



1-1-1984

Public Entities, Officers, and Employees

University of the Pacific; McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>

 Part of the [Legislation Commons](#)

Recommended Citation

University of the Pacific; McGeorge School of Law, *Public Entities, Officers, and Employees*, 15 PAC. L. J. 685 (1984).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol15/iss2/28>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Public Entities, Officers, and Employees

Public Entities, Officers, and Employees; public liability—peace officers

Government Code §945.3 (amended).

SB 67 (Davis); 1983 STAT. Ch 272

Support: Attorney General; California Highway Patrol; California Peace Officers Association; Department of Motor Vehicles

The California Tort Claims Act¹ provides that while charges are pending before a trial court, a defendant² may not bring a civil action³ against a peace officer⁴ or the public entity⁵ employing the officer based on the officer's conduct in relation to the offense.⁶ Chapter 272 specifies that this prohibition against filing a civil action does not apply if the criminal action is on appeal or has been diverted.⁷

Existing law provides that any applicable statute of limitations for filing⁸ or prosecuting an action⁹ under the California Tort Claims Act is suspended while criminal charges are pending before the trial court.¹⁰ Chapter 272 allows the defendant to file a claim with the board of a public entity¹¹ while the criminal action is before the trial court.¹² Significantly, however, the statute of limitations for the presentation of these claims is not extended.¹³

1. See CAL. GOV'T CODE §§810-996.6.

2. CAL. PENAL CODE §685 (definition of defendant).

3. CAL. CIV. PROC. CODE §30 (definition of civil action).

4. CAL. PENAL CODE §852.1(b) (definition of peace officer).

5. CAL. GOV'T CODE §811.2 (definition of public entity).

6. *Id.* §945.3 The officer's conduct includes any act or omission in investigating or reporting the offense or arresting or detaining the accused. *Id.*

7. *Id.*; see CAL. PENAL CODE §1001.1 (definition of pretrial diversion); see *id.* §§1000-1001.55 (diversion procedures for specified crimes).

8. CAL. GOV'T CODE §911.2 (time limits for presentation of claims); see also *id.* §911.4 (when a claim is not timely presented, leave may still be sought to present such claim); see *Williams v. Horvath*, 16 Cal. 3d 834, 838, 548 P.2d 1125, 1128, 129 Cal. Rptr. 453, 456, (1976) (provisions of California law are not required to be met for suits under the Federal Civil Rights Act).

9. See CAL. GOV'T CODE §§945.6-945.8 (statute of limitations for commencing suit).

10. *Id.* §945.3.

11. *Id.* §940.2 (definition of board of a public entity).

12. *Id.* §945.3

13. *Id.*

Public Entities, Officers, and Employees; public liability for hazardous recreational activities

Government Code §831.7 (new).

AB 555 (Campbell); 1983 STAT. Ch 863

Support: City of Los Angeles; County of Los Angeles; Department of General Service; Department of Transportation; East Bay Regional Park District

Under existing law, a public entity¹ or employee² may be liable for injuries to persons caused by dangerous conditions³ on public property.⁴ Existing law provides that property owners are immune from liability for injuries sustained by persons while entering the owner's property for recreational purposes.⁵ Prior to the enactment of Chapter 863, the applicability of this provision to public entities and public employees (hereinafter referred to as public entities) was uncertain.⁶

Chapter 863 specifically grants an immunity to public entities for liability to participants or other persons injured while engaging in hazardous recreational activities.⁷ This immunity shields public entities from claims that arise out of recreational activities conducted on public property, and that create a substantial⁸ risk of injury to participants,⁹ persons assisting

1. CAL. GOV'T. CODE §811.2 (definition of public entity).

2. *Id.* §811.4 (definition of public employee).

3. *Id.* §830 (definition of dangerous condition).

4. *Id.* §835 (conditions of liability of public entity), 840.2 (conditions of liability of public employee for dangerous condition of public property); *see id.* §830(c) (definition of public property). An immunity exists for public entities and employees when the injury is caused by a natural condition on unimproved public property. *Id.* §831.2. Liability generally is not incurred when the injury results from the condition of a reservoir, canal, conduit, or drain. *Id.* §831.8.

5. CAL. CIV. CODE §846.

6. Case law is inconsistent on whether Civil Code section 846 applies to public entities as well as private landowners. *Compare* *English v. Marin Municipal Water District*, 66 Cal. App. 3d 725, 731, 136 Cal. Rptr. 224, 228 (1977) and *Blakley v. California*, 108 Cal. App. 3d 971, 975, 167 Cal. Rptr. 1, 3 (1980) (applying CAL. CIV. CODE §846 to public entities) with *Nelsen v. City of Gridley*, 113 Cal. App. 3d 87, 94, 169 Cal. Rptr. 757, 761 (1980) and *Young v. California*, 129 Cal. App. 3d 559, 563, 181 Cal. Rptr. 160, 162 (1982) (holding that CAL. CIV. CODE §846 did not apply to public entities).

7. CAL. GOV'T. CODE §831.7(a). Hazardous recreational activities are defined to include animal riding, archery, bicycle racing or jumping, boating, body contact sports, diving into water at any place or from any structure where prohibited, hang gliding, kayaking, motorized vehicle racing, off-road motorcycling or four wheel driving, orienteering, pistol and rifle shooting, rock climbing, rocketeering, rodeo, skiing, sky diving, spelunking, sport parachuting, surfing, trampolining, tree climbing, tree rope swinging, water contact activities (when the injured party should have known no lifeguard was provided), white water rafting, and wind surfing. *Id.* §831.7(b)(1)-(3).

8. The risk must be substantial, not minor, trivial, or insignificant. *Id.* §831.7(b).

9. *Id.* §831.7(a).

participants,¹⁰ or spectators who reasonably should have known of the risk of injury.¹¹ Additionally, public entities are protected from damage claims by participants, assistants, and spectators who knew or should have known the risk of injury,¹² and who voluntarily placed themselves in the place of risk or failed to leave the place of risk.¹³

Although Chapter 863 does not create a duty of care¹⁴ or a basis of liability for personal injury or damage to personal property,¹⁵ the liability of a public entity is not limited for (1) failing to guard or warn participants of known dangerous conditions or other hazardous recreational activities not assumed to be part of the recreational activity,¹⁶ (2) damages or injuries suffered when authorization to participate in hazardous recreational activities was granted for the payment of a specific fee,¹⁷ or (3) injuries resulting from the failure to properly construct or maintain structures, recreational equipment, or machinery, or other improvements connected to the hazardous recreational activity.¹⁸ Liability also may be incurred by the public entity for damages or injuries caused by the reckless or grossly negligent promotion of a hazardous recreational activity,¹⁹ or for injuries arising out of acts of gross negligence by the public entity or an employee.²⁰ Finally, the provisions of Chapter 863 are not applicable to independent concessionaires or other nonpublic entities operating hazardous recreational activities on public property.²¹

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *See* RESTATEMENT (SECOND) OF TORTS §4 (defining duty of care).

15. CAL. GOV'T. CODE §831.7(b).

16. *Id.* §831.7(c)(1).

17. *Id.* §831.7(c)(2).

18. *Id.* §831.7(c)(3).

19. *Id.* §831.7(c)(4). Promotional literature, public announcements, or advertisements that merely describe the available facilities and services of the property do not in themselves constitute reckless or grossly negligent promotion. *Id.*

20. *Id.* §831.7(c)(5).

21. *Id.* §831.7(d).

Public Entities, Officers, and Employees; liability for arson

Civil Code §1714.9 (amended).

AB 389 (Sher); 1983 STAT. Ch 136

Support: California Peace Officers Association; California State Fireman's Association; City of Los Angeles; County Supervisors Association of California; Department of Parks and Recreations; Fire Chief's Association; League of California Cities; Peace Officers Research As-

sociation of California

Under the judicially created “fireman’s rule,”¹ a person is not liable for negligent infliction of injuries to firefighters² or peace officers³ if the injury results from conditions usually dealt with by firefighters or peace officers.⁴ Despite the fireman’s rule, existing statutory provisions impose liability on persons committing specified willful⁵ acts⁶ that cause injury to firefighters, peace officers, and emergency medical personnel⁷ employed by a public entity.⁸ Chapter 136 expands these provisions to impose liability upon arsonists⁹ for injuries sustained by firefighters, peace officers, and emergency medical personnel caused by the act of arson.¹⁰

1. *Giorgi v. Pacific Gas and Electric Co.*, 266 Cal. App. 2d 355, 357, 72 Cal. Rptr. 119, 121 (1968); see PROSSER, LAW OF TORTS, 397-98 (4th ed., 1971); see also Comment, *An Examination of the California Fireman’s Rule*, 6 PAC. L.J. 660 (1975).

2. CAL. PENAL CODE §245.1 (definition of fireman).

3. See *id.* §§830 - 830.8 (definition of peace officer).

4. See, e.g., *Scott v. E.L. Yeager Construction Co.*, 12 Cal. App. 3d 1190, 1199, 91 Cal. Rptr. 232, 238 (1970). Case law, however, excluded from the coverage of the fireman’s rule intentional torts or negligent acts independent of those requiring the presence of the firefighter or peace officer. See *Lipson v. Superior Court*, 31 Cal. 3d 362, 369, 644 P.2d 822, 826, 182 Cal. Rptr. 629, 633 (1982); *Krueger v. City of Anaheim*, 130 Cal. App. 3d 166, 171, 181 Cal. Rptr. 631, 635 (1982). But see *Lenthall v. Maxwell*, 138 Cal. App. 3d 716, 719, 188 Cal. Rptr. 260, 262 (1982). The fireman’s rule does not apply to injuries inflicted by a participant in the event bringing the officer to the place of injury, and the act causing the injury is one the officer should reasonably expect to occur while engaged in that duty. *Id.*

5. CAL. PENAL CODE §7(1) (definition of willful).

6. These willful acts include (1) conduct causing an injury after the person knew or should have known of the presence of the firefighter, peace officer, or emergency medical personnel (hereinafter referred to as firefighter), (2) conduct, after the person knew or should have known of the presence of the firefighter, that violates a statute, ordinance, or regulation designed to protect the firefighter, and that is the proximate cause of an injury the statute, ordinance, or regulation was designed to prevent, and (3) conduct intended to injure the firefighter. CAL. CIV. CODE §1714.9(1), (2), (3).

7. See CAL. HEALTH & SAFETY CODE §§1797.80 - 1797.84 (defining emergency medical technicians).

8. CAL. CIV. CODE §1714.9(a). In certain situations, liability is also incurred for injuries suffered by firefighters as a result of a want of ordinary care or skill in the management of a person’s property or person. *Id.* Existing law provides that an award of damages may be reduced by the comparative fault of the firefighter. *Id.* §1714.9(b); see CAL. GOV’T. CODE §811.2 (definition of public entity).

9. CAL. PENAL CODE §451 (definition of arson).

10. Compare CAL. CIV. CODE §1714.9(a)(4) with 1982 Cal. Stat. c.258, §1, at ___ (enacting CAL. CIV. CODE §1714.9). The liability imposed by Chapter 136 does not apply to the employer of the firefighter. CAL. CIV. CODE §1714.9(d).

Public Entities, Officers, and Employees; administrative adjudication

Government Code §11517 (amended).

AB 883 (Lancaster); 1983 STAT. Ch 548

Support: California Youth Authority; County Supervisors Association

of California; Department of Finance

Existing law requires a hearing officer¹ who hears a contested case alone² to prepare a proposed decision³ for consideration by an agency.⁴ The agency itself⁵ may (1) adopt the proposed decision in its entirety,⁶ (2) reduce the proposed penalty and adopt the balance of the proposed decision,⁷ or (3) decide the case based upon the record.⁸ Under prior law, an agency choosing to decide a case upon the record was required to review the transcript⁹ of the hearing.¹⁰ Chapter 548 now provides that upon stipulation of the parties, the agency itself may decide the case based simply upon the record without the use of the transcript.¹¹

1. CAL. GOV'T CODE §11502 (duties, appointment and qualifications of hearing officer); *see id.* §11512, 5 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* §322 (a hearing officer shall preside over every hearing in a contested case).

2. Hearings may either be held before the agency and a presiding officer or before a hearing officer alone. CAL. GOV'T CODE §11517(a), (b). If the agency decides to participate, the hearing officer presides, rules on admission and exclusion of evidence, and advises the agency on matters of law; the agency itself exercises all other powers unless it delegates them to the officer. The hearing officer who acts alone exercises all power relating to the conduct of the hearing. *Id.* §11512(b); WITKIN, *supra* note 1, §322.

3. *See* CAL. GOV'T CODE §11517(b). The proposed decision must be prepared within 30 days after the case is submitted in a form that is suitable to be adopted as the decision on the case. *Id.*

4. *Id.* §11517(b); *see id.* §§11500(a) (definition of agency), 11501 (applicable enumerated agencies).

5. *See id.* §11500(a) (whenever the word "agency" is used alone the power to act may be delegated by the agency; and whenever the words "agency itself" are used the power to act shall be delegated unless otherwise authorized by the statutes).

6. *Id.* §11517(b).

7. *Id.*

8. *Id.* §11517(c).

9. The proceedings of the hearing are reported by a phonographic reporter. *Id.* §11512(d)

10. 1979 Cal. Stat. c.199, §4, at___ (amending CAL. GOV'T CODE §11517(c)).

11. CAL. GOV'T CODE §11517(c), (d).

Public Entities, Officers, and Employees; rejection of claims

Government Code § 911.3 (new).

AB 30 (McAlister); 1983 STAT. Ch 107

Support: California Law Revision Commission; Department of Transportation

Existing law provides that certain claims¹ against public entities² must

1. CAL. GOV'T CODE § 910 (requirements for a claim).

2. *Id.* §900.4 (definition of public entity). This section applies to claims relating to causes of action for death, injury to persons or personal property, or injury to growing crops. *Id.* § 911.2.

be made to the State Board of Control³ within 100 days after the cause of action accrues.⁴ A written application to present a late claim to the public entity is permitted, however, for up to one year after accrual of the cause of action.⁵ Under prior law, when the claimant filed late without an application to present a late claim, the reason for rejection was not required to be specified in the notice of rejection of the claim, and may therefore have been misleading to the claimant.⁶ Chapter 107 requires the State Board of Control to notify⁷ the claimant of the need to file a late claim application.⁸ This notice must be given within forty-five days after the presentation of the late claim,⁹ and must specify the provisions governing late claims.¹⁰ Finally, under Chapter 107, the failure to give timely notice to the claimant is considered a waiver of any defenses regarding the timeliness of filing by the public entity.¹¹

3. *Id.* §900.2 (definition of State Board of Control).

4. *Id.* §901 (specifying date of accrual for a cause of action).

5. *Id.* §§911.4 (application to present a late claim), 911.6 (grant or denial of application to present a late claim).

6. *See Recommendation Relating to Notice of Rejection of Late Claim Against Public Entity*, 16 Cal. L. Revision Comm'n Reports 2251, 2255 (1982).

7. CAL. GOV'T CODE § 910.8 (requirements for notice). The notice must personally be delivered to the claimant, or mailed to the claimant's address or the address stated in the claim or application to file a late claim. *Id.* § 915.4.

8. *Id.* § 911.3(a).

9. *Id.*

10. *Id.*; *see also id.* §§911.4 - 912.2, 946.6.

11. *Id.* § 911.3(b). There is no waiver, however, if the claim states neither the address to which the claimant desires notice to be sent, nor the claimant's address. *Id.*

Public Entities, Officers, and Employees; state resources

Public Resources Code §§6504, 6815, 6893, 6919 (repealed); §§6815, 6919 (new); §§5001.65, 6815.2, 25358 (amended).

AB 1905 (Goggin); 1983 STAT. Ch 1171

Support: California Energy Commission; Department of Finance; State Lands Commission

Prior law provided that an applicant for a lease from the State Lands Commission¹ has thirty days to execute and return the first payment due under the terms of the lease.² All subsequent lease payments had to be made within fifteen days after the due date.³ Furthermore, under prior law, when an application had been filed for a prospecting permit for min-

1. CAL. PUB. RES. CODE §§6002, 6101-6110 (definition of State Lands Commission).

2. *See* 1951 Cal. Stat. c. 1396, §1, at 3329 (amending CAL. PUB. RES. CODE §6504).

3. *Id.*

eral deposits reserved to the state, the owner had a six month preferential right to file an applicatoin for a similar permit after the state sold the land.⁴ Chapter 1171 repeals both the payment requirements and this preferential right.⁵

Existing law requires that leases of available state lands for the extraction and removal of oil and gas deposits be competitively bid.⁶ The State Lands Commission may negotiate and enter into agreements for compensating the development of these resources, except when (1) oil and gas beneath state lands are being drained from wells drilled on adjacent private lands,⁷ or (2) competitive bidding is inappropriate due to the size, shape, or inaccessibility of the drill site on available state lands.⁸ Chapter 1171 expands these exceptions to permit the State Lands Commission to enter into agreements for compensation on state-owned lands without soliciting bids⁹ when the state owns a fractional interest in the land,¹⁰ or when the Sate Lands Commission determines that the lease or agreement is in the best interests of the state.¹¹

Under existing law, if the State Energy Resources Conservation and Development Commission¹² finds a necessity to alleviate fuel shortages or effect cost savings, the Commission may exchange, on a competitively bid basis,¹³ oil, gas, or other hydrocarbons taken in kind for refined or finished products.¹⁴ Chapter 1171 provides that upon a determination by the State Energy Commission that a transfer is in the best interest of the state, the Commission may transfer oil, gas, or other hydrocarbons taken in kind to another state or public agency.¹⁵

4. 1961 Cal. Stat. c. 355, §1, at 1392 (amending CAL. PUB. RES. CODE §6893).

5. See 1983 Cal. Stat. c. 1171, §5, at ___ (repealing CAL. PUB. RES. CODE §6893).

6. See 1976 Cal. Stat. c. 771, §1, at 2400 (amending CAL. PUB. RES. CODE §6815).

7. *Id.* Wells drilled upon private or public lands that drain oil or gas from state-owned lands, may continue to drain oil or gas only from adjacent land. See *id.* CAL. PUB. RES. CODE §6815(b).

8. 1976 Cal. Stat. c. 771, §1, at 2400 (amending CAL. PUB. RES. CODE §6815).

9. Compare CAL. PUB. RES. CODE §§6815(a)(1)-(4), (b), 6919(a)-(d) with 1976 Cal. Stat. c. 771, §1, at 2400 (amending CAL. PUB. RES. CODE §6815) and 1967 Cal. Stat. c. 1398, §39, at 3278 (enacting CAL. PUB. RES. CODE §6919).

10. CAL. PUB. RES. CODE §§6815(a)(3), 6919(c).

11. *Id.* §§6815(a)(4), 6919(d).

12. *Id.* §25104 (definition of State Energy Commission).

13. *Id.* §6815.2(b). The Commission may reject all bids, if it determines that they are not in the public interest. *Id.*

14. See *id.* §6815.2(a),(b).

15. *Id.* §6815.2(e). The Commission will charge the agencies the current market price, including applicable taxes, transportation, treatment, and other costs associated with taking the in-kind royalty. The revenue collected shall be subject to the terms and conditions enumerated in section 6217 of the California Public Resource Code. *Id.*

