



1-1-1988

Public Entities, Officers, and Employees

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Recommended Citation

University of the Pacific; McGeorge School of Law, *Public Entities, Officers, and Employees*, 19 PAC. L. J. 675 (1988).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol19/iss2/30>

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Public Entities, Officers, and Employees

Public Entities, Officers, and Employees; construction contracts—waivers

Public Contract Code § 7102 (amended).
AB 918 (Areias); 1987 STAT. Ch. 98

Under existing law, a provision in a public agency construction contract¹ that limits the contractee's liability to an extension of time for unreasonable delays for which the contractee was responsible, may not be interpreted to preclude a contractor from recovering damages.² Chapter 98 prevents a public agency from requiring an alteration, limitation, or waiver of this provision, and voids any such alteration, limitation, or waiver.³

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1. CAL. PUB. CONT. CODE § 7102 (subcontracts under construction contracts of public agencies are included within California Public Contract Code section 7102).

2. *Id.* (the delay must be unreasonable under the circumstances involved and not within the contemplation of the parties).

3. *Id.* Chapter 98 must not be interpreted as voiding any construction contract provision requiring a notice of delay, providing for arbitration or other procedure for settlement, or providing for liquidated damages. *Id.*

Public Entities, Officers and Employees; unpaid leave to state military reservists

Military and Veterans Code § 395.9 (new).
AB 2169 (Costa); 1987 STAT. Ch. 329

Existing law entitles any public employee¹ who is a member of the reserve corps of the armed forces of the United States,² the California National Guard,³ or the Naval Militia⁴ to a temporary leave of absence⁵ for active duty military training⁶ with pay and for inactive military duty⁷ without pay.⁸ Further, an employee of a private business is permitted a temporary military leave of absence without pay.⁹ Chapter 329 affords any public or private employee who is a member of the State Military Reserve¹⁰ a leave of absence without pay for inactive duty training.¹¹

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1. CAL. MIL. & VET. CODE § 389(b) (definition of public employee).
 2. *Id.* § 389(d) (definition of armed forces of the United States). *See* CAL. GOV'T CODE § 18540 (armed forces defined further).
 3. CAL. MIL. & VET. CODE § 210 (composition of California National Guard).
 4. *Id.* §§ 280-301 (the Naval Militia).
 5. *Id.* § 389(a) (definition of temporary military leave of absence).
 6. 10 U.S.C.S. § 101(22) (Law. Co-op. 1985) (definition of active duty).
 7. *Id.* § 101(31) (definition of inactive duty).
 8. CAL. MIL. & VET. CODE § 395.05(a).
 9. *Id.* § 394.5.
 10. *Id.* § 550 (State Military Reserve).
 11. *Id.* § 395.9. Leave shall not exceed 15 calendar days annually, including time spent going to and returning from duty. *Id.*

Public Entities, Officers, and Employees; tort liability—public beaches

Government Code § 831.21 (new).
SB 23 (Bergeson); 1987 STAT. Ch. 1209

Under existing law, public entities¹ and public employees² are

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1. CAL. GOV'T CODE § 811.2 (definition of public entity).
 2. *Id.* § 811.4 (definition of public employee).

immune from liability for injury³ caused by a natural condition⁴ of any unimproved⁵ public property.⁶ Prior case law, however, provided that public entities and public employees may be liable for injuries caused by a hybrid dangerous condition, partially natural and partially artificial in character.⁷ Chapter 1209 abrogates prior case law by providing that public beaches are in a natural condition and unimproved notwithstanding the provision or absence of public safety services such as lifeguards, police or sheriff patrols, medical services, fire protection services, beach clean-up services, or signs.⁸

JAB

3. Injury means death, bodily injury, damage to or loss of property, or any other injury that a person may suffer to their person, reputation, character, feelings, or estate. *Id.* § 810.8.

4. See *Rendak v. State*, 18 Cal. App. 3d 286, 289, 95 Cal. Rptr. 665, 667 (1971) (public entity was not liable where injury occurred in a natural and unimproved area that was separate, distinct, and remote from improved portions of the park). See also *Sacramento County v. Superior Court*, 89 Cal. App. 3d 215, 218, 152 Cal. Rptr. 391, 392 (1979) (where drowning was caused by the combination of the flow of water in a river and a snag consisting of trees, drowning was caused by a natural condition since there was nothing man-made or artificial about the snag, the river, or the flow of water). But see *Buchanan v. Newport Beach*, 50 Cal. App. 3d 221, 227, 123 Cal. Rptr. 338, 341 (1975) (public entity immunity denied where injury was the product of an improvement to a harbor entrance and the creation of a larger beach area, thus man-made and not a natural condition).

5. See *Fuller v. State*, 51 Cal. App. 3d 926, 937, 125 Cal. Rptr. 586, 592 (1975) (the existence of lifeguard towers, restroom facilities, and concrete fire rings at the beach where a diver was injured did not render the area improved rather than unimproved public property).

6. CAL. GOV'T CODE § 831.2. This immunity includes, but is not limited to, any natural condition of any lake, stream, bay, river, or beach. *Id.* Public property is real or personal property owned or controlled by the public entity, except easements, encroachments, and other property located on the property of the public entity but not owned or controlled by the public entity. *Id.* § 830(c). A similar immunity is granted when the injury is caused by the condition of unpaved access roads and trails to recreational areas, including paved paths on easements of way granted to public entities. *Id.* § 831.4. In addition, certain unimproved and unoccupied portions of state lands are excluded by a grant of immunity. *Id.* § 831.6. See generally 4 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* § 101 (Supp. 1984) (interpretations of unimproved property in various contexts).

7. *Gonzales v. City of San Diego*, 130 Cal. App. 3d 882, 885, 182 Cal. Rptr. 73, 75 (1982) (the immunity did not apply within the context of a hybrid dangerous condition, partially natural and partially artificial in character, the result of a combination of a natural defect of the real property and the relied upon conduct of the governing public entity).

8. CAL. GOV'T CODE § 831.21. This section applies only to causes of action arising from acts or omissions occurring on or after January 1, 1988. *Id.*

Public Entities, Officers, and Employees; false claim actions

Government Code §§ 12650, 12651, 12652, 12653, 12654, 12655 (new).

AB 1441 (Floyd); 1987 STAT. Ch. 1420

FALSE CLAIMS

Existing law prohibits any person from presenting a false or fraudulent claim to any state board or officer, or to any county, city, or district board or officer authorized to pay genuine claims.¹ Chapter 1420 provides that any person² who knowingly³ commits any of the following acts is liable to the state or political subdivision⁴ for treble damages in addition to any costs incurred in a civil action to recover any of these penalties: (1) Presenting a false claim⁵ for payment or approval; (2) making or using a false record or statement in an attempt to have a false claim paid or approved; (3) conspiring to defraud the state or political subdivision by having a false claim allowed or paid; (4) delivering less property or money used by the state or political subdivision that is in one's possession, custody, or control than the amount for which a receipt or certificate is received; (5) making or delivering a receipt that falsely represents the property to be used; (6) buying or receiving as a pledge of an obligation or debt, public property from any person prohibited from selling or pledging the property; (7) making or using a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money

1. CAL. PENAL CODE § 72 (claim includes any bill, account, voucher, or writing). A violation is punishable by imprisonment in the county jail, by a fine not exceeding \$1000, or by both; or by imprisonment in the state prison, by a fine not exceeding \$10,000, or by both. *Id.*

2. CAL. GOV'T CODE § 12650(e) (includes any natural person, corporation, firm, association, organization, partnership, business, or trust).

3. Knowing or knowingly mean that a person, with respect to information: (1) Has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information. *Id.* § 12650(b).

4. Political subdivision includes any city, city and county, county, tax or assessment district, or other legally authorized local governmental entity with jurisdictional boundaries. *Id.* § 12650(c).

5. Claim includes any request or demand for money, property, or services made to any employee, officer, or agent of the state or political subdivision, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded was issued from, or was provided by, the state or by any political subdivision. *Id.* § 12650(a).

or property; or, (8) failing to disclose an inadvertent submission of a false claim within a reasonable time.⁶

I. Procedural Steps

a. Attorney General and Prosecuting Authorities

Chapter 1420 requires the Attorney General of California and the prosecuting authority⁷ to diligently investigate false claim violations involving state or political subdivision funds.⁸ If the Attorney General or prosecuting authority finds a violation, either may bring a civil action against the violator.⁹ If an action brought by the Attorney General involves both state and political subdivision funds, the Attorney General must serve a copy of the complaint on the appropriate prosecuting authority the day the complaint is filed.¹⁰ The prosecuting authority is permitted to intervene within sixty days after receiving the complaint.¹¹ If an action brought by a prosecuting authority involves both political subdivision and state funds, the prosecuting authority must serve a copy of the complaint on the Attorney General the day the complaint is filed,¹² and the Attorney

6. *Id.* § 12651(a). The person may also be liable to the state or political subdivision for \$10,000 for each false claim. *Id.* The court may assess not less than two times and not more than three times the amount of damages that the state or political subdivision sustains and no civil penalty if the court finds: (1) The violator furnished officials of the state or the political subdivision with all information known about the violation within 30 days after the violator first obtained the information; (2) the violator fully cooperated with any investigation; and (3) at the time the information was provided by the violator no criminal prosecution, civil action, or administrative action had commenced with respect to the violation. *Id.* § 12651(b)(1)-(3). Liability under this section is joint and several for any act committed by two or more people. *Id.* § 12651(c). This section does not apply to controversies involving less than \$500, to claims, records, or statements made pursuant to California Government Code section 810, to worker's compensation claims filed pursuant to California Labor Code section 3200, or to claims, records, or statements made under the California Revenue and Taxation Code. *Id.* § 12651(d), (f). The remedies provided in this article are in addition to any other remedies provided for in any other code section or available under common law. *Id.* § 12655(a). This law is to be liberally construed and applied to promote the public interest, and if any provision or the application thereof is held to be unconstitutional, the remainder of the article and the application of the provision to other persons or circumstances will not be affected. *Id.* § 12655(b), (c).

7. Prosecuting authority means the county counsel, city attorney, or other local government official charged with investigating, filing, and conducting civil legal proceedings on behalf of, or in the name of, a particular political subdivision. *Id.* § 12650(d).

8. *Id.* §§ 12652(a)(1), 12652(b)(1).

9. *Id.*

10. *Id.* § 12652(a)(2).

11. *Id.* § 12652(a)(3). The court may allow the prosecuting authority to intervene within 60 days after receipt of the complaint, or thereafter upon a showing of all requirements under California Civil Code section 387. *Id.*

12. *Id.* § 12652(b)(2).

General is required to notify the court within sixty days after receiving the complaint that the Attorney General's office either intends to proceed with the action,¹³ or declines to take over the action.¹⁴

b. Private Persons

Chapter 1420 allows a qui tam plaintiff¹⁵ to bring a civil action for a false claim violation for that person and for the State if state funds are involved, or for the political subdivision if political subdivision funds are exclusively involved.¹⁶ The complaint must be filed in superior court in camera and may remain under seal for up to sixty days.¹⁷ A copy of the complaint and a written disclosure of substantially all material evidence and information the plaintiff possesses must be served by mail on the Attorney General.¹⁸ If the complaint alleges violations involving only state funds, Chapter 1420 requires the Attorney General to notify the court within sixty days after receiving the complaint whether the Attorney General's office intends to proceed or declines to take over the action.¹⁹ If the complaint alleges violations involving both state and political subdivision funds, the Attorney General must forward copies of the complaint and written disclosure to the appropriate prosecuting authority within fifteen days and coordinate any review and investigation with the prosecuting authority.²⁰ The Attorney General must

13. *Id.* § 12652(b)(3)(A) (the Attorney General must assume primary responsibility for conducting the action and the prosecuting attorney has the right to continue as a party).

14. *Id.* § 12652(b)(3)(B) (the prosecuting attorney will retain the right to conduct the action).

15. A person who sues for himself and either for the state, if state funds are involved, or for a political subdivision, if only political subdivision funds are involved, in the name of the state or political subdivision is a qui tam plaintiff. *Id.* § 12652(c)(1).

16. *Id.* The action may be dismissed only with the written consent of the court after the complaint is filed. *Id.* No action may be brought by a person based on allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the state or political subdivision is already a party. *Id.* § 12652(d)(2). No other person may bring a related action based on the same underlying facts. *Id.* § 12652(c)(8). No court may hear a privately conducted false claim action based on information discovered by a present or former employee of the state or political subdivision unless (1) the person first exhausts existing internal procedures for reporting and recovering falsely claimed sums; and (2) the state or political subdivision fails to act on the information provided within a reasonable time. *Id.* § 12652(d)(4).

17. *Id.* § 12652(c)(2) (the complaint may not be served on the defendant until it is unsealed.)

18. *Id.* § 12652(c)(3).

19. *Id.* § 12652(c)(4)(A), (B) (if the Attorney General declines the qui tam plaintiff will have the right to conduct the action). The Attorney General may later intervene if the state's interest is not being adequately represented. *Id.* § 12652(f)(2)(A). If requested, the state may be served with copies of all pleadings filed in the action at the state's expense. *Id.* § 12652(f)(1).

20. *Id.* § 12652(c)(6)(A).

notify the court within sixty days after receiving the complaint whether (1) the Attorney General's office intends to proceed with the case,²¹ (2) the Attorney General's office declines to take over the case but the prosecuting authority of the political subdivision intends to proceed with the case,²² or (3) both the Attorney General and the prosecuting authority of the political subdivision decline to take over the action.²³ If the complaint alleges violations involving only political subdivision funds, Chapter 1420 requires the Attorney General to forward the complaint and written disclosure to the appropriate prosecuting authority within fifteen days and notify the qui tam plaintiff of the transfer.²⁴ Chapter 1420 requires the prosecuting authority to notify the court within forty-five days after receiving the complaint whether they intend to proceed or decline to take over the action.²⁵

II. Jurisdiction

Chapter 1420 provides that no court has jurisdiction over a false claim action brought by a private person against State Senate or Assembly members, members of the state judiciary, elected officials in the executive branch, or members of the governing body of any political subdivision if the action is based on evidence or information known to the state or political subdivision when the action was brought.²⁶ Furthermore, no court has jurisdiction over a false claim action based on the public disclosure of allegations or transactions (1) in a hearing, (2) in an investigation, report, hearing, or audit conducted by or at the request of the Senate, Assembly, Auditor, or governing body of a political subdivision, or (3) from the news media unless the action is brought by the Attorney General or the prose-

21. *Id.* § 12652(c)(6)(B)(i). The political subdivision will be allowed to intervene within 60 days after the Attorney General notifies the court of the intentions of the Attorney General's office. *Id.* § 12652(c)(6)(C).

22. *Id.* § 12652(c)(6)(B)(ii).

23. *Id.* § 12652(c)(6)(B)(iii) (the qui tam plaintiff will have the right to conduct the action).

24. *Id.* § 12652(c)(5)(A).

25. *Id.* § 12652(5)(B)(i), (ii) (if the prosecuting authority declines, the qui tam plaintiff may proceed with the action). The prosecuting authority may later intervene if the political subdivision's interest is not being adequately represented. *Id.* § 12652(f)(2)(A). If requested, the political subdivision may be served with copies of all pleadings filed in the action at the political subdivision's expense. *Id.* § 12652(f)(1).

26. *Id.* § 12652(d)(1). No person may bring an action based on allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the state or political subdivision is already a party. *Id.* § 12652(d)(2).

cuting authority of a political subdivision, or the person bringing the action is an original source²⁷ of the information.²⁸

III. Effect of Prior Criminal Conviction

Chapter 1420 provides that a guilty verdict in any criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, estops the defendant from denying the essential elements of the offense in any civil false claim action involving the same transaction as in the criminal proceeding.²⁹

IV. Employer Responsibilities and Sanctions

Chapter 1420 forbids any employer from making, adopting, or enforcing any rule, regulation, or policy that prevents an employee from disclosing information to a government or law enforcement agency or from acting in furtherance of a false claim action.³⁰ Furthermore, no employer may discharge, demote, suspend, threaten,

27. Original source is an individual who has direct and independent knowledge of the information on which the allegations are based, who voluntarily provided the information to the state or political subdivision before filing an action based on that information, and whose information provided the basis or catalyst for the investigation, hearing, audit, or report that led to the public disclosure. *Id.* § 12652(e)(3)(B).

28. *Id.* § 12652(d)(3)(A). The distribution of proceeds from the action or settlement are to be distributed as follows: (1) A fixed 33% to the office of the Attorney General or prosecuting authority for any action initiated and conducted by the office of the Attorney General or prosecuting authority or for an action brought by a qui tam plaintiff which the Attorney General's office or the prosecuting authority's office conducts; (2) at least 15% but no more than 33% to the qui tam plaintiff when the office of the Attorney General or prosecuting authority proceeds with the action; (3) a reasonable amount determined by the court but not less than 25% nor more than 50% to the qui tam plaintiff if the state or political subdivision does not proceed; (4) no guaranteed recovery for a former employee who exhausted all internal remedies or a former employee who was involved in the false claim, but the court may award the qui tam plaintiff any appropriate amount up to 33% for actions conducted by the office of the Attorney General or political subdivision or up to 50% for personally conducted actions; (5) all remaining proceeds revert to the state or political subdivision. *Id.* § 12652(g)(1)-(6).

29. *Id.* § 12654(d) (except a plea of nolo contendere made prior to January 1, 1988). Chapter 1420 limits the time in which a civil false claim action may be filed to no more than three years after the date of discovery by the state or political subdivision official charged with responsibility to act in the circumstances, or in any other case to no more than ten years after the false claim was committed. *Id.* § 12654(a). An action may be brought for activity prior to the enactment of this article if the limitation period has not lapsed. *Id.* § 12654(b). Chapter 1420 requires the state, the political subdivision, or the qui tam plaintiff to prove all the essential elements of the cause of action, including damages, by a preponderance of the evidence. *Id.* § 12654(c).

30. *Id.* § 12653(a) (includes investigating, initiating, testifying, or assisting in an action filed or to be filed).

harass, deny promotion to, or in any other manner discriminate against, an employee because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency or in furthering a false claim action.³¹ Relief provided under Chapter 1420 includes reinstatement with the same seniority, two times the amount of back pay plus interest, compensation for any special damages, and, where appropriate, punitive damages.³² An employee, however, who is discharged, demoted, suspended, threatened, harassed, denied promotion, or in any other manner discriminated against because of conduct which directly or indirectly resulted in a false claim being submitted to the state or political subdivision is entitled to these remedies only if: (1) the employee voluntarily disclosed information to a government or law enforcement agency or acted in furtherance of a false claim action, and (2) the employee was harassed, threatened with termination or demotion or otherwise coerced by the employer or its management to engage in the fraudulent activity.³³

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31. *Id.* § 12653(b) (includes investigating, initiating, testifying, or assisting in an action filed or to be filed).

32. *Id.* § 12653(c). An employee may bring an action in the appropriate superior court of the state for the relief and the defendant must pay all litigation costs and attorney's fees. *Id.*

33. *Id.* § 12653(d).

