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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1477 Session of  
1978

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INTRODUCED BY LEWIS, STAUFFER, ORLANDO, JUBELIRER AND STOUT,  
MAY 22, 1978

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REFERRED TO LOCAL GOVERNMENT, MAY 22, 1978

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AN ACT

1 Providing a comprehensive procedure for the presentation of tort  
2 claims against political subdivisions.

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26       The General Assembly of the Commonwealth of Pennsylvania  
27 hereby enacts as follows:

28   CHAPTER 1  
29   PRELIMINARY PROVISIONS

1 Section 101. Short title.

2 This act shall be known and may be cited as the "Political  
3 Subdivision Tort Claims Act."

4 Section 102. Legislative findings and intent.

5 (a) The General Assembly hereby finds and declares that  
6 exposure of employees and officials of political subdivisions to  
7 tort claims and civil law suits for acts or omissions within the  
8 scope of their employment has a negative effect upon the  
9 performance of official local governmental duties. Further, it  
10 provides an obstacle to the discharge of the public business. It  
11 is the declared intention of the General Assembly to relieve  
12 employees and officials of political subdivisions from all legal  
13 fees, expenses and judgments arising from such actions, unless  
14 the tort complained of includes malice or criminal intent.

15 (b) The General Assembly further declares that any person  
16 should be legally entitled to recover damages caused by bodily  
17 injury or property damage due to a negligent or wrongful act  
18 committed by either a political subdivision or employees or  
19 officials thereof.

20 (c) Therefore, the General Assembly, by this act, abolishes  
21 all previous judicially created categories of political  
22 subdivision tort liability such as "governmental" or  
23 "proprietary" functions and "discretionary" or "ministerial"  
24 acts. Liability for acts or omissions under this act shall be  
25 based upon the traditional tort concepts of duty and the  
26 reasonably prudent person's standard of care in the performance  
27 of that duty. Determination of the standard of care required in  
28 any particular instance should be made with the knowledge that  
29 each political subdivision has financial limitations within  
30 which it must exercise discretion in determining the extent and

1 nature of its activities.

2 Section 103. Definitions.

3 The following words and phrases when used in this act shall  
4 have, unless the context clearly indicates otherwise, the  
5 meanings given to them in this section:

6 "Agency." Any board, committee, commission, department or  
7 other instrumentality or entity designated to act on behalf of a  
8 political subdivision by law.

9 "Claim." Any written demand against a political subdivision  
10 for monetary damages only to which any person is legally  
11 entitled under the provisions of this act.

12 "Employee." Any person who is acting or who has acted on  
13 behalf of a political subdivision or any agency thereof whether  
14 that person is acting on a permanent or temporary basis, whether  
15 compensated or not. The definition of employee also includes all  
16 elected or appointed officers, members of governing bodies and  
17 other persons designated to act for an agency or political  
18 subdivision. This definition shall neither include independent  
19 contractors nor their employees or agents under contract to the  
20 governmental entity to which this act applies in the event a  
21 claim arises. This definition shall not apply to any person  
22 performing tasks over which the political subdivision has no  
23 legal right of control.

24 "Loss." Any injury, sickness or death of a person or damage  
25 to real or personal property. No award for damages shall include  
26 punitive or exemplary damages nor damages for loss of services  
27 or loss of support.

28 "Political subdivision." Any county, city, borough,  
29 incorporated town, township, school district, vocational school  
30 district, intermediate unit, municipal authority, home rule,

1 optional plan or optional charter municipality, and any boards,  
2 commissions, committees, departments, instrumentalities, or  
3 entities thereof designated to act in behalf of a political  
4 subdivision by law.

5 "Scope of employment." An employee acting in the performance  
6 of the duties of the office or employment imposed by law or  
7 performing tasks lawfully assigned by a competent legal  
8 authority within the political subdivision.

9 CHAPTER 2

10 LIABILITY OF POLITICAL SUBDIVISIONS

11 Section 201. Liability generally.

12 Except as otherwise exempted by statute or the provisions of  
13 this act, every political subdivision is subject to the  
14 liability for its torts and those of its employees acting within  
15 their scope of employment. A political subdivision shall not be  
16 liable for any act or omission of any employee because of  
17 corruption, fraud, malice or intentional wrongdoing on the part  
18 of the employee.

19 Section 202. Employee's acts covered.

20 Action against an employee of a political subdivision for  
21 injury, property loss, death, any or all such inflictions caused  
22 by negligence or wrongful act, bad faith, omission, malicious  
23 action or wanton and willful disregard may be prosecuted subject  
24 to the limitations prescribed herein.

25 Section 203. Exceptions from liability.

26 A political subdivision, or an employee acting within the  
27 scope of employment, shall not be liable if a loss results from:

28 (1) Legislative functions.

29 (2) Judicial or quasi-judicial functions.

30 (3) Execution of the lawful orders of any court.

1           (4) Enactment or enforcement, or failure to enact, any  
2 law, whether valid or invalid, including but not limited to,  
3 any charter provision, ordinance, resolution, rule,  
4 regulation or written policy, unless the act of enforcement  
5 constitutes false arrest or false imprisonment.

6           (5) Performance or failure to perform any act or service  
7 which is within the reasonable exercise of discretion of the  
8 political subdivision or its employee.

9           (6) Civil disobedience, work slowdown or work stoppage  
10 by employees of the public or private sector, riot,  
11 insurrection or rebellion.

12           (7) Temporary or natural conditions on any public way or  
13 other public place, due to weather conditions, unless the  
14 condition is affirmatively caused or allowed to remain after  
15 actual or constructive notice, by the negligence of the  
16 municipality or its employees.

17           (8) Assessment or collection of taxes.

18           (9) Licensing powers or functions including, but not  
19 limited to, the issuance, the denial, suspension or  
20 revocation of or failure or refusal to issue, deny, suspend  
21 or revoke any permit, license, certificate, approval, order  
22 or other similar authority where the authority is  
23 discretionary under the law.

24           (10) Any claim or claims made under the act of June 2,  
25 1915 (P.L.736, No.338), known as "The Pennsylvania Workmen's  
26 Compensation Act."

27           (11) Any claim or claims made under the act of December  
28 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the  
29 "Unemployment Compensation Law."

30           (12) The absence, condition or malfunction of any

1 traffic or road sign, signal or warning device unless the  
2 absence, condition or malfunction is not corrected by the  
3 political subdivision responsible for the maintenance of same  
4 within a reasonable time after having received actual or  
5 constructive notice, or the removal or destruction of such  
6 signs, signal or warning devices by third parties, except on  
7 failure of the political subdivision to correct such absence,  
8 condition or malfunction within a reasonable time after  
9 having received actual or constructive notice. The signs,  
10 signals and warning devices referred to in this clause are  
11 those used in connection with hazards normally connected with  
12 the use of roadways or public ways and do not apply to the  
13 duty to warn of specific defects such as excavations or  
14 roadway obstructions. Nothing shall give rise to liability  
15 resulting from the failure of any political subdivision to  
16 initially place any of the above signs, signals or warning  
17 devices when such failure is the result of a discretionary  
18 act of the political subdivision or its employees.

19 (13) Any paid fireman or policeman, of a political  
20 subdivision rendering emergency care, first aid or rescue  
21 while in the performance of his duties at the scene of an  
22 emergency, or moving the person receiving such care, first  
23 aid and rescue to a hospital or other place of medical care,  
24 except any acts or omissions intentionally designed to harm  
25 or any grossly negligent acts or omissions which result in  
26 harm to the person receiving the emergency care, first aid or  
27 rescue, or being moved to a hospital or other place of  
28 medical care, but nothing herein shall relieve a driver of an  
29 emergency vehicle from liability arising from operation or  
30 use of such vehicle. In order for any fireman or policeman,

1 to receive the benefit of the exemption from civil liability  
2 provided for in this clause, he must first have taken and  
3 successfully completed a standard first aid course recognized  
4 or approved by the American Red Cross and further he shall  
5 have a valid certification from the American Red Cross that  
6 he has successfully completed any necessary training or  
7 refresher courses, or shall have successfully completed a  
8 first aid course having standards at least equal to a first  
9 aid course recognized or approved by the American Red Cross.

10 (14) Any claim which is limited or barred by any other  
11 act or which is for injuries or property damage against any  
12 officer, employee or agent where the individual is immune  
13 from suit.

14 (15) Unintentional misrepresentation.

15 (16) An act or omission of an individual who is not an  
16 employee as defined in section 103.

17 Section 204. Surcharges.

18 No elected or appointed official of any political subdivision  
19 shall be surcharged for any act, error or omission in excess of  
20 the actual financial loss sustained by the political subdivision  
21 by reason thereof and by further reason of any action brought  
22 pursuant to the provisions herein. Other provisions of law to  
23 the contrary notwithstanding, the surcharge imposed hereby shall  
24 be the only surcharge imposed with regard to actions brought  
25 pursuant to this act.

26 Section 205. Liability limited to statutory amount.

27 (a) A political subdivision's liability shall be limited to  
28 the amounts set forth in subsection (b).

29 (b) The liability of a political subdivision for claims  
30 within the scope of this act shall not exceed:



1           (1) Five hundred thousand dollars to any claimant for  
2           any number of claims for personal injury or damage to or  
3           destruction of property, including consequential damages  
4           arising out of a single incident or occurrence.

5           (2) One million dollars for any number of claims arising  
6           out of a single incident or occurrence.

### 7                               CHAPTER 3

#### 8                               JURISDICTION, VENUE AND PROCEDURE

##### 9   Section 301. Jurisdiction.

10          The court of common pleas shall have original jurisdiction in  
11          all causes brought pursuant to the provisions of this act.

##### 12   Section 302. Venue.

13          Venue shall lie in the judicial district in which the cause  
14          of action accrued or where the political subdivision is located,  
15          except where such political subdivision is located in more than  
16          one judicial district, the action shall be brought in the  
17          judicial district where the cause of action accrued or in the  
18          judicial district in which the principal office or place of  
19          business of such political subdivision is located.

##### 20   Section 303. Exclusive procedure for filing claims.

21          No claim or action shall be allowed against a political  
22          subdivision or its employees unless the claim has been filed in  
23          accordance with the provisions of this act.

##### 24   Section 304. Filing procedure.

25          (a) Any person claiming damages of a political subdivision  
26          pursuant to the terms of this act shall, within 180 days of the  
27          date of origin of the claim, notify the clerk or secretary or  
28          other designated officer of such political subdivision in  
29          writing of said claim, stating briefly the facts upon which the  
30          claim is based. The time for giving such written notice of the

1 claim does not include the time during which the individual  
2 injured is unable, due to incapacitation or disability from the  
3 injury, to give notice, not exceeding 90 days of incapacity. In  
4 the event that the individual's injuries result in death, the  
5 time for giving notice shall commence with such individual's  
6 death.

7 (b) Failure to comply with the notice requirement as  
8 required by subsection (a) shall be a bar to any subsequent  
9 action to recover damages unless such failure is reasonably  
10 explained or the political subdivision otherwise had actual or  
11 constructive notice of the incident or condition giving rise to  
12 an individual's claim.

13 (c) The time periods as otherwise provided by law for  
14 commencement of actions based upon death, personal injury or  
15 property damage shall govern the institution of legal  
16 proceedings for the recovery of monetary damages in suits  
17 brought pursuant to the provisions of this act.

18 Section 305. Multiple claims.

19 Where the amount awarded to, or settled upon by, multiple  
20 claimants exceeds the limitations of section 206, any party may  
21 apply to the court of original jurisdiction for apportionment to  
22 each claimant of the proper share of the total amount limited  
23 herein. A claimant's share shall be in the proportion that the  
24 award to the claimant bears to the aggregate award for all  
25 claims arising out of the occurrence.

26 Section 306. Settlements out of court.

27 The political subdivision, after conferring with its legal  
28 officer or other legal counsel, may compromise a settlement of a  
29 claim or suit brought against it or its employees under this act  
30 as to the damages or other relief sought, and may appropriate

1 money for the payment of amounts agreed upon. When the amount of  
2 any settlement exceeds \$2,500, the settlement shall not be  
3 effective until approved by the court of original jurisdiction  
4 and entered as a judgment as provided by law.

5 Section 307. Appeals.

6 Any party aggrieved by a final determination of the court of  
7 original jurisdiction may appeal therefrom to Commonwealth  
8 Court. The procedure on appeal shall be as otherwise provided by  
9 law.

#### 10 CHAPTER 4

#### 11 JUDGMENTS

12 Section 401. Enforcement of judgments generally.

13 Judgments recovered against political subdivisions under the  
14 provisions of this act shall be enforced in the same manner and  
15 to the same extent as judgments are now enforced against such  
16 political subdivisions under the laws of the Commonwealth,  
17 except as herein provided.

18 Section 402. Judgments against insured political subdivisions.

19 If the judgment is obtained against a political subdivision  
20 that has procured a contract or policy of public liability  
21 insurance protection, the holder of the judgment may use the  
22 methods of collecting the judgment as are provided by the policy  
23 or contract and the laws of the Commonwealth to the extent of  
24 the limits of coverage provided.

25 Section 403. Judgments against self-insured political  
26 subdivision and those not fully insured.

27 For the payment of any judgment obtained under the provisions  
28 of this act against a political subdivision that is a self-  
29 insurer or not fully covered by liability insurance, the manner  
30 of paying a money judgment shall be based upon a proof of

1 indebtedness or evidence of any estimated tax levy necessary for  
2 payment of the judgment and any other evidence or statements  
3 which the court of original jurisdiction may require. As an  
4 alternative to paying the money judgment in this manner, the  
5 court, may provide for the judgment to be paid over a period of  
6 not less than one nor more than ten years. The interest rate on  
7 any judgment where payment is extended more than three years  
8 shall be at the rate prescribed by law for the first three years  
9 and at the rate of 6% for each remaining year.

## 10 CHAPTER 5

### 11 LEGAL INDEMNIFICATION

12 Section 501. Indemnification required generally.

13 A political subdivision shall provide a defense for its  
14 employees and be responsible for the payment of any judgment on  
15 any claim or civil law suit against an employee for money  
16 damages arising out of any act or omission within the scope of  
17 employment.

18 Section 502. Special provisions.

19 A political subdivision shall provide a defense for its  
20 employees irrespective of whether the claim and civil suit is  
21 brought in a court of the Commonwealth or the United States or  
22 under State or Federal law. A political subdivision may, unless  
23 directed otherwise by a court of competent jurisdiction, refuse  
24 to defend its employee at any time if it is determined that the  
25 act or omission of the employee was not within the scope of  
26 employment or that the act or omission included criminal intent  
27 or that such act or omission is within the exceptions enumerated  
28 in section 201.

29 Section 503. Contribution, indemnification or reimbursement  
30 by employee.

1 A political subdivision shall not be entitled to contribution  
2 or indemnification, or reimbursement of legal fees and expenses  
3 from its employee unless the court shall find that the act or  
4 omission of the employee was outside the scope of employment or  
5 that the act or omission included criminal intent or that such  
6 act or omission is within the exceptions enumerated in section  
7 201. Any action by a political subdivision against its employee  
8 and any action by an employee against the political subdivision  
9 for contribution, indemnification, or necessary legal fees and  
10 expenses, shall be brought in the same court in which the tort  
11 claim in question was brought.

## 12 CHAPTER 6

### 13 POWERS OF POLITICAL SUBDIVISION

14 Section 601. Purchase of liability insurance authorized.

15 A political subdivision shall have the authority to purchase  
16 insurance on employees for any liability arising from the  
17 performance of their duties within the scope of their  
18 employment.

19 Section 602. Employment of risk manager authorized.

20 A political subdivision shall have the authority to employ a  
21 professional risk manager whose responsibility it shall be to  
22 administer a public liability insurance program for the  
23 political subdivision and initiate any risk management program  
24 for the political subdivision and its employees.

25 Section 603. Joint action by political subdivision authorized.

26 Any two or more political subdivisions may join together,  
27 enter into any agreements, or jointly contract for the  
28 development of a group risk management program either through  
29 the provisions of the act of July 12, 1972 (P.L.762, No.180),  
30 entitled "An act relating to intergovernmental cooperation" or

1 any other applicable law in the Commonwealth. Any two or more  
2 political subdivisions may join together, enter into any  
3 agreements, or jointly contract for the purchasing of public  
4 liability insurance. Any two or more political subdivisions may  
5 pool their public liability insurance risks through the  
6 provisions of the act of July 12, 1972 (P.L.762, No.180), or any  
7 other applicable law of the Commonwealth.

8 Section 604. Insurance pooling and coinsurance.

9 The pooling of insurance risks, reserves, claims or losses  
10 shall not be construed to be transacting insurance nor otherwise  
11 subject such political subdivisions to the provisions of the  
12 laws of the Commonwealth regulating insurance or insurance  
13 companies. Such political subdivisions may be coinsured under a  
14 master policy and the total premium may be prorated among such  
15 political subdivisions. Any county may undertake a group risk  
16 management program or public liability insurance program on  
17 behalf of itself and any other political subdivisions covered by  
18 this act within the county that wish to voluntarily participate  
19 in such programs.

20 Section 605. Funding of self-insurance.

21 Any political subdivision may self-insure, which must be  
22 funded on an annual basis by appropriations to establish a  
23 reserve for self-insurance purposes.

24 CHAPTER 7

25 MISCELLANEOUS PROVISIONS

26 Section 701. General laws and rules applicable.

27 The laws of the Commonwealth and the rules of civil procedure  
28 as promulgated and adopted by the Supreme Court of Pennsylvania  
29 insofar as applicable and not inconsistent herewith shall apply  
30 to and govern actions under this act.

1 Section 702. Repeals.

2 (a) The following act or parts of acts are repealed  
3 absolutely:

4 Clause 53.1 of section 2403, act of June 23, 1931 (P.L.932,  
5 No.317), reenacted and amended June 28, 1951 (P.L.662, No.164),  
6 known as "The Third Class City Code."

7 Clause LXVII of section 1502, act of June 24, 1931 (P.L.1206,  
8 No.331), reenacted and amended May 27, 1949 (P.L.1955, No.569),  
9 known as "The First Class Township Code."

10 Act of July 1, 1937 (P.L.2547, No.476), entitled "An act  
11 requiring all persons claiming damages from any county, city,  
12 borough, town, township or school district to file, within six  
13 (6) months from the origin of such claim, a written notice with  
14 such county, city, borough, town, township or school district."

15 The third paragraph of clause (q) of subsection B of section  
16 4, act of May 2, 1945 (P.L.382, No.164), known as the  
17 "Municipality Authorities Act of 1945."

18 Act of May 15, 1945 (P.L.538, No.210), entitled "An act  
19 relating to the liabilities of elected and appointed officers of  
20 the various political subdivisions and limiting surcharges to  
21 the actual financial loss sustained."

22 Act of May 20, 1949 (P.L.1642, No.495), entitled "An act  
23 relating to property owned by cities of the second class A,  
24 authorizing special funds for its maintenance, and authorizing  
25 council to insure against liability arising out of the ownership  
26 or control of such property."

27 Subsection (b) of section 431, act of August 9, 1955  
28 (P.L.323, No.130), known as "The County Code."

29 Clause 37.1 of section 1202, act of February 1, 1966 (1965  
30 P.L.1656, No.581), known as "The Borough Code."

1       Section 1576 and 7723(d) of Title 75 (Vehicles), act of  
2 November 25, 1970 (P.L.707, No.230), known as the Pennsylvania  
3 Consolidated Statutes.

4       Act of July 10, 1975 (P.L.50, No.29), entitled "An act  
5 providing for liability insurance for officers and employees of  
6 incorporated towns."

7       (b) The following acts or parts of acts are repealed to the  
8 extent indicated:

9       Clause XIII of section 702, act of May 1, 1933 (P.L.103,  
10 No.69), reenacted and amended July 10, 1947 (P.L.1481, No.567),  
11 known as "The Second Class Township Code," insofar as  
12 inconsistent.

13       Section 774, act of March 10, 1949 (P.L.30, No.14), known as  
14 the "Public School Code of 1949," insofar as inconsistent.

15       Section 11, act of March 19, 1951 (P.L.28, No.4), entitled  
16 "An act relating to the civil defense of this State and its  
17 coordination with national defense; providing for the  
18 establishment of a State Council of Civil Defense, local and  
19 district councils of civil defense, Mobile Support Units;  
20 prescribing the powers, duties and immunities thereof and of  
21 their personnel; authorizing mutual aid compacts and providing  
22 penalties," insofar as it relates to political subdivisions and  
23 their agents, employees and representatives.

24       Act of September 25, 1965 (P.L.498, No.252), entitled "An act  
25 exempting certain firemen, policemen and volunteer ambulance and  
26 rescue squad personnel from civil liability when rendering  
27 emergency care, first aid and rescue in the performance of their  
28 official duties except in certain instances," insofar as it  
29 applies to police and firemen who are employees of political  
30 subdivisions.



1       Section 603, act of October 20, 1966 (3rd Sp.Sess., P.L.96,  
2 No.6), known as the "Mental Health and Mental Retardation Act of  
3 1966," insofar as inconsistent.

4       Section 5522 of Title 42 (Judiciary and Judicial Procedure),  
5 act of November 25, 1970 (P.L.707, No.230), known as the  
6 Pennsylvania Consolidated Statutes, insofar as inconsistent.

7       (c) All other acts or parts of acts are repealed to the  
8 extent of any inconsistency.

9       Section 703. Effective date and application.

10       This act shall take effect in 60 days but it shall not affect  
11 any cause of action which arose or which would otherwise have  
12 arisen pursuant to the provisions of this act had it been in  
13 effect, prior to the effective date herein provided.