
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1477 Session of
1978

Report of the Committee of Conference

To the Members of the Senate and House of Representatives:

We, the undersigned, Committee of Conference on the part of the Senate and House of Representatives for the purpose of considering Senate Bill No. 1477, entitled:
"An act providing a comprehensive procedure for the presentation of tort claims against political subdivisions."

respectfully submit the following bill as our report:

H. CRAIG LEWIS

JOHN STAUFFER

(Committee on the part of the Senate.)

NORMAN S. BERSON

CHARLES N. CAPUTO

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(Committee on the part of the House of Representatives.)

AN ACT

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

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20 The General Assembly of the Commonwealth of Pennsylvania
21 hereby enacts as follows:

22 CHAPTER 1

23 PRELIMINARY PROVISIONS

24 Section 101. Short title.

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

27 Section 102. Definitions.

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

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

4 "Employee of a political subdivision." Any person who is
5 acting or who has acted on behalf of a political subdivision
6 whether on a permanent or temporary basis, whether compensated
7 or not and whether within or without the territorial boundaries
8 of the political subdivision, including any volunteer fireman
9 and any elected or appointed officer, member of a governing body
10 or other person designated to act for the political subdivision;
11 provided, however, that independent contractors under contract
12 to the political subdivision and their employees and agents and
13 persons performing tasks over which the political subdivision
14 has no legal right of control are not employees of the political
15 subdivision.

16 "Judicial determination." Any determination by a court of
17 competent jurisdiction including any settlement approved by such
18 court.

19 "Political subdivision." Any county, city, borough,
20 incorporated town, township, school district, vocational school
21 district, intermediate unit, municipal authority, home rule,
22 optional plan or optional charter municipality, any authority
23 created by one or more political subdivisions, and any board,
24 commission, committee, department, instrumentality, or entity
25 thereof designated to act in behalf of one or more political
26 subdivisions.

27 CHAPTER 2

28 GOVERNMENTAL IMMUNITY

29 Section 201. Governmental immunity generally.

30 Except as otherwise provided in this act, no political

1 subdivision shall be liable for any damages on account of any
2 injury to a person or property caused by any act or omission of
3 the political subdivision or an employee thereof or any other
4 person.

5 Section 202. Exceptions to governmental immunity.

6 (a) Liability imposed.--A political subdivision shall be
7 liable for damages on account of an injury to a person or
8 property within the limits set forth in chapter 4 (relating to
9 limitations on damages) if both of the following conditions are
10 satisfied and the injury occurs as a result of one of the
11 actions or activities set forth in subsection (b):

12 (1) The damages would be recoverable under common law or
13 a statute creating a cause of action if the injury were
14 caused by a person not having available a defense under
15 section 201 (relating to governmental immunity generally) or
16 section 302 (relating to defense of official immunity); and

17 (2) The injury was caused by the negligent acts or
18 omissions of the political subdivision or an employee thereof
19 acting within the scope of his office or duties with respect
20 to one of the categories listed in this subsection. As used
21 in this subsection, "negligent acts or omissions" shall not
22 include acts or omissions or conduct which constitutes a
23 crime, actual fraud, actual malice or willful misconduct.

24 (b) Actions or activities which may impose liability.--The
25 following acts or activities by a political subdivision or any
26 of its employees may result in the imposition of liability on a
27 political subdivision:

28 (1) The operation of any motor vehicle in the possession
29 or control of the political subdivision. As used in this
30 paragraph, "motor vehicle" means any vehicle which is self-

1 propelled and any attachment thereof, including vehicles
2 operated by rail, through water or in air.

3 (2) The care, custody or control of personal property of
4 other in the possession or control of the political
5 subdivision. The only losses for which damages shall be
6 recoverable under this paragraph are those property losses
7 suffered with respect to the personal property in the
8 possession or control of the political subdivision.

9 (3) The care, custody or control of real property in the
10 possession of the political subdivision, except that the
11 political subdivision shall not be liable for damages on
12 account of any injury sustained by a person intentionally
13 trespassing on real property in the possession of the
14 political subdivision. As used in this paragraph, "real
15 property" shall not include trees, streets, sidewalks,
16 traffic signs, lights and other traffic controls, street
17 lights and street lighting systems and facilities of steam,
18 sewer, water, gas and electric systems owned by the political
19 subdivision and located within rights of way.

20 (4) A dangerous condition of traffic lights, lights or
21 other traffic controls, street lights or street lighting
22 systems or trees under the care, custody or control of the
23 political subdivision, except that the claimant to recover
24 must establish that the dangerous condition created a
25 reasonably foreseeable risk of the kind of injury which was
26 incurred and that the political subdivision had actual notice
27 or could reasonably be charged with notice under the
28 circumstances of the dangerous condition at a sufficient time
29 prior to the event to have taken measures to protect against
30 the dangerous condition.

1 (5) A dangerous condition of the facilities of steam,
2 sewer, water, gas and electric systems owned by the political
3 subdivision and located within rights of way, except that the
4 claimant to recover must establish that the dangerous
5 condition created a reasonably foreseeable risk of the kind
6 of injury which was incurred and that the political
7 subdivision had actual notice or could reasonably be charged
8 with notice under the circumstance of the dangerous condition
9 at a sufficient time prior to the event to have taken
10 measures to protect against the dangerous condition.

11 (6) A dangerous condition of streets owned by the
12 political subdivision, except that the claimant to recover
13 must establish that the dangerous condition created a
14 reasonably foreseeable risk of the kind of injury which was
15 incurred and that the political subdivision had actual notice
16 or could reasonably be charged with notice under the
17 circumstance of the dangerous condition at a sufficient time
18 prior to the event to have taken measures to protect against
19 the dangerous condition.

20 (7) A dangerous condition of sidewalks within the rights
21 of way of streets owned by the political subdivision, except
22 that the claimant to recover must establish that the
23 dangerous condition created a reasonably foreseeable risk of
24 the kind of injury which was incurred and that the political
25 subdivision had actual notice or could reasonably be charged
26 with notice under the circumstance of the dangerous condition
27 at a sufficient time prior to the event to have taken
28 measures to protect against the dangerous condition. When a
29 political subdivision is liable for damages under this
30 paragraph by reason of its power and authority to require

1 installation and repair of sidewalks under the care, custody
2 and control of other persons, the political subdivision shall
3 be secondarily liable only and such other persons shall be
4 primarily liable.

5 (8) The care, custody or control of animals in the
6 possession or control of a political subdivision, including
7 but not limited to police dogs and horses. Damages shall not
8 be recoverable under this paragraph on account of any injury
9 caused by wild animals, including but not limited to bears
10 and deer, except as otherwise provided by law.

11 (c) Limited definition.--As used in this subsection the
12 amount of time reasonably required to take protective measures
13 including inspections required by law shall be determined with
14 reference to the actual equipment, personnel and facilities
15 available to the political subdivision and the competing demands
16 therefor.

17 CHAPTER 3

18 OFFICIAL IMMUNITY

19 Section 301. Official liability generally.

20 An employee of a political subdivision is liable for civil
21 damages on account of any injury to a person or property caused
22 by his acts or omissions only to the same extent as his
23 employing political subdivision and subject to the limitations
24 imposed by this chapter.

25 Section 302. Defense of official immunity.

26 In any action brought against an employee of a political
27 subdivision for damages on account of an injury to a person or
28 property based upon claims arising from, or reasonably related
29 to, the office or the performance of the duties of the employee,
30 the employee may assert on his own behalf, or the political

1 subdivision may assert on his behalf:

2 (1) Defenses which are available at common law to the
3 employee.

4 (2) The defense that the conduct of the employee which
5 gave rise to the claim was authorized or required by law, or
6 that he in good faith reasonably believed the conduct was
7 authorized or required by law.

8 (3) The defense that the act or omission of the employee
9 which gave rise to the claim was within the policymaking
10 discretion granted to the employee by law. For purposes of
11 this subsection, all acts and omissions of members of the
12 governing body of a political subdivision or of the chief
13 executive officer thereof are deemed to be within the
14 policymaking discretion granted to such person by law.

15 Section 303. Legal assistance.

16 (a) Mandatory provision of legal assistance generally.--When
17 an action is brought against an employee of a political
18 subdivision for damages on account of an injury to a person or
19 property, and it is alleged that the act or omission of the
20 employee which gave rise to the claim was within the scope of
21 the office or duties of the employee, the political subdivision
22 shall, upon the written request of the employee, defend the
23 action, unless or until there is a judicial determination that
24 such act or omission was not within the scope of the office or
25 duties of the employee.

26 (b) Optional provision of legal assistance generally.--When
27 an action is brought against an employee of a political
28 subdivision for damages on account of an injury to a person or
29 property, and it is not alleged that the act or omission of the
30 employee which gave rise to the claim was within the scope of

1 his office or duties, the political subdivision may, upon the
2 written request of the employee, defend the action, and such
3 undertaking to defend thereafter may be withdrawn only with the
4 approval of the court. If the political subdivision has refused
5 a written request to defend the action, and it is judicially
6 determined that the act or omission was, or that the employee in
7 good faith reasonably believed that such act or omission was,
8 within the scope of the office or duties of the employee and did
9 not constitute a crime, actual fraud, actual malice or willful
10 misconduct, the political subdivision shall reimburse the
11 employee for the cost of his legal defense in such amounts as
12 shall be determined to be reasonable by the court.

13 (c) Control of litigation.--When, pursuant to subsection (a)
14 or subsection (b), the political subdivision defends an action
15 against an employee thereof at the request of the employee, it
16 may assume exclusive control of the defense of the employee,
17 keeping him advised with respect thereto, and the employee shall
18 cooperate fully with the defense, provided that in situations
19 where the legal counsel provided by the political subdivision
20 determines that the interests of the employee and the political
21 subdivision conflict, the political subdivision shall obtain the
22 express written consent of the employee for such interested
23 representation or shall supply independent representation.

24 Section 304. Indemnity.

25 (a) Indemnity by political subdivision generally.--When an
26 action is brought against an employee of a political subdivision
27 for damages on account of an injury to a person or property, and
28 he has given timely prior written notice to the political
29 subdivision, and it is judicially determined that an act or
30 omission of the employee caused the injury and such act or

1 omission was, or that the employee in good faith reasonably
2 believed that such act or omission was, within the scope of his
3 office or duties, the political subdivision shall indemnify the
4 employee for the payment of any judgment on the suit.

5 (b) Indemnity by employee generally.--No employee of a
6 political subdivision shall be liable to the political
7 subdivision for any surcharge, contribution, indemnity or
8 reimbursement for any liability incurred by the political
9 subdivision for damages on account of an injury to a person or
10 property caused by an act or omission of the employee which was
11 within the scope of his office or duties or which he in good
12 faith reasonably believed to be within the scope of his office
13 or duties. No employee of a political subdivision shall be
14 liable to the political subdivision for any surcharge,
15 contribution, indemnity or reimbursement for any expenses or
16 legal fees incurred by the political subdivision while defending
17 the employee against a claim for damages on account of an injury
18 to a person or property caused by an act or omission of the
19 employee.

20 (c) Cooperation.--In any action against a political
21 subdivision or an employee thereof for damages on account of an
22 injury caused by the act or omission of the employee in which
23 action the employee has not fully cooperated with the political
24 subdivision in the defense of the action, the provisions of
25 subsection (b) shall not apply.

26 Section 305. Intervention.

27 A political subdivision may intervene in any action brought
28 against an employee thereof for damages on account of an injury
29 to a person or property based upon claims arising from, or
30 reasonably related to, the office or the performance of the

1 duties of the employee.

2 Section 306. Limitation on damages.

3 In any action brought against an employee of a political
4 subdivision for damages on account of an injury to a person or
5 property in which it is judicially determined that the act or
6 omission of the employee caused the injury and that such act or
7 omission was, or that the employee in good faith reasonably
8 believed that such act or omission was, within the scope of his
9 office or duties, damages shall be recoverable only within the
10 limits set forth in chapter 4 (relating to limitations on
11 damages).

12 Section 307. Willful misconduct.

13 In any action against a political subdivision or employee
14 thereof for damages on account of an injury caused by the act or
15 omission of the employee in which it is judicially determined
16 that the act or omission of the employee caused the injury and
17 that such act or omission constituted a crime, actual fraud,
18 actual malice or willful misconduct, the provisions of sections
19 302 (relating to defense of official immunity), 304 (relating to
20 indemnity) and 306 (relating to limitation on damages) shall not
21 apply.

22 CHAPTER 4

23 LIMITATIONS ON DAMAGES

24 Section 401. Limitation on damages generally.

25 Actions for which damages are limited by reference to this
26 chapter shall be limited as set forth in this chapter.

27 Section 402. Amounts recoverable.

28 Damages arising from the same cause of action or transaction
29 or occurrence or series of causes of action or transactions or
30 occurrences shall not exceed \$500,000 in the aggregate.

1 Section 403. Types of losses recognized.

2 Damages shall be recoverable only for:

3 (1) Past or future loss of earnings and earning
4 capacity.

5 (2) Pain and suffering in the following instances;

6 (i) death; or

7 (ii) only in cases of permanent loss of a bodily
8 function, permanent disfigurement or permanent
9 dismemberment where the medical and dental expenses
10 referred to in paragraph (3) are in excess of \$1,500.

11 (3) Medical and dental expenses including the reasonable
12 value of reasonable and necessary medical and dental
13 services, prosthetic devices and necessary ambulance,
14 hospital, professional nursing, and physical therapy expenses
15 accrued and anticipated in the diagnosis, care and recovery
16 of the claimant.

17 (4) Loss of consortium.

18 (5) Loss of support.

19 (6) Property losses.

20 Section 404. Prejudgment interest.

21 No interest shall accrue prior to any entry of judgment.

22 Section 405. Insurance benefits.

23 If a claimant receives or is entitled to receive benefits
24 under a policy of insurance other than a life insurance policy
25 as a result of losses for which damages are recoverable under
26 section 403 (relating to types of losses recognized), the amount
27 of such benefits shall be deducted from the amount of damages
28 which would otherwise be recoverable by such claimant.

29 CHAPTER 5

30 JURISDICTION, VENUE AND PROCEDURE

1 Section 501. Jurisdiction.

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

4 Section 502. Venue.

5 Venue shall lie in the judicial district in which the cause
6 of action accrued or where the political subdivision is located,
7 except where such political subdivision is located in more than
8 one judicial district, the action shall be brought in the
9 judicial district where the cause of action accrued or in the
10 judicial district in which the principal office or place of
11 business of such political subdivision is located.

12 Section 503. Exclusive procedure for filing claims.

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

16 Section 504. Filing procedure.

17 (a) Notice to political subdivision.--Any person claiming
18 damages of a political subdivision pursuant to the terms of this
19 act shall, within 180 days of the date of origin of the claim,
20 notify the clerk or secretary or other designated officer of
21 such political subdivision in writing of said claim, stating
22 briefly the facts upon which the claim is based. The time for
23 giving such written notice of the claim does not include the
24 time during which the individual injured is unable, due to
25 incapacitation or disability from the injury, to give notice,
26 not exceeding 90 days of incapacity. In the event that the
27 individual's injuries result in death, the time for giving
28 notice shall commence with such individual's death.

29 (b) Bar for failure to notify.--Failure to comply with the
30 notice requirement as required by subsection (a) shall be a bar

1 to any subsequent action to recover damages unless such failure
2 is reasonably explained or unless the political subdivision
3 otherwise had actual or constructive notice of the incident or
4 condition giving rise to an individual's claim.

5 (c) Effect of other statutes.--The time periods as otherwise
6 provided by law for commencement of actions based upon death,
7 personal injury or property damage shall govern the institution
8 of legal proceedings for the recovery of monetary damages in
9 suits brought pursuant to the provisions of this act.

10 Section 505. Judgment as a bar.

11 The judgment in an action cognizable under section 301
12 (relating to official liability generally) shall constitute a
13 complete bar to any action by the claimant, by reason of the
14 same subject matter, against the political subdivision of which
15 the defendant in such action is an employee. The judgment in an
16 action under section 202 (relating to exceptions to governmental
17 immunity) shall constitute a complete bar to any action by the
18 claimant, by reason of the same subject matter, against the
19 employee whose act or omission gave rise to the claim.

20 CHAPTER 6

21 JUDGMENTS

22 Section 601. Enforcement of judgments generally.

23 Judgments recovered against political subdivisions under the
24 provisions of this act shall be enforced in the same manner and
25 to the same extent as judgments are now enforced against such
26 political subdivisions under the laws of the Commonwealth,
27 except as herein provided.

28 Section 602. Judgments against insured political subdivisions.

29 If the judgment is obtained against a political subdivision
30 that has procured a contract or policy of public liability

1 insurance protection, the holder of the judgment may use the
2 methods of collecting the judgment as are provided by the policy
3 or contract and the laws of the Commonwealth to the extent of
4 the limits of coverage provided.

5 Section 603. Judgments against self-insured political
6 subdivision and those not fully insured.

7 For the payment of any judgment obtained under the provisions
8 of this act against a political subdivision that is a self-
9 insurer or not fully covered by liability insurance, the manner
10 of paying a money judgment shall be based upon a proof of
11 indebtedness or evidence of any estimated tax levy necessary for
12 payment of the judgment and any other evidence or statements
13 which the court of original jurisdiction may require. As an
14 alternative to paying the money judgment in this manner, the
15 court may provide for the judgment to be paid over a period of
16 not less than one nor more than ten years. The interest rate on
17 any judgment where payment is extended more than three years
18 shall be at the rate prescribed by law for the first three years
19 and at the rate of 6% for each remaining year.

20 CHAPTER 7

21 POWERS OF POLITICAL SUBDIVISION

22 Section 701. Purchase of liability insurance authorized.

23 A political subdivision shall have the authority to purchase
24 insurance on itself or its employees for any liability arising
25 from the performance of their duties within the scope of their
26 employment.

27 Section 702. Employment of risk manager authorized.

28 A political subdivision shall have the authority to employ a
29 professional risk manager whose responsibility it shall be to
30 administer a public liability insurance program for the

1 political subdivision and initiate any risk management program
2 for the political subdivision and its employees.

3 Section 703. Joint action by political subdivision authorized.

4 Any two or more political subdivisions may join together,
5 enter into any agreements, or jointly contract for the
6 development of a group risk management program either through
7 the provisions of the act of July 12, 1972 (P.L.762, No.180),
8 entitled "An act relating to intergovernmental cooperation" or
9 any other applicable law in the Commonwealth. Any two or more
10 political subdivisions may join together, enter into any
11 agreements, or jointly contract for the purchasing of public
12 liability insurance. Any two or more political subdivisions may
13 pool their public liability insurance risks through the
14 provisions of the act of July 12, 1972 (P.L.762, No.180), or any
15 other applicable law of the Commonwealth.

16 Section 704. Insurance pooling and coinsurance.

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

28 Section 705. Funding of self-insurance.

29 Any political subdivision may self-insure, which must be
30 funded on an annual basis by appropriations to establish a

1 reserve for self-insurance purposes.

2 Section 706. Rules and regulations.

3 A political subdivision may promulgate rules and regulations
4 not inconsistent with this act in order to implement the intent
5 of the act.

6 Section 707. Delegation of duties.

7 Any duties placed upon a political subdivision under the
8 provisions of this act may be delegated to an independent
9 contractor by a written agreement.

10 CHAPTER 8

11 MISCELLANEOUS PROVISIONS

12 Section 801. General laws and rules applicable.

13 The laws of the Commonwealth and the rules of civil procedure
14 as promulgated and adopted by the Supreme Court of Pennsylvania
15 insofar as applicable and not inconsistent herewith shall apply
16 to and govern actions under this act.

17 Section 802. Repeals.

18 (a) The following act or parts of acts are repealed
19 absolutely:

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

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

26 The third paragraph of clause (q) of subsection B of section
27 4, act of May 2, 1945 (P.L.382, No.164), known as the
28 "Municipality Authorities Act of 1945."

29 Act of May 15, 1945 (P.L.538, No.210), entitled "An act
30 relating to the liabilities of elected and appointed officers of

1 the various political subdivisions and limiting surcharges to
2 the actual financial loss sustained."

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

8 Subdivision (x) and section 2199.18, act of July 28, 1953
9 (P.L.723, No.230), known as the "Second Class County Code."

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

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

14 Sections 1576 and 7723(d) of Title 75 (Vehicles), act of
15 November 25, 1970 (P.L.707, No.230), known as the Pennsylvania
16 Consolidated Statutes.

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

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

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

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

28 Section 11, act of March 19, 1951 (P.L.28, No.4), entitled
29 "An act relating to the civil defense of this State and its
30 coordination with national defense; providing for the

1 establishment of a State Council of Civil Defense, local and
2 district councils of civil defense, Mobile Support Units;
3 prescribing the powers, duties and immunities thereof and of
4 their personnel; authorizing mutual aid compacts and providing
5 penalties," insofar as it relates to political subdivisions and
6 their agents, employees and representatives.

7 Section 603, act of October 20, 1966 (3rd Sp.Sess., P.L.96,
8 No.6), known as the "Mental Health and Mental Retardation Act of
9 1966," insofar as inconsistent.

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

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

15 Section 803. Effective date and application.

16 This act shall take effect in 60 days and shall apply to all
17 causes of action arising thereafter. Nothing in this act shall
18 be construed to apply its provisions to any cause of action,
19 which arose or which would otherwise have arisen prior to such
20 effective date had this act been in effect at such time.