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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL  
No. 920

Session of  
1977

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INTRODUCED BY MESSRS. MANDERINO, GOODMAN, B. F. O'BRIEN, CAPUTO  
AND PARKER, APRIL 20, 1977

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AS AMENDED ON SECOND CONSIDERATION, IN SENATE, JUNE 13, 1978

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AN ACT

1 Amending the act of May 20, 1937 (P.L.728, No.193), entitled "An  
2 act providing for the creation of a Board of Arbitration of  
3 Claims arising from contracts with the Commonwealth;  
4 providing for and regulating the procedure in prosecuting  
5 claims before such board; defining the powers of the board;  
6 and fixing the compensation of members and employes thereof;  
7 providing that the awards of such board shall be final;  
8 providing for the payment of awards; and authorizing an  
9 appropriation," changing the title of the board and its  
10 members and making it an independent administrative agency;  
11 transferring certain additional jurisdiction to the court;  
12 making certain repeals; increasing the terms of court  
13 members; further providing for the compensation of court  
14 members; ~~providing for hearing panels and for additional~~ <—  
15 ~~expenses;~~ changing procedures for transcripts; AND providing <—  
16 for the disposition of written complaints. ~~and providing for~~ <—  
17 ~~appeals to go to the Commonwealth Court.~~

18 The General Assembly of the Commonwealth of Pennsylvania  
19 hereby enacts as follows:

20 Section 1. The title, act of May 20, 1937 (P.L.728, No.193),  
21 entitled "An act providing for the creation of a Board of  
22 Arbitration of Claims arising from contracts with the  
23 Commonwealth; providing for and regulating the procedure in  
24 prosecuting claims before such board; defining the powers of the

1 board; and fixing the compensation of members and employes  
2 thereof; providing that the awards of such board shall be final;  
3 providing for the payment of awards; and authorizing an  
4 appropriation," is amended to read:

5 AN ACT

6 Providing for the creation of a [Board of Arbitration] Court of  
7 Claims arising from contracts with the Commonwealth;  
8 providing for and regulating the procedure in prosecuting  
9 claims before such [board] court; defining the powers of the  
10 [board] court; and fixing the compensation of members and  
11 employes thereof; providing that the awards of such [board]  
12 court shall be final; providing for the payment of awards;  
13 and authorizing an appropriation.

14 Section 2. Sections 1 and 2.1 of the act, amended or added  
15 September 29, 1961 (P.L.1738, No.705), are amended to read:

16 Section 1. Be it enacted, &c., That there is hereby created  
17 a [departmental] independent administrative board [in the  
18 Department of the Auditor General] known as the [Board of  
19 Arbitration] Court of Claims, the duty of which shall be to  
20 arbitrate claims against the Commonwealth arising from contracts  
21 entered into by the Commonwealth, and to adjust and settle  
22 certain other claims against the Commonwealth formerly handled  
23 by the Auditor General and State Treasurer acting as the Board  
24 of Claims. Any reference in this or any other act to this board  
25 shall be deemed a reference to the Court of Claims.

26 Administrative services for the Court of Claims shall be  
27 provided by the Department of the Auditor General. Such [board]  
28 court shall consist of three members appointed by the Governor,  
29 one of whom shall be learned in the law and shall be chairman of  
30 the [board] court, another of whom shall be a registered civil

1 engineer. The third member of the [board] court shall be a  
2 citizen and resident of the Commonwealth. [not learned in the  
3 law or an engineer.] The lawyer member shall hold the title of  
4 chief administrative judge, one member shall have the title of  
5 engineer member and one member shall have the title of citizen  
6 member. Two members of the [board] court shall constitute a  
7 quorum. The members shall be appointed for terms of [two, four,  
8 and six] four, six and eight years, and shall serve until their  
9 respective successors shall be duly appointed and qualified.  
10 Their successors shall each be appointed for a term of [six]  
11 eight years. In the event any member shall die or resign during  
12 his term of office the Governor shall appoint a successor who  
13 shall hold office for such unexpired term. Each member of the  
14 [board] court shall receive an annual compensation [of eleven  
15 thousand dollars (\$11,000)] OR THIRTY-TWO THOUSAND DOLLARS  
16 (\$32,000), except that the chairman who shall receive an annual  
17 compensation of [thirteen thousand five hundred dollars  
18 (\$13,500)] THIRTY-FIVE THOUSAND DOLLARS (\$35,000), and  
19 ~~be fixed by the Executive Board and each member of the court and~~  
20 ~~the executive secretary of the court~~ shall also be entitled to  
21 all necessary traveling and other expenses ~~which expenses to~~  
22 ~~include mileage for each mile actually traveled from the~~  
23 ~~residence of each member to the place of hearing and return,~~  
24 incurred by him in the discharge of his official duties. Each  
25 member of the court shall be required to devote full-time to the  
26 duties imposed by this act and to discharge such duties on such  
27 days and during such hours as are required of other full-time  
28 State employees.

29 ~~The Court of Claims may, in its discretion appoint three~~  
30 ~~hearing panels consisting of two individuals each, one of whom~~

1 ~~shall be a registered engineer and the other of whom shall be~~  
2 ~~learned in the law and shall be the chairman. These individuals~~  
3 ~~shall receive actual traveling expenses and per diem~~  
4 ~~compensation at the rate of one hundred fifty dollars (\$150) per~~  
5 ~~day for the time actually devoted to the business of the court,~~  
6 ~~but no panel member shall be paid more than ten thousand dollars~~  
7 ~~(\$10,000) per diem compensation in any calendar year. The~~  
8 ~~hearing panels shall be denominated the Eastern, Middle and~~  
9 ~~Western District Hearing Panel, respectively, and shall have~~  
10 ~~jurisdiction in areas of the Commonwealth coterminous with the~~  
11 ~~three judicial districts of the United States District Courts in~~  
12 ~~the Commonwealth established by section 118 of the Judicial Code~~  
13 ~~and Judiciary, act of June 25, 1948, as amended June 2, 1970~~  
14 ~~(Public Law 91-272), 28 U.S.C. section 118.~~

15       Section 2.1. The [board] Court of Claims shall appoint an  
16 executive secretary and shall have the power to and may, at its  
17 pleasure, appoint such employees including lawyers, engineers and  
18 stenographers as are needed in the proper exercise of its  
19 functions. The executive secretary and each employee of the  
20 [board] court for the purposes of the [State Employees'  
21 Retirement System] Part XXV of Title 71 of the Pennsylvania  
22 Consolidated Statutes (relating to retirement for State  
23 employees and officers) shall be considered a State employee.  
24 [The executive secretary and any] Any employee of the [board]  
25 court shall receive all necessary traveling and other expenses  
26 incurred in the discharge of his official duties elsewhere than  
27 in Harrisburg. The [board] court shall maintain its office in  
28 Harrisburg. No charge shall be made against the Commonwealth for  
29 copies of notes of testimony or other papers furnished to the  
30 Commonwealth. The claimant or any other party [shall pay the

1 board at such rates as the board may, by rule, determine for  
2 copies of notes of testimony furnished at the request of the  
3 claimant or any other party] may purchase a copy of testimony  
4 directly from the official stenographer. THE COURT SHALL EMPLOY <—  
5 A REPORTER, WHOSE DUTY IT SHALL BE TO CATALOGUE AND HAVE  
6 PUBLISHED ALL OPINIONS OF THE COURT.

7 Section 3. Section 3 of the act is amended to read:

8 Section 3. The [board] Court of Claims shall adopt an  
9 official seal, which shall authenticate its proceedings.

10 Section 4. Section 4 of the act, amended September 29, 1961  
11 (P.L.1738, No.705), is amended to read:

12 Section 4. The [Board of Arbitration] Court of Claims shall  
13 have exclusive jurisdiction to hear and determine all claims  
14 against the Commonwealth arising from contracts hereafter  
15 entered into with the Commonwealth, where the amount in  
16 controversy amounts to \$300.00 or more. The court shall also  
17 have exclusive jurisdiction to hear and determine those claims  
18 authorized by the act of March 30, 1811 (P.L.145, Ch.XCIX),  
19 entitled "An act to amend and consolidate the several acts  
20 relating to the settlement of the public accounts and the  
21 payment of the public monies, and for other purposes," and  
22 continued by Article X, act of April 9, 1929 (P.L.343, No.176),  
23 known as "The Fiscal Code," wherein the Auditor General and  
24 State Treasurer were granted the power to adjust and settle  
25 certain claims against the Commonwealth.

26 Section 5. Section 5 of the act, amended July 19, 1951  
27 (P.L.1079, No.234), is amended to read:

28 Section 5. The [board] court shall hold hearings at such  
29 place and time as the [board] court shall determine within the  
30 Commonwealth of Pennsylvania. When cases are at issue, as is

1 hereinafter provided, the secretary of the [board] court shall  
2 list such cases for hearing at the earliest available date, and  
3 shall cause to be served upon the claimants in such cases thirty  
4 days written notice, setting forth the time and place of such  
5 hearing.

6 Section 6. Section 6 of the act, amended September 29, 1961  
7 (P.L.1738, No.705), is amended to read:

8 Section 6. The [board] court shall have no power and  
9 exercise no jurisdiction over a claim asserted against the  
10 Commonwealth unless the claim shall have been filed within six  
11 months after it accrued. The claimants shall advise the  
12 department involved, in writing, of such claim, specifying the  
13 details thereof, and shall, within the same period, file with  
14 the secretary of the [board] court a concise and specific  
15 written statement of this claim, signed and verified by the  
16 claimant before an officer authorized to administer oaths.

17 The claimant at the time of filing such statement shall file  
18 therewith six copies of said statement, and the secretary of the  
19 [board] court shall forthwith deliver one copy to the secretary  
20 of the department involved and [the others] one copy to the  
21 Attorney General.

22 At the time of filing his statement of claim, the claimant  
23 shall pay to the State Treasury, through the secretary of the  
24 [board] court, the sum of \$50.00 as a filing fee. All fees so  
25 received shall be credited to the General Fund.

26 Within thirty days after such statement shall be filed with  
27 the secretary of the [board] court, and served upon the  
28 secretary of the department involved, and the Attorney General,  
29 the Commonwealth shall file with the secretary of the [board]  
30 court an answer in writing to the averments of the claimant's

1 statement or other pleading, which shall be signed and verified  
2 by the secretary of the department involved, and shall, at the  
3 same time, file two copies of the same, one of which shall be  
4 served by the secretary on the Attorney General, and the other  
5 forwarded to the claimant.

6 When [the answer of the Commonwealth is filed,] the pleadings  
7 shall be complete and the case shall be deemed to be at issue,  
8 and the secretary of the [board] Court of Claims shall list such  
9 case for hearing before the [board] court at the earliest

10 available date, but not earlier than thirty (30) days after the

11 filing of such answer. ~~When, in the opinion of the secretary of~~ <—  
12 ~~the court, a decision by the court is unlikely to be made within~~  
13 ~~sixty (60) days from the date of hearing, as provided in section~~  
14 ~~8, the secretary of the court may refer the case, together with~~  
15 ~~all pleadings, to one of the three hearing panels established~~  
16 ~~pursuant to section 1, within its jurisdiction. The hearing~~  
17 ~~panel shall list the case for hearing at the earliest available~~  
18 ~~date after receipt of the case from the secretary of the court.~~  
19 ~~The hearing panel shall be subject to all the requirements of~~  
20 ~~this act as to procedure, hearings and opinions, as the court.~~  
21 ~~The hearing panel shall forward its recommendation or~~  
22 ~~recommendations to the court, within the time established~~  
23 ~~pursuant to section 8.~~

24 All cases shall, as far as practicable, be listed for hearing  
25 in the order of the date of the filing of the respective claims,  
26 and the secretary shall cause to be served upon all claimants by  
27 registered mail thirty (30) days' written notice, which notice  
28 shall set forth the time and place of such hearing.

29 The [board] court shall have power to order the interpleader  
30 or impleader of other parties whenever necessary for a complete

1 determination of any claim or counterclaim.

2 Section 7. Section 7 of the act, REPEALED IN PART APRIL 28, <—  
3 1978 (NO.53), is amended to read:

4 Section 7. The secretary of the [board] court shall have the  
5 power to issue subpoenas at the request of either the  
6 Commonwealth or the claimant, and to require the attendance of  
7 witnesses and the production of books, documents, and papers  
8 pertinent to any cause before the [board] court.

9 All subpoenas so issued shall be in such form as shall be  
10 prescribed by the [board] court, and shall be signed by the  
11 secretary, or such person as may be designated by the secretary,  
12 and may be served by any adult in any part of the Commonwealth.

13 Any person who refuses to obey such subpoena, or who refuses  
14 to be sworn to testify, or who fails to produce any papers,  
15 books or documents touching upon the case in which he is  
16 subpoenaed, or who is guilty of any contempt after summoned to  
17 appear, may be punished for contempt of court, ~~and for this~~ <—  
18 ~~purpose an application may be made to the [court of common pleas~~  
19 ~~of Dauphin County, for which purpose such court is hereby given~~  
20 ~~jurisdiction] Commonwealth Court. Each witness so required to~~  
21 ~~attend shall receive for each day's attendance the sum [of two~~  
22 ~~dollars (\$2.00),] provided by law for such witnesses, and in~~  
23 ~~addition thereto, [three cents (3¢) for each mile circular~~  
24 ~~travelled by the usual route from his home to the place where~~  
25 ~~his presence is required,] a sum for mileage as provided by law~~  
26 ~~for witnesses which witness.~~ WITNESS fees and expenses shall be <—  
27 divided between the Commonwealth and the claimant in such  
28 proportion as the [board] court may direct.

29 Section 8. Section 8 of the act, amended September 29, 1961  
30 (P.L.1738, No.705) AND SUBSECTIONS (B) AND (C) REPEALED APRIL <—



1 28, 1978 (NO.53), is amended to read:

2 Section 8. [(a)] All hearings before the [board] Court of <—  
3 Claims or hearing panel shall be public. [and] All matters <—  
4 before the Court of Claims or hearing panel shall be governed by <—  
5 all of the rules of Pennsylvania Civil Procedure not  
6 inconsistent with this act. After consideration of the pleadings  
7 filed with it and the testimony given at the hearing before it,  
8 the [board] Court of Claims or hearing panel, the court shall <—  
9 either dismiss the claim of the claimant or make an award in  
10 favor of the claimant of such sum as it shall determine the  
11 claimant is legally and rightfully entitled to receive, which  
12 decision shall be made by the court within a reasonable time  
13 from the date of the hearing. If the hearing is before a panel, <—  
14 such panel shall make its recommendation or recommendations to  
15 the court within thirty (30) days after the hearing, and the  
16 court shall enter its said action in a book to be kept by it for  
17 that purpose. It shall file a written opinion, setting forth the  
18 reasons for its action. The [board] court in dismissing any  
19 claim or in making any award shall dispose of all costs of the  
20 proceedings by providing for the payment thereof by the  
21 Commonwealth or by the claimant, or by providing that such costs  
22 shall be shared by the said parties in such proportions as the  
23 [board] court in its discretion shall direct.

24 ~~(b) Within thirty (30) days after dismissing the claim or~~ <—  
25 ~~making an award, any party aggrieved thereby, including the~~  
26 ~~Commonwealth, shall have a right of appeal therefrom. Such~~  
27 ~~appeal shall be taken to the [Court of Common Pleas of Dauphin~~  
28 ~~County] Commonwealth Court. Parties interested in such an order~~  
29 ~~including the Commonwealth, jointly, severally or otherwise, may~~  
30 ~~join in an appeal therefrom even though all of the interested~~

1 ~~parties do not join therein.~~

2 ~~(c) The [court] Commonwealth Court shall hear the appeal~~  
3 ~~without a jury on the record certified by the [board] Court of~~  
4 ~~Claims. After hearing, the [court] Commonwealth Court shall~~  
5 ~~affirm the order unless it shall find that the same is not in~~  
6 ~~accordance with law. The findings of the [board] Court of Claims~~  
7 ~~as to the facts, if supported by substantial evidence, shall be~~  
8 ~~conclusive. If the order is not affirmed, the [court]~~  
9 ~~Commonwealth Court may set aside or modify, in whole or in part,~~  
10 ~~or may remand the proceeding to the [board] Court of Claims for~~  
11 ~~further disposition in accordance with the order of the [court]~~  
12 ~~Commonwealth Court.~~

13 Section 9. Section 9 of the act, amended June 26, 1939  
14 (P.L.1081, No.379), is amended to read:

15 Section 9. Within thirty (30) days after any final action is  
16 taken by the [board] Court of Claims, the secretary of the  
17 [board] court shall certify to the secretary of the department  
18 involved, under the seal of the [board] court, a statement of  
19 such action including the amount of costs assessed against the  
20 Commonwealth or the claimant, or both, and the persons entitled  
21 thereto. The amount of any award shall be paid by said  
22 department out of any funds appropriated against the contract  
23 out of which the claim upon which the award is based was  
24 originally charged, to the claimant, and any costs assessed  
25 against the Commonwealth shall be paid by said department out of  
26 said fund or appropriation to such persons as may be entitled  
27 thereto as evidenced by said certificate of the secretary of the  
28 [board] court, in the manner now provided by law. In the event  
29 that costs are assessed against the claimant, the amount of such  
30 costs shall be deducted from whatever balance may be due the

1 claimant upon the contract out of which the claim arose and  
2 shall be paid by the department to the persons entitled thereto  
3 as evidenced by the said certificate.

4 Section 10. Section 10 of the act is amended to read:

5 Section 10. The [board] court shall establish such rules for  
6 its government, and regulations governing practice before it as  
7 it shall deem proper and necessary. All papers herein filed  
8 shall be matters of public record, and the public, subject to  
9 the reasonable requirements of the [board] court, shall at all  
10 times have access thereto and shall be permitted to examine the  
11 same.

12 Section 11. (a) All personnel, appropriations, agreements,  
13 leases, claims, causes of action, equipment, files, records and  
14 all other materials which are used, employed or expended in  
15 connection with the duties, powers or functions of the Board of  
16 Arbitration of Claims of the Department of the Auditor General  
17 are hereby transferred to the Court of Claims of the Department  
18 of the Auditor General with the same force and effect as if the  
19 appropriations had been made to and said items had been the  
20 property of the Court of Claims of the Department of the Auditor  
21 General in the first instance and if said contracts, agreements,  
22 leases and obligations had been incurred or entered into by the  
23 Court of Claims of the Department of the Auditor General.

24 (b) All personnel transferred to the Court of Claims of the  
25 Department of the Auditor General shall retain any employment  
26 status assigned to them in the Board of Arbitration of Claims in  
27 the Department of the Auditor General prior to the effective  
28 date of this act.

29 Section 12. The Board of Arbitration of Claims of the  
30 Department of the Auditor General is abolished and the terms of

1 the members of the board are terminated: Provided, however, That  
2 the members of the board shall serve as members of the Court of  
3 Claims until the members of the court are appointed and  
4 qualified.

5 Section 13. (a) Articles X and XI, act of April 9, 1929  
6 (P.L.343, No.176), known as "The Fiscal Code," are repealed  
7 insofar as inconsistent with the provisions of this act.

8 (b) All other acts or parts of acts inconsistent herewith  
9 are hereby repealed.

10 Section 14. This act shall take effect immediately.