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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 920 Session of  
1977

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Report of the Committee of Conference

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To the Members of the House of Representatives and Senate:

We, the undersigned, Committee of Conference on the part of the House of Representatives and Senate for the purpose of considering House Bill No. 920, entitled:  
"An act amending the act of May 20, 1937 (P.L.728, No.193), entitled 'An act providing for the creation of a Board of Arbitration of Claims arising from contracts with the Commonwealth; \* \* \* and authorizing an appropriation,' changing the title of the board and its members and making it an independent administrative agency; transferring certain additional jurisdiction to the court; making certain repeals; increasing the terms of court members; \* \* \* AND providing for the disposition of written complaints." ~~and providing for appeals to go to the Commonwealth Court.~~ <—

respectfully submit the following bill as our report:

JAMES A. GOODMAN

CHARLES N. CAPUTO

H. SHELDON PARKER, JR.

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

JOSEPH E. GURZENDA

JAMES R. KELLEY

W. THOMAS ANDREWS

(Committee on the part of the Senate.)

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 board;  
12 making certain repeals; increasing the terms of board  
13 members; further providing for the compensation of board  
14 members; providing for hearing panels and for additional  
15 expenses; changing procedures for transcripts; and providing  
16 for the disposition of written complaints.

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

19 Section 1. The title, act of May 20, 1937 (P.L.728, No.193),  
20 entitled "An act providing for the creation of a Board of  
21 Arbitration of Claims arising from contracts with the  
22 Commonwealth; providing for and regulating the procedure in  
23 prosecuting claims before such board; defining the powers of the  
24 board; and fixing the compensation of members and employes  
25 thereof; providing that the awards of such board shall be final;  
26 providing for the payment of awards; and authorizing an  
27 appropriation," is amended to read:

28 AN ACT

29 Providing for the creation of a Board [of Arbitration] of Claims  
30 arising from contracts with the Commonwealth; providing for  
31 and regulating the procedure in prosecuting claims before  
32 such board; defining the powers of the board; and fixing the  
33 compensation of members and employes thereof; providing that  
34 the awards of such board shall be final; providing for the  
35 payment of awards; and authorizing an appropriation.

36 Section 2. Sections 1 and 2.1 of the act, amended or added

1 September 29, 1961 (P.L.1738, No.705), are amended to read:

2 Section 1. Be it enacted, &c., That there is hereby created  
3 a [departmental] independent administrative board [in the  
4 Department of the Auditor General] known as the Board [of  
5 Arbitration] of Claims, the duty of which shall be to arbitrate  
6 claims against the Commonwealth arising from contracts entered  
7 into by the Commonwealth, and to adjust and settle certain other  
8 claims against the Commonwealth formerly handled by the Auditor  
9 General and State Treasurer acting as the Board of Claims. Any  
10 reference in this or any other act to this board shall be deemed  
11 a reference to the Board of Claims. Administrative services for  
12 the Board of Claims shall be provided by the Department of the  
13 Auditor General. Such board shall consist of three members  
14 appointed by the Governor by and with the advice and consent of  
15 a majority of the elected members of the Senate, one of whom  
16 shall be learned in the law and shall be chairman of the board,  
17 another of whom shall be a registered civil engineer. The third  
18 member of the board shall be a citizen and resident of the  
19 Commonwealth. [not learned in the law or an engineer.] The  
20 lawyer member shall hold the title of chief administrative  
21 judge, one member shall have the title of engineer member and  
22 one member shall have the title of citizen member. Two members  
23 of the board shall constitute a quorum. The members shall be  
24 appointed for terms of [two, four, and six] four, six and eight  
25 years, and shall serve until their respective successors shall  
26 be duly appointed and qualified. Their successors shall each be  
27 appointed for a term of [six] eight years. In the event any  
28 member shall die or resign during his term of office the  
29 Governor shall appoint a successor who shall hold office for  
30 such unexpired term. Each member of the board shall receive an

1 annual compensation [of eleven thousand dollars (\$11,000) except  
2 that the chairman who shall receive an annual compensation of  
3 thirteen thousand five hundred dollars (\$13,500) and] as may be  
4 fixed by the Executive Board and each member of the board and  
5 the executive secretary of the board shall also be entitled to  
6 all necessary traveling and other expenses incurred by him in  
7 the discharge of his official duties. Each member of the board  
8 shall be required to devote full-time to the duties imposed by  
9 this act and shall perform no duties inconsistent with their  
10 duties and responsibilities as board members.

11 The Board of Claims may, in its discretion appoint three  
12 hearing panels consisting of two individuals each, one of whom  
13 shall be a registered engineer and the other of whom shall be  
14 learned in the law and shall be the chairman. These individuals  
15 shall receive actual traveling expenses and per diem  
16 compensation at the rate of one hundred fifty dollars (\$150) per  
17 day for the time actually devoted to the business of the board,  
18 but no panel member shall be paid more than ten thousand dollars  
19 (\$10,000) per diem compensation in any calendar year. The  
20 hearing panels shall be denominated the Eastern, Middle and  
21 Western District Hearing Panel, respectively, and shall have  
22 jurisdiction in areas of the Commonwealth coterminous with the  
23 three judicial districts of the United States District Courts in  
24 the Commonwealth established by section 118 of the Judicial Code  
25 and Judiciary, act of June 25, 1948, as amended June 2, 1970  
26 (Public Law 91-272), 28 U.S.C. section 118.

27 The power of the Board of Claims to establish hearing panels  
28 pursuant to this section shall cease on December 31, 1980 and  
29 the functions and duties of the hearing panels shall likewise  
30 cease, unless the General Assembly shall, pursuant to any sunset

1 law enacted by it, approve an extension of the board's power to  
2 appoint hearing panels.

3       Section 2.1. The board shall appoint an executive secretary  
4 and shall have the power to and may, at its pleasure, appoint  
5 such employes including lawyers, engineers and stenographers as  
6 are needed in the proper exercise of its functions. The  
7 executive secretary and each employe of the board for the  
8 purposes of the [State Employees' Retirement System] Part XXV of  
9 Title 71 of the Pennsylvania Consolidated Statutes (relating to  
10 retirement for State employees and officers) shall be considered  
11 a State employe. [The executive secretary and any] Any employe  
12 of the board shall receive all necessary traveling and other  
13 expenses incurred in the discharge of his official duties  
14 elsewhere than in Harrisburg. The board shall maintain its  
15 office in Harrisburg. No charge shall be made against the  
16 Commonwealth for copies of notes of testimony or other papers  
17 furnished to the Commonwealth. The claimant or any other party  
18 [shall pay the board at such rates as the board may, by rule,  
19 determine for copies of notes of testimony furnished at the  
20 request of the claimant or any other party] may purchase a copy  
21 of testimony directly from the official stenographer. The board  
22 shall employ a reporter, whose duty it shall be to catalogue and  
23 have published all opinions of the court.

24       Section 3. Section 4 of the act, amended September 29, 1961  
25 (P.L.1738, No.705), is amended to read:

26       Section 4. The Board of [Arbitration] Claims shall have  
27 exclusive jurisdiction to hear and determine all claims against  
28 the Commonwealth arising from contracts hereafter entered into  
29 with the Commonwealth, where the amount in controversy amounts  
30 to \$300.00 or more. The board shall also have exclusive

1 jurisdiction to hear and determine those claims authorized by  
2 the act of March 30, 1811 (P.L.145, Ch.XCIX), entitled "An act  
3 to amend and consolidate the several acts relating to the  
4 settlement of the public accounts and the payment of the public  
5 monies, and for other purposes," and continued by Article X, act  
6 of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code,"  
7 wherein the Auditor General and State Treasurer were granted the  
8 power to adjust and settle certain claims against the  
9 Commonwealth.

10 Section 4. Section 6 of the act, amended September 29, 1961  
11 (P.L.1738, No.705), is amended to read:

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

21 The claimant at the time of filing such statement shall file  
22 therewith six copies of said statement, and the secretary of the  
23 board shall forthwith deliver one copy to the secretary of the  
24 department involved and [the others] one copy to the Attorney  
25 General.

26 At the time of filing his statement of claim, the claimant  
27 shall pay to the State Treasury, through the secretary of the  
28 board, the sum of \$50.00 as a filing fee. All fees so received  
29 shall be credited to the General Fund.

30 Within thirty days after such statement shall be filed with

1 the secretary of the board, and served upon the secretary of the  
2 department involved, and the Attorney General, the Commonwealth  
3 shall file with the secretary of the board an answer in writing  
4 to the averments of the claimant's statement or other pleading,  
5 which shall be signed and verified by the secretary of the  
6 department involved, and shall, at the same time, file two  
7 copies of the same, one of which shall be served by the  
8 secretary on the Attorney General, and the other forwarded to  
9 the claimant.

10 When [the answer of the Commonwealth is filed,] the pleadings  
11 shall be complete and the case shall be deemed to be at issue,  
12 and the secretary of the board shall list such case for hearing  
13 before the board at the earliest available date, but not earlier  
14 than thirty (30) days after the filing of such answer. When, in  
15 the opinion of the secretary of the board, a decision by the  
16 board is unlikely to be made within sixty (60) days from the  
17 date of hearing, as provided in section 8, the secretary of the  
18 board may refer the case, together with all pleadings, to one of  
19 the three hearing panels established pursuant to section 1,  
20 within its jurisdiction. The hearing panel shall list the case  
21 for hearing at the earliest available date after receipt of the  
22 case from the secretary of the board. The hearing panel shall be  
23 subject to all the requirements of this act as to procedure,  
24 hearings and opinions, as the board. The hearing panel shall  
25 forward its recommendation or recommendations to the board,  
26 within the time established pursuant to section 8.

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

1 shall set forth the time and place of such hearing.

2 The board shall have power to order the interpleader or  
3 impleader of other parties whenever necessary for a complete  
4 determination of any claim or counterclaim.

5 Section 5. Section 8 of the act, amended September 29, 1961  
6 (P.L.1738, No.705) and subsections (b) and (c) repealed April  
7 28, 1978 (No.53), is amended to read:

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

29 Section 6. (a) All personnel, appropriations, agreements,  
30 leases, claims, causes of action, equipment, files, records and



1 all other materials which are used, employed or expended in  
2 connection with the duties, powers or functions of the Board of  
3 Arbitration of Claims of the Department of the Auditor General  
4 are hereby transferred to the Board of Claims of the Department  
5 of the Auditor General with the same force and effect as if the  
6 appropriations had been made to and said items had been the  
7 property of the Board of Claims of the Department of the Auditor  
8 General in the first instance and if said contracts, agreements,  
9 leases and obligations had been incurred or entered into by the  
10 Board of Claims of the Department of the Auditor General.

11 (b) All personnel transferred to the Board of Claims of the  
12 Department of the Auditor General shall retain any employment  
13 status assigned to them in the Board of Arbitration of Claims in  
14 the Department of the Auditor General prior to the effective  
15 date of this act.

16 Section 7. The Board of Arbitration of Claims of the  
17 Department of the Auditor General is abolished and the terms of  
18 the members of the board are terminated: Provided, however, That  
19 the members of the board shall serve as members of the Board of  
20 Claims until the members of the board are appointed and  
21 qualified.

22 Section 8. (a) Articles X and XI, act of April 9, 1929  
23 (P.L.343, No.176), known as "The Fiscal Code," are repealed  
24 insofar as inconsistent with the provisions of this act.

25 (b) All other acts or parts of acts inconsistent herewith  
26 are hereby repealed.

27 Section 9. This act shall take effect immediately.