

No. 1978-260

## AN ACT

HB 920

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; providing for and regulating the procedure in prosecuting claims before such board; defining the powers of the board; and fixing the compensation of members and employes thereof; providing that the awards of such board shall be final; providing for the payment of awards; 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 board; making certain repeals; increasing the terms of board members; further providing for the compensation of board members; providing for hearing panels and for additional expenses; changing procedures for transcripts; and providing for the disposition of written complaints.

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

Section 1. The title, 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; providing for and regulating the procedure in prosecuting claims before such board; defining the powers of the board; and fixing the compensation of members and employes thereof; providing that the awards of such board shall be final; providing for the payment of awards; and authorizing an appropriation," is amended to read:

## AN ACT

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

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

Section 1. Be it enacted, &c., That there is hereby created a **[departmental] independent** administrative board **[in the Department of the Auditor General]** known as the Board **[of Arbitration]** of Claims, the duty of which shall be to arbitrate claims against the Commonwealth arising from contracts entered into by the Commonwealth, *and to adjust and settle certain other claims against the Commonwealth formerly handled by the Auditor General and State Treasurer acting as the Board of Claims. Any reference in this or any other act to this board shall be deemed a reference to the Board of Claims. Administrative services for the Board of Claims shall be provided by the Department of the Auditor General.* Such

board shall consist of three members appointed by the Governor *by and with the advice and consent of a majority of the elected members of the Senate*, one of whom shall be learned in the law and shall be chairman of the board, another of whom shall be a registered civil engineer. The third member of the board shall be a citizen and resident of the Commonwealth. ~~[not learned in the law or an engineer.]~~ *The lawyer member shall hold the title of chief administrative judge, one member shall have the title of engineer member and one member shall have the title of citizen member.* Two members of the board shall constitute a quorum. The members shall be appointed for terms of ~~[two, four, and six]~~ *four, six and eight* years, and shall serve until their respective successors shall be duly appointed and qualified. Their successors shall each be appointed for a term of ~~[six]~~ *eight* years. In the event any member shall die or resign during his term of office the Governor shall appoint a successor who shall hold office for such unexpired term. Each member of the board shall receive an annual compensation ~~[of eleven thousand dollars (\$11,000) except that the chairman who shall receive an annual compensation of thirteen thousand five hundred dollars (\$13,500) and]~~ *as may be fixed by the Executive Board and each member of the board and the executive secretary of the board* shall also be entitled to all necessary traveling and other expenses incurred by him in the discharge of his official duties. *Each member of the board shall be required to devote full-time to the duties imposed by this act and shall perform no duties inconsistent with their duties and responsibilities as board members.*

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

*The power of the Board of Claims to establish hearing panels pursuant to this section shall cease on December 31, 1980 and the functions and duties of the hearing panels shall likewise cease, unless the General Assembly shall, pursuant to any sunset law enacted by it, approve an extension of the board's power to appoint hearing panels.*

Section 2.1. The board shall appoint an executive secretary and shall have the power to and may, at its pleasure, appoint such employes including lawyers, engineers and stenographers as are needed in the proper exercise of its functions. The executive secretary and each employe of the board for the purposes of the ~~[State Employees' Retirement System]~~ *Part*

*XXV of Title 71 of the Pennsylvania Consolidated Statutes (relating to retirement for State employees and officers) shall be considered a State employe. [The executive secretary and any] Any employe of the board shall receive all necessary traveling and other expenses incurred in the discharge of his official duties elsewhere than in Harrisburg. The board shall maintain its office in Harrisburg. No charge shall be made against the Commonwealth for copies of notes of testimony or other papers furnished to the Commonwealth. The claimant or any other party [shall pay the board at such rates as the board may, by rule, determine for copies of notes of testimony furnished at the request of the claimant or any other party] may purchase a copy of testimony directly from the official stenographer. The board shall employ a reporter, whose duty it shall be to catalogue and have published all opinions of the court.*

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

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

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

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

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

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

Within thirty days after such statement shall be filed with the secretary of the board, and served upon the secretary of the department involved, and the Attorney General, the Commonwealth shall file with the secretary of

the board an answer in writing to the averments of the claimant's statement or other pleading, which shall be signed and verified by the secretary of the department involved, and shall, at the same time, file two copies of the same, one of which shall be served by the secretary on the Attorney General, and the other forwarded to the claimant.

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

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

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

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

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

shall be shared by the said parties in such proportions as the board in its discretion shall direct.

Section 6. (a) All personnel, appropriations, agreements, leases, claims, causes of action, equipment, files, records and all other materials which are used, employed or expended in connection with the duties, powers or functions of the Board of Arbitration of Claims of the Department of the Auditor General are hereby transferred to the Board of Claims of the Department of the Auditor General with the same force and effect as if the appropriations had been made to and said items had been the property of the Board of Claims of the Department of the Auditor General in the first instance and if said contracts, agreements, leases and obligations had been incurred or entered into by the Board of Claims of the Department of the Auditor General.

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

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

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

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

Section 9. This act shall take effect immediately.

APPROVED—The 5th day of October, A. D. 1978.

MILTON J. SHAPP