

44.070 Board of Claims -- Limitation on damage awards -- Hearing officers -- Asbestos related claims.

- (1) A Board of Claims, composed of the members of the Crime Victims Compensation Board as hereinafter provided, is created and vested with full power and authority to investigate, hear proof, and to compensate persons for damages sustained to either person or property as a proximate result of negligence on the part of the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies; provided, however, regardless of any provision of law to the contrary, the Commonwealth, its cabinets, departments, bureaus, and agencies, and its officers, agents, and employees, while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies, shall not be liable for collateral or dependent claims which are dependent on loss to another and not the claimant, damages for mental distress or pain or suffering, and compensation shall not be allowed, awarded, or paid for said claims for damages. Furthermore, any damage claim awarded shall be reduced by the amount of payments received or right to receive payment from workers' compensation insurance, social security programs, unemployment insurance programs, medical, disability or life insurance programs, or other federal or state or private program designed to supplement income or pay claimant's expenses or damages incurred. Any claim against the Commonwealth, its departments, agencies, officers, agents, or employees, or a school district board of education, its members, officers, agents, or employees for damages sustained as the result of exposure to asbestos before, during or after its removal from a facility owned, leased, occupied, or operated by the Commonwealth or a school district board of education shall be brought before the Board of Claims. Except as herein provided, the board shall be independent of all agencies, cabinets, and departments of the Commonwealth except as provided in KRS 44.070 to 44.160.
- (2) The board shall be composed of the members of the Crime Victims Compensation Board. The members shall not be entitled to additional compensation for their services on the Board of Claims.
- (3) The Governor shall designate a member of the board to serve as chairman for a term of four (4) years. Any vacancy in the chairmanship shall be filled by the Governor. No member shall, at the same time, serve as chairman of the Crime Victims Compensation Board and as chairman of the Board of Claims.
- (4) The employees of the Crime Victims Compensation Board, without additional compensation, shall be ex officio employees of the Board of Claims.
- (5) Regardless of any provision of law to the contrary, the jurisdiction of the board is exclusive, and a single claim for the recovery of money or a single award of money shall not exceed two hundred thousand dollars (\$200,000), exclusive of interest and costs. However, if a single act of negligence results in multiple claims, the total award may not exceed three hundred fifty thousand dollars (\$350,000), to be

equitably divided among the claimants, but in no case may any claimant individually receive more than two hundred thousand dollars (\$200,000).

- (6) The Governor shall appoint the necessary number of hearing officers, each of whom shall be an attorney admitted to practice law in Kentucky and shall have practiced law for at least three (3) years. These officers, upon the direction of the chairman or the board, shall conduct hearings, and otherwise supervise the presentation of evidence and perform any other duties assigned to them by the chairman or the board, except that such hearing officers shall not render final decisions, orders, or awards. However, such hearing officers may, in receiving evidence on behalf of the board, make such rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case.
- (7) The board may at any time recommend the removal of any hearing officer upon filing with the Governor a full written statement of its reasons for such removal.
- (8) Upon recommendation to the board by the attorney for the Commonwealth, its cabinet, department, bureau, agency, or employee thereof, that a settlement has been reached between the parties to the claim, and upon approval by the board that the settlement is reasonable for all parties concerned, the agreed judgment or dismissal may be entered accordingly, even without a party's admission to liability.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 304, sec. 4, effective July 14, 2000. -- Amended 1986 Ky. Acts ch. 279, sec. 1, effective July 15, 1986; and ch. 499, sec. 3, effective July 15, 1986. -- Amended 1978 Ky. Acts ch. 15, sec. 1, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 326, sec. 2. -- Amended 1972 Ky. Acts ch. 234, sec. 1. - - Amended 1960 Ky. Acts ch. 25, sec. 1. -- Amended 1958 Ky. Acts ch. 52, sec. 1. -- Amended 1956 (1st Extra. Sess.) Ky. Acts ch. 7, Art. XIII, sec. 1. -- Amended 1950 Ky. Acts ch. 50, sec. 1. -- Created 1946 Ky. Acts ch. 189, secs. 1 and 3, par. 1.

Formerly codified as KRS 176.290.

44.071 Jurisdiction of Board of Claims as to municipal maintenance of state-owned traffic control devices.

- (1) The Board of Claims, created by KRS 44.070, is hereby vested with full power, authority, and jurisdiction to investigate, hear proof, and compensate persons for damages sustained to either person or property as approximate result of negligence on the part of any municipality, or any of its officers, agents, or employees while acting within the scope of their employment by the municipality, or any agency thereof, relating to the maintenance by the municipality of state-owned traffic control devices pursuant to a contract with the Commonwealth.
- (2) Claims for personal injury or property damage against any municipality, or any of its officers, agents, or employees while acting within the scope of their employment of the municipality, arising out of negligence in the maintenance of state-owned traffic control devices pursuant to a contract with the Commonwealth, shall be limited and reduced in the same manner as described in KRS 44.070 with respect to claims against the Commonwealth.
- (3) It is the intention of subsections (1) and (2) of this section to provide every municipality and agency thereof, and their respective officers, agents, or employees with the same liability protection, restrictions, and reductions when such municipalities and agencies are performing maintenance on state-owned traffic control devices pursuant to a contract with the Commonwealth as the Commonwealth and its agencies, officers, and employees would enjoy if performing the work itself.

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 225, sec. 1, effective July 13, 1990.

44.072 Legislative intent as to sovereign immunity in negligence claims.

It is the intention of the General Assembly to provide the means to enable a person negligently injured by the Commonwealth, any of its cabinets, departments, bureaus or agencies, or any of its officers, agents or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus or agencies to be able to assert their just claims as herein provided. The Commonwealth thereby waives the sovereign immunity defense only in the limited situations as herein set forth. It is further the intention of the General Assembly to otherwise expressly preserve the sovereign immunity of the Commonwealth, any of its cabinets, departments, bureaus or agencies or any of its officers, agents or employees while acting in the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus or agencies in all other situations except where sovereign immunity is specifically and expressly waived as set forth by statute. The Board of Claims shall have exclusive jurisdiction to hear claims for damages, except as otherwise specifically set forth by statute, against the Commonwealth, its cabinets, departments, bureaus, agencies or any of its officers, agents or employees while acting within the scope of their employment by the Commonwealth, its cabinets, departments, bureaus or agencies.

Effective: July 15, 1986

History: Created 1986 Ky. Acts ch. 499, sec. 1, effective July 15, 1986.

44.073 State institutions of higher education declared agencies of state government -- Jurisdiction of Board of Claims -- Sovereign immunity.

- (1) For purposes of KRS 44.072, state institutions of higher education under KRS Chapter 164 are agencies of the state.
- (2) The Board of Claims shall have primary and exclusive jurisdiction over all negligence claims for the negligent performance of ministerial acts against the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any officers, agents, or employees thereof while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies.
- (3) The Board of Claims shall have primary and exclusive jurisdiction to make findings of fact, conclusions of law, and legal determinations with regard to whether the alleged negligent act was on the part of the Commonwealth or any of its cabinets, departments, bureaus, or agencies or any officers, agents, or employees thereof.
- (4) The Board of Claims shall have primary and exclusive jurisdiction to make findings of fact, conclusions of law, and legal determinations with regard to whether the alleged negligent act was on the part of the Commonwealth or any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies.
- (5) No action for negligence against the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any officers, agents, or employees thereof may be brought initially in any other court or forum in the Commonwealth except the Board of Claims until the Board of Claims makes a determination, that has become final, that the Board of Claims has or does not have primary and exclusive jurisdiction over the claim.
- (6) The determination by the Board of Claims becomes final only after all appellate rights have been finalized or waived.
- (7) Any applicable statute of limitations for bringing negligence actions in any court or forum other than the Board of Claims shall be tolled pending the final determination that the Board of Claims does not have primary and exclusive jurisdiction of the negligence claim.
- (8) No action for negligence may be brought in any court or forum other than the Board of Claims against the Commonwealth, any of its cabinets, departments, bureaus, or agencies or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies.
- (9) Negligence as used herein includes negligence, gross negligence, or wanton negligence.
- (10) The defense of contributory negligence is not a complete bar to recovery of plaintiff's claim in the Board of Claims, and the doctrine of comparative negligence shall be utilized by the board.

- (11) Except as otherwise provided by this chapter, nothing contained herein shall be construed to be a waiver of sovereign immunity or any other immunity or privilege maintained by the Commonwealth, its cabinets, departments, bureaus, and agencies and its officers, agents, and employees.
- (12) Except as otherwise specifically set forth by statute and in reference to subsection (11) of this section, no action for damages may be maintained in any court or forum against the Commonwealth, any of its cabinets, departments, bureaus, or agencies or any of its officers, agents, or employees while acting within their official capacity and scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies.
- (13) The preservation of sovereign immunity referred to in subsections (11) and (12) of this section includes, but is not limited to, the following:
 - (a) Discretionary acts or decisions;
 - (b) Executive decisions;
 - (c) Ministerial acts;
 - (d) Actions in the performance of obligations running to the public as a whole;
 - (e) Governmental performance of a self-imposed protective function to the public or citizens; and
 - (f) Administrative acts.
- (14) The filing of an action in court or any other forum or the purchase of liability insurance or the establishment of a fund for self-insurance by the Commonwealth, its cabinets, departments, bureaus, or agencies or its agents, officers, or employees thereof for a government-related purpose or duty shall not be construed as a waiver of sovereign immunity or any other immunity or privilege thereby held. Except as specifically set forth by statute, no counterclaim, set-off, recoupment, cross-claim, or other form of avoidance of the claim for damages may be asserted by any person when suit is brought against said person by the Commonwealth or any of its cabinets, departments, bureaus, or agencies thereof.
- (15) Neither the Commonwealth nor any of its cabinets, departments, bureaus, or agencies or any officers, agents, or employees thereof shall be liable under a respondeat superior theory or any other similar theory for the acts of independent contractors, contractors, or subcontractors thereof or anyone else doing work or providing services for the state on a volunteer basis or pursuant to a contract therewith.

Effective: July 15, 1986

History: Created 1986 Ky. Acts ch. 499, sec. 2, effective July 15, 1986.