

## **CHAPTER 860**

AN ACT in relation to the court of claims and the jurisdiction, practice and procedure therein

Became a law June 13, 1939, with the approval of the Governor. Passed, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

### **COURT OF CLAIMS ACT**

Article 1. The court, judges and officers (Secs. 1-7).

2. Jurisdiction (Secs. 8-12).

3. Practice provisions (Secs. 13-28).

4. Laws repealed; when to take effect (Secs. 29-30).

### **ARTICLE I**

#### **THE COURT, JUDGES AND OFFICERS**

Section 1. Short title.

2. Organization of court of claims.

3. Prohibitions as to judges.

5. Appointment, duties, salaries and compensation of court officers and employees.

6. Seal of court.

7. Records of proceedings and reports.

**Section 1. Short title.** This act shall be known as the "Court of Claims Act."

**§ 2. Organization of court of claims.** 1. The court of claims is hereby continued.

2. Such court shall consist of (a) twenty-seven judges, who shall be appointed by the governor, by and with the advice and consent of the senate; (b) such number of additional judges not exceeding seventeen to and including December thirty-first, nineteen hundred eighty-two, and not exceeding fifteen on and after January first, nineteen hundred

eighty-three, as shall be appointed by the governor, by and with the advice and consent of the senate; (c) such number of additional judges not exceeding nineteen as shall be appointed by the governor, by and with the advice and consent of the senate prior to December thirty-first, nineteen hundred eighty-two; (d) such number of additional judges not exceeding thirty-seven as shall be appointed by the governor, by and with the advice and consent of the senate; (e) such number of additional judges not exceeding twelve as shall be appointed by the governor, by and with the advice and consent of the senate, provided that no more than five of such judges shall be appointed prior to July first, nineteen hundred ninety.

3. The term of each judge hereafter appointed shall be nine years, provided, however, that the existing terms of present judges shall continue until the expiration thereof.

4. Whenever the term of office of a judge shall expire, or his office become vacant from any cause, his successor shall be appointed for the unexpired term. Notwithstanding the provisions of section five of the public officers law, a judge of the court of claims shall hold over and continue to discharge the duties of his office, after the expiration of the term for which he shall have been appointed, until his successor shall have been chosen and qualified but after the expiration of such term the office shall be deemed vacant for the purpose of choosing his successor.

6. By an order to be filed in the office of the secretary of state, the governor shall designate one of the judges as presiding judge, who shall act as such during his term, and thereafter upon the appointment of his successor, the governor shall designate such successor or any other judge of the court as presiding judge, who shall act as such during his term.

7. A judge of the court of claims must be an attorney and counselor-at-law admitted to practice in the courts of this state, of at least ten years' experience in practice.

8. Whenever in any other statute reference is made to the board of claims or any officer thereof, the same shall be deemed to refer to and mean the court of claims or an officer thereof. A determination of the board of claims heretofore rendered shall have the same force and effect and be subjected to the same procedure as provided in this act for a judgment.

**§ 3. Prohibitions as to judges.** A judge shall not during his term of office practice the profession of law or act as referee in any action or proceeding in any court of this state. A judge shall not hold any other office or public trust to which any salary or compensation is attached and shall be subject to the same prohibitions as a justice of the supreme court.

**§ 5. Appointment, duties, salaries and compensation of court officers and employees.** 1. The court of claims shall appoint and may at pleasure remove the clerk of the court, one confidential stenographer to the presiding judge, stenographers, typists, attendants and other clerical assistants. They shall perform such duties as the court may prescribe. The number of stenographers, typists, attendants and other clerical assistants employed and the salaries of all employees shall be fixed by the court of claims. Such temporary employees as may be needed shall likewise be appointed.

1-a. The clerk of the court and such other non-judicial personnel as shall be authorized by law, rule or order shall each have the power to administer oaths, take acknowledgments and sign the process or mandate of the court.

2. Any officer or employee of the court shall be paid his actual traveling and other expenses while in the discharge of his duties, elsewhere than in the city of Albany, to be audited by the court and paid from the contingent fund.

3. No charge shall be made against the state by the clerk or the

stenographers for copies of minutes, testimony or papers furnished to the attorney general or to the court or filed in the office of the clerk. When copies of minutes of testimony or other proceedings in the court of claims are delivered to the claimant or impleaded parties at their request, the stenographer shall be entitled to be paid in accordance with the provisions of the civil practice law and rules.

**§ 6. Seal of court.** The court shall adopt and procure an official seal, with suitable device and inscription. A description of such seal, with an impression thereof, shall be filed in the office of the secretary of state. The expenses of procuring such seal shall be paid out of the contingent fund of the court.

**§ 7. Records of proceedings and reports.** 1. The court shall keep records of its proceedings, and at such times during the session as it may deem proper, or as the senate or assembly may request, report to the legislature the claims upon which it has finally acted, with a statement of the judgment rendered in each case.

2. The court shall also furnish to the judicial council of the state such reports and information as may from time to time be requested by it.

3. On the first day of January in each year, the clerk shall report to the comptroller, under oath, a detailed statement of his disbursements made under the direction of the court from its contingent fund during the preceding year.

## ARTICLE II

### **JURISDICTION**

Section 8. Waiver of immunity from liability.

8-a. Torts of militia members and military and naval employees.

8-b. Claims for unjust conviction and imprisonment.

9. Jurisdiction and powers of the court.

10. Time of filing claims and notices of intention to file claims.
11. Filing, service and contents of claim or notice of intention.
  - 11-a. Filing fee.
  - 11-b. Use of facsimile transmission and electronic filing authorized.
12. Conditions of judgment.

**§ 8. Waiver of immunity from liability.** The state hereby waives its immunity from liability and action and hereby assumes liability and consents to have the same determined in accordance with the same rules of law as applied to actions in the supreme court against individuals or corporations, provided the claimant complies with the limitations of this article. Nothing herein contained shall be construed to affect, alter or repeal any provision of the workmen's compensation law.

**§ 8-a. 1. Torts of militia members and military and naval employees.** The state hereby waives its immunity from liability and action with respect to the torts of members of the organized militia and employees in the division of military and naval affairs of the executive department in the operation, maintenance and control of vehicles, including aircraft, owned by the state or issued or loaned or assigned to the state by the United States for the use of such organized militia or such employees, and in the operation, maintenance and control of armories devoted to the use of the organized militia of the state, while acting within the scope and in the performance of their duties in the military service of the state, except while engaged in the active service of the state pursuant to sections five, six or seven of the military law. The state hereby assumes such liability and consents to have the same determined in accordance with the same rules of law as applied to actions in the supreme court, provided the claimant complies with the limitations of this article. Nothing herein contained shall be construed to effect a waiver of immunity from liability and action or an assumption of liability with respect to the claim of any person in, or

formerly in, the military service of the state, arising out of or in connection with such person's military service on behalf of the state; nor shall anything herein contained be construed to affect, alter or repeal any provision of the military law or the workmen's compensation law. The waiver of immunity and the assumption of liability contained in this section shall not in any event apply in circumstances where under the laws of the United States liability has been or is hereafter assumed by the United States, to the extent of such assumption of liability under the laws of the United States.

**§ 8-b. Claims for unjust conviction and imprisonment.** 1. The legislature finds and declares that innocent persons who have been wrongly convicted of crimes and subsequently imprisoned have been frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the law and that such persons should have an available avenue of redress over and above the existing tort remedies to seek compensation for damages. The legislature intends by enactment of the provisions of this section that those innocent persons who can demonstrate by clear and convincing evidence that they were unjustly convicted and imprisoned be able to recover damages against the state. In light of the substantial burden of proof that must be carried by such persons, it is the intent of the legislature that the court, in exercising its discretion as permitted by law regarding the weight and admissibility of evidence submitted pursuant to this section, shall, in the interest of justice, give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence or other factors not caused by such persons or those acting on their behalf.

2. Any person convicted and subsequently imprisoned for one or more felonies or misdemeanors against the state which he did not commit may, under the conditions hereinafter provided, present a claim for damages against the state. In scheduling court appearances and filing deadlines, the court shall give docket priority at each stage of the proceeding to such claims for damages under this subdivision where the claimant asserts proof of innocence through DNA evidence. Any adjournments

granted in the course of such a proceeding should be for as short a time as is practicable.

3. In order to present the claim for unjust conviction and imprisonment, claimant must establish by documentary evidence that:

(a) he has been convicted of one or more felonies or misdemeanors against the state and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and

(b) (i) he has been pardoned upon the ground of innocence of the crime or crimes for which he was sentenced and which are the grounds for the complaint; or (ii) his judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either he was found not guilty at the new trial or he was not retried and the accusatory instrument dismissed; provided that the judgement of conviction was reversed or vacated, and the accusatory instrument was dismissed, on any of the following grounds: (A) paragraph (a), (b), (c), (e) or (g) of subdivision one of section 440.10 of the criminal procedure law; or (B) subdivision one (where based upon grounds set forth in item (A) hereof), two, three (where the count dismissed was the sole basis for the imprisonment complained of) or five of section 470.20 of the criminal procedure law; or (C) comparable provisions of the former code of criminal procedure or subsequent law; or (D) the statute, or application thereof, on which the accusatory instrument was based violated the constitution of the United States or the state of New York; and

(c) his claim is not time-barred by the provisions of subdivision seven of this section.

4. The claim shall state facts in sufficient detail to permit the court to find that claimant is likely to succeed at trial in proving that (a) he did not commit any of the acts charged in the accusatory instrument or his acts or omissions charged in the accusatory instrument did not constitute a felony or misdemeanor against the state, and (b) he did not by his own conduct cause or bring about his conviction. The claim shall be verified by the claimant. If the court finds after reading the claim that claimant is not likely to succeed at trial, it shall dismiss the claim, either on its own motion or on the motion of

the state.

5. In order to obtain a judgment in his favor, claimant must prove by clear and convincing evidence that:

(a) he has been convicted of one or more felonies or misdemeanors against the state and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and

(b) (i) he has been pardoned upon the ground of innocence of the crime or crimes for which he was sentenced and which are the grounds for the complaint; or (ii) his judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either he was found not guilty at the new trial or he was not retried and the accusatory instrument dismissed; provided that the judgement of conviction was reversed or vacated, and the accusatory instrument was dismissed, on any of the following grounds: (A) paragraph (a), (b), (c), (e) or (g) of subdivision one of section 440.10 of the criminal procedure law; or (B) subdivision one (where based upon grounds set forth in item (A) hereof), two, three (where the count dismissed was the sole basis for the imprisonment complained of) or five of section 470.20 of the criminal procedure law; or (C) comparable provisions of the former code of criminal procedure or subsequent law; or (D) the statute, or application thereof, on which the accusatory instrument was based violated the constitution of the United States or the state of New York; and

(c) he did not commit any of the acts charged in the accusatory instrument or his acts or omissions charged in the accusatory instrument did not constitute a felony or misdemeanor against the state; and

(d) he did not by his own conduct cause or bring about his conviction.

6. If the court finds that the claimant is entitled to a judgment, it shall award damages in such sum of money as the court determines will fairly and reasonably compensate him.

7. Any person claiming compensation under this section based on a pardon that was granted before the effective date of this section or the dismissal of an accusatory instrument that occurred before the effective date of this section shall file his claim within two years after the

effective date of this section. Any person claiming compensation under this section based on a pardon that was granted on or after the effective date of this section or the dismissal of an accusatory instrument that occurred on or after the effective date of this section shall file his claim within two years after the pardon or dismissal.

**§ 9. Jurisdiction and powers of the court.** The court shall have jurisdiction: 1. To hear and determine all matters now pending in the said court of claims.

2. To hear and determine a claim of any person, corporation or municipality against the state for the appropriation of any real or personal property or any interest therein, for the breach of contract, express or implied, or for the torts of its officers or employees while acting as such officers or employees, providing the claimant complies with the limitations of this article. For the purposes of this act only, a real property tax lien shall be deemed to be an interest in real property.

2-a. To hear and determine a claim of any person, corporation or municipality, against the state for the torts of members of the organized militia and the employees in the division of military and naval affairs of the executive department, providing that the claim is encompassed by the waiver of immunity and assumption of liability contained in section eight-a of this chapter, and providing, further, that the claimant complies with the limitations of this article.

3. To hear and determine any claim in favor of the state against the claimant, or against his assignor at the time of the assignment.

3-a. To hear and determine the claim for damages against the state for unjust conviction and imprisonment pursuant to section eight-b of this article.

4. To render judgment in favor of the claimant or the state for such sum as should be paid by or to the state.

5. To order two or more claims growing out of the same set of facts to be tried or heard together, with or without consolidation, whenever it can be done without prejudice to a substantial right.

6. To order the interpleader of other parties known or unknown whenever necessary for a complete determination of the claim or counterclaim.

7. To provide for the perpetuation of testimony.

8. To open defaults; to vacate, amend, correct, or modify any process, claim, order or judgment, in furtherance of justice for any error in form or substance; before entry of judgment, to reopen a trial and permit submission of further evidence; to grant a new trial upon any grounds for which a new trial may be granted in the supreme court.

9. To establish rules for the government of the court and the regulation of practice therein and to prescribe the forms of procedure before it, in furtherance of the provisions of this act and not inconsistent with law, and except as otherwise provided by this act or by rules of this court or the civil practice law and rules, the practice shall be the same as in the supreme court.

9-a. To make a declaratory judgment as defined in section three thousand one of the civil practice law and rules with respect to any controversy involving the obligation of an insurer to indemnify or defend a defendant in any action pending in the court of claims, provided that the court shall have no jurisdiction to enter a judgment against an insurer pursuant to this subdivision either: (i) for money damages; or, (ii) if the insurer would otherwise have a right to a jury trial of the controversy with respect to which the declaratory judgment is sought.

10. To provide for the regular or special sessions of the court, for such terms and at such places as it may determine and to prepare the calendar of cases therefor.

11. The court and the judges shall have all of the powers necessary to carry out properly the jurisdiction granted and the duties imposed by this act.

12. To hear and determine special proceedings for the distribution of moneys deposited pursuant to subdivision (E) of section three hundred four of the eminent domain procedure law.

13. To hear and determine a claim of any person against the state for a retaliatory personnel action by its officers or employees pursuant to section seventy-five-b of the civil service law or section seven hundred forty of the labor law.

**§ 10. Time of filing claims and notices of intention to file claims.**

No judgment shall be granted in favor of any claimant unless such claimant shall have complied with the provisions of this section applicable to his claim.

1. A claim for the appropriation by the state of lands, or any right, title or interest in or to lands shall be filed within three years after the accrual of such claim, or where title is vested by the filing of a description and map in the office of the county clerk or register, then within three years after personal service of a copy of such description and map and notice of filing thereof or if personal service cannot be made within the state, then within three years after the filing of the description and map and the recording of notice of filing thereof.

2. A claim by an executor or administrator of a decedent who left him or her surviving a husband, wife or next of kin, for damages for a wrongful act, neglect or default, on the part of the state by which the decedent's death was caused, shall be filed and served upon the attorney general within ninety days after the appointment of such executor or administrator, unless the claimant shall within such time serve upon the attorney general a written notice of intention to file a claim therefor, in which event the claim shall be filed and served upon the attorney

general within two years after the death of the decedent. In any event such claim shall be filed and served upon the attorney general within two years after the death of the decedent.

3. A claim to recover damages for injuries to property or for personal injuries caused by the negligence or unintentional tort of an officer or employee of the state while acting as such officer or employee, shall be filed and served upon the attorney general within ninety days after the accrual of such claim, unless the claimant shall within such time serve upon the attorney general a written notice of intention to file a claim therefor, in which event the claim shall be filed and served upon the attorney general within two years after the accrual of such claim.

3-a. A claim to recover damages for injuries to property or for personal injuries caused by the negligence or unintentional tort of a member of the organized militia or of an employee in the division of military and naval affairs of the executive department, shall be filed and served upon the attorney general within ninety days after the accrual of such claim, unless the claimant shall within such time serve upon the attorney general a written notice of intention to file a claim therefor, in which event the claim shall be filed and served upon the attorney general within two years after the accrual of such claim.

3-b. A claim to recover damages for injuries to property or for personal injuries caused by the intentional tort of an officer or employee of the state while acting as such officer or employee, or of a member of the organized militia or of an employee in the division of military and naval affairs of the executive department, shall be filed and served upon the attorney general within ninety days after the accrual of such claim, unless the claimant shall within such time serve upon the attorney general a written notice of intention to file a claim therefor, in which event the claim shall be filed and served upon the attorney general within one year after the accrual of such claim.

4. A claim for breach of contract, express or implied, and any other claim not otherwise provided for by this section, over which jurisdiction has been conferred upon the court of claims, shall be filed

and served upon the attorney general within six months after the accrual of such claim, unless the claimant shall within such time serve upon the attorney general a written notice of intention to file a claim therefor, in which event the claim shall be filed and served upon the attorney general within two years after such accrual.

5. If the claimant shall be under legal disability, the claim may be presented within two years after such disability is removed.

6. A claimant who fails to file or serve upon the attorney general a claim or to serve upon the attorney general a notice of intention, as provided in the foregoing subdivisions, within the time limited therein for filing or serving upon the attorney general the claim or notice of intention, may, nevertheless, in the discretion of the court, be permitted to file such claim at any time before an action asserting a like claim against a citizen of the state would be barred under the provisions of article two of the civil practice law and rules. For the purpose of this subdivision, a claim against the state arising under subdivision one of this section shall be deemed an action upon an implied contractual obligation. The application for such permission shall be made upon motion returnable at any regular or special session of the court and may be heard and determined by any judge thereof. The claim proposed to be filed, containing all of the information set forth in section eleven of this act, shall accompany such application. In determining whether to permit the filing of a claim pursuant to this subdivision, the court shall consider, among other factors, whether the delay in filing the claim was excusable; whether the state had notice of the essential facts constituting the claim; whether the state had an opportunity to investigate the circumstances underlying the claim; whether the claim appears to be meritorious; whether the failure to file or serve upon the attorney general a timely claim or to serve upon the attorney general a notice of intention resulted in substantial prejudice to the state; and whether the claimant has any other available remedy.

7. For the purposes of subdivision three of this section, a claim against the state which would be governed by section two hundred fourteen-c of the civil practice law and rules if it were asserted

against a citizen of the state shall be deemed to have accrued on the date of discovery of the injury by the claimant or on the date when through the exercise of reasonable diligence the injury should have been discovered by the claimant, whichever is earlier.

8. (a) A claimant who timely serves a notice of intention but who fails to timely serve or file a claim may, nevertheless, apply to the court for permission to treat the notice of intention as a claim. The court shall not grant such application unless: it is made upon motion before an action asserting a like claim against a citizen of the state would be barred under the provisions of article two of the civil practice law and rules; the notice of intention was timely served, and contains facts sufficient to constitute a claim; and the granting of the application would not prejudice the defendant.

(b) An application by a claimant whose time to commence an action against a citizen of the state would be extended or tolled by reason of any of the provisions contained in article two of the civil practice law and rules shall be considered timely if the application has been made prior to the expiration of the limitation period for filing as extended by reason of the provisions of article two of the civil practice law and rules.

\* 9. A claim of any incarcerated individual in the custody of the department of corrections and community supervision for recovery of damages for injury to or loss of personal property may not be filed unless and until the incarcerated individual has exhausted the personal property claims administrative remedy, established for incarcerated individuals by the department. Such claim must be filed and served within one hundred twenty days after the date on which the incarcerated individual has exhausted such remedy.

\* NB Expires September 1, 2027

10. Notwithstanding any provision of law to the contrary, this section shall not apply to: (i) any claim to recover damages for physical, psychological, or other injury or condition suffered as a result of conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, incest as defined in section 255.27, 255.26 or

255.25 of the penal law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the penal law committed against a child less than eighteen years of age; or

(ii) any civil claim or cause of action revived pursuant to section two hundred fourteen-j of the civil practice law and rules.

11. Notwithstanding any provision of law to the contrary, any person who suffers physical, psychological, or other injury or condition while in custody shall have, pursuant to section two hundred eight-a of the civil practice law and rules, the full benefit of the limitations period provided in this section and, in addition, shall have a two-year window following the date of the person's release from that period of custody within which to commence an action based on such injury or condition. For any otherwise time-barred civil claims or causes of action revived by section two hundred eight-a of the civil practice law and rules, no notice of intention to file a claim shall be required as a condition precedent to the commencement of such action or special proceeding. This exemption shall not apply to any claim that was timely under the otherwise applicable statute of limitations.

**§ 11. Filing, service and contents of claim or notice of intention. a.**

(i) The claim shall be filed with the clerk of the court; and, except in the case of a claim for the appropriation by the state of lands, a copy shall be served personally or by certified mail, return receipt requested, upon the attorney general within the times hereinbefore provided for filing with the clerk of the court. Any notice of intention shall be served personally or by certified mail, return receipt requested, upon the attorney general within the times hereinbefore provided for service upon the attorney general. Service by certified mail, return receipt requested, upon the attorney general shall not be complete until the claim or notice of intention is received in the office of the attorney general. Personal service upon the attorney general shall be made in the same manner as described in section three hundred seven of the civil practice law and rules.

(ii) In any action brought in the court of claims against the New York

state thruway authority, the city university of New York, or the New York state power authority, a copy of the claim shall be served personally or by certified mail, return receipt requested, upon such defendant, in addition to the attorney general, within the times hereinbefore provided for filing with the clerk of the court, and any notice of intention shall be served personally or by certified mail, return receipt requested, upon such defendant, in addition to the attorney general, within the times hereinbefore provided for service upon the attorney general. Service by certified mail, return receipt requested, shall not be complete until the claim or notice of intention is received by the defendant. Personal service upon any defendant shall be made in the same manner as described in the civil practice law and rules.

b. The claim shall state the time when and place where such claim arose, the nature of same, the items of damage or injuries claimed to have been sustained and, except in an action to recover damages for personal injury, medical, dental or podiatric malpractice or wrongful death, the total sum claimed. A claim for the appropriation by the state of lands, or any right, title or interest in or to lands shall include an inventory or itemized statement of fixtures, if any, for which compensation is claimed. The notice of intention to file a claim shall set forth the same matters except that the items of damage or injuries and the sum claimed need not be stated. The claim and notice of intention to file a claim shall be verified in the same manner as a complaint in an action in the supreme court.

c. Any objection or defense based upon failure to comply with (i) the time limitations contained in section ten of this act, (ii) the manner of service requirements set forth in subdivision a of this section, or (iii) the verification requirements as set forth in subdivision b of this section is waived unless raised, with particularity, either by a motion to dismiss made before service of the responsive pleading is required or in the responsive pleading, and if so waived the court shall not dismiss the claim for such failure.

d. Subdivision b of this section shall not apply to any otherwise

time-barred civil claims or causes of action revived by section two hundred eight-a of the civil practice law and rules. This exemption shall not apply to any claim that was timely under the otherwise applicable statute of limitations, provided that, the court, in exercising its discretion as otherwise permitted by law regarding the claim or notice of intention to file a claim shall, in the interest of justice, give due consideration to difficulties of proof caused by incarceration.

**\* § 11-a. Filing fee.** 1. The clerk of the court of claims shall require for the filing of a claim a fee of fifty dollars. The fee shall be payable in advance, unless a motion, affidavit, or certification pursuant to section eleven hundred one of the civil practice law and rules is filed with the claim, in which case the provisions of such section shall be applicable.

2. The court shall award to a prevailing claimant as a taxable disbursement the actual amount of any fee paid to file the claim.

\* NB Expires September 1, 2027

**§ 11-b. Use of facsimile transmission and electronic filing authorized.** 1. Notwithstanding any other provision of law, the chief administrator of the courts may authorize a program in the use of facsimile transmission and electronic means in the court as provided in article twenty-one-A of the civil practice law and rules.

2. For purposes of this section, "facsimile transmission" and "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.

**§ 12. Conditions of judgment.** 1. In no case shall any liability be implied against the state. No judgment shall be granted on any claim against the state except upon such legal evidence as would establish liability against an individual or corporation in a court of law or

equity.

2. No judgment shall be awarded to any claimant on any claim which, as between citizens of the state, would be barred by lapse of time.

3. Claims shall be heard and judgments thereon rendered by one judge, provided, however, that the presiding judge may order any claim or claims to be heard or determined by more than one judge, but not more than three judges, in which event the judgments thereon shall be rendered upon the concurrence of two judges. All intermediate applications and motions may be heard and determined by one judge.

4. Before any judgment shall be rendered for appropriation of land, the value of which exceeds five thousand dollars the judge rendering or one of the judges concurring in the judgment shall view the premises affected thereby.

### ARTICLE III

#### **PRACTICE PROVISIONS**

Section 13. Court rooms for sessions.

14. Procedure upon interpleader; when independent claim barred.

15. Substitution of assignee or legal representative of claimant.

16. Proceedings as to evidence in appropriation cases.

17. Examinations before trial.

17-a. Examination of notices of intention to file a claim.

18. Expense of procuring testimony on commission or deposition.

19. Proceeding upon failure of claimant to file claim within six months or to appear or proceed.

20. Judgments and payment thereof.

20-a. Settlement of claims.

21. Compromise of canal claims.

22. Determination of ownership of awards for property appropriated.

23. Disposition of amount of award deposited.
24. Appeals generally.
25. Time and manner of taking appeal.
26. Case on appeal.
27. Taxation of costs, fees and disbursements.
28. Allowance for expense of searches in certain cases.

**§ 13. Court rooms for sessions.** The sheriff of any county, except Albany, shall furnish for the use of the court suitable rooms in the court house of his county for any session ordered to be held thereat and shall, if requested, attend said session. His fees for attendance shall be paid out of the contingent fund of the court at the same rate as for attending a term of the supreme court in that county.

**§ 14. Procedure upon interpleader; when independent claim barred.** Parties interpleaded shall be served with the order of interpleader, personally or by publication in manner provided for the service of a citation in the surrogate's court, except that in the case of a claim for land appropriated publication in one newspaper published in the county where such land is located, once in each of four successive weeks, shall be sufficient unless otherwise ordered by such court or judge. Within three months from the time a party is so brought in he may file a claim independently of the claim to which he has been made a party. If he fails so to do, he may not thereafter file such an independent claim except by permission granted by order of the court, after notice to the attorney-general, pursuant to subdivision five of section ten of this act.

**§ 15. Substitution of assignee or legal representative of claimant.** In the event of the death of the claimant or of one of the claimants named in a claim of any nature against the state, heretofore or hereafter filed in the court of claims, and also in the event that by assignment or by operation of law, some person other than the claimant named in the claim has succeeded to the interest of one of the claimants

named in such a claim, it shall be the duty of the personal representative of said claimant or of the person who succeeded claimant in interest to said claim or any interest therein within six months after he becomes invested with the title to said claim or any interest therein, to secure from the court of claims and serve upon the attorney-general an order substituting him as party to said claim instead of the party named in said claim, to whose right, title and interest he has succeeded, and in the event that he fails so to do, the court of claims on motion of the attorney-general, on such notice as the court may require, to all parties who have appeared in said action or proceeding or to the assignee or successor of the claimant may dismiss said claim.

**§ 16. Proceedings as to evidence in appropriation cases.** 1. Upon the trial of any claim for the appropriation of real property or an interest therein, evidence of the price and other terms upon any sale, or of the rent reserved and other terms upon any lease, relating to any property taken or to be taken or to any other property in the vicinity thereof shall be relevant, material and competent, upon the issue of value or damage and shall be admissible on direct examination, if the court shall find (1) that such sale or lease was made within a reasonable time of the vesting of title in the state, (2) that it was made in good faith in the ordinary course of business, and (3) in case such sale or lease relates to other than property taken or to be taken, that it relates to property which is similar to the property taken or to be taken; provided, however, that no such evidence shall be admissible as to any sale or lease, unless at least twenty days before the trial the attorney for the party proposing to offer such evidence shall have served either personally or by mail a written notice in respect of such sale or lease, which said notice shall specify the names and addresses of the parties to the sale or lease, the date of making of the same, the location of the premises, the office, liber and page of the record of the same, if recorded, and the purchase price or rent reserved and other material terms; or unless such sale or lease shall have occurred within twenty days before the trial. Such notice by the attorney-general shall be served upon all claimants or their attorneys named in the claim; or if

served on behalf of a claimant, shall be served upon the attorney-general and upon all other claimants or their attorneys named in the claim. Where the court has received and accepted evidence of the price and other terms upon any sale or of the rent reserved and other terms upon any lease of property in the vicinity of the parcel taken, the court may, in its discretion, view such properties.

2. Upon the trial evidence showing the amount or valuation for which each parcel of such real property taken has been assessed for purposes of taxation on the city, town or village assessment rolls, wherein the real property is situated, for each of the three years preceding the date of said taking shall be received in evidence, such assessed valuation, in case only part of an entire plot in a single ownership is to be acquired, shall include the valuation of all buildings encroaching upon or within the bounds of the taking provided, however, that when offered such evidence shall be subject to objection upon any legal ground.

**§ 17. Examinations before trial.** 1. By the state. The attorney-general, upon five days' notice to the attorney for the claimant or to the claimant if there be no attorney, may require any person filing a notice of claim for any cause whatever against the state to be sworn before him or one of his deputies or assistants within the county of the claimant's residence, relating to such claim, and when so sworn, to answer orally as to any facts relative to the justness of such claim. In any such claim brought for personal injuries where the state shall have availed itself of an examination pursuant to section seventeen-a of this article the state shall not be entitled to an examination upon oral questions. Whenever any claim for the appropriation of property is pending or has been determined in the court of claims and the attorney-general is required by law to examine the title of the claimant thereto, prior to the payment of an award, the attorney-general may require such claimant to be sworn before him or one of his deputies or assistants within the county of the claimant's residence, or if the claimant be a corporation within the county where its principal place of business in this state is located, or if the

claimant be a non-resident within the county where the property is situated, relating to such title, and when so sworn, to answer orally as to any facts relative to the title of such property. The attorney-general may also require such claimant to file with him an affidavit stating any material facts relating to such title. Wilful false swearing before the attorney-general or his deputy or assistant is perjury and punishable as such.

2. By the claimant. Examination before trial by the claimant shall be available as provided in subdivision (f) of section thirty-one hundred two of the civil practice law and rules.

**§ 17-a. Examination of notices of intention to file a claim. 1.**

Wherever a notice of intention to file a claim is served, the defendant shall have the right to demand an examination of the claimant relative to the occurrence and extent of the injuries or damages for which claim is made, which examination shall be upon oral questions unless the parties otherwise stipulate and may include a physical examination of the claimant by a duly qualified physician. If the party to be examined desires, he or she is entitled to have such physical examination in the presence of his or her own personal physician and such relative or other person as he or she may elect. Exercise of the right to demand a physical examination of the claimant as provided in this section shall in no way affect the right of a defendant in a subsequent claim brought upon the notice of intention to file a claim to demand a physical examination of the claimant pursuant to statute or court rule.

2. The demand for examination as provided in subdivision one of this section shall be made by the attorney for the defendant or by such officer, agent or employee as may be designated by him for that purpose. The demand shall be in writing and shall be served personally or by registered or certified mail upon the claimant unless the claimant is represented by an attorney, when it shall be served personally or by mail upon his or her attorney. The demand shall give reasonable notice of the examination. It shall state the person before whom the examination is to be held, the time, place and subject matter thereof

and, if a physical examination is to be required, it shall so state. No demand for examination shall be effective against the claimant for any purpose unless it shall be served as provided in this subdivision within ninety days from the date of service of the notice of intention to file a claim.

3. In any examination required pursuant to the provisions of this section the claimant shall have the right to be represented by counsel. The examination shall be conducted upon oath or affirmation. The officer or person before whom the examination is held shall take down or cause to be taken down every question and answer unless the parties consent that only the substance of the testimony be inserted. The testimony so taken, together with the report of the examining physician where a physical examination is required, shall constitute the record of the examination. The transcript of the record of an examination, including a copy of the report of the examining physician shall not be subject to or available for public inspection, except upon court order upon good cause shown, but shall be furnished to the claimant or his or her attorney upon request.

4. A transcript of the testimony taken at an examination pursuant to the provisions of this section, including a copy of the report of the examining physician, may be read in evidence by either party, in a claim founded upon the notice of intention to file a claim in connection with which it was taken, at the trial thereof or upon assessment of damages or upon motion. In an action by an executor or administrator to recover damages for a wrongful act, neglect or default by which a decedent's death was caused, the testimony of such decedent taken pursuant to the provisions of this section in respect of such wrongful act, neglect or default may be read in evidence.

5. Where a demand for examination has been served as provided in subdivision two of this section no claim shall be commenced against the defendant against which the notice of intention to file a claim is made unless the claimant has duly complied with such demand for examination, which compliance shall be in addition to the requirements of sections ten and eleven of this chapter. If such examination is not conducted

within ninety days of service of the demand, the claimant may commence the claim. The claim, however, may not be commenced until compliance with the demand for examination if the claimant fails to appear at the hearing or requests an adjournment or postponement beyond the ninety day period. If the claimant requests an adjournment or postponement beyond the ninety day period, the defendant shall reschedule the hearing for the earliest date available.

**§ 18. Expense of procuring testimony on commission or deposition.**

When testimony is taken on commission or deposition at the instance of the claimant, the expense thereof including the fees of the commissioner, shall be paid by the claimant; and when taken at the instance of the state, such fees and all expenses incurred by the attorney-general shall be paid by the state.

**§ 19. Proceeding upon failure of claimant to file claim within six months or to appear or proceed.** 1. If a claim which bears interest, is not filed until more than six months after the accrual of said claim, no interest shall be allowed between the expiration of six months from the time of such accrual and the time of the filing of such claim.

2. If, when any such claim is reached for trial, the claimant fails to appear or is not ready to proceed to the trial thereof, the court, in its discretion, may proceed forthwith to take proofs and testimony therein offered by the state or otherwise, and may make an award in accordance therewith and cause a judgment to be entered therein. If, in such case, the court shall decide not to proceed with the trial or shall thereafter open claimant's default and restore the claim to the calendar, the court shall not allow interest upon such claim between said date of adjournment or dismissal and the entry of judgment, unless, in the exercise of its discretion, for good cause shown, the court shall otherwise determine.

3. Claims may be dismissed for failure to appear or prosecute or be restored to the calendar for good cause shown, in the discretion of the

court.

4. Where an award is made for the appropriation by the state of real property or any interest therein or for damages to real property caused by the state, interest thereon, if any, shall be suspended by the clerk of the court in and by the judgment from the expiration of thirty days after notification in writing by the attorney-general to the claimant or his attorney that the attorney-general is ready and willing to approve title to the property covered by the award upon the presentation to him of proper proofs, instruments and vouchers, to the date of such presentation, unless otherwise ordered by the court or a judge thereof on an application by the claimant or his attorney, made prior to the entry of judgment and on notice to the attorney-general, showing a satisfactory reason why interest should not be suspended.

Before the entry of judgment, the attorney-general shall notify the clerk of the court in writing of the period of time, if any, during which interest on the award shall be suspended pursuant to this subdivision.

**§ 20. Judgments and payment thereof.** 1. The determination of the court upon a claim shall be by a judgment to be entered, certified and served as provided by the rules of the court.

2. If the claim arises in a case where the state seeks to appropriate or has appropriated land for a public use, the judgment shall contain a description of such land.

3. For all purposes, including filing and docketing, a judgment rendered in the court of claims in favor of the state shall be deemed to have been rendered in the county of Albany, and a transcript of such judgment, certified by the clerk of the court, may be filed and docketed in the clerk's office of Albany county and enforced in the same manner and have the same effect as a judgment of the supreme court.

4. A judgment against claimant on any claim prosecuted as provided in

this act shall forever bar any further claim or demand against the state arising out of the matters involved in the controversy.

5. The comptroller upon the consent of the attorney-general may pay such portion of the judgment of the court of claims from which appeal has not been taken by the state. On motion, the appellate division to which appeal has been taken may, pending appeal, by order direct the comptroller to pay such portions of the judgment from which appeal has not been taken by the state. Any such payment shall be without prejudice to the rights of the state or the claimant on such appeal.

5-a. Where an appeal has been taken by either the claimant or the state or by both the claimant and the state from all or part of a judgment of the court of claims, the comptroller, upon the recommendation of the attorney general may deposit in a special account all or any part of the amount directed to be paid in the judgment. Interest on the amount deposited shall not be allowed from the expiration of twenty days after notification in writing by the comptroller to the claimant or his attorney that the comptroller is ready and willing to pay said amount upon presentation of the instruments and vouchers required by law to be filed in his office. Upon presentation of such instruments and vouchers the comptroller is authorized to pay said amount, with interest as herein provided, to the claimant. Any such deposit or payment shall be without prejudice to the rights of the state or the claimant on such appeal.

6. No such judgment shall be paid until there shall be filed with the comptroller a copy thereof duly certified by the clerk of the court of claims together with a certificate of the attorney-general that no appeal has been or will be taken by the state from the judgment or part thereof specified in the certificate, and a release and waiver by the attorney for the claimant of any lien for services upon said claimant's cause of action, claim, award, verdict, report, decision or judgment in favor of said claimant, which said attorney may have thereon under and by virtue of section four hundred and seventy-five of the judiciary law; and where an award is made by reason of the appropriation of land or any interest therein for a public use or for damages to land caused by the

state, there shall also be filed with the comptroller, a satisfactory abstract of title and certificate of search as to incumbrances, showing the person demanding such damages to be legally entitled thereto.

6-a. Notwithstanding the provisions of subdivisions five, five-a and six of this section, in any case where a judgment or any part thereof is to be paid to an incarcerated individual serving a sentence of imprisonment with the state department of corrections and community supervision or to a prisoner confined at a local correctional facility, the comptroller shall give written notice, if required pursuant to subdivision two of section six hundred thirty-two-a of the executive law, to the office of victim services that such judgment shall be paid thirty days after the date of such notice.

7. Interest shall be allowed on each judgment of the court of claims from the date thereof until payment is actually made, provided, however, that interest shall be suspended and shall not be allowed:

a. In the event a certificate of no appeal is not forwarded by the claimant to the office of the comptroller of the state of New York within thirty days from date of mailing said certificate to the claimant by the attorney general, then interest shall be suspended from date of mailing to date of receipt of said certificate by the comptroller.

b. In the event a satisfaction of judgment and waiver of attorney's lien is not forwarded within thirty days after mailing of said satisfaction of judgment and waiver of attorney's lien by the attorney general, interest shall be suspended for that period of time from the date of mailing the satisfaction of judgment and waiver of attorney's lien to the date that the same is received by the comptroller.

8. The provisions of this section as to limitation of interest shall not apply, however, to judgments paid from the various trust funds or sinking funds of the state, which funds shall be entitled to interest until the twentieth day after an appropriation is available for the reimbursement thereof or until payment, if payment be sooner made.

9. Notwithstanding any other provision of law, when any advance payment has been made pursuant to any statute relating to the appropriation of property by the state, the comptroller, on paying the judgment of the court of claims for the real property acquired, shall deduct from the total amount awarded as principal and interest the amount of principal paid under the terms of the partial payment offer and all interest thereon; and only the balance of such judgment shall be payable.

10. On or before January fifteenth the comptroller, in consultation with the department of law and other agencies as may be appropriate, shall submit to the governor and the legislature an annual accounting of judgments and interest paid pursuant to this section during the preceding and current fiscal years. Such accounting shall include, but not be limited to the number, type and amount of claims so paid, as well as an estimate of claims to be paid during the remainder of the current fiscal year and during the following fiscal year.

**§ 20-a. Settlement of claims.** Notwithstanding any inconsistent provision of this act or of the state finance law, the comptroller shall examine, audit, and certify for payment the settlement of any claim filed in the court of claims for injuries to personal property, real property, or for personal injuries caused by the tort of an officer or employee of the state while acting as such officer or employee, provided that a stipulation of settlement executed by the parties shall have been approved by order of the court. No such stipulation shall be executed on behalf of the state without, after consultation with the director of the budget, the approval of the head of the department or agency having supervision of the officer or employee alleged to have caused the injuries and of the attorney general. The attorney general shall cause a review to be made within the department of law of all cases filed in the court of claims to determine which cases are appropriate for possible settlement. Payment of any claim made pursuant to the approval of a settlement by the court shall be made from the funds appropriated for the purpose of payment of judgments against the state pursuant to section twenty of this act. In any case where payment is to be made to

an incarcerated individual serving a sentence of imprisonment with the state department of corrections and community supervision or to a prisoner confined at a local correctional facility, the procedures set forth in subdivision six-a of section twenty of this article shall be followed. On or before January fifteenth the comptroller, in consultation with the department of law and other agencies as may be appropriate, shall submit to the governor and the legislature an annual accounting of settlements paid pursuant to this section during the preceding and current fiscal years. Such accounting shall include, but not be limited to the number, type and amount of claims so paid, as well as an estimate of claims to be paid during the remainder of the current fiscal year and during the following fiscal year.

**§ 21. Compromise of canal claims.** No claims brought against the state on account of the canal shall be settled or compromised for any amount without the written consent thereto by the commissioner of transportation or his duly authorized representative.

**§ 22. Determination of ownership of awards for property appropriated.**  
1. In the event there may be adverse and conflicting claims asserted to an award for property appropriated by the state or any part thereof, or if there be any apparent lien or encumbrance on the property so appropriated, or on any interest therein, or any dower or other interest which has been asserted by any party as affecting the rights to an award, or which has caused the attorney general or other official of the state to refuse to make payment of any portion of the award, the court may, upon motion of a party in an action to determine the amount of said award, order the interpleader or joinder of anyone claiming or imputed to have such a claim or interest.

The court shall determine the respective interests and rights of the parties to the award and the method of apportionment thereof, and direct to whom the same shall be paid.

2. In the event the court is unable for any reason to determine the

various interests in the award for the property appropriated, and in any other case as justice requires, it may, in and by its award and judgment direct the comptroller to deposit the amount awarded as compensation for the property appropriated in any bank in which moneys belonging to the fund from which such compensation is payable may be deposited, to the account of such award. In any case where the court has directed a deposit in accordance with this subdivision, the comptroller may, at his option, deposit such money in a sub-account of the eminent domain account established by section ninety-seven-dd of the state finance law. Any deposits made pursuant to this subdivision shall be paid and distributed to the persons entitled to the same as ordered by the supreme court on application of any person interested in such award.

**§ 23. Disposition of amount of award deposited.** If the amount awarded is deposited, as provided by section twenty-two of this act, any person claiming an interest in the fund may apply to the supreme court in and for the county of Albany, for an order of distribution. Such application shall be made by verified petition setting forth the rights of any and all persons who may have, or claim to have, any interest in or lien or incumbrance on, the property so appropriated and the award therefor, and the names and addresses of such persons, if known. Thereupon, such court shall make an order, describing the property so appropriated, directed to the attorney-general of the state of New York and to all such persons and to any others who may be unknown, who have or claim to have, any right, title, interest, claim or demand in or to said appropriated property or said award, requiring them to appear before such court and to present their claims or demands on account of such appropriation, at a time and place stated in the order, in the city of Albany, not less than thirty days after service of such order, and show cause why a final order of distribution should not be made. If any such persons appear by such petition to be residents of the state of New York, the order shall be served in the same manner as a summons may be served in an action in the supreme court. If the petition states that any are non-residents of the state or that the names or addresses of any are unknown, the order shall require the service of the order by publication as provided by section fourteen of this act. The court may on the return day hear all

persons interested and make a final order of distribution or refer any claim to a referee to hear, try and report. The court may likewise on the confirmation of a report of a referee, after eight days' notice to those who appeared on the return day, make a final order of distribution. If all the interested parties are competent and over the age of twenty-one years they may enter into a written stipulation providing for the distribution and the court shall thereupon issue an order which shall implement the stipulation. The determination of the court and final order of distribution shall, unless set aside or reversed on appeal, be final and conclusive upon the owners or other persons claiming any interest in or lien or incumbrance on the property so appropriated and the award therefor.

**§ 24. Appeals generally.** Either party may appeal from an order or judgment of the court of claims, or of a referee to hear and determine of such court, to the appellate division of the supreme court of the department in which the claims relating to the orders or judgments appealed, arose. The appeal from a judgment may be taken upon questions of law or of fact, or both, or for an alleged excess or insufficiency of the judgment. Upon such appeal, the court may affirm, reverse or modify the judgment granting such award and judgment as the court of claims should have granted, or dismiss the appeal or grant a new trial or remit for further proceedings. The provisions of the civil practice law and rules relating to appeals in the supreme court apply, so far as practicable, to appeals from orders or judgments of the court of claims or from orders of its referee, except as modified in this article.

**§ 25. Time and manner of taking appeal.** An appeal must be taken within thirty days after the service of the order or judgment with notice of entry, or the service by the clerk of a certified copy of the order or judgment, by serving upon the claimant or his attorney, or upon the attorney-general, and upon the clerk, in like manner as in the supreme court, a written notice to the effect that the appellant appeals from the order or from the judgment or from a specified part thereof, and briefly stating the grounds of the appeal.

**§ 26. Case on appeal.** The appellant shall serve upon the adverse party a case containing so much of the evidence as the appellant may deem necessary to present the questions raised by the appeal. The respondent may propose and serve amendments thereto. The case may be settled by any judge who concurred in the judgment. The court shall by rule regulate the time and procedure for the foregoing. The court may also dispense with the printing of the exhibits, in which case the original exhibits or agreed copies may be submitted to the appellate division.

**§ 27. Taxation of costs, fees and disbursements.** Except as provided in section 701 of the eminent domain procedure law and sections 3126 and 8303-a of the civil practice law and rules, costs, witnesses' fees and disbursements shall not be taxed, nor shall counsel or attorney's fees be allowed by the court to any party.

**§ 28. Allowance for expense of searches in certain cases.** The court of claims, whenever the appraised value of the premises appropriated shall be less than two hundred dollars, shall in their award make a reasonable allowance for the expense of procuring the abstract of title and certificate of search as to incumbrances, which the statutes require shall be furnished the comptroller before payment of any damages which may be awarded for the permanent appropriation of land or water.

#### ARTICLE IV

##### **LAWS REPEALED; WHEN TO TAKE EFFECT**

Section 29. Laws repealed.

30. When to take effect.

**§ 29. Laws repealed.** Chapter nine hundred and twenty-two of the laws of nineteen hundred twenty and all acts amendatory thereof are hereby

repealed.

**§ 30. When to take effect.** This act shall take effect July first, nineteen hundred thirty-nine.