

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 324 Session of
1999

INTRODUCED BY ROHRER, EGOLF, GEIST, LEH, MARKOSEK, McNAUGHTON,
SAYLOR, SEYFERT, STERN, E. Z. TAYLOR AND YEWIC,
FEBRUARY 3, 1999

REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 3, 1999

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled
2 "An act providing for and reorganizing the conduct of the
3 executive and administrative work of the Commonwealth by the
4 Executive Department thereof and the administrative
5 departments, boards, commissions, and officers thereof,
6 including the boards of trustees of State Normal Schools, or
7 Teachers Colleges; abolishing, creating, reorganizing or
8 authorizing the reorganization of certain administrative
9 departments, boards, and commissions; defining the powers and
10 duties of the Governor and other executive and administrative
11 officers, and of the several administrative departments,
12 boards, commissions, and officers; fixing the salaries of the
13 Governor, Lieutenant Governor, and certain other executive
14 and administrative officers; providing for the appointment of
15 certain administrative officers, and of all deputies and
16 other assistants and employees in certain departments, boards,
17 and commissions; and prescribing the manner in which the
18 number and compensation of the deputies and all other
19 assistants and employees of certain departments, boards and
20 commissions shall be determined," placing restrictions on
21 private influence.

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

24 Section 1. The act of April 9, 1929 (P.L.177, No.175), known
25 as The Administrative Code of 1929, is amended by adding a
26 section to read:

27 Section 219.1. Private Influence.--(a) This section shall

1 be known as the Private Influence Reform Law.

2 (b) The General Assembly finds that some executive agencies
3 have abused their delegated power to administer statutorily
4 authorized programs by tailoring those programs to the
5 specifications of private entities, particularly nonprofit
6 foundations with public interest agendas, in connection with the
7 receipt of funding from those private organizations. This
8 disturbing practice has occurred without adequate legislative
9 oversight. When the General Assembly delegates vast amounts of
10 power to unelected officials in the Executive Branch, it is
11 imperative that the General Assembly take steps to assure that
12 appointed officials exercise their discretion and expertise in a
13 way that best reflects legislative intent and to assure that
14 this delegated authority has not been compromised by the
15 desirability of obtaining money from private organizations with
16 their own notion of the common good.

17 (c) Except where specifically authorized by statute, no
18 executive agency may accept funds from any private entity if the
19 Commonwealth or an executive agency would be required to modify
20 or adopt any program, project or initiative, including any pilot
21 project, as a condition for the receipt of funds from the
22 private entity. The execution of a contract or other agreement
23 between a private entity and a State agency in connection with a
24 privately funded initiative shall create a rebuttable
25 presumption that the executive agency has agreed to modify or
26 adopt a program, project or initiative as a condition for the
27 receipt of funds from the private entity if the contract or
28 agreement requires an executive agency to operate a program,
29 initiative or project, including a pilot project, in accordance
30 with prescribed terms or conditions.

1 (d) Notwithstanding an executive agency's determination that
2 its acceptance of funds from a private entity is not conditioned
3 upon the modification or adoption of any program, initiative or
4 project of the Commonwealth or an executive agency, the
5 executive agency may not accept funds from the private entity or
6 enter into any binding contract or agreement with the private
7 entity which is related to the acceptance of funds until at
8 least fifteen days after the commission issues a report on the
9 impact of the privately funded initiative. The executive agency
10 shall provide the commission with a copy of the proposed
11 contract or agreement, any project narrative, information on the
12 proposed funding arrangement, and any other relevant information
13 in the possession of the executive agency. The executive agency
14 and the private entity shall comply with any of the commission's
15 requests for additional information related to the foregoing.
16 The commission shall issue the report within forty-five (45)
17 days of its receipt of the information described in this
18 subsection.

19 (e) The commission shall provide a copy of the information
20 received from the executive agency, pursuant to subsection (d),
21 to the chair and minority chair of the Appropriations Committee
22 and other appropriate committees of the Senate and the chair and
23 minority chair of the Appropriations Committee and other
24 appropriate committees of the House of Representatives within
25 five (5) days after its receipt of such information. The
26 commission shall prepare a description of the privately funded
27 initiative, which shall include the identity of any private
28 entity proposing to fund the program, narrative or project; the
29 amount of any proposed funding; and an invitation for public
30 comment. The commission shall submit the description for

publication in the Pennsylvania Bulletin within ten days (10)
after it receives the information described in subsection (d).

(f) The report shall include the commission's nonbinding
determination as to whether the privately funded initiative:

(1) Is permissible under subsection (c).

(2) Is in the public interest. This clause shall include
a determination as to whether the initiative is consistent
with the statutory authority of the executive agency and with
the intention of the General Assembly in the enactment of the
statutory law upon which the initiative is based.

(3) Would have a significant economic or fiscal impact
upon the Commonwealth or its political subdivisions.

(4) Would represent a policy decision of such a
substantial nature that it requires legislative review.

(g) If the report concerns a pilot project, the report shall
also analyze the potential impact of the project as a Statewide
program in accordance with the criteria under subsection (f).

(h) The commission shall provide for the transmittal of a
copy of its report to the executive agency, the Attorney
General, the appropriate committees of the General Assembly and
to any member of the public who shall request a copy of the
report.

(i) The commission and any appropriate committee of the
Senate or the House of Representatives may conduct public
hearings on any privately funded initiative.

(j) If any contract or agreement specified in subsection (d)
requires the approval of the Attorney General as to legality,
the executive agency shall notify the Attorney General that it
is transmitting the contract or agreement to the commission
pursuant to subsection (d). The Attorney General shall await the

1 report of the commission before making a determination regarding
2 the legality of the contract or agreement.

3 (k) No executive agency may accept funds from a private
4 entity for the purpose of paying all or part of the compensation
5 of an officer or employe of the agency unless the identity of
6 the executive agency, the officers and employes receiving
7 compensation, the private entity making the payment and the
8 amount and purpose of the privately funded subsidy are published
9 in the Pennsylvania Bulletin and are transmitted to the chair
10 and minority chair of the Appropriations Committee and other
11 appropriate committees of the Senate and the chair and minority
12 chair of the Appropriations Committee and other appropriate
13 committees of the House of Representatives at least thirty (30)
14 days before any such funds are accepted.

15 (l) No executive agency may enter into any contract or
16 agreement with a nonprofit foundation or other private entity
17 which entitles the foundation or entity to receive data
18 collected in connection with its participation in or funding of
19 a State program, project or initiative unless the Attorney
20 General certifies that the contract or agreement contains
21 sufficient safeguards to protect confidential data and privacy
22 rights of individuals affected by the program, project or
23 initiative.

24 (m) Nothing in this section shall apply to funds received by
25 the Commonwealth as a fee or other payment for a license,
26 permit, service, product, tax, fine or penalty, or received for
27 the purchase, lease or use of real or personal property or
28 similar matters.

29 (n) Definitions.--As used in this section, the following
30 words and phrases shall have the meanings given to them in this

1 subsection:

2 "Commission" means the Independent Regulatory Review
3 Commission.

4 "Executive agency" means any department, departmental
5 administrative board or commission, independent board or
6 commission, or other agency, including the Governor's Office,
7 within the Executive Branch of the Commonwealth.

8 "Private entity" includes a nonprofit foundation with a
9 public interest agenda.

10 "Privately funded initiative" means any program, project or
11 initiative of an executive agency, including a pilot project,
12 which is funded or will be funded, in whole or in part, by a
13 private entity.

14 Section 2. This act shall take effect in 60 days.