

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1309 Session of
2001

INTRODUCED BY DERMODY, DeWEESE, VEON, WALKO, YOUNGBLOOD, MUNDY,
BELFANTI, SCRIMENTI, HALUSKA, C. WILLIAMS, GEORGE, SOLOBAY,
LEVDANSKY, ROBINSON, STABACK, SURRA, MELIO, TRELLO, LAUGHLIN,
COSTA, WASHINGTON, STEELMAN, HORSEY, PRESTON, YUDICHAK,
TANGRETTI, FRANKEL, TIGUE AND WOJNAROSKI, APRIL 9, 2001

REFERRED TO COMMITTEE ON STATE GOVERNMENT, APRIL 9, 2001

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 employes 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 employes of certain departments, boards and
20 commissions shall be determined," providing requirements for
21 privatization contracts; establishing the Privatization
22 Review Board in the Treasury Department and providing for its
23 powers and duties; and providing for the Commission on
24 Privatization and for former State employees.

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

27 Section 1. The act of April 9, 1929 (P.L.177, No.175), known

1 as The Administrative Code of 1929, is amended by adding an
2 article to read:

3 ARTICLE XI-A

4 PRIVATIZATION REVIEW BOARD

5 Section 1101-A. Definitions.--As used in this article:

6 "Agency" means any administrative department, departmental or
7 independent administrative board, commission, agency,
8 instrumentality, authority or institution of the Commonwealth.

9 "Board" means the Privatization Review Board established
10 under section 1110-A.

11 "Dependent" means the spouse and children of an employe, if
12 such persons qualify for dependent status under the Internal
13 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.)
14 or for whom a support order has been or could be granted under
15 the laws of this Commonwealth.

16 "Privatization contract" means an agreement or combination or
17 series of agreements by which a nongovernmental person or entity
18 agrees with an agency to provide services, valued at one hundred
19 thousand dollars (\$100,000) or more, which are substantially
20 similar to or in lieu of, services provided, in whole or in
21 part, by regular employes of the agency. Any subsequent
22 agreement, including any agreement from a rebidding of
23 previously privatized service, or any agreement renewing or
24 extending a privatization contract, shall not be considered a
25 privatization contract. An agreement solely to provide legal,
26 management, consulting, planning, engineering or design services
27 shall not be considered a privatization contract.

28 Section 1102-A. Validity of Privatization Contracts.--No
29 agency shall enter into a privatization contract, and no
30 privatization contract shall be valid, unless the agency

1 complies with this article.

2 Section 1103-A. Method of Awarding Privatization

3 Contracts.--(a) An agency shall prepare a written statement of
4 the services proposed to be the subject of a privatization
5 contract, including the specific quantity and standard of
6 quality of the services to be procured. The agency shall solicit
7 competitive sealed bids for a privatization contract based on
8 the services proposed in the statement.

9 (b) The day designated by the agency upon which it will
10 accept the sealed bids shall be the same for all parties.

11 (c) The statement shall be a public record, shall be filed
12 with the agency, the Office of Administration, the Office of the
13 Budget and the Treasury Department.

14 (d) For each position in which a bidder intends to employ a
15 person pursuant to the privatization contract and for which the
16 duties of the person are substantially similar to the duties
17 performed by a regular employe of the agency, the statement
18 required by subsection (a) shall include a statement of the
19 minimum wage rate to be paid for the position, which rate shall
20 be lesser of step one of the grade or classification under which
21 the comparable regular employe of the agency is paid, or the
22 average private sector wage rate for the position as determined
23 by the Department of Labor and Industry.

24 Section 1104-A. Mandatory Provisions of Privatization

25 Contracts.--A privatization contract shall contain the
26 following:

27 (1) The term shall not exceed five (5) years, and no
28 amendment shall be valid if the purpose or effect of the
29 amendment is to avoid this section.

30 (2) The specific wage rate for each person to be employed

1 under the privatization contract. The wage rate shall not be
2 less than the minimum wage rate defined in section 1103-A(d).

3 (3) A provision that the contractor shall pay not less than
4 a percentum, comparable to the percentum paid by the
5 Commonwealth for State employes, of the cost of health insurance
6 plans for every employe employed not less than twenty (20) hours
7 per week pursuant to such contract. The contractor shall also
8 agree that an insurance plan shall provide coverage to the
9 employe and the employe's dependents during the term of the
10 privatization contract.

11 (4) A provision requiring the contractor to offer available
12 employe positions pursuant to the privatization contract to
13 qualified regular employes of the agency whose State employment
14 is terminated because of the privatization contract and who
15 satisfy the hiring criteria of the contractor.

16 (5) Provisions requiring the contractor to comply with a
17 policy of nondiscrimination and equal opportunity for all
18 persons under the laws of this Commonwealth and the United
19 States, and to take affirmative steps to provide such equal
20 opportunity for all such persons.

21 (6) Such other terms and conditions deemed by the agency to
22 be necessary or in the best interests of the Commonwealth.

23 Section 1105-A. Duty to Report Payroll Records and
24 Enforcement.--(a) A contractor shall submit quarterly payroll
25 records to the agency, listing the name, address, Social
26 Security number, hours worked and the hourly wage paid for each
27 employe in the previous quarter.

28 (b) The Attorney General may bring a civil action for
29 equitable relief in the Commonwealth Court to enforce this
30 section or to prevent or remedy the dismissal, demotion or other

1 action prejudicing any employe as a result of a report of a
2 violation of this section.

3 Section 1106-A. Cost Estimates.--(a) An agency shall
4 prepare a comprehensive written estimate of the cost of regular
5 agency employes providing the subject services in the most cost-
6 efficient manner. The estimate shall include all direct and
7 indirect costs of regular agency employes providing the subject
8 services, including, but not limited to, pension, insurance and
9 other employe benefit costs.

10 (b) For the purpose of the estimate in subsection (a), any
11 employe organization may, at any time before the final day for
12 the agency to receive sealed bids pursuant to section 1103-A,
13 propose amendments to any relevant collective bargaining
14 agreement to which it is a party. The amendments shall take
15 effect only if necessary to reduce the cost estimate under this
16 section below the contract cost pursuant to section 1108-A.

17 (c) The estimate shall remain confidential until after the
18 final day for the agency to receive sealed bids for the
19 privatization contract pursuant to section 1103-A, at which time
20 the estimate shall become a public record and shall be filed
21 with the agency, the Office of Administration, the Office of the
22 Budget and the Treasury Department for review pursuant to
23 section 1110-A.

24 Section 1107-A. Bids by Employe Organizations.--(a) After
25 consulting any relevant employe organization, the agency shall
26 provide adequate resources for the purpose of encouraging and
27 assisting present agency employes to organize and submit a bid
28 to provide the subject services. In determining what resources
29 are adequate for this purpose, the agency shall refer to an
30 existing collective bargaining agreement of a similar employe

1 organization whose members perform the subject services, if
2 available, which agreement provides similar resources in the
3 same or other agencies.

4 (b) However, if no such collective bargaining agreement
5 exists, the agency shall refer to any existing collective
6 bargaining agreements providing the resources and shall provide
7 the resources at the minimum level of assistance provided in the
8 agreements.

9 (c) The agency shall consider an employe bid on the same
10 basis as all other bids.

11 (d) An employe bid may be made as a joint venture with other
12 persons.

13 Section 1108-A. Public Designation of Award and Cost
14 Analysis.--(a) After soliciting and receiving bids, an agency
15 shall publicly designate the bidder to which it proposes to
16 award the contract.

17 (b) The agency shall prepare a comprehensive written
18 analysis of the contract cost based upon the designated bid,
19 specifically including the costs of transition from public to
20 private operation, of additional unemployment and retirement
21 benefits, if any, and of monitoring and otherwise administering
22 contract performance.

23 (c) If the designated bidder proposes to perform any or all
24 of the privatization contract outside the boundaries of this
25 Commonwealth, the contract cost shall be increased by the amount
26 of income tax revenue which will be lost to the Commonwealth by
27 the corresponding elimination of agency employes, as determined
28 by the Department of Revenue to the extent it is able to do so.

29 Section 1109-A. Certification to Treasury Department.--(a)
30 The head of the agency and the Secretary of Administration shall

1 each certify, in writing, to the Treasury Department the
2 following findings:

3 (1) That the agency and the Secretary of Administration have
4 complied with this article and all other applicable laws.

5 (2) That the quality of the services to be provided by the
6 designated bidder is likely to satisfy the quality requirements
7 of the statement prepared under section 1103-A, and to equal or
8 exceed the quality of services which could be provided by
9 regular agency employes under section 1106-A.

10 (3) That the contract cost under section 1108-A will be less
11 than the estimated cost under section 1106-A, taking into
12 account all comparable types of costs.

13 (4) That the designated bidder and its supervisory employes,
14 while in the employ of the designated bidder, have no
15 adjudicated record of substantial or repeated wilful
16 noncompliance with any Federal or State regulatory statute,
17 including, but not limited to, statutes concerning labor
18 relations, occupational safety and health, nondiscrimination and
19 affirmative action, environmental protection and conflicts of
20 interest.

21 (5) That the proposed privatization contract is in the
22 public interest, in that it meets the applicable quality and
23 fiscal standards set forth in this article.

24 (b) The head of the agency shall provide a copy of the
25 proposed privatization contract with the certificate transmitted
26 to the Treasury Department.

27 Section 1110-A. Privatization Review Board.--(a) There
28 shall be in the Treasury Department a Privatization Review Board
29 consisting of the State Treasurer or a designee, who shall chair
30 the board, the State Inspector General or a designee and three

1 (3) residents of this Commonwealth appointed by the State
2 Treasurer, one (1) of whom shall be a certified public
3 accountant.

4 (b) The board shall consider, study and review the
5 certifications and proposed privatization contracts submitted to
6 the Treasury Department under this article, and shall issue
7 findings regarding compliance with this article.

8 (c) The board may adopt rules and regulations and may
9 prescribe forms to carry out this article.

10 (d) The Treasury Department shall have the power and duty to
11 provide the board with facilities, experts, stenographers and
12 assistants as necessary to carry out the work of the board. The
13 board may enlist voluntary assistance as available from
14 citizens, research organizations and other agencies.

15 Section 1111-A. Effect of Board Review.--(a) No agency
16 shall make any privatization contract and no privatization
17 contract shall be valid if, within thirty (30) days after
18 receiving the certificate required by section 1109-A, the board
19 notifies the agency of its objection. The objection shall be in
20 writing and shall state specifically the findings of the board
21 that the agency has failed to comply with one or more
22 requirements of this article, including that the board finds
23 incorrect, based on an independent review of all the facts, any
24 of the findings required by section 1109-A.

25 (b) The objection of the board shall be final and binding on
26 the agency, unless the board, in writing, withdraws the
27 objection under subsection (c) and states specific reasons for
28 the withdrawal.

29 (c) After receipt of a board objection, the agency or the
30 Secretary of Administration may file a revised certification.

1 The board shall review the revised certification, and if the
2 board finds that the findings are correct, it shall withdraw the
3 objection.

4 (d) The provisions of this article are in addition to any
5 other provisions of this or any other act which would otherwise
6 apply to privatization contracts and this article is not
7 intended to preempt or repeal such provisions.

8 Section 1112-A. Summons.--For the purpose of reviewing
9 compliance with this article and the certificates provided under
10 section 1109-A, the board may require by summons the attendance
11 and testimony under oath of witnesses and the production of
12 books, papers and other records relating to such review. All
13 provisions of the law relative to summonses in civil cases,
14 including the manner of service and the compensation of
15 witnesses who are not State employes shall apply to the
16 summonses. The summonses shall be enforced under the applicable
17 laws of this Commonwealth.

18 Section 1113-A. Commission on Privatization.--(a) A
19 Commission on Privatization is established and shall consist of
20 fifteen (15) members, three (3) of whom shall be appointed by
21 the Governor, three (3) of whom shall be appointed by the
22 President pro tempore of the Senate, three (3) of whom shall be
23 appointed by the Speaker of the House of Representatives, three
24 (3) of whom shall be appointed by the Minority Leader of the
25 Senate and three (3) of whom shall be appointed by the Minority
26 Leader of the House of Representatives.

27 (b) The commission shall investigate and study the successes
28 and failures of privatization efforts in this Commonwealth and
29 in other states, and the implementation and operation of this
30 article and any laws enacted in other states on this and related

1 subjects.

2 (c) The commission may recommend appropriate legislation or
3 changes in the procedures of the executive branch. The
4 commission shall report the results of its investigation and
5 study by filing the same with the Chief Clerk of the Senate and
6 the Chief Clerk of the House of Representatives not later than
7 November 30, 2002.

8 Section 1114-A. Former State Employes.--A former State
9 employe whose salary is not less than forty-five thousand
10 dollars (\$45,000) annually is prohibited, for a period of one
11 (1) year after termination of his State employment, from
12 becoming an officer of or an employe of a business or
13 organization which is or was a party to any privatization
14 contract under this article in which contract the employe
15 participated as such State employe unless before the termination
16 of State employment the Governor determines, in writing and
17 files with the State Ethics Commission, that the participation
18 did not significantly affect the terms or implementation of the
19 privatization contract.

20 Section 1115-A. Applicability.--This article shall apply to
21 all privatization contracts executed on or after the effective
22 date of this article.

23 Section 2. This act shall take effect immediately.