AN ACT

Establishing the Council on Efficient Government; and providing for its powers and duties and for business cases to outsource.

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

Section 1. Short title.

This act shall be known and may be cited as the Council on Efficient Government Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:


"State agency." Any of the following:

(1) Any department, agency, board or commission under the jurisdiction of the Governor.

(2) The Office of Attorney General.

(a) Establishment.--The Council on Efficient Government is established and shall consist of the following members:

(1) The chief executive or administrative officer of a State agency who is appointed by the Governor.

(2) Two members who are engaged in private enterprise and who are appointed by the Governor.

(3) Two members who are engaged in private enterprise and who are appointed by the President pro tempore of the Senate.

(4) Two members who are engaged in private enterprise and who are appointed by the Speaker of the House of Representatives.

(b) Terms.--The terms of appointment for members to the council are for two years, unless the chief executive or administrative officer of a State agency ceases to hold office. The Governor shall appoint a replacement member for the remainder of the unexpired term.

(c) Reimbursement of reasonable expenses.--A member of the council who is engaged in private enterprise is not eligible to receive compensation but is eligible for reimbursement of reasonable expenses, pursuant to State law.

(d) Disqualification on council reviews.--A member of the council may not participate in a council review of a business case to outsource if the State agency is conducting the proposed...
outsourcing or, in the case of a member engaged in private
enterprise, if the member has a business relationship with an
tentity that is involved or potentially could be involved in the
proposed outsourcing.

e) Delegation prohibited.--A member of the council who is
engaged in private enterprise may not delegate the membership to
a designee.

(f) Quorum.--A quorum shall consist of at least three
members of the council.

(g) Vacancies.--A vacancy on the council shall be filled in
the same manner as the original appointment, and any member
appointed to fill a vacancy occurring for a reason other than
the expiration of a term shall serve only for the unexpired term
of the member's predecessor.

(h) Chairperson.--The council shall select a chairperson
from among its members.

Section 4. Powers and duties.

(a) General rule.--The council shall:

(1) Review whether or not a good or service provided by
a State agency may be privatized to provide the same type and
quality of good or service that would result in cost savings
or best value. The council may hold public hearings as part
of its evaluation process and shall report its
recommendations to the Governor, the President pro tempore of
the Senate and the Speaker of the House of Representatives.

(2) Review privatization of a good or service at the
request of a State agency or a private enterprise.

(3) Review issues concerning agency competition with one
or more private enterprises to determine ways to eliminate
any unfair competition with a private enterprise.
(4) Recommend privatization to a State agency if a proposed privatization is demonstrated to provide a more cost-efficient or more effective manner of providing a good or service.

(5) Employ a standard process for reviewing business cases to outsource.

(6) Review and evaluate business cases to outsource as requested by the Governor or the State agency head whose State agency is proposing to outsource.

(7) No later than 30 days before a State agency's issuance of a solicitation of $10,000,000 or more, provide to the State agency conducting the procurement, the Governor, the President pro tempore of the Senate and the Speaker of the House of Representatives an advisory report for each business case reviewed and evaluated by the council. The report shall contain all versions of the business case, an evaluation of the business case, any relevant recommendations and sufficient information to assist the State agency in determining whether the business case to outsource should be included with the legislative budget request.

(8) Recommend and implement standard processes for State agency and council review and evaluate State agency business cases to outsource, including templates for use by State agencies in submitting business cases to the council.

(9) Recommend standards, processes and guidelines for use by State agencies in developing business cases to outsource.

(10) Incorporate any lesson learned from outsourcing services and activities into council standards, procedures and guidelines, as appropriate, and identify and disseminate
to State agencies information regarding best practices in
outsourcing efforts.

(11) Develop guidelines for assisting State employees
whose jobs are eliminated as a result of outsourcing.

(12) Receive complaints of violations of this act.

(13) Transmit complaints received under this section to
the State agency alleged to be in violation.

(14) Hold public hearings on complaints and determine
whether a State agency is in violation of this act.

(15) Issue a written report of its findings to the
complainant within 90 days after receiving the State agency's
response.

(16) Transmit to the Governor, the President pro tempore
of the Senate and the Speaker of the House of Representatives
a complete report of each meeting, including recommendations
to correct violations of prohibitions on competition with
private enterprise and findings on necessary exceptions to
the prohibitions.

(17) (i) Solicit petitions of interest from private
sector service providers as the council considers
appropriate. The council may evaluate and review the
petitions and may hold public hearings as part of the
evaluation process. The council may recommend some or all
of the petitions to the Governor's Office for further
review pursuant to State law.

(ii) A person does not have a cause of action based
on the failure of the council to consider a petition of
interest or make a recommendation.

(b) Evaluation and review of exemptions.--The council may
evaluate and review all State agency exemptions and exemptions
to the restrictions on competition with private enterprise in
this act and may determine that any function or functions of a
State agency are in violation of this act. The council shall
report its findings and recommendations to the Governor, the
President pro tempore of the Senate and the Speaker of the House
of Representatives.

(c) Annual report.--The council shall prepare an annual
report on:

(1) Recommendations on innovative methods of delivering
government services that would improve the efficiency,
effectiveness or competition in the delivery of government
services, including enterprise-wide proposals.

(2) Outsourcing efforts of each State agency, including
the number of outsourcing business cases and solicitations,
the number and dollar value of outsourcing contracts,
descriptions of performance results as applicable, any
contract violations or project slippages and the status of
extensions, renewals and amendments of outsourcing contracts.

(3) Information about the council's activities.

(4) The status of the inventory of commercial activities
created under section 5.

(d) Submission of annual report.--The council shall submit
the annual report prescribed by subsection (c) to the Governor,
the President pro tempore of the Senate and the Speaker of the
House of Representatives no later than January 15 immediately
following the calendar year for which the report is made. The
council shall provide an oral report to the Joint Legislative
Budget Committee and the Governor's Budget Office when the
legislature is not in session.

(e) Staff.--The Auditor General of the Commonwealth shall
employ an adequate number of staff who collectively possess
significant expertise and experience as required to carry out
the duties specified in this act.

(f) Cooperation by State agencies.--Each State agency shall
submit to the council all information, documents and other
materials required by the council pursuant to this act.

(g) Release of performance audits.--At the request of the
council, the Auditor General shall provide performance audit and
other required information relating to State agency budgets and
functions. The Auditor General may assist in the development and
review of the agency inventory of commercial activities
prescribed in section 5.

(h) Filing of recommendations for privatization.--In
addition to filing a copy of recommendations for privatization
with a State agency head, the council shall file a copy of its
recommendations for privatization with the Governor's Office,
the Joint Legislative Budget Committee and the Governor's Budget
Office for submission to the relevant legislative appropriation
subcommittee.

(i) Advisory groups.--The council may appoint advisory
groups to conduct studies, research or analyses and make reports
and recommendations with respect to a matter within the
jurisdiction of the council. At least one member of the council
shall serve on each advisory group.

(j) Independent privatizations.--Subject to the provisions
of section 6, nothing in this act shall be construed to preclude
a State agency from privatizing the provision of a good or
service independently of any recommendation of the council,
provided there is legal authority to do so.

(k) Aggrieved persons.--Except as provided by statute, any
aggrieved person may elect to directly seek judicial relief from action of the council.

Section 5. Commercial activities inventory and review.

(a) General rule.--On or before a date selected by concurrent resolution or act of the General Assembly, the council shall create an inventory of activities of State agencies to classify whether each activity or elements of the activity are:

(1) A commercial activity that may be obtained in whole or in part from a private enterprise.

(2) An inherently governmental activity.

(b) Biennial update of inventory.--The council shall update the inventory created under this section at least every two years.

(c) Public access to inventory.--The council shall make the inventory available to the public through electronic means.

(d) Cooperation from State agencies.--State agencies shall cooperate with inventory requests made by the council.

Section 6. Business cases to outsource.

(a) Project cost of more than $10,000,000.--A proposal to outsource having a projected cost of more than $10,000,000 in any fiscal year shall require:

(1) An initial business case analysis conducted by the State agency and submitted to the council, the Governor, the President pro tempore of the Senate and the Speaker of the House of Representatives at least 60 days before a solicitation is issued. The council shall evaluate the business case analysis and submit an advisory report to the State agency, the Governor, the President pro tempore of the Senate and the Speaker of the House of Representatives when
the advisory report is completed, but at least 30 days before
the State agency issues the solicitation.

(2) A final business case analysis conducted by the
State agency and submitted after the conclusion of any
negotiations, at least 30 days before execution of a
contract, to the council, the Governor, the President pro
tempore of the Senate and the Speaker of the House of
Representatives.

(b) Project cost of $1,000,000 to $10,000,000.--A proposal
to outsource having a projected cost of at least $1,000,000 but
not more than $10,000,000 in any fiscal year shall require:

(1) An initial business case analysis conducted by the
State agency and submission of the business case, at least 30
days before issuing a solicitation, to the council, the
Governor, the President pro tempore of the Senate and the
Speaker of the House of Representatives.

(2) A final business case analysis conducted by the
State agency and submitted after the conclusion of any
negotiations, at least 30 days before execution of a
contract, to the council, the Governor, the President pro
tempore of the Senate and the Speaker of the House of
Representatives.

(c) Project cost of less than $1,000,000.--A business case
to outsource having a projected cost of less than $1,000,000 in
any fiscal year shall require a final business case analysis
conducted by the State agency after the conclusion of any
negotiations and provided to the council at least 30 days before
execution of a contract. The council shall provide the business
case in its annual report to the President pro tempore of the
Senate and the Speaker of the House of Representatives.
(d) Contents of business case.--For any proposed outsourcing, the State agency shall develop a business case that justifies the proposal to outsource. The business case is not subject to challenge or protest. The business case shall include:

(1) A detailed description of the service or activity for which the outsourcing is proposed.

(2) A description and analysis of the State agency's current performance based on existing performance measures if the State agency is currently performing the service or activity.

(3) The goals to be achieved through the proposed outsourcing and the rationale for the goals.

(4) A citation to the existing or proposed legal authority for outsourcing the service or activity.

(5) A description of available options for achieving the goals. If State employees are currently performing the service or activity, at least one option involving maintaining State provision of the service or activity shall be included.

(6) An analysis of the advantages and disadvantages of each option, including, at a minimum, potential performance improvements and risks.

(7) A description of the current market for the contractual services that are under consideration for outsourcing.

(8) (i) A cost-benefit analysis documenting the direct and indirect specific baseline costs, savings and qualitative and quantitative benefits involved in or resulting from the implementation of the recommended
option or options. The analysis shall specify the
schedule that, at a minimum, must be adhered to in order
to achieve the estimated savings. All elements of cost
shall be clearly identified in the cost-benefit analysis,
described in the business case and supported by
applicable records and reports. The head of the State
agency shall attest that based on the data and
information underlying the business case and to the best
of his knowledge, all projected costs, savings and
benefits are valid and achievable.

(ii) For the purposes of this paragraph:

(A) "Cost" means the reasonable, relevant and
verifiable cost, which may include elements such as
personnel, materials and supplies, services,
equipment, capital depreciation, rent, maintenance
and repairs, utilities, insurance, personnel travel,
overhead and interim and final payments. The
appropriate elements shall depend on the nature of
the specific initiative.

(B) "Savings" means the difference between the
direct and indirect actual annual baseline costs
compared to the projected annual cost for the
contracted functions or responsibilities in any
succeeding State fiscal year during the term of the
contract.

(9) A description of differences among current State
agency policies and processes and, as appropriate, a
discussion of options for or a plan to standardize,
consolidate or revise current policies and processes, if any,
to reduce the customization of any proposed solution that
would otherwise be required.

(10) A description of the specific performance standards that must, at a minimum, be met to ensure adequate performance.

(11) The projected time frame for key events from the beginning of the procurement process through the expiration of the contract.

(12) A plan to ensure compliance with applicable record retention laws and the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

(13) A specific and feasible contingency plan addressing contractor nonperformance and a description of the tasks involved in and costs required for its implementation.

(14) A State agency's transition plan for addressing changes in the number of agency personnel, affected business processes, employee transition issues and communication with affected stakeholders, such as State agency clients and the public. The transition plan must contain a reemployment and retraining assistance plan for employees who are not retained by the State agency or employed by the contractor.

(15) A plan for ensuring access by persons with disabilities in compliance with applicable Federal and State laws.

(16) A description of legislative and budgetary actions necessary to accomplish the proposed outsourcing.

(e) Required contents of contracts.--Each contract for a proposed outsourcing under this section shall include the following:

(1) A scope-of-work provision that clearly specifies each service or deliverable to be provided, including a
description of each service or deliverable or activity that
is quantifiable, measureable and verifiable. This contractual
provisions shall include a clause stating that if a
particular service or deliverable is inadvertently omitted or
not clearly specified, but determined to be operationally
necessary and verified to have been performed by the agency
within the 12 months before the execution of the contract,
the service or deliverable will be provided by the contractor
through the identified contract amendment process.

(2) A service-level agreement provision describing all
services to be provided under the terms of the agreement, the
State agency's service requirements and performance
objectives, specific responsibilities of the State agency and
the contractor and the process for amending any portion of
the service-level agreement. Each service-level agreement
shall contain an exclusivity clause that allows the State
agency to retain the right to perform the service or
activity, directly or with another contractor, if service
levels are not being achieved.

(3) A provision that identifies all associated costs,
specific payment terms and payment schedules, including
provisions governing incentives and financial disincentives
and criteria governing payment.

(4) A provision that identifies a clear and specific
transition plan that will be implemented in order to complete
all required activities needed to transfer the service or
activity from the State agency to the contractor and operate
the service or activity successfully.

(5) A performance standards provision that identifies
all required performance standards, which shall include at a
minimum:

(i) Detailed and measurable acceptance criteria for each service or deliverable to be provided to the State agency under the terms of the contract that document the required performance level.

(ii) A method for monitoring and reporting progress in achieving specified performance standards and levels.

(iii) The sanctions or disincentives that will be imposed for nonperformance by the contractor or State agency.

(6) A provision that requires the contractor and its subcontractors to maintain adequate accounting records that comply with all applicable Federal and State laws and generally accepted accounting principles.

(7) A provision that authorizes the State agency to have access to and audit all records related to the contract and subcontracts, or any responsibilities or functions under the contract and subcontracts, for purposes of legislative oversight and a requirement for audits by a service organization pursuant to professional auditing standards, if appropriate.

(8) A provision that requires the contractor to interview and consider for employment with the contractor each displaced State employee who is interested in such employment.

(9) A contingency plan provision that describes the mechanism for continuing the operation of the service or activity, including transferring the service or activity back to the State agency or successor contractor, if the contractor fails to perform and comply with the performance
standards and levels of the contract and the contract is terminated.

(10) A provision that requires the contractor and its subcontractors to comply with applicable record retention laws and the Right-to-Know Law specifically to:

(i) Keep and maintain the public records that ordinarily and necessarily would be required by the State agency in order to perform the service or activity.

(ii) Provide the public with access to the public records on the same terms and conditions that the State agency would provide the records.

(iii) Ensure that records that are exempt or records that are confidential and exempt are not disclosed except as authorized by law.

(iv) Meet all requirements for retaining records and transfer to the State agency, at no cost, all public records in possession of the contractor on termination of the contract and destroy any duplicate public records that are exempt or confidential. All records stored electronically shall be provided to the State agency in a format that is compatible with the information technology systems of the State agency.

(11) (i) A provision that addresses ownership of intellectual property.

(ii) This paragraph shall not be construed to provide the specific authority needed by a State agency to obtain a copyright or trademark.

(12) If applicable, a provision that allows the State agency to purchase from the contractor, at its depreciated value, assets used by the contractor in the performance of
the contract. If assets have not depreciated, the State agency retains the right to negotiate to purchase at an agreed-upon cost.


The council, by rule, shall establish an accounting method that:

(1) Is similar to generally accepted accounting principles used by a private enterprise.

(2) Allows a State agency to identify the total actual cost of engaging in a commercial activity in a manner similar to how a private enterprise identifies the total actual cost to the private enterprise, including the following:

(i) Labor expenses, such as compensation and benefits, costs of training, costs of paying overtime, costs of supervising labor or other personnel expenses.

(ii) Operating costs, such as vehicle maintenance and repair, marketing, advertising or other sales expenses, office expenses, costs of an accounting operation, such as billing, insurance expenses, real estate or equipment costs, debt service costs or a proportionate amount of other overhead or capital expenses, such as vehicle depreciation and depreciation of other fixed assets.

(iii) Contract management costs.

(iv) Other costs particular to a person supplying the good or service.

(3) Provides a process to estimate the taxes a State agency would pay related to engaging in a commercial activity if the State agency were required to pay Federal, State and local taxes to the same extent as a private enterprise.
engaging in the commercial activity.

Section 8. Required review of commercial activities by Governor.

Beginning with a fiscal year designated by concurrent resolution or act of the General Assembly, the Governor, at least once every two fiscal years, shall select at least three commercial activities that are being performed by a State agency to be examined by the Governor's Budget Office.

Section 9. Duties of Governor's Budget Office.

(a) General rule.--The Governor's Budget Office shall:

(1) Determine the amount of an appropriation that is no longer needed by a State agency because all or a portion of the State agency's provision of a good or service is privatized.

(2) Adjust the Governor's budget recommendations to reflect the amount that is determined under paragraph (1).

(3) Report its findings to the President pro tempore of the Senate and the Speaker of the House of Representatives.

(b) Construction.--Nothing in this section shall be construed to prevent the Governor from making a budget recommendation regarding the restoration of a portion of the appropriation to a State agency that is reduced under this section.

Section 10. Applicability.

This act does not apply to contracts in support of the planning, development, implementation, operation or maintenance of the road, bridge and public transportation construction program of the Department of Transportation.

Section 11. Initial terms of members of the Council on Efficient Government.
Notwithstanding section 2, the initial members of the council who are engaged in private enterprise shall assign themselves by lot to terms of one or two years in office. The appointing authority shall make all subsequent appointments as prescribed by statute.

Section 12. Effective date.

This act shall take effect in 60 days.