AN ACT

Prohibiting government competition with private enterprise.

The General Assembly finds and declares as follows:

(1) Private enterprise is necessary to the health, welfare and prosperity of this Commonwealth.

(2) Government competes with private enterprise when it provides goods and services to the public beyond its government function.

(3) This act is intended to protect economic opportunities for private enterprise against unfair competition by government agencies and to enhance the efficient provision of goods and services to the public.
Section 3. 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:

"Agency." A government agency as defined in this act.

"Authority." Any authority created by a government agency or agencies for a purpose other than the purpose of the agency or agencies.

"Commercial activity." Performing services or providing goods that can normally be obtained from private enterprise.

"Government agency." The State, any unit of State government, and any municipality, municipal or county authority or political subdivision. The term includes all of the following:

1. An entity which is not majority-owned as private property and established under the Constitution of Pennsylvania, statute, ordinance or any other order or action by the entity or its officers.

2. A State-owned and State-related university, community college and public school district.

"Government competition." The provision of goods or services to the public by government agencies that are essentially the same as those offered by private enterprise.

"Government functions." Those functions that are exclusively the prerogative of government, including operation of the agency or department, fulfillment of the legal obligations of the agency, law enforcement and the judicial system.

"Invited guests." Persons who enter onto a campus for educational, research or public service activity and not primarily to purchase or receive goods and services which are
not related to the educational, research or public service activity for which the persons enter onto the campus.

"Local agency." A department, office, commission, institution, board or other agency or local organization, regardless of whether moneys are appropriated to the agency, including cities, boroughs, towns, townships or any other municipal entity.

"Necessary services." Those services that are critical for human safety and health, including fire departments, emergency services and medical services.

"Private enterprise." An individual, firm, partnership, joint venture, corporation, association or any other legal entity engaging in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing or advertising of goods or services for profit.

"Private sector." Two or more competing privately owned companies.

"Public service." An activity that is normally and generally associated with community colleges and universities in this Commonwealth, a purpose or significant result of which is not to engage in competition with private enterprise.

"State agency." A department, office, commission, institution, board or other agency or State organization, regardless of whether moneys are appropriated to the agency.

"Telecommunications." Radio, telegraph, telefax, telephoto, television, cable and satellite transmission, computer, Internet and other electronic services.

"Utilities." Provision of electric power and water supply.

"Vital services." Those services that are vital to the public, including water and electric supply, sewers, garbage and
trash removal, recycling, streets and roads, public transportation and public transportation infrastructure, State and local correctional facilities, child care, elder care, telecommunication services which include radio, telegraph, telefax, telephoto, television cable and satellite transmission, computer, Internet and other electronic services.

Section 4. Government competition prohibited.

Government, government agencies, State-owned and State-related universities, community colleges, school districts and public authorities are prohibited from competing against private enterprise, including by intergovernmental or interagency agreement, and are prohibited from funding, capitalizing, securing the indebtedness of, or leasing the obligations of, or subsidizing, any charitable or not-for-profit institution which would use such support to compete against private enterprise.

Section 5. Excepted functions and services.

The following functions or services are excepted from the provisions of section 4:

(1) Government functions.

(2) Necessary services. Nothing in this act shall preclude a government agency or authority from utilizing private enterprise to provide necessary services.

(3) Vital services, to the extent such services are not available from private enterprise. In such cases, government shall make good faith efforts for private enterprise to furnish such services.

(4) The development, management and operation of State parks, historical monuments and hiking or equestrian trails.

(5) Provisions of goods and services to students and invited guests by State-owned and State-related universities,
community colleges and public school districts.

Section 6. Existing government competition.

(a) General rule.--In cases of government competition against private enterprise that exist on the effective date of this act, the government agency or authority may continue to engage in the competition but may not exceed the scope of the competition.

(b) Construction.--Nothing in this act shall be construed to preclude a government agency or authority from contracting with private enterprise to provide goods or services to the public.

Section 7. Financial statements.

(a) Maintenance.--

(1) In all cases of commercial activity by government agencies, annual financial statements of all income and expenses of the commercial activities shall be maintained separately and on the same basis as the financial statements of the government agencies.

(2) Income from monetary assets of government agencies shall not be shown as income of commercial activities but shall be shown as income of the government agencies.

(b) Income from government agencies.--The financial statements of commercial activities shall not include any income from government agencies. Grants shall not be included as income of the commercial activities, but shall be shown as income to the government agencies.

(c) Common expenses.--The financial statements of commercial activities shall include proportionate amounts of common expenses shared with government agencies, including utility costs, supplies, repair and replacement costs, insurance of all types, employee compensation, employee benefits, payroll taxes,
debt service and depreciation of all types.

(d) Audit.--The financial statements of government agencies and commercial activities shall be audited and certified as correct by a certified public accountant and auditor within 120 days after the end of the annual accounting period and when certified shall be released to the public.

Section 8. Remedies.

(a) Nature of action and jurisdiction.--The civil cause of action authorized under this section shall be brought in the Commonwealth Court, which shall have jurisdiction to issue preliminary and permanent injunctive relief.

(b) Preliminary orders.--

(1) An affected person or entity may file a complaint seeking preliminary injunctive relief by alleging that a government agency is participating or planning to participate in commercial activity resulting in new competition with existing private enterprise. Upon receipt of the complaint, the court shall order a preliminary hearing, which shall not be later than 30 days from the date of the order.

(2) The court shall issue appropriate preliminary injunctive relief if at the preliminary hearing the plaintiff makes a prima facie showing that:

(i) the government agency is or is planning to participate in commercial activity;

(ii) that commercial activity results or will result in competition with private enterprise;

(iii) the government has not made a good faith effort for private enterprise to furnish vital services; and

(iv) the threat to private enterprise or public
moneys is imminent.

(3) The plaintiff shall not be required to show no adequate remedy at law or irreparable harm nor any other common law element applicable to obtaining preliminary injunctive relief.

(4) If the court finds that the government agency is participating or planning to participate in commercial activity resulting in competition with private enterprise but that preliminary injunctive relief is not warranted the court shall deny the request for preliminary injunctive relief and proceed to trial.

(c) Permanent injunction.--Where, after a final hearing on the merits, the court finds that a government agency is participating or planning to participate in commercial activity resulting in competition with private enterprise in violation of this act, the court shall grant permanent injunctive relief and shall issue orders as necessary to abate the government competition with private enterprise.

(d) Monetary damages.--The court may award actual monetary damages to the plaintiff. The plaintiff must prove actual damages by clear and convincing evidence.

(e) Recovery of costs.--Whenever an action for injunctive relief and damages brought under this section terminates in a settlement or judgment favorable to the plaintiff, the plaintiff shall be entitled to recover the actual costs of the suit, including reasonable attorney fees and all expenses and disbursements made by the plaintiff in bringing the action.

Section 30. Effective date.

This act shall take effect in 60 days.