
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2572 Session of
2006

INTRODUCED BY LEH, BENNINGHOFF, BOYD, CAPPELLI, CRAHALLA,
CREIGHTON, DENLINGER, FICHTER, FORCIER, GEIST, GINGRICH,
MAHER, MARSICO, McILHATTAN, METCALFE, PYLE, QUIGLEY,
REICHLEY, ROHRER, SAYLOR, SEMMEL, SIPTROTH, R. STEVENSON,
E. Z. TAYLOR AND WILT, APRIL 4, 2006

REFERRED TO COMMITTEE ON COMMERCE, APRIL 4, 2006

AN ACT

1 Prohibiting government competition with private enterprise.

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

4 Section 1. Short title.

5 This act shall be known and may be cited as the Free
6 Enterprise and Taxpayer Protection Act.

7 Section 2. Declaration of policy.

8 The General Assembly finds and declares as follows:

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

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

14 (3) This act is intended to protect economic
15 opportunities for private enterprise against unfair
16 competition by government agencies and to enhance the

1 efficient provision of goods and services to the public.

2 Section 3. Definitions.

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

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

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

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

12 "Government agency." The State, any unit of State
13 government, and any municipality, municipal or county authority
14 or political subdivision. The term includes an entity which is
15 not majority-owned as private property and established under the
16 Constitution of Pennsylvania, statute, ordinance or any other
17 order or action by the entity or its officers. The term includes
18 State-owned and State-related universities, community colleges
19 and public school districts.

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

23 "Government functions." Those functions that are exclusively
24 the prerogative of government, including, but not limited to,
25 operation of the agency or department, fulfillment of the legal
26 obligations of the agency, law enforcement and the judicial
27 system.

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

1 not related to the educational, research or public service
2 activity for which the persons enter onto the campus.

3 "Local agency." A department, office, commission,
4 institution, board or other agency or local organization,
5 regardless of whether moneys are appropriated to the agency,
6 including, but not limited to, cities, boroughs, towns,
7 townships or any other municipal entity.

8 "Necessary services." Those services that are critical for
9 human safety and health, including, but not limited to, fire
10 departments, emergency services and medical services.

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

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

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

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

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

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

29 "Vital services." Those services that are vital to the
30 public, including, but not limited to, water and electric

1 supply, sewers, garbage and trash removal, recycling, streets
2 and roads, public transportation and public transportation
3 infrastructure, State and local correctional facilities, child
4 care, elder care, telecommunication services which include
5 radio, telegraph, telefax, telephoto, television cable and
6 satellite transmission, computer, Internet and other electronic
7 services.

8 Section 4. Government competition prohibited.

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

17 Section 5. Excepted functions and services.

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

20 (1) Government functions.

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

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

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

30 (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, but not
limited to, utility costs, supplies, repair and replacement

1 costs, insurance of all types, employee compensation, employee
2 benefits, payroll taxes, debt service and depreciation of all
3 types.

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

9 Section 8. Remedies.

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

14 (b) Preliminary orders.--

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

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

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

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

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

1 and

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

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

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

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

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

24 (e) Recovery of costs.--Whenever an action for injunctive
25 relief and damages brought pursuant to this section terminates
26 in a settlement or judgment favorable to the plaintiff, the
27 plaintiff shall be entitled to recover the actual costs of the
28 suit, including, but not limited to, reasonable attorney fees
29 and all expenses and disbursements made by the plaintiff in
30 bringing the action.

1 Section 30. Effective date.

2 This act shall take effect in 90 days.