

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2397 Session of
2008

INTRODUCED BY GODSHALL, S. H. SMITH, STERN, TURZAI, BAKER,
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MURT, MUSTIO, PICKETT, PRESTON, REICHLEY, ROAE, RUBLEY AND
SCAVELLO, MARCH 27, 2008

REFERRED TO COMMITTEE ON STATE GOVERNMENT, MARCH 27, 2008

AN ACT

1 Prohibiting campaign contributions by certain persons that
2 contract with the Commonwealth or its political subdivisions.

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

5 CHAPTER 1

6 PRELIMINARY PROVISIONS

7 Section 101. Short title.

8 This act shall be known and may be cited as the Public
9 Contract Integrity Act.

10 Section 102. Declaration of policy.

11 The General Assembly finds and declares as follows:

12 (1) In a representative form of government, it is
13 essential that individuals who are elected to public office
14 have the trust, respect and confidence of the citizenry.

15 (2) All individuals and businesses have a right to
16 participate in the political process, including making
17 contributions to candidates or soliciting contributions on

1 behalf of candidates, political parties and those holding
2 office within this Commonwealth.

3 (3) However, when an individual or business makes
4 contributions or solicits major contributions to obtain a
5 contract awarded by a government agency, it constitutes a
6 violation of the public trust and raises legitimate public
7 concerns about whether the contract awarded was based on
8 merit.

9 (4) While the right of individuals and businesses to
10 make contributions is unequivocal, that right may be limited,
11 even abrogated, when the contributions promote the actuality
12 or appearance of public corruption.

13 (5) The Commonwealth has a duty to protect the integrity
14 of contractual decisions made by elected officials at all
15 levels of government.

16 (6) It is essential that the citizenry have confidence
17 that the selection of contractors is based on merit and not
18 the extent of contributions made by contractors.

19 (7) It is essential that the citizenry trust the process
20 through which taxpayer dollars are spent.

21 (8) The Commonwealth has a duty to promote the honesty
22 and integrity of the process of selecting contractors and a
23 duty to guard against favoritism, improvidence, extravagance
24 and corruption in the selection process.

25 Section 103. Definitions.

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

29 "Candidate." Includes the Governor, an individual seeking
30 the office of Governor, the Lieutenant Governor, an individual

1 seeking the office of Lieutenant Governor, an individual
2 appointed by the Governor to head a department, board,
3 commission or authority who is responsible for awarding public
4 contracts, an individual holding elected office in a local
5 agency and an individual seeking elected office in a local
6 agency. The term also includes a committee of a political party
7 organized at the level of the Commonwealth or the level of a
8 political subdivision of this Commonwealth and a political
9 action committee or other entity formed to provide contributions
10 to the Governor, an individual seeking the office of Governor,
11 the Lieutenant Governor, an individual seeking the office of
12 Lieutenant Governor, an individual holding elected office in a
13 local agency or an individual seeking elected office in a local
14 agency.

15 "Contribution." A payment, gift, subscription, assessment,
16 contract, payment for services, dues, loan, forbearance or
17 deposit of money or valuable thing to a candidate before or
18 after an election. The term includes the purchase of tickets for
19 events, including dinners, luncheons, rallies and other
20 fundraising events and the granting of discounts or rebates not
21 available to the general public.

22 "Executive agency." The Governor and the departments,
23 boards, commissions, authorities and other officers and agencies
24 of the Commonwealth. The term does not include any court or
25 other officer or agency of the unified judicial system, the
26 General Assembly and its officers and agencies or any
27 independent agency or State-affiliated entity.

28 "Local agency." The governing authority of a county,
29 township, borough or other political subdivision of the
30 Commonwealth.

1 "Person." Includes a corporation, partnership, limited
2 liability company, business trust, other association, estate,
3 trust, foundation or individual seeking a public contract. The
4 term also includes the spouse of an individual or a child of an
5 individual living in the home of an individual seeking a public
6 contract, and a principal in a business entity who owns at least
7 10% of the equity of that business entity in the case of a
8 corporation, partnership, limited liability company, business
9 trust or other association of a business entity seeking a public
10 contract.

11 "Public contract." An agreement, contract or amendment to an
12 existing agreement or contract or other transaction, including
13 an agreement or contract for legal or engineering services,
14 awarded without public bidding.

15 Section 104. Scope of act.

16 This act shall apply to the Commonwealth and its political
17 subdivisions.

18 CHAPTER 3
19 VIOLATIONS

20 Section 301. Unlawful acts.

21 (a) Certain public contracts prohibited.--Notwithstanding
22 any other provision of law to the contrary, it is unlawful for
23 an executive agency or a local agency to enter into a public
24 contract with a person who has made a contribution to or
25 solicited a contribution on behalf of a candidate exceeding the
26 limits set forth under subsection (b) within one year
27 immediately preceding the awarding of a public contract.

28 (b) Certain contributions unlawful.--Notwithstanding any
29 provision of law to the contrary, it is unlawful for a person
30 seeking a public contract to make a contribution to any one

1 candidate or solicit a contribution on behalf of any one
2 candidate which exceeds \$300 within one year immediately
3 preceding the awarding of a public contract or to make a
4 contribution to two or more candidates or solicit a contribution
5 on behalf of two or more candidates which exceed \$3,000 in the
6 aggregate within one year immediately preceding the awarding of
7 a public contract.

8 (c) After public contract awarded.--Notwithstanding any
9 provision of law to the contrary, it is unlawful for a person
10 awarded a public contract to make a contribution to a candidate
11 or to solicit a contribution on behalf of a candidate during the
12 duration of that public contract.

13 Section 302. Breach of public contract.

14 (a) Breach of contract.--It shall be a breach of a public
15 contract for a person seeking or awarded a public contract to
16 violate a provision of this act or to:

17 (1) Make or solicit a contribution in violation of this
18 act.

19 (2) Conceal or misrepresent a contribution given to a
20 candidate.

21 (3) Make or solicit a contribution through
22 intermediaries for the purpose of concealing or
23 misrepresenting the source of the contribution.

24 (4) Fund a contribution made by a third party which, if
25 made or solicited by the person, would violate this act.

26 (5) Directly or indirectly, whether by the person or an
27 intermediary, perform an act which would violate this act.

28 (b) Terms.--A public contract shall include a provision
29 setting forth the prohibitions contained in this act and shall
30 contain a provision that it is a breach of the terms of the

1 public contract for a person to violate this act or to:

2 (1) Make or solicit a contribution in violation of this
3 act.

4 (2) Conceal or misrepresent a contribution given to a
5 candidate.

6 (3) Make or solicit a contribution through
7 intermediaries for the purpose of concealing or
8 misrepresenting the source of the contribution.

9 (4) Fund a contribution made by a third party which, if
10 made or solicited by the person, would violate this act.

11 (5) Directly or indirectly, whether by the person or an
12 intermediary, perform an act which would violate this act.

13 Section 303. Certification required.

14 Prior to awarding a public contract, a person awarded the
15 contract shall provide a written certification that the person
16 has not made a contribution to or solicited a contribution on
17 behalf of a candidate in violation of this act. The
18 certification shall be made part of the person's application for
19 a public contract. A certification which contains materially
20 false information shall subject the person to prosecution under
21 18 Pa.C.S. § 4904 (relating to unsworn falsification to
22 authorities) and to a fine of \$5,000.

23 CHAPTER 5

24 ENFORCEMENT

25 Section 501. Remedies.

26 (a) Executive or local agency.--A public contract which is
27 entered into by an executive agency or local agency in violation
28 of this act shall be void.

29 (b) Person seeking public contract.--A person who makes a
30 contribution to a candidate or solicits a contribution on behalf

1 of a candidate in violation of this act shall be subject to a
2 fine of \$5,000. Each contribution made to a candidate or
3 solicited on behalf of a candidate shall constitute a separate
4 offense.

5 (c) Courts.--The several courts of common pleas and the
6 Commonwealth Court shall have jurisdiction to prevent and
7 restrain violations of sections 301, 302(a) and 303 by issuing
8 appropriate orders, including, but not limited to:

9 (1) Ordering any candidate to divest himself of a
10 contribution made in violation of this act.

11 (2) Making due provision for the rights of taxpayers by
12 voiding the public contract or ordering the denial,
13 suspension or revocation of licenses, permits or other
14 approval granted to the person in connection with the public
15 contract or prohibiting the person from engaging in any act.

16 (d) Injunctions.--In any proceeding under subsection (c),
17 the court shall proceed as soon as is practicable to the hearing
18 and determination thereof. Pending final determination, the
19 court may enter preliminary or special injunctions, or take such
20 other actions, including the acceptance of satisfactory
21 performance bonds, as it may deem proper. Proceedings under
22 subsection (c) at pretrial, trial and appellate levels shall be
23 governed by the Pennsylvania Rules of Civil Procedure and all
24 other rules and procedures relating to civil actions, except to
25 the extent inconsistent with the provisions of this section.

26 Section 502. Enforcement.

27 (a) Attorney General.--The Attorney General shall have the
28 power and duty to enforce the provisions of this act, including
29 the power to institute proceedings under section 501 and to take
30 such actions as may be necessary to ascertain and investigate

1 alleged violations of sections 301, 302(a) and 303.

2 (b) District attorneys.--The district attorneys of the
3 several counties shall have concurrent authority to institute
4 proceedings under section 501 and to take such actions as may be
5 necessary to ascertain and investigate alleged violations of
6 sections 301, 302(a) and 303.

7 (c) Construction.--Nothing in this section shall be
8 construed to limit the regulatory or investigative authority of
9 any department or agency of the Commonwealth or a political
10 subdivision of the Commonwealth, including the Inspector
11 General, whose function might relate to persons, candidates or
12 matters falling within the scope of this act.

13 CHAPTER 21

14 MISCELLANEOUS PROVISIONS

15 Section 2101. Repeal.

16 All acts and parts of acts are repealed insofar as they are
17 inconsistent with this act.

18 Section 2102. Applicability.

19 This act shall apply to all contributions made to candidates
20 or solicitations on behalf of candidates by persons seeking
21 public contracts on or after the effective date of this act.

22 Section 2103. Effective date.

23 This act shall take effect immediately.