

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1909 Session of
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INTRODUCED BY CAPPABIANCA, BATTISTO, MILLER, BAKER, HERSHEY,
DEMPSEY, ARMSTRONG, STISH, KREBS, COY, HANNA, CARONE, WAUGH,
CURRY, BROWNE, E. Z. TAYLOR, GORDNER, VAN HORNE AND STEIL,
JUNE 29, 1995

REFERRED TO COMMITTEE ON FINANCE, JUNE 29, 1995

AN ACT

1 Providing for the tax exemption of institutions of purely public
2 charity; and making repeals.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Institutions
8 of Purely Public Charity Act.

9 Section 2. Legislative intent.

10 (a) Findings.--The General Assembly finds and declares as
11 follows:

12 (1) It is in the best interest of this Commonwealth and
13 its citizens that the recognition of tax-exempt status be
14 accomplished in an orderly, uniform and economical manner.

15 (2) For more than 100 years, it has been the policy of
16 this Commonwealth to foster the organization and operation of
17 charitable organizations by exempting charitable
18 organizations from taxation.

19 (3) Because charitable organizations contribute to the
20 common good or lessen the burdens of government, the historic
21 policy of exempting charitable institutions from taxation
22 should be continued.

23 (4) The General Assembly recognizes that it is
24 unrealistic today to expect charitable organizations to rely
25 completely upon private philanthropy and that there is an
26 appropriate role and responsibility for government support
27 with respect to activities historically recognized as
28 charitable.

29 (5) The General Assembly recognizes that the lack of
30 specific legislative standards defining the term

1 "institutions of purely public charity" has led to increasing
2 confusion and confrontation among traditionally tax-exempt
3 organizations and local governments to the detriment of the
4 public.

5 (6) There is increasing concern that the eligibility
6 standards for charitable tax exemptions are being applied
7 inconsistently, which may violate the uniformity provision of
8 the Constitution of Pennsylvania.

9 (b) Intent.--It is the intent of the General Assembly to
10 eliminate inconsistent application of eligibility standards for
11 charitable tax exemptions, reduce confusion and confrontation
12 among traditionally tax-exempt organizations and local
13 governments and insure that charitable and public funds are not
14 unnecessarily diverted from the public good to litigate
15 eligibility for tax-exempt status by:

16 (1) Providing standards to be applied uniformly in all
17 proceedings throughout this Commonwealth for determining
18 eligibility for exemption from State and local taxation which
19 are consistent with traditional legislative and judicial
20 applications of the constitutional term "institutions of
21 purely public charity."

22 (2) Creating a single unified procedure and process
23 throughout this Commonwealth to certify the status of an
24 organization as an institution of purely public charity to
25 establish conclusively entitlement to exemption whenever the
26 General Assembly provides an exemption from taxation.

27 Section 3. Definitions.

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

1 "Application." An application for certification by the
2 Secretary of Revenue filed by an organization seeking to be
3 certified as an institution of purely public charity, which
4 shall be in the form the Secretary of Revenue shall prescribe
5 consistent with this act.

6 "Government agency." Any Commonwealth agency or any
7 political subdivision or municipal or other local authority or
8 any officer or agency of any political subdivision or local
9 authority.

10 "Institution of purely public charity." A domestic or
11 foreign nonprofit corporation, association, trust or other
12 organization which meets the criteria under section 4.

13 "Secretary." The Secretary of Revenue of the Commonwealth or
14 his designee.

15 Section 4. Criteria.

16 (a) General rule.--An institution of purely public charity
17 is a nonprofit corporation, association, trust or other
18 organization which meets the criteria set forth in this section
19 or which is principally engaged in fundraising on behalf of or
20 making grants to corporations, associations, trusts or other
21 organizations which meet the criteria set forth in this section.
22 An institution of purely public charity shall meet all of the
23 criteria contained in subsections (b), (c), (d), (e) and (f).
24 The factors specified as sufficient to satisfy each criterion
25 set forth in this section are not the exclusive means by which
26 the criterion can be met.

27 (b) Charitable purpose.--The institution shall advance a
28 charitable purpose. This criterion is satisfied if the
29 institution is organized and operated primarily to fulfill any
30 one or combination of the following purposes:

(1) Relief of poverty.

(2) Advancement of education.

(3) Advancement of religion.

(4) Promotion of health.

(5) Government or municipal purposes.

(6) Accomplishment of any purpose which is beneficial to the community, including, but not limited to, advancement of the arts and sciences, advancement of the cultural, spiritual, mental, physical, social or emotional welfare or improvement of others.

(c) Private profit motive.--The institution shall operate entirely free from private profit motive. Compensation, including benefits of any director, officer or employee, shall not be based primarily upon the financial performance of the organization. Notwithstanding whether the institution's revenues exceed its expenses, this criterion is satisfied if the institution meets the following:

(1) Neither the institution's net earnings nor donations which it receives inures to the benefit of private shareholders or other individuals, as the private inurement standard is interpreted under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)).

(2) The institution applies or reserves any revenue in excess of expenses in furtherance of its charitable purpose or to funding of other charitable organizations.

(d) Community service.--

(1) The institution shall donate or render gratuitously a substantial portion of its services. This criterion is satisfied if the institution benefits the community by

1 actually providing any of the following:

2 (i) Goods or services to all who seek them without
3 regard to their ability to pay for what they receive. An
4 organization meets this test if it has a written policy
5 to this effect, it has publicized this policy in a
6 reasonable manner and it provides goods and services
7 according to its policy.

8 (ii) Goods or services for fees that are based upon
9 the recipient's ability to pay for them. An organization
10 meets this test if it can demonstrate that it has
11 implemented a written policy and a written schedule of
12 fees based on individual or family income.

13 (iii) Uncompensated goods or services to at least
14 10% of those receiving similar services.

15 (iv) Goods or services for fees which, in total, are
16 90% or less of the cost of providing such services,
17 including the reasonable value of volunteer labor or
18 services.

19 (v) Goods or services for fees within the financial
20 reach of a substantial part of the community and provides
21 a reasonable level of financial assistance, taking into
22 account the institution's assets, income and projected
23 future needs.

24 (vi) Funds to corporations, associations, trusts or
25 other organizations which meet the criteria of this
26 section.

27 (2) As used in this subsection, the following words and
28 phrases shall have the meanings given to them in this
29 paragraph:

30 "Goods or services." Medically necessary goods or

1 services, but not limited to life-threatening situations if
2 the institution's purpose is to provide health care services.

3 "Uncompensated goods or services." Includes all benefits
4 provided by the institution to the community it serves,
5 including, but not limited to, the following:

6 (i) The full cost of all goods and services provided
7 by the institution for which the institution has not
8 received monetary compensation or the difference between
9 the full cost and any lesser fee received for the goods
10 and services, including the cost of the goods and
11 services which are bad debts, as determined in accordance
12 with the generally accepted accounting principles
13 applicable to the institution.

14 (ii) The difference between the full cost of
15 education and research programs provided by or
16 participated in by the institution and the payment made
17 to the institution to support the education and research
18 programs.

19 (iii) The difference between the full cost of
20 providing the goods and services and the payment made to
21 the institution under any government entitlement program.

22 (iv) The difference between the full cost of the
23 community services which the institution provides or
24 participates in and the payment made to the institution
25 to support such community services.

26 (v) The reasonable value of any moneys, property or
27 services donated by the institution to another
28 institution of purely public charity.

29 (vi) The reasonable value of volunteer assistance
30 donated by individuals to the institution.

1 (e) Charity to persons.--

2 (1) The institution shall benefit a substantial and
3 indefinite class of persons who are legitimate subjects of
4 charity.

5 (2) As used in this subsection, the following words and
6 phrases shall have the meanings given to them in this
7 paragraph:

8 "Legitimate subjects of charity." Those individuals who
9 are unable to provide themselves with what the institution
10 provides for them.

11 "Substantial and indefinite class of persons." Persons
12 not predetermined in number, provided that, where the
13 services are received primarily by members of the
14 institution, membership cannot be predetermined in number and
15 cannot be arbitrarily denied by a vote of the existing
16 members. This section specifically recognizes that the use of
17 admissions criteria and enrollment limitations by educational
18 institutions do not constitute predetermined membership or
19 arbitrary restrictions on membership so as to violate this
20 section.

21 (f) Government service.--The institution shall relieve the
22 government of some of its burden. This criterion is satisfied if
23 the institution meets any of the following:

24 (1) Provides a service to the public that the government
25 would otherwise be obliged to fund or to provide directly or
26 indirectly or assure that a similar organization exists to
27 provide the service.

28 (2) Provides services in furtherance of its charitable
29 purpose which are either the responsibility of the government
30 by law or which traditionally have been assumed or offered or

1 funded by the government.

2 (3) Receives on a regular basis payments for services
3 rendered under a government entitlement program, which
4 payments are less than the full costs incurred by the
5 institution for the rendering of the services.

6 (4) Provides a service which advances important
7 community, public, spiritual, mental, physical, educational,
8 emotional, civic, historical or cultural objectives.

9 (g) Shared service organization.--

10 (1) A shared service organization shall be treated as an
11 institution of purely public charity without requiring it to
12 qualify under this section if it is a nonprofit corporation,
13 association, trust or other organization comprised of or
14 formed by two or more institutions of purely public charity
15 to provide services to, for or on behalf of two or more
16 institutions of purely public charity or to the beneficiaries
17 of one or more institutions of purely public charity and
18 which meets the following criteria:

19 (i) The organization provides a support service to
20 its member organizations that each member organization
21 could otherwise perform itself.

22 (ii) Each member organization or investor in the
23 shared service organization is itself an institution of
24 purely public charity or a government agency.

25 (iii) If the shared service is made available to a
26 member organization's beneficiaries, the member
27 organization makes the service available regardless of
28 the beneficiaries' ability to pay for the service.

29 (iv) The activity or service performed by the shared
30 service organization is in furtherance of the charitable

mission of its member organizations.

(v) The member organizations accept or in some fashion underwrite a portion of the financial risk of the shared service organization.

(vi) If it provides services to legitimate subjects of charity, the shared service organization shall be compensated solely by the member organizations.

(2) The fact that the shared service organization receives all or a portion of its revenue from the sale or provision of services or products to its member organizations, and by so doing does not provide uncompensated or undercompensated services directly to beneficiaries of the member organizations, shall not preclude the shared service organization from designation as an institution of purely public charity if it otherwise meets requirements of paragraph (1).

(h) Standards.--Nothing contained in this act shall be deemed to prohibit a charitable organization from conducting activities intended to influence legislation. Nothing in this act shall prohibit a political subdivision from filing challenges to or making determinations as to whether a particular parcel of property is being used to advance the charitable purpose of an institution of purely public charity. No additional criteria shall be imposed on any organization in order to be recognized or certified as an institution of purely public charity.

Section 5. Certification process.

(a) Application and certification.--The secretary shall certify that organizations which meet the criteria set forth in section 4 and which apply for certification from the secretary

1 are institutions of purely public charity under the application
2 procedure described in subsection (b). Any organization so
3 certified shall be conclusively entitled to any exemption from
4 taxes otherwise available to it by statute. Nothing in this
5 section shall require any organization to seek certification
6 from the secretary.

7 (b) Application procedure.--Any organization seeking
8 certification as an institution of purely public charity shall
9 file an application with the secretary, containing that
10 information as the secretary may require consistent with this
11 act. Notice of the filing of each such application shall be
12 published in the Pennsylvania Bulletin by the secretary within
13 ten days of receipt of the application. The secretary shall also
14 send within ten days of receipt of the application by first
15 class mail written notice of the application to the affected
16 government agencies where the principal offices of the applicant
17 are located. The secretary shall review the information
18 submitted by the applicant with the application and by any
19 person or government agency who chooses to submit information to
20 the secretary regarding the application and shall, within 90
21 days of receipt of the application, certify that the applicant
22 is an institution of purely public charity as established by
23 section 4 or issue a determination that the applicant does not
24 qualify as an institution of purely public charity. Written
25 notice of the secretary's determination, with written evidence
26 of the certification, if granted, shall be mailed to the
27 applicant and the affected government agencies within five days
28 of the determination. The secretary shall not approve an
29 application prior to 45 days following receipt of the
30 application to permit the secretary to consider information

1 submitted by any person or government agency which chooses to
2 submit information regarding such application. The burden of
3 establishing that the organization is an institution of purely
4 public charity as established by section 4 shall rest with the
5 applicant, which shall meet this burden by a preponderance of
6 the evidence.

7 (c) Filing fees.--The secretary may adopt by regulation
8 filing fees not to exceed \$400 per application for applicants
9 seeking certification as institutions of purely public charity.
10 If the applicant certifies to the secretary that its annual
11 gross receipts will be less than \$200,000 for its next two
12 fiscal years, the filing fee shall not exceed \$150 per
13 application. The secretary may adopt lesser fees by regulation.

14 (d) Certification review.--The secretary shall have the
15 primary and exclusive jurisdiction to certify that any
16 organization is an institution of purely public charity under
17 the procedures set forth in this act and to revoke any
18 certification previously granted, subject to review as set forth
19 in sections 6 and 7.

20 (e) Effect of denial of certification.--In the event of a
21 final and unappealed or unappealable adjudication denying
22 certification as an institution of purely public charity, the
23 applicant may not claim the benefit of the status as an
24 institution of purely public charity for the applicant's fiscal
25 year next following the receipt of the adjudication denying
26 certification. Until a final and unappealed or unappealable
27 adjudication is rendered, the applicant may apply for a writ of
28 supersedeas from a court of competent jurisdiction deferring it
29 from the obligation to pay taxes owed to a government agency by
30 virtue of the initial adjudication during the pendency of the

1 appeal.

2 Section 6. Hearing.

3 The applicant and affected government agencies who have
4 participated in the application procedure under section 5 shall
5 have 30 days from the date of mailing of the secretary's
6 determination to request a hearing on the determination by
7 filing written notice of intent to request a hearing. If a
8 hearing is not so requested by the applicant or the affected
9 government agencies, the adjudication of the secretary shall
10 become final and effective. If a hearing is so requested by the
11 applicant or the affected government agencies, it shall be held
12 before an independent hearing officer appointed by the secretary
13 no earlier than 15 days and no later than 60 days following the
14 secretary's receipt of the applicant's request for the hearing
15 unless the applicant consents in writing to a postponement of
16 the hearing. At the request of the applicant or an affected
17 government agency, the secretary shall hold the hearing in the
18 county in which the applicant is located. The procedures at the
19 hearing shall be governed by the provisions of 1 Pa. Code Ch. 35
20 (relating to formal proceedings). As applicable, the applicant
21 and the affected government agencies who have participated in
22 the application procedure under section 5 may intervene and
23 participate in the hearing. The secretary shall render a final
24 adjudication on the application for certification no later than
25 20 days after the receipt of the hearing officer's findings and
26 recommendations following the hearing.

27 Section 7. Appeal to court.

28 The applicant, the Attorney General or an affected government
29 agency who has intervened and participated in the hearing under
30 section 6 may appeal the adjudication of the secretary made

1 under section 6 to court under 2 Pa.C.S. § 702 (relating to
2 appeals).

3 Section 8. Annual reports.

4 Each organization that has been certified as an institution
5 of purely public charity by the secretary shall, no later than
6 five months following the end of the organization's fiscal year,
7 file with the secretary an annual report containing that
8 information as the secretary may require, consistent with this
9 act. In lieu of the report, the organization may elect to file a
10 copy of the Federal tax return of an organization exempt from
11 income tax and related forms required to be filed by the
12 organization with the Internal Revenue Service for the fiscal
13 year in question. The secretary may for good cause shown extend
14 the time for filing of the annual report. Organizations with
15 gross receipts less than \$25,000 in a fiscal year in question
16 shall be exempt from the foregoing filing requirement.

17 Section 9. Periodic reexamination.

18 The secretary shall also reexamine the certification of each
19 organization so certified every seven years after initial
20 certification after publishing notice of the reexamination in
21 the Pennsylvania Bulletin and notifying in writing the affected
22 government agencies where the principal offices of the applicant
23 are located. The organization whose certification is subject to
24 the reexamination and any interested person or government agency
25 may submit written information to the secretary concerning the
26 reexamination. Within 90 days after publication of intent to
27 reexamine, the secretary shall reaffirm the certification in
28 question unless clear and convincing evidence has been presented
29 to the secretary that the organization no longer is organized
30 and operated as an institution of purely public charity as

1 established by section 4. Revocation shall entitle the
2 organization whose certification is revoked to the same hearing
3 and appeal procedures available to applicants for initial
4 certification under sections 6 and 7. The revocation, if
5 sustained, shall only be effective after all available
6 administrative and judicial appeals have been exhausted or
7 waived by the organization.

8 Section 10. Revocation of certification.

9 If a government agency by clear and convincing evidence
10 demonstrates to the secretary that an organization previously
11 certified has changed its mission or lost its Federal tax
12 exemption, the secretary shall reexamine the certified
13 organization and, if warranted by such reexamination, give
14 notice of his intention to revoke the certification previously
15 granted to the organization. If at any time the secretary has
16 reason to believe that an organization previously certified is
17 no longer organized or operated as an institution of purely
18 public charity as established by section 4, the secretary shall
19 give written notice to the organization of his intention to
20 revoke the certification previously granted to the organization.
21 The secretary's notice shall set forth the grounds upon which
22 his conclusion is based. Failure to file the reports required by
23 section 8 shall constitute sufficient grounds to make this
24 preliminary determination. After expiration of the 30-day period
25 for the organization's response, the secretary shall notify the
26 organization that he is withdrawing his prior notice or that he
27 is revoking the organization's certification. If the secretary's
28 decision is to revoke the certification, revocation shall
29 entitle the affected organization to the hearing and appeal
30 rights described in section 9. The revocation shall not be

1 effective until the organization has exhausted or waived all
2 rights to hearings and judicial appeals with respect to the
3 revocation.

4 Section 11. Existing institutions.

5 Nothing in this act shall affect the rights or remedies under
6 existing law or create a presumption regarding any organization
7 that does not seek certification from the secretary as an
8 institution of purely public charity under this act with respect
9 to whether the organization is or should be otherwise recognized
10 as an institution of purely public charity for the purpose of
11 any existing statute.

12 Section 12. Third-party rights.

13 At all administrative and judicial proceedings regarding
14 revocations of certification under this act, the Attorney
15 General shall be the exclusive representative of the interests
16 of the Commonwealth, government agencies, instrumentalities and
17 taxing authorities and citizens and shall possess the same
18 procedural rights as the organization seeking to retain such
19 certification in the proceedings, provided, however, that
20 government agencies shall have the right to participate and be
21 represented by their legal counsel in all judicial and
22 administrative proceedings pertaining thereto.

23 Section 13. Regulations.

24 The secretary may promulgate rules and regulations to
25 administer and enforce this act.

26 Section 14. Payments in lieu of taxes.

27 (a) Levy of payment.--A county and municipality may levy,
28 assess and collect a payment in lieu of tax upon adoption of an
29 ordinance or resolution authorizing such in an amount determined
30 pursuant to subsection (b) on all real property within the

1 county and municipality which has been determined to be exempt
2 from real property taxation based on its use by an institution
3 of purely public charity.

4 (b) Computation of payment in lieu of tax.--The payment in
5 lieu of tax authorized under this section shall be levied
6 annually by a county and a municipality subject to the following
7 limitations:

8 (1) The payment in lieu of tax shall be expressed and
9 determined as a percentage of the property tax liability of
10 the property if it were otherwise taxable by the county or
11 municipality.

12 (2) The percentage rate shall be specified in the annual
13 levy by the county or municipality, and the rate shall not
14 exceed 5% the first year, 10% the second year, 15% the third
15 year, 20% the fourth year and 25% each year thereafter.

16 (3) The rate shall be uniform.

17 (c) Collection.--

18 (1) Before the payment in paragraph (2) is collected, an
19 institution of purely public charity may arrange with any
20 county and municipality for provision of services or in-kind
21 payments in a dollar-for-dollar setoff of the payment
22 authorized under subsection (b) and shall be accepted by the
23 county and municipality as payment in lieu of taxes.

24 (2) The payment in lieu of tax authorized under this
25 section shall be collected by the treasurer or local tax
26 collector of each county or municipality at the same time and
27 in the same manner as are real property taxes. A person who
28 fails to make a payment in lieu of tax to the appropriate
29 county or municipality shall be subject to all of the same
30 statutory interest, penalties, liens and other remedies which

are imposed by or available to counties and municipalities
for the nonpayment of real property taxes.

(d) Assessment and certification.--The county assessor
shall, not less frequently than every five years, certify the
tax-exempt status of each parcel of property for which such
status is claimed based on its use by an institution of purely
public charity. The burden of proving that the property should
remain tax-exempt shall be on the property owner. Nothing in
this section shall limit the ability of the appropriate board of
assessment to review and revise the assessed values assigned to
tax-exempt property in the same manner as all other taxable real
property.

(e) Appeal.--A person aggrieved by the county's
determination of certification of the tax-exempt status of any
real property shall have the same right to appeal as any person
aggrieved by the determinations of the county as to any taxable
property under the applicable assessment law.

(f) Effect.--Subsection (b) shall not supersede any existing
court orders, contracts, agreements or arrangements which
authorize or require a payment in lieu of tax in an amount that
is less than 25% of the property tax liability.

Section 15. Payment date.

Payments required under section 14 shall not be imposed and
collected until January 1, 1997.

Section 16. Repeals.

(a) Absolute.--The following acts and parts of acts are
repealed:

(1) Section 204(c) of the act of May 22, 1933 (P.L.853,
No.155), known as The General County Assessment Law.

(2) Section 202(a)(9) of the act of May 21, 1943

1 (P.L.571, No.254), known as The Fourth to Eighth Class County
2 Assessment Law.

3 (b) General.--All other acts and parts of acts are repealed
4 insofar as they are inconsistent with this act.

5 Section 17. Effective date.

6 This act shall take effect in 60 days.