

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 55

Session of 1997

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AS REPORTED FROM COMMITTEE ON FINANCE, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 12, 1997

AN ACT

1 Providing for the tax exemption of institutions of purely public
2 charity; exempting real property owned by State-related
3 universities OR FEDERAL GOVERNMENT INSTRUMENTALITIES from ←
4 taxation; and providing for unfair competition.

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1 SECTION 11. EXEMPTION FOR FEDERAL GOVERNMENT INSTRUMENTALITY. <—
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5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

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

10 Section 2. Legislative intent.

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

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

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

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

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

30 (5) The General Assembly recognizes that the lack of

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

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

10 (b) Intent.--It is the intent of the General Assembly to
11 eliminate inconsistent application of eligibility standards for
12 charitable tax exemptions, reduce confusion and confrontation
13 among traditionally tax-exempt organizations and local
14 governments and insure that charitable and public funds are not
15 unnecessarily diverted from the public good to litigate
16 eligibility for tax-exempt status by providing standards to be
17 applied uniformly in all proceedings throughout this
18 Commonwealth for determining eligibility for exemption from
19 State and local taxation which are consistent with traditional
20 legislative and judicial applications of the constitutional term
21 "institutions of purely public charity."

22 Section 3. State-related universities.

23 (a) General rule.--It is the intent of the General Assembly
24 to recognize that the State-related universities provide a
25 direct public benefit and serve the public purposes of this
26 Commonwealth by declaring the real property of State-related
27 universities to be public property for purposes of exemption
28 from State and local taxation when the property is actually and
29 regularly used for public purposes, provided that nothing in
30 this section is intended or shall be construed to affect the

1 title to real property of State-related universities or the
2 power and authority of the governing bodies of State-related
3 universities with respect to such real property. Further,
4 nothing in this section is intended or shall be construed to
5 affect, impair or terminate any contract or agreement in effect
6 on or before the effective date of this act by and between a
7 State-related university and any county, city, borough, township
8 or school district wherein the State-related university pays
9 real estate taxes, amounts in lieu of real estate taxes or other
10 charges, fees or contributions for municipal services.

11 (b) Real property.--All real property owned by State-related
12 universities, or owned by the Commonwealth and used by a State-
13 related university, is and shall be deemed public property for
14 purposes of the Constitution of Pennsylvania and the laws of
15 this Commonwealth relating to the assessment, taxation and
16 exemption of real estate and shall be exempt from all State and
17 local taxation when actually and regularly used for public
18 purposes.

19 (c) Exemption.--This section shall not include the property
20 of a State-related university the possession and control of
21 which has been transferred to a for-profit entity not otherwise
22 entitled to tax-exempt status, irrespective of whether that
23 entity is affiliated with the university. The execution of a
24 management services contract with a third party entity to
25 provide operational services to the university which would
26 otherwise be provided or conducted directly by the university
27 shall not, however, be considered a transfer of possession and
28 control of real property within the meaning of this section.

29 (d) Definitions.--As used in this section, the following
30 words and phrases shall have the meanings given to them in this

1 subsection:

2 "Public purposes." All activities relating to the
3 educational mission of State-related universities, including,
4 without limitation, teaching, research, service and activities
5 incident or ancillary thereto which provide services to or for
6 students, employees or the public.

7 "State-related universities." The Pennsylvania State
8 University and its affiliate, the Pennsylvania College of
9 Technology, the University of Pittsburgh, Temple University and
10 its subsidiaries Temple University Hospital, Inc., and Temple
11 University Children's Hospital, Inc., and Lincoln University.

12 Section 4. Definitions.

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

16 "Commercial business." The sale of products or services that
17 are principally the same as those offered by an existing small
18 business in the same community.

19 "Goods or services." Goods or services which promote any of
20 the six enumerated purposes under section 5(b) and which are
21 valued in accordance with generally accepted accounting
22 principles applicable to the institution. If the institution's
23 purpose is to provide health care services, the term shall
24 include, but not be limited to, medically necessary goods or
25 services in life-threatening situations.

26 "Government agency." Any Commonwealth agency or any
27 political subdivision or municipal or other local authority or
28 any officer or agency of any political subdivision or local
29 authority.

30 "Institution of purely public charity." A domestic or

1 foreign nonprofit corporation, association, trust or other
2 organization which meets the criteria under section 5.

3 "Net operating income." The amount of funds remaining after
4 deducting all operating expenses related to the provision of
5 goods or services associated with the institution's charitable
6 purpose from payments received from providing these goods or
7 services, as determined in accordance with the generally
8 accepted accounting principles applicable to the institution.

9 "Small business." Any self-employed individual, sole
10 proprietorship, firm, corporation, partnership, association or
11 other entity that:

12 (1) has fewer than 101 full-time employees; and

13 (2) is subject to income taxation under the act of March
14 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

15 "Tax Reform Code." The act of March 4, 1971 (P.L.6, No.2),
16 known as the Tax Reform Code of 1971.

17 "Total operating expenses." The costs related to the
18 provision of goods or services associated with the institution's
19 charitable purpose, as determined in accordance with generally
20 accepted accounting principles applicable to the institution.

21 Section 5. Criteria.

22 (a) General rule.--An institution of purely public charity
23 is a nonprofit corporation, association, trust or other
24 organization which meets the criteria set forth in this section.

25 ~~A nonprofit corporation, together with its subsidiary nonprofit~~ <—
26 ~~corporations of which it is the only member or only shareholder,~~
27 ~~may elect to be considered as a single institution in meeting~~
28 ~~the criteria set forth in this section.~~ A NONPROFIT PARENT <—

29 CORPORATION, TOGETHER WITH ALL OF ITS SUBSIDIARY NONPROFIT
30 CORPORATIONS, MAY ELECT TO BE CONSIDERED AS A SINGLE INSTITUTION

1 IN MEETING THE CRITERIA SET FORTH IN THIS SECTION AS LONG AS ALL
2 OF THE FOLLOWING ARE MET:

3 (1) EACH SUBSIDIARY:

4 (I) IS A NONSTOCK CORPORATION OF WHICH THE NONPROFIT
5 PARENT CORPORATION IS THE ONLY MEMBER; AND

6 (II) MEETS THE REQUIREMENTS OF SUBSECTIONS (B), (C),
7 (D), (E) AND (F).

8 (2) THE PARENT:

9 (I) IS A NONSTOCK CORPORATION;

10 (II) IS DULY QUALIFIED BY THE INTERNAL REVENUE
11 SERVICE AS MEETING THE REQUIREMENTS OF SECTION 501(C)(3)
12 OF THE INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-514,
13 26 U.S.C. § 501(C)(3));

14 (III) MEETS THE REQUIREMENTS OF SUBSECTIONS (B) AND
15 (C); AND

16 (IV) EXCEPT FOR SERVICES THAT MEET THE REQUIREMENTS
17 OF SUBSECTIONS (B), (C), (D), (E) AND (F), DOES NOT
18 RENDER SERVICES FOR A FEE TO AN INDIVIDUAL OR ENTITY THAT
19 DOES NOT MEET THE REQUIREMENTS OF PARAGRAPH (1).

20 An institution of purely public charity shall meet all of the
21 criteria contained in subsections (b), (c), (d), (e) and (f).

22 Institutions of purely public charity which meet the criteria
23 specified in this section shall be considered to be founded,
24 endowed and maintained by public or private charity.

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

29 (1) Relief of poverty.

30 (2) Advancement of education, including, but not limited

1 to, postsecondary education.

2 (3) Advancement of religion.

3 (4) Prevention and treatment of disease or injury.

4 (5) Government or municipal purposes.

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

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

17 (1) Neither the institution's net earnings nor donations
18 which it receives inures to the benefit of private
19 shareholders or other individuals, as the private inurement
20 standard is interpreted under section 501(c)(3) of the
21 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
22 501(c)(3)). The purchase of tangible or intangible assets,
23 including professional practices for fair market value, shall
24 not, by itself, be construed to constitute evidence of
25 operation for a private profit motive.

26 (2) The institution applies or reserves any revenue in
27 excess of expenses in furtherance of its charitable purpose
28 or to funding of other charitable organizations which meet
29 the provisions of this subsection.

30 (d) Community service.--

1 (1) The institution shall donate or render gratuitously
2 a substantial portion of its services. This criterion is
3 satisfied if the institution benefits the community by
4 actually providing any of the following:

5 (i) Goods or services to all who seek them without
6 regard to their ability to pay for what they receive if
7 all of the following apply:

8 (A) The institution has a written policy to this
9 effect.

10 (B) The institution has published this policy in
11 a reasonable manner.

12 (C) The institution provides uncompensated goods
13 or services at least equal to 75% of the
14 institution's net operating income but not less than
15 3% of the institution's total operating expenses.

16 (ii) Goods or services for fees that are based upon
17 the recipient's ability to pay for them if all of the
18 following apply:

19 (A) The institution can demonstrate that it has
20 implemented a written policy and a written schedule
21 of fees based on individual or family income. An
22 institution will meet the requirement of this clause
23 if the institution consistently applies a formula to
24 all individuals requesting consideration of reduced
25 fees which is in part based on individual or family
26 income.

27 (B) At least 20% of the individuals receiving
28 goods or services from the institution pay no fee or
29 a fee which is lower than the cost of the goods or
30 services provided by the institution.

1 (C) At least 10% of the individuals receiving
2 goods or services from the institution receive a
3 reduction in fees of at least 10% of the cost of the
4 goods or services provided to them.

5 (D) No individual receiving goods or services
6 from the institution pays a fee which is equal to or
7 greater than the cost of the goods or services
8 provided to them, or the goods or services provided
9 to the individuals described in clause (B) are
10 comparable IN QUALITY AND QUANTITY to the goods or ←
11 services provided to those individuals who pay a fee
12 which is equal to or greater than the cost of the
13 goods or services provided to them.

14 (iii) Wholly gratuitous goods or services to at
15 least 5% of those receiving similar goods or services
16 from the institution.

17 (iv) Financial assistance or uncompensated goods or
18 services to at least 20% of those receiving similar goods
19 or services from the institution if at least 10% of the
20 individuals receiving goods or services from the
21 institution either paid no fees or fees which were 90% or
22 less of the cost of the goods or services provided to
23 them, after consideration of any financial assistance
24 provided to them by the institution.

25 (v) Uncompensated goods or services which, in the
26 aggregate, are equal to at least 5% of the institution's
27 costs of providing goods or services.

28 (vi) Goods or services at no fee or reduced fees to
29 government agencies or goods or services to individuals
30 eligible for government programs if one of the following

1 applies:

2 (A) The institution receives 75% or more of its
3 gross operating revenue from grants or fee-for-
4 service payments by government agencies and if the
5 aggregate amount of fee-for-service payments from
6 government agencies does not exceed 95% of the
7 institution's costs of providing goods or services to
8 the individuals for whom the fee-for-services
9 payments are made.

10 (B) The institution provides goods or services
11 to individuals with mental retardation, to
12 individuals who need mental health services, to
13 members of an individual's family or guardian in
14 support of such goods or services or to individuals
15 who are dependent, neglected or delinquent children,
16 as long as the institution performs duties that would
17 otherwise be the responsibility of government and the
18 institution is restricted in its ability to retain
19 revenue over expenses or voluntary contributions by
20 any one of the following statutes or regulations or
21 by contractual limitations with county children and
22 youth offices in this Commonwealth:

23 (I) Sections 1315(c) and 1905(d) of the
24 Social Security Act (49 Stat. 620, 42 U.S.C. §§
25 1396d(d) and 1396n(c)).

26 (II) 42 CFR 440.150 (relating to
27 intermediate care facility (ICF/MR) services.

28 (III) 42 CFR Pt. 483 Subpt. I (relating to
29 conditions of participation for intermediate care
30 facilities for the mentally retarded).

1 (IV) The act of October 20, 1966 (3rd
2 Sp.Sess., P.L.96, No.6), known as the Mental
3 Health and Mental Retardation Act of 1966.

4 (V) Articles II, VII, IX and X of the act of
5 June 13, 1967 (P.L.31, No.21), known as the
6 Public Welfare Code.

7 (VI) 23 Pa.C.S. Ch. 63 (relating to child
8 protective services).

9 (VII) 42 Pa.C.S. Ch. 63 (relating to
10 juvenile matters).

11 (VIII) 55 Pa. Code Chs. 3170 (relating to
12 allowable costs and procedures for county
13 children and youth), 3680 (relating to
14 administration and operation of a children and
15 youth social service agency) 4300 (relating to
16 county mental health and mental retardation
17 fiscal manual), 6400 (relating to community homes
18 for individuals with mental retardation), 6500
19 (relating to family living homes), 6210 (relating
20 to participation requirements for the
21 intermediate care facilities for the mentally
22 retarded program), 6211 (relating to allowable
23 cost reimbursement for non-State operated
24 intermediate care facilities for the mentally
25 retarded) and 6600 (relating to intermediate care
26 facilities for the mentally retarded).

27 (vii) Funds to corporations, associations, trusts or
28 other organizations which meet the criteria of this
29 section, funds to government agencies or funds to
30 organizations which qualify under section 501(c)(3) of

1 the Internal Revenue Code of 1986 (Public Law 99-514, 26
2 U.S.C. § 501(c)(3)), if the institution providing the
3 funds is primarily engaged in fundraising on behalf of or
4 making grants to such corporations, associations, trusts,
5 such government agencies or such organizations.

6 (2) The institution may elect to average the applicable
7 data for ~~the~~ ITS five most recently completed fiscal years ←
8 for the purposes of calculating any formula or meeting any
9 quantitative standard in paragraph (1).

10 (3) An institution that does not satisfy the provisions
11 of paragraph (1)(i) through (vii) may meet this criterion by
12 demonstrating that it donates or renders gratuitously a
13 substantial portion of its goods or services.

14 (4) For the purposes of calculating the number of
15 individuals for use in the percentage calculations in this
16 subsection, educational institutions may use full time
17 equivalent students as defined by the Department of
18 Education.

19 (5) As used in this subsection, the term "uncompensated
20 goods or services" shall include all benefits provided to the
21 community the institution serves, including, but not limited
22 to, the following:

23 (i) The full cost of all goods or services provided
24 by the institution for which the institution has not
25 received monetary compensation or the difference between
26 the full cost and any lesser fee received for the goods
27 or services, including the cost of the goods or services
28 provided to individuals unable to pay.

29 (ii) The difference between the full cost of
30 education and research programs provided by or

1 participated in by the institution and the payment made
2 to the institution to support the education and research
3 programs.

4 (iii) The difference between the full cost of
5 providing the goods or services and the payment made to
6 the institution under any government program, including
7 individuals covered by Medicare or Medicaid.

8 (iv) The difference between the full cost of the
9 community services which the institution provides or
10 participates in and the payment made to the institution
11 to support such community services.

12 (v) The reasonable value of any moneys, property,
13 goods or services donated by the primary donor to another
14 institution of purely public charity or to a government
15 agency or the reasonable value of the net donation made
16 by a secondary donor to a primary donor. As used in this
17 subparagraph, the following words and phrases shall have
18 the following meanings:

19 "Net donation." In the case of a donation of money,
20 property or identical goods and services made by a
21 secondary donor, the difference between the value of the
22 donation made by the secondary donor and the value of the
23 donation made by the primary donor, provided such value
24 is positive.

25 "Primary donor." An institution which makes a
26 donation of any money, property, goods or services to
27 another institution of purely public charity.

28 "Secondary donor." An institution which receives a
29 donation of any money, property, goods or services from a
30 primary donor and then makes a donation back to that

1 primary donor within three years of having received such
2 donation.

3 (vi) The reasonable value of volunteer assistance
4 donated by individuals to the institution. The reasonable
5 value of volunteer assistance, computed on an hourly
6 basis, shall not exceed the "Statewide average weekly
7 wage" as defined in section 105.1 of the act of June 2,
8 1915 (P.L.736, No.338), known as the Workers'
9 Compensation Act divided by 40.

10 (vii) The cost of goods or services by charitable
11 health care facilities licensed by the Department of
12 Health or the Department of Public Welfare, which are bad
13 debts, as determined in accordance with the generally
14 accepted accounting principles applicable to the
15 institution.

16 (e) Charity to persons.--

17 (1) The institution shall benefit a substantial and
18 indefinite class of persons who are legitimate subjects of
19 charity.

20 (2) As used in this subsection, the following words and
21 phrases shall have the meanings given to them in this
22 paragraph:

23 "Legitimate subjects of charity." Those individuals who
24 are unable to provide themselves with what the institution
25 provides for them.

26 "Substantial and indefinite class of persons." Persons
27 not predetermined in number, provided that, where the goods
28 or services are received primarily by members of the
29 institution, membership cannot be predetermined in number and
30 cannot be arbitrarily denied by a vote of the existing

1 members. This section specifically recognizes that the use of
2 admissions criteria and enrollment limitations by educational
3 institutions do not constitute predetermined membership or
4 arbitrary restrictions on membership so as to violate this
5 section and recognizes that an institution may reasonably
6 deny membership based on the types of services it provides,
7 as long as denial is not in violation of Federal or State
8 antidiscrimination laws, such as the Civil Rights Act of 1964
9 (Public Law 88-352, 78 Stat. 241) and the act of October 27,
10 1955 (P.L.744, No.222), known as the Pennsylvania Human
11 Relations Act.

12 (3) An institution shall be considered to benefit a
13 substantial and indefinite class of persons who are
14 legitimate subjects of charity if the institution is
15 primarily engaged in fundraising on behalf of or making
16 grants to:

17 (i) corporations, associations, trusts or other
18 organizations which meet the criteria set forth in this
19 section;

20 (ii) government agencies; or

21 (iii) organizations which qualify under section
22 501(c)(3) of the Internal Revenue Code of 1986 (Public
23 Law 99-514, 26 U.S.C. § 501(c)(3)).

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

27 (1) provides a service to the public that the government
28 would otherwise be obliged to fund or to provide directly or
29 indirectly or assure that a similar organization exists to
30 provide the service;

1 (2) provides services in furtherance of its charitable
2 purpose which are either the responsibility of the government
3 by law or which historically have been assumed or offered or
4 funded by the government;

5 (3) receives on a regular basis payments for services
6 rendered under a government program if the payments are less
7 than the full costs incurred by the institution for the
8 rendering of the services or if the institution can
9 demonstrate that comparable services are more expensive when
10 provided by the government; or

11 (4) provides a service which advances important
12 community, public, spiritual, mental, physical, educational,
13 emotional, civic, historical or cultural objectives.

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

24 Section 6. Multiple jurisdictions.

25 (a) Intent.--It is the intent of the General Assembly to
26 foster uniformity in the application of the standards contained
27 within this act for determining status as an institution of
28 purely public charity. The General Assembly recognizes that
29 multiple jurisdictions at different levels of government will be
30 required to determine whether an organization requesting tax

1 exemption meets such standards. Because many organizations will
2 be required to seek and receive approval from different
3 governmental entities, the General Assembly believes that an
4 organization which demonstrates compliance with the standards at
5 the State level shall be entitled to a rebuttable presumption
6 that it has met those standards when determining qualification
7 for local property tax exemptions. Such a presumption is not
8 intended to in any way limit or preclude the ability of a local
9 taxing jurisdiction to challenge a tax exemption based on the
10 use of a particular parcel.

11 (b) Effect of prior qualification.--An organization
12 possessing a valid exemption from the tax imposed by Article II
13 of the Tax Reform Code, pursuant to an administrative or
14 judicial determination that the organization qualifies for
15 exemption under section 204(10) of the Tax Reform Code, shall be
16 presumed to meet the criteria contained in section 5(b), (c),
17 (d), (e) and (f), and any person challenging such presumption
18 before any agency or court shall bear the burden of proving the
19 contrary. Any person challenging such presumption may request
20 from the institution all relevant financial statements, records
21 and documents used to obtain the exemption under section 204(10)
22 of the Tax Reform Code. Failure by the institution to supply
23 such information within 30 days shall remove the presumption
24 with respect to that challenge.

25 (c) Applicability of presumption.--The provisions of this
26 section shall apply only to sales and use tax exemptions granted
27 or renewed on or after the effective date of this act.

28 Section 7. Existing agreements.

29 Nothing in this act shall be construed to affect, impair,
30 terminate or supersede any contract, agreement or arrangement in

1 effect on or before the effective date of this act which
2 authorizes or requires payment of taxes, amounts in lieu of
3 taxes, or other charges or fees for the services of a political
4 subdivision of this Commonwealth. Further, nothing in this act
5 shall be construed to impair, or otherwise inhibit, the right or
6 ability of any institution or political subdivision to enter
7 into such agreements after the effective date of this act.

8 Section 8. Unfair competition with small businesses.

9 (a) Intent.--It is the policy of this act that institutions
10 of purely public charity shall not use their tax-exempt status
11 to compete unfairly with small business.

12 (b) Rule.--An institution of purely public charity may not
13 fund, capitalize, guarantee the indebtedness of, lease
14 obligations of, or subsidize a commercial business that is
15 unrelated to the institution's charitable purpose as stated in
16 the institution's charter or governing legal documents.

17 (c) Exceptions.--Institutions of purely public charity are
18 not in violation of subsection (b) if any of the following
19 apply:

20 (1) The commercial business is intended only for the use
21 of its employees, staff, alumni, faculty, members, students,
22 clients, volunteers, patients or residents. For purposes of
23 this paragraph, a person shall not be considered an employee,
24 staff, member, alumnus, faculty, student, client, volunteer,
25 patient or resident if the person's only relationship with
26 the institution is to receive products or services resulting
27 from the commercial business.

28 (2) The commercial business results in sales to the
29 general public that are incidental or periodic rather than
30 permanent and ongoing.

1 (d) Support for other charities.--Nothing in this section
2 shall be construed as prohibiting or limiting the ability of an
3 institution of purely public charity to fund, capitalize,
4 guarantee the indebtedness of or otherwise subsidize another
5 institution of purely public charity.

6 (e) Investments.--An institution of purely public charity
7 that invests in publicly traded stocks and bonds; real estate;
8 or other investments is not in violation of subsection (b).

9 (f) Educational functions.--An institution of purely public
10 charity that uses its facilities to host groups for educational
11 purposes only is not in violation of subsection (b).

12 (g) Government functions.--An institution of purely public
13 charity may engage in a new commercial business that may
14 otherwise be in violation of subsection (b) if the institution
15 is formally requested to do so by the Commonwealth or a
16 political subdivision.

17 (h) Existing arrangements.--An institution of purely public
18 charity that prior to the effective date of this act funded,
19 capitalized, guaranteed the indebtedness of, leased obligations
20 of or subsidized a commercial business may continue to own and
21 operate such businesses without violating subsection (b) as long
22 as the institution does not substantially expand the scope of
23 the commercial business. In the event an injunction is issued
24 under subsection (i), the effect of such injunction shall be
25 limited to restraining the substantial expansion of the scope of
26 the commercial business which was initiated after the effective
27 date of this act.

28 (i) Remedies.--Whenever the Attorney General receives a
29 complaint from an aggrieved small business or has reason to
30 believe that any institution of purely public charity is

1 violating this section and the proceedings would be in the
2 public interest, the Attorney General may bring an action in the
3 name of the Commonwealth against that institution to restrain
4 such violation by temporary or permanent injunction. The
5 Attorney General must either bring an action or issue a written
6 determination to the aggrieved small business within 120 days of
7 the filing of a complaint.

8 (1) If the Attorney General fails to bring an action or
9 to issue a written determination to a small business
10 complainant within 120 days of the filing of a complaint, the
11 small business may petition the Commonwealth Court for a writ
12 of mandamus ordering the Attorney General either to bring an
13 action under this section or to provide the reason or reasons
14 why the Attorney General has declined to do so.

15 (2) Nothing in this subsection shall preclude either an
16 aggrieved small business or an institution of purely public
17 charity that has been affected by a decision of the Attorney
18 General from pursuing an appeal of that decision under 2
19 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of
20 Commonwealth agency action).

21 Section 9. Accountability and disclosure.

22 (a) Intent.--An institution which qualifies for ~~tax~~ <—
23 ~~exemptions~~ A TAX EXEMPTION by virtue of being designated an <—
24 institution of purely public charity has a unique responsibility
25 to periodically demonstrate to the public that it is fulfilling
26 the purpose for which the exemption is granted. The citizens of
27 this Commonwealth expect an organization which is granted tax
28 exemption to adhere to a high standard of accountability and
29 public disclosure. Therefore, the institution should make an
30 annual report in which it makes available certain information

1 about its organization and its charitable activities. The report
2 should be made consistent with the desire of the General
3 Assembly to avoid burdensome reporting requirements which unduly
4 distract the organization from its charitable purposes.

5 (b) Report required.--It shall be the duty of the president,
6 chairman or principal officer of an institution which files, or
7 is required to file, an annual return with the Internal Revenue
8 Service under the Internal Revenue Code of 1986 (Public Law 99-
9 514, 26 U.S.C. § 1 et seq.) to file a report with the bureau no
10 later than the date, including any extensions granted by the
11 Internal Revenue Service, the institution files or is required
12 to file an annual return with the Internal Revenue Service. The
13 following information shall be included in the report required
14 by this section and shall be in a format approved by the
15 Secretary of the Commonwealth:

16 (1) A copy of the annual return filed or required to be
17 filed with the Internal Revenue Service.

18 (2) The date the institution was ~~incorporated~~ ORGANIZED ←
19 UNDER APPLICABLE LAW and a reference to any determination of
20 its tax-exempt status under the Internal Revenue Code of
21 1986, including, if applicable, its Internal Revenue tax
22 exemption number and the tax-exempt purposes as established
23 by the Internal Revenue Service.

24 (3) The following information on each affiliate of the
25 institution of purely public charity:

26 (i) The name and type of organization.

27 (ii) Whether the affiliate is organized on a for-
28 profit or nonprofit basis.

29 (iii) The relationship of each affiliate to the
30 institution making the report.

1 (4) The institution's relationship with any other
2 nonprofit corporation or unincorporated association if the
3 relationship involves formal governance or the sharing of
4 revenue.

5 (c) Amendments to annual returns.--It shall be the duty of
6 the president, chairman or principal officer of any institution
7 which files an amended annual return with the Internal Revenue
8 Service to file a copy of the amended annual return with the
9 bureau within ten days of its filing with the Internal Revenue
10 Service.

11 (d) Exemption from filing.--

12 (1) An institution which is not required to file an
13 annual return with the Internal Revenue Service shall be
14 exempt from the requirements of this section.

15 (2) An institution which files a consolidated annual
16 return with the Internal Revenue Service shall not be
17 required to file any report except as otherwise required by
18 this subsection. The institution shall file with the bureau a
19 statement giving the name and tax-exempt number of the
20 organization filing the consolidated annual return.

21 (e) Paperwork reduction.--The Secretary of the Commonwealth
22 shall implement procedures and may modify the reporting
23 requirements of this section in order to reduce or eliminate
24 duplicate filing by institutions subject to this section. The
25 Secretary of the Commonwealth shall allow the president,
26 chairman or principal officer of an institution subject to this
27 section to substitute the registration statement required under
28 section 5 of the act of December 19, 1990 (P.L.1200, No.202),
29 known as the Solicitation of Funds for Charitable Purposes Act,
30 for those portions of the report required under subsection (b)

1 which duplicate the information required under section 5 of the
2 Solicitation of Funds for Charitable Purposes Act. The Secretary
3 of the Commonwealth shall allow the institution to certify that
4 the information required in subsection (b)(2), (3) or (4) has
5 not changed since the prior report in lieu of providing the same
6 information in the report required by subsection (b). The
7 Secretary of the Commonwealth may obtain from the Internal
8 Revenue Service copies of annual returns of institutions which
9 file annual returns with the Internal Revenue Service on
10 computer disk or other electronic or paper media.

11 (f) Retention of records.--The Secretary of the Commonwealth
12 shall retain the reporting information required by this section
13 for three years after the reports are required to be filed.

14 (g) Utilization of reports.--The Secretary of the
15 Commonwealth shall make reports submitted under this section
16 available for public inspection. The Secretary of the
17 Commonwealth shall provide any government agency a copy of the
18 report filed under this section upon request. Nothing in this
19 subsection shall prevent a government agency from requiring any
20 organization seeking exemption as an institution of purely
21 public charity to provide the information described in
22 subsection (b) to that agency as part of a determination of the
23 tax exempt status of the institution.

24 (h) Definitions.--As used in this section, the following
25 words and phrases shall have the meanings given to them in this
26 subsection:

27 "Affiliate." A domestic or foreign corporation, association,
28 trust or other organization which owns a 10% or greater interest
29 in the institution. A domestic or foreign corporation,
30 association, trust or other organization in which the

1 institution owns a 10% or greater interest.

2 "Annual return." The annual information return required to be
3 filed with the Internal Revenue Service by organizations exempt
4 from tax by virtue of section 501(a) of the Internal Revenue
5 Code of 1986 (Public Law 99-514, 26 U.S.C. §1, et seq.). The
6 annual information return consists of Internal Revenue Service
7 Form 990 or Form 990EZ and Schedule A.

8 "Bureau." The Bureau of Charitable Organizations of the
9 Department of State of the Commonwealth.

10 "Institution." A domestic or foreign nonprofit corporation,
11 association, trust or other organization which qualifies as an
12 institution of purely public charity under the provisions of
13 this act and which receives or claims exemption from the real
14 property tax imposed by any political subdivision in this
15 Commonwealth or which receives or claims exemption from the tax
16 imposed by Article II of the Tax Reform Code.

17 Section 10. Litigation reduction.

18 (a) Institutions.--An institution of purely public charity
19 may bring an action against the challenging party or parties for
20 recovery of reasonable litigation expenses and attorney fees on
21 account of any challenge pertaining to the tax-exempt status of
22 any property initiated within three years of the initiation of
23 an earlier challenge involving, in any part, the same property
24 if:

25 (1) the institution successfully defends its tax exempt
26 status as an institution of purely public charity in a court
27 of common pleas, Commonwealth Court or the Pennsylvania
28 Supreme Court; and

29 (2) appeals by the challenging party or parties are
30 exhausted and there has been a final unappealed or

1 unappealable adjudication or judgment.

2 (b) Government agencies.--A government agency may bring an
3 action for recovery of reasonable litigation expenses and
4 attorney fees on account of any application pertaining to the
5 tax-exempt status of any property filed within three years of an
6 earlier application involving, in any part, the same property
7 against an organization claiming tax-exempt status as an
8 institution of purely public charity if:

9 (1) the organization relies on section 5(d)(3) in
10 claiming tax-exempt status as an institution of purely public
11 charity;

12 (2) the organization is determined by a court of common
13 pleas, Commonwealth Court or the Supreme Court not to meet
14 the requirement in section 5(d) that it donate or render
15 gratuitously a substantial portion of its services; and

16 (3) appeals by the organization are exhausted and there
17 has been a final unappealed or unappealable adjudication or
18 judgment.

19 SECTION 11. EXEMPTION FOR FEDERAL GOVERNMENT INSTRUMENTALITY. <—

20 IT IS THE INTENT OF THE GENERAL ASSEMBLY TO AFFIRM THAT, FOR
21 PURPOSES OF THE CONSTITUTION OF PENNSYLVANIA AND THE LAWS OF
22 THIS COMMONWEALTH RELATING TO THE ASSESSMENT AND TAXATION OF
23 REAL ESTATE, REAL PROPERTY IS PROPERTY OF A FEDERAL GOVERNMENT
24 ENTITY AND IS, THUS, EXEMPT FROM ALL STATE AND LOCAL TAXATION IF
25 THE REAL PROPERTY IS OWNED BY A CORPORATION WHICH IS:

26 (1) ESTABLISHED BY FEDERAL STATUTE; AND

27 (2) REQUIRED TO SUBMIT TO CONGRESS ANNUAL REPORTS OF
28 ITS ACTIVITIES, CONTAINING ITEMIZED ACCOUNTS OF ALL
29 RECEIPTS AND EXPENDITURES, AFTER BEING FULLY AUDITED BY
30 THE DEPARTMENT OF DEFENSE.

1 Section ~~11~~ 12. Repeals.

<—

2 All acts and parts of acts are repealed insofar as they are
3 inconsistent with this act except for section 204(a)(3) of the
4 act of May 22, 1933 (P.L.853, No.155), known as The General
5 County Assessment Law, as it applies to charitable organizations
6 providing residential housing services.

7 Section ~~12~~ 13. Applicability.

<—

8 This act shall not apply to nor affect 40 Pa.C.S. § 6103 or
9 6301 or the entities subject to those sections.

10 Section ~~13~~ 14. Effective date.

<—

11 This act shall take effect January 1, next following the date
12 of final enactment.