

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 55

Session of 1997

INTRODUCED BY BOYES, TRELLO, KENNEY, TIGUE, ITKIN, BROWNE, NAILOR, CAWLEY, DENT, DeLUCA, DEMPSEY, COY, FLICK, READSHAW, GANNON, PRESTON, BOSCOLA, BROWN, CURRY, GRUPPO, BELARDI, ARMSTRONG, ROONEY, LAWLESS, COLAIZZO, LYNCH, ROBERTS, GODSHALL, OLASZ, TRAVAGLIO, MUNDY, MELIO, WOJNAROSKI, C. WILLIAMS, GIGLIOTTI, YOUNGBLOOD, SAYLOR, L. I. COHEN, STEVENSON, WILT, BELFANTI, O'BRIEN, ZUG, BUNT, ADOLPH, GLADECK, LESCOVITZ, E. Z. TAYLOR, EACHUS, LaGROTTA, HASAY, LEH AND ROSS, JANUARY 28, 1997

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES, MARCH 18, 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           (5) The General Assembly recognizes that the lack of  
2 specific legislative standards defining the term  
3 "institutions of purely public charity" has led to increasing  
4 confusion and confrontation among traditionally tax-exempt  
5 organizations and local governments to the detriment of the  
6 public.

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

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

23 Section 3. State-related universities.

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

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

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

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

30 (d) Definitions.--As used in this section, the following

1 words and phrases shall have the meanings given to them in this  
2 subsection:

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

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

13 Section 4. Definitions.

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

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

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

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

1 "Institution of purely public charity." A domestic or  
2 foreign nonprofit corporation, association, trust or other  
3 organization which meets the criteria under section 5.

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

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

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

14 (2) is subject to income taxation under the act of March  
15 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

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

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

22 Section 5. Criteria.

23 (a) General rule.--An institution of purely public charity  
24 is a nonprofit corporation, association, trust or other  
25 organization which meets the criteria set forth in this section.  
26 A nonprofit parent corporation, together with all of its  
27 subsidiary nonprofit corporations, may elect to be considered as  
28 a single institution in meeting the criteria set forth in this  
29 section as long as all of the following are met:

30 (1) Each subsidiary:

1 (i) is a nonstock corporation of which the nonprofit  
2 parent corporation is the only member; and

3 (ii) meets the requirements of subsections (b), (c),  
4 (d), (e) and (f).

5 (2) The parent:

6 (i) is a nonstock corporation;

7 (ii) is duly qualified by the Internal Revenue  
8 Service as meeting the requirements of section 501(c)(3)  
9 of the Internal Revenue Code of 1986 (Public Law 99-514,  
10 26 U.S.C. § 501(c)(3));

11 (iii) meets the requirements of subsections (b) and  
12 (c); and

13 (iv) except for services that meet the requirements  
14 of subsections (b), (c), (d), (e) and (f), does not  
15 render services for a fee to an individual or entity that  
16 does not meet the requirements of paragraph (1).

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

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

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

26 (1) Relief of poverty.

27 (2) Advancement of education, including, but not limited  
28 to, postsecondary education.

29 (3) Advancement of religion.

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

1 (5) Government or municipal purposes.

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

7 (6) ACCOMPLISHMENT OF A PURPOSE WHICH IS BENEFICIAL TO <—  
8 THE COMMUNITY, INCLUDING ADVANCEMENT OF THE ARTS AND  
9 SCIENCES, ADVANCEMENT OF THE CULTURAL, SPIRITUAL, MENTAL,  
10 PHYSICAL, SOCIAL OR EMOTIONAL WELFARE OR IMPROVEMENT OF  
11 OTHERS.

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

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

28 (2) The institution applies or reserves any revenue in  
29 excess of expenses in furtherance of its charitable purpose  
30 or to funding of other charitable organizations which meet



1 the provisions of this subsection.

2 (3) COMPENSATION, INCLUDING BENEFITS, OF ANY DIRECTOR, ←  
3 OFFICER OR EMPLOYEE, IS NOT BASED PRIMARILY UPON THE  
4 FINANCIAL PERFORMANCE OF THE ORGANIZATION.

5 (d) Community service.--

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

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

13 (A) The institution has a written policy to this  
14 effect.

15 (B) The institution has published this policy in  
16 a reasonable manner.

17 (C) The institution provides uncompensated goods  
18 or services at least equal to 75% of the  
19 institution's net operating income but not less than  
20 3% of the institution's total operating expenses.

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

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

1 income.

2 (B) At least 20% of the individuals receiving  
3 goods or services from the institution pay no fee or  
4 a fee which is lower than the cost of the goods or  
5 services provided by the institution.

6 (C) At least 10% of the individuals receiving  
7 goods or services from the institution receive a  
8 reduction in fees of at least 10% of the cost of the  
9 goods or services provided to them.

10 (D) No individual receiving goods or services  
11 from the institution pays a fee which is equal to or  
12 greater than the cost of the goods or services  
13 provided to them, or the goods or services provided  
14 to the individuals described in clause (B) are  
15 comparable in quality and quantity to the goods or  
16 services provided to those individuals who pay a fee  
17 which is equal to or greater than the cost of the  
18 goods or services provided to them.

19 (iii) Wholly gratuitous goods or services to at  
20 least 5% of those receiving similar goods or services  
21 from the institution.

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

30 (v) Uncompensated goods or services which, in the

1 aggregate, are equal to at least 5% of the institution's  
2 costs of providing goods or services.

3 (vi) Goods or services at no fee or reduced fees to  
4 government agencies or goods or services to individuals  
5 eligible for government programs if one of the following  
6 applies:

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

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

28 (I) Sections 1315(c) and 1905(d) of the  
29 Social Security Act (49 Stat. 620, 42 U.S.C. §§  
30 1396d(d) and 1396n(c)).

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

3 (III) 42 CFR Pt. 483 Subpt. I (relating to  
4 conditions of participation for intermediate care  
5 facilities for the mentally retarded).

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

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

12 (VI) 23 Pa.C.S. Ch. 63 (relating to child  
13 protective services).

14 (VII) 42 Pa.C.S. Ch. 63 (relating to  
15 juvenile matters).

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

1 facilities for the mentally retarded).

2 (vii) Funds to corporations, associations, trusts or  
3 other organizations which meet the criteria of this  
4 section, funds to government agencies or funds to  
5 organizations which qualify under section 501(c)(3) of  
6 the Internal Revenue Code of 1986 (Public Law 99-514, 26  
7 U.S.C. § 501(c)(3)), if the institution providing the  
8 funds is primarily engaged in fundraising on behalf of or  
9 making grants to such corporations, associations, trusts,  
10 such government agencies or such organizations.

11 (2) The institution may elect to average the applicable  
12 data for its five most recently completed fiscal years for  
13 the purposes of calculating any formula or meeting any  
14 quantitative standard in paragraph (1).

15 ~~(3) An institution that does not satisfy the provisions~~ ←  
16 ~~of paragraph (1)(i) through (vii) may meet this criterion by~~  
17 ~~demonstrating that it donates or renders gratuitously a~~  
18 ~~substantial portion of its goods or services.~~

19 ~~(4)~~ (3) For the purposes of calculating the number of  
20 individuals for use in the percentage calculations in this  
21 subsection, educational institutions may use full time  
22 equivalent students as defined by the Department of  
23 Education.

24 ~~(5)~~ (4) As used in this subsection, the term ←  
25 "uncompensated goods or services" shall include all benefits  
26 provided to the community the institution serves, including,  
27 but not limited to, the following:

28 (i) The full cost of all goods or services provided  
29 by the institution for which the institution has not  
30 received monetary compensation or the difference between

1 the full cost and any lesser fee received for the goods  
2 or services, including the cost of the goods or services  
3 provided to individuals unable to pay.

4 (ii) The difference between the full cost of  
5 education and research programs provided by or  
6 participated in by the institution and the payment made  
7 to the institution to support the education and research  
8 programs.

9 (iii) The difference between the full cost of  
10 providing the goods or services and the payment made to  
11 the institution under any government program, including  
12 individuals covered by Medicare or Medicaid.

13 (iv) The difference between the full cost of the  
14 community services which the institution provides or  
15 participates in and the payment made to the institution  
16 to support such community services.

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

24 "Net donation." In the case of a donation of money,  
25 property or identical goods and services made by a  
26 secondary donor, the difference between the value of the  
27 donation made by the secondary donor and the value of the  
28 donation made by the primary donor, provided such value  
29 is positive.

30 "Primary donor." An institution which makes a

1 donation of any money, property, goods or services to  
2 another institution of purely public charity.

3 "Secondary donor." An institution which receives a  
4 donation of any money, property, goods or services from a  
5 primary donor and then makes a donation back to that  
6 primary donor within three years of having received such  
7 donation.

8 (vi) The reasonable value of volunteer assistance  
9 donated by individuals to the institution. The reasonable  
10 value of volunteer assistance, computed on an hourly  
11 basis, shall not exceed the "Statewide average weekly  
12 wage" as defined in section 105.1 of the act of June 2,  
13 1915 (P.L.736, No.338), known as the Workers'  
14 Compensation Act divided by 40.

15 (vii) The cost of goods or services PROVIDED TO AN <—  
16 INDIVIDUAL by charitable health care facilities licensed  
17 by the Department of Health or the Department of Public  
18 Welfare, which are bad debts, as determined in accordance  
19 with the generally accepted accounting principles  
20 applicable to the institution.

21 (VIII) THE REASONABLE VALUE OF ANY MONEYS, PROPERTY, <—  
22 GOODS OR SERVICES DONATED TO A POLITICAL SUBDIVISION. IF  
23 THE INSTITUTION OF PURELY PUBLIC CHARITY DONATES TO A  
24 POLITICAL SUBDIVISION AN AMOUNT EQUAL TO OR GREATER THAN  
25 25% OF THE TAX LIABILITY THE EXEMPT ENTITY WOULD INCUR IF  
26 ITS CURRENTLY TAX-EXEMPT PROPERTY WERE TAXABLE, THE  
27 INSTITUTION CAN CREDIT THE DONATION AT 200% OF THE ACTUAL  
28 VALUE FOR PURPOSES OF MEETING THE REQUIREMENTS OF THIS  
29 SUBSECTION.

30 (e) Charity to persons.--

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

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

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

10          "Substantial and indefinite class of persons." Persons  
11 not predetermined in number, provided that, where the goods  
12 or services are received primarily by members of the  
13 institution, membership cannot be predetermined in number and  
14 cannot be arbitrarily denied by a vote of the existing  
15 members. This section specifically recognizes that the use of  
16 admissions criteria and enrollment limitations by educational  
17 institutions do not constitute predetermined membership or  
18 arbitrary restrictions on membership so as to violate this  
19 section and recognizes that an institution may reasonably  
20 deny membership based on the types of services it provides,  
21 as long as denial is not in violation of Federal or State  
22 antidiscrimination laws, such as the Civil Rights Act of 1964  
23 (Public Law 88-352, 78 Stat. 241) and the act of October 27,  
24 1955 (P.L.744, No.222), known as the Pennsylvania Human  
25 Relations Act.

26          (3) An institution shall be considered to benefit a  
27 substantial and indefinite class of persons who are  
28 legitimate subjects of charity if the institution is  
29 primarily engaged in fundraising on behalf of or making  
30 grants to:



1 (i) corporations, associations, trusts or other  
2 organizations which meet the criteria set forth in this  
3 section;

4 (ii) government agencies; or

5 (iii) organizations which qualify under section  
6 501(c)(3) of the Internal Revenue Code of 1986 (Public  
7 Law 99-514, 26 U.S.C. § 501(c)(3)).

8 (4) AN INSTITUTION SHALL NOT BE CONSIDERED TO BENEFIT A ←  
9 SUBSTANTIAL AND INDEFINITE CLASS OF PERSONS WHO ARE  
10 LEGITIMATE SUBJECTS OF CHARITY IF:

11 (I) THE INSTITUTION IS NOT QUALIFIED UNDER SECTION  
12 501(C)(3) OF THE INTERNAL REVENUE CODE OF 1986; AND

13 (II) THE INSTITUTION IS QUALIFIED UNDER SECTION  
14 501(C)(4), (5), (6), (7), (8) OR (9) OF THE INTERNAL  
15 REVENUE CODE OF 1986 AS ANY OF THE FOLLOWING:

16 (A) AN ASSOCIATION OF EMPLOYEES, THE MEMBERSHIP  
17 OF WHICH IS LIMITED TO THE EMPLOYEES OF A DESIGNATED  
18 PERSON OR PERSONS.

19 (B) A LABOR ORGANIZATION.

20 (C) AN AGRICULTURAL OR HORTICULTURAL  
21 ORGANIZATION.

22 (D) A BUSINESS LEAGUE, CHAMBER OF COMMERCE, REAL  
23 ESTATE BOARD, BOARD OF TRADE OR PROFESSIONAL SPORTS  
24 LEAGUE.

25 (E) A CLUB ORGANIZED FOR PLEASURE OR RECREATION.

26 (F) A FRATERNAL BENEFICIARY SOCIETY, ORDER OR  
27 ASSOCIATION.

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

1 (1) provides a service to the public that the government  
2 would otherwise be obliged to fund or to provide directly or  
3 indirectly or assure that a similar organization exists to  
4 provide the service;

5 (2) provides services in furtherance of its charitable  
6 purpose which are either the responsibility of the government  
7 by law or which historically have been assumed or offered or  
8 funded by the government;

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

15 (4) provides a service which advances important  
16 community, public, spiritual, mental, physical, educational,  
17 emotional, civic, historical or cultural objectives.

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

28 (G) STANDARDS.-- <—

29 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2), NOTHING IN THIS  
30 ACT SHALL BE DEEMED TO PROHIBIT A CHARITABLE ORGANIZATION

1 FROM CONDUCTING ACTIVITIES INTENDED TO INFLUENCE LEGISLATION.

2 (2) NO SUBSTANTIAL PART OF THE ACTIVITIES OF AN  
3 INSTITUTION OF PURELY PUBLIC CHARITY SHALL CONSIST OF  
4 CARRYING ON PROPAGANDA OR OTHERWISE ATTEMPTING TO INFLUENCE  
5 LEGISLATION, EXCEPT AS OTHERWISE PROVIDED IN SECTION 501(H)  
6 OF THE INTERNAL REVENUE CODE OF 1986 OR PARTICIPATING IN OR  
7 INTERVENING IN, INCLUDING THE PUBLISHING OR DISTRIBUTING OF  
8 STATEMENTS, ANY POLITICAL CAMPAIGN ON BEHALF OF, OR IN  
9 OPPOSITION TO, ANY CANDIDATE FOR PUBLIC OFFICE AS SUCH  
10 LIMITATIONS ARE INTERPRETED UNDER SECTION 501 OF THE INTERNAL  
11 REVENUE CODE OF 1986.

12 (3) NOTHING IN THIS ACT SHALL AFFECT, IMPAIR OR HINDER  
13 THE RESPONSIBILITIES OR PREROGATIVES OF THE POLITICAL  
14 SUBDIVISION RESPONSIBLE FOR MAINTAINING REAL PROPERTY  
15 ASSESSMENT ROLLS TO MAKE A DETERMINATION WHETHER A PARCEL OF  
16 PROPERTY OR A PORTION OF A PARCEL OF PROPERTY IS BEING USED  
17 TO ADVANCE THE CHARITABLE PURPOSE OF AN INSTITUTION OF PURELY  
18 PUBLIC CHARITY, OR TO ASSESS THE PARCEL OR PART OF THE PARCEL  
19 OF PROPERTY AS TAXABLE BASED ON THE USE OF THE PARCEL OR PART  
20 OF THE PARCEL FOR PURPOSES OTHER THAN THE CHARITABLE PURPOSE  
21 OF THE INSTITUTION. SUCH DETERMINATION AND ASSESSMENT SHALL  
22 BE MADE IN ACCORD WITH APPLICABLE STATUS REGARDING THE  
23 ASSESSMENT OF REAL PROPERTY FOR TAXATION PURPOSES AND SHALL  
24 BE MADE WITHOUT REGARD TO THE CORPORATE STRUCTURE OF THE  
25 INSTITUTION, THE SUBSIDIARY NATURE OF THE USE OR THE FORM OR  
26 NATURE OF OWNERSHIP OR ACQUISITION OF THE PROPERTY.

27 (4) NOTHING IN THIS ACT SHALL PROHIBIT A POLITICAL  
28 SUBDIVISION FROM FILING CHALLENGES TO OR MAKING  
29 DETERMINATIONS AS TO WHETHER A PARTICULAR PARCEL OF PROPERTY  
30 IS BEING USED TO ADVANCE THE CHARITABLE PURPOSE OF AN

1 INSTITUTION OF PURELY PUBLIC CHARITY.

2 (5) NO ADDITIONAL CRITERIA SHALL BE IMPOSED ON ANY  
3 ORGANIZATION IN ORDER TO BE RECOGNIZED AS AN INSTITUTION OF  
4 PURELY PUBLIC CHARITY.

5 Section 6. Multiple jurisdictions.

6 ~~(a) Intent. It is the intent of the General Assembly to~~ <—

7 (A) INTENT.-- <—

8 (1) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO foster  
9 uniformity in the application of the standards contained  
10 within this act for determining status as an institution of  
11 purely public charity. The General Assembly recognizes that  
12 multiple jurisdictions at different levels of government will  
13 be required to determine whether an organization requesting  
14 tax exemption meets such standards. Because many  
15 organizations will be required to seek and receive approval  
16 from different governmental entities, the General Assembly  
17 believes that an organization which demonstrates compliance  
18 with the standards at the State level shall be entitled to a  
19 rebuttable presumption that it has met those standards when  
20 determining qualification for local property tax exemptions.

21 ~~Such a presumption is not intended to in any way limit or~~ <—  
22 ~~preclude the ability of a local taxing jurisdiction to~~  
23 ~~challenge a tax exemption based on the use of a particular~~  
24 ~~parcel.~~

25 ~~(b) Effect of prior qualification. An organization~~  
26 ~~possessing a valid exemption from the tax imposed by Article II~~  
27 ~~of the Tax Reform Code, pursuant to an administrative or~~  
28 ~~judicial determination that the organization qualifies for~~  
29 ~~exemption under section 204(10) of the Tax Reform Code, shall be~~  
30 ~~presumed to meet the criteria contained in section 5(b), (c),~~

1 ~~(d), (e) and (f), and any person challenging such presumption~~  
2 ~~before any agency or court shall bear the burden of proving the~~  
3 ~~contrary. Any person challenging such presumption may request~~  
4 ~~from the institution all relevant financial statements, records~~  
5 ~~and documents used to obtain the exemption under section 204(10)~~  
6 ~~of the Tax Reform Code. Failure by the institution to supply~~  
7 ~~such information within 30 days shall remove the presumption~~  
8 ~~with respect to that challenge.~~

9 (2) THE GENERAL ASSEMBLY, RECOGNIZING THE INTEREST OF <—  
10 THE TAXPAYERS IN A FAIR AND EQUITABLE SYSTEM OF PROPERTY TAX  
11 ASSESSMENT AND THE ATTENDANT STATUTORY REQUIREMENTS FOR THE  
12 POLITICAL SUBDIVISION RESPONSIBLE FOR MAINTAINING REAL  
13 PROPERTY ASSESSMENT ROLES TO ADMINISTER THE SYSTEM OF  
14 PROPERTY ASSESSMENT, BELIEVES THAT SUCH A PRESUMPTION SHALL  
15 NOT IN ANY WAY LIMIT THE RESPONSIBILITIES, PREROGATIVES OR  
16 ABILITIES OF COUNTIES OR LOCAL JURISDICTIONS WITH RESPECT TO  
17 THE DETERMINATION OF, OR CHALLENGES TO, THE TAXABLE STATUS OF  
18 A PARCEL OR PART OF A PARCEL OF PROPERTY BASED ON THE USE OF  
19 THE PARCEL OR PART OF THE PARCEL OF PROPERTY.

20 (B) PRESUMPTION.--AN ORGANIZATION POSSESSING A VALID  
21 EXEMPTION FROM THE TAX IMPOSED BY ARTICLE II OF THE TAX REFORM  
22 CODE, PURSUANT TO ADMINISTRATIVE OR JUDICIAL DETERMINATION THAT  
23 THE ORGANIZATION QUALIFIES FOR EXEMPTION UNDER SECTION 204(10)  
24 OF THE TAX REFORM CODE, SHALL BE ENTITLED TO ASSERT A  
25 PRESUMPTION THAT IT MEETS THE CRITERIA CONTAINED IN SECTION  
26 5(B), (C), (D), (E) AND (F), AND ANY PERSON CHALLENGING SUCH  
27 PRESUMPTION BEFORE ANY AGENCY OR COURT SHALL BEAR THE BURDEN, BY  
28 THE PREPONDERANCE OF EVIDENCE, OF PROVING THE CONTRARY. THE  
29 DEPARTMENT OF REVENUE SHALL FURNISH TO ANY INSTITUTION APPLYING  
30 FOR EXEMPTION A WRITTEN DETERMINATION OF THE DEPARTMENT OF

1 REVENUE'S DECISION INCLUDING SPECIFIC INFORMATION CONCERNING HOW  
2 THE APPLICANT DOES OR DOES NOT MEET EACH OF THE CRITERIA IN  
3 SECTION 5. ANY ORGANIZATION ASSERTING SUCH A PRESUMPTION SHALL  
4 BE DEEMED TO HAVE WAIVED ANY RIGHT TO CONFIDENTIALITY AND  
5 CONSENTED TO RELEASE OF ANY INFORMATION SUPPORTING THE EXEMPTION  
6 FROM THE TAX IMPOSED BY ARTICLE II OF THE TAX REFORM CODE UNDER  
7 SECTION 204(10), AND SUCH INFORMATION, ALONG WITH THE WRITTEN  
8 DETERMINATION OF THE DEPARTMENT OF REVENUE'S DECISION IN SUPPORT  
9 OF THAT EXEMPTION, SHALL BE PUBLIC RECORD WHICH THE DEPARTMENT  
10 OF REVENUE SHALL FURNISH TO ANY PERSON UPON REQUEST. ANY PERSON  
11 CHALLENGING SUCH PRESUMPTION MAY REQUEST FROM THE INSTITUTION  
12 ALL RELEVANT FINANCIAL STATEMENTS, RECORDS AND DOCUMENTS USED TO  
13 OBTAIN THE EXEMPTION UNDER SECTION 204(10) OF THE TAX REFORM  
14 CODE. FAILURE BY THE INSTITUTION TO SUPPLY, OR AT ITS OPTION, TO  
15 PERMIT INSPECTION OF SUCH INFORMATION IN ITS POSSESSION WITHIN  
16 30 DAYS SHALL REMOVE THE PRESUMPTION WITH RESPECT TO THAT  
17 CHALLENGE.

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

21 Section 7. Existing agreements.

22 Nothing in this act shall be construed to affect, impair,  
23 terminate or supersede any contract, agreement or arrangement in  
24 effect on or before the effective date of this act which  
25 authorizes or requires payment of taxes, amounts in lieu of  
26 taxes, or other charges or fees for the services of a political  
27 subdivision of this Commonwealth. Further, nothing in this act  
28 shall be construed to impair, or otherwise inhibit, the right or  
29 ability of any institution or political subdivision to enter  
30 into such agreements after the effective date of this act.

1 Section 8. Unfair competition with small businesses.

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

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

10 (c) Exceptions.--Institutions of purely public charity are  
11 not in violation of subsection (b) if any of the following  
12 apply:

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

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

24 (d) Support for other charities.--Nothing in this section  
25 shall be construed as prohibiting or limiting the ability of an  
26 institution of purely public charity to fund, capitalize,  
27 guarantee the indebtedness of or otherwise subsidize another  
28 institution of purely public charity.

29 (e) Investments.--An institution of purely public charity  
30 that invests in publicly traded stocks and bonds; real estate;

1 or other investments is not in violation of subsection (b).

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

5 (g) Government functions.--An institution of purely public  
6 charity may engage in a new commercial business that may  
7 otherwise be in violation of subsection (b) if the institution  
8 is formally requested to do so by the Commonwealth or a  
9 political subdivision.

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

21 (i) Remedies.--Whenever the Attorney General receives a  
22 complaint from an aggrieved small business or has reason to  
23 believe that any institution of purely public charity is  
24 violating this section and the proceedings would be in the  
25 public interest, the Attorney General may bring an action in the  
26 name of the Commonwealth against that institution to restrain  
27 such violation by temporary or permanent injunction. The  
28 Attorney General must either bring an action or issue a written  
29 determination to the aggrieved small business within 120 days of  
30 the filing of a complaint.



1 (1) If the Attorney General fails to bring an action or  
2 to issue a written determination to a small business  
3 complainant within 120 days of the filing of a complaint, the  
4 small business may petition the Commonwealth Court for a writ  
5 of mandamus ordering the Attorney General either to bring an  
6 action under this section or to provide the reason or reasons  
7 why the Attorney General has declined to do so.

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

14 Section 9. Accountability and disclosure.

15 (a) Intent.--An institution which qualifies for a tax  
16 exemption by virtue of being designated an institution of purely  
17 public charity has a unique responsibility to periodically  
18 demonstrate to the public that it is fulfilling the purpose for  
19 which the exemption is granted. The citizens of this  
20 Commonwealth expect an organization which is granted tax  
21 exemption to adhere to a high standard of accountability and  
22 public disclosure. Therefore, the institution should make an  
23 annual report in which it makes available certain information  
24 about its organization and its charitable activities. The report  
25 should be made consistent with the desire of the General  
26 Assembly to avoid burdensome reporting requirements which unduly  
27 distract the organization from its charitable purposes.

28 (b) Report required.--It shall be the duty of the president,  
29 chairman or principal officer of an institution which files, or  
30 is required to file, an annual return with the Internal Revenue

1 Service under the Internal Revenue Code of 1986 (Public Law 99-  
2 514, 26 U.S.C. § 1 et seq.) to file a report with the bureau no  
3 later than the date, including any extensions granted by the  
4 Internal Revenue Service, the institution files or is required  
5 to file an annual return with the Internal Revenue Service. The  
6 following information shall be included in the report required  
7 by this section and shall be in a format approved by the  
8 Secretary of the Commonwealth:

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

11 (2) The date the institution was organized under  
12 applicable law and a reference to any determination of its  
13 tax-exempt status under the Internal Revenue Code of ~~1986,~~ <—  
14 ~~including, if applicable, its Internal Revenue tax~~ 1986, <—  
15 INCLUDING, IF APPLICABLE:

16 (I) THE INSTITUTION'S INTERNAL REVENUE TAX exemption  
17 number and the tax-exempt purposes as established by the  
18 Internal Revenue Service.

19 (II) A REVOCATION OF TAX-EXEMPT STATUS BY THE <—  
20 INTERNAL REVENUE SERVICE.

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

23 (i) The name and type of organization.

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

26 (iii) The relationship of each affiliate to the  
27 institution making the report.

28 (4) The institution's relationship with any other  
29 nonprofit corporation or unincorporated association if the  
30 relationship involves formal governance or the sharing of

1 revenue.

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

8 (d) Exemption from filing.--

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

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

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

1 the information required in subsection (b)(2), (3) or (4) has  
2 not changed since the prior report in lieu of providing the same  
3 information in the report required by subsection (b). The  
4 Secretary of the Commonwealth may obtain from the Internal  
5 Revenue Service copies of annual returns of institutions which  
6 file annual returns with the Internal Revenue Service on  
7 computer disk or other electronic or paper media.

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

11 (g) Utilization of reports.--The Secretary of the  
12 Commonwealth shall make reports submitted under this section  
13 available for public inspection TO THE EXTENT THAT THE ←  
14 INFORMATION IS AVAILABLE FOR PUBLIC INSPECTION UNDER SECTION  
15 6104 OF THE INTERNAL REVENUE CODE OF 1986. The Secretary of the  
16 Commonwealth shall provide any government agency a copy of the  
17 report filed under this section upon request. Nothing in this  
18 subsection shall prevent a government agency from requiring any  
19 organization seeking exemption as an institution of purely  
20 public charity to provide the information described in  
21 subsection (b) to that agency as part of a determination of the  
22 tax exempt status of the institution.

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

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

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

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

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

16 ~~Section 10. Litigation reduction.~~ <—

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

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

28 ~~(2) appeals by the challenging party or parties are~~  
29 ~~exhausted and there has been a final unappealed or~~  
30 ~~unappealable adjudication or judgment.~~

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

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

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

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

18 ~~Section 11. Exemption for Federal Government instrumentality.~~

19       ~~It is the intent of the General Assembly to affirm that, for~~  
20 ~~purposes of the Constitution of Pennsylvania and the laws of~~  
21 ~~this Commonwealth relating to the assessment and taxation of~~  
22 ~~real estate, real property is property of a Federal Government~~  
23 ~~entity and is, thus, exempt from all State and local taxation if~~  
24 ~~the real property is owned by a corporation which is:~~

25           ~~(1) established by Federal statute; and~~

26           ~~(2) required to submit to Congress annual reports of~~  
27 ~~its activities, containing itemized accounts of all~~  
28 ~~receipts and expenditures, after being fully audited by~~  
29 ~~the Department of Defense.~~

30 SECTION 10. EXEMPTION FOR FEDERAL GOVERNMENT INSTRUMENTALITY.       <—

1 IT IS THE INTENT OF THE GENERAL ASSEMBLY TO AFFIRM THAT ALL  
2 REAL PROPERTY OWNED BY ANY CORPORATION ESTABLISHED BY AN ACT OF  
3 THE CONGRESS OF THE UNITED STATES, THAT IS REQUIRED TO SUBMIT  
4 ANNUAL REPORTS OF ITS ACTIVITIES TO CONGRESS CONTAINING ITEMIZED  
5 ACCOUNTS OF ALL RECEIPTS AND EXPENDITURES AFTER BEING FULLY  
6 AUDITED BY THE DEPARTMENT OF DEFENSE, FOR PURPOSES OF THE  
7 CONSTITUTION OF PENNSYLVANIA AND THE LAWS OF THIS COMMONWEALTH  
8 RELATING TO THE ASSESSMENT AND TAXATION OF REAL ESTATE, IS  
9 PROPERTY OF A FEDERAL GOVERNMENT INSTRUMENTALITY AND THUS EXEMPT  
10 FROM ALL STATE AND LOCAL TAXATION.

11 Section ~~12~~ 11. Repeals. ←

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

17 Section ~~13~~ 12. Applicability. ←

18 This act shall not apply to nor affect 40 Pa.C.S. § 6103 or  
19 6301 or the entities subject to those sections.

20 Section ~~14~~ 13. Effective date. ←

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