

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1162 Session of
2001

INTRODUCED BY DENT, GERLACH, ORIE, MOWERY AND BOSCOLA,
OCTOBER 16, 2001

REFERRED TO COMMUNITY AND ECONOMIC DEVELOPMENT, OCTOBER 16, 2001

AN ACT

1 Establishing the Private Enterprise Review Board; and providing
2 for competition with private enterprise by government,
3 community colleges and universities.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Government
8 Competition with Private Enterprise Act.

9 Section 2. Purpose.

10 The purpose of this act is to limit government competition
11 with private enterprise in the offering of goods and services,
12 to provide additional economic opportunities to private
13 industry, to regulate competition by institutions of higher
14 education unless it enhances an educational or research function
15 and to address issues and complaints concerning competition
16 through a private enterprise review board.

17 Section 3. Definitions.

18 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Agency." State agency or local agency as defined in this
4 act.

5 "Invited guests." Persons who enter onto a campus for
6 educational, research or public service activity and not
7 primarily to purchase or receive goods and services not related
8 to the educational, research or public service activity for
9 which the persons enter onto the campus.

10 "Local agency." A department, office, commission,
11 institution, board or other agency or local organization,
12 regardless of whether moneys are appropriated to the agency,
13 including, but not limited to, cities, boroughs, towns,
14 townships or any other municipal entity.

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

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

24 "Small business." Any self-employed individual, sole
25 proprietorship, firm, corporation, partnership, association or
26 other entity that:

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

28 (2) is subject to income taxation under the act of March
29 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

30 "State agency." A department, office, commission,

1 institution, board or other agency or State organization,
2 regardless of whether moneys are appropriated to the agency.

3 Section 4. Government competition with private enterprise
4 prohibited.

5 (a) Prohibition.--A State agency or local agency shall not
6 engage in the manufacturing, processing, sale, offering for
7 sale, rental, leasing, delivery, dispensing, distributing or
8 advertising of goods or services to the public which are also
9 offered by private enterprise unless specifically authorized by
10 law.

11 (b) Provisions through other agencies.--A State agency or
12 local agency shall not offer or provide goods or services to the
13 public for or through another state agency or local agency,
14 including providing goods or services to the public by
15 intergovernmental or interagency agreement.

16 (c) Exceptions.--The restrictions on competition with
17 private enterprise contained in this section do not apply to:

18 (1) The development, operation and management of State
19 parks, historical monuments and hiking or equestrian trails.

20 (2) The construction, maintenance and operation of State
21 transportation facilities.

22 Section 5. Competition with private enterprise by community
23 colleges and universities.

24 Community colleges and universities, which shall include
25 State and State-related universities, in this Commonwealth shall
26 not, unless specifically authorized by law:

27 (1) Provide to persons other than students, faculty,
28 staff or invited guests, goods, services or facilities that
29 are practically available from private enterprise.

30 (2) Enter competitive bidding for rendering any goods or

1 services by the community college or university rendering the
2 goods or services. Any such bid shall fairly and fully
3 allocate all direct and indirect costs unless the funding
4 agency or sources provide for or require all bidders to use a
5 specific procedure or formula for allocating costs.

6 (3) Provide to students, faculty, staff or invited
7 guests goods, services or facilities that are practically
8 available from private enterprise except as otherwise
9 authorized by law.

10 (4) Provide goods, services or facilities for or through
11 another State agency or local agency, including by
12 intergovernmental or interagency agreement, which, if
13 provided directly by the contractor, would be in violation of
14 this section.

15 Section 6. Private Enterprise Review Board.

16 (a) Establishment.--The Private Enterprise Review Board is
17 hereby established.

18 (b) Membership.--The board shall be composed of the
19 following 15 members:

20 (1) The Secretary of Community and Economic Development.

21 (2) One member appointed by the Secretary of Education.

22 (3) Nine members from private enterprise, at least five
23 of whom are small business owners, two appointed by the
24 President pro tempore of the Senate; two appointed by the
25 Speaker of the House of Representatives; two appointed by the
26 Minority Leader of the Senate and two appointed by the
27 Minority Leader of the House of Representatives and one
28 appointed by the Governor.

29 (4) Two Senators, appointed by the President pro
30 tempore.

1 (5) Two representatives, appointed by the Speaker of the
2 House of Representatives.

3 (c) Terms of appointment.--Members of the board serve for
4 terms of two years. A member of the Senate, a member of the
5 House of Representatives or officer of a State agency no longer
6 holding such office shall lose membership on the board, in which
7 case the appointing officer shall appoint a replacement member
8 for the remainder of the unexpired term.

9 (d) Compensation.--Members of this board shall not be
10 eligible to receive compensation but are eligible for
11 reimbursement of necessary expenses.

12 (e) Duties of the board.--The board shall:

13 (1) Select a chairman from among its members.

14 (2) Establish operating guidelines of the board.

15 (3) Meet at least four times each year and hold
16 additional hearings as may be necessary at the call of the
17 chairman.

18 (4) Receive written complaints of violations of this
19 act.

20 (5) Transmit complaints received under paragraph (4) to
21 the State agency, local agency, university or community
22 college alleged to be in violation.

23 (6) Review complaints and determine whether the agency,
24 university or community college is in violation of the
25 provisions of this act.

26 (7) Issue a written report of its findings within 90
27 days after the complaint was filed.

28 (8) Transmit a complete report of each meeting to the
29 Governor and the General Assembly, including recommendations
30 to remedy violations and findings on necessary exceptions to

1 the prohibitions.

2 (f) Evaluation.--The board may evaluate and review
3 opportunities to contract with private enterprise that are
4 deemed to be in the public interest. The public agencies
5 offering services subject to review shall be involved as
6 participants in the evaluation process. The board may hold
7 public hearings as a part of its evaluation process and shall
8 report its recommendations to the Governor and the General
9 Assembly.

10 (g) Review.--The board may evaluate and review all State
11 agency exceptions to competition with private enterprise and may
12 determine that any function or functions of a State agency,
13 local agency, university or community college are or could be a
14 violation of this act. The board shall report its findings and
15 recommendations to the Governor and the General Assembly.

16 (h) Staff support.--At the request of the board, the
17 Department of Community and Economic Development shall provide
18 such staff support as is necessary to carry out the board's
19 duties pursuant to this section. The Auditor General shall
20 provide performance audit information relating to State agency,
21 university and community college budgets and functions that the
22 Auditor General has available without additional contact with
23 agencies through the legislative review of agencies otherwise
24 authorized by law.

25 Section 7. Regulations.

26 The Department of Community and Economic Development shall
27 promulgate rules and regulations to administer the provisions of
28 this act.

29 Section 8. Effective date.

30 This act shall take effect in 60 days.