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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1502 Session of  
2007

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INTRODUCED BY PASHINSKI, McCALL, BELFANTI, BENNINGTON,  
BLACKWELL, BRENNAN, BUXTON, DeWEESE, EACHUS, FABRIZIO,  
FRANKEL, FREEMAN, GEORGE, GIBBONS, GOODMAN, GRUCELA, HARKINS,  
JAMES, JOSEPHS, KIRKLAND, KORTZ, KULA, MAHONEY, MARKOSEK,  
MELIO, MOUL, MUNDY, MYERS, M. O'BRIEN, PETRONE, SANTONI,  
SEIP, SIPTROTH, K. SMITH, SOLOBAY, SURRA, THOMAS, WALKO AND  
YUDICHAK, JUNE 13, 2007

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REFERRED TO COMMITTEE ON LABOR RELATIONS, JUNE 13, 2007

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AN ACT

1 Providing for contractor cost provisions of public service  
2 contracts; and imposing penalties.

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

5 Section 1. Short title.

6 This act shall be known and may be cited as the Public  
7 Services Contractor Cost Act.

8 Section 2. Declaration of policy.

9 The General Assembly finds and declares that using private  
10 contractors to provide public services formerly provided by  
11 public employees does not always promote the public interest. To  
12 ensure that residents of this Commonwealth receive high-quality  
13 public services at low cost, with due regard for the taxpayers  
14 of this Commonwealth, the service recipients and the needs of  
15 public and private workers, the General Assembly finds it

1 necessary to regulate privatization contracts.

2 Section 3. Definitions.

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

6 "Agency." Includes an executive office, department,  
7 division, board, commission or other office or officer in the  
8 executive branch of the government.

9 "Employee of a private contractor." Includes a worker  
10 directly employed by a private contractor as well as an employee  
11 of a subcontractor or an independent contractor that provides  
12 supplies or services to a private contractor. The term includes  
13 former employees of a private contractor or subcontractor and  
14 former independent contractors.

15 "Person." Includes an individual, institution, Federal,  
16 State or local governmental entity or any other public or  
17 private entity.

18 "Private contractor." Any entity which enters into a  
19 privatization contract.

20 "Privatization contract." An agreement or combination or  
21 series of agreements by which a nongovernmental person or entity  
22 agrees with an agency to provide services, valued at \$100,000 or  
23 more, which are substantially similar to and in lieu of services  
24 previously provided or that could have been provided in whole or  
25 in part, by regular employees of an agency.

26 "Public record." A public record as defined in section 1 of  
27 the act of June 21, 1957 (P.L.390, No.212), referred to as the  
28 Right-to-Know Law. The term includes any document relating to  
29 the privatization contract or performance under the contract,  
30 prepared, received or retained by a contractor or subcontractor

1 whether the document be handwritten, typed, tape-recorded,  
2 printed, photocopied, photographed or recorded by any other  
3 method.

4 "Services." Includes, with respect to a private contractor,  
5 all aspects of the provision of services provided by a private  
6 contractor pursuant to a privatization contract or any services  
7 provided by a subcontractor of a private contractor.

8 "Subcontractor." A subcontractor of a private contractor for  
9 work under a privatization contract or an amendment to a  
10 privatization contract.

#### 11 Section 4. Privatization contracts and requirements.

12 (a) General rule.--No agency shall make any privatization  
13 contract and no privatization contract shall be valid unless the  
14 agency and the contractor comply with each of the requirements  
15 in this section and sections 5 through 8 and includes the  
16 specified provisions in the privatization contract.

17 (b) Statement of services and analysis of bids for  
18 privatization contract.--The agency shall prepare a specific  
19 written statement of the services proposed to be the subject of  
20 the privatization contract, including the specific quality and  
21 standard of quality of the subject services. The agency shall  
22 solicit competitive sealed bids for the privatization contracts  
23 based upon this statement. The day designated by the agency upon  
24 which it will accept these sealed bids shall be the same for any  
25 and all parties. This statement shall be a public record, shall  
26 be filed in the agency and shall be published in the  
27 Pennsylvania Bulletin not later than 30 business days prior to  
28 the date on which bids are due.

29 (c) Union neutrality.--State funds shall not be used to  
30 support or oppose unionization, including, but not limited to,

1 preparation and distribution of materials which advocate for or  
2 against unionization; hiring or consulting legal counsel or  
3 other consultants to advise the contractor about how to assist,  
4 promote or deter union organizing or how to impede a union which  
5 represents the contractor's employees from fulfilling its  
6 representational responsibilities; holding meetings to influence  
7 employees about unionization; planning or conducting activities  
8 by supervisors to assist, promote or deter union activities; or  
9 defending against unfair labor practice charges brought by  
10 Federal or State enforcement agencies.

11 Section 5. Review of contract costs.

12 (a) Estimate of costs.--Any agency considering whether to  
13 enter into a privatization contract shall prepare a  
14 comprehensive written estimate of the costs of regular agency  
15 employees' providing the subject services in the most cost-  
16 efficient manner. The estimate shall include all direct and  
17 indirect costs of regular agency employees providing the subject  
18 services, including, but not limited to, pension, insurance and  
19 other employee benefit costs. For the purpose of this estimate,  
20 any employee organization may, at any time before the final day  
21 for the agency to receive sealed bids pursuant to section 4(b),  
22 propose amendments to any relevant collective bargaining  
23 agreement to which it is a party. Any amendments shall take  
24 effect only if necessary to reduce the cost estimate pursuant to  
25 this subsection below the contract cost. The estimate shall  
26 remain confidential until after the final day for the agency to  
27 receive sealed bids for the privatization contract at which time  
28 the estimate shall become a public record, shall be filed in the  
29 agency and shall be published in the Pennsylvania Bulletin.

30 (b) Evaluation of contractor performance and costs.--After

1 soliciting and receiving bids, the agency shall publicly  
2 designate the bidder to which it proposes to award the  
3 privatization contract. In selecting a contractor, the agency  
4 shall consider the contractor's past performance and its record  
5 of compliance with Federal, State and local laws, including the  
6 disclosures as required in section 4(c). The agency shall  
7 prepare a comprehensive written analysis of the contract cost  
8 based upon the designated bid, specifically including the costs  
9 of transition from public to private operation, of additional  
10 unemployment and retirement benefits, if any, and of monitoring  
11 and otherwise administering contract performance. If the  
12 designated bidder proposes to perform any or all of the contract  
13 outside the boundaries of this Commonwealth, the contract shall  
14 be increased by the amount of income tax revenue, if any, which  
15 will be lost to the Commonwealth by the corresponding  
16 elimination of agency employees, as determined by the Department  
17 of Revenue to the extent that it is able to do so.

18 (c) Agency certification.--The head of the agency shall  
19 certify in writing that:

20 (1) The agency has complied with all provisions of this  
21 section and of all other applicable laws.

22 (2) The quality of the services to be provided by the  
23 designated bidder is likely to satisfy the quality  
24 requirements of the statement prepared pursuant to section  
25 4(b) and to equal or exceed the quality of services which  
26 could be provided by regular agency employees.

27 (3) The contract cost will be at least 10% less than the  
28 estimated cost pursuant to subsection (a), taking into  
29 account all comparable types of costs and all the additional  
30 costs of the contract as specified in subsection (b).

1           (4) The proposed privatization contract is in the public  
2       interest in that it meets the applicable quality and fiscal  
3       standards set forth in this act.

4 Any privatization contract entered into by an agency and the  
5 agency certification described in this subsection shall be  
6 public records subject to disclosure pursuant to the act of June  
7 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know  
8 Law.

9 Section 6. Monitoring and enforcement of privatization  
10                       contracts.

11       (a) Subcontracts and amendments to privatization  
12 contracts.--

13           (1) No contractor shall award a subcontract for work  
14       under a contract or for work under an amendment to a contract  
15       without the agency's approval of:

16                       (i) The selection of the subcontractor.

17                       (ii) The provisions of the subcontract.

18           (2) Each contractor shall file a copy of each executed  
19       subcontract or amendment to the subcontract with the agency,  
20       which shall maintain the subcontract or amendment as a public  
21       record, as defined under the act of June 21, 1957 (P.L.390,  
22       No.212), referred to as the Right-to-Know Law.

23       (b) Submission of audits.--Any private contractor awarded a  
24       privatization contract, and any subcontractor to a private  
25       contractor subject to these provisions, shall file with the  
26       agency copies of financial audits of the private contractor  
27       prepared at least annually during the course of the contract  
28       term.

29       (c) Access.--All privatization contracts shall include a  
30       contract provision specifying that in order to determine

1 compliance with these principles as well as the contract, the  
2 private contractor shall be required to provide the Commonwealth  
3 or its agents, except where prohibited by Federal or State laws,  
4 regulations or rules, reasonable access through representatives  
5 of the private contractor to facilities, records and employees  
6 that are used in conjunction with the provision of contract  
7 services.

8 (d) Performance standards.--The private contractor shall  
9 submit a report, not less than annually during the term of the  
10 privatization contract, detailing the extent to which the  
11 contractor has achieved the specific quantity and standard of  
12 quality of the subject services as specified by the agency  
13 pursuant to section 4(b) and its compliance with all Federal,  
14 State and local laws, including any complaints, citations or  
15 findings issued by administrative agencies or courts.

16 (e) Enforcement.--The agency may seek contractual remedies  
17 for any violation of a privatization contract.

18 Section 19. Nonpreemption.

19 Nothing in this act preempts any other law and nothing in  
20 this act shall be construed or interpreted to impair or diminish  
21 in any way the authority of any locality, municipality or  
22 subdivision to enact and enforce any law which provides  
23 equivalent or greater protection for its employees.

24 Section 20. Applicability.

25 This act shall apply to any privatization contract entered  
26 into after the effective date of this act.

27 Section 21. Effective date.

28 This act shall take effect in 60 days.