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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 1503** Session of  
2007

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INTRODUCED BY MAHONEY, McCALL, BELFANTI, BENNINGTON, BLACKWELL,  
BRENNAN, BUXTON, DeWEESE, EACHUS, FABRIZIO, FRANKEL, FREEMAN,  
GEORGE, GIBBONS, GOODMAN, GRUCELA, HARKINS, JAMES, JOSEPHS,  
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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 public oversight and accountability of  
2 privatization 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 Accountability 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 and to protect  
2 those workers who report conditions and practices which impact  
3 the efficiency and quality of public services provided by  
4 private contractors. The General Assembly further finds it  
5 necessary to ensure that access to public information guaranteed  
6 by the act of June 21, 1957 (P.L.390, No.212), referred to as  
7 the Right-to-Know Law, is not in any way hindered by public  
8 services being provided by private contractors.

9 Section 3. Definitions.

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

13 "Agency." Includes an executive office, department,  
14 division, board, commission or other office or officer in the  
15 executive branch of the government.

16 "Discrimination or retaliation." Includes a threat,  
17 intimidation or any adverse change in an employee's wages,  
18 benefits or terms or conditions of employment. In the case of a  
19 person who is not an employee of the private contractor, the  
20 term includes any adverse action taken against the person or the  
21 person's employer, including the cancellation of or refusal to  
22 renew a contract with the person or the person's employer.

23 "Employee of a private contractor." Includes a worker  
24 directly employed by a private contractor as well as an employee  
25 of a subcontractor or an independent contractor that provides  
26 supplies or services to a private contractor. The term includes  
27 former employees of a private contractor or subcontractor and  
28 former independent contractors.

29 "Person." Includes an individual, institution, Federal,  
30 State or local governmental entity or any other public or

1 private entity.

2 "Private contractor." Any entity which enters into a  
3 privatization contract.

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

10 "Public record." A public record as defined in section 1 of  
11 the act of June 21, 1957 (P.L.390, No.212), referred to as the  
12 Right-to-Know Law. The term includes any document relating to  
13 the privatization contract or performance under the contract,  
14 prepared, received or retained by a contractor or subcontractor  
15 whether the document is handwritten, typed, tape-recorded,  
16 printed, photocopied, photographed or recorded by any other  
17 method.

18 "Services." Includes, with respect to a private contractor,  
19 all aspects of the provision of services provided by a private  
20 contractor pursuant to a privatization contract or any services  
21 provided by a subcontractor of a private contractor.

22 "Subcontractor." A subcontractor of a private contractor for  
23 work under a privatization contract or an amendment to a  
24 privatization contract.

25 Section 4. Privatization contracts and requirements.

26 (a) General rule.--No agency shall make any privatization  
27 contract and no privatization contract shall be valid unless the  
28 agency and the contractor comply with each of the requirements  
29 in this section and sections 5 through 8 and include the  
30 specified provisions in the privatization contract.

1 (b) Statement of services and analysis of bids for  
2 privatization contract.--The agency shall prepare a specific  
3 written statement of the services proposed to be the subject of  
4 the privatization contract, including the specific quality and  
5 standard of quality of the subject services. The agency shall  
6 solicit competitive sealed bids for the privatization contracts  
7 based upon this statement. The day designated by the agency upon  
8 which it will accept these sealed bids shall be the same for any  
9 and all parties. This statement shall be a public record, shall  
10 be filed in the agency and shall be published in the  
11 Pennsylvania Bulletin not later than 30 business days prior to  
12 the date on which bids are due.

13 (c) Disclosure.--Every bid shall detail:

14 (1) The length of continuous employment of current  
15 employees with the contractor by job classification without  
16 identifying employee names. In addition, the contractor may  
17 submit information detailing the relevant prior experience of  
18 employees within each job classification. If the positions  
19 identified by the bidder shall be newly created, the bid  
20 shall identify the minimum requirements for prospective  
21 applicants for each position.

22 (2) The annual rate of current staff turnover.

23 (3) The number of hours of training planned for each  
24 employee in subject matters directly related to providing  
25 services to residents of this Commonwealth and clients.

26 (4) Any legal complaints issued by an enforcement agency  
27 for alleged violations of applicable Federal, State or local  
28 rules, regulations or laws, including laws governing employee  
29 safety and health, labor relations and other employment  
30 requirements, and any citations, court findings or

1 administrative findings for violations of Federal, State or  
2 local rules, regulations or laws. The information must  
3 include the date, enforcement agency, the rule, law or  
4 regulation involved and any additional information the  
5 contractor may wish to submit.

6 (5) Any collective bargaining agreements or personnel  
7 policies covering the employees to provide services to the  
8 Commonwealth.

9 (6) Political contributions made by the bidder or any  
10 employee in a management position with the bidding company to  
11 any elected officer of the State or member of the General  
12 Assembly during the four years prior to the due date of the  
13 bid.

14 (d) Maintenance of wage standards.--For each position in  
15 which a contractor employs any person pursuant to the  
16 privatization contract, the minimum compensation to be paid for  
17 the position shall be the greater of the wage rate paid at step  
18 one of the grade or classification under which an agency  
19 employee whose duties are most similar is paid, plus the cash  
20 value of health and other benefits provided to those State  
21 employees, or the average private sector compensation rate,  
22 including the value of health and other benefits, for the  
23 position as determined by the Department of Labor and Industry.

24 (e) Term.--The term of any privatization contract shall not  
25 exceed two years. No amendment to a privatization contract shall  
26 be valid if it has the purpose or effect of avoiding any  
27 requirement of this act.

28 (f) Contract provisions.--A privatization contract shall  
29 contain provisions requiring the contractor to offer available  
30 employee positions pursuant to the contract to qualified regular

1 employees of the agency whose State employment is terminated  
2 because of the privatization contract. A privatization contract  
3 shall also contain provisions requiring the contractor to comply  
4 with a policy of nondiscrimination and equal opportunity for all  
5 persons and to take affirmative steps to provide equal  
6 opportunity for all persons.

7 (g) Union neutrality.--State funds shall not be used to  
8 support or oppose unionization, including, but not limited to,  
9 preparation and distribution of materials which advocate for or  
10 against unionization; hiring or consulting legal counsel or  
11 other consultants to advise the contractor about how to assist,  
12 promote or deter union organizing or how to impede a union which  
13 represents the contractor's employees from fulfilling its  
14 representational responsibilities; holding meetings to influence  
15 employees about unionization; planning or conducting activities  
16 by supervisors to assist, promote or deter union activities; or  
17 defending against unfair labor practice charges brought by  
18 Federal or State enforcement agencies.

19 Section 5. Review of contract costs.

20 (a) Estimate of costs.--Any agency considering whether to  
21 enter into a privatization contract shall prepare a  
22 comprehensive written estimate of the costs of regular agency  
23 employees providing the subject services in the most cost-  
24 efficient manner. The estimate shall include all direct and  
25 indirect costs of regular agency employees providing the subject  
26 services, including, but not limited to, pension, insurance and  
27 other employee benefit costs. For the purpose of this estimate,  
28 any employee organization may, at any time before the final day  
29 for the agency to receive sealed bids pursuant to section 4(b),  
30 propose amendments to any relevant collective bargaining

1 agreement to which it is a party. Any amendments shall take  
2 effect only if necessary to reduce the cost estimate pursuant to  
3 this subsection below the contract cost. The estimate shall  
4 remain confidential until after the final day for the agency to  
5 receive sealed bids for the privatization contract at which time  
6 the estimate shall become a public record, shall be filed in the  
7 agency and shall be published in the Pennsylvania Bulletin.

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

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

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

30 (2) The quality of the services to be provided by the

1 designated bidder is likely to satisfy the quality  
2 requirements of the statement prepared pursuant to section  
3 4(b) and to equal or exceed the quality of services which  
4 could be provided by regular agency employees.

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

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

12 Any privatization contract entered into by an agency and the  
13 agency certification described in this subsection shall be  
14 public records subject to disclosure pursuant to the act of June  
15 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know  
16 Law.

17 Section 6. Monitoring and enforcement of privatization  
18 contracts.

19 (a) Subcontracts and amendments to privatization  
20 contracts.--

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

24 (i) The selection of the subcontractor.

25 (ii) The provisions of the subcontract.

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



1 (b) Submission of audits.--Any private contractor awarded a  
2 privatization contract, and any subcontractor to a private  
3 contractor subject to these provisions, shall file with the  
4 agency copies of financial audits of the private contractor  
5 prepared at least annually during the course of the contract  
6 term.

7 (c) Access.--All privatization contracts shall include a  
8 contract provision specifying that in order to determine  
9 compliance with these principles as well as the contract, the  
10 private contractor shall be required to provide the Commonwealth  
11 or its agents, except where prohibited by Federal or State laws,  
12 regulations or rules, reasonable access through representatives  
13 of the private contractor to facilities, records and employees  
14 that are used in conjunction with the provision of contract  
15 services.

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

24 (e) Enforcement.--The agency may seek contractual remedies  
25 for any violation of a privatization contract. In addition, if a  
26 contractor fails to comply with section 4(d), (f) or (g), any  
27 person or entity aggrieved by the violation may bring a claim  
28 for equitable and other relief, including back pay. In such a  
29 suit, an aggrieved person or entity shall be entitled to costs  
30 and attorney fees.

1 Section 7. Public record ownership and access.

2 (a) Ownership of public records.--

3 (1) No contractor or subcontractor, or employee or agent  
4 of a contractor or subcontractor, shall have any ownership  
5 rights or interest in any public records which the  
6 contractor, subcontractor, employee or agent possesses,  
7 modifies or creates pursuant to a contract, subcontract or  
8 amendment to a contract or subcontract.

9 (2) No contractor or subcontractor or employee or agent  
10 of a contractor or subcontractor shall impair the integrity  
11 of any public records which the contractor, subcontractor,  
12 employee or agent possesses or creates.

13 (3) Public records which a contractor, subcontractor or  
14 employee or agent of a contractor or subcontractor possesses,  
15 modifies or creates pursuant to a contract or subcontract  
16 shall at all times and for all purposes remain the property  
17 of the Commonwealth.

18 (b) Public access to information.--

19 (1) Any public record which an agency provides to a  
20 contractor or subcontractor or which a contractor or  
21 subcontractor creates shall be and remain a public record for  
22 the purposes of the act of June 21, 1957 (P.L.390, No.212),  
23 referred to as the Right-to-Know Law, and the enforcement  
24 provisions of that law shall apply to any failure to disclose  
25 records under this section.

26 (2) With regard to any public record, the agency and the  
27 contractor or subcontractor shall have a joint and several  
28 obligation to comply with the obligations of the agency under  
29 the Right-to-Know Law, provided the determination of whether  
30 to disclose a particular record or type of record shall be

1 made solely by the agency.

2 (3) No contractor or subcontractor or employee or agent  
3 of a contractor or subcontractor shall disclose to the public  
4 any public records:

5 (i) Which it possesses, modifies or creates pursuant  
6 to a contract, subcontract or amendment to a contract or  
7 subcontract.

8 (ii) Which the agency:

9 (A) is prohibited from disclosing pursuant to  
10 Federal or State law in all cases;

11 (B) may disclose pursuant to Federal or State  
12 law only to certain entities or individuals or under  
13 certain conditions; or

14 (C) may withhold from disclosure pursuant to  
15 Federal or State law.

16 (4) No provision of this subsection shall be construed  
17 to prohibit any contractor from disclosing public records to  
18 any of its subcontractors to carry out the purposes of its  
19 subcontract.

20 (5) No contractor or subcontractor or employee or agent  
21 of a contractor or subcontractor shall sell, market or  
22 otherwise profit from the disclosure or use of any public  
23 records which are in its possession pursuant to a contract,  
24 subcontract or amendment to a contract or subcontract, except  
25 as authorized in the contract, subcontract or amendment.

26 (6) Any contractor or subcontractor or employee or agent  
27 of a contractor or subcontractor which learns of any  
28 violation of this section shall, no later than seven calendar  
29 days after learning of the violation, notify the agency and  
30 the Attorney General of the violation.

1 (c) Penalties.--In addition to any remedies provided under  
2 the Right-to-Know Law:

3 (1) If any person violates subsection (a) or (b), the  
4 Attorney General may bring an action against the person  
5 seeking:

6 (i) damages on behalf of the State for the  
7 violation;

8 (ii) restitution for damages suffered by any person  
9 as a result of the violation; or

10 (iii) imposition and recovery of a civil penalty of  
11 not more than \$50,000 for the violation.

12 (2) In addition to the remedies under paragraph (1), any  
13 person aggrieved by a violation of subsection (a) or (b) may  
14 bring an action to recover any damages suffered as a result  
15 of the violation.

16 (3) In any action brought under paragraph (1) or (2),  
17 the court may:

18 (i) order disgorgement of any profits or other  
19 benefits derived as a result of a violation of subsection  
20 (a) or (b);

21 (ii) award punitive damages, costs and reasonable  
22 attorney fees; and

23 (iii) order injunctive or other equitable relief.

24 (4) Proof of public interest or public injury shall not  
25 be required in any action brought under paragraph (1) or (2).  
26 No action may be brought under paragraph (1) or (2) more than  
27 three years after the occurrence of the violation.

28 (5) Any person who knowingly and willfully violates  
29 subsection (a) or (b) shall, for each violation, be fined not  
30 more than \$5,000 or imprisoned for not less than one year nor

1 more than five years, or both.

2 Section 8. Prohibition against discrimination or retaliation  
3 for disclosure of information.

4 (a) General rule.--No person shall retaliate or discriminate  
5 in any manner against any public employee or employee of a  
6 private contractor because that employee, or any person acting  
7 on behalf of the employee, in good faith:

8 (1) Engaged in any disclosure of information relating to  
9 the services provided by a private contractor pursuant to a  
10 privatization contract.

11 (2) Advocated on behalf of service recipients with  
12 respect to the care or services provided by the private  
13 contractor.

14 (3) Initiated, cooperated or otherwise participated in  
15 any investigation or proceeding of any governmental entity  
16 relating to the services provided pursuant to a privatization  
17 contract.

18 (b) Attempts.--No person shall retaliate or discriminate in  
19 any manner against any public employee or employee of a private  
20 contractor because the employee attempted or had an intention to  
21 engage in an action described in subsection (a).

22 (c) Restrictions on reporting prohibited.--No person shall  
23 by contract, policy or procedure prohibit or restrict any  
24 employee of a private contractor from engaging in any action for  
25 which a protection against discrimination or retaliation is  
26 provided under subsection (a).

27 (d) Confidential information.--This section does not protect  
28 disclosures that would violate Federal or State law or diminish  
29 or impair the rights of any person to the continued protection  
30 of confidentiality of communications provided by Federal or

1 State law.

2 (e) Good faith action.--With respect to the conduct  
3 described in subsection (a)(1), an employee of a private  
4 contractor shall be considered to be acting in good faith if the  
5 employee reasonably believes that:

6 (1) the information is true; and

7 (2) the information disclosed by the employee:

8 (i) evidences a violation of any law, rule or  
9 regulation or of a generally recognized professional or  
10 clinical standard; or

11 (ii) relates to the care, services or conditions  
12 which potentially endanger one or more recipients of  
13 service or employees employed pursuant to a privatization  
14 contract.

15 (f) Confidentiality of complaints to government agencies.--  
16 The identity of an employee of a private contractor who  
17 complains in good faith to a government agency or department or  
18 any member or employee of the General Assembly about the quality  
19 of services provided by a private contractor shall remain  
20 confidential and shall not be disclosed by any person except  
21 upon the knowing written consent of the employee of the private  
22 contractor and except in the case in which there is imminent  
23 danger to health or public safety or an imminent violation of  
24 criminal law.

25 (g) Enforcement.--

26 (1) (i) Any current or former public employee or  
27 employee of a private contractor who believes that the  
28 employee has been retaliated or discriminated against in  
29 violation of subsection (a), (b) or (c) may file a civil  
30 action in a court of competent jurisdiction against the

1 person believed to have violated subsection (a), (b) or  
2 (c).

3 (ii) If the court determines that a violation of  
4 subsection (a), (b) or (c) has occurred, the court shall  
5 award damages which result from the unlawful act or acts,  
6 including compensatory damages, reinstatement,  
7 reimbursement of any wages, salary, employment benefits  
8 or other compensation denied or lost to the employee by  
9 reason of the violation, as well as punitive damages,  
10 attorney fees and costs, including expert witness fees.  
11 The court shall award interest on the amount of damages  
12 awarded at the prevailing rate.

13 (iii) The court may issue temporary, preliminary and  
14 permanent injunctive relief restraining violations of  
15 this act, including the restraint of any withholding of  
16 the payment of wages, salary, employment benefits or  
17 other compensation, plus interest, found by the court to  
18 be due and the restraint of any other change in the terms  
19 and conditions of employment and may award other  
20 equitable relief as may be appropriate, including  
21 employment, reinstatement and promotion.

22 (iv) An action may be brought under this subsection  
23 not later than two years after the date of the last event  
24 constituting the alleged violation for which the action  
25 is brought.

26 (2) Any person who violates subsection (a), (b) or (c)  
27 shall be subject to a civil penalty not to exceed \$10,000 for  
28 each violation. In determining the amount of any penalty  
29 under this subsection, the appropriateness of the penalty to  
30 the size of the business of the person charged and the

1 gravity of the violation shall be considered. The amount of  
2 any penalty under this subsection, when finally determined,  
3 may be:

4 (i) deducted from any sums owing by the Commonwealth  
5 to the person charged; or

6 (ii) ordered by the court, in an action brought for  
7 a violation of subsection (a), (b) or (c) brought by the  
8 employee or employees who suffered retaliation or  
9 discrimination.

10 (h) Burden of proof.--

11 (1) In any civil action brought under this act, the  
12 complainant shall have the initial burden of making a prima  
13 facie showing that any behavior described in subsections (a),  
14 (b) and (c) was a contributing factor in the adverse action  
15 or inaction alleged in the complaint. A prima facie case  
16 shall be established if the complainant can show that:

17 (i) the respondent knew of the complainant's  
18 protected activities at the time that the alleged  
19 unfavorable action or inaction was taken; and

20 (ii) the discriminatory action occurred within a  
21 period of time such that a reasonable person could  
22 conclude that an activity protected by subsection (a) or  
23 (b) was a contributing factor in the discriminatory  
24 treatment.

25 (2) Once the complainant establishes a prima facie case,  
26 the burden shifts to the respondent to demonstrate, by clear  
27 and convincing evidence, that it would have taken the same  
28 action or inaction in the absence of the behavior.

29 (i) Notice.--

30 (1) Each private contractor shall post and keep posted



1 in conspicuous places on its premises where notices to  
2 employees and applicants for employment are customarily  
3 posted, a notice setting forth excerpts from or summaries of  
4 the pertinent provisions of this act and information  
5 pertaining to the filing of a charge under this section.

6 (2) Any employer that willfully violates this section  
7 may be assessed a civil penalty not to exceed \$100 for each  
8 separate offense.

9 Section 9. Nonpreemption.

10 Nothing in this act preempts any other law and nothing in  
11 this act shall be construed or interpreted to impair or diminish  
12 in any way the authority of any locality, municipality or  
13 subdivision to enact and enforce any law which provides  
14 equivalent or greater protection for its employees.

15 Section 10. Applicability.

16 This act shall apply as follows:

17 (1) Section 8 shall apply to acts of retaliation or  
18 discrimination occurring on or after the first day of the  
19 first month that begins after the effective date of this act.

20 (2) The remaining provisions of this act shall apply to  
21 any privatization contract entered into after the effective  
22 date of this act.

23 Section 11. Effective date.

24 This act shall take effect in 60 days.