
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1504 Session of
2007

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

REFERRED TO COMMITTEE ON LABOR RELATIONS, JUNE 13, 2007

AN ACT

1 Providing for public records in privatization 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 Records 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 ensure that access to public information guaranteed
2 by the act of June 21, 1957 (P.L.390, No.212), referred to as
3 the Right-to-Know Law, is not in any way hindered by public
4 services being provided by private contractors.

5 Section 3. Definitions.

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

9 "Agency." Includes an executive office, department,
10 division, board, commission or other office or officer in the
11 executive branch of the government.

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

18 "Person." Includes an individual, institution, Federal,
19 State or local governmental entity or any other public or
20 private entity.

21 "Private contractor." Any entity which enters into a
22 privatization contract.

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

29 "Public record." A public record as defined in section 1 of
30 the act of June 21, 1957 (P.L.390, No.212), referred to as the

1 Right-to-Know Law. The term includes any document relating to
2 the privatization contract or performance under the contract,
3 prepared, received or retained by a contractor or subcontractor
4 whether the document be handwritten, typed, tape-recorded,
5 printed, photocopied, photographed or recorded by any other
6 method.

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

11 "Subcontractor." A subcontractor of a private contractor for
12 work under a privatization contract or an amendment to a
13 privatization contract.

14 Section 4. Public record ownership and access.

15 (a) Ownership of public records.--

16 (1) No contractor or subcontractor, or employee or agent
17 of a contractor or subcontractor, shall have any ownership
18 rights or interest in any public records which the
19 contractor, subcontractor, employee or agent possesses,
20 modifies or creates pursuant to a contract, subcontract or
21 amendment to a contract or subcontract.

22 (2) No contractor or subcontractor or employee or agent
23 of a contractor or subcontractor shall impair the integrity
24 of any public records which the contractor, subcontractor,
25 employee or agent possesses or creates.

26 (3) Public records which a contractor, subcontractor or
27 employee or agent of a contractor or subcontractor possesses,
28 modifies or creates pursuant to a contract or subcontract
29 shall at all times and for all purposes remain the property
30 of the Commonwealth.

1 (b) Public access to information.--

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

9 (2) With regard to any public record, the agency and the
10 contractor or subcontractor shall have a joint and several
11 obligation to comply with the obligations of the agency under
12 the Right-to-Know Law, provided the determination of whether
13 to disclose a particular record or type of record shall be
14 made solely by the agency.

15 (3) No contractor or subcontractor or employee or agent
16 of a contractor or subcontractor shall disclose to the public
17 any public records:

18 (i) Which it possesses, modifies or creates pursuant
19 to a contract, subcontract or amendment to a contract or
20 subcontract.

21 (ii) Which the agency:

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

24 (B) may disclose pursuant to Federal or State
25 law only to certain entities or individuals or under
26 certain conditions; or

27 (C) may withhold from disclosure pursuant to
28 Federal or State law.

29 (4) No provision of this subsection shall be construed
30 to prohibit any contractor from disclosing public records to

1 any of its subcontractors to carry out the purposes of its
2 subcontract.

3 (5) No contractor or subcontractor or employee or agent
4 of a contractor or subcontractor shall sell, market or
5 otherwise profit from the disclosure or use of any public
6 records which are in its possession pursuant to a contract,
7 subcontract or amendment to a contract or subcontract, except
8 as authorized in the contract, subcontract or amendment.

9 (6) Any contractor or subcontractor or employee or agent
10 of a contractor or subcontractor which learns of any
11 violation of this section shall, no later than seven calendar
12 days after learning of the violation, notify the agency and
13 the Attorney General of the violation.

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

16 (1) If any person violates subsection (a) or (b), the
17 Attorney General may bring an action against the person
18 seeking:

19 (i) damages on behalf of the State for the
20 violation;

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

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

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

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

1 (i) order disgorgement of any profits or other
2 benefits derived as a result of a violation of subsection
3 (a) or (b);

4 (ii) award punitive damages, costs and reasonable
5 attorney fees; and

6 (iii) order injunctive or other equitable relief.

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

11 (5) Any person who knowingly and willfully violates
12 subsection (a) or (b) shall, for each violation, be fined not
13 more than \$5,000 or imprisoned for not less than one year nor
14 more than five years, or both.

15 Section 19. Nonpreemption.

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

21 Section 20. Applicability.

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

24 Section 21. Effective date.

25 This act shall take effect in 60 days.