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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 250 Session of  
2011

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INTRODUCED BY GROVE, BOYD, CLYMER, DENLINGER, GRELL, KAUFFMAN,  
PYLE AND SWANGER, JANUARY 26, 2011

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REFERRED TO COMMITTEE ON STATE GOVERNMENT, JANUARY 26, 2011

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AN ACT

1 Establishing the Council on Efficient Government; and providing  
2 for its powers and duties and for business cases to  
3 outsource.

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 Council on  
8 Efficient Government Act.

9 Section 2. 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 "Council." The Council on Efficient Government established  
14 by this act.

15 "State agency." Any of the following:

16 (1) Any department, agency, board or commission under  
17 the jurisdiction of the Governor.

18 (2) The Office of Attorney General.

1 (3) The Department of the Auditor General.

2 (4) The Treasury Department.

3 (5) An independent administrative department, agency,  
4 board or commission of the Executive branch of State  
5 government.

6 Section 3. Council on Efficient Government.

7 (a) Establishment.--The Council on Efficient Government is  
8 established and shall consist of the following members:

9 (1) The chief executive or administrative officer of a  
10 State agency who is appointed by the Governor.

11 (2) Two members who are engaged in private enterprise  
12 and who are appointed by the Governor.

13 (3) Two members who are engaged in private enterprise  
14 and who are appointed by the President pro tempore of the  
15 Senate.

16 (4) Two members who are engaged in private enterprise  
17 and who are appointed by the Speaker of the House of  
18 Representatives.

19 (b) Terms.--The terms of appointment for members to the  
20 council are for two years, unless the chief executive or  
21 administrative officer of a State agency ceases to hold office.  
22 The Governor shall appoint a replacement member for the  
23 remainder of the unexpired term.

24 (c) Reimbursement of reasonable expenses.--A member of the  
25 council who is engaged in private enterprise is not eligible to  
26 receive compensation but is eligible for reimbursement of  
27 reasonable expenses, pursuant to State law.

28 (d) Disqualification on council reviews.--A member of the  
29 council may not participate in a council review of a business  
30 case to outsource if the State agency is conducting the proposed

1 outsourcing or, in the case of a member engaged in private  
2 enterprise, if the member has a business relationship with an  
3 entity that is involved or potentially could be involved in the  
4 proposed outsourcing.

5 (e) Delegation prohibited.--A member of the council who is  
6 engaged in private enterprise may not delegate the membership to  
7 a designee.

8 (f) Quorum.--A quorum shall consist of at least three  
9 members of the council.

10 (g) Vacancies.--A vacancy on the council shall be filled in  
11 the same manner as the original appointment, and any member  
12 appointed to fill a vacancy occurring for a reason other than  
13 the expiration of a term shall serve only for the unexpired term  
14 of the member's predecessor.

15 (h) Chairperson.--The council shall select a chairperson  
16 from among its members.

#### 17 Section 4. Powers and duties.

18 (a) General rule.--The council shall:

19 (1) Review whether or not a good or service provided by  
20 a State agency may be privatized to provide the same type and  
21 quality of good or service that would result in cost savings  
22 or best value. The council may hold public hearings as part  
23 of its evaluation process and shall report its  
24 recommendations to the Governor, the President pro tempore of  
25 the Senate and the Speaker of the House of Representatives.

26 (2) Review privatization of a good or service at the  
27 request of a State agency or a private enterprise.

28 (3) Review issues concerning agency competition with one  
29 or more private enterprises to determine ways to eliminate  
30 any unfair competition with a private enterprise.

1           (4) Recommend privatization to a State agency if a  
2 proposed privatization is demonstrated to provide a more  
3 cost-efficient or more effective manner of providing a good  
4 or service.

5           (5) Employ a standard process for reviewing business  
6 cases to outsource.

7           (6) Review and evaluate business cases to outsource as  
8 requested by the Governor or the State agency head whose  
9 State agency is proposing to outsource.

10          (7) No later than 30 days before a State agency's  
11 issuance of a solicitation of \$10,000,000 or more, provide to  
12 the State agency conducting the procurement, the Governor,  
13 the President pro tempore of the Senate and the Speaker of  
14 the House of Representatives an advisory report for each  
15 business case reviewed and evaluated by the council. The  
16 report shall contain all versions of the business case, an  
17 evaluation of the business case, any relevant recommendations  
18 and sufficient information to assist the State agency in  
19 determining whether the business case to outsource should be  
20 included with the legislative budget request.

21          (8) Recommend and implement standard processes for State  
22 agency and council review and evaluate State agency business  
23 cases to outsource, including templates for use by State  
24 agencies in submitting business cases to the council.

25          (9) Recommend standards, processes and guidelines for  
26 use by State agencies in developing business cases to  
27 outsource.

28          (10) Incorporate any lesson learned from outsourcing  
29 services and activities into council standards, procedures  
30 and guidelines, as appropriate, and identify and disseminate

1 to State agencies information regarding best practices in  
2 outsourcing efforts.

3 (11) Develop guidelines for assisting State employees  
4 whose jobs are eliminated as a result of outsourcing.

5 (12) Receive complaints of violations of this act.

6 (13) Transmit complaints received under this section to  
7 the State agency alleged to be in violation.

8 (14) Hold public hearings on complaints and determine  
9 whether a State agency is in violation of this act.

10 (15) Issue a written report of its findings to the  
11 complainant within 90 days after receiving the State agency's  
12 response.

13 (16) Transmit to the Governor, the President pro tempore  
14 of the Senate and the Speaker of the House of Representatives  
15 a complete report of each meeting, including recommendations  
16 to correct violations of prohibitions on competition with  
17 private enterprise and findings on necessary exceptions to  
18 the prohibitions.

19 (17) (i) Solicit petitions of interest from private  
20 sector service providers as the council considers  
21 appropriate. The council may evaluate and review the  
22 petitions and may hold public hearings as part of the  
23 evaluation process. The council may recommend some or all  
24 of the petitions to the Governor's Office for further  
25 review pursuant to State law.

26 (ii) A person does not have a cause of action based  
27 on the failure of the council to consider a petition of  
28 interest or make a recommendation.

29 (b) Evaluation and review of exemptions.--The council may  
30 evaluate and review all State agency exemptions and exemptions

1 to the restrictions on competition with private enterprise in  
2 this act and may determine that any function or functions of a  
3 State agency are in violation of this act. The council shall  
4 report its findings and recommendations to the Governor, the  
5 President pro tempore of the Senate and the Speaker of the House  
6 of Representatives.

7 (c) Annual report.--The council shall prepare an annual  
8 report on:

9 (1) Recommendations on innovative methods of delivering  
10 government services that would improve the efficiency,  
11 effectiveness or competition in the delivery of government  
12 services, including enterprise-wide proposals.

13 (2) Outsourcing efforts of each State agency, including  
14 the number of outsourcing business cases and solicitations,  
15 the number and dollar value of outsourcing contracts,  
16 descriptions of performance results as applicable, any  
17 contract violations or project slippages and the status of  
18 extensions, renewals and amendments of outsourcing contracts.

19 (3) Information about the council's activities.

20 (4) The status of the inventory of commercial activities  
21 created under section 5.

22 (d) Submission of annual report.--The council shall submit  
23 the annual report prescribed by subsection (c) to the Governor,  
24 the President pro tempore of the Senate and the Speaker of the  
25 House of Representatives no later than January 15 immediately  
26 following the calendar year for which the report is made. The  
27 council shall provide an oral report to the Joint Legislative  
28 Budget Committee and the Governor's Budget Office when the  
29 legislature is not in session.

30 (e) Staff.--The Auditor General of the Commonwealth shall

1 employ an adequate number of staff who collectively possess  
2 significant expertise and experience as required to carry out  
3 the duties specified in this act.

4 (f) Cooperation by State agencies.--Each State agency shall  
5 submit to the council all information, documents and other  
6 materials required by the council pursuant to this act.

7 (g) Release of performance audits.--At the request of the  
8 council, the Auditor General shall provide performance audit and  
9 other required information relating to State agency budgets and  
10 functions. The Auditor General may assist in the development and  
11 review of the agency inventory of commercial activities  
12 prescribed in section 5.

13 (h) Filing of recommendations for privatization.--In  
14 addition to filing a copy of recommendations for privatization  
15 with a State agency head, the council shall file a copy of its  
16 recommendations for privatization with the Governor's Office,  
17 the Joint Legislative Budget Committee and the Governor's Budget  
18 Office for submission to the relevant legislative appropriation  
19 subcommittee.

20 (i) Advisory groups.--The council may appoint advisory  
21 groups to conduct studies, research or analyses and make reports  
22 and recommendations with respect to a matter within the  
23 jurisdiction of the council. At least one member of the council  
24 shall serve on each advisory group.

25 (j) Independent privatizations.--Subject to the provisions  
26 of section 6, nothing in this act shall be construed to preclude  
27 a State agency from privatizing the provision of a good or  
28 service independently of any recommendation of the council,  
29 provided there is legal authority to do so.

30 (k) Aggrieved persons.--Except as provided by statute, any

1 aggrieved person may elect to directly seek judicial relief from  
2 action of the council.

3 Section 5. Commercial activities inventory and review.

4 (a) General rule.--On or before a date selected by  
5 concurrent resolution or act of the General Assembly, the  
6 council shall create an inventory of activities of State  
7 agencies to classify whether each activity or elements of the  
8 activity are:

9 (1) A commercial activity that may be obtained in whole  
10 or in part from a private enterprise.

11 (2) An inherently governmental activity.

12 (b) Biennial update of inventory.--The council shall update  
13 the inventory created under this section at least every two  
14 years.

15 (c) Public access to inventory.--The council shall make the  
16 inventory available to the public through electronic means.

17 (d) Cooperation from State agencies.--State agencies shall  
18 cooperate with inventory requests made by the council.

19 Section 6. Business cases to outsource.

20 (a) Project cost of more than \$10,000,000.--A proposal to  
21 outsource having a projected cost of more than \$10,000,000 in  
22 any fiscal year shall require:

23 (1) An initial business case analysis conducted by the  
24 State agency and submitted to the council, the Governor, the  
25 President pro tempore of the Senate and the Speaker of the  
26 House of Representatives at least 60 days before a  
27 solicitation is issued. The council shall evaluate the  
28 business case analysis and submit an advisory report to the  
29 State agency, the Governor, the President pro tempore of the  
30 Senate and the Speaker of the House of Representatives when

1 the advisory report is completed, but at least 30 days before  
2 the State agency issues the solicitation.

3 (2) A final business case analysis conducted by the  
4 State agency and submitted after the conclusion of any  
5 negotiations, at least 30 days before execution of a  
6 contract, to the council, the Governor, the President pro  
7 tempore of the Senate and the Speaker of the House of  
8 Representatives.

9 (b) Project cost of \$1,000,000 to \$10,000,000.--A proposal  
10 to outsource having a projected cost of at least \$1,000,000 but  
11 not more than \$10,000,000 in any fiscal year shall require:

12 (1) An initial business case analysis conducted by the  
13 State agency and submission of the business case, at least 30  
14 days before issuing a solicitation, to the council, the  
15 Governor, the President pro tempore of the Senate and the  
16 Speaker of the House of Representatives.

17 (2) A final business case analysis conducted by the  
18 State agency and submitted after the conclusion of any  
19 negotiations, at least 30 days before execution of a  
20 contract, to the council, the Governor, the President pro  
21 tempore of the Senate and the Speaker of the House of  
22 Representatives.

23 (c) Project cost of less than \$1,000,000.--A business case  
24 to outsource having a projected cost of less than \$1,000,000 in  
25 any fiscal year shall require a final business case analysis  
26 conducted by the State agency after the conclusion of any  
27 negotiations and provided to the council at least 30 days before  
28 execution of a contract. The council shall provide the business  
29 case in its annual report to the President pro tempore of the  
30 Senate and the Speaker of the House of Representatives.

1 (d) Contents of business case.--For any proposed  
2 outsourcing, the State agency shall develop a business case that  
3 justifies the proposal to outsource. The business case is not  
4 subject to challenge or protest. The business case shall  
5 include:

6 (1) A detailed description of the service or activity  
7 for which the outsourcing is proposed.

8 (2) A description and analysis of the State agency's  
9 current performance based on existing performance measures if  
10 the State agency is currently performing the service or  
11 activity.

12 (3) The goals to be achieved through the proposed  
13 outsourcing and the rationale for the goals.

14 (4) A citation to the existing or proposed legal  
15 authority for outsourcing the service or activity.

16 (5) A description of available options for achieving the  
17 goals. If State employees are currently performing the  
18 service or activity, at least one option involving  
19 maintaining State provision of the service or activity shall  
20 be included.

21 (6) An analysis of the advantages and disadvantages of  
22 each option, including, at a minimum, potential performance  
23 improvements and risks.

24 (7) A description of the current market for the  
25 contractual services that are under consideration for  
26 outsourcing.

27 (8) (i) A cost-benefit analysis documenting the direct  
28 and indirect specific baseline costs, savings and  
29 qualitative and quantitative benefits involved in or  
30 resulting from the implementation of the recommended

1 option or options. The analysis shall specify the  
2 schedule that, at a minimum, must be adhered to in order  
3 to achieve the estimated savings. All elements of cost  
4 shall be clearly identified in the cost-benefit analysis,  
5 described in the business case and supported by  
6 applicable records and reports. The head of the State  
7 agency shall attest that based on the data and  
8 information underlying the business case and to the best  
9 of his knowledge, all projected costs, savings and  
10 benefits are valid and achievable.

11 (ii) For the purposes of this paragraph:

12 (A) "Cost" means the reasonable, relevant and  
13 verifiable cost, which may include elements such as  
14 personnel, materials and supplies, services,  
15 equipment, capital depreciation, rent, maintenance  
16 and repairs, utilities, insurance, personnel travel,  
17 overhead and interim and final payments. The  
18 appropriate elements shall depend on the nature of  
19 the specific initiative.

20 (B) "Savings" means the difference between the  
21 direct and indirect actual annual baseline costs  
22 compared to the projected annual cost for the  
23 contracted functions or responsibilities in any  
24 succeeding State fiscal year during the term of the  
25 contract.

26 (9) A description of differences among current State  
27 agency policies and processes and, as appropriate, a  
28 discussion of options for or a plan to standardize,  
29 consolidate or revise current policies and processes, if any,  
30 to reduce the customization of any proposed solution that

1 would otherwise be required.

2 (10) A description of the specific performance standards  
3 that must, at a minimum, be met to ensure adequate  
4 performance.

5 (11) The projected time frame for key events from the  
6 beginning of the procurement process through the expiration  
7 of the contract.

8 (12) A plan to ensure compliance with applicable record  
9 retention laws and the act of February 14, 2008 (P.L.6,  
10 No.3), known as the Right-to-Know Law.

11 (13) A specific and feasible contingency plan addressing  
12 contractor nonperformance and a description of the tasks  
13 involved in and costs required for its implementation.

14 (14) A State agency's transition plan for addressing  
15 changes in the number of agency personnel, affected business  
16 processes, employee transition issues and communication with  
17 affected stakeholders, such as State agency clients and the  
18 public. The transition plan must contain a reemployment and  
19 retraining assistance plan for employees who are not retained  
20 by the State agency or employed by the contractor.

21 (15) A plan for ensuring access by persons with  
22 disabilities in compliance with applicable Federal and State  
23 laws.

24 (16) A description of legislative and budgetary actions  
25 necessary to accomplish the proposed outsourcing.

26 (e) Required contents of contracts.--Each contract for a  
27 proposed outsourcing under this section shall include the  
28 following:

29 (1) A scope-of-work provision that clearly specifies  
30 each service or deliverable to be provided, including a

1 description of each service or deliverable or activity that  
2 is quantifiable, measureable and verifiable. This contractual  
3 provisions shall include a clause stating that if a  
4 particular service or deliverable is inadvertently omitted or  
5 not clearly specified, but determined to be operationally  
6 necessary and verified to have been performed by the agency  
7 within the 12 months before the execution of the contract,  
8 the service or deliverable will be provided by the contractor  
9 through the identified contract amendment process.

10 (2) A service-level agreement provision describing all  
11 services to be provided under the terms of the agreement, the  
12 State agency's service requirements and performance  
13 objectives, specific responsibilities of the State agency and  
14 the contractor and the process for amending any portion of  
15 the service-level agreement. Each service-level agreement  
16 shall contain an exclusivity clause that allows the State  
17 agency to retain the right to perform the service or  
18 activity, directly or with another contractor, if service  
19 levels are not being achieved.

20 (3) A provision that identifies all associated costs,  
21 specific payment terms and payment schedules, including  
22 provisions governing incentives and financial disincentives  
23 and criteria governing payment.

24 (4) A provision that identifies a clear and specific  
25 transition plan that will be implemented in order to complete  
26 all required activities needed to transfer the service or  
27 activity from the State agency to the contractor and operate  
28 the service or activity successfully.

29 (5) A performance standards provision that identifies  
30 all required performance standards, which shall include at a

1 minimum:

2 (i) Detailed and measurable acceptance criteria for  
3 each service or deliverable to be provided to the State  
4 agency under the terms of the contract that document the  
5 required performance level.

6 (ii) A method for monitoring and reporting progress  
7 in achieving specified performance standards and levels.

8 (iii) The sanctions or disincentives that will be  
9 imposed for nonperformance by the contractor or State  
10 agency.

11 (6) A provision that requires the contractor and its  
12 subcontractors to maintain adequate accounting records that  
13 comply with all applicable Federal and State laws and  
14 generally accepted accounting principles.

15 (7) A provision that authorizes the State agency to have  
16 access to and audit all records related to the contract and  
17 subcontracts, or any responsibilities or functions under the  
18 contract and subcontracts, for purposes of legislative  
19 oversight and a requirement for audits by a service  
20 organization pursuant to professional auditing standards, if  
21 appropriate.

22 (8) A provision that requires the contractor to  
23 interview and consider for employment with the contractor  
24 each displaced State employee who is interested in such  
25 employment.

26 (9) A contingency plan provision that describes the  
27 mechanism for continuing the operation of the service or  
28 activity, including transferring the service or activity back  
29 to the State agency or successor contractor, if the  
30 contractor fails to perform and comply with the performance

1 standards and levels of the contract and the contract is  
2 terminated.

3 (10) A provision that requires the contractor and its  
4 subcontractors to comply with applicable record retention  
5 laws and the Right-to-Know Law specifically to:

6 (i) Keep and maintain the public records that  
7 ordinarily and necessarily would be required by the State  
8 agency in order to perform the service or activity.

9 (ii) Provide the public with access to the public  
10 records on the same terms and conditions that the State  
11 agency would provide the records.

12 (iii) Ensure that records that are exempt or records  
13 that are confidential and exempt are not disclosed except  
14 as authorized by law.

15 (iv) Meet all requirements for retaining records and  
16 transfer to the State agency, at no cost, all public  
17 records in possession of the contractor on termination of  
18 the contract and destroy any duplicate public records  
19 that are exempt or confidential. All records stored  
20 electronically shall be provided to the State agency in a  
21 format that is compatible with the information technology  
22 systems of the State agency.

23 (11) (i) A provision that addresses ownership of  
24 intellectual property.

25 (ii) This paragraph shall not be construed to  
26 provide the specific authority needed by a State agency  
27 to obtain a copyright or trademark.

28 (12) If applicable, a provision that allows the State  
29 agency to purchase from the contractor, at its depreciated  
30 value, assets used by the contractor in the performance of

1 the contract. If assets have not depreciated, the State  
2 agency retains the right to negotiate to purchase at an  
3 agreed-upon cost.

4 Section 7. Council accounting method.

5 The council, by rule, shall establish an accounting method  
6 that:

7 (1) Is similar to generally accepted accounting  
8 principles used by a private enterprise.

9 (2) Allows a State agency to identify the total actual  
10 cost of engaging in a commercial activity in a manner similar  
11 to how a private enterprise identifies the total actual cost  
12 to the private enterprise, including the following:

13 (i) Labor expenses, such as compensation and  
14 benefits, costs of training, costs of paying overtime,  
15 costs of supervising labor or other personnel expenses.

16 (ii) Operating costs, such as vehicle maintenance  
17 and repair, marketing, advertising or other sales  
18 expenses, office expenses, costs of an accounting  
19 operation, such as billing, insurance expenses, real  
20 estate or equipment costs, debt service costs or a  
21 proportionate amount of other overhead or capital  
22 expenses, such as vehicle depreciation and depreciation  
23 of other fixed assets.

24 (iii) Contract management costs.

25 (iv) Other costs particular to a person supplying  
26 the good or service.

27 (3) Provides a process to estimate the taxes a State  
28 agency would pay related to engaging in a commercial activity  
29 if the State agency were required to pay Federal, State and  
30 local taxes to the same extent as a private enterprise

1 engaging in the commercial activity.

2 Section 8. Required review of commercial activities by  
3 Governor.

4 Beginning with a fiscal year designated by concurrent  
5 resolution or act of the General Assembly, the Governor, at  
6 least once every two fiscal years, shall select at least three  
7 commercial activities that are being performed by a State agency  
8 to be examined by the Governor's Budget Office.

9 Section 9. Duties of Governor's Budget Office.

10 (a) General rule.--The Governor's Budget Office shall:

11 (1) Determine the amount of an appropriation that is no  
12 longer needed by a State agency because all or a portion of  
13 the State agency's provision of a good or service is  
14 privatized.

15 (2) Adjust the Governor's budget recommendations to  
16 reflect the amount that is determined under paragraph (1).

17 (3) Report its findings to the President pro tempore of  
18 the Senate and the Speaker of the House of Representatives.

19 (b) Construction.--Nothing in this section shall be  
20 construed to prevent the Governor from making a budget  
21 recommendation regarding the restoration of a portion of the  
22 appropriation to a State agency that is reduced under this  
23 section.

24 Section 10. Applicability.

25 This act does not apply to contracts in support of the  
26 planning, development, implementation, operation or maintenance  
27 of the road, bridge and public transportation construction  
28 program of the Department of Transportation.

29 Section 11. Initial terms of members of the Council on  
30 Efficient Government.

1       Notwithstanding section 2, the initial members of the council  
2 who are engaged in private enterprise shall assign themselves by  
3 lot to terms of one or two years in office. The appointing  
4 authority shall make all subsequent appointments as prescribed  
5 by statute.

6 Section 12. Effective date.

7       This act shall take effect in 60 days.