

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**

**No. 1670** Session of  
2003

INTRODUCED BY DERMODY, DeWEESE, VEON, HALUSKA, WASHINGTON,  
WALKO, LEVDANSKY, GEORGE, THOMAS, PETRARCA, HORSEY,  
YOUNGBLOOD AND TANGRETTI, JUNE 23, 2003

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JUNE 23, 2003

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled  
2 "An act providing for and reorganizing the conduct of the  
3 executive and administrative work of the Commonwealth by the  
4 Executive Department thereof and the administrative  
5 departments, boards, commissions, and officers thereof,  
6 including the boards of trustees of State Normal Schools, or  
7 Teachers Colleges; abolishing, creating, reorganizing or  
8 authorizing the reorganization of certain administrative  
9 departments, boards, and commissions; defining the powers and  
10 duties of the Governor and other executive and administrative  
11 officers, and of the several administrative departments,  
12 boards, commissions, and officers; fixing the salaries of the  
13 Governor, Lieutenant Governor, and certain other executive  
14 and administrative officers; providing for the appointment of  
15 certain administrative officers, and of all deputies and  
16 other assistants and employes in certain departments, boards,  
17 and commissions; and prescribing the manner in which the  
18 number and compensation of the deputies and all other  
19 assistants and employes of certain departments, boards and  
20 commissions shall be determined," providing requirements for  
21 privatization contracts; establishing the Privatization  
22 Review Board in the Treasury Department and providing for its  
23 powers and duties; and providing for the Commission on  
24 Privatization and for former State employees.

25 The General Assembly of the Commonwealth of Pennsylvania  
26 hereby enacts as follows:

27 Section 1. The act of April 9, 1929 (P.L.177, No.175), known  
28 as The Administrative Code of 1929, is amended by adding an

1 article to read:

2 ARTICLE XI-A

3 PRIVATIZATION REVIEW BOARD

4 Section 1101-A. Definitions.--As used in this article:

5 "Agency" means any administrative department, departmental or  
6 independent administrative board, commission, agency,  
7 instrumentality, authority or institution of the Commonwealth.

8 "Board" means the Privatization Review Board established  
9 under section 1110-A.

10 "Dependent" means the spouse and children of an employe, if  
11 such persons qualify for dependent status under the Internal  
12 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.)  
13 or for whom a support order has been or could be granted under  
14 the laws of this Commonwealth.

15 "Privatization contract" means an agreement or combination or  
16 series of agreements by which a nongovernmental person or entity  
17 agrees with an agency to provide services, valued at one hundred  
18 thousand dollars (\$100,000) or more, which are substantially  
19 similar to or in lieu of, services provided, in whole or in  
20 part, by regular employes of the agency. Any subsequent  
21 agreement, including any agreement from a rebidding of  
22 previously privatized service, or any agreement renewing or  
23 extending a privatization contract, shall not be considered a  
24 privatization contract. An agreement solely to provide legal,  
25 management, consulting, planning, engineering or design services  
26 shall not be considered a privatization contract.

27 Section 1102-A. Validity of Privatization Contracts.--No  
28 agency shall enter into a privatization contract, and no  
29 privatization contract shall be valid, unless the agency  
30 complies with this article.

1 Section 1103-A. Method of Awarding Privatization

2 Contracts.--(a) An agency shall prepare a written statement of  
3 the services proposed to be the subject of a privatization  
4 contract, including the specific quantity and standard of  
5 quality of the services to be procured. The agency shall solicit  
6 competitive sealed bids for a privatization contract based on  
7 the services proposed in the statement.

8 (b) The day designated by the agency upon which it will  
9 accept the sealed bids shall be the same for all parties.

10 (c) The statement shall be a public record, shall be filed  
11 with the agency, the Office of Administration, the Office of the  
12 Budget and the Treasury Department.

13 (d) For each position in which a bidder intends to employ a  
14 person pursuant to the privatization contract and for which the  
15 duties of the person are substantially similar to the duties  
16 performed by a regular employe of the agency, the statement  
17 required by subsection (a) shall include a statement of the  
18 minimum wage rate to be paid for the position, which rate shall  
19 be lesser of step one of the grade or classification under which  
20 the comparable regular employe of the agency is paid, or the  
21 average private sector wage rate for the position as determined  
22 by the Department of Labor and Industry.

23 Section 1104-A. Mandatory Provisions of Privatization

24 Contracts.--A privatization contract shall contain the  
25 following:

26 (1) The term shall not exceed five (5) years, and no  
27 amendment shall be valid if the purpose or effect of the  
28 amendment is to avoid this section.

29 (2) The specific wage rate for each person to be employed  
30 under the privatization contract. The wage rate shall not be

1 less than the minimum wage rate defined in section 1103-A(d).

2 (3) A provision that the contractor shall pay not less than  
3 a percentum, comparable to the percentum paid by the  
4 Commonwealth for State employes, of the cost of health insurance  
5 plans for every employe employed not less than twenty (20) hours  
6 per week pursuant to such contract. The contractor shall also  
7 agree that an insurance plan shall provide coverage to the  
8 employe and the employe's dependents during the term of the  
9 privatization contract.

10 (4) A provision requiring the contractor to offer available  
11 employe positions pursuant to the privatization contract to  
12 qualified regular employes of the agency whose State employment  
13 is terminated because of the privatization contract and who  
14 satisfy the hiring criteria of the contractor.

15 (5) Provisions requiring the contractor to comply with a  
16 policy of nondiscrimination and equal opportunity for all  
17 persons under the laws of this Commonwealth and the United  
18 States, and to take affirmative steps to provide such equal  
19 opportunity for all such persons.

20 (6) Such other terms and conditions deemed by the agency to  
21 be necessary or in the best interests of the Commonwealth.

22 Section 1105-A. Duty to Report Payroll Records and  
23 Enforcement.--(a) A contractor shall submit quarterly payroll  
24 records to the agency, listing the name, address, Social  
25 Security number, hours worked and the hourly wage paid for each  
26 employe in the previous quarter.

27 (b) The Attorney General may bring a civil action for  
28 equitable relief in the Commonwealth Court to enforce this  
29 section or to prevent or remedy the dismissal, demotion or other  
30 action prejudicing any employe as a result of a report of a

1 violation of this section.

2 Section 1106-A. Cost Estimates.--(a) An agency shall  
3 prepare a comprehensive written estimate of the cost of regular  
4 agency employes providing the subject services in the most cost-  
5 efficient manner. The estimate shall include all direct and  
6 indirect costs of regular agency employes providing the subject  
7 services, including, but not limited to, pension, insurance and  
8 other employe benefit costs.

9 (b) For the purpose of the estimate in subsection (a), any  
10 employe organization may, at any time before the final day for  
11 the agency to receive sealed bids pursuant to section 1103-A,  
12 propose amendments to any relevant collective bargaining  
13 agreement to which it is a party. The amendments shall take  
14 effect only if necessary to reduce the cost estimate under this  
15 section below the contract cost pursuant to section 1108-A.

16 (c) The estimate shall remain confidential until after the  
17 final day for the agency to receive sealed bids for the  
18 privatization contract pursuant to section 1103-A, at which time  
19 the estimate shall become a public record and shall be filed  
20 with the agency, the Office of Administration, the Office of the  
21 Budget and the Treasury Department for review pursuant to  
22 section 1110-A.

23 Section 1107-A. Bids by Employe Organizations.--(a) After  
24 consulting any relevant employe organization, the agency shall  
25 provide adequate resources for the purpose of encouraging and  
26 assisting present agency employes to organize and submit a bid  
27 to provide the subject services. In determining what resources  
28 are adequate for this purpose, the agency shall refer to an  
29 existing collective bargaining agreement of a similar employe  
30 organization whose members perform the subject services, if

1 available, which agreement provides similar resources in the  
2 same or other agencies.

3 (b) However, if no such collective bargaining agreement  
4 exists, the agency shall refer to any existing collective  
5 bargaining agreements providing the resources and shall provide  
6 the resources at the minimum level of assistance provided in the  
7 agreements.

8 (c) The agency shall consider an employe bid on the same  
9 basis as all other bids.

10 (d) An employe bid may be made as a joint venture with other  
11 persons.

12 Section 1108-A. Public Designation of Award and Cost  
13 Analysis.--(a) After soliciting and receiving bids, an agency  
14 shall publicly designate the bidder to which it proposes to  
15 award the contract.

16 (b) The agency shall prepare a comprehensive written  
17 analysis of the contract cost based upon the designated bid,  
18 specifically including the costs of transition from public to  
19 private operation, of additional unemployment and retirement  
20 benefits, if any, and of monitoring and otherwise administering  
21 contract performance.

22 (c) If the designated bidder proposes to perform any or all  
23 of the privatization contract outside the boundaries of this  
24 Commonwealth, the contract cost shall be increased by the amount  
25 of income tax revenue which will be lost to the Commonwealth by  
26 the corresponding elimination of agency employes, as determined  
27 by the Department of Revenue to the extent it is able to do so.

28 Section 1109-A. Certification to Treasury Department.--(a)  
29 The head of the agency and the Secretary of Administration shall  
30 each certify, in writing, to the Treasury Department the

1 following findings:

2 (1) That the agency and the Secretary of Administration have  
3 complied with this article and all other applicable laws.

4 (2) That the quality of the services to be provided by the  
5 designated bidder is likely to satisfy the quality requirements  
6 of the statement prepared under section 1103-A, and to equal or  
7 exceed the quality of services which could be provided by  
8 regular agency employes under section 1106-A.

9 (3) That the contract cost under section 1108-A will be less  
10 than the estimated cost under section 1106-A, taking into  
11 account all comparable types of costs.

12 (4) That the designated bidder and its supervisory employes,  
13 while in the employ of the designated bidder, have no  
14 adjudicated record of substantial or repeated wilful  
15 noncompliance with any Federal or State regulatory statute,  
16 including, but not limited to, statutes concerning labor  
17 relations, occupational safety and health, nondiscrimination and  
18 affirmative action, environmental protection and conflicts of  
19 interest.

20 (5) That the proposed privatization contract is in the  
21 public interest, in that it meets the applicable quality and  
22 fiscal standards set forth in this article.

23 (b) The head of the agency shall provide a copy of the  
24 proposed privatization contract with the certificate transmitted  
25 to the Treasury Department.

26 Section 1110-A. Privatization Review Board.--(a) There  
27 shall be in the Treasury Department a Privatization Review Board  
28 consisting of the State Treasurer or a designee, who shall chair  
29 the board, the State Inspector General or a designee and three

30 (3) residents of this Commonwealth appointed by the State

1 Treasurer, one (1) of whom shall be a certified public  
2 accountant.

3 (b) The board shall consider, study and review the  
4 certifications and proposed privatization contracts submitted to  
5 the Treasury Department under this article, and shall issue  
6 findings regarding compliance with this article.

7 (c) The board may adopt rules and regulations and may  
8 prescribe forms to carry out this article.

9 (d) The Treasury Department shall have the power and duty to  
10 provide the board with facilities, experts, stenographers and  
11 assistants as necessary to carry out the work of the board. The  
12 board may enlist voluntary assistance as available from  
13 citizens, research organizations and other agencies.

14 Section 1111-A. Effect of Board Review.--(a) No agency  
15 shall make any privatization contract and no privatization  
16 contract shall be valid if, within thirty (30) days after  
17 receiving the certificate required by section 1109-A, the board  
18 notifies the agency of its objection. The objection shall be in  
19 writing and shall state specifically the findings of the board  
20 that the agency has failed to comply with one or more  
21 requirements of this article, including that the board finds  
22 incorrect, based on an independent review of all the facts, any  
23 of the findings required by section 1109-A.

24 (b) The objection of the board shall be final and binding on  
25 the agency, unless the board, in writing, withdraws the  
26 objection under subsection (c) and states specific reasons for  
27 the withdrawal.

28 (c) After receipt of a board objection, the agency or the  
29 Secretary of Administration may file a revised certification.  
30 The board shall review the revised certification, and if the

1 board finds that the findings are correct, it shall withdraw the  
2 objection.

3 (d) The provisions of this article are in addition to any  
4 other provisions of this or any other act which would otherwise  
5 apply to privatization contracts and this article is not  
6 intended to preempt or repeal such provisions.

7 Section 1112-A. Summons.--For the purpose of reviewing  
8 compliance with this article and the certificates provided under  
9 section 1109-A, the board may require by summons the attendance  
10 and testimony under oath of witnesses and the production of  
11 books, papers and other records relating to such review. All  
12 provisions of the law relative to summonses in civil cases,  
13 including the manner of service and the compensation of  
14 witnesses who are not State employes shall apply to the  
15 summonses. The summonses shall be enforced under the applicable  
16 laws of this Commonwealth.

17 Section 1113-A. Commission on Privatization.--(a) A  
18 Commission on Privatization is established and shall consist of  
19 fifteen (15) members, three (3) of whom shall be appointed by  
20 the Governor, three (3) of whom shall be appointed by the  
21 President pro tempore of the Senate, three (3) of whom shall be  
22 appointed by the Speaker of the House of Representatives, three  
23 (3) of whom shall be appointed by the Minority Leader of the  
24 Senate and three (3) of whom shall be appointed by the Minority  
25 Leader of the House of Representatives.

26 (b) The commission shall investigate and study the successes  
27 and failures of privatization efforts in this Commonwealth and  
28 in other states, and the implementation and operation of this  
29 article and any laws enacted in other states on this and related  
30 subjects.

1       (c) The commission may recommend appropriate legislation or  
2 changes in the procedures of the executive branch. The  
3 commission shall report the results of its investigation and  
4 study by filing the same with the Chief Clerk of the Senate and  
5 the Chief Clerk of the House of Representatives not later than  
6 November 30, 2004.

7       Section 1114-A. Former State Employes.--A former State  
8 employe whose salary is not less than forty-five thousand  
9 dollars (\$45,000) annually is prohibited, for a period of one  
10 (1) year after termination of his State employment, from  
11 becoming an officer of or an employe of a business or  
12 organization which is or was a party to any privatization  
13 contract under this article in which contract the employe  
14 participated as such State employe unless before the termination  
15 of State employment the Governor determines, in writing and  
16 files with the State Ethics Commission, that the participation  
17 did not significantly affect the terms or implementation of the  
18 privatization contract.

19       Section 1115-A. Applicability.--This article shall apply to  
20 all privatization contracts executed on or after the effective  
21 date of this article.

22       Section 2. This act shall take effect immediately.