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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 1671** Session of  
2003

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

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REFERRED TO COMMITTEE ON STATE GOVERNMENT, JUNE 23, 2003

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AN ACT

1 Providing for privatization contracts with political subdivision  
2 agencies; and establishing privatization review boards in all  
3 political subdivisions and providing for their powers and  
4 duties.

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5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Political  
9 Subdivision Privatization Review Board Act.

10 Section 2. Definitions.

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

14 "Agency." An office, department, division, board, commission  
15 or other office of the political subdivision.

16 "Dependent." The spouse and children of an employee, if such  
17 persons would qualify for dependent status under the Internal  
18 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.)  
19 or for whom a support order has been or could be granted under  
20 the laws of this Commonwealth.

21 "Political subdivision." Cities of the first class, second  
22 class, second class A and third class and all counties of every  
23 class or a home rule municipality which is or was a first class  
24 city, second class city, second class A city, third class city  
25 or a home rule county.

26 "Privatization contract." An agreement or combination or  
27 series of agreements by which a nongovernmental person or entity  
28 agrees with an agency to provide services, valued at \$50,000 or  
29 more for all counties and for cities of the first and second  
30 class and at \$25,000 or more for all other political

1 subdivisions, which are substantially similar to or in lieu of,  
2 services theretofore provided, in whole or in part, by regular  
3 employees of the agency. Any subsequent agreement, including any  
4 agreement from a rebidding of previously privatized service, or  
5 any agreement renewing or extending a privatization contract,  
6 shall not be considered a privatization contract. An agreement  
7 solely to provide legal, management, consulting, planning,  
8 engineering or design services shall not be considered a  
9 privatization contract.

10 "Reviewing officer." The controller of the political  
11 subdivision.

12 Section 3. Validity of contracts.

13 No agency shall make any privatization contract, and no  
14 privatization contract shall be valid, unless the agency  
15 complies with this act.

16 Section 4. Contracts generally.

17 An agency shall prepare a specific written statement of the  
18 services proposed to be the subject of the privatization  
19 contract, including the specific quantity and standard of  
20 quality of the subject services. The agency shall solicit  
21 competitive sealed bids for a privatization contract based upon  
22 this statement. The day designated by the agency upon which it  
23 will accept these sealed bids shall be the same for all parties.  
24 This statement shall be a public record, shall be filed in the  
25 agency and in the office of the clerk of the political  
26 subdivision, and shall be transmitted to the reviewing officer.  
27 The term of any privatization contract shall not exceed five  
28 years. No amendment to a privatization contract shall be valid  
29 if it has the purpose or effect of avoiding any requirement of  
30 this act.

1 Section 5. Wages.

2 For each position in which a bidder intends to employ any  
3 person pursuant to the privatization contract and for which the  
4 duties are substantially similar to the duties performed by a  
5 regular agency employee or employees, the statement required by  
6 section 4 shall include a statement of the minimum wage rate to  
7 be paid for the position, which rate shall be the lesser of step  
8 one of the grade or classification under which the comparable  
9 regular agency employee is paid, or the average private sector  
10 wage rate for the position as determined by the agency from data  
11 collected from the Department of Labor and Industry. A bid for a  
12 privatization contract and a privatization contract shall  
13 include provisions specifically establishing the wage rate for  
14 each such position, which shall not be less than the minimum  
15 wage rate as described in this section.

16 Section 6. Health insurance.

17 A bid for a privatization contract and a privatization  
18 contract shall include provisions for the contractor to pay not  
19 less than a percentage, comparable to the percentage paid by the  
20 political subdivision for its employees, of the cost of health  
21 insurance plans for each employee employed not less than 20  
22 hours per week pursuant to the contract. Insurance plans shall  
23 provide coverage to the employee and the employee's dependents  
24 during the term of the privatization contract.

25 Section 7. Enforcement.

26 Each contractor shall submit quarterly payroll records to the  
27 agency, listing the name, address, Social Security number, hours  
28 worked and the hourly wage paid for each employee in the  
29 previous quarter. The Attorney General or the district attorney  
30 of the county in which the political subdivision is located may

1 bring a civil action for equitable relief in the court of common  
2 pleas to enforce sections 5, 6 and this section or to prevent or  
3 remedy the dismissal, demotion or other action prejudicing any  
4 employee as a result of a report of a violation of section 5 and  
5 this section.

6 Section 8. Employment.

7 A privatization contract shall contain provisions requiring  
8 the contractor to offer available employee positions under the  
9 contract to qualified regular employees of the agency whose  
10 employment with the political subdivision is terminated because  
11 of the privatization contract and who satisfy the hiring  
12 criteria of the contractor. A contract shall also contain  
13 provisions requiring the contractor to comply with a policy of  
14 nondiscrimination and equal opportunity for all persons under  
15 the laws of the United States and this Commonwealth, and to take  
16 affirmative steps to provide equal opportunity for all such  
17 persons.

18 Section 9. Cost estimates.

19 (a) Written estimate.--An agency shall prepare a  
20 comprehensive written estimate of the cost of regular agency  
21 employees providing the subject services in the most cost  
22 efficient manner. The estimate shall include all direct and  
23 indirect costs of regular agency employees providing the subject  
24 services, including, but not limited to, pension, insurance and  
25 other employee benefit costs.

26 (b) Amendments.--For the purpose of this estimate, any  
27 employee organization may, at any time before the final day for  
28 the agency to receive sealed bids under section 4, propose  
29 amendments to any relevant collective bargaining agreement to  
30 which it is a party. The amendments shall take effect only if

1 necessary to reduce the cost estimate pursuant to this  
2 subsection below the contract cost under section 11.

3 (c) Confidentiality.--The estimate shall remain confidential  
4 until after the final day for the agency to receive sealed bids  
5 for the privatization contract under section 4, at which time  
6 the estimate shall become a public record, shall be filed in the  
7 agency and in the office of the clerk of the political  
8 subdivision, and shall be transmitted to the reviewing officer  
9 for review pursuant to section 13.

10 Section 10. Employee organization.

11 After consulting any relevant employee organization, the  
12 agency shall provide adequate resources for the purpose of  
13 encouraging and assisting present agency employees to organize  
14 and submit a bid to provide the subject services. In determining  
15 what resources are adequate for this purpose, the agency shall  
16 refer to an existing collective bargaining agreement of a  
17 similar employee organization whose members perform the subject  
18 services, if available, which agreement provides similar  
19 resources in the same or other agencies. However, if no such  
20 collective bargaining agreement exists, the agency shall refer  
21 to any existing collective bargaining agreements providing the  
22 resources, and shall provide the resources at the minimum level  
23 of assistance provided in the agreements. The agency shall  
24 consider an employee bid on the same basis as all other bids. An  
25 employee bid may be made as a joint venture with other persons.

26 Section 11. Award of contract.

27 After soliciting and receiving bids, an agency shall publicly  
28 designate the bidder to which it proposes to award the contract.  
29 The agency shall prepare a comprehensive written analysis of the  
30 contract cost based upon the designated bid, specifically

1 including the costs of transition from public to private  
2 operation, of additional unemployment and retirement benefits,  
3 if any, and of monitoring and otherwise administering contract  
4 performance. If the designated bidder proposes to perform any or  
5 all of the contract outside the boundaries of the political  
6 subdivision, the contract cost shall be increased by the amount  
7 of tax revenue, if any, lost to the political subdivision by the  
8 corresponding elimination of agency employees.

9 Section 12. Certification of certain matters.

10 (a) Certification.--The head of the agency and the governing  
11 body of the political subdivision shall each certify in writing  
12 to the reviewing officer:

13 (1) That the agency and the governing body have complied  
14 with all the provisions of this act and all other applicable  
15 laws.

16 (2) That the quality of the services to be provided by  
17 the designated bidder is likely to satisfy the quality  
18 requirements of the statement prepared under section 4 and to  
19 equal or exceed the quality of services which could be  
20 provided by regular agency employees under section 9.

21 (3) That the contract cost under section 11 will be less  
22 than the estimated cost under section 9, taking into account  
23 all comparable types of costs.

24 (4) That the designated bidder and its supervisory  
25 employees, while in the employ of the designated bidder, have  
26 no adjudicated record of substantial or repeated willful  
27 noncompliance with any Federal or State regulatory statute,  
28 including, but not limited to, statutes concerning labor  
29 relations, occupational safety and health, nondiscrimination  
30 and affirmative action, environmental protection and

1 conflicts of interest.

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

5 (b) Contract.--A copy of the proposed privatization contract  
6 shall accompany the certificate transmitted to the reviewing  
7 officer.

8 Section 13. Privatization Review Board.

9 (a) Board established.--There is hereby established in the  
10 office of the reviewing officer the Privatization Review Board  
11 which shall consist of the reviewing officer or his designee,  
12 who shall chair the board, and four residents of the political  
13 subdivision appointed by the reviewing officer, one of whom  
14 shall be a certified public accountant.

15 (b) Reviewing officer.--The reviewing officer shall provide  
16 necessary facilities and staff assistance to the board.

17 (c) Objection.--An agency shall not make any privatization  
18 contract and no privatization contract shall be valid if, within  
19 30 days after receiving the certificate required under section  
20 12, the board notifies the agency of this objection. This  
21 objection shall be in writing and shall state specifically the  
22 board's finding that the agency has failed to comply with one or  
23 more requirements of this act, including that the board finds  
24 incorrect, based on independent review of all the facts, any of  
25 the findings required by section 12.

26 (d) Review.--For the purpose of reviewing the agency's  
27 compliance and certificate the board may require by summons the  
28 attendance and testimony under oath of witnesses and the  
29 production of books, papers and other records relating to such  
30 review. All provisions of the law relative to summonses in civil

1 cases, including the manner of service and the compensation of  
2 witnesses who are not political subdivision or State employees  
3 shall apply to the summonses. The summonses shall be enforced  
4 pursuant to the applicable laws of this Commonwealth.

5 (e) Final and binding.--The objection of the board shall be  
6 final and binding on the agency, unless the board thereafter in  
7 writing withdraws the objection, stating specific reasons based  
8 upon a revised certificate by the agency and by the governing  
9 body of the political subdivision and upon the board's review  
10 thereof.

11 Section 14. Construction.

12 The provisions of this act are in addition to any other  
13 provisions of law which would otherwise apply to privatization  
14 contracts and this act is not intended to preempt or repeal  
15 those provisions.

16 Section 15. Regulations.

17 The Privatization Review Board may promulgate the regulations  
18 necessary to carry out its functions under this act.

19 Section 16. Applicability.

20 This act shall apply to all privatization contracts executed  
21 on or after the effective date of this act.

22 Section 17. Effective date.

23 This act shall take effect immediately.