

1 AN ACT concerning State Government.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 1. Short title. This Act may be cited as the  
5 Public Service Accountability Act.

6 Section 5. Legislative intent. The legislature finds  
7 that using private contractors to provide public services  
8 formerly provided by public employees does not always promote  
9 the public interest. To ensure that citizens of this State  
10 receive high quality public services at a low cost, with due  
11 regard for the taxpayers of this State, the service  
12 recipients, and the needs of public and private workers, the  
13 legislature finds it necessary to regulate privatization  
14 contracts and to protect those workers who report conditions  
15 and practices that impact on the efficiency and quality of  
16 public services provided by private contractors. The  
17 legislature further finds it necessary to ensure that access  
18 to public information guaranteed by the Freedom of  
19 Information Act is not in any way hindered by the fact that  
20 public services are provided by private contractors.

21 Section 10. Definitions. For purposes of this Act:

22 "State agency" or "agency" means an executive office,  
23 department, division, board, commission, or other office or  
24 officer in the executive branch of State government.

25 "Employee of a private contractor" means a worker  
26 directly employed by a private contractor or subcontractor or  
27 an independent contractor that provides supplies or services  
28 to a private contractor. This term includes former employees  
29 of a private contractor or subcontractor and former  
30 independent contractors.

1 "Discrimination or retaliation" means a threat,  
2 intimidation, or any adverse change in an employee's wages,  
3 benefits, or terms or conditions of employment as a result of  
4 the employee reporting a violation of this Act. In the case  
5 of a person who is not an employee of the private contractor,  
6 this term includes any adverse action taken against the  
7 person or the person's employer, including the cancellation  
8 of or refusal to renew a contract with the person or the  
9 person's employer.

10 "Services" means, with respect to a private contractor,  
11 all aspects of the provision of services provided by a  
12 private contractor pursuant to a privatization contract, or  
13 any services provided by a subcontractor of a private  
14 contractor.

15 "Person" means an individual, institution, federal,  
16 State, or local governmental entity, or any other public or  
17 private entity.

18 "Privatization contract" means an agreement or  
19 combination or series of agreements by which a  
20 non-governmental person or entity agrees with a State agency  
21 to provide services valued at \$100,000 or more that are  
22 substantially similar to and in lieu of services that have  
23 been provided or that could have been provided, in whole or  
24 in part, by regular employees of an agency.

25 "Private contractor" means any entity that enters into a  
26 privatization contract as that term is defined in this  
27 Section.

28 "Public employee" means an employee of any State  
29 department or agency.

30 "Public record" means to a public record as defined in  
31 the Freedom of Information Act, and also includes any  
32 document relating to the privatization contract or  
33 performance under the privatization contract, prepared,  
34 received, or retained by a contractor or subcontractor

1 whether that document be handwritten, typed, tape-recorded,  
2 printed, photocopied, photographed, or recorded by any other  
3 method.

4 "Subcontractor" means a subcontractor of a private  
5 contractor for work under a privatization contract or an  
6 amendment to a privatization contract.

7 Section 15. Privatization contracts; requirements.

8 (a) No State agency shall make any privatization  
9 contract and no privatization contract shall be valid unless  
10 the State agency and the contractor comply with the  
11 requirements of this Act, including listing those specified  
12 provisions in the privatization contract as required by this  
13 Act.

14 (b) The State agency shall prepare a specific written  
15 statement of the services to be provided under the  
16 privatization contract, including the specific quantity and  
17 standard of quality of the subject services. The agency shall  
18 solicit competitive sealed bids for the privatization  
19 contract based upon this statement. This statement shall be a  
20 public record, shall be filed in the agency, and shall be  
21 published in the State register not later than 30 business  
22 days prior to the date on which bids are due. The day  
23 designated by the agency for accepting these sealed bids  
24 shall be the same for all parties.

25 (c) Every bid shall detail:

26 (1) The length of continuous employment of current  
27 employees with the contractor by job classification  
28 without identifying employee names. In addition, the  
29 contractor may submit information detailing the relevant  
30 prior experience of employees within each job  
31 classification. If the positions identified by the bidder  
32 shall be newly created, the bid shall identify the  
33 minimum requirements for prospective applicants for each

1 of these position;

2 (2) The annual rate of current staff turnover;

3 (3) The number of hours of training planned for each  
4 employee in subject matters directly related to providing  
5 services to State residents and clients;

6 (4) any legal complaints issued by an enforcement  
7 agency of this state or any other State for alleged  
8 violations of applicable federal, state, or local rules,  
9 regulations, or laws, including laws governing employee  
10 safety and health, labor relations, and other employment  
11 requirements, and any citations, court findings, or  
12 administrative findings for violations of federal, state,  
13 or local rules, regulations, or laws. The information  
14 must include: (i) the date; (ii) the enforcement agency;  
15 (iii) the rule, law, or regulation involved; and (iv) any  
16 additional information the contractor may wish to submit;

17 (5) any collective bargaining agreements or  
18 personnel policies covering the employees that provide  
19 services to the State; and

20 (6) political contributions made by the bidder or  
21 any employee in a management position with the bidding  
22 company to any elected officer of the State or member of  
23 the State legislature during the 4 years prior to the due  
24 date of the bid.

25 (d) For each position in which a contractor will employ  
26 a person pursuant to the privatization contract, the minimum  
27 compensation to be paid for the position shall be:

28 (1) the greater of the wage rate paid at step one  
29 of the grade or classification under which an agency  
30 employee whose duties are most similar is paid plus the  
31 cash value of health and other benefits provided to the  
32 State employees; or

33 (2) the private sector compensation rate, including  
34 the value of health and other benefits, for that position

1 as determined by the Department of Labor.

2 (e) The term of any privatization contract shall not  
3 exceed 2 years.

4 (f) No amendment to a privatization contract shall be  
5 valid if it has the purpose or effect of avoiding any of the  
6 requirements of this Act.

7 (g) Every privatization contract shall contain  
8 provisions requiring the contractor to offer available  
9 employee positions pursuant to the contract to qualified  
10 regular employees of the agency whose State employment is  
11 terminated because of the privatization contract. Every  
12 contract shall also contain provisions requiring the  
13 contractor to comply with a policy of nondiscrimination and  
14 equal employment opportunity for all persons and to take  
15 affirmative steps to provide equal opportunity for all  
16 persons.

17 (h) Every privatization contract shall contain  
18 provisions regarding the process for determining whether or  
19 not to disclose a particular record or type of record. The  
20 privatization contract shall specify who is responsible for  
21 determining whether or not disclosure is required and shall  
22 outline the liability of the parties to the contract for  
23 failure to disclose as required by the Freedom of Information  
24 Act.

25 Section 20. Review of contract costs.

26 (a) Any State agency considering whether to enter into a  
27 privatization contract shall prepare a comprehensive written  
28 estimate of the costs of regular agency employees' providing  
29 the subject services in the most cost-efficient manner. The  
30 estimate shall include all direct and indirect costs of  
31 regular agency employees providing the subject services  
32 including, but not limited to, pension, insurance, and other  
33 employee benefit costs. For the purpose of this estimate, any

1 employee organization may, at any time before the final day  
2 for the agency to receive sealed bids, propose amendments to  
3 any relevant collective bargaining agreement to which it is a  
4 party. Any amendments shall take effect only if necessary to  
5 reduce the cost estimate. This estimate shall remain  
6 confidential until after the final day for the agency to  
7 receive sealed bids for the privatization contract at which  
8 time the estimate shall become a public record, shall be  
9 filed with the agency, and shall be published in the State  
10 register.

11 (b) Any State agency required to complete a written  
12 estimate of costs evaluation as detailed in subsection (a) of  
13 this Section shall also prepare a community impact evaluation  
14 that shall be submitted to the General Assembly when the  
15 issuance of a privatization contract would result in the  
16 closure of a State facility or the layoff of the lesser of 50  
17 employees or 50% of the staff of a State facility or agency.  
18 A community impact evaluation shall also be submitted to the  
19 General Assembly when a private entity that holds a  
20 privatization contract with a State agency seeks to layoff  
21 the lesser of 50 employees or 50% of the staff performing  
22 work pursuant to the privatization contract. Any time a  
23 community impact evaluation is required pursuant to this Act,  
24 a report shall be presented to the General Assembly no later  
25 than 3 months prior to the planned issuance of a  
26 privatization contract or the implementation of a facility  
27 closure or the layoff of employees. The community impact  
28 evaluation shall be in the form of a report to the General  
29 Assembly and shall include, but not be limited to, the  
30 following:

- 31 (1) State revenues expected to be saved as a result  
32 of the proposed layoff or facility or agency closing;  
33 (2) the rationale for the layoff or facility or  
34 agency closing;

1           (3) the function and duties of the State employees  
2 that will be laid-off;

3           (4) whether the function and duties of the State  
4 employees to be laid-off will be performed by another  
5 section of State government, and if so, which section;

6           (5) the economic impact on the community where the  
7 proposed layoff or closure of a facility or agency is  
8 located;

9           (6) the analyses of current and projected economic  
10 and labor conditions of the communities affected by the  
11 proposed layoff or facility or agency closure;

12           (7) any other data that pertains to the economic  
13 and labor impacts on Illinois communities as a result of  
14 the proposed layoff or facility or agency closing; and

15           (8) any other data that the General Assembly may  
16 request concerning the proposed layoff or facility or  
17 agency closing.

18           (c) After soliciting and receiving bids, the agency  
19 shall publicly designate the bidder to which it proposes to  
20 award the privatization contract. In selecting a contractor,  
21 the agency shall consider the contractors' past performance  
22 and its record in this State or any other state of compliance  
23 with federal, state, and local laws, including the  
24 disclosures required by this Act.

25           (d) The agency shall prepare a comprehensive written  
26 analysis of the contract cost based upon the designated bid,  
27 specifically including the costs of transition from public to  
28 private operation, of additional unemployment and retirement  
29 benefits, if any, and of monitoring and otherwise  
30 administering contract performance. If the designated bidder  
31 proposes to perform any or all of the contract outside the  
32 boundaries of the State, the contract cost shall be increased  
33 by the amount of income tax revenue, if any, that will be  
34 lost to the State by the corresponding elimination of agency

1 employees, as determined by the Department of Revenue to the  
2 extent that it is able to do so.

3 (e) The head of the agency shall certify in writing  
4 that:

5 (1) he or she has complied with all provisions  
6 of this Section and of all other applicable laws;

7 (2) the quality of the services to be provided  
8 by the designated bidder is likely to satisfy the  
9 quality requirements of the statement prepared  
10 pursuant to this Act, and to equal or exceed the  
11 quality of services that could be provided by  
12 regular agency employees;

13 (3) the contract cost will be at least 10% less  
14 than the estimated cost, taking into account all  
15 comparable types of costs and all the additional  
16 costs of the contract as specified in this Act; and

17 (4) the proposed privatization contract is in  
18 the public interest and meets the applicable quality  
19 and fiscal standards set forth in this Act.

20 Any privatization contract entered into by a State agency  
21 and the agency certification described above shall be a  
22 public record and subject to disclosure pursuant to the  
23 Freedom of Information Act.

24 Section 25. Monitoring and enforcement of privatization  
25 contracts.

26 (a) No contractor shall award a subcontract for work  
27 under a contract or an amendment to a contract without the  
28 approval of the selection of the subcontractor and the  
29 provisions of the subcontract by agency head or his or her  
30 designee.

31 (b) Each contractor shall file a copy of executed  
32 subcontract or amendment to the subcontract with the agency.  
33 The agency shall maintain the subcontract or amendment as a



1 public record.

2 (c) Any private contractor awarded a privatization  
3 contract, and any subcontractor to a private contractor  
4 subject to these provisions, shall file with the agency head  
5 copies of financial audits of the private contractor prepared  
6 by independent, certified public auditors at least annually  
7 during the course of the contract term.

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

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

25 (f) The State agency may seek contractual remedies for  
26 any violation of a privatization contract. In addition, if a  
27 contractor fails to comply with the wage standards,  
28 employment provisions or union provisions in this Act, any  
29 person or entity aggrieved by the violation may bring a claim  
30 for equitable and other relief including backpay. In any  
31 lawsuit brought for reasons listed in this subsection, an  
32 aggrieved person or entity shall be entitled to costs and  
33 attorney fees.

1 Section 30. Compliance; privacy actions.

2 (a) Public records that a contractor, subcontractor,  
3 employee, or agent possesses, modifies, or creates pursuant  
4 to a privatization contract shall at all times and for all  
5 purposes remain the property of the State. A contractor,  
6 subcontractor, employee, or agent of a contractor or  
7 subcontractor shall have no ownership rights or interest in  
8 any public records that the contractor, subcontractor,  
9 employee, or agent possesses, modifies, or creates pursuant  
10 to a contract, subcontract, or amendment to a contract or  
11 subcontract and shall not impair the integrity of any public  
12 record that the contractor, subcontractor, employee, or agent  
13 possesses or creates.

14 (b) Any public record that a State agency provides to a  
15 contractor or subcontractor or that a contractor or  
16 subcontractor creates shall be and remain a public record for  
17 the purposes of the Freedom of Information Act and the  
18 enforcement provisions of that law shall apply to any failure  
19 to disclose records under this Section.

20 (c) A private contractor who fails to disclose a record  
21 that the privatization contract requires to be disclosed or  
22 that the State agency directs to be disclosed shall be liable  
23 to the State agency for any fines or penalties assessed  
24 against the agency for the violation of the Freedom of  
25 Information Act concerning that record.

26 (d) No contractor or subcontractor or employee or agent  
27 of a contractor or subcontractor shall disclose to the public  
28 any public records that it possesses, modifies, or creates  
29 pursuant to a contract, subcontract, or amendment to a  
30 contract and that the State agency:

31 (1) is prohibited from disclosing pursuant to State  
32 or federal law in all cases;

33 (2) may disclose pursuant to State or federal law  
34 only to certain entities or individuals or under certain

1 conditions; or

2 (3) may withhold from disclosure pursuant to State  
3 or federal law. No provision of this subsection shall be  
4 construed to prohibit any contractor from disclosing  
5 public records to any of its subcontractors to carry out  
6 the purposes of its subcontract.

7 (e) No contractor, subcontractor, employee, or agent of a  
8 contractor or subcontractor shall sell, market, or otherwise  
9 profit from the disclosure or use of any public records that  
10 are in its possession pursuant to a contract, subcontract, or  
11 amendment to a contract or subcontract, except as authorized  
12 in the contract, subcontract, or amendment.

13 (f) Any contractor or subcontractor, or employee or agent  
14 of a contractor or subcontractor, that learns of any  
15 violation of the provisions of this Act shall, no later than  
16 7 calendar days after learning of the violation, notify the  
17 agency head and the Attorney General of the violation.

18 (g) In addition to any remedies provided under the  
19 Freedom of Information Act, if any person violates any  
20 provision of subsections (a) or (b) of this Section, the  
21 Attorney General may bring an action against that person  
22 seeking damages on behalf of the State for the violation,  
23 restitution for damages suffered by any person as a result of  
24 the violation, or imposition and recovery of a civil penalty  
25 of not more than \$50,000 for the violation.

26 In addition to the remedies that may be brought by the  
27 Attorney General, any person aggrieved by a violation of any  
28 provision of subsections (a) or (b) of this Section may bring  
29 an action in any State court to recover any damages suffered  
30 as a result of the violation.

31 In any action brought under this subsection, the court  
32 may:

33 (1) order disgorgement of any profits or other  
34 benefits derived as a result of a violation of any

1 provision of subsections (a) or (b) of this Section;

2 (2) award punitive damages, costs, and reasonable  
3 attorneys fees; and

4 (3) order injunctive or other equitable relief.

5 Proof of public interest or public injury shall not be  
6 required in any action brought under this subsection (g).

7 No action may be brought more than 3 years after the  
8 occurrence of the violation.

9 Any person who knowingly and willfully violates any  
10 provision of subsections (a) or (b) shall be guilty of a  
11 Class 3 felony.

12 Section 35. Prohibition against discrimination.

13 (a) No person shall retaliate or discriminate in any  
14 manner against any public employee or employee of a private  
15 contractor because that employee, or any person acting on  
16 behalf of the employee, acting in good faith:

17 (1) engaged in any disclosure of information  
18 relating to the services provided by a private contractor  
19 pursuant to a privatization contract;

20 (2) advocated on behalf of service recipients with  
21 respect to the care or services provided by the private  
22 contractor; or

23 (3) initiated, cooperated, or otherwise participated  
24 in any investigation or proceeding of any governmental  
25 entity relating to the services provided pursuant to a  
26 privatization contract.

27 (b) No person shall retaliate or discriminate in any  
28 manner against any public employee or employee of a private  
29 contractor because the employee has attempted or has an  
30 intention to engage in an action described in subsection (a)  
31 of this Section.

32 (c) No person shall by contract, policy, or procedure  
33 prohibit or restrict any employee of a private contractor

1 from engaging in any action for which a protection against  
2 discrimination or retaliation is provided under this Section.

3 (d) This Section does not protect disclosures that would  
4 violate federal or State law or diminish or impair the rights  
5 of any person to the continued protection of confidentiality  
6 of communications provided by State or federal law.

7 (e) With respect to the conduct described in subsection  
8 (a) of this Section, an employee of a private contractor  
9 shall be considered to be acting in good faith if the  
10 employee reasonably believes that the information is true and  
11 the information disclosed by the employee: (i) evidences a  
12 violation of any law, rule, or regulation, or of a generally  
13 recognized professional or clinical standard; or (ii) relates  
14 to the care, services, or conditions that potentially  
15 endanger one or more recipients of service or employees  
16 employed pursuant to a privatization contract.

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

26 (g) Any current or former public employee or employee of  
27 a private contractor who believes that he or she has been  
28 retaliated or discriminated against in violation of  
29 subsections (a), (b), or (c) of this Section may file a civil  
30 action in any State court of competent jurisdiction against  
31 the person believed to have violated these subsections.

32 (h) If the court determines that a violation of this  
33 Section has occurred, the court shall award any damages that  
34 result from the unlawful act or acts, including compensatory

1 damages, reinstatement, reimbursement of any wages, salary,  
2 employment benefits, or other compensation denied or lost to  
3 such employee by reason of the violation, as well as punitive  
4 damages, attorneys' fees, and costs, including expert witness  
5 fees. The court shall award interest on the amount of damages  
6 awarded at the prevailing rate.

7 (i) The court may issue temporary, preliminary, and  
8 permanent injunctive relief restraining violations of this  
9 Act, including the restraint of any withholding of the  
10 payment of wages, salary, employment benefits, or other  
11 compensation, plus interest, found by the court to be due and  
12 the restraint of any other change in the terms and conditions  
13 of employment and may award any other equitable relief as may  
14 be appropriate, including employment, reinstatement, and  
15 promotion.

16 (j) An action may be brought under this subsection not  
17 later than 2 years after the date of the last event  
18 constituting the alleged violation for which the action is  
19 brought.

20 (k) Any person who violates a provision of subsections  
21 (a), (b), or (c) of this Section shall be subject to a civil  
22 penalty of not to exceed \$10,000 for each violation. In  
23 determining the amount of any penalty under this subsection,  
24 the appropriateness of the penalty to the size of the  
25 business of the person charged and the gravity of the  
26 violation shall be considered. The amount of any penalty  
27 under this subsection, when finally determined, may be  
28 deducted from any sums owing by the state to the person  
29 charged or ordered to be paid to the employee or employees  
30 who suffered retaliation or discrimination, as ordered by the  
31 court.

32 (l) In any civil action brought under this Act, the  
33 complainant shall have the initial burden of making a prima  
34 facie showing that any behavior described in subsections (a),

1 (b), or (c) of this Section was a contributing factor in the  
2 adverse action or inaction alleged in the complaint. A prima  
3 facie case shall be established if the complainant can show  
4 that the respondent knew of the complainant's protected  
5 activities at the time that the alleged unfavorable action or  
6 inaction was taken and the discriminatory action occurred  
7 within a period of time that a reasonable person could  
8 conclude that an activity protected by subsections (a), (b),  
9 or (c) of this Section was a contributing factor in the  
10 discriminatory treatment. Once the complainant establishes a  
11 prima facie case, the burden shifts to the respondent to  
12 demonstrate, by clear and convincing evidence, that it would  
13 have taken the same adverse action or inaction in the absence  
14 of such behavior.

15 (m) Each private contractor shall post and keep posted,  
16 in conspicuous places on its premises where notices to  
17 employees and applicants for employment are customarily  
18 posted, a notice, to be prepared or approved by the  
19 secretary, setting forth excerpts from, or summaries of, the  
20 pertinent provisions of this Act and information pertaining  
21 to the filing of a charge under this Section. Any employer  
22 that willfully violates this Section may be assessed a civil  
23 penalty not to exceed \$100 for each separate offense.

24 Section 40. Nonpreemption. Nothing in this Act preempts  
25 any other law, and nothing in this Act shall be construed or  
26 interpreted to impair or diminish in any way the authority of  
27 any locality, municipality or subdivision to enact and  
28 enforce any law that provides equivalent or greater  
29 protections for its employees.

30 Section 45. Severability. If any provision of this Act  
31 or its application to any person or circumstances is held to  
32 be invalid, the invalidity of that provision or application

1 does not affect other provisions or applications of this Act  
2 that can be given effect without the invalid provision or  
3 application.

4 Section 99. Effective date. This Act takes effect upon  
5 becoming law.