



Rep. Constance A. Howard

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1 AMENDMENT TO HOUSE BILL 1308

2 AMENDMENT NO. _____. Amend House Bill 1308 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 State Services Accountability Act.

6 Section 5. Legislative findings and declaration of policy.

7 (a) The purpose of this Act is to set forth a program to
8 better provide services and public works to the citizens of
9 Illinois by ensuring that tax dollars expended for services or
10 public works are properly used for their allocated purpose. The
11 State of Illinois enters into reimbursement agreements and
12 contracts with and provides grants to private entities
13 (contractors and grantees) for the purpose of providing
14 services and building or enhancing public works for the
15 citizens of Illinois. The State of Illinois enters into these
16 contracts and provides these grants to provide quality services
17 and public works for the citizens of Illinois.

18 (b) The General Assembly finds that the tax dollars
19 appropriated for public services and public works should not be
20 used to conduct campaigns aimed at influencing the decision of
21 employees to be represented or not to be represented by an
22 employee organization.

23 (c) The State of Illinois shall protect its tax dollars and
24 ensure that they are being used for the purposes allocated by

1 prohibiting its contractors or grantees from using State
2 funding to influence the decision of any of its employees to be
3 represented or not be represented by a union.

4 (d) This Act is intended solely as a limitation on the
5 permissible uses of State appropriations. It is not intended to
6 expand, limit, or in any manner affect existing rights or
7 duties of employers, employees, or labor organizations under
8 the National Labor Relations Act or other federal law affecting
9 labor relations.

10 Section 10. Definitions. As used in this Act:

11 "Contractor or grantee" means an individual or entity,
12 other than the State of Illinois, a State agency, or a
13 political subdivision of the State of Illinois, which has a
14 reimbursement agreement or contractual or other relationship
15 with or has received moneys from the State of Illinois or a
16 State agency to provide services, or public works which
17 reimbursement agreement, contract, or grant is funded in whole
18 or in part by the State of Illinois, or through the Medicaid
19 program of the State of Illinois.

20 "Contractor" includes a subcontractor and a contractor of a
21 grantee and any other entity, other than a unit of local
22 government or a school district, that receives State funds for
23 supplying services or public works pursuant to a written
24 contract with the State or any of its agencies and which is
25 controlled in whole or in part by the contractor or an entity
26 in which the contractor has a substantial beneficial interest.

27 "Department" means the Department of Labor.

28 "Grantee" includes a sub-grantee and a grantee of a
29 contractor and any other entity which provides to the State of
30 Illinois or any of its agencies services or public works
31 controlled in whole or in part by the grantee, or an entity in
32 which the grantee has a substantial beneficial interest.

33 "Employee" means a person employed by a contractor or

1 grantee other than a person employed in a bona fide supervisory
2 or managerial position as defined by applicable law.

3 "Labor organization", "employee representative", "employee
4 organization", or "union" means an organization or union of any
5 kind in which employees participate and which exists for the
6 purpose, in whole or in part, of representing employees
7 concerning grievances, labor disputes, wages, rates of pay,
8 benefits, hours of employment, or working conditions.

9 "State agency" includes the State and every State agency,
10 department, board, or commission.

11 "State funds" means any money provided by the State of
12 Illinois or a State agency.

13 "Public works" has the meaning ascribed to that term in
14 Section 2 of the Prevailing Wage Act.

15 "Public body" means the State or any officer, board or
16 commission of the State or any political subdivision or
17 department thereof, or any entity supported in whole or in part
18 by public funds, authorized by law to construct public works or
19 to enter into any contract for the construction of public
20 works, and includes every county, city, town, village,
21 township, school district, irrigation, utility, reclamation
22 improvement or other district and every other political
23 subdivision, district, or municipality of the State whether
24 such political subdivision, municipality, or district operates
25 under a special charter or not.

26 Section 12. Applicability. This Act does not apply to the
27 following:

28 (1) any contract or grant that has a value of less than
29 \$25,000; or

30 (2) any contractor or grantee that receives at least
31 85% of its total revenues from sources other than the State
32 of Illinois.

33 The dollar amount in this Section shall be updated

1 annually, beginning on January 20, 2007, by a percentage equal
2 to the change in the consumer price index-u during the
3 preceding 12-month calendar year. "Consumer price index-u"
4 means the index published by the Bureau of Labor Statistics of
5 the United States Department of Labor that measures the average
6 change in prices of goods and services purchased by all urban
7 consumers, United States city average, all items, 1982-84=100.
8 The new amount resulting from each annual adjustment shall be
9 determined by the Illinois Department of Labor and made
10 available to the public on January 20 of every year.

11 Section 15. Policy requirements.

12 (a) A contractor or grantee may not use State funds to
13 influence the decision of any of its employees to be
14 represented or not to be represented by an employee
15 organization. Such expenditures include, but are not limited
16 to, the cost of: preparing literature or other similar
17 communications to employees for this purpose; the hiring of
18 vendors, including lawyers and consultants, for this purpose;
19 and the use of work time for meetings, including meetings of
20 and with supervisors and managerial employees, for this
21 purpose. Such activities are not proscribed, but rather,
22 contractors and grantees are prohibited from using State funds
23 to pay for such activities.

24 (b) A contractor or grantee shall certify as part of any
25 State contract, grant, or reimbursement agreement that it will
26 not use State funds to influence the decision of any of its
27 employees to be represented or not be represented by a labor
28 organization.

29 (c) A contractor or grantee may not receive a contract or
30 grant to provide services or public works for the citizens of
31 the State of Illinois unless the contractor or grantee has
32 agreed to provide certification under subsection (b).

33 (d) Any reimbursement agreement, contract, or grant

1 entered into by and between a contractor or a grantee and the
2 State of Illinois or a State agency to provide services or
3 public works shall include a certification under subsection (b)
4 and an agreement by the contractor or grantee to comply with
5 the terms of the certification under subsection (b).

6 (e) A contractor or grantee entering into a contract with
7 any person or entity, such as a subcontractor, to provide
8 services or public works directly subject to, and primarily for
9 the purpose of performing, the contract or grant agreement
10 between the contractor or grantee and the State of Illinois or
11 a State agency shall include in the contract or grant agreement
12 a certification under subsection (b) and an agreement to comply
13 with the terms of the certification under subsection (b).

14 Section 20. Enforcement.

15 (a) Any taxpayer, employee, or employee representative may
16 file a complaint with the Department of Labor against a
17 contractor or grantee covered under this Act if the taxpayer,
18 employee, or employee representative believes in good faith
19 that the contractor or grantee has expended funds in violation
20 of this Act. For the purposes of this Section, a complainant is
21 presumed to act in good faith if the complainant reasonably
22 believes that: (i) the information reported or disclosed to the
23 complainant is true; and (ii) a violation has occurred. A
24 complainant is not acting in good faith under this Section if
25 the complaint is based on information that the complainant
26 reasonably should know is false or misleading with respect to
27 the occurrence of a violation, or if the complainant has reason
28 to believe another party has filed a similar complaint within
29 the past 14 days.

30 (b) Upon receipt of a complaint by the Department, the
31 Department shall immediately notify the State agency that has
32 entered into the contract, grant, or reimbursement agreement
33 with respect to which the complainant has alleged an

1 expenditure of funds that violates this Act. The State agency
2 shall, within 5 business days, provide the Department with
3 copies of all documents in its possession relevant to the
4 amount and sources of expenditures by the contractor or grantee
5 under the contract, grant, or reimbursement agreement, and
6 shall otherwise give full cooperation to the Department in all
7 aspects of the Department's adjudication of the complaint. The
8 Department shall, within 3 business days after a complaint is
9 filed, provide the contractor or grantee with a copy of the
10 complaint by personal service or certified mail, together with
11 notice to the contractor or grantee that it must provide
12 records sufficient to show that no State funds were used to
13 influence the decision of any of its employees to be
14 represented or not to be represented by an employee
15 organization. The contractor or grantee shall provide the
16 records to the Department within 15 business days after the
17 contractor or grantee receives notice from the Department,
18 unless the Department gives the contractor or grantee an
19 extension of 10 business days to provide the records, based
20 upon a showing of good cause for the extension. The Department
21 shall keep confidential all proprietary records submitted by
22 contractors or grantees, pursuant to the filing of a complaint
23 that is not subject to the Freedom of Information Act or
24 relevant to the State contract. The Department may not provide
25 these proprietary records to the opposing party, except as is
26 necessary to investigate or prosecute a complaint, or to give
27 the complainant the opportunity to provide additional,
28 supplemental, or rebuttal information or evidence. These
29 proprietary records shall be subject to a protective order, if
30 appropriate, to prohibit redisclosure. Following the last date
31 for receipt of all required records, the Department shall
32 schedule an expedited hearing. The Department shall provide the
33 parties to the hearing with at least 5 business days' advance
34 notice. At the conclusion of the hearing, the Department shall

1 make a determination as to whether the contractor or grantee
2 has violated the Act by using State funds to influence the
3 decision of any of its employees to be represented or not
4 represented by a labor organization. The hearing shall be
5 completed, and a decision rendered by the Department, within 5
6 business days. For good cause, the Department may extend the
7 final date for issuing a decision by an additional 5 business
8 days. The decision of the Department shall not include the
9 disclosure of proprietary records.

10 (c) The Department shall immediately provide the Attorney
11 General with a copy of its determination, together with a copy
12 of the full hearing record and all documents submitted to the
13 Department by other State agencies and the contractor or
14 grantee. Not earlier than 21 calendar days after the Department
15 provides these documents, the Attorney General may take any
16 action that in the sole judgment of the Attorney General is
17 necessary to enforce compliance with the Act including, but not
18 limited to, a civil action for injunctive relief, declaratory
19 relief, damages, or penalties, or a combination of these
20 remedies. Between the time that the Department makes a
21 determination and the earliest date that the Attorney General
22 may file an action for enforcement of the Act, any party to the
23 hearing before the Department may provide the Attorney General
24 with supplementary written information relevant to the issue of
25 whether an action for enforcement should be filed.

26 (d) If the State of Illinois brings an enforcement action
27 for violation of this Act, any taxpayer, employee, or employee
28 representative with a direct interest in compliance with this
29 Act may join in that enforcement action as a real party in
30 interest.

31 (e) Remedies for violation of this Act include but are not
32 limited to injunctive and declaratory relief, damages, and
33 penalties as provided below. In view of the difficulty of
34 determining actual damages incurred because of a violation of

1 this Act, liquidated damages shall be awarded at the rate of
2 \$1,000 for each violation, plus an additional \$500 for each day
3 the violation continues without remedy. All damages shall inure
4 to the benefit of the State of Illinois.

5 Section 35. Construction of Act. Nothing in this Act shall
6 be construed to make a contractor responsible for the actions
7 of a subcontractor.

8 Section 90. Severability. The provisions of this Act are
9 severable under Section 1.31 of the Statute on Statutes.

10 Section 900. The Freedom of Information Act is amended by
11 changing Section 7 as follows:

12 (5 ILCS 140/7) (from Ch. 116, par. 207)

13 Sec. 7. Exemptions.

14 (1) The following shall be exempt from inspection and
15 copying:

16 (a) Information specifically prohibited from
17 disclosure by federal or State law or rules and regulations
18 adopted under federal or State law.

19 (b) Information that, if disclosed, would constitute a
20 clearly unwarranted invasion of personal privacy, unless
21 the disclosure is consented to in writing by the individual
22 subjects of the information. The disclosure of information
23 that bears on the public duties of public employees and
24 officials shall not be considered an invasion of personal
25 privacy. Information exempted under this subsection (b)
26 shall include but is not limited to:

27 (i) files and personal information maintained with
28 respect to clients, patients, residents, students or
29 other individuals receiving social, medical,
30 educational, vocational, financial, supervisory or

1 custodial care or services directly or indirectly from
2 federal agencies or public bodies;

3 (ii) personnel files and personal information
4 maintained with respect to employees, appointees or
5 elected officials of any public body or applicants for
6 those positions;

7 (iii) files and personal information maintained
8 with respect to any applicant, registrant or licensee
9 by any public body cooperating with or engaged in
10 professional or occupational registration, licensure
11 or discipline;

12 (iv) information required of any taxpayer in
13 connection with the assessment or collection of any tax
14 unless disclosure is otherwise required by State
15 statute;

16 (v) information revealing the identity of persons
17 who file complaints with or provide information to
18 administrative, investigative, law enforcement or
19 penal agencies; provided, however, that identification
20 of witnesses to traffic accidents, traffic accident
21 reports, and rescue reports may be provided by agencies
22 of local government, except in a case for which a
23 criminal investigation is ongoing, without
24 constituting a clearly unwarranted per se invasion of
25 personal privacy under this subsection; and

26 (vi) the names, addresses, or other personal
27 information of participants and registrants in park
28 district, forest preserve district, and conservation
29 district programs.

30 (c) Records compiled by any public body for
31 administrative enforcement proceedings and any law
32 enforcement or correctional agency for law enforcement
33 purposes or for internal matters of a public body, but only
34 to the extent that disclosure would:

1 (i) interfere with pending or actually and
2 reasonably contemplated law enforcement proceedings
3 conducted by any law enforcement or correctional
4 agency;

5 (ii) interfere with pending administrative
6 enforcement proceedings conducted by any public body;

7 (iii) deprive a person of a fair trial or an
8 impartial hearing;

9 (iv) unavoidably disclose the identity of a
10 confidential source or confidential information
11 furnished only by the confidential source;

12 (v) disclose unique or specialized investigative
13 techniques other than those generally used and known or
14 disclose internal documents of correctional agencies
15 related to detection, observation or investigation of
16 incidents of crime or misconduct;

17 (vi) constitute an invasion of personal privacy
18 under subsection (b) of this Section;

19 (vii) endanger the life or physical safety of law
20 enforcement personnel or any other person; or

21 (viii) obstruct an ongoing criminal investigation.

22 (d) Criminal history record information maintained by
23 State or local criminal justice agencies, except the
24 following which shall be open for public inspection and
25 copying:

26 (i) chronologically maintained arrest information,
27 such as traditional arrest logs or blotters;

28 (ii) the name of a person in the custody of a law
29 enforcement agency and the charges for which that
30 person is being held;

31 (iii) court records that are public;

32 (iv) records that are otherwise available under
33 State or local law; or

34 (v) records in which the requesting party is the

1 individual identified, except as provided under part
2 (vii) of paragraph (c) of subsection (1) of this
3 Section.

4 "Criminal history record information" means data
5 identifiable to an individual and consisting of
6 descriptions or notations of arrests, detentions,
7 indictments, informations, pre-trial proceedings, trials,
8 or other formal events in the criminal justice system or
9 descriptions or notations of criminal charges (including
10 criminal violations of local municipal ordinances) and the
11 nature of any disposition arising therefrom, including
12 sentencing, court or correctional supervision,
13 rehabilitation and release. The term does not apply to
14 statistical records and reports in which individuals are
15 not identified and from which their identities are not
16 ascertainable, or to information that is for criminal
17 investigative or intelligence purposes.

18 (e) Records that relate to or affect the security of
19 correctional institutions and detention facilities.

20 (f) Preliminary drafts, notes, recommendations,
21 memoranda and other records in which opinions are
22 expressed, or policies or actions are formulated, except
23 that a specific record or relevant portion of a record
24 shall not be exempt when the record is publicly cited and
25 identified by the head of the public body. The exemption
26 provided in this paragraph (f) extends to all those records
27 of officers and agencies of the General Assembly that
28 pertain to the preparation of legislative documents.

29 (g) Trade secrets and commercial or financial
30 information obtained from a person or business where the
31 trade secrets or information are proprietary, privileged
32 or confidential, or where disclosure of the trade secrets
33 or information may cause competitive harm, including all
34 information determined to be confidential under the State

1 Services Accountability Act or Section 4002 of the
2 Technology Advancement and Development Act. Nothing
3 contained in this paragraph (g) shall be construed to
4 prevent a person or business from consenting to disclosure.

5 (h) Proposals and bids for any contract, grant, or
6 agreement, including information which if it were
7 disclosed would frustrate procurement or give an advantage
8 to any person proposing to enter into a contractor
9 agreement with the body, until an award or final selection
10 is made. Information prepared by or for the body in
11 preparation of a bid solicitation shall be exempt until an
12 award or final selection is made.

13 (i) Valuable formulae, computer geographic systems,
14 designs, drawings and research data obtained or produced by
15 any public body when disclosure could reasonably be
16 expected to produce private gain or public loss. The
17 exemption for "computer geographic systems" provided in
18 this paragraph (i) does not extend to requests made by news
19 media as defined in Section 2 of this Act when the
20 requested information is not otherwise exempt and the only
21 purpose of the request is to access and disseminate
22 information regarding the health, safety, welfare, or
23 legal rights of the general public.

24 (j) Test questions, scoring keys and other examination
25 data used to administer an academic examination or
26 determined the qualifications of an applicant for a license
27 or employment.

28 (k) Architects' plans, engineers' technical
29 submissions, and other construction related technical
30 documents for projects not constructed or developed in
31 whole or in part with public funds and the same for
32 projects constructed or developed with public funds, but
33 only to the extent that disclosure would compromise
34 security, including but not limited to water treatment

1 facilities, airport facilities, sport stadiums, convention
2 centers, and all government owned, operated, or occupied
3 buildings.

4 (l) Library circulation and order records identifying
5 library users with specific materials.

6 (m) Minutes of meetings of public bodies closed to the
7 public as provided in the Open Meetings Act until the
8 public body makes the minutes available to the public under
9 Section 2.06 of the Open Meetings Act.

10 (n) Communications between a public body and an
11 attorney or auditor representing the public body that would
12 not be subject to discovery in litigation, and materials
13 prepared or compiled by or for a public body in
14 anticipation of a criminal, civil or administrative
15 proceeding upon the request of an attorney advising the
16 public body, and materials prepared or compiled with
17 respect to internal audits of public bodies.

18 (o) Information received by a primary or secondary
19 school, college or university under its procedures for the
20 evaluation of faculty members by their academic peers.

21 (p) Administrative or technical information associated
22 with automated data processing operations, including but
23 not limited to software, operating protocols, computer
24 program abstracts, file layouts, source listings, object
25 modules, load modules, user guides, documentation
26 pertaining to all logical and physical design of
27 computerized systems, employee manuals, and any other
28 information that, if disclosed, would jeopardize the
29 security of the system or its data or the security of
30 materials exempt under this Section.

31 (q) Documents or materials relating to collective
32 negotiating matters between public bodies and their
33 employees or representatives, except that any final
34 contract or agreement shall be subject to inspection and

1 copying.

2 (r) Drafts, notes, recommendations and memoranda
3 pertaining to the financing and marketing transactions of
4 the public body. The records of ownership, registration,
5 transfer, and exchange of municipal debt obligations, and
6 of persons to whom payment with respect to these
7 obligations is made.

8 (s) The records, documents and information relating to
9 real estate purchase negotiations until those negotiations
10 have been completed or otherwise terminated. With regard to
11 a parcel involved in a pending or actually and reasonably
12 contemplated eminent domain proceeding under Article VII
13 of the Code of Civil Procedure, records, documents and
14 information relating to that parcel shall be exempt except
15 as may be allowed under discovery rules adopted by the
16 Illinois Supreme Court. The records, documents and
17 information relating to a real estate sale shall be exempt
18 until a sale is consummated.

19 (t) Any and all proprietary information and records
20 related to the operation of an intergovernmental risk
21 management association or self-insurance pool or jointly
22 self-administered health and accident cooperative or pool.

23 (u) Information concerning a university's adjudication
24 of student or employee grievance or disciplinary cases, to
25 the extent that disclosure would reveal the identity of the
26 student or employee and information concerning any public
27 body's adjudication of student or employee grievances or
28 disciplinary cases, except for the final outcome of the
29 cases.

30 (v) Course materials or research materials used by
31 faculty members.

32 (w) Information related solely to the internal
33 personnel rules and practices of a public body.

34 (x) Information contained in or related to

1 examination, operating, or condition reports prepared by,
2 on behalf of, or for the use of a public body responsible
3 for the regulation or supervision of financial
4 institutions or insurance companies, unless disclosure is
5 otherwise required by State law.

6 (y) Information the disclosure of which is restricted
7 under Section 5-108 of the Public Utilities Act.

8 (z) Manuals or instruction to staff that relate to
9 establishment or collection of liability for any State tax
10 or that relate to investigations by a public body to
11 determine violation of any criminal law.

12 (aa) Applications, related documents, and medical
13 records received by the Experimental Organ Transplantation
14 Procedures Board and any and all documents or other records
15 prepared by the Experimental Organ Transplantation
16 Procedures Board or its staff relating to applications it
17 has received.

18 (bb) Insurance or self insurance (including any
19 intergovernmental risk management association or self
20 insurance pool) claims, loss or risk management
21 information, records, data, advice or communications.

22 (cc) Information and records held by the Department of
23 Public Health and its authorized representatives relating
24 to known or suspected cases of sexually transmissible
25 disease or any information the disclosure of which is
26 restricted under the Illinois Sexually Transmissible
27 Disease Control Act.

28 (dd) Information the disclosure of which is exempted
29 under Section 30 of the Radon Industry Licensing Act.

30 (ee) Firm performance evaluations under Section 55 of
31 the Architectural, Engineering, and Land Surveying
32 Qualifications Based Selection Act.

33 (ff) Security portions of system safety program plans,
34 investigation reports, surveys, schedules, lists, data, or

1 information compiled, collected, or prepared by or for the
2 Regional Transportation Authority under Section 2.11 of
3 the Regional Transportation Authority Act or the St. Clair
4 County Transit District under the Bi-State Transit Safety
5 Act.

6 (gg) Information the disclosure of which is restricted
7 and exempted under Section 50 of the Illinois Prepaid
8 Tuition Act.

9 (hh) Information the disclosure of which is exempted
10 under the State Officials and Employees Ethics Act.

11 (ii) Beginning July 1, 1999, information that would
12 disclose or might lead to the disclosure of secret or
13 confidential information, codes, algorithms, programs, or
14 private keys intended to be used to create electronic or
15 digital signatures under the Electronic Commerce Security
16 Act.

17 (jj) Information contained in a local emergency energy
18 plan submitted to a municipality in accordance with a local
19 emergency energy plan ordinance that is adopted under
20 Section 11-21.5-5 of the Illinois Municipal Code.

21 (kk) Information and data concerning the distribution
22 of surcharge moneys collected and remitted by wireless
23 carriers under the Wireless Emergency Telephone Safety
24 Act.

25 (ll) Vulnerability assessments, security measures, and
26 response policies or plans that are designed to identify,
27 prevent, or respond to potential attacks upon a community's
28 population or systems, facilities, or installations, the
29 destruction or contamination of which would constitute a
30 clear and present danger to the health or safety of the
31 community, but only to the extent that disclosure could
32 reasonably be expected to jeopardize the effectiveness of
33 the measures or the safety of the personnel who implement
34 them or the public. Information exempt under this item may

1 include such things as details pertaining to the
2 mobilization or deployment of personnel or equipment, to
3 the operation of communication systems or protocols, or to
4 tactical operations.

5 (mm) Maps and other records regarding the location or
6 security of a utility's generation, transmission,
7 distribution, storage, gathering, treatment, or switching
8 facilities.

9 (nn) Law enforcement officer identification
10 information or driver identification information compiled
11 by a law enforcement agency or the Department of
12 Transportation under Section 11-212 of the Illinois
13 Vehicle Code.

14 (oo) Records and information provided to a residential
15 health care facility resident sexual assault and death
16 review team or the Residential Health Care Facility
17 Resident Sexual Assault and Death Review Teams Executive
18 Council under the Residential Health Care Facility
19 Resident Sexual Assault and Death Review Team Act.

20 (2) This Section does not authorize withholding of
21 information or limit the availability of records to the public,
22 except as stated in this Section or otherwise provided in this
23 Act.

24 (Source: P.A. 92-16, eff. 6-28-01; 92-241, eff. 8-3-01; 92-281,
25 eff. 8-7-01; 92-645, eff. 7-11-02; 92-651, eff. 7-11-02; 93-43,
26 eff. 7-1-03; 93-209, eff. 7-18-03; 93-237, eff. 7-22-03;
27 93-325, eff. 7-23-03, 93-422, eff. 8-5-03; 93-577, eff.
28 8-21-03; 93-617, eff. 12-9-03.)".