



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB4161

Introduced 2/27/2009, by Rep. Michael G. Connelly

SYNOPSIS AS INTRODUCED:

New Act

Creates the Council on Efficient Government Act. Creates the council and sets forth its duties, including review of whether goods and services provided by State agencies should be privatized or outsourced to obtain cost savings or best value. Requires reports. Requires business case analyses. Sets forth outsourcing contract requirements. Requires the council to establish an accounting method. Exempts transportation construction. Repeals the Act on July 1, 2019. Effective July 1, 2009.

LRB096 11787 RCE 22577 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning efficient 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 Council on Efficient Government Act.

6 Section 5. Purposes. The purposes of the council on
7 efficient government are to:

8 (1) Ensure that each State agency focuses on its core
9 mission and delivers goods and services effectively and
10 efficiently by leveraging resources and contracting with
11 private sector vendors if these vendors can more effectively
12 and efficiently provide these goods or services and reduce the
13 cost of government.

14 (2) Evaluate for feasibility, cost effectiveness, and
15 efficiency business cases to be outsourced before a State
16 agency proceeds with any outsourcing of goods or services.

17 Section 10. Council on efficient government; members;
18 terms; vacancies.

19 (A) The council on efficient government is established
20 consisting of the following members:

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

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

3 (3) Two members who are engaged in private enterprise
4 and who are appointed by the President of the Senate.

5 (4) Two members who are engaged in private enterprise
6 and who are appointed by the Speaker of the House of
7 Representatives.

8 (B) The terms of one of each of the 2 initial appointees
9 under each of items (2), (3), and (4) of subsection (A) are for
10 one year as determined by lot. Otherwise, the terms of
11 appointment to the council are for 2 years unless the chief
12 executive or administrative officer of a State agency ceases to
13 hold office. The Governor shall appoint a replacement member
14 for the remainder of the unexpired term.

15 (C) A member of the council who is engaged in private
16 enterprise is not eligible to receive compensation but is
17 eligible for reimbursement of expenses.

18 (D) A member of the council may not participate in a
19 council review of a business case to outsource if the State
20 agency is conducting the proposed outsourcing or, in the case
21 of a member engaged in private enterprise, if the member has a
22 business relationship with an entity that is involved or
23 potentially could be involved in the proposed outsourcing.

24 (E) A member of the council who is engaged in private
25 enterprise may not delegate the membership to a designee.

26 (F) A quorum shall consist of at least 3 members of the

1 council.

2 (G) Any vacancy on the council shall be filled in the same
3 manner as the original appointment, and any member appointed to
4 fill a vacancy occurring for a reason other than the expiration
5 of a term serves only for the unexpired term of the member's
6 predecessor.

7 (H) The council shall select a chairperson from among its
8 members.

9 Section 15. Powers and duties of council.

10 (A) The council shall:

11 (1) Review whether or not a good or service provided by
12 a State agency could be privatized to provide the same type
13 and quality of good or service that would result in cost
14 savings or best value. The council may hold public hearings
15 as part of its evaluation process and shall report its
16 recommendations to the Governor, the President of the
17 Senate and the Speaker of the House of Representatives.

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

20 (3) Review issues concerning agency competition with
21 one or more private enterprises to determine ways to
22 eliminate any unfair competition with a private
23 enterprise.

24 (4) Recommend privatization to a State agency if a
25 proposed privatization is demonstrated to provide a more

1 cost efficient or more effective manner of providing a good
2 or service.

3 (5) Comply with Sections 20 and 25.

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

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

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

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

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

1 outsource.

2 (11) Incorporate any lessons learned from outsourcing
3 services and activities into council standards, procedures
4 and guidelines, as appropriate, and identify and
5 disseminate to agencies information regarding best
6 practices in outsourcing efforts.

7 (12) Develop guidelines for assisting State employees
8 whose jobs are eliminated as a result of outsourcing.

9 (13) Receive complaints of violations of this Act.

10 (14) Transmit complaints received under this Section
11 to the State agency alleged to be in violation.

12 (15) Hold public hearings on complaints and determine
13 whether the agency is in violation of this Act.

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

17 (17) Transmit to the Governor, the President of the
18 Senate, and the Speaker of the House of Representatives a
19 complete report of each meeting, including recommendations
20 to correct violations of prohibitions on competition with
21 private enterprise and findings on necessary exceptions to
22 the prohibitions.

23 (18) Solicit petitions of interest from private sector
24 service providers as the council considers appropriate.
25 The council may evaluate and review the petitions and may
26 hold public hearings as part of the evaluation process. The

1 council may recommend some or all of the petitions to the
2 Governor's Office of Management and Budget for further
3 review. A person does not have a cause of action based on
4 the failure of the council to consider a petition of
5 interest or make a recommendation.

6 (B) The council may evaluate and review all State agency
7 exemptions and exemptions to the restrictions on competition
8 with private enterprise in this Act and may determine that any
9 function or functions of State agency are in violation of this
10 Act. The council shall report its findings and recommendations
11 to the Governor, the President of the Senate, and the Speaker
12 of the House of Representatives.

13 (C) The council shall prepare an annual report on:

14 (1) Recommendations on innovative methods of
15 delivering government services that would improve the
16 efficiency, effectiveness, or competition in the delivery
17 of government services, including enterprisewide
18 proposals.

19 (2) Outsourcing efforts of each State agency,
20 including the number of outsourcing business cases and
21 solicitations, the number and dollar value of outsourcing
22 contracts, descriptions of performance results as
23 applicable, any contract violations or project slippages,
24 and the status of extensions, renewals, and amendments of
25 outsourcing contracts.

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

1 (4) The status of the inventory created under Section
2 20.

3 (D) The council shall submit the annual report prescribed
4 by subsection (C) of this Section to the Governor, the
5 President of the Senate, and the Speaker of the House of
6 Representatives no later than January 15 immediately following
7 the calendar year for which the report is made. The council
8 shall provide an oral report to the legislative appropriations
9 committees and the Governor's Office of Management and Budget
10 when the legislature is not in session.

11 (E) The Auditor General shall employ an adequate number of
12 staff who collectively possess significant expertise and
13 experience as required to carry out the responsibilities of
14 this Act.

15 (F) Each State agency shall submit to the council all
16 information, documents, and other materials required by the
17 council pursuant to this Act.

18 (G) At the request of the council and on approval of the
19 Legislative Audit Commission, the Auditor General shall
20 provide performance audit and other required information
21 relating to State agency budgets and functions. The Auditor
22 General may assist in the development and review of the agency
23 inventory of commercial activities prescribed in Section 20.

24 (H) In addition to filing a copy of recommendations for
25 privatization with an agency head, the council shall file a
26 copy of its recommendations for privatization with the

1 Governor's office, the legislative appropriations committees,
2 and the Governor's Office of Management and Budget for
3 submission to the relevant legislative appropriation
4 committees.

5 (I) The council may appoint advisory groups to conduct
6 studies, research, or analyses and make reports and
7 recommendations with respect to a matter within the
8 jurisdiction of the council. At least one member of the council
9 shall serve on each advisory group.

10 (J) Subject to Section 25, subsection (B), this Act does
11 not preclude a State agency from privatizing the provision of a
12 good or service independent of the council.

13 (K) Any aggrieved person may elect to directly seek
14 judicial relief.

15 Section 20. Commercial activities inventory and review.

16 (A) On or before June 30, 2010, the council shall create an
17 inventory of activities of State agencies to classify whether
18 each activity or elements of the activity are:

19 (1) A commercial activity that can be obtained in whole
20 or in part from a private enterprise.

21 (2) An inherently governmental activity.

22 (B) The council shall update the inventory created under
23 this Section at least every 2 years.

24 (C) The council shall make the inventory available to the
25 public through electronic means.

1 (D) State agencies shall cooperate with inventory requests
2 made by the council.

3 Section 25. Business cases to outsource; review and
4 analysis; requirements.

5 (A) A proposal to outsource having a projected cost of more
6 than \$10,000,000 in any fiscal year shall require:

7 (1) An initial business case analysis conducted by the
8 State agency and submitted to the council, the Governor,
9 the President of the Senate, and the Speaker of the House
10 of Representatives at least 60 days before a solicitation
11 is issued. The council shall evaluate the business case
12 analysis and submit an advisory report to the State agency,
13 the Governor, the President of the Senate, and the Speaker
14 of the House of Representatives when the advisory report is
15 completed, but at least 30 days before the agency issues
16 the solicitation.

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 of
21 the Senate, and the Speaker of the House of
22 Representatives.

23 (B) A proposal to outsource having a projected cost of at
24 least \$1,000,000 but not more than \$10,000,000 in any fiscal
25 year shall require:

1 (1) An initial business case analysis conducted by the
2 State agency and submission of the business case, at least
3 30 days before issuing a solicitation, to the council, the
4 Governor, the President of the Senate, and the Speaker of
5 the House of Representatives.

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

12 (C) A business case to outsource having a projected cost of
13 less than \$1,000,000 in any fiscal year shall require a final
14 business case analysis conducted by the State agency after the
15 conclusion of any negotiations and provided to the council at
16 least 30 days before execution of a contract. The council shall
17 provide the business cases in its annual report to the
18 President of the Senate and the Speaker of the House of
19 Representatives.

20 (D) For any proposed outsourcing, the State agency shall
21 develop a business case that justifies the proposal to
22 outsource. The business case is not subject to challenge or
23 protest. The business case must include:

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

26 (2) A description and analysis of the State agency's

1 current performance based on existing performance measures
2 if the State agency is currently performing the service or
3 activity.

4 (3) The goals desired to be achieved through the
5 proposed outsourcing and the rationale for the goals.

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

8 (5) A description of available options for achieving
9 the goals. If State employees are currently performing the
10 service or activity, at least one option involving
11 maintaining State provision of the service or activity
12 shall be included.

13 (6) An analysis of the advantages and disadvantages of
14 each option, including, at a minimum, potential
15 performance improvements and risks.

16 (7) A description of the current market for the
17 contractual services that are under consideration for
18 outsourcing.

19 (8) A cost benefit analysis documenting the direct and
20 indirect specific baseline costs, savings, and qualitative
21 and quantitative benefits involved in or resulting from the
22 implementation of the recommended option or options. The
23 analysis must specify the schedule that, at a minimum, must
24 be adhered to in order to achieve the estimated savings.
25 All elements of cost must be clearly identified in the cost
26 benefit analysis, described in the business case and

1 supported by applicable records and reports. The State
2 agency head shall attest that based on the data and
3 information underlying the business case and to the best of
4 the State agency head's knowledge all projected costs,
5 savings, and benefits are valid and achievable. For the
6 purposes of this paragraph:

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

15 (b) "Savings" means the difference between the
16 direct and indirect actual annual baseline costs
17 compared to the projected annual cost for the
18 contracted functions or responsibilities in any
19 succeeding State fiscal year during the term of the
20 contract.

21 (9) A description of differences among current State
22 agency policies and processes and, as appropriate, a
23 discussion of options for or a plan to standardize,
24 consolidate, or revise current policies and processes, if
25 any, to reduce the customization of any proposed solution
26 that would otherwise be required.

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

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

7 (12) A plan to ensure compliance with the public
8 records law.

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

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

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

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

26 (E) Each contract for a proposed outsourcing pursuant to

1 this Section shall include the following:

2 (1) A scope-of-work provision that clearly specifies
3 each service or deliverable to be provided, including a
4 description of each deliverable or activity that is
5 quantifiable, measurable, and verifiable. This provision
6 must include a clause stating that if a particular service
7 or deliverable is inadvertently omitted or not clearly
8 specified but determined to be operationally necessary and
9 verified to have been performed by the agency within the 12
10 months before the execution of the contract, the service or
11 deliverable will be provided by the contractor through the
12 identified contract amendment process.

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

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

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

6 (5) A performance standards provision that identifies
7 all required performance standards, which must include at a
8 minimum:

9 (a) Detailed and measurable acceptance criteria
10 for each deliverable and service to be provided to the
11 State agency under the terms of the contract that
12 document the required performance level.

13 (b) A method for monitoring and reporting progress
14 in achieving specified performance standards and
15 levels.

16 (c) The sanctions or disincentives that will be
17 imposed for nonperformance by the contractor or State
18 agency.

19 (6) A provision that requires the contractor and its
20 subcontractors to maintain adequate accounting records
21 that comply with all applicable federal and State laws and
22 generally accepted accounting principles.

23 (7) A provision that authorizes the State agency to
24 have access to and audit all records related to the
25 contract and subcontracts, or any responsibilities or
26 functions under the contract and subcontracts, for

1 purposes of legislative oversight and a requirement for
2 audits by a service organization pursuant to professional
3 auditing standards, if appropriate.

4 (8) A provision that requires the contractor to
5 interview and consider for employment with the contractor
6 each displaced State employee who is interested in that
7 employment.

8 (9) A contingency plan provision that describes the
9 mechanism for continuing the operation of the service or
10 activity, including transferring the service or activity
11 back to the State agency or successor contractor, if the
12 contractor fails to perform and comply with the performance
13 standards and levels of the contract and the contract is
14 terminated.

15 (10) A provision that requires the contractor and its
16 subcontractors to comply with public records laws
17 specifically to:

18 (a) Keep and maintain the public records that
19 ordinarily and necessarily would be required by the
20 State agency in order to perform the service or
21 activity.

22 (b) Provide the public with access to the public
23 records on the same terms and conditions that the State
24 agency would provide the records.

25 (c) Ensure that records that are exempt or records
26 that are confidential and exempt are not disclosed

1 except as authorized by law.

2 (d) Meet all requirements for retaining records
3 and transfer to the State agency, at no cost, all
4 public records in possession of the contractor on
5 termination of the contract and destroy any duplicate
6 public records that are exempt or confidential. All
7 records stored electronically must be provided to the
8 State agency in a format that is compatible with the
9 information technology systems of the State agency.

10 (11) A provision that addresses ownership of
11 intellectual property. This paragraph does not provide the
12 specific authority needed by a State agency to obtain a
13 copyright or trademark.

14 (12) If applicable, a provision that allows the State
15 agency to purchase from the contractor, at its depreciated
16 value, assets used by the contractor in the performance of
17 the contract. If assets have not depreciated, the State
18 agency shall retain the right to negotiate to purchase at
19 an agreed on cost.

20 Section 30. Council accounting method. The council, by
21 rule, shall establish an accounting method that:

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

24 (2) Allows an agency to identify the total actual cost of
25 engaging in a commercial activity in a manner similar to how a

1 private enterprise identifies the total actual cost to the
2 private enterprise, including the following:

3 (a) Labor expenses, such as compensation and benefits,
4 costs of training, costs of paying overtime, and costs of
5 supervising labor or other personnel expenses.

6 (b) Operating costs, such as vehicle maintenance and
7 repair, marketing, advertising or other sales expenses,
8 office expenses, costs of an accounting operation such as
9 billing, insurance expenses, real estate or equipment
10 costs, debt service costs or a proportionate amount of
11 other overhead or capital expenses, such as vehicle
12 depreciation and depreciation of other fixed assets.

13 (c) Contract management costs.

14 (d) Other costs particular to a person supplying the
15 good or service.

16 (3) Provides a process to estimate the taxes a State agency
17 would pay related to engaging in a commercial activity if the
18 State agency were required to pay federal, State, and local
19 taxes to the same extent as a private enterprise engaging in
20 the commercial activity.

21 Section 35. Governor; required review of commercial
22 activities. Beginning with fiscal year 2010, the Governor, at
23 least once every 2 fiscal years, shall select at least 3
24 commercial activities that are being performed by a State
25 agency to be examined by the Governor's Office of Management

1 and Budget.

2 Section 40. Duties of the Governor's Office of Management
3 and Budget.

4 (A) The Governor's Office of Management and Budget shall:

5 (1) Determine the amount of an appropriation that is no
6 longer needed by an executive branch agency because all or
7 a portion of the agency's provision of a good or service is
8 privatized.

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

11 (3) Report its findings to the President of the Senate
12 and the Speaker of the House of Representatives.

13 (B) This Section does not prevent the Governor from making
14 a budget recommendation regarding the restoration of a portion
15 of the appropriation to a State agency that is reduced under
16 this Section.

17 Section 45. Applicability. This Act does not apply to
18 contracts in support of the planning, development,
19 implementation, operation, or maintenance of the road, bridge,
20 and public transportation construction program of the
21 Department of Transportation.

22 Section 90. Repeal. This Act is repealed on July 1, 2019.

23 Section 99. Effective date. This Act takes effect upon July

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1 1, 2009.