

# ASSEMBLY LABOR COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 5430**

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 15, 2023

The Assembly Labor Committee reports favorably and with committee amendments Assembly Bill No. 5430.

The bill prohibits the privatization of public services unless there are cost savings which are not based on increased charges or reduced services to the public, or lowered workforce standards. Each prospective private contractor would be required to demonstrate cost reductions based on improvements such as management efficiencies or technical innovation, not based on added burdens imposed on the members of the public using the services or the employees producing them.

The bill requires that a contract for the privatization of public services not be entered into without cost analyses demonstrating that there will be actual cost savings for the public agency and the taxpayers without increased fees, fares, or other charges to the public, reduced quantity or quality of services, or lowered workforce standards, including reduced staff qualifications and remuneration. The bill further requires sustained oversight and public disclosure regarding those contracts to provide accountability to taxpayers, public users of the services, and employees producing the services, that the cost savings actually occur without increased charges, or reduced services or workforce standards, and provides penalties and sanctions for any noncompliance involving agency or contractor misrepresentation, fraud or other malfeasance, misfeasance or nonfeasance.

As amended, the bill's prohibition on the privatization of public services does not apply to contracts for: (1) legal, management consulting, planning, engineering or design services, (2) prevailing wage construction work, (3) certain services provided by disabled individuals employed by rehabilitation facilities, (4) a vendor providing software or other information technology or equipment for the purpose of enhancing or increasing the productivity, efficiency, or effectiveness of regular employees of the agency in providing services; or (5) services which a vendor provides during an emergency or other unpredictable situation which creates a need for more services than the current regular employees are able to provide during the emergency or

situation, provided that there is no loss of employment for regular employees who normally provide the services.

As amended, the bill prohibits any political subdivision from entering into a contract of \$500,000 or more, and any public body, including the State, from entering into a contract of \$1 million or more, to purchase from private entities services previously performed by agency employees, unless:

1. The agency solicits competitive sealed bids for the contracts based on a comprehensive statement of requirements by the agency;

2. The contract requires that the public not be charged fares, fees or other charges greater than those currently charged, that the quantity and quality of the services provided equal or exceed the quantity and quality of services currently provided, that the contractor is qualified, and that contractor employees have qualifications and wage and benefit rates at least equal to the agency employees currently performing the services. Contractors are required to submit payroll records to the agency and, upon any failure to pay the agreed upon wage and benefit rates, are subject to the remedies and penalties provided by the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.) for failure to pay the prevailing wage;

3. The agency permits the union of the affected agency employees to review the agency's estimate of current costs and submit an alternative cost estimate and propose cost saving measures compliant with requirements of the bill and the agency reviews the union estimate and proposal and makes a determination whether to reduce the agency's estimate of current costs;

4. The contract requires compliance with antidiscrimination standards, requires available positions to be offered to qualified displaced agency employees, and requires the agency to prepare a plan of training and assistance for displaced employees;

5. The contractor and specified associates have no adjudicated record of substantial or repeated noncompliance with any federal or State law pertaining to the operation of a business, including laws regarding contracting and conflict of interest;

6. After receiving bids, the agency publicly designates the bidder to which it proposes to award the contract and issues a comprehensive written analysis of the total contract cost of the designated bid; and

7. The agency provides written certification that the agency and the proposed contract are in compliance with all provisions of the bill and the total estimated contract cost is less than the cost of agency employees performing the services, with a statement of the amount of the savings.

As amended, the bill requires the agency to make public its determination of whether to award a contract within 60 days of the completion of the bidding.

The Office of the State Comptroller would be required to review the certification and prohibit the agency from entering into the

privatization contract if the office provides a written determination that the bid does not provide cost savings or that the agency has otherwise failed to comply with any requirement of the bill.

The State Auditor would be required to conduct post-audits of contracts subject to the bill, evaluating whether the projected cost savings were obtained without raising charges, cutting services, or lowering workforce standards. If the noncompliance was related to agency or contractor misrepresentation, fraud or other malfeasance, misfeasance or nonfeasance, the agency or contractor would be subject to penalties and sanctions including, where appropriate, debarment or rescission of contracts, or reimbursement of excess charges to the public and underpayments of employees.

As amended, the requirements of the bill apply to any privatization contract entered into after the effective date of the bill and any renewal, extension or transfer of that contract, but do not apply to contracts entered into before the effective date or renewals, extensions or transfers of those contracts.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

1. raise the threshold for a privatization contract to be subject to the provisions of the bill from \$250,000 to \$500,000 for any contract with political subdivisions and to \$1 million for any contract with public bodies, including the State, which are not political subdivisions;
2. clarify that the provisions of the bill apply to any privatization contract entered into after the effective date of the bill and any renewal, extension or transfer of that contract, but do not apply to contracts entered into before the effective date or renewals, extensions or transfers of those contracts;
3. add additional limitations to the applicability of the bill to exclude any contract with a vendor providing software or other information technology or equipment for the purpose of enhancing or increasing the productivity, efficiency, or effectiveness of regular employees of the agency in providing services; and any contract under which a vendor provides services during an emergency or other unpredictable situation which creates a need for more services than the current regular employees are able to provide during the emergency or situation, provided that there is no loss of employment for regular employees who normally provide the services; and
4. require the agency to make public its determination of whether to award a contract within 60 days of the completion of the bidding.