

ASSEMBLY, No. 2205

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JANUARY 30, 2006

Sponsored by:

Assemblyman JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

Concerns certain contracts to privatize State services.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain contracts to privatize State services and
2 supplementing chapter 24 of Title 52 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. It is the policy of this State that State employees shall
8 perform the public services of the State in preference to contracting
9 out those services to the private sector. The Legislature finds and
10 declares that using private contractors to provide public services
11 formerly provided by State employees, or which are substantially
12 similar to and in lieu of services heretofore provided, or that could
13 be provided, in whole or in part, by State employees, does not
14 always promote the public interest. To ensure that citizens of the
15 State receive high quality public service at a fair cost, and to ensure
16 fair treatment of those State employees who have been providing
17 the public services, the Legislature finds it necessary to regulate the
18 circumstances which may result in the awarding of public service
19 contracts to private business entities, and to require that no decision
20 regarding the privatization of any service provided by the State
21 should be made without a careful evaluation of the long term impact
22 of the privatization on the State, its citizens and its employees.
23 Therefore, no agency of the State shall enter into a privatization
24 contract and no such contract shall be valid unless it complies with
25 the conditions set forth in this act.

26
27 2. As used in this act:

28 "Agency" includes, but is not limited to, an executive officer,
29 department, division, board, commission or other office or officer in
30 the executive branch of the State government, or any authority or
31 other instrumentality of the State, but does not include any political
32 subdivision of the State.

33 "Aggregate cost savings" with respect to a privatization contract
34 means the amount by which the net reduction of in-house costs
35 exceeds the entire cost of the privatization contract.

36 "Entire cost of the privatization contract" means a detailed
37 accounting of all costs under a privatization contract, or pro-rata
38 share of the costs, and all costs resulting from the contract,
39 including:

40 (1) Costs of labor;

41 (2) Costs of employer-provided fringe benefits;

42 (3) Costs of equipment or materials, whether supplied by the
43 State or a private contractor;

44 (4) All other costs directly or indirectly attributable to
45 transferring the work being performed by State employees to a
46 private business entity under the contract, including, but not limited
47 to, the costs of preparing and bidding the contract, the costs of
48 training the new workforce, bonding costs, insurance liability costs,

1 costs to the public of delayed or reduced services, and recovery
2 costs of returning the work to the agency if required by future
3 decision makers;

4 (5) Costs borne by the State in the maintenance of any publicly
5 supplied property, equipment or materials;

6 (6) Costs of administering, inspecting or monitoring the
7 contracted service, including, but not limited to, the use of
8 consultant services for this purpose;

9 (7) Cost of any anticipated unemployment compensation or
10 other benefits, including retraining expenses, for State employees
11 who are displaced as a result of the contracted service;

12 (8) Cost of lost income tax revenue and other tax revenue to the
13 State through the elimination of agency employees if the contractor
14 performs functions outside of the State.

15 "Fringe benefits" means all employer-provided fringe benefits
16 including health, dental, vision care, prescription, holidays,
17 vacations, sick and administrative leave, pensions and other
18 retirement benefits.

19 "Maintenance work" means the repair or maintenance of existing
20 facilities when the size, type or extent of those facilities is not
21 thereby changed or increased.

22 "Net reduction of in-house costs" means the net reduction of cost
23 to an agency caused by the agency not providing or performing a
24 service which is instead performed or provided by a private
25 business entity under a privatization contract.

26 "Private business entity" means a non-governmental person or
27 entity.

28 "Privatization contract" means an agreement, modification of a
29 prior agreement, or combination or series of agreements between a
30 private business entity and an agency under which the entity
31 performs or provides services substantially similar to, and in lieu of,
32 services heretofore provided, or that could be provided, in whole or
33 in part, by employees of the agency, except that "privatization
34 contract" shall not include any agreement between an agency and a
35 private business entity exclusively for the provision to the agency of
36 services substantially similar to those performed for the agency by
37 managerial executives as defined by subsection (f) of section 3 of
38 P.L.1941, c.100 (C.34:13A-3), confidential employees as defined
39 by subsection (g) of section 3 of P.L.1941, c.100 (C.34:13A-3) or
40 State employees assigned to the senior executive service pursuant to
41 N.J.S.11A:3-3, or exclusively for the provision of legal services to
42 the agency, or any contract for public work under which all non-
43 managerial workers are required by law to be paid the prevailing
44 wage determined by the Commissioner of Labor and Workforce
45 Development pursuant to the provisions of the "New Jersey
46 Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), and
47 under which none of those workers are engaged in maintenance
48 work. To "renew" a privatization contract, or the "renewal" of the

1 contract, means entering into an agreement in which the type, scope
2 and amount of the work under the contract as renewed are the same
3 as the type, scope and amount of the work under the original
4 contract, the added duration of the contract is the same as the
5 original contract, and the cost of the contract as renewed is not
6 more than the original contract except for a reasonable cost of
7 living adjustment. To "extend" a privatization contract, or the
8 "extension" of the contract, means entering into an agreement in
9 which the type and scope of the work under the contract as extended
10 are the same as the type and scope of the work under the original
11 contract, the added duration of the contract is less than the original
12 contract, and the rate of cost of the contract as extended is not more
13 than the original contract except for a reasonable cost of living
14 adjustment. An agreement which changes the type or scope of the
15 work under a privatization contract or increases the cost of a
16 privatization contract by more than \$250,000 shall not be regarded
17 as a renewal or extension of the contract, but shall instead be
18 regarded as a newly entered-into privatization contract, distinct
19 from the previous contract, for the purposes of this act.

20
21 3. In any case of a privatization contract entered into, renewed
22 or extended by an agency after the effective date of this act, the
23 agency shall, prior to soliciting bids or proposals from any
24 prospective or current contractor for the contract or its renewal or
25 extension, prepare and make available to the public a written
26 statement which describes: the requirements of the contract; the
27 procedures for awarding the contract, which shall be in compliance
28 with this act and all other applicable laws; the quantity and standard
29 of quality of the specific services proposed to be the subject of the
30 contract; the number of employees, the rate and total amounts of
31 wages and benefits needed for employees of the agency to do the
32 work involved in the contract; and the net reduction of in-house
33 costs anticipated by the agency in connection with the contract.

34
35 4. a. In any case of a privatization contract with a total value of
36 more than \$250,000 entered into, renewed or extended by an agency
37 after the effective date of this act, the agency, upon selecting a
38 contractor but prior to making a final award of the contract, shall
39 prepare a certification that the contract complies with the provisions
40 of section 5 of this act and shall prepare a cost analysis of the work
41 to be performed under the contract, which shall be used to assess
42 whether it is more effective to use employees of the private
43 business entity or to use existing or additional agency employees to
44 perform the work required. The cost analysis shall be based on the
45 quantity and quality of service described in the statement prepared
46 by the agency pursuant to section 3 of this act and on the agency's
47 calculations of the net reduction of in-house costs attributable to the
48 privatization contract, of the entire cost of the contract, and of the

1 aggregate cost savings due to the contract.

2 b. The agency shall make copies of the certification and cost
3 analysis available to the public and transmit copies to the State
4 Auditor and representatives of all employee organizations whose
5 members perform services which may be subject to the privatization
6 contract. The Speaker of the General Assembly, the President of
7 the Senate, or any representative of an employee organization
8 representing affected employees, or affected member of the public
9 may, not more than 15 days after the certification and cost analysis
10 are made available to the public, submit to the agency and the State
11 Auditor written comments regarding the certification, the cost
12 analysis and the proposed privatization contract, and may request
13 the State Auditor to hold a public hearing on the proposed contract.
14 If the State Auditor determines that the nature of the privatization
15 contract warrants a hearing, or if the hearing is requested by the
16 Speaker of the General Assembly, the President of the Senate, or
17 any union representing affected employees, a public hearing shall
18 be held not more than 30 days after the receipt of the cost analysis.
19 The purpose of the public hearing shall be to gather testimony
20 regarding all aspects of the agency's plan to privatize the service
21 which is the subject of the cost analysis.

22 c. The State Auditor shall, whether or not a public hearing is
23 held, review the certification and perform an independent audit of
24 the agency's calculations, make such adjustments to those
25 calculations as it deems appropriate, and issue its determination of
26 the aggregate cost savings, if any, with respect to the privatization
27 contract, and its determination of whether the contract is in full
28 compliance with the provisions of this act. The State Auditor shall,
29 not more than 30 days after receiving the certification and cost
30 analysis pursuant to subsection a. of this section, submit to the
31 agency, and make available to the public and representatives of the
32 employee organizations representing affected employees, together
33 with copies of the documents submitted by the bidder as part of the
34 bid, a written report of its determination of the aggregate cost
35 savings of the contract and of any analysis or concerns the State
36 Auditor may have regarding the proposed contract and its
37 determination of whether the contract is in full compliance with the
38 provisions of this act, except that the State Auditor may extend, by
39 not more than 30 days, the length of time in which to submit the
40 report, if needed to conduct a hearing or other further investigation.
41 If the State Auditor determines that the aggregate cost savings of
42 the contract are inadequate or the contract is otherwise not in
43 conformance with the requirements of this act, the agency may not
44 make a final award of the privatization contract and the contract
45 shall not be valid. If the State Auditor does not determine that the
46 contract is not in conformance with the requirements of this act, the
47 agency shall review the report before making a final award of the
48 contract.

1 d. The agency, when preparing the certification that the contract
2 complies with section 5 of this act, and the auditor, when reviewing
3 the certification, shall seek information from the State Departments
4 of Labor and Workforce Development, Environmental Protection,
5 Law and Public Safety and Health and Senior Services, regarding
6 any convictions, criminal convictions, debarments, suspensions or
7 other measures resulting from actions taken by a department for
8 noncompliance of the contractor and its subsidiaries, affiliates,
9 principals, and managerial or supervisory employees with laws
10 regarding labor relations, workplace standards, occupational health
11 and safety, public health and safety, environmental protection,
12 nondiscrimination and affirmative action, tax payment and conflicts
13 of interest.

14 e. If the agency decides not to make a final award of the contract
15 to a contractor after making the review of the proposed contract
16 required pursuant to this section and selects another contractor, the
17 agency shall comply with requirements of subsections a., b., c. and
18 d. of this section when considering any other contractor.

19
20 5. Except as provided by section 6 of this act, no privatization
21 contract with a total value of more than \$250,000 shall be entered
22 into, renewed or extended by an agency after the effective date of
23 this act unless all the following conditions are met:

24 a. The aggregate cost savings for the privatization contract are
25 substantial and the cost savings are not outweighed by the public's
26 interest in having a particular function performed directly by the
27 State, and, in the case of a privatization contract first entered into
28 after the effective date of this act, the savings are not outweighed by
29 any substantial reduction of the ability of the State to resume the
30 service as a State employee-provided service if the contracted
31 service proves not to be in the public interest, including a reduction
32 caused by any divestment of capital and equipment by the State in
33 connection with the contract;

34 b. If the privatization contract is first entered into after the
35 effective date of this act, but not in any case of a renewal or
36 extension of a privatization contract, the contract provides that State
37 employees directly or indirectly displaced by the terms of the
38 privatization contract after the effective date of this act have the
39 right of first refusal for the jobs under the contract;

40 c. If the privatization contract is first entered into after the
41 effective date of this act, but not in any case of a renewal or
42 extension of a privatization contract, the agency prepares a plan of
43 assistance for each employee displaced after the effective date of
44 this act who chooses not to work under the terms of the contract,
45 including any training needed to place the employee in a
46 comparable position in that agency, or if that is not possible, with
47 another agency;

48 d. If the privatization contract is first entered into after the

1 effective date of this act, but not in any case of a renewal or
2 extension of a privatization contract, the contract requires the
3 contractor to provide fringe benefit coverage and a rate of pay and
4 pay progression to its employees performing work under the
5 contract not less than what is provided to State employees
6 performing the work and requires the contractor to submit annual
7 payroll reports to the agency, which shall be available for public
8 inspection, listing the hours worked and the hourly wage paid for
9 each employee who performed work under the contract. The
10 Attorney General may bring a civil action for equitable relief in the
11 Superior Court to enforce this subsection or to prevent or remedy
12 any noncompliance with the provisions of this subsection;

13 e. The contract prohibits the contractor from increasing fees or
14 other direct or indirect charges to the public for the provision of
15 services and requires the contractor to maintain staffing levels
16 sufficient to ensure that there is no deterioration in the quality and
17 quantity of services provided to the public and to provide staff
18 which has certification, licensing and levels of job proficiency equal
19 to or exceeding that of the public employees who would provide the
20 services if there was no privatization contract;

21 f. The contractor, and its subsidiaries, affiliates, principals and
22 managerial or supervisory employees are not, at the time of the
23 awarding of the contract, subject to debarment, suspension,
24 adjudication or conviction and have not been subject to any
25 debarment, suspension or conviction during the ten-year period
26 before the awarding of the contract, or any criminal conviction at
27 any time, which debarment, suspension, adjudication or conviction
28 is due to substantial or repeated noncompliance with any federal or
29 state law regarding the operation of a business, including, but not
30 limited to, laws regarding labor relations, workplace standards,
31 occupational health and safety, public health and safety,
32 environmental protection, nondiscrimination and affirmative action,
33 tax payment and conflicts of interest;

34 g. The contractor has disclosed to the State Treasurer and to the
35 State Auditor every suit to which it, or its subsidiaries or affiliates
36 are, or have been a party, whether for alleged violations of law, or
37 arising out of the terms of a contract;

38 h. The agency and the contractor have disclosed to the State
39 Treasurer and to the State Auditor every report generated by the
40 agency, the contractor or any entity retained by the agency or
41 contractor, analyzing the ability of the contractor to comply with
42 the specifications of the contract;

43 i. The contract clearly states the legal and financial responsibility
44 for damages which arise out of contractor noncompliance, theft,
45 damage, negligence or inability to perform to the quantity and
46 quality standards specified in the contract;

47 j. The contractor certifies that its hiring practices meet applicable
48 nondiscrimination and affirmative action standards and the contract

1 requires the contractor to comply with a policy of nondiscrimination
2 and equal opportunity for all persons in accordance with applicable
3 nondiscrimination laws, regulations and standards;

4 k. The awarding of the contract does not have a significant
5 adverse effect on any affirmative action effort of the State;

6 l. The term of the contract is three years or less and the contract
7 provides that it will be voided if it is amended in a manner which
8 has the purpose or effect of avoiding any requirement this act;

9 m. If the privatization contract is first entered into after the
10 effective date of this act, but not in any case of a renewal or
11 extension of a privatization contract, no principal or management
12 employee of the contractor has worked in the preceding four years
13 for the State in any capacity which relates to work to be performed
14 under the contract;

15 n. The contractor has complied with requests of the agency, the
16 State Auditor and affected employee organizations, to provide
17 copies of any union contract, personnel manual and documents
18 describing fringe benefits, that cover its employees;

19 o. The contracted service is exactly the same as that which is or
20 would be performed by State employees if there was no
21 privatization contract;

22 p. In the case of a privatization contract in which a contractor
23 provides to an agency services to create, develop, enhance or update
24 a data processing system or other system based on information
25 technology, the contract requires the contractor to utilize the
26 knowledge of State employees and involve State employees at all
27 stages of the work as needed to ensure, to the maximum practical
28 extent, that the skills of State employees have been upgraded
29 sufficiently by the time of the completion of the work to provide the
30 employees with the expertise needed to operate and maintain the
31 system and an increased ability to perform future work to establish,
32 develop, enhance or update existing and subsequently established
33 data processing systems or other systems based on information
34 technology; and

35 q. The contract is in conformance with all applicable provisions
36 of law, including the provisions of the "New Jersey Contractual
37 Liability Act," N.J.S.59:13-1 et seq. and is consistent with the
38 provisions of any collective bargaining agreement applicable to the
39 affected public employees and is subject to any employee protection
40 arrangements established pursuant to 49 U.S.C. 5333(b).

41 Failure of a contractor to meet the conditions of subsection f., g.,
42 h., m. or n. of this section shall result in termination of the contract,
43 if the failure becomes known after the award of the contract.
44

45 6. a. If it is impossible for the agency to perform the work with
46 existing or additional employees of the agency because no training
47 is available to provide the employees with the required level of
48 expertise or skill and no workers with the required level of expertise

1 or skill are available to hire, or it is impractical because the work
2 would be of such an intermittent nature as to be likely to cause
3 regular periods of unemployment for the employees if they were
4 hired by the agency, or because it is impractical for the agency to
5 perform the work with existing or additional employees of the
6 agency because the work is in response to emergency situations
7 which do not occur on a regular basis, such as snow removal, the
8 agency may enter into, or renew or extend, a contract with a private
9 business entity, exclusively for the performance of that portion of
10 the work for which it is impossible for any of the reasons indicated
11 in this subsection a., or impractical for any of the reasons indicated
12 in this subsection a., for the agency to perform the work with
13 existing or with newly-hired, additional employees of the agency,
14 even if the contract does not provide any cost savings, and the
15 contract shall not be subject to any other procedures provided by
16 this act, if all of the following conditions are met:

17 (1) The agency makes a determination that it is impossible for
18 any of the reasons indicated in this subsection a., or impractical for
19 any of the reasons indicated in this subsection a., for the agency to
20 perform the work with existing or additional employees of the
21 agency;

22 (2) The agency, not less than 20 days before any solicitation of
23 bids or proposals, makes available a statement of that
24 determination, with supporting documentation for the statement, to
25 the public, the State Auditor and the representatives of all employee
26 organizations whose members are or may be affected by the
27 privatization contract; and

28 (3) The State Auditor reviews the statement of the determination
29 of the agency and reviews any comments regarding the statement
30 submitted by any representative of the employee organizations or
31 any affected member of the public to the State Auditor not more
32 than 10 days after the statement is made available, and the State
33 Auditor, before the contract is awarded, makes public a statement
34 that the State Auditor concurs with the determination of the agency.

35 The State Auditor shall annually conduct a post audit of the
36 contract and issue a report, the first report not later than the end of
37 the first year of the contract, reviewing and evaluating: the
38 compliance of the agency and the contractor with the provisions of
39 this act; whether it has, since the contract was entered into, become
40 possible or practical to train or hire agency employees to perform
41 any part of the work under the contract; what, if any, cost savings
42 the agency may obtain by hiring or training agency employees to
43 perform the work; and any efforts made by the agency to obtain
44 those savings.

45 Each department and each State entity other than a department
46 authorized by law to adopt regulations regarding its operations
47 shall, not more than 180 days after the effective date of this act,
48 adopt regulations establishing criteria to be used when making

1 determinations of whether it is, for any of the reasons indicated in
2 this subsection a., impossible or impractical for the department or
3 entity, with existing or with additional employees of the department
4 or entity, to perform work being considered for a privatization
5 contract.

6 b. In the case of a privatization contract which was in effect
7 upon the effective date of this act and expires after the effective
8 date of this act, the agency may, on a one-time-only basis, extend
9 the contract for a period not to exceed two years and the contract
10 shall not be subject to any other procedures provided by this act, if
11 all of the following conditions are met:

12 (1) The agency makes a determination that the entire extension
13 period is necessary for the agency to hire or train State employees
14 and to take other actions needed to ensure that, when the extension
15 is ended, the services provided under the contract will continue to
16 be provided in a timely and satisfactory manner by State employees;

17 (2) The agency makes available, not less than 30 days before the
18 extension period begins, a statement of that determination, with
19 supporting documentation, to the public, the State Auditor and the
20 representatives of all employee organizations whose members are or
21 may be affected by the privatization contract; and

22 (3) The State Auditor reviews the statement of the determination
23 of the agency and reviews any comments regarding the statement
24 submitted to the State Auditor by any representative of the
25 employee organizations or any affected member of the public not
26 more than 15 days after the statement is made available, and the
27 State Auditor, before the extension period begins, makes public a
28 statement that the State Auditor concurs with the determination of
29 the agency.

30 c. In the case of a privatization contract which was in effect
31 upon the effective date of this act and expires less than 120 days
32 after the effective date of this act, if the agency elects to seek an
33 extension or renewal of the contract, the contract shall not be
34 regarded as expired until the agency has had the amount of time
35 needed to comply with the provisions of sections 3 and 4 of this act.

36 d. This section shall not be construed or applied as authorizing
37 the privatization of work that has been regularly performed by State
38 employees, including permanent intermittent employees.

39
40 7. Except in the case of any privatization contract which,
41 pursuant to subsections a. or b. of section 6 of this act, is not subject
42 to the provisions of this section, the State Auditor shall, as part of
43 his responsibility under R.S.52:24-4, conduct a post audit of each
44 privatization contract entered into, renewed or extended after the
45 effective date of this act with a total value of more than \$250,000
46 and shall issue, and make available to the public and representatives
47 of employee organizations representing affected employees, an
48 annual report to the Governor and the Legislature regarding the

1 contract, the first of which shall be issued not more than 90 days
2 after the end of the first year that the contract is in effect, or, in the
3 case of a contract in effect upon the effective date of this act, not
4 more than 90 days after the end of the first year after the contract is
5 renewed or extended. The report shall include an evaluation of any
6 actual net reduction of in-house costs, the actual entire cost of the
7 privatization contract, and any actual aggregate cost savings of the
8 contract, and shall include, in the case of a contract entered into,
9 renewed or extended after the effective date of this act, a review of
10 the compliance of the agency and the contractor with the provisions
11 of this act in connection with the contract and a comparison of any
12 calculation made by the agency pursuant to section 4 of this act of
13 anticipated aggregate cost savings due to the contract with any
14 actual aggregate cost savings. The State Auditor shall, upon the
15 conclusion of the contract, prepare and make available to the public
16 a final comprehensive audit report on the effectiveness of the
17 contractor in meeting the goals and requirements of the contract.
18 For the purposes of paragraph 6 of section 1 of Article 7 of the State
19 Constitution, the duties assigned to the State Auditor by sections 3,
20 4 and 6 of this act are duties related to post-audits required pursuant
21 to this act and make an essential contribution to the conduct of
22 those post-audits. Any malfeasance, misfeasance or nonfeasance of
23 an agency or any officer of the agency in connection with a
24 privatization contract which is disclosed by any audit or
25 investigation conducted pursuant to this act shall be subject to the
26 provisions of R.S.52:24-7.

27
28 8. a. The provisions of this act shall not apply to any
29 privatization contract entered into upon or prior to the effective date
30 of this act under which health or human services are provided to an
31 agency by a non-profit entity, or bus line services are provided to an
32 agency, and shall not apply to any renewal or extension of that
33 contract, except that:

34 (1) Each State department or other agency which has entered
35 into privatization contracts which are exempted from the provisions
36 of this act pursuant to this section shall conduct a review of each of
37 those contracts which has a total value of more than \$500,000, and
38 was entered into during the seven-year period ending on the
39 effective date of this act. The purpose of the review shall be to
40 evaluate cost and policy issues regarding the contract, including the
41 amount of any net aggregate savings provided to the agency by the
42 contract. The agency shall issue and make available to the public
43 and the State Auditor a comprehensive report of the findings for all
44 contracts reviewed, organized by categories of contracts, with
45 supporting documentation for each contract, and the report shall be
46 issued and made available to the public and the State Auditor not
47 later than one year after the effective date of this act;

48 (2) In the case of any privatization contract reviewed by an

1 agency pursuant to paragraph (1) of this subsection, the State
2 Auditor shall review the report of the agency's review, and if the
3 State Auditor finds that savings may be obtained by using current or
4 newly hired agency employees instead of contractors, then any
5 renewal or extension of the contract occurring after the issuing of
6 the report of the review shall be subject to the provisions and
7 procedures of this act; and

8 (3) In the case of any privatization contract reviewed by an
9 agency pursuant to paragraph (1) of this subsection which is
10 renewed or extended before the report of the review is issued, the
11 renewal or extension shall not be for a duration of longer than one
12 year, and the contract shall be subject to the provisions of paragraph
13 (2) of this subsection if and when the contract is again renewed or
14 extended after the report is issued.

15 b. In the case of any privatization contract first entered into after
16 the effective date of this act, or of the renewal or extension of any
17 privatization contract which was in effect upon the effective date of
18 this act, under which engineering services are provided to the
19 Department of Transportation or the New Jersey Transit
20 Corporation, if the contract and the process for awarding the
21 contract meets the requirements of all applicable laws other than
22 this act, and if the Commissioner of Transportation certifies that the
23 contract complies with the requirements of this act or certifies that
24 it is impossible for the department or the corporation to perform the
25 work with existing or additional employees of the department or the
26 corporation because no training is available to provide the
27 employees with the required level of expertise or skill and no
28 workers with the required level of expertise or skill are available to
29 hire and that the contract complies with all of the provisions of this
30 act except for subsection a. of section 5 of this act, then the contract
31 may be entered into, extended or renewed immediately upon that
32 certification, and the procedures of sections 3, 4, 6 and 7 of this act
33 shall not apply to the contract, except that the contract shall be
34 subject to all of the provisions of this act requiring contractors and
35 agencies to make disclosures, determinations, cost analysis and
36 reviews. The commissioner may, as long as it meets the
37 requirements of this act, certify at the time of the annual submission
38 of the transportation capital programs of the department and the
39 corporation whether it is impossible for the department or the
40 corporation to perform the work under each contract subject to this
41 subsection with existing or additional employees of the department
42 or the corporation because no training is available to provide the
43 employees with the required level of expertise or skill and workers
44 with the required level of expertise or skill are available to hire.
45 The State Auditor shall annually conduct a post audit of all of the
46 contracts subject to the provisions of this subsection and issue a
47 report to representatives of all employee organizations whose
48 members may be affected by each contract, the Speaker of the

1 General Assembly, the President of the Senate and the agencies,
2 which report reviews and evaluates:

3 (1) The compliance of the agencies and contractors with the
4 provisions of this act in connection with the contracts;

5 (2) Any actual net reduction of in-house costs, the actual entire
6 cost of the privatization contracts and any actual aggregate cost
7 savings of the contracts;

8 (3) Whether it is possible or practical to train or hire agency
9 employees to perform any part of the work under the contracts;

10 (4) What, if any, cost savings the agency may obtain by hiring
11 or training agency employees to perform the work; and

12 (5) Any efforts made by the agency to obtain those savings.

13 The commissioner shall, not more than 180 days after the
14 effective date of this act, adopt regulations establishing criteria to
15 be used when making determinations of whether it is, for any of the
16 reasons indicated in this subsection, impossible for the department
17 or corporation, with existing or with additional employees of the
18 department or corporation, to perform work being considered for a
19 privatization contract.

20

21 9. In the case of any document or information required to be
22 made available to the public by the provisions of this act, the means
23 to do so shall include being made available to the public on the
24 Internet.

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26 10. This act shall take effect immediately.

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STATEMENT

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31 This bill establishes requirements and procedures regarding
32 privatization contracts between State agencies and private business
33 entities under which the business entities provide services
34 substantially similar to services provided by State agency
35 employees.

36 The bill requires that any State agency, before soliciting bids or
37 proposals for a privatization contract or its renewal or extension,
38 prepare and make available to the public a statement describing:
39 contract requirements; procedures for awarding the contract;
40 services subject to the contract; the wages and benefits of the
41 agency employees performing the work; and the anticipated net
42 reduction of in-house costs.

43 The bill requires the agency, upon selecting a contractor for any
44 privatization contract with a total value of more than \$250,000, but
45 before making a final award of the contract, to prepare a cost
46 analysis of the contract and certification that the contract complies
47 with the requirements of the bill. The agency is required to make
48 the cost analysis and certification available to the public, the State

1 Auditor and affected employee organizations. The Speaker of the
2 General Assembly, the President of the Senate or affected employee
3 organization representative or member of the public may, not more
4 than 15 days after the certification and cost analysis are made
5 available, submit comments to the agency and the State Auditor and
6 request a public hearing. The State Auditor is required to review
7 the certification and perform an audit of the agency's calculations
8 and report its own determination of the aggregate cost savings, if
9 any, with respect to the contract.

10 The bill requires that for any privatization contract with a total
11 value of more than \$250,000:

12 1. The contract results in substantial aggregate cost savings not
13 outweighed by the public's interest in having the service performed
14 directly by the State;

15 2. Displaced State workers are given a right of first refusal for
16 the jobs under the contract, or training and other assistance if they
17 choose not to work under the contract;

18 3. The contractor provides workers under the contract with
19 benefits and a rate of pay not less than that provided to State
20 employees performing the work;

21 4. The contracted service is the same as that performed by State
22 employees in lieu of the privatization contract, there is no increase
23 in charges to the public and staffing levels are maintained at the
24 level needed to sustain the quality of the service;

25 5. The contractor, its subsidiaries and affiliates, and its
26 managerial and supervisory employees have not been subject to
27 debarment, suspension, adjudication or conviction during the 10-
28 year period before the awarding of the contract or any criminal
29 conviction at anytime and no principal or management employee of
30 the contractor worked in the preceding four years for the State in
31 any capacity related to work under the contract;

32 6. The contractor discloses every suit involving it or its
33 subsidiaries or affiliates, and every report regarding the contractor's
34 ability to comply with the contract, and provides copies of all
35 requested union contracts, personnel manuals, and documents
36 describing fringe benefits, that cover its employees;

37 7. The contract has a term of not more than three years and
38 states the contractor's liability for damages arising out of contractor
39 noncompliance, theft, damage, negligence or inability of the
40 contractor to perform;

41 8. The contractor's practices meet all applicable
42 nondiscrimination and affirmative action standards and the contract
43 has no significant adverse effect on State affirmative action efforts;

44 9. For any privatization contract to perform development work
45 on an information technology-based system, the contractor involves
46 State employees in the work to ensure, as much as practical, that
47 their skills are upgraded enough to permit them to operate and
48 maintain the system and perform future development work; and

1 10. The contract is in conformance with the provisions of any
2 applicable collective bargaining agreement and subject to the
3 provisions of any employee protection arrangement established
4 under 49 U.S.C. 5333(b).

5 The bill requires the State Auditor to conduct annual post audits
6 of each privatization contract with a total value of more than
7 \$250,000 and issue a report which includes evaluations of any
8 actual net reduction of in-house costs, the actual entire cost of the
9 contract and any actual aggregate cost savings of the contract, and a
10 review of the compliance of the agency and the contractor with the
11 requirements of the bill.