

SENATE, No. 840

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED FEBRUARY 1, 2010

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Mercer)

SYNOPSIS

Concerns certain contracts to privatize county services.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning certain contracts to privatize county services
2 and supplementing P.L.1947, c.151. (C.52:27BB-1 et seq.)

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

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

34 "Division" means the Division of Local Government Services in
35 the State Department of Community Affairs.

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 county or a private contractor;

44 (4) All other costs directly or indirectly attributable to
45 transferring the work being performed by county 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 county in the maintenance of any
5 publicly 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) Costs of any anticipated unemployment compensation or
10 other benefit including retraining expenses, for county 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 or the county through the elimination of agency employees if
14 the contractor performs functions outside of the county.

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 and as a result of which, State
34 funds are provided to the entity, except that "privatization contract"
35 shall not include any agreement between an agency and a private
36 business entity exclusively for the provision to the agency of
37 services substantially similar to those performed for the agency by
38 managerial executives as defined by subsection (f) of section 3 of
39 P.L.1941, c.100 (C.34:13A-3) or confidential employees as defined
40 by subsection (g) of section 3 of P.L.1941, c.100 (C.34:13A-3), or
41 exclusively for the provision of legal services to the agency, or any
42 contract for public work under which all non-managerial workers
43 are required by law to be paid the prevailing wage determined by
44 the Commissioner of Labor pursuant to the provisions of the "New
45 Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et
46 seq.), and under which none of those workers are engaged in
47 maintenance work. To "renew" a privatization contract, or the
48 "renewal" of the contract, means entering into an agreement in

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

20 "State funds" means any funds appropriated by the State and any
21 other money or other thing of value provided directly or indirectly
22 by the State to any contractor in connection with a privatization
23 contract with an agency, including any funds that the State receives
24 from the federal government.

25

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

39

40 4. a. In any case of a privatization contract with a total value
41 of more than \$250,000 entered into, renewed or extended by an
42 agency after the effective date of this act, the agency, upon
43 selecting a contractor but prior to making a final award of the
44 contract, shall prepare a certification that the contract complies with
45 the provisions of section 5 of this act and shall prepare a cost
46 analysis of the work to be performed under the contract, which shall
47 be used to assess whether it is more effective to use employees of
48 the private business entity or to use existing or additional agency

1 employees to perform the work required. The cost analysis shall be
2 based on the quantity and quality of service described in the
3 statement prepared by the agency pursuant to section 3 of this act
4 and on the agency's calculations of the net reduction of in-house
5 costs attributable to the privatization contract, of the entire cost of
6 the privatization contract, and of the aggregate cost savings due to
7 the contract.

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

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

1 this act, the agency may not make a final award of the privatization
2 contract and the contract shall not be valid. If the division does not
3 determine that the contract is not in conformance with the
4 requirements of this act, the agency shall review the report before
5 making a final award of the contract.

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

19 e. If the agency decides not to make a final award of the
20 contract to a contractor after making the review of the proposed
21 contract required pursuant to this section and selects another
22 contractor, the agency shall comply with requirements of
23 subsections a., b., c. and d. of this section when considering any
24 other contractor.

25
26 5. Except as provided by section 6 of this act, no privatization
27 contract with a total value of more than \$250,000 shall be entered
28 into, renewed or extended by an agency after the effective date of
29 this act unless all the following conditions are met:

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

40 b. 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 contract provides that
43 county employees directly or indirectly displaced by the terms of
44 the privatization contract after the effective date of this act have the
45 right of first refusal for the jobs under the contract;

46 c. If the privatization contract is first entered into after the
47 effective date of this act, but not in any case of a renewal or
48 extension of a privatization contract, the agency prepares a plan of

1 assistance for each employee displaced after the effective date of
2 this act who chooses not to work under the terms of the contract,
3 including any training needed to place the employee in a
4 comparable position in that agency, or if that is not possible, with
5 another agency;

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

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

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

41 g. The contractor has disclosed to the State Treasurer and to the
42 division every suit to which it, or its subsidiaries or affiliates are, or
43 have been a party, whether for alleged violations of law, or arising
44 out of the terms of a contract;

45 h. The agency and the contractor have disclosed to the State
46 Treasurer and to the division every report generated by the agency,
47 the contractor or any entity retained by the agency or contractor,

- 1 analyzing the ability of the contractor to comply with the
2 specifications of the contract;
- 3 i. The contract clearly states the legal and financial
4 responsibility for damages which arise out of contractor
5 noncompliance, theft, damage, negligence or inability to perform to
6 the quantity and quality standards specified in the contract;
- 7 j. The contractor certifies that its hiring practices meet
8 applicable nondiscrimination and affirmative action standards and
9 the contract requires the contractor to comply with a policy of
10 nondiscrimination and equal opportunity for all persons in
11 accordance with applicable nondiscrimination laws, regulations and
12 standards;
- 13 k. The awarding of the contract does not have a significant
14 adverse effect on any affirmative action effort of the county;
- 15 l. The term of the contract is three years or less and the
16 contract provides that it will be voided if it is amended in a manner
17 which has the purpose or effect of avoiding any requirement of this
18 act;
- 19 m. If the privatization contract is first entered into after the
20 effective date of this act, but not in any case of a renewal or
21 extension of a privatization contract, no principal or management
22 employee of the contractor has worked in the preceding four years
23 for the county or the State in any capacity which relates to work to
24 be performed under the contract;
- 25 n. The contractor has complied with requests of the agency, the
26 division and affected employee organizations, to provide copies of
27 any union contract, personnel manual and documents describing
28 fringe benefits, that cover its employees;
- 29 o. The contracted service is exactly the same as that which is or
30 would be performed by county employees if there was no
31 privatization contract;
- 32 p. In the case of a privatization contract in which a contractor
33 provides to an agency services to create, develop, enhance or update
34 a data processing system or other system based on information
35 technology, the contract requires the contractor to utilize the
36 knowledge of county employees and involve county employees at
37 all stages of the work as needed to ensure, to the maximum practical
38 extent, that the skills of county employees have been upgraded
39 sufficiently by the time of the completion of the work to provide the
40 employees with the expertise needed to operate and maintain the
41 system and an increased ability to perform future work to establish,
42 develop, enhance or update existing and subsequently established
43 data processing systems or other systems based on information
44 technology; and
- 45 q. The contract is in conformance with all applicable
46 provisions of law, including the provisions of the "New Jersey
47 Contractual Liability Act," N.J.S.59:13-1 et seq. and is consistent
48 with the provisions of any collective bargaining agreement

1 applicable to the affected public employees and is subject to any
2 employee protection arrangements established pursuant to 49
3 U.S.C.s.5333(b).

4 Failure of a contractor to meet the conditions of subsection f., g.,
5 h., m. or n. of this section shall result in termination of the contract,
6 if the failure becomes known after the award of the contract.
7

8 6. a. If it is impossible for the agency to perform the work with
9 existing or additional employees of the agency because no training
10 is available to provide the employees with the required level of
11 expertise or skill and no workers with the required level of expertise
12 or skill are available to hire, or it is impractical because the work
13 would be of such an intermittent nature as to be likely to cause
14 regular periods of unemployment for the employees if they were
15 hired by the agency, or because it is impractical for the agency to
16 perform the work with existing or additional employees of the
17 agency because the work is in response to emergency situations
18 which do not occur on a regular basis, such as snow removal, the
19 agency may enter into, or renew or extend, a contract with a private
20 business entity, exclusively for the performance of that portion of
21 the work for which it is impossible for any of the reasons indicated
22 in this subsection a., or impractical for any of the reasons indicated
23 in this subsection a., for the agency to perform the work with
24 existing or with newly-hired, additional employees of the agency,
25 even if the contract does not provide any cost savings, and the
26 contract shall not be subject to any other procedures provided by
27 this act, if all of the following conditions are met:

28 (1) The agency makes a determination that it is impossible for
29 any of the reasons indicated in this subsection a., or impractical for
30 any of the reasons indicated in this subsection a., for the agency to
31 perform the work with existing or additional employees of the
32 agency;

33 (2) The agency, not less than 20 days before any solicitation of
34 bids or proposals, makes available a statement of that
35 determination, with supporting documentation for the statement, to
36 the public, the division and the representatives of all employee
37 organizations whose members are or may be affected by the
38 privatization contract; and

39 (3) The division reviews the statement of the determination of
40 the agency and reviews any comments regarding the statement
41 submitted by any representative of the employee organizations or
42 any affected member of the public to the division not more than 10
43 days after the statement is made available, and the division, before
44 the contract is awarded, makes public a statement that the division
45 concurs with the determination of the agency.

46 The division shall annually conduct a post audit of the contract
47 and issue a report, the first report not later than the end of the first
48 year of the contract, reviewing and evaluating: the compliance of

1 the agency and the contractor with the provisions of this act;
2 whether it has, since the contract was entered into, become possible
3 or practical to train or hire agency employees to perform any part of
4 the work under the contract; what, if any, cost savings the agency
5 may obtain by hiring or training agency employees to perform the
6 work; and any efforts made by the agency to obtain those savings.

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

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

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

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

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

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

40

41 7. Except in the case of any privatization contract which,
42 pursuant to subsections a. or b. of section 6 of this act, is not
43 subject to the provisions of this section, the division shall conduct a
44 post audit of each privatization contract entered into 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 division 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

19 8. a. The provisions of this act shall not apply to any
20 privatization contract entered into upon or prior to the effective date
21 of this act under which health or human services are provided to an
22 agency by a non-profit entity or bus line services are provided to an
23 agency, and shall not apply to any renewal or extension of that
24 contract, except that:

25 (1) Each agency which has entered into privatization contracts
26 which are exempted from the provisions of this act pursuant to this
27 section shall conduct a review of each of those contracts which has
28 a total value of more than \$500,000, and was entered into during the
29 seven-year period ending on the effective date of this act. The
30 purpose of the review shall be to evaluate cost and policy issues
31 regarding the contract, including the amount of any net aggregate
32 savings provided to the agency by the contract. The agency shall
33 issue and make available to the public and the division a
34 comprehensive report of the findings for all contracts reviewed,
35 organized by categories of contracts, with supporting
36 documentation for each contract, and the report shall be issued and
37 made available to the public and the division not later than one year
38 after the effective date of this act;

39 (2) In the case of any privatization contract reviewed by an
40 agency pursuant to paragraph (1) of this subsection, the division
41 shall review the report of the agency's review, and if the division
42 finds that savings may be obtained by using current or newly hired
43 agency employees instead of contractors, then any renewal or
44 extension of the contract occurring after the issuing of the report of
45 the review shall be subject to the provisions and procedures of this
46 act; and

47 (3) In the case of any privatization contract reviewed by an
48 agency pursuant to paragraph (1) of this subsection which is

1 renewed or extended before the report of the review is issued, the
2 renewal or extension shall not be for a duration of longer than one
3 year, and the contract shall be subject to the provisions of paragraph
4 (2) of this subsection of this section if and when the contract is
5 again renewed or extended after the report is issued.

6 b. In the case of any privatization contract first entered into
7 after the effective date of this act, or of the renewal or extension of
8 any privatization contract which was in effect upon the effective
9 date of this act, under which engineering services are provided to an
10 agency, if the contract and the process for awarding the contract
11 meets the requirements of all applicable laws other than this act,
12 and if the agency certifies that the contract complies with the
13 requirements of this act or certifies that it is impossible for the
14 agency to perform the work with existing or additional employees
15 of the agency because no training is available to provide the
16 employees with the required level of expertise or skill and no
17 workers with the required level of expertise or skill are available to
18 hire and that the contract complies with all of the provisions of this
19 act except for subsection a. of section 5 of this act, then the contract
20 may be entered into, extended or renewed immediately upon that
21 certification, and the procedures of sections 3, 4, 6 and 7 of this act
22 shall not apply to the contract, except that the contract shall be
23 subject to all of the provisions of this act requiring contractors and
24 agencies to make disclosures, determinations, cost analysis and
25 reviews. The division shall annually conduct a post audit of all of
26 the contracts subject to the provisions of this subsection and issue a
27 report to representatives of all employee organizations whose
28 members may be affected by each contract, the Speaker of the
29 General Assembly, the President of the Senate and the agencies,
30 which report reviews and evaluates:

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

33 (2) Any actual net reduction of in-house costs, the actual entire
34 cost of the privatization contracts and any actual aggregate cost
35 savings of the contracts;

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

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

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

41 The division shall, not more than 180 days after the effective
42 date of this act, adopt regulations establishing criteria to be used
43 when making determinations of whether it is, for any of the reasons
44 indicated in this subsection, impossible for the agency, with
45 existing or with additional employees of the agency, to perform
46 work being considered for a privatization contract.

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

10. This act shall take effect immediately.

STATEMENT

This bill establishes requirements and procedures regarding privatization contracts between county agencies and private business entities under which the business entities provide services substantially similar to services provided by county agency employees and as a result of which, State or federal funds are provided to the entity.

The bill requires that any county agency, before soliciting bids or proposals for a privatization contract or its renewal or extension, prepare a statement describing: contract requirements; procedures for awarding, renewing or extending the contract; services subject to the contract; the wages and benefits of the agency employees performing the work; and the anticipated net reduction of in-house costs.

The bill requires the agency, upon selecting a contractor for any privatization contract with a total value of more than \$250,000, but before making a final award of the contract, to prepare and make public a cost analysis of the contract and certification that the contract complies with the requirements of the bill. The President of the Senate, the Speaker of the General Assembly or any affected employee organization representative or member of the public may, within 15 days after the certification and cost analysis are made available, submit comments and request a public hearing and the Division of Local Government Services is required to hold the hearing if the request is from the legislative leadership or the employee organization. The division is required, within 30 days after receiving the agency's cost analysis, or 60 days if there is a hearing, to review the certification and perform an audit of the agency's calculations and report its own determination of the aggregate cost savings, if any, and whether the contract is in compliance with the bill. If the division finds the cost savings to be inadequate or the contract otherwise not in compliance, the agency is not permitted to award the contract.

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

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

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

5 3. The contractor, its subsidiaries and affiliates, and its
6 managerial and supervisory employees have no record of substantial
7 or repeated noncompliance with any law regarding the operation of
8 a business which resulted in debarment, suspension or conviction
9 within the last ten years or criminal conviction at any time;

10 4. The contract has a term of not more than three years and
11 states the contractor's liability for damages;

12 5. The contractor's practices meet all applicable
13 nondiscrimination and affirmative action standards and the contract
14 has no significant adverse effect on affirmative action efforts;

15 6. The contractor, for any contract to perform development
16 work on an information technology-based system, involves county
17 employees in the work to ensure, as much as practical, so that their
18 skills are upgraded enough to permit them to operate and maintain
19 the system and perform future development work;

20 7. The contract conforms with all applicable collective
21 bargaining agreements, federal laws and the "New Jersey
22 Contractual Liability Act"; and

23 8. In the case of a new contract, but not the extensions or
24 renewals of contracts in effect before the bill's enactment: the
25 contractor provides workers under the contract with benefits and a
26 rate of pay not less than that provided to county employees
27 performing the work; displaced county workers are given a right of
28 first refusal for the jobs under the contract, or training and other
29 assistance if they choose not to work under the contract; and no
30 principal or management employee of the contractor worked in the
31 preceding four years for the agency in any capacity related to work
32 under the contract.

33 The bill requires the division to conduct annual post audits of
34 each privatization contract with a total value of more than \$250,000
35 and issue a report which includes evaluations of the actual net
36 reduction of in-house costs, the actual entire cost of the contract and
37 the actual aggregate cost savings of the contract, and a review of the
38 compliance of the agency and the contractor with the requirements
39 of the bill.

40 The bill provides a streamlined, 20-day process for contracts for
41 which the agency certifies, and the division concurs with the
42 agency, after public response, that it is impossible for the agency to
43 perform the work with existing or additional employees of the
44 agency because needed training is not available and no workers
45 with the required level of expertise or skill are available to hire, or
46 it is impractical because the work is of an intermittent nature or on
47 an emergency basis, such as snow removal. The bill also permits an
48 agency to extend for two years a privatization contract in effect

1 when the bill was enacted, if the division concurs with the agency,
2 after public response, that the extension is needed to hire or train
3 county employees.

4 The bill exempts entirely contracts which involve no State or
5 federal funds and contracts for management and legal services and
6 all work subject to the State prevailing wage law except
7 maintenance work which makes no changes to facilities.

8 The bill exempts existing contracts for health or human services
9 provided by a non-profit entity or for bus line services, except that
10 the agency is required to review each contract entered into during
11 the previous seven years worth more than \$500,000 to evaluate cost
12 savings, and provide its findings to the public and the division. If
13 the division determines that savings may be attained by using public
14 employees instead of contractors, any subsequent renewal or
15 extension of the contract would be subject to the bill's procedures
16 and requirements.

17 The bill allows contracts for engineering services to be entered
18 into or renewed without going through the bill's procedures, so long
19 as the agency certifies them to be in compliance with all of the
20 requirements of the bill, except that, if it is impossible for an
21 agency to train or hire public employees with sufficient expertise or
22 skill levels, the contract does not have to provide cost savings. The
23 bill requires that the contracts are subsequently audited for
24 compliance and cost savings.