

**ASSEMBLY, No. 919**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

**Sponsored by:**

**Assemblywoman VERLINA REYNOLDS-JACKSON**

**District 15 (Hunterdon and Mercer)**

**Assemblyman BENJIE E. WIMBERLY**

**District 35 (Bergen and Passaic)**

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**District 15 (Hunterdon and Mercer)**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**Co-Sponsored by:**

**Assemblywoman Swift, Assemblymen Guardian, Sampson, Simonsen,  
McClellan, DeAngelo, Conaway and Assemblywoman Hall**

**SYNOPSIS**

Establishes procedures and standards regarding public service privatization contracts.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 2/27/2024)**

1 AN ACT establishing procedures and standards with respect to  
2 certain privatization contracts and supplementing Title 52 of the  
3 Revised Statutes.

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

7  
8 1. The Legislature finds and declares that:

9 a. Using private contractors to provide public services formerly  
10 provided by public employees does not always promote the public  
11 interest;

12 b. Decisions to use private contractors to provide public  
13 services must be based on factors which promote the public interest;

14 c. To ensure that citizens of the State receive high quality  
15 public services at low cost, with due regard for the taxpayers of the  
16 State and the needs of public and private workers, it is necessary to  
17 regulate privatization contracts for public services and to require a  
18 thorough review and analysis of potential cost impacts prior to  
19 entering into any such privatization contract; and

20 d. It is appropriate to require that cost savings of the contract to  
21 the State be substantial and significant because of the hazard that  
22 the use of private contractors to provide services may prove, in the  
23 long term, to be less efficient or more expensive than expected  
24 when the contracting commences, and the ability of an agency to  
25 resume the public provision of services under those circumstances  
26 may be hindered by factors such as the divestment of equipment  
27 and capital and the loss of experienced, highly qualified personnel  
28 in connection with the contract.

29  
30 2. As used in this act:

31 "Agency" means any department, division, board, commission or  
32 other office or officer of the State or of any political subdivision of the  
33 State, or any authority or other instrumentality of the State.

34 "Employee benefits" means all benefits provided to employees,  
35 including, but not limited to, pensions, paid time off and health  
36 insurance plans, including coverage provided under those plans to the  
37 employee, the employee's spouse and dependent children.

38 "Local agency" means any department, division, board,  
39 commission or other office or officer of any political subdivision of  
40 the State.

41 "Privatization contract" or "contract" means an agreement or  
42 combination or series of agreements valued at a total of \$500,000 or  
43 more, if an agency is a local agency, or \$1,000,000 or more if the  
44 agency is not a local agency, by which a non-governmental person or  
45 entity agrees with the agency to provide services which are  
46 substantially similar to, and in lieu of, services previously provided, in  
47 whole or in part, by regular employees of the agency which results in a

1 loss of employment for the regular employees, except that none of the  
2 following shall be considered a privatization contract:

3 (1) any agreement solely to provide legal, management consulting,  
4 planning, engineering or design services;

5 (2) any contract solely for public work subject to the prevailing  
6 wage requirements of P.L.1963, c. 150 (C.34:11-56.25 et seq.);

7 (3) any contract to have services principally provided by persons  
8 with disabilities employed by rehabilitation facilities as defined under  
9 the provisions of the "Rehabilitation Facilities Set-Aside Act,"  
10 P.L.1981, c.488 (C.30:6-23 et seq.);

11 (4) any contract with a vendor providing software or other  
12 information technology or equipment for the purpose of enhancing or  
13 increasing the productivity, efficiency, or effectiveness of regular  
14 employees of the agency in providing services; or

15 (5) any contract under which a vendor provides services during an  
16 emergency or other unpredictable situation which creates a need for  
17 more services than the current regular employees are able to provide  
18 during the emergency or situation, provided that there is no loss of  
19 employment for regular employees who normally provide the services.  
20

21 3. No agency shall enter into a privatization contract, and no  
22 privatization contract with the agency shall be valid, unless all of the  
23 following requirements are met:

24 a. The agency shall solicit competitive sealed bids for each  
25 privatization contract based on a comprehensive written statement,  
26 prepared by the agency, of the quality and quantity of the services  
27 proposed to be the subject of the privatization contract, any fees, fares  
28 or other charges to the public, the current costs to the agency of  
29 providing those services, the qualifications, compensation and benefits  
30 of agency personnel currently performing those services, and a  
31 comprehensive description of the information the prospective  
32 contractor is required to provide as part of the bid as required for the  
33 evaluation of the bid pursuant to this section, and, if the bidder is  
34 awarded the contract, a comprehensive description of the information  
35 that the contractor is required to provide, including the quarterly  
36 reports required pursuant to subsections b. and c. of this section for  
37 ongoing oversight and the post-audits conducted pursuant to this act.  
38 The day designated by the agency upon which it will accept the sealed  
39 bids shall be the same for any and all parties. The statement shall be a  
40 public record, and shall be transmitted to the Office of the State  
41 Comptroller for review. The term of a privatization contract shall not  
42 exceed five years. No amendment to a privatization contract shall be  
43 valid if it has the purpose or effect of avoiding any requirement of this  
44 section.

45 b. Every bid for a privatization contract and every privatization  
46 contract shall require that the public not be subject to any fees, fares,  
47 or other charges greater than those currently charged, that the quantity  
48 and quality of the services performed under the contract equal or

1 exceed the quantity and quality of services currently performed by  
2 agency employees, that the contractor has the demonstrated ability and  
3 experience to provide services of that quantity and quality, that the  
4 staff used by the contractor have certification, licensing and levels of  
5 job proficiency equal to or exceeding those of the agency employees  
6 currently performing the services, and that the rate of wages and  
7 employee benefits for each position not be less than the rate of wages  
8 and employee benefits for comparable agency employees. Each bid  
9 shall include a requirement that, in addition to the quarterly payroll  
10 records required pursuant to subsection c. of this section, quarterly  
11 reports be made to the agency regarding contractor compliance with  
12 the requirements of this subsection regarding the quality and quantity  
13 of services and any charges imposed on the public, and those reports  
14 shall be made public by the agency. The agency shall have access to  
15 all contractor records relevant to compliance with the requirements of  
16 this section.

17 c. For each position in which a bidder will employ any person  
18 pursuant to the privatization contract, the statement made by the  
19 agency pursuant to subsection a. of this section shall include the rate of  
20 wages and employee benefits paid by the agency to the regular agency  
21 employee or employees most comparable to the position under the  
22 privatization contract. Each bid for a privatization contract and every  
23 privatization contract shall include provisions specifically stating the  
24 rate of wages and employee benefits for each position, which shall not  
25 be less than the rate of wages and employee benefits stated by the  
26 agency for comparable agency employees. Each contractor shall  
27 submit quarterly payroll records to the agency, listing the name, hours  
28 worked, the hourly wage and employee benefit rates paid to each  
29 employee, and the agency shall make the records available upon  
30 request to any labor organization representing employees of the  
31 contractor or employees or displaced employees of the agency. Any  
32 contractor who fails to pay the rates of wages and employee benefits  
33 required by the contract pursuant to this subsection shall be subject to  
34 the remedies which apply in connection with a failure to pay the  
35 prevailing wage pursuant to the "New Jersey Prevailing Wage Act,"  
36 P.L.1963, c.150 (C.34:11-56.25 et seq.), including, but not limited to,  
37 the withholding of payments from the agency to the contractor  
38 pursuant to section 9 of P.L.1963, c.150 (C.34:11-56.33), the  
39 imposition of fines and penalties by the Commissioner of Labor and  
40 Workforce Development pursuant to sections 11 and 15 of P.L.1963,  
41 c.150 (C.34:11-56.35 and 34:11-56.39), debarment from contracting  
42 pursuant to sections 13 and 14 of P.L.1963, c.150 (C.34:11-56.37 and  
43 34:11-56.38), and the actions by workers to recover unpaid amounts in  
44 civil actions pursuant to section 16 of P.L.1963, c.150  
45 (C.34:11-56.40). The commissioner shall have the same authority and  
46 responsibility to conduct investigations, inspections and other  
47 activities to enforce wage and benefit payments due under contracts  
48 pursuant to this section as he has to conduct investigations, inspections

1 and other activities to enforce payments of prevailing wages pursuant  
2 to the “New Jersey Prevailing Wage Act,” P.L.1963, c.150  
3 (C.34:11-56.25 et seq.).

4 d. The agency, prior to soliciting bids, shall prepare a  
5 comprehensive estimate of the costs of regular agency employees  
6 providing the services subject to the contract, including the cost of  
7 employee benefits and provide the agency personnel performing the  
8 services and the majority representative of those personnel a period of  
9 30 days to review the agency’s estimates of the cost of agency  
10 personnel performing the services and submit an alternative cost  
11 estimate based on that review and any proposal made by the majority  
12 representative to reduce costs and increase the efficiency of agency  
13 operations in a manner which is in compliance with the requirements  
14 of this section, including all requirements regarding charges to the  
15 public, the quantity and quality of services, and employee  
16 remuneration. The agency shall review any proposal and revised  
17 estimate after bidding has been completed and make a determination  
18 of whether and how much to reduce the agency’s estimates of the cost  
19 of agency personnel performing the services when making the  
20 comparison with the cost to the agency of the contractor’s bid pursuant  
21 to this section and determining whether the bid will provide savings  
22 for the agency. The agency shall not disclose the majority  
23 representative’s alternative estimate or proposal to reduce costs prior  
24 to the completion of the bidding.

25 e. The contract shall require the contractor to comply with a  
26 policy of nondiscrimination and equal opportunity, take affirmative  
27 steps to provide that equal opportunity, and offer available employee  
28 positions to qualified regular employees of the agency who are  
29 displaced or dismissed from agency employment, in whole or in part,  
30 because of the privatization contract, and the agency shall, in  
31 consultation with affected agency personnel and their majority  
32 representative, and prior to the commencing of the term of the  
33 contract, prepare a plan of assistance for each employee displaced as a  
34 result of the contract, including any training needed to place the  
35 employee in a position with the contractor or the agency.

36 f. The contractor making the bid, and its subsidiaries, affiliates,  
37 principals and managerial or supervisory employees are not, when the  
38 bid is made or the contract is awarded, or during the ten-year period  
39 before the award were not, subject to debarment, suspension,  
40 adjudication or conviction, or any criminal conviction at any time,  
41 which debarment, suspension, adjudication or conviction is due to  
42 substantial or repeated noncompliance with any federal or State law  
43 pertaining to the operation of a business, including, but not limited to,  
44 laws regarding labor relations, workplace standards, occupational  
45 safety and health, public safety and health, environmental protection,  
46 nondiscrimination and affirmative action, tax payment and conflicts of  
47 interest.

48 g. The agency shall make public its determination of whether to

1 award a contract within 60 days of the completion of the bidding.

2 h. If the agency determines, after soliciting and receiving bids,  
3 that one or more of the bids comply with the cost savings requirement  
4 and all other requirements of this section, the agency shall publicly  
5 designate to which of the compliant bidders it proposes to award the  
6 contract and issue a comprehensive written analysis of the total  
7 contract cost of the designated bid, including the costs of transition  
8 from public to private operation and any additional unemployment and  
9 retirement benefits of agency employees, and the costs of monitoring  
10 and administering contract performance born pursuant to this act by  
11 the agency and any State entity, including the State Auditor and the  
12 Office of the State Comptroller. If the designated bidder is  
13 headquartered outside the State, or proposes to perform any or all of  
14 the work done under contract outside the boundaries of the State, the  
15 contract cost shall be increased by the amount of income tax revenue,  
16 if any, which will be lost to the State by the corresponding elimination  
17 of agency employees.

18 i. The agency shall provide the Office of the State Comptroller  
19 with a copy of the proposed privatization contract and a written  
20 certification:

21 (1) That the agency has complied with all provisions of this  
22 section;

23 (2) That the agency finds that the proposed privatization contract is  
24 in the public interest and meets all requirements of this section;

25 (3) That the agency finds that the estimated contract cost is less  
26 than the cost of agency personnel performing the services, taking into  
27 account any reduction of that cost made by the agency pursuant to  
28 subsection d. of this section; and

29 (4) That sets forth the agency's estimate of the total amount of the  
30 cost savings to the agency that would be provided by the contract.

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32 4. The Office of the State Comptroller shall, within 30 business  
33 days after receiving the certificate required by section 3 of this act,  
34 review the certification of the agency, and prohibit the agency from  
35 entering into the privatization contract if the office determines that  
36 the bid does not provide cost savings or that the agency has failed to  
37 comply with any other requirement of this section. The office may  
38 require by summons the attendance and testimony under oath of  
39 witnesses and the production of books, papers and other records  
40 relating to that review. The office may extend the time for an  
41 objection for an additional period of 30 business days beyond the  
42 original 30 business days by written notice to the agency, stating the  
43 reason for that extension. The determination shall be final and  
44 binding on the agency, unless withdrawn due to a revision of the  
45 certification by the agency found satisfactory by the office. The  
46 certification, the proposed contract, the determination and any  
47 revision of the determination, with supporting documentation, shall  
48 be made available by the office to the public on the Internet.

1       5. The State Auditor shall, as part of his responsibility under  
2 R.S.52:24-4, conduct an annual post audit of each privatization  
3 contract entered into after the effective date of this act and shall  
4 issue, and make available to the public and representatives of  
5 employee organizations representing affected employees, an annual  
6 report to the Governor and the Legislature regarding the contract,  
7 the first of which shall be issued not more than 90 days after the end  
8 of the first year that the contract is in effect. The report shall  
9 include an evaluation of the actual entire cost and any actual cost  
10 savings of the contract compared with the amount of cost and  
11 savings estimated when the contract was awarded, with an analysis  
12 of whether any failure to provide the amount of savings was related  
13 to misrepresentation, fraud or other malfeasance, misfeasance or  
14 nonfeasance of an agency or contractor, and a review of the  
15 compliance of the agency and the contractor with the provisions of  
16 this act, including all requirements regarding charges to the public,  
17 the quantity and quality of services, and the qualifications and  
18 remuneration of contractor employees, with an analysis of whether  
19 any non-compliance was related to misrepresentation, fraud or other  
20 malfeasance, misfeasance or nonfeasance of an agency or  
21 contractor. Any agency or contractor, or officer or agent of the  
22 agency or contractor, determined to be responsible for the  
23 misrepresentation, fraud or other malfeasance, misfeasance or  
24 nonfeasance shall be subject to penalties and sanctions as provided  
25 by law, including, where appropriate, debarment, contract  
26 rescission, damages, and reimbursement of excess charges to the  
27 public and underpayments to employees. Any finding by the State  
28 Auditor that a contractor has failed to make the wage or benefit  
29 payments required under a privatization contract shall be referred to  
30 the Commissioner of Labor and Workforce Development for  
31 appropriate enforcement actions. The post-audit reports, with  
32 supporting documentation and records, shall be made available by  
33 the State Auditor to the public on the Internet on an ongoing basis.

34

35       6. This act shall take effect on the 90th day after enactment. The  
36 provisions of this act shall apply to any privatization contract first  
37 entered into on or after the effective date of this act and to any renewal  
38 extension, or transfer to another contractor of that privatization  
39 contract, but the provisions of this act shall not apply to any  
40 privatization contract which is first entered into prior to the effective  
41 date of this act, or any renewal, extension, or transfer of that  
42 privatization contract.

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STATEMENT

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47       This bill prohibits the privatization of public services unless there  
48 are cost savings which are not based on increased charges or reduced

1 services to the public, or lowered workforce standards. Each  
2 prospective private contractor would be required to demonstrate cost  
3 reductions based on improvements such as management efficiencies or  
4 technical innovation, not based on added burdens imposed on the  
5 members of the public using the services or the employees producing  
6 them.

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

21 The bill's prohibition on the privatization of public services does  
22 not apply to contracts for: (1) legal, management consulting, planning,  
23 engineering or design services, (2) prevailing wage construction work,  
24 (3) certain services provided by disabled individuals employed by  
25 rehabilitation facilities, (4) a vendor providing software or other  
26 information technology or equipment for the purpose of enhancing or  
27 increasing the productivity, efficiency, or effectiveness of regular  
28 employees of the agency in providing services; or (5) services which a  
29 vendor provides during an emergency or other unpredictable situation  
30 which creates a need for more services than the current regular  
31 employees are able to provide during the emergency or situation,  
32 provided that there is no loss of employment for regular employees  
33 who normally provide the services.

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

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

41 2. The contract requires that the public not be charged fares, fees  
42 or other charges greater than those currently charged, that the quantity  
43 and quality of the services provided equal or exceed the quantity and  
44 quality of services currently provided, that the contractor is qualified,  
45 and that contractor employees have qualifications and wage and  
46 benefit rates at least equal to the agency employees currently  
47 performing the services. Contractors are required to submit payroll  
48 records to the agency and, upon any failure to pay the agreed upon



1 wage and benefit rates, are subject to the remedies and penalties  
2 provided by the “New Jersey Prevailing Wage Act,” P.L.1963, c.150  
3 (C.34:11-56.25 et seq.) for failure to pay the prevailing wage;

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

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

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

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

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

26 The bill requires the agency to make public its determination of  
27 whether to award a contract within 60 days of the completion of the  
28 bidding.

29 The Office of the State Comptroller would be required to review  
30 the certification and prohibit the agency from entering into the  
31 privatization contract if the office provides a written determination that  
32 the bid does not provide cost savings or that the agency has otherwise  
33 failed to comply with any requirement of the bill.

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

43 The requirements of the bill apply to any privatization contract  
44 entered into after the effective date of the bill and any renewal,  
45 extension or transfer of that contract, but do not apply to contracts  
46 entered into before the effective date or renewals, extensions or  
47 transfers of those contracts.