

SENATE, No. 1518

STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Co-Sponsored by:

Senators Diegnan, Ruiz, Cryan and Polistina

SYNOPSIS

Establishes procedures and standards regarding public service privatization contracts.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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
33 the 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
37 the 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
45 or entity agrees with the agency to provide services which are
46 substantially similar to and in lieu of, services previously provided,
47 in whole or in part, by regular employees of the agency, except that
48 any agreement solely to provide legal, management consulting,

1 planning, engineering or design services, or any contract solely for
2 public work subject to the prevailing wage requirements of
3 P.L.1963, c. 150 (C.34:11-56.25 et seq.), or any contract to have
4 services principally provided by persons with disabilities employed
5 by rehabilitation facilities as defined under the provisions of the
6 "Rehabilitation Facilities Set-Aside Act," P.L.1981, c.488 (C.30:6-
7 23 et seq.), shall not be considered a privatization contract.
8

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

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

33 b. Every bid for a privatization contract and every privatization
34 contract shall require that the public not be subject to any fees,
35 fares, or other charges greater than those currently charged, that the
36 quantity and quality of the services performed under the contract
37 equal or exceed the quantity and quality of services currently
38 performed by agency employees, that the contractor has the
39 demonstrated ability and experience to provide services of that
40 quantity and quality, that the staff used by the contractor have
41 certification, licensing and levels of job proficiency equal to or
42 exceeding those of the agency employees currently performing the
43 services, and that the rate of wages and employee benefits for each
44 position not be less than the rate of wages and employee benefits
45 for comparable agency employees. Each bid shall include a
46 requirement that, in addition to the quarterly payroll records
47 required pursuant to subsection c. of this section, quarterly reports
48 be made to the agency regarding contractor compliance with the

1 requirements of this subsection regarding the quality and quantity
2 of services and any charges imposed on the public, and those
3 reports shall be made public by the agency. The agency shall have
4 access to all contractor records relevant to compliance with the
5 requirements of this section.

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

42 d. The agency, prior to soliciting bids, shall permit the agency
43 personnel performing the services and the majority representative of
44 those personnel to review the agency's estimates of the cost of
45 agency personnel performing the services and permit the majority
46 representative to submit an alternative cost estimate based on that
47 review and any proposal made by the majority representative to
48 reduce costs and increase the efficiency of agency operations in a

1 manner which is in compliance with the requirements of this
2 section, including all requirements regarding charges to the public,
3 the quantity and quality of services, and employee remuneration,
4 and the agency shall review the proposal and the revised estimate
5 after bidding has been completed and make a determination of
6 whether and how much to reduce the agency's estimates of the cost
7 of agency personnel performing the services when making the
8 comparison with the cost to the agency of the contractor's bid
9 pursuant to this section and determining whether the bid will
10 provide savings for the agency. The agency shall not disclose the
11 majority representative's alternative estimate or proposal to reduce
12 costs prior to the completion of the bidding.

13 e. The contract shall require the contractor to comply with a
14 policy of nondiscrimination and equal opportunity, take affirmative
15 steps to provide that equal opportunity, and offer available
16 employee positions to qualified regular employees of the agency
17 who are displaced or dismissed from agency employment, in whole
18 or in part, because of the privatization contract, and the agency
19 shall, in consultation with affected agency personnel and their
20 majority representative, and prior to the commencing of the term of
21 the contract, prepare a plan of assistance for each employee
22 displaced as a result of the contract, including any training needed
23 to place the employee in a position with the contractor or the
24 agency.

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

37 g. The agency shall prepare a comprehensive estimate of the
38 costs of regular agency employees providing the services subject to
39 the contract, including the cost of employee benefits.

40 h. If the agency determines, after soliciting and receiving bids,
41 that one or more of the bids comply with the cost savings
42 requirement and all other requirements of this section, the agency
43 shall publicly designate to which of the compliant bidders it
44 proposes to award the contract and issue a comprehensive written
45 analysis of the total contract cost of the designated bid, including
46 the costs of transition from public to private operation and any
47 additional unemployment and retirement benefits of agency
48 employees, and the costs of monitoring and administering contract

1 performance born pursuant to this act by the agency and any State
2 entity, including the State Auditor and the Office of the State
3 Comptroller. If the designated bidder is headquartered outside the
4 State, or proposes to perform any or all of the work done under
5 contract outside the boundaries of the State, the contract cost shall
6 be increased by the amount of income tax revenue, if any, which
7 will be lost to the State by the corresponding elimination of agency
8 employees.

9 i. The agency shall provide the Office of the State Comptroller
10 with a copy of the proposed privatization contract and a written
11 certification:

12 (1) That the agency has complied with all provisions of this
13 section;

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

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

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

24
25 4. The Office of the State Comptroller shall, within 30 business
26 days after receiving the certificate required by section 3 of this act,
27 review the certification of the agency, and prohibit the agency from
28 entering into the privatization contract if the office determines that
29 the bid does not provide cost savings or that the agency has failed to
30 comply with any other requirement of this section. The office may
31 require by summons the attendance and testimony under oath of
32 witnesses and the production of books, papers and other records
33 relating to that review. The office may extend the time for an
34 objection for an additional period of 30 business days beyond the
35 original 30 business days by written notice to the agency, stating the
36 reason for that extension. The determination shall be final and
37 binding on the agency, unless withdrawn due to a revision of the
38 certification by the agency found satisfactory by the office. The
39 certification, the proposed contract, the determination and any
40 revision of the determination, with supporting documentation, shall
41 be made available by the office to the public on the Internet.

42
43 5. The State Auditor shall, as part of his responsibility under
44 R.S.52:24-4, conduct an annual post audit of each privatization
45 contract entered into after the effective date of this act and shall
46 issue, and make available to the public and representatives of
47 employee organizations representing affected employees, an annual
48 report to the Governor and the Legislature regarding the contract,

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

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

38
39 STATEMENT
40

41 The purpose of this bill is to ensure that no public services are
42 privatized unless there are cost savings without increased charges or
43 reduced services to the public, or lowered workforce standards. Each
44 prospective private contractor would be required to demonstrate cost
45 reductions based on improvements such as management efficiencies or
46 technical innovation, not based on added burdens imposed on the
47 members of the public using the services or the employees producing
48 them. The bill requires that a contract for the privatization of public

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

14 The bill prohibits any agency of the State or political subdivision
15 from entering into a contract of \$500,000 or more, if the agency is a
16 political subdivision, or \$1 million or more if it is not a political
17 subdivision, to purchase from private entities services previously
18 performed by agency employees, other than legal, management
19 consulting, planning, engineering or design services, prevailing wage
20 construction work, or certain services provided by disabled individuals
21 employed by rehabilitation facilities, unless:

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

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

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

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

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

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

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

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

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

23 The requirements of the bill do not apply to any privatization
24 contract first entered into before the effective date of the bill or to the
25 renewal, extension, or transfer of any privatization contract first
26 entered into prior to that effective date, but do apply to the renewal,
27 extension, or transfer of any contract entered into after the effective
28 date.