

ASSEMBLY, No. 320

STATE OF NEW JERSEY 211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

Sponsored by:

Assemblywoman LORETTA WEINBERG

District 37 (Bergen)

Co-Sponsored by:

**Assemblymen Johnson, Conaway, Gusciora, Conners, Burzichelli,
Assemblywoman Greenstein, Assemblyman Scalera, Assemblywomen
Watson Coleman and Voss**

SYNOPSIS

Concerns certain contracts to privatize county services.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 6/17/2005)

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

- 39 (1) Costs of labor;
40 (2) Costs of employer-provided fringe benefits;
41 (3) Costs of equipment or materials, whether supplied by the
42 county or a private contractor;
43 (4) All other costs directly or indirectly attributable to transferring
44 the work being performed by county employees to a private business
45 entity under the contract, including, but not limited to, the costs of
46 preparing and bidding the contract, the costs of training the new

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

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

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

9 (7) Costs of any anticipated unemployment compensation or other
10 benefit including retraining expenses, for county employees who are
11 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 the
14 contractor performs functions outside of the county.

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

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

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

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

27 "Privatization contract" means an agreement, modification of a
28 prior agreement, or combination or series of agreements between a
29 private business entity and an agency under which the entity performs
30 or provides services substantially similar to, and in lieu of, services
31 heretofore provided, or that could be provided, in whole or in part, by
32 employees of the agency and as a result of which, State funds are
33 provided to the entity, except that "privatization contract" shall not
34 include any agreement between an agency and a private business entity
35 exclusively for the provision to the agency of services substantially
36 similar to those performed for the agency by managerial executives as
37 defined by subsection (f) of section 3 of P.L.1941, c.100 (C.34:13A-3)
38 or confidential employees as defined by subsection (g) of section 3 of
39 P.L.1941, c.100 (C.34:13A-3), or exclusively for the provision of legal
40 services to the agency, or any contract for public_work under which all
41 non-managerial workers are required by law to be paid the prevailing
42 wage determined by the Commissioner of Labor pursuant to the
43 provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c.150
44 (C.34:11-56.25 et seq.), and under which none of those workers are
45 engaged in maintenance work. To "renew" a privatization contract, or
46 the "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 under
3 the original contract, the added duration of the contract is the same as
4 the original contract, and the cost of the contract as renewed is not
5 more than the original contract except for a reasonable cost of living
6 adjustment. To "extend" a privatization contract, or the "extension"
7 of the contract, means entering into an agreement in which the type
8 and scope of the work under the contract as extended are the same as
9 the type and scope of the work under the original contract, the added
10 duration of the contract is less than the original contract, and the rate
11 of cost of the contract as extended is not more than the original
12 contract except for a reasonable cost of living adjustment. An
13 agreement which changes the type or scope of the work under a
14 privatization contract or increases the cost of a privatization contract
15 by more than \$250,000 shall not be regarded as a renewal or extension
16 of the contract, but shall instead be regarded as a newly entered-into
17 privatization contract, distinct from the previous contract, for the
18 purposes of this act.

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

24

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

38

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

1 to use existing or additional agency employees to perform the work
2 required. The cost analysis shall be based on the quantity and quality
3 of service described in the statement prepared by the agency pursuant
4 to section 3 of this act and on the agency's calculations of the net
5 reduction of in-house costs attributable to the privatization contract,
6 of the entire cost of the privatization contract, and of the aggregate
7 cost savings due to 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 and
10 representatives of all employee organizations whose members perform
11 services which may be subject to the privatization contract. The
12 Speaker of the General Assembly, the President of the Senate, or any
13 representative of an employee organization representing affected
14 employees, or affected member of the public may, not more than 15
15 days after the certification and cost analysis are made available to the
16 public, submit to the agency and the division written comments
17 regarding the certification, the cost analysis and the proposed
18 privatization contract, and may request the division to hold a public
19 hearing on the proposed contract. If the division determines that the
20 nature of the privatization contract warrants a hearing, or if the
21 hearing is requested by the Speaker of the General Assembly, the
22 President of the Senate, or any employee organization representing
23 affected employees, a public hearing shall be held not more than 30
24 days after the receipt of the cost analysis. The purpose of the public
25 hearing shall be to gather testimony regarding all aspects of the
26 agency's plan to privatize the service which is the subject of the cost
27 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 copies
39 of the documents submitted by the bidder as part of the bid, a written
40 report of its determination of the aggregate cost savings of the
41 contract and of any analysis or concerns the division may have
42 regarding the proposed contract and its determination of whether the
43 contract is in full compliance with the provisions of this act, except
44 that the division may extend, by not more than 30 days, the length of
45 time in which to submit the report, if needed to conduct a hearing or
46 other further investigation. If the division determines that the

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

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

20 e. If the agency decides not to make a final award of the contract
21 to a contractor after making the review of the proposed contract
22 required pursuant to this section and selects another contractor, the
23 agency shall comply with requirements of subsections a., b., c. and d.
24 of this section when considering any 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 this
29 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 service
37 proves not to be in the public interest, including a reduction caused by
38 any divestment of capital and equipment by the county in connection
39 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 extension
42 of a privatization contract, the contract provides that county
43 employees directly or indirectly displaced by the terms of the
44 privatization contract after the effective date of this act have the right
45 of first refusal for the jobs under the contract;

- 1 c. If the privatization contract is first entered into after the
2 effective date of this act, but not in any case of a renewal or extension
3 of a privatization contract, the agency prepares a plan of assistance
4 for each employee displaced after the effective date of this act who
5 chooses not to work under the terms of the contract, including any
6 training needed to place the employee in a comparable position in that
7 agency, or if that is not possible, with another agency;
- 8 d. If the privatization contract is first entered into after the
9 effective date of this act, but not in any case of a renewal or extension
10 of a privatization contract, the contract requires the contractor to
11 provide fringe benefit coverage and a rate of pay and pay progression
12 to its employees performing work under the contract not less than
13 what is provided to county employees performing the work and
14 requires the contractor to submit annual payroll reports to the agency
15 and the division, which shall be available for public inspection, listing
16 the hours worked and the hourly wage paid for each employee who
17 performed work under the contract. The Attorney General may bring
18 a civil action for equitable relief in the Superior Court to enforce this
19 subsection or to prevent or remedy any noncompliance with the
20 provisions of this subsection;
- 21 e. The contract prohibits the contractor from increasing fees or
22 other direct or indirect charges to the public for the provision of
23 services and requires the contractor to maintain staffing levels
24 sufficient to ensure that there is no deterioration in the quality and
25 quantity of services provided to the public and to provide staff which
26 has certification, licensing and levels of job proficiency equal to or
27 exceeding that of the public employees who would provide the
28 services if there was no privatization contract;
- 29 f. The contractor, and its subsidiaries, affiliates, principals and
30 managerial or supervisory employees are not, at the time of the
31 awarding of the contract, subject to debarment, suspension,
32 adjudication or conviction and have not been subject to any
33 debarment, suspension or conviction during the ten-year period before
34 the awarding of the contract, or any criminal conviction at any time,
35 which debarment, suspension, adjudication or conviction is due to
36 substantial or repeated noncompliance with any federal or State law
37 regarding the operation of a business, including, but not limited to,
38 laws regarding labor relations, workplace standards, occupational
39 health and safety, public health and safety, environmental protection,
40 nondiscrimination and affirmative action, tax payment and conflicts of
41 interest;
- 42 g. The contractor has disclosed to the State Treasurer and to the
43 division every suit to which it, or its subsidiaries or affiliates are, or
44 have been a party, whether for alleged violations of law, or arising out
45 of the terms of a contract;

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

1 q. The contract is in conformance with all applicable provisions of
2 law, including the provisions of the “New Jersey Contractual Liability
3 Act,” N.J.S.59:13-1 et seq. and is consistent with the provisions of any
4 collective bargaining agreement applicable to the affected public
5 employees and is subject to any employee protection arrangements
6 established pursuant to 49 U.S.C.s.5333(b).

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

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

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

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

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

46 The division shall annually conduct a post audit of the contract and

1 issue a report, the first report not later than the end of the first year of
2 the contract, reviewing and evaluating: the compliance of the agency
3 and the contractor with the provisions of this act; whether it has, since
4 the contract was entered into, become possible or practical to train or
5 hire agency employees to perform any part of the work under the
6 contract; what, if any, cost savings the agency may obtain by hiring or
7 training agency employees to perform the work; and any efforts made
8 by the agency to obtain those savings.

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

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

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

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

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

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

41
42 7. Except in the case of any privatization contract which, pursuant
43 to subsections a. or b. of section 6 of this act, is not subject to the
44 provisions of this section, the division shall conduct a post audit of
45 each privatization contract entered into after the effective date of this
46 act with a total value of more than \$250,000 and issue, and make

1 available to the public and representatives of employee organizations
2 representing affected employees, an annual report to the Governor and
3 the Legislature regarding the contract, the first of which shall be issued
4 not more than 90 days after the end of the first year that the contract
5 is in effect, or, in the case of a contract in effect upon the effective
6 date of this act, not more than 90 days after the end of the first year
7 after the contract is renewed or extended. The report shall include an
8 evaluation of any actual net reduction of in-house costs, the actual
9 entire cost of the privatization contract, and any actual aggregate cost
10 savings of the contract, and shall include, in the case of a contract
11 entered into, renewed or extended after the effective date of this act,
12 a review of the compliance of the agency and the contractor with the
13 provisions of this act in connection with the contract and a comparison
14 of any calculation made by the agency pursuant to section 4 of this act
15 of anticipated aggregate cost savings due to the contract with any
16 actual aggregate cost savings. The division shall, upon the conclusion
17 of the contract, prepare and make available to the public a final
18 comprehensive audit report on the effectiveness of the contractor in
19 meeting the goals and requirements of the contract.

20

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

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

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

1 to the provisions and procedures of this act; and

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

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

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

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

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

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

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

43 The division shall, not more than 180 days after the effective date
44 of this act, adopt regulations establishing criteria to be used when
45 making determinations of whether it is, for any of the reasons
46 indicated in this subsection, impossible for the agency, with existing or

1 with additional employees of the agency, to perform work being
2 considered for a privatization contract.

3

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

7

8 10. This act shall take effect immediately.

9

10

11

STATEMENT

12

13 This bill establishes requirements and procedures regarding
14 privatization contracts between county agencies and private business
15 entities under which the business entities provide services substantially
16 similar to services provided by county agency employees.

17 The bill requires that any county agency, before soliciting bids or
18 proposals for a privatization contract or its renewal or extension,
19 prepare and make available to the public a statement describing:
20 contract requirements; procedures for awarding the contract; services
21 subject to the contract; the wages and benefits of the agency
22 employees performing the work; and the anticipated net reduction of
23 in-house costs.

24 The bill requires the agency, upon selecting a contractor for any
25 privatization contract with a total value of more than \$250,000, but
26 before making a final award of the contract, to prepare a cost analysis
27 of the contract and certification that the contract complies with the
28 requirements of the bill. The agency is required to make the cost
29 analysis and certification available to the public, the division and
30 affected employee organizations. The Speaker of the General
31 Assembly, the President of the Senate or affected employee
32 organization representative or member of the public may, not more
33 than 15 days after the certification and cost analysis are made
34 available, submit comments to the agency and the division and request
35 a public hearing. The division is required to review the certification
36 and perform an audit of the agency's calculations and report its own
37 determination of the aggregate cost savings, if any, with respect to the
38 contract.

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

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

44 2. Displaced county workers are given a right of first refusal for
45 the jobs under the contract, or training and other assistance if they
46 choose not to work under the contract;

- 1 3. The contactor provides workers under the contract with benefits
2 and a rate of pay not less than that provided to county employees
3 performing the work;
- 4 4. The contracted service is the same as that performed by county
5 employees in lieu of the privatization contract and there is no increase
6 in charges to the public and staffing levels are maintained at the level
7 needed to sustain the quality of the service;
- 8 5. The contractor, its subsidiaries and affiliates, and its managerial
9 and supervisory employees have not been subject to debarment,
10 suspension, adjudication or conviction during the 10-year period
11 before the awarding of the contract or any criminal conviction at any
12 time and no principal or management employee of the contractor
13 worked in the preceding four years for the county or the State in any
14 capacity related to work under the contract;
- 15 6. The contractor discloses every suit involving it or its subsidiaries
16 or affiliates, and every report regarding the contractor's ability to
17 comply with the contract, and provides copies of all requested union
18 contracts, personnel manuals, and documents describing fringe
19 benefits, that cover its employees;
- 20 7. The contract has a term of not more than three years and states
21 the contractor's liability for damages arising out of contractor
22 noncompliance, theft, damage, negligence or inability of the contractor
23 to perform; and
- 24 8. The contractor's practices meet all applicable nondiscrimination
25 and affirmative action standards and the contract has no significant
26 adverse effect on county affirmative action efforts;
- 27 9. For any privatization contract to perform development work on
28 an information technology-based system, the contractor involves
29 county employees in the work to ensure, as much as practical, that
30 their skills are upgraded enough to permit them to operate and
31 maintain the system and perform future development work; and
- 32 10. The contractor is in conformance with the provisions of any
33 applicable collective bargaining agreement and subject to the
34 provisions of any employee protection arrangement established under
35 49 U.S.C.s.5333(b).

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