

**SENATE, No. 983**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED FEBRUARY 9, 2004

**Sponsored by:**

**Senator SHIRLEY K. TURNER**

**District 15 (Mercer)**

**Senator NICHOLAS ASSELTA**

**District 1 (Cape May, Atlantic and Cumberland)**

**SYNOPSIS**

Concerns certain contracts to privatize State services.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/6/2005)**

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

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

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

25

26 2. As used in this act:

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

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

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

38 (1) Costs of labor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18

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

32

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

1 due to the contract.

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

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

1 the contract.

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

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

19

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

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

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

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

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

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

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

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

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

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

1 standards specified in the contract;

2 j. The contractor certifies that its hiring practices meet applicable  
3 nondiscrimination and affirmative action standards and the contract  
4 requires the contractor to comply with a policy of nondiscrimination  
5 and equal opportunity for all persons in accordance with applicable  
6 nondiscrimination laws, regulations and standards;

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

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

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

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

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

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

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

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

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

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

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

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

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

45       Each department and each State entity other than a department  
46 authorized by law to adopt regulations regarding its operations shall,

1 not more than 180 days after the effective date of this act, adopt  
2 regulations establishing criteria to be used when making  
3 determinations of whether it is, for any of the reasons indicated in this  
4 subsection a., impossible or impractical for the department or entity,  
5 with existing or with additional employees of the department or entity,  
6 to perform work being considered for a privatization contract.

7 b. In the case of a privatization contract which was in effect upon  
8 the effective date of this act and expires after the effective date of this  
9 act, the agency may, on a one-time-only basis, extend the contract for  
10 a period not to exceed two years and the contract shall not be subject  
11 to any other procedures provided by this act, if all of the following  
12 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 State employees and  
15 to take other actions needed to ensure that, when the extension is  
16 ended, the services provided under the contract will continue to be  
17 provided in a timely and satisfactory manner by State employees;

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

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

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

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

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

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

28

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

35 (1) Each State department or other agency which has entered into  
36 privatization contracts which are exempted from the provisions of this  
37 act pursuant to this section shall conduct a review of each of those  
38 contracts which has a total value of more than \$500,000, and was  
39 entered into during the seven-year period ending on the effective date  
40 of this act. The purpose of the review shall be to evaluate cost and  
41 policy issues regarding the contract, including the amount of any net  
42 aggregate savings provided to the agency by the contract. The agency  
43 shall issue and make available to the public and the State Auditor a  
44 comprehensive report of the findings for all contracts reviewed,  
45 organized by categories of contracts, with supporting documentation  
46 for each contract, and the report shall be issued and made available to

1 the public and the State Auditor not later than one year after the  
2 effective date of this act;

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

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

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

1 subject to the provisions of this subsection and issue a report to  
2 representatives of all employee organizations whose members may be  
3 affected by each contract, the Speaker of the General Assembly, the  
4 President of the Senate and the agencies, which report reviews and  
5 evaluates:

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

8 (2) Any actual net reduction of in-house costs, the actual entire  
9 cost of the privatization contracts and any actual aggregate cost  
10 savings of the contracts;

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

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

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

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

23

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

27

28 10. This act shall take effect immediately.

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30

31

#### STATEMENT

32

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

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

44 The bill requires the agency, upon selecting a contractor for any  
45 privatization contract with a total value of more than \$250,000, but  
46 before making a final award of the contract, to prepare a cost analysis

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

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

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

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

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

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

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

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

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

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

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

6       10. The contract is in conformance with the provisions of any  
7 applicable collective bargaining agreement and subject to the  
8 provisions of any employee protection arrangement established under  
9 49 U.S.C. 5333(b).

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