

[First Reprint]

**SENATE, No. 770**

**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

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**SYNOPSIS**

Establishes procedures and standards regarding public service privatization contracts.

**CURRENT VERSION OF TEXT**

As reported by the Senate Labor Committee on April 28, 2014, with amendments.

(Sponsorship Updated As Of: 6/17/2014)

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 “Privatization contract” or “contract” means an agreement or  
39 combination or series of agreements valued at a total of \$250,000 or  
40 more by which a non-governmental person or entity agrees with an  
41 agency to provide services which are substantially similar to and in  
42 lieu of, services previously provided, in whole or in part, by regular  
43 employees of the agency, except that any agreement solely to  
44 provide legal, management consulting, planning, engineering or

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SLA committee amendments adopted April 28, 2014.

1 design services, or any contract solely for public work subject to the  
2 prevailing wage requirements of P.L.1963, c. 150 (C. 34:11-56.25  
3 et seq.), or any contract **1[solely]**<sup>1</sup> to have services **1principally**<sup>1</sup>  
4 provided by persons with disabilities employed **1[at] by**<sup>1</sup>  
5 rehabilitation facilities **1as defined**<sup>1</sup> under **1the**<sup>1</sup> 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.**1[”]**<sup>1</sup>  
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

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

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

43 d. The agency, prior to soliciting bids, shall permit the agency  
44 personnel performing the services and the majority representative of  
45 those personnel to review the agency's estimates of the cost of  
46 agency personnel performing the services and permit the majority  
47 representative to submit an alternative cost estimate based on that

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

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

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

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

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

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

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

14 (1) That the agency has complied with all provisions of this  
15 section;

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

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

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

26

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

44

45 5. The State Auditor shall, as part of his responsibility under  
46 R.S.52:24-4, conduct an annual post audit of each privatization  
47 contract entered into after the effective date of this act and shall  
48 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,  
3 the first of which shall be issued not more than 90 days after the end  
4 of the first year that the contract is in effect. The report shall  
5 include an evaluation of the actual entire cost and any actual cost  
6 savings of the contract compared with the amount of cost and  
7 savings estimated when the contract was awarded, with an analysis  
8 of whether any failure to provide the amount of savings was related  
9 to misrepresentation, fraud or other malfeasance, misfeasance or  
10 nonfeasance of an agency or contractor, and a review of the  
11 compliance of the agency and the contractor with the provisions of  
12 this act, including all requirements regarding charges to the public,  
13 the quantity and quality of services, and the qualifications and  
14 remuneration of contractor employees, with an analysis of whether  
15 any non-compliance was related to misrepresentation, fraud or other  
16 malfeasance, misfeasance or nonfeasance of an agency or  
17 contractor. Any agency or contractor, or officer or agent of the  
18 agency or contractor, determined to be responsible for the  
19 misrepresentation, fraud or other malfeasance, misfeasance or  
20 nonfeasance shall be subject to penalties and sanctions as provided  
21 by law, including, where appropriate, debarment, contract  
22 rescission, damages, and reimbursement of excess charges to the  
23 public and underpayments to employees. Any finding by the State  
24 Auditor that a contractor has failed to make the wage or benefit  
25 payments required under a privatization contract shall be referred to  
26 the Commissioner of Labor and Workforce Development for  
27 appropriate enforcement actions. The post-audit reports, with  
28 supporting documentation and records, shall be made available by  
29 the State Auditor to the public on the Internet on an ongoing basis.

30  
31 6. This act shall take effect on the 90th day after enactment but  
32 the provisions of this act shall not apply to any privatization  
33 contract first entered into prior to the effective date of this act or to  
34 the renewal or extension of any privatization contract first entered  
35 into prior to the effective date of this act.