

[First Reprint]

ASSEMBLY, No. 5430

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED MAY 11, 2023

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District 15 (Hunterdon and Mercer)

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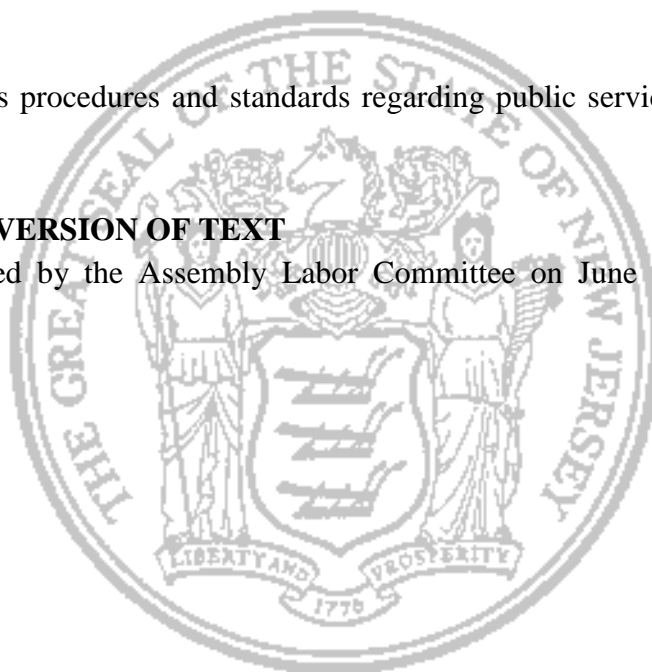
Assemblyman Giblin, Assemblywoman Swift, Assemblymen Guardian, Sampson, Simonsen, McClellan, Moriarty, Benson, DeAngelo, Conaway and Assemblywoman Jasey

SYNOPSIS

Establishes procedures and standards regarding public service privatization contracts.

CURRENT VERSION OF TEXT

As reported by the Assembly Labor Committee on June 15, 2023, with amendments.



(Sponsorship Updated As Of: 12/7/2023)

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

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

7
8 1. The Legislature finds and declares that:

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

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

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

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

29
30 2. As used in this act:

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

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

38 ¹“Local agency” means any department, division, board,
39 commission or other office or officer of any political subdivision of
40 the State.¹

41 “Privatization contract” or “contract” means an agreement or
42 combination or series of agreements valued at a total of ¹**[\$250,000]**
43 \$500,000¹ or more¹, if an agency is a local agency, or \$1,000,000 or
44 more if the agency is not a local agency.¹ by which a non-

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:

¹Assembly ALA committee amendments adopted June 15, 2023.

1 governmental person or entity agrees with ¹~~an~~ the¹ agency to
2 provide services which are substantially similar to^{1,1} and in lieu of,
3 services previously provided, in whole or in part, by regular employees
4 of the agency ¹which results in a loss of employment for the regular
5 employees¹, except that ¹none of the following shall be considered a
6 privatization contract:

7 (1)¹ any agreement solely to provide legal, management
8 consulting, planning, engineering or design services¹~~], or~~];

9 (2)¹ any contract solely for public work subject to the prevailing
10 wage requirements of P.L.1963, c. 150 (C.34:11-56.25 et seq.)¹~~], or~~];

11 (3)¹ any contract to have services principally provided by persons
12 with disabilities employed by rehabilitation facilities as defined under
13 the provisions of the "Rehabilitation Facilities Set-Aside Act,"
14 P.L.1981, c.488 (C.30:6-23 et seq.)¹~~],~~ shall not be considered a
15 privatization contract~~]~~];

16 (4) any contract with a vendor providing software or other
17 information technology or equipment for the purpose of enhancing or
18 increasing the productivity, efficiency, or effectiveness of regular
19 employees of the agency in providing services; or

20 (5) any contract under which a vendor provides services during an
21 emergency or other unpredictable situation which creates a need for
22 more services than the current regular employees are able to provide
23 during the emergency or situation, provided that there is no loss of
24 employment for regular employees who normally provide the
25 services¹.

26
27 3. No agency shall enter into a privatization contract, and no
28 privatization contract with the agency shall be valid, unless all of the
29 following requirements are met:

30 a. The agency shall solicit competitive sealed bids for each
31 privatization contract based on a comprehensive written statement,
32 prepared by the agency, of the quality and quantity of the services
33 proposed to be the subject of the privatization contract, any fees, fares
34 or other charges to the public, the current costs to the agency of
35 providing those services, the qualifications, compensation and benefits
36 of agency personnel currently performing those services, and a
37 comprehensive description of the information the prospective
38 contractor is required to provide as part of the bid as required for the
39 evaluation of the bid pursuant to this section, and, if the bidder is
40 awarded the contract, a comprehensive description of the information
41 that the contractor is required to provide, including the quarterly
42 reports required pursuant to subsections b. and c. of this section for
43 ongoing oversight and the post-audits conducted pursuant to this act.
44 The day designated by the agency upon which it will accept the sealed
45 bids shall be the same for any and all parties. The statement shall be a
46 public record, and shall be transmitted to the Office of the State

1 Comptroller for review. The term of a privatization contract shall not
2 exceed five years. No amendment to a privatization contract shall be
3 valid if it has the purpose or effect of avoiding any requirement of this
4 section.

5 b. Every bid for a privatization contract and every privatization
6 contract shall require that the public not be subject to any fees, fares,
7 or other charges greater than those currently charged, that the quantity
8 and quality of the services performed under the contract equal or
9 exceed the quantity and quality of services currently performed by
10 agency employees, that the contractor has the demonstrated ability and
11 experience to provide services of that quantity and quality, that the
12 staff used by the contractor have certification, licensing and levels of
13 job proficiency equal to or exceeding those of the agency employees
14 currently performing the services, and that the rate of wages and
15 employee benefits for each position not be less than the rate of wages
16 and employee benefits for comparable agency employees. Each bid
17 shall include a requirement that, in addition to the quarterly payroll
18 records required pursuant to subsection c. of this section, quarterly
19 reports be made to the agency regarding contractor compliance with
20 the requirements of this subsection regarding the quality and quantity
21 of services and any charges imposed on the public, and those reports
22 shall be made public by the agency. The agency shall have access to
23 all contractor records relevant to compliance with the requirements of
24 this section.

25 c. For each position in which a bidder will employ any person
26 pursuant to the privatization contract, the statement made by the
27 agency pursuant to subsection a. of this section shall include the rate of
28 wages and employee benefits paid by the agency to the regular agency
29 employee or employees most comparable to the position under the
30 privatization contract. Each bid for a privatization contract and every
31 privatization contract shall include provisions specifically stating the
32 rate of wages and employee benefits for each position, which shall not
33 be less than the rate of wages and employee benefits stated by the
34 agency for comparable agency employees. Each contractor shall
35 submit quarterly payroll records to the agency, listing the name, hours
36 worked, the hourly wage and employee benefit rates paid to each
37 employee, and the agency shall make the records available upon
38 request to any labor organization representing employees of the
39 contractor or employees or displaced employees of the agency. Any
40 contractor who fails to pay the rates of wages and employee benefits
41 required by the contract pursuant to this subsection shall be subject to
42 the remedies which apply in connection with a failure to pay the
43 prevailing wage pursuant to the "New Jersey Prevailing Wage Act,"
44 P.L.1963, c.150 (C.34:11-56.25 et seq.), including, but not limited to,
45 the withholding of payments from the agency to the contractor
46 pursuant to section 9 of P.L.1963, c.150 (C.34:11-56.33), the
47 imposition of fines and penalties by the Commissioner of Labor and

1 Workforce Development pursuant to sections 11 and 15 of P.L.1963,
2 c.150 (C.34:11-56.35 and 34:11-56.39), debarment from contracting
3 pursuant to sections 13 and 14 of P.L.1963, c.150 (C.34:11-56.37 and
4 34:11-56.38), and the actions by workers to recover unpaid amounts in
5 civil actions pursuant to section 16 of P.L.1963, c.150 (C.34:11-
6 56.40). The commissioner shall have the same authority and
7 responsibility to conduct investigations, inspections and other
8 activities to enforce wage and benefit payments due under contracts
9 pursuant to this section as he has to conduct investigations, inspections
10 and other activities to enforce payments of prevailing wages pursuant
11 to the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-
12 56.25 et seq.).

13 d. The agency, prior to soliciting bids, shall ¹~~["permit"]~~ prepare a
14 comprehensive estimate of the costs of regular agency employees
15 providing the services subject to the contract, including the cost of
16 employee benefits and provide¹ the agency personnel performing the
17 services and the majority representative of those personnel ¹a period of
18 30 days¹ to review the agency's estimates of the cost of agency
19 personnel performing the services and ¹~~["permit the majority~~
20 ~~representative to"]~~¹ submit an alternative cost estimate based on that
21 review and any proposal made by the majority representative to reduce
22 costs and increase the efficiency of agency operations in a manner
23 which is in compliance with the requirements of this section, including
24 all requirements regarding charges to the public, the quantity and
25 quality of services, and employee remuneration¹~~["], and the"]~~. The¹
26 agency shall review ¹~~["the"]~~ any¹ proposal and ¹~~["the"]~~¹ revised estimate
27 after bidding has been completed and make a determination of whether
28 and how much to reduce the agency's estimates of the cost of agency
29 personnel performing the services when making the comparison with
30 the cost to the agency of the contractor's bid pursuant to this section
31 and determining whether the bid will provide savings for the agency.
32 The agency shall not disclose the majority representative's alternative
33 estimate or proposal to reduce costs prior to the completion of the
34 bidding.

35 e. The contract shall require the contractor to comply with a
36 policy of nondiscrimination and equal opportunity, take affirmative
37 steps to provide that equal opportunity, and offer available employee
38 positions to qualified regular employees of the agency who are
39 displaced or dismissed from agency employment, in whole or in part,
40 because of the privatization contract, and the agency shall, in
41 consultation with affected agency personnel and their majority
42 representative, and prior to the commencing of the term of the
43 contract, prepare a plan of assistance for each employee displaced as a
44 result of the contract, including any training needed to place the
45 employee in a position with the contractor or the agency.

46 f. The contractor making the bid, and its subsidiaries, affiliates,

principals and managerial or supervisory employees are not, when the bid is made or the contract is awarded, or during the ten-year period before the award were not, subject to debarment, suspension, adjudication or conviction, or any criminal conviction at any time, which debarment, suspension, adjudication or conviction is due to substantial or repeated noncompliance with any federal or State law pertaining to the operation of a business, including, but not limited to, laws regarding labor relations, workplace standards, occupational safety and health, public safety and health, environmental protection, nondiscrimination and affirmative action, tax payment and conflicts of interest.

g. ¹【The agency shall prepare a comprehensive estimate of the costs of regular agency employees providing the services subject to the contract, including the cost of employee benefits】 The agency shall make public its determination of whether to award a contract within 60 days of the completion of the bidding¹.

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

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

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

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

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

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

4. The Office of the State Comptroller shall, within 30 business

1 days after receiving the certificate required by section 3 of this act,
2 review the certification of the agency, and prohibit the agency from
3 entering into the privatization contract if the office determines that
4 the bid does not provide cost savings or that the agency has failed to
5 comply with any other requirement of this section. The office may
6 require by summons the attendance and testimony under oath of
7 witnesses and the production of books, papers and other records
8 relating to that review. The office may extend the time for an
9 objection for an additional period of 30 business days beyond the
10 original 30 business days by written notice to the agency, stating the
11 reason for that extension. The determination shall be final and
12 binding on the agency, unless withdrawn due to a revision of the
13 certification by the agency found satisfactory by the office. The
14 certification, the proposed contract, the determination and any
15 revision of the determination, with supporting documentation, shall
16 be made available by the office to the public on the Internet.

17

18 5. The State Auditor shall, as part of his responsibility under
19 R.S.52:24-4, conduct an annual post audit of each privatization
20 contract entered into after the effective date of this act and shall
21 issue, and make available to the public and representatives of
22 employee organizations representing affected employees, an annual
23 report to the Governor and the Legislature regarding the contract,
24 the first of which shall be issued not more than 90 days after the end
25 of the first year that the contract is in effect. The report shall
26 include an evaluation of the actual entire cost and any actual cost
27 savings of the contract compared with the amount of cost and
28 savings estimated when the contract was awarded, with an analysis
29 of whether any failure to provide the amount of savings was related
30 to misrepresentation, fraud or other malfeasance, misfeasance or
31 nonfeasance of an agency or contractor, and a review of the
32 compliance of the agency and the contractor with the provisions of
33 this act, including all requirements regarding charges to the public,
34 the quantity and quality of services, and the qualifications and
35 remuneration of contractor employees, with an analysis of whether
36 any non-compliance was related to misrepresentation, fraud or other
37 malfeasance, misfeasance or nonfeasance of an agency or
38 contractor. Any agency or contractor, or officer or agent of the
39 agency or contractor, determined to be responsible for the
40 misrepresentation, fraud or other malfeasance, misfeasance or
41 nonfeasance shall be subject to penalties and sanctions as provided
42 by law, including, where appropriate, debarment, contract
43 rescission, damages, and reimbursement of excess charges to the
44 public and underpayments to employees. Any finding by the State
45 Auditor that a contractor has failed to make the wage or benefit
46 payments required under a privatization contract shall be referred to
47 the Commissioner of Labor and Workforce Development for

1 appropriate enforcement actions. The post-audit reports, with
2 supporting documentation and records, shall be made available by
3 the State Auditor to the public on the Internet on an ongoing basis.
4

5 6. This act shall take effect on the 90th day after enactment ¹['
6 but the'] .The¹ provisions of this act shall ¹['not']¹ apply to any
7 privatization contract first entered into ¹['prior to'] on or after¹ the
8 effective date of this act ¹['or'] and¹ to ¹['the'] any¹ renewal ¹['or'],¹
9 extension ¹, or transfer to another contractor¹ of ¹['any'] that¹
10 privatization contract ¹['first entered into prior to the effective date of
11 this act'], but the provisions of this act shall not apply to any
12 privatization contract which is first entered into prior to the effective
13 date of this act, or any renewal, extension, or transfer of that
14 privatization contract¹.