

[First Reprint]

SENATE, No. 1350

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED FEBRUARY 3, 2022

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Co-Sponsored by:

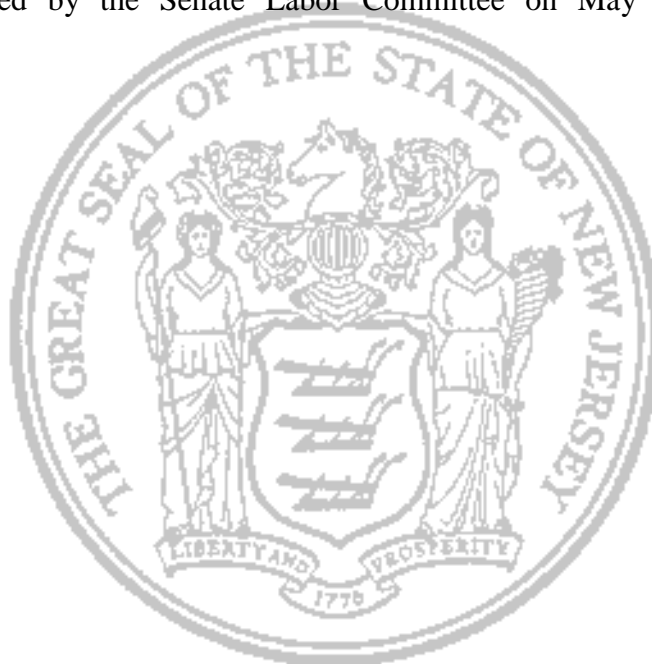
Senators Diegnan, Ruiz, Cryan and Polistina

SYNOPSIS

Establishes procedures and standards regarding public service privatization contracts.

CURRENT VERSION OF TEXT

As reported by the Senate Labor Committee on May 8, 2023, with amendments.



(Sponsorship Updated As Of: 6/1/2023)

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
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 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
43 ¹[\$250,000] \$500,000¹ or more¹, if an agency is a local agency, or
44 \$1,000,000 or more if the agency is not a local agency.¹ by which a

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:

¹Senate SLA committee amendments adopted May 8, 2023.

1 non-governmental person or entity agrees with ¹~~an~~ the¹ agency to
2 provide services which are substantially similar to and in lieu of,
3 services previously provided, in whole or in part, by regular
4 employees of the agency, except that any agreement solely to
5 provide legal, management consulting, planning, engineering or
6 design services, or any contract solely for public work subject to the
7 prevailing wage requirements of P.L.1963, c. 150 (C.34:11-56.25 et
8 seq.), or any contract to have services principally provided by
9 persons with disabilities employed by rehabilitation facilities as
10 defined under the provisions of the "Rehabilitation Facilities Set-
11 Aside Act," P.L.1981, c.488 (C.30:6-23 et seq.), shall not be
12 considered a privatization contract.

13

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

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

38 b. Every bid for a privatization contract and every privatization
39 contract shall require that the public not be subject to any fees,
40 fares, or other charges greater than those currently charged, that the
41 quantity and quality of the services performed under the contract
42 equal or exceed the quantity and quality of services currently
43 performed by agency employees, that the contractor has the
44 demonstrated ability and experience to provide services of that
45 quantity and quality, that the staff used by the contractor have
46 certification, licensing and levels of job proficiency equal to or
47 exceeding those of the agency employees currently performing the
48 services, and that the rate of wages and employee benefits for each

1 position not be less than the rate of wages and employee benefits
2 for comparable agency employees. Each bid shall include a
3 requirement that, in addition to the quarterly payroll records
4 required pursuant to subsection c. of this section, quarterly reports
5 be made to the agency regarding contractor compliance with the
6 requirements of this subsection regarding the quality and quantity
7 of services and any charges imposed on the public, and those
8 reports shall be made public by the agency. The agency shall have
9 access to all contractor records relevant to compliance with the
10 requirements of this section.

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

47 d. The agency, prior to soliciting bids, shall permit the agency
48 personnel performing the services and the majority representative of

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

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

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

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

45 h. If the agency determines, after soliciting and receiving bids,
46 that one or more of the bids comply with the cost savings
47 requirement and all other requirements of this section, the agency
48 shall publicly designate to which of the compliant bidders it

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

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

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

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

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

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

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

47
48 5. The State Auditor shall, as part of his responsibility under

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

33
34 6. This act shall take effect on the 90th day after enactment ¹[,
35 but the] . The¹ provisions of this act shall ¹[not]¹ apply to any
36 privatization contract first entered into ¹[prior to] on or after¹ the
37 effective date of this act ¹[or] and¹ to ¹[the] any¹ renewal ¹[or],¹
38 extension ¹, or transfer to another contractor¹ of ¹[any] that¹
39 privatization contract ¹[first entered into prior to the effective date
40 of this act], but the provisions of this act shall not apply to any
41 privatization contract which is first entered into prior to the
42 effective date of this act, or any renewal, extension, or transfer of
43 that privatization contract¹.