

**SENATE COMMITTEE SUBSTITUTE FOR  
SENATE, Nos. 968 and 1494**

**STATE OF NEW JERSEY  
215th LEGISLATURE**

ADOPTED OCTOBER 1, 2012

**Sponsored by:**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Senator SHIRLEY K. TURNER**

**District 15 (Hunterdon and Mercer)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblywoman BONNIE WATSON COLEMAN**

**District 15 (Hunterdon and Mercer)**

**Co-Sponsored by:**

**Senators Van Drew, Greenstein, Assemblywoman Mosquera and  
Assemblyman Albano**

**SYNOPSIS**

Establishes procedures and standards regarding public service privatization contracts.

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Senate Labor Committee.



**(Sponsorship Updated As Of: 5/21/2013)**

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  
45      design services, or any contract solely for public work subject to the  
46      prevailing wage requirements of P.L.1963, c. 150 (C. 34:11-56.25  
47      et seq.), or any contract solely to have services provided by persons

1 with disabilities employed at rehabilitation facilities under  
2 provisions of the “Rehabilitation Facilities Set-Aside Act,”  
3 P.L.1981, c.488 (C.30:6-23 et seq.), shall not be considered a  
4 “privatization contract.”  
5

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

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

30 b. Every bid for a privatization contract and every privatization  
31 contract shall require that the public not be subject to any fees,  
32 fares, or other charges greater than those currently charged, that the  
33 quantity and quality of the services performed under the contract  
34 equal or exceed the quantity and quality of services currently  
35 performed by agency employees, that the contractor has the  
36 demonstrated ability and experience to provide services of that  
37 quantity and quality, that the staff used by the contractor have  
38 certification, licensing and levels of job proficiency equal to or  
39 exceeding those of the agency employees currently performing the  
40 services, and that the rate of wages and employee benefits for each  
41 position not be less than the rate of wages and employee benefits  
42 for comparable agency employees. Each bid shall include a  
43 requirement that, in addition to the quarterly payroll records  
44 required pursuant to subsection c. of this section, quarterly reports  
45 be made to the agency regarding contractor compliance with the  
46 requirements of this subsection regarding the quality and quantity  
47 of services and any charges imposed on the public, and those

1 reports shall be made public by the agency. The agency shall have  
2 access to all contractor records relevant to compliance with the  
3 requirements of this section.

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

40 d. The agency, prior to soliciting bids, shall permit the agency  
41 personnel performing the services and the majority representative of  
42 those personnel to review the agency's estimates of the cost of  
43 agency personnel performing the services and permit the majority  
44 representative to submit an alternative cost estimate based on that  
45 review and any proposal made by the majority representative to  
46 reduce costs and increase the efficiency of agency operations in a  
47 manner which is in compliance with the requirements of this

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

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

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

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

39 h. If the agency determines, after soliciting and receiving bids,  
40 that one or more of the bids comply with the cost savings  
41 requirement and all other requirements of this section, the agency  
42 shall publicly designate to which of the compliant bidders it  
43 proposes to award the contract and issue a comprehensive written  
44 analysis of the total contract cost of the designated bid, including  
45 the costs of transition from public to private operation and any  
46 additional unemployment and retirement benefits of agency  
47 employees, and the costs of monitoring and administering contract  
48 performance born pursuant to this act by the agency and any State

1 entity, including the State Auditor and the Office of the State  
2 Comptroller. If the designated bidder is headquartered outside the  
3 State, or proposes to perform any or all of the work done under  
4 contract outside the boundaries of the State, the contract cost shall  
5 be increased by the amount of income tax revenue, if any, which  
6 will be lost to the State by the corresponding elimination of agency  
7 employees.

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

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

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

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

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

23  
24 4. The Office of the State Comptroller shall, within 30 business  
25 days after receiving the certificate required by section 3 of this act,  
26 review the certification of the agency, and prohibit the agency from  
27 entering into the privatization contract if the office determines that  
28 the bid does not provide cost savings or that the agency has failed to  
29 comply with any other requirement of this section. The office may  
30 require by summons the attendance and testimony under oath of  
31 witnesses and the production of books, papers and other records  
32 relating to that review. The office may extend the time for an  
33 objection for an additional period of 30 business days beyond the  
34 original 30 business days by written notice to the agency, stating the  
35 reason for that extension. The determination shall be final and  
36 binding on the agency, unless withdrawn due to a revision of the  
37 certification by the agency found satisfactory by the office. The  
38 certification, the proposed contract, the determination and any  
39 revision of the determination, with supporting documentation, shall  
40 be made available by the office to the public on the Internet.

41  
42 5. The State Auditor shall, as part of his responsibility under  
43 R.S.52:24-4, conduct an annual post audit of each privatization  
44 contract entered into after the effective date of this act and shall  
45 issue, and make available to the public and representatives of  
46 employee organizations representing affected employees, an annual  
47 report to the Governor and the Legislature regarding the contract,  
48 the first of which shall be issued not more than 90 days after the end

1 of the first year that the contract is in effect. The report shall  
2 include an evaluation of the actual entire cost and any actual cost  
3 savings of the contract compared with the amount of cost and  
4 savings estimated when the contract was awarded, with an analysis  
5 of whether any failure to provide the amount of savings was related  
6 to misrepresentation, fraud or other malfeasance, misfeasance or  
7 nonfeasance of an agency or contractor, and a review of the  
8 compliance of the agency and the contractor with the provisions of  
9 this act, including all requirements regarding charges to the public,  
10 the quantity and quality of services, and the qualifications and  
11 remuneration of contractor employees, with an analysis of whether  
12 any non-compliance was related to misrepresentation, fraud or other  
13 malfeasance, misfeasance or nonfeasance of an agency or  
14 contractor. Any agency or contractor, or officer or agent of the  
15 agency or contractor, determined to be responsible for the  
16 misrepresentation, fraud or other malfeasance, misfeasance or  
17 nonfeasance shall be subject to penalties and sanctions as provided  
18 by law, including, where appropriate, debarment, contract  
19 rescission, damages, and reimbursement of excess charges to the  
20 public and underpayments to employees. Any finding by the State  
21 Auditor that a contractor has failed to make the wage or benefit  
22 payments required under a privatization contract shall be referred to  
23 the Commissioner of Labor and Workforce Development for  
24 appropriate enforcement actions. The post-audit reports, with  
25 supporting documentation and records, shall be made available by  
26 the State Auditor to the public on the Internet on an ongoing basis.

27

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