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

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

1. The Legislature finds and declares that:
   a. Using private contractors to provide public services formerly
      provided by public employees does not always promote the public
      interest;
   b. Decisions to use private contractors to provide public
      services must be based on factors which promote the public interest;
   c. To ensure that citizens of the State receive high quality
      public services at low cost, with due regard for the taxpayers of the
      State and the needs of public and private workers, it is necessary to
      regulate privatization contracts for public services and to require a
      thorough review and analysis of potential cost impacts prior to
      entering into any such privatization contract; and
   d. It is appropriate to require that cost savings of the contract to
      the State be substantial and significant because of the hazard that
      the use of private contractors to provide services may prove, in the
      long term, to be less efficient or more expensive than expected
      when the contracting commences, and the ability of an agency to
      resume the public provision of services under those circumstances
      may be hindered by factors such as the divestment of equipment
      and capital and the loss of experienced, highly qualified personnel
      in connection with the contract.

2. As used in this act:
   “Agency” means any department, division, board, commission or
   other office or officer of the State or of any political subdivision of
   the State, or any authority or other instrumentality of the State.
   “Employee benefits” means all benefits provided to employees,
   including, but not limited to, pensions, paid time off and health
   insurance plans, including coverage provided under those plans to
   the employee, the employee's spouse and dependent children.
   “Privatization contract” or “contract” means an agreement or
   combination or series of agreements valued at a total of $250,000 or
   more by which a non-governmental person or entity agrees with an
   agency to provide services which are substantially similar to and in
   lieu of, services previously provided, in whole or in part, by regular
   employees of the agency, except that any agreement solely to
   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:
Senate S.A committee amendments adopted April 28, 2014.
design services, or any contract solely for public work subject to the prevailing wage requirements of P.L.1963, c. 150 (C. 34:11-56.25 et seq.), or any contract to have services provided by persons with disabilities employed by rehabilitation facilities as defined under provisions of the “Rehabilitation Facilities Set-Aside Act,” P.L.1981, c.488 (C.30:6-23 et seq.), shall not be considered a privatization contract.

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

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

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

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

d. The agency, prior to soliciting bids, shall permit the agency  
personnel performing the services and the majority representative of  
those personnel to review the agency’s estimates of the cost of  
agency personnel performing the services and permit the majority  
representative to submit an alternative cost estimate based on that
review and any proposal made by the majority representative to reduce costs and increase the efficiency of agency operations in a manner which is in compliance with the requirements of this section, including all requirements regarding charges to the public, the quantity and quality of services, and employee remuneration, and the agency shall review the proposal and the revised estimate after bidding has been completed and make a determination of whether and how much to reduce the agency’s estimates of the cost of agency personnel performing the services when making the comparison with the cost to the agency of the contractor’s bid pursuant to this section and determining whether the bid will provide savings for the agency. The agency shall not disclose the majority representative’s alternative estimate or proposal to reduce costs prior to the completion of the bidding.

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

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. 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.

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

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

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