



General Assembly

Substitute Bill No. 351

February Session, 2014



**AN ACT CONCERNING THE ASSESSMENT OF PROPOSED
PRIVATIZATION CONTRACTS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4e-16 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2014*):

3 (a) Prior to entering into any privatization contract for the
4 privatization of a state service, [that is not currently privatized] that
5 was not performed by a nonstate entity, in whole or in part, prior to
6 June 1, 2010, and is currently being performed directly, in whole or in
7 part, by a state contracting agency, the state contracting agency shall
8 develop a cost-benefit analysis in accordance with the provisions of
9 subsection (b) of this section. [Such requirement shall not apply to a
10 privatization contract for a service currently provided, in whole or in
11 part, by a non-state entity.] Any affected party may petition the State
12 Contracting Standards Board for review of such privatization contract,
13 in accordance with the provisions of subsections (f) to (h), inclusive, of
14 this section.

15 (b) The cost-benefit analysis conducted by a state contracting agency
16 prior to entering into a privatization contract shall document the direct
17 and indirect costs, savings, and qualitative and quantitative benefits,
18 that will result from the implementation of such privatization contract.

19 Such cost-benefit analysis shall specify the schedule that, at a
20 minimum, shall be adhered to in order to achieve any estimated
21 savings. Any cost factor shall be clearly identified in such cost-benefit
22 analysis and supported by all applicable records and reports. The
23 department head of such state contracting agency shall certify that,
24 based on the data and information, all projected costs, savings and
25 benefits are valid and achievable. As used in this subsection, (1) "costs"
26 means all reasonable, relevant and verifiable expenses, including
27 salary, materials, supplies, services, equipment, capital depreciation,
28 rent, maintenance, repairs, utilities, insurance, travel, overhead,
29 interim and final payments and the normal cost of fringe benefits, as
30 calculated by the Comptroller; [. As used in this subsection,] (2)
31 "normal cost of fringe benefits" means the amount of contributions
32 required to fund the benefit allocated to the current year of service;
33 and (3) "savings" means the difference between the current annual
34 direct and indirect costs of providing such service and the projected,
35 annual direct and indirect costs of contracting to provide such services
36 in any succeeding state fiscal year during the term of such proposed
37 privatization contract.

38 (c) (1) If such cost-benefit analysis identifies a cost savings to the
39 state of ten per cent or more, and such privatization contract will not
40 diminish the quality of such service, the state contracting agency shall
41 develop a business case, in accordance with the provisions of
42 subsection (d) of this section, in order to evaluate the feasibility of
43 entering into any such contract and to identify the potential results,
44 effectiveness and efficiency of such contract.

45 (2) If such cost-benefit analysis identifies a cost savings of less than
46 ten per cent to the state and such privatization contract will not
47 diminish the quality of such service, the state contracting agency may
48 develop a business case, in accordance with the provisions of
49 subsection (d) of this section, in order to evaluate the feasibility of
50 entering into any such contract and to identify the potential results,
51 effectiveness and efficiency of such contract, provided there is a

52 significant public policy reason to enter into such privatization
53 contract. Any such business case shall be approved in accordance with
54 the provisions of subdivision (4) of subsection (h) of this section.

55 (3) If any such proposed privatization contract would result in the
56 layoff, transfer or reassignment of one hundred or more state agency
57 employees, after consulting with the potentially affected bargaining
58 units, if any, the state contracting agency shall notify the state
59 employees of such bargaining unit, after such [cost benefit] cost-benefit
60 analysis is completed. Such state contracting agency shall provide an
61 opportunity for said employees to reduce the costs of conducting the
62 operations to be privatized and provide reasonable resources for the
63 purpose of encouraging and assisting such state employees to organize
64 and submit a bid to provide the services that are the subject of the
65 potential privatization contract. The state contracting agency shall
66 retain sole discretion in determining whether to proceed with the
67 privatization contract, provided the business case for such contract is
68 approved by the board.

69 (d) Any business case developed by a state contracting agency for
70 the purpose of complying with subsection (c) of this section shall
71 include: (1) The [cost benefit] cost-benefit analysis as described in
72 subsection (b) of this section, (2) a detailed description of the service or
73 activity that is the subject of such business case, (3) a description and
74 analysis of the state contracting agency's current performance of such
75 service or activity, (4) the goals to be achieved through the proposed
76 privatization contract and the rationale for such goals, (5) a description
77 of available options for achieving such goals, (6) an analysis of the
78 advantages and disadvantages of each option, including, at a
79 minimum, potential performance improvements and risks attendant to
80 termination of the contract or rescission of such contract, (7) a
81 description of the current market for the services or activities that are
82 the subject of such business case, (8) an analysis of the quality of
83 services as gauged by standardized measures and key performance
84 requirements including compensation, turnover, and staffing ratios, (9)

85 a description of the specific results-based performance standards that
86 shall, at a minimum be met, to ensure adequate performance by any
87 party performing such service or activity, (10) the projected time frame
88 for key events from the beginning of the procurement process through
89 the expiration of a contract, if applicable, (11) a specific and feasible
90 contingency plan that addresses contractor nonperformance and a
91 description of the tasks involved in and costs required for
92 implementation of such plan, and (12) a transition plan, if appropriate,
93 for addressing changes in the number of agency personnel, affected
94 business processes, employee transition issues, and communications
95 with affected stakeholders, such as agency clients and members of the
96 public, if applicable. Such transition plan shall contain a reemployment
97 and retraining assistance plan for employees who are not retained by
98 the state or employed by the contractor. If the primary purpose of the
99 proposed privatization contract is to provide a core governmental
100 function, such business case shall also include information sufficient to
101 rebut the presumption that such core governmental function should
102 not be privatized. Such presumption shall not be construed to prohibit
103 a state contracting agency from contracting for specialized technical
104 expertise not available within such agency, provided such agency shall
105 retain responsibility for such core governmental function. For the
106 purposes of this section, "core governmental function" means a
107 function for which the primary purpose is (A) the inspection for
108 adherence to health and safety standards because public health or
109 safety may be jeopardized if such inspection is not done or is not done
110 in a timely or proper manner, (B) the establishment of statutory,
111 regulatory or contractual standards to which a regulated person, entity
112 or state contractor shall be held, (C) the enforcement of statutory,
113 regulatory or contractual requirements governing public health or
114 safety, or (D) criminal or civil law enforcement. If any part of such
115 business case is based upon evidence that the state contracting agency
116 is not sufficiently staffed to provide the core governmental function
117 required by the privatization contract, the state contracting agency
118 shall also include within such business case a plan for remediation of
119 the understaffing to allow such services to be provided directly by the

120 state contracting agency in the future.

121 (e) Upon the completion of such business case, the state contracting
122 agency shall submit the business case to the State Contracting
123 Standards Board. For any privatization contract with a projected cost
124 that exceeds one hundred fifty million dollars annually or six hundred
125 million dollars over the life of such contract, the state contracting
126 agency shall also submit such business case to the Governor, the
127 president pro tempore of the Senate, the speaker of the House of
128 Representatives, and any collective bargaining unit affected by the
129 proposed privatization contract.

130 (f) (1) There shall be a privatization contract committee of the State
131 Contracting Standards Board that shall review, evaluate, issue
132 advisory reports and make recommendations on business cases
133 submitted to the board by any state contracting agency. Such
134 privatization contract committee shall consist of five members of the
135 State Contracting Standards Board. Such members shall be appointed
136 by the chairperson of the board and consist of both gubernatorial and
137 legislative appointments, have not more than three members from any
138 one political party, and at least one member of such committee shall
139 have expertise in the area that is the subject of such proposed contract.
140 The chairperson of the board, or the chairperson's designee shall serve
141 as the chair of the privatization contract committee.

142 (2) Upon receipt of any such business case from a state contracting
143 agency, the State Contracting Standards Board shall immediately refer
144 such business case to such privatization contract committee. The
145 privatization contract committee shall employ a standard process for
146 reviewing, evaluating and approving any such business cases. Such
147 process shall include due consideration of: (A) The cost-benefit
148 analysis developed by the state contracting agency, (B) the business
149 case developed by the state contracting agency, including any facts,
150 documents or other materials that are relevant to such business case,
151 (C) any adverse effect that such privatization contract may have on
152 minority, small and women-owned businesses that do, or are

153 attempting to do business with the state, and (D) the value of having
154 services performed in the state and within the United States.

155 (3) The privatization committee shall evaluate the business case and
156 submit the committee's evaluation to the State Contracting Standards
157 Board for review and approval. During the review or consideration of
158 any such business case, no member of the board shall engage in any
159 ex-parte communication with any lobbyist, contractor or union
160 representative. Unless otherwise provided in this section, a majority
161 vote of the board shall be required to approve any such business case.

162 (4) The business case for a privatization contract to provide a core
163 governmental function may be approved by a two-thirds vote of the
164 board, provided the state contracting agency has provided sufficient
165 evidence to rebut the presumption contained in subsection (d) of this
166 section and there is a significant policy reason to approve such
167 business case. In no such case shall the insufficient staffing of a state
168 contracting agency constitute a significant policy reason to approve a
169 business case for a privatization contract to provide a core
170 governmental function.

171 (g) Each state contracting agency that submits a business case to the
172 board for review shall submit to the board all information, documents
173 or other material required by the privatization contract committee to
174 complete its review and evaluation of such business case.

175 (h) (1) Not later than sixty days after receipt of any business case,
176 the State Contracting Standards Board shall transmit a report detailing
177 its review, evaluation and disposition regarding such business case to
178 the state contracting agency that submitted such business case and, in
179 the case of a privatization contract with a projected cost of one
180 hundred fifty million dollars or more annually, or six hundred million
181 dollars or more over the life of the contract, concomitantly transmit
182 such report to the Governor, the president pro tempore of the Senate,
183 the speaker of the House of Representatives and any collective
184 bargaining unit affected by the proposed privatization contract. Such

185 sixty-day period may be extended for an additional thirty days upon a
186 majority vote of the board or the privatization contract committee and
187 for good cause shown.

188 (2) The board's report shall include the business case prepared by
189 the state contracting agency, the evaluation of the business case
190 prepared by the privatization contract committee, the reasons for
191 approval or disapproval, any recommendations of the board and
192 sufficient information to assist the state contracting agency in
193 determining if additional steps are necessary to move forward with a
194 privatization contract.

195 (3) If the State Contracting Standards Board does not act on a
196 business case submitted by a state contracting agency within sixty
197 days of receipt of such business case, such business case shall be
198 deemed approved, except that no business case may be approved for
199 failure of the board to meet.

200 (4) In the case of a business case developed pursuant to subdivision
201 (2) of subsection (c) of this section, a two-thirds vote of the board shall
202 be required for approval of such privatization contract.

203 (5) Any state contracting agency may request an expedited review
204 of a business case submitted to the board if there is a compelling public
205 interest for such expedited review. If the board approves the agency's
206 request for such an expedited review, such review shall be completed
207 not later than thirty days after receipt of such request. If the board fails
208 to complete an expedited review within thirty days of receipt of a
209 request that was approved by the board, such business case shall be
210 deemed to be approved.

211 (i) A state contracting agency may publish notice soliciting bids for a
212 privatization contract only after the board approves such business
213 case, provided any privatization contract that is estimated to cost in
214 excess of one hundred fifty million dollars annually or six hundred
215 million dollars or more over the life of the contract shall also be

216 approved by the General Assembly prior to the state contracting
217 agency soliciting bids for such contract. The General Assembly may
218 approve any such contract as a whole by a majority vote of each house
219 or may reject such agreement as a whole by a majority vote of either
220 house. If the General Assembly is in session, it shall vote to approve or
221 reject such contract not later than thirty days after such state
222 contracting agency files such contract with the General Assembly. If
223 the General Assembly is not in session when such contract is filed, it
224 shall be submitted to the General Assembly not later than ten days
225 after the first day of the next regular session or special session called
226 for such purpose. The contract shall be deemed approved if the
227 General Assembly fails to vote to approve or reject such contract
228 within thirty days after such filing. Such thirty-day period shall not
229 begin or expire unless the General Assembly is in regular session. For
230 the purpose of this subsection, any contract filed with the clerks within
231 thirty days before the commencement of a regular session of the
232 General Assembly shall be deemed to be filed on the first day of such
233 session.

234 (j) Each state contracting agency shall submit, in writing, to the State
235 Contracting Standards Board, any proposed amendment to a board-
236 approved business case in order that the board may review and
237 approve of such proposed amendment. The board may approve or
238 disapprove of any such proposed amendment not later than thirty
239 days after receipt of such proposed amendment by the same vote that
240 was required for approval of the original business case. If the board
241 fails to complete its review within thirty days of receipt of such
242 proposed amendment, such amendment shall be deemed approved.

243 (k) Not later than thirty days after a decision of the board to
244 approve a business case, any collective bargaining agent of any
245 employee adversely affected by such proposed privatization contract
246 may file a motion for an order to show cause in the superior court for
247 the judicial district of Hartford on the grounds that such contract fails
248 to comply with the substantive or procedural requirements of this

249 section. A ruling on any such motion may: (1) Deny the motion; (2)
250 grant the motion if the court finds that the proposed contract would
251 substantively violate the provisions of this section; or (3) stay the
252 effective date of the contract until any substantive or procedural defect
253 found by the court has been corrected.

254 (l) (1) The board may review additional existing privatization
255 contracts and shall review not less than one contracting area each year
256 that is currently privatized. During the review of any such
257 privatization contract, no member of the board shall engage in any ex-
258 parte communication with any lobbyist, contractor or union
259 representative. For each such privatization contract selected for review
260 by the board, the appropriate state contracting agency shall develop a
261 cost-benefit analysis in accordance with subsection (b) of this section.
262 In addition, any affected party may petition the board for review of
263 any existing privatization contract, in accordance with the provisions
264 of subsections (f) to (h), inclusive, of this section.

265 (2) If such cost-benefit analysis identifies a ten per cent or more cost
266 savings to the state from the use of such privatization contract and
267 such contract does not diminish the quality of the service provided,
268 such state contracting agency shall develop a business case for the
269 renewal of such privatization contract in accordance with the
270 provisions of subsections (d) and (e) of this section. The board shall
271 review such contract in accordance with the provisions of subsections
272 (f) to (h), inclusive, of this section and may approve such renewal by
273 the applicable vote of the board, provided any such renewal that is
274 estimated to cost in excess of one hundred fifty million dollars
275 annually or six hundred million dollars or more over the life of the
276 contract shall also be approved by the General Assembly prior to the
277 state contracting agency renewing such contract. If such renewal is
278 approved by the board and the General Assembly, if applicable, the
279 provisions of subsection (j) of this section shall apply to any proposed
280 amendment to such contract.

281 (3) If such cost-benefit analysis identifies a cost savings to the state

282 of less than ten per cent, such state contracting agency shall prepare a
283 plan to have such service provided by state employees and shall begin
284 to implement such plan, provided: (A) While such plan is prepared,
285 but prior to implementation of such plan, such state contracting
286 agency may develop a business case for such privatization contract, in
287 accordance with the provisions of subsection (d) of this section, that
288 achieves a cost savings to the state of ten per cent or more. Any such
289 business case shall be reviewed by the board in accordance with the
290 provisions of subsections (f) to (h), inclusive, of this section, and may
291 be approved by the applicable vote of the board; (B) such privatization
292 contract shall not be renewed with the vendor currently providing
293 such service unless: (i) There exists a significant public interest in
294 renewing such contract, and (ii) such renewal is approved by a two-
295 thirds vote of the board; (C) the state contracting agency may enter
296 into a contract with a term of one year or less for the provision of such
297 service until such state contracting agency implements such plan; and
298 (D) the procedure for the transfer of funds from the General Fund, as
299 described in section 4-94, may be utilized to allocate necessary
300 resources for the implementation of the provisions of this subdivision.

301 (4) Notwithstanding the provisions of subdivision (3) of this
302 subsection, the renewal of a privatization contract with a nonprofit
303 organization shall not be denied if the cost of increasing compensation
304 to employees performing the privatized service is the sole cause for
305 such contract not achieving a cost savings to the state of ten per cent or
306 more.

307 (m) The Office of Policy and Management, in consultation with the
308 State Contracting Standards Board, shall: (1) Develop policies and
309 procedures, including templates for use by state contracting agencies
310 for the development of a cost-benefit analysis, as described in
311 subsection (b) of this section, and (2) review with each state contracting
312 agency the budgetary impact of any such privatization contract and
313 the need to request budget adjustments in connection with any such
314 privatization contract.

315 (n) The State Contracting Standards Board, in consultation with the
316 Department of Administrative Services, shall: (1) Recommend and
317 implement standards and procedures for state contracting agencies to
318 develop business cases in connection with privatization contracts,
319 including templates for use by state contracting agencies when
320 submitting business cases to the board, and policies and procedures to
321 guide state contracting agencies to complete such business cases, and
322 (2) develop guidelines and procedures for assisting state employees
323 whose jobs are affected by a privatization contract.

324 (o) Notwithstanding the provisions of subsections (a) and (i) of this
325 section, a state contracting agency may enter into a privatization
326 contract without development of a cost-benefit analysis or approval of
327 a business case by the State Contracting Standards Board if (1) the state
328 contracting agency finds that a privatization contract is required (A)
329 due to an imminent peril to the public health, safety or welfare, and (B)
330 the agency states, in writing, its reasons for such finding; and (2) the
331 Governor approves such finding, in writing.

332 (p) Prior to entering into or renewing any privatization contract for
333 a state service that was performed by a nonstate entity, in whole or in
334 part, prior to June 1, 2010, the state contracting agency shall evaluate
335 such contract to determine if continuing to contract for the service is
336 the most cost-effective method of delivering such service, by
337 determining the costs, as defined in subsection (b) of this section, of
338 such service. The state contracting agency shall perform such
339 evaluation in accordance with a template prescribed by the Secretary
340 of the Office of Policy and Management and such evaluation shall be
341 subject to verification by the secretary. The secretary may waive the
342 requirement for an evaluation of cost-effectiveness under this
343 subsection upon a finding by the secretary that exigent or emergent
344 circumstances necessitate such waiver.

345 [(p)] (q) Nothing in this section shall be construed to apply to
346 procurements that involve the expenditure of federal assistance or
347 federal contract funds, provided federal law provides applicable

348 procurement procedures that are inconsistent with the requirements of
349 this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2014</i>	4e-16

Statement of Legislative Commissioners:

Sections 1 and 2 were combined into section 1 to conform to drafting conventions.

GAE *Joint Favorable Subst.*