



General Assembly

Amendment

February Session, 2014

LCO No. 5111

SB0024805111SD0

Offered by:

SEN. MUSTO, 22nd Dist.

REP. JUTILA, 37th Dist.

To: Subst. Senate Bill No. 248

File No. 517

Cal. No. 348

"AN ACT CONCERNING PUBLIC WORKS PROJECTS AND THE THRESHOLD FOR COMPETITIVE BIDDING, SUBCONTRACTOR PREQUALIFICATION, CONSTRUCTION MANAGER AT-RISK PROJECT DELIVERY CONTRACTS, THE HIRING OF CONSULTANTS AND THE PURCHASING OF CERTAIN PROPERTY AND SERVICES."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Section 4e-16 of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2014*):

5 (a) Prior to entering into any privatization contract for the
6 privatization of a state service that is not currently privatized, the state
7 contracting agency shall develop a cost-benefit analysis in accordance
8 with the provisions of subsection (b) of this section. Such requirement
9 shall not apply to a privatization contract for a service currently
10 provided, in whole or in part, by a non-state entity. Any affected party
11 may petition the State Contracting Standards Board for review of such

12 privatization contract, in accordance with the provisions of subsections
13 (f) to (h), inclusive, of this section.

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

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

44 (2) If such cost-benefit analysis identifies a cost savings of less than

45 ten per cent to the state and such privatization contract will not
46 diminish the quality of such service, the state contracting agency may
47 develop a business case, in accordance with the provisions of
48 subsection (d) of this section, in order to evaluate the feasibility of
49 entering into any such contract and to identify the potential results,
50 effectiveness and efficiency of such contract, provided there is a
51 significant public policy reason to enter into such privatization
52 contract. Any such business case shall be approved in accordance with
53 the provisions of subdivision (4) of subsection (h) of this section.

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

68 (d) Any business case developed by a state contracting agency for
69 the purpose of complying with subsection (c) of this section shall
70 include: (1) The [cost benefit] cost-benefit analysis as described in
71 subsection (b) of this section, (2) a detailed description of the service or
72 activity that is the subject of such business case, (3) a description and
73 analysis of the state contracting agency's current performance of such
74 service or activity, (4) the goals to be achieved through the proposed
75 privatization contract and the rationale for such goals, (5) a description
76 of available options for achieving such goals, (6) an analysis of the
77 advantages and disadvantages of each option, including, at a

78 minimum, potential performance improvements and risks attendant to
79 termination of the contract or rescission of such contract, (7) a
80 description of the current market for the services or activities that are
81 the subject of such business case, (8) an analysis of the quality of
82 services as gauged by standardized measures and key performance
83 requirements including compensation, turnover, and staffing ratios, (9)
84 a description of the specific results-based performance standards that
85 shall, at a minimum be met, to ensure adequate performance by any
86 party performing such service or activity, (10) the projected time frame
87 for key events from the beginning of the procurement process through
88 the expiration of a contract, if applicable, (11) a specific and feasible
89 contingency plan that addresses contractor nonperformance and a
90 description of the tasks involved in and costs required for
91 implementation of such plan, and (12) a transition plan, if appropriate,
92 for addressing changes in the number of agency personnel, affected
93 business processes, employee transition issues, and communications
94 with affected stakeholders, such as agency clients and members of the
95 public, if applicable. Such transition plan shall contain a reemployment
96 and retraining assistance plan for employees who are not retained by
97 the state or employed by the contractor. If the primary purpose of the
98 proposed privatization contract is to provide a core governmental
99 function, such business case shall also include information sufficient to
100 rebut the presumption that such core governmental function should
101 not be privatized. Such presumption shall not be construed to prohibit
102 a state contracting agency from contracting for specialized technical
103 expertise not available within such agency, provided such agency shall
104 retain responsibility for such core governmental function. For the
105 purposes of this section, "core governmental function" means a
106 function for which the primary purpose is (A) the inspection for
107 adherence to health and safety standards because public health or
108 safety may be jeopardized if such inspection is not done or is not done
109 in a timely or proper manner, (B) the establishment of statutory,
110 regulatory or contractual standards to which a regulated person, entity
111 or state contractor shall be held, (C) the enforcement of statutory,
112 regulatory or contractual requirements governing public health or

113 safety, or (D) criminal or civil law enforcement. If any part of such
114 business case is based upon evidence that the state contracting agency
115 is not sufficiently staffed to provide the core governmental function
116 required by the privatization contract, the state contracting agency
117 shall also include within such business case a plan for remediation of
118 the understaffing to allow such services to be provided directly by the
119 state contracting agency in the future.

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

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

141 (2) Upon receipt of any such business case from a state contracting
142 agency, the State Contracting Standards Board shall immediately refer
143 such business case to such privatization contract committee. The
144 privatization contract committee shall employ a standard process for
145 reviewing, evaluating and approving any such business cases. Such

146 process shall include due consideration of: (A) The cost-benefit
147 analysis developed by the state contracting agency, (B) the business
148 case developed by the state contracting agency, including any facts,
149 documents or other materials that are relevant to such business case,
150 (C) any adverse effect that such privatization contract may have on
151 minority, small and women-owned businesses that do, or are
152 attempting to do business with the state, and (D) the value of having
153 services performed in the state and within the United States.

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

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

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

174 (h) (1) Not later than sixty days after receipt of any business case,
175 the State Contracting Standards Board shall transmit a report detailing
176 its review, evaluation and disposition regarding such business case to
177 the state contracting agency that submitted such business case and, in

178 the case of a privatization contract with a projected cost of one
179 hundred fifty million dollars or more annually, or six hundred million
180 dollars or more over the life of the contract, concomitantly transmit
181 such report to the Governor, the president pro tempore of the Senate,
182 the speaker of the House of Representatives and any collective
183 bargaining unit affected by the proposed privatization contract. Such
184 sixty-day period may be extended for an additional thirty days upon a
185 majority vote of the board or the privatization contract committee and
186 for good cause shown.

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

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

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

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

210 (i) A state contracting agency may publish notice soliciting bids for a
211 privatization contract only after the board approves such business
212 case, provided any privatization contract that is estimated to cost in
213 excess of one hundred fifty million dollars annually or six hundred
214 million dollars or more over the life of the contract shall also be
215 approved by the General Assembly prior to the state contracting
216 agency soliciting bids for such contract. The General Assembly may
217 approve any such contract as a whole by a majority vote of each house
218 or may reject such agreement as a whole by a majority vote of either
219 house. If the General Assembly is in session, it shall vote to approve or
220 reject such contract not later than thirty days after such state
221 contracting agency files such contract with the General Assembly. If
222 the General Assembly is not in session when such contract is filed, it
223 shall be submitted to the General Assembly not later than ten days
224 after the first day of the next regular session or special session called
225 for such purpose. The contract shall be deemed approved if the
226 General Assembly fails to vote to approve or reject such contract
227 within thirty days after such filing. Such thirty-day period shall not
228 begin or expire unless the General Assembly is in regular session. For
229 the purpose of this subsection, any contract filed with the clerks within
230 thirty days before the commencement of a regular session of the
231 General Assembly shall be deemed to be filed on the first day of such
232 session.

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

242 (k) Not later than thirty days after a decision of the board to

243 approve a business case, any collective bargaining agent of any
244 employee adversely affected by such proposed privatization contract
245 may file a motion for an order to show cause in the superior court for
246 the judicial district of Hartford on the grounds that such contract fails
247 to comply with the substantive or procedural requirements of this
248 section. A ruling on any such motion may: (1) Deny the motion; (2)
249 grant the motion if the court finds that the proposed contract would
250 substantively violate the provisions of this section; or (3) stay the
251 effective date of the contract until any substantive or procedural defect
252 found by the court has been corrected.

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

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

276 state contracting agency renewing such contract. If such renewal is
277 approved by the board and the General Assembly, if applicable, the
278 provisions of subsection (j) of this section shall apply to any proposed
279 amendment to such contract.

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

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

306 (m) The Office of Policy and Management, in consultation with the
307 State Contracting Standards Board, shall: (1) Develop policies and
308 procedures, including templates for use by state contracting agencies

309 for the development of a cost-benefit analysis, as described in
310 subsection (b) of this section, and (2) review with each state contracting
311 agency the budgetary impact of any such privatization contract and
312 the need to request budget adjustments in connection with any such
313 privatization contract.

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

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

331 (p) Prior to entering into or renewing any privatization contract that
332 is not subject to the provisions of subsection (a) of this section, the state
333 contracting agency shall evaluate such contract to determine if
334 entering into or renewing such contract is the most cost-effective
335 method of delivering the service, by determining the costs, as defined
336 in subsection (b) of this section, of such service. The state contracting
337 agency shall perform such evaluation in accordance with a template
338 prescribed by the Secretary of the Office of Policy and Management
339 and such evaluation shall be subject to verification by the secretary.
340 The secretary may waive the requirement for an evaluation of cost-
341 effectiveness under this subsection upon a finding by the secretary that

342 exigent or emergent circumstances necessitate such waiver.

343 [(p)] (q) Nothing in this section shall be construed to apply to
344 procurements that involve the expenditure of federal assistance or
345 federal contract funds, provided federal law provides applicable
346 procurement procedures that are inconsistent with the requirements of
347 this section."

This act shall take effect as follows and shall amend the following sections:		
Sec. 501	October 1, 2014	4e-16