

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: S3/18/97

A Bill

SENATE BILL 722

4
5 By: Senator Walker

For An Act To Be Entitled

9 "AN ACT CONCERNING REGULATION OF PRIVATIZATION CONTRACTS;
10 AND FOR OTHER PURPOSES."

Subtitle

13 "AN ACT CONCERNING REGULATION OF
14 PRIVATIZATION CONTRACTS."

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. The General Assembly finds and declares that using private
20 contractors to provide public services formerly provided by state employees
21 does not always promote the public interest. To ensure that citizens of the
22 state receive high quality public services at low cost, with due regard for
23 the taxpayers of the state and the needs of public and private workers, the
24 General Assembly finds it necessary to regulate such privatization contracts
25 in accordance with this act. The General Assembly does not intend to restrict
26 the use of community facilities to provide care for clients of state agencies,
27 if any privatization contract relating to such facilities otherwise complies
28 with the provisions of this act.

30 SECTION 2. As used in this act:

31 (1) "Agency", means an executive office, department, division, board,
32 commission or other office or officer in the executive branch of the
33 government of this state, with the exception of the Arkansas State Highway
34 Commission and the Arkansas State Highway and Transportation Department.

35 (2) "Dependent" the spouse and children of an employee if the persons
36 would qualify for dependent status under the Internal Revenue Code or for whom

1 a support order has been or could be granted.

2 (3) "Privatization contract" an agreement or combination or series of
3 agreements by which a non-governmental person or entity agrees with an agency
4 to provide services, valued at one hundred thousand dollars (\$100,000) or
5 more, which are substantially similar to and in lieu of, services provided, in
6 whole or in part, by regular employees of an agency. Any subsequent
7 agreement, including any agreement resulting from a rebidding of previously
8 privatized service, or any agreement renewing or extending a privatization
9 contract, shall not be considered a privatization contract. An agreement
10 solely to provide legal, management consulting, planning, engineering or
11 design services shall not be considered a privatization contract.

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13 SECTION 3. Privatization contracts; requirements.

14 No agency shall make any privatization contract and no such contract
15 shall be valid unless the agency, in consultation with the Department of
16 Finance and Administration, first complies with each of the following
17 requirements.

18 (1) The agency shall prepare a specific written statement of the
19 services proposed to be the subject of the privatization contract, including
20 the specific quantity and standard of quality of the subject services. The
21 agency shall solicit competitive sealed bids for the privatization contracts
22 based upon this statement. The day designated by the agency upon which it
23 will accept these sealed bids shall be the same for any and all parties. This
24 statement shall be a public record, shall be filed in the agency and in the
25 Department of Finance and Administration. The term of any privatization
26 contract shall not exceed five (5) years. No amendment to a privatization
27 contract shall be valid if it has the purpose or effect of avoiding any
28 requirement of this section.

29 (2) For each position in which a bidder will employ any person
30 pursuant to the privatization contract and for which the duties are
31 substantially similar to the duties performed by a regular agency employee or
32 employees, the statement required by subdivision (1) shall include a statement
33 of the minimum wage rate to be paid for the position, which rate shall be the
34 lesser of step one of the grade or classification under which the comparable
35 regular agency employee is paid, or the average private sector wage rate for
36 the position as determined by the Department of Finance and Administration.

1 Every bid for a privatization contract and every privatization contract shall
2 include provisions for the contractor to pay not less than a percentage,
3 comparable to the percentage paid by the state for state employees, of the
4 costs of health insurance plans for every employee employed for not less than
5 twenty (20) hours per week pursuant to such contract. The health insurance
6 plans shall provide coverage to the employee and the employee's spouse and
7 dependent children. Each contractor shall submit quarterly payroll records to
8 the agency, listing the name, address, social security number, hours worked
9 and the hourly wage paid for each employee in the previous quarter. The
10 Attorney General may bring a civil action for equitable relief to enforce this
11 subdivision or to prevent or remedy the dismissal, demotion or other action
12 prejudicing any employee as a result of a report of a violation of this
13 subdivision.

14 (3) Every privatization contract shall contain provisions requiring the
15 contractor to offer available employee positions pursuant to the contract to
16 qualified regular employees of the agency whose state employment is terminated
17 because of the privatization contract and who satisfy the hiring criteria of
18 the contractor. Every contract shall also contain provisions requiring the
19 contractor to comply with a policy of nondiscrimination and equal opportunity
20 and to take affirmative steps to provide equal opportunity.

21 (4) The agency shall prepare a comprehensive written estimate of the
22 costs of regular agency employees providing the subject services in the most
23 cost efficient manner. The estimate shall include all direct and indirect
24 costs of regular agency employees providing the subject services, including
25 but not limited to, pension, insurance and other employee benefit costs. For
26 the purpose of this estimate. The estimate shall remain confidential until
27 after the final day for the agency to receive sealed bids for the
28 privatization contract pursuant to subdivision (1), at which time the estimate
29 shall become a public record, shall be filed in the agency and in the
30 Department of Finance and Administration.

31 (5) The agency shall provide adequate resources for the purpose of
32 encouraging and assisting present agency employees to organize and submit a
33 bid to provide the subject services. The agency shall consider any employee
34 bid on the same basis as all other bids. An employee bid may be made as a
35 joint venture with other persons.

36 (6) After soliciting and receiving bids, the agency shall publicly

1 designate the bidder to which proposes to award the contract. The agency
2 shall prepare a comprehensive written analysis of the contract cost based upon
3 the designate bid, specifically including the costs of transition from public
4 to private operation of additional unemployment and retirement benefits, if
5 any, and of monitoring and otherwise administering contract performance. If
6 the designated bidder proposes to perform any or all of the contract outside
7 the boundaries of the state, the contract cost shall be increased by the
8 amount of income tax revenue, if any, which will be lost to the state by the
9 corresponding elimination of agency employees, as determined by the Department
10 of Finance and Administration to the extent that it is able to do so.

11 (7) The head of the agency shall each certify in writing to the
12 Department of Finance and Administration, that:

13 (A) he has complied with all provisions of this act and of all
14 other applicable laws;

15 (B) the quality of the services to be provided by the designated
16 bidder is likely to satisfy the quality requirements of the statement prepared
17 pursuant to subdivision (1), and to equal or exceed the quality of services
18 which could be provided by regular agency employees pursuant to subsection
19 (4);

20 (C) the contract cost pursuant to subdivision (6) will be less
21 than the estimated cost pursuant to subdivision (4), taking into account all
22 comparable types of costs;

23 (D) the designate bidder and its supervisory employees, while in
24 the employ of the designated bidder, have no adjudicated record of substantial
25 or repeated willful noncompliance with any relevant federal or state
26 regulatory statute including, but not limited to, statutes concerning labor
27 relations, occupational safety and health, nondiscrimination and affirmative
28 action, environmental protection and conflicts of interest; and

29 (E) the proposed privatization contract is in the public
30 interest, in that it meets the applicable quality and fiscal standards set
31 forth in this act.

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33 SECTION 4. All provisions of this act of a general and permanent nature
34 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
35 Revision Commission shall incorporate the same in the Code.

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1 SECTION 5. If any provision of this act or the application thereof to
2 any person or circumstance is held invalid, such invalidity shall not affect
3 other provisions or applications of the act which can be given effect without
4 the invalid provision or application, and to this end the provisions of this
5 act are declared to be severable.

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7 SECTION 6. All laws and parts of laws in conflict with this act are
8 hereby repealed.

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/s/Walker

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