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SENATE BILL 41

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

BEN D. ALTAMIRANO

AN ACT

RELATING TO STATE GOVERNMENT FUNCTIONS; ENACTING THE  
PRIVATIZATION ACT; PROVIDING REQUIREMENTS AND CONDITIONS FOR  
PRIVATIZATION EFFORTS; REQUIRING A COST-BENEFIT ANALYSIS OF  
POTENTIAL PRIVATIZATION; PROVIDING POWERS AND DUTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the  
"Privatization Act".

Section 2. LEGISLATIVE FINDINGS AND PURPOSE. --

A. The legislature finds that:

(1) there is a national trend toward smaller  
government and an increasing trend toward providing  
governmental services through contract with private sector  
labor rather than state employees;

(2) while privatization may be cost

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1 effective, inappropriate privatization can result in increases  
2 in the cost of providing functions and decreases in the  
3 quality of delivered functions, as well as additional costs  
4 associated with reestablishing the function within an agency;  
5 and

6 (3) the decision to privatize should be based  
7 on objective measures of the efficacy of privatization,  
8 including lower cost to taxpayers and better delivery of  
9 services.

10 B. The legislature finds further that  
11 privatization should be undertaken only when consistent with  
12 the constitution of New Mexico and statutes. Without  
13 legislative action to eliminate a program, service or  
14 regulation, or other appropriate legislative action, an agency  
15 is constrained in its ability to delegate its authority and  
16 responsibility.

17 C. The purpose of the Privatization Act is to  
18 ensure that privatization is implemented appropriately and  
19 cost effectively and will truly benefit the citizens of New  
20 Mexico.

21 Section 3. DEFINITIONS. -- As used in the Privatization  
22 Act:

23 A. "agency" means a department, office, agency,  
24 board, commission, institution, branch or school district of  
25 the state, including courts and district attorneys, that

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1 receives a direct appropriation from the legislature;

2 B. "appropriate authority" includes the governor,  
3 attorney general, state treasurer, commissioner of public  
4 lands, supreme court, board of regents, state board of  
5 education or other official that has ultimate control of an  
6 agency;

7 C. "function" means a program, service or activity  
8 that an agency has a direct or indirect statutory obligation  
9 to administer or perform;

10 D. "person" means an individual or a business,  
11 corporation, association, partnership or similar legal entity;  
12 and

13 E. "privatization" means the supplantation of  
14 state or public school employees with a private sector  
15 contract to perform an agency function.

16 Section 4. PRIVATIZATION CONTRACTS. --An agency may  
17 propose to privatize any of its functions, but it shall not  
18 delegate its authority or responsibility. An agency's  
19 contract with a private sector provider shall provide for  
20 adequate supervision of the provider's activities to ensure  
21 that there is no inappropriate delegation of the agency's  
22 authority.

23 Section 5. PRIVATIZATION-- COST- BENEFIT ANALYSIS--  
24 REPORT. --

25 A. An agency that is considering privatizing any

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1 of its functions shall conduct a cost-benefit analysis of the  
2 action. The analysis shall include:

3 (1) the potential one-time savings and the  
4 potential annual recurring savings from privatization;

5 (2) the potential market for privatization;

6 (3) the relative strengths and weaknesses of  
7 governmental and private sector customer service mechanisms;

8 and

9 (4) the impact of possible reduced services  
10 on the citizens of the state.

11 B. An agency shall not consider for privatization  
12 any of the following:

13 (1) a function that directly or significantly  
14 consists of planning or making public policy;

15 (2) a function that directly or significantly  
16 affects the investigation or prosecution of a criminal act,  
17 the operation of a court or the preservation of the public  
18 peace or health;

19 (3) a function that makes judgments or  
20 recommendations relative to the fiscal policy of the state or  
21 judgments pertaining to the making of rules by which  
22 entitlements are granted; and

23 (4) a function that regulates the business,  
24 occupation or profession of a person domiciled or doing  
25 business in New Mexico; provided that an agency may recommend

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1 to the legislature the elimination of the regulation.

2 C. The agency shall propose privatization of a  
3 function only if the cost-benefit analysis determines that:

4 (1) a private sector provider can provide the  
5 function for less cost than the agency, and that the annual  
6 savings will be fifteen percent or more of the agency's most  
7 recently completed fiscal year's expenditures for that  
8 function; or

9 (2) a private sector provider can provide the  
10 function for an aggregate fifteen percent less than the agency  
11 proposes as an aggregate charge for performing the function.

12 D. The agency shall report its findings, including  
13 its working papers and methodology for the cost-benefit  
14 analysis, and recommendations for statutory changes to the  
15 appropriate authority. If the appropriate authority approves  
16 of the findings, it shall transmit a copy of the report to the  
17 department of finance and administration and the legislative  
18 finance committee by October 1 preceding a regular session of  
19 the legislature in which the appropriate authority proposes  
20 that a function be privatized.

21 E. The department of finance and administration  
22 and the legislative finance committee shall examine the  
23 agency's findings and recommendations and evaluate the cost-  
24 benefit analysis. Recommendations of the department and the  
25 committee shall be included in the respective budget

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1 documents.

2 F. An agency shall not privatize a function  
3 without the approval of the legislature.

4 Section 6. EFFECTIVE DATE. --The effective date of the  
5 provisions of this act is July 1, 1998.

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1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998  
3  
4  
5

6 January 22, 1998  
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8 Mr. President:  
9

10 Your COMMITTEES' COMMITTEE, to whom has been referred  
11

12 SENATE BILL 41  
13

14 has had it under consideration and finds same to be GERMANE, in  
15 accordance with constitutional provisions, and thence referred to  
16 the FINANCE COMMITTEE.  
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19 Respectfully submitted,  
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25 \_\_\_\_\_  
Manny M. Aragon, Chairman

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

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1 FORTY-THIRD LEGISLATURE

SB 41/a

2 SECOND SESSION, 1998

3  
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5  
6 February 13, 1998

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8 Mr. President:

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10 Your JUDICIARY COMMITTEE, to whom has been referred

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12 SENATE BILL 41

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14 has had it under consideration and reports same WITHOUT

15  
16 RECOMMENDATION, amended as follows:

17  
18 1. On page 2, between lines 16 and 17, insert the following new  
19 subsection:

20 "C. The legislature finds further that state and public school  
21 employees should be afforded job security and protections, and salaries  
22 and benefits paid by private contractors should be comparable to agency  
23 salaries and benefits."

24  
25 2. Reletter the succeeding subsection accordingly.

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

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**SJC SB/41**

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3. On page 6, line 1, after the period insert:

"The department of finance and administration and the legislative finance committee shall develop an analytical framework to evaluate the costs, benefits and performance of government activities and risks and benefits of privatizing a particular function of government. The framework shall include criteria for selecting functions to privatize, cost comparison and evaluation methods and procedures for monitoring the performance of privatized functions."

**and thence referred to the FINANCE COMMITTEE.**

**Respectfully submitted,**

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

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SJC SB/41

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Fernando R. Macias, Chairman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 3 For 2 Against

Yes: 3

No: Payne, Sanchez

Excused: Tsosie, Vernon McSorley

Absent: None

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1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998

3 SJC SB/41

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6 FORTY-THIRD LEGISLATURE  
7 SECOND SESSION, 1998  
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10  
11 February 16, 1998  
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13 Mr. President:

14  
15 Your FINANCE COMMITTEE, to whom has been referred  
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17 SENATE BILL 41, as amended  
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19 has had it under consideration and reports same with recommendation that  
20 it DO PASS.  
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23 Respectfully submitted,  
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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

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Ben D. Altamirano, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Aragon, Carraro, Eisenstadt, Ingle, Lyons

Absent: None

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SECOND SESSION, 1998

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