

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 53

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Manny M Aragon

FOR THE LEGISLATIVE FINANCE COMMITTEE

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

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

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 to take other action, an agency is constrained  
15 in its ability to delegate its authority and responsibility.

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

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

22 A. "agency" means a department, office, agency,  
23 board, commission, institution or branch of the state that  
24 receives a direct appropriation from the legislature;

25 B. "appropriate authority" means the governor,

underscored material = new  
[bracketed material] = delete

1 attorney general, secretary of state, state auditor, state  
2 treasurer, commissioner of public lands, supreme court, board  
3 of regents, state board of education or other official that  
4 has ultimate control of an agency;

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

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

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

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

21 Section 5. PRIVATIZATION-- COST-BENEFIT ANALYSIS--  
22 REPORT. --

23 A. An agency that is considering privatizing any  
24 of its functions shall conduct a cost-benefit analysis of the  
25 action. The analysis shall include the:

underscored material = new  
[bracketed material] = delete

1 (1) potential one-time savings and potential  
2 annual recurring savings from privatization;

3 (2) potential market for privatization;

4 (3) relative strengths and weaknesses of  
5 governmental and private sector customer service mechanisms;

6 and

7 (4) impact of possible reduced services on  
8 the citizens of the state.

9 B. An agency shall not consider for privatization  
10 any of the following:

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

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

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

21 (4) a function that regulates the business,  
22 occupation or profession of a person domiciled or doing  
23 business in New Mexico; provided that an agency may recommend  
24 to the legislature the elimination of the regulation.

25 C. The agency shall propose privatization of a

. 125566. 1

underscored material = new  
[bracketed material] = delete

1 function only if the cost-benefit analysis determines that:

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

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

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

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

25 F. An agency shall not privatize a function

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

without the approval of the legislature.

Section 6. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 1999.

1 FORTY- FOURTH LEGI SLATURE

2 FIRST SESSI ON, 1999

3  
4  
5  
6 February 18, 1999

7  
8 Mr. Presi dent:

9  
10 Your FI NANCE COMMI TTEE, to whom has been referred

11  
12 SENATE BI LL 53

13  
14 has had it under consideration and reports same with  
15 recommendation that it DO PASS.

16  
17  
18 Respectfully submi tted,

19  
20  
21  
22  
23 \_\_\_\_\_  
24 Ben D. Altami rano, Chai rman

25 . 125566. 1

underscored material = new  
[bracketed material] = delete

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

1 Adopted \_\_\_\_\_

2 (Chief Clerk)

(Chief Clerk)

3

4

5

6 Date \_\_\_\_\_

7

8

9 The roll call vote was 11 For 0 Against

10 Yes: 11

11 No: 0

12 Excused: Gri ego, Ingle

13 Absent: None

14

15

16 S0053FC1

17

18

19

20

21

22

23

24

25

underscored material = new  
[bracketed material] = delete