

ASSEMBLY BILL NO. 512—COMMITTEE ON EDUCATION

MARCH 24, 2003

Referred to Committee on Education

SUMMARY—Prescribes requirements for privatization agreements between school districts and contractors for certain educational services. (BDR 34-840)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to education; prescribing requirements for privatization agreements between school districts and contractors for the performance of certain services; prohibiting a school district from entering into such agreements under certain circumstances; specifying the procedure to be followed in entering into such agreements; establishing substantive requirements for the agreements; providing for the automatic termination of agreements under certain circumstances; and providing other matters properly relating thereto.

1 WHEREAS, The boards of trustees of the various school districts
2 are primarily responsible, under the oversight of the Legislature, for
3 operating and managing the system of public education in this state;
4 and

5 WHEREAS, The boards of trustees of the school districts are
6 ultimately accountable for ensuring that the system of public
7 education operates effectively and achieves the results mandated by
8 this state and federal law; and

9 WHEREAS, Some school districts in this state have entered into
10 agreements with independent contractors for the performance of
11 instructional or other services related to education in the public
12 schools; and

13 WHEREAS, While the Legislature has not declared such
14 agreements to be unlawful, the Legislature desires to ensure that



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1 these agreements do not become a means by which the boards of
2 trustees lose control over the public schools or abdicate their
3 responsibility for the operation and management of the public
4 schools; and

5 WHEREAS, Certain safeguards are therefore necessary to ensure
6 that the costs and benefits of any such agreement are carefully
7 considered and monitored, and that control over the system of public
8 education remains at all times with the elected representatives of the
9 public; and

10 WHEREAS, Accordingly, it is appropriate that procedural and
11 substantive requirements relating to such agreements be adopted and
12 enforced; now, therefore,

13

14 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
15 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

16

17 **Section 1.** Chapter 386 of NRS is hereby amended by adding
18 thereto the provisions set forth as sections 2 to 21, inclusive, of this
19 act.

20 **Sec. 2.** *As used in sections 2 to 20, inclusive, of this act,*
21 *unless the context otherwise requires, the words and terms defined*
22 *in sections 3 and 4 of this act have the meanings ascribed to them*
23 *in those sections.*

24 **Sec. 3.** *“Contractor” means the person or entity with whom*
25 *the board of trustees of a school district proposes to enter into, or*
26 *has entered into, a privatization agreement.*

27 **Sec. 4.** *“Privatization agreement” means any agreement*
28 *between the board of trustees of a school district and a person or*
29 *entity, other than an employee of the school district, for the*
30 *performance of instructional services or any other service related*
31 *to education that would, but for the agreement, be performed by*
32 *an employee of the district.*

33 **Sec. 5. 1.** *Before entering into a privatization agreement,*
34 *the board of trustees of a school district shall undertake an*
35 *investigation of the proposed contractor to determine whether the*
36 *contractor satisfies the requirements of this section.*

37 **2.** *The board of trustees of a school district may enter into a*
38 *privatization agreement only with a contractor who establishes*
39 *that the contractor has performed similar agreements successfully*
40 *and has earned a profit in each of the preceding 5 fiscal years.*

41 **3.** *The board of trustees of a school district shall not enter*
42 *into a privatization agreement with any contractor if:*

43 *(a) The contractor has a record of unsatisfactory performance*
44 *relating to similar agreements or other public contracts, is*
45 *insolvent, or has any record of unsatisfied judgments or claims; or*



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1 (b) *The contractor or any officer or managing employee of the*
2 *contractor has previously been convicted of a felony or an offense*
3 *involving moral turpitude.*

4 **Sec. 6. 1.** *If the board of trustees of a school district is*
5 *considering whether to enter into a privatization agreement, the*
6 *board of trustees shall give written notice of that fact to:*

7 (a) *The residents of the school district, by publishing the notice*
8 *at least once each week during 2 successive weeks in a newspaper*
9 *of general circulation within the district; and*

10 (b) *Each bargaining agent of the employees of the school*
11 *district who may be affected by the agreement or, if there is no*
12 *bargaining agent for the employees, to each such employee*
13 *individually.*

14 2. *In addition to the requirements of subsection 1, if the*
15 *board of trustees of a school district is considering whether to*
16 *enter into a privatization agreement and the agreement requires*
17 *an annual expenditure by the school district of:*

18 (a) *One million dollars or more; or*

19 (b) *An amount equal to 5 percent or more of the district's total*
20 *budgeted expenditures for the current fiscal year,*
21 *whichever is less, the board of trustees shall provide written notice*
22 *to the Director of the Legislative Counsel Bureau for transmittal*
23 *to the Legislature if the Legislature is in regular session or to the*
24 *Legislative Committee on Education if the Legislature is not in*
25 *regular session.*

26 3. *Publication or delivery of the notice required by subsection*
27 *1 and delivery of the notice required by subsection 2 must be*
28 *completed not less than 90 days before any action is taken by the*
29 *board of trustees to adopt the agreement or carry out its*
30 *provisions. The notice must set forth:*

31 (a) *A description of the services to be provided pursuant to the*
32 *agreement;*

33 (b) *A statement of the reasons for entering into the agreement;*

34 (c) *A statement of the money to be allocated to the agreement,*
35 *identified by source;*

36 (d) *A statement of the expenditures to be budgeted for the*
37 *agreement, in sufficient detail to permit identification of the*
38 *specific purposes for which the expenditures will be made;*

39 (e) *An estimate of any costs attributable to the agreement that*
40 *would not otherwise be incurred, identifying those costs and the*
41 *source of money to be used to pay them;*

42 (f) *An estimate of any savings expected to be realized from the*
43 *agreement, identifying the particular areas of expenditure*
44 *involved and the anticipated savings in each category;*



1 (g) An explanation of any anticipated nonmonetary benefits of
2 the agreement; and

3 (h) A description of the manner in which a copy of the
4 agreement may be obtained.

5 4. Upon request of a person, the board of trustees shall
6 provide or make available a copy of the proposed agreement,
7 regardless of whether the terms of the agreement have been
8 finalized. As the proposed agreement is further revised, a copy
9 must be made available pursuant to this subsection.

10 5. As used in this section, "bargaining agent" has the
11 meaning ascribed to it in NRS 288.027.

12 **Sec. 7.** The board of trustees of a school district shall not
13 adopt a privatization agreement if the agreement will result in,
14 among the employees of the school district:

15 1. A reduction in force or the elimination of any existing
16 position; or

17 2. A reduction or loss of salary, seniority or other benefits.

18 **Sec. 8. 1.** Before adopting a privatization agreement, the
19 board of trustees of a school district must hold at least two public
20 meetings during two regularly scheduled meetings of the board of
21 trustees to receive comment from the general public and affected
22 employees about the proposed agreement and to respond to
23 questions about the proposed agreement.

24 2. The board of trustees shall not adopt the agreement unless
25 the board of trustees determines that any savings or other benefits
26 expected to be realized from the agreement substantially outweigh
27 the expected costs and disadvantages of the agreement. The board
28 of trustees shall state the factual basis for its determination in the
29 form of written findings, which must be made part of the record of
30 the proceedings of the board of trustees. The lack of substantial
31 evidence in the record to support any such finding is *prima facie*
32 evidence that the requirements of this subsection have been
33 violated.

34 **Sec. 9.** (Deleted by amendment.)

35 **Sec. 10.** A contractor shall not employ any person to perform
36 duties pursuant to a privatization agreement who has previously
37 been convicted of a felony or an offense involving moral turpitude.

38 **Sec. 11. 1.** If a contractor is a party to a privatization
39 agreement which provides for pass-through payments to the
40 contractor, the contractor shall, on or before March 15 of each
41 year, submit to the board of trustees of the school district a
42 proposed budget for the ensuing fiscal year, setting forth a
43 detailed estimate of revenues and expenditures relating to the
44 agreement. The board of trustees shall review the budget and
45 approve or modify it.



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1 2. As used in this section, "pass-through payment" means a
2 payment to the contractor that is calculated to approximate, on a
3 per pupil basis, the amount of revenue received by the school
4 district from all sources or from the State Distributive School
5 Account.

6 **Sec. 12.** 1. The board of trustees of a school district that
7 has entered into a privatization agreement shall prepare an
8 annual written report that sets forth:

9 (a) The actual costs incurred and savings realized in the
10 operation of the agreement, as compared to those that were
11 projected before the agreement became effective. The report must
12 include sufficient details to permit the reader to determine where
13 any savings were realized, and to identify any disparities between
14 projected and actual costs.

15 (b) If the agreement is for the performance of instructional
16 services, the information required by NRS 385.347 for pupils
17 receiving services under the agreement. The information must
18 include a comparison of the results achieved during the period
19 covered by the report with those achieved before the agreement
20 became effective.

21 (c) Any changes in the assignments of staff or levels of staffing
22 associated with the agreement, changes in levels of employee
23 absenteeism or changes in the number of grievances filed by
24 employees.

25 (d) Improvements or declines in the satisfaction of pupils and
26 staff with the service being provided.

27 (e) Any quantifiable changes in the service provided under the
28 agreement.

29 (f) Any other information deemed by the board of trustees to
30 be relevant in assessing the performance of the contractor and the
31 success of the agreement.

32 (g) Any other information required by regulation of the State
33 Board.

34 2. Such a written report must also be prepared within 60 days
35 after the expiration or termination of an agreement.

36 3. The board of trustees shall submit a copy of the written
37 report to the Legislative Committee on Education for its review
38 and shall provide a copy of the report to any person who requests
39 it.

40 4. Based upon its review of the report and such other
41 information as it deems to be relevant, the Legislative Committee
42 on Education may direct the board of trustees to terminate the
43 agreement.

44 **Sec. 13.** 1. If a privatization agreement is for the
45 performance of instructional services, it must set forth a



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1 *measurable standard of academic achievement for pupils*
2 *receiving the services and provide that the agreement is terminable*
3 *at will by the board of trustees if there is evidence that the*
4 *standard is not being met. A privatization agreement may provide*
5 *for review by an arbitrator of any such action by the board of*
6 *trustees, but the agreement must provide that the decision of the*
7 *arbitrator is final and binding and subject to judicial review only*
8 *on the grounds set forth in NRS 38.241. Any decision of the board*
9 *of trustees to terminate the agreement is effective immediately and*
10 *may not be stayed or enjoined pending the outcome of any arbitral*
11 *or judicial proceeding brought to challenge the decision.*

12 *2. The standard of academic achievement set forth in the*
13 *agreement must be based on the results of standardized tests or*
14 *other generally accepted methods of evaluating the academic*
15 *achievement of pupils. The standard must quantify expected levels*
16 *of achievement and specify a time certain within which these*
17 *levels of achievement must be attained. The board of trustees shall*
18 *not delegate to the contractor the responsibility for evaluating test*
19 *results and other indicators of academic achievement.*

20 *3. The board of trustees of a school district may enter into a*
21 *separate privatization agreement with another independent*
22 *contractor to evaluate the test results and other indicators of*
23 *academic achievement. During the term of the privatization*
24 *agreement and for 2 years after that agreement expires or is*
25 *terminated, such an independent contractor is disqualified from*
26 *entering into any agreement with the board of trustees to provide*
27 *instructional services to pupils in the school district.*

28 **Sec. 14.** *If the board of trustees of a school district has*
29 *entered into a privatization agreement and the board of trustees is*
30 *a party to a collective bargaining agreement governing the*
31 *performance of any of the services to be provided under the*
32 *privatization agreement, the privatization agreement must require*
33 *that the contractor comply with the collective bargaining*
34 *agreement during the term of that agreement.*

35 **Sec. 15.** *If a contractor is permitted by the terms of the*
36 *privatization agreement to use any capital facility belonging to the*
37 *school district, the agreement must require the contractor to pay to*
38 *the district the fair rental value of the facility or otherwise fairly*
39 *compensate the district for the use of the facility and for any*
40 *maintenance, repair and depreciation of the facility.*

41 **Sec. 16.** *1. A privatization agreement must provide that*
42 *neither the board of trustees nor the school district:*

43 *(a) Has any obligation to indemnify the contractor against any*
44 *liability or claim asserted against the contractor by a third party;*
45 *or*



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1 (b) *Is responsible as surety or guarantor for any debt or*
2 *liability incurred by the contractor.*

3 2. *The agreement must further require the contractor to*
4 *indemnify the board of trustees and the school district against any*
5 *claim by or liability to a third party attributable to the agreement.*
6 *The contractor shall name the board of trustees and the school*
7 *district as additional insureds on any policy of insurance*
8 *maintained by the contractor in connection with the performance*
9 *of the privatization agreement.*

10 3. *If any failure of the contractor to perform his duties under*
11 *a privatization agreement would expose the school district to a risk*
12 *of monetary loss in excess of \$100,000, the agreement must*
13 *require the contractor to post a bond, cash deposit or other*
14 *security adequate to ensure the performance of the agreement and*
15 *to protect against the risk of loss.*

16 **Sec. 17.** *The following documents and records are public*
17 *records and must be made available, upon request, for inspection*
18 *and copying as provided by NRS 239.010:*

19 1. *A privatization agreement and any attachment, exhibit,*
20 *schedule or amendment to the agreement.*

21 2. *Any correspondence between the contractor and the board*
22 *of trustees or the school district relating to a privatization*
23 *agreement.*

24 3. *The books of account and other financial records of a*
25 *contractor.*

26 **Sec. 18.** 1. *The term of a privatization agreement must not*
27 *exceed 3 years. Unless terminated early, any agreement purporting*
28 *to be for a term of more than 3 years expires by operation of law*
29 *after 3 years.*

30 2. *A privatization agreement must provide for its termination*
31 *as a matter of course:*

32 (a) *If any money required to be appropriated by the*
33 *Legislature for the support of the agreement is not appropriated;*

34 (b) *If the board of trustees concludes at any time, in its sole*
35 *discretion and after consideration of the facts set forth in the*
36 *report required by section 12 of this act, that the continued*
37 *existence of the agreement is not in the best interest of the school*
38 *district;*

39 (c) *If the board of trustees is directed to terminate the*
40 *agreement pursuant to section 12 of this act; or*

41 (d) *If the agreement is for the performance of instructional*
42 *services and the pupils receiving the services fail to meet any*
43 *standard of academic achievement required by any federal or state*
44 *law or regulation.*



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1 *Except as otherwise provided in subsection 3, any such*
2 *termination is final and is not subject to review in any arbitral,*
3 *judicial or other proceeding.*

4 *3. If an agreement is terminated by the board of trustees*
5 *pursuant to paragraph (b) of subsection 2 and the agreement*
6 *provides for review by an arbitrator of any such action, the*
7 *agreement must provide that the decision of the arbitrator is final*
8 *and binding and subject to judicial review only on the grounds set*
9 *forth in NRS 38.241. Any decision of the board of trustees to*
10 *terminate the agreement is effective immediately and may not be*
11 *stayed or enjoined pending the outcome of any arbitral or judicial*
12 *proceeding brought to challenge the decision.*

13 **Sec. 19.** *A contractor shall not assign or attempt to assign its*
14 *interest in a privatization agreement to any other person. A*
15 *contractor shall not subcontract with any other person for the*
16 *performance of any part of the privatization agreement without*
17 *the written consent of the board of trustees.*

18 **Sec. 20.** *Except as otherwise provided in subsection 1 of*
19 *section 18 of this act, a privatization agreement that fails to*
20 *comply with any requirement of sections 2 to 20, inclusive, of this*
21 *act is unlawful and void and may be so declared in an action*
22 *commenced by any taxpayer of the county in which the school*
23 *district is located. Any such action must be brought in the district*
24 *court of the county and must include as defendants the members*
25 *of the board of trustees, the school district and the contractor.*

26 **Secs. 21-23.** (Deleted by amendment.)

27 **Sec. 24.** Sections 2 to 20, inclusive, of this act apply to any
28 contract entered into for a purpose described in section 4 of this act,
29 on or after the effective date of this act.

30 **Sec. 25.** (Deleted by amendment.)

31 **Sec. 26.** This act becomes effective upon passage and
32 approval.

