
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; requiring the Legislature or the Legislative Committee on Education to approve privatization agreements under certain circumstances; establishing substantive requirements for the agreements; providing for the automatic termination of agreements under certain circumstances; prohibiting the governing body of a charter school from entering into certain contracts or agreements; 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



1 WHEREAS, Some school districts in this state have entered into
2 agreements with independent contractors for the performance of
3 instructional or other services related to education in the public
4 schools; and

5 WHEREAS, While the Legislature has not declared such
6 agreements to be unlawful, the Legislature desires to ensure that
7 these agreements do not become a means by which the boards of
8 trustees lose control over the public schools or abdicate their
9 responsibility for the operation and management of the public
10 schools; and

11 WHEREAS, Certain safeguards are therefore necessary to ensure
12 that the costs and benefits of any such agreement are carefully
13 considered and monitored, and that control over the system of public
14 education remains at all times with the elected representatives of the
15 public; and

16 WHEREAS, Accordingly, it is appropriate that procedural and
17 substantive requirements relating to such agreements be adopted and
18 enforced; now, therefore,

19

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

22

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

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

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

33 **Sec. 4.** *“Privatization agreement” means any agreement*
34 *between the board of trustees of a school district and a person or*
35 *entity, other than an employee of the school district, for the*
36 *performance of instructional services or any other service related*
37 *to education that would, but for the agreement, be performed by*
38 *an employee of the district.*

39 **Sec. 5. 1.** *Before entering into a privatization agreement,*
40 *the board of trustees of a school district shall undertake an*
41 *investigation of the proposed contractor to determine whether the*
42 *contractor satisfies the requirements of this section.*

43 **2.** *The board of trustees of a school district may enter into a*
44 *privatization agreement only with a contractor who establishes*



1 *that the contractor has performed similar agreements successfully*
2 *and has earned a profit in each of the preceding 5 fiscal years.*
3 *3. The board of trustees of a school district shall not enter*
4 *into a privatization agreement with any contractor if:*
5 *(a) The contractor has a record of unsatisfactory performance*
6 *relating to similar agreements or other public contracts, is*
7 *insolvent, or has any record of unsatisfied judgments or claims; or*
8 *(b) The contractor or any officer or managing employee of the*
9 *contractor has previously been convicted of a felony or an offense*
10 *involving moral turpitude.*
11 **Sec. 6. 1.** *If the board of trustees of a school district is*
12 *considering whether to enter into a privatization agreement, the*
13 *board of trustees shall give written notice of that fact to:*
14 *(a) The residents of the school district, by publishing the notice*
15 *at least once each week during 2 successive weeks in a newspaper*
16 *of general circulation within the district; and*
17 *(b) Each bargaining agent of the employees of the school*
18 *district who may be affected by the agreement or, if there is no*
19 *bargaining agent for the employees, to each such employee*
20 *individually.*
21 **2.** *Publication or delivery of the notice required by subsection*
22 *1 must be completed not less than 120 days before any action is*
23 *taken by the board of trustees to adopt the agreement or carry out*
24 *its provisions. The notice must set forth:*
25 *(a) A description of the services to be provided pursuant to the*
26 *agreement;*
27 *(b) A statement of the reasons for entering into the agreement;*
28 *(c) A statement of the money to be allocated to the agreement,*
29 *identified by source;*
30 *(d) A statement of the expenditures to be budgeted for the*
31 *agreement, in sufficient detail to permit identification of the*
32 *specific purposes for which the expenditures will be made;*
33 *(e) An estimate of any costs attributable to the agreement that*
34 *would not otherwise be incurred, identifying those costs and the*
35 *source of money to be used to pay them;*
36 *(f) An estimate of any savings expected to be realized from the*
37 *agreement, identifying the particular areas of expenditure*
38 *involved and the anticipated savings in each category;*
39 *(g) An explanation of any anticipated nonmonetary benefits of*
40 *the agreement; and*
41 *(h) A description of the manner in which a copy of the*
42 *agreement may be obtained.*
43 **3.** *Upon request of a person, the board of trustees shall*
44 *provide or make available a copy of the proposed agreement,*
45 *regardless of whether the terms of the agreement have been*



1 *finalized. As the proposed agreement is further revised, a copy*
2 *must be made available pursuant to this subsection.*

3 *4. As used in this section, "bargaining agent" has the*
4 *meaning ascribed to it in NRS 288.027.*

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

8 *1. A reduction in force or the elimination of any existing*
9 *position; or*

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

11 **Sec. 8.** *1. Before adopting a privatization agreement, the*
12 *board of trustees of a school district must hold at least three public*
13 *meetings, over a period of not less than 90 days, to receive*
14 *comment from the general public and affected employees about*
15 *the proposed agreement and to respond to questions about the*
16 *proposed agreement.*

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

27 **Sec. 9.** *1. If a privatization agreement is approved by the*
28 *board of trustees of a school district and the agreement requires*
29 *an annual expenditure by the school district of:*

30 *(a) \$500,000 or more; or*

31 *(b) An amount equal to 5 percent or more of the district's total*
32 *budgeted expenditures for the current fiscal year,*
33 *whichever is less, the agreement is not effective until it has been*
34 *reviewed and approved by the Legislature by concurrent resolution*
35 *or by the Legislative Committee on Education, as set forth in this*
36 *section.*

37 *2. After the adoption of a privatization agreement that is*
38 *subject to the requirements of subsection 1, the board of trustees*
39 *of the school district may submit a written request for approval of*
40 *the agreement by the Legislature or by the Legislative Committee*
41 *on Education. If a board of trustees chooses to submit such an*
42 *agreement for legislative approval, the request must be submitted*
43 *to the Director of the Legislative Counsel Bureau. The written*
44 *request for approval must set forth the information required by*
45 *subsection 2 of section 6 of this act. The information set forth in*



1 *the request must be updated as necessary to reflect any changes*
2 *occurring between the date of the notice and the date of the*
3 *request.*

4 *3. If such a request is made during a regular session of the*
5 *Legislature, the Director of the Legislative Counsel Bureau shall*
6 *transmit the request to the Legislature. If the request is made*
7 *when the Legislature is not in regular session or if the Legislature*
8 *has adjourned the session without acting upon the request, the*
9 *Director of the Legislative Counsel Bureau shall transmit*
10 *the request to the Legislative Committee on Education. If the*
11 *Legislature considers and approves such an agreement, the*
12 *Legislature shall express its approval by concurrent resolution.*

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

16 **Sec. 11.** *1. If a contractor is a party to a privatization*
17 *agreement which provides for pass-through payments to the*
18 *contractor, the contractor shall, on or before March 15 of each*
19 *year, submit to the board of trustees of the school district a*
20 *proposed budget for the ensuing fiscal year, setting forth a*
21 *detailed estimate of revenues and expenditures relating to the*
22 *agreement. The board of trustees shall review the budget and*
23 *approve or modify it.*

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

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

32 *(a) The actual costs incurred and savings realized in the*
33 *operation of the agreement, as compared to those that were*
34 *projected before the agreement became effective. The report must*
35 *include sufficient details to permit the reader to determine where*
36 *any savings were realized, and to identify any disparities between*
37 *projected and actual costs.*

38 *(b) If the agreement is for the performance of instructional*
39 *services, the information required by NRS 385.347 for pupils*
40 *receiving services under the agreement. The information must*
41 *include a comparison of the results achieved during the period*
42 *covered by the report with those achieved before the agreement*
43 *became effective.*

44 *(c) Any changes in the assignments of staff or levels of staffing*
45 *associated with the agreement, changes in levels of employee*



1 *absenteeism or changes in the number of grievances filed by*
2 *employees.*

3 *(d) Improvements or declines in the satisfaction of pupils and*
4 *staff with the service being provided.*

5 *(e) Any quantifiable changes in the service provided under the*
6 *agreement.*

7 *(f) Any other information deemed by the board of trustees to*
8 *be relevant in assessing the performance of the contractor and the*
9 *success of the agreement.*

10 *(g) Any other information required by regulation of the State*
11 *Board.*

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

14 *3. The board of trustees shall submit a copy of the written*
15 *report to the Legislative Committee on Education for its review*
16 *and shall provide a copy of the report to any person who requests*
17 *it.*

18 *4. Based upon its review of the report and such other*
19 *information as it deems to be relevant, the Legislative Committee*
20 *on Education may direct the board of trustees to terminate the*
21 *agreement.*

22 **Sec. 13.** *1. If a privatization agreement is for the*
23 *performance of instructional services, it must set forth a standard*
24 *of academic achievement for pupils receiving the services and*
25 *provide that the agreement is terminable at will by the board of*
26 *trustees if the board of trustees determines, in its sole discretion,*
27 *that the standard is not being met. A privatization agreement may*
28 *provide for review by an arbitrator of any such action by the board*
29 *of trustees, but the agreement must provide that the decision of the*
30 *arbitrator is final and binding and subject to judicial review only*
31 *on the grounds set forth in NRS 38.241. Any decision of the board*
32 *of trustees to terminate the agreement is effective immediately and*
33 *may not be stayed or enjoined pending the outcome of any arbitral*
34 *or judicial proceeding brought to challenge the decision.*

35 *2. The standard of academic achievement set forth in the*
36 *agreement must be based on the results of standardized tests or*
37 *other generally accepted methods of evaluating the academic*
38 *achievement of pupils. The standard must quantify expected levels*
39 *of achievement and specify a time certain within which these*
40 *levels of achievement must be attained. The board of trustees shall*
41 *not delegate to the contractor the responsibility for evaluating test*
42 *results and other indicators of academic achievement.*

43 *3. The board of trustees of a school district may enter into a*
44 *separate privatization agreement with another independent*
45 *contractor to evaluate the test results and other indicators of*



1 *academic achievement. During the term of the privatization*
2 *agreement and for 2 years after that agreement expires or is*
3 *terminated, such an independent contractor is disqualified from*
4 *entering into any agreement with the board of trustees to provide*
5 *instructional services to pupils in the school district.*

6 **Sec. 14.** *If the board of trustees of a school district has*
7 *entered into a privatization agreement and the board of trustees is*
8 *a party to a collective bargaining agreement governing the*
9 *performance of any of the services to be provided under the*
10 *privatization agreement, the privatization agreement must require*
11 *that the contractor comply with the collective bargaining*
12 *agreement during the term of that agreement.*

13 **Sec. 15.** *If a contractor is permitted by the terms of the*
14 *privatization agreement to use any capital facility belonging to the*
15 *school district, the agreement must require the contractor to pay to*
16 *the district the fair rental value of the facility or otherwise fairly*
17 *compensate the district for the use of the facility and for any*
18 *maintenance, repair and depreciation of the facility.*

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

21 *(a) Has any obligation to indemnify the contractor against any*
22 *liability or claim asserted against the contractor by a third party;*
23 *or*

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

26 *2. The agreement must further require the contractor to*
27 *indemnify the board of trustees and the school district against any*
28 *claim by or liability to a third party attributable to the agreement.*
29 *The contractor shall name the board of trustees and the school*
30 *district as additional insureds on any policy of insurance*
31 *maintained by the contractor in connection with the performance*
32 *of the privatization agreement.*

33 *3. If any failure of the contractor to perform his duties under*
34 *a privatization agreement would expose the school district to a risk*
35 *of monetary loss in excess of \$100,000, the agreement must*
36 *require the contractor to post a bond, cash deposit or other*
37 *security adequate to ensure the performance of the agreement and*
38 *to protect against the risk of loss.*

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

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



1 2. Any correspondence between the contractor and the board
2 of trustees or the school district relating to a privatization
3 agreement.

4 3. The books of account and other financial records of a
5 contractor.

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

10 2. A privatization agreement must provide for its termination
11 as a matter of course:

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

14 (b) If the board of trustees concludes at any time, in its sole
15 discretion and after consideration of the facts set forth in the
16 report required by section 12 of this act, that the continued
17 existence of the agreement is not in the best interest of the school
18 district;

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

21 (d) If the agreement is for the performance of instructional
22 services and the pupils receiving the services fail to meet any
23 standard of academic achievement required by any federal or state
24 law or regulation.

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

28 3. If an agreement is terminated by the board of trustees
29 pursuant to paragraph (b) of subsection 2 and the agreement
30 provides for review by an arbitrator of any such action, the
31 agreement must provide that the decision of the arbitrator is final
32 and binding and subject to judicial review only on the grounds set
33 forth in NRS 38.241. Any decision of the board of trustees to
34 terminate the agreement is effective immediately and may not be
35 stayed or enjoined pending the outcome of any arbitral or judicial
36 proceeding brought to challenge the decision.

37 **Sec. 19.** A contractor shall not assign or attempt to assign its
38 interest in a privatization agreement to any other person. A
39 contractor shall not subcontract with any other person for the
40 performance of any part of the privatization agreement without
41 the written consent of the board of trustees.

42 **Sec. 20.** Except as otherwise provided in subsection 1 of
43 section 18 of this act, a privatization agreement that fails to
44 comply with any requirement of sections 2 to 20, inclusive, of this
45 act is unlawful and void and may be so declared in an action



1 *commenced by any taxpayer of the county in which the school*
2 *district is located. Any such action must be brought in the district*
3 *court of the county and must include as defendants the members*
4 *of the board of trustees, the school district and the contractor.*

5 **Sec. 21.** 1. *The governing body of a charter school shall*
6 *not enter into a contract or agreement with any person under the*
7 *terms of which the person agrees to:*

8 (a) *Employ or provide the administrator or any of the*
9 *instructional or educational support personnel of the charter*
10 *school; or*

11 (b) *Operate, manage or oversee any educational service or*
12 *program of the charter school.*

13 2. *A contract or agreement that violates the prohibition of*
14 *this section is unlawful and void and may be so declared in an*
15 *action commenced by any taxpayer of the county in which the*
16 *charter school is located. Any such action must be brought in*
17 *the district court of the county and must include as defendants the*
18 *parties to the contract or agreement.*

19 **Sec. 22.** NRS 386.500 is hereby amended to read as follows:

20 386.500 For the purposes of NRS 386.500 to 386.610,
21 inclusive, *and section 21 of this act*, a pupil is “at risk” if he has an
22 economic or academic disadvantage such that he requires special
23 services and assistance to enable him to succeed in educational
24 programs. The term includes, without limitation, pupils who are
25 members of economically disadvantaged families, pupils with
26 limited proficiency in the English language, pupils who are at risk of
27 dropping out of high school and pupils who do not meet minimum
28 standards of academic proficiency. The term does not include a
29 pupil with a disability.

30 **Sec. 23.** NRS 386.560 is hereby amended to read as follows:

31 386.560 1. ~~The~~ *Except as otherwise provided in section 21*
32 *of this act, the* governing body of a charter school may contract with
33 the board of trustees of the school district in which the charter
34 school is located or the University and Community College System
35 of Nevada for the provision of facilities to operate the charter school
36 or to perform any service relating to the operation of the charter
37 school, including, without limitation, transportation and the
38 provision of health services for the pupils who are enrolled in the
39 charter school.

40 2. A charter school may use any public facility located within
41 the school district in which the charter school is located. A charter
42 school may use school buildings owned by the school district only
43 upon approval of the board of trustees of the school district and
44 during times that are not regular school hours.



1 3. The board of trustees of a school district may donate surplus
2 personal property of the school district to a charter school that is
3 located within the school district.

4 4. Except as otherwise provided in this subsection, upon the
5 request of a parent or legal guardian of a pupil who is enrolled in a
6 charter school, the board of trustees of the school district in which
7 the charter school is located shall authorize the pupil to participate
8 in a class that is not available to the pupil at the charter school or *to*
9 participate in an extracurricular activity, excluding sports, at a
10 public school within the school district if:

11 (a) Space for the pupil in the class or extracurricular activity is
12 available; and

13 (b) The parent or legal guardian demonstrates to the satisfaction
14 of the board of trustees that the pupil is qualified to participate in the
15 class or extracurricular activity.

16 If the board of trustees of a school district authorizes a pupil to
17 participate in a class or extracurricular activity, excluding sports,
18 pursuant to this subsection, the board of trustees is not required to
19 provide transportation for the pupil to attend the class or activity.
20 The provisions of this subsection do not apply to a pupil who is
21 enrolled in a charter school and who desires to participate on a part-
22 time basis in a program of distance education provided by the board
23 of trustees of a school district pursuant to NRS 388.820 to 388.874,
24 inclusive. Such a pupil must comply with NRS 388.858.

25 5. Upon the request of a parent or legal guardian of a pupil who
26 is enrolled in a charter school, the board of trustees of the school
27 district in which the charter school is located shall authorize the
28 pupil to participate in sports at the public school that he would
29 otherwise be required to attend within the school district, or upon
30 approval of the board of trustees, any public school within the same
31 zone of attendance as the charter school if:

32 (a) Space is available for the pupil to participate; and

33 (b) The parent or legal guardian demonstrates to the satisfaction
34 of the board of trustees that the pupil is qualified to participate.

35 If the board of trustees of a school district authorizes a pupil to
36 participate in sports pursuant to this subsection, the board of trustees
37 is not required to provide transportation for the pupil to participate.

38 6. The board of trustees of a school district may revoke its
39 approval for a pupil to participate in a class, extracurricular activity
40 or sports at a public school pursuant to subsections 4 and 5 if the
41 board of trustees or the public school determines that the pupil has
42 failed to comply with applicable statutes, or applicable rules and
43 regulations of the board of trustees, the public school or an
44 association for interscholastic activities. If the board of trustees so
45 revokes its approval, neither the board of trustees nor the public



1 school are liable for any damages relating to the denial of services to
2 the pupil.

3 **Sec. 24.** 1. Sections 2 to 20, inclusive, of this act apply to
4 any contract entered into for a purpose described in section 4 of this
5 act, on or after the effective date of this act.

6 2. With respect to any contract entered into for a purpose
7 described in section 4 of this act and existing on the effective date of
8 this act, no money apportioned to a school district on or after that
9 date pursuant to NRS 387.124 may be expended in connection with
10 a contract that fails to comply with the requirements of sections 2 to
11 20, inclusive, of this act. The first renewal of such a contract, or any
12 amendment that serves as a renewal of the contract, after the
13 effective date of this act shall be deemed for the purposes of this act
14 to be the entrance into a new contract, to which the provisions of
15 sections 2 to 20, inclusive, of this act are applicable.

16 **Sec. 25.** 1. Section 21 of this act applies to any contract
17 entered into for a purpose described in that section on or after the
18 effective date of this act.

19 2. With respect to any contract entered into for a purpose
20 described in section 21 of this act and existing on the effective date
21 of this act, no money apportioned to a charter school on or after that
22 date pursuant to NRS 387.124 may be expended in connection with
23 a contract that violates section 21 of this act. The first renewal of
24 such a contract, or any amendment that serves as a renewal of the
25 contract, after the effective date of this act shall be deemed for the
26 purposes of this act to be the entrance into a new contract, to which
27 the provisions of section 21 of this act are applicable.

28 **Sec. 26.** This act becomes effective upon passage and
29 approval.

