

**As Introduced**

**125th General Assembly  
Regular Session  
2003-2004**

**H. B. No. 363**

**Representatives D. Stewart, Cirelli, DeGeeter, Miller, Skindell, Strahorn**

---

**A BILL**

To amend section 125.01 and to enact sections 125.78, 1  
125.781, 125.782, 125.783, 125.784, 125.785, 2  
125.786, 125.787, 125.788, 125.789, 115.7810, and 3  
125.99 of the Revised Code to establish 4  
requirements governing state privatization 5  
contracts. 6

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 125.01 be amended and sections 7  
125.78, 125.781, 125.782, 125.783, 125.784, 125.785, 125.786, 8  
125.787, 125.788, 125.789, 125.7810, and 125.99 of the Revised 9  
Code be enacted to read as follows: 10

**Sec. 125.01.** As used in this chapter: 11

(A) "Order" means a copy of a contract or a statement of the 12  
nature of a contemplated expenditure, a description of the 13  
property or supplies to be purchased or service to be performed, 14  
other than a service performed by officers and regular employees 15  
of the state, and per diem of the national guard, and the total 16  
sum of the expenditure to be made therefor, if the sum is fixed 17  
and ascertained, otherwise the estimated sum thereof, and an 18  
authorization to pay for the contemplated expenditure, signed by 19  
the person instructed and authorized to pay upon receipt of a 20

proper invoice. 21

(B) "Invoice" means an itemized listing showing delivery of 22  
the supplies or performance of the service described in the order, 23  
and the date of the purchase or rendering of the service, or an 24  
itemization of the things done, material supplied, or labor 25  
furnished, and the sum due pursuant to the contract or obligation. 26

(C) "Products" means materials, manufacturer's supplies, 27  
merchandise, goods, wares, and foodstuffs. 28

(D) "Produced" means the manufacturing, processing, mining, 29  
developing, and making of a thing into a new article with a 30  
distinct character in use through the application of input, within 31  
the state, of Ohio products, labor, skill, or other services. 32  
"Produced" does not include the mere assembling or putting 33  
together of non-Ohio products or materials. 34

(E) "Ohio products" means products that are mined, excavated, 35  
produced, manufactured, raised, or grown in the state by a person 36  
where the input of Ohio products, labor, skill, or other services 37  
constitutes no less than twenty-five per cent of the manufactured 38  
cost. With respect to mined products, such products shall be mined 39  
or excavated in this state. 40

(F) "Purchase" means to buy, rent, lease, lease purchase, or 41  
otherwise acquire supplies or services. "Purchase" also includes 42  
all functions that pertain to the obtaining of supplies or 43  
services, including description of requirements, selection and 44  
solicitation of sources, preparation and award of contracts, all 45  
phases of contract administration, and receipt and acceptance of 46  
the supplies and services and payment for them. 47

(G) ~~"Services Except for purposes of sections 125.78 to~~ 48  
125.7810 of the Revised Code, "services" means the furnishing of 49  
labor, time, or effort by a person, not involving the delivery of 50  
a specific end product other than a report which, if provided, is 51

merely incidental to the required performance. "Services Except 52  
for purposes of sections 125.78 to 125.7810 of the Revised Code, 53  
"services" does not include services furnished pursuant to 54  
employment agreements or collective bargaining agreements. 55

(H) "Supplies" means all property, including, but not limited 56  
to, equipment, materials, other tangible assets, and insurance, 57  
but excluding real property or an interest in real property. 58

(I) "Competitive Except as provided in sections 125.781 to 59  
125.784 of the Revised Code, "competitive selection" means any of 60  
the following procedures for making purchases: 61

(1) Competitive sealed bidding under section 125.07 of the 62  
Revised Code; 63

(2) Competitive sealed proposals under section 125.071 of the 64  
Revised Code; 65

(3) Reverse auctions under section 125.072 of the Revised 66  
Code. 67

**Sec. 125.78.** As used in sections 125.78 to 125.7810 of the 68  
Revised Code: 69

(A) "State Agency" means an office, department, board, 70  
commission, or other instrumentality in the executive branch of 71  
state government authorized to enter into contracts for the 72  
purchase of services. 73

(B) "Employee of a private contractor" means an individual 74  
directly employed by a private contractor or a subcontractor, as 75  
well as an independent contractor providing services pursuant to a 76  
privatization contract. Such term also includes former employees 77  
of a private contractor or subcontractor and former independent 78  
contractors. 79

(C) "Employee organization" means any labor or bona fide 80  
organization in which public employees participate and that exists 81

for the purpose, in whole or in part, of dealing with state agencies concerning grievances, labor disputes, wages, hours, terms, and other conditions of employment. 82  
83  
84

(D) "Person" includes an individual, corporation, trust, estate, partnership, association, or any other public or private entity. 85  
86  
87

(E) "Private contractor" means a person that enters into a privatization contract. 88  
89

(F) "Privatization contract" means an agreement or combination or series of agreements, and amendments thereto, by which a private contractor agrees with a state agency to provide services, valued at fifty thousand dollars or more, which are substantially similar to and in lieu of, services provided or that could have been provided by a public employee. 90  
91  
92  
93  
94  
95

(G) "Public employee" means an individual holding a position by appointment or employment in the service of a state agency. 96  
97

(H) "Public record" has the same meaning as in division (A) of section 149.43 of the Revised Code and also includes records, regardless of the medium, prepared, received, or retained by a contractor or subcontractor relating to a privatization contract. 98  
99  
100  
101

**Sec. 125.781.** A state agency entering into a privatization contract for the purchase of services shall do so by competitive selection in accordance with sections 125.782 to 125.784 of the Revised Code. 102  
103  
104  
105

**Sec. 125.782.** (A) Not later than ninety days prior to giving notice in accordance with section 125.783 of the Revised Code, a state agency shall prepare a comprehensive written estimate of the costs resulting from public employees providing the services that are the subject of that notice in the most cost-efficient manner, 106  
107  
108  
109  
110

including, but not limited to, the costs associated with pensions, 111  
insurance, and other employee benefits. Upon commencing to prepare 112  
the estimate, the agency shall notify the relevant employee 113  
organization of its intent to enter into a privatization contract. 114  
Not later than thirty days following notification by the agency, 115  
the employee organization may commence procedures under section 116  
4117.14 of the Revised Code for the purpose of modifying any 117  
existing collective bargaining agreement between the agency and 118  
the employee organization. The only modifications to the 119  
collective bargaining agreement authorized under this section 120  
shall be those modifications necessary to preserve the jobs of the 121  
public employees by providing that no potential privatization 122  
contract meets the condition set forth in division (D)(3) of 123  
section 125.784 of the Revised Code. For purposes of determining 124  
if a potential contract meets the condition, the modifications 125  
shall be incorporated into the cost estimate. 126

(B) The estimate prepared pursuant to division (A) of this 127  
section shall remain confidential until after the final day for 128  
the agency to receive sealed bids for the privatization contract, 129  
at which time the estimate shall be considered a public record for 130  
purposes of sections 125.788 and 149.43 of the Revised Code. 131

**Sec. 125.783.** A state agency purchasing services by 132  
competitive selection pursuant to section 125.781 of the Revised 133  
Code, shall give notice in the following manner: 134

(A) The agency shall advertise the intended purchase by 135  
notice that is posted by mail or electronic means and that is for 136  
the benefit of competing persons producing or dealing in the 137  
services to be purchased. The notice shall be in the form of a 138  
written statement detailing the services to be purchased, 139  
including the specific quantity and standard of quality of the 140

services. The notice also shall detail the contract requirements 141  
of section 125.785 of the Revised Code. 142

(B) The notice required under division (A) of this section 143  
shall include the time and place where bids or proposals will be 144  
accepted and opened and the conditions under which bids or 145  
proposals will be received. The time designated when the bids or 146  
proposals will be accepted and opened shall be the same for all 147  
competing persons. 148

(C) Every bid or proposal shall detail: 149

(1) The length of continuous employment of the bidder's 150  
current employees by job classification without identifying the 151  
employees; 152

(2) Any relevant experience of current employees within each 153  
job classification; 154

(3) If the bidder anticipates creating new employment 155  
positions to fulfill requirements under the privatization 156  
contract, the minimum requirements for prospective applicants for 157  
each position; 158

(4) The annual rate of employee turnover; 159

(5) The number of training hours planned for each employee in 160  
subject matters directly related to the provision of services 161  
under the privatization contract; 162

(6) Any legal complaints issued by federal, state, or local 163  
enforcement agencies for alleged violations of any laws, 164  
regulations, or rules. The information must also include the date 165  
of the complaint, the enforcement agency involved, the relevant 166  
law, regulation, or rule, and the outcome of the complaint; 167

(7) Any collective bargaining agreements and personnel 168  
policies covering the employees expected to provide services under 169  
the privatization contract; 170

(8) Any contributions or in-kind contributions, as those terms are defined in section 3517.01 of the Revised Code, made by the bidder or employees of the bidder in management positions to any elected officer of the state or any member of the general assembly during the four years preceding the day when bids or proposals will be accepted. 171  
172  
173  
174  
175  
176

(D) The posting of the notice required under division (A) of this section shall be completed not later than thirty business days preceding the day when the bids or proposals will be accepted and opened. 177  
178  
179  
180

**Sec. 125.784.** (A) On the day provided for in division (B) of section 125.783 of the Revised Code, the state agency shall open the bids or proposals. After investigating the bids or proposals pursuant to division (B) of this section, the agency shall publicly designate the bidder to which it proposes to award the privatization contract. 181  
182  
183  
184  
185  
186

(B) For purposes of investigating the bids or proposals in accordance with division (A) of this section, the agency shall prepare a comprehensive written analysis of the costs associated with the potential privatization contract. The analysis shall consider: 187  
188  
189  
190  
191

(1) The bidder's experience and its record of compliance with federal, state, or local laws, regulations, and rules; 192  
193

(2) The costs associated with the transition from public to private operation; 194  
195

(3) The costs of additional unemployment and retirement benefits as a result of entering into the privatization contract; 196  
197

(4) The costs associated with monitoring and administering the privatization contract. 198  
199

(C) If the bidder proposes to perform any of the 200

privatization contract outside the state, the agency shall 201  
increase its estimate of the contract cost by the amount of income 202  
tax revenue, if any, which will be lost to the state by the 203  
corresponding elimination of public employees, as determined by 204  
the tax commissioner. 205

(D) Following the investigation under division (A) of this 206  
section, the director of the agency shall certify in writing that: 207

(1) The director has complied with sections 125.781 to 208  
125.785 of the Revised Code and all other applicable laws. 209

(2) The quality of the services provided pursuant to the 210  
privatization contract is likely to satisfy the quality 211  
requirements set forth in the notice required under division (A) 212  
of section 125.783 of the Revised Code and is likely to equal or 213  
exceed the quality of services provided by public employees. 214

(3) The cost of the privatization contract will be at least 215  
ten per cent less than the cost estimate prepared pursuant to 216  
section 125.782 of the Revised Code. 217

(4) The proposed privatization contract is in the public 218  
interest. 219

(E) The certification prepared pursuant to division (D) of 220  
this section shall be a public record for purposes of sections 221  
125.788 and 149.43 of the Revised Code. 222

**Sec. 125.785.** (A) A state agency may enter into a 223  
privatization contract if the contract meets all of the following 224  
requirements: 225

(1) The contract is awarded pursuant to competitive selection 226  
in accordance with sections 125.782 to 125.784 of the Revised 227  
Code. 228

(2) The term of the contract does not exceed two years. 229

(3) The contract provides that the state shall be afforded reasonable access to facilities, records, and employees utilized by the private contractor to provide services under the contract. 230  
231  
232

(4) The contract provides that the minimum compensation of a private contractor employee providing services pursuant to the contract shall be the greater of the wage rate paid at step one of the grade or classification under which a public employee whose duties are most similar is paid, plus the cash value of health and other benefits provided to such public employee, or the average private sector compensation, including the value of health and other benefits, for the position as determined by the department of job and family services. 233  
234  
235  
236  
237  
238  
239  
240  
241

(5) The contract provides that the private contractor and subcontractor shall offer employee positions made available pursuant to the contract to qualified public employees whose state employment is terminated as a result of the contract. 242  
243  
244  
245

(6) The contract provides that the private contractor and subcontractor shall comply with a policy of nondiscrimination and equal opportunity for all individuals and, in doing so, shall not discriminate against or intimidate any employee or applicant for employment on account of race, creed, gender, disability as defined in section 4112.01 of the Revised Code, or color. 246  
247  
248  
249  
250  
251

(7) The contract provides that no state funds shall be used by the private contractor or subcontractor to support or oppose unionization. For purposes of this section, prohibited activities include, but are not limited to, preparing and distributing materials that advocate for or against unionization; hiring or consulting legal counsel or other consultants to advise the contractor or subcontractor about how to assist, promote, or deter unionization or how to impede a union which represents the contractor's or subcontractor's employees from fulfilling its 252  
253  
254  
255  
256  
257  
258  
259  
260

representational responsibilities; holding meetings to influence 261  
employees about unionization; planning or conducting activities to 262  
assist, promote, or deter union activities; or defending against 263  
unfair labor practice charges brought by federal or state 264  
enforcement agencies. 265

(B) A privatization contract entered into by a state agency 266  
shall be a public record for purposes of sections 125.788 and 267  
149.43 of the Revised Code. 268

(C) No amendment to a privatization contract shall be valid 269  
if it has the purpose or effect of avoiding any requirement of 270  
sections 125.781 to 125.7810 of the Revised Code. 271

**Sec. 125.786.** No private contractor shall enter into a 272  
subcontract, or an amendment to a subcontract, for work under a 273  
privatization contract without the approval of the agency with 274  
which the contractor has entered into the privatization contract. 275  
Any such subcontract or amendment shall be filed with the agency 276  
and shall be a public record for purposes of sections 125.788 and 277  
149.43 of the Revised Code. 278

**Sec. 125.787.** (A) Not less than annually during the term of a 279  
privatization contract, the private contractor and any 280  
subcontractors providing services pursuant to a privatization 281  
contract shall conduct a financial audit related to the provision 282  
of services under the contract or subcontract. The financial audit 283  
shall be prepared and attested as correct by an independent 284  
certified public accountant and filed with the agency with which 285  
the private contractor has entered into the contract. 286

(B) Not less than annually during the term of a privatization 287  
contract, the private contractor shall file with the state agency 288  
a report detailing the extent to which the contractor has achieved 289  
the specific quantity and standard of quality of the subject 290

services in accordance with division (A) of section 125.783 of the 291  
Revised Code. The report shall also detail the contractor's 292  
compliance with federal, state, and local laws in providing 293  
services under the contract. 294

**Sec. 125.788.** (A) In addition to the requirements set forth 295  
in section 149.43 of the Revised Code, public records shall be 296  
maintained and made available in accordance with the following 297  
provisions: 298

(1) Any public record a private contractor, subcontractor, or 299  
employee of a private contractor creates, possesses, or modifies 300  
pursuant to a privatization contract shall remain the property of 301  
the state agency with which the private contractor has entered 302  
into a privatization contract and no private contractor, 303  
subcontractor, or employee of a private contractor shall have any 304  
ownership rights in the records. 305

(2) No private contractor, subcontractor, or employee of a 306  
private contractor shall impair the integrity of any public record 307  
it possesses. 308

(3) A private contractor or subcontractor in possession of a 309  
public record shall make the record available in accordance with 310  
section 149.43 of the Revised Code, provided the determination of 311  
whether or not to make the record available shall be made solely 312  
by the state agency. No private contractor, subcontractor, or 313  
employee of a private contractor shall make a public record 314  
available if the state agency is prohibited from disclosing, or is 315  
not required to disclose, the public record pursuant to federal or 316  
state law or if the state agency may disclose the public record 317  
only to certain entities or individuals or under certain 318  
conditions pursuant to federal or state law. 319

(4) A private contractor, subcontractor, or employee of a 320

private contractor shall not sell, market, or otherwise profit 321  
from the disclosure or use of any public record that it possesses 322  
pursuant to a privatization contract. 323

(B) Whenever a private contractor, subcontractor, or employee 324  
of a private contractor learns of any violation of this section, 325  
the private contractor, subcontractor, or employee of a private 326  
contractor shall, not later than seven calendar days after 327  
learning of the violation, notify the state agency and the 328  
attorney general of the violation. 329

**Sec. 125.789.** If a public employee or employee of a private 330  
contractor reasonably believes that a violation of division (A) of 331  
section 125.788 of the Revised Code has occurred, the public 332  
employee or employee of a private contractor shall have the same 333  
rights and duties accorded an employee under section 4113.52 of 334  
the Revised Code. For purposes of section 4113.52 of the Revised 335  
Code, the violation shall be considered a hazard to public health 336  
or safety. 337

**Sec. 125.7810.** (A) A person aggrieved by a private 338  
contractor's failure to comply with division (A)(4), (5), (6), or 339  
(7) of section 125.785 of the Revised Code may bring a civil 340  
action against the private contractor. In that action, the court 341  
may award damages, including back pay, equitable relief as the 342  
court finds appropriate, court costs, and reasonable attorney's 343  
fees. 344

(B) In addition to any remedies provided for in section 345  
149.43 of the Revised Code, a person aggrieved by a violation of 346  
section 125.788 may bring a civil action to recover damages 347  
suffered as a result of the violation. 348

(C) If the attorney general has reasonable cause to believe 349  
that a person has violated section 125.788 of the Revised Code, 350

<u>the attorney general may do one of the following:</u>	351
<u>(1) Bring an action on behalf of any state agency for damages caused by the violation;</u>	352
<u>(2) Bring an action on behalf of persons injured by the violation to recover damages caused by the violation;</u>	353
<u>(3) Bring an action seeking the imposition of a civil penalty of not more than fifty thousand dollars.</u>	354
<u>(D) In any action brought under division (B) or (C) of this section, the court may, on its own motion, grant additional relief, including:</u>	355
<u>(1) Damages equal to any profits derived by the person who violated section 125.788 of the Revised Code to the extent the profits are reasonably related to the violation;</u>	356
<u>(2) Punitive damages, court costs, and reasonable attorney's fees;</u>	357
<u>(3) Injunctive or other equitable relief.</u>	358
<u>(E) No action shall be brought under division (B) or (C) of this section more than three years after the occurrence of the violation.</u>	359
<u>Sec. 125.99. Any person who willfully and knowingly violates section 125.788 of the Revised Code shall, for each violation, be fined not more than five thousand dollars or imprisoned for not less than one year nor more than five years, or both.</u>	360
<u>Section 2. That existing section 125.01 of the Revised Code is hereby repealed.</u>	361
	362
	363
	364
	365
	366
	367
	368
	369
	370
	371
	372
	373
	375
	376