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S.111

Introduced by Senators White, Pearson, and Pollina  
Referred to Committee on Government Operations  
Date: March 2, 2017  
Subject: Executive; contracts; privatization contracts  
Statement of purpose of bill as introduced: This bill proposes to impose new requirements on the Executive Branch for entering into privatization contracts.

An act relating to privatization contracts

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. 3 V.S.A. § 343 is amended to read~~

~~§ 343. PRIVATIZATION CONTRACTS; PROCEDURE~~

~~(a) No agency may enter a privatization contract, unless all of the following are satisfied:~~

~~(1)(A) ~~Thirty-five~~ Ninety days prior to the beginning of any open bidding process, the agency provides written notice to the collective bargaining representative of the intent to seek to enter a privatization contract. During those ~~35~~ 90 days, the collective bargaining representative shall have the opportunity to discuss alternatives to contracting. Such alternatives may include amendments to the contract if mutually agreed upon by the parties.~~

1 ~~Notices regarding the bid opportunity may not be issued during the 35-day~~  
2 ~~90-day discussion period. The continuation of discussions beyond the end of~~  
3 ~~the 35-day 90-day period shall not delay the issuance of notices.~~

4 (B) The agency shall prepare a specific written statement of the  
5 services proposed to be the subject of the privatization contract, including the  
6 specific quantity and standard or quality of the subject services. For each  
7 position in which a bidder will employ any person pursuant to a privatization  
8 contract and for which the duties are substantially similar to the duties  
9 performed by a State employee, the statement shall also include a statement of  
10 the minimum wage rate to be paid for each position, which shall not be less  
11 than the average step of the grade under which the comparable regular State  
12 employee is paid. This statement shall be subject to 1 V.S.A. chapter 5,  
13 subchapter 3 (Public Records Act).

14 (2) The proposed contract is projected to result in overall cost savings to  
15 the State of at least ~~10~~ 20 percent above the projected cost of having the  
16 services provided by classified State employees.

17 (3) When comparing the cost of having a service provided by classified  
18 State employees to the cost of having the service provided by a contractor:

19 (A) The expected costs of having services provided by classified  
20 State employees and obtaining the service through a contractor should be  
21 ~~compared over the life of the contract. One-time costs associated with having~~

1 ~~services provided by a contractor rather than classified State employees, such~~  
2 as the expected cost of leave pay-outs for separating employees,  
3 unemployment compensation, and the cost of meeting the State's obligation, if  
4 any, to continue health insurance benefits, shall be spread over the expected  
5 life of the contract.

6 (B) The basic cost of services by a contractor includes:

7 (i) the bid price or maximum acceptable bid identified by the  
8 contracting authority; and

9 (ii) any additional costs to be incurred by the agency for  
10 inspection, facilities, reimbursable expenses, supervision, training, and  
11 materials, but only to the extent that these costs exceed the costs the agency  
12 could expect to incur for inspection, facilities, reimbursable expenses, and  
13 materials if the services were provided by classified State employees.

14 (C) The basic cost for services provided by a classified State  
15 employee includes:

16 (i) wages, benefits, and training;

17 (ii) the cost of supervision and facilities, but only to the extent  
18 that these costs exceed the costs the agency could expect to incur for  
19 supervision or facilities if the services were provided by a contractor; and

20 (iii) the estimated cost of obtaining goods when the comparison is  
21 with the cost of a contract that includes both goods and services.

1 ~~(D) Possible reductions in the cost of obtaining services from~~  
2 ~~classified State employees that require concessions shall not be considered~~  
3 ~~unless proposed in writing by the certified collective bargaining agent and~~  
4 ~~mutually agreed to by the State and collective bargaining agent. In the event~~  
5 ~~that the proposed privatization contract will require the contractor to hire more~~  
6 ~~than ten employees, the Secretary of Administration shall contract for a~~  
7 ~~regional economic impact study, and shall share the results of the study with~~  
8 ~~the collective bargaining representative prior to the commencement of the 90-~~  
9 ~~day notice period. During that 90-day period, the Secretary shall discuss with~~  
10 ~~the collective bargaining representative and implement alternatives to~~  
11 ~~contracting.~~

12 (4) The agency shall solicit competitive sealed bids for the privatization  
13 contracts based upon the written statement described in subdivision (1)(B) of  
14 this subsection. The day designated by the agency upon which it shall accept  
15 these sealed bids shall be the same for any and all parties. Upon receipt of  
16 each sealed bid, the agency shall, within a period not to exceed 24 hours,  
17 transmit the full contents of the bids to the collective bargaining representative.  
18 The agency and the collective bargaining representative shall discuss  
19 alternatives to contracting that allow the agency to achieve cost savings  
20 without disrupting the classified workforce.

21 ~~(5) Every bid for a privatization contract shall include provisions~~

1 ~~specifically establishing the wage rate for each position, which shall not be less~~  
2 ~~than the minimum wage rate contained in the statement described in~~  
3 ~~subdivision (1)(B) of this subsection. Every bid shall also include provisions~~  
4 ~~for the contractor to include in the contract the costs of health, dental, and~~  
5 ~~vision insurance plans for every employee employed pursuant to the contract~~  
6 ~~equal to the percentage paid by the State for State employees. The health~~  
7 ~~insurance plan described in the bid shall provide coverage to the employee and~~  
8 ~~the employee's spouse and dependent children, if any. The bid shall require~~  
9 ~~that each contractor submit quarterly payroll records to the agency, which list~~  
10 ~~the name, address, Social Security number, hours worked, and the hourly wage~~  
11 ~~paid for each employee in the previous quarter.~~

12 (6) ~~The agency shall prepare a comprehensive written estimate of the~~  
13 ~~costs of regular agency employees providing the subject services in the most~~  
14 ~~cost-efficient manner. The estimate shall include all direct and indirect costs~~  
15 ~~of regular agency employees providing the subject services, including pension,~~  
16 ~~insurance, and other employee benefit costs. For the purpose of this estimate,~~  
17 ~~any employee organization may, at any time before the final day for the~~  
18 ~~agency to receive sealed bids pursuant to subdivision (1) of this subsection,~~  
19 ~~propose amendments to any relevant collective bargaining agreement to which~~  
20 ~~it is a party. Any amendments shall take effect only if necessary to reduce the~~  
21 ~~cost estimate pursuant to this subdivision below the contract cost pursuant to~~

1 ~~subdivision (9) of this subsection. Possible reductions in the cost of obtaining~~  
2 ~~services from classified State employees that require concessions shall not be~~  
3 ~~considered unless proposed in writing by the certified collective bargaining~~  
4 ~~representative and mutually agreed to by the State and collective bargaining~~  
5 ~~representative. The estimate shall remain confidential until after the final day~~  
6 ~~for the agency to receive sealed bids for the privatization contract pursuant to~~  
7 ~~subdivision (1) of this subsection, at which time the estimate shall be filed~~  
8 ~~with both the agency, the collective bargaining representative, and the~~  
9 ~~Secretary of Administration. The estimate shall be subject to 1 V.S.A. chapter~~  
10 ~~5, subchapter 3 (Public Records Act).~~

11 ~~(7) After consulting with any relevant employee organization, the~~  
12 ~~agency shall provide adequate resources for the purpose of encouraging and~~  
13 ~~assisting present agency employees to organize and submit a bid to provide the~~  
14 ~~subject services. In determining what resources are adequate for this purpose,~~  
15 ~~the agency shall refer to an existing collective bargaining agreement of a~~  
16 ~~similar employee organization whose members perform the subject services~~  
17 ~~and which provides similar resources in the same or other agencies. If no such~~  
18 ~~collective bargaining agreement exists, the agency shall refer to any existing~~  
19 ~~collective bargaining agreements providing such resources, and shall provide~~  
20 ~~the resources at least the minimum level of assistance provided in the~~  
21 ~~agreements. The agency shall consider any employee bid on the same basis as~~

1 ~~all other bids. An employee bid may be made as a joint venture with other~~  
2 ~~persons.~~

3 (d) After soliciting and receiving bids, the agency shall publicly  
4 designate the bidder to which it proposes to award the contract. The agency  
5 shall prepare a comprehensive written analysis of the contract cost based upon  
6 the designated bid, specifically including the costs of transition from public to  
7 private operation, of additional unemployment and retirement benefits, if any,  
8 and of monitoring and otherwise administering contract performance. If the  
9 designated bidder proposes to perform any or all of the contract outside the  
10 boundaries of the State, the contract cost shall be increased by the amount of  
11 income tax revenue, if any, that will be lost to the State by the corresponding  
12 elimination of agency employees as determined by the Department of Taxes.

13 (9) The agency and the Secretary of Administration shall each certify in  
14 writing that:

15 (A) they have complied with all provisions of this section and of all  
16 other applicable laws;

17 (B) the quality of the services to be provided by the designated  
18 bidder is likely to satisfy the quality requirements of the statement prepared  
19 pursuant to subdivision (1) of this subsection, and to equal or exceed the  
20 quality of services which could be provided by regular agency employees  
21 pursuant to subdivision (3),

1 ~~(C) the contract cost pursuant to this subdivision (9) will be less than~~  
2 the estimated cost pursuant to subdivision (6), taking into account all the  
3 comparable types of costs;

4 (D) the designated bidder and its supervisory employees, while in the  
5 employ of the designated bidder, have no adjudicated record of substantial or  
6 repeated willful non-compliance with any relevant federal or State regulatory  
7 statute, including statutes concerning labor relations, occupational safety and  
8 health, nondiscrimination and affirmative action, environmental protection,  
9 and conflicts of interest; and

10 (E) the proposed privatization contract is in the public interest, in  
11 that it meets the applicable quality and fiscal standards set forth in this section.

12 (b) Each privatization contract shall include the following terms and  
13 conditions:

14 (1) The term of any privatization contract shall not exceed five years.

15 (2) Provisions specifically establishing the wage rate for each position,  
16 which shall not be less than the minimum wage rate contained in the statement  
17 described in subdivision (a)(1) of this section.

18 (3) Provisions for the contractor to include in the contract the costs of  
19 health, dental, and vision insurance plans for every employee employed  
20 pursuant to the contract equal to the percentage paid by the State for State  
21 employees. The health insurance plan shall provide coverage to the employee



1 ~~and the employee's spouse and dependent children, if any. Each contractor~~  
2 shall submit quarterly payroll records to the agency, which list the name,  
3 address, Social Security number, hours worked, and the hourly wage paid for  
4 each employee in the previous quarter.

5 (4) A provision that the agency shall not amend any privatization  
6 contract if the amendment has the purpose or effect of voiding any  
7 requirement of this section.

8 (5) A provision requiring the contractor to offer available employee  
9 positions pursuant to the contract to qualified regular employees of the agency  
10 whose employment is terminated because of the privatization contract and who  
11 satisfy the hiring criteria of the contractor.

12 (6) A provision requiring the contractor to comply with a policy of  
13 nondiscrimination and equal opportunity for all persons and to take affirmative  
14 steps to provide such equal opportunity for all persons.

15 (7) A provision granting all employees employed under the contract just  
16 cause employment protection.

17 (8) A provision requiring the contractor to comply with a policy of  
18 whistleblower protection equal to those defined in sections 971-973 of this  
19 title.

20 (c) After the 90-day period of review described in subdivision (a)(1)(A) of  
21 this section, but subsequent to the certification described in subdivision (a)(9),

1 ~~a panel to be composed of the Commissioner of Labor or designee, the~~  
2 ~~Auditor of Accounts or designee, and the president of the collective bargaining~~  
3 ~~agent or designee, shall issue a decision on the compliance of the proposed~~  
4 ~~privatization contract with the terms of this title, and if necessary, the~~  
5 ~~collective bargaining representative may bring a civil action to invalidate the~~  
6 ~~proposed privatization contract.~~

7 (d)(1) The Attorney General is authorized, upon request, to investigate  
8 whether the contract has met the projected savings of 20 percent.

9 (2) If a privatization contract entered into pursuant to the provisions of  
10 this section does not meet the projected savings of 20 percent at any time  
11 following the first 12 months of the contract, the contract shall not be renewed  
12 and the services shall be thereafter provided by classified State employees.

13 Sec. 2. EFFECTIVE DATE

14 ~~This act shall take effect on passage.~~

~~Sec. 1. IMPROVEMENTS TO PRIVATIZATION CONTRACTING~~

~~*The Secretary of Administration, the Commissioner of Buildings and  
General Services, the Attorney General, the Auditor of Accounts, and the  
President of the Vermont State Employees' Association or designee shall study  
and recommend to the House and Senate Committees on Government  
Operations, on or before January 15, 2019, improvements to the method by  
which privatization contracts are awarded, including recommendations to  
ensure that any State service that is privatized may include provisions  
regarding livable wages and benefits, and follow-up annual audits to ensure  
that the projected cost savings are realized through the contracted activity.*~~

*Sec. 1. 3 V.S.A. § 343 is amended to read:*

*§ 343. PRIVATIZATION CONTRACTS; PROCEDURE*

(a) ~~No~~ An agency may shall not enter into a privatization contract, unless all of the following are satisfied:

\* \* \*

(b)(1) A privatization contract shall contain specific performance measures regarding quantity, quality, and results and guarantees regarding the services performed.

(2) The agency shall provide information in the State's Workforce Report on the contractor's compliance with the specific performance measures set out in the contract.

(3) The agency may not renew the contract if the contractor fails to comply with the specific performance measures set out in the contract as required by subdivision (1) of this subsection.

(c)(1) Before an agency may renew a privatization contract for the first time, the Auditor of Accounts shall review the privatization contract analyzing whether it is achieving:

(A) the 10 percent cost-savings requirement set forth in subdivision (a)(2) of this section;

(B) the performance measures incorporated into the contract as required under subdivision (b)(1) of this section.

(2) If the Auditor of Accounts finds that a privatization contract has not achieved the cost savings required under subdivision (a)(2) of this section or complied with performance measures required under subdivision (b)(1) of this section, the Auditor of Accounts shall file a report with the agency and the House and Senate Committees on Government Operations, and the agency shall review whether to renew the privatization contract or perform the work with State employees.

## Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.