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H.226

Introduced by Representatives Poirier of Barre City, Aswad of Burlington,
Bissonnette of Winooski, Botzow of Pownal, Bray of New
Haven, Deen of Westminster, Donovan of Burlington, Head of
S. Burlington, Howard of Rutland City, Howrigan of Fairfield,
Kitzmiller of Montpelier, Larson of Burlington, Macaig of
Williston, Malcolm of Pawlet, Martin of Wolcott, Milkey of
Brattleboro, Moran of Wardsboro, Mrowicki of Putney, Nuovo
of Middlebury, Obuchowski of Rockingham, Peltz of
Woodbury, Sharpe of Bristol, South of St. Johnsbury and
Zuckerman of Burlington

Referred to Committee on

Date:

Subject: Executive; state employees; privatization contracts

Statement of purpose: This bill proposes to require: (1) state agencies to
require the disclosure of certain information from bidders for privatization
contracts; (2) that privatization contracts contain certain provisions; and (3) the
joint legislative government accountability committee to approve or deny
privatization contracts.

An act relating to privatization contracts

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

2 Sec. 1. FINDINGS

3 The general assembly finds that:

4 (1) using private contractors to provide public services formerly
5 provided by state employees does not always promote the public interest;

6 (2) to ensure that residents of Vermont receive high-quality public
7 services at low cost, with due regard for the taxpayers of the state, service
8 recipients, and the needs of public and private workers, it is necessary to
9 regulate privatization contracts and to protect those workers who report
10 conditions and practices which affect the efficiency and quality of public
11 services provided by private contractors;

12 (3) it is necessary to ensure that access to public information is not in
13 any way hindered when public services are provided by private contractors.

14 Sec. 2. 3 V.S.A. § 341(3) is amended to read:

15 (3) "Privatization contract" means a personal services contract by which
16 an entity or an individual who is not a state employee agrees with an agency to
17 provide services, valued at \$20,000.00 or more per year, which are the same or
18 substantially similar to and in lieu of services previously provided, in whole or
19 in part, by permanent, classified state employees, and which result in ~~the~~ a
20 vacancy or elimination of a position of an employee in a collective bargaining

1 unit as those terms are defined in section 902 of this title, through attrition,
2 separation, or reduction in force of at least one permanent, classified employee.

3 Sec. 3. 3 V.S.A. §§ 345 and 346 are added to read:

4 § 345. PRIVATIZATION CONTRACT DISCLOSURE

5 A bid for a privatization contract shall specify:

6 (1) The length of continuous employment of current employees who
7 will be providing the services with the contractor by job classification without
8 identifying employee names. In addition, the contractor shall submit
9 information specifying the relevant prior experience of employees within each
10 job classification. If the positions identified by the contractor are newly
11 created, the bid shall identify the minimum requirements for prospective
12 applicants for each position.

13 (2) The annual turnover rate of the positions that would be providing the
14 services for the contractor.

15 (3) The number of hours of training planned for each position in subject
16 matters directly related to the services provided to residents of the state of
17 Vermont.

18 (4) Any complaints issued by an enforcement agency of the federal
19 government, any state, or any political subdivision thereof, for alleged
20 violations of applicable federal, state, or local rules, regulations, or laws,
21 including laws governing employee safety and health, environmental issues,

1 labor relations, and other employment requirements, and any citations, court
2 findings, or administrative findings for violations of federal, state, or
3 local rules, regulations, or laws. The information shall include the date, the
4 enforcement agencies involved, the rules, laws, or regulations alleged to have
5 been violated, and any additional information the contractor may wish to
6 submit.

7 (5) The level of health coverage provided to employees of the contractor
8 and a list of all other benefits provided, including sick leave, vacation time,
9 and annual leave.

10 (6) Any collective bargaining agreements or personnel policies covering
11 the employees to provide services to the state of Vermont.

12 (7) Political contributions made by the bidder or any employee in a
13 management position with the bidding company to any elected officer of the
14 state or member of the general assembly during the four years prior to the due
15 date of the bid.

16 § 346. CONTRACT PROVISIONS

17 (a) A privatization contract shall contain provisions requiring the contractor
18 to offer available employee positions pursuant to the contract to qualified
19 regular employees of the agency whose state employment is terminated
20 because of the privatization contract. A privatization contract shall also

1 contain provisions requiring the contractor to comply with federal and state
2 laws relating to nondiscrimination and equal opportunity employment.

3 (b) If the department of human resources approves a contract for services to
4 replace services formerly provided by state employees, the contract for
5 procuring those services shall include a requirement that the contractor make
6 its records concerning the performance and negotiation of the contract
7 available for inspection or copying upon a request of the department, and that
8 those records shall be considered records of the department for purposes of
9 disclosure upon a request made under the public records act. The contractor
10 shall ensure that any subcontract include a similar obligation to disclose
11 records concerning performance of the duties required under the subcontract.
12 The contractor and any subcontractor shall retain records concerning the
13 performance of the contract for at least four years after the completion of the
14 contract.

15 (c) A private contract that expends state or federal tax dollars shall be
16 subject to a full and comprehensive audit of all records relating to the contract
17 upon the request of any member of the joint legislative government
18 accountability committee.

19 (d) An agency seeking to privatize services performed by state employees
20 shall submit a detailed cost-benefit analysis to the joint legislative government
21 accountability committee. The analysis shall be prepared utilizing accurate,

1 reliable, and objective data and shall use the soundest actuarial techniques that
2 are available to the agency. The analysis shall identify all costs associated
3 with implementing and monitoring the contract and shall include a detailed
4 comparative estimate of the costs that the state would incur for the entire
5 period of the proposed contract:

6 (1) if state employees were to continue to provide the services;

7 (2) if a private contractor were to provide the services.

8 (e) The joint legislative government accountability committee shall
9 approve or deny all privatization contracts. An agency shall not proceed to
10 enter into a privatization contract under this chapter until it receives notice of
11 approval from the committee and unless the contract would yield cost savings
12 of at least 10 percent of the cost of using state employees to provide the
13 services.

14 (f) An agency shall also follow the procedures set forth in this section for
15 any expansion of an existing privatization contract that would further replace
16 services performed by state employees.

17 (g) Before renewing or rebidding a privatization contract that replaces
18 services provided by state employees, an agency shall conduct an analysis to
19 determine whether the existing contract actually provides the required quality
20 of services and produces the projected savings and shall provide a copy of this
21 analysis to the joint legislative government accountability committee. If the

1 analysis indicates that the privatization contract did not produce the savings or
2 provided services that did not meet required standards of performance, the
3 agency shall reassume the responsibility of providing the services through state
4 employees.