

1 S.176

2 Introduced by Senator White

3 Referred to Committee on

4 Date:

5 Subject: Executive; contracts; privatization contracts

6 Statement of purpose of bill as introduced: This bill proposes to amend the  
7 requirements for the Executive Branch to enter into privatization contracts.

8 An act relating to privatization contracts

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

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

11 § 343. PRIVATIZATION CONTRACTS; PROCEDURE

12 (a) An agency shall not enter into a privatization contract, unless all of the  
13 following are satisfied:

14 (1)(A) Thirty-five days prior to the beginning of any open bidding  
15 process, the agency provides written notice to the collective bargaining  
16 representative of the intent to seek to enter a privatization contract. During  
17 those 35 days, the collective bargaining representative shall have the  
18 opportunity to discuss alternatives to contracting. Such alternatives may  
19 include amendments to the contract if mutually agreed upon by the parties.  
20 Notices regarding the bid opportunity may not be issued during the 35-day

1 discussion period. The continuation of discussions beyond the end of the 35-  
2 day period shall not delay the issuance of notices.

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

13 (2) The proposed contract is projected to result in overall cost savings to  
14 the State of at least ~~40~~ 20 percent above the projected cost of having the  
15 services provided by classified State employees.

16 \* \* \*

17 (4) Every bid for a privatization contract shall include provisions  
18 specifically establishing the wage rate for each position, which shall not be less  
19 than the minimum wage rate contained in the statement described in  
20 subdivision (1)(B) of this subsection. Every bid shall also include provisions  
21 for the contractor to include in the contract the costs of health, dental, and

1 vision insurance plans for every employee employed pursuant to the contract  
2 equal to the percentage paid by the State for State employees. The health  
3 insurance plan described in the bid shall provide coverage to the employee and  
4 the employee's spouse and dependent children, if any.

5 (5) The agency and the Secretary of Administration shall each certify in  
6 writing that:

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

9 (B) the quality of the services to be provided by the designated bidder  
10 is likely to satisfy the quality requirements of the statement prepared pursuant  
11 to subdivision (1) of this subsection (a);

12 (C) the designated bidder and its supervisory employees, while in the  
13 employ of the designated bidder, have no record of substantial or repeated  
14 willful noncompliance with any relevant federal or State regulatory statute,  
15 including statutes concerning labor relations, occupational safety and health,  
16 nondiscrimination and affirmative action, environmental protection, and  
17 conflicts of interest; and

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

20 (b) Each privatization contract shall include the following terms and  
21 conditions:

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

4           (2) Provisions for the contractor to include in the contract the costs of  
5           health, dental, and vision insurance plans for every employee employed  
6           pursuant to the contract equal to the percentage paid by the State for State  
7           employees. The health insurance plan shall provide coverage to the employee  
8           and the employee's spouse and dependent children, if any. Each contractor  
9           shall submit quarterly payroll records to the agency, which list the name,  
10           address, Social Security number, hours worked, and the hourly wage paid for  
11           each employee in the previous quarter.

12           (3) A provision that the agency shall not amend any privatization  
13           contract if the amendment has the purpose or effect of voiding any requirement  
14           of this section.

15           (4) A provision requiring the contractor to comply with a policy of  
16           nondiscrimination and equal opportunity for all persons and to take affirmative  
17           steps to provide such equal opportunity for all persons.

18           (5) A provision granting all employees employed under the contract just  
19           cause employment protection.

1           (6) A provision requiring the contractor to comply with a policy of  
2           whistleblower protection equal to those defined in sections 971–978 of this  
3           title.

4           (c) Not more than 10 days after the 35-day period of review described in  
5           subdivision (a)(1)(A) of this section, and subsequent to the certification  
6           described in subdivision (a)(5) of this section, a panel to be composed of the  
7           Commissioner of Labor or designee, the Auditor of Accounts or designee, and  
8           the president of the collective bargaining agent or designee shall issue a  
9           decision on the compliance of the proposed privatization contract with the  
10           terms of this title and, if necessary, the collective bargaining representative  
11           may bring a civil action to invalidate the proposed privatization contract.

12           (d) The Attorney General is authorized, upon request, to investigate  
13           whether the contract has met the prospective savings of 20 percent at any time  
14           following the first 12 months of the contract; if not, the contract shall not be  
15           renewed, and the services shall be thereafter provided by classified State  
16           employees.

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

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

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

7       ~~(e)~~(f)(1) Before an agency may renew a privatization contract for the first  
8 time, the Auditor of Accounts shall review the privatization contract analyzing  
9 whether it is achieving:

10           (A) the ~~40~~ 20 percent cost-savings requirement set forth in  
11 subdivision (a)(2) of this section;

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

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

- 1      Sec. 2. EFFECTIVE DATE
- 2      This act shall take effect on passage.