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H.364

Introduced by Representatives Vyhovsky of Essex, Anthony of Barre City,
Christie of Hartford, Hooper of Randolph, Hooper of
Burlington, Howard of Rutland City, and Patt of Worcester

Referred to Committee on

Date:

Subject: Executive; contracts; privatization contracts

Statement of purpose of bill as introduced: This bill proposes to amend the
requirements for the Executive Branch to enter 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. § 341 is amended to read:

§ 341. DEFINITIONS

* * *

(3) “Privatization contract” means a contract or grant for services valued
at \$25,000.00 or more per year, which is the same or substantially similar to
and in lieu of services previously provided, in whole or in part, by permanent,
classified State employees, ~~and which results in a reduction in force of at least~~
~~one permanent, classified employee, or the elimination of a vacant position of~~
~~an employee covered by a collective bargaining agreement.~~

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Sec. 2. 3 V.S.A. §343 is amended to read:

§ 343. PRIVATIZATION CONTRACTS; PROCEDURE

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

(1)(A) Thirty-five 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 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. Notices regarding the bid opportunity may not be issued during the 35-day discussion period. The continuation of discussions beyond the end of the 35-day period shall not delay the issuance of notices.

(B) The agency shall prepare a specific written statement of the services proposed to be the subject of the privatization contract, including the specific quantity and standard or quality of the subject services. For each position in which a bidder will employ any person pursuant to a privatization contract and for which the duties are substantially similar to the duties performed by a permanent, classified State employee, the statement shall also include the minimum wage rate to be paid for each position, which shall not be

1 less than the average step of the grade under which the comparable State
2 employee position is paid. This statement shall be subject to 1 V.S.A.
3 chapter 5, subchapter 3 (Public Records Act).

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

7 * * *

8 (4) Every bid for a privatization contract shall include provisions
9 specifically establishing the wage rate for each position, which shall not be less
10 than the minimum wage rate contained in the statement described in
11 subdivision (1)(B) of this subsection. Every bid shall also include provisions
12 for the contractor to include in the contract the costs of health, dental, and
13 vision insurance plans for every employee employed pursuant to the contract at
14 least equal to the percentage paid by the State for State employees. The health
15 insurance plan described in the bid shall provide coverage to the employee and
16 the employee's spouse and dependent children, if any.

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

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

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

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

10 (D) the proposed privatization contract is in the public interest, in that
11 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) Provisions specifically establishing the wage rate for each position,
15 which shall not be less than the minimum wage rate contained in the statement
16 described in subdivision (a)(1) of this section.

17 (2) Provisions for the contractor to include in the contract the costs of
18 health, dental, and vision insurance plans for every employee employed
19 pursuant to the contract equal to the percentage paid by the State for State
20 employees. The health insurance plan shall provide coverage to the employee
21 and the employee's spouse and dependent children, if any. Each contractor

1 shall submit quarterly payroll records to the agency, which list the name,
2 address, hours worked, and the hourly wage paid for each employee in the
3 previous quarter.

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

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

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

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

15 (c) Not more than 10 days after the 35-day period of review described in
16 subdivision (a)(1)(A) of this section, and subsequent to the certification
17 described in subdivision (a)(5) of this section, a panel to be composed of the
18 Commissioner of Labor or designee, the Auditor of Accounts or designee, and
19 the president of the collective bargaining agent or designee shall issue a
20 decision on the compliance of the proposed privatization contract with the
21 terms of this title. If the proposed privatization contract does not comply with

1 the requirements of this title, the contract shall be considered void ab initio,
2 and the Attorney General, a State's Attorney, or the collective bargaining
3 representative may bring a civil action in Washington Superior Court to enjoin
4 enforcement of the contract.

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

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

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

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

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

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

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

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

12 Sec. 3. EFFECTIVE DATE

13 This act shall take effect on passage.