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S.96

Introduced by Senators Vyhovsky, McCormack, Perchlik, Watson and White

Referred to Committee on Government Operations

Date: February 22, 2023

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.~~

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

2 § 343. PRIVATIZATION CONTRACTS; PROCEDURE

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

5 (1)(A) Thirty-five days prior to the beginning of any open bidding
6 process, the agency provides written notice to the collective bargaining
7 representative of the intent to seek to enter a privatization contract. During
8 those 35 days, the collective bargaining representative shall have the
9 opportunity to discuss alternatives to contracting. Such alternatives may
10 include amendments to the contract if mutually agreed upon by the parties.
11 Notices regarding the bid opportunity may not be issued during the 35-day
12 discussion period. The continuation of discussions beyond the end of the 35-
13 day period shall not delay the issuance of notices.

14 (B) The agency shall prepare a specific written statement of the
15 services proposed to be the subject of the privatization contract, including the
16 specific quantity and standard or quality of the subject services. For each
17 position in which a bidder will employ any person pursuant to a privatization
18 contract and for which the duties are substantially similar to the duties
19 performed by a permanent, classified State employee, the statement shall also
20 include the minimum wage rate to be paid for each position, which shall not be
21 less than the average step of the grade under which the comparable State

1 ~~employee position is paid. This statement shall be subject to 1 V.S.A.~~
2 ~~chapter 5, subchapter 3 (Public Records Act).~~

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

6 * * *

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

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

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

1 ~~(B) the quality of the services to be provided by the designated~~
2 ~~bidder is likely to satisfy the quality requirements of the statement prepared~~
3 ~~pursuant 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~~
6 ~~requirement 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 the Superior Court of Washington
4 County to enjoin 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; and

3 ~~(B) the performance measures incorporated into the contract as~~
4 required under subdivision ~~(b)~~(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 Committee on Government Operations and Military Affairs and Senate
10 ~~Committees~~ Committee on Government Operations, and the agency shall
11 review whether to renew the privatization contract or perform the work with
12 State employees.

13 Sec. 3. EFFECTIVE DATE

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

~~*§ 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.*~~

~~** * **~~

~~Sec. 2. 5 V.S.A. §§ 342 and 343 are amended to read.~~

~~§ 342. CONTRACTING STANDARDS; CONTRACTS FOR SERVICES~~

~~Each contract for services valued at \$25,000.00 or more per year shall require certification by the Office of the Attorney General to the Secretary of Administration that such contract for services is not contrary to the spirit and intent of the classification plan and merit system and standards of this title. A contract for services is contrary to the spirit and intent of the classification plan and merit system and standards of this title, and shall not be certified by the Office of the Attorney General as provided in this section, unless the provisions of subdivisions (1), (2), and (3) of this section are met, or one or more of the exceptions described in subdivision (4) of this section apply.~~

~~(1) The agency will not exercise supervision over the daily activities or methods and means by which the contractor provides services other than supervision necessary to ensure that the contractor meets performance expectations and standards; and~~

~~(2) The services provided are not the same as those provided by classified State employees within the agency; and~~

~~(3) The contractor customarily engages in an independently established trade, occupation, profession, or business; or~~

~~(4) Any of the following apply:~~

~~(A) The services are not available within the agency or are of such a highly specialized or technical nature that the necessary knowledge, skills, or expertise is not available within the agency.~~

~~(B) The services are incidental to a contract for purchase or lease of real or personal property.~~

~~(C) There is a demonstrated need for an independent audit, review, or investigation; or independent management of a facility is needed as a result of, or in response to, an emergency such as licensure loss or criminal activity.~~

~~(D) The State is not able to provide equipment, materials, facilities, or support services in the location where the services are to be performed in a cost-effective manner.~~

~~(E) The contract is for professional services, such as legal, engineering, or architectural services, that are typically rendered on a case-by-case or project-by-project basis, and the services are for a period limited to the duration of the project, normally not to exceed two years or provided on an intermittent basis for the duration of the contract.~~

(F) The need for services is urgent, temporary, or occasional, such that the time necessary to hire and train employees would render obtaining the services from State employees imprudent. Such contract shall be limited to 90 days duration, with any extension subject to review and approval by the Secretary of Administration.

(G) Contracts for the type of services covered by the contract are specifically authorized by law.

(H) Efforts to recruit State employees to perform work, authorized by law, have failed so that no applicant meeting the minimum qualifications has applied for the job.

(I) The cost of obtaining the services by contract is lower than the cost of obtaining the same services by utilizing State employees. When comparing costs, the provisions of section 343 of this title shall apply.

§ 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) During this 35-day period, 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 prevailing wage rate to be paid for each position, which shall not be less than the average step of the grade under which the comparable State employee position is paid. This statement shall be provided to the collective bargaining representative, the Agency of Administration, and be posted where it is viewable to the public. This statement shall be subject to 1 V.S.A. chapter 5, subchapter 3 (Public Records Act).

~~(1) Every bid for a privatization contract shall include:~~

~~(A) the wage rate for each position, which shall not be less than the prevailing wage rate contained in the statement described in subdivision (1)(B) of this subsection (a); and~~

~~(B) whether health, dental, and vision insurance coverage is provided to employees and, if applicable, the cost to employees for such coverage;~~

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

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

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

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

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

~~(b) Each privatization contract shall include:~~

~~(1) the wage rate for each position, which shall not be less than the prevailing wage rate contained in the statement described in subdivision (a)(1) of this section;~~

~~(2) a provision that the cost and coverage of the health, dental, and vision insurance provided to employees is substantially similar to the cost and coverage of the health, dental, and vision insurance provided to State employees;~~

~~(3) a provision that the contractor shall submit quarterly payroll records to the agency, which lists the hours worked and the hourly wage paid for each employee in the previous quarter;~~

~~(4) a provision that the agency shall not amend any privatization contract if the amendment has the purpose or effect of voiding any requirement of this section;~~

~~(5) a provision requiring the contractor to comply with a policy of nondiscrimination and equal opportunity for all persons and to take affirmative steps to provide such equal opportunity for all persons;~~

~~(6) a provision granting all employees employed under the contract just cause employment protection; and~~

~~(7) a provision requiring the contractor to comply with a policy of whistleblower protection equal to those defined in sections 971–978 of this title.~~

~~(b)(c)(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.~~

~~(e)(d)(1) Before an agency may renew a privatization contract for the first time, the Auditor of Accounts shall review the privatization contract, along with employer payroll and benefits records, analyzing whether it is achieving:~~

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

~~(B) the performance measures incorporated into the contract as required under subdivision (b)(c)(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)(c)(1) and subdivision (d)(1) of this section, the Auditor of Accounts shall file a report with the agency and the House Committee on Government Operations and Military Affairs and Senate Committees Committee on Government Operations, and the agency shall not renew the privatization contract review whether to renew the privatization contract or perform the work with State employees.~~

~~Sec. 3. 3 V.S.A. § 343(a)(2) is amended to read:~~

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

~~Sec. 4. FISCAL AND OPERATIONAL IMPACT OF PRIVATIZATION
CONTRACT CHANGES~~

~~(a) The Agency of Administration, in consultation with the Joint Fiscal Office, shall assess the fiscal and operational impacts of:~~

- ~~(1) modifying the definition of “privatization contract”; and~~
~~(2) increasing the required cost savings of a privatized contract from 10 percent to 20 percent, as set forth in this act.~~

~~(b) The Agency shall submit a written report to the House Committees on Appropriations and on Government Operations and Military Affairs and the Senate Committees on Appropriations and on Government Operations with its analysis conducted pursuant to this section on or before January 15, 2025.~~

~~Sec. 5. EFFECTIVE DATE~~

~~This act shall take effect on passage, except that Sec. 1 and Sec. 3 shall take effect on July 1, 2025.~~

~~Sec. 1. FISCAL AND OPERATIONAL IMPACT OF PRIVATIZATION
CONTRACT CHANGES~~

~~(a) The Agency of Administration, in consultation with the Joint Fiscal Office, the State Auditor, the Vermont State Employees’ Association, and the Office of the Attorney General, shall assess the fiscal and operational impacts of:~~

~~(1) modifying the definition of “privatization contract” as set forth in 3 V.S.A. § 341, to:~~

- ~~(A) require that grants be included in privatization contracts; and~~
~~(B) remove the requirement that a privatization contract result in:~~
~~(i) the reduction in force of at least one permanent, classified employee; or~~
~~(ii) the elimination of a vacant position of an employee covered by a collective bargaining agreement;~~

~~(2) increasing the required cost savings of a privatization contract from 10 percent to 20 percent;~~

~~(3) requiring that contractors subject to a privatized contract pay their employees performing work pursuant to a privatized contract either the prevailing wage rate for such work as set by the U.S. Department of Labor, or the same wage rate as a State employee performing a substantially similar task would receive;~~

(4) requiring that contractors subject to a privatized contract offer their employees performing work pursuant to a privatized contract health benefits that are substantially similar to health benefits provided to State employees; and

(5) removing exceptions set forth in 3 V.S.A. § 342(4) that, after review, are used excessively or arbitrarily to certify privatized contracts by the Office of the Attorney General.

(b) The Agency shall submit a written report to the General Assembly with its analysis conducted pursuant to this section on or before February 1, 2025.

Sec. 2. 3 V.S.A. § 342 is amended to read:

§ 342. CONTRACTING STANDARDS; CONTRACTS FOR SERVICES

Each contract for services valued at \$25,000.00 or more per year shall require certification by the Office of the Attorney General to the Secretary of Administration that such contract for services is not contrary to the ~~spirit and~~ intent of the classification plan and merit system and standards of this title. A contract for services is contrary to the ~~spirit and~~ intent of the classification plan and merit system and standards of this title, and shall not be certified by the Office of the Attorney General as provided in this section, unless the provisions of subdivisions (1), (2), and (3) of this section are met, or one or more of the exceptions described in subdivision (4) of this section apply.

* * *

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2024.