



VERMONT LEGISLATIVE
Joint Fiscal Office

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Fiscal Note

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S.96 – An act relating to privatizing contracts

As recommended by the Senate Committee on Government Operations, Draft 2.1

Bill Summary

The bill would require each State contract or grant for services valued at \$25,000 or more per year be certified by the Office of the Attorney General to the Secretary of Administration. Certification would verify the following, as in current law:

- The contracting agency will not closely supervise the daily activities of the contractor other than to ensure performance expectations and standards
- The services provided are not the same as those provided by classified State employees within the agency
- The contractor customarily engages in an independently established trade, occupation, profession, or business

JFO is unable to estimate direct fiscal impacts on the State.

The bill would also require verification of a new cost-savings percentage:

- A proposed contract would save the State at least 20 percent of the projected cost of having the services provided by classified State employees, an increase from 10 percent in current law (effective July 1, 2025)

Exceptions already in current law would be granted for several reasons, including the following:

- The services are not available within the agency or require highly specialized or technical skills
- The services are incidental to a contract for purchase or lease of real or personal property
- An independent audit, review, or investigation is required
- The State is unable to provide equipment, materials, facilities, or support services in a specific location
- The need for services is urgent, temporary, or occasional; if true, the contract is limited to 90 days
- No applicant for a State employee position meets the minimum requirements
- The cost of obtaining services by contract is lower than if utilizing State employees

Fiscal Impact

JFO is unable to estimate direct fiscal impacts on the State. Direct fiscal impacts on the General Fund and other State funds could potentially be substantial. Existing contracts when renewed would be subject to review using the new standards. Near-term curtailment of large numbers of State contracts and grants for services such as case managers, drivers, custodial staff, traveling nurses, security officers and health care providers at correctional facilities, or personnel for emergency operations expected to last more than 90 days

could cause sizable increases in State spending to provide State services previously provided by contractors. Going forward, contracts that previously saved the State at least 10 percent but less than 20 percent would revert to State employees, increasing payroll expenses and future retirement liabilities. On the other hand, if some services now performed by State employees could be contracted out to save the State at least 20 percent, there could be some savings. Neither additional spending nor savings can be estimated at this point.

Implementation costs beginning in fiscal year 2025 and growing further in fiscal year 2026 would fall on the Office of the Vermont Attorney General, the Agency of Administration (AoA), and any agency or office that wants to provide grants or contract out services. It's clear that additional resources would be needed, but exactly what might be needed or how many new positions would be required to carry out the responsibilities created by the bill is not clear. The Office of the Attorney General does not request additional positions as of now.

Indirect fiscal impacts through reduced economic activity at nonprofits, small businesses, and community-based organizations could lead to fewer State services available to Vermonters, reduced tax revenue, and migration out of Vermont for those who could no longer obtain necessary services. On the other hand, replacing lower-paid contract workers with more highly compensated State employees could raise spending power and economic activity in the State if not offset by higher State taxes and fees.

Background and Details

The following sections have a fiscal impact.

Section 1

Section 1 would change the definition of “privatization contract” to include grants as well as contracts. It also deletes the requirement to show a reduction in force of at least one permanent, classified employee or the elimination of a vacant position covered by collective bargaining.

Section 2

Broad reasons and exceptions for contracts to require certification appear in Section 2. It also specifies requirements for every bid for privatization, some of which could be difficult to meet. Every bid would have to include a wage rate that is at least equal to the prevailing wage rate for the comparable State employee position as well as similar health, dental, and vision insurance coverage, if provided to State employees.

Section 3

Section 3 states that any certified contract would have to save the State at least 20 percent of the projected cost of having the services provided by classified State employees. The current threshold is 10 percent.

Section 4

Section 4 requires a written report on or before January 15, 2025. AoA, in consultation with the Joint Fiscal Office (JFO), would assess fiscal and operational impacts of modifying the definition of a privatized contract and increasing the required cost savings of a privatized contract from 10 percent to 20 percent.

Section 5

Section 5 states that Section 2 and 4 would take effect on passage and that Sections 1 and 3 would take effect on July 1, 2025. The findings of the written report in Section 4 would have no bearing on the bill taking effect.

Considerations for Legislators

Difficulty of Estimating Fiscal Effects

To estimate the direct fiscal effects of this bill, JFO would first have to identify the value of services contracted out now using the 10 percent cost savings threshold that would not be allowed under the bill

when the contract comes up for renewal. Ineligible contracts and grants would require State employees to provide those services if the State is able to hire needed personnel. Evaluating contracts would require looking at every contract and grant that could come up for renewal.

However, the State has no central collection point for contracts and grants, implying that JFO would have to contact every agency, department, Designated Agency, and Specialized Service Agency to obtain the contracts and grants to see if wages and benefits offered are identified. If the wage and benefit information could be collected, JFO would then have to find the current prevailing wage rate within State government for comparable services that are performed, or were performed several years ago, by State employees. The prevailing wage rate is defined in the bill as the average step of the grade under which the comparable State employee position is paid. JFO does not have the personnel to undertake such detailed and voluminous investigative work. The work is essential, however, to identifying the fiscal impact on the State and the possible change in availability of certain services to Vermonters.

Second, JFO would have to estimate how many new privatization contracts and grants might be eligible going forward. If the State is unable to hire qualified candidates to fill job openings or a position requires specialized skills not available among State employees, for example, contracting could be allowed. In cases where a job requires specialized skills not available among State employees, it's difficult to see how the prevailing wage rate could be calculated. It's also difficult to know if nonprofits or small businesses would want to disclose wage rates and benefits for their employees as part of their bid.

Questions for further discussion

Questions regarding contracts

- How many existing contracts would be up for renewal?
- Would it be possible to discern individual wage rates and benefits offered under existing contracts?
- How many existing contracts would be deemed ineligible at renewal according to the bill?
- Would the State be able to hire additional State employees to fulfill the services covered by the terminated contracts and grants?
- How much would it cost the State to hire additional employees to take over a large number of services across many sectors?
- If new contracts with different wage rates or different benefits were certified, how much time would elapse before those new contracts were in effect?
- If bidders did not previously offer health and dental benefits to their employees, does the federal Employee Retirement Income Security Act (ERISA) require that offering health and dental benefits to some employees requires a similar package must be offered to all employees?
- How would the workforce shortage interact with the State's need to hire additional workers?

Question about the 20 percent cost-saving requirement

- According to Table 44 of the Department of Human Resources' State of Vermont Workforce Report, Fiscal Year 2023, non-health and non-dental benefits comprised 22.8 percent of the average State employee's compensation package, not including other costs to the State such as office space, IT equipment and support, or annual leave and sick leave. Does this imply that many positions if contracted out would save the State at least 20 percent of total costs?

Questions on implementation

- Would it be feasible to obtain wage rates and benefits for every individual to be included on a contract?
- Would it be possible to obtain the prevailing wage rate for every job to be contracted out?
- What resources would be needed to write grants and contracts in accordance with the bill provisions and carry out the certification process outlined in the bill?

Questions on the ability of AoA/JFO to perform the requested study

- What additional resources would AoA and JFO require to do the research required to write the requested report?
- How difficult would it be to obtain and review existing contracts that might be up for renewal? Do existing contracts contain the specific information on wage rates and benefits necessary to judge whether they would pass certification and estimate additional costs to the State? Do grants contain the necessary information?
- Is it realistic to obtain the prevailing wage rate for the variety of potential jobs that might be contracted out?

Resources

Vermont Department of Human Resources, State of Vermont Workforce Report, Fiscal Year 2023.
https://humanresources.vermont.gov/sites/humanresources/files/documents/DHR-Workforce_Report_0.pdf