

1 TO THE HONORABLE SENATE:

2 The Committee on Government Operations to which was referred Senate
3 Bill No. 96 entitled “An act relating to privatization contracts” respectfully
4 reports that it has considered the same and recommends that that bill be
5 amended by striking out all after the enacting clause and inserting in lieu
6 thereof the following:

7 Sec. 1. 3 V.S.A. § 341 is amended to read:

8 § 341. DEFINITIONS

9 * * *

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

16 * * *

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

18 § 342. CONTRACTING STANDARDS; CONTRACTS FOR SERVICES

19 Each contract for services valued at \$25,000.00 or more per year shall
20 require certification by the Office of the Attorney General to the Secretary of
21 Administration that such contract for services is not contrary to the ~~spirit and~~

1 intent of the classification plan and merit system and standards of this title. A
2 contract for services is contrary to the ~~spirit and~~ intent of the classification plan
3 and merit system and standards of this title, and shall not be certified by the
4 Office of the Attorney General as provided in this section, unless the
5 provisions of subdivisions (1), (2), and (3) of this section are met, or one or
6 more of the exceptions described in subdivision (4) of this section apply.

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

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

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

15 (4) Any of the following apply:

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

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

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

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

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

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

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

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

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

4 § 343. PRIVATIZATION CONTRACTS; PROCEDURE

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

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

16 (B) During this 35-day period, the agency shall prepare a specific
17 written statement of the services proposed to be the subject of the privatization
18 contract, including the specific quantity and standard or quality of the subject
19 services. For each position in which a bidder will employ any person pursuant
20 to a privatization contract and for which the duties are substantially similar to
21 the duties performed by a permanent, classified State employee, the statement

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

7 * * *

8 (4) Every bid for a privatization contract shall include:

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

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

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

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

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

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

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

9 (b) Each privatization contract shall include:

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

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

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

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

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

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

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

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

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

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

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

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

6 (B) the performance measures incorporated into the contract as
7 required under subdivision ~~(b)~~(c)(1) of this section.

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

17 * * *

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

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

1 Sec. 4. FISCAL AND OPERATIONAL IMPACT OF PRIVATIZATION

2 CONTRACT CHANGES

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

5 (1) modifying the definition of “privatization contract”; and

6 (2) increasing the required cost savings of a privatized contract from 10
7 percent to 20 percent, as set forth in this act.

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

12 Sec. 5. EFFECTIVE DATE

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

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16
17
18 (Committee vote: _____)

19 _____

20 Senator _____

21 FOR THE COMMITTEE