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H.363

Introduced by Representatives Gardner of Richmond, Gannon of Wilmington,
Bock of Chester, Brownell of Pownal, Christensen of
Weathersfield, Durfee of Shaftsbury, Hooper of Burlington,
Jerome of Brandon, Jessup of Middlesex, Kitzmiller of
Montpelier, Macaig of Williston, McCarthy of St. Albans City,
McCullough of Williston, Mrowicki of Putney, Sullivan of
Burlington, Walz of Barre City, and Wood of Waterbury

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

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

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

4 * * *

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

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 concerning labor relations, occupational safety and health, nondiscrimination
5 and affirmative action, environmental protection, and conflicts of interest; and

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

8 (b) Each privatization contract shall include the following terms and
9 conditions:

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

13 (2) Provisions for the contractor to include in the contract the costs of
14 health, dental, and vision insurance plans for every employee employed
15 pursuant to the contract equal to or greater than the percentage paid by the
16 State for State employees. The health insurance plan shall provide coverage to
17 the employee and the employee's spouse and dependent children, if any. Each
18 contractor shall submit quarterly payroll records to the agency, which list the
19 name, address, Social Security number, hours worked, and the hourly wage
20 paid for each employee in the previous quarter.

1 (3) 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 (4) 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 (5) A provision granting all employees employed under the contract just
8 cause employment protection.

9 (6) 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 analyzing
3 whether it is ~~achieving~~:

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

6 (B) includes the terms and conditions required under subsection (b)
7 of this section; and

8 (C) complies with the performance measures incorporated into the
9 contract as required under subdivision ~~(b)(1)~~ (c)(1) of this section.

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

18 Sec. 2. EFFECTIVE DATE

19 This act shall take effect on passage.