

1 S.240

2 Introduced by Senator White

3 Referred to Committee on

4 Date:

5 Subject: Executive; standards for contracts including privatization contracts;

6 privatization contracts

7 Statement of purpose of bill as introduced: This bill proposes to impose new
8 requirements for agencies entering into privatization contracts.

9 An act relating to privatization contracts

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. 3 V.S.A. § 342 is amended to read:

12 § 342. CONTRACTING STANDARDS; PERSONAL SERVICES AND
13 PRIVATIZATION CONTRACTS

14 A personal services or privatization contract is contrary to the spirit and
15 intent of the classification plan and merit system and standards of this title, and
16 shall not be certified by the ~~attorney general~~ Attorney General under
17 subdivision 311(a)(10) of this title, unless the provisions of subdivisions (1),
18 (2), and (3) of this ~~subsection~~ section are met, or one or more of the exceptions
19 described in subdivision (4) of this ~~subsection~~ section apply.

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

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

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

9 (4) Any of the following apply:

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

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

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

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

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

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

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

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

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

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

2 § 343. PRIVATIZATION CONTRACTS; PROCEDURE

3 No agency may enter a privatization contract, unless all of the following
4 are satisfied:

5 (1) 35 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. The
8 agency shall prepare a specific written statement of the services proposed to be
9 the subject of the privatization contract, including the specific quantity and
10 standard or quality of the subject services. During those 35 days, the collective
11 bargaining representative shall have the opportunity to discuss alternatives to
12 contracting. Such alternatives may include amendments to the contract if
13 mutually agreed upon by the parties. Notices regarding the bid opportunity
14 may not be issued during the 35-day discussion period. The continuation of
15 discussions beyond the end of the 35-day period shall not delay the issuance
16 of notices.

17 (2) The agency shall solicit competitive sealed bids for the privatization
18 contracts based upon the statement referenced in subdivision (1) of this
19 section. This statement shall be a public record. The day designated by the
20 agency upon which it will accept these sealed bids shall be the same for any
21 and all parties. The term of any privatization contract shall not exceed five

1 years. No amendment to a privatization contract shall be valid if it has the
2 purpose or effect of avoiding any requirement of this section.

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

6 ~~(3)~~(4) When comparing the cost of having a service provided by
7 classified ~~state~~ State employees to the cost of having the service provided by
8 a contractor:

9 (A) The expected costs of having services provided by classified ~~state~~
10 State employees and obtaining the service through a contractor should be
11 compared over the life of the contract. One-time costs associated with having
12 services provided by a contractor rather than classified ~~state~~ State employees,
13 such as the expected cost of leave pay-outs for separating employees,
14 unemployment compensation, and the cost of meeting the ~~state's~~ State's
15 obligation, if any, to continue health insurance benefits, shall be spread over
16 the expected life of the contract.

17 (B) The basic cost of services by a contractor includes:

18 (i) the bid price or maximum acceptable bid identified by the
19 contracting authority; and

20 (ii) any additional costs to be incurred by the agency for
21 inspection, facilities, reimbursable expenses, supervision, training, and

1 materials, but only to the extent that these costs exceed the costs the agency
2 could expect to incur for inspection, facilities, reimbursable expenses, and
3 materials if the services were provided by classified ~~state~~ State employees.

4 (C) The basic cost for services provided by a classified ~~state~~ State
5 employee includes:

6 (i) wages, benefits, and training;

7 (ii) the cost of supervision and facilities, but only to the extent that
8 these costs exceed the costs the agency could expect to incur for supervision or
9 facilities if the services were provided by a contractor; and

10 (iii) the estimated cost of obtaining goods when the comparison is
11 with the cost of a contract that includes both goods and services.

12 ~~(D) Possible reductions in the cost of obtaining services from~~
13 ~~classified state employees that require concessions shall not be considered~~
14 ~~unless proposed in writing by the certified collective bargaining agent and~~
15 ~~mutually agreed to by the state and collective bargaining agent.~~

16 (5) For each position in which a bidder will employ any person pursuant
17 to a privatization contract and for which the duties are substantially similar to
18 the duties performed by a State employee, the statement required by
19 subdivision (1) of this section shall include a statement of the minimum wage
20 rate to be paid for each position, which shall not be less than the first step of
21 the grade under which the comparable regular State employee is paid. Every

1 bid for a privatization contract and every privatization contract shall include
2 provisions specifically establishing the wage rate for each position, which shall
3 not be less than the minimum wage rate contained in the statement required by
4 the agency. Every bid and contract shall also include provisions for the
5 contractor to pay a percentage of the costs of health insurance plans for every
6 employee employed pursuant to the contract comparable to the percentage paid
7 by the State for State employees. The health insurance plan shall provide
8 coverage to the employee and the employee's spouse and dependent children,
9 if any. Each contractor shall submit quarterly payroll records to the agency,
10 which list the name, address, Social Security number, hours worked, and the
11 hourly wage paid for each employee in the previous quarter.

12 (6) A privatization contract shall contain a provision requiring the
13 contractor to offer available employee positions pursuant to the contract to
14 qualified regular employees of the agency whose employment is terminated
15 because of the privatization contract and who satisfy the hiring criteria of the
16 contractor. The contract shall also contain a provision requiring the contractor
17 to comply with a policy of nondiscrimination and equal opportunity for all
18 persons and to take affirmative steps to provide such equal opportunity for
19 all persons.

20 (7) The agency shall prepare a comprehensive written estimate of the
21 costs of regular agency employees providing the subject services in the most

1 cost-efficient manner. The estimate shall include all direct and indirect costs
2 of regular agency employees providing the subject services, including pension,
3 insurance, and other employee benefit costs. For the purpose of this estimate,
4 any employee organization may, at any time before the final day for the agency
5 to receive sealed bids pursuant to subdivision (1) of this section, propose
6 amendments to any relevant collective bargaining agreement to which it is a
7 party. Any amendments shall take effect only if necessary to reduce the cost
8 estimate pursuant to this subdivision below the contract cost pursuant to
9 subdivision (9) of this section. Possible reductions in the cost of obtaining
10 services from classified State employees that require concessions shall not be
11 considered unless proposed in writing by the certified collective bargaining
12 agent and mutually agreed to by the State and collective bargaining agent. The
13 estimate shall remain confidential until after the final day for the agency to
14 receive sealed bids for the privatization contract pursuant to subdivision (1) of
15 this section, at which time the estimate shall become a public record and filed
16 with both the agency and the Secretary of Administration.

17 (8) After consulting with any relevant employee organization, the
18 agency shall provide adequate resources for the purpose of encouraging and
19 assisting present agency employees to organize and submit a bid to provide the
20 subject services. In determining what resources are adequate for this purpose,
21 the agency shall refer to an existing collective bargaining agreement of a

1 similar employee organization whose members perform the subject services
2 and which provides similar resources in the same or other agencies. If no such
3 collective bargaining agreement exists, the agency shall refer to any existing
4 collective bargaining agreements providing such resources, and shall provide
5 the resources at the minimum level of assistance provided in the agreements.
6 The agency shall consider any employee bid on the same basis as all other
7 bids. An employee bid may be made as a joint venture with other persons.

8 (9) After soliciting and receiving bids, the agency shall publicly
9 designate the bidder to which it proposes to award the contract. The agency
10 shall prepare a comprehensive written analysis of the contract cost based upon
11 the designated bid, specifically including the costs of transition from public to
12 private operation, of additional unemployment and retirement benefits, if any,
13 and of monitoring and otherwise administering contract performance. If the
14 designated bidder proposes to perform any or all of the contract outside the
15 boundaries of the State, the contract cost shall be increased by the amount of
16 income tax revenue, if any, that will be lost to the State by the corresponding
17 elimination of agency employees as determined by the Department of Taxes.

18 (10) The secretary of the agency and the Secretary of Administration
19 shall each certify in writing that:

20 (A) they have complied with all provisions of this section and of all
21 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 section, and to equal or exceed the quality of services
4 which could be provided by regular agency employees pursuant
5 to subdivision (5).

6 (C) the contract cost pursuant to subdivision (9) of this section will
7 be less than the estimated cost pursuant to subdivision (7), taking into account
8 all the comparable types of costs;

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

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

17 (11) The State Auditor is authorized, upon request, to investigate and if
18 necessary, to invalidate any relevant contracts.

19 Sec. 3. EFFECTIVE DATE

20 This act shall take effect on July 1, 2014.