

1 **H. B. 4323**

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3 (By Delegates Guthrie, Sponaugle, Poore,
4 Caputo, Skinner, Perdue, Fragale, Young
5 and D. Poling)
6

7 [Introduced January 24, 2014; referred to the
8 Committee on Industry and Labor and Finance.]
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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §5A-12-1, §5A-12-2,
12 §5A-12-3 and §5A-12-4, all relating to establishing
13 requirements for prior review of all privatization proposals
14 to insure that the public interest is being served when public
15 sector jobs are outsourced to the private sector.

16 *Be it enacted by the Legislature of West Virginia:*

17 That the Code of West Virginia, 1931, as amended, be amended
18 by adding thereto a new article, designated §5A-12-1, §5A-12-2,
19 §5A-12-3 and §5A-12-4, all to read as follows:

20 **ARTICLE 12. PRIVATIZATION OF PUBLIC SERVICES; PRIOR REVIEW OF**
21 **PRIVATIZATION CONTRACTS.**

22 **§5A-12-1. Findings.**

23 The Legislature hereby finds and declares that using private
24 contractors to provide public services formerly provided by state
25 employees does not always promote the public interest. To ensure

1 that citizens of the state receive high quality public services at
2 low cost, with due regard for the taxpayers of the state and the
3 needs of public and private workers, the Legislature finds it
4 necessary to regulate such privatization contracts in accordance
5 with sections two, three and four of this article. The Legislature
6 does not intend to restrict the use of community facilities to
7 provide care for clients of state agencies, if any privatization
8 contract relating to such facilities otherwise complies with the
9 provisions of sections two, three and four of this article.

10 **§5A-12-2. Definitions.**

11 For purposes of this article:

12 (1) "Agency" means an executive office, department, division,
13 board, commission or other office or officer in the executive
14 branch of the government of the state.

15 (2) "Business day" means any calendar day excluding Saturdays,
16 Sundays, and legal holidays.

17 (3) "Dependent" means the spouse and children of an employee
18 if such persons would qualify for dependent status under the
19 Internal Revenue Code or for whom a support order has been or could
20 be granted under chapter forty-eight of this code.

21 (4) "Privatization contract" means an agreement or combination
22 or series of agreements by which a nongovernmental person or entity
23 agrees with an agency to provide services, valued at \$750,000, but
24 as of January 1 each year, the amount shall increase to reflect

1 increases in the consumer price index calculated by the United
2 States Bureau of Labor Statistics for all urban consumers
3 nationally during the most recent twelve month period for which
4 data are available or more, which are substantially similar to and
5 in lieu of, services theretofore provided, in whole or in part, by
6 regular employees of an agency. Any subsequent agreement, including
7 any agreement resulting from a rebidding of previously privatized
8 service, or any agreement renewing or extending a privatization
9 contract, is not a privatization contract. An agreement solely to
10 provide construction as defined in subdivision two, section one,
11 article five-a, chapter twenty-one of this code, legal, management
12 consulting, planning, engineering or design services is not a
13 privatization contract.

14 **§5A-12-3. Privatization contract review requirements.**

15 No agency may make any privatization contract and no such
16 contract is valid unless the agency, in consultation with the
17 Department of Administration, first complies with each of the
18 following requirements:

19 (1) The agency shall prepare a specific written statement of
20 the services proposed to be the subject of the privatization
21 contract, including the specific quantity and standard of quality
22 of the subject services. The agency shall solicit competitive
23 sealed bids for the privatization contracts based upon this
24 statement. The day designated by the agency upon which it will

1 accept these sealed bids shall be the same for any and all parties.
2 This statement is a public record, shall be filed in the agency and
3 in the Department of Administration, and shall be transmitted to
4 the State Auditor for review pursuant to section four of this
5 article. The term of any privatization contract may not exceed five
6 years. No amendment to a privatization contract is valid if it has
7 the purpose or effect of avoiding any requirement of this section.

8 (2) For each position in which a bidder will employ any person
9 pursuant to the privatization contract and for which the duties are
10 substantially similar to the duties performed by a regular agency
11 employee or employees, the statement required by subdivision (1)
12 shall include a statement of the minimum wage rate to be paid for
13 the position, which rate shall be the lesser of step one of the
14 grade or classification under which the comparable regular agency
15 employee is paid, or the average private sector wage rate for the
16 position as determined by the Department of Administration from
17 data collected by the Division of Labor. Every bid for a
18 privatization contract and every privatization contract shall
19 include provisions specifically establishing the wage rate for each
20 position, which shall not be less than the minimum wage rate as
21 defined above. Every such bid and contract shall also include
22 provisions for the contractor to pay not less than a percentage,
23 comparable to the percentage paid by the agency for state
24 employees, of the costs of health insurance plans for every

1 employee employed for not less than twenty hours per week pursuant
2 to such contract. Such health insurance plans shall provide
3 coverage to the employee and the employee's spouse and dependent
4 children. Each contractor shall submit quarterly payroll records to
5 the agency, listing the name, address, social security number,
6 hours worked and the hourly wage paid for each employee in the
7 previous quarter. The State Auditor may bring a civil action for
8 equitable relief to enforce this section or to prevent or remedy
9 the dismissal, demotion or other action prejudicing any employee as
10 a result of a report of a violation of this section.

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

20 (4) The agency shall prepare a comprehensive written estimate
21 of the costs of regular agency employees' providing the subject
22 services in the most cost-efficient manner. The estimate shall
23 include all direct and indirect costs of regular agency employees'
24 providing the subject services, including, but not limited to,

1 pension, insurance and other employee benefit costs. Such estimate
2 shall remain confidential until after the final day for the agency
3 to receive sealed bids for the privatization contract pursuant to
4 subdivision (1), at which time the estimate shall become a public
5 record, shall be filed in the agency and in the Department of
6 Administration, and shall be transmitted to the State Auditor for
7 review pursuant to section four of this article.

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

21 (6) The head of the agency and the Secretary of the Department
22 of Administration shall each certify in writing to the State
23 Auditor, that:

24 (A) He or she has complied with all provisions of this section

1 and of all other applicable laws;

2 (B) The quality of the services to be provided by the
3 designated bidder is likely to satisfy the quality requirements of
4 the statement prepared pursuant to subdivision (1), and to equal or
5 exceed the quality of services which could be provided by regular
6 agency employees pursuant to subdivision (4);

7 (C) The designated bidder and its supervisory employees, while
8 in the employ of the designated bidder, have no adjudicated record
9 of substantial or repeated willful noncompliance with any relevant
10 federal or state regulatory statute including, but not limited to,
11 statutes concerning labor relations, occupational safety and
12 health, nondiscrimination and affirmative action, environmental
13 protection and conflicts of interest; and

14 (D) The proposed privatization contract is in the public
15 interest, in that it meets the applicable quality and fiscal
16 standards set forth herein.

17 A copy of the proposed privatization contract shall accompany
18 the certificate transmitted to the State Auditor.

19 **§5A-12-4. State Auditor approval of privatization contract.**

20 (a) An agency may not make any privatization contract and no
21 such contract is valid if, within thirty business days after
22 receiving the certificate required by section three of this
23 article, the State Auditor notifies the agency of his or her
24 objection. Such objection shall be in writing and shall state

1 specifically the State Auditor's finding that the agency has failed
2 to comply with one or more requirements of section three, including
3 that the State Auditor finds incorrect, based on independent review
4 of all the relevant facts, any of the findings required by
5 subdivision (6) of section three. The State Auditor may extend the
6 time for such objection for an additional period of thirty business
7 days beyond the original thirty business days by written notice to
8 the submitting agency stating the reason for such extension.

9 (b) For the purpose of reviewing the agency's compliance and
10 certificate pursuant to section three of this article, the State
11 Auditor or his or her designee may require the agency or the
12 Secretary of the Department of Administration to provide any
13 records, documents or other information obtained pursuant to this
14 article in evaluating the proposed privatization contract.

15 (c) The State Auditor may propose rules for legislative
16 approval in accordance with the provisions of article three,
17 chapter twenty-nine-a of this code, to carry out the provisions of
18 this article.

19 (d) The objection of the State Auditor pursuant to subsection
20 (a) shall be final and binding on the agency, unless the State
21 Auditor thereafter in writing withdraws the objection, stating the
22 specific reasons, based upon a revised certificate by the agency
23 and by the Secretary of the Department of Administration and upon
24 the State Auditor's review thereof.

NOTE: The purpose of this bill is to establish requirements for prior review of all privatization proposals to insure that the public interest is being served when public sector jobs are outsourced to the private sector.

This article is new; therefore, it has been completely underscored.