

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2041

FISCAL
NOTE

2015 Carryover

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[Introduced January 13, 2016; referred to the
Committee on Industry and Labor then Finance .]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §5A-12-1, §5A-12-2, §5A-12-3 and §5A-12-4, all relating to establishing
 3 requirements for prior review of all privatization proposals to insure that the public interest
 4 is being served when public sector jobs are outsourced to the private sector.

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

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

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

§5A-12-1. Findings.

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

§5A-12-2. Definitions.

1 For purposes of this article:

2 "Agency" means an executive office, department, division, board, commission or other
 3 office or officer in the executive branch of the government of the state.

4 "Business day" means any calendar day excluding Saturdays, Sundays, and legal
 5 holidays.

6 "Dependent" means the spouse and children of an employee if such persons would qualify
7 for dependent status under the Internal Revenue Code or for whom a support order has been or
8 could be granted under chapter forty-eight of this code.

9 "Privatization contract" means an agreement or combination or series of agreements by
10 which a nongovernmental person or entity agrees with an agency to provide services, valued at
11 \$750,000, but as of January 1 each year, the amount shall increase to reflect increases in the
12 Consumer Price Index calculated by the United States Bureau of Labor Statistics for all urban
13 consumers nationally during the most recent twelve month period for which data are available or
14 more, which are substantially similar to and in lieu of, services theretofore provided, in whole or
15 in part, by regular employees of an agency. Any subsequent agreement, including any agreement
16 resulting from a rebidding of previously privatized service, or any agreement renewing or
17 extending a privatization contract, is not a privatization contract. An agreement solely to provide
18 construction as defined in subdivision two, section one, article five-a, chapter twenty-one of this
19 code, legal, management consulting, planning, engineering or design services is not a
20 privatization contract.

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

1 No agency may make any privatization contract and no such contract is valid unless the
2 agency, in consultation with the Department of Administration, first complies with each of the
3 following requirements:

4 (1) The agency shall prepare a specific written statement of the services proposed to be
5 the subject of the privatization contract, including the specific quantity and standard of quality of
6 the subject services. The agency shall solicit competitive sealed bids for the privatization contracts
7 based upon this statement. The day designated by the agency upon which it will accept these
8 sealed bids shall be the same for any and all parties. This statement is a public record, shall be

9 filed in the agency and in the Department of Administration, and shall be transmitted to the State
10 Auditor for review pursuant to section four of this article. The term of any privatization contract
11 may not exceed five years. No amendment to a privatization contract is valid if it has the purpose
12 or effect of avoiding any requirement of this section.

13 (2) For each position in which a bidder will employ a person pursuant to the privatization
14 contract and for which the duties are substantially similar to the duties performed by a regular
15 agency employee or employees, the statement required by subdivision (1) of this section shall
16 include a statement of the minimum wage rate to be paid for the position, which rate shall be the
17 lesser of step one of the grade or classification under which the comparable regular agency
18 employee is paid, or the average private sector wage rate for the position as determined by the
19 Department of Administration from data collected by the Division of Labor. Every bid for a
20 privatization contract and every privatization contract shall include provisions specifically
21 establishing the wage rate for each position, which may not be less than the minimum wage rate
22 as defined above. Every such bid and contract shall also include provisions for the contractor to
23 pay not less than a percentage, comparable to the percentage paid by the agency for state
24 employees, of the costs of health insurance plans for every employee employed for not less than
25 twenty hours per week pursuant to such contract. Such health insurance plans shall provide
26 coverage to the employee and the employee's spouse and dependent children. Each contractor
27 shall submit quarterly payroll records to the agency, listing the name, address, social security
28 number, hours worked and the hourly wage paid for each employee in the previous quarter. The
29 State Auditor may bring a civil action for equitable relief to enforce this section or to prevent or
30 remedy the dismissal, demotion or other action prejudicing any employee as a result of a report
31 of a violation of this section.

32 (3) Every privatization contract shall contain provisions requiring the contractor to offer

33 available employee positions pursuant to the contract to qualified regular employees of the
34 agency whose state employment is terminated because of the privatization contract and who
35 satisfy the hiring criteria of the contractor. Every such contract shall also contain provisions
36 requiring the contractor to comply with a policy of nondiscrimination and equal opportunity, and
37 to take affirmative steps to provide such equal opportunity for such persons.

38 (4) The agency shall prepare a comprehensive written estimate of the costs of regular
39 agency employees' providing the subject services in the most cost-efficient manner. The estimate
40 shall include all direct and indirect costs of regular agency employees' providing the subject
41 services, including, but not limited to, pension, insurance and other employee benefit costs. The
42 estimate shall remain confidential until after the final day for the agency to receive sealed bids for
43 the privatization contract pursuant to subdivision (1) of this section, at which time the estimate
44 shall become a public record, shall be filed in the agency and in the Department of
45 Administration, and shall be transmitted to the State Auditor for review pursuant to section four of
46 this article.

47 (5) After soliciting and receiving bids, the agency shall publicly designate the bidder to
48 which it proposes to award the contract. The agency shall prepare a comprehensive written
49 analysis of the contract cost based upon the designated bid, specifically including the costs of
50 transition from public to private operation, of additional unemployment and retirement benefits, if
51 any, and of monitoring and otherwise administering contract performance. If the designated bidder
52 proposes to perform any or all of the contract outside the boundaries of the state, the contract
53 cost shall be increased by the amount of income tax revenue, if any, which will be lost to the state
54 by the corresponding elimination of agency employees, as determined by the Department of
55 Revenue to the extent that it is able to do so.

56 (6) The head of the agency and the Secretary of the Department of Administration shall

57 each certify in writing to the State Auditor, that:

58 (A) He or she has complied with all provisions of this section and of all other applicable
59 laws;

60 (B) The quality of the services to be provided by the designated bidder is likely to satisfy
61 the quality requirements of the statement prepared pursuant to subdivision (1) of this section, and
62 to equal or exceed the quality of services which could be provided by regular agency employees
63 pursuant to subdivision (4) of this section;

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

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

71 A copy of the proposed privatization contract shall accompany the certificate transmitted
72 to the State Auditor.

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

1 (a) An agency may not make any privatization contract and no such contract is valid if,
2 within thirty business days after receiving the certificate required by section three of this article,
3 the State Auditor notifies the agency of his or her objection. The objection shall be in writing and
4 shall state specifically the State Auditor's finding that the agency has failed to comply with one or
5 more requirements of section three, including that the State Auditor finds incorrect, based on
6 independent review of all the relevant facts, any of the findings required by subdivision (6) of
7 section three of this article. The State Auditor may extend the time for the objection for an

8 additional period of thirty business days beyond the original thirty business days by written notice
9 to the submitting agency stating the reason for the extension.

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

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

16 (d) The objection of the State Auditor pursuant to subsection (a) of this section is final and
17 binding on the agency, unless the State Auditor thereafter in writing withdraws the objection,
18 stating the specific reasons, based upon a revised certificate by the agency and by the Secretary
19 of the Department of Administration and upon 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.