VERMONT LEGISLATIVE
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Fiscal Note
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S.96 – An act relating to privatizing contracts

As amended by the House Committee on Government Operations and Military Affairs, Draft 3.1
As recommended by the House Committee on Appropriations

Bill Summary

JFO is unable to estimate fiscal impacts on the State.

The bill would redefine a privatization contract as of July 1, 2025 and would establish new standards for privatization contracts on passage. Existing contracts would be subject to the new definition and standards when they come up for renewal. In the bill, the definition of a privatization contract would no longer require a reduction in force or elimination of a vacant State position. It would require that services provided by the contract be similar to work performed by current State employees or replace the duties of a vacant position in State government.

The bill would require privatization contracts to meet stricter standards regarding wage rate, health insurance benefits, labor protections, reporting requirements, and performance measures.

Finally, the bill would require a study of fiscal and operational impacts of including grants in privatization contracts, increasing the required cost savings of a privatization contract from 10 percent to 20 percent, and removing exceptions that are used "excessively or arbitrarily" to certify contracts by the Office of the Attorney General.

Fiscal Impact

The bill as amended by the House Committee on Government Affairs would likely have both direct and indirect fiscal impacts on State government and would likely have a cost to the State, but JFO is not able to estimate those impacts.

The size of direct fiscal impacts on the General Fund and other State funds is uncertain but could potentially be substantial. Existing contracts not classified as privatization contracts when up for renewal would have to meet the new standards that no longer require a Reduction in Force or elimination of a vacant position. Near-term curtailment of State contracts for services such as case managers, drivers, custodial staff, security officers and health care providers at correctional facilities, or personnel for emergency operations expected to last more than 90 days could cause State spending to rise to provide State services previously provided by contractors. Both current and future personnel and retirement costs could grow. Contracts that are renewed under the new standards would likely cost the State more for both wages and benefits. On the other hand, if some services now performed by State employees could be contracted out to save the State at least 10 percent, there could be some savings. Neither additional spending nor savings can be estimated at this point because many contracts do not include detailed information on wages and benefits paid to individual contract employees who would be covered by this bill.

Implementation costs beginning in fiscal year 2025 would fall on the Office of the Vermont Attorney General, the Agency of Administration (AoA), and any agency or office that wants to contract out services. It's clear that additional resources would be needed, but exactly what might be needed or how many new positions would be required to carry out the responsibilities created by the bill is not clear. The Office of the Attorney General does not request additional positions as of now.

If the bill led to a chilling effect on bids for State contracts because of the new standards and reporting requirements, indirect fiscal impacts could occur. Reduced economic activity at nonprofits, small businesses, and community-based organizations could lead to fewer State services available to Vermonters, migration out of Vermont for those who could no longer obtain necessary services, and reduced tax revenue. On the other hand, replacing lower-paid contract workers with more highly compensated State employees could raise spending power and economic activity in the State if not offset by higher State taxes and fees.

Background and Details

The following sections would likely have a fiscal impact.

Section 1

Section 1 would change the definition of "privatization contract" to be a State contract for services valued at $25,000 or more per year which is the same or substantially similar to services currently provided by permanent classified State employees or that will substantially replace the duties of a vacant position in State government. A Reduction in Force or elimination of a vacant State position would no longer be necessary. The effective date for Section 1 is July 1, 2025.

Section 2

Section 2 would establish new standards for privatization contracts effective July 1, 2024:

- The wage rate for each position shall not be less than the prevailing wage rate, defined in the bill as the average step of the grade under which the comparable State employee position is paid
- If State employees in the comparable State position are offered health, dental, and vision insurance coverage, the privatized contract must offer health, dental, and vision insurance coverage with substantially similar cost to employees and coverage
- Contractors must submit quarterly payroll records for each employee with hours worked and hourly wage
- Contracts must include certain labor policies such as equal opportunity, whistleblower, and just cause employment protections
- Privatization contracts must contain specific performance measures

If the Auditor of Accounts finds that a privatization contract up for renewal has not achieved 10 percent cost savings or complied with specified performance measures, the contract cannot be renewed.

Section 3

Section 3 would require a written report from the Agency of Administration on or before February 1, 2025. AoA, in consultation with the Joint Fiscal Office (JFO), the State Auditor, the Vermont State Employees' Association, and the Office of the Attorney General, would assess fiscal and operational impacts of including grants in the definition of "privatization contract," increasing the required cost savings of a privatized contract from 10 percent to 20 percent, and removing exceptions to privatization contracts currently allowed but used "excessively or arbitrarily."

Considerations for Legislators

Difficulty of Estimating Fiscal Effects

According to AoA, Vermont has no privatization contracts under the current definition. To estimate the direct fiscal effects of this bill, AoA would have to identify the value of current contracts that are not considered privatization contracts but would be when the contract comes up for renewal. If wage rates, benefit offerings, or labor protections do not meet the new standards, those contracts might not be renewed. Ineligible contracts would require State employees to provide those services—if the State is able to hire needed personnel. Evaluating contracts would require looking at every contract that could come up for renewal.

However, the State has no central collection point for contracts, implying that AoA would have to contact every agency, department, Designated Agency, and Specialized Service Agency to obtain the contracts to see if they meet the new standards. If the wage and benefit information could be collected, AoA would then have to find the current prevailing wage rate within State government for comparable services that are performed by classified State employees. The prevailing wage rate is defined in the bill as the average step of the grade under which the comparable State employee position is paid. Additional costs associated with contracts up for renewal could then be estimated.

Second, AoA would have to estimate how many new privatization contracts might be eligible going forward. If the State finds it difficult to hire qualified candidates to fill job openings, for example, contracting could be allowed. A new factor affecting potential bids is that it's difficult to know if nonprofits or small businesses would want to disclose wage rates and benefits for their employees as part of their bid as required by the bill.

Questions for further discussion

Questions regarding contracts

- How many existing contracts would be up for renewal?
- Would it be possible to discern individual wage rates and benefits offered under existing contracts?
- How many existing contracts would be deemed ineligible at renewal?
- Would the State be able to hire additional State employees to fulfill the services covered by the terminated contracts?
- How much would it cost the State to hire additional employees to take over services no longer provided under contract across many sectors?
- If new contracts with different wage rates or different benefits were certified, how much time would elapse before those new contracts were in effect?
- Does it make sense to pay every contract worker no less than the average step of the grade under which the comparable State employee position is paid?
    - For example, consider the position of case manager for Reach Up in which State employees are paid at Grade 10, Steps 1 through 15. The implication is that a contract employee for the position who is a new college grad with no experience would be paid at Step 8 or above, whereas a State employee with three years of experience might be paid at Step 3.
- If bidders did not previously offer health, dental, and vision benefits to their employees, does the federal Employee Retirement Income Security Act (ERISA) require that offering health and dental benefits to some employees requires a similar package must be offered to all employees?
    - Also, does the bill require offering health/dental/vision insurance to part-time or short-duration contract employees?
- How would the workforce shortage affect the State's ability to hire additional workers?

Questions on implementation

- Would it be feasible to obtain wage rates and benefits for every individual to be included on a contract?

- Would it be possible to obtain the prevailing wage rate for every job to be contracted out?
- What resources would be needed to write contracts in accordance with the bill provisions and carry out the certification process outlined in the bill?

Questions on the ability of AoA/JFO to perform the requested study

- What additional resources would AoA require to do the research required to complete the requested report?
- How difficult would it be to obtain and review existing contracts that might be up for renewal? Do existing contracts contain the specific information on wage rates and benefits necessary to judge whether they would pass certification and estimate additional costs to the State?
- How much effort might it take to obtain the prevailing wage rate for the variety of potential jobs that could be contracted out?