

H. B. 2041

(By Delegates Guthrie, Skinner and Smith, P.)
[Introduced January 14, 2015; referred to the
Committee on Industry and Labor then Finance .]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5A-12-1, §5A-12-2, §5A-12-3 and §5A-12-4, all relating to establishing 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.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new 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.

The Legislature finds and declares that using private contractors to provide public services formerly provided by state employees does not always promote the public interest. To ensure that citizens of the state receive high quality public services at low cost, with due regard for the taxpayers

1 of the state and the needs of public and private workers, the Legislature finds it necessary to regulate
2 such privatization contracts in accordance with sections two, three and four of this article. The
3 Legislature does not intend to restrict the use of community facilities to provide care for clients of
4 state agencies, if any privatization contract relating to such facilities otherwise complies with the
5 provisions of sections two, three and four of this article.

6 **§5A-12-2. Definitions.**

7 For purposes of this article:

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

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

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

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

1 subdivision two, section one, article five-a, chapter twenty-one of this code, legal, management
2 consulting, planning, engineering or design services is not a privatization contract.

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

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

7 (1) The agency shall prepare a specific written statement of the services proposed to be the
8 subject of the privatization contract, including the specific quantity and standard of quality of the
9 subject services. The agency shall solicit competitive sealed bids for the privatization contracts based
10 upon this statement. The day designated by the agency upon which it will accept these sealed bids
11 shall be the same for any and all parties. This statement is a public record, shall be filed in the agency
12 and in the Department of Administration, and shall be transmitted to the State Auditor for review
13 pursuant to section four of this article. The term of any privatization contract may not exceed five
14 years. No amendment to a privatization contract is valid if it has the purpose or effect of avoiding
15 any requirement of this section.

16 (2) For each position in which a bidder will employ a person pursuant to the privatization
17 contract and for which the duties are substantially similar to the duties performed by a regular agency
18 employee or employees, the statement required by subdivision (1) of this section shall include a
19 statement of the minimum wage rate to be paid for the position, which rate shall be the lesser of step
20 one of the grade or classification under which the comparable regular agency employee is paid, or
21 the average private sector wage rate for the position as determined by the Department of
22 Administration from data collected by the Division of Labor. Every bid for a privatization contract

1 and every privatization contract shall include provisions specifically establishing the wage rate for
2 each position, which may not be less than the minimum wage rate as defined above. Every such bid
3 and contract shall also include provisions for the contractor to pay not less than a percentage,
4 comparable to the percentage paid by the agency for state employees, of the costs of health insurance
5 plans for every employee employed for not less than twenty hours per week pursuant to such
6 contract. Such health insurance plans shall provide coverage to the employee and the employee's
7 spouse and dependent children. Each contractor shall submit quarterly payroll records to the agency,
8 listing the name, address, social security number, hours worked and the hourly wage paid for each
9 employee in the previous quarter. The State Auditor may bring a civil action for equitable relief to
10 enforce this section or to prevent or remedy the dismissal, demotion or other action prejudicing any
11 employee as a result of a report of a violation of this section.

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

18 (4) The agency shall prepare a comprehensive written estimate of the costs of regular agency
19 employees' providing the subject services in the most cost-efficient manner. The estimate shall
20 include all direct and indirect costs of regular agency employees' providing the subject services,
21 including, but not limited to, pension, insurance and other employee benefit costs. The estimate shall
22 remain confidential until after the final day for the agency to receive sealed bids for the privatization

1 contract pursuant to subdivision (1) of this section, at which time the estimate shall become a public
2 record, shall be filed in the agency and in the Department of Administration, and shall be
3 transmitted to the State Auditor for review pursuant to section four of this article.

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

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

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

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

21 (C) The designated bidder and its supervisory employees, while in the employ of the
22 designated bidder, have no adjudicated record of substantial or repeated willful noncompliance with

1 any relevant federal or state regulatory statute including, but not limited to, statutes concerning labor
2 relations, occupational safety and health, nondiscrimination and affirmative action, environmental
3 protection and conflicts of interest; and

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

6 A copy of the proposed privatization contract shall accompany the certificate transmitted to
7 the State Auditor.

8 **§5A-12-4. State Auditor approval of privatization contract.**

9 (a) An agency may not make any privatization contract and no such contract is valid if, within
10 thirty business days after receiving the certificate required by section three of this article, the State
11 Auditor notifies the agency of his or her objection. The objection shall be in writing and shall state
12 specifically the State Auditor's finding that the agency has failed to comply with one or more
13 requirements of section three, including that the State Auditor finds incorrect, based on independent
14 review of all the relevant facts, any of the findings required by subdivision (6) of section three of this
15 article. The State Auditor may extend the time for the objection for an additional period of thirty
16 business days beyond the original thirty business days by written notice to the submitting agency
17 stating the reason for the extension.

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

22 (c) The State Auditor may propose rules for legislative approval in accordance with article

1 three, chapter twenty-nine-a of this code, to carry out the provisions of this article.

2 (d) The objection of the State Auditor pursuant to subsection (a) of this section is final and
3 binding on the agency, unless the State Auditor thereafter in writing withdraws the objection, stating
4 the specific reasons, based upon a revised certificate by the agency and by the Secretary of the
5 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.