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## DIGEST

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HB 163 Engrossed

2016 Regular Session

Havard

**Abstract:** Establishes the Privatization Review Act to provide certain requirements for specified privatization contracts and for legislative oversight and approval of such privatization contracts.

Proposed law defines for its purposes (1) "appropriate standing committees of the legislature" as the standing committees of the legislature to which an agency is required to submit a report pursuant to present law (Administrative Procedure Act—APA); (2) "agency" as an office, department, division, board, commission, officer, system, or other organizational unit of the executive branch of state government; (3) "nongovernmental entity" as a legal entity other than an agency; (4) "nongovernmental person" as an individual other than an employee of an agency; and (5) "privatization contract" as either (a) an agreement or combination or series of agreements by which a nongovernmental person or entity agrees with an agency to provide services valued at \$5 million or more per year and which are substantially similar to and in lieu of services previously provided in whole or in part by state employees of an agency (specifically excludes an agreement solely to provide engineering or design services and an agreement to provide for the repair or construction of a street, road, highway, or bridge) or (b) any agreement or combination or series of agreements by which a nongovernmental person or entity agrees to lease or rent any state building or facility for \$500,000 or more.

Proposed law creates and provides for the Privatization Review Act by prohibiting an agency from entering into a privatization contract for services, unless the agency (or agency head) complies with each of the following:

- (1) (a) Prepare a specific statement of services proposed to be privatized, including the quantity and standard of quality of such services; (b) solicit competitive bids or proposals based upon the statement; and (c) transmit the statement to the legislative auditor and appropriate legislative standing committees.
- (2) Prepare a comprehensive written estimate of the costs of state employees providing the subject services in the most cost-efficient manner, including all direct and indirect costs of state employees providing the subject services. Provides that such estimate remains confidential until after the final day for the agency to receive bids or proposals for the privatization contract at which time the estimate shall become a public record, shall be filed in the agency and in the division of administration, and shall be transmitted to the legislative auditor and the appropriate standing committees of the legislature.

- (3) After solicitation of the competitive bids or proposals, publicly designate the nongovernmental person or entity to which it proposes to award the contract and prepare a comprehensive written analysis of the contract cost based upon the designated bid, specifically including the costs of transition from public to private operation, of additional unemployment and retirement benefits, if any, of additional retirement costs, if any, and of monitoring and otherwise administering contract performance. If the designated nongovernmental person or entity proposes to perform any or all of the contract outside the boundaries of the state or if the designated nongovernmental person or entity is domiciled outside the boundaries of the state, the analysis shall include the amount of income tax revenue, if any, which will be lost to the state by the corresponding elimination of state employees and any additional loss of revenue to the state due to the domicile of the nongovernmental person or entity, as determined by the Dept. of Revenue to the extent practicable.
- (4) Certify to the legislative auditor and appropriate legislative standing committees that (a) he has complied with all provisions of proposed law and of all other applicable laws; (b) the quality of the services to be provided by the contractor is likely to satisfy the quality requirements of the statement and to equal or exceed the quality of services which could be provided by state employees; (c) the contract cost will be less than the estimated cost, taking into account all comparable types of cost and analysis of lost tax income, if any; (d) the designated contractor and its supervisory employees, while in the employ of the contractor, have no adjudicated record of substantial or repeated noncompliance with any relevant federal or state regulatory provision and have no record of substantial or repeated failure to meet performance measures or goals in any prior or current contract with the state; and (e) the proposed privatization contract is in the public interest in that it meets the applicable quality and fiscal standards set forth in proposed law.

Proposed law further provides for the Privatization Review Act by prohibiting an agency from entering into a privatization contract for lease or rental of state buildings or facilities, unless the agency (or agency head) complies with each of the following:

- (1) Prepare a specific written statement of the fair market rental of lease value of the state building or facility based upon documented comparables. Specifies that the statement is a public record and requires it to be filed in the agency and in the division of administration, and transmitted to the legislative auditor and the appropriate legislative committees upon completion.
- (2) Publicly announce the availability of the building or facility for lease or rent and if more than one nongovernmental entity or person expresses documented interest in the lease or rental, engage in a competitive process to designate the nongovernmental entity or person with whom it intends to negotiate.
- (3) Certify in writing to the legislative auditor and the appropriate standing committees of the legislature that: (a) he has complied with all provisions of proposed law and of all other applicable laws; (b) the designated nongovernmental person or entity and its supervisory

employees, while in the employ of said designated nongovernmental person or entity, have no adjudicated record of substantial or repeated noncompliance with any relevant federal or state regulatory provision; and (c) the proposed privatization contract is in the public interest and the reasons therefore.

Proposed law provides for legislative review as follows:

- (1) Requires a copy of the proposed privatization contract to accompany the certification transmitted to the legislative auditor and appropriate standing committees of the legislature.
- (2) Requires the agency head to further send each legislator a copy of the proposed privatization contract and the certification via e-mail on the same day he transmits those documents to the legislative auditor and appropriate standing committees of the legislature.
- (3) Requires the legislative auditor to review each contract and certification no later than 30 days after receipt and to submit his findings to the appropriate legislative standing committees and to each legislator via e-mail. Requires the findings to be in writing and to include findings regarding the agency's compliance with the requirements of proposed law and to include the legislative auditor's independent review of all relevant facts regarding any of the agency's and division of administration's findings. Requires each agency to cooperate and assist the legislative auditor in his review and notwithstanding any law or privilege to the contrary, to provide all documents and other records to the legislative auditor that he deems necessary to complete his review.
- (4) Requires the appropriate legislative standing committees to review the certification and proposed contract and provides that the committees may disapprove the contract within a reasonable time, not to exceed 45 days after receipt of the findings of the legislative auditor. Prohibits the agency from entering into the contract if either standing committee disapproves the contract. Provides that if either standing committee does not disapprove of a contract within the 45-day time period or if both committees approve the contract, the agency may enter into the contract.

Proposed law further provides that (1) no amendment to a privatization contract shall be valid if it has the purpose or effect of avoiding any requirement of proposed law and (2) no agency shall transfer or grant to another person or entity the authority to negotiate any privatization agreement in any manner to subvert the provisions of proposed law or the Public Records Law. Proposed law specifies that any contract entered into by the state or any of its agencies in violation of proposed law shall be void ab initio.

Proposed law provides that after each complete year of a privatization contract for services, the agency shall report to the appropriate legislative standing committees (1) an analysis of the performance on the privatization contract, specifically including performance measures; and (2) all complaints received and the agency's and contractor's response to each complaint.

Proposed law provides that after each complete year of a privatization contract for rental or lease of

state buildings or facilities, the agency shall report to the appropriate legislative standing committees: (1) an analysis of the nongovernmental person's or entity's compliance with the terms of the privatization contract; (2) all complaints received and the agency's and contractor's response to each complaint; and (3) a current analysis of the fair market rental of lease value of the state building or facility based upon documented comparables.

Proposed law specifies that notwithstanding any other provision to the contrary and except as otherwise specifically provided by proposed law, all records related to a privatization contract shall be available for examination, inspection, reproduction, and copying in the same manner as provided by the Public Records Law regardless of the agency, official, person, or legal entity in possession of the record.

(Amends R.S. 44:4.1(B)(34); Adds R.S. 49:351-357)