

RÉSUMÉ DIGEST

HB 137

2015 Regular Session

Havard

Proposed law would have created and provided for the Privatization Review Act. Would have defined 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 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. Would have specifically excluded from the definition of privatization contract an agreement solely to provide engineering or design services, an agreement to provide for the repair or construction of a street, road, highway, or bridge; and any contract in effect prior to the effective date of proposed law.

Proposed law would have prohibited an agency from entering into a privatization contract for services, unless the agency (or agency head):

- (1) (a) Prepared a specific statement of services proposed to be privatized, including the quantity and standard of quality of such services; (b) solicited competitive bids or proposals based upon the statement; and (c) transmitted the statement to the legislative auditor and appropriate legislative standing committees.
- (2) Prepared a comprehensive written estimate of the costs of state employees providing the subject services. (Proposed law would have provided that such estimate (a) remained confidential until after the final day for the agency to receive bids; (b) be filed with the agency and the division of administration; (c) be transmitted to the legislative auditor and the appropriate standing committees of the legislature.)
- (3) After solicitation of the bids or proposals, publicly designated the person or entity to which it proposed to award the contract and prepared a comprehensive written analysis of the contract cost, which was to include certain specified costs. If the person or entity proposed to perform any or all of the contract outside the state or if the person or entity was domiciled outside the state, the analysis would have had to include any resulting loss of revenue to the state.
- (4) Certified to the legislative auditor and appropriate legislative standing committees that (a) he 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 was 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 would be less than the estimated cost of having state employees perform the services; (d) the designated contractor and its supervisory employees, while in the employ of the contractor, had no adjudicated record of substantial or repeated noncompliance with any relevant federal or state regulatory provision and had 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 would have been in the public interest in that it would have met the applicable quality and fiscal standards set forth in proposed law.

Proposed law would have further provided 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):

- (1) Prepared a specific written statement of rental or lease value of the state building or facility. Proposed law would have specified that the statement was a public record and would have required 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 announced the availability of the building or facility and if more than one nongovernmental entity or person expressed interest, engaged in a competitive process to designate the entity or person with whom it intended to negotiate.
- (3) Certified in writing to the legislative auditor and the appropriate standing committees of the legislature that: (a) he complied with all provisions of proposed law and of all other applicable laws; (b) the person or entity and its supervisory employees, while in the employ of said designated nongovernmental person or entity, had no adjudicated record of substantial or repeated noncompliance with any relevant federal or state regulatory provision; and (c) the proposed privatization contract was in the public interest and the reasons therefore.

Proposed law would have provided for legislative review of service and lease contracts as follows:

- (1) Required a copy of the proposed privatization contract to accompany the certification transmitted to the legislative auditor and appropriate standing committees of the legislature.
- (2) Required the agency head to send each legislator a copy of the proposed privatization contract and the certification.
- (3) Required the legislative auditor to review each contract and certification and to submit his findings to the appropriate legislative standing committees and to each legislator. Required 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. Required 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 deemed necessary to complete his review.
- (4) Required the appropriate legislative standing committees to review the certification and proposed contract and provided that the committees may disapprove the contract within a reasonable time. Prohibited the agency from entering into the contract if either standing committee disapproved the contract.

Proposed law would have further provided that (1) no amendment to a privatization contract would be valid if it had 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 would have specified that any contract entered into by the state or any of its agencies in violation of proposed law was void ab initio.

Proposed law would have required the agency entering a contract for services to report annually to the appropriate legislative standing committees (1) an analysis of the performance on the privatization contract, and (2) all complaints received and the agency's and contractor's response to each complaint.

Proposed law would have required the agency entering a contract for rental or lease of state buildings or facilities to report annually 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 or lease value of the state building or facility.

Proposed law would have specified 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.

(Proposed to amend R.S. 44:4.1(B)(34); Proposed to add R.S. 49:351-357)

Veto Message: "House Bill No. 137 is a broad-reaching expansion of bureaucratic government that would not only discourage vitally needed private sector partnerships, but it would also hinder the state's ability to provide timely and critical services to the people of Louisiana in a manner that is both efficient and a responsible use of taxpayer dollars. Privatization efforts have saved Louisiana more than \$100 million since 2008 in addition to improving service and accessibility. HB 137 would create additional red tape in the governmental contracting process that would curb efforts to reduce the size of government and government spending.

For these reasons, I have vetoed House Bill No. 137 and hereby return it to the House of Representatives."