

HB 354 -- Privatization Contracts

Co-Sponsors: Lowe, George, Spreng, Walsh, Darrough, Wildberger, Wilson (42)

This bill regulates the use of privatization contracts by the state and participating political subdivisions. The Department of Transportation; municipal fire departments who contract with private companies as contained in Section 85.012, RSMo; and public bodies who contract for architectural services, engineering services, or land surveying services are not covered.

Privatization contracts are agreements in which a non-governmental entity agrees with a public body to provide services valued at \$25,000 or more which could have been provided by regular employees of a public body. The bill:

- (1) Prohibits public bodies from entering into privatization contracts, except under the conditions of the bill;
- (2) Requires public bodies to solicit competitive sealed bids for privatization contracts based on a written proposal. Bid requirements are outlined in the bill;
- (3) Requires contractors who enter into privatization contracts to compensate employees at the rate a state employee doing similar work would receive or the average private sector compensation rate, whichever is greater;
- (4) Limits privatization contracts to two years;
- (5) Requires the contractor to offer available positions to qualified public employees whose employment was terminated due to privatization contracts;
- (6) Requires a nondiscrimination and equal opportunity provision in all privatization contracts;
- (7) Prohibits public funds from being used to support or oppose unionization;
- (8) Requires public bodies to prepare a comprehensive written estimate of the cost of using regular public employees before considering privatization contracts and a comprehensive written contract analysis;
- (9) Requires a public body to consider a contractor's past performance and its record of compliance with applicable laws before awarding the contract;

(10) Requires a public body to publicly designate the bidder to whom it proposes to award the privatization contract;

(11) Requires a public body to certify in writing that all provisions of this law have been followed, the quality of services satisfies quality requirements, the cost is at least 10% less than if the public body had completed the services, and the privatization contract is in the public interest;

(12) Prohibits a privatization contractor from subcontracting without the approval of a public body;

(13) Requires privatization contractors and subcontractors to file an annual financial audit with a public body;

(14) Requires that a public body have reasonable access to privatization contractors' project financial records, facilities, and employees;

(15) Requires the privatization contractor to submit an annual report, detailing progress and quality of the project. The contractor must also submit a report of its compliance with all applicable laws and findings issued by an administrative agency or court;

(16) Allows a public body to seek contractual remedies for any violation of the privatization contract. Other persons or entities are also allowed to bring a claim against a contractor for certain violations of the bill;

(17) Restricts ownership rights or interest in any public record by a privatization contractor and requires public bodies and contractors to comply with all open records laws;

(18) Restricts the use of privatization contract records and contract records of a public body. The bill outlines remedies which may be taken for violation of these restrictions;

(19) Prohibits retaliation against any public employee or private contractor employee who, acting in good faith, discloses information or participates in any investigation or proceedings against any governmental entity relating to a violation of a privatization contract. The identity of any employee complaining in good faith to a public body or elected official about a violation of a privatization contract will be confidential; and

(20) Requires private contractors to post provisions of the privatization contract law and information pertaining to the filing of a charge for the violation of certain provisions of the bill.

The bill contains an emergency clause.