

Regular Session, 2013

HOUSE BILL NO. 240

BY REPRESENTATIVES HAVARD, BERTHELOT, AND GEYMANN

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PRIVATIZATION: Establishes the Privatization Review Act

1 AN ACT

2 To amend and reenact R.S. 44:4.1(B)(34) and to enact Chapter 6 of Title 49 of the Louisiana
3 Revised Statutes of 1950, to be comprised of R.S. 49:351 through 357, relative to
4 privatization contracts; to create and provide for the Privatization Review Act to
5 provide for certain requirements and procedures for certain privatization contracts;
6 to provide for duties of executive branch agencies and agency heads relative to
7 privatization contracts; to provide for the duties of the legislative auditor relative to
8 certain privatization contracts; to provide procedures for legislative review and
9 approval of privatization contracts; to provide for definitions; to provide for certain
10 prohibitions; to provide for the voidability of privatization contracts; to provide
11 relative to the records related to privatization contracts; and to provide for related
12 matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Chapter 6 of Title 49 of the Louisiana Revised Statutes of 1950, comprised
15 of R.S. 49:351 through 357, is hereby enacted to read as follows:

16 CHAPTER 6. PRIVATIZATION REVIEW ACT

17 §351. Legislative findings

18 The legislature hereby finds and declares that using private contractors to
19 provide public services formerly provided by state employees needs to be
20 extensively reviewed to ensure that it promotes best practices, ensures that citizens

1 of the state receive high-quality public services at low cost, and is in the overall best
2 interest of the state and its citizens.

3 §352. Definitions

4 For purposes of this Chapter only, the following words and phrases shall have
5 the following meanings:

6 (1) "Agency" shall mean an office, department, division, board, commission,
7 officer, system, or other organizational unit of the executive branch of state
8 government.

9 (2) "Appropriate standing committees of the legislature" shall mean the
10 standing committees of the legislature to which an agency is required to submit a
11 report pursuant to R.S. 49:968(B).

12 (3) "Nongovernmental entity" shall mean a legal entity other than an agency.

13 (4) "Nongovernmental person" shall mean an individual other than an
14 employee of an agency.

15 (5) "Privatization contract" shall mean an agreement or combination or series
16 of agreements by which a nongovernmental person or entity agrees with an agency
17 to provide services that are valued at five million dollars or more per year and that
18 are substantially similar to and in lieu of services previously provided in whole or
19 in part by state employees of an agency. An agreement solely to provide engineering
20 or design services shall not be considered a privatization contract.

21 §353. Requirements

22 A. No agency shall enter into a privatization contract and no such contract
23 shall be valid unless the agency, in consultation with the division of administration,
24 first complies with each of the following requirements:

25 (1)(a) The agency shall prepare a specific written statement of the services
26 proposed to be the subject of the privatization contract, including the specific
27 quantity and standard of quality of the subject services.

28 (b) For each position in which a nongovernmental person or entity will
29 employ any person pursuant to the privatization contract and for which the duties are

1 substantially similar to the duties performed by a state employee or employees, the
2 statement shall include a statement of the minimum wage rate to be paid for said
3 position.

4 (c) The agency shall solicit competitive bids or proposals for the
5 privatization contracts based upon this statement.

6 (d) The statement shall be a public record, shall be filed in the agency and
7 in the division of administration, and shall be transmitted to the legislative auditor
8 and the appropriate standing committees of the legislature upon its completion.

9 (2) Every privatization contract shall contain provisions requiring the
10 contractor to offer available employee positions pursuant to the contract to qualified
11 classified state employees of the agency at which state employment is terminated
12 because of the privatization contract and who satisfy the hiring criteria of the
13 contractor.

14 (3)(a) The agency shall prepare a comprehensive written estimate of the
15 costs of state employees providing the subject services in the most cost-efficient
16 manner. The estimate shall include all direct and indirect costs of state employees
17 providing the subject services, including but not limited to retirement, insurance, and
18 other employee benefit costs.

19 (b) Such estimate shall remain confidential until after the final day for the
20 agency to receive bids or proposals for the privatization contract pursuant to
21 Paragraph (1) of this Subsection, at which time the estimate shall become a public
22 record, shall be filed in the agency and in the division of administration, and shall be
23 transmitted to the legislative auditor and the appropriate standing committees of the
24 legislature for review pursuant to R.S. 49:354.

25 (4) After soliciting and receiving bids or proposals, the agency shall publicly
26 designate the nongovernmental person or entity to which it proposes to award the
27 contract. The agency shall prepare a comprehensive written analysis of the contract
28 cost based upon the designated bid or proposal, specifically including the costs of
29 transition from public to private operation, of additional unemployment and

1 retirement benefits, if any, of additional retirement costs, if any, and of monitoring
2 and otherwise administering contract performance. If the designated
3 nongovernmental person or entity proposes to perform any or all of the contract
4 outside the boundaries of the state or if the designated nongovernmental person or
5 entity is domiciled outside the boundaries of the state, said analysis of the contract
6 cost shall indicate the amount of income tax revenue, if any, which will be lost to the
7 state by the corresponding elimination of state employees and any additional loss of
8 revenue to the state due to the domicile of the nongovernmental person or entity, as
9 determined by the Department of Revenue to the extent practicable.

10 (5) The head of the agency shall certify in writing to the legislative auditor
11 and the appropriate standing committees of the legislature that:

12 (a) He has complied with all provisions of this Section and of all other
13 applicable laws.

14 (b) The quality of the services to be provided by the designated
15 nongovernmental person or entity is likely to satisfy the quality requirements of the
16 statement prepared pursuant to Paragraph (1) of this Subsection, and to equal or
17 exceed the quality of services which could be provided by state employees pursuant
18 to Paragraph (3) of this Subsection.

19 (c) The contract cost, according to the analysis required by Paragraph (4) of
20 this Subsection, will be less than the estimated cost estimated pursuant to Paragraph
21 (3) of this Subsection, taking into account all comparable types of cost and analysis
22 of lost tax income, if any.

23 (d) The designated nongovernmental person or entity and its supervisory
24 employees, while in the employ of said designated nongovernmental person or
25 entity, have no adjudicated record of substantial or repeated noncompliance with any
26 relevant federal or state regulatory provision, including but not limited to provisions
27 concerning occupational safety and health, nondiscrimination, environmental
28 protection, and Code of Governmental Ethics and other conflicts of interest

1 provisions and have no record of substantial or repeated failure to meet performance
2 measures or goals in any prior or current contract with the state.

3 (e) The proposed privatization contract is in the public interest in that it meets
4 the applicable quality and fiscal standards set forth in this Section.

5 B.(1) A copy of the proposed privatization contract shall accompany the
6 certificate transmitted to the legislative auditor and appropriate standing committees
7 of the legislature for review pursuant to R.S. 49:354.

8 (2) The agency head shall send each member of the legislature a copy of the
9 proposed privatization contract and the certificate via electronic mail on the same
10 day he transmits those documents to the legislative auditor and appropriate standing
11 committees of the legislature.

12 §354. Legislative review

13 A.(1) The legislative auditor shall review each contract and certificate no
14 later than thirty days after receipt. After completion of the review, the legislative
15 auditor shall submit his findings to the appropriate legislative standing committees.
16 Such findings shall be in writing and shall state the legislative auditor's findings
17 regarding the agency's compliance with the requirements of R.S. 49:353 and shall
18 specifically include the legislative auditor's independent review of all relevant facts
19 regarding any of the agency's findings required by R.S. 49:353(A)(5).

20 (2) The legislative auditor shall send each member of the legislature a copy
21 of his findings via electronic mail on the same day he transmits his findings to the
22 appropriate standing committees of the legislature.

23 (3) Each agency shall cooperate and assist the legislative auditor in his
24 review and, notwithstanding any law or privilege to the contrary, shall provide all
25 documents and other records to the legislative auditor that he deems necessary to
26 complete his review.

27 B. The appropriate standing committees of the legislature shall review the
28 proposed certificate and contract and comment as necessary on any such contract
29 within a reasonable time not to exceed forty-five days after receipt of the findings

1 of the legislative auditor. If either standing committee disapproves the contract or
2 if both committees vote to approve the contract, the agency shall not enter into the
3 contract. If either standing committee does not disapprove of a contract within the
4 forty-five-day time period, the agency may enter into the contract.

5 §355. Prohibitions; voidability

6 A. No amendment to a privatization contract shall be valid if it has the
7 purpose or effect of avoiding any requirement of this Chapter.

8 B. No agency shall transfer or grant to another person or entity the authority
9 to negotiate any privatization agreement in any manner to subvert the provisions of
10 this Chapter or the Public Records Law.

11 C. Any contract entered into by the state or any of its agencies in violation
12 of this Chapter shall be void ab initio.

13 §356. Post-privatization review

14 After each complete year of a privatization contract, the agency shall report
15 to the appropriate standing committees of the legislature the following information:

16 (1) The number of privatization contractor employees and consultants,
17 reflected as full-time equivalent positions, and the amount of compensation received
18 by each privatization contractor employee and consultant during the previous year,
19 and their hourly wage rates for the current and previous fiscal year.

20 (2) An analysis of the nongovernmental person or entity performance under
21 the privatization contract, specifically including performance measures.

22 (3) All complaints received and the agency's and contractor's response to
23 each complaint.

24 §357. Records

25 Notwithstanding any other provision to the contrary and except as otherwise
26 specifically provided by this Chapter, all records related to a privatization contract
27 shall be available for examination, inspection, reproduction, and copying in the same
28 manner as provided by the Public Records Law regardless of the agency, official,
29 person, or legal entity in possession of the record.

1 Section 2. R.S. 44:4.1(B)(34) is hereby amended and reenacted to read as follows:

2 §4.1. Exceptions

3 * * *

4 B. The legislature further recognizes that there exist exceptions, exemptions,
5 and limitations to the laws pertaining to public records throughout the revised
6 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
7 limitations are hereby continued in effect by incorporation into this Chapter by
8 citation:

9 * * *

10 (34) R.S. 49:220.25, 353(A)(3)(b), 956, 997, 1055

11 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Havard

HB No. 240

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 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 and specifies that an agreement solely to provide engineering or design services shall not be considered a privatization contract.

Proposed law creates and provides for the Privatization Review Act by prohibiting an agency from entering into a privatization contract, 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; (c) include in the statement for each position in which a nongovernmental person or entity will employ any person pursuant to the privatization contract and for which the duties are substantially similar to the duties performed by a state employee or employees, a statement of the minimum wage rate

- to be paid for said position; and (d) transmit the statement to the legislative auditor and appropriate legislative standing committees.
- (2) Require every privatization contract to contain provisions requiring the contractor to offer available employee positions pursuant to the contract to qualified classified state employees of the agency at which state employment is terminated because of the privatization contract and who satisfy the hiring criteria of the contractor.
 - (3) 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, including but not limited to retirement, insurance, and other employee benefit costs. 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.
 - (4) 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 and 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, include in the analysis 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.
 - (5) 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, including but not limited to provisions concerning occupational safety and health, nondiscrimination, environmental protection, and Code of Governmental Ethics and other conflicts of interest provisions 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 provides for legislative review as follows:

- (1) Requires a copy of the proposed privatization contract to accompany the certificate 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 certificate 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 certificate 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 proposed certificate and contract and comment as necessary on any such 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, the agency shall report to the appropriate legislative standing committees (1) the number of privatization contractor employees and consultants, reflected as full-time equivalent positions, and the amount of compensation received by each privatization contractor employee and consultant during the previous year, and their hourly wage rates for the current and previous fiscal year; (2) an analysis of the performance on the privatization contract, specifically including performance measures; and (3) all complaints received and the agency's and contractor's response to each complaint.

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)