

1 H.111

2 Introduced by Representative Lippert of Hinesburg

3 Referred to Committee on

4 Date:

5 Subject: State contracts; standards; public records

6 Statement of purpose: This bill proposes to prohibit state agencies from  
7 preventing examination or copying of a public record by entering personal  
8 service or privatization contracts. The bill would also provide that written or  
9 recorded information that is produced or acquired by a contractor under a  
10 personal services or privatization contract shall be a public record available for  
11 inspection or copying unless exempt.

12 An act relating to access to records under personal service or privatization  
13 contracts entered into by the state

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 Sec. 1. 3 V.S.A. § 342 is amended to read:

16 § 342. CONTRACTING STANDARDS; PERSONAL SERVICES

17 CONTRACTS

18 (a) A personal services contract is contrary to the spirit and intent of the  
19 classification plan and merit system and standards of this title, and shall not be  
20 certified by the attorney general under subdivision 311(a)(10) of this title,

1 unless the provisions of subdivisions (1), (2), and (3) of this subsection are  
2 met, or one or more of the exceptions described in subdivision (4) of this  
3 subsection apply.

4 (1) The agency will not exercise supervision over the daily activities or  
5 methods and means by which the contractor provides services other than  
6 supervision necessary to ensure that the contractor meets performance  
7 expectations and standards; and

8 (2) The services provided are not the same as those provided by  
9 classified state employees within the agency; and

10 (3) The contractor customarily engages in an independently established  
11 trade, occupation, profession or business; or

12 (4) Any of the following apply:

13 (A) The services are not available within the agency or are of such a  
14 highly specialized or technical nature that the necessary knowledge, skills or  
15 expertise is not available within the agency.

16 (B) The services are incidental to a contract for purchase or lease of  
17 real or personal property.

18 (C) There is a demonstrated need for an independent audit, review or  
19 investigation; or independent management of a facility is needed as a result of,  
20 or in response to, an emergency such as licensure loss or criminal activity.

1           (D) The state is not able to provide equipment, materials, facilities or  
2 support services in the location where the services are to be performed in a  
3 cost-effective manner.

4           (E) The contract is for professional services, such as legal,  
5 engineering, or architectural services, that are typically rendered on a case by  
6 case or project-by-project basis, and the services are for a period limited to the  
7 duration of the project, normally not to exceed two years or provided on an  
8 intermittent basis for the duration of the contract.

9           (F) The need for services is urgent, temporary or occasional, such  
10 that the time necessary to hire and train employees would render obtaining the  
11 services from state employees imprudent. Such contract shall be limited to 90  
12 days duration, with any extension subject to review and approval by the  
13 secretary of administration.

14           (G) Contracts for the type of services covered by the contract are  
15 specifically authorized by law.

16           (H) Efforts to recruit state employees to perform work, authorized by  
17 law, have failed in that no applicant meeting the minimum qualifications has  
18 applied for the job.

19           (I) The cost of obtaining the services by contract is lower than the  
20 cost of obtaining the same services by utilizing state employees. When  
21 comparing costs, the provisions of section 343 of this title shall apply.

1       (b) An agency shall not prevent the examination or copying of a public  
2 record, as that term is defined in 1 V.S.A. § 317(b), by contracting for personal  
3 services under this section. Written or recorded information, regardless of  
4 physical form or characteristics, which is produced or acquired by a contractor  
5 providing services under a contract authorized by this section, shall be a public  
6 record available for inspection or copying unless exempt from public  
7 inspection and copying under 1 V.S.A. § 317.

8       Sec. 2. 3 V.S.A. § 343 is amended to read:

9       § 343. PRIVATIZATION CONTRACTS; PROCEDURE

10       (a) No agency may enter a privatization contract, unless all of the following  
11 are satisfied:

12           (1) 35 days prior to the beginning of any open bidding process, the  
13 agency provides written notice to the collective bargaining representative of  
14 the intent to seek to enter a privatization contract. During those 35 days, the  
15 collective bargaining representative shall have the opportunity to discuss  
16 alternatives to contracting. Such alternatives may include amendments to the  
17 contract if mutually agreed upon by the parties. Notices regarding the bid  
18 opportunity may not be issued during the 35-day discussion period. The  
19 continuation of discussions beyond the end of the 35-day period shall not delay  
20 the issuance of notices.

1           (2) The proposed contract is projected to result in overall cost savings to  
2 the state of at least ten percent above the projected cost of having the services  
3 provided by classified state employees.

4           (3) When comparing the cost of having a service provided by classified  
5 state employees to the cost of having the service provided by a contractor:

6           (A) The expected costs of having services provided by classified state  
7 employees and obtaining the service through a contractor should be compared  
8 over the life of the contract. One-time costs associated with having services  
9 provided by a contractor rather than classified state employees, such as the  
10 expected cost of leave pay-outs for separating employees, unemployment  
11 compensation and the cost of meeting the state's obligation, if any, to continue  
12 health insurance benefits, shall be spread over the expected life of the contract.

13           (B) The basic cost of services by a contractor includes:

14           (i) the bid price or maximum acceptable bid identified by the  
15 contracting authority; and

16           (ii) any additional costs to be incurred by the agency for  
17 inspection, facilities, reimbursable expenses, supervision, training and  
18 materials, but only to the extent that these costs exceed the costs the agency  
19 could expect to incur for inspection, facilities, reimbursable expenses and  
20 materials if the services were provided by classified state employees.

1           (C) The basic cost for services provided by a classified state  
2 employee includes:

3                 (i) wages, benefits and training;

4                 (ii) the cost of supervision and facilities, but only to the extent that  
5 these costs exceed the costs the agency could expect to incur for supervision or  
6 facilities if the services were provided by a contractor; and

7                 (iii) the estimated cost of obtaining goods when the comparison is  
8 with the cost of a contract that includes both goods and services.

9           (D) Possible reductions in the cost of obtaining services from  
10 classified state employees that require concessions shall not be considered  
11 unless proposed in writing by the certified collective bargaining agent and  
12 mutually agreed to by the state and collective bargaining agent.

13           (b) An agency shall not prevent the examination or copying of a public  
14 record, as that term is defined in 1 V.S.A. § 317(b), by entering a privatization  
15 contract under subsection (a) of this section. Written or recorded information,  
16 regardless of physical form or characteristics, which is produced or acquired  
17 by a contractor providing services under a privatization contract authorized by  
18 subsection (a) of this section, shall be a public record available for inspection  
19 or copying unless exempt from public inspection and copying under 1 V.S.A.  
20 § 317.

1       Sec. 3. TRANSITION

2           The requirements of Secs. 1 (personal service contracts) and 2 (privatization  
3       contracts) of this act shall apply to personal service or privatization contracts  
4       entered into after the effective date of this act.

5       Sec. 4. EFFECTIVE DATE

6           This act shall take effect on July 1, 2011.