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H.702

Introduced by Representatives Lorber of Burlington, Campion of Bennington,
Lippert of Hinesburg, Russell of Rutland City, Trieber of
Rockingham and Wizowaty of Burlington

Referred to Committee on

Date:

Subject: Government contracting; nondiscrimination

Statement of purpose: This bill proposes to prohibit, with certain exceptions,
government contracts with contractors that discriminate against same-sex
couples in the provision of employee benefits.

An act relating to prohibiting discrimination in government contracting

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

Sec. 1. 3 V.S.A. § 345 is added to read:

§ 345. NONDISCRIMINATION IN GOVERNMENT CONTRACTS

(a)(1) Notwithstanding any other provision of law to the contrary, no
agency may enter into a contract for goods or services in the amount of
\$100,000.00 or more with a contractor who in the provision of benefits
discriminates between employees with opposite-sex spouses and employees
with same-sex spouses or civil union partners, or discriminates between the

1 same-sex spouses or civil union partners and opposite-sex spouses of those
2 employees.

3 (2) In this section:

4 (A) "Civil union partner" means one of two persons who established
5 a civil union pursuant to 15 V.S.A. chapter 23 or a legal union of two persons
6 of the same sex, other than a marriage, that was validly established in another
7 jurisdiction, and that is substantially equivalent to a civil union under
8 15 V.S.A. chapter 23.

9 (B) "Contract" includes all contracts with a cumulative amount of
10 \$100,000.00 or more per contractor in each fiscal year.

11 (3)(A) Subject to subdivision (B) of this subdivision (3), this section
12 does not apply to any contracts executed or amended prior to January 1, 2013,
13 or to bid packages advertised and made available to the public, or any
14 competitive or sealed bids received by the state, prior to January 1, 2013,
15 unless and until those contracts or property contracts are amended after
16 December 31, 2012, and would otherwise be subject to this section.

17 (B) If the duration of a contract executed or amended prior to
18 January 1, 2013 is for more than one year going beyond January 1, 2014, this
19 section shall apply to the contract on January 1, 2014.

20 (4) The requirements of this section shall apply only to those portions of
21 a contractor's operations that occur under any of the following conditions:

1 (A) Within the state.

2 (B) On real property outside the state if the property is owned by the
3 state or if the state has a right to occupy the property, and if the contractor's
4 presence at that location is connected to a contract with the state.

5 (C) Elsewhere in the United States where work related to a state
6 contract is being performed.

7 (b) A contractor shall treat as confidential, to the maximum extent allowed
8 by law or by the requirement of the contractor's insurance provider, any
9 request by an employee or applicant for employment for civil union partner or
10 spousal benefits or any documentation of eligibility for civil union partner or
11 spousal benefits submitted by an employee or applicant for employment.

12 (c) After taking all reasonable measures to find a contractor that complies
13 with this section, as determined by the agency, the requirements of this section
14 may be waived under any of the following circumstances:

15 (1) Whenever there is only one prospective contractor willing to enter
16 into a specific contract with the agency.

17 (2) If the contract is necessary to respond to an emergency, as
18 determined by the agency, that endangers the public health, welfare, or safety,
19 or the contract is necessary for the provision of essential services, and no entity
20 that complies with the requirements of this section capable of responding to the
21 emergency is immediately available.

1 (3) If the requirements of this section violate, or are inconsistent with,
2 the terms or conditions of a grant, subvention, or agreement, provided that a
3 good faith attempt has been made by the agency to change the terms or
4 conditions of any grant, subvention, or agreement to authorize application of
5 this section.

6 (4) If the contractor is providing wholesale or bulk water, power, or
7 natural gas, the conveyance or transmission of the same, or ancillary services,
8 as required for assuring reliable services in accordance with good utility
9 practice, provided that the purchase of the same may not practically be
10 accomplished through the standard competitive bidding procedures, and further
11 provided that this exemption does not apply to contractors providing direct
12 retail services to end users.

13 (d)(1) If there is a difference in the cost to provide a certain benefit to a
14 same-sex spouse, civil union partner, or opposite-sex spouse, the contractor is
15 not deemed to be in violation of this section so long as it permits the employee
16 to pay any excess costs.

17 (2) The contractor is not deemed to discriminate in the provision of
18 benefits if the contractor, in providing the benefits, pays the actual costs
19 incurred in obtaining the benefit.

1 (3) In the event a contractor is unable to provide a certain benefit,
2 despite taking reasonable measures to do so, the contractor may not be deemed
3 to discriminate in the provision of benefits.

4 (4) For any contracts executed or amended prior to January 1, 2013, and
5 to bid packages advertised and made available to the public, or any competitive
6 or sealed bids received by the state prior to January 1, 2013, unless and until
7 those contracts or bid packages are amended on or after January 1, 2013, and
8 would otherwise be subject to this section, a contractor may require an
9 employee to pay the costs of providing additional benefits that are offered to
10 comply with this section if an employee elects to have the additional benefits.
11 This subdivision shall not be construed to permit a contractor to require an
12 employee to cover the costs of providing any benefits that have otherwise been
13 provided to all employees regardless of marital or civil union status.

14 (e) A contractor is not deemed to be in violation of this section if the
15 contractor does any of the following:

16 (1) Offers the same benefits to employees with same-sex spouses or
17 civil union partners and employees with opposite-sex spouses and offers the
18 same benefits to same-sex spouses, civil union partners, and opposite-sex
19 spouses of employees.

1 (2) Elects to provide the same benefits to individuals that are provided
2 to employees' opposite-sex spouses, employees' same-sex spouses, and
3 employees' civil union partners.

4 (3) Elects to provide benefits on a basis unrelated to an employee's
5 marital status or civil union status, including allowing each employee to
6 designate a legally domiciled member of the employee's household as being
7 eligible for benefits.

8 (4) Elects not to provide benefits to employees based on their marital
9 status or civil unions status, or elects not to provide benefits to employees'
10 opposite-sex spouses, employees' same-sex spouses, and to employees' civil
11 union partners.

12 (f)(1) Every contract subject to this chapter shall contain a statement by
13 which the contractor certifies that the contractor is in compliance with this
14 section.

15 (2) The agency shall enforce this section pursuant to its existing
16 enforcement powers.

17 (3) A contractor who falsely certifies that it is in compliance with this
18 section shall be subject to any penalties included in the contract in addition to
19 any existing remedies otherwise available to the agency by law unless, within a
20 time period specified by the agency, the contractor provides to the agency
21 proof that it has complied, or is in the process of complying, with this section.

1 (g) Nothing in this section is intended to regulate the contracting practices
2 of any local jurisdiction.

3 (h) This section shall be construed so as not to conflict with applicable
4 federal laws, rules, or regulations. In the event that a court or agency of
5 competent jurisdiction holds that federal law, rule, or regulation invalidates
6 any subdivision, sentence, or subsection of this section of this code or the
7 application thereof to any person or circumstances, it is the intent of the state
8 that the court or agency sever that subdivision, sentence, or subsection of this
9 section so that the remainder of this section shall remain in effect.

10 Sec. 2. 3 V.S.A. § 341 is amended to read:

11 § 341. DEFINITIONS

12 As used in this chapter:

13 (1) “Agency” means any agency, board, department, commission,
14 committee or authority of the executive branch of state government.

15 (2) “Personal services contract” ~~or “contract”~~ means an agreement or
16 combination or series of agreements, by which an entity or individual who is
17 not a state employee agrees with an agency to provide services, valued at
18 \$10,000.00 or more per year.

19 (3) “Privatization contract” means a personal services contract by which
20 an entity or an individual who is not a state employee agrees with an agency to
21 provide services, valued at \$20,000.00 or more per year, which are the same or

1 substantially similar to and in lieu of services previously provided, in whole or
2 in part, by permanent, classified state employees, and which result in a
3 reduction in force of at least one permanent, classified employee, or the
4 elimination of a vacant position of an employee covered by a collective
5 bargaining agreement.

6 Sec. 3. EFFECTIVE DATE

7 This act shall take effect on passage.