

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH SESSION

S.F. No. 2515

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| 03/10/2014 | 6077 | Introduction and first reading Referred to State and Local Government |

A bill for an act

relating to local government; establishing procedures and standards for contracting with private entities for the provision of services provided by public employees; providing for public accountability; proposing coding for new law in Minnesota Statutes, chapter 471.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[471.706] PRIVATIZATION OF PUBLIC SERVICES.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given them in this subdivision.

(b) "Municipality" has the meaning given in section 471.345, subdivision 1.

(c) "Employee of a private contractor" includes an employee of a subcontractor or independent contractor that provides supplies or services to a private contractor, as well as a former employee of a private contractor or subcontractor and a former independent contractor.

(d) "Privatization contract" means an enforceable agreement or combination or series of enforceable agreements in which a private contractor agrees with a municipality to provide services that are substantially similar to and in place of services previously provided by public employees of the municipality or, in the case of new services, services that could be provided by public employees of the municipality.

(e) "Public employee" has the meaning given in section 179A.03, subdivision 14, except that for purposes of this section, "public employer" means municipality as defined in paragraph (b).

(f) "Services" means all aspects of services provided by a private contractor to a municipality or by a subcontractor to a private contractor to implement a privatization contract.

2.1 (g) "Subcontractor" means a subcontractor of a private contractor for work under a
2.2 privatization contract or an amendment to a privatization contract.

2.3 Subd. 2. **Application.** (a) This section applies to privatization contracts in an
2.4 amount of \$25,000 or more.

2.5 (b) This section does not apply to:

2.6 (1) temporary contracts and nonrecurring contracts that do not result in displacement
2.7 of public employees; or

2.8 (2) contracts for services previously performed by supervisory employees,
2.9 professional employees, or confidential employees, as defined in section 179A.03.

2.10 Subd. 3. **Municipality's determination to privatize; procedure.** (a) A
2.11 municipality considering whether to enter into a privatization contract for a service
2.12 shall prepare a comprehensive written description of the services to be privatized. The
2.13 description must indicate whether the same or substantially similar services are being
2.14 provided by public employees. In the case of proposed new services, the description
2.15 must include the municipality's reasons for determining that those services could not or
2.16 should not be provided by current or additional public employees. The description must
2.17 include an estimate of the cost of having the service provided in the most cost-effective
2.18 manner by municipal employees. The cost estimate must include all direct costs of having
2.19 municipal employees provide the service, including the cost of pension, insurance, and
2.20 other employee benefits. The estimate is nonpublic data as defined in section 13.02,
2.21 subdivision 9, until the day after the deadline for receipt of responses under subdivision
2.22 4, when it becomes public data.

2.23 (b) The municipality must notify any exclusive representative or representatives of
2.24 employees that would be affected by a proposed privatization contract of its intention
2.25 to enter into a privatization contract, and must provide the exclusive representative or
2.26 representatives with a copy of the description prepared under this subdivision. For the
2.27 purpose of the municipality's cost estimate under paragraph (a), an exclusive representative
2.28 of municipal employees may propose amendments to any relevant collective bargaining
2.29 agreement to which it is a party at any time before the final day for the receipt of responses
2.30 under subdivision 4. Amendments take effect if they are subsequently approved by both
2.31 parties to the collective bargaining agreement and if they are necessary to reduce the cost
2.32 estimate determined under this subdivision below the cost of providing the service under
2.33 a privatization contract.

2.34 (c) The municipality's solicitation of services under a proposed privatization contract
2.35 must be based on the written description. The municipality's solicitation of proposals shall
2.36 follow the procedures required for contracts in section 471.345.

3.1 Subd. 4. **Private contractor's proposal requirements.** The municipality's
3.2 solicitation of services under a proposed privatization contract must require a responder to
3.3 disclose:

3.4 (1) the length of continuous employment of the responder's current employees by
3.5 job classification without identifying employees by name and, at the responder's option,
3.6 any relevant prior experience of those employees;

3.7 (2) if the proposed services are to be performed by new employees, the minimum
3.8 requirements the responder will impose on job applicants;

3.9 (3) the responder's current annual rate of employee turnover;

3.10 (4) the number of hours, if any, planned for each employee relating to duties to be
3.11 performed by the employee in providing services under the proposed privatization contract;

3.12 (5) any complaints issued by a federal, state, or local enforcement agency relating to
3.13 alleged violations of relevant laws or rules, including those relating to employee safety
3.14 and health and labor relations, along with any court decisions, administrative findings,
3.15 or penalties for violations of those laws and rules, listing the date, the court or agency,
3.16 and the law or rule found to be violated;

3.17 (6) any collective bargaining agreements or personnel policies covering the
3.18 employees to perform services under the proposed privatization contract; and

3.19 (7) any political contribution made by the responder or managerial employee of the
3.20 responder, during the four years immediately preceding the due date of the response, to an
3.21 elected official or candidate for elected office of that municipality.

3.22 If the responder is a subsidiary of a parent entity, the disclosures made in response to
3.23 clauses (5), (6), and (7) must cover the parent entity as well as the responder itself.

3.24 Subd. 5. **Municipality's analysis of proposals.** In determining which private
3.25 contractor to award the privatization contract to, the municipality shall consider each
3.26 responder's past performance and record of compliance with federal and state laws and
3.27 local ordinances. The municipality shall prepare a comprehensive written estimate of the
3.28 cost of each proposal based on the responder's bid, including the cost of a transition from
3.29 public to private provision of the service, any additional unemployment and retirement
3.30 benefits resulting from the transfer, and costs associated with monitoring the proposed
3.31 contract. If a responder proposes to perform any or all of the desired services outside the
3.32 state, the commissioner of revenue shall assist the municipality in determining, as nearly
3.33 as possible, any loss of sales and income tax revenue to the state. The municipality shall
3.34 include that amount in the cost estimate prepared under this subdivision.

3.35 Subd. 6. **Municipality's certification.** Before awarding a privatization contract, a
3.36 municipality shall adopt the following findings:

- 4.1 (1) the municipality has complied with this section and other applicable law;
4.2 (2) the quality of the services to be provided by the designated responder is likely to
4.3 equal or exceed the quality of services that could be provided by municipal employees;
4.4 (3) the cost of the proposed contract, including all costs identified under subdivision
4.5 5, will be at least 15 percent lower than the cost determined under subdivision 3, taking
4.6 into account any amendments to a collective bargaining agreement proposed by an
4.7 exclusive representative; and
4.8 (4) the proposed privatization contract is in the public interest.

4.9 Subd. 7. **Private contract term.** The term of a privatization contract, including
4.10 any extensions resulting from amendments or change orders, must not exceed two years.
4.11 An amendment or change order is not valid if it has the purpose or effect of avoiding
4.12 any requirement of this section.

4.13 Subd. 8. **Wage rates.** The minimum wage rate for employees of a private contractor
4.14 providing service for a municipality is the average wage rate for the classification of
4.15 municipal employees whose duties are most similar, plus the value of health and other
4.16 benefits provided to the public employees in that classification.

4.17 Subd. 9. **Affirmative action standards; no displacement.** A privatization contract
4.18 must impose affirmative action standards on the private contractor and any subcontractors
4.19 that are at least as stringent as those applying to the contracting municipality. No
4.20 privatization contract may cause the municipality to fail to meet its affirmative action
4.21 standards or cause the displacement of municipal employees. For purposes of this
4.22 subdivision, "displacement" means a layoff, demotion, involuntary transfer to a new
4.23 classification or title, involuntary transfer or reassignment to a new location requiring a
4.24 change in residence, or reduction in hours of work, wages, or benefits.

4.25 Subd. 10. **Use of public money.** A private contractor may not use public money
4.26 paid to it under a privatization contract to:

- 4.27 (1) support or oppose the organization of its employees by an exclusive representative;
4.28 (2) assist a subcontractor to support or oppose the organization of its employees;
4.29 (3) facilitate or deter the ability of an exclusive representative of its employees to
4.30 carry out the exclusive representative's responsibilities; or
4.31 (4) assist a subcontractor to facilitate or deter the lawful activities of an exclusive
4.32 representative of its employees.

4.33 Subd. 11. **Data practices.** A privatization contract must comply with section
4.34 13.05, subdivision 11. All data relating to a privatization contract are public data. If the
4.35 contracting municipality is a metropolitan agency, it shall submit copies of all public data
4.36 associated with the privatization contract to the legislative auditor. All other contracting

- 5.1 municipalities shall submit copies of all public data associated with the privatization
- 5.2 contract to the state auditor.