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SENATE BILL DRS45433-MDz-114* (01/11)

Short Title: Enhance Oversight of Service Contracts/PED. (Public)

Sponsors: Senators Randleman, Hartsell, and Krawiec (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENHANCE OVERSIGHT OF STATE SERVICE CONTRACTS, AS
3 RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION
4 OVERSIGHT COMMITTEE.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by adding a
7 new section to read:

8 "**§ 143-50.2. Oversight of certain service contracts.**

9 (a) Creation of Business Case Justification Template. – The Secretary of the Department
10 of Administration, in consultation with the Office of State Budget and Management, shall develop
11 a business case justification template to be used by State agencies to document the business case
12 for changing the provider of one or more agency services. The template shall provide for inclusion
13 of at least all of the following:

- 14 (1) A detailed description of the manner in which the service is currently provided.
15 (2) The unit and total cost of performing the service during the most recently
16 completed fiscal year.
17 (3) A description of the metrics to be used to evaluate the service, the current level
18 of performance for each metric, and the expected level of performance for each
19 metric once the change has been made.
20 (4) Identification of resources required to effectively procure the service, if
21 applicable.
22 (5) An assessment of the availability of private providers who could provide the
23 service.
24 (6) Justification for a waiver from competitive bidding requirements, if applicable.
25 (7) Justification for use of multiple private providers to perform the service, if
26 applicable.
27 (8) Information security requirements that a private provider would need to satisfy,
28 if applicable.
29 (9) Identification of roles, organizational placement, responsibilities, and
30 qualifications of key project team members, including demonstrated
31 competency incorporating government-vendor partnerships into the
32 procurement process, if applicable.
33 (10) Identification of funding requirements and funding sources for the proposed
34 contract period, if applicable.
35 (11) A description of the transition process for changing the provider of the service.



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1 (b) Documentation and Approval of Provider Changes Required. – Notwithstanding any
2 other provision of law, a State agency shall not change the provider of an agency service until it
3 has done all of the following, regardless of whether the new provider of that service will be the
4 State agency itself or a private provider:

5 (1) Documented the business case for making the change on the business case
6 justification template developed pursuant to subsection (a) of this section.

7 (2) Obtained written approvals from all of the following, as applicable, upon a
8 determination that there is an adequate business case for making the change:

9 a. If the total cost of providing the service is five million dollars
10 (\$5,000,000) or less, the State Purchasing Officer. The State Purchasing
11 Officer may delegate the authority to make approvals pursuant to this
12 sub-subdivision to the head of a State agency if the State Purchasing
13 Officer determines that at least all of the following conditions are
14 satisfied:

15 1. The State agency's procurement staff have demonstrated
16 competency with respect to the skills necessary to effectively
17 utilize government-vendor partnerships to achieve best value.

18 2. The results of recent Division of Purchase and Contract
19 compliance reviews of the agency's procurement processes have
20 been satisfactory.

21 b. If the total cost of providing the service exceeds five million dollars
22 (\$5,000,000):

23 1. The State Purchasing Officer.

24 2. The Office of State Budget and Management.

25 (3) Consulted with the Joint Legislative Commission on Governmental Operations
26 about the change. The requirement to consult shall be deemed satisfied if the
27 Commission does not have a meeting at which the matter is heard within 15
28 days of receiving the required submission, unless the chairs of the Commission
29 notify the agency during that period that they need additional time to review the
30 change, in which case G.S. 12-3(15)b. shall govern when the requirement to
31 consult shall be deemed to have been satisfied.

32 (c) Exceptions. – Subsection (b) of this section shall not apply if any of the following
33 conditions are satisfied:

34 (1) The proposed new provider of the agency service is a county, municipality, or
35 some other governmental entity other than the State agency required or
36 authorized to provide the service.

37 (2) The total cost of providing the agency service does not exceed one million
38 dollars (\$1,000,000).

39 (3) The procurement of a contract to obtain the service would not be subject to the
40 Secretary of Administration's authority under G.S. 143-49(3) to purchase or
41 contract for services.

42 (d) Definitions. – The following definitions apply in this section:

43 (1) Agency service. – A service that a State agency is required or authorized to
44 provide.

45 (2) Service contract. – A contract between a State agency and a private provider
46 that is a new contract for one or more agency services, is for the renewal of an
47 existing contract for one or more agency services, or is an extension of an
48 existing contract for one or more agency services.

49 (3) Private provider. – A non-State entity other than a county, municipality, or
50 other governmental entity.

1 (4) Total cost. – If the proposed service provider is a private provider, the total
2 amount of revenue that a service provider or combination of service providers
3 would be estimated to receive during the first three years of providing the
4 agency service. Otherwise, the total amount of funds that the State agency
5 would be estimated to expend providing the agency service during the first
6 three years of providing the service."

7 **SECTION 2.(a)** The Office of State Budget and Management shall develop and
8 implement a plan to determine whether services provided by State agencies could be more
9 effectively provided by private providers, as that term is defined in G.S. 143-50.2(d)(3), as enacted
10 by Section 1 of this act. No later than December 1, 2016, the Office of State Budget and
11 Management shall report the plan to the Joint Legislative Commission on Governmental
12 Operations and to the Fiscal Research Division of the General Assembly. The plan developed
13 pursuant to this section shall do all of the following:

- 14 (1) Provide for an examination of each service provided by each State agency.
- 15 (2) Include an examination of methods for providing each service through contracts
16 with non-State entities.
- 17 (3) Include an analysis of the costs and benefits to the State of providing each
18 service through contracts with non-State entities.

19 **SECTION 2.(b)** Each State agency shall fully cooperate with the Office of State
20 Budget and Management in the development and implementation of the plan required by
21 subsection (a) of this section.

22 **SECTION 3.(a)** Article 3 of Chapter 143 of the General Statutes is amended by
23 adding a new section to read:

24 **"§ 143-50.3. Contract management system.**

25 (a) Operation of Contract Management System. – The State Purchasing Officer shall
26 operate a contract management system and require each State agency to use the system to manage
27 all service contracts entered by the agency. The system developed pursuant to this subsection shall
28 include the capacity to ensure at least all of the following:

- 29 (1) That payments are made in accordance with the applicable contract terms and
30 conditions.
- 31 (2) That key documents related to contracts can be stored, searched, and retrieved
32 from the system by appropriate personnel.
- 33 (3) That customizable management reports can be generated by State agencies that
34 are parties to contracts or that have contract oversight responsibilities.

35 (b) Reporting. – No later than December 1 of each year, the State Purchasing Officer shall
36 report to the Joint Legislative Commission on Governmental Operations and to the Fiscal
37 Research Division of the General Assembly on service contracts entered into by State agencies.
38 Each report shall include the following information about each service contract entered into
39 between State agencies and non-State entities during the previous fiscal year:

- 40 (1) The description, value, and procurement method of the contract.
- 41 (2) The amount of payments made under the contract during the previous fiscal
42 year.
- 43 (3) The total amount of payments made under the contract.
- 44 (4) A description of the business case for entering the contract as submitted to the
45 Department of Administration and the date on which the business case was
46 submitted and approved in accordance with G.S. 143-50.2(b).
- 47 (5) The results of any reviews of the State agency's procurement processes
48 conducted by the contract management system.

49 (c) For purposes of this section, the term "service contract" shall have the same meaning as
50 in G.S. 143-50.2(d)."

1 **SECTION 3.(b)** Notwithstanding G.S. 143-50.3(a), as enacted by subsection (a) of
2 this section, a State agency shall not be required to use the contract management system
3 established pursuant to that section until the agency is notified by the Division of Purchase and
4 Contract of the Department of Administration that the system is operational. The Division shall
5 notify each State agency within 30 days of the contract management system becoming operational.

6 **SECTION 4.** G.S. 143-48.3 is amended by adding a new subsection to read:

7 "(g) The requirements of this section shall be construed consistently with G.S. 143-50.3."

8 **SECTION 5.** G.S. 143-50.1(e) reads as rewritten:

9 "(e) ~~The~~ Consistently with the requirements of G.S. 143-50.3, the Department of
10 Administration shall adopt procedures for the record keeping of the information provided by State
11 agencies and that has been received by the Secretary or the Secretary's designee pursuant to
12 G.S. 114-8.3(c). The Department shall keep the records, and shall include a log with information
13 that provides identification of individual contracts and where the contract documents are located.
14 The Secretary is authorized to require that entities reporting pursuant to G.S. 114-8.39(c) provide
15 additional information that may be required to identify the individual contracts."

16 **SECTION 6.** Section 1 of this act becomes effective October 1, 2016. The remainder
17 of this act is effective when it becomes law.