

HOUSE BILL 2197

By Turner M

AN ACT to amend Tennessee Code Annotated, Title 3;  
Title 4; Title 10 and Title 12, relative to state  
contracts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 12-3-101, is amended by designating the existing language as subsection (a) and by adding the following language:

(b) The central procurement office shall establish and maintain an online database that is accessible, searchable, sortable and downloadable which shall include the following:

- (1) Description of any contract and services being purchased in the state;
- (2) Name of the agency, department, or division contracting for the services;
- (3) Name of the contractor, and any and all subcontractors;
- (4) Effective and expiration dates of the contract;
- (5) Annual amount paid to the contractor in the past fiscal years, and the current fiscal year under the contract by funding source;
- (6) Annual amount proposed to be paid to the contractor in the fiscal years beyond the approved budget;
- (7) Total projected cost of the contract for all fiscal years by funding source; and
- (8) A list of private contractor employees for each contract, reflected as full time equivalent positions, the hourly wage rate of the employees, and the

number of private contractor employees and consultants for the current and previous fiscal years.

(c) The information compiled in accordance with this section shall be reflected in an annual service contractor expenditure budget accompanying the governor's budget, detailing the total spending on total service contracts for the state.

SECTION 2. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by adding the following language as a new, appropriately designated section:

(a) Each service contract in excess of twenty-five thousand dollars (\$25,000) between a public agency and a person or company for the performance of a governmental function shall:

(1) Provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function; and

(2) Indicate that such records and files are subject to the public records laws, compiled in title 10, chapter 7, and may be disclosed by the public agency.

(b) Any contractor doing business with an agency or department shall:

(1) Keep and maintain the public records that ordinarily and necessarily would be kept and maintained by the agency in order to perform the service or activity;

(2) Provide the agency with access to such public records on the same terms and conditions that the agency would provide the records and at a cost that does not exceed costs as defined in the public records laws, compiled in title 10, chapter 7, or as otherwise provided by law; and

(3) Abide by the open meetings provisions of title 8, chapter 44 ensuring that any and all meetings between the private contractor and officials acting on behalf of the jurisdiction are open to the public.

SECTION 3. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by adding the following language as a new, appropriately designated section:

(a) Before a contract is finalized, the contracting agency shall prepare a request to the governing body of the agency for an appropriation and any authority that is necessary for the contracting agency to hire personnel and obtain resources necessary to oversee and monitor performance of service contracts and enforce other conditions required by law. No procurement shall proceed unless the necessary appropriation and authority have been granted.

(b) If the contracting agency procures services, the contracting agency shall:

(1) Keep a record of the cost analysis and findings that the contracting agency makes for each procurement the agency conducts, along with the basis for the decision to proceed with the procurement;

(2) Properly ensure that the contractor is providing services as required by the contract within the costs as established by the contract;

(3) Enforce performance standards established by the contract;

(4) Collect and provide copies of the records required by law; and

(5) Ensure that any all aspects of the contract are properly enforced.

SECTION 4. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by adding the following language as a new, appropriately designated section:

(a) Any service contract shall incorporate specific performance criteria and cost parameters, and the contractor shall submit quarterly reports to the central procurement office on the contractor's compliance with the performance criteria and actual costs incurred. The service contract may be canceled if the contractor fails to comply with the performance criteria and other requirements set out in the contract and if annual costs exceed those established by the contract. The contract may be cancelled at any time if the contractor fails to comply with all applicable local, state and federal laws, regulations and statutes.

(b) No agency may enter into a contract that guarantees payment for services not provided. Service or asset contracts shall not unduly restrict the government from taking actions in the public interest and shall not unfairly place the burden of risk on taxpayers. For example, for purposes of this section:

(1) Contracts shall not provide for guaranteed occupancy rates for private prisons, dormitories, and any other contracted facility;

(2) No contract shall prohibit a government entity from maintaining, improving, or building public infrastructure;

(3) No contract shall penalize a jurisdiction if a contractor loses revenue as a result of natural or man-made emergencies such as acts of terrorism, or acts of God;

(4) Any increases in fees or charges for public services shall be submitted to the governing body of the respective local jurisdiction for approval; and

(5) The decision to approve or disallow increases shall be made in a public manner, subject to the requirements of the open meetings laws compiled in title 10, chapter 7.

SECTION 5. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by adding the following language as a new, appropriately designated section:

(a) Any private entity that has a contract with the state can have no adjudicated record of substantial or repeated willful noncompliance with any relevant federal, state or local statute or regulation, including payment of taxes or other payments owed to a public entity. Prior to awarding a contract, bidders shall submit documentation to the central procurement office, signed by the bidder under penalty of perjury, attesting to compliance with all applicable local, state and federal laws, including health and safety,

labor and employment, and licensing laws, that affect the employees, worksite or performance of the contract. All bidders and contractors shall complete a pledge of compliance provided by the central procurement office attesting under penalty of perjury to comply with all applicable laws, regulations and statutes.

(b) Prior to entering into a private service contract, the central procurement office shall make public a cost comparison. No agency may enter a service contract, unless the proposed contract is projected to result in overall cost savings to the state of at least ten percent (10%) less than the projected cost of having the services provided by public employees. Contract costs shall include direct costs, including salaries and fringe benefits, indirect overhead costs, including the contractor's proportional share of existing administrative salaries and benefits, rent and equipment costs, utilities, and materials. Additionally, transition costs, including unemployment compensation, shall be included in the analysis of contractor costs.

(c) Projected cost savings shall not derive from a bidder's failure to provide health and retirement benefits and adequate wages to its employees. Contractors shall pay wages comparable to wages for public employees performing similar work or the average private sector wage, whichever is less. In addition, contractors shall pay no less than the current percentage for health benefits comparable to those offered current public employees, or a wage differential sufficient to cover the cost of the health benefits. The wages and benefits shall be included in any bid and actual wages and benefits shall be reported to the contracting agency on a quarterly basis. This information shall be public record, and itemized per employee of the contractor.

SECTION 6. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by adding the following language as a new, appropriately designated section:

(a) Prior to entering into a private contract for public services, the central procurement office shall produce a thorough analysis of the possible impacts of the private contract. The analysis shall include, but is not limited to, the following:

- (1) Possible loss of employment or income in a local area;
- (2) Impacts on social services in the local area;
- (3) Impacts on public assistance programs;
- (4) Economic impact on local businesses;
- (5) Any possible loss or increase in tax revenue for the local area; and
- (6) Any environmental impacts that may result from the private contract, including any upgrades or possible degradation.

(b) The findings of the central procurement office shall be made public and posted on the state procurement office's web site. The central procurement office shall conduct public meetings in order for all citizens to have an opportunity to address concerns and obtain information.

SECTION 7. Tennessee Code Annotated, Title 12, Chapter 4, Part 8, is amended by adding the following language as a new, appropriately designated section:

No contract shall be automatically renewed without utilizing the competitive bidding process. Any in-house bids submitted shall be considered. If an in-house bid or proposal meets the cost and performance criteria specified in the law or the request for proposal, it shall be deemed the most qualified bid.

SECTION 8. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by adding the following language as a new, appropriately designated section:

Prior to outsourcing any work to a foreign jurisdiction outside of the United States, both the in-house and proposed contractors' costs, and scope of work, shall be estimated by the central procurement office and provided to affected bargaining

representatives, along with all source information on all cost estimates. The bargaining representative shall be provided a full and fair opportunity to present its own cost estimates and recommendations for the new work processes. This estimate and recommendations shall be given full consideration.

SECTION 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 10. This act shall take effect July 1, 2014, the public welfare requiring it, and shall apply to all public contracts entered into or renewed on or after July 1, 2014.