

3507

2009-2010 Regular Sessions

I N S E N A T E

March 20, 2009

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, in relation to service contracts entered into by a regulated electric and gas utility

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings and intent. The employees of New York
2 state's electric and gas utilities provide a wide variety of essential
3 services that enhance the quality of life for the people of this state.
4 It is the public policy of this state, expressed in the public service
5 law, that these services be provided in the most reliable, cost effi-
6 cient, and effective manner, with the highest possible standards and the
7 least threat of corruption. This can best be achieved through the
8 employment of regulated utility employees who have a record of success-
9 ful, high quality, professional maintenance, clerical, and other techni-
10 cal work. Therefore, it is the intent of this legislature that profes-
11 sional, maintenance, clerical, and technical duties be performed by
12 employees of a regulated utility unless, due to special and particular
13 circumstances, they must be performed by a private contractor or unless
14 such duties have customarily and historically been performed by such
15 contractors.

16 S 2. Article 9 and sections 150, 151, 152, 153 and 154 of the public
17 service law, article 9 and sections 151, 152 and 154, as renumbered by
18 chapter 792 of the laws of 1930, are renumbered article 10 and sections
19 155 to 159, respectively, and a new article 9 is added to read as
20 follows:

21 ARTICLE 9

22 SUBCONTRACTING

23 SECTION 150. CONTRACTS FOR PROFESSIONAL, MAINTENANCE, CLERICAL, OR TECH-
24 NICAL SERVICES.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 S 150. CONTRACTS FOR PROFESSIONAL, MAINTENANCE, CLERICAL, OR TECHNICAL
2 SERVICES. 1. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS HAVE THE
3 FOLLOWING MEANINGS, UNLESS OTHERWISE SPECIFIED:

4 (A) "UTILITY" MEANS AN ELECTRIC CORPORATION, A GAS CORPORATION, OR AN
5 ELECTRIC AND GAS CORPORATION AS DEFINED IN SECTION TWO OF THIS CHAPTER.

6 (B) "CONTRACT" MEANS AN ENFORCEABLE AGREEMENT, ENTERED INTO BY A
7 CONTRACTOR AND THE UTILITY, WHICH EXCEEDS TWO HUNDRED FIFTY THOUSAND
8 DOLLARS. A SINGLE CONTRACT WHICH IS DIVIDED INTO SEPARATE CONTRACTS
9 SOLELY TO AVOID THE APPLICATION OF THIS ARTICLE SHALL BE DEEMED A SINGLE
10 CONTRACT FOR PURPOSES OF THIS ARTICLE.

11 (C) "CONTRACTOR" MEANS ANY PERSON, PARTNERSHIP, FIRM, CORPORATION,
12 ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY RENDERING OR
13 PROVIDING PROFESSIONAL, MAINTENANCE, CLERICAL, OR TECHNICAL SERVICES
14 PURSUANT TO A CONTRACT WITH THE UTILITY.

15 (D) "SERVICES" MEANS ANY PROFESSIONAL, MAINTENANCE, CLERICAL, OR TECH-
16 NICAL SERVICES CURRENTLY PERFORMED BY MEMBERS OF THE PROFESSIONAL, MAIN-
17 TENANCE, CLERICAL, AND TECHNICAL BARGAINING UNIT OF THE UTILITY OR WHICH
18 COME WITHIN THE SCOPE OF THE PROFESSIONAL PRACTICE OF THE MEMBERS OF
19 SUCH BARGAINING UNIT.

20 (E) "CHANGE ORDER" MEANS A WRITTEN ORDER BY A UTILITY DIRECTING THE
21 CONTRACTOR TO MAKE CHANGES IN A CONTRACT.

22 (F) "CONTRACT MODIFICATION" MEANS ANY WRITTEN ALTERATION TO SPECIFICA-
23 TIONS, DELIVERY POINT, RATE OF DELIVERY, PERIOD OF PERFORMANCE, PRICE,
24 QUALITY, OR OTHER PROVISIONS OF ANY CONTRACT ACCOMPLISHED BY MUTUAL
25 ACTION OF THE PARTIES TO THE CONTRACT.

26 2. GUIDELINES FOR CONTRACTING FOR SERVICES. NO CONTRACT WITH A
27 CONTRACTOR FOR SERVICES SHALL BE ENTERED INTO BY A UTILITY UNLESS
28 CONTRACTING FOR SUCH SERVICES IS:

29 (A) COST EFFECTIVE WHEN COMPARED TO THE COST OF HAVING A UTILITY
30 PERFORM THE WORK; OR

31 (B) REQUIRED FOR A SHORT DURATION, MAKING IT IMPRACTICAL TO HIRE
32 BARGAINING UNIT EMPLOYEES TO PERFORM THE SERVICE; OR

33 (C) REQUIRED FOR SPECIAL EXPERTISE NOT CURRENTLY AVAILABLE IN THE
34 BARGAINING UNIT; OR

35 (D) REQUIRED DUE TO AN URGENT NEED SUCH THAT THE DELAY IN HIRING
36 EMPLOYEES WOULD FRUSTRATE THE PUBLIC INTEREST; OR

37 (E) REQUIRED TO AVOID A CONFLICT OF INTEREST; OR

38 (F) OTHERWISE REQUIRED TO BE SO CONTRACTED; OR

39 (G) IN COMPLIANCE WITH THE UTILITY'S AFFIRMATIVE ACTION EFFORTS AND
40 WILL NOT CAUSE THE UTILITY TO FAIL TO MEET ITS AFFIRMATIVE ACTION GOALS.
41 A CONTRACTOR MUST ALSO MEET OR EXCEED THE UTILITY'S GOALS FOR AFFIRMA-
42 TIVE ACTION; OR

43 (H) IN COMPLIANCE WITH THE REQUIREMENTS OF APPLICABLE STATE, LOCAL,
44 AND FEDERAL LAW.

45 3. IN DETERMINING IF A CONTRACT IS COST EFFECTIVE, THE UTILITY SHALL
46 PERFORM A COST BENEFIT ANALYSIS WHICH SHALL EVALUATE, BUT NOT BE LIMITED
47 TO, THE FOLLOWING FACTORS:

48 (A) REIMBURSEMENT FROM OTHER SOURCES;

49 (B) BOTH THE DIRECT AND INDIRECT COSTS OF PERFORMING THE WORK;

50 (C) WHETHER OR NOT THE CONTRACTOR PROVIDES WAGES AND SUPPLEMENTS TO
51 ITS EMPLOYEES WHICH ARE COMPARABLE TO THOSE PAID TO SIMILAR EMPLOYEES
52 PERFORMING SIMILAR WORK IN THE GEOGRAPHIC AREA WHERE THE WORK IS TO BE
53 PROVIDED. A CONTRACT MAY NOT BE CONSIDERED COST EFFECTIVE IF SUCH WAGES
54 AND SUPPLEMENTS ARE SUBSTANTIALLY BELOW THOSE CUSTOMARILY PAID IN THE
55 AREA;

56 (D) THE QUALITY OF SERVICE BEING PROVIDED.

1 4. REVIEW OF CONTRACTS FOR SERVICES. (A) PRIOR TO EXECUTING A CONTRACT
2 FOR SERVICES, A UTILITY SHALL PREPARE A SPECIFIC STATEMENT WHICH SETS
3 FORTH THE OBJECTIVE DATA SUPPORTING THE REASONS WHY THE PROPOSED
4 CONTRACT MEETS THE REQUIREMENTS SET FORTH IN SUBDIVISION TWO OF THIS
5 SECTION.

6 (B) (1) PRIOR TO THE SCHEDULED AWARD OF A CONTRACT FOR SERVICES, A
7 UTILITY SHALL PROVIDE TO THE EMPLOYEE ORGANIZATION THAT REPRESENTS UTIL-
8 ITY EMPLOYEES WHO WOULD OTHERWISE PERFORM SUCH SERVICES WITH COPIES OF
9 THE STATEMENT RENDERED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION AND
10 THE PROPOSED CONTRACT SO THAT SUCH EMPLOYEE ORGANIZATION SHALL HAVE AT
11 LEAST FIFTEEN DAYS TO OBJECT TO THE PROPOSED CONTRACT. AN EMPLOYEE
12 ORGANIZATION WHICH PROVIDES TIMELY WRITTEN NOTICE OF OBJECTION AND THE
13 REASONS THEREFOR SHALL, UNLESS THE UTILITY AGREES IN WRITING TO WITHDRAW
14 THE PROPOSED CONTRACT, BE PERMITTED TO BE HEARD BY THE COMMISSION ON ITS
15 OBJECTIONS PRIOR TO THE AWARD OF THE CONTRACT. WITHIN FIFTEEN DAYS OF
16 RECEIPT OF ANY SUCH OBJECTIONS, THE COMMISSION, AFTER CONSIDERING THE
17 OBJECTIONS OF THE EMPLOYEE ORGANIZATION, SHALL NOTIFY THE EMPLOYEE
18 ORGANIZATION WHETHER THE UTILITY WILL WITHDRAW THE PROPOSED CONTRACT OR
19 ENTER INTO THE CONTRACT. IF THE UTILITY DECIDES TO ENTER INTO THE
20 CONTRACT, AND THE EMPLOYEE ORGANIZATION STILL BELIEVES THAT THE CONTRACT
21 IS IN VIOLATION OF THE GUIDELINES IN SUBDIVISION TWO OF THIS SECTION,
22 THE EMPLOYEE ORGANIZATION MAY FORWARD ITS COMPLAINT TO THE COMMISSION
23 WITHIN FIVE DAYS OF RECEIPT OF THE COMMISSION'S NOTIFICATION. BEFORE
24 APPROVING SUCH CONTRACT, THE COMMISSION SHALL CONSIDER THE EMPLOYEE
25 ORGANIZATION'S COMPLAINT, AND SHALL NOT APPROVE SUCH CONTRACT IF IT
26 BELIEVES SUCH COMPLAINT IS VALID. THE COMMISSION SHALL NOTIFY THE
27 EMPLOYEE ORGANIZATION OF ITS DECISION TO EITHER APPROVE OR DISAPPROVE
28 THE CONTRACT. IF THE COMMISSION APPROVES THE CONTRACT, THE EMPLOYEE
29 ORGANIZATION, IF IT HAS COMPLIED WITH THE PROVISIONS OF THIS SECTION,
30 SHALL HAVE THE RIGHT TO BRING A PROCEEDING PURSUANT TO ARTICLE SEVENTY-
31 EIGHT OF THE CIVIL PRACTICE LAW AND RULES TO DETERMINE WHETHER THE
32 APPROVAL WAS IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. IN
33 CARRYING OUT ITS DUTIES UNDER THIS SECTION, THE COMMISSION SHALL FORM AN
34 ADVISORY BOARD, WHICH SHALL CONSIST OF REPRESENTATIVES OF THE STATE
35 GOVERNMENT, EMPLOYEE ORGANIZATIONS, AND THE PUBLIC.

36 (2) NOTWITHSTANDING THE PROVISIONS CONTAINED WITHIN SUBPARAGRAPH ONE
37 OF THIS PARAGRAPH, THE EMPLOYEE ORGANIZATION MAY BE PROVIDED LESS THAN
38 THE REQUIRED FIFTEEN DAYS TO OBJECT TO THE PROPOSED CONTRACT WHEN THE
39 CONTRACT IS REQUIRED TO RESPOND TO AN EMERGENCY AS DEFINED IN PARAGRAPH
40 (D) OF SUBDIVISION TWO OF THIS SECTION.

41 5. CHANGE ORDERS AND CONTRACT MODIFICATIONS. IF A UTILITY INTENDS TO
42 CHANGE, BY USE OF A CHANGE ORDER OR CONTRACT MODIFICATION, A CONTRACT
43 FOR SERVICES, AND SUCH CHANGE RESULTS IN CAUSING THE AMOUNT OF THE
44 CONTRACT TO EXCEED ONE HUNDRED TWENTY-FIVE PERCENT OF THE ORIGINAL
45 CONTRACT AMOUNT, THEN APPROVAL OF SUCH CHANGES SHALL BE SUBJECT TO THE
46 PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION.

47 S 3. This act shall take effect on the first of April next succeeding
48 the date on which it shall have become a law.