

2499--A

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I N A S S E M B L Y

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Introduced by M. of A. BRONSON, LUPARDO, COLTON, ORTIZ, FAHY, WOERNER -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Ways and Means -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the state finance law, in relation to the cost effectiveness of consultant contracts by state agencies

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

1 Section 1. Legislative intent. The legislature hereby finds and
2 declares that it is in the public interest to enact a cost benefit
3 review process when a state agency enters into contracts for personal
4 services. New York State spends over \$3.5 billion annually on personal
5 service contracts, over \$840 million more than the State spent on these
6 contracts in SFY 2003-04, a 32% increase. Despite an Executive Order
7 that has implemented a post contract review process for some personal
8 service contracts the cost of those contracts continues to escalate
9 every year well above the inflation rate. In addition the State Finance
10 Law does not require state agencies to compare the cost or quality of
11 personal services to be provided by consultants with the cost or quality
12 of providing the same services by the state employees. Numerous audits
13 by the Office of State Comptroller as well as a KPMG study commissioned
14 by the department of transportation have found that consultants hired
15 under personal service contracts can cost between fifty percent and
16 seventy-five percent more than state employees that do the exact same
17 work including the cost of state employee benefits. The Contract Disclo-
18 sure Law (Chapter 10 of the laws of 2006) required consultants who
19 provide personal services to file forms for each contract that outline
20 how many consultants they hired, what titles they employed them in and

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

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1 how much they paid them. A review of these forms show that the average
2 consultant makes about fifty percent more than state employees doing
3 comparable work. It is in the public interest for state agencies to
4 compare the cost of doing work by consultants with the cost of doing the
5 same work with state employees as well as document whether or not that
6 such work can be done by state employees. If state government is to be
7 smarter, more efficient, and transparent then a cost benefit analysis
8 process that makes its findings public should be required by law.

9 S 2. Section 163 of the state finance law is amended by adding a new
10 subdivision 16 to read as follows:

11 16. CONSULTANT SERVICES. A. BEFORE A STATE AGENCY ENTERS INTO A
12 CONTRACT FOR CONSULTANT SERVICES WHICH IS ANTICIPATED TO COST MORE THAN
13 SEVEN HUNDRED FIFTY THOUSAND DOLLARS IN A TWELVE MONTH PERIOD THE STATE
14 AGENCY SHALL CONDUCT A COST COMPARISON REVIEW TO DETERMINE WHETHER THE
15 SERVICES TO BE PROVIDED BY THE CONSULTANT CAN BE PERFORMED AT EQUAL OR
16 LOWER COST BY UTILIZING STATE EMPLOYEES, UNLESS THE CONTRACT MEETS ONE
17 OF THE EXCEPTIONS SET FORTH IN PARAGRAPH G OF THIS SUBDIVISION. AS USED
18 IN THIS SECTION, THE TERM "CONSULTANT SERVICES" SHALL MEAN ANY CONTRACT
19 ENTERED INTO BY A STATE AGENCY FOR ANALYSIS, EVALUATION, RESEARCH,
20 TRAINING, DATA PROCESSING, COMPUTER PROGRAMMING, THE DESIGN, DEVELOPMENT
21 AND IMPLEMENTATION OF TECHNOLOGY, COMMUNICATIONS OR TELECOMMUNICATIONS
22 SYSTEMS OR THE INFRASTRUCTURE PERTAINING THERETO, INCLUDING HARDWARE AND
23 SOFTWARE, ENGINEERING INCLUDING INSPECTION AND PROFESSIONAL DESIGN
24 SERVICES, HEALTH SERVICES, MENTAL HEALTH SERVICES, ACCOUNTING, AUDITING,
25 OR SIMILAR SERVICES AND SUCH SERVICES THAT ARE SUBSTANTIALLY SIMILAR TO
26 AND IN LIEU OF SERVICES PROVIDED, IN WHOLE OR IN PART, BY STATE EMPLOY-
27 EES, BUT SHALL NOT INCLUDE LEGAL SERVICES OR SERVICES IN CONNECTION WITH
28 LITIGATION INCLUDING EXPERT WITNESSES AND SHALL NOT INCLUDE CONTRACTS
29 FOR CONSTRUCTION OF PUBLIC WORKS. FOR PURPOSES OF THIS SUBDIVISION, THE
30 COSTS OF PERFORMING THE SERVICES BY STATE EMPLOYEES SHALL INCLUDE ANY
31 SALARY, PENSION COSTS, ALL OTHER BENEFIT COSTS, COSTS THAT ARE REQUIRED
32 FOR EQUIPMENT, FACILITIES AND ALL OTHER OVERHEAD. THE COSTS OF CONSULT-
33 ANT SERVICES SHALL INCLUDE THE TOTAL COST OF THE CONTRACT INCLUDING
34 COSTS THAT ARE REQUIRED FOR EQUIPMENT, FACILITIES AND ALL OTHER OVERHEAD
35 AND ANY CONTINUING STATE COSTS DIRECTLY ASSOCIATED WITH A CONTRACTOR
36 PROVIDING A CONTRACTED FUNCTION INCLUDING, BUT NOT LIMITED TO, THOSE
37 COSTS FOR INSPECTION, SUPERVISION, MONITORING OF THE CONTRACTOR'S WORK
38 AND ANY PRO RATA SHARE OF EXISTING COSTS OR EXPENSES, INCLUDING ADMINIS-
39 TRATIVE SALARIES AND BENEFITS, RENT, EQUIPMENT COSTS, UTILITIES AND
40 MATERIALS. THE COST COMPARISON SHALL BE EXPRESSED WHERE FEASIBLE AS AN
41 HOURLY RATE, OR WHERE SUCH A CALCULATION IS NOT FEASIBLE, AS A TOTAL
42 ESTIMATED COST FOR THE ANTICIPATED TERM OF THE CONTRACT.

43 B. PRIOR TO ENTERING ANY CONSULTATION SERVICES CONTRACT FOR THE PRIVA-
44 TIZATION OF A STATE SERVICE THAT IS NOT CURRENTLY PRIVATIZED, THE STATE
45 AGENCY SHALL DEVELOP A COST COMPARISON REVIEW IN ACCORDANCE WITH THE
46 PROVISIONS OF PARAGRAPH A OF THIS SUBDIVISION.

47 C. (I) IF SUCH COST COMPARISON REVIEW IDENTIFIES A COST SAVINGS TO THE
48 STATE OF TEN PERCENT OR MORE, AND SUCH CONSULTANT SERVICES CONTRACT WILL
49 NOT DIMINISH THE QUALITY OF SUCH SERVICE, THE STATE AGENCY SHALL DEVELOP
50 A BUSINESS PLAN, IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH D OF
51 THIS SUBDIVISION, IN ORDER TO EVALUATE THE FEASIBILITY OF ENTERING ANY
52 SUCH CONTRACT AND TO IDENTIFY THE POTENTIAL RESULTS, EFFECTIVENESS AND
53 EFFICIENCY OF SUCH CONTRACT.

54 (II) IF SUCH COST COMPARISON REVIEW IDENTIFIES A COST SAVINGS OF LESS
55 THAN TEN PERCENT TO THE STATE AND SUCH CONSULTANT SERVICES CONTRACT WILL
56 NOT DIMINISH THE QUALITY OF SUCH SERVICE, THE STATE AGENCY MAY DEVELOP A

1 BUSINESS PLAN, IN ORDER TO EVALUATE THE FEASIBILITY OF ENTERING ANY SUCH
2 CONTRACT AND TO IDENTIFY THE POTENTIAL RESULTS, EFFECTIVENESS AND EFFI-
3 CIENCY OF SUCH CONTRACT, PROVIDED THERE IS A SIGNIFICANT PUBLIC POLICY
4 REASON TO ENTER INTO SUCH CONSULTANT SERVICES CONTRACT.

5 (III) IF ANY SUCH PROPOSED CONSULTANT SERVICES CONTRACT WOULD RESULT
6 IN THE LAYOFF, TRANSFER OR REASSIGNMENT OF FIFTY OR MORE STATE AGENCY
7 EMPLOYEES, AFTER CONSULTING WITH THE POTENTIALLY AFFECTED BARGAINING
8 UNITS, IF ANY, THE STATE AGENCY SHALL NOTIFY THE STATE EMPLOYEES OF SUCH
9 BARGAINING UNIT, AFTER SUCH COST COMPARISON REVIEW IS COMPLETED. SUCH
10 STATE AGENCY SHALL PROVIDE AN OPPORTUNITY FOR SAID EMPLOYEES TO REDUCE
11 THE COSTS OF CONDUCTING THE OPERATIONS TO BE PRIVATIZED AND PROVIDE
12 REASONABLE RESOURCES FOR THE PURPOSE OF ENCOURAGING AND ASSISTING SUCH
13 STATE EMPLOYEES TO ORGANIZE AND SUBMIT A BID TO PROVIDE THE SERVICES
14 THAT ARE THE SUBJECT OF THE POTENTIAL CONSULTANT SERVICES CONTACT.

15 D. ANY BUSINESS PLAN DEVELOPED BY A STATE AGENCY FOR THE PURPOSE OF
16 COMPLYING WITH PARAGRAPH C OF THIS SUBDIVISION SHALL INCLUDE: (I) THE
17 COST COMPARISON REVIEW AS DESCRIBED IN PARAGRAPH B OF THIS SUBDIVISION,
18 (II) A DETAILED DESCRIPTION OF THE SERVICE OR ACTIVITY THAT IS THE
19 SUBJECT OF SUCH BUSINESS PLAN, (III) A DESCRIPTION AND ANALYSIS OF THE
20 STATE AGENCY'S CURRENT PERFORMANCE OF SUCH SERVICE OR ACTIVITY, (IV) THE
21 GOALS TO BE ACHIEVED THROUGH THE PROPOSED CONSULTANT SERVICES CONTRACT
22 AND THE RATIONALE FOR SUCH GOALS, (V) A DESCRIPTION OF AVAILABLE OPTIONS
23 FOR ACHIEVING SUCH GOALS, (VI) AN ANALYSIS OF THE ADVANTAGES AND DISAD-
24 VANTAGES OF EACH OPTION, INCLUDING, AT A MINIMUM, POTENTIAL PERFORMANCE
25 IMPROVEMENTS AND RISKS ATTENDANT TO TERMINATION OF THE CONTRACT OR
26 RESCISSION OF SUCH CONTRACT, (VII) A DESCRIPTION OF THE CURRENT MARKET
27 FOR THE SERVICES OR ACTIVITIES THAT ARE THE SUBJECT OF SUCH BUSINESS
28 PLAN, (VIII) AN ANALYSIS OF THE QUALITY OF SERVICES AS GAUGED BY STAND-
29 ARDIZED MEASURES AND KEY PERFORMANCE REQUIREMENTS INCLUDING COMPEN-
30 SATION, TURNOVER, AND STAFFING RATIOS, (IX) A DESCRIPTION OF THE SPECIF-
31 IC RESULTS BASED PERFORMANCE STANDARDS THAT SHALL, AT A MINIMUM BE MET,
32 TO ENSURE ADEQUATE PERFORMANCE BY ANY PARTY PERFORMING SUCH SERVICE OR
33 ACTIVITY, (X) THE PROJECTED TIME FRAME FOR KEY EVENTS FROM THE BEGINNING
34 OF THE PROCUREMENT PROCESS THROUGH THE EXPIRATION OF A CONTRACT, IF
35 APPLICABLE, (XI) A SPECIFIC AND FEASIBLE CONTINGENCY PLAN THAT ADDRESSES
36 CONTRACTOR NONPERFORMANCE AND A DESCRIPTION OF THE TASKS INVOLVED IN AND
37 COSTS REQUIRED FOR IMPLEMENTATION OF SUCH PLAN, AND (XII) A TRANSITION
38 PLAN, IF APPROPRIATE, FOR ADDRESSING CHANGES IN THE NUMBER OF AGENCY
39 PERSONNEL, AFFECTED BUSINESS PROCESSES, EMPLOYEE TRANSITION ISSUES, AND
40 COMMUNICATIONS WITH AFFECTED STAKEHOLDERS, SUCH AS AGENCY CLIENTS AND
41 MEMBERS OF THE PUBLIC, IF APPLICABLE. SUCH TRANSITION PLAN SHALL CONTAIN
42 A REEMPLOYMENT AND RETRAINING ASSISTANCE PLAN FOR EMPLOYEES WHO ARE NOT
43 RETAINED BY THE STATE OR EMPLOYED BY THE CONTRACTOR. IF ANY PART OF SUCH
44 BUSINESS PLAN IS BASED UPON EVIDENCE THAT THE STATE AGENCY IS NOT SUFFI-
45 CIENTLY STAFFED TO PROVIDE THE SERVICES REQUIRED BY THE CONSULTANT
46 SERVICES CONTRACT, THE STATE AGENCY SHALL ALSO INCLUDE WITHIN SUCH BUSI-
47 NESS PLAN A RECOMMENDATION FOR REMEDIATION OF THE UNDERSTAFFING TO ALLOW
48 SUCH SERVICES TO BE PROVIDED DIRECTLY BY THE STATE AGENCY IN THE FUTURE.

49 E. UPON THE COMPLETION OF SUCH BUSINESS PLAN, THE STATE AGENCY SHALL
50 SUBMIT THE BUSINESS PLAN TO THE STATE COMPTROLLER.

51 F. (I) NOT LATER THAN SIXTY DAYS AFTER RECEIPT OF ANY BUSINESS PLAN,
52 THE STATE COMPTROLLER SHALL TRANSMIT A REPORT DETAILING ITS REVIEW,
53 EVALUATION AND DISPOSITION REGARDING SUCH BUSINESS PLAN TO THE STATE
54 AGENCY THAT SUBMITTED SUCH COST COMPARISON REVIEW. SUCH SIXTY-DAY PERIOD
55 MAY BE EXTENDED FOR AN ADDITIONAL THIRTY DAYS UPON A SHOWING OF GOOD
56 CAUSE.

(II) THE STATE COMPTROLLER'S REPORT SHALL INCLUDE THE BUSINESS PLAN PREPARED BY THE STATE AGENCY, THE REASONS FOR APPROVAL OR DISAPPROVAL, ANY RECOMMENDATIONS OR OTHER INFORMATION TO ASSIST THE STATE AGENCY IN DETERMINING IF ADDITIONAL STEPS ARE NECESSARY TO MOVE FORWARD WITH A CONSULTANT SERVICES CONTRACT.

(III) IF THE STATE COMPTROLLER DOES NOT ACT ON A BUSINESS PLAN SUBMITTED BY A STATE AGENCY WITHIN NINETY DAYS OF RECEIPT OF SUCH BUSINESS PLAN, SUCH BUSINESS PLAN SHALL BE DEEMED APPROVED.

G. A COST COMPARISON SHALL NOT BE REQUIRED IF THE CONTRACTING AGENCY DEMONSTRATES:

(I) THE SERVICES ARE INCIDENTAL TO THE PURCHASE OF REAL OR PERSONAL PROPERTY; OR

(II) THE CONTRACT IS NECESSARY IN ORDER TO AVOID A CONFLICT OF INTEREST ON THE PART OF THE AGENCY OR ITS EMPLOYEES; OR

(III) THE SERVICES ARE OF SUCH A HIGHLY SPECIALIZED NATURE THAT IT IS NOT FEASIBLE TO UTILIZE STATE EMPLOYEES TO PERFORM THEM OR REQUIRE SPECIAL EQUIPMENT THAT IS NOT FEASIBLE FOR THE STATE TO PURCHASE OR LEASE; OR

(IV) THE SERVICES ARE OF SUCH AN URGENT NATURE THAT IT IS NOT FEASIBLE TO UTILIZE STATE EMPLOYEES; OR

(V) THE SERVICES ARE ANTICIPATED TO BE SHORT TERM AND ARE NOT LIKELY TO BE EXTENDED OR REPEATED AFTER THE CONTRACT IS COMPLETED; OR

(VI) A QUANTIFIABLE IMPROVEMENT IN SERVICES THAT CANNOT BE REASONABLY DUPLICATED.

H. NOTHING IN THIS SECTION SHALL BE DEEMED TO AUTHORIZE A STATE AGENCY TO ENTER INTO A CONTRACT WHICH IS OTHERWISE PROHIBITED BY LAW.

I. ALL DOCUMENTS RELATED TO THE COST COMPARISON AND BUSINESS PLAN REQUIRED BY THIS SUBDIVISION AND THE DETERMINATIONS MADE PURSUANT TO PARAGRAPH G OF THIS SUBDIVISION SHALL BE PUBLIC RECORDS SUBJECT TO DISCLOSURE PURSUANT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

S 3. On or before December 31, 2019 the state comptroller shall prepare a report, to be delivered to the governor, the temporary president of the senate and the speaker of the assembly. Such report shall include, but need not be limited to, an analysis of the effectiveness of the cost comparison review program and an analysis of the cost savings associated with performing such cost comparison.

S 4. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to all contracts solicited or entered into by state agencies after the effective date of this act; provided, however, the amendments to section 163 of the state finance law made by section two of this act shall not affect the repeal of such section and shall be deemed repealed therewith.