S T A T E O F N E W Y O R K

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I N S E N A T E

February 24, 2016

Introduced by Sen. ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law, in relation to the cost effectiveness of consultant contracts by state agencies; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Legislative intent. The legislature hereby finds and declares that it is in the public interest to enact a cost benefit review process when a state agency enters into contracts for personal services. New York State spends over $3.5 billion annually on personal service contracts, over $840 million more than the State spent on these contracts in SFY 2003-04, a 32% increase. Despite an Executive Order that has implemented a post contract review process for some personal service contracts the cost of those contracts continues to escalate every year well above the inflation rate. In addition the State Finance Law does not require state agencies to compare the cost or quality of personal services to be provided by consultants with the cost or quality of providing the same services by the state employees. Numerous audits by the Office of State Comptroller as well as a KPMG study commissioned by the department of transportation have found that consultants hired under personal service contracts can cost between fifty percent and seventy-five percent more than state employees that do the exact same work including the cost of state employee benefits. The Contract Disclosure Law (Chapter 10 of the laws of 2006) required consultants who provide personal services to file forms for each contract that outline how many consultants they hired, what titles they employed them in and how much they paid them. A review of these forms shows that the average consultant makes about fifty percent more than state employees doing comparable work. It is in the public interest for state agencies to compare the cost of doing work by consultants with the cost of doing the same work with state employees as well as document whether or not such work can be done by state employees. If state government is to be smar-

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

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ter, more efficient, and transparent then a cost benefit analysis process that makes its findings public should be required by law.

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

16. CONSULTANT SERVICES. A. BEFORE A STATE AGENCY ENTERS INTO A CONTRACT FOR CONSULTANT SERVICES WHICH IS ANTICIPATED TO COST MORE THAN TWO HUNDRED FIFTY THOUSAND DOLLARS IN A TWELVE MONTH PERIOD THE STATE AGENCY SHALL CONDUCT A COST COMPARISON REVIEW TO DETERMINE WHETHER THE SERVICES TO BE PROVIDED BY THE CONSULTANT CAN BE PERFORMED AT EQUAL OR LOWER COST BY UTILIZING STATE EMPLOYEES, UNLESS THE CONTRACT MEETS ONE OF THE EXCEPTIONS SET FORTH IN PARAGRAPH B OF THIS SUBDIVISION. AS USED IN THIS SECTION, THE TERM "CONSULTANT SERVICES" SHALL MEAN ANY CONTRACT ENTERED INTO BY A STATE AGENCY FOR ANALYSIS, EVALUATION, RESEARCH, TRAINING, DATA PROCESSING, COMPUTER PROGRAMMING, ENGINEERING INCLUDING PROFESSIONAL DESIGN SERVICES, HEALTH SERVICES, MENTAL HEALTH SERVICES, ACCOUNTING, AUDITING, OR SIMILAR SERVICES, BUT SHALL NOT INCLUDE LEGAL SERVICES OR SERVICES IN CONNECTION WITH LITIGATION INCLUDING EXPERT WITNESSES AND SHALL NOT INCLUDE CONTRACTS FOR CONSTRUCTION OF PUBLIC WORKS. FOR PURPOSES OF THIS SUBDIVISION, THE COSTS OF PERFORMING THE SERVICES BY STATE EMPLOYEES SHALL INCLUDE ANY SALARY, PENSION COSTS, ALL OTHER BENEFIT COSTS, COSTS THAT ARE REQUIRED FOR EQUIPMENT, FACILITIES AND ALL OTHER OVERHEAD. THE COSTS OF CONSULTANT SERVICES SHALL INCLUDE THE TOTAL COST OF THE CONTRACT INCLUDING COSTS THAT ARE REQUIRED FOR EQUIPMENT, FACILITIES AND ALL OTHER OVERHEAD AND ANY CONTINUING STATE COSTS DIRECTLY ASSOCIATED WITH A CONTRACTOR PROVIDING A CONTRACTED FUNCTION INCLUDING, BUT NOT LIMITED TO, THOSE COSTS FOR INSPECTION, SUPERVISION, MONITORING OF THE CONTRACTOR'S WORK AND ANY PRO RATA SHARE OF EXISTING COSTS OR EXPENSES, INCLUDING ADMINISTRATIVE SALARIES AND BENEFITS, RENT, EQUIPMENT COSTS, UTILITIES AND MATERIALS. THE COST COMPARISON SHALL BE EXPRESSED WHERE FEASIBLE AS AN HOURLY RATE, OR WHERE SUCH A CALCULATION IS NOT FEASIBLE, AS A TOTAL ESTIMATED COST FOR THE ANTICIPATED TERM OF THE CONTRACT.

B. 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.

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

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

E. THIS ANALYSIS SHALL BE COMPLETED NO MORE THAN THIRTY DAYS AFTER IT COMMENCES AND MUST BE INITIATED WITHIN THREE DAYS OF THE CONTRACT BEING IDENTIFIED.

S 3. On or before December 31, 2017 the office of general services 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 study 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 expire and be deemed repealed December 31, 2018; provided, however, that 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.