

2017-2018 Regular Sessions

I N S E N A T E

(PREFILED)

January 4, 2017

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

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  
21 how much they paid them. A review of these forms show that the average  
22 consultant makes about fifty percent more than state employees doing  
23 comparable work. It is in the public interest for state agencies to  
24 compare the cost of doing work by consultants with the cost of doing the

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

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1 same work with state employees as well as document whether or not that  
2 such work can be done by state employees. If state government is to be  
3 smarter, more efficient, and transparent then a cost benefit analysis  
4 process that makes its findings public should be required by law.

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

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

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

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

50 (II) IF SUCH COST COMPARISON REVIEW IDENTIFIES A COST SAVINGS OF LESS  
51 THAN TEN PERCENT TO THE STATE AND SUCH CONSULTANT SERVICES CONTRACT WILL  
52 NOT DIMINISH THE QUALITY OF SUCH SERVICE, THE STATE AGENCY MAY DEVELOP A  
53 BUSINESS PLAN, IN ORDER TO EVALUATE THE FEASIBILITY OF ENTERING ANY SUCH  
54 CONTRACT AND TO IDENTIFY THE POTENTIAL RESULTS, EFFECTIVENESS AND EFFI-  
55 CIENCY OF SUCH CONTRACT, PROVIDED THERE IS A SIGNIFICANT PUBLIC POLICY  
56 REASON TO ENTER INTO SUCH CONSULTANT SERVICES CONTRACT.

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

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

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

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

53 (II) THE STATE COMPTROLLER'S REPORT SHALL INCLUDE THE BUSINESS PLAN  
54 PREPARED BY THE STATE AGENCY, THE REASONS FOR APPROVAL OR DISAPPROVAL,  
55 ANY RECOMMENDATIONS OR OTHER INFORMATION TO ASSIST THE STATE AGENCY IN

1 DETERMINING IF ADDITIONAL STEPS ARE NECESSARY TO MOVE FORWARD WITH A  
2 CONSULTANT SERVICES CONTRACT.

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

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

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

10 (II) THE CONTRACT IS NECESSARY IN ORDER TO AVOID A CONFLICT OF INTER-  
11 EST ON THE PART OF THE AGENCY OR ITS EMPLOYEES; OR

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

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

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

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

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

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

28 S 3. On or before December 31, 2020 the state comptroller shall  
29 prepare a report, to be delivered to the governor, the temporary presi-  
30 dent of the senate and the speaker of the assembly. Such report shall  
31 include, but need not be limited to, an analysis of the effectiveness of  
32 the cost comparison review program and an analysis of the cost savings  
33 associated with performing such cost comparison.

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