

ASSEMBLY, No. 3443

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED FEBRUARY 1, 2024

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

SYNOPSIS

Requires cost analysis in certain cases when State department contracts out work.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/1/2024)

1 AN ACT concerning certain State contracts or agreements and
2 supplementing Title 52 of the Revised Statutes.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. As used in this act:

8 "cost analysis" means a detailed description of the costs, or pro-
9 rata share of costs, of the following:

10 a. costs of labor;

11 b. costs of employer-provided fringe benefits;

12 c. costs of equipment or materials, whether supplied by the
13 State or a private contractor;

14 d. costs directly attributable to transferring the work being
15 performed by State employees to a private business entity;

16 e. costs of administering and inspecting the contracted service;
17 and

18 f. costs of any anticipated unemployment compensation or
19 other benefits which are likely to be paid to State employees who
20 are displaced as a result of the contracted service; and

21 "resource analysis" means an analysis of a State department's
22 finances and personnel.

23

24 2. a. Prior to entering into any contract or agreement in excess
25 of \$100,000 with a private business entity for the performance of
26 work usually performed by employees of a State department, the
27 department shall prepare a cost analysis of the work to be
28 performed. The cost analysis shall determine whether it is more
29 cost effective to use employees of the private business entity than to
30 use existing or additional departmental employees to perform the
31 work required. The department shall apply that determination to the
32 contract or agreement in the form of a certification. The cost
33 analysis shall be accompanied by a resource analysis and an
34 analysis of the ability of the State to reassume the contracted
35 service if contracting of the service is not in the public interest.
36 Except as otherwise provided, no contract or agreement that
37 decreases the amount of work assigned to State employees shall be
38 entered into unless the cost analysis determines that the contract or
39 agreement will result in a substantial cost savings to the State and
40 that the potential cost savings of contracting of services is not
41 outweighed by the public's interest in having a particular function
42 performed directly by the State.

43 b. In no instance shall a department enter into any contract with
44 a private business entity for work which is being performed by
45 departmental employees if a principal of the contractor, including
46 management employees, has, in the preceding two years, worked
47 for the State department which is entering into the contract in any
48 capacity which affects the work to be performed by the contractor.

1 c. For a particular type of work that has not previously been
2 performed by the State, the department shall be permitted to
3 designate a contract or an agreement as a pilot project for the
4 purpose of determining whether contracting a particular type of
5 work can result in cost savings to the State.

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7 3. The cost analysis required by this act shall be filed with the
8 Office of Management and Budget in the Department of the
9 Treasury and shall be available for inspection by the public during
10 regular business hours upon request. At the time the cost analysis is
11 filed with the Office of Management and Budget, a copy thereof
12 shall be transmitted by the department to the Senate State
13 Government Committee and the Assembly State and Local
14 Government Committee, or the respective successor committees,
15 and the representatives of bargaining units whose members would
16 be affected by the contract or agreement.

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18 4. A representative of a bargaining unit receiving a copy of the
19 cost analysis shall have 20 business days from receipt thereof to file
20 a response in writing to the Office of Management and Budget. The
21 contract or agreement which is the subject of the cost analysis may
22 not be entered into by the department until the expiration of the 20-
23 day period or until the response is filed, whichever is first, unless
24 the provisions of section 5 of this act shall apply requiring the
25 expiration of a 30-day period before a contract or agreement may be
26 entered into.

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28 5. If the resource analysis of the department's finances and
29 personnel concludes that the department cannot perform the work
30 with existing or additional departmental employees because such
31 employees lack the expertise, skill or access to appropriate
32 technology or because the work would be of such an intermittent
33 nature as to be likely to cause regular periods of unemployment for
34 departmental employees, then, even though the cost analysis
35 indicates that it would be more cost effective to use departmental
36 employees, the department may enter into a contract with a private
37 business entity for the performance of the work, except that this
38 provision shall not be construed or applied to authorize the
39 privatization of work that has been regularly performed by
40 permanent intermittent employees. In no case shall such a contract
41 be entered into until 30 business days after receipt of the copy of
42 the cost analysis by the respective Senate and Assembly State
43 Government committees. If during that time the Legislature acts to
44 remove the constraints preventing the use of departmental
45 employees, the contract or agreement shall not be entered into.

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47 6. This act shall take effect immediately.

STATEMENT

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This bill provides that prior to entering into any contract or agreement in excess of \$100,000 with a private business entity for the performance of work usually performed by employees of a State department, the department must prepare a cost analysis of the work to be performed. The cost analysis is to determine whether it is more cost effective to use employees of the private business entity than to use existing or additional departmental employees to perform the work required. The department is to apply that determination to the contract or agreement in the form of a certification. The cost analysis is to be accompanied by a resource analysis and an analysis of the ability of the State to reassume the contracted service if contracting of the service is not in the public interest. Except as otherwise provided, no contract or agreement that decreases the amount of work assigned to State employees could be entered into unless the cost analysis determines that the contract or agreement will result in a substantial cost savings to the State and that the potential cost savings of contracting of services is not outweighed by the public's interest in having a particular function performed directly by the State.

In no instance could a department enter into any contract with a private business entity for work which is being performed by departmental employees if a principal of the contractor, including management employees, has, in the preceding two years, worked for the State department that is entering into the contract in any capacity that affects the work to be performed by the contractor.

For a particular type of work that has not previously been performed by the State, the department would be permitted to designate a contract or an agreement as a pilot project for the purpose of determining whether contracting a particular type of work can result in cost savings to the State.

The cost analysis is to be filed with the Office of Management and Budget in the Department of the Treasury and is to be available for inspection by the public during regular business hours upon request. At the time the cost analysis is filed with the Office of Management and Budget, a copy of the analysis is to be transmitted by the department to the Senate State Government Committee and the Assembly State and Local Government Committee, or the respective successor committees, and the representatives of bargaining units whose members would be affected by the contract or agreement.

A representative of a bargaining unit receiving a copy of the cost analysis would have 20 business days from receipt thereof to file a response in writing to the Office of Management and Budget. The contract or agreement that is the subject of the cost analysis could not be entered into by the department until the expiration of the 20-day period or until the response is filed, whichever occurs first,

1 unless the provisions set forth below, requiring the expiration of a
2 30-day period before a contract or agreement may be entered into,
3 are applicable.

4 If the resource analysis of the department's finances and
5 personnel concludes that the department cannot perform the work
6 with existing or additional departmental employees because such
7 employees lack the expertise, skill or access to appropriate
8 technology or because the work would be of such an intermittent
9 nature as to be likely to cause regular periods of unemployment for
10 departmental employees, then, even though the cost analysis
11 indicates that it would be more cost effective to use departmental
12 employees, the department could enter into a contract with a
13 private business entity for the performance of the work. However,
14 such a contract could not be entered into until 30 business days after
15 receipt of the copy of the cost analysis by legislative committees.
16 If during that time the Legislature acted to remove the constraints
17 preventing the use of departmental employees, the contract or
18 agreement could not be entered into.