

2014 -- H 7469

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO TOWNS AND CITIES -- PRIVATIZATION OF MUNICIPAL SERVICES

Introduced By: Representatives Carnevale, DeSimone, Palumbo, Ucci, and Guthrie

Date Introduced: February 12, 2014

Referred To: House Municipal Government

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 45 of the General Laws entitled "TOWNS AND CITIES" is hereby  
2 amended by adding thereto the following chapter:

3 CHAPTER 67

4 PRIVATIZATION OF MUNICIPAL SERVICES

5 **45-67-1. Statement of intent.** -- If it is determined that privatization of certain municipal  
6 governmental functions may be appropriate, the privatization inquiry process should be well  
7 defined with appropriate non-partisan, institutional oversight. The principles that guide a  
8 privatization inquiry shall include the following:

9 (1) To ensure the potential savings are realized and maximized -- build cost controls and  
10 containment incentives into contracts to eliminate excessive and unreasonable overhead costs and  
11 profits at the expense of citizens of the municipality;

12 (2) To preserve and promote competition -- permit in-house program managers and  
13 public employees to bid for the contract on a level playing field;

14 (3) To ensure quality and responsiveness -- develop reliable measures of service quality,  
15 strengthen in-house monitoring capacity and expertise, and write contracts with periodic  
16 performance reporting;

17 (4) To ensure accountability, control, and avoidance of conflicts of interest with  
18 departmental managers -- write detailed contract specifications, and require record-keeping and  
19 periodic reports;

1           (5) To address legal and political barriers -- involve affected groups in the decision  
2 making process; and

3           (6) To recognize the impact on service recipients, employees, and their families -- enable  
4 public employees to have an opportunity to bid for their work.

5           **45-67-2. Definitions. -- When used in this chapter:**

6           (1) "In-house costs" means a detailed budget breakdown of the current costs of providing  
7 the service or program proposed for privatization.

8           (2) "Statement of work and performance standards" means a clear statement of the nature  
9 and extent of the work to be performed with measurable performance standards as set forth in §  
10 45-67-3(b)(2).

11           (3) "In-house bid" shall mean the cost of the proposal proffered by in-house state  
12 programs and employees and their representatives pursuant to § 45-67-3.

13           (4) "Cost comparison" means an analysis of the comparative costs of providing the  
14 service in-house or by privatization.

15           (5) "Conversion differential" means transition costs and costs associated with starting up  
16 or closing down during conversion to purchased services or in the event of the need to bring  
17 services back in-house.

18           (6) "Transition costs" means the cost of contracting including monitoring vendors for  
19 accountability, costs associated with unemployment compensation, payment of accrued leave  
20 credits, bumping, and retention factors for those with statutory status. Transition costs shall not  
21 include department overhead or other costs that would continue even if the services were  
22 privatized.

23           (7) "Privatization" or "privatization contract" means an agreement or combination or  
24 series of agreements by which a non-governmental person or entity agrees with an agency to  
25 provide services expected to result in a fiscal year expenditure of at least one hundred fifty  
26 thousand dollars (\$150,000). (As of July 1 of each year, the amount shall increase to reflect  
27 increases in the consumer price index calculated by the United States Bureau of Labor Statistics  
28 for all urban consumers nationally during the most recent twelve (12) month period for which  
29 data are available or more), which would contract services which are substantially similar to and  
30 in replacement of work normally performed by an employee of a municipality as of June 30,  
31 2014.

32           "Privatization" or "privatization contract" excludes:

33           (i) Contracts resulting from an emergency procurement;

34           (ii) Contracts with a term of one hundred eighty (180) days or less on a non-recurring

1 basis:

2 (iii) Contracts to provide highly specialized or technical services not normally provided  
3 by municipal employees;

4 (iv) Any subsequent contract which: (A) Renews or rebids a prior privatization contract  
5 which existed before June 30, 2014; or (B) Renews or rebids a privatization contract that was  
6 subject to the provisions of this statute after its enactment; and

7 (v) An agreement to provide legal services or management consulting services.

8 **45-67-3. Preclosure analysis. --** (a) Prior to the closure, consolidation or privatization of  
9 any municipal facility, function or program, the chief administrative officer of the municipality or  
10 his or her designee, shall conduct a thorough cost comparison analysis and evaluate quality  
11 performance concerns before deciding to purchase services from private vendors rather than  
12 provide services directly.

13 (b) The chief administrative officer shall notify the bargaining representatives of  
14 municipal employees who will be directly impacted by a potential privatization in writing at least  
15 six (6) months in advance of its consideration of privatizing a municipal service and complete the  
16 following process:

17 (1) Document the current in-house costs of providing the services with a detailed budget  
18 breakdown. The in-house cost shall include any department overhead and other costs that would  
19 continue even if the service was contracted out.

20 (2) Prepare a statement of work and performance standards which shall form the basis for  
21 the requests for proposals and which shall include the following:

22 (i) A clear statement of work with measurable performance standards including  
23 qualitative as well as quantitative standards that bidders must meet or exceed;

24 (ii) Requirements that contractors meet affirmative action, disability and other  
25 nondiscriminatory and service standards currently required of municipal agencies.

26 (iii) A clear format that will enable comparison of competitive bids and in-house bids.  
27 The format must require detailed budget breakdowns.

28 (c) Prior to the issuance of the request for proposals ("RFP"), current public employees  
29 must be notified of the intent to solicit bid proposals and of the decision timeline. Additionally, at  
30 least sixty (60) calendar days prior to the issuing of an RFP, the cost analysis and statement of  
31 work shall be sent to the bargaining representatives of municipal employees who will be directly  
32 impacted by a potential privatization.

33 (d) Prior to, or up until the time when a prospective offeror is required to submit to the  
34 municipality a proposal for a privatization contract, directly impacted municipal employees and

1 their bargaining representatives shall be afforded an opportunity to present a new cost estimate,  
2 reflecting any innovations that they could incorporate into the work performance standards. This  
3 new cost estimate shall be deemed an in-house bid, which shall form the basis for the eventual  
4 cost comparison. The chief administrative officer shall provide technical and informational  
5 assistance to the in-house municipal work group in its preparation of an in-house bid.

6 (e) Prior to or at any time before or after the normal procurement process, the chief  
7 administrative officer may elect to accept the in-house bid or proceed with the normal  
8 procurement process which must:

9 (1) Incorporate the statement of work and performance standards; and

10 (2) Require bidders to meet the same statement of work performance standards as would  
11 be expected by an in-house cost estimate; and

12 (3) Include bid forms requiring a sufficiently detailed breakdown of cost categories to  
13 allow accurate and meaningful comparisons, if applicable.

14 (f) The in-house bid developed pursuant to § 45-67-3(d) shall be kept confidential from  
15 bidders.

16 **45-67-4. Cost comparison. --** The chief administrative officer shall analyze all vendor  
17 bids as compared to current delivery of service costs or an in-house bid, whichever is lower,  
18 according to the following:

19 (1) Any cost comparison must include an analysis of:

20 (i) Comparative benefits for employees to meet the requirements of the statement of work  
21 and performance standards;

22 (ii) All transition costs as defined in § 45-67-2(6);

23 (iii) Any conversion costs as defined in § 45-67-2(5) of this chapter; and

24 (iv) Areas where the bidder's costs appear artificially low, thereby putting the  
25 municipality at risk for further cost overruns.

26 (2) In the event that the municipality will incur new program costs related to the  
27 statement of work and performance standards, such costs shall be included in the cost  
28 comparison.

29 (3) All cost comparisons must include an analysis of whether the cost savings will result  
30 in meeting the performance and qualitative measures set out in the statement of work and  
31 performance standards.

32 **45-67-5. Award of contract. --** After conducting a cost comparison pursuant to § 45-67-  
33 4, the chief administrative officer may award the bid to an outside vendor only if the savings to  
34 the municipality is substantial and the quality of performance of service required and specified in

1 statement of work and performance standards will be met or exceeded by the outside vendor.

2 **45-67-6. Appeal.** -- Before any award is final, municipal employees or their bargaining  
3 representatives shall have a right to protest the award decision within thirty (30) days to the chief  
4 administrative officer. The chief administrative officer shall have no more than fifteen (15) days  
5 to render a decision. Any municipal employees or their bargaining representative that files a  
6 protest shall have thirty (30) days from the director's decision to file an appeal to the superior  
7 court. The superior court shall determine within thirty (30) days of filing whether to stay the  
8 award or allow the procurement to proceed. Until such time as the superior court makes this  
9 determination, no final award by the municipality may be made.

10 **45-67-7. Applicability.** -- (a) The process set forth in this chapter shall apply to  
11 privatization contracts as defined in § 45-67-2(7).

12 (b) Notwithstanding any general law or special law to the contrary, no award shall be  
13 made or privatization contract entered into by any municipal government in the state of Rhode  
14 Island unless and until the processes and procedures outlined in §§ 45-67-3, 45-67-4 and 45-67-5  
15 have been fully complied with in their entirety. All of the aforementioned sections shall apply to  
16 all pending awards and pending privatization contracts.

17 **45-67-8. Severability.** -- If any provision of this chapter, or the application of this  
18 chapter to any person or circumstances is held invalid by a court of competent jurisdiction, the  
19 remainder of the chapter and the application of that provision to other persons or circumstances  
20 shall not be affected.

21 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

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RELATING TO TOWNS AND CITIES -- PRIVATIZATION OF MUNICIPAL SERVICES

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- 1           This act would establish a process governing the privatization of municipal services
- 2 analogous to present chapter 42-148 governing the privatization of state services.
- 3           This act would take effect upon passage.

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