

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE BILL 1322

AN ACT

AMENDING TITLE 9, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 9; RELATING TO
MANAGED COMPETITION FOR CITY SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 9, Arizona Revised Statutes, is amended by adding chapter 9, to read:

CHAPTER 9

MANAGED COMPETITION FOR CITY SERVICES

ARTICLE 1. GENERAL PROVISIONS

9-1001. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "COMPETITIVE SERVICE CITY" MEANS A CITY WITH A POPULATION OF MORE THAN FIVE HUNDRED THOUSAND PERSONS.

2. "MUNICIPAL SERVICES" MEANS ALL SERVICES FURNISHED DIRECTLY OR INDIRECTLY BY A COMPETITIVE SERVICE CITY FOR THE BENEFIT OF THE PUBLIC OR ITS RESIDENTS, INCLUDING ALL RELATED INTERNAL MANAGEMENT SERVICES, TECHNOLOGY SERVICES, PHYSICAL ASSET SERVICES, FACILITIES SERVICES, SUPPORT SERVICES, ENTERPRISE AND FEE-FUNDED SERVICES AND ADMINISTRATIVE SERVICES. MUNICIPAL SERVICES DO NOT INCLUDE THE DUTIES PERFORMED BY THE MAYOR OR CITY COUNCIL, THE CITY MANAGER'S OFFICE, THE CITY CLERK'S OFFICE, MUNICIPAL PROSECUTORS, MUNICIPAL JUDGES OR THE CITY ATTORNEY, IF ANY. MUNICIPAL SERVICES ALSO DO NOT INCLUDE PROFESSIONAL SERVICES, ASSAYER SERVICES, CONSTRUCTION OR CONSTRUCTION SERVICES, DESIGN SERVICES, GEOLOGIST SERVICES OR LAND SURVEYING SERVICES THAT ARE SUBJECT TO ANY PROVISION OF TITLE 34, CHAPTERS 2 THROUGH 6 OR TITLE 41, CHAPTER 23, ARTICLE 5.

9-1002. Competition mandate; municipal services; fee; exemption; state preemption

A. THE LEGISLATURE FINDS THAT THE FURNISHING OF SIZABLE MUNICIPAL SERVICES IS A MATTER OF STATEWIDE CONCERN AND IS NOT SUBJECT TO FURTHER REGULATION BY THOSE POLITICAL SUBDIVISIONS OF THIS STATE THAT ARE SUBJECT TO THIS ARTICLE. NOTWITHSTANDING ANY LAW TO THE CONTRARY, NO LATER THAN THE END OF THE FIRST FISCAL YEAR AFTER THE EFFECTIVE DATE OF THIS CHAPTER, EVERY COMPETITIVE SERVICE CITY SHALL FURNISH ALL MUNICIPAL SERVICES WITH AN ANTICIPATED OR ACTUAL COST OF FIVE HUNDRED THOUSAND OR MORE DOLLARS THROUGH A CITY DEPARTMENT OR AN INDEPENDENT CONTRACTOR BY WAY OF A SERVICE CONTRACT THAT HAS BEEN ENTERED INTO THROUGH OPEN AND COMPETITIVE BIDDING. A COMPETITIVE SERVICE CITY MAY ENTER INTO A SERVICE CONTRACT THROUGH OPEN AND COMPETITIVE BIDDING FOR THOSE MUNICIPAL SERVICES THAT HAVE AN ANTICIPATED OR ACTUAL COST OF LESS THAN FIVE HUNDRED THOUSAND DOLLARS. FOR PURPOSES OF ASSESSING THE ANTICIPATED OR ACTUAL COST OF MUNICIPAL SERVICES UNDER THIS SECTION, COMPETITIVE SERVICE CITIES SHALL NOT ENGAGE IN INTENTIONAL EFFORTS TO AVOID FURNISHING MUNICIPAL SERVICES THROUGH OPEN AND COMPETITIVE BIDDING, SUCH AS BY UNREASONABLY DISAGGREGATING RELATED MUNICIPAL SERVICES.

B. ANY STATE AGENCY OR POLITICAL SUBDIVISION OF THIS STATE, INCLUDING A MUNICIPALITY OR A DEPARTMENT OF A MUNICIPALITY, A REGIONAL AUTHORITY, A SPECIAL DISTRICT OR A QUASI-GOVERNMENTAL BODY, MAY BID FOR A MUNICIPAL SERVICE CONTRACT PURSUANT TO THIS CHAPTER AS AN INDEPENDENT CONTRACTOR BUT SHALL ALSO COMPLY WITH SECTION 9-1007. IF A MUNICIPAL SERVICE CONTRACT IS AWARDED TO AN INDEPENDENT CONTRACTOR PURSUANT TO THIS CHAPTER, A COMPETITIVE SERVICE CITY SHALL NOT PRECLUDE OR HINDER ITS MUNICIPAL EMPLOYEES FROM

1 TERMINATING THEIR EMPLOYMENT WITH THE MUNICIPALITY TO ACCEPT EMPLOYMENT WITH
2 THE INDEPENDENT CONTRACTOR UNLESS A CONFLICT OF INTEREST OR CORRUPTION WOULD
3 RESULT. THE OFFICE OF THE CITY MANAGER OF EACH COMPETITIVE SERVICE CITY IS
4 RESPONSIBLE FOR ADMINISTERING AND MONITORING ALL MUNICIPAL SERVICE CONTRACTS
5 WITH INDEPENDENT CONTRACTORS AND CITY DEPARTMENTS.

6 C. ANY COMPETITIVE SERVICE CITY CONDUCTING OPEN AND COMPETITIVE
7 BIDDING PURSUANT TO SUBSECTION A OF THIS SECTION MUST EMPLOY GENERALLY
8 ACCEPTED ACCOUNTING PRINCIPLES WHEN CONSIDERING BIDS SUBMITTED BY ANY
9 BIDDER. PERMIT APPLICANTS MAY USE THE PROFESSIONAL SERVICES PROVIDER OF
10 THEIR CHOICE FOR PLAN SUBMISSION, PERMITTING AND INSPECTIONS. COMPETITIVE
11 SERVICE CITIES SHALL ONLY CHARGE A REASONABLE FEE FOR PERMITS ISSUED.

12 D. ANY BIDDER SEEKING TO PERFORM A MUNICIPAL SERVICE PURSUANT TO
13 SUBSECTION A OF THIS SECTION MAY INCORPORATE WITHIN A BID THE USE OF ANY
14 MUNICIPAL FACILITY OR EQUIPMENT THAT A COMPETITIVE SERVICE CITY WOULD USE IN
15 PERFORMING THE SAME MUNICIPAL SERVICE.

16 E. THIS CHAPTER DOES NOT APPLY TO MUNICIPAL JUDGES, MUNICIPAL
17 PROSECUTORS, CITY ATTORNEYS, POLICE OFFICERS WHO ARE CERTIFIED PEACE
18 OFFICERS, MUNICIPAL FIREFIGHTERS OR 911 OPERATORS OR TAX COLLECTION AND AUDIT
19 ENFORCEMENT FUNCTIONS OF A COMPETITIVE SERVICE CITY OR IF COMPLIANCE WOULD
20 VIOLATE ANY APPLICABLE FEDERAL LAW OR REGULATION.

21 9-1003. Precompetition assessment

22 A. NO LATER THAN THREE MONTHS BEFORE THE END OF THE FIRST FISCAL YEAR
23 AFTER THE EFFECTIVE DATE OF THIS CHAPTER, AND THEREAFTER AS DETERMINED BY
24 ORDINANCE, THE OFFICE OF THE CITY MANAGER OF EACH COMPETITIVE SERVICE CITY
25 SHALL PREPARE A REPORT PRESCRIBING A WRITTEN STATEMENT OF WORK FOR EACH
26 MUNICIPAL SERVICE TO BE PUT INTO OPEN AND COMPETITIVE BIDDING AND DESCRIBING
27 THE SERVICES TO BE CONTRACTED, THE ANTICIPATED CONTRACT PRICE AND THE
28 PERFORMANCE STANDARDS TO BE INCORPORATED INTO THOSE CONTRACTS. THE OFFICE OF
29 THE CITY MANAGER SHALL TRANSMIT THIS REPORT TO THE CITY COUNCIL, AND THE
30 COUNCIL SHALL CONSIDER THE REPORT WITHIN THIRTY DAYS OF ITS TRANSMISSION. IF
31 APPROVED BY A MAJORITY OF THE CITY COUNCIL, THE STATEMENT OF WORK IS DEEMED
32 ADOPTED BY THE CITY AS ITS FINAL STATEMENT OF WORK FOR EACH MUNICIPAL SERVICE
33 TO BE PUT INTO OPEN AND COMPETITIVE BIDDING. THE CITY SHALL IMMEDIATELY
34 COMMENCE WITH OPEN AND COMPETITIVE BIDDING ON THE MUNICIPAL SERVICES THAT ARE
35 ADOPTED.

36 B. THE DISAPPROVAL OF A CITY COUNCIL IS ONLY VALID IF THE CITY COUNCIL
37 PROPOSES, BY RESOLUTION, SPECIFIC MODIFICATIONS TO THE STATEMENT OF WORK IN
38 SUFFICIENT DETAIL TO GUIDE THE OFFICE OF THE CITY MANAGER IN IMPLEMENTING AN
39 OPEN AND COMPETITIVE BID. THE OFFICE OF THE CITY MANAGER SHALL INCORPORATE
40 THE SPECIFIC MODIFICATIONS INTO A FINAL STATEMENT OF WORK WITHIN THIRTY
41 DAYS. THE FINAL STATEMENT OF WORK WILL THEN BE DEEMED ADOPTED BY THE CITY
42 COUNCIL AND THE CITY COUNCIL SHALL IMMEDIATELY BEGIN CONDUCTING OPEN AND
43 COMPETITIVE BIDDING FOR THE MUNICIPAL SERVICES THAT ARE ADOPTED.

44 9-1004. Open and competitive bidding of services

45 NO LATER THAN ONE MONTH BEFORE THE END OF THE FIRST FISCAL YEAR AFTER
46 THE EFFECTIVE DATE OF THIS CHAPTER, THE CITY COUNCIL, BY ORDINANCE, SHALL
47 PROVIDE FOR STANDARDS AND PROCESSES ENSURING TRANSPARENT, OPEN AND

1 COMPETITIVE BIDDING BY INDEPENDENT CONTRACTORS AND CITY DEPARTMENTS FOR
2 CONTRACTS TO FURNISH MUNICIPAL SERVICES PURSUANT TO THIS CHAPTER, INCLUDING
3 PROVISIONS TO GUARD AGAINST CORRUPTION AND CONFLICTS OF INTEREST. THE
4 COMPETITIVE SERVICE CITY SHALL REASONABLY TAILOR THE SCALE AND COMPLEXITY OF
5 OPERATIONS TO BE PERFORMED UNDER A MUNICIPAL SERVICE CONTRACT OFFERED FOR
6 COMPETITIVE BIDDING TO GENERATE COMPETITIVE BIDS FROM THE PRIVATE SECTOR THAT
7 OFFER THE HIGHEST QUALITY, LOWEST COST AND MOST RELIABLE PERFORMANCE.

8 9-1005. Minimum contract standards

9 A. THE OFFICE OF THE CITY MANAGER OF A COMPETITIVE SERVICE CITY SHALL
10 AWARD CONTRACTS PURSUANT TO THIS CHAPTER TO THE BIDDER WHO IS ABLE TO PROVIDE
11 REASONABLE ASSURANCE OF FULFILLING THE COMPETITIVE SERVICE CITY'S CONTRACT
12 STANDARDS WHILE PROVIDING THE COMPETITIVE SERVICE CITY WITH THE BEST VALUE.
13 NO CONTRACT AWARDED PURSUANT TO THIS CHAPTER MAY HAVE A TERM LONGER THAN FIVE
14 YEARS WITH THREE ONE YEAR RENEWALS BEFORE THE RELATED SERVICES MUST BE
15 OFFERED AGAIN BY THE COMPETITIVE SERVICE CITY THROUGH OPEN AND COMPETITIVE
16 BIDDING PURSUANT TO THIS CHAPTER. A LONGER TERM MAY BE AWARDED ONLY FOR A
17 CONTRACT WITH AN INDEPENDENT CONTRACTOR OR PUBLIC-PRIVATE PARTNERSHIP
18 INVOLVING SIGNIFICANT FIXED CAPITAL INVESTMENTS, WITH A CONTRACT TERM EQUAL
19 TO THE AMORTIZATION SCHEDULE REASONABLE IN THAT INDUSTRY. FOR PURPOSES OF
20 THIS CHAPTER, THE COMPETITIVE SERVICE CITY'S CONTRACT STANDARDS SHALL SPECIFY
21 DESIRED, MEASURABLE PERFORMANCE OUTCOMES FROM THE CONTRACTED WORK, SHALL NOT
22 OVERRIDE THE MANAGERIAL DISCRETION OF INDEPENDENT CONTRACTORS IN DETERMINING
23 HOW BEST TO FULFILL THOSE CONTRACT STANDARDS AND SHALL NOT DICTATE THE AMOUNT
24 OR COMPOSITION OF COMPENSATION TO BE PAID BY INDEPENDENT CONTRACTORS TO THEIR
25 EMPLOYEES OR AUTHORIZED SUBCONTRACTORS IN MEETING THOSE PERFORMANCE
26 OUTCOMES. IF THE COMPETITIVE SERVICE CITY AWARDS A CONTRACT TO A BIDDER THAT
27 DOES NOT OFFER TO FULFILL THE COMPETITIVE SERVICE CITY'S CONTRACT STANDARDS
28 AT THE LOWEST COST TO THE COMPETITIVE SERVICE CITY, THE COMPETITIVE SERVICE
29 CITY SHALL CONCURRENTLY SPECIFY ALL MATERIAL REASONS THAT JUSTIFY NOT
30 ACCEPTING THE LOWER COST BID. AS A CONDITION TO AWARDED ANY CONTRACT TO BE
31 PAID IN WHOLE OR IN PART FROM REVENUES GENERATED BY THE SALE OF TAX EXEMPT
32 MUNICIPAL BONDS, THE COMPETITIVE CITY MAY REQUIRE ADEQUATE ASSURANCE THAT
33 SUCH TAX EXEMPT STATUS WILL BE PRESERVED.

34 B. THE BIDS OF ANY INDEPENDENT CONTRACTOR PROVIDING SERVICES TO
35 COMPETITIVE SERVICE CITIES SHALL MEET THE FOLLOWING MINIMUM CONTRACT
36 STANDARDS DURING THE TERM OF ANY SERVICE CONTRACT:

37 1. ALL BIDDERS, PUBLIC OR PRIVATE, MUST BE ABLE TO PROVIDE REASONABLE
38 PERFORMANCE AND PAYMENT BONDS, PARENT COMPANY GUARANTEES, LETTERS OF CREDIT
39 OR OTHER ACCEPTABLE FORM OF SECURITY OR A COMBINATION OF ANY OF THESE
40 SECURITIES, THE PENAL SUM OR AMOUNT OF WHICH MAY BE LESS THAN ONE HUNDRED PER
41 CENT OF THE VALUE OF THE CONTRACT INVOLVED BASED ON THE COMPETITIVE SERVICE
42 CITY'S DETERMINATION, MADE ON A FACILITY-BY-FACILITY BASIS, OF WHAT IS
43 REQUIRED TO ADEQUATELY PROTECT THE COMPETITIVE SERVICE CITY.

44 2. ALL BIDDERS, PUBLIC OR PRIVATE, MUST MAINTAIN AN ADEQUATE LEVEL OF
45 LIABILITY INSURANCE CONSISTENT WITH THE CITY'S RISK MANAGEMENT REQUIREMENTS.
46 THE COST OF LIABILITY INSURANCE MUST BE INCLUDED IN ALL BIDS SUBMITTED
47 PURSUANT TO SECTION 9-1002, SUBSECTION A.

1 3. THE INDEPENDENT CONTRACTOR MUST HAVE APPROPRIATE SAFETY POLICIES
2 AND PROCEDURES IN PLACE TO PROTECT THE PUBLIC AND ITS EMPLOYEES IN PROVIDING
3 THE SERVICE.

4 4. THE INDEPENDENT CONTRACTOR MUST PERFORM BACKGROUND CHECKS ON
5 EMPLOYEES PERFORMING ANY SERVICE FOR WHICH THE COMPETITIVE SERVICE CITY
6 REQUIRES BACKGROUND CHECKS OF MUNICIPAL EMPLOYEES.

7 5. THE INDEPENDENT CONTRACTOR MUST ACKNOWLEDGE THAT THE COMPETITIVE
8 SERVICE CITY MAY RIGHTFULLY TERMINATE AND RESCIND ANY CONTRACT AWARDED TO THE
9 INDEPENDENT CONTRACTOR IN THE EVENT OF ANY MATERIAL BREACH OF THE CONTRACT.

10 9-1006. Transparency in bidding and performance

11 A. ALL BID RELATED COMMUNICATIONS AND SUPPORTING MATERIALS SUBMITTED
12 FOR CONSIDERATION BY COMPETITIVE SERVICE CITIES ARE PUBLIC RECORDS.

13 B. THE OFFICE OF THE CITY MANAGER AND ALL CITY DEPARTMENTS OF EACH
14 COMPETITIVE SERVICE CITY SHALL PERFORM ANNUAL PERFORMANCE AUDITS FOR
15 CONTRACTED SERVICES, THE COST OF WHICH MUST BE ACCOUNTED FOR AND INCORPORATED
16 INTO ANY BID. THE OFFICE OF THE CITY MANAGER OF EACH COMPETITIVE SERVICE
17 CITY SHALL SEEK AN INDEPENDENT PERFORMANCE AUDIT EVERY FIVE YEARS TO EVALUATE
18 THE ACCURACY AND COMPLETENESS OF THE MUNICIPALITY'S PERFORMANCE AUDITS. ALL
19 PERFORMANCE AUDITS ARE PUBLIC RECORDS.

20 9-1007. Transparency in the cost of municipal employment

21 ANY STATE AGENCY OR POLITICAL SUBDIVISION OF THIS STATE, INCLUDING A
22 COMPETITIVE SERVICE CITY, A REGIONAL AUTHORITY, A DEPARTMENT OF A COMPETITIVE
23 SERVICE CITY, A SPECIAL DISTRICT, A PUBLIC-PRIVATE PARTNERSHIP THAT INCLUDES
24 MUNICIPAL EMPLOYEES OR A QUASI-GOVERNMENTAL BODY, THAT BIDS ON A MUNICIPAL
25 SERVICE CONTRACT MUST SPECIFICALLY DISCLOSE AND INCORPORATE BUDGETING FOR
26 REASONABLY ANTICIPATED OVERTIME TO BE PAID TO THE BIDDER'S EMPLOYEES, HEALTH
27 CARE BENEFITS OR OTHER FRINGE BENEFITS, AS WELL AS THE PRESENT VALUE OF
28 ANTICIPATED RETIREMENT BENEFITS TO BE PAID TO THE BIDDER'S EMPLOYEES THAT
29 VEST DURING THE TERM OF THE RELATED SERVICE CONTRACT BASED ON THE BIDDER'S
30 AVERAGE EMPLOYEE ATTRITION RATE OVER THE PRECEDING FIVE YEARS.

31 9-1008. Taxpayer standing

32 NOTWITHSTANDING ANY LAW TO THE CONTRARY, TAXPAYERS RESIDING IN A
33 COMPETITIVE SERVICE CITY MAY BRING A SPECIAL ACTION IN ANY COURT OF COMPETENT
34 JURISDICTION TO ENFORCE THIS CHAPTER.

35 Sec. 2. Existing contracts

36 This act does not apply to existing vested contractual or
37 intergovernmental agreements for the furnishing of municipal services that
38 have been entered into before the effective date of this act. When the
39 vested contractual or intergovernmental agreements expire, the agreements may
40 only be continued if they are municipal services that are subject to this act
41 and if they are continued or renegotiated pursuant to this act.