

REFERENCE TITLE: **cities; services; managed competition**

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SB 1322

Introduced by
Senator Antenori

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)

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

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

4 CHAPTER 9

5 MANAGED COMPETITION FOR CITY SERVICES

6 ARTICLE 1. GENERAL PROVISIONS

7 9-1001. Definitions

8 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

11 2. "MUNICIPAL SERVICES" MEANS ALL SERVICES FURNISHED DIRECTLY OR
12 INDIRECTLY BY A COMPETITIVE SERVICE CITY FOR THE BENEFIT OF THE PUBLIC OR ITS
13 RESIDENTS, INCLUDING ALL RELATED INTERNAL MANAGEMENT SERVICES, SUPPORT
14 SERVICES AND ADMINISTRATIVE SERVICES.

15 9-1002. Competition mandate; municipal services; exemption

16 A. NOTWITHSTANDING ANY LAW TO THE CONTRARY, NO LATER THAN THE END OF
17 THE FIRST FISCAL YEAR AFTER THE EFFECTIVE DATE OF THIS CHAPTER, EVERY
18 COMPETITIVE SERVICE CITY SHALL FURNISH ALL MUNICIPAL SERVICES WITH AN
19 ANTICIPATED OR ACTUAL COST OF FIFTY THOUSAND OR MORE DOLLARS THROUGH A CITY
20 DEPARTMENT OR AN INDEPENDENT CONTRACTOR BY WAY OF A SERVICE CONTRACT THAT HAS
21 BEEN ENTERED INTO THROUGH OPEN AND COMPETITIVE BIDDING. A COMPETITIVE
22 SERVICE CITY MAY ENTER INTO A SERVICE CONTRACT THROUGH OPEN AND COMPETITIVE
23 BIDDING FOR THOSE MUNICIPAL SERVICES THAT HAVE AN ANTICIPATED OR ACTUAL COST
24 OF LESS THAN FIFTY THOUSAND DOLLARS.

25 B. ANY STATE AGENCY OR POLITICAL SUBDIVISION OF THIS STATE, INCLUDING
26 A MUNICIPALITY, A DEPARTMENT OF A MUNICIPALITY, A SPECIAL DISTRICT OR A
27 QUASI-GOVERNMENTAL BODY, MAY BID FOR A MUNICIPAL SERVICE CONTRACT PURSUANT TO
28 THIS CHAPTER BUT SHALL ALSO COMPLY WITH SECTION 9-1007. IF A MUNICIPAL
29 SERVICE CONTRACT IS AWARDED TO AN INDEPENDENT CONTRACTOR PURSUANT TO THIS
30 CHAPTER, A COMPETITIVE SERVICE CITY SHALL NOT PRECLUDE OR HINDER ITS
31 MUNICIPAL EMPLOYEES FROM TERMINATING THEIR EMPLOYMENT WITH THE MUNICIPALITY
32 TO ACCEPT EMPLOYMENT WITH THE INDEPENDENT CONTRACTOR UNLESS A CONFLICT OF
33 INTEREST OR CORRUPTION WOULD RESULT. THE CITY MANAGER OF EACH COMPETITIVE
34 SERVICE CITY IS RESPONSIBLE FOR ADMINISTERING AND MONITORING ALL MUNICIPAL
35 SERVICE CONTRACTS WITH INDEPENDENT CONTRACTORS AND CITY DEPARTMENTS.

36 C. THIS CHAPTER DOES NOT APPLY TO MUNICIPAL JUDGES, POLICE OFFICERS
37 WHO ARE CERTIFIED PEACE OFFICERS, MUNICIPAL FIREFIGHTERS OR 911 OPERATORS.

38 9-1003. Precompetition assessment

39 A. NO LATER THAN THREE MONTHS BEFORE THE END OF THE FIRST FISCAL YEAR
40 AFTER THE EFFECTIVE DATE OF THIS CHAPTER, AND THEREAFTER AS DETERMINED BY
41 ORDINANCE, THE CITY MANAGER OF EACH COMPETITIVE SERVICE CITY SHALL PREPARE A
42 REPORT PRESCRIBING AN INITIAL PRELIMINARY WRITTEN STATEMENT OF WORK FOR EACH
43 MUNICIPAL SERVICE TO BE PUT INTO OPEN AND COMPETITIVE BIDDING AND DESCRIBING
44 THE SERVICES TO BE CONTRACTED, THE ANTICIPATED CONTRACT PRICE AND THE
45 PERFORMANCE STANDARDS TO BE INCORPORATED INTO THOSE CONTRACTS. THE CITY

1 MANAGER SHALL TRANSMIT THIS REPORT TO THE CITY COUNCIL, AND THE COUNCIL SHALL
2 CONSIDER THE REPORT WITHIN ONE DAY OF ITS TRANSMISSION. IF NOT DISAPPROVED
3 BY A MAJORITY OF THE CITY COUNCIL WITHIN ONE MONTH AFTER RECEIVING THE
4 REPORT, THE PRELIMINARY STATEMENT OF WORK IS DEEMED ADOPTED BY THE CITY AS
5 ITS FINAL STATEMENT OF WORK FOR EACH MUNICIPAL SERVICE TO BE PUT INTO OPEN
6 AND COMPETITIVE BIDDING. THE CITY COUNCIL SHALL IMMEDIATELY COMMENCE WITH
7 OPEN AND COMPETITIVE BIDDING ON THE MUNICIPAL SERVICES THAT ARE ADOPTED.

8 B. THE CITY COUNCIL MAY DISAPPROVE OF THE PRELIMINARY STATEMENT OF
9 WORK BUT THE DISAPPROVAL IS ONLY VALID IF THE CITY COUNCIL PROPOSES, BY
10 RESOLUTION, SPECIFIC MODIFICATIONS OF THE STATEMENT OF WORK IN SUFFICIENT
11 DETAIL TO GUIDE THE CITY MANAGER IN IMPLEMENTING AN OPEN AND COMPETITIVE BID.
12 IF SUCH MODIFICATIONS ARE PROVIDED, THE CITY MANAGER SHALL INCORPORATE THE
13 MODIFICATIONS PROPOSED BY RESOLUTION INTO A FINAL STATEMENT OF WORK, WHICH
14 WILL THEN BE DEEMED ADOPTED BY THE CITY. THE CITY COUNCIL SHALL IMMEDIATELY
15 COMMENCE WITH OPEN AND COMPETITIVE BIDDING ON THE MUNICIPAL SERVICES THAT ARE
16 ADOPTED.

17 9-1004. Open and competitive bidding of services

18 NO LATER THAN ONE MONTH BEFORE THE END OF THE FIRST FISCAL YEAR AFTER
19 THE EFFECTIVE DATE OF THIS CHAPTER, THE CITY COUNCIL, BY ORDINANCE, SHALL
20 PROVIDE FOR STANDARDS AND PROCESSES ENSURING TRANSPARENT, OPEN AND
21 COMPETITIVE BIDDING BY INDEPENDENT CONTRACTORS AND CITY DEPARTMENTS FOR
22 CONTRACTS TO FURNISH MUNICIPAL SERVICES PURSUANT TO THIS CHAPTER, INCLUDING
23 PROVISIONS TO GUARD AGAINST CORRUPTION AND CONFLICTS OF INTEREST.

24 9-1005. Minimum contract standards

25 A. THE CITY MANAGER OF A COMPETITIVE SERVICE CITY SHALL AWARD
26 CONTRACTS PURSUANT TO THIS CHAPTER TO THE BIDDER WHO IS ABLE TO PROVIDE
27 REASONABLE ASSURANCE OF FULFILLING THE COMPETITIVE SERVICE CITY'S CONTRACT
28 STANDARDS AT THE LOWEST COST TO THE CITY. NO CONTRACT AWARDED PURSUANT TO
29 THIS CHAPTER MAY HAVE A TERM LONGER THAN FOUR YEARS BEFORE THE RELATED
30 SERVICES MUST BE OFFERED AGAIN BY THE COMPETITIVE SERVICE CITY THROUGH OPEN
31 AND COMPETITIVE BIDDING PURSUANT TO THIS CHAPTER. FOR PURPOSES OF THIS
32 CHAPTER, THE COMPETITIVE SERVICE CITY'S CONTRACT STANDARDS SHALL SPECIFY
33 DESIRED, MEASURABLE PERFORMANCE OUTCOMES FROM THE CONTRACTED WORK, SHALL NOT
34 OVERRIDE THE MANAGERIAL DISCRETION OF INDEPENDENT CONTRACTORS IN DETERMINING
35 HOW BEST TO FULFILL THOSE CONTRACT STANDARDS AND SHALL NOT DICTATE THE AMOUNT
36 OR COMPOSITION OF COMPENSATION TO BE PAID BY INDEPENDENT CONTRACTORS TO THEIR
37 EMPLOYEES OR AUTHORIZED SUBCONTRACTORS IN MEETING THOSE PERFORMANCE OUTCOMES.

38 B. THE BIDS OF ANY INDEPENDENT CONTRACTOR PROVIDING SERVICES TO
39 COMPETITIVE SERVICE CITIES SHALL MEET THE FOLLOWING MINIMUM CONTRACT
40 STANDARDS DURING THE TERM OF ANY SERVICE CONTRACT:

41 1. THE INDEPENDENT CONTRACTOR MUST BE ABLE TO PERFORM THE CONTRACTED
42 SERVICE AND BE READY, ABLE AND WILLING TO FURNISH REASONABLE PERFORMANCE
43 BONDING OR EQUIVALENT SECURITY TO GUARANTEE THE PERFORMANCE.

44 2. THE INDEPENDENT CONTRACTOR MUST MAINTAIN AN ADEQUATE LEVEL OF
45 LIABILITY INSURANCE CONSISTENT WITH THE CITY'S RISK MANAGEMENT REQUIREMENTS.

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 BIDS, RELATED COMMUNICATIONS AND SUPPORTING MATERIALS SUBMITTED
12 FOR CONSIDERATION BY COMPETITIVE SERVICE CITIES ARE PUBLIC RECORDS.

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

19 9-1007. Transparency in the cost of municipal employment

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

28 9-1008. Override authority

29 NO MORE THAN ONCE PER FISCAL YEAR, THE CITY COUNCIL, BY ORDINANCE THAT
30 IS APPROVED BY AT LEAST THREE-FOURTHS OF THE CITY COUNCIL AND THAT IS SUBJECT
31 TO REFERENDUM, MAY OVERRIDE OPEN AND COMPETITIVE BIDDING FOR A SPECIFIED
32 SINGLE FISCAL YEAR IF:

33 1. A PUBLIC MEETING OF THE CITY COUNCIL IS CALLED TO CONSIDER THE
34 SUBJECT MATTER OF THE PROPOSED ORDINANCE WITH AT LEAST SIXTY DAYS' PRIOR
35 NOTICE TO THE PUBLIC. THE PUBLIC MEETING SHALL BE HELD BETWEEN THE HOURS OF
36 7:00 P.M. AND 9:00 P.M. ON A WEEKDAY OR BETWEEN THE HOURS OF 11:00 A.M. AND
37 3:00 P.M. ON A WEEKEND.

38 2. THE PROPOSED ORDINANCE IS VOTED ON DURING THAT MEETING AFTER
39 ALLOWING FOR AT LEAST ONE HOUR OF PUBLIC COMMENT THAT ALLOWS MEMBERS OF THE
40 PUBLIC TO SPEAK IN THE ORDER IN WHICH THEY HAVE SIGNED IN TO SPEAK.

41 3. THE NOTICE OF HEARING INCLUDES A PROPOSED ORDINANCE CONTAINING
42 SPECIFIC FINDINGS AS TO WHICH MUNICIPAL SERVICES ARE TO BE EXCLUDED FROM OPEN
43 AND COMPETITIVE BIDDING FOR THE SPECIFIED FISCAL YEAR AND WHY COMPLIANCE WITH
44 THIS CHAPTER IS NOT PRACTICABLE.

1 9-1009. Taxpayer standing

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

5 Sec. 2. Existing contracts

6 This act does not apply to existing vested contractual or
7 intergovernmental agreements for the furnishing of municipal services that
8 have been entered into before the effective date of this act. When the
9 vested contractual or intergovernmental agreements expire, the agreements may
10 only be continued if they are municipal services that are subject to this act
11 and if they are continued or renegotiated pursuant to this act.