

[Second Reprint]

**ASSEMBLY, No. 3996**

**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

INTRODUCED MAY 1, 2020

**Sponsored by:**

**Assemblywoman YVONNE LOPEZ**

**District 19 (Middlesex)**

**Assemblywoman ANGELA V. MCKNIGHT**

**District 31 (Hudson)**

**Assemblyman ROBERT J. KARABINCHAK**

**District 18 (Middlesex)**

**Senator M. TERESA RUIZ**

**District 29 (Essex)**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**Co-Sponsored by:**

**Assemblywomen Pinkin, Speight, Assemblyman Spearman,  
Assemblywoman Tucker, Assemblymen Mukherji, Thomson,  
Assemblywomen Murphy, Vainieri Huttle, Jimenez, Assemblyman  
Freiman and Senator Pou**

**SYNOPSIS**

Permits modification of scope of work or terms and conditions of contract between non-profit organizations and State agencies for failure to perform due to COVID-19 pandemic.

**CURRENT VERSION OF TEXT**

As reported by the Senate State Government, Wagering, Tourism & Historic Preservation Committee on July 22, 2020, with amendments.

(Sponsorship Updated As Of: 8/27/2020)

1 AN ACT providing for <sup>2</sup>**[waivers of contract penalties and**  
2 modification of contract terms on public contracts between non-  
3 profit organizations and State agencies for failure to perform**]**  
4 the modification of contract terms on public contracts between  
5 non-profit organizations and State agencies for the inability to  
6 perform<sup>2</sup> due to the COVID-19 Public Health Emergency and  
7 State of Emergency.

8  
9 **BE IT ENACTED** by the Senate and General Assembly of the State  
10 of New Jersey:

11  
12 1. <sup>2</sup>**[Notwithstanding the provisions of any law, rule, or**  
13 regulation to the contrary, a State agency that has awarded a  
14 contract to or entered into an agreement with a non-profit  
15 organization may provide a waiver of any penalty provided in the  
16 contract or agreement for the failure of the non-profit organization  
17 to fulfill the terms and conditions in the contract or agreement if the  
18 failure is due to the COVID-19 Public Health Emergency and State  
19 of Emergency declared by the Governor in Executive Order No. 103  
20 of 2020 and the failure occurred during the period of the  
21 emergencies or during the six-month period immediately following  
22 the end of the emergencies. The waiver shall be provided to the  
23 extent the State agency or agencies deem it feasible and appropriate  
24 under the circumstances.

25 A non-profit organization shall be permitted to request a  
26 modification of the terms and conditions of a contract awarded by,  
27 or of an agreement entered into with, a State agency and the State  
28 agency shall consider such a request to modify the terms and  
29 conditions in the contract or agreement, when compliance by the  
30 non-profit organization with the terms and conditions was impacted  
31 due to the emergencies and the impact occurred during the period of  
32 the emergencies or during the six-month period immediately  
33 following the end of the emergencies.

34 Non-profit organizations shall submit to the appropriate State  
35 agency supportive documentation as proof that the failure to fulfill  
36 the terms and conditions of a contract or agreement was due to, or  
37 that the compliance was impacted by, the COVID-19 Public Health  
38 Emergency and State of Emergency declared by the Governor in  
39 Executive Order No. 103 of 2020, in order to receive a waiver of a  
40 penalty or to have a <sup>1</sup>**[medication]** modification<sup>1</sup> of the terms and  
41 conditions considered by a State agency.

42 As used in this section, “State agency” means any of the  
43 principal departments in the Executive Branch of the State  
44 Government, and any division, board, bureau, office, commission,

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AAP committee amendments adopted May 11, 2020.

<sup>2</sup>Senate SSG committee amendments adopted July 22, 2020.

1 or other instrumentality within or created by such department, the  
2 Legislature of the State, and any office, board, bureau, or  
3 commission within or created by the Legislative Branch, and any  
4 independent State authority, commission, instrumentality, or  
5 agency. A county or municipality shall not be deemed an agency or  
6 instrumentality of the State.】

7 Notwithstanding the provisions of any law, rule, or regulation to  
8 the contrary, when the Division of Purchase and Property in the  
9 Department of the Treasury has awarded a contract on behalf of a  
10 State agency to a non-profit organization, or a State agency has  
11 entered into an agreement or contract pursuant to its delegated  
12 purchasing authority or a waiver of advertising with a non-profit  
13 organization, or a State agency has entered into an agreement or  
14 contract with a third party entity on behalf of a non-profit  
15 organization, the division or State agency may, at the request of the  
16 non-profit organization, amend the scope of work or terms and  
17 conditions if the non-profit organization is unable to fulfill the  
18 terms and conditions in the contract due to the COVID-19 Public  
19 Health Emergency and State of Emergency declared by the  
20 Governor in Executive Order No. 103 and Executive Order 119 of  
21 2020.

22 COVID-19 Public Health Emergency and State of Emergency  
23 amendments shall be permitted if the inability to perform occurred  
24 during the period of the COVID-19 Public Health Emergency and  
25 State of Emergency or during the six-month period immediately  
26 following the end of the COVID-19 Public Health Emergency and  
27 State of Emergency.

28 Non-profit organizations shall submit to the division or  
29 appropriate State agency supportive documentation as proof that the  
30 failure to fulfill the terms and conditions of a contract or agreement  
31 was due to, or that the compliance was impacted by, the COVID-19  
32 Public Health Emergency and State of Emergency declared by the  
33 Governor in 2020, in order to receive a waiver of a penalty or to  
34 have a modification of the terms and conditions considered by a  
35 State agency.

36 As used in this section, “State agency” means any of the  
37 principal departments in the Executive Branch of the State  
38 Government, and any division, board, bureau, office, commission,  
39 or other instrumentality within or created by such department, the  
40 Legislature of the State, and any office, board, bureau, or  
41 commission within or created by the Legislative Branch, and any  
42 independent State authority, commission, instrumentality, or  
43 agency. A county or municipality shall not be deemed an agency or  
44 instrumentality of the State.

45 This act shall not apply to an agreement or contract entered into  
46 by the division or a State agency specifically related to the State’s  
47 efforts to combat the COVID-19 Public Health Emergency and  
48 State of Emergency.<sup>2</sup>

**A3996 [2R] LOPEZ, MCKNIGHT**

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1       2. This act shall take effect immediately and shall expire on the  
2 first day of the ninth month following the end of the Public Health  
3 Emergency and State of Emergency declared by the Governor in  
4 Executive Order No. 103 of 2020.