

P.L. 2020, CHAPTER 121, *approved November 9, 2020*  
Assembly, No. 3996 (*Second Reprint*)

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

**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 penalty or to have a ~~1~~**[medication]** modification<sup>1</sup> of the terms and  
2 conditions considered by a State agency.

3 As used in this section, “State agency” means any of the  
4 principal departments in the Executive Branch of the State  
5 Government, and any division, board, bureau, office, commission,  
6 or other instrumentality within or created by such department, the  
7 Legislature of the State, and any office, board, bureau, or  
8 commission within or created by the Legislative Branch, and any  
9 independent State authority, commission, instrumentality, or  
10 agency. A county or municipality shall not be deemed an agency or  
11 instrumentality of the State. **]**

12 Notwithstanding the provisions of any law, rule, or regulation to  
13 the contrary, when the Division of Purchase and Property in the  
14 Department of the Treasury has awarded a contract on behalf of a  
15 State agency to a non-profit organization, or a State agency has  
16 entered into an agreement or contract pursuant to its delegated  
17 purchasing authority or a waiver of advertising with a non-profit  
18 organization, or a State agency has entered into an agreement or  
19 contract with a third party entity on behalf of a non-profit  
20 organization, the division or State agency may, at the request of the  
21 non-profit organization, amend the scope of work or terms and  
22 conditions if the non-profit organization is unable to fulfill the  
23 terms and conditions in the contract due to the COVID-19 Public  
24 Health Emergency and State of Emergency declared by the  
25 Governor in Executive Order No. 103 and Executive Order 119 of  
26 2020.

27 COVID-19 Public Health Emergency and State of Emergency  
28 amendments shall be permitted if the inability to perform occurred  
29 during the period of the COVID-19 Public Health Emergency and  
30 State of Emergency or during the six-month period immediately  
31 following the end of the COVID-19 Public Health Emergency and  
32 State of Emergency.

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

41 As used in this section, “State agency” means any of the  
42 principal departments in the Executive Branch of the State  
43 Government, and any division, board, bureau, office, commission,  
44 or other instrumentality within or created by such department, the  
45 Legislature of the State, and any office, board, bureau, or  
46 commission within or created by the Legislative Branch, and any  
47 independent State authority, commission, instrumentality, or

1 agency. A county or municipality shall not be deemed an agency or  
2 instrumentality of the State.

3 This act shall not apply to an agreement or contract entered into  
4 by the division or a State agency specifically related to the State's  
5 efforts to combat the COVID-19 Public Health Emergency and  
6 State of Emergency.<sup>2</sup>

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

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