

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

## FIRST REGULAR SESSION - 1989

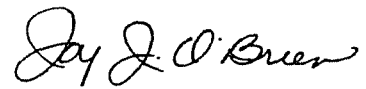
Legislative Document

No. 1036

S.P. 391

In Senate, April 4, 1989

Reference to the Committee on State and Local Government suggested and ordered printed.

  
JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator BUSTIN of Kennebec.

Cosponsored by Representative JOSEPH of Waterville, Senator WEBSTER of Franklin and Representative NORTON of Winthrop.

### STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Protect the Integrity of the Civil Service System and to Set Standards  
for the Contracting of Service by the State.



1 Be it enacted by the People of the State of Maine as follows:

3 5 MRSA §1816-A is enacted to read:

5 §1816-A. Personal services contract

7 1. Conditions; cost savings. Personal services contracting  
9 is permissible to achieve cost savings when all the following  
11 conditions are met.

13 A. The contracting agency shall clearly demonstrate that  
15 the proposed contract will result in actual overall cost  
17 savings to the State, provided that:

19 (1) In comparing costs, there shall be included the  
21 State's additional cost of providing the same service  
23 as proposed by a contractor. These additional costs  
25 shall include the salaries and benefits of additional  
27 staff that would be needed and the cost of additional  
29 space, equipment and materials needed to perform the  
31 function;

33 (2) In comparing costs, there shall be included the  
35 State's indirect overhead costs, unless these costs can  
37 be attributed solely to the function in question and  
39 would not exist if that function was not performed in  
41 state service. "Indirect overhead cost" means the pro  
43 rata share of existing administrative salaries and  
45 benefits, rent, equipment costs, utilities and  
47 materials; and

49 (3) In comparing costs, there shall be included in the  
51 cost of a contractor providing a service any continuing  
state costs that would be directly associated with the  
contracted function. These continuing state costs  
shall include, but not be limited to, those for  
inspection, supervision and monitoring.

B. Proposals to contract out work shall not be approved  
solely on the basis that savings will result from lower  
contractor pay rates or benefits. Proposals to contract out  
work shall be eligible for approval if the contractor's  
wages are at the industry's level and do not undercut state  
pay rates.

C. The contract does not cause the displacement of civil  
service employees. The term "displacement" includes layoff,  
demotion, involuntary transfer to a new class, involuntary  
transfer to a new location requiring a change of residence  
or a reduction in an individual's authorized hours.

1 D. The contract does not adversely affect the State's  
2 affirmative action efforts.

3 E. The savings shall be large enough to ensure that they  
4 will not be eliminated by private sector and state cost  
5 fluctuations that could normally be expected during the  
6 contracting period.

7 F. The amount of savings must clearly justify the size and  
8 duration of the contracting agreement.

9 G. The contract must be awarded through a publicized,  
10 competitive bidding process.

11 H. The contract must include specific provisions pertaining  
12 to the qualifications of the staff that will perform the  
13 work under the contract, as well as an assurance that the  
14 contractor's hiring practices meet applicable affirmative  
15 action and antidiscrimination standards.

16 I. The potential for future economic risk to the State from  
17 potential contractor rate increases or work interruptions is  
18 minimal.

19 J. The contract is with a firm. A "firm" means a  
20 corporation, partnership, nonprofit organization or sole  
21 proprietorship.

22 K. The potential economic advantage of contracting is not  
23 outweighed by the public's interest in having a particular  
24 function performed directly by the State Government.

25 2. Other conditions. Personal services contracting also  
26 shall be permissible when any of the following conditions can be  
27 met.

28 A. The services contracted are not or cannot be made  
29 available within civil service, cannot be performed  
30 satisfactorily by civil service employees or are of such a  
31 highly specialized or technical nature that the necessary  
32 expert knowledge, experience or ability is not available  
33 through the civil service system.

34 B. The services are incidental to a contract for the  
35 purchase or release of real or personal property. Contracts  
36 under these criteria, known as "service agreements," shall  
37 include, but not be limited to, agreements to service or  
38 maintain office equipment or computers that are leased or  
39 rented.

40 C. The legislative, administrative or legal goals and  
41 purposes cannot be accomplished through the utilization of

1 persons selected pursuant to the regular civil service  
2 system. Contracts are permissible under this criterion to  
3 protect against a conflict of interest or to ensure  
4 independent and unbiased findings in cases where there is a  
5 clear need for a different, outside perspective. These  
6 contracts shall include, but not be limited to, obtaining  
7 expert witnesses in litigation.

9 D. State agencies need private counsel because a conflict  
10 of interest on the part of the Department of the Attorney  
11 General prevents it from representing the agency without  
12 compromising its position. These contracts shall require  
13 the written consent of the Attorney General.

15 E. The contractor will provide equipment, materials,  
16 facilities or support services that cannot feasibly be  
17 provided by the State in the location where the services are  
18 to be performed.

19 F. The contractor will conduct training courses for which  
20 appropriately qualified civil service instructors are not  
21 and cannot be made available.

23 G. The services are of such an urgent, temporary or  
24 occasional nature that the delay incumbent in their  
25 implementation under civil service would frustrate their  
26 very purpose.

29 3. Collective bargaining agreements. Personal services  
30 contracts shall not be used when their terms or standards of  
31 performance would conflict with terms of existing collective  
32 bargaining agreements.

35 4. Procedure. Any state agency proposing to execute a  
36 contract pursuant to this section shall notify the Commissioner  
37 of Administration of its intention. All organizations that  
38 represent state employees who perform the type of work to be  
39 contracted, the joint standing committee of the Legislature  
40 having jurisdiction over appropriations and financial affair  
41 matters and any person or organization which has filed with the  
42 board a request for notice, shall be contacted immediately by the  
43 Commissioner of Administration upon receipt of this notice so  
44 that they may be given a reasonable opportunity to comment on the  
45 proposed contract. Departments or agencies submitting proposed  
46 contracts shall retain and provide all data and other information  
47 relevant to the contracts and necessary for a specific  
48 application of the standards set forth in subsections 1 and 2.  
49 Any employee organization may request, within 10 days of  
50 notification, the Commissioner of Administration to review any  
51 contract proposed or executed pursuant to this section. The  
review shall be conducted in accordance with the Maine

1 Administrative Procedure Act, Title 5, chapter 375. Upon such a  
3 request, the Commissioner of Administration shall review the  
5 contract for compliance with the standards specified in  
7 subsections 1 and 2.

9 5. Legislative request. Any state agency denied approval  
11 under this section may request specific legislation to authorize  
13 the execution of the proposed contract.

#### 11 STATEMENT OF FACT

13 This bill establishes standards which must be met by State  
15 Government before it contracts for services outside of the civil  
17 service system. Notice of intent to contract must be given to  
19 employee representatives, the Joint Standing Committee on  
21 Appropriations and Financial Affairs and interested parties. The  
Commissioner of Administration may conduct hearings when  
requested under the Maine Administrative Procedure Act, the Maine  
Revised Statutes, Title 5, chapter 375.