

# MAINE STATE LEGISLATURE

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# 115<sup>th</sup> MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

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Legislative Document

No. 1376

S.P. 515

In Senate, April 1, 1991

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator CONLEY of Cumberland  
Cosponsored by President PRAY of Penobscot.

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STATE OF MAINE

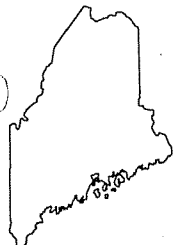
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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An Act to Promote Economic Development.

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

4 26 MRSA c. 7, sub-c. VIII-A is enacted to read:

6 SUBCHAPTER VIII-A

8 STATE ECONOMIC SUPPORT AND HIRING PREFERENCES

10 §865. Definitions

12 As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

14 1. Direct economic support. "Direct economic support" means the provision of a financial payment, grant, loan or evidence of debt, loan guarantee or tax increment financing arrangement in any amount or investment tax credits in excess of \$250,000 in any single tax year to an employer, for the purpose of supporting that employer's economic activities, by a public agency acting either on its own behalf or as an intermediary or administrator of funds provided in whole or in part from any public source. Unless specifically provided for in this subsection, the term does not include:

24 A. Job training programs under chapter 33;

26 B. Housing development assistance under Title 30-A, chapter 201 or 202; or

30 C. Tax exemptions or abatements.

32 2. Employer. "Employer" means any person, partnership, private corporation or other private legal entity, whether temporary or permanent, that employs more than 100 individuals in the State at any time when direct economic support is received by that employer. The term includes any related entity, such as a corporate parent or subsidiary of an employer, or any other entity or form in which the employer has any degree of beneficial ownership.

40 3. Existing employee. "Existing employee" means:

42 A. Any individual who is employed in this State by an employer receiving direct economic support; or

44 B. Unless discharged for good cause relating to the individual's job performance or unless the individual voluntarily quits employment, any individual:

46 (1) Who was an employee of the employer for at least 6  
50 months at a facility in the State and was an employee

2 at any time when the employer received the direct  
economic support; or

4 (2) Who was an employee of the employer for at least 6  
6 months at a facility in the State within 3 years before  
8 the employer's original receipt of the direct economic  
support.

10 4. New employment position. "New employment position"  
12 means any position of employment averaging at least 20 hours per  
14 week that is available with an employer and that was not held by  
16 an employee of that employer before the employer's receipt of the  
direct economic support, including positions that involve duties  
not performed previously for that employer by its employees and  
the creation of additional positions involving duties currently  
performed by existing employees of the employer.

18 5. Original receipt or originally received. "Original  
20 receipt" or "originally received," as applied to the receipt of  
22 direct economic support, means the date on which an employer  
24 first receives the direct economic support. For tax benefits  
subject to this subchapter, "original receipt" or "originally  
received" means the first day of the tax year for which the  
benefit is applicable.

26 6. Public agency. "Public agency" means the State, any  
28 political subdivision of the State or any state or local  
governmental or quasi-governmental entity.

30 **§866. Preference to existing employees**

32 1. Preference required. As a condition of receiving any  
34 direct economic support, an employer shall obligate itself and  
36 its successors and assigns to give preference in hiring for new  
employment positions inside the State to any existing employees  
of the employer who apply for those positions, unless:

38 A. The existing employee is not qualified to perform the  
40 duties of the new position and can not be made qualified  
42 with the same training required for alternative applicants  
who are not existing employees of the employer.

44 (1) This paragraph does not require an employer to  
46 provide any technical or advanced education to an  
48 existing employee that would not be provided to  
alternative applicants who are not existing employees  
of the employer.

50 (2) An existing employee may challenge the employer's  
52 determination of the employee's qualifications, or the  
length or level of training necessary to make the  
employee qualified by submitting to the employer  
evidence of comparable qualifications, or the need for

2 a comparable period or level of training to become  
3 qualified, relative to the qualifications or training  
4 requirements of an alternative applicant who is not an  
5 existing employee;

6 B. The new position is a supervisory position; or

8 C. That preference conflicts with any other state or  
9 federal law.

10  
11 2. Term. The requirements imposed by subsection 1 apply to  
12 an employer from the employer's original receipt of any direct  
13 economic support until 3 years after the final date of receipt of  
14 that direct economic support.

15  
16 3. Notice to existing employees. An employer subject to  
17 this section shall notify existing employees of the existence of  
18 a new employment position by publishing notice of the position in  
19 3 successive editions of a newspaper of general circulation in  
20 the county where the new employment position is available and in  
21 a newspaper of general circulation in any county in which the  
22 employer employs individuals in the State.

23 §867. Other obligations

24  
25 The requirements of section 866 are in addition to and not  
26 in place of any other obligations to which an employer is  
27 subject. The requirements of section 866 do not affect the  
28 provisions of any individual or collective employment contract,  
29 any agreement with any public agency or any obligation under any  
30 other law or rule that offers greater reemployment opportunities  
31 to existing employees.

32  
33 §868. Enforcement; penalty

34  
35 1. Attorney General to draft language. The Attorney  
36 General shall draft language that must be incorporated in all  
37 contracts, agreements, applications or other documents providing  
38 for direct economic support to employers. This language must  
39 obligate the recipient of any direct economic support to comply  
40 with this subchapter as a condition of receiving the direct  
41 economic support.

42  
43 2. Complaint; court action. Any aggrieved existing  
44 employee of an employer subject to this subchapter may file a  
45 complaint with the Attorney General requesting the Attorney  
46 General to investigate the alleged violation of this subchapter.  
47 Upon receipt of a complaint, the Attorney General may investigate  
48 the merits of the complaint and, when justified, file a civil  
49 action in any court of competent jurisdiction to enforce this  
50 subchapter.

2 3. Injunction; penalty. Upon finding that an employer has  
 4 violated this subchapter, the court shall issue an injunction  
 6 compelling the employer to comply with this subchapter. If the  
 8 employer fails to comply with this injunction within a reasonable  
 10 time, as determined by the court, the employer forfeits either  
 12 the right to or the value of, in the court's discretion, any  
 14 direct economic support that creates a hiring preference under  
section 866 applicable to the employee or employees in question.  
 16 The court shall determine the amount of this forfeiture and  
 18 prescribe the method of repayment to the public agency or  
 20 agencies providing the direct economic support.

12 **§869. Application**

14 This subchapter applies to direct economic support  
 16 originally received by an employer on or after the effective date  
 18 of this subchapter.

20 **STATEMENT OF FACT**

22 This bill requires employers in the State who receive  
 24 economic subsidies from the State to give a hiring preference to  
 26 their existing employees whenever new employment positions are  
 28 created by the employer. This preference does not require the  
 30 employer to fill any new positions with existing employees who  
 32 are not qualified to perform the tasks required by the new  
 34 position. The bill only requires the employer to hire an  
existing employee if that employee is qualified to do the job and  
no better qualified applicant exists. The preference may not,  
however, conflict with any collective bargaining agreement that  
may apply to such an employer.