

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2345

H.P. 1669

House of Representatives, February 13, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26. Reference to the Committee on Appropriations and Financial Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative DAGGETT of Augusta.

Cosponsored by Representative ALIBERTI of Lewiston, Representative LARRIVEE of Gorham and Senator CONLEY of Cumberland.

STATE OF MAINE

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

An Act Concerning Reasonable Standards and Procedures for
Contracting Services by the State.



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

2
4 Sec. 1. 5 MRSA §1816-A is enacted to read:

6 §1816-A. Personal services contract

8 1. Conditions; general. Personal services contracting is permissible when any of the following conditions occur.

10 A. The services contracted are not or can not be made
12 available within civil service, can not be performed
14 satisfactorily by civil service employees or are of such a
16 highly specialized or technical nature that the necessary
18 expert knowledge, experience or ability is not available
20 through the civil service system.

22 B. The services are incidental to a contract for the
24 purchase or release of real or personal property. Contracts
26 under these criteria, known as "service agreements,"
28 include, but are not limited to, agreements to service or
30 maintain office equipment or computers that are leased or
32 rented.

34 C. The legislative, administrative or legal goals and
36 purposes can not be accomplished by using persons selected
38 pursuant to the civil service system. Contracts are
40 permissible under this criterion to protect against a
42 conflict of interest or to ensure independent and unbiased
44 findings when there is a clear need for a different, outside
46 perspective. These contracts include, but are not limited
48 to, obtaining expert witnesses in litigation.

50 D. A state agency needs private counsel because a conflict
of interest on the part of the Department of the Attorney
General prevents it from representing the agency without
compromising its position. These contracts require the
written consent of the Attorney General.

E. The contractor is to provide equipment, materials,
facilities or support services that the State can not
feasibly provide in the location where the services are to
be performed.

F. The contractor is to conduct training courses for which
appropriately qualified civil service instructors are not
and can not be made available.

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

2 2. Conditions; cost savings. Personal services contracting
4 is permissible to achieve cost savings when all the following
 conditions occur.

6 A. The contracting agency clearly demonstrates that the
8 proposed contract would result in actual overall cost
 savings to the State, as long as, in comparing costs:

10 (1) The State's additional costs of providing the same
12 service as proposed by a contractor are included.
14 These additional costs must include the salaries and
 benefits of additional staff that would be needed and
 the cost of additional space, equipment and materials
 needed to perform the function;

16 (2) The State's indirect overhead costs are included,
18 unless these costs may be attributed solely to the
20 function in question and would not exist if that
22 function were not performed in state service.
 "Indirect overhead cost" means the pro rata share of
 existing administrative salaries and benefits, rent,
 equipment costs, utilities and materials; and

24 (3) Any continuing state costs directly associated
26 with a contractor providing a contracted function are
28 included. These continuing state costs include, but
 are not limited to, those costs for inspection,
 supervision and monitoring.

30 B. The contract does not adversely affect the State's
32 affirmative action efforts.

34 C. The savings are large enough to ensure that they will
36 not be eliminated by private sector and state cost
 fluctuations that would normally be expected during the
 contracting period.

38 D. The amount of savings clearly justifies the size and
40 duration of the contracting agreement.

42 E. The contract is awarded through a publicized,
44 competitive bidding process.

46 F. The contract includes specific provisions pertaining to
48 the qualifications of the staff that is to perform the work
 under the contract, as well as a statement that the
 contractor's hiring practices meet applicable affirmative
 action and antidiscrimination standards.

50

2 G. The potential for future economic risk to the State from
potential contractor rate increases or work interruptions is
4 minimal.

6 H. The contract is with a firm. For the purposes of this
8 section, "firm" means a corporation, partnership, nonprofit
10 organization or sole proprietorship.

12 I. The potential economic advantage of contracting is not
14 outweighed by the public's interest in having a particular
16 function performed directly by State Government.

18 3. Collective bargaining agreements. Personal services
20 contracts may not be used when their terms or standards of
22 performance conflict with terms of existing collective bargaining
24 agreements.

26 4. Procedure. Any state agency proposing to execute a
28 contract pursuant to this section shall notify the Commissioner
30 of Administrative and Financial Services of its intention. All
32 organizations that represent state employees who perform the type
34 of work to be contracted, the joint standing committee of the
36 Legislature having jurisdiction over appropriations and financial
38 affairs and any person or organization that has filed with the
40 Bureau of General Services a request for notice must be contacted
immediately by the Commissioner of Administrative and Financial
Services upon receipt of this notice so that they may be given a
reasonable opportunity to comment on the proposed contract.
Departments or agencies submitting proposed contracts shall
retain and provide all data, including written findings, and
other information relevant to the contracts and necessary for a
specific application of the standards set forth in subsections 1
and 2. Any employee organization may request, within 10 days of
notification, the Commissioner of Administrative and Financial
Services to review any contract proposed or executed pursuant to
this section. The review must be conducted in accordance with
the Maine Administrative Procedure Act. Upon such a request, the
Commissioner of Administrative and Financial Services shall
review the contract for compliance with the standards specified
in subsections 1 and 2.

42 5. Legislative request. Any state agency denied approval
44 under this section may request specific legislation to authorize
46 the execution of the proposed contract.

48 STATEMENT OF FACT

50 This bill establishes standards that must be met by State
Government before it contracts for services outside the civil

2 service system. Notice of intent to contract must be given to employee representatives, the Joint Standing Committee on Appropriations and Financial Affairs and interested parties.