

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1993

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No. 1560

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H.P. 1162

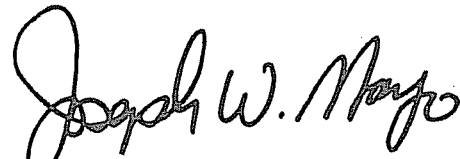
House of Representatives, June 9, 1993

**An Act Requiring Public Schools to Purchase Insurance through a  
Competitive Bidding Process.**

(EMERGENCY)

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Reported by Representative MITCHELL for the Joint Standing Committee on Education  
pursuant to Joint Order H.P. 1157.

  
JOSEPH W. MAYO, Clerk

2           **Mandate preamble.** This measure requires one or more local  
3 units of government to expand or modify activities so as to  
4 necessitate additional expenditures from local revenues but does  
5 not provide funding for at least 90% of those expenditures.  
6 Pursuant to the Constitution of Maine, Article IX, Section 21,  
7 two thirds of all of the members elected to each House have  
8 determined it necessary to enact this measure.

9           **Emergency preamble.** Whereas, Acts of the Legislature do not  
10 become effective until 90 days after adjournment unless enacted  
11 as emergencies; and

12           Whereas, adoption of a competitive bidding process for the  
13 purchase of insurance for school buses, school buildings and  
14 other school needs will lead to immediate savings to schools  
15 statewide in fiscal year 1993-94; and

16           Whereas, in the judgment of the Legislature, these facts  
17 create an emergency within the meaning of the Constitution of  
18 Maine and require the following legislation as immediately  
19 necessary for the preservation of the public peace, health and  
20 safety; now, therefore,

21  
22  
23  
24 **Be it enacted by the People of the State of Maine as follows:**

25           **Sec. 1. 20-A MRSA §1001, sub-§14 is enacted to read:**

26           **14. Insurance purchase by competitive bidding.** Except as  
27 otherwise provided by waiver, a school board shall purchase  
28 insurance by competitive bidding. On each insurance policy, a  
29 competitive bid must be sought at least once every 5 years. To  
30 take advantage of commercial package policies in the marketplace,  
31 a school board shall group qualifying lines of insurance into a  
32 single competitive bid process. Each policy secured by  
33 competitive bidding must be issued with a 3-year policy term or,  
34 if this is not possible, a commitment for 3 one-year policy terms  
35 must be secured with an option for 2 additional one-year policy  
36 terms, subject to annual review and adjustment.

37           **A. The requirement of competitive bidding may be waived by  
38 a school board when:**

39           **(1) In the opinion of the school board, an emergency  
40 exists that requires the immediate procurement of  
41 insurance. The emergency may include the premature  
42 cancellation of an existing policy or acquisition of a  
43 risk that can not be added to an existing policy,  
44 including the signing of a lease. However, at the next  
45 renewal of the policy, procurement of insurance is  
46 subject to competitive bidding;**

2           (2) After reasonable investigation by the school  
4           board, it appears that the required insurance is  
          procurable from only one source;

6           (3) It appears to be in the best interest of the  
8           school board to negotiate for the procurement of an  
          excess insurance line; or

10          (4) The line of insurance is workers' compensation or  
12          an employee benefit such as life, disability or health  
          insurance in accordance with subsection 5.

14          B. A registry of bidders must be maintained by the school  
16          board. Invitations to bid or proposals must be sent to a  
18          registry of bidders on file with the school board.  
20          Insurance agents or brokers licensed by the Bureau of  
22          Insurance and risk pools authorized under Title 24-A or  
24          Title 30-A, chapter 117 desiring to have their names entered  
          on a registry of bidders shall submit to the school board in  
          writing a request for such action. The name of a bidder  
          entered in a registry who fails to submit a bid on 3  
          consecutive proposals or invitations to bid may be removed  
          from the registry at the discretion of the school board.

26          C. "Competitive bidding" means the following multistep  
28          process.

30          (1) At least 4 months before the expiration date of  
32          the policy for which bids are being solicited, a  
34          prequalification questionnaire, referred to in this  
          paragraph as the "questionnaire," must be developed by  
          the school board for the purpose of prequalifying  
          bidders. The questionnaire must contain at a minimum:

36                 (a) Questions on the bidder's insurance  
38                 knowledge, educational background, licensing,  
40                 errors and omissions insurance, experience with  
42                 public entities, experience with school systems  
44                 and number of years in business. The  
               questionnaire must state that qualified bidders  
               must be insurance agents or brokers licensed by  
               the Bureau of Insurance or duly authorized risk  
               pools under Title 24-A or Title 30-A, chapter 117;

46                 (b) The evaluation criteria and relative scoring  
48                 weights to be applied in the prequalification  
               evaluation process;

2                   (c) A statement that bidders are subject to  
3                   prescreening and may not approach an insurer or  
4                   reinsurer until given permission by the school  
5                   board to do so since markets are allocated by the  
6                   school board. The questionnaire must state that  
7                   failure to comply with this restriction  
8                   automatically disqualifies the bidder. The  
9                   questionnaire must state that the school board  
10                   reserves the option to require a personal  
11                   interview at any time in the process; and

12                   (d) The address and contact person to which the  
13                   questionnaire must be submitted and the opening  
14                   date and time, which may not be less than 3 1/2  
15                   months from the expiration date of the policy or  
16                   policies being sought. The questionnaire must  
17                   state that: all proposals are publicly opened at  
18                   the date, time and place noted; a questionnaire  
19                   received after the date and time specified is  
20                   rejected, but retained and not evaluated or  
21                   considered further; and proposals are not  
22                   available for inspection until after the bid is  
23                   awarded. The questionnaire must state that the  
24                   school board reserves the right to reject a  
25                   questionnaire and does not accept responsibility  
26                   for costs incurred by a bidder in the preparation  
27                   of a questionnaire. The questionnaire must state  
28                   that bidders are notified of the outcome in  
29                   writing no later than 10 days after the closing  
30                   date.

31                   (2) In the same time frame, the school board shall  
32                   also develop a request for proposal, referred to in  
33                   this paragraph as the "proposal." The proposal must  
34                   contain at a minimum:

35                   (a) The line or lines of insurance for which bids  
36                   are being solicited and a clear definition of  
37                   minimum coverage required, minimum limits  
38                   required, deductibles, policy forms and  
39                   endorsements required and policy term required.  
40                   If coverage identical to the expiring coverage is  
41                   being sought, a copy of the expiring policy or  
42                   policies and all endorsements may be enclosed to  
43                   meet this requirement;

44                   (b) Basic underwriting information, such as named  
45                   insured, mailing address, nature of risk, actual  
46                   locations, schedules of buildings, business

- 2                   personal property, vehicles or any other property  
3                   for which insurance is being sought, if applicable;
- 4                   (c) At least a 3-year and preferably a 5-year  
5                   company-generated loss run;
- 6                   (d) A clear definition of the services, if any,  
7                   required of both the bidder and the insurer;
- 8                   (e) The minimum A.M. Best rating and financial  
9                   size category acceptable to the school board;
- 10                   (f) The evaluation criteria and relative scoring  
11                   weights to be applied to the proposal. Cost of  
12                   the insurance coverage must be included in the  
13                   evaluation criteria and must be given a minimum of  
14                   50% of the total weight of all criteria;
- 15                   (g) The address and contact person to which a bid  
16                   must be submitted and the bid opening date and  
17                   time. The proposal must state that: all  
18                   proposals are publicly opened at the date, time  
19                   and place noted; bids received after the date and  
20                   time specified are rejected, but retained and not  
21                   evaluated or considered further; and proposals are  
22                   not available for inspection until after the bid  
23                   is awarded. The proposal must state that the  
24                   school board reserves the right to reject a bid  
25                   and does not accept responsibility for costs  
26                   incurred by a bidder in the preparation of a  
27                   proposal. The proposal must state that all  
28                   bidders are notified of the outcome in writing no  
29                   later than 20 days after the bid closing date;
- 30                   (h) The name, address and optionally a facsimile  
31                   number of a school board contact person to whom  
32                   written questions may be addressed. The proposal  
33                   must state that the school board will reply to  
34                   questions submitted in writing before a specified  
35                   deadline with copies of the questions and answers  
36                   to be provided in writing to all bidders; and
- 37                   (i) A statement that the successful bidder must  
38                   present an insurance binder to the school board  
39                   within 5 days of the award and no later than the  
40                   expiration date of the existing policy. Failure  
41                   to do so disqualifies the award and the award is  
42                   then made to the next highest-rated bidder who was  
43                   in compliance with the proposal. The proposal  
44                   must state that all decisions regarding the award  
45                   are final.

2           (3) Each bidder on the registry of bidders must be  
4           provided with a questionnaire and proposal 4 months  
6           before the expiration of the policy or policies being  
8           sought. Each bidder must complete and return the  
10           questionnaire before the stated date and time as  
12           specified in the questionnaire. In addition, a bidder  
14           must state in the order of preference the insurers they  
          prefer to solicit on the school board's behalf. The  
          school board shall then have 3 persons independently  
          review a questionnaire on the basis of the established  
          criteria. The reviewers shall document the scoring and  
          select all qualified bidders, but no more than the 5  
          highest-rated, to participate further in the process.

16           (4) The school board shall allocate to each selected  
18           bidder at least one insurer from which to solicit a  
20           bid. This market allocation must be made on the basis  
22           of awarding the bidder's first choice to the bidder.  
24           If there is a conflict, an incumbent broker is given  
26           preference over the school board's incumbent insurer.  
          Allocation is then made on the basis of  
          highest-qualifying score. Once market allocation is  
          complete, a new bid closing date must be set for 30  
          days before the policy expiration date for submission  
          of insurer bids.

28           (5) The school board shall have 3 persons  
30           independently review each submitted bid on the basis of  
32           the established criteria. The reviewers shall document  
34           the scoring and substantive information that supports  
36           the scoring and make the award decision. Interviews  
38           may be considered within the review. Award must be  
40           made to the highest-rated proposal that conforms to the  
42           proposal. Tie scores must be resolved on the basis of  
44           factors considered by the school board to serve the  
46           best interests of the school system. Minor  
48           negotiations not affecting the bid price more than 5%  
50           after notice of award are allowed and, if agreement can  
          not be reached, the proposal may be rejected and the  
          award made to the next highest-rated bidder who is in  
          compliance with the proposal. Written records must be  
          kept by each person reviewing or ranking proposals.  
          The award of the bid must then be announced publicly.  
          All bidders must be notified in writing no later than 5  
          days after the award is made. The successful bidder  
          shall submit, in accordance with the proposal, a  
          written binder of insurance within 5 days of the award  
          and no later than the expiration date of the expiring  
          policy. All decisions regarding awards are final.

