

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 453

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H.P. 332

House of Representatives, February 8, 1995

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

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Received by the Clerk of the House on February 6, 1995. Referred to the Committee on State and Local Government and ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative DAGGETT of Augusta.  
Cosponsored by Representatives: AHEARNE of Madawaska, AULT of Wayne, HATCH of Skowhegan, KERR of Old Orchard Beach, MITCHELL of Vassalboro, MORRISON of Bangor, ROSEBUSH of East Millinocket, STROUT of Corinth, Senators: BERUBE of Androscoggin, MICHAUD of Penobscot, MILLS of Somerset.

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

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

6 **§1816-A. Personal services contract**

8 **1. Conditions; general. Except for contracts requiring specific legislative approval, personal services contracting is permissible when any one of the following conditions occur.**

10 **A. The services contracted are not currently available within the state agency, can not be performed satisfactorily by civil service employees or are of such a highly specialized or technical nature that the necessary expert knowledge, experience or ability is not available through the civil service system.**

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

14 **C. The legislative, administrative or legal goals and purposes can not be accomplished by using persons selected pursuant to the civil service system. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings when there is a clear need for a different outside perspective.**

16 **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.**

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

20 **F. The contractor conducts training courses for which appropriately qualified civil service instructors are not and can not be made available.**

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

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

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

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

14                   (2) Any continuing state costs directly associated  
15 with a contractor providing a contracted function are  
16 included. These continuing state costs include, but  
17 are not limited to, those costs for inspection,  
18 supervision, monitoring and any pro rata share of  
19 existing costs or expenses, including administrative  
20 salaries and benefits, rent, equipment costs, utilities  
21 and materials.

22           B. The contract does not adversely affect the State's  
23 affirmative action efforts.

24           C. The contract is awarded in accordance with sections  
25 1825-A and 1825-B.

26           D. The contract includes specific provisions pertaining to  
27 the qualifications of the staff that is to perform the work  
28 under the contract, as well as a statement that the  
29 contractor's hiring practices meet applicable affirmative  
30 action and antidiscrimination standards.

31           E. The potential for future economic risk to the State from  
32 potential contractor rate increases or work interruptions is  
33 minimal.

34           F. The contract is with a firm or a licensed, registered or  
35 otherwise professionally qualified individual. For the  
36 purposes of this section, "firm" means a corporation,  
37 partnership, nonprofit organization or sole proprietorship.

38           G. The firm to which the contract is awarded has no more  
39 than a total of 3 occupational safety and health or labor  
40 law violations within the previous 5 calendar years.

2 H. The potential economic advantage of contracting is not  
3 outweighed by the public's interest in having a particular  
4 function performed directly by State Government.

5 I. The contract does not violate existing state employee  
6 collective bargaining agreements or contain standards of  
7 performance lower than existing state employee collective  
8 bargaining agreements.

9 3. Procedure. Any state agency proposing to execute a  
10 contract pursuant to this section shall notify the Commissioner  
11 of Administrative and Financial Services of its intention. All  
12 organizations that represent state employees who perform the type  
13 of work to be contracted, the joint standing committee of the  
14 Legislature having jurisdiction over state and local government  
15 matters and the joint standing committee of the Legislature  
16 having jurisdiction over appropriations and financial affairs  
17 must be contacted immediately by the Commissioner of  
18 Administrative and Financial Services upon receipt of this notice  
19 so that they may be given a reasonable opportunity to comment on  
20 the proposed contract. Departments or agencies submitting  
21 proposed contracts shall retain and provide all data, including  
22 written findings, and other information relevant to the contracts  
23 and necessary for a specific application of the standards set  
24 forth in subsections 1 and 2. Any employee organization may  
25 request, within 3 business days of notification, the Commissioner  
26 of Administrative and Financial Services to review any contract  
27 proposed or executed pursuant to this section. The review must  
28 be conducted in accordance with the Maine Administrative  
29 Procedure Act. Upon such a request, the Commissioner of  
30 Administrative and Financial Services shall review the contract  
31 for compliance with the standards specified in subsections 1 and  
32 2.

33 4. Legislative request. Any state agency denied approval  
34 under this section may request specific legislation to authorize  
35 the execution of the proposed contract.

36 5. Report. Each state agency shall deliver a report on  
37 personal services contracting by January 31, 1996 and annually  
38 thereafter to the joint standing committee of the Legislature  
39 having jurisdiction over state and local government matters and  
40 to the Bureau of General Services. The report must include, at a  
41 minimum, the number of requests for personal services contracts  
42 considered by the Department of Administrative and Financial  
43 Services, the number of personal services contracts put out to  
44 bid, the cost of the contracts, the estimated cost to the State  
45 if the personal services had been accomplished within civil  
46 service, the number and type of appeals, the estimated cost of  
47 the appeals, and the estimated cost of the appeals.

2 administering the appeals process and any suggestions for  
3 improvement.

4 **Sec. 2. Effective date.** The contracting provisions in the Maine  
5 Revised Statutes, Title 5, section 1816-A apply to proposals for  
6 new contracts and the renewal process for existing contracts as  
7 they occur on and after the effective date of this Act.

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9  
10 **STATEMENT OF FACT**

11  
12 This bill establishes standards that must be met by State  
13 Government before it contracts for services outside of the civil  
14 service system. Notice of intent to contract must be given to  
15 employee representatives, the Joint Standing Committee on  
16 Appropriations and Financial Affairs, the Joint Standing  
17 Committee on State and Local Government and interested parties.  
18