

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1242

S.P. 383

In Senate, February 25, 1997

An Act to Promote the Effective Delivery of Public Services.

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

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator RAND of Cumberland.

Cosponsored by Representatives: BOLDUC of Auburn, HATCH of Skowhegan, JABAR of Waterville, QUINT of Portland, SAMSON of Jay, SAXL of Portland, SHIAH of Bowdoinham, TESSIER of Fairfield.

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

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

§1816-A. Personal services contract

1. Conditions; general. A state agency may enter into a contract to have personal services performed by persons outside the civil service system only if:

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 can not be made available in a timely manner through the civil service system;

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;

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;

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 provides 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 services are of such an urgent, temporary or occasional nature that the delay incumbent in implementation under civil service would frustrate the purpose;

G. The contract would result in actual overall cost savings and meets the criteria in subsection 2; or

H. The contract has specific legislative approval.

2 2. Conditions; cost savings. Personal services contracting
3 is permissible under subsection 1, paragraph G only if:

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

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

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

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

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

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

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

33 F. The services are to be performed by persons who are
34 licensed, registered or otherwise professionally qualified;

35 G. Any person or legal entity to which the contract is
36 awarded has no more than 3 occupational safety and health or
37 labor law violations within the previous 5 calendar years;

38 H. The potential economic advantage of contracting is not
39 outweighed by the public's interest in having a particular
40 function performed directly by State Government; and

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2 1. The contract does not violate existing state employee
3 collective bargaining agreements or contain standards of
4 performance lower than existing state employee collective
5 bargaining agreements.

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

30 4. Legislative request. Any state agency denied approval
31 under this section may request specific legislation to authorize
32 the execution of the proposed contract.

33 5. Report. Each state agency shall deliver a report on
34 personal services contracting by January 31, 1998 and annually
35 thereafter to the joint standing committee of the Legislature
36 having jurisdiction over state and local government matters and
37 to the Department of Administrative and Financial Services,
38 Bureau of General Services. The report must include, at a
39 minimum, the number of requests for personal services contracts
40 considered by the Department of Administrative and Financial
41 Services, the number of personal services contracts put out to
42 bid, the cost of the contracts, the estimated cost to the State
43 if the personal services had been accomplished within civil
44 service, the number and type of appeals, the estimated cost of
45 administering the appeals process and any suggestions for
46 improvement.

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

SUMMARY

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