119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document **No. 2106**

S.P. 747 In Senate, March 30, 1999

An Act to Allow Nonprofit Corporations to Retain Small Levels of Profits Realized on State Contracts.

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

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.

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

Sec. 1. 5 MRSA §20005, sub-§6-A, ¶A, as enacted by PL 1997, c. 381, §1, is amended to read:

A. A renewal contract with a provider is not subject to the request-for-proposal procedure requirement if the contract granted under this subsection is ~~performance---based~~ performance-based. On or after January 1, 2000, contracts awarded or renewed under this section are subject to the following provisions:

(1) A nonprofit provider of goods or services to the State may retain up to 5% of earned reserves from a contract with the State pursuant to Title 13-B, section 202, subsection 1, paragraph U. The provider may retain more than this amount with the permission of the state agency for which the goods or services are provided;

(2) Reserves retained under this paragraph may be used to meet financial liabilities, including costs incurred in preparation or for the fulfillment of the requirements of the contract or for those costs related to an existing contract;

(3) Pursuant to Title 13-B, section 202, subsection 1, paragraph U, all reserves earned from state contracts exceeding 5% must be returned to the State within one year from the date of receipt. All earned reserves under 5% that are not used for a legitimate purpose under this paragraph must be returned to the State within 4 years of the receipt of the earned reserve;

(4) All providers electing to retain earned reserves under this paragraph may be subject to an audit to ensure adherence to this paragraph; and

(5) If the State intends to renew a contract with a service provider and to change in any way the provisions of that contract, then the State must give notice to the provider at least 6 months prior to the expiration date of the contract. The State must negotiate the contract in good faith. If notice is not given by the State within the 6-month period, then the contract is automatically extended until good faith negotiations have concluded.

Sec. 2. 13-B MRSA §202, sub-§1, ¶S, as amended by PL 1989, c. 857, §51, is further amended to read:

S. To have and exercise all powers necessary or convenient to effect the purposes for which the corporation is organized, or to further the activities in which the corporation may lawfully be engaged; ~~and~~

Sec. 3. 13-B MRSA §202, sub-§1, ¶T, as enacted by PL 1989, c. 857, §52, is amended to read:

T. To engage in legislative liaison activities, including gathering information regarding legislation, analyzing the effect of legislation, communicating with Legislators and attending and giving testimony at legislative sessions, public hearings or committee hearings, notwithstanding any rule adopted by the Department of ~~Finance.~~ Administrative and Financial Services; and

Sec. 4. 13-B MRSA §202, sub-§1, ¶U is enacted to read:

U. To enter into contracts with the State for the provision of goods or services that will allow the corporation to retain and use up to 5% of all reserves earned pursuant to a contract with the State and to use these earned reserves for costs incurred in preparation or for the fulfillment of the requirements of the contract. Corporations retaining earned reserves under this subsection must return that portion of the earned reserve that exceeds 5% of the total amount of the earned reserve within one year from the date of receipt. Earned reserves under 5% that are retained by the corporation must be returned to the State within 4 years of receipt if not used for a legitimate purpose pursuant to this paragraph. All reserves earned by the corporation from state contracts are subject to audit under Title 5, section 1660-G.

Sec. 5. 34-B MRSA §3604, sub-§3, ¶E, as amended by PL 1997, c. 381, §2, is further amended to read:

E. Any new contract must be awarded through a request-for-proposal procedure and any contract of $500,000 per year or more that is renewed must be awarded through a request-for-proposal procedure at least every 8 years, except for the following.

(1) A renewal contract with a provider is not subject to the request-for-proposal procedure requirement if the contract granted under this subsection is ~~performance--based~~ performance-based. On or after January 1, 2000, contracts awarded or amended under

this subparagraph are subject to the following provisions:

(a) Nonprofit providers of goods and services to the State may retain up to 5% of earned reserves from a contract with the State pursuant to Title 13-B, section 202, subsection 1, paragraph U. The provider may retain more than this amount with the permission of the state agency for which goods and services are provided;

(b) Reserves retained under this subparagraph may be used to meet financial liabilities, including costs incurred in preparation or for the fulfillment of the requirements of the contract or for those costs related to existing contracts;

(c) Pursuant to Title 13-B, section 202, subsection 1, paragraph U, all reserves earned from state contracts exceeding 5% must be returned to the State within one year from the date of receipt. All reserves earned under 5% that are not used for a legitimate purpose under this subparagraph must be returned to the State within 4 years of the receipt of the earned reserve;

(d) All providers electing to retain earned reserves under this subparagraph may be subject to an audit to ensure adherence to this subparagraph; and

(e) If the State intends to renew a contract with a service provider and to change in any way the provisions of that contract, then the State must give notice to the provider at least 6 months prior to the expiration date of the contract. The State must negotiate the contract in good faith. If notice is not given by the State within the 6-month period, then the contract is automatically extended until good faith negotiations have concluded.

(2) Notwithstanding subparagraph (1), the department shall subject a contract to a request-for-proposal procedure when necessary to comply with paragraph G.

SUMMARY

This bill allows nonprofit corporations that contract with the State to provide goods or services to retain up to 5% of any reserve earned under the contract. The bill allows the provider to retain more than this amount with permission of the contracting state agency. The bill limits the use of the retained earnings by the corporation to fulfilling the requirements of existing state contracts. It requires the State to provide a service provider with a 6-month notice if it intends to renew an existing contract and change in any way the provisions of the contract.