

MAINE STATE LEGISLATURE

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STATE AND LOCAL GOVERNMENT

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STATE OF MAINE
SENATE
120TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "*A*" to S.P. 489, L.D. 1578, Bill, "An Act to Clarify the Laws Governing Employment by the State"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 5 MRSA §18, sub-§7, as enacted by PL 1987, c. 784, §3, is amended to read:

7. Avoidance of appearance of conflict of interest. Every executive employee shall endeavor to avoid the appearance of a conflict of interest by disclosure or by abstention. For the purposes of this subsection and subsection 8, "conflict of interest" includes receiving remuneration, other than reimbursement for reasonable travel expenses, for performing functions that a reasonable person would expect to perform as part of that person's official responsibility as an executive employee.

Sec. 2. 5 MRSA §18-A is enacted to read:

§18-A. Conflict of interest; contract with the State

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

2 A. "State entity" means any office, department, agency,
4 authority, commission, board, institution, hospital or other
 instrumentality of the State.

6 B. "Executive employee" has the same meaning as set forth
8 in section 19, subsection 1, paragraph D except that
10 "executive employee" includes employees of and members
 serving with the National Guard and employees of the
 University of Maine System, the Maine Maritime Academy and
 the state technical colleges.

12 2. Prohibition. An executive employee may not have any
14 direct or indirect pecuniary interest in or receive or be
16 eligible to receive, directly or indirectly, any benefit that may
 arise from any contract made on behalf of the State when the
 state entity that employs the executive employee is a party to
 the contract.

18 3. Violative contract void. Any contract made in violation
20 of this section is void.

22 4. Exemptions. This section does not apply:

24 A. To purchases by the Governor under authority of Title 1,
26 section 814;

28 B. To contracts made with a corporation that has issued
30 shares to the public for the general benefit of that
 corporation; or

32 C. If an exemption is approved by the Director of the
34 Bureau of General Services within the Department of
36 Administrative and Financial Services or the director's
38 designee based upon one of the following and if the director
 gives notice of the granting of this exemption to all
 parties bidding on the contract in question with a statement
 of the reason for the exemption and if an opportunity is
 provided for any party to appeal the granting of the
 exemption:

40 (1) When the private entity or party that proposes to
42 contract with the State and that employs the executive
44 employee, based upon all relevant facts, is the only
46 reasonably available source to provide the service or
 product to the State, as determined by the director; or

48 (2) When the director determines that the amount of
50 compensation to be paid to the private entity or party
 providing the service or product to the State is de
 minimis.'

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

The Bureau of General Services within the Department of Administrative and Financial Services will incur some minor additional costs to grant exemptions to certain contracting procedures and to hear appeals of those exemptions. These costs can be absorbed within the bureau's existing budgeted resources.

The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may increase General Fund revenue by minor amounts.

This bill may increase the number of civil suits filed in the court system. The additional workload and administrative costs associated with the minimal number of new cases filed can be absorbed within the budgeted resources of the Judicial Department. The collection of additional filing fees may also increase General Fund revenue by minor amounts.'

SUMMARY

This amendment adds a new section to the bill that more clearly states the prohibition with respect to a state employee having a beneficial interest in an entity that is contracting with a state agency that employs that employee. The amendment also provides a specific procedure for the granting of exemptions from the statutory rule contained in the amendment with specific reasons for those exemptions, which would be granted by the Director of the Bureau of General Services within the Department of Administrative and Financial Services or the director's designee, subject to a right of appeal after notice by any other parties who have bid on the contract in question. It also adds a fiscal note to the bill.