

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2006

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Legislative Document

No. 1769

S.P. 686

In Senate, December 30, 2005

### **An Act To Strengthen the State Purchasing Code of Conduct Laws**

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Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

Received by the Secretary of the Senate on December 28, 2005. Referred to the Committee on State and Local Government pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator ROTUNDO of Androscoggin.  
Cosponsored by Senator: President EDMONDS of Cumberland, Representatives: BARSTOW of Gorham, CUMMINGS of Portland.

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

PART A

Sec. A-1. 5 MRSA §1825-K, as enacted by PL 2001, c. 439, Pt. NNNN, §1, is repealed and the following enacted in its place:

§1825-K. Application of state purchasing code of conduct to certain bidders seeking contracts as part of competitive bid process; affidavit required

1. Application. This subchapter applies to competitive bids for sale of apparel, footwear or textiles pursuant to subchapter 1-A.

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

A. "Code of conduct" means the state purchasing code of conduct that follows the principles set out in section 1825-L.

B. "Independent monitor" means a not-for-profit organization that is neither funded nor controlled, in whole or in part, by businesses that sell or manufacture apparel, footwear or textiles.

3. Availability of copy of code of conduct. The State Purchasing Agent shall make a copy of the state purchasing code of conduct available to all bidders subject to this subchapter.

4. Affidavit requirement. The State Purchasing Agent may not accept a bid for the sale of goods covered by this subchapter unless:

A. Prior to the close of the bidding deadline, the bidder has filed with the agent a signed affidavit, executed and filed by a person authorized to commit the bidder to the code of conduct, stating:

(1) That the bidder will comply with the code of conduct;

(2) That the bidder has furnished a copy of the code of conduct to each supplier at the point of assembly of the goods subject to the bid process and required that each supplier inform the bidder of whether the supplier is in compliance with the code of conduct; and

2           (3) That, to the best of the bidder's knowledge, each  
4           supplier at the point of assembly of the goods subject  
          to the bid process is in compliance with the code of  
          conduct; and

6           B. The bidder has submitted a list of the names and  
8           addresses of suppliers at the point of assembly of goods  
          subject to the bid process.

10           5. Affidavit update requirement. If, after complying with  
12           the filing requirements of this section, a bidder is awarded a  
14           contract, that contractor must, during the term of the contract,  
16           promptly inform the State Purchasing Agent of any change in the  
          information furnished in the affidavit submitted at the time of  
          the original bid and must submit a new, updated affidavit that  
          conforms with the requirements of subsection 4.

18           **Sec. A-2. 5 MRSA §1825-L, sub-§3,** as enacted by PL 2001, c.  
20           439, Pt. NNNN, §1, is repealed.

22           **Sec. A-3. 5 MRSA §1825-M,** as enacted by PL 2001, c. 439, Pt.  
24           NNNN, §1, is repealed.

**Sec. A-4. 5 MRSA §1825-N, first ¶,** as enacted by PL 2001, c.  
26           439, Pt. NNNN, §1, is amended to read:

28           The State Purchasing Agent shall provide to bidders and  
          ~~these who have been awarded contracts~~ contractors resources to  
30           assist with compliance with the state purchasing code of conduct  
          established in this subchapter. These resources must include a  
32           list, easily accessed by the public, of bidders and vendors who  
          have adopted the state purchasing code of conduct.

34           **Sec. A-5. 5 MRSA §1825-Q** is enacted to read:

36           §1825-Q. Complaints of noncompliance with code of conduct;  
38           investigations of complaints

40           1. Complaints alleging noncompliance. The State Purchasing  
          Agent shall initiate an investigation to determine whether a  
42           violation of the code of conduct has occurred if:

44           A. The State Purchasing Agent has independent knowledge  
          that a contractor or a supplier at the point of assembly of  
46           goods subject to a contract is not in compliance with the  
          code of conduct;

48           B. The contractor informs the State Purchasing Agent that  
50           the contractor or a supplier at the point of assembly of

2 goods subject to a contract is not in compliance with the  
3 code of conduct;

4 C. A worker for a contractor or for a supplier at the point  
5 of assembly of goods subject to a contract files a written  
6 complaint directly with the State Purchasing Agent stating  
7 that the contractor or supplier, to the best of the worker's  
8 knowledge, is not in compliance with the code of conduct;

10 D. A 3rd party established and based outside the United  
11 States, on behalf of or on the basis of information from a  
12 worker or workers, files directly with the State Purchasing  
13 Agent a signed and dated written complaint stating that, to  
14 the best of the 3rd party's knowledge, a contractor or a  
15 supplier at the point of assembly of goods subject to a  
16 contract is not in compliance with the code of conduct. If  
17 possible, the 3rd party's written complaint be signed and  
18 dated under oath before an official authorized to administer  
19 oaths; or

20 E. A 3rd party established and based in the United States,  
21 on behalf of or on the basis of information from a worker or  
22 workers, files directly with the State Purchasing Agent a  
23 written complaint, signed and dated under oath before an  
24 official authorized by applicable law to administer oaths,  
25 stating that, to the best of the 3rd party's knowledge, a  
26 contractor or a supplier at the point of assembly of goods  
27 subject to a contract is not in compliance with the code of  
28 conduct.

30 2. Specificity required. Any complaint made to the State  
31 Purchasing Agent must state with reasonable specificity each  
32 reason a party subject to the complaint is allegedly not in  
33 compliance with the code of conduct.

34 3. Notification to party subject to complaint. After  
35 receiving a complaint alleging noncompliance with the code of  
36 conduct, the State Purchasing Agent shall contact in a timely  
37 manner, in writing and by certified letter, the contractor that  
38 is the subject of the complaint or whose supplier is the subject  
39 of the complaint.

40 **Sec. A-6. 5 MRSA §1825-R is enacted to read:**

41 **§1825-R. Determinations of noncompliance with code of conduct**

42 1. Relevant information. In making a determination of  
43 whether a violation of the code of conduct has occurred, the  
44 State Purchasing Agent may take into account any factors,  
45 information, sources of information and materials determined  
46 information, sources of information and materials determined

2 reliable and relevant by the State Purchasing Agent, as  
3 determined on a case-by-case basis. The State Purchasing Agent  
4 has specific authority and discretion to employ an independent  
5 monitor to investigate a complaint.

6 2. Determination by State Purchasing Agent. The  
7 determination of whether a party subject to a complaint is in  
8 compliance with the code of conduct is solely that of the State  
9 Purchasing Agent.

10 3. Notice of determination. After rendering a  
11 determination under this section, the State Purchasing Agent  
12 promptly shall inform the complainant and contractor in writing.

13 **Sec. A-7. 5 MRSA §1825-S is enacted to read:**

14 **§1825-S. Consequences of noncompliance with code of conduct**

15 1. Action by State Purchasing Agent. Upon determination of  
16 a violation of the code of conduct by a contractor or  
17 contractor's supplier at the point of assembly of goods covered  
18 by this subchapter, the State, through the State Purchasing  
19 Agent, shall inform the contractor and engage in discussions with  
20 the contractor about the violation. The purpose of the  
21 discussions is to work in partnership with the contractor to  
22 influence the contractor to change its practices or to use its  
23 bargaining position with the offending supplier to change the  
24 supplier's practices, rather than to cease doing business with  
25 the contractor or supplier. The State Purchasing Agent shall  
26 prescribe appropriate measures to ensure compliance with the code  
27 of conduct. These measures may include, but are not limited to:

28 A. Requesting that each party found not to be in compliance  
29 with the code of conduct provide access to independent  
30 monitors, if available;

31 B. Requesting that each party found not to be in compliance  
32 with the code of conduct offer their workers and managers  
33 the training and guidelines necessary to bring the workplace  
34 into compliance with the code of conduct; and

35 C. Requesting that each party found not to be in compliance  
36 with the code of conduct demonstrate to the State Purchasing  
37 Agent that prescribed changes or improvements have been  
38 completed and implemented.

39 2. Termination of contract. If, in the opinion of the  
40 State Purchasing Agent, a contractor that has been determined as  
41 not in compliance with the code of conduct does not make good  
42 faith efforts to change its practices or use its bargaining  
43 position to bring its practices into compliance with the code of  
44 conduct, the State Purchasing Agent may terminate the contract.

2 position with an offending supplier to change the supplier's  
3 practices, the State Purchasing Agent may take appropriate  
4 remedial action including, but not limited to, barring the  
5 subject contractor from bidding on future state contracts or  
6 terminating the State's contract with the contractor. Reference  
7 to the authority given in this subsection must be specifically  
8 referenced in the State's contracts with those contractors that  
9 are subject to the code of conduct.

## 10 **PART B**

### 12 **Sec. B-1. Rulemaking pursuant to statutory amendment.**

14 Notwithstanding the provisions of the Maine Revised Statutes,  
15 Title 5, section 1825-0, amendments to rules that are  
16 necessitated to ensure consistency with the amendments to state  
17 purchasing code of conduct law in Part A are routine technical  
18 rules as defined in Title 5, chapter 375, subchapter 2-A.

## 20 **PART C**

### 22 **Sec. C-1. Code of conduct working group.**

24 The Commissioner of Administrative and Financial Services, or the commissioner's  
25 designee, shall convene a working group to explore whether the  
26 State Purchasing Agent should investigate alleged violations of  
27 the state purchasing code of conduct established in the Maine  
28 Revised Statutes, Title 5, chapter 155, subchapter 1-B by the  
29 creation and use of an independent fact-finding consortium. If  
30 the working group determines that the use of such a consortium is  
31 appropriate, the working group also shall examine the means by  
32 which such a consortium would be created and function.

34 **1. Membership.** The working group must consist of 4 members  
35 who are Maine-based advocates for labor rights and just working  
36 conditions in the apparel, footwear and textile industry and 4  
37 members who represent Maine-based businesses having business of  
38 the type that could be subject to the state purchasing code of  
39 conduct. Members shall serve without compensation. The State  
40 Purchasing Agent, or the agent's designee, shall serve as an ex  
41 officio, nonvoting member of the working group.

42 **2. Convening of working group.** The Commissioner of  
43 Administrative and Financial Services shall convene the first  
44 meeting of the working group. At that meeting, the members shall  
45 elect a chair, who shall convene, set the agenda for and  
46 facilitate working group meetings.





2           3. Sets out the factors that may be taken into account by  
the State Purchasing Agent in making a determination of whether  
the code of conduct has been violated;

4

6           4. Permits the State Purchasing Agent to take remedial  
action, including, but not limited to, terminating contracts,  
against contractors that do not make good faith efforts to comply  
8 with the code of conduct; and

10           5. Eliminates the State's prerogative to contract with  
noncompliant contractors when no other procurement source option  
12 exists.

14           Part B of the bill provides that changes to rules made to  
ensure consistency with changes to the law in this bill are  
16 routine technical rules.

18           Part C establishes a working group whose task is to report  
on whether the State should form an independent consortium to  
20 monitor and investigate complaints of violations of the code of  
conduct and, if so, the manner in which such a consortium would  
22 be created and function.