

MAINE STATE LEGISLATURE

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Date: 5/31/11

L.D. 776
(Filing No. H-386)

EDUCATION AND CULTURAL AFFAIRS

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 583, L.D. 776, Bill, "An Act To Create a Fair Process for Energy Service Companies Contracting with Maine Schools"

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

'Sec. 1. 20-A MRSA §15915, sub-§1, as amended by PL 2005, c. 499, §1, is repealed and the following enacted in its place:

1. Initial agreement for energy conservation improvements. A school administrative unit may enter into an agreement of up to 20 years with an energy services company. For the purposes of this section, "energy services company" means a company or 3rd-party financing company that provides design, installation, operation, maintenance and financing of energy conservation or combined energy conservation and related air quality improvements at existing school administrative unit facilities. The school administrative unit's costs to enter into such an agreement are not applicable to the unit's school construction project costs, the debt service on which is eligible for subsidy purposes under section 15907. Such an agreement is deemed to be a professional service, which is not subject to the competitive bidding requirements of Title 5, section 1743-A, if the agreement:

A. Provides for operation or maintenance of the improvement for at least 5 years or the entire term of the financing agreement if longer than 5 years;

B. Requires a guaranty by the contractor that the improvement will meet performance criteria set forth in the agreement for at least 5 years or for the entire term of the financing agreement if longer than 5 years; and

C. Has a total contract cost, excluding private or federal grant funds, interest and operating and maintenance costs, of less than \$2,500,000 for any school building.

A school administrative unit may select an energy services company on the basis of a request for qualifications or a request for proposals, and it is not required to use a competitive method set forth in this chapter and Title 5, section 1743-A and Private and Special Law 1999, chapter 79. The selection process must include at a minimum a

COMMITTEE AMENDMENT

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request for qualifications or a request for proposals that is advertised in a newspaper of general circulation in the school administrative unit and a newspaper of general circulation in the City of Augusta. The deadline for receipt of requests for qualifications or requests for proposals may not be less than 15 days from the last day the advertisement was published. The school administrative unit shall establish an interview committee, which must include the superintendent of the school administrative unit and at least one school board member. The interview committee shall interview not fewer than 3 energy services companies unless a smaller number of energy services companies responds to the request for qualifications or request for proposals. A request for qualifications or a request for proposals may not contain terms that require an energy services company to have more than 3 years of experience in the energy conservation field, a minimum number of prior projects or project references or membership in or accreditation from a regional, national or international association of energy services companies or to use equipment that is not generally available to energy services companies or terms that are otherwise included for the purpose of bias or favoritism toward a particular energy services company.

Objections to the terms of a request for qualifications or a request for proposals under this subsection are deemed waived if not delivered in writing to the office of the superintendent of schools in that school administrative unit within 7 days of the last publication of the newspaper advertisement. If an objection is received, the school board shall conduct a hearing on the objection within 14 days of its receipt. The school board shall allow interested energy services companies to speak at the hearing and shall issue a decision to either validate or invalidate the request for qualifications or the request for proposals within 7 days of the close of the hearing. A decision by the school board in response to an objection is a final government action subject to appeal to the Superior Court.

Sec. 2. 20-A MRSA §15915, sub-§1-A is enacted to read:

1-A. Performance criteria. An agreement under this section between a school administrative unit and an energy services company must include performance criteria that guarantee:

- A. Energy savings;
- B. A maximum price, including operation, maintenance and financing costs;
- C. That the project will meet local, state and federal codes;
- D. That measurement and verification of energy savings are determined using the international performance measurement and verification protocol published by the United States Department of Energy, Office of Scientific and Technical Information; and
- E. An annual reconciliation of energy savings based on the measurement and verification process under this section.

Prior to entering into an agreement, a school administrative unit may request that the Department of Administrative and Financial Services, Bureau of General Services review the performance criteria in the agreement for conformance with this subsection. The

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1 Bureau of General Services shall review and advise school administrative units to the
2 extent resources allow.

3 **Sec. 3. Guidance for procuring energy conservation and air quality**
4 **improvement services.** The Department of Administrative and Financial Services,
5 Bureau of General Services and the Department of Education, in consultation with
6 representatives of energy services companies and representatives of school management,
7 shall develop guidance for school administrative units procuring energy conservation and
8 related air quality improvement services under the Maine Revised Statutes, Title 20-A,
9 section 15915. No later than January 1, 2012, the agencies shall make accessible:

- 10 1. Guidance for preparing a request for qualifications and a request for proposals,
11 including a sample of each type of request and a sample of a notice to be given;
- 12 2. A list of performance criteria recommended for inclusion in an energy services
13 agreement; and
- 14 3. Guidelines for obtaining independent 3rd-party verification of energy savings by a
15 qualified professional.'

16 SUMMARY

17 This amendment replaces the bill. The bill removes provisions of law that allow
18 school administrative units to use a process other than a competitive bidding process in
19 selecting energy service providers for the design, installation, operation, maintenance and
20 financing of energy conservation or combined energy conservation and air quality
21 improvements. The amendment retains a school administrative unit's authority to use a
22 process other than a competitive bidding process while revising the current law to:

- 23 1. Increase the length of an agreement from 15 years to 20 years;
- 24 2. Define "energy services company" and use that term in the statute;
- 25 3. Increase the total contract cost allowed without going to competitive bidding from
26 \$2,000,000 to \$2,500,000 and exclude private and federal grant funds from counting
27 toward that maximum figure;
- 28 4. Prohibit a request for qualifications or a request for proposals from containing
29 certain requirements that might exclude qualified energy services companies from
30 competing;
- 31 5. Establish performance criteria that must be included in an agreement for energy
32 services;
- 33 6. Establish a minimum time period for accepting responses to a request for
34 qualifications or a request for proposals and a maximum period for responding to
35 objections to the terms of a request; and
- 36 7. Require the Department of Administrative and Financial Services, Bureau of
37 General Services and the Department of Education to provide guidance to school
38 administrative units regarding these agreements.

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Approved: 05/27/11 *MAC*



125th MAINE LEGISLATURE

LD 776

LR 1543(02)

An Act To Create a Fair Process for Energy Service Companies Contracting with Maine Schools

Fiscal Note for Bill as Amended by Committee Amendment "A"
Committee: Education and Cultural Affairs
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Additional costs to the Department of Education to work with the Department of Administrative and Financial Services, Bureau of General Services to provide the required guidance to school administrative units can be absorbed within existing budgeted resources.