

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1193

H.P. 830

House of Representatives, March 28, 2017

**An Act To Ensure the Cost-efficiency of Contracting out Services by
the State**

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

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative WARREN of Hallowell.
Cosponsored by Senator MIRAMANT of Knox and
Representatives: DUNPHY of Old Town, HUBBELL of Bar Harbor, JORGENSEN of
Portland, MARTIN of Sinclair, McLEAN of Gorham, SPEAR of South Thomaston, TIPPING
of Orono, Senator: DION of Cumberland.

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

2 **Sec. 1. 3 MRSA §994, sub-§13** is enacted to read:

3 **13. Review of privatization contracts.** Upon the request of the State Auditor in
4 accordance with Title 5, section 1824-B, subsection 3, paragraph D, to review proposed
5 privatization contracts and recommend to the State Auditor whether a proposed contract
6 should be objected to under Title 5, section 1824-B, subsection 3.

7 **Sec. 2. 5 MRSA c. 167** is enacted to read:

8 **CHAPTER 167**

9 **PRIVATIZATION CONTRACTS**

10 **§2041. Privatization contracts**

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

13 A. "Agency" means an executive office, department, division, board, commission or
14 other office or officer in the executive branch of the government of the State.

15 B. "Commissioner" means the Commissioner of Administrative and Financial
16 Services.

17 C. "Department" means the Department of Administrative and Financial Services.

18 D. "Dependent" means the spouse or child of an employee if that person would
19 qualify for dependent status under the United States Internal Revenue Code or for
20 whom a support order has been or could be granted under Title 19-A, Part 2 or 3.

21 E. "Privatization contract" or "contract" means an agreement or a combination or
22 series of agreements with a term of no more than 5 years by which a
23 nongovernmental person or entity agrees to provide services valued at \$200,000 or
24 more, which are substantially similar to and in lieu of services previously provided in
25 whole or in part by employees of an agency. "Privatization contract" does not
26 include:

27 (1) An agreement subsequent to an executed privatization contract, including an
28 agreement resulting from a rebidding of the services provided under the contract;

29 (2) An agreement renewing or extending an executed privatization contract; or

30 (3) An agreement solely to provide legal, management consulting, planning,
31 engineering or design services.

32 **2. Requirements for privatization contract; validity and enforceability; bid**
33 **process.** An agency may not make a privatization contract unless the agency, in
34 consultation with the department, has complied with the requirements of this subsection
35 and the State Auditor does not object to the contract under subsection 3. A privatization
36 contract made by an agency that has not complied with the requirements of this
37 subsection, or that contains terms or conditions intended to avoid the requirements of this

1 subsection, or that is objected to by the State Auditor under subsection 3, is invalid and
2 unenforceable. In addition to the requirements provided under this subsection, the bid
3 process described in this subsection is subject to the competitive bid process requirements
4 of subchapter 1-A.

5 A. The agency must prepare a written statement describing the services proposed to
6 be provided under a privatization contract, including the specific quantity and
7 standard of quality of such services. This statement is a public record and must be
8 made available by the agency for public inspection. The agency must file the
9 statement with the department and transmit the statement to the State Auditor for
10 review under subsection 3.

11 B. The agency must solicit competitive sealed bids for the privatization contract
12 based upon the statement required under paragraph A. The deadline for accepting the
13 sealed bids must be the same for all parties.

14 C. For each position in which a bidder will employ a person under the privatization
15 contract and for which the duties of the employee will be substantially similar to the
16 duties performed by an agency employee, the statement required under paragraph A
17 must include a statement of the minimum wage rate to be paid for the position, which
18 is the lesser of step one of the grade or classification under which the comparable
19 agency employee is paid or, as determined by the department, the average private
20 sector wage rate for that type of position. Every bid for a privatization contract must
21 specifically establish the wage rate for each position under the contract, which must
22 be no less than the minimum wage rate determined under this paragraph.

23 D. A bid for a privatization contract and a privatization contract must provide that
24 the contractor pay a percentage of the costs of health insurance plans for each
25 employee under the bid or contract that will be or is employed for 20 hours or more
26 weekly. The percentage required under the bid or contract must be comparable to the
27 percentage paid by the State for health insurance plans for comparable agency
28 employees. A health insurance plan provided to an employee under a privatization
29 contract must provide coverage to the employee and the employee's spouse and
30 dependent children. A contractor shall submit quarterly payroll records to the agency
31 listing the name, address, social security number, hours worked and hourly wage paid
32 for each employee in the previous quarter. The Attorney General may bring a civil
33 action in the Superior Court to enforce this paragraph or to prevent or remedy the
34 dismissal, demotion or other action prejudicing any employee as a result of the
35 employee's report of a violation of this paragraph by the contractor.

36 E. A privatization contract must require the contractor to offer available employee
37 positions under the contract to qualified employees of the agency who satisfy the
38 hiring criteria of the contractor and whose state employment is terminated as a result
39 of the contract. The contract must require the contractor to comply with a policy of
40 nondiscrimination and equal opportunity for all persons protected under Title 5,
41 chapter 337 and to take affirmative steps to provide equal opportunity for those
42 persons.

43 F. Prior to soliciting bids for a privatization contract under paragraph B, the agency
44 shall prepare a comprehensive written estimate of the costs of agency employees
45 providing, in the most cost-efficient manner, the services sought under the proposed

1 contract. The estimate must include all direct and indirect costs of agency employees
2 providing such services, including, but not limited to, retirement benefits, insurance
3 and other employee benefit costs. For the purposes of this estimate, an employee
4 organization may, at any time before the deadline for the agency to receive sealed
5 bids under paragraph B, propose amendments to a collective bargaining agreement to
6 which it is a party that are intended to reduce the cost estimate under this paragraph.
7 Any amendments to a collective bargaining agreement between the agency and an
8 employee organization that are intended to reduce the cost estimate under this
9 paragraph must be accounted for by the agency prior to finalizing the estimate under
10 this paragraph. The estimate required under this paragraph shall remain confidential
11 until the deadline for the agency to receive sealed bids pursuant to paragraph B has
12 passed, at which time the estimate shall be a public record and must be made
13 available by the agency for public inspection, filed with the department and
14 transmitted to the State Auditor for review under subsection 3.

15 G. Where applicable, the agency shall consult with and provide adequate resources
16 to an employee organization for the purpose of encouraging and assisting agency
17 employees to organize and submit a bid, which may be made as part of a joint venture
18 with other persons, to provide the services sought under the proposed privatization
19 contract. The agency shall consider any such employee bid on the same basis as all
20 other bids. An employee bid submitted under this paragraph is confidential and may
21 not be disclosed by the agency, except that the agency may disclose the bid to the
22 department or the State Auditor as may be required under this section. The
23 provisions of sections 18, 18-A and 19 do not apply to any actions of an agency
24 employee conducted in accordance with this paragraph.

25 H. After soliciting and receiving bids, the agency shall publicly designate the bidder
26 to which it proposes to award the privatization contract. The agency shall prepare a
27 comprehensive written analysis of the contract cost based on the designated bid,
28 including an analysis of the costs of transition from public to private operation,
29 additional unemployment and retirement benefits, if any, and monitoring and
30 otherwise administering contract performance. If the designated bidder proposes to
31 perform any or all of the contract outside of the boundaries of the State, the contract
32 cost, as determined for the purposes of this analysis, must be increased by the amount
33 of income tax revenue, if any, that will be lost to the State by the corresponding
34 elimination of agency employees, as determined by the State Tax Assessor.

35 I. At the time that the agency publicly designates the bidder to which it proposes to
36 award the privatization contract under paragraph H, the head of the agency and the
37 commissioner shall each certify in writing to the State Auditor that:

38 (1) The agency has complied with all provisions of this section and any other
39 applicable laws and rules;

40 (2) The quality of the services to be provided by the designated bidder is likely
41 to satisfy the quality requirements included in the statement prepared under
42 paragraph A and to equal or exceed the quality of services that could be provided
43 by agency employees as determined under paragraph F;

1 (3) The contract cost as determined under paragraph H will be less than the
2 estimated cost as determined under paragraph F, taking into account all
3 comparable types of costs;

4 (4) The designated bidder and its supervisory employees have no adjudicated
5 record of substantial or repeated willful noncompliance with any relevant federal
6 or state law or rule, including, but not limited to, labor relations laws and rules,
7 occupational safety and health laws and rules, nondiscrimination and affirmative
8 action laws and rules, environmental protection laws and rules and conflicts of
9 interest laws and rules; and

10 (5) The proposed privatization contract is otherwise in the public interest.

11 The agency and the commissioner shall include a copy of the proposed privatization
12 contract with the certificate transmitted to the State Auditor in accordance with this
13 paragraph.

14 **3. Review by State Auditor; objection; request for review by Office of Program**
15 **Evaluation and Government Accountability.** Except as provided in paragraph D, an
16 agency may not make a privatization contract and a privatization contract is invalid and
17 unenforceable if, within 30 days of receiving the certificate and other documents required
18 under subsection 2, the State Auditor objects to the proposed contract and notifies the
19 agency in writing of the objection in accordance with this subsection.

20 A. An objection made under this subsection must state specifically the State
21 Auditor's basis for finding that the agency has failed to comply with the requirements
22 of subsection 2, including whether the State Auditor finds, based on an independent
23 review of all relevant facts, that any of the findings required under subsection 2,
24 paragraph I are incorrect.

25 B. In determining compliance by the agency with the requirements of subsection 2,
26 the State Auditor may require the attendance and testimony of agency employees and
27 other witnesses and the production of books, papers and other records relating to the
28 review under this subsection.

29 C. The State Auditor's objection to a proposed privatization contract in accordance
30 with this subsection is final and binding on the agency, except when the State
31 Auditor, by written notification to the agency, withdraws the objection based on a
32 revised certificate submitted by the agency and the commissioner. If the State
33 Auditor withdraws an objection under this paragraph, the specific reasons for the
34 withdrawal of the objection, as based on the State Auditor's review of the revised
35 certificate, must be stated in the written notification to the agency.

36 D. No later than 30 days after receiving from the agency the certificate and other
37 documents required under subsection 2, the State Auditor may request that the Office
38 of Program Evaluation and Government Accountability, established under Title 3,
39 section 991, review the proposed contract and documents with the joint standing
40 committee of the Legislature having jurisdiction over program evaluation and
41 government accountability matters and recommend to the State Auditor whether the
42 proposed contract complies with the requirements of subsection 2. If, prior to the
43 expiration of the 30-day review period, the Office of Program Evaluation and

