

# MAINE STATE LEGISLATURE

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L.D. 1296

Date: 6/12/17

Majority

(Filing No. H-486)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
128TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 893, L.D. 1296, Bill, "An Act To Prohibit the Privatization of State Correctional Facilities and the State's Forensic Hospitals"

Amend the bill by striking out the title and substituting the following:

'An Act To Ensure Legislative Participation in Planning and Approval of Certain Changes in Correctional Services and To Prohibit the Privatization of Corrections Ownership and Services and Certain Ownership and Services in the Provision of Forensic Mental Health Services in Mental Health Institutes'

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

'Sec. 1. 34-A MRSA §1201, as amended by PL 1991, c. 314, §9, is further amended to read:

§1201. Legislative intent; findings

Recognizing the need to firmly control all of the State's correctional and detention facilities, provide for the safety of staff and clients, undertake appropriate programming for the classification, education, rehabilitation and maintenance of clients and assure an effective system for the supervision of parolees and probationers, it is the intent of the Legislature to create a Department of Corrections to improve the administration of correctional facilities, programs and services for clients.

The Legislature finds and declares that the management, administration and operation of the State's correctional and detention facilities involve functions that are inherently governmental. The imprisonment of persons convicted of or detained for crimes requires discretionary decisions and the exercise of the State's coercive police powers that profoundly affect those persons and their families, distinguishing imprisonment and the privatization of imprisonment from privatization in other areas of government. It is further found that issues of liability, accountability and cost warrant a prohibition of the ownership, operation, administration and management by private contractors of correctional facilities.

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1           Sec. 2. 34-A MRSA §§1201-A and 1201-B are enacted to read:

2           **§1201-A. Certain contracts prohibited**

3           Beginning on the effective date of this section, except for services subject to an  
4 existing contract on the effective date of this section or services that are similar to those  
5 contracted services that are provided by a contract entered into after the effective date of  
6 this section, the department is prohibited from contracting with a private contractor or  
7 private vendor for the provision of services relating to the operation of direct care and  
8 supervision, administration or management of a correctional facility for the incarceration  
9 or detention of persons in the custody of the department.

10           **§1201-B. Legislative participation and approval in planning for changes in**  
11 **correctional services**

12           Beginning on the effective date of this section, the department is prohibited from  
13 decreasing the population, capacity or staffing of a state correctional facility by more than  
14 25% within any fiscal biennium unless the department has first sought the participation  
15 and approval of the Legislature through legislation or by rule adopted as provided in this  
16 section. Any action by the department to decrease population, capacity or staffing of a  
17 state correctional facility in excess of the limit of 25% within any fiscal biennium as  
18 provided in this section may only be taken after passage of legislation by the Legislature  
19 and approval by the Governor or adoption of major substantive rules on a nonemergency  
20 basis as provided in Title 5, section 8072, subsections 1 and 2 and approval of the  
21 Legislature as provided in Title 5, section 8072, subsections 8 and 9. Rules adopted  
22 pursuant to this section are major substantive rules as defined by Title 5, chapter 375,  
23 subchapter 2-A.

24           Sec. 3. 34-B MRSA §3802-A and 3802-B are enacted to read:

25           **§3802-A. Legislative intent; findings**

26           Recognizing the need to firmly control all of the state mental health institutes,  
27 provide for the safety of staff and clients, undertake appropriate programming for the  
28 classification, treatment and maintenance of clients and assure an effective system for the  
29 supervision of clients who have been furloughed, placed on convalescent status or  
30 released with conditions, it is the intent of the Legislature to guide the department in the  
31 improvement of the administration of mental health institute placements, programs and  
32 services for clients.

33           The Legislature finds and declares that the management, administration and operation  
34 of the state mental health institutes and any facilities that serve clients relocated from  
35 state mental health institutes to less intensive residential facilities for persons in the  
36 custody of the commissioner involve functions that are inherently governmental. The  
37 placement of persons committed for mental health treatment to the custody of the  
38 commissioner requires discretionary decisions and the exercise of the State's coercive  
39 powers that profoundly affect those persons and their families, distinguishing  
40 commitment to the commissioner for mental health services and the privatization of  
41 commitment for mental health services from privatization in other areas of government.  
42 It is further found that issues of liability, accountability and cost warrant a prohibition of  
43 the ownership, operation, administration and management by private contractors of state

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1 mental health institutes and facilities that serve clients relocated from state mental health  
2 institutes to less intensive residential facilities for persons in the custody of the  
3 commissioner.

4 **§3802-B. Certain contracts prohibited**

5 Beginning on the effective date of this section, except for services subject to an  
6 existing contract on the effective date of this section or services that are similar to those  
7 contracted services that are provided by a contract entered into after the effective date of  
8 this section, the department is prohibited from contracting with a private contractor or  
9 private vendor for the provision of services relating to the operation of direct care and  
10 supervision, administration or management of a state mental health institute and any  
11 facilities that serve clients relocated from state mental health institutes to less intensive  
12 residential facilities for persons in the custody of the commissioner.'

13 **SUMMARY**

14 This amendment is the majority report of the committee. The amendment replaces  
15 the bill. The amendment provides findings of legislative intent and prohibitions on  
16 contracting for certain services by the Department of Corrections with regard to  
17 correctional services and the Department of Health and Human Services with regard to  
18 state mental health institutes and less intensive residential facilities for persons in the  
19 custody of the Commissioner of Health and Human Services. The services that may not  
20 be contracted are services relating to the operation of direct care and supervision,  
21 administration and management, with an exception for services subject to a contract on  
22 the effective date of the Act or services that are similar to those contracted services that  
23 are provided by a contract entered into after the effective date of the Act. The  
24 amendment prohibits the Department of Corrections from decreasing the population,  
25 capacity or staffing of a state correctional facility by more than 25% within any fiscal  
26 biennium unless the department has first sought the participation and approval of the  
27 Legislature through legislation or major substantive rules. The amendment requires that  
28 any action by the department to decrease population, capacity or staffing of a state  
29 correctional facility in excess of the limit of 25% within any fiscal biennium may only be  
30 taken after passage of legislation by the Legislature and approval by the Governor or  
31 adoption of major substantive rules on a nonemergency basis, as provided in the Maine  
32 Revised Statutes, Title 5, section 8072, subsections 1 and 2 and approval of the  
33 Legislature as provided in Title 5, section 8072, subsections 8 and 9.

**FISCAL NOTE REQUIRED**  
**(See attached)**

**COMMITTEE AMENDMENT**



# 128th MAINE LEGISLATURE

LD 1296

LR 1724(02)

An Act To Prohibit the Privatization of State Correctional Facilities and the State's Forensic Hospitals

Fiscal Note for Bill as Amended by Committee Amendment  
Committee: Criminal Justice and Public Safety

*A(CH-486)*

Fiscal Note Required: Yes

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## Fiscal Note

Minor cost increase - General Fund

### Fiscal Detail and Notes

Any additional costs to the Legislature are expected to be minor and can be absorbed within existing budgeted resources.