

MAINE STATE LEGISLATURE

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Amendment Name: Amendment CA (S-456) (LD 1458 2020)

Date: 8/3/2020

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Date: (Filing No. S-)

STATE AND LOCAL GOVERNMENT

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**STATE OF MAINE
SENATE
129TH LEGISLATURE
SECOND SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 443, L.D. 1458, “An Act To Protect Taxpayers in the Privatization of State Services”

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

'An Act To Protect Taxpayers in the Privatization of State Services and To Establish the State Procurement Review Committee'

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

'Sec. 1. 5 MRSA §18, sub-§1, ¶D, as enacted by PL 1979, c. 734, §2, is amended to read:

D. "Proceeding" means a proceeding, application, request, ruling, determination, award, contract, claim, controversy, charge, accusation, arrest or other matter relating to governmental action or inaction, but does not include an employee organization bid or contract to provide agency services under section 1816-B.

Sec. 2. 5 MRSA §18-A, sub-§4, as enacted by PL 2001, c. 203, §2, is amended to read:

- 4. Exemptions.** This section does not apply:
 - A. To purchases by the Governor under authority of Title 1, section 814;
 - B. To contracts made with a corporation that has issued shares to the public for the general benefit of that corporation; ~~or~~
 - C. If an exemption is approved by the Director of the Bureau of General Services within the Department of Administrative and Financial Services or the director's 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:

COMMITTEE AMENDMENT

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

5 (2) When the director determines that the amount of compensation to be paid to
6 the private entity or party providing the service or product to the State is de
7 minimis; or

8 D. To a contract by an employee organization to provide agency services under section
9 1816-B.

10 **Sec. 3. 5 MRSA §1816-B** is enacted to read:

11 **§1816-B. Privatization of agency services**

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

14 A. "Agency" means a state agency as defined in section 1552, subsection 6, but for
15 purposes of this section does not include the Maine Community College System.

16 B. "Agency cost estimate" means the cost to the agency seeking to privatize services
17 to provide the services in the most cost-efficient manner. "Agency cost estimate" is the
18 total of all direct and indirect costs to provide the services, including but not limited to
19 wages and pension, insurance and other employee benefit costs of agency employees.

20 C. "Agency employee" means an employee of the agency seeking to privatize state
21 services.

22 D. "Business day" means any calendar day, excluding Saturdays, Sundays and legal
23 holidays listed in Title 4, section 1051.

24 E. "Commissioner" means the Commissioner of Administrative and Financial
25 Services.

26 F. "Contract cost" means the total cost to the agency to privatize services. The total
27 cost is the sum of the cost of the proposed bid designated pursuant to subsection 7, the
28 costs of transition from public to private operation, the costs of any additional
29 unemployment and retirement benefits and the costs of monitoring and otherwise
30 administering contract performance.

31 G. "Contractor" means a nongovernmental person that has entered into a privatization
32 contract with the State.

33 H. "Dependent" means the spouse or child of an employee if the spouse or child would
34 qualify for dependent status under the United States Internal Revenue Code of 1986 or
35 for whom a support order has been or could be granted under Title 19-A, section 1652,
36 subsection 2.

37 I. "Employee organization" means an organization that has as its primary purpose the
38 representation of employees in their employment relations with an employer under
39 Title 26, chapter 9-B.

40 J. "Privatization contract" means an agreement or a combination or series of
41 agreements by which a nongovernmental person agrees with an agency to provide
42 services that are substantially similar to and in lieu of services provided, in whole or in

1 part, by agency employees and that has an agency cost estimate of at least \$500,000 as
2 of October 1, 2020 and annually increased by the amount of increase in the Consumer
3 Price Index calculated by the United States Department of Labor, Bureau of Labor
4 Statistics for the most recent 12-month period for which data are available.
5 "Privatization contract" does not include:

6 (1) Any subsequent agreement to a privatization contract, including an agreement
7 resulting from a rebidding of previously privatized service, or an agreement
8 renewing or extending a privatization contract;

9 (2) A contract for information technology services provided to an agency if an
10 employee organization representing the agency employees agrees to the terms of
11 the contract in writing; or

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

14 **2. Privatization of services.** Notwithstanding any provision of this chapter or chapter
15 156 to the contrary, an agency seeking to enter into a privatization contract shall, in
16 consultation with the commissioner, comply with the requirements of this section.

17 A. Prior to issuing a request for proposals for the privatization of services, an agency
18 seeking to enter into a privatization contract shall prepare a written statement that
19 includes:

20 (1) A summary of the services proposed to be the subject of the privatization
21 contract, including the specific quantity and standard of quality of the services;

22 (2) The minimum wage rate for each position for which a contractor may employ
23 a person pursuant to the privatization contract and for which the duties are
24 substantially similar to the duties performed by an agency employee. The
25 minimum wage rate must be the lowest classification under chapter 372 under
26 which the comparable agency employee is paid or the average private sector wage
27 rate for the position as determined by the commissioner from data collected by the
28 Department of Administrative and Financial Services, Bureau of Human
29 Resources and Bureau of General Services, whichever is lower; and

30 (3) The percentage paid by the State for the costs of health insurance plan coverage
31 for the agency employees who are employed for not less than 20 hours per week
32 and the percentage paid by the State for such costs for any dependent of such an
33 employee.

34 B. A written statement created by an agency under paragraph A is a public record and
35 must be filed, prior to issuance of a request for proposals, with the commissioner, the
36 Attorney General and employee organizations that represent agency employees.

37 C. Prior to issuing a request for proposals for the privatization of services, an agency
38 seeking to enter into a privatization contract shall determine the agency cost estimate.
39 The agency cost estimate is confidential and not a public record until the day after the
40 final day for the agency to receive sealed bids for the privatization contract pursuant to
41 subsection 5, at which time the agency cost estimate becomes a public record and must
42 be filed with the commissioner and the Attorney General.

1 **3. Employee organization request for review; final agency action.** Employee
2 organizations representing agency employees may file a written request for review with the
3 commissioner regarding the contents of the written statement required in subsection 2,
4 paragraph A within 10 business days of the date the statement was filed. The commissioner
5 shall issue a written decision on the request for review within 15 business days of receiving
6 the request for review. The commissioner's decision under this subsection constitutes final
7 agency action for the purposes of judicial review under chapter 375, subchapter 7.

8 **4. Collective bargaining agreement amendment.** An employee organization
9 representing agency employees may at any time before the final day for the agency to
10 receive sealed bids pursuant to subsection 5 propose an amendment to any relevant
11 collective bargaining agreement to which the employee organization is a party, but such a
12 proposed amendment may take effect only if the effect of the proposed amendment is to
13 reduce the agency cost estimate below the contract cost. A proposed amendment under this
14 subsection is confidential and not a public record until the day after the final day for the
15 agency to receive sealed bids for the privatization contract pursuant to subsection 5, at
16 which time the proposed amendment becomes a public record and must be filed with the
17 agency, the commissioner and the Attorney General.

18 **5. Request for proposals.** An agency seeking to enter into a privatization contract
19 shall solicit competitive sealed bids for the privatization contract through the request for
20 proposals process. The day designated by the agency upon which it will accept sealed bids
21 must be the same for all parties.

22 **A. The request for proposals for a privatization contract and the privatization contract**
23 **must require the contractor to:**

24 **(1) Pay a rate no less than the minimum wage rate established pursuant to**
25 **subsection 2, paragraph A for each position subject to a minimum wage rate;**

26 **(2) Provide, to an employee employed for not less than 20 hours per week and to**
27 **any dependent of the employee, health insurance plan coverage that is comparable**
28 **to the health insurance plan coverage provided to agency employees;**

29 **(3) Pay not less than the percentage established pursuant to subsection 2, paragraph**
30 **A toward the cost of health insurance plan coverage for an employee employed for**
31 **not less than 20 hours per week and for any dependent of such an employee;**

32 **(4) Submit quarterly payroll records to the agency, listing the name, address, social**
33 **security number, hours worked and hourly wage rate paid for each employee in the**
34 **previous quarter. Employee names, addresses and social security numbers are**
35 **confidential;**

36 **(5) Offer available employee positions under the privatization contract to qualified**
37 **agency employees who are displaced or terminated because of the privatization**
38 **contract and who satisfy the nondiscriminatory hiring criteria of the contractor; and**

39 **(6) Comply with a policy of nondiscrimination and take affirmative steps to**
40 **provide equal opportunity for any person protected by the Maine Human Rights**
41 **Act.**

42 **B. The Attorney General may bring a civil action for equitable relief in Superior Court**
43 **to enforce paragraph A or to prevent or remedy the dismissal, demotion or other action**
44 **prejudicing any employee as a result of a report of a violation of paragraph A.**

1 C. The term of a privatization contract, including renewals provided for in a
2 privatization contract, may not exceed 5 years unless a longer term is approved by the
3 commissioner.

4 D. A privatization contract may not be amended for the purpose or effect of avoiding
5 a requirement of this section.

6 **6. Employee organization bids.** Agency employees who are represented by an
7 employee organization may organize and request that the employee organization submit a
8 bid on their behalf to provide the services to be privatized.

9 A. An employee organization, after consulting with any agency employees seeking to
10 bid on a privatization contract, shall provide adequate resources for the purpose of
11 encouraging and assisting agency employees to organize and submit a bid to provide
12 the services to be privatized. For purposes of this paragraph, "adequate resources"
13 means no less than the minimum level of assistance provided for in:

14 (1) The terms of the existing collective bargaining agreement covering the agency
15 employees seeking to submit a bid;

16 (2) The terms of the expired collective bargaining agreement covering the agency
17 employees seeking to submit a bid during the period of collective bargaining
18 negotiations for a new agreement; or

19 (3) The terms of a comparable collective bargaining agreement covering
20 individuals who provide similar services if the existing or expired collective
21 bargaining agreement does not provide for a minimum level of assistance.

22 B. An employee organization bid under this subsection may be made as a joint venture
23 with other persons.

24 C. An employee organization bid under this subsection is confidential until the day
25 after the agency designates the proposed winning bidder under subsection 7.

26 **7. Review of bids; designation of winning bidder.** After soliciting and receiving the
27 submitted bids, an agency shall:

28 A. Publicly designate the bidder to which the agency proposes to award a privatization
29 contract;

30 B. Determine the contract cost of the designated bid and file a cost analysis with the
31 commissioner and the Attorney General. If the proposed bidder proposes to perform
32 any or all of the contract outside the boundaries of the State, the contract cost must be
33 increased by the amount of any lost income tax revenue to the State caused by the
34 corresponding elimination of agency employees, as determined by the State Tax
35 Assessor; and

36 C. Determine whether the contract cost under paragraph B is less than the agency cost
37 estimate prepared pursuant to subsection 2, paragraph C. If the contract cost is equal
38 to or more than the agency cost estimate, the agency may not enter into a privatization
39 contract.

40 If a bid is received from an employee organization, the commissioner, or the
41 commissioner's designee, may include staff from the Department of Administrative and

1 Financial Services, Bureau of Human Resources in the bid review process authorized by
2 section 1825-D.

3 **8. Negotiation of privatization contract.** If the contract cost calculated pursuant to
4 subsection 7, paragraph B is less than the agency cost estimate, the agency may begin
5 negotiating the terms of the privatization contract except that, if an employee organization
6 bid is awarded the contract pursuant to subsection 7, the Department of Administrative and
7 Financial Services, Bureau of Human Resources shall negotiate the terms of the
8 privatization contract with the employee organization. If the contract cost is equal to or
9 more than the agency cost estimate, the agency may not enter into a privatization contract.
10 The privatization contract must be filed with the commissioner and the Attorney General
11 prior to execution.

12 **9. Attorney General authority.** The authority of the Attorney General over the
13 privatization of agency services is governed by this subsection.

14 A. At any time during the process of privatizing any agency services pursuant to this
15 section, the Attorney General may:

16 (1) Intervene in the process;

17 (2) Require by summons the attendance and testimony under oath of state
18 employees and the production of documents for the purpose of investigating
19 whether the provisions set forth in this chapter and chapter 156 are met. All
20 documents produced and testimony given to the Attorney General pursuant to this
21 subparagraph are confidential. The Attorney General may seek an order from
22 Superior Court compelling compliance with a summons issued under this
23 subparagraph; and

24 (3) Bring an action in Superior Court in the name of the State against an agency
25 when the Attorney General has reason to believe that a requirement of this section
26 has not been met, the agency has acted unlawfully or beyond the scope of its
27 authority, the actions or inactions of the agency are not supported by the record
28 required by this section or the privatization of agency services is not in the public
29 interest.

30 B. After the filing of a court action under this subsection, further action by an agency
31 under this section must be stayed unless the court orders otherwise. During the period
32 of the stay, any time period specified for agency action under this chapter or chapter
33 156 is tolled until the court action is dismissed by the Attorney General or the Superior
34 Court orders an agency to take further action. Relief from the stay may be granted only
35 upon a showing of compelling justification.

36 C. Except as provided in this paragraph, at least 10 business days prior to
37 commencement of an action under this subsection, the Attorney General shall notify
38 the agency and the commissioner of the proposed action and shall provide the
39 commissioner and the agency an opportunity to confer with the Attorney General in
40 person or by counsel or other representative as to the proposed action. The Attorney
41 General may proceed without notice upon a showing by affidavit of immediate
42 irreparable harm to the citizens of the State.

43 D. An action by the Attorney General under this subsection may seek to, among other
44 things, restrain by temporary or permanent injunction the privatization of agency

1 services under this section, and the court may make such other orders or judgments as
2 may be necessary to prevent the privatization of agency services.

3 **10. Rules; forms.** The Department of Administrative and Financial Services may
4 prescribe forms and adopt rules to carry out the provisions of this section and to ensure that
5 the competitive bidding process under this section is consistent with the provisions of
6 competitive bids under subchapter 1-A. Rules adopted pursuant to this subsection are
7 routine technical rules as defined in chapter 375, subchapter 2-A.

8 **Sec. 4. 5 MRSA §1824-B** is enacted to read:

9 **§1824-B. State Procurement Review Committee**

10 The State Procurement Review Committee, referred to in this section as "the
11 committee," is established to oversee, subject to the provisions of section 1825-B,
12 subsection 2, the purchase of services subject to this chapter that cost \$1,000,000 or more.
13 The purchase of services that cost less than \$1,000,000 may be subject to this section at the
14 discretion of the committee chair.

15 **1. Membership.** The membership of the committee includes:

16 A. A member of the Governor's staff, appointed by the Governor;

17 B. The director of the division of procurement services within the Department of
18 Administrative and Financial Services or the director's designee;

19 C. The State Budget Officer or the State Budget Officer's designee;

20 D. The State Controller or the State Controller's designee; and

21 E. The Attorney General or the Attorney General's designee, serving as a nonvoting
22 member.

23 The Chief Information Officer or the Chief Information Officer's designee is a committee
24 member when the services to be purchased by a department or agency are within the Chief
25 Information Officer's responsibilities and duties under chapter 163.

26 **2. Chair.** The director of the division of procurement services within the Department
27 of Administrative and Financial Services or the director's designee shall serve as chair of
28 the committee.

29 **3. Unanimous consent.** A decision by the committee requires unanimous consent.

30 **4. Requests for review.** Prior to issuing a request for proposals, executing a contract
31 or grant or renewing, extending, amending or otherwise altering an existing contract or
32 grant to purchase services that cost \$1,000,000 or more, a department or agency shall
33 submit a request for review to the chair of the committee. The department or agency shall
34 submit to the chair the request for proposals, proposed contract, contract amendment and
35 related contract bid documents, as appropriate. The committee may request additional
36 information and documentation from the department or agency.

37 **5. Attorney General review.** If the cost of the request for proposals, contract or grant
38 or renewal, extension, amendment or other alteration to an existing contract or grant is
39 likely to equal or exceed \$3,000,000, the department or agency shall give the Attorney
40 General the opportunity to review the proposal, contract or grant or the renewal, extension,
41 amendment or other alteration to an existing contract or grant prior to submitting a request
42 for review pursuant to subsection 4. The Attorney General, or the Attorney General's

1 designee, may review the terms of the proposal, contract or grant or the renewal, extension,
2 amendment or other alteration to an existing contract or grant and notify the department or
3 agency of any concerns with the terms.

4 **6. Duties.** The committee may approve a request to issue a request for proposals,
5 execute a contract or grant or renew, extend, amend or otherwise alter an existing contract
6 or grant subject to this section if the committee finds that:

7 A. The service to be provided under the contract or grant cannot be economically
8 provided by a department or agency;

9 B. The contract or grant is the most economical, effective and appropriate means of
10 providing the service;

11 C. The contract or grant will not impair the ability of a department or agency to meet
12 its statutory duties and responsibilities under state or federal laws, rules or regulations;
13 and

14 D. The contract or grant will not diminish the impact of statewide or other budgetary
15 cost-saving initiatives.

16 **7. Rules; forms.** The Department of Administrative and Financial Services may
17 prescribe forms and adopt rules to carry out the provisions of this section. Rules adopted
18 pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter
19 2-A.'

20 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
21 number to read consecutively.

22 SUMMARY

23 This amendment replaces the bill. The amendment sets out requirements for certain
24 state agencies seeking to enter into a contract to privatize state services. Prior to issuing a
25 request for proposals, an agency must determine the minimum wage rate it pays the
26 employees providing the services, the percentage of health insurance plan coverage
27 provided by the State for those employees and their dependents and the cost to the agency
28 to provide the services. All bids and subsequent privatization contracts must pay the
29 established minimum wage rate, provide comparable health insurance coverage and pay at
30 least the same percentage for health insurance plan coverage as paid by the agency to
31 employees providing the services and their dependents prior to the privatization. The bid
32 and successful contractor must offer employment to any agency employee displaced or
33 terminated because of the privatization of state services who meets the contractor's
34 nondiscriminatory hiring criteria. The amendment allows agency employees, through an
35 employee organization, to submit a bid to provide the services. The amendment allows an
36 employee organization representing employees who will be displaced or terminated if the
37 agency services are privatized to offer an amendment to the collective bargaining
38 agreement that will lower the agency's cost to provide the services. A privatization contract
39 may not be executed if the total cost of the contract, including transition costs to move
40 services from the agency to the contractor, is more than the agency's estimation of its cost
41 to provide the services. The amendment requires all calculations, documents and other
42 relevant materials to be submitted to the Attorney General. The Attorney General may
43 choose to review the materials and may request additional information during the review.

1 The amendment grants authority to the Attorney General to intervene at any stage of the
2 privatization process. The amendment also gives an employee organization the authority
3 to request a review of the written statement prepared by the agency seeking to privatize
4 services. The Commissioner of Administrative and Financial Services is required to
5 provide a response to such a request within 15 business days, and the decision is considered
6 final agency action for purposes of judicial review. The amendment retains the Attorney
7 General's authority to bring an action to prevent or enjoin privatization in appropriate cases.

8 The amendment also establishes the State Procurement Review Committee to oversee
9 contracts, grants, amendments, renewals and requests for proposals valued over
10 \$1,000,000. The Office of the Attorney General must be consulted when the value equals
11 or exceeds \$3,000,000.

12 **FISCAL NOTE REQUIRED**

13 **(See attached)**



129th MAINE LEGISLATURE

LD 1458

LR 1091(02)

An Act To Protect Taxpayers in the Privatization of State Services

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: State and Local Government

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

The bill sets new requirements for state departments and agencies seeking to enter into a contract to privatize a state service, including that an agency calculate the minimum wage it pays employees currently providing the service, the percentage of health insurance coverage provided for these employees and the cost to the agency to provide the service being privatized. Documentation of these calculations must be submitted to the Attorney General, who may review the materials and intervene in the contracting process. The bill also establishes a State Procurement Review Committee that has oversight over contracts, amendments, renewals and requests for proposal valued over \$1,000,000. Costs to state departments and agencies as a result of the changes referenced above are expected to be minor and can be absorbed within existing budgeted resources.