

MAINE STATE LEGISLATURE

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L.D. 1750

Date: 3/31/22

(Filing No. S-490)

VETERANS AND LEGAL AFFAIRS

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STATE OF MAINE

SENATE

130TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 608, L.D. 1750, "An Act To Create a Framework for Maine's Spirits Contract"

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

PART A

Sec. A-1. 28-A MRSA §90, as enacted by PL 2013, c. 269, Pt. A, §4 and amended by c. 368, Pt. V, §61, is repealed and the following enacted in its place:

§90. Contract for wholesale spirits activities and marketing

1. Statement of purpose. The Legislature finds that it is in the public interest to continue to maximize growth in the State's wholesale spirits business while ensuring that growth in revenue from the business is achieved in a socially responsible manner. The contracting of the operations of the wholesale spirits business serves this purpose and provides the State's agency liquor store partners with effective and efficient services in order to responsibly serve consumers of spirits in the State.

2. Contract for spirits administration and trade marketing. Upon the expiration or termination of all contracts for the operation of the State's wholesale spirits business in effect on January 1, 2022, the commissioner shall enter into a single 10-year contract for spirits administration and spirits trade marketing in accordance with the requirements in this section.

3. Competitive bid process. A contract described in subsection 2 must be awarded pursuant to a competitive bid process in a manner consistent with the process described in Title 5, chapter 155, subchapter 1-A.

4. Request for proposals. The commissioner shall develop a request for proposals for the competitive bid process required under subsection 3 designed to encourage vigorous bidding. The request for proposals must:

A. Inform potential bidders of the State's target gross revenue profit margin over the term of the contract;

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- 1 B. Instruct potential bidders to propose the scope of spirits administration and spirits
- 2 trade marketing services that will be provided and the fee for those services expressed
- 3 as a percentage of revenue generated by the wholesale business;
- 4 C. Direct potential bidders to indicate whether subcontractors will be used for any
- 5 portion of the services described in paragraph B and to identify those subcontractors;
- 6 D. Inform potential bidders that they may propose incentives intended to encourage
- 7 responsible growth of revenue and enhanced efficiencies in services provided; and
- 8 E. Require each bidder to affirm that neither the bidder nor any of the principal officers
- 9 of the bidder has a direct financial interest in a license or permit in this State or another
- 10 state for the manufacture of spirits, other than a minor investment in not more than 1%
- 11 of the securities of a business entity that holds such a license or permit.
- 12 **5. Information provided by bidder. A bidder seeking consideration of the award of**
- 13 **a contract pursuant to this section shall:**
- 14 A. Demonstrate the bidder's knowledge of the wholesale liquor business, the alcoholic
- 15 beverage industry or a related field as well as the bidder's experience or knowledge, if
- 16 any, of the responsible marketing of liquor;
- 17 B. Propose the bidder's marketing strategies and the scope of the spirits administration
- 18 services the bidder will provide as well as the fee for those strategies and services
- 19 expressed as a percentage of revenue generated by the wholesale business;
- 20 C. Identify the strategies and services proposed in paragraph B for which the bidder
- 21 may use a subcontractor and identify those subcontractors;
- 22 D. Demonstrate the bidder's financial capacity and access to capital to maintain the
- 23 strategies and services proposed in paragraph B;
- 24 E. Demonstrate the bidder's capabilities for providing transportation and distribution
- 25 of spirits to agency liquor stores, which must include:
- 26 (1) Delivery vehicles with the appropriate capacity to deliver spirits to the full
- 27 range of agency liquor stores, including both large and small stores;
- 28 (2) Drivers with the requisite driver's license credentials to drive all sizes of
- 29 delivery vehicles;
- 30 (3) The ability to make deliveries to agency liquor stores on at least 250 days per
- 31 year; and
- 32 (4) The ability to provide the minimum number of deliveries established in the
- 33 request for proposals per week to each store, which may not be less than 2;
- 34 F. Demonstrate the bidder's warehousing capacity and ability to expand its
- 35 warehousing capacity over the term of the contract. The bidder shall propose bailment
- 36 rates and related fees that the bidder proposes to charge spirits suppliers;
- 37 G. Describe the bidder's information technology capabilities, which must include
- 38 methods for processing orders and invoices, inventory management and sales data
- 39 analysis;
- 40 H. Describe the bidder's plan for enhancing services to spirits suppliers and agency
- 41 liquor stores;

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- 1 I. Describe the bidder's business plan to provide services in a manner that will assist
- 2 the State in achieving a responsible growth rate for the wholesale spirits business;
- 3 J. Demonstrate the positive impact on the economy, employment and state revenues
- 4 that the bidder's overall proposal will provide;
- 5 K. Demonstrate that the bidder, any principal officer of the bidder and any named
- 6 subcontractor have not been found to have violated any state or federal law or rule
- 7 governing the manufacture, distribution or sale of spirits; and
- 8 L. Affirm that neither the bidder nor any of the principal officers of the bidder has a
- 9 direct financial interest in a license or permit in this State or another state for the
- 10 manufacture of spirits, other than a minor investment in not more than 1% of the
- 11 securities of a business entity that holds such a license or permit.

12 In addition to the requirements of paragraphs A to L, the commissioner, in order to ensure
 13 that the objective of maximizing growth in the State's wholesale spirits business is
 14 achieved, may require a bidder to provide additional information, including disclosure of
 15 the potential of a bidder's direct and substantial conflict of interest with the State's financial
 16 interest.

17 **6. Award criteria and issuance of contract.** The commissioner shall choose the best-
 18 value bidder in conformity with Title 5, section 1825-B, subsection 7 and shall consider as
 19 criteria for award the information required to be provided in subsection 5. The
 20 commissioner may not award the contract to a bidder that holds or has a direct financial
 21 interest in, or that has a principal officer that holds or has a direct financial interest in, a
 22 license or permit in this State or another state to manufacture spirits. A minor investment
 23 in not more than 1% of the securities of a business entity that holds a license or permit in
 24 this State or another state to manufacture spirits does not constitute a financial interest
 25 prohibited by this subsection.

26 The commissioner shall ensure that the following criteria are met before entering into a
 27 contract:

- 28 A. That revenue to the State from the sale of spirits is predictable over the term of the
- 29 contract;
- 30 B. That revenue from the sale of spirits will be maximized by the issuance of the
- 31 contract and achieved through efficiency of services;
- 32 C. That the bidder has demonstrated that services provided to agency liquor stores will
- 33 be enhanced; and
- 34 D. That, upon execution of the contract, the disruption of services to agency liquor
- 35 stores and spirits suppliers will be minimal or absent.

36 **7. Mandatory contract provisions.** A contract entered into with a successful bidder
 37 in accordance with this section must:

- 38 A. Require that the person awarded the contract submit to the bureau, in a manner
- 39 determined by the bureau, an annual report audited by an independent 3rd party. The
- 40 bureau, following receipt of the report, shall provide the report annually to the joint
- 41 standing committees of the Legislature having jurisdiction over appropriations and
- 42 financial affairs and alcoholic beverages matters;

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1 B. Prohibit the person awarded the contract from engaging in activities reserved for
2 agency liquor stores licensed as reselling agents to provide spirits to establishments
3 licensed for on-premises consumption;

4 C. Include provisions that allow for ongoing performance standards review so that
5 deficiencies in such standards may result in amendments to the contract or nullification.
6 Performance standards subject to contract amendments or nullification include:

7 (1) Working in partnership with the State to achieve the goal of a responsible
8 growth rate for the wholesale spirits business as negotiated with the successful
9 bidder at the time of award;

10 (2) Transparency in annual reporting and conformance to the reporting
11 requirements established in consultation with the successful bidder throughout the
12 term of the contract by the bureau; and

13 (3) Responsiveness to the service needs of agency liquor stores;

14 D. Include provisions establishing standards of efficiency and quality of operations;
15 and

16 E. Require that the bureau approve all bailment rates and related fees.

17 **8. Extension.** The commissioner and a successful bidder awarded a contract under this
18 section may agree to a single extension of the existing terms of the contract for a period of
19 no more than 3 years following the end of the original 10-year contract term.

20 **9. Price regulation.** Notwithstanding any other provision of this section to the
21 contrary, the State shall regulate the wholesale and retail prices of all spirits sold in the
22 State.

23 **Sec. A-2. No effect on existing contracts.** Nothing in this Act is intended to affect
24 the validity of or cause a premature termination of the spirits administration and spirits
25 trade marketing contracts under the Maine Revised Statutes, Title 28-A, section 90 that
26 were in effect on the day prior to the effective date of this Act.

27 **PART B**

28 **Sec. B-1. 28-A MRSA §83-C, sub-§5,** as enacted by PL 2013, c. 476, Pt. A, §9, is
29 repealed.

30 **Sec. B-2. 28-A MRSA §606, sub-§4-A,** as amended by PL 2019, c. 404, §10, is
31 repealed and the following enacted in its place:

32 **4-A. Discount rates for agency liquor stores; rulemaking.** Beginning July 1, 2014,
33 the bureau shall set the wholesale price of spirits, which is the price an agency liquor store
34 pays to purchase spirits, at a minimum discount of 12% off the retail price. Upon the
35 expiration or termination of all contracts for the operation of the State's wholesale spirits
36 business in effect on January 1, 2022, the bureau shall set the wholesale price of spirits,
37 which is the price an agency liquor store pays to purchase spirits, at a minimum discount
38 of 18% off of the retail price.

39 The bureau by rule may establish discount rates greater than the minimum discount rates
40 established in this subsection, including:

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A. Graduated discount rates, which must be structured in a way that does not adversely affect agency liquor stores that stock a low level of inventory; and

B. Increased discount rates to be awarded as part of a sales incentive program for agency liquor stores. In adopting a sales incentive program under this paragraph, the bureau shall consider the effect of the sales incentive program on state revenue and on any pending or existing contracts awarded under section 90.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. B-3. Report on discount rate rulemaking. The Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations shall submit a report to the joint standing committee of the Legislature having jurisdiction over alcoholic beverages matters no later than February 1, 2023 describing the steps taken by the bureau after the effective date of this Act to adopt or amend or to propose to adopt or amend rules governing the wholesale prices of spirits under the Maine Revised Statutes, Title 28-A, section 606, subsection 4-A, including rules establishing graduated discount rates or a sales incentive program for agency liquor stores. The report must include a copy of any rules finally adopted after the effective date of this Act or a description of the substance of the rules that the bureau has proposed or intends to propose for adoption after the effective date of this Act. The joint standing committee of the Legislature having jurisdiction over alcoholic beverages matters may report out legislation based upon the report to any session of the 131st Legislature.

Sec. B-4. Bureau of Alcoholic Beverages and Lottery Operations to convene stakeholder group regarding sale and distribution of certain spirits products; report. The Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations shall convene a stakeholder group to consider changes to the law that would allow the importation and sale of spirits products containing between 8% and 15% alcohol by volume by certificate of approval holders under the Maine Revised Statutes, Title 28-A, section 1361 and that would allow the production and sale of such spirits products by in-state manufacturers of malt liquor or wine licensed under Title 28-A, section 1355-A. The stakeholder group must include, at a minimum, agency liquor stores; on-premises and off-premises retail licensees; certificate of approval holders under Title 28-A, sections 1361 and 1381; in-state manufacturers licensed under Title 28-A, section 1355-A, including small breweries and small distilleries; and wholesale licensees.

The stakeholder group shall hold at least 3 meetings for the purpose of considering the following:

1. Changes to current law that would allow retailers licensed to sell malt liquor or wine for on-premises or off-premises consumption that are not agency liquor stores to sell spirits products containing between 8% and 15% alcohol by volume, including but not limited to amending the definition of "low-alcohol spirits products" and creating a new category of spirits product that includes products commonly known as "ready-to-drink" cocktails; and

2. Changes to current law that would establish the category of the spirits products identified in subsection 1 that certificate of approval holders under Title 28-A, section 1361 should be authorized to import and sell and that manufacturers of malt liquor or wine licensed under Title 28-A, section 1355-A should be authorized to produce and sell; the

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1 categories of the spirits products identified in subsection 1 that wholesale licensees should
2 be authorized to distribute for resale; and the categories of spirits products identified in
3 subsection 1 that the State should continue to distribute to agency liquor stores.

4 No later than March 1, 2023, the bureau shall submit a report summarizing any
5 conclusions reached and proposals supported by the stakeholder group, which may include
6 suggested legislation, to the joint standing committee of the Legislature having jurisdiction
7 over alcoholic beverages matters. The committee may report out legislation related to the
8 report to the 131st Legislature in 2023.'

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

SUMMARY

11 This amendment replaces the bill, which is a concept draft.

12 Part A of the amendment:

13
14 1. Directs the Commissioner of Administrative and Financial Services to award a
15 single 10-year contract for spirits administration and spirits trade marketing through a
16 competitive bidding process for a contract term that will begin when the current contracts
17 for spirits administration and spirits trade marketing expire;

18 2. Directs the commissioner to develop a request for proposals that is designed to
19 encourage vigorous bidding and that requires bidders to provide detailed information,
20 including: information regarding the bidder's prior experience and knowledge of the
21 relevant industries; a description of the bidder's proposed marketing strategies and the
22 scope of the spirits administration services the bidder will provide, as well as the fee that
23 the bidder will charge for these strategies and services; an identification of the services for
24 which the bidder proposes to use a subcontractor and the identity of that subcontractor;
25 information demonstrating the bidder's financial capacity and access to capital; a
26 description of the bidder's capabilities for providing transportation and distribution of
27 spirits to agency liquor stores, including its capability to make deliveries on a minimum of
28 250 days per year and, for each agency liquor store, a minimum of 2 deliveries per week;
29 information demonstrating the bidder's warehousing capabilities and ability to expand its
30 warehouse capacity over the term of the contract; a description of the bidder's information
31 technology capabilities related to invoicing, inventory management and sales data analysis;
32 and information demonstrating that the bidder's proposal will enhance services to agency
33 liquor stores, assist the State in achieving a responsible growth rate for the spirits business
34 and positively impact the state economy. In addition, the commissioner shall require each
35 bidder to demonstrate that the bidder, each principal officer of the bidder and any named
36 subcontractor have not been found to have violated any state or federal law or rule
37 governing the manufacture, distribution or sale of spirits. Each bidder must also affirm that
38 neither the bidder nor any of the bidder's principal officers has a direct financial interest in
39 a license or permit in any state for the manufacture of spirits, other than a minor investment
40 in not more than 1% of the securities of a business entity holding such a license or permit;

41 3. Establishes the criteria for issuance of the contract and mandatory contract
42 provisions, including those regarding auditing, oversight and performance review, which
43 closely adhere to the law that was in effect when the commissioner entered into the current
44 spirits administration and spirits trade marketing contracts; and

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COMMITTEE AMENDMENT "A" to S.P. 608, L.D. 1750 (S-490)

1 4. Authorizes the commissioner and the successful bidder to agree to a single extension
2 of the contract for a period of no more than 3 years following the end of the original 10-
3 year contract term.

4 Part B of the amendment:

5 1. When the new spirits administration and spirits trade marketing contract described
6 in Part A takes effect, increases from 12% to 18% the statutory minimum discount rate for
7 agency liquor stores. The discount rate is the percentage taken off of the retail price when
8 calculating the wholesale price that an agency liquor store pays to purchase spirits from the
9 State;

10 2. Combines within one statutory provision the Department of Administrative and
11 Financial Services, Bureau of Alcoholic Beverages and Lottery Operations' authority to
12 adopt rules establishing discount rates above the statutory minimum, including graduated
13 discount rates and increased discount rates to be awarded as part of a sales incentive
14 program for agency liquor stores and specifies that these are routine technical rules;

15 3. Requires the bureau to submit a report to the joint standing committee of the
16 Legislature having jurisdiction over alcoholic beverages matters by February 1, 2023 on its
17 proposals to adopt new or to amend existing rules governing discount rates. The committee
18 is authorized to report out legislation based on the report to any session of the 131st
19 Legislature; and

20 4. Directs the bureau to convene a stakeholder group to consider changes to the law
21 that would allow the production, importation and sale of spirits products containing
22 between 8% and 15% alcohol by volume by certificate of approval holders under the Maine
23 Revised Statutes, Title 28-A, section 1361 and by in-state manufacturers of malt liquor or
24 wine licensed under section 1355-A.

25 **FISCAL NOTE REQUIRED**

26 (See attached)

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130th MAINE LEGISLATURE

LD 1750

LR 2226(02)

An Act To Create a Framework for Maine's Spirits Contract

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-490)
Committee: Veterans and Legal Affairs
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Any additional costs to the Bureau of Alcoholic Beverages and Lottery Operations within the Department of Administrative and Financial Services as a result of changes to the criteria used to evaluate a new contract for spirit administration and spirits trade marketing when the current contracts expire are anticipated to be minor and can be absorbed within existing budgeted resources.