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STATE OF MAINE
ONE HUNDRED AND TWENTY-NINTH LEGISLATURE
COMMITTEE ON STATE AND LOCAL GOVERNMENT

TO: Senator Michael Carpenter, Senate Chair
Representative Donna Bailey, House Chair
Joint Standing Committee on Judiciary

FROM: Senator Ned Claxton, Senate Chair *NC*
Representative Roland Danny Martin, House Chair *DM*
Joint Standing Committee on State and Local Government

DATE: March 12, 2020

Re: Public Record Exceptions
LD 1458, An Act to Protect Taxpayers in the Privatization of State Services and to
Establish the State Procurement Review Committee

The Joint Standing Committee on State and Local Government requests the Joint Standing Committee on Judiciary review, pursuant to 1 MRSA §434, public records exceptions included in the majority committee amendment to LD 1458, *An Act to Protect Taxpayers in the Privatization of State Services and to Establish the State Procurement Review Committee*.

On March 4, 2020, the committee held its final work session on this bill and the majority of the committee (8 members) voted to pass the bill as amended. A minority of the committee (5 members) opposed the bill. The majority report for this bill, which is attached, creates a process that state agencies must follow to privatize state services currently provided by state employees. The bill also establishes the State Procurement Review Committee. State agencies must receive approval from the committee before entering into agreements or issuing a request for proposal when the value of the agreement or proposal equals or exceeds \$1,000,000. Agreements and requests for proposal with a value equal to or in excess of \$3,000,000 must be submitted to the Office of the Attorney General prior to submission to the State Procurement Review Committee.

The bill contains 5 new public records exceptions within the privatization process. These public records exceptions include:



1. *Agency cost estimate (time-limited exception)* See §1816-B, sub-§2, ¶C.

The agency cost estimate is calculated by the agency seeking to privatize state services prior to the issuance of a request for proposal. After bids are reviewed and a winning bid is identified, the agency cost estimate is compared to the total contract cost. If the agency cost estimate is less than the total contract cost the agency may not privatize services. The exception prevents public access to this information until the due date for bids has passed. If the agency cost estimate is a public record prior to the due date for bids, the competitive nature of the bid process will be diminished.

2. *Collective bargaining agreement amendment (time-limited exception)* See §1816-B, sub-§4.

An employee organization representing the employees who will be displaced or terminated if state services are privatized may propose an amendment to the collective bargaining agreement in an effort to reduce the agency cost estimate. The exception prevents public access to this information until the due date for bids has passed. If a collective bargaining agreement amendment is a public record prior to the due date for bids, the competitive nature of the bid process will be diminished.

3. *Employee organization bid (time-limited exception)*. See §1816-B, sub-§6, ¶C.

An employee organization, on behalf of the state employees who will be displaced or terminated if state services are privatized, may submit a bid in response to the request for proposal issued by the agency seeking to privatize services. The exception prevents public access to the bid until the due date for bids has passed. If an employee organization bid is a public record prior to the due date for bids, the competitive nature of the bid process will be diminished.

4. *Office of the Attorney General investigation*. See §1816-B, sub-§9, ¶A.

Documents and testimony provided by a state employee during an investigation by the Office of the Attorney General into the actions or inactions of the state agency seeking to privatize state services, or the Department of Administrative and Financial Services in assisting with the process, are confidential in the hands of the Office of the Attorney General. The exception provides assurance to state employees summoned by the Office of the Attorney General that the extent and substance of disclosures will not be shared with others, including the employer. This exception is intended to increase the likelihood the Office of the Attorney General will receive complete and accurate information from state employees. The receipt of complete and accurate information is also the public's primary interest in this instance. Any record disclosed to the Office of the Attorney General that is a public record in the hands of another state agency remains a public record and is subject to disclosure in accordance with the Freedom of Access Act.

5. *Name and address on payroll records*. See §1816-B, sub-§5, ¶A, sub-¶4.

An entity awarded a contract to privatize state services must submit quarterly payroll records to the state agency overseeing the contract. The payroll records must include the

salary of each employee with the employee's name, address and social security number¹. The public agency will use this information to confirm that each employee is receiving the wage required under the terms of §1816-B.

Personally identifying information is rendered confidential in several other sections of Maine law. Most recently, P.L. 2018, ch. 389, §§1 and 2 made home addresses, home or personal telephone numbers, personal e-mail addresses and dates of birth of state employees confidential with limited exceptions. This protection from disclosure is also granted to certain financial information under Title 9-A, Maine Consumer Credit Code, Title 9-A, Banks and Financial Institutions, and Title 36, Taxation.

Reviewing the statutory criteria for the proposed exceptions to public records, we would comment for the committee as follows:

I. AGENCY COST ESTIMATE (TIME-LIMITED EXCEPTION) p. 11

A. Need to collect the information.

The documents subject to this time-limited exception must be created and submitted to the Department of Administrative and Financial Services by either a state agency or an employee organization when a state agency seeks to privatize state services through the competitive bid process established in Title 5, chapter 155.

B. Value in maintaining information.

Maintenance of this information from the privatization of state services process and the competitive bid process is essential for the Department of Administrative and Financial Services and the public agency overseeing the privatization contract to perform its duties.

C. Federal Law.

The committee is not aware of any federal law that requires these records to be confidential.

D. Balancing the individual's privacy rights and the public interest.

This is a time-limited exception is essential to protecting the competitive nature of the bid process used by state agencies when privatizing state services. Both the agency soliciting competitive bids and the taxpayers funding the resulting contract benefit from protecting competition.

E. Balancing the effect of disclosure on business competition against the public interest.

If the agency cost estimate is a public record prior to the due date for bids, the competitive nature of the bid process will be diminished.

¹ Social security numbers are specifically excluded from the definition of a public record by 1 MRSA §402, sub-§3, ¶N.

F. Interfering in public negotiations.

Public disclosure of this information before sealed bids are received might compromise negotiations between the state agency seeking to privatize state services and the employee organization representing the state employees who may be displaced or terminated.

G. Balancing the public interest and potential jeopardy to public safety or a member of the public.

This public record exception does not impact public safety or the safety of a member of the public.

H. Narrowness of the exception.

This exception is time-limited until all bids are received. At that time, the records are public.

I. Any other criteria.

The committee is not aware of any other criteria that will assist the Judiciary Committee in its work.

2. COLLECTIVE BARGAINING AGREEMENT AMENDMENT (TIME-LIMITED EXCEPTION) p.12

A. Need to collect the information.

The documents subject to this time-limited exception must be created and submitted to the Department of Administrative and Financial Services by either a state agency or an employee organization when a state agency seeks to privatize state services through the competitive bid process established in Title 5, chapter 155.

B. Value in maintaining information.

Maintenance of this information from the privatization of state services process and the competitive bid process is essential for the Department of Administrative and Financial Services and the public agency overseeing the privatization contract to perform its duties.

C. Federal Law.

The committee is not aware of any federal law that requires these records to be confidential.

D. Balancing the individual's privacy rights and the public interest.

This time-limited exception is essential to protecting the competitive nature of the bid process used by state agencies when privatizing state services. Both the agency soliciting competitive bids and the taxpayers funding the resulting contract benefit from protecting competition.

E. Balancing the effect of disclosure on business competition against the public interest.

If the terms of a collective bargaining agreement amendment are a public record prior to the due date for bids, the competitive nature of the bid process will be diminished.

F. Interfering in public negotiations.

Public disclosure of this information before sealed bids are received might compromise negotiations between the state agency seeking to privatize state services and the employee organization representing the state employees who may be displaced or terminated.

G. Balancing the public interest and potential jeopardy to public safety or a member of the public.

This public record exception does not impact public safety or the safety of a member of the public.

H. Narrowness of the exception.

This exception is time-limited until all bids are received. At that time, the records are public.

I. Any other criteria.

The committee is not aware of any other criteria that will assist the Judiciary Committee in its work.

3. EMPLOYEE ORGANIZATION BID (TIME-LIMITED EXCEPTION)

P.13

A. Need to collect the information.

The documents subject to this time-limited exception are created at the option of an employee organization when a state agency seeks to privatize state services through the competitive bid process established in Title 5, chapter 155.

B. Value in maintaining information.

Maintenance of this information during the privatization of state services process and the competitive bid process is essential for the Department of Administrative and Financial Services and the public agency overseeing the privatization contract to perform its duties.

C. Federal Law.

The committee is not aware of any federal law that requires these records to be confidential.

D. Balancing the individual's privacy rights and the public interest.

This time-limited exception is essential to protecting the competitive nature of the bid process used by state agencies. Both the agency soliciting competitive bids and the taxpayers funding the resulting contract benefit from protecting competition.

E. Balancing the effect of disclosure on business competition against the public interest.

If the terms of an employee organization bid are a public record prior to the due date for other bids, the competitive nature of the bid process will be diminished.

F. Interfering in public negotiations.

Public disclosure of this information before sealed bids are received might compromise negotiations between the state agency seeking to privatize state services and the employee organization representing the state employees who may be displaced or terminated.

G. Balancing the public interest and potential jeopardy to public safety or a member of the public.

This public record exception does not impact public safety or the safety of a member of the public.

H. Narrowness of the exception.

This exception is time-limited until all bids are received. At that time, the records are public.

I. Any other criteria.

The committee is not aware of any other criteria that will assist the Judiciary Committee in its work.

4. OAG INVESTIGATION

p. 14

A. Need to collect the information.

The Office of the Attorney General determines what information is necessary for its investigation into whether a state agency followed the requirements of this Act.

B. Value in maintaining information.

Maintenance of information related to an investigation into the competitive bid process is essential for the Office of the Attorney General to perform its duties.

C. Federal Law

The committee is not aware of any federal law that requires these records to be confidential.

D. Balancing the individual's privacy rights and the public interest.

The exception provides assurance to state employees summoned by the Office of the Attorney General that the extent and substance of disclosures will not be shared with others, including the employer. This exception is intended to increase the likelihood the investigator will receive complete and accurate information from state employees. The receipt of complete and accurate information is also the public's primary interest in this instance.

E. Balancing the effect of disclosure on business competition against the public interest.

The committee is not aware that disclosure of this information will put a business at a competitive disadvantage.



F. Interfering in public negotiations.

The committee is not aware of any connection between this information and negotiations involving a public body.

G. Balancing the public interest and potential jeopardy to public safety or a member of the public.

This public record exception does not impact public safety or the safety of a member of the public.

H. Narrowness of the exception.

This exception only applies to a public record in the possession of the Office of the Attorney General that was obtained in the course of an investigation pursuant to this law. The exception does not render the public record confidential when in the possession or custody of any other agency or public official of the State.

I. Any other criteria.

The committee is not aware of any other criteria that will assist the Judiciary Committee in its work.

5. NAME AND ADDRESS (PAYROLL RECORDS) p.15

A. Need to collect the information.

The inclusion of an employee's name and address on the quarterly payroll reports submitted to a state agency is considered necessary for adequate monitoring of contract performance and compliance, including confirming that each employee is receiving the wage required under the terms of §1816-B.

B. Value in maintaining information.

Maintenance of this information is essential for the Department of Administrative and Financial Services and the public agency overseeing the privatization contract to perform its duties.

C. Federal Law.

The committee is not aware of any federal law that requires these records to be confidential.

D. Balancing the individual's privacy rights and the public interest.

The proposed exception protects the privacy interests of the individual whose name and address are disclosed to a state agency while allowing the state agency to monitor contract performance and compliance.

E. Balancing the effect of disclosure on business competition against the public interest.

Disclosure of the salary paid by a private entity to a specific employee may disadvantage the private entity operating in a competitive market. In comparison, the public's primary interest

is whether the private entity is complying with the laws, regulations and contract terms governing its agreement with a state agency. That interest does not diminish if the payroll information is de-identified.

F. Interfering in public negotiations

The committee is not aware of any connection between this information and negotiations involving a public body.

G. Balancing the public interest and potential jeopardy to public safety or a member of the public.

This public record exception does not impact public safety or the safety of a member of the public.

H. Narrowness of the exception.

This exception applies only to employee names and addresses.

I. Any other criteria.

The committee is not aware of any other criteria that will assist the Judiciary Committee in its work.

Thank you for reviewing these proposed public record exceptions. If you have any questions, please do not hesitate to contact us.



Committee: SLG
LA: LC
LR (item): 109102
File name: G:\COMMITTEES\SLG\Bill Amendments\129th 2nd\109102.docx
New Title: No
Add Emergency: No
Date: March 6, 2020

COMMITTEE AMENDMENT “ . “ to LD 1458, An Act To Protect Taxpayers in the Privatization of State Services

Amend this 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 everything after the title and before the summary and inserting the following

Sec. 1. 5 MRSA §18, sub-§1, ¶D, 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, is amended to read:

4. Exemptions. This section does not apply:

A. To purchases by the Governor under authority of Title 1, section 814; or

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:

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

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

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

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

§1816-B. Privatization of Agency Services.

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

A. "Agency" means a state agency as defined in section 1552, subsection 6 but for purposes of this section does not include Maine's Community Colleges.

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

C. "Business day" means any calendar day excluding Saturdays, Sundays and legal holidays listed in Maine Revised Statutes, Title 4, section 1051.

D. "Commissioner" means the Commissioner of the Department of Administrative and Financial Services.

E. "Contract cost" means the total cost to the agency to privatize services. The total contract cost is the sum of the cost of the proposed bid designated pursuant to subsection 7 plus the costs of transition from public to private operation, the costs of any additional unemployment and retirement benefits and the costs of monitoring and otherwise administering contract performance. If the proposed bidder designated pursuant to subsection 7 proposes to perform any or all of the contract outside the boundaries of the State, the contract cost must be increased by the amount of any lost income tax revenue to the State as determined by the State Tax Assessor caused by the corresponding elimination of agency employees as determined by the State Tax Assessor.

F. "Contractor" means a nongovernmental person who has entered into a privatization contract with the State.

G. "Dependent" means the spouse or child of an employee if the spouse or child would qualify for dependent status under the United States Internal Revenue Code of 1986 or for whom a support order has been or could be granted under Title 19-A, section 1653, subsection 2.

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

I. "Privatization contract" means an agreement or combination or series of agreements by which a nongovernmental person agrees with an agency to provide services that are substantially similar to and in lieu of services provided, in whole or in part, by regular employees of the agency and which has an agency cost estimate of at least \$500,000 as of

October 1, 2020 and annually increased by the amount of increase in the Consumer Price Index calculated by the United States Department of Labor, Bureau of Labor Statistics for the most recent 12-month period for which data are available. A privatization contract does not include:

- (1) Any subsequent agreement to a privatization contract, including any agreement resulting from a rebidding of previously privatized service, or any agreement renewing or extending a privatization contract;
- (2) A contract for information technology services provided to an agency if an employee organization representing the agency employees agrees to the terms of the contract in writing; or
- (3) An agreement solely to provide legal, management consulting, planning, engineering or design services.

2. Privatization of services. Notwithstanding the provisions of this chapter and chapter 156 to the contrary, an agency seeking to enter into a privatization contract shall, in consultation with the commissioner, comply with the requirements of this section.

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

- (1) A summary of the services proposed to be the subject of a privatization contract, including the specific quantity and standard of quality of the subject services.
- (2) The minimum wage rate for each position for which a contractor awarded a privatization contract under this section may employ a person pursuant to the privatization contract and for which the duties are substantially similar to the duties performed by a regular agency employee. The minimum wage rate must be the lowest classification under chapter 372 under which the comparable regular agency employee is paid or the average private sector wage rate for the position as determined by the commissioner from data collected by the department's Bureau of Human Resources and Bureau of General Services, whichever is lower; and
- (3) The percentage paid by the State for the costs of health insurance plans coverage for the regular employees of the agency who provide the services that will be subject to the privatization agreement and who are employed for not less than 20 hours per week.

B. The statement created by the agency pursuant to this subsection is a public record and must be filed, prior to issuance of a request for proposal, with the commissioner, the Attorney General, and employee organizations that represent employees providing the services to be privatized

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

3. Employee organization request for review; final agency action. Employee organizations representing employees who provide the services to be privatized may file a written request for review with the commission regarding the contents of the statement required pursuant to subsection 2 within 10 days of the date of the written statement required in subsection 2, paragraph A. The commission shall issue a written decision on the request for review within 15 days of receiving the request for review. The commissioner's decision under this subsection constitutes final agency action for the purposes of judicial review under chapter 375, subchapter VII.

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

5. Request for proposals. The agency shall solicit competitive sealed bids for a privatization contract through the request for proposals process. The day designated by the agency upon which it will accept sealed bids must be the same for all parties.

A. The request for proposals for a privatization contract and the privatization contract must require the contractor:

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

(2) Provide health insurance plan coverage to every employee employed for not less than 20 hours per week pursuant to the privatization contract and for a dependent of the employee that is comparable to the health insurance plan coverage provided to regular employees of the agency who provide the services that will be subject to the privatization agreement;

(3) Pay not less than the percentage established pursuant to subsection 2, paragraph A toward the cost of health insurance plan coverage for every employee employed for not less than 20 hours per week pursuant to the privatization contract and for a dependent of the employee;

5. → (4) Submit quarterly payroll records to the agency, listing the name, address, social security number, hours worked and hourly wage paid for each employee in the previous quarter. The employee name, address and social security number are confidential;

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

(6) Comply with a policy of, and to take affirmative steps to provide, nondiscrimination and equal opportunity for any person protected by chapter 337.

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

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

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

6. Employee organization bids. Employees of an agency seeking a privatization contract under subsection 5 and who are represented by an employee organization may organize and request the employee organization submit a bid on their behalf to provide the subject services.

A. An employee organization after consulting with any relevant employees seeking to bid on a privatization contract shall provide adequate resources for the purpose of encouraging and assisting agency employees to organize and submit a bid to provide the services. Adequate resources are no less than the minimum level of assistance provided for in either:

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

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

(3). The terms of a comparable collective bargaining agreement covering individuals who provide similar resources if the existing or expired collective bargaining agreements do not provide for a minimum level of assistance.

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

3. →

C. An employee organization bid under this subsection is confidential until the date the agency designates the proposed winning bidder under subsection 7.

7. Review of bids; Designation of winning bidder. After soliciting and receiving the submitted bids an agency shall:

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

B. Determine the contract cost of the designated bid and file the cost analysis with the commissioner and the Attorney General; and

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

If a bid is received from an employee organization the commissioner, or the commissioner's designee, may include staff from the Department of Administrative and Financial Services Bureau of Human Resources in the bid review process authorized by section 1825-D.

8. Negotiation of privatization contract. If the contract cost calculated pursuant to subsection 7, paragraph B is less than the agency cost estimate, the agency may begin negotiating the terms of the privatization contract except that if an employee organization bid is awarded the contract pursuant to subsection 7, the Department of Administrative and Financial Services Bureau of Human Resources shall negotiate the terms of the privatization contract with the employee organization. The privatization contract must be filed with the commissioner and the Attorney General prior to execution.

9. Attorney General authority. At any time during the process to privatize any state services the Attorney General may:

A. Require by summons the attendance and testimony under oath of state employees and the production of documents for the purpose of investigating whether the provisions set forth in this chapter and chapter 156 are met. All documents produced and testimony given to the Attorney General pursuant to this paragraph are confidential. The Attorney General may seek an order from the Superior Court compelling compliance with a summons issued under this paragraph.

B. Intervene at any point in the process established in this section.

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

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

E. Except as provided in this paragraph, at least 10 days prior to commencement of any action under this section, the Attorney General shall notify the agency or department and the commission of the intended action, and give the commission and agency or department an opportunity to confer with the Attorney General in person or by counsel or other representative as to the proposed action. The Attorney General may proceed without notice as required by this section upon a showing by affidavit of immediate irreparable harm to the consumers of the State.

F. The action by the Attorney General may seek to, among other things, restrain by temporary or permanent injunction the privatization of state services under this section and

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18-19

the court may make such other orders or judgments as may be necessary to prevent the privatization of state services.

10. Rules; forms. The Department of Administrative and Financial Services may prescribe forms and adopt rules to carry out the provisions of this section and to ensure that the competitive bidding process under this section is consistent with the provisions of competitive bids under subchapter 1-A. Rules adopted pursuant to this subsection are routine technical rules as defined in section 8071, subsection 2, paragraph A.

Sec. 4. 5 MRSA §1827 is enacted to read:

§ 1827. State Procurement Review Committee. Subject to the provisions of §1825-B, subsection 2, the State Procurement Review Committee, referred to in this section as “the committee”, is established to oversee the purchase of services subject to this chapter that cost \$1,000,000 or more. The purchase of services that cost less than \$1,000,000 may be subject to this subsection at the discretion of the committee chair.

A. Membership. The committee members include:

1. A member of the Governor’s staff, appointed by the Governor;
2. The Department of Administrative and Financial Services, Director of Divisions of Purchases or the director’s designee;
3. The State Budget Officer or the state budget officer’s designee;
4. The State Controller or the state controller’s designee; and
5. The Attorney General or the attorney general’s designee, serving as a nonvoting member.

The Chief Information Officer or the chief information officer’s designee is a member when the services to be purchased by a department or agency are within Chief Information Officer’s responsibilities and duties under chapter 163.

B. Chair. The Director of the Division of Purchases or the director’s designee shall serve as the committee chair.

C. Unanimous consent. Decisions by the committee require unanimous consent.

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

E. Attorney General review. If the cost of the request for proposals, contract or grant or renewal, extension, amendment or other alteration to an existing contract is likely to equal or exceed \$3,000,000, the department or agency shall give the Office of the Attorney General the opportunity to review the proposal, contract or grant or the renewal, extension,

amendment or other alteration to an existing contract prior to submitting a request pursuant to subsection D. The Attorney General, or the Attorney General's designee, may review the terms of the proposal, contract or grant or the renewal, extension, amendment, or other alteration to an existing contract or grant and notify the department or agency of any concerns with the terms.

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

- (1) Service to be provided under the contract or grant cannot be economically provided by a state department or agency;
- (2) Contract or grant is the most economical, effective and appropriate means of providing the service;
- (3) Contract or grant will not impair the ability of a department or agency to meet its statutory duties and responsibilities under state or federal laws or regulations; and
- (4) Contract or grant will not diminish the impact of statewide or other budgetary cost-savings initiatives.

G. Rules; forms. The Department of Administrative and Financial Services may prescribe forms and adopt rules to carry out the provisions of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in section 8071, subsection 2, paragraph A.

SUMMARY

This amendment replaces the bill. The amendment sets out requirements for state agencies seeking to enter into a contract to privatize state services. Prior to issuing a request for proposals the agency must determine the minimum wage it pays the employees providing the services, the percentage of health insurance plan coverage provided by the state for these employees, and the cost to the agency to provide the services. All bids and subsequent privatization contracts must pay the established minimum wage, provide comparable health insurance coverage and pay at least the same percentage for health insurance plan coverage as paid by the agency to employees providing the services prior to the privatization. The bid and successful contractor must offer employment to any agency employee displaced or terminated because of the privatization of state services who meets the contractors nondiscriminatory hiring criteria. The amendment allows agency employees, through an employee organization, to submit a bid to provide the services. The amendment allows an employee organization representing the employees to be displaced or terminated if the agency services are privatized to offer an amendment to the collective bargaining agreement that will lower the agency's cost to provide the service. A privatization contract may not be executed if the total cost of the contract, including transition costs to move services from the agency to the contractor is more than the agency's estimation of its cost to provide the service. The amendment requires all calculations, documents and other relevant materials be submitted to the Attorney General. The Attorney General may choose to review the materials and may request additional information during its review. The amendment grants authority to the Attorney General to intervene at any stage of the process established in

section 1816-B. The amendment also gives the employee organization(s) the authority to request review of the statement created by the agency seeking to privatize services. The commissioner is required to provide a response to such a request within 15 days and the decision is considered final agency action for purposes of judicial review. The amendment retains the Attorney General's authority to bring an action to prevent or enjoin privatization in appropriate cases.

The bill also establishes the State Procurement Review Committee with oversight over contracts, amendment, renewals, and requests for proposals valued over \$1 million dollars.

CHAPTER 156

DEPARTMENT CONTRACTS AND APPEAL OF DECISIONS

§1831. Rules

1. Adoption of rules. Every department or agency of State Government, subject to chapters 141 to 152, purchasing services or awarding grants or contracts which are not subject to the authority of the Department of Administration, as defined in chapters 153 and 155, shall establish a procedure by which these services are purchased or by which grants or contracts are awarded. This procedure must be adopted in accordance with the Maine Administrative Procedure Act, chapter 375 no later than January 1, 1991 and must be approved by the State Purchasing Agent prior to their adoption. The State Purchasing Agent shall ensure that the rules adopted under this section meet the standards of public notice, administrative review, and rights to appeal as set forth in chapter 155, subchapter I-A. Any department or agency of State Government that does not adopt rules under this section by January 1, 1991, is subject to rules adopted by the State Purchasing Agent under chapter 155, subchapter I-A.

A. [PL 1989, c. 785, §3 (RP).]

B. [PL 1989, c. 785, §3 (RP).]

C. [PL 1989, c. 785, §3 (RP).]

D. [PL 1989, c. 785, §3 (RP).]

E. [PL 1989, c. 785, §3 (RP).]

F. [PL 1989, c. 785, §3 (RP).]

[PL 1989, c. 785, §3 (AMD).]

2. Limitation. This section does not apply to purchase of supplies, services, materials and equipment or to public improvements, as described under chapters 153 and 155. This section does not apply to construction, improvement or repair of any and all ways, roads or bridges with appurtenances or other public improvements which by law are under the supervision of the Department of Transportation in accordance with section 174I.

[PL 1989, c. 165, §2 (AMD).]

3. Application. The procedure adopted by a department or agency in this section may be used by the department or agency for any qualifying purchase or award of a contract or grant. Nothing in this section may be construed to require the adoption of new procedures for every new purchase, contract or award. Nothing in this section may be construed to require the State Purchasing Agent or the Department of Administration to approve any contract, grant or award that is not presently approved by the State Purchasing Agent or the Department of Administration under chapters 153 and 155.

[PL 1985, c. 785, Pt. A, §76 (AMD).]

SECTION HISTORY

PL 1983, c. 188 (NEW). PL 1985, c. 785, §A76 (AMD). PL 1989, c. 165, §2 (AMD). PL 1989, c. 785, §3 (AMD).

§1832. Contracts with day care facilities

(REPEALED)

SECTION HISTORY

PL 1985, c. 380, §1 (NEW).

§1833. Workers' Compensation Management Fund

The Workers' Compensation Management Fund is established to provide for any expenses related to the resolution of workers' compensation claims including: records and information management; investigation; medical review; representation; rehabilitation; payment of compensation; appropriate medical expenses and other payments required by the Workers' Compensation Board; the settlement of cases; and other necessary expenses. [PL 1991, c. 885, Pt. D, §2 (AMD).]

The fund must be an internal service fund and be under the control of the Commissioner of Administrative and Financial Services and the supervision of the Bureau of Human Resources. The fund must be a continuing fund and may not lapse. The treasurer shall credit interest earned to the fund. [PL 1991, c. 780, Pt. Y, §72 (AMD).]

1. Capitalization; premiums. The fund is capitalized by legislative appropriations, payment from state departments and agencies and by other appropriate means.

On or before July 1st of each year, the Department of Administrative and Financial Services, Division of Employee Health and Benefits shall inform the State Budget Officer of quarterly premium charges for the fiscal year. The State Budget Officer shall advise any affected department or agency of the premium charges so that they may be incorporated into the normal budgetary process. An agency that does not have sufficient funding to pay the required premium charges shall request funds from the Legislature.

All state departments and agencies shall make premium payments to the fund at the beginning of each quarter based on charges to user departments. Premiums charged to user departments must be based on an analysis of the loss experience of each department, the reserve requirements related to departmental loss experience and the recovery of expenses as authorized in this section as related to each user department. Each department shall allocate the premium charge based on an analysis of the loss experience of each account or subdivision of account within the department. Premiums charged must be sufficient to ensure the continuation of the fund and shall be set by the commissioner.

Funds received from the reserve fund for self-insured retention losses under section 1731 must be repaid to that reserve fund through premiums charged except that, on the request of the commissioner, the Governor may waive repayment to the reserve fund when warranted and necessary. [PL 2013, c. 447, §1 (AMD).]

2. Transitional clause.
[PL 2013, c. 447, §2 (RP).]

SECTION HISTORY

PL 1989, c. 501, §P16 (NEW). PL 1991, c. 780, §§Y72,73 (AMD). PL 1991, c. 885, §D2 (AMD). PL 2013, c. 447, §§1, 2 (AMD).

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