

LD 875 An Act To Protect Taxpayers in the Privatization of Services and To Establish the State Procurement Review Committee

To: Members, Joint Standing Committee on State and Local Government
From: Lynne Caswell, Esq., Legislative Analyst
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<http://legislature.maine.gov/ctl/SLG/04-30-2021?panel=1&time=0&sortdir=0&sortby=2>

SUMMARY

This bill creates a process and criteria that must be followed before a state agency can enter in to a privatization contract with a nongovernmental entity to perform agency services and it creates the State Procurement Review Committee to review all agreements entered into by state agencies with a value of \$1,000,000 more.

STATE PROCUREMENT REVIEW COMMITTEE

The last section of this bill creates the State Procurement Review Committee, chaired by Division of Procurement Services within DAFS, with members from the State Controller's office, the OAG (nonvoting member), the State Budget Officer, a member of the Governor's staff and the CIO if the services to be purchased are within the CIO's scope of responsibilities.

The committee reviews the following when the cost equals or exceeds \$1,000,000

- Requests for proposals;
- New contracts or grants; and
- Renewals, extensions, amendments or alterations of existing contract or grants

The committee may, but is not required, to approve the RPF, contract or grant if:

- The services cannot be economically provided by the agency;
- The agreement is the most economical effective and appropriate means of providing the service
- The agreement will not impair the ability of an agency to meet its statutory duties under state and federal laws, rules and regulations and
- The agreement will not diminish the impact of statewide or other budgetary cost saving initiatives.

If the cost of the RFP, contract or grant (including renewal, extension and amendment) value equals or exceeds \$3,000,000, the OAG has the opportunity to review the details and share any concerns with the agency.

PRIVATIZATION OF STATE SERVICES**Applies to:**

- State agency seeking to privatize services when
 - the contracted services will be "substantially similar to and in lieu of services" currently being provided by agency employees; and
 - The cost is \$500,00 or more

Does not apply to:

- Contracts or grants for services not provided by agency employees;

- Existing contracts or grants that were previously outsourced agency services; or the extension, renewal;
- The Maine Community College System;
- Contracts for legal, management consulting, planning, engineering or design services; or
- IT service contracts if the employee bargaining unit agrees to the terms

Pre-RFP - Prior to issuing a request for proposal, the agency seeking to privatize state services must determine:

- Comparable Wage - the lowest classification rate of pay for each position to be outsourced and the average private sector wage rate for the same or similar position;
- Health Insurance Coverage – the percentage of health insurance plan coverage provided by the agency for the employees and their dependents whose positions would be outsourced;
- Agency Cost - the cost to the agency to cost-effectively provide the services to be privatized, including direct cost and indirect costs: wages pensions, insurance and other employee benefit costs; and
- Submit this information to the OAG, DAFS and any employee organization representing the agency employees

Conditions for Contracts - All bids and subsequent privatization contracts must:

- Pay the established minimum wage rate;
- Provide comparable health insurance coverage as that provided to agency employee and their dependents;
- Pay at least the same percentage for health insurance plan coverage as that paid for agency employees and their dependent;
- Offer employment to any agency employee displaced or terminated because of the privatization of services who meets the contractor's nondiscriminatory hiring criteria.

Post-RFP - After a bid is selected, the agency must determine:

- Contract Cost – the total cost to the agency to outsource the services which is the cost to be paid to the winning bidder please t
 - cost to transition services from state agency to private entity;
 - ongoing cost to monitor and administer contract;
 - unemployment benefits of terminated state employees; and
 - lost income tax revenue if work performed outside the State

**If the contract cost is more than the agency cost, the services cannot be outsourced.

Employee Organizations may:

- at the request of agency employees, submit a bid;
- submit an amendment to the bargaining agreement to take effect only if the proposed amendment reduces the agency cost below the contract costs thereby preventing the privatization of services;
- request the DAFS commission review the pre-RFP calculations made by the agency seeking to privatize agency services

Required Submissions to OAG:

- Summary of services to be privatized;
- Comparable wage calculation;
- Health insurance coverage calculation
- Agency cost calculation
- Contract cost calculation
- Bargaining agreement amendment proposal; and
- Privatization contract

Attorney General may

- Intervene in the process;
- Summons attendance and testimony of state employees and production of documents
- Conduct a review at the request of an employee organization
- File civil action in Superior Court

Rulemaking – DAFS may prescribe forms and adopt rules (routine technical)

TESTIMONY

Sponsor: Senator Baldacci

Proponents DAFS by Anya Trundy; OAG by Aaron Frye; AFSCME Council 93 by James Durkin; ME AFL-CIO by Adam Goode; MSEA by Jeff McCabe

Opponents: none

NFNA: AGC by Matthew Marks; FAME by Bill Norbert; MSHA by Erik Jorgensen

MATTERS FOR CONSIDERATION***PRIOR SESSION***

This committee worked LD 1458 in the 129th Legislature and voted OTPA (8) / ONTP (5) just prior to the adjournment in March. The amendment voted out of committee is substantially similar to LD 875. The fiscal note for LD 1458 found “costs to state departments and agencies a result of the changes ... are expected to be minor and can be absorbed within existing budgeted resources.”

FOAA EXCEPTIONS

This bill contains 5 exceptions to the FOAA (approval by JUD required)

1. Agency Cost Estimate (time limited)
2. Employee Organization Bid (time limited)
3. Employee Organization Proposed Amendment (time limited)
4. Personally identifying information, including SS#, submitted by contractor on quarterly basis;
5. OAG summoned testimony and production of documents by state employees.

Title 1, §343, sub-§1 requires the JUD committee hold a public hearing and vote on the proposed public records exceptions.

INFORMATION REQUESTS

QUASI-INDEPENDENT STATE ENTITIES

Title 5, §12021 defines a "Quasi-independent state entity" to mean

an organization that has been established by the Legislature as an independent board, commission or agency to fulfill governmental purposes and that receives revenues that are derived, in whole or part, from federal or state taxes or fees.

This section of statute lists the following as "reporting entities" (not necessarily a complete list of quasis)

1. The Child Development Services System;
2. The ConnectMaine Authority;
3. The Efficiency Maine Trust;
4. The Finance Authority of Maine;
5. The Loring Development Authority of Maine;
6. The Maine Community College System;
7. The Maine Governmental Facilities Authority;
8. The Maine Health and Higher Educational Facilities Authority;
9. The Maine Human Rights Commission;
10. The Maine Maritime Academy;
11. The Maine Municipal and Rural Electrification Cooperative Agency;
12. The Maine Municipal Bond Bank;
13. The Maine Port Authority;
14. The Maine Public Employees Retirement System;
15. The Maine State Housing Authority;
16. The Maine Technology Institute;
17. The Maine Turnpike Authority;
18. The Midcoast Regional Redevelopment Authority;
19. The Northern New England Passenger Rail Authority;
20. The Small Enterprise Growth Board
21. The University of Maine System
22. The Washington County Development Authority; and
23. The Workers' Compensation Board

AGENCY "means a state agency as defined in section 1552, subsection 6"

6. State agency. "State agency" means any body of State Government authorized by law to adopt rules, to issue licenses or to take final action in adjudicatory proceedings, including, but not limited to, every authority, board, bureau, commission, department or officer of the State Government so authorized; but the term does not include the Governor, courts, University of Maine System, Maine Maritime Academy, school districts, special purpose districts or municipalities, counties or other political subdivisions of the State.

FISCAL IMPACT - Preliminary (OFPR)

None provided as of this date.

