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STATE OF MAINE  
ONE HUNDRED AND THIRTIETH LEGISLATURE  
COMMITTEE ON STATE AND LOCAL GOVERNMENT

TO: Senator Anne Carney, Senate Chair  
Representative Thom Harnett, House Chair  
Joint Standing Committee on Judiciary

FROM: Senator Joseph Baldacci, Senate Chair <sup>JB by LC</sup>  
Representative Ann Matlack, House Chair <sup>AM by LC</sup>  
Joint Standing Committee on State and Local Government

DATE: May 24, 2021

RE: Freedom of Access Act Exceptions – LD 875

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 report to LD 875, *An Act to Protect Taxpayers in the Privatization of Services and to Establish the State Procurement Review Committee*.

On May 17, 2021, the committee held a 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, establishes the State Procurement Review Committee to review all requests for proposal, contracts and agreements valued at \$1,000,000 or more. The bill also creates a process that state agencies must follow to privatize state services currently provided by state employees. Within the portion of this bill setting out the privatization process, there are 5 new public records exceptions as follows:

I. *AGENCY COST ESTIMATE (time-limited exception)* See §1816-B, sub-§2, ¶C

Description of exception: 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 day after the final day for the agency to receive sealed bids in response to the request for proposal. If the agency cost estimate is a public record prior to the receipt of sealed bids, the competitive nature of the bid process will be diminished.

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Statutory Criteria

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 agency cost estimate is 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.

2. **COLLECTIVE BARGAINING AGREEMENT AMENDMENT (time-limited exception)** See §1816-B, sub-§4

Description of Exception: 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 day after the final day for the agency to receive sealed bids in response to the request for proposal. 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.

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Statutory Criteria

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. **NAME AND ADDRESS ON PAYROLL RECORDS.** See §1816-B, sub-§5, ¶A, sub-¶4

Description of Exception: 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 number. 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.

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Statutory Criteria:

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.

4. **EMPLOYEE ORGANIZATION BID** (*time-limited exception*). See §1816-B, sub-§6, ¶C

Description of Exception: 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 receipt of sealed bids, the competitive nature of the bid process will be diminished.

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Statutory Criteria

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.

5. **Office of the Attorney General investigation.** See §1816-B, sub-§9, ¶A, sub-¶2

Description of Exception: 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.

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## Statutory Criteria

### 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.

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



# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

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Legislative Document

No. 875

S.P. 289

In Senate, March 8, 2021

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

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Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator BALDACCI of Penobscot.  
Cosponsored by Senator: RAFFERTY of York, Representatives: CUDDY of Winterport,  
Speaker FECTEAU of Biddeford.

1 **Be it enacted by the People of the State of Maine as follows:**

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

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

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

10 **4. Exemptions.** This section does not apply:

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

12 B. To contracts made with a corporation that has issued shares to the public for the  
13 general benefit of that corporation; or

14 C. If an exemption is approved by the Director of the Bureau of General Services  
15 within the Department of Administrative and Financial Services or the director's  
16 designee based upon one of the following and if the director gives notice of the granting  
17 of this exemption to all parties bidding on the contract in question with a statement of  
18 the reason for the exemption and if an opportunity is provided for any party to appeal  
19 the granting of the exemption:

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

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

27 D. To a contract by an employee organization to provide agency services under section  
28 1816-B.

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

30 **§1816-B. Privatization of agency services**

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

33 A. "Agency" means a state agency as defined in section 1552, subsection 6, but does  
34 not include the ~~Maine Community College System~~. **quasi-independent state entities**

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

39 C. "Agency employee" means an employee of the agency seeking to privatize services.



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

3           E. "Commissioner" means the Commissioner of Administrative and Financial  
4           Services.

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

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

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

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

19          J. "Privatization contract" means an agreement or a combination or series of  
20          agreements by which a nongovernmental person agrees with an agency to provide  
21          services that are substantially similar to and in lieu of services provided, in whole or in  
22          part, by agency employees and that has an agency cost estimate of at least \$500,000 as  
23          of October 1, 2021 and annually increased by the amount of increase in the Consumer  
24          Price Index compiled by the United States Department of Labor, Bureau of Labor  
25          Statistics for the most recent 12-month period for which data are available.  
26          "Privatization contract" does not include:

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

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

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

35          2. Privatization of services. Notwithstanding any provision of this chapter or chapter  
36          156 to the contrary, an agency seeking to enter into a privatization contract shall, in  
37          consultation with the commissioner, comply with the requirements of this section.

38          A. Prior to issuing a request for proposals under subsection 5 for the privatization of  
39          services, an agency seeking to enter into a privatization contract shall prepare a written  
40          statement that includes:

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

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

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

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

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

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

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

#2

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

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

#3

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

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

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

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

15 (5) Offer available employee positions under the privatization contract to qualified  
16 agency employees who are displaced or terminated because of the privatization  
17 contract and who satisfy the nondiscriminatory hiring criteria of the contractor  
18 under subparagraph (6); and

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

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

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

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

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

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

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

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

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

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

#4

6           C. An employee organization bid under this subsection is confidential and not a public  
7           record until the day after the agency designates the proposed winning bidder under  
8           subsection 7.

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

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

13          B. Determine the contract cost of the designated bid and file a cost analysis with the  
14          commissioner and the Attorney General. If the proposed bidder under paragraph A  
15          proposes to perform any or all of the contract outside the boundaries of the State, the  
16          contract cost must be increased by the amount of any lost income tax revenue to the  
17          State caused by the corresponding elimination of agency employees, as determined by  
18          the State Tax Assessor; and

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

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

27          **8. Negotiation of privatization contract.** If the contract cost calculated pursuant to  
28          subsection 7, paragraph B is less than the agency cost estimate, the agency may begin  
29          negotiating the terms of the privatization contract except that, if an employee organization  
30          bid is awarded the privatization contract pursuant to subsection 7, the Department of  
31          Administrative and Financial Services, Bureau of Human Resources shall negotiate the  
32          terms of the privatization contract with the employee organization. If the contract cost is  
33          equal to or more than the agency cost estimate, the agency may not enter into a privatization  
34          contract. The privatization contract must be filed with the commissioner and the Attorney  
35          General prior to execution.

36          **9. Attorney General authority.** The authority of the Attorney General over the  
37          privatization of services is governed by this subsection.

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

40                 (1) Intervene in the process;

41                 (2) Require by summons the attendance and testimony under oath of state  
42                 employees and the production of documents for the purpose of investigating  
43                 whether the provisions set forth in this chapter and chapter 156 are met. (All

#5

1 documents produced and testimony given to the Attorney General pursuant to this  
2 subparagraph are confidential. The Attorney General may seek an order from the  
3 Superior Court compelling compliance with a summons issued under this  
4 subparagraph; and

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

10 B. After the filing of a court action under this subsection, further action by an agency  
11 under this section must be stayed unless the court orders otherwise. During the period  
12 of the stay, any time period specified for agency action under this chapter or chapter  
13 156 is tolled until the court action is dismissed by the Attorney General or the Superior  
14 Court orders an agency to take further action. Relief from the stay may be granted only  
15 upon a showing of compelling justification.

16 C. Except as provided in this paragraph, at least 10 business days prior to  
17 commencement of an action under this subsection, the Attorney General shall notify  
18 the agency and the commissioner of the proposed action and shall provide the  
19 commissioner and the agency an opportunity to confer with the Attorney General in  
20 person or by counsel or other representative as to the proposed action. The Attorney  
21 General may proceed without notice upon a showing by affidavit of immediate  
22 irreparable harm to the citizens of the State.

23 D. An action by the Attorney General under this subsection may seek to, among other  
24 things, restrain by temporary or permanent injunction the privatization of services  
25 under this section, and the court may make such other orders or judgments as may be  
26 necessary to prevent the privatization of services.

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

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

33 **§1824-B. State Procurement Review Committee**

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

- 39 **1. Membership.** The membership of the committee includes:  
40 A. A member of the Governor's staff, appointed by the Governor;  
41 B. The director of the division of procurement services within the Department of  
42 Administrative and Financial Services or the director's designee;  
43 C. The State Budget Officer or the State Budget Officer's designee;

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1           D. The State Controller or the State Controller's designee; and  
2           E. The Attorney General or the Attorney General's designee, serving as a nonvoting  
3           member.  
4           The Chief Information Officer or the Chief Information Officer's designee is a committee  
5           member when the services to be purchased by a department or agency are within the Chief  
6           Information Officer's responsibilities and duties under chapter 163.  
7           **2. Chair.** The director of the division of procurement services within the Department  
8           of Administrative and Financial Services or the director's designee shall serve as chair of  
9           the committee.  
10          **3. Unanimous consent.** A decision by the committee requires unanimous consent.  
11          **4. Requests for review.** Prior to issuing a request for proposals, executing a contract  
12          or grant or renewing, extending, amending or otherwise altering an existing contract or  
13          grant to purchase services that cost \$1,000,000 or more, a department or agency shall  
14          submit a request for review to the chair of the committee. The department or agency shall  
15          submit to the chair the request for proposals, proposed contract, contract amendment and  
16          related contract bid documents, as appropriate. The committee may request additional  
17          information and documentation from the department or agency.  
18          **5. Attorney General review.** If the cost of the request for proposals, contract or grant  
19          or renewal, extension, amendment or other alteration to an existing contract or grant is  
20          likely to equal or exceed \$3,000,000, the department or agency shall give the Attorney  
21          General the opportunity to review the proposal, contract or grant or the renewal, extension,  
22          amendment or other alteration to an existing contract or grant prior to submitting a request  
23          for review pursuant to subsection 4. The Attorney General, or the Attorney General's  
24          designee, may review the terms of the proposal, contract or grant or the renewal, extension,  
25          amendment or other alteration to an existing contract or grant and notify the department or  
26          agency of any concerns with the terms.  
27          **6. Duties.** The committee may approve a request to issue a request for proposals,  
28          execute a contract or grant or renew, extend, amend or otherwise alter an existing contract  
29          or grant subject to this section if the committee finds that:  
30                A. The service to be provided under the contract or grant cannot be economically  
31                provided by a department or agency;  
32                B. The contract or grant is the most economical, effective and appropriate means of  
33                providing the service;  
34                C. The contract or grant will not impair the ability of a department or agency to meet  
35                its statutory duties and responsibilities under state or federal laws, rules or regulations;  
36                and  
37                D. The contract or grant will not diminish the impact of statewide or other budgetary  
38                cost-saving initiatives.  
39          **7. Rules; forms.** The Department of Administrative and Financial Services may  
40          prescribe forms and adopt rules to carry out the provisions of this section. Rules adopted  
41          pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter  
42          2-A.

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**SUMMARY**

This bill sets out requirements for certain state agencies seeking to enter into a contract to privatize services. Prior to issuing a request for proposals, an agency must determine the minimum wage rate it pays the employees providing the services, the percentage of health insurance plan coverage provided by the State for those employees and their dependents and the cost to the agency to provide the services. All bids and subsequent privatization contracts must pay the established minimum wage rate, 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 and their dependents prior to the privatization. The bid and successful contractor must offer employment to any agency employee displaced or terminated because of the privatization of services who meets the contractor's nondiscriminatory hiring criteria. The bill allows agency employees, through an employee organization, to submit a bid to provide the services. The bill allows an employee organization representing employees who will be displaced or terminated if the services are privatized to offer an amendment to the collective bargaining agreement that will lower the agency's cost to provide the services. 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 services. The bill requires all calculations, documents and other relevant materials to be submitted to the Attorney General. The Attorney General may choose to review the materials and may request additional information during the review. The bill grants authority to the Attorney General to intervene at any stage of the privatization process. The bill also gives an employee organization the authority to request a review of the written statement prepared by the agency seeking to privatize services. The Commissioner of Administrative and Financial Services is required to provide a response to such a request within 15 business days, and the decision is considered final agency action for purposes of judicial review. The Attorney General has the authority to bring an action to prevent or enjoin privatization in appropriate cases.

The bill also establishes the State Procurement Review Committee to oversee requests for proposals and contracts and grants and renewals, extensions, amendments and other alterations to existing contracts and grants valued over \$1,000,000. The Office of the Attorney General must be consulted when the value equals or exceeds \$3,000,000.

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PUBLIC RECORDS EXCEPTION REVIEW CHECKLIST

Revised 2/13/12

A. Whether the record protected needs to be collected (Conclusion of committee of jurisdiction?)		
B. The value to the agency or official or to the public in maintaining the record (Conclusion of committee of jurisdiction?)		
C. Whether federal law requires the record to be confidential		
Does the proposed exception meet one or more of the following (D, E, F, G or I)		
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in disclosure		
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records		
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records		
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records		
I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception		
H. Whether the proposed exception is as narrowly tailored as possible		
<b><i>If the proposed exception creates broad confidentiality for an entity: 2-A. Accountability review of agency or official.</i></b> In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.		
<b>2-B. Accessibility of public records.</b> In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.		

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