

TESTIMONY OF BETTY M. LAMOREAU
IN SUPPORT OF LD 1769, "AN ACT TO STRENGTHEN THE STATE
PURCHASING CODE OF CONDUCT LAW"

DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES,
DIVISION OF PURCHASES IN THE BUREAU OF GENERAL SERVICES
BEFORE THE JOINT STANDING COMMITTEE ON STATE AND LOCAL
GOVERNMENT

FRIDAY, JANUARY 27, 2006 AT 9 A.M.
CROSS STATE OFFICE BUILDING, ROOM 216

Senator Schneider, Representative Barstow, and Distinguished Members of the Joint Standing Committee on State and Local Government:

My name is Betty Lamoreau, and I am the Director of the Division of Purchases in the Bureau of General Services, Department of Administrative and Financial Services. I am here today to testify in SUPPORT of LD 1769 "An Act to Strengthen the State Purchasing Code of Conduct Law." This bill is a companion to a Resolve that eventually will be before this committee as part of the process of amending the major substantive rules that are currently in effect with regard to the administration of the Code of Conduct law. I have attached a copy of the rule to this testimony.

During its 1st Regular Session, the 120th Maine Legislature enacted the State Purchasing Code of Conduct law. The intent of the bill was to ensure that State contractors, and their subcontractors, supplying apparel, footwear, and textiles make 'good faith' efforts to ensure that their employees worked in conditions that were safe, healthy, and in compliance with applicable labor laws. To that end, the Code of Conduct law requires each bidder for State contracts to supply apparel, footwear, and textiles to submit an affidavit with their bids stating that they "will comply with the state purchasing code of conduct ... , and that, to the best of the bidder's knowledge, [their subcontractor manufacturers are] in compliance" with the Code.

In addition to requiring those assurances, the law also directs the State Purchasing Agent to take steps to remedy situations in which the director makes a determination that a contractor – or one or more of its subcontractors – is not in compliance with the Code. If such noncompliance is found, the State Purchasing Agent is to work with a contractor to encourage it, or an offending subcontractor, to become compliant with the Code.

The first practical application of the Code of Conduct law occurred over the past year and a half, and yielded great insight into significant weaknesses of the existing law. Perhaps the most notable deficiency in the law is that while it requires assurances by bidders that they and their subcontractors are in compliance with the Code, and while it provides means for addressing circumstances in which a determination has been made that the Code has been violated, the present law does not provide any real guidance on the manner or process by which a determination of a Code violation is to be made by the State Purchasing Agent.

LD 1769 addresses that problem in a few ways. First, it defines the information that must be included in a complaint brought under the Code. Further, the bill provides direction about the process by which the State Purchasing Agent is to initiate an investigation to determine whether a Code violation has occurred. The bill also states the scope of information that may be considered by the State Purchasing Agent in making such a determination, as well as clarifies that a determination of compliance or noncompliance is to be made solely by the State Purchasing Agent.

A review of the bill will show that other aspects of the law have been made stronger; however, one other major problem with the existing law that the legislation seeks to (at least) begin to address relates to the manner by which the State Purchasing Agent is to conduct fact-finding in order to make a determination of compliance or noncompliance when a complaint is made under the Code. After all, as a practical and fiscal matter, the Division of Purchases simply does not have the personnel and fiscal resources to conduct in-depth investigations into complaints, especially when a

contractor or subcontractor subject to the Code, and central to a complaint, is based in a foreign country and travel would be necessary to look into allegations.

One possible means of remedying that problem is introduced through the bill's creation of a Code of Conduct Working Group, which would explore the viability of creating and using a multi-State and -city consortium to independently investigate complaints brought under the Code. Serving in that fact-finding role, the consortium would be able to provide the State Purchasing Agent with some of the information he or she might need to make a determination of compliance or non-compliance under the Code.

I want to take a moment to note that there is one change to the law that is reflected in the bill that, since the bill's submission, has come to my attention as being problematic, and that is the legislation's elimination of the State's prerogative to obtain goods covered by the Code of Conduct law from manufacturers that, although not compliant with the Code, are the only source of those goods. Because there may be rare occasions when the State may have no choice but to procure essential goods from noncompliant contractors or subcontractors, the State must maintain its ability to do so, as a fundamental matter of ensuring the health and safety of State workers.

Even by keeping that component of the existing law, however, LD 1769 nonetheless significantly improves the Code of Conduct law. It provides guidance with respect to the manner of investigating complaints brought under the Code, and gives the State Purchasing Agent meaningful options to bring about compliance with the Code when a determination of noncompliance has been made. In those and other ways demonstrated in the bill and described in my testimony, LD 1769 helps the State in reaching the central policy goal underlying the law: To ensure that persons making apparel, footwear, and textiles for the State work in safe, healthy, and just working conditions.

Thank you for the opportunity to speak to you today. I am happy to answer any questions you may have and to participate at the work session on this legislation.