

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 1763

6  
7 H.P. 1253

House of Representatives, January 2, 1986

8 Submitted by the Department of Finance and Administration pursuant to  
Joint Rule 24.

9 Received by the Clerk of the House on January 2, 1986. Referred to the  
Committee on State Government and 1,600 ordered printed pursuant to Joint  
10 Rule 14.

EDWIN H. PERT, Clerk

Presented by Representative Lacroix of Oakland.

11 Cosponsored by Representative Boutilier of Lewiston, Representative  
Cote of Auburn and Representative Descoteaux of Biddeford.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-SIX  
16

17 AN ACT to Clarify the Surety Bonding Process  
18 for Contractors.  
19

20 Be it enacted by the People of the State of Maine as  
21 follows:

22 Sec. 1. 5 MRSA §1745, as repealed and replaced  
23 by PL 1977, c. 303, §2, is amended to read:

24 §1745. Advertisement for sealed proposals

25 The trustees, commissioners or other persons in  
26 charge of any public improvement in an amount in ex-  
27 cess of \$25,000, which is subject to chapters 141 to  
28 155 shall, after consultation with the Director of  
29 Public Improvements, advertise for sealed proposals  
30 not less than 2 weeks in such papers as the Governor  
31 may direct. The last advertisement shall be at least  
32 one week before the time named therein for the clos-  
33 ing of such bids. Sealed proposals for any public im-  
34 provements shall be addressed to the trustees, com-  
35 missioners or such other persons having the construc-

1 tion in charge and shall remain sealed until opened  
2 at the time and place stated in the advertisement or  
3 as the Governor may direct.

4 No contract in an amount in excess of \$25,000,  
5 shall be awarded unless the faithful performance  
6 thereof shall be secured by a bond in the penal sum  
7 of not less than 20% of the amount of the contract,  
8 payable to the State and deposited with the Treasurer  
9 of State.

10 Sec. 2. 14 MRSA §871, sub-§3, as amended by PL  
11 1985, c. 154, is further amended to read:

12 3. Surety bonds. Unless specifically exempted by  
13 statute, before any contract, exceeding \$25,000 in  
14 amount, for the construction, alteration or repair of  
15 any public building or other public improvement or  
16 public work, including highways, is awarded to any  
17 person by the State or by any political subdivision  
18 or quasi-municipal corporation, or by any public au-  
19 thority, such person shall furnish to the State or to  
20 such other contracting body, as the case may be, the  
21 following surety bonds:

22 A. A performance bond in an amount equal to the  
23 full contract amount, conditioned upon the faith-  
24 ful performance of the contract in accordance  
25 with the plans, specifications and conditions  
26 thereof. Such bond shall be solely for the protec-  
27 tion of the State or the contracting body  
28 awarding the contract, as the case may be.

29 B. A payment bond in an amount equal to the full  
30 amount of the contract solely for the protection  
31 of claimants supplying labor or materials to the  
32 contractor or his subcontractor in the prosecu-  
33 tion of the work provided for in such contract.  
34 The term "materials" shall include rental of  
35 equipment.

36 When required by the contracting authority, the con-  
37 tractor shall furnish bid surety. Bid surety will be  
38 accepted in an amount which the contracting agency  
39 considers sufficient to guarantee that if the work is  
40 awarded the contractor will contract with the con-  
41 tracting agency. The contracting authority is autho-

1 rized to require a bid bond only by a surety company  
2 or companies duly authorized to do business in this  
3 State, at the discretion of the contracting authority  
4 where necessary to assure that the contractor is  
5 bondable.

6 The bid securities shall be returned to the respec-  
7 tive unsuccessful bidders. The surety of the success-  
8 ful bidder shall be returned to the contractor upon  
9 the execution and delivery to the contracting agency  
10 of the contract and bonds with sufficient sureties,  
11 in terms satisfactory to the contracting agency for  
12 the due execution of the work.

13 A surety bond may be in the form of United States  
14 postal money order, official bank checks, cashiers  
15 checks, certificates of deposit, certified checks,  
16 money in escrow, bonds from parties other than bond-  
17 ing companies subject to an adequate financial stand-  
18 ing documented by a financial statement of the party  
19 giving the surety, bond or bonds from a surety compa-  
20 ny or companies duly authorized to do business in the  
21 State.

22 Each such bond shall be executed by a surety company  
23 or companies duly authorized to do business in this  
24 State. In the case of contracts on behalf of the  
25 State, the bonds shall be payable to the State and  
26 deposited with the contracting authority. In the case  
27 of all other contracts subject to this section, the  
28 bonds shall be payable to and deposited with the con-  
29 tracting body awarding the contract.

30 Sec. 3. 23 MRSA §453, first ¶, as amended by PL  
31 1985, c. 86, §1, is further amended to read:

32 The department shall prepare all engineering  
33 plans and specifications for materials, construction  
34 and workmanship which it considers necessary for the  
35 complete construction of the bridge structure, ap-  
36 proaches and for maintenance of traffic and, as soon  
37 as practicable after being advised that the municipal  
38 officers are authorized to raise the town's share of  
39 the estimated cost of such construction, shall requi-  
40 sition the county and city or town for their respec-  
41 tive portions of the estimated cost of construction  
42 as provided in section 452, and except as otherwise

1 provided in this section, advertise for bids for the  
2 construction of the bridge in 2 or more public news-  
3 papers printed wholly or in part in the State, and in  
4 one public newspaper printed wholly or in part in the  
5 county in which the proposed work is to be done, if  
6 any such newspaper is so printed in such county. Such  
7 advertisement shall state the place where the bidders  
8 may examine or obtain the plans and specifications,  
9 and the time and place where the bids for such work  
10 will be received by the department. Each bidder must  
11 accompany his bid with a good and sufficient bid bond  
12 in favor of the State for the benefit of the depart-  
13 ment, executed by a corporate surety authorized to do  
14 business in the State, or certain securities, payable  
15 to the Treasurer of State, for an amount which the  
16 department considers sufficient to guarantee that if  
17 the work is awarded to him, he will contract with the  
18 department for its due execution. "Securities" shall  
19 include official bank checks, cashier's checks, cer-  
20 tified checks, certificates of deposit or United  
21 States postal money orders. Such securities shall be  
22 returned to the respective unsuccessful bidders. The  
23 security or bond of the successful bidder shall be  
24 returned to him upon the execution and delivery to  
25 the department of his contract and his bond with suf-  
26 ficient sureties, in terms satisfactory to the de-  
27 partment for the due execution of such work. All bids  
28 so submitted shall be publicly opened, read and  
29 posted at the time and place stated in such adver-  
30 tisement. The department shall have the right to re-  
31 ject any and all bids if in its opinion good cause  
32 exists therefor, but otherwise it shall award the  
33 contract to the lowest responsible bidder. Any town  
34 may submit bids for bridge construction within its  
35 limits and shall be subject to all requirements pre-  
36 scribed for other contractors, except that no bond  
37 need be required of it. The department may provide  
38 for the construction of the bridge on a day labor ba-  
39 sis, or with approval of the Governor, by contract  
40 without advertising for bids. The department shall  
41 have full power in all matters relating to the fur-  
42 nishing of bonds by the successful bidders for the  
43 completion of their work and fulfilling of their con-  
44 tracts. These bonds shall protect fully the State,  
45 county and town from all liability arising from dam-  
46 age or injury to persons or property as a result of  
47 the contractor's operations. The county commissioners

1 of any county where a bridge is built or rebuilt in  
2 any unorganized township are authorized and required  
3 to assess upon said township such sums as may be re-  
4 quired to build or rebuild said bridge according to  
5 the last state valuation. This expense shall be added  
6 to their assessment on said township for repairs au-  
7 thorized by section 4051, which assessment shall cre-  
8 ate a lien upon said township for the amount thereof  
9 as effectually as is now provided in relation to re-  
10 pairs on county roads. The portion of such expense to  
11 be assessed in any one year shall be determined by  
12 the county commissioners, but in no case shall the  
13 total expense be distributed over a period of more  
14 than 5 years. That portion of said assessment which  
15 is for building or rebuilding said bridge shall be  
16 set down in the assessment in distinct items in a  
17 separate column and shall be enforced as is provided  
18 in section 4104.

19 Sec. 4. 23 MRSA §753, as amended by PL 1985, c.  
20 86, §2, is further amended to read:

21 §753. Contracts for construction

22 The department shall have full power in the let-  
23 ting of all contracts for the construction of all  
24 state highways and other work under its jurisdiction,  
25 except as otherwise provided. The department shall  
26 make all surveys, plans, estimates, specifications  
27 and contracts for all proposed work and shall, except  
28 as otherwise provided in chapters 1 to 19, advertise  
29 for bids for the same in 2 or more public newspapers  
30 printed wholly or in part in the State, and in one  
31 public newspaper printed wholly or in part in the  
32 county where the proposed work is to be done, if any  
33 such newspaper is so printed in such county. Such ad-  
34 vertisement shall state the place where the bidders  
35 may examine the plans and specifications, and the  
36 time and place where the bids for such work will be  
37 received by the department. Each bidder must accom-  
38 pany his bid with a deposit of a good and sufficient  
39 bid bond in favor of the State for the benefit of the  
40 department, executed by a corporate surety authorized  
41 to do business in the State, or certain securities,  
42 payable to the Treasurer of State, for an amount  
43 which the department considers sufficient to guaran-  
44 tee that if the work is awarded to him, he will con-

1 tract with the department for its due execution.  
2 "Securities" shall include official bank checks,  
3 cashier's checks, certified checks, certificates of  
4 deposit or United States postal money orders. Such  
5 securities shall be returned to the respective unsuccess-  
6 cessful bidders. The security or bond of the successful  
7 bidder shall be returned to him upon the execution  
8 and delivery to the department of his contract  
9 and his bond with sufficient sureties, in terms satisfactory  
10 to the department for the due execution of  
11 such work. All bids so submitted shall be publicly  
12 opened and read at the time and place stated in such  
13 advertisement. The department shall have the right to  
14 reject any and all bids, if in its opinion good cause  
15 exists, but otherwise it shall award the contract to  
16 the lowest responsible bidder. Any town may submit  
17 bids for state highway construction within its limits,  
18 and shall be subject to all requirements prescribed  
19 for other contractors, except that no bond need be  
20 required of it. The department may construct state  
21 highways by day labor without advertising for bids;  
22 and may, with the approval of the Governor, award  
23 contracts for state highways without advertising for  
24 bids, if the same shall be for the best interest  
25 of the State. The department shall have full power  
26 in all matters relating to the furnishing of bonds  
27 by the successful bidders for the completion of their  
28 work and fulfilling of their contracts, and for the  
29 protection of the State and town from all liability  
30 arising from damage or injury to persons or property.  
31

32 STATEMENT OF FACT

33 This bill is intended to clarify and make consistent  
34 provisions of the surety bonding process for the State  
35 and municipalities. There is now conflict between the  
36 provisions of the Maine Revised Statutes, Title 5,  
37 section 1745; Title 14, section 871; and Title 23,  
38 sections 453 and 753. This bill establishes a clear  
39 and consistent policy for both state and municipal  
40 officials.