

MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 829, L.D. 2089)
2 (New Title)
3 SECOND REGULAR SESSION
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE
6

7 Legislative Document

No. 2291

9 S.P. 917

In Senate, March 28, 1986

10 Reported by Senator Andrews of Cumberland from the Committee on
11 State Government and printed under Joint Rule 2. Original bill presented by
12 Senator Bustin of Kennebec. Cosponsored by Representative Hickey of
Augusta, Representative Paradis of Augusta and Senator Kany of Kennebec.

JOY J. O'BRIEN, Secretary of the Senate

13
14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-SIX
18

19 AN ACT Providing for the Lease of Unused
20 Space or Facilities Owned by the
21 State.
22

23 Be it enacted by the People of the State of Maine as
24 follows:

25 Sec. 1. 5 MRSA c. 154 is enacted to read:

26 CHAPTER 154

27 LEASE OF STATE-OWNED FACILITIES

28 §1781. Purpose

29 There are a large number of state-owned facili-
30 ties throughout the State, a number of which have
31 some unused space or which are currently leasing
32 space to organizations other than state agencies.
33 Since some state agencies may have negotiated con-

1 tracts with tenants that may violate constitutional
2 and other statutory provisions, it is the intent of
3 the Legislature to establish a policy governing the
4 leasing of state-owned facilities that complies with
5 constitutional and legal principles.

6 It is the purpose of this chapter to provide for
7 uniform procedures and a standard policy for the
8 leasing of state-owned facilities. A decentralized
9 procedure and many differing policies lead to confu-
10 sion and misunderstanding.

11 §1782. Definitions

12 As used in this chapter, unless the context indi-
13 cates otherwise, the following terms have the follow-
14 ing meanings.

15 1. Agency of jurisdiction. "Agency of jurisdic-
16 tion" means the state agency which has use of and ju-
17 risdiction over the facility.

18 2. Available facility. "Available facility"
19 means a facility in which all or a part of the facil-
20 ity is unused and available for leasing.

21 3. Director. "Director" means the Director of
22 the Bureau of Public Improvements.

23 4. Other organization. "Other organization"
24 means any not-for-profit, sole proprietorship, part-
25 nership, corporation or association that is not a
26 state agency.

27 5. State agency. "State agency" means an agency
28 of State Government as defined in section 8002, sub-
29 section 2.

30 §1783. Lease of state-owned facilities

31 The director shall negotiate and have final ap-
32 proval of any lease or rental contract for all or a
33 portion of any available state-owned building or fa-
34 ility. No available state-owned facility or building
35 may be leased except as provided in this section.

1 1. Unused state facilities. In the event that an
2 agency of jurisdiction finds that it has no need for
3 an available facility, for a period of at least one
4 year, the director may lease the available facility.

5 2. State agencies to be given priority. In pro-
6 viding for the lease of an available facility, the
7 director shall first offer the available facility to
8 state agencies in the following order:

9 A. State agencies or sub-units of state agencies
10 which are not located in state-owned facilities;
11 and

12 B. State agencies located in state-owned facili-
13 ties.

14 3. Lease of state-owned facilities to other or-
15 ganizations. In the event that no state agency leases
16 the available facility as provided in subsections 1
17 and 2, the director, with the approval of the commis-
18 sioner or director of the agency of jurisdiction,
19 may, by competitive bid, offer to lease the facility
20 to any other organization.

21 A. Whenever the director offers to lease the
22 available facility pursuant to this subsection,
23 the director shall offer the lease to only those
24 types of organizations that the agency of juris-
25 isdiction finds to be compatible with or conducive
26 to the operation and services of the agency of
27 jurisdiction.

28 4. Standards. In offering a lease under the pro-
29 visions of subsection 3, the director shall include
30 standards and conditions in the lease as determined
31 by the commissioner or director of the agency of ju-
32 risdiction which, at a minimum, include the follow-
33 ing:

34 A. The types of uses compatible with and condu-
35 cive to the activities of the agency of jurisdic-
36 tion; and

37 B. The types of activities in which the lessee
38 may engage which, at a minimum, shall include the
39 following:

1 (1) Any services or programs that the les-
2 see is required to provide or offer;

3 (2) Termination of lease provisions, to in-
4 clude 60-day notice by either the State or
5 the lessee;

6 (3) Capital improvements to be made or
7 equipment to be provided by the lessee;

8 (4) The length of the lease not to exceed 2
9 years;

10 (5) Following notice as provided in this
11 subsection, termination of the lease by the
12 State to accommodate the needs of a state
13 agency; and

14 (6) Any other provisions deemed necessary
15 by the agency of jurisdiction or the direc-
16 tor.

17 §1784. Rent and fees

18 In providing a lease under this chapter, the di-
19 rector shall require payment of fees or charges that,
20 at a minimum, cover the costs of utilities, including
21 heat, custodial services and any other costs gener-
22 ated by the lessee. In addition, a monthly rental fee
23 shall be charged to the user which need not necessar-
24 ily be the current rate charged in the private sector
25 for similar facilities.

26 1. Provision of services to the State. If the
27 lessee provides services or assistance to the State
28 at no charge or at significantly reduced charges or
29 the lessee provides in-kind contributions, the month-
30 ly rental fee may be reduced or waived by mutual
31 agreement of the director and the commissioner or di-
32 rector of the agency of jurisdiction.

33 §1785. Adoption of rules

34 1. Rules of implementation. The director shall
35 adopt rules to implement this chapter. At a minimum,
36 these rules shall include:

1 A. Provisions for offering available state fa-
2 ilities to state agencies;

3 B. Provisions for offering, by competitive bid-
4 ding, available facilities to other organiza-
5 tions;

6 C. Standards for determining user created costs
7 to state agencies for use of state-owned facili-
8 ties to be reimbursed to the State; and

9 D. Standards for determining rental fees based
10 on the location of the facilities, accessibility,
11 local market rates, services or in-kind contribu-
12 tions provided by the user or lessee and any oth-
13 er standards deemed necessary by the director.

14 §1786. Exemption of state from liability

15 Whenever a lease is offered to or signed by an-
16 other organization pursuant to this chapter, the
17 lease conditions shall clearly state that the State
18 or any state employee shall not be liable for any
19 personal injury or death or any property damage sus-
20 tained as a result of the lease of the available fa-
21 ility in accordance with this chapter. The State
22 shall not be liable for any actions of the lessee or
23 the employees of the lessee.

24 Sec. 2. 14 MRSA §8103, sub-§2, as enacted by PL
25 1977, c. 578, §1, is amended to read:

26 2. Examples. Notwithstanding section 8104, a
27 governmental entity shall not be liable for any claim
28 which results from:

29 A. The undertaking or failure to undertake any
30 legislative or quasi-legislative act, including,
31 but not limited to, the adoption or failure to
32 adopt any statute, charter, ordinance, order,
33 regulation, resolution or resolve;

34 B. The undertaking, or failure to undertake, any
35 judicial or quasi-judicial act, including, but
36 not limited to, the granting, granting with con-
37 ditions, refusal to grant or revocation of any
38 license, permit, order or other administrative
39 approval or denial;

1 C. The performance or failure to exercise or
2 perform a discretionary function or duty, whether
3 or not the discretion be abused and whether or
4 not the statute, charter, ordinance, order, reso-
5 lution, regulation or resolve under which the
6 discretionary function or duty is performed is
7 valid or invalid;

8 D. The decision not to provide communications,
9 heat, light, water, electricity or solid or liq-
10 uid waste collection, disposal or treatment ser-
11 vices;

12 E. The activities of the Maine National Guard
13 when engaged in combatant activities during a
14 time of war, or when called to duty in accordance
15 with a proclamation of emergency by the Governor
16 in accordance with Title 37-A, section 57 or 207;

17 F. The construction, ownership, maintenance or
18 use of:

19 (1) Unimproved land;

20 (2) Historic sites, including, but not lim-
21 ited to memorials, as defined in Title 12,
22 section 601, subsection 1; or

23 (3) Land, buildings, structures, facilities
24 or equipment designed for use primarily by
25 the public in connection with public outdoor
26 recreation;

27 G. The discharge, dispersal, release or escape
28 of smoke, vapors, soot, fumes, acids, alkalines,
29 toxic chemicals, liquids or gases, waste materi-
30 als or other irritants, contaminants or
31 pollutants into or upon land, the atmosphere or
32 any water course or body of water, except as pro-
33 vided in section 8104, subsection 3;

34 H. The ownership, maintenance or use of any
35 building acquired by a governmental entity for
36 reasons of tax delinquency from the date of fore-
37 closure and until actual possession by the delin-
38 quent taxpayer or his lessee or licensee has
39 ceased for a period of 60 days; ~~or~~

1 I. The ownership, maintenance or use of any
2 building acquired by a governmental entity by
3 eminent domain or by condemnation until actual
4 possession by the former owner or his lessee or
5 licensee has ceased for a period of 60 days; ~~or~~

6 J. Any defect, lack of repair or lack of suffi-
7 cient railing in any highway, town way, sidewalk,
8 parking area, causeway, bridge, airport runway or
9 taxiway, including appurtenances necessary for
10 the control of such ways including but not lim-
11 ited to street signs, traffic lights, parking me-
12 ters and guardrails, except as provided in sec-
13 tion 8104, subsection 4, and in Title 23, section
14 3655- ; or

15 K. The leasing of state-owned property, includ-
16 ing buildings to other organizations pursuant to
17 Title 5, chapter 154.

18 Paragraphs A through ~~J~~ K of this subsection, to which
19 immunity applies, are cited as examples and shall not
20 be interpreted to limit the general immunity provided
21 by this section.

22 Sec. 3. Reimbursement to agencies of jurisdiction
23 for prior use. In the event that a state agency, pri-
24 or to the effective date of this Act, has provided
25 available facilities to any other organization at no
26 cost, at a significantly reduced cost or at a cost
27 that fails to cover the costs created by the user,
28 the commissioner or director of the agency of juris-
29 diction shall establish a charge or fee that the com-
30 missioner or director of the state agency which has
31 use of and jurisdiction over that facility deems fair
32 and just for the prior use of the facility.

33 In determining the fair and just reimbursement
34 fee as defined in this section, the commissioner or
35 director of the state agency which has use of and ju-
36 risdiction over the facility shall consider the fol-
37 lowing:

38 1. The terms of the previous contracts;

39 2. Any capital improvements made by the lessee
40 to the available facilities;

1 3. Any services or benefits provided by the les-
2 see to the agency of jurisdiction;

3 4. Any damages to the available facilities which
4 are the responsibility of the lessee; and

5 5. Any other criteria deemed just and reasonable
6 by the agency of jurisdiction.

7 Sec. 4. Application of chapter to current ten-
8 ants in state-owned buildings. Any other organiza-
9 tion, as defined in the Maine Revised Statutes, Title
10 5, section 1782, currently using or leasing an avail-
11 able state-owned building or facility shall be sub-
12 ject to the provisions of Title 5, chapter 154, ex-
13 cept that the current lessees or other user organiza-
14 tions may remain in their current location for a pe-
15 riod of 2 years from the effective date of this Act.
16 The Director of the Bureau of Public Improvements or
17 the lessee may terminate the lease as provided in Ti-
18 tle 5, chapter 154.

19 STATEMENT OF FACT

20 The original bill posed serious constitutional
21 problems. The original bill has been rewritten to re-
22 move the violations of the special legislation and
23 equal protection clauses of the Constitution of
24 Maine.

25 Under this redrafted version, the Director of the
26 Bureau of Public Improvements will lease any availa-
27 ble space in state-owned buildings. The director is
28 required to give first option to state agencies and
29 then to not-for-profit organizations.

30 If an available facility is leased to a
31 not-for-profit organization, the activities and uses
32 of the facility must be compatible with and conducive
33 to the activities and programs of the agency of ju-
34 risdiction as determined by the agency of jurisdic-
35 tion.

36 Lease arrangements may not exceed 2 years and are
37 to be awarded by competitive bid. The lease may be

1 terminated by the State or the lessee on 60 days' no-
2 tice.

3 The State is not liable for any death, personal
4 injury or property damages resulting from the lease
5 of available state facilities to not-for-profit orga-
6 nizations.

7 The new draft also provides that lease agreements
8 cover the operating costs incurred as a result of the
9 activities of the lessee. In addition, a monthly
10 rental charge is required which can be waived or re-
11 duced depending upon the benefits realized by or ser-
12 vices provided to the State.

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