MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document **No. 613**

H.P. 476 House of Representatives, February 23, 1993

An Act to Shorten the Appeal Procedure for the State Bidding Process and to Provide Consistent Administration of Appeal Hearings.

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 24.

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

Joseph W. Mayo

JOSEPH W. MAYO, Clerk

Presented by Representative DAGGETT of Augusta.
Cosponsored by Senator: BERUBE of Androscoggin.

Printed on recycled paper

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

Sec. 1. 5 MRSA §1825-E, sub-§§1 and 2, as amended by PL 1991, c. 780, Pt. Y, §71, are further amended to read:

1. Stay. Persons aggrieved by a contract award decision may request a stay of a contract award decision. Such a request must be made to the Director of the Bureau of General Services in writing within ~~30~~ 10 days of notification of the contract award and must state the nature of the grievance.

The Director of the Bureau of General Services shall issue a stay of a contract award decision, pending appeal, upon a showing of irreparable injury to the petitioner, a reasonable likelihood of success on the merits, and no substantial harm to adverse parties or to the general public.

The Director of the Bureau of General Services shall notify the petitioner in writing of the director's decision regarding the issuance of a stay within ~~10~~ 7 days of receipt of the request.

Failure of the petitioner to obtain a stay does not affect the petitioner's right to a hearing of appeal under this subchapter.

2. Request for hearing of appeal. Persons aggrieved by an agency contract award decision under this subchapter may request a hearing of appeal. Such a request must be made to the Director of the Bureau of General Services in writing within ~~30~~ 15 days of notification of the contract award. The Director of the Bureau of General Services shall grant a hearing of appeal unless:

A. The Director of the Bureau of General Services determines that:

(1) The petitioner is not an aggrieved person;

(2) A prior request by same petitioner relating to the same contract award has been granted;

(3) The request was made more than ~~30~~ 15 days after notice of contract award; or

(4) The request is capricious, frivolous or without merit; or

B. No contract award was granted.

The Director of the Bureau of General Services shall notify the petitioner in writing of the director's decision regarding a request for a hearing of appeal within ~~30~~ 15 days of receipt of

the request. If a request for a hearing is granted, notification must be made at least ~~15~~ 10 days before the hearing date and must include the date and location of the hearing and the names of the appeal committee members.

Sec. 2. 5 MRSA §1825-E, sub-§3, as amended by PL 1991, c. 780, Pt. Y, §71, is repealed.

Sec. 3. 5 MRSA §1825-E, sub-§3-A is enacted to read:

3-A. Appeal hearing. The Director of the Bureau of General Services shall appoint a presiding officer to hear a petitioner's appeal, make findings of fact and make a proposed decision to the director and to all parties. Participants can file written response or exceptions to the findings of the presiding officer, within 10 calendar days of the proposed decision, with the Director of the Bureau of General Services.

The Director of the Bureau of General Services shall keep a record of each hearing and issue a decision in writing not later than 20 days following the hearing of appeal.

Subject to the requirements of rules adopted under this section and evidence presented during a hearing of appeal, the Director of the Bureau of General Services may decide either to:

A. Validate the contract award decision under appeal; or

B. Invalidate the contract award decision under appeal.

Except as provided in paragraph B, the Director of the Bureau of General Services may not modify the contract award under appeal, or make a new contract award. Contracts found invalid by the Director of the Bureau of General Services under this subchapter become immediately void and of no legal effect.

Sec. 4. 5 MRSA §1825-F, first ¶, as enacted by PL 1989, c.785, §2, is amended to read:

Decisions made by ~~an--appeal--committee~~ the Director of the Bureau of General Services under section 1825-E, subsection ~~3~~ 3-A, constitute final agency action on the petitioner's appeal for the purposes of judicial review under chapter 375, subchapter VII. The ~~State--Purchasing--Agent~~ Director of the Bureau of General Services shall notify a petitioner of a final agency action made under this subchapter in writing within ~~10~~ 5 days of the final agency action. Notification of final agency action must include:

STATEMENT OF FACT

Currently, the appeals process for contract award decisions takes 90 days or longer to reach decision on any appeal. This bill is designed to shorten that procedure to 45 days and to provide the Director of the Bureau of General Services with strengthened criteria to deny appeals without merit. This bill also establishes a decision-making presiding officer to provide continuity and clarity to the process and establishes the Director of the Bureau of General Services as the final agency decision maker.