

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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Legislative Document

No. 613

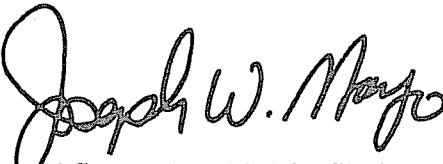
H.P. 476

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.**

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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, Clerk

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

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

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

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

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

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

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

24  
25 2. Request for hearing of appeal. Persons aggrieved by an  
26 agency contract award decision under this subchapter may request  
27 a hearing of appeal. Such a request must be made to the Director  
28 of the Bureau of General Services in writing within 30 15 days of  
29 notification of the contract award. The Director of the Bureau  
30 of General Services shall grant a hearing of appeal unless:

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

34 (1) The petitioner is not an aggrieved person;

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

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

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

46 B. No contract award was granted.

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

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

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

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

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

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

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

26 A. Validate the contract award decision under appeal; or

28 B. Invalidate the contract award decision under appeal.

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

36 Sec. 4. 5 MRSA §1825-F, first ¶, as enacted by PL 1989, c.785,  
37 §2, is amended to read:

40 Decisions made by an appeal committee the Director of the  
41 Bureau of General Services under section 1825-E, subsection 3  
42 3-A, constitute final agency action on the petitioner's appeal  
43 for the purposes of judicial review under chapter 375, subchapter  
44 VII. The State--Purchasing--Agent Director of the Bureau of  
45 General Services shall notify a petitioner of a final agency  
46 action made under this subchapter in writing within 10 5 days of  
47 the final agency action. Notification of final agency action  
48 must include:

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**STATEMENT OF FACT**

4           Currently, the appeals process for contract award decisions  
6 takes 90 days or longer to reach decision on any appeal. This  
8 bill is designed to shorten that procedure to 45 days and to  
10 provide the Director of the Bureau of General Services with  
12 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.