

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2005

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Legislative Document

No. 1662

H.P. 1173

House of Representatives, May 9, 2005

### **An Act To Amend the Law Governing the Department of Transportation's Contracting Authority**

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Submitted by the Department of Transportation pursuant to Joint Rule 204.  
Reference to the Committee on Transportation suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative MARLEY of Portland.  
Cosponsored by Senator DAMON of Hancock and  
Representative: McKENNEY of Cumberland.

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

**Sec. 1. 5 MRSA §1741**, as amended by PL 1985, c. 130, is further amended to read:

**§1741. Definitions**

Whenever the words "public improvement" or "public improvements" shall appear in chapters 141 to 155, ~~they shall be held to those words~~ mean and include the construction, major alteration or repair of buildings or public works now owned or leased or hereafter constructed, acquired or leased by the State of Maine or any department, officer, board, commission or agency thereof of the State, or constructed, acquired or leased, in whole or in part with state funds, and including the construction, major alteration or repair of school buildings, in excess of \$25,000, by any school administrative unit and for which state school construction aid is to be paid, ~~provided~~ except that sections 1743 and 1745 shall be not be applicable to construction, major alteration or repair of school buildings. Nothing in this section may apply to the construction, improvement or repair of any and all ways, roads or bridges with appurtenances and other public improvements which This subchapter does not apply to contracts for transportation-related services and contracts for construction and maintenance that, by law, are under the supervision of the Department of Transportation.

The word "person" as used in this section and sections 1745 to 1749 ~~shall mean~~ means and ~~include~~ includes any individual, copartnership, association, corporation or joint stock company, and their lessees, trustees or receivers appointed by any court whatsoever.

**Sec. 2. 23 MRSA §52**, as amended by PL 1997, c. 52, §1, is repealed and the following enacted in its place:

**§52. General powers and duties**

The Department of Transportation, referred to in this chapter as "the department," may from time to time make and shall enforce rules and regulations relating to the planning, design, engineering, construction, improvement, maintenance and use of transportation infrastructure. The department may from time to time make and shall enforce rules relating to the manner of conducting all investigations and hearings and the administration of its office, powers and duties. The department shall direct the expenditure of all money for the planning, design, engineering, construction, improvement, demolition, maintenance and use of all transportation infrastructure for which state funds are provided by law. The department may obtain leases for

2 such land and office space as the department considers necessary  
3 for the performance of its duties. As used in this section,  
4 "transportation infrastructure" means infrastructure related to  
5 all modes of transportation, including highways, bridges,  
6 railroads, ferries, mass transit, airports and bicycle and  
7 pedestrian facilities, as well as all buildings, utilities,  
8 facilities and other appurtenances related to such modes.

9  
10 The department has full power to purchase all supplies,  
11 materials and equipment that are incidental to, or necessary for,  
12 project-specific construction, improvement or maintenance of  
13 transportation infrastructure. The purchase of supplies,  
14 materials and equipment for nonproject-specific purposes must be  
15 made through the State Purchasing Agent as provided by law. For  
16 the purposes of this section, unless the context otherwise  
17 indicates, "project-specific" means relating to a specific  
18 location for a limited duration, as opposed to perennial,  
19 nonlocation-specific activities. The department may be consulted  
20 by and shall, without charge, advise municipal officers and road  
21 commissioners on the subject of construction, improvement and  
22 maintenance of public highways, bridges and other structures. The  
23 department shall whenever practicable give preference in  
24 employment to the inhabitants of the town in which such highways  
25 are located.

26 The department may adopt its own guidelines for determining  
27 the reasonableness and permissibility of various cost factors,  
28 including, but not limited to, salary limits, benefits and  
29 expense reimbursement. Notwithstanding any other federal or  
30 state law to the contrary, the department's guidelines must be  
31 used in lieu of federally mandated provisions.

32  
33 **Sec. 3. 23 MRSA §753**, as amended by PL 2001, c. 689, §1, is  
34 repealed.

35 **Sec. 4. 23 MRSA §753-A, sub-§2**, as enacted by PL 2001, c. 140,  
36 §1, is amended to read:

37  
38 **2. Authorization.** ~~Notwithstanding section 753~~ Notwithstanding ~~chapter 410,~~  
39 subchapter 4 or any other provision of law, the department may  
40 use design-build contracting to deliver projects. The department  
41 may evaluate and select proposals on either a best-value or  
42 low-bid basis. If the scope of work requires substantial  
43 engineering judgment, the quality of which may vary significantly  
44 as determined by the department, then the basis of award must be  
45 best value.

46  
47 The department shall identify in its planning process those  
48 projects it believes are candidates for design-build  
49 contracting. The failure of the department to identify such  
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2 projects does not prevent the department from using design-build  
contracting in extraordinary circumstances including emergency  
work, unscheduled projects or loss of funding.

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6 The department retains the authority to terminate the contracting  
process at any time, to reject any proposal, to waive  
technicalities or to advertise for new proposals if the  
8 department determines that it is in the best interest of the  
State.

10 **Sec. 5. 23 MRSA §803**, as amended by PL 1971, c. 593, §22, is  
12 repealed.

14 **Sec. 6. 23 MRSA c. 410, sub-c. 4** is enacted to read:

16 **SUBCHAPTER 4**

18 **CONTRACTS**

20 **§4241. Definitions**

22 As used in this subchapter, unless the context otherwise  
24 indicates, the following terms have the following meanings.

26 **1. Transportation infrastructure.** "Transportation  
infrastructure" means infrastructure related to all modes of  
28 transportation, including highways, bridges, railroads, ferries,  
mass transit, airports and bicycle and pedestrian facilities, as  
30 well as all buildings, utilities, facilities and other  
appurtenances related to those modes.

32 **2. Transportation-related services.**  
"Transportation-related services" means all services necessary or  
34 convenient to discharge the powers, duties and responsibilities  
of the department and the commissioner as provided by law  
36 including those provided in section 4206. These services include  
all services necessary or convenient to plan, design, engineer,  
38 construct, improve, demolish, maintain or use transportation  
infrastructure. These services may include, but are not limited  
40 to, planning and feasibility studies, engineering, surveying,  
mapping, environmental services, architectural-related services,  
42 appraisal, title services, right-of-way services, project and  
program management, construction support services and equal  
44 opportunity and civil rights services.

46 **§4242. Contracts for transportation-related services**

48 The department has full power in the procurement and letting  
of all contracts for transportation-related services. The  
50 department may award contracts for these services pursuant to

2 procedures permitted by federal law. The department may solicit  
3 statements of qualifications and proposals, and award contracts  
4 for services based upon the criteria contained in the  
5 solicitations, only if the solicitations are posted  
6 electronically on the department's publicly accessible site on  
7 the Internet for at least 2 weeks or advertised in newspapers.  
8 If advertisements are published in newspapers, they must appear  
9 in 2 or more public newspapers circulated wholly or in part in  
10 the State and in one public newspaper circulated wholly or in  
11 part in the county where the proposed work is to be done, if any  
12 such newspaper is circulated in that county.

13 The department has the full power to maintain qualifications  
14 and performance data on firms and individuals that seek to  
15 provide transportation-related services. The commissioner may  
16 designate projects requiring additional project-specific  
17 prequalification standards and procedures for interested firms  
18 and individuals.

19 **§4243. Contracts for construction and maintenance**

20 The department has full power in the procurement and letting  
21 of all contracts to construct, demolish or maintain  
22 transportation infrastructure. The department shall make, or  
23 cause to be made, all surveys, plans, estimates, specifications  
24 and contracts for all proposed work. If the work is to be  
25 contracted, the department shall, except as otherwise provided in  
26 this Title, advertise for bids for the proposed work  
27 electronically through the department's publicly accessible site  
28 on the Internet or through advertisements in newspapers. If  
29 advertisements are published in newspapers, advertisements must  
30 appear in 2 or more public newspapers circulated wholly or in  
31 part in the State and in one public newspaper circulated wholly  
32 or in part in the county where the proposed work is to be done if  
33 any such newspaper is circulated in that county. The  
34 advertisement must state the place where the bidders may purchase  
35 or examine the plans and specifications and the time and place  
36 where the bids for the work will be received by the department.  
37 Each bidder must accompany its bid with a bid guaranty in  
38 accordance with the department's specifications. All bids  
39 submitted must be publicly opened and read at the time and place  
40 stated in the advertisement. The department has the right to  
41 reject any bids and to advertise for new bids if, in the  
42 department's opinion, doing so is in the best interest of the  
43 department; otherwise, the department shall award the contract to  
44 the responsible bidder submitting the lowest bid. A town may  
45 submit bids for construction, demolition or maintenance of  
46 transportation infrastructure within that town's limits and is  
47 subject to all requirements prescribed for other contractors,  
48 except that a bond is not required of the town. The department  
49 may also award contracts to the responsible bidder submitting the  
50 lowest bid, provided that the bidder is a resident of the town.

2 may construct, demolish or maintain transportation infrastructure  
3 by day labor without advertising for bids and may, with the  
4 approval of the Governor, award contracts for the construction,  
5 demolition or maintenance of transportation infrastructure  
6 without advertising for bids if doing so is in the best interest  
7 of the State.

8 The department has the full power to prequalify bidders for  
9 construction, demolition and maintenance projects based on  
10 factors contained in the department's written prequalification  
11 procedures. The commissioner may designate projects requiring  
12 project-specific prequalification standards and procedures for  
13 bidders.

14 The department may adopt its own standard contract  
15 specifications. The department's standard specifications must be  
16 used in lieu of federally mandated contract clauses.  
17

## 20 SUMMARY

21 This bill clarifies the Department of Transportation's  
22 authority to procure and let contracts for transportation-related  
23 services and contracts for construction and maintenance. It  
24 clarifies that the department may let contracts relating to all  
25 modes of transportation and confirms that the department may  
26 purchase supplies, materials and equipment necessary for  
27 project-specific maintenance activities. This bill also confirms  
28 that the department may maintain qualifications and performance  
29 data for consultants and may prequalify bidders.  
30