

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWELFTH LEGISLATURE

SECOND REGULAR SESSION
January 8, 1986 to April 16, 1986

SECOND SPECIAL SESSION
May 28, 1986 to May 30, 1986

AND AT THE

THIRD SPECIAL SESSION
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

CHAPTER 758

S.P. 917 - L.D. 2291

AN ACT Providing for the Lease of Unused Space or Facilities Owned by the State.

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

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

CHAPTER 154

LEASE OF STATE-OWNED FACILITIES

§1781. Purpose

There are a large number of state-owned facilities throughout the State, a number of which have some unused space or which are currently leasing space to organizations other than state agencies. Since some state agencies may have negotiated contracts with tenants that may violate constitutional and other statutory provisions, it is the intent of the Legislature to establish a policy governing the leasing of state-owned facilities that complies with constitutional and legal principles.

It is the purpose of this chapter to provide for uniform procedures and a standard policy for the leasing of state-owned facilities. A decentralized procedure and many differing policies lead to confusion and misunderstanding.

§1782. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Agency of jurisdiction. "Agency of jurisdiction" means the state agency which has use of and jurisdiction over the facility.

2. Available facility. "Available facility" means a facility in which all or a part of the facility is unused and available for leasing.

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

4. Other organization. "Other organization" means any not-for-profit, sole proprietorship, partnership, corporation or association that is not a state agency.

5. State agency. "State agency" means an agency of State Government as defined in section 8002, subsection 2.

§1783. Lease of state-owned facilities

The director shall negotiate and have final approval of any lease or rental contract for all or a portion of any available state-owned building or facility. No available state-owned facility or building may be leased except as provided in this section, Title 12, Title 23, Title 30, chapter 233, and Resolve 1986, chapter 68.

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

2. State agencies to be given priority. In providing for the lease of an available facility, the director shall first offer the available facility to state agencies in the following order:

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

B. State agencies located in state-owned facilities.

3. Lease of state-owned facilities to other organizations. In the event that no state agency leases the available facility as provided in subsections 1 and 2, the director, with the approval of the commissioner or director of the agency of jurisdiction, may, by competitive bid, offer to lease the facility to any other organization.

A. Whenever the director offers to lease the available facility pursuant to this subsection, the director shall offer the lease to only those types of organizations that the agency of jurisdiction finds to be compatible with or conducive to the operation and services of the agency of jurisdiction.

4. Standards. In offering a lease under the provisions of subsection 3, the director shall include standards and conditions in the lease as determined

by the commissioner or director of the agency of jurisdiction which, at a minimum, include the following:

A. The types of uses compatible with and conducive to the activities of the agency of jurisdiction; and

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

(1) Any services or programs that the lessee is required to provide or offer;

(2) Termination of lease provisions, to include 60-day notice by either the State or the lessee;

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

(4) The length of the lease not to exceed 2 years, except when the director, with the approval of the commissioner or director of the agency of jurisdiction, finds that a longer term lease will accrue benefit to the State;

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

(6) Any other provisions deemed necessary by the agency of jurisdiction or the director.

§1784. Rent and fees

In providing a lease under this chapter, the director shall require payment of fees or charges that, at a minimum, cover the costs of utilities, including heat, custodial services and any other costs generated by the lessee. In addition, a monthly rental fee shall be charged to the user which need not necessarily be the current rate charged in the private sector for similar facilities.

1. Provision of services to the State. If the lessee provides services or assistance to the State at no charge or at significantly reduced charges or the lessee provides in-kind contributions, the monthly rental fee may be reduced or waived by mutual

agreement of the director and the commissioner or director of the agency of jurisdiction.

§1785. Adoption of rules

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

A. Provisions for offering available state facilities to state agencies;

B. Provisions for offering, by competitive bidding, available facilities to other organizations;

C. Standards for determining user created costs to state agencies for use of state-owned facilities to be reimbursed to the State; and

D. Standards for determining rental fees based on the location of the facilities, accessibility, local market rates, services or in-kind contributions provided by the user or lessee and any other standards deemed necessary by the director.

§1786. Exemption of state from liability

Whenever a lease is offered to or signed by another organization pursuant to this chapter, the lease conditions shall clearly state that the State or any state employee shall not be liable for any personal injury or death or any property damage sustained as a result of the lease of the available facility in accordance with this chapter. The State shall not be liable for any actions of the lessee or the employees of the lessee.

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

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

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

B. The undertaking, or failure to undertake, any judicial or quasi-judicial act, including, but not limited to, the granting, granting with conditions, refusal to grant or revocation of any

license, permit, order or other administrative approval or denial;

C. The performance or failure to exercise or perform a discretionary function or duty, whether or not the discretion be abused and whether or not the statute, charter, ordinance, order, resolution, regulation or resolve under which the discretionary function or duty is performed is valid or invalid;

D. The decision not to provide communications, heat, light, water, electricity or solid or liquid waste collection, disposal or treatment services;

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

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

(1) Unimproved land;

(2) Historic sites, including, but not limited to memorials, as defined in Title 12, section 601, subsection 1; or

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

G. The discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalines, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water, except as provided in section 8104, subsection 3;

H. The ownership, maintenance or use of any building acquired by a governmental entity for reasons of tax delinquency from the date of foreclosure and until actual possession by the delinquent taxpayer or his lessee or licensee has ceased for a period of 60 days; ~~or~~

I. The ownership, maintenance or use of any building acquired by a governmental entity by eminent domain or by condemnation until actual

possession by the former owner or his lessee or licensee has ceased for a period of 60 days; or

J. Any defect, lack of repair or lack of sufficient railing in any highway, town way, sidewalk, parking area, causeway, bridge, airport runway or taxiway, including appurtenances necessary for the control of such ways including but not limited to street signs, traffic lights, parking meters and guardrails, except as provided in section 8104, subsection 4, and in Title 23, section 3655- ; or

K. The leasing of state-owned property, including buildings to other organizations pursuant to Title 5, chapter 154.

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

Sec. 3. Reimbursement to agencies of jurisdiction for prior use. In the event that a state agency, prior to the effective date of this Act, has provided available facilities to any other organization at no cost, at a significantly reduced cost or at a cost that fails to cover the costs created by the user, the commissioner or director of the agency of jurisdiction shall establish a charge or fee that the commissioner or director of the state agency which has use of and jurisdiction over that facility deems fair and just for the prior use of the facility.

In determining the fair and just reimbursement fee as defined in this section, the commissioner or director of the state agency which has use of and jurisdiction over the facility shall consider the following:

1. The terms of the previous contracts;
2. Any capital improvements made by the lessee to the available facilities;
3. Any services or benefits provided by the lessee to the agency of jurisdiction;
4. Any damages to the available facilities which are the responsibility of the lessee; and
5. Any other criteria deemed just and reasonable by the agency of jurisdiction.

Sec. 4. Application of chapter to current tenants in state-owned buildings. Any other organization, as defined in the Maine Revised Statutes, Title 5, section 1782, currently using or leasing an available state-owned building or facility shall be subject to the provisions of Title 5, chapter 154, except that the current lessees or other user organizations may remain in their current location for a period of 2 years from the effective date of this Act. The Director of the Bureau of Public Improvements or the lessee may terminate the lease as provided in Title 5, chapter 154.

Effective July 16, 1986.

CHAPTER 759

S.P. 932 - L.D. 2333

**AN ACT to Provide for a Job Development
Training Funding Capability within the
Resources of the State Contingent
Account.**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, it is necessary to provide support for state efforts to create jobs by assisting in meeting the training needs of labor intensive new or expanding industries; and

Whereas, these increases in employment opportunities for Maine citizens would not be likely to materialize if state assistance were not provided; and

Whereas, this assistance would be provided for the purpose of unusual, unforeseen or extraordinary needs only; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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