

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
SEPTEMBER 30, 1989

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

J.S. McCarthy Company
Augusta, Maine
1989

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
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ONE HUNDRED AND FOURTEENTH LEGISLATURE

1989

34-B MRSA §3623, sub-§1, as enacted by PL 1987, c. 349, Pt. H, §21, is amended to read:

1. Established. The Region II Crisis Intervention Program Advisory Board, as established by Title 5, chapter 379, shall consist of 11 members as follows: ~~The~~ the Superintendent of the Bangor Mental Health Institute, or ~~his~~ the superintendent's designee; ~~the chief executive officer of the participating hospital, or his designee~~ the chief of psychiatry of a participating hospital, or the chief's designee, or if there is no participating hospital, a psychiatrist selected by the board; the Director of Community Support Services for the Community Health and Counseling Service; 2 representatives of the Down-East Alliance for the Mentally Ill and 2 other family members of mentally ill people chosen by the Down-East Alliance for the Mentally Ill to represent a geographical distribution within the region. These members shall select a private mental health practitioner and 2 consumers of services for the mentally ill. The coordinator of the project shall be a member of the advisory board, but may only vote in case of a tie.

This subsection is repealed October 1, 1991.

See title page for effective date.

CHAPTER 164

S.P. 275 - L.D. 721

An Act to Amend the Protection From Harassment Laws

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

5 MRSA §4654, sub-§2, as amended by PL 1987, c. 708, §4, is further amended to read:

2. Temporary orders. The court may enter any temporary orders, authorized under subsection 4, without written or oral notice to the defendant or ~~his~~ the defendant's attorney if:

A. It appears clearly from a verified petition or an affidavit accompanying the petition that:

(1) Before the defendant or ~~his~~ the defendant's attorney can be heard, the plaintiff may be in immediate and present danger of physical abuse from the defendant or ~~may suffer~~ is in immediate and present danger of suffering extreme emotional distress as a result of the defendant's conduct;

(2) Either the plaintiff has or has not contacted any law enforcement officials concerning the alleged harassment; and

(3) The plaintiff has provided sufficient information to substantiate the alleged harassment;

B. When reasonable, the plaintiff or the court has made reasonable efforts to give written or oral notice to the defendant or ~~his~~ the defendant's attorney that the plaintiff is seeking a temporary order; and

C. The court provides written reasons for entering a temporary order.

See title page for effective date.

CHAPTER 165

S.P. 247 - L.D. 577

An Act Relating to Contracts Administered by the Department of Transportation

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

Sec. 1. 5 MRSA §1749, 4th ¶, as amended by PL 1971, c. 593, §22, is further amended to read:

Nothing in this section ~~shall~~ may apply to the construction, improvement or repair of any and all ways, roads and bridges with appurtenances or other public improvements which, by law, are under the supervision of the Department of Transportation.

Sec. 2. 5 MRSA §1831, sub-§2, as enacted by PL 1983, c. 188, is amended to read:

2. Limitation. This section does not apply to purchase of supplies, services, materials and equipment or to public improvements, as described under chapters 153 and 155. This section does not apply to construction, improvement or repair of any and all ways, roads or bridges with appurtenances or other public improvements which by law are under the supervision of the Department of Transportation in accordance with section 1741.

Sec. 3. 23 MRSA §52-A, sub-§§1 and 2, as enacted by PL 1979, c. 580, are amended to read:

1. Retention of part of contract price. Notwithstanding any other law, in any contract awarded by the Department of Transportation and to which the department is a party for the construction and maintenance of public highways, bridges and other structures, the department may withhold up to 5% of the money due the contractor until the project under the contract has been accepted by or for the department. Upon receipt of a claim from a subcontractor pursuant to subsection 2, the department may withhold a greater percentage of the money due under the contract if it determines that the additional amount may be required to pay the claim. When the contract has been substantially completed, the department may, upon request, further reduce the amounts withheld if it deems it desirable and prudent. The reduction shall not reduce the amount withheld to an amount less than the amount of any pending claim against the contractor filed by a subcontractor pursuant to subsection 2.

Under any contract subject to this section, the contractor may, from time to time, withdraw the whole or any portion of the amount retained for payments to the contractor pursuant to the terms of the contract, upon depositing with the Treasurer of State: ~~A~~ a negotiable certification of deposit, United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness, United States treasury bills, ~~or~~ bonds or notes of the State of ~~Maine~~ or bonds of any political subdivision of the State of ~~Maine~~. No amount ~~shall~~ may be withdrawn in excess of the market value of the securities at the time of deposit or of the par value of such securities, whichever is lower.

The value of the amount retained and of the securities deposited pursuant to this section shall not be reduced to an amount less than the amount of any pending claim against the contractor filed by a subcontractor pursuant to subsection 2.

Except as otherwise provided, the Treasurer of State shall collect all interest or income when due on the obligations so deposited and shall pay the same, when and as collected, to the contractor who deposited the obligations. If the deposit is in the form of coupon bonds, the Treasurer of State shall deliver each coupon as it matures to the contractor. The Treasurer of ~~state~~ State shall have the power to enter into a contract or agreement with any national bank, trust company or safe deposit company located in New England or New York City for custodial care and servicing of any securities deposited with ~~him~~ the Treasurer of State pursuant to this section. Such services shall consist of the safekeeping of the securities and of all services required to effectuate the purposes of this section.

Any amount deducted by the department pursuant to the terms of the contract, from the retained payments due the contractor, shall be deducted first from that portion of the retained payments for which no security has been substituted, then from the proceeds of any deposited security. In the latter case, the contractor shall be entitled to receive interest, coupons or income only from those securities which remain after such amount has been deducted.

Any assignment of retained payments made by the contractor shall be honored by the Treasurer of State as part of the procedure to accomplish the substitution of securities under this section, provided that such assignment shall not be made without prior notification to the contracting agency of the State and the Treasurer of State. Such assignment shall not impair the equitable rights of the contractor's surety in the retained payments or in the securities substituted therefor in the event of the contractor's default in the performance of the contract or in the payment of labor and material bills or other obligations covered by the surety's bond.

2. Settlement of claims by subcontractor. In any contract subject to this section, any subcontractor employed pursuant to that contract may file a claim with the department. The claim shall be only for final payment for goods and services received by the contractor and provided by the subcontractor employed pursuant to the contract and may be filed any time within 90 days after delivery of final goods and services. If the contractor fails or refuses to pay the

claim, the subcontractor may submit the claim to arbitration within an additional 60 days after filing the claim with the department. The subcontractor shall notify the department of the submission of the claim to arbitration. Failure to file a claim with the department or failure to submit it to arbitration as provided under this subsection shall constitute a waiver of the claim with respect to the department and shall further constitute a release of any liability against the department by the subcontractor for retained funds being returned to the contractor. ~~The department shall submit the dispute to arbitration and both~~ Both the contractor and subcontractor shall be bound by the decision of the arbitrator. The department shall pay any amount awarded by the arbitrator, including any costs of arbitration, from money due and securities deposited pursuant to subsection 1, up to the full value of the money and securities. In addition, the contractor shall pay to the subcontractor any interest or other income which was earned and received by the contractor on the money or securities awarded by the arbitrator from the date of receipt of final goods and services to the date of payment of the award by the contractor.

The membership of the American Arbitration Association shall be used as arbitrators and the procedures used for arbitration shall be in conformity with the Construction Industry Arbitration Rules as administered by the American Arbitration Association.

See title page for effective date.

CHAPTER 166

H.P. 401 - L.D. 545

An Act to Clarify Election Law Procedures

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

Sec. 1. 21-A MRSA §§6 and 7 are enacted to read:

§6. Date falling on holiday

When the date on which an act must be performed or an event must take place falls on a Saturday, Sunday or legal holiday, the act shall be performed or the event shall take place on the next following business day.

§7. Use of words

When used in this Title, the words "shall" and "must" are used in a mandatory sense to impose an obligation to act or refrain from acting in the manner specified by the context. The word "may," when used in this Title, is used in a permissive sense to grant authority or permission, but not to create duty, to act in the manner specified by the context. When used in this Title, the term "may not" indicates a lack of authority or permission to act or refrain from acting in the manner specified by the context, whereas the term "shall not" indicates a duty to refrain from action or omission in the manner specified by the context.