

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND FOURTEENTH LEGISLATURE  
**FIRST SPECIAL SESSION**

August 21, 1989 to August 22, 1989

and

**SECOND REGULAR SESSION**

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR  
NON-EMERGENCY LAWS IS  
July 14, 1990

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

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J.S. McCarthy Company  
Augusta, Maine  
1990

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**PUBLIC LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED AT THE**  
**SECOND REGULAR SESSION**

**of the**  
**ONE HUNDRED AND FOURTEENTH LEGISLATURE**

**January 3, 1990 to April 14, 1990**

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refusal to submit to a required chemical test to determine his blood alcohol level testing. The provisions of section 1311-A, subsection 8, paragraph C apply.

**Sec. 17. Allocation.** The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

1990-91

**HUMAN SERVICES, DEPARTMENT OF**

**Bureau of Health**

Positions	(.5)
Personal Services	\$5,346
All Other	5,500
Capital Expenditures	590

Provides funds for a part-time Chemist II position in the Public Health Laboratory effective March 1, 1991, supplies and related expenses.

**DEPARTMENT OF HUMAN SERVICES**  
**TOTAL** \$11,436

**Sec. 18. Effective date; repeal.** That part of section 3 of this Act that amends the Maine Revised Statutes, Title 29, section 1312, subsection 12, takes effect on January 1, 1991. Section 9 of this Act is repealed January 1, 1991. Section 10 of this Act takes effect on January 1, 1991.

See title page for effective date, unless otherwise indicated.

**CHAPTER 785**

**S.P. 895 - L.D. 2277**

**An Act to Create an Appeals Procedure for the State Bidding Process**

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

**Whereas,** the procurement of materials and services through competitive bidding is essential to the State for achieving the greatest efficiency and economy; and

**Whereas,** clear and consistent standards governing the competitive bidding process are necessary to ensure an effective competitive bidding process; and

**Whereas,** the right of bidders aggrieved by a state contract award decision to a fair and timely appeals hearing must be ensured; 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:**

**Sec. 1. 5 MRSA §1816,** as amended by PL 1989, c. 6; c. 9, §2; c. 104, Pt. C, §§8 and 10; and c. 501, Pt. J, §§1 to 5, is repealed.

**Sec. 2. 5 MRSA c. 155, sub-c. I-A** is enacted to read:

**SUBCHAPTER I-A**

**RULES GOVERNING THE COMPETITIVE BID PROCESS**

**§1825-A. Definitions**

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

**1. Aggrieved person.** "Aggrieved person" means any person who bids on a contract and who is adversely affected, financially, professionally or personally, by that contract award decision.

**2. Approved equal.** "Approved equal" means any goods or service other than specified in the bid proposal that in the opinion of the State Purchasing Agent is equivalent in character, quality and performance to the goods or service specified in the bid proposal.

**3. Competitive bidding.** "Competitive bidding" means the transmission of a written proposal or invitation to bid to at least 3 responsible suppliers that is to be replied to at a stated time. In obtaining competitive bids, if the State Purchasing Agent finds that 3 responsible bidders are not available, the State Purchasing Agent may make such exceptions to this subsection as are in the best interests of the State.

**4. In-state bidder.** "In-state bidder" means a person or group of persons whose principal place of business, or a branch of whose business, is located in the State.

**5. Person.** "Person" means any individual, business, corporation, association, firm, partnership or other organization, whether profit or nonprofit.

**6. Petitioner.** "Petitioner" means any person who has requested a stay of a contract award decision or a hearing of appeal.

**7. Significantly vary.** "Significantly vary" means to change, modify, add to, subtract from, substitute or otherwise change a proposal or invitation to bid to an extent that may affect the price of goods or services requested.

**8. Stay.** “Stay” means the temporary suspension of a contract award pending an appeal under this subchapter.

**§1825-B. Bids, awards and contracts**

**1. Purchases by competitive bidding.** The State Purchasing Agent shall purchase collectively all goods and services for the State or any department or agency of the State in a manner that best secures the greatest possible economy consistent with the required grade or quality of the goods or services. Except as otherwise provided by law, the State Purchasing Agent shall make purchases of goods or services needed by the State or any department or agency of the State through competitive bidding.

**2. Waiver.** The requirement of competitive bidding may be waived by the State Purchasing Agent when:

A. The procurement of goods or services for county commissioners pursuant to Title 30-A, section 124, involves the expenditure of \$1,000 or less, and the interests of the State would best be served;

B. The State Purchasing Agent is authorized by the Governor to make purchases without competitive bidding because in the opinion of the Governor an emergency exists that requires the immediate procurement of goods or services;

C. After reasonable investigation by the State Purchasing Agent, it appears that any required unit or item of supply, or brand of that unit or item, is procurable by the State from only one source;

D. It appears to be in the best interest of the State to negotiate for the procurement of petroleum products;

E. The purchase is part of a cooperative project between the State and the University of Maine System involving:

(1) An activity assisting a state agency and enhancing the ability of the university system to fulfill its mission of teaching, research and public service; and

(2) A sharing of project responsibilities and, when appropriate, costs; or

F. The procurement of goods or services involves expenditures of \$2,500 or less, in which case the State Purchasing Agent may accept oral proposals or invitations to bid.

**3. Report.** By January 15th of each year the State Purchasing Agent shall submit to the joint standing committee of the Legislature having jurisdiction over state and local government a report concerning any waivers from the competitive bidding provisions established in subsection 2, paragraph E.

**4. Registry of suppliers.** Suppliers desiring to have their names entered on a registry of suppliers must submit a request to the State Purchasing Agent in writing. The State Purchasing Agent may prescribe the manner and form in which such a request must be submitted and may limit the number of names of out-of-state bidders on any registry. The name of any supplier entered in such a registry who fails to submit a bid on 3 consecutive proposals or invitations to bid may be removed from the registry at the discretion of the State Purchasing Agent.

**5. Alternate bids.** When, in bid forms and specifications, an article or material is identified by using a trade name and catalog number of a manufacturer or vendor, the term “or approved equal,” if not inserted with the identification, is implied. There is a presumption that any reference to a particular manufacturer’s product either by trade name or by limited description has been made solely for the purpose of more clearly indicating the minimum standard of quality desired. Consideration must be given to proposals submitted on approved equal alternate commodities to the extent that such action serves the best interest of the State. The bidder submitting a proposal on a commodity other than as specified shall furnish complete identification, descriptive literature or data with respect to the alternate commodity that the bidder proposes to furnish. Lack of such information on the bid must be construed to mean that the bidder proposes to furnish the exact commodity described. The State reserves the right to reject any bids, in whole or in part, to waive any formality or technicality in any bid and to accept any item in any bid.

**6. Record of bids.** Each bid, with the name of the bidder, must be entered on a record. Each record, with the successful bid indicated, must be open to public inspection after the letting of the contract. A bond for the proper performance of each contract may be required of each successful bidder at the discretion of the State Purchasing Agent, with the approval of the Commissioner of Administration.

**7. Awards to lowest bidder.** Except as otherwise provided by law, orders awarded or contracts made by the State Purchasing Agent or by any department or agency of the State must be awarded to the lowest responsible bidder, taking into consideration the qualities of the goods or services to be supplied, their conformity with the specifications, the purposes for which they are required, the date of delivery and the ultimate cost to the State. If the bidder that was initially awarded the order or contract does not perform, the State Purchasing Agent may cancel the contract and award a new contract to the 2nd lowest responsible bidder. The order or contract may not be awarded to a bidder that the State Purchasing Agent determined was not in compliance at the time the initial bid was submitted.

**8. Tie bids.** The State Purchasing Agent shall award contracts or purchases to in-state bidders or to bidders offering commodities produced or manufactured in the State if the price, quality, availability and other factors are equivalent.

**§1825-C. Rulemaking**

The State Purchasing Agent shall adopt rules under this subchapter governing the purchase of services, the awarding of grants or contracts, and the procedure by which aggrieved persons may appeal contract award decisions made by any department or agency of State Government. These rules must be adopted in accordance with the Maine Administrative Procedure Act and apply to all departments and agencies of State Government subject to the authority of the Department of Administration as set forth in this chapter.

**§1825-D. Public notice and review of bids**

The State Purchasing Agent shall make the public aware of contracts for which bids are being requested and the procedure to be used in reviewing bids. Rules adopted under this subchapter must include a clear procedure:

1. Notice. For informing the public about contracts for which proposals are being requested;

2. Review process. To be used when reviewing competitive bids, including the requirement that written records be kept by each person directly reviewing or ranking bids;

3. Contract award. For determining successful bidders and awarding contracts, including written notification to all bidders upon an award decision made pursuant to a request for proposals and criteria to be used to resolve tie bids; and

4. Criteria for appeals. For the review of any contract award decision appealed under this subchapter.

A department or agency of State Government may not significantly vary the content, nature or requirements of a proposal or invitation to bid issued under this subchapter without immediately notifying all bidders of those changes in writing and allowing sufficient time for bidders to reflect those changes in their bid packages.

A department or agency of State Government may not change or substitute the procedures adopted under this subchapter without the State Purchasing Agent first adopting those changes or substitutions as rules under this subchapter in accordance with the Maine Administrative Procedure Act, chapter 375.

**§1825-E. Appeal procedures**

The State Purchasing Agent shall ensure that every department or agency of State Government affords aggrieved persons an opportunity to appeal a contract award decision. As provided by this section, rules adopted under this subchapter must establish clear procedures by which an aggrieved person may appeal a contract award decision.

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 State Purchasing Agent in writing within 30 days of notification of the contract award and must state the nature of the grievance.

The State Purchasing Agent 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 State Purchasing Agent shall notify the petitioner in writing of the State Purchasing Agent's decision regarding the issuance of a stay within 10 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 State Purchasing Agent in writing within 30 days of notification of the contract award. The State Purchasing Agent shall grant a hearing of appeal unless:

A. The State Purchasing Agent 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 days after notice of contract award; or

(4) The request is capricious; or

B. No contract award was granted.

The State Purchasing Agent shall notify the petitioner in writing of the State Purchasing Agent's decision regarding a request for a hearing of appeal within 30 days of receipt of the request. If a request for a hearing is granted, notification must be made at least 15 days before the hearing date and must include the date and location of the hearing and the names of the appeal committee members.

3. Appeal committee. A committee of 3 members shall hear a petitioner's appeal within 60 days of receipt of the request for an appeal. The Commissioner of Finance shall appoint the members of an appeal committee, except that persons who have any direct or indirect personal, professional or financial conflict of interest in the appeal or employees of any department affected by the contract may not serve on the appeal committee.

Members of an appeal committee appointed under this section shall meet at the appointed time and place in the presence of the petitioner and such individuals as the petitioner determines necessary for a full and fair hearing. The petitioner may present to the appeal committee any materials the petitioner considers relevant to the appeal.

The appeal committee shall keep a written record of each hearing and shall submit its decision and the reasons for its decision to the State Purchasing Agent in writing no later than 15 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 appeal committee 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, an appeal committee may not modify the contract award under appeal, or make a new contract award. Contracts found invalid by an appeal committee under this subchapter become immediately void and of no legal effect.

#### §1825-F. Final agency action

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

1. Complaint. A brief summary of the nature of the petitioner's appeal;

2. Decision. Notification of the decision of the appeal committee;

3. Reasons. An explanation of the reasons for the decision; and

4. Right to judicial review. An explanation of the petitioner's right to judicial review of final agency action.

#### §1825-G. Failure to act

Failure or refusal of the State Purchasing Agent to adopt rules under this subchapter is sufficient grounds for an aggrieved person to request judicial review of agency rulemaking pursuant to section 8058. In the event that a judicial declaration of an invalid rule is made under this section and section 8058, the contract award under appeal becomes immediately void and of no legal effect.

#### §1825-H. Deadline for adoption of rules

The State Purchasing Agent shall adopt rules implementing this subchapter no later than January 1, 1991.

**Sec. 3. 5 MRSA §1831**, as amended by PL 1989, c. 165, §2, is further amended to read:

#### **§1831. Rules**

**1. Adoption of rules.** Every department or agency of State Government, subject to chapters 141 to 152, purchasing services or awarding grants or contracts which are not subject to the authority of the Department of Administration, as defined in chapters 153 and 155, shall establish a procedure by which these services ~~shall be~~ are purchased or by which grants or contracts ~~shall be~~ are awarded. This procedure ~~shall~~ must be adopted in accordance with the Maine Administrative Procedure Act, chapter 375; ~~no later than January 1, 1991 and shall~~ must be approved by the State Purchasing Agent prior to their adoption. The State Purchasing Agent shall ensure that the rules adopted under this section meet the standards of public notice, administrative review, and rights to appeal as set forth in chapter 155, subchapter I-A. Any department or agency of State Government that does not adopt rules under this section by January 1, 1991, is subject to rules adopted by the State Purchasing Agent under chapter 155, subchapter I-A. The procedure shall include, among any other provisions deemed necessary by the State Purchasing Agent:

~~A. A notification process to inform prospective bidders about contracts for which bids are being requested;~~

~~B. A process by which bid applications shall be reviewed;~~

~~C. Criteria for the selection of bids for any additional review prior to any award of contracts;~~

~~D. Criteria for the award of a contract;~~

~~E. A definition of the procedure by which a person, aggrieved by the decision of a department or agency under this chapter, may appeal the decision; and~~

~~F. Criteria for the review of any decision that has been appealed under this chapter.~~

**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.

**3. Application.** The procedure adopted by a department or agency in this section may be used by the

department or agency for any qualifying purchase or award of a contract or grant. Nothing in this section may be construed to require the adoption of new procedures for every new purchase, contract or award. Nothing in this section may be construed to require the State Purchasing Agent or the Department of Administration to approve any contract, grant or award that is not presently approved by the State Purchasing Agent or the Department of Administration under chapters 153 and 155.

**Sec. 4. 30-A MRSA §124, 2nd ¶**, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and as amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

Except for purchases through the State, the county commissioners shall make all purchases over \$1,000 of services, supplies, materials and equipment needed by the county, or any department or agency of the county, by competitive bidding. Title 5, ~~section 1816~~ chapter 155, subchapter 1-A governs these purchases as far as applicable. Title 5, section ~~1816~~ 1825-B, subsection 2, paragraph A, governs purchases through the State.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 6, 1990.

## CHAPTER 786

H.P. 1684 - L.D. 2330

### An Act Concerning Security Deposits on Propane Gas Deliveries

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

**Whereas**, the costs associated with heating a home in this State through the winter months are extraordinarily high; and

**Whereas**, these costs create a tremendous financial hardship for the people of this State, particularly senior citizens and people on fixed incomes; and

**Whereas**, the additional financial burden presented by liquid propane dealers who collect security deposits from residential customers without returning interest on those deposits cannot be borne by the people of this State; 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:**

**32 MRSA c. 24-A** is enacted to read:

## CHAPTER 24-A

### LIQUID PROPANE DEALERS

#### §1695. Interest on security deposits

Sellers of liquid propane for residential use may collect security deposits from residential customers only if the sellers return to the customers the deposit plus accrued interest at the market rate less any amount owed the seller at the time of the return of the deposit to the customer.

#### §1696. Penalty and enforcement

Any person, firm, partnership or corporation that violates any of the provisions of this chapter commits a civil violation for which a civil forfeiture of not more than \$500 for each offense must be adjudged.

When the Attorney General becomes cognizant of a possible violation of this chapter, the Attorney General shall investigate the matter and, if the Attorney General has reason to believe a violation has occurred, the Attorney General shall bring action in court to enforce the provisions of this chapter.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 6, 1990.

## CHAPTER 787

H.P. 1749 - L.D. 2412

### An Act to Provide for a Study of the Harness Racing Industry

**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 enact this legislation as an emergency measure in order that the Commission to Study the Harness Racing Industry may complete its study so that any recommendations may be implemented in a timely manner; 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:**