

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTIETH LEGISLATURE**

**SECOND REGULAR SESSION**  
**January 2, 2002 to April 25, 2002**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 25, 2002**

**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**  
**2002**

beneficiaries or even unavailability of financing for certain projects; 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. Allocation to Treasurer of State.**

No portion of the state ceiling for calendar year 2002 is allocated to the Treasurer of State. No portion of the state ceiling for calendar year 2003 is allocated to the Treasurer of State.

**Sec. 2. Allocation to Finance Authority of Maine.**

The \$25,000,000 of the state ceiling for calendar year 2002 previously allocated to the Finance Authority of Maine remains allocated to the Finance Authority of Maine to be used or reallocated in accordance with the Maine Revised Statutes, Title 10, section 363, subsection 6 for calendar year 2002. Five million dollars of the state ceiling previously unallocated is now allocated to the Finance Authority of Maine to be used or reallocated in accordance with Title 10, section 363, subsection 6 for calendar year 2002. Thirty million dollars of the state ceiling for calendar year 2003 is allocated to the Finance Authority of Maine to be used or reallocated in accordance with Title 10, section 363, subsection 6.

**Sec. 3. Allocation to Maine Municipal Bond Bank.**

The \$10,000,000 of the state ceiling for calendar year 2002 previously allocated to the Maine Municipal Bond Bank remains allocated to the Maine Municipal Bond Bank to be used or reallocated in accordance with the Maine Revised Statutes, Title 10, section 363, subsection 7 for calendar year 2002. Ten million dollars of the state ceiling for calendar year 2003 is allocated to the Maine Municipal Bond Bank to be used or reallocated in accordance with Title 10, section 363, subsection 7.

**Sec. 4. Allocation to Maine Educational Loan Authority.**

Ten million dollars of the state ceiling previously unallocated is now allocated to the Maine Educational Loan Authority to be used or reallocated in accordance with the Maine Revised Statutes, Title 10, section 363, subsection 8 for calendar year 2002. No portion of the state ceiling for calendar year 2003 is allocated to the Maine Educational Loan Authority.

**Sec. 5. Allocation to Maine State Housing Authority.**

The \$40,000,000 of the state ceiling for calendar year 2002 previously allocated to the Maine State Housing Authority remains allocated to the

Maine State Housing Authority to be used or reallocated in accordance with the Maine Revised Statutes, Title 10, section 363, subsection 4 for calendar year 2002. Forty million dollars of the state ceiling for calendar year 2003 is allocated to the Maine State Housing Authority to be used or reallocated in accordance with Title 10, section 363, subsection 4 for calendar year 2003.

**Sec. 6. Unallocated state ceiling.** One hundred thirty-five million dollars of the state ceiling for calendar year 2002 is unallocated and must be reserved for future allocation in accordance with applicable laws. One hundred forty-five million dollars of the state ceiling for calendar year 2003 is unallocated and must be reserved for future allocation in accordance with applicable laws.

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

Effective March 12, 2002.

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**CHAPTER 54**

**H.P. 1426 - L.D. 1864**

**An Act to Increase the Number of Alternative Delivery Pilot Projects for School Construction and to Increase the Maximum Project Cost of Projects Eligible for Alternative Delivery**

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

**Sec. 1. P&SL 1999, c. 79, §§4 and 5** are amended to read:

**Sec. 4. Design-build method.** The design-build method must generally follow those guidelines developed by the Design-Build Institute of America or by the American Institute of Architects / Association of General Contractors or a combined or modified version of one or both of those entities with the final design-build procedures and documents to be determined at the sole discretion of the Department of Administrative and Financial Services, Bureau of General Services, referred to in this Act as the "bureau." For the purposes of this section, "owner" means the school board or the school building committee, as applicable. The owner may prequalify design-build teams using criteria that include at a minimum those set forth in the Maine Revised Statutes, Title 5, section 1747 and may include additional criteria considered appropriate by the director of the bureau. Selection of the design-build teams is governed by this section and the approval

process established pursuant to section 11 of this Act and the policies and procedures established pursuant to section 12 of this Act.

1. Prior to publication of a request for qualifications, the owner shall develop concept and schematic designs incorporating a detailed set of program requirements for the project using the services of a qualified architect, engineer or other professional who is selected using the bureau's architect-engineer selection rules. Individuals who are involved in developing the project's program requirements may not participate in the design-build teams.

2. For each project, the owner shall publish a request for qualifications in at least 2 newspapers distributed in the State, one of which must be the Kennebec Journal. The owner shall issue a request-for-qualifications package to all firms requesting one in accordance with the notice. The owner shall evaluate and rate all firms submitting a responsive statement of qualifications and select the most qualified firms to receive a request for proposals. Selection criteria at this stage include at a minimum the ability of the competitor to satisfactorily carry out the project design and construction requirements, past performance, relevant experience and financial capacity to perform. The owner may select a short list of 3 to 5 firms. The owner may pay a reasonable stipend to all responsive proposers who were not selected. The amount of the stipend must be published together with the evaluation criteria in the request for proposals.

3. The request for proposals must set forth the scope of work, design parameters, construction requirements, time constraints and all other requirements that the owner determines have a substantial impact on the cost or quality of the project and the project development process. The request for proposals must include the criteria for acceptable proposals and state clearly what weight will be assigned to each criterion. A description of the scoring process and quality criteria to be used to judge the proposals must also be contained in the request for proposals. As part of the selection process, proposers must make oral presentations to the selection panel established under subsection 4.

4. The owner shall appoint members of a selection panel for each project. The selection panel in both the request-for-qualifications and request-for-proposals phases must include design and construction professionals from within the bureau, design and construction professionals from outside the bureau and community representatives from the locality of the project.

5. Each proposal must be submitted to the owner in 2 separate components: a sealed technical proposal

and a sealed price proposal. These 2 components must be submitted simultaneously. The selection panel shall first open and evaluate and score each responsive technical proposal based on the quality criteria contained in the request for proposals. Nonresponsive proposals must be rejected. During this evaluation process, the price proposals must remain sealed and all technical proposals are confidential. After completion of the evaluation of the technical proposals, the selection panel shall publicly open and read each price proposal. The owner shall award the contract to the proposer with the lowest price per quality score point, as long as that proposal meets all request-for-proposals requirements. The owner may modify the scoring of price and quality in accordance with rules adopted by the bureau pursuant to the Maine Revised Statutes, Title 5, section 1743, subsection 3.

**Sec. 5. Construction-manager-at-risk method.** The construction-manager-at-risk method must generally follow the format of "Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor," American Institute of Architects Document A121/CMc and Association of General Contractors Document 565(1991 Edition). The final procedures and documents for this method of delivery are determined at the discretion of the director of the bureau and are governed by this section and the approval process established pursuant to section 11 of this Act and the policies and procedures established pursuant to section 12 of this Act. For the purposes of this section, "owner" means the school board or the school building committee, as applicable.

1. A project must be approved by the review panel established pursuant to section 11 of this Act before the owner advertises for construction-manager-at-risk services and prior to the owner's approval of the schematic design.

2. The owner shall publish in at least 2 newspapers distributed in the State, one of which must be the Kennebec Journal and one of which must be a newspaper in the locality of the project, a request for qualifications that must contain the evaluation criteria upon which proposals are evaluated. Evaluation criteria include: project size and scope, relevant experience, bondable capacity and project team experience of the proposers. The owner shall evaluate the proposals and determine which proposers, if any, are qualified to perform the project. The owner may select a short list of 3 to 5 firms.

3. A proposer determined to be qualified must be invited to submit a proposal based on evaluation criteria that at a minimum must include the following:

A. The fee;

B. The firm's management system's technical capacity;

C. The project approach and schedule;

D. The firm's construction experience with projects of similar size and complexity;

E. The technical approach;

F. The composition and qualifications of the proposer's workforce, including resumes of management personnel; and

G. The safety record.

The owner shall, in advance of soliciting a construction-manager proposal, publish the evaluation weight of each individual proposal component. As part of the selection process, prequalified proposers must make oral presentations to the selection panel established under subsection 4.

4. The owner shall appoint members of a selection panel for each project. The selection panel must include representatives of the owner, designer, if selected, and other community representatives from the locality of the project. From among the proposals submitted, the owner shall select the most advantageous proposal that meets the published evaluation criteria.

5. Subcontractors for the major subtrades must be selected in accordance with the provisions in this subsection. The bureau shall determine the major subtrades that are subject to the provisions of this subsection. The owner shall create and may participate in a subcontractor prequalification panel, composed of a representative from the designer, the construction manager and the bureau. The construction manager shall develop detailed bid packages based on the industry standard practice. The bureau shall advertise in at least 2 newspapers distributed in the State, one of which must be the Kennebec Journal, for requests for qualifications for each trade. The subcontractor prequalification panel shall, from the qualifications submitted, determine a short list of trade contractors who must be permitted to submit bids in accordance with the bid package requirements, pursuant to a publicly advertised process and deadline. Bids must be opened publicly and be awarded to the lowest responsive eligible bidder.

6. In the event the owner hires an owner's representative, the owner's representative is disqualified from construction management consideration for the same project.

**Sec. 2. P&SL 1999, c. 79, §9** is repealed and the following enacted in its place:

**Sec. 9. Eligible projects.** A school administrative unit seeking to use an alternative delivery method for a school construction project subject to approval under section 11 of this Act may employ one of the following methods in undertaking a school construction project as part of this 5-year pilot or study program.

1. Three design-build projects and 3 construction-manager-advisor projects or construction-manager-at-risk projects for school construction may be employed provided that the total project cost does not exceed \$2,500,000.

2. Four projects that exceed \$2,500,000 in total project cost but do not exceed \$20,000,000 in total project cost may utilize the design-build method.

3. Two projects that exceed \$2,500,000 in total project cost but do not exceed \$10,000,000 in total project cost may utilize the construction-manager-advisor method or the construction-manager-at-risk method.

4. Five projects that exceed \$2,500,000 in total project cost but do not exceed \$10,000,000 may utilize the construction-manager-at-risk method.

5. Five projects that exceed \$10,000,000 in total project cost may employ the construction-manager-at-risk method.

The 22 projects described in this section must be scheduled for completion by 2005, the intent of this law being the creation of a 5-year pilot or study program.

**Sec. 3. P&SL 1999, c. 79, §12** is amended to read:

**Sec. 12. Policies and procedures; pilot project assessment.** The Commissioner of Education and the Commissioner of Administrative and Financial Services shall adopt policies and procedures to implement the application form and review the evaluation criteria, composition of the review panel, performance measures, contract documents, administrative appeals process and all other matters necessary to implement this Act. The policies adopted must provide that decisions pertaining to prequalification and selection may be appealed only to the Department of Administrative and Financial Services, Bureau of General Services, and that the decision of the Director of the Bureau of General Services or the director's designee is final and may not be appealed. The director or the director's designee shall consult with 2 nonvoting, outside advisors from the design and construction industry. The policies adopted may also include procedures that allow for reimbursement to a school administrative unit for a stipend paid to any design-build team that

has been qualified to submit, and that does submit, a proposal. Any such reimbursement must come from funds in the state-supported line of the project budget and in amounts to be established jointly by the Commissioner of Education and the Commissioner of Administrative and Financial Services.

The Commissioner of Education and the Commissioner of Administrative and Financial Services shall establish an assessment team to assess the 5-year pilot program established under this Act. The assessment team evaluation must be conducted as follows.

1. The assessment team is composed of at least 7 members as follows:

A. One representative of the Bureau of General Services designated by the Commissioner of Administrative and Financial Services;

B. One representative of the Department of Education designated by the Commissioner of Education;

C. One representative of the State Board of Education designated by the Chair of the State Board of Education;

D. One representative of school administrative units in the State designated by the Executive Director of the Maine School Management Association;

E. One representative of the construction trade designated by the president of a state-based organization that represents building contractors or specialty contractors;

F. One representative designated by the president of a state-based organization that represents architects; and

G. One representative designated by the president of a state-based organization that represents consulting engineers.

2. The purpose of the assessment is to evaluate the relative advantages and disadvantages of the alternative delivery methods employed under the terms and conditions of this Act, including, but not limited to, an analysis of the comparative costs and benefits of these methods for school construction projects to those found using the traditional competitive design-bid-build method set forth in the Maine Revised Statutes, Title 5, section 1743-A and Title 20-A, chapter 609.

3. In analyzing the relative merits of the traditional method and the alternative methods employed for school construction under this 5-year pilot

program, the assessment team shall consider the following factors:

A. The technical complexities of the projects;

B. The time or schedule savings or delays;

C. The project cost control;

D. The implications for the health and safety of educators, students and community members;

E. The capacity of state and local officials to plan and manage the selected alternative project delivery method of construction;

F. The consistency and fairness in the procurement process;

G. The appropriateness of the major subtrades designated by the Department of Administrative and Financial Services, Bureau of General Services that were subject to the provisions of the subcontractor prequalification panel process established for the construction-manager-at-risk projects;

H. The assurance of competition; and

I. The advancement of the public interest.

4. The assessment team must be convened no later than September 1, 2004 and must report the findings and recommendations from its assessment, including any recommended legislation, to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs no later than December 7, 2005. The joint standing committee of the Legislature having jurisdiction over education and cultural affairs may report out a bill to the Second Regular Session of the 122nd Legislature to implement the recommendations of the assessment team.

See title page for effective date.

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## CHAPTER 55

S.P. 736 - L.D. 2047

### **An Act to Make Allocations from Maine Turnpike Authority Funds for the Maine Turnpike Authority for the Calendar Year Ending December 31, 2003**

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

**Sec. 1. Allocation.** Gross revenues of the Maine Turnpike Authority for the calendar year ending December 31, 2003 must be segregated,