

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

FIRST REGULAR SESSION
December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 17, 2005

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

Penmor Lithographers
Lewiston, Maine
2005

2. Compensation and removal of directors who are members of public. Each director who is a member of the public is entitled to compensation according to the provisions of Title 5, chapter 379. The Governor may remove any director who is a member of the public for cause.

3. Ex officio directors. Each ex officio director may vote and may designate 2 employees of that director's department or agency, either of whom may represent that director and may vote and otherwise act on behalf of that director at meetings of the board. Any such designation must be in writing and delivered to the board, and the designation continues in effect until revoked or amended by the director in a written document delivered to the board.

4. Chair. The Governor shall appoint one director to serve as chair of the board, who is responsible for scheduling, convening and chairing all board meetings.

5. Officers. The board shall elect a treasurer, a secretary and any other officers the board from time to time considers necessary, none of whom needs to be a director.

6. Quorum. All powers of the authority may be exercised by the board in lawful meeting, and a majority of directors then in office constitutes a quorum. A vacancy on the board does not impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

7. Regular meetings. Regular meetings of the board may be established by bylaw, and notice of such regular meetings need not be given to directors.

Sec. 9. 23 MRSA §8115, as enacted by PL 1995, c. 374, §3, is amended to read:

§8115. Obligations of authority

All expenses incurred in carrying out this chapter must be paid solely from funds provided to or obtained by the authority pursuant to this chapter. Any notes, obligations or liabilities under this chapter may not be deemed to be a debt of the State or a pledge of the faith and credit of the State; but those notes, obligations and liabilities are payable exclusively from funds provided to or obtained by the authority pursuant to this chapter. Pecuniary liability of any kind may not be imposed upon the State or any locality, town or landowner in the State because of any act, agreement, contract, tort, malfeasance, misfeasance or nonfeasance by or on the part of the authority or its agents, servants or employees. The records and correspondence relating to negotiations, trade secrets received by the authority and estimates of costs on projects to be put out to bid and any documents or records solicited or prepared in connection with employment

applications are confidential and the. The authority is deemed to have a lawyer-client privilege.

Sec. 10. Transition provision. Current appointed members of the Northern New England Passenger Rail Authority board of directors shall serve until their terms expire.

Sec. 11. Extension of passenger rail service. The Department of Transportation shall develop a plan to extend the existing passenger rail service between Boston, Massachusetts and Portland northward to Brunswick and Rockland so that this extended service is in operation no later than January 1, 2008. The Department of Transportation shall submit a report to the Joint Standing Committee on Transportation with its findings and recommendations no later than January 1, 2006.

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

Effective June 7, 2005.

CHAPTER 313

H.P. 1173 - L.D. 1662

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

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

The department has full power to purchase all supplies, materials and equipment that are incidental to, or necessary for, project-specific construction, improvement or maintenance of transportation infrastructure. The purchase of supplies, materials and equipment for nonproject-specific purposes must be made through the State Purchasing Agent as provided by law. For the purposes of this section, unless the context otherwise indicates, "project-specific" means relating to a specific location for a limited duration, as opposed to perennial, nonlocation-specific activities. The department may be consulted by and shall, without charge, advise municipal officers and road commissioners on the subject of construction, improvement and maintenance of public highways, bridges and other structures. The department shall whenever practicable give preference in employment

to the inhabitants of the town in which such highways are located.

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

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

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

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

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

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 department determines that it is in the best interest of the State.

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

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

SUBCHAPTER 4

CONTRACTS

§4241. Definitions

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

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

facilities and other appurtenances related to those modes.

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

§4242. Contracts for transportation-related services

The department has full power in the procurement and letting of all contracts for transportation-related services. The department may award contracts for these services pursuant to procedures permitted by federal law. The department may solicit statements of qualifications and proposals, and award contracts for services based upon the criteria contained in the solicitations, only if the solicitations are posted electronically on the department's publicly accessible site on the Internet for at least 2 weeks or advertised in newspapers. If advertisements are published in newspapers, they must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed work is to be done, if any such newspaper is circulated in that county.

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

§4243. Contracts for construction and maintenance

The department has full power in the procurement and letting of all contracts to construct, demolish or maintain transportation infrastructure. The department shall make, or cause to be made, all surveys, plans, estimates, specifications and contracts for all proposed work. If the work is to be contracted, the department shall, except as otherwise provided in this Title, advertise for bids for the proposed work

electronically through the department's publicly accessible site on the Internet or through advertisements in newspapers. If advertisements are published in newspapers, advertisements must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed work is to be done if any such newspaper is circulated in that county. The advertisement must state the place where the bidders may purchase or examine the plans and specifications and the time and place where the bids for the work will be received by the department. Each bidder must accompany its bid with a bid guaranty in accordance with the department's specifications. All bids submitted must be publicly opened and read at the time and place stated in the advertisement. The department has the right to reject any bids and to advertise for new bids if, in the department's opinion, doing so is in the best interest of the department; otherwise, the department shall award the contract to the responsible bidder submitting the lowest bid. A town may submit bids for construction, demolition or maintenance of transportation infrastructure within that town's limits and is subject to all requirements prescribed for other contractors, except that a bond is not required of the town. The department may construct, demolish or maintain transportation infrastructure by day labor without advertising for bids and may, with the approval of the Governor, award contracts for the construction, demolition or maintenance of transportation infrastructure without advertising for bids if doing so is in the best interest of the State.

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

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

See title page for effective date.

CHAPTER 314

S.P. 468 - L.D. 1341

An Act To Amend the Motor Vehicle Laws

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