

MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 829, L.D. 2089)
2 (New Title)
3 SECOND REGULAR SESSION
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE
6

7 Legislative Document

No. 2291

8
9 S.P. 917

In Senate, March 28, 1986

10 Reported by Senator Andrews of Cumberland from the Committee on
11 State Government and printed under Joint Rule 2. Original bill presented by
12 Senator Bustin of Kennebec. Cosponsored by Representative Hickey of
Augusta, Representative Paradis of Augusta and Senator Kany of Kennebec.

JOY J. O'BRIEN, Secretary of the Senate

13
14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-SIX
18

19 AN ACT Providing for the Lease of Unused
20 Space or Facilities Owned by the
21 State.
22

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

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

26 CHAPTER 154

27 LEASE OF STATE-OWNED FACILITIES

28 §1781. Purpose

29 There are a large number of state-owned facili-
30 ties throughout the State, a number of which have
31 some unused space or which are currently leasing
32 space to organizations other than state agencies.
33 Since some state agencies may have negotiated con-

1 A. Provisions for offering available state fa-
2 ilities to state agencies;

3 B. Provisions for offering, by competitive bid-
4 ding, available facilities to other organiza-
5 tions;

6 C. Standards for determining user created costs
7 to state agencies for use of state-owned facili-
8 ties to be reimbursed to the State; and

9 D. Standards for determining rental fees based
10 on the location of the facilities, accessibility,
11 local market rates, services or in-kind contribu-
12 tions provided by the user or lessee and any oth-
13 er standards deemed necessary by the director.

14 §1786. Exemption of state from liability

15 Whenever a lease is offered to or signed by an-
16 other organization pursuant to this chapter, the
17 lease conditions shall clearly state that the State
18 or any state employee shall not be liable for any
19 personal injury or death or any property damage sus-
20 tained as a result of the lease of the available fa-
21 ility in accordance with this chapter. The State
22 shall not be liable for any actions of the lessee or
23 the employees of the lessee.

24 Sec. 2. 14 MRSA §8103, sub-§2, as enacted by PL
25 1977, c. 578, §1, is amended to read:

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

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

34 B. The undertaking, or failure to undertake, any
35 judicial or quasi-judicial act, including, but
36 not limited to, the granting, granting with con-
37 ditions, refusal to grant or revocation of any
38 license, permit, order or other administrative
39 approval or denial;

1 C. The performance or failure to exercise or
2 perform a discretionary function or duty, whether
3 or not the discretion be abused and whether or
4 not the statute, charter, ordinance, order, reso-
5 lution, regulation or resolve under which the
6 discretionary function or duty is performed is
7 valid or invalid;

8 D. The decision not to provide communications,
9 heat, light, water, electricity or solid or liq-
10 uid waste collection, disposal or treatment ser-
11 vices;

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

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

19 (1) Unimproved land;

20 (2) Historic sites, including, but not lim-
21 ited to memorials, as defined in Title 12,
22 section 601, subsection 1; or

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

27 G. The discharge, dispersal, release or escape
28 of smoke, vapors, soot, fumes, acids, alkalines,
29 toxic chemicals, liquids or gases, waste materi-
30 als or other irritants, contaminants or
31 pollutants into or upon land, the atmosphere or
32 any water course or body of water, except as pro-
33 vided in section 8104, subsection 3;

34 H. The ownership, maintenance or use of any
35 building acquired by a governmental entity for
36 reasons of tax delinquency from the date of fore-
37 closure and until actual possession by the delin-
38 quent taxpayer or his lessee or licensee has
39 ceased for a period of 60 days; ~~or~~

1 I. The ownership, maintenance or use of any
2 building acquired by a governmental entity by
3 eminent domain or by condemnation until actual
4 possession by the former owner or his lessee or
5 licensee has ceased for a period of 60 days; ~~or~~

6 J. Any defect, lack of repair or lack of suffi-
7 cient railing in any highway, town way, sidewalk,
8 parking area, causeway, bridge, airport runway or
9 taxiway, including appurtenances necessary for
10 the control of such ways including but not lim-
11 ited to street signs, traffic lights, parking me-
12 ters and guardrails, except as provided in sec-
13 tion 8104, subsection 4, and in Title 23, section
14 3655- ; or

15 K. The leasing of state-owned property, includ-
16 ing buildings to other organizations pursuant to
17 Title 5, chapter 154.

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

22 Sec. 3. Reimbursement to agencies of jurisdiction
23 for prior use. In the event that a state agency, pri-
24 or to the effective date of this Act, has provided
25 available facilities to any other organization at no
26 cost, at a significantly reduced cost or at a cost
27 that fails to cover the costs created by the user,
28 the commissioner or director of the agency of juris-
29 diction shall establish a charge or fee that the com-
30 missioner or director of the state agency which has
31 use of and jurisdiction over that facility deems fair
32 and just for the prior use of the facility.

33 In determining the fair and just reimbursement
34 fee as defined in this section, the commissioner or
35 director of the state agency which has use of and ju-
36 risdiction over the facility shall consider the fol-
37 lowing:

38 1. The terms of the previous contracts;

39 2. Any capital improvements made by the lessee
40 to the available facilities;

1 terminated by the State or the lessee on 60 days' no-
2 tice.

3 The State is not liable for any death, personal
4 injury or property damages resulting from the lease
5 of available state facilities to not-for-profit orga-
6 nizations.

7 The new draft also provides that lease agreements
8 cover the operating costs incurred as a result of the
9 activities of the lessee. In addition, a monthly
10 rental charge is required which can be waived or re-
11 duced depending upon the benefits realized by or ser-
12 vices provided to the State.

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