

**CHAPTER 153****PUBLIC IMPROVEMENTS****SUBCHAPTER 1****POWERS; BIDS AND CONTRACTS GENERALLY****§1741. Definitions**

Whenever the words "public improvement" or "public improvements" appear in chapters 141 to 155, those words mean and include the construction, major alteration or repair of buildings or public works now owned or leased or constructed, acquired or leased by the State or any department, officer, board, commission or agency 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, except that sections 1743 and 1745 are not applicable to construction, major alteration or repair of school buildings. 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 or the Maine Turnpike Authority. [PL 2015, c. 5, §1 (AMD).]

The word "person" as used in this section and sections 1745 to 1749 means and includes any individual, copartnership, association, corporation or joint stock company and their lessees, trustees or receivers appointed by any court whatsoever. [PL 2005, c. 313, §1 (AMD).]

**SECTION HISTORY**

PL 1971, c. 542, §1 (AMD). PL 1971, c. 593, §22 (AMD). PL 1973, c. 154, §1 (AMD). PL 1979, c. 541, §A38 (AMD). PL 1985, c. 130 (AMD). PL 2005, c. 313, §1 (AMD). PL 2015, c. 5, §1 (AMD).

**§1742. Powers and duties**

The Department of Administrative and Financial Services, through the Bureau of General Services, has authority: [PL 1991, c. 780, Pt. Y, §53 (AMD).]

**1. Programs.** To require the development of overall long range public improvement programs for all departments and agencies of the State Government and to coordinate and present recommendations pertaining thereto to the Governor, the Governor-elect, the State Budget Officer and the Legislature;

**2. Inspection.** To regularly inspect state-owned and leased buildings in the State and report to the controlling department head whatever construction, repairs, alterations and improvements are determined necessary. If the Commissioner of Administrative and Financial Services considers it advisable, the commissioner shall make a similar report to the Governor;  
[PL 1991, c. 780, Pt. Y, §54 (AMD).]

**3. Advise.** Upon request to advise all state departments, agencies and school administrative units in connection with engineering and architectural questions and matters pertaining to any and all public improvements;  
[PL 1971, c. 542, §2 (AMD).]

**4. Review.** To review the operation and maintenance of state-owned and leased buildings and property and to make recommendations with respect thereto to the Commissioner of Administrative and Financial Services and controlling department or agency head concerned;  
[PL 1991, c. 780, Pt. Y, §55 (AMD).]

**5. Data.** To prepare, at the request of the Governor or the Legislature, data pertaining to existing or proposed public improvements;  
[PL 1975, c. 771, §79 (AMD).]

**6. Approve selection of architects and engineers and other professionals.** To approve the selection of architects and engineers registered in Maine and other professionals in the planning, design and monitoring of construction of public improvements consistent with the policy of this State that proposals for professional, architectural and engineering services for public improvements be publicly announced, and that contracts for those services be negotiated by the contracting authority on the basis of evaluation of professional competency and qualifications required for the type of services contemplated at fair and reasonable prices.

The bureau shall adopt procedures for the procurement of any professional, architectural and engineering services for public improvements as defined in section 1741. The procedures must be adopted pursuant to Title 5, chapter 375 and be deemed a rule.

The procedure must contain a provision that, prior to initiating the process of selecting an architect or engineer or other professional for any project, the contracting authority shall advertise in a daily newspaper that serves the area in which the project is likely to be located. The advertisement must state, at a minimum, that the selection is to take place and describe the procedures that an engineer or architect or other professional may use to be considered as a candidate in the selection process.

Notwithstanding this subsection, the bureau may select a person or persons to perform professional, architectural or engineering services from the list described in this subsection without advertising or competitive selection if the cost of the services does not exceed \$25,000. The bureau shall solicit names for placement on a list by placing a general advertisement for professional, architectural or engineering services in newspapers that taken together have general circulation throughout the State. The bureau may substitute advertisement in professional journals or other publications that it finds equally effective in reaching the intended audience. The bureau may require persons responding to the advertisement to complete a qualifying questionnaire designed to address experience and expertise in performing the type of work advertised. The bureau shall prepare a list of respondents that it determines qualified and update the list at least every 2 years.

If the bureau determines that a person is not qualified for placement on the list of providers of professional, architectural or engineering services, the person may appeal that decision in writing to the Commissioner of Administrative and Financial Services within 15 days of the bureau's decision. The commissioner shall complete the appeal process and issue a decision within 15 days of the filing of the appeal. The decision of the commissioner is final;  
[RR 2013, c. 1, §10 (COR).]

**6-A. Building code.** To adopt for design purposes for all public improvements the most recent version of one of the following published compilations of rules that has been prepared by the International Code Council, the American Insurance Association, the Building Officials and Code Administrators International, the International Conference of Building Officials, the National Fire Protection Association or the Southern Building Code Congress, except that, where an administrative unit has adopted one of the above codes, that code must be used for the design of a school building in that administrative unit.

The bureau has discretion to determine which portions of the building codes used in this subsection are applicable to public improvement projects. This determination must be adopted by rule and applies to all public improvement projects covered by those codes. Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter II-A;  
[PL 2001, c. 607, §1 (AMD).]

**7. Approve plans for public improvements.** To approve all proposals, plans, specifications and contracts for public improvements that the State or any of its agencies hold in fee or by leasehold

interest and for school administrative unit projects costing in excess of \$100,000. The commissioner shall, upon the request of a school administrative unit, provide consultation for any public improvement regardless of cost. The Bureau of General Services shall furnish a quarterly report to the project unit school board that details the services provided to the project during the time period covered by the report. The Bureau of General Services shall submit to the State Board of Education an annual report that summarizes the services provided each project;

[PL 2005, c. 386, Pt. L, §1 (AMD).]

**8. Inspection.** To inspect materials, equipment, methods used and changes in plans in making public improvements, and inspect public improvements during the course of construction or repair, and make such recommendations as may be indicated to the architect or engineer, when employed, to the controlling department or agency head, or school administrative unit. The architect or engineer when employed shall provide adequate inspection of materials, equipment, methods and changes in plans on all projects under his supervision;

[PL 1971, c. 542, §4 (AMD).]

**9. Recommendations.** To require prompt inspection upon the completion of any public improvement and to make recommendations promptly for the acceptance or rejection thereof to the authority which approved the execution of the project;

**10. Inventory.**

[PL 1997, c. 90, §2 (RP).]

**11. Listing of real estate.** To require the listing of real estate belonging to or under lease to the State Government, showing controlling agency, location, metes and bounds, cost or rental rate and when acquired or rented;

**12. Demolish obsolete buildings.** To demolish or otherwise dispose of buildings and appurtenances, excluding land, belonging to the State that have become hazards, obsolete or are unjustifiably expensive to maintain. Such demolition or other disposal shall be on the recommendation of the department or agency head having jurisdiction over the buildings and appurtenances concerned and under such terms and conditions as deemed by the Governor to be in the best interests of the State;

[PL 1975, c. 771, §80 (AMD).]

**13. File of plans.** To collect and maintain a complete and accurate file of drawings showing plans of location and situation of all public improvements;

**14. Records.** To collect and maintain records of construction costs and progress of all public improvements;

**15. Supervision of State House and grounds.** To have general supervision of the State House and the grounds specified in Title 3, section 902-A, subsection 2, and to make repairs and alterations in and about such grounds and buildings at the direction of the Legislative Council or the Executive Director of the Legislative Council, as provided in Title 3, section 902, subsection 3;

[PL 1989, c. 410, §18 (AMD).]

**16. Maintain public park in Augusta.** To maintain all that portion of the state lands specified in Title 3, section 902, subsection 2, in accordance with the official plans proposed by the State House and Capitol Park Commission to the Legislative Council and adopted by the Legislature pursuant to Title 3, section 902, subsection 1;

[PL 1989, c. 410, §18 (AMD).]

**17. Food service.** To provide, with the consent of the Governor, food service in the state office buildings located at the seat of government and elsewhere in the State as may be determined by the Governor;

[PL 1975, c. 771, §81 (AMD).]

**18. Assign rooms.** To assign rooms in all buildings used by the State for offices and determine the occupancy thereof in such manner as the public service may require;

**19. Facilities required by State.**

[PL 1991, c. 9, Pt. L, §1 (RP).]

**19-A. Real property leases required by State.** Except as provided in section 1742-D, to locate, negotiate and manage all real property leases required by departments and agencies of State Government;

[PL 1991, c. 9, Pt. L, §2 (NEW).]

**19-B. Real property interests acquired by State.**

[PL 2007, c. 488, §1 (NEW); MRSA T. 5 §1742, sub-§19-B (RP).]

**20. Utility services.**

[PL 1985, c. 785, Pt. A, §66 (RP); PL 1987, c. 402, Pt. A, §§41, 42 (AMD).]

**20-A. Utility services.** To purchase or contract or approve the purchasing or contracting for electric, water, sewerage and gas services for any department and agency of State Government and to grant necessary easements for utilities;

A. [PL 1987, c. 282, §1 (RP).]

B. [PL 1987, c. 282, §1 (RP).]

C. [PL 1987, c. 282, §1 (RP).]

[PL 1991, c. 780, Pt. Y, §56 (AMD).]

**21. Rules.** To make rules, subject to the approval of the Commissioner of Administrative and Financial Services for the purposes of carrying out this subchapter;

[PL 1991, c. 780, Pt. Y, §57 (AMD).]

**22. Drug-related seized property.**

[PL 1989, c. 483, Pt. A, §15 (RP).]

**23. Inventory of land.** To periodically inventory all land owned by any state agency and, together with other state agencies, determine land that is needed by state agencies for other uses and land that is surplus. Prior to offering any land for sale, the commissioner shall review with the Maine State Housing Authority and other state agencies the information derived from the inventory.

A. By February 1, 1988, the commissioner shall provide an initial report on the status of the land inventory to the joint standing committees of the Legislature having jurisdiction over economic development; state and local government; and appropriations and financial affairs. [PL 1987, c. 407, §3 (NEW).]

B. Notwithstanding any other provision of law, the procedure for the distribution of surplus state property for the purpose of this subsection shall take priority over any other procedure for the disbursement of surplus state land. [PL 1987, c. 407, §2 (NEW).]

C. Nothing in this subsection shall be construed to pertain to public reserved lands which are exempt from this subsection. [PL 1989, c. 502, Pt. A, §15 (AMD).]

D. The department shall work closely with the Maine State Housing Authority to develop a procedure by which surplus state-owned land and structures are held in trust for the purpose set forth in this section and Title 30-A, chapter 201, subchapter 3-A; [PL 2017, c. 234, §1 (AMD).]  
[PL 2017, c. 234, §1 (AMD).]

**24. Application of minimum air ventilation standards.** Beginning September 1, 1988, to apply ASHRAE Standard 62-1989 entitled, Ventilation for Acceptable Indoor Air Quality, as prepared by the

American Society of Heating, Refrigeration and Air Conditioning Engineers, Inc. or more stringent standards to buildings occupied by state employees during normal working hours. These standards must be applied to buildings that are constructed or substantially renovated by the State after September 1, 1988 and to buildings for which the State enters into new leases or renews leases following the date in this subsection. For the purpose of this subsection, "substantial renovation" means any renovation for which the cost exceeds 50% of the buildings' value.

A. The bureau, in cooperation with a labor-management committee established to look at this issue, shall develop a plan by which priorities are established for improving indoor air quality and ventilation standards in buildings occupied by state employees. This plan must include data gathering and analysis of air quality in a sample number of buildings by which reasonable projections and estimates concerning air quality can be established. The bureau shall report its findings to the joint standing committee of the Legislature having jurisdiction over state and local government no later than January 16, 1989. This report, at a minimum, must contain the following:

- (1) A description of the extent of the problem, if any, with respect to air quality and ventilation in buildings occupied by state employees;
- (2) Priorities of locations for which the improvement of air quality is necessary. These locations must be areas occupied by state employees during normal working hours;
- (3) A timetable by which these priorities could be addressed;
- (4) A description of what may be necessary to address these priorities, including feasible alternatives;
- (5) The costs of addressing these priorities; and
- (6) If possible, locations leased by the State that may not meet the air quality standards defined in this subsection.

Nothing in this paragraph may be construed to require the bureau to conduct an in depth analysis for each building or to present technical data for each building occupied by state employees. [PL 2005, c. 634, §4 (AMD).]

B. The indoor air quality and ventilation standards applied by the bureau remain in effect until the Board of Occupational Safety and Health adopts air quality and ventilation standards; [PL 2005, c. 634, §4 (AMD).]

[PL 2005, c. 634, §4 (AMD).]

**25. Sites for child care programs.** To review, in cooperation with the Office of Child Care Coordination in the Department of Health and Human Services, feasible sites for child care programs offered primarily as a service to state employees pursuant to Title 22, section 8307, subsection 2; [RR 2013, c. 1, §11 (COR).]

**26. Rental income.** To credit income from the rental of facilities in Limestone to the Department of Administrative and Financial Services, Bureau of General Services, Other Special Revenue Funds account. These funds must be used for repairs, capital improvements and other costs of managing the facilities operated by the Maine Military Authority in Limestone.

Notwithstanding any other provision of law and except when the Governor in the case of an emergency pursuant to Title 37-B, section 742 or 744 needs money for disaster relief, in which case the Governor may transfer no more than 10% of the balance of the rental income, the department also may recommend that:

A. Part of the rental income collected by the Department of Administrative and Financial Services, Bureau of General Services pursuant to this subsection be transferred to the General Fund as undedicated revenue; [PL 2005, c. 519, Pt. W, §1 (NEW).]

B. Part of the rental income collected by the Department of Administrative and Financial Services, Bureau of General Services pursuant to this subsection be transferred to the Department of Defense, Veterans and Emergency Management, Maine National Guard Education Assistance Pilot Program, Other Special Revenue Funds account for tuition assistance; [PL 2005, c. 634, §6 (AMD).]

C. Part of the rental income collected by the Department of Administrative and Financial Services, Bureau of General Services pursuant to this subsection be transferred to the Department of Defense, Veterans and Emergency Management, Maine National Guard Education Assistance Pilot Program, Other Special Revenue Funds account for the reimbursement of the purchase of supplemental life insurance as provided for in the provisions of Title 37-B, section 390-B; [PL 2009, c. 1, Pt. CC, §2 (AMD).]

D. Beginning July 1, 2007, part of the rental income collected by the Department of Administrative and Financial Services, Bureau of General Services pursuant to this subsection be transferred to the Department of Defense, Veterans and Emergency Management for maintenance and repair of National Guard armories in the State; and [PL 2005, c. 634, §6 (NEW).]

E. Part of the rental income collected by the Department of Administrative and Financial Services, Bureau of General Services pursuant to this subsection be transferred to the Department of Defense, Veterans and Emergency Management, Disaster Assistance Relief, Other Special Revenue Funds account for disaster assistance; [PL 2017, c. 284, Pt. P, §1 (AMD).]

[PL 2017, c. 284, Pt. P, §1 (AMD); PL 2017, c. 288, Pt. B, §1 (AMD).]

**27. Disaster assistance.**

[PL 2009, c. 1, Pt. CC, §4 (RP).]

**28. State landfills.** To own, design, develop or operate, or contract with private parties to operate, solid waste disposal facilities, as provided in Title 38, chapter 24, subchapter 4; and [PL 2017, c. 284, Pt. P, §2 (AMD).]

**29. Accept contributions.** To accept contributions from public and private sources for the maintenance, repair and construction of state facilities. Contributed funds must be invested as provided by law with the earnings credited to the appropriate fund to be used for the same purposes.

[PL 2017, c. 284, Pt. P, §3 (NEW).]

The head of any agency, board, commission, department of the State Government or school administrative unit, not otherwise exempted by law, who contemplates any public improvement, must first obtain the approval of the Director of the Bureau of General Services for such work. This paragraph is not intended to restrict the head of any agency, board, commission or department of the State Government from making emergency repairs to any state-owned building, public work or property or any property under lease to the State Government or to restrict any school administrative unit under like conditions that is under that person's supervision and control whenever it appears that such repairs are immediately necessary to prevent injury to persons or further damage to such buildings or property. [PL 1991, c. 780, Pt. Y, §58 (AMD).]

**SECTION HISTORY**

PL 1967, c. 307 (AMD). PL 1967, c. 409, §1 (AMD). PL 1971, c. 542, §§2-5 (AMD). PL 1973, c. 154, §2 (AMD). PL 1973, c. 741 (AMD). PL 1975, c. 771, §§78-81 (AMD). PL 1979, c. 223 (AMD). PL 1983, c. 824, §Y (AMD). PL 1985, c. 340 (AMD). PL 1985, c. 457, §4 (AMD). PL 1985, c. 481, §§A11,12 (AMD). PL 1985, c. 501, §§B15,16 (AMD). PL 1985, c. 737, §A16 (AMD). PL 1985, c. 785, §§A63-68 (AMD). PL 1985, c. 785, §B31 (AMD). PL 1987, c. 282, §1 (AMD). PL 1987, c. 402, §§A41,A42 (AMD). PL 1987, c. 407, §§1-3 (AMD). PL 1987, c. 733, §§1-3 (AMD). PL 1987, c. 741, §§1-3 (AMD). PL 1987, c. 820, §1 (AMD). PL 1989, c. 410, §18 (AMD). PL 1989, c. 483, §§A14,A15 (AMD). PL 1989, c. 502, §§A15-18 (AMD). PL 1989,

c. 596, §N2 (AMD). PL 1991, c. 9, §§L1,2 (AMD). PL 1991, c. 780, §§Y53-58 (AMD). PL 1995, c. 665, §G1 (AMD). PL 1997, c. 90, §2 (AMD). PL 1997, c. 499, §1 (AMD). PL 2001, c. 506, §1 (AMD). PL 2001, c. 606, §1 (AMD). PL 2001, c. 607, §1 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 386, §L1 (AMD). PL 2005, c. 519, §W1 (AMD). PL 2005, c. 634, §§4-7 (AMD). PL 2007, c. 488, §1 (AMD). PL 2009, c. 1, Pt. CC, §§1-4 (AMD). RR 2011, c. 2, §2 (COR). PL 2011, c. 655, Pt. GG, §1 (AMD). PL 2011, c. 655, Pt. GG, §70 (AFF). RR 2013, c. 1, §§10, 11 (COR). PL 2017, c. 234, §1 (AMD). PL 2017, c. 284, Pt. P, §§1-3 (AMD). PL 2017, c. 288, Pt. B, §1 (AMD).

#### **§1742-A. Security; regulations**

**(REPEALED)**

#### SECTION HISTORY

PL 1971, c. 622, §§17-B (NEW). PL 1977, c. 138, §1 (RP).

#### **§1742-B. Municipal building ordinances**

The Department of Administrative and Financial Services, Bureau of General Services, referred to as "the bureau" in this section, shall provide written notification to the municipal manager or, in the absence of a manager, the first selectman of a state construction project or public improvement within the boundaries of that municipality as soon as practicable after beginning the schematic design process. If a municipality intends to review and issue building permits on state construction projects and public improvements, the municipality must file a notice of intent with the bureau no later than 45 days following receipt of notification by the bureau of the state construction project or public improvement. Once the required notice is filed, the projects and improvements to state-owned or leased buildings must comply with municipal ordinances governing the construction and alteration of buildings, provided that the municipal building code standards are as stringent as, or more stringent than, the code for state buildings. Prior to requesting bids, the bureau shall obtain or it shall require the project designer to obtain municipal approval of the project plans and specifications. Contractors and subcontractors shall obtain all necessary municipal building permits and the project must be subject to municipal inspections. [PL 2005, c. 489, §1 (AMD).]

Fees may be assessed for any permit obtained for any state construction project or public improvements to state-owned buildings. [PL 2005, c. 489, §1 (AMD).]

If a proposed public improvement is for new construction only and is not reviewed by a municipality, the state agency responsible for the new construction shall provide public notice of the project in the same manner as is required for notice of similar projects by ordinance of the municipality. Public notice under this paragraph must be provided as soon as development of the schematic design for the project is complete. [PL 2001, c. 615, §1 (NEW).]

For purposes of this section, "schematic design" means the phase of the project or public improvement when the scale, proportions and relationships of the major project components are defined and the major building systems, construction materials, cost estimate and schedule of the project or public improvement are identified. Documents that are a part of the schematic design include a site plan and floor plan and building sections and elevations. [PL 2005, c. 489, §1 (NEW).]

#### SECTION HISTORY

PL 1985, c. 625 (NEW). PL 1987, c. 91 (AMD). PL 1991, c. 577 (AMD). PL 2001, c. 615, §1 (AMD). PL 2005, c. 489, §1 (AMD).

#### **§1742-C. Institutions of higher education**

The Department of Administrative and Financial Services, through the Bureau of General Services, shall provide the following services to institutions of higher education. [PL 2007, c. 466, Pt. A, §11 (AMD).]

**1. University of Maine System.** Notwithstanding section 1742, the Bureau of General Services is not required to provide services to the University of Maine System.

[PL 2011, c. 691, Pt. B, §9 (AMD).]

**2. Maine Community College System; Maine Maritime Academy.** The Bureau of General Services shall provide any of the services set out in section 1742, subsections 1 to 9, 12 to 14, 19 and 23 to the Maine Community College System and the Maine Maritime Academy. Application of section 1742, subsection 23 to these institutions is limited to all public improvements:

A. Costing \$25,000 or more; or [PL 1989, c. 483, Pt. A, §16 (NEW).]

B. Costing less than \$25,000 when building codes or other legal requirements exist. [PL 1989, c. 483, Pt. A, §16 (NEW).]

[PL 2001, c. 667, Pt. B, §1 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

**3. Public improvements budget submission; Maine Community College System.** In accordance with Title 20-A, section 12706, subsection 4-A, the Bureau of General Services shall advise and assist the Maine Community College System in developing a prioritized public improvements budget for the system. This budget must be presented to the Governor and the Legislature as separate from the public improvements budget developed by the Bureau of General Services for the departments and agencies of State Government.

[PL 2013, c. 368, Pt. R, §3 (AMD).]

#### SECTION HISTORY

PL 1989, c. 483, §A16 (NEW). PL 1991, c. 376, §22 (AMD). PL 2001, c. 667, §B1 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF). PL 2007, c. 466, Pt. A, §11 (AMD). PL 2011, c. 691, Pt. B, §§9, 10 (AMD). PL 2013, c. 368, Pt. R, §3 (AMD).

#### §1742-D. Bureau of General Services; real property leases

**1. Work closely with all departments and agencies.** The Bureau of General Services shall work closely with all departments and agencies in locating real property leases to ensure that agency program requirements are met to the maximum extent possible. The bureau shall:

A. Maintain records of state agency real property leasing needs and all available space owned, leased and potentially available for lease, and make this information available to all state agencies; [PL 1991, c. 9, Pt. L, §3 (NEW).]

B. Monitor market prices for real property leases on a regional basis and establish rates to be charged to state agencies on an annual basis; and [PL 1991, c. 9, Pt. L, §3 (NEW).]

C. Hold all real property leases to ensure they are negotiated and managed to the best economic advantage of the State. [PL 1991, c. 9, Pt. L, §3 (NEW).]

[PL 1991, c. 780, Pt. Y, §59 (AMD).]

**2. Establish standards; waiver.** The Bureau of General Services shall establish the following:

A. Standards for occupant safety and comfort in leased space that are consistent with law and all applicable building, fire, handicapped accessibility and environmental codes; and [PL 1999, c. 776, §1 (AMD).]

B. By July 1, 1991, standards for space use for all state facilities that ensure the equitable and efficient distribution of available floor space, including common areas, consistent with cost, program and functional objectives. [PL 1991, c. 9, Pt. L, §3 (NEW).]

The Director of the Bureau of General Services may provide a waiver of the standards and criteria established under this section if the director concludes that the unique conditions of location, program or employee function require such a waiver or in order to meet the purpose of Title 30-A, section



4349-A, subsection 2, relating to priority locations for state office buildings, courts and other state civic buildings.

[PL 1999, c. 776, §1 (AMD).]

**3. Real Property Lease Internal Service Fund Account established.** The Bureau of General Services shall establish, through the Office of the State Controller, the Real Property Lease Internal Service Fund Account. The funds deposited in the account must include, but not be limited to, appropriations made to the account, funds transferred to the account from within the Department of Administrative and Financial Services and funds received from state departments and agencies using leasing services provided by the bureau.

[PL 1991, c. 780, Pt. Y, §59 (AMD); PL 2003, c. 600, §4 (REV).]

**4. Charges for leasing services.** The Bureau of General Services may levy charges according to a rate schedule recommended by the Director of the Bureau of General Services and approved by the Commissioner of Administrative and Financial Services against all departments and agencies using leasing services pursuant to this section.

[PL 1991, c. 780, Pt. Y, §59 (AMD).]

**5. Submission of budget.** The Bureau of General Services shall submit a budget of estimated revenues and costs incurred by the account in connection with the leasing services established in this section.

[PL 1991, c. 780, Pt. Y, §59 (AMD).]

**6. Staff.** The Director of the Bureau of General Services shall appoint, subject to the Civil Service Law, staff necessary to carry out the purposes of this section.

[PL 1991, c. 780, Pt. Y, §59 (AMD).]

**7. Payment by department or agency.** Each department or agency using the services of this program must budget adequate funds to pay the leasing services provided by the Bureau of General Services.

[PL 1991, c. 780, Pt. Y, §59 (AMD).]

**8. Report.** The Director of the Bureau of General Services shall report to the joint standing committees of the Legislature having jurisdiction over state and local government matters and appropriations and financial affairs matters by January 31st of each year with respect to the status of current leases, projected real property leasing requirements and anticipated costs for each fiscal year.

[PL 1991, c. 780, Pt. Y, §59 (AMD).]

**9. Exception.** The land leases of the various departments and agencies of State Government are exempted from the provisions of this section.

[PL 1993, c. 272, §1 (NEW).]

**10. Downtown Leasehold Improvement Fund.** The Downtown Leasehold Improvement Fund, referred to in this subsection as the "fund," is established within the Bureau of General Services to assist state agencies in securing suitable space in downtowns whenever possible by providing for capital improvements to real property leased by the State in downtowns necessary to meet public health, safety and accessibility requirements of federal, state and local statutes and codes.

The fund is a nonlapsing fund consisting of sums that are appropriated by the Legislature or transferred to the fund from time to time by the Treasurer of State, the proceeds of notes or bonds issued by the State for the purpose of deposit in the fund, grants and awards made to the State or an instrumentality of the State by the Federal Government for the purpose for which the fund has been established and other funds from any public or private source received for use for the purpose for which the fund has been established.

The bureau shall invest in leasehold improvements from this fund only when it determines that the length and other terms of the lease will provide for reasonable use of and return on the investments for the State.

The bureau may establish accounts and subaccounts as it determines desirable to effectuate the purpose of the fund.

[PL 1999, c. 776, §2 (NEW).]

#### SECTION HISTORY

PL 1991, c. 9, §L3 (NEW). PL 1991, c. 780, §Y59 (AMD). PL 1993, c. 272, §1 (AMD). PL 1999, c. 776, §§1,2 (AMD). PL 2003, c. 600, §4 (REV).

#### **§1742-E. Bureau of General Services; asbestos, lead and indoor air quality assessment and mitigation services**

**1. Asbestos, lead and indoor air quality assessment and mitigation services.** The Department of Administrative and Financial Services, through the Bureau of General Services, Division of Safety and Environmental Services, shall provide asbestos, lead and indoor air quality assessment and mitigation oversight services for public schools and state facilities. The Division of Safety and Environmental Services is the lead agency of the State for asbestos, lead and indoor air quality matters. [PL 1997, c. 499, §2 (NEW).]

#### SECTION HISTORY

PL 1997, c. 499, §2 (NEW).

#### **§1742-F. Capital Construction and Improvement Reserve Fund**

#### **(REPEALED)**

#### SECTION HISTORY

PL 2001, c. 83, §E1 (NEW). PL 2013, c. 36, §1 (RP).

#### **§1743. Public improvement construction contracts**

The Department of Administrative and Financial Services through the Bureau of General Services shall award a contract in accordance with this section for any public improvement that the State or any of its agencies hold in fee involving a total cost in excess of \$100,000, except contracts for professional, architectural and engineering services. The bureau may reject any public improvement bid, qualification package or proposal when it determines that to do so is in the best interests of the State. The contract must be awarded by competitive bid as provided in subsection 2 or by the bid method provided in subsections 3 to 7 for alternative methods of project delivery. [PL 2001, c. 271, §1 (RPR).]

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Bureau" means the Bureau of General Services. [PL 2001, c. 271, §1 (NEW).]

B. "Construction-manager-advisor method" means a method of project delivery in which the bureau engages a single firm for a fee to advise and consult with the bureau as to design and construction and may include consultation as to the selection of one or more design professionals to furnish the design when trade contracts for performance are held directly by the bureau. The firm is contractually bound to manage the schedule and budget to ensure adherence to both by the trade contractors. [PL 2001, c. 271, §1 (NEW).]

C. "Construction-manager-at-risk method" means a method of project delivery in which the bureau engages a single firm for a fee to advise and consult with the bureau as to design and construction and separately engages one or more design professionals to furnish the design, and in which the

firm is responsible to the bureau for schedule and price. The firm engaged to act as construction manager at-risk may perform all or a portion of the work on the project at the bureau's discretion. [PL 2001, c. 271, §1 (NEW).]

D. "Design-build method" means a method of project delivery in which a single firm is contractually responsible to perform design, construction and related services. [PL 2001, c. 271, §1 (NEW).]

E. "Design-build team" means representatives of an individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship or other entity that submits a prequalification package in response to a request for qualifications under subsection 5, paragraph A, subparagraph (2). [PL 2001, c. 271, §1 (NEW).]

F. "Director" means the Director of the Bureau of General Services. [PL 2001, c. 271, §1 (NEW).]

G. "Proposer" means an individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship or other entity that submits a proposal. [PL 2001, c. 271, §1 (NEW).]

H. "Quality" means those features that the bureau determines are most important to the project. "Quality" includes design quality; feasibility of construction; long-term maintenance costs; life-cycle costs, particularly energy efficiency; service life; and other factors the bureau determines in the best interest of the State. [PL 2001, c. 271, §1 (NEW).]

I. "Review panel" means the Alternative Delivery System Review Panel established in subsection 4. [PL 2001, c. 271, §1 (NEW).]  
[PL 2001, c. 271, §1 (NEW).]

**2. Competitive bids.** A public improvement contract may be awarded under a system of competitive bidding in accordance with this Part and such other conditions as the Governor may prescribe. The competitive bidding process may be waived in individual cases involving emergency circumstances with the written approval of the director.  
[PL 2007, c. 9, §1 (AMD); PL 2007, c. 466, Pt. C, §2 (AMD).]

**3. Alternative methods of project delivery.** As an alternative to the competitive bid method provided in subsection 2, a public improvement contract may be undertaken using the construction-manager-advisor, construction-manager-at-risk or design-build method of construction.

A. To the extent the provisions of this section do not address specific alternative delivery procurement, award or administration issues, the provisions may be supplemented at the discretion of the director with the concepts contained in the Bureau's architect-engineer selection procedures that are designed to achieve quality-based selection and with policies and procedures adopted by rule of the bureau with the advice of the review panel. [PL 2001, c. 271, §1 (NEW).]

B. After award of a contract or contracts for a project under an alternative method of delivery, the bureau shall notify all unsuccessful proposers in writing within a reasonable amount of time of the final selection and award, and make available to them all scoring information used in the selection process. Upon award of the contract or contracts and after resolution of any procurement disputes, the bureau shall return documents submitted by unsuccessful proposers upon request. [PL 2001, c. 271, §1 (NEW).]

C. Using the time frames and procedures established in section 1749, this paragraph governs appeals from decisions on alternative methods of project delivery.

(1) Resolution of disputes must be by appeal to the director, whose decision is the final administrative appeal.

(2) Nothing in this paragraph prevents an aggrieved party from seeking judicial review, which may include a request for stay of award pursuant to applicable laws, judicial decisions, rules and any other applicable procedures. [PL 2001, c. 271, §1 (NEW).]

D. The director may adopt rules necessary to implement the provisions for alternative project delivery methods set out in this section in accordance with the Maine Administrative Procedure Act. Prior to the procurement or award of any contract under an alternative delivery method, the director shall adopt by rule policies and procedures to implement that method. Rules adopted under this subsection are routine technical rules pursuant to chapter 375, subchapter II-A. [PL 2001, c. 271, §1 (NEW).]

[PL 2001, c. 271, §1 (NEW).]

**4. Alternative Delivery System Review Panel.** The director shall establish the Alternative Delivery System Review Panel to advise the director in developing alternative project delivery policies, procedures and rules and in selecting public improvement projects for construction under an alternative delivery method.

A. The review panel is composed of 6 members as follows:

- (1) Two representatives of the bureau designated by the Commissioner of Administrative and Financial Services;
- (2) Two representatives of the construction trade, one of whom is a building contractor designated by the president of a state-based organization that represents building contractors and one of whom is designated by the president of a state-based organization that represents specialty contractors;
- (3) One representative designated by the president of a state-based organization that represents architects; and
- (4) One representative designated by the president of a state-based organization that represents consulting engineers.

The private sector members serve terms of 3 years each and each appointing authority shall designate an alternate who shall serve in the event of a conflict of interest. [PL 2001, c. 271, §1 (NEW).]

B. In making a recommendation on selection of projects to the bureau, the review panel shall consider the following criteria:

- (1) Technical complexity of the project;
- (2) Substantial time or schedule savings that are necessary to the success of the project;
- (3) Project cost control;
- (4) The bureau's capacity to plan and manage the selected alternative project delivery method of construction, either in house or through outside contract;
- (5) Consistency and fairness in the procurement process;
- (6) Assurance of competition; and
- (7) Advancement of the public interest. [PL 2001, c. 271, §1 (NEW).]

[PL 2001, c. 271, §1 (NEW).]

**5. Design-build method.** The design-build method must be consistent with guidelines approved by a national architect, general contractor or design-build organization or a combined or modified version of the guidelines approved by those entities, with the final design-build procedures and documents to be determined at the discretion of the bureau. The bureau may prequalify design-build

teams using criteria that must include at a minimum those set forth in section 1747 and may also include additional criteria considered appropriate by the director.

A. Selection of the design-build teams is governed by this paragraph.

(1) Prior to publication of a request for qualifications, the bureau 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 bureau shall publish a request for qualifications in at least 2 newspapers distributed in the State, one of which must be the Kennebec Journal. The bureau shall issue a request-for-qualifications package to all firms requesting one in accordance with the notice. The bureau 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 bureau may select a short list of 3 to 5 firms. The bureau 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 bureau 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 subparagraph (4).

(4) The director 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 individuals who will use the facility.

(5) Each proposal must be submitted to the bureau 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 bureau 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 bureau shall be permitted to modify the scoring of price and quality in accordance with rules adopted by the bureau. [PL 2001, c. 271, §1 (NEW).]

[PL 2001, c. 271, §1 (NEW).]

**6. Construction-manager-at-risk method.** The construction-manager-at-risk method must be consistent with the concepts set forth in a standard form of agreement between an owner and a construction manager when the construction manager is also the constructor as established by national architect or general contractor organizations. The final procedures and documents for this method of delivery are determined at the discretion of the director.

A. The bureau shall publish in at least 2 newspapers distributed in the State, one of which must be the Kennebec Journal, a request for qualifications that must contain the evaluation criteria upon which proposals are evaluated. Evaluation criteria include project size and scope, and relevant experience and financial and staff capability of proposers. The bureau shall evaluate the proposals and determine which proposers, if any, are qualified to perform the project. The bureau may select a short list of 3 to 5 firms. [PL 2001, c. 271, §1 (NEW).]

B. Proposers determined to be qualified must be invited to submit a fee proposal. The bureau shall, in advance of soliciting a fee proposal, publish the evaluation criteria upon which the proposers are evaluated. Evaluation criteria at a minimum must include the following:

- (1) Fee;
- (2) Technical capacity;
- (3) Management plan and project schedule if available;
- (4) Experience;
- (5) Past performance;
- (6) Technical approach; and
- (7) Composition and qualifications of the proposers' workforce.

As part of the selection process, proposers must make oral presentations to the selection panel established under paragraph C. [PL 2001, c. 271, §1 (NEW).]

C. The director shall appoint members of a selection panel for each project. The selection panel must include representatives of the owner, designer, if selected, and individuals who will use the facility. From among the proposals submitted, the bureau shall select the most advantageous proposal that meets the published evaluation criteria. [PL 2001, c. 271, §1 (NEW).]

D. Subcontractors must be selected in accordance with the following provisions. The bureau shall create 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. [PL 2001, c. 271, §1 (NEW).]

[PL 2001, c. 271, §1 (NEW).]

**7. Construction-manager-advisor method.** The construction-manager-advisor method must be consistent with the standard scope of services employed by the bureau in public improvement projects.

A. The bureau shall publish in at least 2 newspapers distributed in the State, one of which must be the Kennebec Journal, a request for proposals that identifies the evaluation criteria upon which proposers are evaluated. Evaluation criteria must include:

- (1) Fee;
- (2) Technical capacity;
- (3) Management plan;
- (4) Experience;
- (5) Past performance; and

## (6) Composition of the project team, with individual resumes.

As part of the selection process, proposers must make oral presentations to the selection panel established under paragraph B. [PL 2001, c. 271, §1 (NEW).]

B. The director shall appoint members of a selection panel for each project. The selection panel must include representatives of the owner, designer, if selected, and individuals who will use the facility. From among the proposals submitted, the bureau shall select the most advantageous proposal according to the published evaluation criteria. [PL 2001, c. 271, §1 (NEW).]

C. The position of general contractor must be awarded to the lowest responsive and eligible bidder. Additional trade contracts, if any, must be awarded to the lowest responsive and eligible bidder or bidders. [PL 2001, c. 271, §1 (NEW).]

[PL 2001, c. 271, §1 (NEW).]

**8. Owner's representative.** The bureau may employ a qualified individual to represent the owner on any public improvement project awarded under the competitive bid process provided in subsection 2 or an alternative method of project delivery provided in subsection 3. Owner's representative services must be consistent with the standard scope of services employed by the bureau. The services of the owner's representative must be procured in a manner consistent with the bureau's rules governing selection of architects and engineers or with policies and procedures adopted by rule of the bureau with the advice of the review panel.

[PL 2001, c. 271, §1 (NEW).]

## SECTION HISTORY

PL 1967, c. 409, §2 (AMD). PL 1973, c. 274, §1 (AMD). PL 1975, c. 771, §82 (AMD). PL 1977, c. 303, §1 (RPR). PL 1985, c. 785, §A69 (AMD). PL 1989, c. 596, §N3 (AMD). PL 2001, c. 271, §1 (RPR). PL 2007, c. 9, §1 (AMD). PL 2007, c. 466, Pt. C, §2 (AMD).

**§1743-A. Competitive bids; advertisement**

Any contract for the construction, major alteration or repair of school buildings involving a total cost in excess of \$250,000, except contracts for professional, architectural and engineering services and contracts for energy conservation services in accordance with Title 20-A, section 15915, must be awarded by competitive bids. The school district directors, school committee, building committee or whatever agency has responsibility for the construction, major alteration or repair shall, after consultation with the Director of the Bureau of General Services, seek sealed proposals. Sealed proposals must be addressed to the responsible agency and must remain sealed until publicly opened in the presence of the responsible agency or a committee of the responsible agency at such time as the responsible agency may direct. Competitive bids may be waived in individual cases involving unusual circumstances with the written approval of the Director of the Bureau of General Services and the Commissioner of Education. [PL 2011, c. 691, Pt. B, §11 (AMD).]

When a contract requires that maintenance and service following completion of a project be provided by the person responsible for the construction, major alteration or repair of that project, the cost for the ongoing maintenance and service must be included in determining the total cost of the project and the need to award the project by competitive bid. When a school administrative unit enters into 2 or more contracts for construction, major alteration or repair of school buildings within a 6-month period and the total of those projects exceeds \$250,000, the contracts for those projects must be awarded by competitive bid. [PL 2011, c. 352, §1 (NEW).]

**REVISOR'S NOTE:** §1743-A. Design of buildings (As enacted by PL 1973, c. 176 was REPEALED by PL 1973, c. 625, §30)

## SECTION HISTORY

PL 1973, c. 154, §3 (NEW). PL 1973, c. 176 (NEW). PL 1973, c. 625, §30 (RP). PL 1989, c. 483, §A17 (AMD). PL 1989, c. 700, §A17 (AMD). PL 2011, c. 352, §1 (AMD). PL 2011, c. 691, Pt. B, §11 (AMD).

### **§1743-B. Design of buildings**

On projects for the design of buildings, the State of Maine and all political subdivisions thereof may select, without prejudice and on an equal basis, a prime professional who may be either an engineer or an architect. The professional so retained for a project shall perform only those services for which he is competent and shall utilize the services of other qualified professionals as required to provide a proper and complete professional service to the State or subdivision thereof consistent with applicable law. [PL 1973, c. 625, §31 (NEW).]

#### SECTION HISTORY

PL 1973, c. 625, §31 (NEW).

### **§1743-C. Information to bidders on public improvement projects**

A public improvement project for the construction, altering, repairing, furnishing or equipping of a building or public works must meet the requirements of this section. [PL 1995, c. 524, §1 (NEW).]

**1. Information to potential bidders.** The Bureau of General Services or the procuring agency shall ensure that the bidding documents provided to potential bidders state that information concerning the availability of state subcontractors and suppliers, including women-owned businesses, is available from the Bureau of General Services or the Department of Economic and Community Development. The statement must indicate that the use of subcontractors and suppliers and women-owned businesses in the State in the procurement of its goods and services is encouraged where possible. [PL 1995, c. 524, §1 (NEW).]

**2. Notice to businesses.** The Bureau of General Services shall adopt policies to promote the participation by enterprises doing business in this State and residents of this State in procurement contracts where possible. Policies must include, but are not limited to, providing for the notification of enterprises doing business in this State of opportunities to participate as subcontractors and suppliers on procurement contracts in an amount estimated to be equal to or greater than \$100,000. [PL 1995, c. 524, §1 (NEW).]

**3. Notice to economic development organizations.** The Bureau of General Services or the procuring state agency shall provide notice of all anticipated competitive contracting opportunities to an automated supplier matching service identified as appropriate by the Department of Economic and Community Development. [PL 1995, c. 524, §1 (NEW).]

**4. Annual education session.** The Bureau of General Services shall sponsor an annual education session on procedures to procure contracts with the State. The Bureau of General Services shall notify business enterprises in this State who have demonstrated an interest in opportunities to participate as contractors, subcontractors or suppliers on procurement contracts of the time and place of this annual education session. [PL 1995, c. 524, §1 (NEW).]

**5. Annual report.** On or before the first business day of July of each year, each state agency or department shall report to the Department of Economic and Community Development with information pertaining to the procurement contracts entered into in an amount equal to or greater than \$50,000 by that agency or department during the previous year. The information must include the subject matter and value of the contracts, designation of each contractor as a business enterprise of this State or a foreign business enterprise, the process used to select the contractors and the status of each contract. [PL 1995, c. 524, §1 (NEW).]



**6. Federal funds.** The provisions in this section apply to contracts involving funds obtained from the Federal Government unless expressly prohibited by federal law or regulations adopted pursuant to those laws.

[PL 1995, c. 524, §1 (NEW).]

#### SECTION HISTORY

PL 1995, c. 524, §1 (NEW).

#### **§1744. Preference for Maine granite**

**(REPEALED)**

#### SECTION HISTORY

PL 1977, c. 240, §4 (RP).

#### **§1745. Advertisement for sealed proposals; bonds**

The trustees, commissioners or other persons in charge of any public improvement in an amount in excess of \$100,000, which is subject to chapters 141 to 155 shall, after consultation with the Director of the Bureau of General Services, advertise for sealed proposals not less than 2 weeks in such papers as the Governor may direct. The last advertisement must be at least one week before the time named in the advertisement for the closing of such bids. Sealed proposals for any public improvements must be addressed to the trustees, commissioners or such other persons having the construction in charge and remain sealed until opened at the time and place stated in the advertisement or as the Governor may direct. [PL 2011, c. 691, Pt. B, §12 (AMD).]

If a public improvement has been properly advertised in accordance with this chapter, and no proposals have been received from a qualified person who has been bonded in accordance with the requirements of Title 14, section 871, the Director of the Bureau of General Services is authorized to accept proposals from persons that are not bonded in accordance with the requirements of Title 14, section 871. The Director of the Bureau of General Services is authorized to set reasonable standards to ensure the interest of the State in the consideration of persons mentioned in this paragraph. [PL 2011, c. 691, Pt. B, §12 (AMD).]

#### SECTION HISTORY

PL 1967, c. 409, §3 (AMD). PL 1973, c. 274, §2 (AMD). PL 1975, c. 771, §83 (AMD). PL 1977, c. 303, §2 (RPR). PL 1985, c. 554, §1 (AMD). PL 1989, c. 483, §A18 (AMD). PL 2011, c. 691, Pt. B, §12 (AMD).

#### **§1746. Retention of part of contract price**

In any contract awarded for any public improvement the State shall withhold 5% of the money due the contractor until the project under the contract has been accepted by or for the State, except that when the contract has been substantially completed the State may, upon request, further reduce the amounts withheld if it deems it desirable and prudent.

Under any contract made or awarded by the State or by any public department or official thereof, including the construction, improvement or repair of any and all ways, roads or bridges with appurtenances which, by law, are under the supervision of the Department of Transportation, 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 negotiable certificate 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 in the State of Maine. No amount shall 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. [PL 1971, c. 593, §22 (AMD).]

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 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 pursuant to this section. Such services shall consist of the safekeeping of said securities and of all services required to effectuate the purposes of this section. [PL 1967, c. 437 (NEW).]

Any amount deducted by the State, or by any public department or official thereof, 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. [PL 1967, c. 437 (NEW).]

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 will 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 said surety's bond. [PL 1967, c. 437 (NEW).]

Any contract made or awarded by the State, political subdivision or department or official thereof shall include the cost of necessary pollution control, if any, which will be required during the execution of the contract; provided the cost of pollution control activity which is required by legislation or regulation, passed or promulgated after the date on which bids are received for the project for which such contract is made or awarded, shall be paid for in an equitable manner. [PL 1973, c. 223 (NEW).]

The Director of the Bureau of General Services may approve contracts with a provision for daily financial incentive for projects completed before the scheduled date when it can be demonstrated that the early completion will result in a financial savings to the owner or to the State. The financial incentive may not be greater than the projected daily rate of savings to the owner or the State. [PL 2011, c. 691, Pt. B, §13 (AMD).]

## SECTION HISTORY

PL 1967, c. 437 (AMD). PL 1969, c. 322, §1 (AMD). PL 1971, c. 593, §22 (AMD). PL 1973, c. 223 (AMD). PL 1989, c. 483, §A19 (AMD). PL 2011, c. 691, Pt. B, §13 (AMD).

### §1747. Questionnaire as prebid qualification

The public official may require, from a firm proposing to bid on public work duly advertised, a standard qualification statement and a letter from a licensed bonding company confirming that the firm has the financial capacity to perform the work before furnishing that person with plans and specifications for the proposed public work advertised. [PL 1997, c. 295, §1 (AMD).]

The Director of General Services, after consultation with the appropriate department head or superintendent of schools, may refuse to release plans and specifications to a contractor for the purpose of bidding on a project: [PL 1997, c. 295, §1 (AMD).]

**1. Untimely completion.** If, in the opinion of the director, there is evidence the contractor has not completed in a timely manner a prior construction project or projects and the resulting noncompletion clearly reflects disregard for the completion date and has created a hardship for the owner; [PL 1997, c. 295, §1 (AMD).]

**2. Incomplete work.** If, in the opinion of the director, there is evidence the contractor has a history of inability to complete similar work;  
[PL 1997, c. 295, §1 (AMD).]

**3. Insufficient resources.** If, in the opinion of the director, there is evidence the contractor does not have sufficient resources to successfully complete the work. The director may require additional information about the contractor's resources, including identification of major claims or litigation pending and whether the contractor has sought protection under the bankruptcy laws in the past 5 years. That information is confidential and not subject to disclosure under Title 1, chapter 13, subchapter 1. In evaluating the resources of a contractor, the director may consider the contractor's prior experience, including any significant disparity between the size and type of prior projects and the project or projects under consideration;  
[PL 2003, c. 589, §1 (AMD).]

**4. Misconduct.** If the contractor has been convicted of collusion or fraud or any other civil or criminal violation relating to construction projects;  
[PL 2001, c. 271, §3 (AMD).]

**5. Safety record.** If, in the opinion of the director, there is evidence of a history of inadequate safety performance and lack of formal safety procedures;  
[PL 2001, c. 271, §4 (NEW).]

**6. Material misrepresentation.** If, in the opinion of the director, there is evidence of a material misrepresentation on the contractor's prebid qualification statement; or  
[PL 2001, c. 271, §4 (NEW).]

**7. Termination, suspension, defaults.** If, in the opinion of the director, there is evidence that the contractor through its own fault has been terminated, has been suspended for cause, has been debarred from bidding, has agreed to refrain from bidding as part of a settlement or has defaulted on a contract or had a contract completed by another party.  
[PL 2001, c. 271, §4 (NEW).]

If a contractor is disqualified for any of the reasons stated in subsection 1, 2, 4, 5, 6 or 7, the director may disallow the contractor from bidding on any similar public improvements for a period not to exceed one year. [PL 2001, c. 271, §5 (AMD).]

#### SECTION HISTORY

PL 1989, c. 483, §A20 (RPR). PL 1993, c. 324, §1 (AMD). PL 1997, c. 295, §1 (AMD). PL 2001, c. 271, §§2-5 (AMD). PL 2003, c. 589, §1 (AMD).

#### §1748. Procedure if answers unsatisfactory

Whenever the public official is not satisfied with the sufficiency of the answers contained in such standard questionnaire and the financial statement of such persons, he may refuse to furnish such persons with plans and specifications on public work duly advertised, and the bid of any person to whom plans and specifications have not been issued may be disregarded.

#### §1749. Procedure for contractor

Any contractor dissatisfied with the Director of the Bureau of General Services' decision under section 1747 may appeal the decision to the Commissioner of Administrative and Financial Services within 5 calendar days of the receipt of notice from the director that the contractor has been excluded from receiving plans and specifications or the director has refused to accept the contractor's bid. The appeal process must be conducted at the discretion of the commissioner, but must be completed and a final decision rendered within 5 calendar days after the contractor's written notice of appeal unless extended by the commissioner. The decision of the commissioner is final and binding. Any contractor who requests a hearing under this section must be allowed to receive plans and specifications for a

particular duly advertised public improvement and bid on that improvement. The bid of any contractor submitted under this section may be disallowed upon final decision of the commissioner. [PL 1991, c. 780, Pt. Y, §60 (AMD).]

If, in the construction of any public work, including buildings, highways, bridges, dams and drainage structures that the State does by contract, there arises a dispute between the State and the contractor that can not be settled, this dispute must be submitted, at the discretion of the Director of the Bureau of General Services, to alternative dispute resolution or to binding arbitration. Either the State or the contractor may, if unsatisfied by the alternative dispute resolution process, submit the dispute to binding arbitration. [PL 1993, c. 49, §1 (AMD).]

Nothing in this section 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. [PL 1989, c. 165, §1 (AMD).]

#### SECTION HISTORY

PL 1967, c. 203 (AMD). PL 1971, c. 593, §22 (AMD). PL 1989, c. 165, §1 (AMD). PL 1989, c. 483, §A21 (AMD). PL 1991, c. 780, §Y60 (AMD). PL 1993, c. 49, §§1,2 (AMD).

#### **§1750. Penalties**

**(REPEALED)**

#### SECTION HISTORY

PL 1977, c. 696, §44 (RP).

#### **§1751. Employment of a clerk-of-the-works**

A clerk-of-the-works must be employed to assist in the inspection of the construction of a public improvement when directed by the director. The clerk shall report directly to the professional architect-engineer of record for the project. In addition, the clerk shall provide a report of all correspondence sent or received by the clerk to the owner. The budget for the public improvement must include funding for the clerk. The clerk must be hired through an open advertising and interview process by the owner and the architect-engineer. The clerk candidate recommended by the architect-engineer is subject to approval by both the owner and the director before being hired. The architect-engineer may terminate or impose disciplinary action on the clerk after consultation with the owner. The clerk must possess qualifications of education and experience in construction technology and administration compatible with the needs of the public improvement. The director may adopt rules relative to this section. [PL 1993, c. 606, §1 (AMD).]

#### SECTION HISTORY

PL 1983, c. 187 (NEW). PL 1983, c. 480, §B1 (AMD). PL 1993, c. 339, §1 (AMD). PL 1993, c. 606, §1 (AMD).

#### **§1752. Centrally leased space and food vending**

The Bureau of General Services may establish a dedicated revenue account for the management of space leased by the bureau for state offices and facilities. Charges levied to state agencies for centrally leased space must be deposited to the dedicated revenue account. A dedicated revenue account may be established for operations related to food vending services. [PL 2011, c. 691, Pt. B, §14 (AMD).]

#### SECTION HISTORY

PL 1989, c. 501, §P15 (NEW). PL 2011, c. 691, Pt. B, §14 (AMD).

#### **§1753. Employment of owner's representative**

An owner's representative may be employed to facilitate the construction of a school project under Title 20-A, chapter 609. For purposes of this section, "owner" means the school building committee. [PL 1993, c. 606, §2 (NEW).]

**1. Representative's relationship to owner.** The owner's representative may be an employee of the Bureau of General Services, an employee of the owner or an independent contractor. The owner's representative's responsibility is to act as an advisor to the owner. It is the responsibility of the owner's representative to facilitate open communications among all parties, to help to avoid adversarial interactions and to promote a sense of trust and teamwork in order to accomplish the smooth execution of the project and to see that the project is completed at the lowest possible cost and highest degree of quality and workmanship that are consistent with the plans and specifications for the project. [PL 1993, c. 606, §2 (NEW).]

**2. Owner's representative qualifications.** The owner's representative must be hired by the owner through an open advertising and interview process and is subject to final approval by the Director of the Bureau of General Services. [PL 1993, c. 606, §2 (NEW).]

**3. Representative's responsibilities.** The responsibilities of the owner's representative are, without limitation, to:

- A. Prepare for and attend meetings with the owner or a committee representing the owner, prepare minutes of those meetings, maintain a noncommercial history of the building project, submit comments on the budget for the project and maintain project files; [PL 1993, c. 606, §2 (NEW).]
- B. Provide guidance to the owner in the selection of an architect or an engineer in accordance with the architect and engineering services procurement process as administered by the Bureau of General Services; [PL 1993, c. 606, §2 (NEW).]
- C. Attend a preplanning orientation with the owner, architect and engineer; [PL 1993, c. 606, §2 (NEW).]
- D. Attend and participate in meetings with the owner, architect and engineer concerning space requirements, design considerations, cost-containment strategies, energy efficiency considerations, any special requirements and also the review of schematic designs and preliminary and final plans; [PL 1993, c. 606, §2 (NEW).]
- E. Assist the owner in securing the necessary governmental permits or approvals; [PL 1993, c. 606, §2 (NEW).]
- F. Assist the owner in reviewing bid responses; [PL 1993, c. 606, §2 (NEW).]
- G. Assist the owner in contract negotiations; and [PL 1993, c. 606, §2 (NEW).]
- H. Meet with the owner regularly to review and discuss project progress. [PL 1993, c. 606, §2 (NEW).]

The owner may expand or reduce the scope of the owner's representative's responsibilities through a contract, so long as that contract conforms to the overall relationship established in subsection 1. [PL 1993, c. 606, §2 (NEW).]

**4. Owner's representative an allowable cost.** For purposes of this section, the owner's representative is a subsidizable cost eligible for subsidy in accordance with Title 20-A, sections 15672 and 15901 only if the local unit pays 50% of the costs of the employment of an owner's representative. [PL 2005, c. 683, Pt. B, §1 (AMD).]

**5. Report required.** A school unit employing an owner's representative under this section shall provide a report to the Bureau of General Services describing the effectiveness of an owner's representative to a project. The Bureau of General Services shall provide the joint standing committee

of the Legislature having jurisdiction over state and local government matters with an annual report on the employment of an owner's representative, including the written comments from each school unit that has chosen to employ an owner's representative under this section.

[PL 1997, c. 186, §1 (AMD).]

**6. Sunset.**

[PL 1997, c. 186, §2 (RP).]

SECTION HISTORY

PL 1993, c. 606, §2 (NEW). PL 1997, c. 186, §§1,2 (AMD). PL 2005, c. 683, §B1 (AMD).

**SUBCHAPTER 1-A**

**ENERGY CONSERVATION IN BUILDINGS ACT**

**§1761. Short title**

This subchapter may be cited as the "Energy Conservation in Buildings Act." [PL 1977, c. 563, §2 (RPR).]

SECTION HISTORY

PL 1977, c. 320 (NEW). PL 1977, c. 563, §1 (RP). PL 1977, c. 563, §2 (REEN).

**§1762. No facility constructed without life-cycle costs**

No public improvement, as defined in this chapter, public school facility or other building or addition constructed or substantially renovated in whole or in part with public funds or using public loan guarantees, with an area in excess of 5,000 square feet, may be constructed without having secured from the designer a proper evaluation of life-cycle costs, as computed by a qualified architect or engineer. The requirements of this section with respect to substantial renovation shall pertain only to that portion of the building being renovated. Construction shall proceed only upon disclosing, for the design chosen, the life-cycle costs as determined in section 1764 and the capitalization of the initial construction costs of the facility or building. The life-cycle costs shall be a primary consideration in the selection of the design. As a minimum, the design shall meet the energy efficiency building performance standards promulgated by the Department of Economic and Community Development. [PL 1989, c. 501, Pt. DD, §1 (AMD).]

SECTION HISTORY

PL 1977, c. 320 (NEW). PL 1977, c. 563, §1 (RP). PL 1977, c. 563, §2 (REEN). PL 1981, c. 353, §1 (RPR). PL 1989, c. 501, §DD1 (AMD).

**§1762-A. Water conservation in state facilities**

After January 1, 1992, unless otherwise required by law, or for reasons of health or safety, the Bureau of General Services and the following departments and agencies may not purchase or install any faucet, shower head, toilet or urinal that is not a low-flow faucet, a low-flow shower head, a water-saving toilet or a water-saving urinal: [PL 2011, c. 691, Pt. B, §15 (AMD).]

**1. Bureau of Purchases.** The Bureau of Purchases under chapter 155; [PL 1991, c. 246, §1 (NEW).]

**2. University of Maine System.** The University of Maine System under Title 20-A, chapter 411; [PL 1991, c. 246, §1 (NEW).]

**3. Maine Community College System.** The Maine Community College System under Title 20-A, chapter 431; and

[PL 1991, c. 246, §1 (NEW); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

**4. Maine State Housing Authority.** The Maine State Housing Authority under Title 30-A, chapter 201.

[PL 1991, c. 246, §1 (NEW).]

By January 1, 1992, the Bureau of General Services shall adopt rules defining a "low-flow faucet," a "low-flow shower head," a "water-saving toilet" and a "water-saving urinal" that minimize water use to the maximum extent economically and technologically feasible. [PL 2011, c. 691, Pt. B, §15 (AMD).]

#### SECTION HISTORY

PL 1991, c. 246, §1 (NEW). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF). PL 2011, c. 691, Pt. B, §15 (AMD).

#### §1763. No facility leased without life-cycle costs

No public improvement, as defined in this chapter, or public school facility, with an area in excess of 10,000 square feet within a given building boundary, may be leased until a life-cycle costs analysis has been performed and a lease may only be approved when the life-cycle costs analysis compare favorably to available like facilities. [PL 1997, c. 541, §1 (AMD).]

In the event of an emergency such as a building destroyed by fire, this requirement may be waived by the Bureau of General Services. [PL 1997, c. 541, §1 (AMD).]

#### SECTION HISTORY

PL 1977, c. 320 (NEW). PL 1977, c. 563, §1 (RP). PL 1977, c. 563, §2 (REEN). PL 1997, c. 541, §1 (AMD).

#### §1764. Life-cycle costs

**1. Bureau of General Services to adopt rules and procedures.** The Bureau of General Services shall adopt rules, including energy conservation guidelines that conform as a minimum to the energy efficiency building performance standards adopted by the Department of Economic and Community Development for conducting an energy-related life-cycle costs analysis of alternative architectural or engineering designs, or both, and shall evaluate the efficiency of energy utilization for designs in the construction and lease of public improvements and public school facilities. Any rules adopted take effect 90 days after the enactment of this subchapter.

[PL 1997, c. 541, §2 (AMD).]

**2. Life-cycle costs.** Any life-cycle costs must include:

A. The reasonably expected energy costs over the life of the building, as determined by the designer, that are required to maintain illumination, power, temperature, humidity and ventilation and all other energy-consuming equipment in a facility; [PL 1997, c. 541, §2 (AMD).]

B. The reasonable energy-related costs of probable maintenance, including labor and materials and operation of the building, replacement costs over the expected life of the facility and any other ownership cost issues identified by the Bureau of General Services; and [PL 1997, c. 541, §2 (AMD).]

C. A comparison of energy-related and economic-related design alternatives. The Bureau of General Services may direct the designer to select, include and develop life-cycle costs for any viable alternatives that should be considered. [PL 1997, c. 541, §2 (NEW).]

[PL 1997, c. 541, §2 (AMD).]

**3. Determination of life-cycle costs.** To determine the life-cycle costs, the Bureau of General Services shall adopt rules that include but are not limited to:

A. The orientation and integration of the facility with respect to its physical site; [PL 1977, c. 563, §2 (RPR).]

B. The amount and type of glass employed in the facility and the directions of exposure; [PL 1977, c. 563, §2 (RPR).]

C. The effect of insulation incorporated into the facility design and the effect on solar utilization to the properties of external surfaces; [PL 1977, c. 563, §2 (RPR).]

D. The variable occupancy and operating conditions of the facility and subportions of the facility; [PL 2007, c. 671, §1 (AMD).]

E. Energy consumption analysis of the major equipment of the facility's heating, ventilating and cooling system, lighting system, hot water system and all other major energy-consuming equipment and systems as appropriate. This analysis must include:

(1) The comparison of alternative systems;

(2) A projection of the annual energy consumption of major energy-consuming equipment and systems for a range of operations of the facility over the life of the facility; and

(3) The evaluation of the energy consumption of component equipment in each system, considering operation of the components at other than full or rated outputs; and [PL 2007, c. 671, §2 (AMD).]

F. The cost-effectiveness of integrating wind or solar electricity generating equipment into the design and construction of the facility. [PL 2007, c. 671, §3 (NEW).]  
[PL 2007, c. 671, §§1-3 (AMD).]

**4. Annual updating of rules.** Rules must be based on the best currently available methods of analysis and provisions must be made for an annual updating of rules and standards as required. [PL 1997, c. 541, §2 (AMD).]

#### SECTION HISTORY

PL 1977, c. 320 (NEW). PL 1977, c. 563, §1 (RP). PL 1977, c. 563, §2 (REEN). PL 1981, c. 353, §2 (AMD). PL 1989, c. 501, §DD2 (AMD). PL 1997, c. 541, §2 (AMD). PL 2007, c. 671, §§1-3 (AMD).

#### §1764-A. Improvement of energy efficiency in state-funded construction

**1. Definition.** For purposes of this section, "substantially renovated" means any renovation for which the cost exceeds 50% of the building's current value prior to renovation. [PL 2003, c. 497, §1 (NEW); PL 2003, c. 497, §5 (AFF).]

**2. Rules.** The Bureau of General Services, in consultation with the Public Utilities Commission, shall by rule require that all planning and design for the construction of new or substantially renovated state-owned or state-leased buildings and buildings built with state funds, including buildings funded through state bonds or the Maine Municipal Bond Bank:

A. Involve consideration of architectural designs and energy systems that show the greatest net benefit over the life of the building by minimizing long-term energy and operating costs; [PL 2003, c. 497, §1 (NEW); PL 2003, c. 497, §5 (AFF).]

B. Include an energy-use target that exceeds by at least 20% the energy efficiency standards in effect for commercial and institutional buildings pursuant to the Maine Uniform Building and Energy Code under Title 10, chapter 1103; and [PL 2017, c. 475, Pt. C, §1 (AMD).]



C. Include a life-cycle cost analysis that explicitly considers cost and benefits over a minimum of 30 years and that explicitly includes the public health and environmental benefits associated with energy-efficient building design and construction, to the extent they can be reasonably quantified. [PL 2003, c. 497, §1 (NEW); PL 2003, c. 497, §5 (AFF).]

Rules adopted pursuant to this section apply to all new or substantially renovated state-owned or state-leased buildings and buildings built with state funds, including buildings funded through state bonds or the Maine Municipal Bond Bank, regardless of whether the planning and design for construction is subject to approval by the department.

Rules adopted pursuant to this section may provide for exemptions, waivers or other appropriate consideration for buildings with little or no energy usage, such as unheated sheds or warehouses.

The Bureau of General Services shall adopt rules pursuant to this section by July 1, 2004. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2017, c. 475, Pt. C, §1 (AMD).]

**3. Approval.** A state agency responsible for approving the construction of a new or substantially renovated state-owned or state-leased building and buildings built with state funds, including buildings funded through state bonds or the Maine Municipal Bond Bank, may not grant such approval unless the agency or other entity or organization proposing the construction can show that it has duly considered the most energy-efficient and environmentally efficient designs suitable in accordance with rules adopted pursuant to this section. [PL 2013, c. 424, Pt. A, §2 (AMD).]

#### SECTION HISTORY

RR 2003, c. 1, §2 (COR). PL 2003, c. 497, §1 (NEW). PL 2003, c. 497, §5 (AFF). PL 2011, c. 420, Pt. A, §3 (AMD). PL 2013, c. 424, Pt. A, §2 (AMD). PL 2017, c. 475, Pt. C, §1 (AMD).

#### **§1765. Application of subchapter to certain public school buildings**

Sections 1762 to 1764 do not apply to any public school facility approved by the State Board of Education prior to July 23, 1977. [RR 1997, c. 2, §13 (COR).]

#### SECTION HISTORY

PL 1977, c. 563, §2 (NEW). RR 1997, c. 2, §13 (COR).

#### **§1766. Use of biomass and solid waste fuels in state facilities**

For the purposes of the installation, development or operation of any energy production improvement at or in connection with a state facility, and notwithstanding any other provision of law, any department or agency of the State, subject to approval of the Bureau of General Services, may enter into an agreement with a private party under which the private party may, for consideration, lease or otherwise acquire property interest, exclusive of ownership in fee, in land, buildings or other existing heating facilities and right of access thereto; as long as any improvement to the land, buildings or other existing heating facility installed, erected, owned, developed or operated by the private party utilizes biomass, solid waste or some combination of biomass and solid waste for at least 50% of its total energy input. The duration of the agreement may not exceed 20 years. [PL 2011, c. 691, Pt. B, §16 (AMD).]

The private party undertaking the installation, erection, ownership, development or operation of such an improvement may cogenerate thermal energy and electricity and may sell thermal energy to a state facility located at or near the site of the improvement. The private party may sell thermal energy in excess of the requirements of the state facility to any other customer and may sell cogenerated electricity to the state facility. [PL 1999, c. 657, §1 (AMD).]

A forest harvest operation to supply biomass fuel to the improvement shall be conducted in accordance with a landowner's forest management plan approved by a registered professional forester.

The private party undertaking the improvement shall make available the services of a registered professional forester at no cost to a landowner whose land will be harvested to provide biomass fuel to the improvement. [PL 1983, c. 803 (NEW).]

Any department or agency of the State, subject to approval by the Bureau of General Services, at the termination of the agreement with the private party pursuant to this section, may acquire, operate and maintain the improvement, may renew the agreement with the private party or may make an agreement with another private party to operate and maintain the improvement. [PL 2011, c. 691, Pt. B, §16 (AMD).]

All agreements made with private parties as contemplated in this section shall be subject to review by a subcommittee of the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs. [PL 1983, c. 803 (NEW).]

The provisions of section 1587 shall not apply to an agreement with a private party as contemplated in this section except, in the event that the state department or agency chooses to exercise an option to purchase energy production improvements, the department or agency before or at the time of the exercise of the option shall submit the proposed purchase of the energy production improvements for approval by the Legislature through the usual budget procedure. [PL 1983, c. 803 (NEW).]

#### SECTION HISTORY

PL 1983, c. 803 (NEW). PL 1999, c. 657, §1 (AMD). PL 2011, c. 691, Pt. B, §16 (AMD).

#### **§1766-A. Electricity purchases for state buildings**

No later than January 1, 2010, all electricity consumed in state-owned buildings must be supplied by renewable resources. For purposes of this section, "renewable resource" has the same meaning as in Title 35-A, section 3210, subsection 2, paragraph C. In purchasing electricity for state-owned buildings, the State may give preference to electricity generated by community-based renewable energy projects, as defined in Title 35-A, section 3602, subsection 1. [PL 2009, c. 329, Pt. A, §1 (AMD).]

#### SECTION HISTORY

PL 2007, c. 52, §1 (NEW). PL 2009, c. 329, Pt. A, §1 (AMD).

#### **§1767. Energy service companies and 3rd-party financing**

Any department or agency of the State, subject to approval of the Bureau of General Services, may enter into an agreement with a private party such as an energy service or 3rd-party financing company for the design, installation, operation, maintenance and financing of energy conservation improvements at state facilities. [PL 2007, c. 539, Pt. O, §1 (AMD).]

Any department or agency of the State, subject to approval by the Bureau of General Services, at the termination of the agreement with the private party pursuant to this section, may acquire, operate and maintain the improvement, may renew the agreement with the private party or may make an agreement with another private party to operate and maintain the improvement. [PL 2007, c. 539, Pt. O, §1 (AMD).]

All agreements made with private parties as contemplated in this section are subject to review by a subcommittee of the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs. [PL 2007, c. 539, Pt. O, §1 (AMD).]

The provisions of section 1587 do not apply to an agreement with a private party as contemplated in this section, except in the event that the state department or agency chooses to exercise an option to purchase energy conservation improvements, the department or agency before or at the time of the exercise of the option shall submit the proposed purchase of the energy conservation improvements for approval by the Legislature through the usual budget procedure. [PL 2007, c. 539, Pt. O, §1 (AMD).]

The Bureau of General Services on behalf of any department or agency of the State is authorized to enter into agreements with private parties to study, plan, design, install, operate, maintain, finance and secure other services as may be necessary for the delivery of energy conservation projects at state facilities and projects to generate or cogenerate energy at state facilities for use on site and elsewhere. Nothing in this section may be construed to compel the Bureau of General Services to enter into such agreements. An agreement made subject to this section must be submitted to the Legislature for approval through the usual budget procedure if the agreement would require a new expenditure beyond existing appropriations or allocations. [PL 2007, c. 539, Pt. O, §1 (NEW).]

#### SECTION HISTORY

PL 1985, c. 128 (NEW). PL 2007, c. 539, Pt. O, §1 (AMD).

#### **§1768. Shared savings program; state agencies**

The Bureau of General Services shall develop an energy efficiency incentive program in which an eligible department or agency of the State may retain a portion of any first-year energy cost savings demonstrably attributable to energy efficiency improvements undertaken by that department or agency. A condition of the program is that the portion of energy cost savings not retained by the department or agency must be credited to the General Fund. The bureau shall submit the proposed program to the joint standing committee of the Legislature having jurisdiction over state and local government matters by January 1, 1992. [PL 2011, c. 691, Pt. B, §17 (AMD).]

#### SECTION HISTORY

RR 1991, c. 1, §6 (COR). PL 1991, c. 246, §2 (NEW). PL 1991, c. 481, §1 (NEW). PL 2011, c. 691, Pt. B, §17 (AMD).

#### **§1769. Outdoor lighting**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Direct light" means light emitted directly from a lamp off a reflector or through a refractor of a luminaire. [PL 1991, c. 481, §1 (NEW).]
- B. "Fixture" means the assembly that holds the lamp and may include an assembly housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror and a refractor or lens. [PL 1991, c. 481, §1 (NEW).]
- C. "Footcandle" means an illuminance equal to one lumen per square foot. [PL 1991, c. 481, §1 (NEW).]
- D. "Full cutoff luminaire" means a luminaire that allows no direct light emissions above a horizontal plane through the luminaire's lowest light-emitting part. [PL 1991, c. 481, §1 (NEW).]
- E. "Glare" means direct light emitting from a luminaire that causes reduced vision or momentary blindness. [PL 1991, c. 481, §1 (NEW).]
- F. "Illuminance" means the level of light measured at a surface. [PL 1991, c. 481, §1 (NEW).]
- G. "Lamp" means the component of a luminaire that produces the light. [PL 1991, c. 481, §1 (NEW).]
- H. "Light trespass" means light emitted by a luminaire that shines beyond the boundaries of the property on which the luminaire is located. [PL 1991, c. 481, §1 (NEW).]
- I. "Lumen" means a unit of measurement of luminous flux. [PL 1991, c. 481, §1 (NEW).]
- J. "Luminaire" means the complete lighting system, including the lamp and the fixture. [PL 1991, c. 481, §1 (NEW).]

K. "Permanent outdoor luminaire" means any luminaire or system of luminaires that is outdoors and that is intended to be used for 7 days or longer. [PL 1991, c. 481, §1 (NEW).]

L. "State funds" means any bond revenues or any money appropriated or allocated by the Legislature. [PL 1991, c. 481, §1 (NEW).]  
[PL 1991, c. 481, §1 (NEW).]

**2. Permanent outdoor luminaires.** A person may not use any state funds to install or replace any permanent outdoor luminaire unless:

A. The luminaire is a full cutoff luminaire when the rated output of the luminaire is greater than 1,800 lumens; [PL 1991, c. 481, §1 (NEW).]

B. The luminaire's maximum illuminance does not exceed the minimum illuminance recommended for that purpose by the Illuminating Engineering Society of America or the federal Department of Transportation; and [PL 1991, c. 481, §1 (NEW).]

C. The Director of the Bureau of General Services ensures that consideration is given to minimizing glare and light trespass. [PL 2011, c. 691, Pt. B, §18 (AMD).]  
[PL 2011, c. 691, Pt. B, §18 (AMD).]

**3. Exceptions.** Exceptions from the provisions of this section are permitted only when:

A. Federal laws, rules and regulations take precedence over these provisions; or [PL 1991, c. 481, §1 (NEW).]

B. The Director of the Bureau of General Services determines that there is a compelling safety interest that can not be addressed by any other method. [PL 2011, c. 691, Pt. B, §19 (AMD).]  
[PL 2011, c. 691, Pt. B, §19 (AMD).]

#### SECTION HISTORY

RR 1991, c. 1, §6 (RNU). PL 1991, c. 481, §1 (NEW). PL 2011, c. 691, Pt. B, §§18, 19 (AMD).

#### §1770. Energy savings pilot program

**1. Goal.** The Legislature finds it is in the best interests of the State to significantly reduce its energy consumption to the extent possible without interfering with other goals, plans and policies of the State. The energy reduction goal, referred to in this section as the "goal," for facilities owned by the State is, by 2010, a 25% reduction in energy consumption relative to baseline consumption in 1998, as long as the achievement of the goal is accomplished in a manner that:

A. Is consistent with all applicable laws; and [PL 1999, c. 735, §1 (NEW).]

B. Does not interfere with other goals, plans or policies of the State. [PL 1999, c. 735, §1 (NEW).]

For purposes of this subsection, "facilities owned by the State" includes all facilities that consume energy and that are owned by the legislative, judicial or executive branches of government, any state department, agency or authority, the University of Maine System or the Maine Community College System.

[PL 1999, c. 735, §1 (NEW); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

**2. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Department" means the Department of Administrative and Financial Services. [PL 1999, c. 735, §1 (NEW).]

B. "Energy service company" means a company with the technical, operational, financial and managerial capabilities to implement performance-based contracts that result in energy and operational cost savings including the capability:

- (1) To design, implement and install energy efficiency and facility improvement measures;
- (2) To secure necessary financial measures to support energy savings guarantees; and
- (3) To ensure energy and operational cost savings. [PL 1999, c. 735, §1 (NEW).]

C. "Performance-based contract" means a contract with an energy service company for evaluation, recommendation or implementation of one or more energy-saving measures. A performance-based contract may be structured as:

- (1) A guaranteed energy savings performance contract that includes the design and installation of equipment and, if applicable, operation and maintenance of any of the energy-saving measures implemented and that guarantees annual savings that meet or exceed the total annual contract payments made by the State under the contract;
- (2) A shared savings contract that includes provisions mutually agreed upon by the State and the energy service company as to the negotiated rate of payments based upon energy and operational cost savings and a stipulated maximum energy consumption level over the life of the contract; or
- (3) Any other form of performance-based contract established by the department by rule. [PL 1999, c. 735, §1 (NEW).]

[PL 1999, c. 735, §1 (NEW).]

**3. Pilot project.** The department shall develop an energy savings pilot project, referred to in this section as the "pilot project," designed to achieve by 2010 a 25% reduction in energy consumption relative to baseline consumption in 1998 by facilities included in the pilot project. The department shall use performance-based contracts to achieve the energy savings. By September 1, 2000, the department shall:

A. Identify at least 10 facilities that are over 40,000 square feet for inclusion in the pilot project. The 10 facilities may include facilities that through modifications or renovations could achieve reduced energy consumption and facilities that could be replaced by new facilities that will consume less energy; and [PL 1999, c. 735, §1 (NEW).]

B. Establish a process for soliciting proposals from energy service companies and for selecting energy service providers. The process must include a requirement that an energy service provider who submits a proposal to undertake a project provide a feasibility analysis for that project. The process may also include a requirement that an energy service company initially selected to undertake a project provide, prior to contracting, a financial-grade energy audit. [PL 1999, c. 735, §1 (NEW).]

[PL 1999, c. 735, §1 (NEW).]

**4. Plan development and implementation.** The department shall use available data, including data collected from life-cycle cost evaluations undertaken pursuant to this chapter, and shall consult with agencies with relevant expertise to develop the pilot project and to choose facilities for inclusion in the pilot project.

[PL 1999, c. 735, §1 (NEW).]

**5. Reporting.** The department shall report annually to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters by the first business day in February on:

A. The status of plans or efforts to achieve the goal and the extent of projected or actual energy savings relative to the goal; and [PL 1999, c. 735, §1 (NEW).]

B. The status of the pilot project, including projected and actual energy savings for each facility included in the pilot project and the number and a description of the energy service companies that responded to the request for proposals and descriptions of all contracts entered into pursuant to the pilot project. [PL 1999, c. 735, §1 (NEW).]

[PL 1999, c. 735, §1 (NEW).]

**6. Rules.** The department may establish by rule procedures and policies that facilitate the implementation of the pilot project, including, but not limited to, a process for prequalifying energy service companies and procedures that encourage a comprehensive approach to the achievement of energy savings. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. The department shall submit to the Legislature provisionally adopted rules no later than the first business day in February 2001.

[PL 1999, c. 735, §1 (NEW).]

#### SECTION HISTORY

PL 1999, c. 735, §1 (NEW). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF).

## SUBCHAPTER 2

### PUBLIC WAYS AND PARKING AREAS

#### §1771. Definitions

**(REPEALED)**

#### SECTION HISTORY

PL 1971, c. 49, §1 (RPR). PL 1977, c. 138, §2 (RP).

#### §1772. Rules and regulations

**(REPEALED)**

#### SECTION HISTORY

PL 1971, c. 49, §2 (AMD). PL 1977, c. 138, §2 (RP).

#### §1772-A. User fees

**(REPEALED)**

#### SECTION HISTORY

PL 1971, c. 544, §§15-A (NEW). PL 1975, c. 771, §84 (AMD). PL 1977, c. 138, §2 (RP).

#### §1773. Special officers; powers and duties; cooperation

**(REPEALED)**

#### SECTION HISTORY

PL 1973, c. 528 (AMD). PL 1977, c. 138, §2 (RP).

#### §1774. Jurisdiction

**(REPEALED)**

#### SECTION HISTORY

PL 1977, c. 138, §2 (RP).

#### §1775. Fines and costs of court

**(REPEALED)**

SECTION HISTORY

PL 1965, c. 260 (AMD). PL 1977, c. 138, §2 (RP).

**§1776. Offenses not covered by rules and regulations**

**(REPEALED)**

SECTION HISTORY

PL 1977, c. 138, §2 (RP).

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