

MAINE STATE LEGISLATURE

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L.D. 1525

Date: 4-4-16

(Filing No. S-459)

STATE AND LOCAL GOVERNMENT

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STATE OF MAINE

SENATE

127TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 587, L.D. 1525, Bill, "An Act To Encourage the Purchase of Products Made in Maine and in the United States and To Give Preference to Maine Businesses When Awarding Contracts"

Amend the bill by striking out the title and substituting the following:

'An Act To Encourage the Purchase of Products Made in Maine and in the United States and To Give Preference to Maine Businesses When Awarding Contracts and To Establish the Procurement Review Board'

Amend the bill in section 1 in §1777 in subsection 4 in the 2nd line (page 1, line 33 in L.D.) by inserting after the following: "institutions" the following: 'and includes the University of Maine System, the Maine Community College System and the Maine Maritime Academy'

Amend the bill in section 1 in §1778 in subsection 5 in the 2nd line (page 3, line 15 in L.D.) by striking the following: "the State's" and inserting the following: 'applicable'

Amend the bill by inserting after section 1 the following:

'Sec. 2. 5 MRSA §1815 is amended to read:

§1815. Requisitions required

Except as otherwise provided in chapters 141 to 155 and the rules and regulations adopted hereunder, services, supplies, materials and equipment ~~shall~~ must be purchased by or furnished to the State Government or any department or agency thereof only upon requisition to the State Purchasing Agent. A proposal, bid, contract renewal or amendment to, extension of or change to an existing contract valued at \$1,000,000 or more must go through the Procurement Review Board process pursuant to section 1815-A prior to issuance of a public request for proposals or bids by any department or agency. A proposal, bid, contract renewal or amendment to, extension of or change to an existing contract valued at less than \$1,000,000 must go through the Procurement Review Board process pursuant to section 1815-A if a majority of the voting members of the board vote to review the request. The State Purchasing Agent, or ~~his~~ the agent's authorized

COMMITTEE AMENDMENT

representative, shall examine each requisition submitted to ~~him~~ the agent by any department or agency of the State Government and may revise it as to quantity, quality or estimated cost after consultation with the department or agency concerned.

Sec. 3. 5 MRSA §1815-A is enacted to read:

§1815-A. Procurement Review Board

1. Board established. The Procurement Review Board, referred to in this section as "the board," is established pursuant to section 12004-G, subsection 29-E to carry out the duties of the board as provided in this section.

2. Membership; vacancy; compensation. The board consists of 7 members as follows:

A. Five members who have business or professional experience in the area of procurement, appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over state and local government matters and to confirmation by the Senate;

B. The Attorney General or the Attorney General's designee, who serves as a nonvoting member; and

C. The Treasurer of State or the treasurer's designee, who serves as a nonvoting member.

A member of the Legislature may not be appointed to or serve on the board.

In the case of a vacancy, the Governor may nominate an individual to fill the vacant position. If the Governor does not nominate an individual to fill a vacant position on the board within 30 days of the vacancy, the President of the Senate and the Speaker of the House of Representatives shall jointly appoint an individual to fill the vacancy. A member appointed by the President of the Senate and the Speaker of the House of Representatives is not subject to confirmation by the Legislature.

Members described in paragraph A are entitled to reimbursement for direct expenses of attendance at meetings of the board.

3. Terms. Members of the board appointed by the Governor serve 4-year terms. Board members may serve 2 consecutive terms.

4. Chair. The board shall elect annually a chair from among its members to serve for one year.

5. Powers and duties. The board has the following powers and duties:

A. To review, comment on and approve all requests for proposals, bids, contract renewals and amendments to, extensions of and other changes to existing contracts for the procurement of supplies, professional or artistic services, construction and real property and capital improvement leases procured by the State valued at \$1,000,000 or more; and

B. To review, upon a majority vote of its voting members, requests for proposals, bids, contract renewals and amendments to, extensions of and other changes to an existing contract valued at less than \$1,000,000.

1 **6. Staff support.** Upon a majority vote of its voting members, and to the extent
2 funds are available, the board may employ an executive director and staff support.

3 **7. Meetings.** The board shall meet at least twice each month. The board shall meet
4 in person. Each meeting of the board must be open to the public. The board shall keep
5 records and minutes of its activities under this section and meetings. These records and
6 minutes must be made easily accessible to the public and be provided expeditiously upon
7 request.

8 **8. Interests of members.** That a member of the board is employed by or holds an
9 interest in an entity doing business with or attempting to do business with the State does
10 not preclude the entity from doing business with or attempting to do business with the
11 State.

12 **9. Board approval required.** State departments and agencies shall submit all
13 requests for proposals, bids, contract renewals and amendments to, extensions of and
14 other changes to existing contracts to the board. A proposal, bid, contract renewal or
15 amendment to, extension of or other change to an existing contract valued at \$1,000,000
16 or more must be approved by the board before proceeding. If a proposal, bid, contract
17 renewal or amendment to, extension of or other change to an existing contract is valued at
18 less than \$1,000,000 and if the board takes no action to initiate a review within 30 days of
19 receiving the proposal, bid, contract renewal or amendment to, extension of or other
20 change to an existing contract, the affected department or agency may proceed with the
21 proposal, bid, contract renewal or amendment to, extension of or other change to an
22 existing contract without the review, comment or approval of the board. The State
23 Purchasing Agent, any other position that is authorized to make procurements and each
24 state department or agency shall cooperate with the board, provide information to the
25 board and respond to the board in the board's reviews, studies and hearings.

26 **10. Legal advice from Attorney General required for expenditures of \$3,000,000**
27 **or more.** Prior to seeking approval from the board, state departments and agencies shall
28 request and obtain legal advice from the Attorney General if an expenditure of
29 \$3,000,000 or more is reasonably expected as a result of a request for proposals or bids or
30 a contract renewal or amendment to, extension of or other change to an existing contract
31 under this section.

32 **11. Legal advice from Attorney General required in specific instances.** The
33 board shall request and obtain legal advice from the Attorney General on a proposed
34 contract if the board determines:

35 A. The contract may expose the State to substantial risk in the event of
36 nonperformance; or

37 B. The contract could reasonably be expected to incur costs to the State in excess of
38 \$3,000,000 over the full term of the proposed contract, exclusive of extensions or
39 amendments.

40 **12. Conditions for board approval of a contract.** The board shall approve the
41 award of a contract pursuant to subsection 9 when the board determines:

42 A. The service to be performed under the contract cannot be economically provided
43 by State Government;

1 B. The award of the contract is the most economical, effective and appropriate
2 means of fulfilling a demonstrated need;

3 C. The contract will not impair the ability of the department or agency to meet its
4 statutory duties and responsibilities; and

5 D. The contract does not diminish statewide or other budgetary cost-saving
6 initiatives.

7 **13. Sole source contract requirements.** A sole source contract subject to the
8 board's approval pursuant to subsection 9 may be approved when accompanied by written
9 justification from the department or agency that demonstrates that:

10 A. The contract is critical or essential to department or agency responsibilities or
11 operations;

12 B. Sufficient staffing or expertise is not available from within the department or
13 agency or through other governmental entities;

14 C. The supplies or services required are unique to the specific contractor; or

15 D. The services are of an urgent nature and only one known source can meet the
16 department's or agency's needs within the required time frame and the department or
17 agency has exercised due diligence and determined that the negotiated costs, fees or
18 rates are fair and responsible.

19 **14. Notification of legislative committees of jurisdiction.** Within 3 months of
20 determining that a contract has resulted in a cost overrun, each applicable state
21 department and agency shall notify the board and applicable legislative committees of
22 jurisdiction of the contract that resulted in the cost overrun and report the dollar amount
23 that has exceeded the contract.

24 **Sec. 4. 5 MRSA §12004-G, sub-§29-E** is enacted to read:

25 **29-E.**

26 <u>Procurement</u>	<u>Procurement Review</u>	<u>Expenses Only</u>	<u>5 MRSA §1815-A</u>
27 <u>Review</u>	<u>Board</u>		

28 **Sec. 5. Procurement Review Board; staggered terms.** Notwithstanding the
29 Maine Revised Statutes, Title 5, section 1815-A, subsection 3, of the initial members
30 appointed to the Procurement Review Board, the Governor shall appoint 2 members for
31 terms of 3 years, 2 members for terms of 2 years and one member for a term of one year.

32 **Sec. 6. Appropriations and allocations.** The following appropriations and
33 allocations are made.

34 **ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF**

35 **Purchases - Division of 0007**

36 Initiative: Provides funds for one Management Analyst II position and related costs.

COMMITTEE AMENDMENT "A" to S.P. 587, L.D. 1525

1	GENERAL FUND	2015-16	2016-17
2	POSITIONS - LEGISLATIVE COUNT	0.000	1.000
3	Personal Services	\$0	\$76,465
4	All Other	\$0	\$10,000
5			
6	GENERAL FUND TOTAL	<u>\$0</u>	<u>\$86,465</u>
7	ADMINISTRATIVE AND FINANCIAL		
8	SERVICES, DEPARTMENT OF		
9	DEPARTMENT TOTALS	2015-16	2016-17
10			
11	GENERAL FUND	\$0	\$86,465
12			
13	DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$86,465</u>
14	TRANSPORTATION, DEPARTMENT OF		
15	Administration 0339		
16	Initiative: Provides an allocation for 2 Procurement and Contract Specialist positions and		
17	related costs.		
18	HIGHWAY FUND	2015-16	2016-17
19	POSITIONS - LEGISLATIVE COUNT	0.000	2.000
20	Personal Services	\$0	\$139,400
21	All Other	\$0	\$10,000
22			
23	HIGHWAY FUND TOTAL	<u>\$0</u>	<u>\$149,400</u>
24	TRANSPORTATION, DEPARTMENT OF		
25	DEPARTMENT TOTALS	2015-16	2016-17
26			
27	HIGHWAY FUND	\$0	\$149,400
28			
29	DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$149,400</u>
30	TREASURER OF STATE, OFFICE OF		
31	Administration - Treasury 0022		
32	Initiative: Provides funding for one Public Service Coordinator I position and related		
33	costs.		

1	GENERAL FUND	2015-16	2016-17
2	POSITIONS - LEGISLATIVE COUNT	0.000	1.000
3	Personal Services	\$0	\$85,300
4	All Other	\$0	\$5,000
5			
6	GENERAL FUND TOTAL	<u>\$0</u>	<u>\$90,300</u>
7	TREASURER OF STATE, OFFICE OF		
8	DEPARTMENT TOTALS	2015-16	2016-17
9			
10	GENERAL FUND	\$0	\$90,300
11			
12	DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$90,300</u>
13	SECTION TOTALS	2015-16	2016-17
14			
15	GENERAL FUND	\$0	\$176,765
16	HIGHWAY FUND	\$0	\$149,400
17			
18	SECTION TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$326,165</u>
19			

20 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
21 section number to read consecutively.

22 SUMMARY

23 This amendment, which is the majority report of the committee, makes the following
24 changes to the bill.

25 1. It changes the title of the bill.

26 2. It amends the bill to clarify that the law's application must be consistent with all
27 applicable trade obligations and not only with the State's international trade obligations.

28 3. It amends the bill to include the University of Maine System, the Maine
29 Community College System and the Maine Maritime Academy in the definition of
30 "public agency."

31 4. It establishes the 7-member Procurement Review Board, which must review
32 proposals, bids, contract renewals and amendments to, extensions of and changes to
33 existing contracts valued over \$1,000,000 and, upon a majority vote of the board, may
34 review proposals, bids, contract renewals and amendments to, extensions of and changes
35 to existing contracts valued under \$1,000,000. The Attorney General and Treasurer of
36 State serve as nonvoting members of the board.

37 5. It requires the Procurement Review Board to meet at least twice per month in
38 person and make records and minutes of meetings accessible to the public.

6. It sets out requirements for sole source contracts under review by the board.
7. It requires each applicable state department and agency to notify the board and applicable legislative committee of jurisdiction within 3 months of determining that a contract has resulted in a cost overrun.
8. It adds an appropriations and allocations section.

FISCAL NOTE REQUIRED

(See attached)

**127th MAINE LEGISLATURE****LD 1525****LR 2207(02)****An Act To Encourage the Purchase of Products Made in Maine and in the United States and To Give Preference to Maine Businesses When Awarding Contracts**

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-459)
Committee: State and Local Government
Fiscal Note Required: Yes

Fiscal Note

	FY 2015-16	FY 2016-17	Projections FY 2017-18	Projections FY 2018-19
Net Cost (Savings)				
General Fund	\$0	\$176,765	\$178,873	\$185,545
Highway Fund	\$0	\$149,400	\$153,582	\$157,889
Appropriations/Allocations				
General Fund	\$0	\$176,765	\$178,873	\$185,54
Highway Fund	\$0	\$149,400	\$153,582	\$157,889

Fiscal Detail and Notes

The bill includes a General Fund appropriation of \$90,300 in fiscal year 2016-17 to the Office of the Treasurer of State for one Public Service Coordinator I position and related costs to prepare for and attend meetings of the Procurement Review Board. It also includes a General Fund appropriation of \$86,465 in fiscal year 2016-17 for the Department of Administrative and Financial Services for one Management Analyst II position to meet the contractual requirements concerning the origin of manufactured goods and construction materials.

The bill also includes a Highway Fund allocation of \$149,400 in fiscal year 2016-17 to the Department of Transportation for 2 Procurement And Contract Specialist positions and related costs to coordinate with the board.

Requiring all contracts for the construction, reconstruction, alteration, repair, improvement or maintenance of a public building or public work by a public agency, including the University of Maine System, Maine Maritime Academy and the Maine Community College System, to include a provision that the manufactured goods, including iron and steel, used or supplied in the performance of the contract or any subcontract must be manufactured in Maine or the United States could increase costs to the General Fund, Highway Fund and Federal Expenditures Fund as well as to the higher educational institutions if these goods are more expensive than those manufactured elsewhere and a waiver is not granted.