

MAINE STATE LEGISLATURE

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Date: 6/14/2017

Majority

(Filing No. S-274)

STATE AND LOCAL GOVERNMENT

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STATE OF MAINE

SENATE

128TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 447, L.D. 1295, Bill, "An Act To Create the Procurement Review Board"

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

'An Act To Create the Sole-source Procurement Review Board'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 5 MRSA c. 155, sub-c. 3 is enacted to read:

SUBCHAPTER 3

SOLE-SOURCE PROCUREMENT REVIEW BOARD

§1826-E. Sole-source Procurement Review Board

1. Board established. The Sole-source Procurement Review Board, referred to in this subchapter as "the board," is established pursuant to section 12004-G, subsection 32-A.

A. The board consists of 7 members:

(1) The Attorney General or the Attorney General's designee;

(2) The Treasurer of State or the Treasurer of State's designee; and

(3) Five members nominated by the Governor and confirmed by a majority vote of the joint standing committee of the Legislature having jurisdiction over state and local government matters and by a majority vote of the Senate. Each member must have demonstrated sufficient business or professional experience in the area of procurement to perform the functions of the board.

COMMITTEE AMENDMENT

1 The Attorney General and the Treasurer of State or their designees serve as nonvoting
2 members of the board. A member of the board may not be a member of the
3 Legislature. In the event that the Governor has not nominated an individual to fill a
4 vacancy on the board within 30 days of the vacancy, the President of the Senate shall
5 nominate an individual to fill the vacancy.

6 B. At the first meeting, the voting members of the board shall select a chair from
7 among its members. The chair serves for a one-year term.

8 C. A voting member of the board serves for a 4-year term. The Governor may
9 nominate a voting member for a 2nd term.

10 D. A member of the board employed by or holding an interest in an entity doing
11 business with or attempting to do business with the State does not by the member's
12 service on the board preclude that entity from doing business with or attempting to do
13 business with the State.

14 E. The board shall meet at least twice per month. Meetings of the board must be
15 conducted in person and must be open to the public. Written minutes of such
16 meetings must be created and made available for public inspection and copying.

17 F. A majority of the voting members of the board constitutes a quorum.

18 G. A member of the board receives no compensation but must be reimbursed for
19 expenses reasonably incurred in the performance of the member's duties.

20 **2. Authority and duties.** Notwithstanding any other provision of law, the board
21 shall review, comment upon and approve or disapprove all sole-source contracts and
22 contract renewals, amendments, extensions or other changes to an existing sole-source
23 contract for the procurement of supplies or services, including but not limited to
24 professional, artistic and construction services, and for real property and capital
25 improvement leases procured by the State. If the board takes no action to initiate the
26 review of a sole-source contract or contract renewal, amendment, extension or other
27 change to an existing sole-source contract within 30 days of submission by a department
28 or agency in accordance with subsection 3, the department or agency may proceed
29 without the review, comment or approval of the board. The board may review, study and
30 hold public hearings concerning the implementation of its duties.

31 As used in this section, unless the context otherwise indicates, "sole-source contract"
32 means a contract that is not subject to the requirement of competitive bidding under
33 subchapter 1-A, including contracts for which the requirement of competitive bidding is
34 waived under section 1825-B, subsection 2 and contracts exempted from competitive
35 bidding under any other provision of law.

36 **3. Responsibilities of agencies.** State departments and agencies shall submit to the
37 board for approval all proposed sole-source contracts and contract renewals, amendments,
38 extensions or other changes to an existing sole-source contract. Each chief procurement
39 officer, state purchasing officer, procurement compliance monitor and state department or
40 agency shall cooperate with the board, provide information to the board and be
41 responsive to the board in the board's conduct of its reviews, studies and hearings.

1 **4. Advice of Attorney General.** The board shall timely seek legal advice from the
2 Attorney General regarding any proposed sole-source contract when the board determines
3 the contract:

4 A. May expose the State to substantial risk in the event of nonperformance; or

5 B. Could reasonably be expected to incur costs to the State in excess of \$3,000,000
6 over the full term of the proposed contract, exclusive of extensions or amendments.
7 Upon a majority vote of the voting members of the board, the board also may seek
8 legal review by and consult with the Attorney General on any contractual matter
9 subject to the board's approval.

10 **5. Approval criteria.** The board shall approve the award of a sole-source contract if
11 the board is satisfied that:

12 A. The department or agency has exercised due diligence in determining that the
13 costs, fees or rates negotiated are fair and responsible; and

14 B. The department or agency has demonstrated:

15 (1) The contract is critical or essential to department or agency responsibilities or
16 operations;

17 (2) Sufficient staffing or expertise is not available from within the department or
18 agency or through other government entities;

19 (3) The supplies or services required are unique to a specific contractor; or

20 (4) Timeliness in supporting department or agency responsibilities or operations
21 is an immediate concern through no fault of the department or agency and only
22 one known source can meet the department's or agency's needs within the
23 required time frame.

24 Upon a majority vote of its voting members that the conditions under paragraphs A and B
25 have not been satisfied, the board may reject a contract renewal, amendment, extension or
26 other change to an existing sole-source contract.

27 **6. Cost overrun.** A state department or agency shall notify the legislative
28 committee of jurisdiction of a sole-source contract that results in a cost overrun and shall
29 report the dollar amount of the overrun.

30 **7. Staff support.** Upon a majority vote of its voting members, the board may
31 employ an executive director, subject to appropriation. The board also may employ a
32 reasonable and necessary number of staff persons, subject to appropriation.

33 **8. Rulemaking.** The board may adopt rules to implement this section. Rules
34 adopted pursuant to this subsection are routine technical rules as defined in chapter 375,
35 subchapter 2-A.

36 **Sec. 2. 5 MRS**A §12004-G, sub-§32-A is enacted to read:

37 **32-A.**

1	All Other	\$3,000	\$3,000
2			
3	GENERAL FUND TOTAL	<u>\$29,280</u>	<u>\$30,068</u>
4	TREASURER OF STATE, OFFICE OF		
5	DEPARTMENT TOTALS	2017-18	2018-19
6			
7	GENERAL FUND	\$29,280	\$30,068
8			
9	DEPARTMENT TOTAL - ALL FUNDS	<u>\$29,280</u>	<u>\$30,068</u>
10	SECTION TOTALS	2017-18	2018-19
11			
12	GENERAL FUND	\$707,487	\$922,162
13			
14	SECTION TOTAL - ALL FUNDS	<u>\$707,487</u>	<u>\$922,162</u>
15			

SUMMARY

This amendment is the majority report of the committee. The amendment replaces the bill. The amendment establishes the Sole-source Procurement Review Board, which is required to review and approve or disapprove all sole-source contracts and contract renewals, amendments, extensions or other changes to an existing sole-source contract for the procurement of supplies or services, including but not limited to professional, artistic and construction services, and for real property and capital improvement leases procured by the State. The amendment also adds an appropriations and allocations section.

FISCAL NOTE REQUIRED

(See attached)



128th MAINE LEGISLATURE

LD 1295

LR 1518(02)

An Act To Create the Procurement Review Board

Fiscal Note for Bill as Amended by Committee Amendment
Committee: State and Local Government
Fiscal Note Required: Yes

"A" (S-274)

Fiscal Note

	FY 2017-18	FY 2018-19	Projections FY 2019-20	Projections FY 2020-21
Net Cost (Savings)				
General Fund	\$707,487	\$922,162	\$948,645	\$975,923
Appropriations/Allocations				
General Fund	\$707,487	\$922,162	\$948,645	\$975,923

Fiscal Detail and Notes

The Department of Administrative and Financial Services has indicated it will require 9.25 staff positions to provide support to the Sole-source Procurement Board. The bill includes General Fund appropriations of \$678,207 in fiscal year 2017-18 and \$892,094 in fiscal year 2018-19 for that purpose.

The State Treasurer has indicated the need for a part-time Management Analyst position to fulfill that agency's responsibilities under this bill. The bill includes General Fund appropriations of \$29,280 in fiscal year 2017-18 and \$30,068 in fiscal year 2018-19 to the Office of State Treasurer for that purpose.

The Department of Transportation could incur increased construction costs if the contracting process is extended and contractors need to accelerate their work to complete the contract on time. No estimate can be made of any additional cost at this time.

Additional costs to the Department of the Attorney General can be absorbed utilizing existing budgeted resources.