

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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.

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

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

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

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

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

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

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

**2. Authority and duties.** Notwithstanding any other provision of law, the board shall review, comment upon 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. If the board takes no action to initiate the review of a sole-source contract or contract renewal, amendment, extension or other change to an existing sole-source contract within 30 days of submission by a department or agency in accordance with subsection 3, the department or agency may proceed without the review, comment or approval of the board. The board may review, study and hold public hearings concerning the implementation of its duties.

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

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

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

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

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

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

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

B. The department or agency has demonstrated:

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

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

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

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

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

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

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

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

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

**32-A.**

State Procurement

Sole-source  
Procurement  
Review Board

Expenses Only

5 MRSA §1826-E

**Sec. 3. Initial terms of Sole-source Procurement Review Board.** Notwithstanding the Maine Revised Statutes, Title 5, section 1826-E, subsection 1, paragraph C, of the initial confirmed members of the Sole-source Procurement Review Board, the first member serves for a one-year term, the 2nd and 3rd members serve for 2-year terms and the 4th and 5th members serve for 3-year terms.

**Sec. 4. Appropriations and allocations.** The following appropriations and allocations are made.

**ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF**

**Purchases - Division of 0007**

Initiative: Establishes 8 full-time and one part-time Management Analyst II positions and one Secretary Associate position to provide support to the Sole-source Procurement Review Board.

<b>GENERAL FUND</b>	<b>2017-18</b>	<b>2018-19</b>
POSITIONS - LEGISLATIVE COUNT	9.250	9.250
Personal Services	\$650,907	\$855,694
All Other	\$27,300	\$36,400
<b>GENERAL FUND TOTAL</b>	<b>\$678,207</b>	<b>\$892,094</b>

**ADMINISTRATIVE AND FINANCIAL SERVICES,  
 DEPARTMENT OF  
 DEPARTMENT TOTALS  
 GENERAL FUND**

	<b>2017-18</b>	<b>2018-19</b>
<b>GENERAL FUND</b>	<b>\$678,207</b>	<b>\$892,094</b>
<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$678,207</b>	<b>\$892,094</b>

**TREASURER OF STATE, OFFICE OF**

**Administration - Treasury 0022**

Initiative: Provides funding for one part-time Management Analyst position and related costs to provide administrative support to the Sole-source Procurement Review Board.

<b>GENERAL FUND</b>	<b>2017-18</b>	<b>2018-19</b>
POSITIONS - LEGISLATIVE COUNT	0.500	0.500
Personal Services	\$26,280	\$27,068
All Other	\$3,000	\$3,000
<b>GENERAL FUND TOTAL</b>	<b>\$29,280</b>	<b>\$30,068</b>

<b>TREASURER OF STATE, OFFICE OF</b>		
<b>DEPARTMENT TOTALS</b>	<b>2017-18</b>	<b>2018-19</b>
<b>GENERAL FUND</b>	<b>\$29,280</b>	<b>\$30,068</b>
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<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$29,280</b>	<b>\$30,068</b>
<b>SECTION TOTALS</b>	<b>2017-18</b>	<b>2018-19</b>
<b>GENERAL FUND</b>	<b>\$707,487</b>	<b>\$922,162</b>
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<b>SECTION TOTAL - ALL FUNDS</b>	<b>\$707,487</b>	<b>\$922,162</b>

**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)**