

SB 177-FN – AS INTRODUCED

2013 SESSION

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SENATE BILL **177-FN**

AN ACT relative to the procurement process for state services and establishing a state contracting standards board.

SPONSORS: Sen. Soucy, Dist 18; Sen. Pierce, Dist 5; Sen. Woodburn, Dist 1; Rep. Perry, Straf 3; Rep. Gale, Hills 28; Rep. Goley, Hills 8

COMMITTEE: Finance

ANALYSIS

This bill establishes a state contracting standards board responsible for state service contracts.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

1 VIII. “Privatization contract” means an agreement or series of agreements between a state
2 contracting agency and a person, other than a nonprofit agency, in which such person agrees to
3 provide services valued at \$500,000 or more over the life of the contract that are substantially
4 similar to and in lieu of services provided, in whole or in part, by employees of such agency or by
5 employees of another state agency for such state agency. “Privatization contract” does not include an
6 agreement to only provide legal services, litigation support or management or financial consulting, or
7 a consultant services agreement with the department of administrative services to provide
8 professional architectural or design services on a project-by-project basis for only a period of time.

9 IX. “Comparative costs” means a comparison of the costs of entering into a privatization
10 contract to the costs of the state providing the services that are the subject of the privatization
11 contract, using a comparative costs methodology.

12 X. “Comparative costs analysis” means an examination of all direct and indirect costs to the
13 state and an examination of the effect of a proposed privatization contract on the public health and
14 safety of residents of the state who may utilize such privatized service.

15 XI. “Purchase of service agreement” means any contract between a state agency and a
16 nonprofit agency, partnership, or corporation for the purchase by the state of ongoing and routine
17 health and human services for clients of the department of health and human services and the
18 department of corrections.

19 XII. “Rebidding” means a state contracting agency’s requesting of proposals or qualifications
20 for a contract to provide services that are specific to an existing facility or program provided such
21 services are being provided under a contract in effect as of the effective date of this section.

22 XIII. “Established wage rate” means a minimum wage rate for employee positions with
23 duties that are substantially similar to the duties performed by a regular agency, which rate shall be
24 the lesser of step one of the grade or classification under which the comparable state agency
25 employee is paid, or the standard private sector wage rate for said position.

26 XIV. “Nonprofit agency” means any organization that is not a for-profit business and
27 provides services contracted for by the state, or a nonstate entity. It also means private institutions
28 of higher learning which receive state financial assistance.

29 21-V:2 State Contracting Standards Board Established.

30 I. There is established a state contracting standards board that shall consist of 13 members
31 appointed as follows:

32 (a) Whenever the governor is of a different political party than that which controls both
33 houses of the general court: 7 members shall be appointed by the governor, 2 members shall be
34 appointed by the speaker of the house of representatives, 2 members shall be appointed by the
35 president of the senate, one member shall be appointed by the majority leader of the senate and one
36 member by the majority leader of the house of representatives.

1 (b) Whenever the political party of the governor controls only one of the houses of the
2 general court: 7 members shall be appointed by the governor, one member shall be appointed by the
3 majority leader of the senate, one member shall be appointed by the majority leader of the house of
4 representatives, and 4 members shall be appointed by the highest ranking leader of the opposing
5 party of the applicable house of the general court.

6 (c) Whenever the political party of the governor also controls both houses of the general
7 court: 7 members shall be appointed by the governor, one member shall be appointed by the majority
8 leader of the senate, one member shall be appointed by the majority leader of the house of
9 representatives and 2 members shall be appointed by the minority leader of the house of
10 representatives and 2 members by the minority leader of the senate.

11 II.(a) Each member shall have demonstrated sufficient knowledge by education, training, or
12 experience in several of the following enumerated areas:

- 13 (1) Procurement.
- 14 (2) Contract negotiation, selection, and drafting.
- 15 (3) Contract risk assessment.
- 16 (4) Requests for proposals and real estate transactions.
- 17 (5) Business insurance and bonding.
- 18 (6) The code of ethics.
- 19 (7) Federal and state statutes, policies, and regulations.
- 20 (8) Outsourcing and privatization proposal analysis.
- 21 (9) Small and minority business enterprise development.
- 22 (10) Engineering and information technologies.
- 23 (11) Personnel and labor relations.

24 (b) Such education, training, or experience shall have been acquired over not less than a
25 continuous 5-year period and shall have been acquired within the 10-year period preceding such
26 appointment.

27 (c) Nothing in this section shall be construed to prohibit an appointing authority from
28 selecting a member of the general public who has demonstrated an interest in governmental ethics
29 and integrity to serve on the board as such appointing authority's appointee.

30 III. The chairperson of the board shall be appointed by the members of the board.

31 IV. The terms of the members shall be coterminous with the terms of the appointing
32 authority for each member. If any vacancy occurs on the board, the appointing authorities having
33 the power to make the appointment under the provisions of this section shall appoint a person in
34 accordance with the provisions of this section.

35 V. The state contracting standards board shall be an independent executive department.

36 VI. The chairperson of the board shall be compensated \$200 per diem up to a maximum of
37 \$30,000 annually. Other members of the board shall be compensated \$200 per diem up to a

1 maximum of \$25,000 annually. No person shall serve on the board who holds another state or
2 municipal, governmental position and no person on the board nor any spouse, child, stepchild, parent
3 or sibling of such person shall be directly or indirectly involved in any enterprise that does business
4 with the state.

5 VII. The commissioner of the department of administrative services or the commissioner's
6 designee shall serve as the executive director of the board and as an ex-officio, nonvoting member of
7 the board.

8 VIII. The board may employ secretaries, real estate examiners, contract specialists, forensic
9 fraud examiners, property and procurement specialists, paralegals, attorneys and such other
10 employees as the board deems necessary, all of whom shall be in the state classified service.

11 IX. The reasonable expenses of the state contracting standards board and its employees
12 shall be paid from the budget of the board upon the approval of the board.

13 X. No employee of the state contracting standards board shall hold another state or
14 municipal position, nor shall any such employee or any nonclerical employee or any spouse, child,
15 stepchild, parent or sibling of such employee of the board be directly or indirectly involved in any
16 enterprise that does business with the state. Each member and employee of the state contracting
17 standards board shall file, with the board and with the secretary of state, a financial statement
18 indicating all sources of business income of such person in excess of \$1,000, and the name of any
19 business with which such member or employee is associated. Such statement shall be a public
20 record. Financial statements for the preceding calendar year shall be filed with the secretary of state
21 on or before April 15th of each year if such employee or member held such a position during the
22 preceding calendar year.

23 XI. Any violation of the provisions of paragraphs VI or X shall constitute a violation of
24 RSA 21-G and may be the subject of a complaint and investigation filed and conducted in accordance
25 with the provisions of that chapter.

26 XII. The board shall adopt such rules as it deems necessary for the conduct of its internal
27 affairs.

28 XIII. Six members of the board shall constitute a quorum which shall be required for the
29 transaction of business by the board.

30 21-V:3 Uniform Procurement Code.

31 I. On or before January 1, 2014, the state contracting standards board shall prepare a
32 uniform procurement code applicable to state contracting and procurement processes for services,
33 including expenditures by municipalities that receive state funds.

34 II. Nothing in this section shall be construed to require the application of uniform
35 procurement code procedures when such procurement involves the expenditure of federal assistance
36 or contract funds and federal law provides applicable procurement procedures to the extent such
37 procedures are inconsistent with the uniform procurement code.

1 III. The uniform procurement code described in paragraph I shall be designed to:

2 (a) Establish uniform contracting standards and practices among the various state
3 contracting agencies.

4 (b) Simplify and clarify the state's laws governing contracting standards and
5 procurement policies and practices, including, but not limited to, procedures for competitive sealed
6 bids, competitive sealed proposals, small purchases, sole source procurements, emergency
7 procurements, and special procurements.

8 (c) Ensure the fair and equitable treatment of all businesses and persons who deal with
9 the procurement system of the state.

10 (d) Include a process to maximize the use of small contractors and minority business
11 enterprises.

12 (e) Provide increased economy in state procurement activities and maximize purchasing
13 value to the fullest extent possible, such that procurement does not occur unless it is anticipated to
14 reduce the cost of the same state-provided services by at least 10 percent.

15 (f) Ensure that the procurement of services by any state contracting agency is obtained
16 in a cost-effective and responsive manner.

17 (g) Preserve and maintain the existing contracting, procurement, disqualification, and
18 termination authority and discretion of any state contracting agency when such contracting and
19 procurement procedures represent best practices.

20 (h) Include a process to improve contractor and state contracting agency accountability.

21 (i) Include standards by which state contracting agencies shall evaluate proposals to
22 privatize state or quasi-public agency services and privatization contract bid proposals. Such
23 standards shall, at a minimum, include:

24 (1) A requirement for a comparative costs analysis to be completed prior to any state
25 or quasi-public agency decision to privatize services.

26 (2) Adequate notification requirements to affected employees and, where applicable,
27 certified bargaining agents.

28 (3) A requirement for the preparation of an employee impact statement, including
29 measures to be taken by the bidder to retain qualified state and quasi-public agency employees.

30 (4) A provision requiring state agencies and quasi-public agencies to provide
31 adequate information and resources to their employees for the purpose of encouraging and assisting
32 such state or quasi-public employees to organize and submit a bid to provide the services that are the
33 subject of such privatization contract.

34 (5) A requirement that bidders disclose all relevant information pertaining to past
35 performance, pending or concluded legal or regulatory proceedings or complaints, including, but not
36 limited to, compliance with fair employment practices and nondiscrimination standards and
37 compliance with federal fair employment and nondiscrimination standards.

1 (6) A requirement that where any applicable collective bargaining agreement allows
2 layoffs resulting from privatization, the contract offer available employee positions pursuant to the
3 contract to qualified regular employees of the agency whose state employment is terminated because
4 of such privatization contract provided such employees satisfy the hiring criteria of the contractor.

5 (7) Provisions for a fair wage according to objective standards.

6 (j) Provide that the renewal, modification, extension or rebidding of a privatization
7 agreement in effect on or before the effective date of this section, or reentered into after the effective
8 date of this section, shall be subject to the procurement code on and after January 1, 2015.

9 (k) Establish standards for leases and lease-purchase agreements and for the purchase
10 and sale of real estate.

11 (l) Provide a process for competitive sealed bids, competitive sealed proposals, small
12 purchases, sole source procurements, emergency procurements, special procurements, best value
13 selection, qualification based selection, and the conditions for their use.

14 IV. In preparing the uniform procurement code, the state contracting standards board shall
15 conduct a comprehensive review of existing state contracting and procurement laws, regulations, and
16 practices and shall utilize existing procurement procedures and guidelines that the board deems
17 appropriate.

18 V. Upon request by the state contracting standards board, each state agency engaged in
19 procurement shall provide the board, in a timely manner, with such procurement information as the
20 board deems necessary. The board shall have access to all information, files, and records related to
21 any state contracting agency in furtherance of this purpose. Nothing in this section shall be
22 construed to require the board's disclosure of documents that are exempt from disclosure under
23 RSA 91-A or that may be protected from disclosure under claim of an attorney-client privilege.

24 VI. The uniform procurement code shall be submitted to the general court for its approval.
25 The board shall file such code with the clerks of the house of representatives and the senate not later
26 than January 15, 2014, and not later than January 20, 2014, the speaker of the house of
27 representatives and the president pro tempore of the senate shall submit such code to the joint
28 standing committee of the general court having cognizance of matters relating to government
29 administration and state procurement. The committee shall hold a public hearing on such code and
30 shall report its recommendations, including any changes thereto, to the house of representatives and
31 the senate concerning the approval or rejection of the code. The general court shall take a vote on
32 such code not later than the end of the 2014 regular session.

33 21-V:4 Additional Duties of the State Contracting Standards Board. In addition to the
34 preparation of the uniform procurement code described in RSA 21-V:3, the duties of the state
35 contracting standards board shall include:

36 I. Recommending the repeal of repetitive, conflicting, or obsolete statutes concerning state
37 procurement.

1 II. Developing, publishing, and maintaining the uniform procurement code for all state
2 agencies engaged in procurement.

3 III. Assisting state agencies in complying with the code by providing guidance, models,
4 advice, and practical assistance to state agency staff related to:

5 (a) Buying the best service at the best price.

6 (b) Properly selecting contractors.

7 (c) Drafting contracts that achieve state goals and protect taxpayers' interest.

8 IV. Reviewing and certifying that a state agency's procurement processes are in compliance
9 with the code.

10 V. Biennially, recertifying each state agency's procurement processes and providing agencies
11 with notice of any certification deficiency.

12 VI. Defining the training requirements for state contracting agency procurement
13 professionals.

14 VII. Monitoring implementation of a state contracting portal on the state website and
15 making recommendations for improvement to the department of administrative services and the
16 department of information technology.

17 VIII. Defining the contract data retention requirements for state agencies concerning
18 retention of information on:

19 (a) The number and type of state contracts currently in effect state-wide.

20 (b) The dollar value of such contracts.

21 (c) A list of client agencies.

22 (d) A description of services purchased under such contracts.

23 (e) Contractor names.

24 (f) An evaluation of contractor performance.

25 (g) The availability of the information described in subparagraphs (a) through (f) on the
26 state website.

27 IX. Providing the governor and the joint standing committee of the general court having
28 cognizance of matters relating to government administration and state procurement with
29 recommendations concerning the uniform procurement code.

30 X. Approving an ethics training course for state employees involved in procurement and for
31 state contractors. Such ethics training course may be developed and provided by any person, firm or
32 corporation provided such course is approved by the state contracting standards board.

33 21-V:5 Annual Report. On or before November 1, the state contracting standards board shall
34 submit an annual report of its findings and any recommendations for proposed legislation to the
35 president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk,
36 the governor, and the state library.

37 2 Effective Date. This act shall take effect upon its passage.

SB 177 FISCAL NOTE

AN ACT relative to the procurement process for state services and establishing a state contracting standards board.

FISCAL IMPACT:

The Department of Administrative Services states this bill, **as introduced**, will increase state general fund expenditures by an indeterminable amount in FY 2013 and each year thereafter. The bill will have no fiscal impact on county and local expenditures, or state, county, and local revenues.

METHODOLOGY:

The Department of Administrative Services (DAS) states this bill would establish a state contracting standards board as an independent executive department and requires it to prepare a uniform procurement code. This bill would also require the state contracting standards board to assist state agencies in complying with the code by providing guidance, models, advice, and practical assistance, along with certifying state agency procurement practices comply with the uniform procurement code. The board is to be comprised of 13 members with the chairperson earning a \$200 per diem up to \$30,000 maximum annually while regular members earn \$200 per diem up to \$20,000 annually. Assuming all members received their maximum compensation for the year, compensation cost for the board alone would be \$330,000 per year (($\$25,000 \times 12$ regular board members) + ($\$30,000 \times 1$ chairperson = \$330,000)). The bill gives the board authority to hire classified staff but does not indicate how many classified staff would be needed. For this reason, DAS is unable to determine the financial impact of this bill.

This bill does not provide for an appropriation to pay the board member per diems.