

MAINE STATE LEGISLATURE

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RMU
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MAJORITY

L.D. 890

Date: 6/18/2013

(Filing No. S-303)

LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
SENATE
126TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT " " to S.P. 311, L.D. 890, Bill, "An Act To Buy American-made Products"

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

'Sec. 1. 5 MRSA c. 153, sub-c. 3 is enacted to read:

SUBCHAPTER 3

MAINE BUY AMERICA ACT

§1777. Short title

This Act may be known and cited as "the Maine Buy America Act."

§1778. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Emergency life safety and property safety goods. "Emergency life safety and property safety goods" means any goods that are part of or for addition to a system designed to prevent, respond to, alert regarding, suppress, control or extinguish an emergency or the cause of an emergency, or goods used to assist evacuation in the event of an emergency, that threatens life or property. "Emergency life safety and property safety goods" includes, but is not limited to, goods relating to systems or items for fire alarm, fire sprinkling, fire suppression, fire extinguishing, security, gas detection, intrusion detection, access control, video surveillance and recording, mass notification, public address, emergency lighting, patient wandering, infant tagging and nurse call.

2. Manufactured good. "Manufactured good" means:

A. An article, material or supply, including any preassembled items, brought to a construction site for incorporation into a public building or public work; and

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- 1 B. Articles, materials or supplies acquired for public use.
- 2 3. Manufactured in the United States. "Manufactured in the United States" means:
- 3 A. In the case of an iron or steel product, all manufacturing takes place in the United
- 4 States, except metallurgical processes involving the refinement of steel additives; and
- 5 B. In the case of a manufactured good, other than an iron or steel product:
- 6 (1) All of the manufacturing processes for the manufactured good take place in
- 7 the United States; and
- 8 (2) The origin of a manufactured good's components or subcomponents meets a
- 9 minimum level of domestic content, as defined in rules established by the
- 10 Department of Administrative and Financial Services pursuant to section 1780.
- 11 4. Public agency. "Public agency" means the State and its departments, agencies,
- 12 boards, commissions and institutions, but does not mean a municipality or school
- 13 administrative unit.
- 14 5. Public building or public work. "Public building or public work" means any
- 15 structure, building, highway, waterway, street, bridge, transit system, airport or other
- 16 betterment, work or improvement whether of a permanent or temporary nature and
- 17 whether for governmental or proprietary use. "Public building or public work" includes,
- 18 but is not limited to, any railway; street railway; subway; elevated and monorail
- 19 passenger rolling stock; passenger and rail rolling stock; self-propelled car; gallery car;
- 20 locomotive; passenger bus; wires, poles and equipment for electrification of a transit
- 21 system; rails; tracks; roadbed; guideway; elevated structure; buildings; schools; hospitals;
- 22 stations; terminals; docks; and shelters, and repairs to any such public buildings and
- 23 public works.
- 24 6. United States. "United States" means the United States of America and any
- 25 territory or insular possession subject to the jurisdiction of the United States.
- 26 §1779. Use of American-made materials
- 27 1. Mandatory contract provision. Notwithstanding any other provision of law,
- 28 each contract for the construction, reconstruction, alteration, repair, improvement or
- 29 maintenance of a public building or public work made by a public agency must contain a
- 30 provision that the manufactured goods, including iron and steel, used or supplied in the
- 31 performance of the contract or any subcontract to the contract must be manufactured in
- 32 the United States.
- 33 2. Exceptions. A public agency may apply to the Governor or the Governor's
- 34 designee for a waiver of the requirements of subsection 1 in any case or category of cases
- 35 in which the executive head of a public agency finds:
- 36 A. That the application of the requirements of subsection 1 would be inconsistent
- 37 with the public interest;
- 38 B. That the necessary manufactured goods are not produced in the United States in
- 39 sufficient and reasonably available quantities and of a satisfactory quality;

1 C. That inclusion of manufactured goods manufactured in the United States will
2 increase the cost of the overall project contract by an unreasonable amount, as
3 defined in rules established by the Department of Administrative and Financial
4 Services pursuant to section 1780; or

5 D. The cost of the total contract for the construction, reconstruction, alteration,
6 repair, improvement or maintenance of a public building or public work is below a
7 minimum project cost as established by rules of the Department of Administrative
8 and Financial Services pursuant to section 1780.

9 **3. Public review and comment.** The Department of Administrative and Financial
10 Services shall implement procedures to allow a reasonable amount of time for public
11 review and comment on a requested waiver under subsection 2 before making a finding
12 based on the request and shall publish on the department's publicly accessible website, or
13 in a newspaper of general circulation in the area of the proposed work, a detailed
14 justification for any waiver granted.

15 **4. Intentional violations.** The Department of Administrative and Financial Services
16 shall, after a hearing, debar a person, business or other entity from participation in
17 contracts or subcontracts with the State for 2 years if the department has reason to believe
18 that person, business or other entity has intentionally:

19 A. Affixed a label bearing a "Made in America" inscription, or any inscription with
20 the same meaning, to any manufactured good, including iron and steel, used in a
21 project to which this section applies when that manufactured good was not
22 manufactured in the United States;

23 B. Represented that any manufactured good, including iron and steel, used in a
24 project to which this section applies was manufactured in the United States when that
25 manufactured good was not manufactured in the United States; or

26 C. Violated any provision of this subchapter.

27 **5. International trade obligations.** This section must be applied in a manner
28 consistent with the State's obligations under any applicable international agreements
29 pertaining to government procurement.

30 **6. Exception for emergency life safety and property safety goods.** The provisions
31 of this subchapter do not apply to emergency life safety and property safety goods.

32 **§1780. Rules**

33 The Department of Administrative and Financial Services shall adopt routine
34 technical rules as described in chapter 375, subchapter 2-A to implement this subchapter.

35 **Sec. 2. Appropriations and allocations.** The following appropriations and
36 allocations are made.

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

38 **Purchases - Division of 0007**

39 Initiative: Provides funds for 2 Management Analyst I positions and related costs to
40 comply with the Maine Buy America Act.

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GENERAL FUND	2013-14	2014-15
POSITIONS - LEGISLATIVE COUNT	2.000	2.000
Personal Services	\$105,370	\$168,219
All Other	\$5,366	\$8,049
GENERAL FUND TOTAL	\$110,736	\$176,268

Sec. 3. Effective date. This Act takes effect June 1, 2014.'

SUMMARY

This amendment, which is the majority report of the Joint Standing Committee on Labor, Commerce, Research and Economic Development, establishes the Maine Buy America Act and requires that all contracts for the construction, reconstruction, alteration, repair, improvement or maintenance of a public building or public work made by a state agency, board, commission or institution contain a provision that the manufactured goods, including iron and steel, used or supplied in the performance of the contract or any subcontract under the contract must be manufactured in the United States. This requirement does not apply to municipalities or school administrative units.

This amendment requires that, in the case of a manufactured good other than an iron or steel product, all of the manufacturing processes take place in the United States and the origin of the manufactured good's components or subcomponents meet a minimum level of domestic content as established by rule.

Under the amendment, a public agency may apply to the Governor or the Governor's designee for a waiver of the requirement if the executive head of the public agency finds that the application of the requirement would be inconsistent with the public interest, that the necessary manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality or that inclusion of manufactured goods made in the United States will increase the cost of the overall project contract by an unreasonable amount. The Department of Administrative and Financial Services must develop rules regarding the Act, including rules to guide the waiver process and the process for public review and comment regarding requests for a waiver.

The amendment requires that if the Department of Administrative and Financial Services has reason to believe that any person, business or other entity has intentionally made fraudulent representations about the domestic content of a manufactured good or has intentionally violated any provision of the legislation, the department must, after a hearing, debar that person, business or other entity from contracts or subcontracts with the State for 2 years.



126th MAINE LEGISLATURE

LD 890

LR 402(02)

An Act To Buy American-made Products

Fiscal Note for Bill as Amended by Committee Amendment *A" (S-303)*
Committee: Labor, Commerce, Research and Economic Development
Fiscal Note Required: Yes

Fiscal Note

Potential current biennium cost increase - General Fund
Potential current biennium cost increase - Highway Fund

	FY 2013-14	FY 2014-15	Projections FY 2015-16	Projections FY 2016-17
Net Cost (Savings)				
General Fund	\$110,736	\$176,268	\$181,438	\$186,838
Appropriations/Allocations				
General Fund	\$110,736	\$176,268	\$181,438	\$186,838

Fiscal Detail and Notes

This bill includes a General Fund appropriation of \$110,736 in fiscal year 2013-14 and \$176,268 for 2 Management Analyst II positions within the Department of Administrative and Financial Services to comply with the Maine Buy America Act. Requiring all iron, steel and manufactured goods used or supplied in state public works projects be manufactured in the United States could increase the cost of such projects. Any cost increase would not be determined until bids are received.