

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

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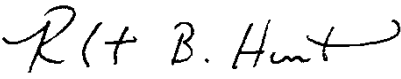
No. 407

H.P. 273

House of Representatives, February 12, 2015

An Act To Buy American-made Products

Reference to the Committee on State and Local Government suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative MARTIN of Eagle Lake.

1 **Be it enacted by the People of the State of Maine as follows:**

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

3 **SUBCHAPTER 3**

4 **MAINE BUY AMERICA ACT**

5 **§1777. Short title**

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

7 **§1778. Definitions**

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

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

19 **2. Manufactured good.** "Manufactured good" means:

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

22 B. Articles, materials or supplies acquired for public use.

23 **3. Manufactured in the United States.** "Manufactured in the United States" means:

24 A. In the case of an iron or steel product, all manufacturing takes place in the United
25 States, except metallurgical processes involving the refinement of steel additives; and

26 B. In the case of a manufactured good, other than an iron or steel product:

27 (1) All of the manufacturing processes for the manufactured good take place in
28 the United States; and

29 (2) The origin of a manufactured good's components or subcomponents meets a
30 minimum level of domestic content, as defined in rules established by the
31 Department of Administrative and Financial Services pursuant to section 1780.

32 **4. Public agency.** "Public agency" means the State and its departments, agencies,
33 boards, commissions and institutions, but does not mean a county, municipality or school
34 administrative unit.

1 **5. Public building or public work.** "Public building or public work" means any
2 structure, building, highway, waterway, street, bridge, transit system, airport or other
3 betterment, work or improvement whether of a permanent or temporary nature and
4 whether for governmental or proprietary use. "Public building or public work" includes,
5 but is not limited to, any railway; street railway; subway; elevated and monorail
6 passenger rolling stock; passenger and rail rolling stock; self-propelled car; gallery car;
7 locomotive; passenger bus; wires, poles and equipment for electrification of a transit
8 system; rails; tracks; roadbed; guideway; elevated structure; buildings; schools; hospitals;
9 stations; terminals; docks; and shelters, and repairs to any such public buildings and
10 public works.

11 **6. United States.** "United States" means the United States of America and any
12 territory or insular possession subject to the jurisdiction of the United States.

13 **§1779. Use of American-made materials**

14 **1. Mandatory contract provision.** Notwithstanding any other provision of law,
15 each contract for the construction, reconstruction, alteration, repair, improvement or
16 maintenance of a public building or public work made by a public agency must contain a
17 provision that the manufactured goods, including iron and steel, used or supplied in the
18 performance of the contract or any subcontract to the contract must be manufactured in
19 the United States.

20 **2. Exceptions.** A public agency may apply to the Governor or the Governor's
21 designee for a waiver of the requirements of subsection 1 in any case or category of cases
22 in which the executive head of a public agency finds:

23 A. That the application of the requirements of subsection 1 would be inconsistent
24 with the public interest;

25 B. That the necessary manufactured goods are not produced in the United States in
26 sufficient and reasonably available quantities and of a satisfactory quality;

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

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

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

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

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

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

12 C. Violated any provision of this subchapter.

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

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

18 **§1780. Rules**

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

21 **Sec. 2. Effective date.** This Act takes effect September 1, 2016.

22 **SUMMARY**

23 This bill establishes the Maine Buy America Act and requires that all contracts for
24 the construction, reconstruction, alteration, repair, improvement or maintenance of a
25 public building or public work made by a state agency, board, commission or institution
26 contain a provision that the manufactured goods, including iron and steel, used or
27 supplied in the performance of the contract or any subcontract under the contract must be
28 manufactured in the United States. This requirement does not apply to municipalities or
29 school administrative units.

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

34 Under the Act, a public agency may apply to the Governor or the Governor's designee
35 for a waiver of the requirement if the executive head of the public agency finds that the
36 application of the requirement would be inconsistent with the public interest, that the
37 necessary manufactured goods are not produced in the United States in sufficient and
38 reasonably available quantities and of a satisfactory quality or that inclusion of

1 manufactured goods made in the United States will increase the cost of the overall project
2 contract by an unreasonable amount. The Department of Administrative and Financial
3 Services is directed to develop rules regarding the Act, including rules to guide the
4 waiver process and the process for public review and comment regarding requests for a
5 waiver.

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

12 The bill provides that the provisions of this legislation must be applied in a manner
13 consistent with the State's obligations under any applicable international agreements
14 pertaining to government procurement.