

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

SECOND REGULAR SESSION-2016

Legislative Document

No. 1525

S.P. 587

In Senate, January 6, 2016

**An Act To Encourage the Purchase of Products Made in Maine and
in the United States and To Give Preference to Maine Businesses
When Awarding Contracts**

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

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

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator SAVIELLO of Franklin.

Cosponsored by Representative BLACK of Wilton and

Senators: BAKER of Sagadahoc, CYRWAY of Kennebec, LANGLEY of Hancock, PATRICK of Oxford, WHITTEMORE of Somerset, WOODSOME of York.

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 **MATERIALS, SUPPLIERS AND VENDORS**

5 **§1777. Definitions**

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

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

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

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

20 B. An article, material or supply acquired for public use.

21 **3. Manufactured in Maine or in the United States.** "Manufactured in Maine or in
22 the United States" means:

23 A. In the case of an iron or steel product, all manufacturing takes place in Maine or
24 another state in the United States, except metallurgical processes involving the
25 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 Maine or another state in 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 railroad rolling stock; self-propelled car; gallery
7 car; locomotive; passenger bus; wires, poles and equipment for electrification of a transit
8 system; rails; tracks; roadbed; guideway; elevated structure; building; school; hospital;
9 station; terminal; dock; and shelter and repairs to any such public buildings and public
10 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 **§1778. Use of materials manufactured in Maine or in the United States**

14 **1. Mandatory contract provision.** Notwithstanding any other provision of law, a
15 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 Maine or in 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 Maine or in the
26 United States in sufficient and reasonably available quantities and of a satisfactory
27 quality;

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

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

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

1 United States. This requirement does not apply to counties, municipalities or school
2 administrative units.

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

7 The bill provides that a public agency may apply to the Governor or the Governor's
8 designee for a waiver of the requirement if the executive head of the public agency finds
9 that the application of the requirement would be inconsistent with the public interest, that
10 the necessary manufactured goods are not produced in Maine or in the United States in
11 sufficient and reasonably available quantities and of a satisfactory quality or that
12 inclusion of manufactured goods made in Maine or in the United States will increase the
13 cost of the overall project contract by an unreasonable amount. The Department of
14 Administrative and Financial Services is directed to develop rules regarding this
15 legislation, including rules to guide the waiver process and the process for public review
16 and comment regarding requests for a waiver.

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

23 The bill gives preference in the awarding of contracts to businesses located in the
24 State.

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