

# MAINE STATE LEGISLATURE

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# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 956

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S.P. 311

In Senate, March 9, 2017

### **An Act To Establish the Maine Buy America and Build Maine Act**

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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 JACKSON of Aroostook.  
Cosponsored by Speaker GIDEON of Freeport and  
Senators: BREEN of Cumberland, DAVIS of Piscataquis, LIBBY of Androscoggin,  
SAVIELLO of Franklin, Representatives: BLACK of Wilton, FECTEAU of Biddeford,  
MARTIN of Eagle Lake, MARTIN of Sinclair.

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 AND BUILD MAINE ACT**

5 **§1777. Short title**

6 This Act may be known and cited as "the Maine Buy America and Build Maine 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. Department.** "Department" means the Department of Administrative and  
11 Financial Services.

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

21 **3. In-state contractor.** "In-state contractor" means an individual residing in this  
22 State or a business based in this State. "In-state contractor" includes:

23 A. If an individual, an individual who has a physical address in this State at which  
24 the individual has established residency and has filed a Maine tax return for at least  
25 the 2 years immediately prior to bidding on a state contract; or

26 B. If a business, a business that has a physical address in this State at which it  
27 conducts business, including interviewing applicants for employment by the business  
28 and hiring and employing staff, and:

29 (1) Has filed a Maine tax return or paid Maine employment taxes for at least the  
30 2 years immediately prior to bidding on a state contract; or

31 (2) If the business does not meet the requirements of subparagraph (1), an  
32 officer, if the business is a corporation, a partner in the business or the sole  
33 proprietor must meet the requirements of paragraph A.

34 **4. Manufactured good.** "Manufactured good" means:

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

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

4 **5. Manufactured in the United States.** "Manufactured in the United States" means:

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

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

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

10 (2) The origin of the manufactured good's components or subcomponents meets  
11 a minimum level of domestic content, as defined in rules established by the  
12 department pursuant to section 1780.

13 **6. Public agency.** "Public agency" means the State and its departments, agencies,  
14 boards, commissions and institutions but does not mean a county, municipality or school  
15 administrative unit.

16 **7. Public building or public work.** "Public building or public work" means any  
17 structure, building, highway, waterway, street, bridge, transit system, airport or other  
18 betterment, work or improvement whether of a permanent or temporary nature and  
19 whether for governmental or proprietary use. "Public building or public work" includes,  
20 but is not limited to, any railway; street railway; subway; elevated and monorail  
21 passenger rolling stock; passenger and rail rolling stock; self-propelled car; gallery car;  
22 locomotive; passenger bus; wires, poles and equipment for electrification of a transit  
23 system; rails; tracks; roadbed; guideway; elevated structure; school; hospital; station;  
24 terminal; dock; and shelter; and repairs to any such public building or public work.

25 **8. United States.** "United States" means the United States of America and any  
26 territory or insular possession subject to the jurisdiction of the United States.

27 **§1779. Use of American-made materials**

28 **1. Mandatory contract provision.** Notwithstanding any other provision of law to  
29 the contrary, a contract for the construction, reconstruction, alteration, repair,  
30 improvement or maintenance of a public building or public work made by a public  
31 agency must contain a provision that the manufactured goods, including iron and steel,  
32 used or supplied in the performance of the contract or any subcontract to the contract  
33 must be manufactured in the United States.

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

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

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

3 C. That inclusion of manufactured goods manufactured in the United States will  
4 increase the cost of the overall project contract by an unreasonable amount, as  
5 defined in rules established by the department pursuant to section 1780; or

6 D. The cost of the total contract for the construction, reconstruction, alteration,  
7 repair, improvement or maintenance of a public building or public work is below a  
8 minimum project cost as established by rules of the department pursuant to section  
9 1780.

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

15 **4. Intentional violations.** The department shall, after a hearing, debar a person,  
16 business or other entity from participation in contracts or subcontracts with the State for 2  
17 years if the department has reason to believe that person, business or other entity has  
18 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. Preference for in-state contractors**

33 **1. Award of substantially similar bids; opportunity to match.** In addition to the  
34 requirements of Title 26, chapter 15 and notwithstanding any other provision of law to  
35 the contrary, except as provided in subsection 2, the department, in awarding a bid for the  
36 construction, reconstruction, alteration, repair, improvement or maintenance of a public  
37 building or public work or for services provided to or on behalf of the State, shall award  
38 the bid to an in-state contractor if that in-state contractor's bid is substantially similar to  
39 other submitted bids. If an in-state contractor submits a bid that is substantially higher  
40 than other submitted bids, the department shall give that in-state contractor the  
41 opportunity to match the lowest bid submitted. If more than one in-state contractor

1 submits a bid that is substantially similar to other submitted bids, each must be given the  
2 opportunity to revise and resubmit that contractor's bid.

3 **2. Exception.** If the department determines, by a preponderance of evidence, that a  
4 bid submitted by an in-state contractor is frivolous or that the in-state contractor is  
5 incapable of satisfactorily completing the contract, the department may refuse to award  
6 the bid to that in-state contractor.

7 **3. Grievance; investigation; mediation.** An in-state contractor that is not awarded  
8 a bid pursuant to subsection 1 may request, within 30 days of the award of the bid, the  
9 Attorney General to investigate the bidding process and award to determine whether the  
10 procedure in subsection 1 was adhered to by the department or, if the contract was not  
11 awarded pursuant to subsection 2, whether the department's determination was valid. If  
12 the Attorney General determines that the department has not followed the procedure  
13 specified in subsection 1, the Attorney General may act as a mediator in a dispute  
14 between the in-state contractor and the department.

15 **§1781. Rules**

16 The department shall adopt routine technical rules as described in chapter 375,  
17 subchapter 2-A to implement this subchapter.

18 **Sec. 2. Effective date.** This Act takes effect September 1, 2018.

19 **SUMMARY**

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

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

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

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

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

10           The bill also requires that, in the award of a bid for the construction, reconstruction,  
11 alteration, repair, improvement or maintenance of a public building or public work or for  
12 services to be provided to or on behalf of the State, if 2 or more bids are submitted that  
13 are substantially similar, preference must be given to the bid submitted by an in-state  
14 contractor. If the bid submitted by an in-state contractor is higher than the lowest bid  
15 submitted by a contractor that is not an in-state contractor, the in-state contractor must be  
16 given the opportunity to match the lowest bid submitted.