

MAINE STATE LEGISLATURE

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Amendment Name: Amendment CA (S-486) (LD 1280 2020)

Date: 9/1/2020

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Date: (Filing No. S-)

STATE AND LOCAL GOVERNMENT

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**STATE OF MAINE
SENATE
129TH LEGISLATURE
SECOND SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 400, L.D. 1280, Bill, “An Act To Establish the Maine Buy American and Build Maine Act”

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

'Sec. 1. 5 MRSA §1743, first ¶, as repealed and replaced by PL 2001, c. 271, §1, is amended to read:

The Department of Administrative and Financial Services through the Bureau of General Services shall award a contract in accordance with this section and chapter 168 for any public improvement that the State or any of its agencies hold in fee involving a total cost in excess of \$100,000, except contracts for professional, architectural and engineering services. The bureau may reject any public improvement bid, qualification package or proposal when it determines that to do so is in the best interests of the State. The contract must be awarded by competitive bid as provided in subsection 2 or by the bid method provided in subsections 3 to 7 for alternative methods of project delivery.

Sec. 2. 5 MRSA §1811, sub-§1, as amended by PL 1991, c. 780, Pt. Y, §62, is further amended to read:

1. Purchases. To purchase all services, supplies, materials and equipment required by the State Government or by any department or agency thereof, subject to chapters 141 to 155 and chapter 168;

A. The Director of the Bureau of General Services may establish dates by which departments and agencies of State Government must order standard forms that each department or agency requires, and to determine the quantity of each standard form to be printed in order to obtain savings resulting from volume purchasing;

Sec. 3. 5 MRSA §1812, first ¶, as amended by PL 1991, c. 780, Pt. Y, §67, is further amended to read:

The terms "services," "supplies," "materials" and "equipment" as used in this chapter mean any and all services, articles or things that are used by or furnished to the State or

COMMITTEE AMENDMENT

1 any department or agency thereof, and any and all printing, binding, publication of laws,
2 journals and reports. Except as provided in chapters 141 to 155 and chapter 168, any and
3 all services, supplies, materials and equipment needed by one or more departments or
4 agencies of the State Government must be directly purchased or contracted for by the
5 Director of the Bureau of General Services, as may be determined from time to time by
6 rules adopted pursuant to chapters 141 to 155 and chapter 168, which rules the
7 Department of Administrative and Financial Services is authorized and empowered to
8 make. It is the intent and purpose of this chapter that the Director of the Bureau of
9 General Services purchase collectively all services, supplies, materials and equipment for
10 the State or any department or agency thereof in a manner that will best secure the
11 greatest possible economy consistent with the grade or quality of the services, supplies,
12 materials and equipment best adapted for the purposes for which they are needed.
13 Whenever supplies and materials are available for purchase that are composed in whole
14 or in part of recycled materials and are shown by the seller, supplier or manufacturer to
15 be equal in quality and are competitively priced, except for paper and paper products, the
16 Director of the Bureau of General Services shall purchase such recycled supplies and
17 materials. The Director of the Bureau of General Services shall also review procurement
18 procedures and bid specifications for the purchase of products and materials to ensure, to
19 the maximum extent feasible, the purchase of products or materials that are made with
20 recycled materials or may be recycled or reused once discarded. For the purposes of this
21 section and section 1812-B, "recycled materials" means materials that are composed in
22 whole or in part of elements that are reused or reclaimed.

23 **Sec. 4. 5 MRSA §1819** is amended to read:

24 **§1819. Unlawful purchases**

25 Whenever any department or agency of the State Government, required by chapters
26 141 to 155 and chapter 168 and rules ~~and regulations~~ adopted pursuant ~~thereto~~, to those
27 chapters applying to the purchase of services, supplies, materials or equipment through
28 the State Purchasing Agent, ~~shall contract contracts~~ for the purchase of such services,
29 supplies, materials or equipment contrary to chapters 141 to 155 and chapter 168 or the
30 rules ~~and regulations~~ made ~~hereunder~~ under those chapters, such contract ~~shall be~~ is void
31 and ~~have~~ has no effect. If any such department or agency purchases any services,
32 supplies, materials or equipment contrary to chapters 141 to 155 and chapter 168 or rules
33 ~~and regulations~~ made ~~hereunder~~ under those chapters, the head of such department or
34 agency ~~shall be~~ is personally liable for the costs thereof, and, if such services, supplies,
35 materials or equipment are so unlawfully purchased and paid for out of state ~~moneys~~
36 money, the amount thereof may be recovered in the name of the State in an appropriate
37 action instituted ~~therefor~~ for that recovery.

38 **Sec. 5. 5 MRSA c. 168** is enacted to read:

39 **CHAPTER 168**

40 **MAINE BUY AMERICAN AND BUILD MAINE ACT**

1 **§2046. Short title**

2 This Act may be known and cited as "the Maine Buy American and Build Maine
3 Act."

4 **§2047. Definitions**

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

7 **1. Department.** "Department" means the Department of Administrative and
8 Financial Services.

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

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

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

23 B. If a business, a business or a subsidiary of the business that has a physical address
24 in this State at which it conducts business, including interviewing applicants for
25 employment by the business or a subsidiary of the business and hiring and employing
26 staff, and:

27 (1) Has filed a Maine tax return or paid Maine employment taxes for at least the
28 2 years immediately prior to bidding on a state contract;

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

32 (3) If the business or a subsidiary of the business does not meet the requirements
33 of subparagraph (1) or (2), at least 60% of the individuals employed by the
34 business are residents of this State. For purposes of this subparagraph, an
35 individual is a resident of this State if the individual meets the requirements of
36 Title 21-A, section 112 and filed a Maine income tax return the previous year.

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

38 A. An article, material or supply valued over \$500, including any preassembled
39 items, brought to a construction site for incorporation into a public building or public
40 work; and

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

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

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

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

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

9 (2) The origin of the manufactured good's components meets a minimum level of
10 domestic content, as defined in rules established by the department pursuant to
11 section 2050; or

12 (3) The manufactured good is assembled in the United States.

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; locomotive; passenger bus; wires, poles
21 and equipment for electrification of a transit system; rails; tracks; roadbed; guideway;
22 elevated structure; school; hospital; station; terminal; dock; shelter; and repairs to any
23 such public building or public work.

24 **8. Public improvement.** "Public improvement" means the construction,
25 reconstruction, alteration, repair, improvement or maintenance of a public building or
26 public work made by a public agency other than the Department of Transportation or the
27 Maine Turnpike Authority.

28 **9. United States.** "United States" means the United States of America and any
29 territory or insular possession subject to the jurisdiction of the United States.

30 **§2048. Use of American-made materials**

31 **1. Mandatory contract provision.** Notwithstanding any provision of law to the
32 contrary, a contract for a public improvement must contain a provision that the
33 manufactured goods, including iron, cement and steel, used or supplied in the
34 performance of the contract or any subcontract to the contract must be manufactured in
35 the United States.

36 **2. Procurement.** Notwithstanding any provision of law to the contrary,
37 manufactured goods purchased by a public agency must be manufactured in the United
38 States.

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

4 A. That the application of the requirements of subsection 1 or 2 would be
5 inconsistent with the public interest;

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

8 C. That inclusion of manufactured goods manufactured in the United States will
9 increase the cost of the overall public improvement or procurement contract by an
10 unreasonable amount, as defined in rules established by the department pursuant to
11 section 2050; or

12 D. The total cost of the contract for a public improvement or purchase of
13 manufactured goods by a public agency is below a minimum project cost as
14 established by rules of the department pursuant to section 2050.

15 **4. Public review and comment.** The department shall implement procedures to
16 allow a reasonable amount of time for public review and comment on a requested waiver
17 under subsection 3 before making a finding based on the request and shall publish on the
18 department's publicly accessible website or, in the case of a public improvement, in a
19 newspaper of general circulation in the area of the proposed work a detailed justification
20 for any waiver granted.

21 **5. Intentional violations.** The department shall, after a hearing, debar a person,
22 business or other entity from participation in contracts or subcontracts with the State for 2
23 years if the department has reason to believe that person, business or other entity has
24 intentionally:

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

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

32 C. Violated any provision of this chapter.

33 **6. International trade obligations.** The requirements of this section do not apply to
34 the extent they violate or are inconsistent with international agreements pertaining to
35 government procurement.

36 **7. Exception for emergency life safety and property safety goods.** The provisions
37 of this chapter do not apply to emergency life safety and property safety goods.

38 **8. Federal compliance.** The requirements of this section do not apply to the extent
39 they violate or are inconsistent with federal funding requirements.

1 **§2049. Preference for in-state contractors**

2 Notwithstanding any provision of law to the contrary, the department shall follow the
3 requirements of this section.

4 **1. Award of substantially similar bids.** In addition to the requirements of Title 26,
5 chapter 15, public agencies, in awarding a bid for a public improvement, services
6 provided to or on behalf of the State or the purchase of manufactured goods, shall award
7 the bid to an in-state contractor if that in-state contractor's bid is substantially similar to
8 other submitted bids.

9 **2. Opportunity to match; public improvements.** If, pursuant to section 1743-A,
10 an in-state contractor submits a bid for a public improvement that is substantially similar
11 to but substantially higher than other submitted bids, the public agency shall give the in-
12 state contractor the opportunity to match the lowest bid submitted. If more than one in-
13 state contractor submits a bid that is substantially similar to but substantially higher than
14 other submitted bids, the public agency shall give each in-state contractor the opportunity
15 to revise and resubmit that in-state contractor's bid.

16 **3. Opportunity to match; procurements.** If, pursuant to section 1825-B, an in-
17 state contractor submits a bid that is substantially similar to but substantially higher than
18 other submitted bids, the public agency shall give the in-state contractor the opportunity
19 to match the lowest bid submitted. If more than one in-state contractor submits a bid that
20 is substantially similar to but substantially higher than other submitted bids, the public
21 agency shall give each in-state contractor the opportunity to revise and resubmit that in-
22 state contractor's bid.

23 **4. Exception.** If the public agency determines, by a preponderance of evidence, that
24 a bid submitted by an in-state contractor is frivolous or that the in-state contractor is
25 incapable of satisfactorily completing the contract, the department may refuse to award
26 the bid to that in-state contractor.

27 **5. Federal compliance.** The requirements of this section do not apply to the extent
28 they violate or are inconsistent with federal funding requirements.

29 **§2050. Rules**

30 The department shall adopt rules necessary to implement this chapter. Rules adopted
31 pursuant to this section are routine technical rules as defined in chapter 375, subchapter
32 2-A.

33 **Sec. 6. Effective date.** This Act takes effect July 1, 2021.'

34 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
35 section number to read consecutively.

36 **SUMMARY**

37 This amendment, which strikes and replaces the bill, applies the buy American
38 requirement and the opportunity to match portions of the bill to procurements by state
39 agencies. It exempts the Department of Transportation and the Maine Turnpike
40 Authority from the buy American requirement. It adds subsidiaries of businesses to the

1 definition of "in-state contractor." It limits the buy American requirement to goods
2 costing more than \$500. It clarifies that both the buy and build requirements must be
3 applied consistent with federal funding requirements. It prevents application of the buy
4 American requirements when they violate or are inconsistent with international
5 agreements or federal funding requirements.



129th MAINE LEGISLATURE

LD 1280

LR 750(02)

An Act To Establish the Maine Buy American and Build Maine Act

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: State and Local Government

Fiscal Note Required: Yes

Fiscal Note

Potential current biennium cost increase - All Funds

Potential current biennium cost increase - Higher educational institutions

Fiscal Detail and Notes

Requiring all procurement bids and subsequent contracts to contain a provision that the manufactured goods be manufactured in the United States could increase costs to all state agencies and public higher educational institutions if contracted goods are less expensive than those manufactured in the United States and a waiver is not granted. This provision does not apply to the Department of Transportation's construction contracts. The Department of Administrative and Financial Services (DAFS) has indicated it will require additional positions to review all contracts and to implement and enforce the waiver process. However, full information was not provided pertaining to the salary grade and ranges required for these positions and no positions are included in the bill at this time.