

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1411

S.P. 461

In Senate, April 12, 2021

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

Received by the Secretary of the Senate on April 8, 2021. Referred to the Committee on State and Local Government pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by President JACKSON of Aroostook.
Cosponsored by Representative BRYANT of Windham and
Senators: BALDACCI of Penobscot, CLAXTON of Androscoggin, MAXMIN of Lincoln,
RAFFERTY of York, Representatives: DOUDERA of Camden, Speaker FECTEAU of
Biddeford, MATLACK of St. George.

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

2 **Sec. 1. 5 MRSA §1743, first ¶**, as repealed and replaced by PL 2001, c. 271, §1, is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

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

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

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

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

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

23 The terms "services," "supplies," "materials" and "equipment" as used in this chapter
24 mean any and all services, articles or things that are used by or furnished to the State or any
25 department or agency thereof, and any and all printing, binding, publication of laws,
26 journals and reports. Except as provided in chapters 141 to 155 and chapter 168, any and
27 all services, supplies, materials and equipment needed by one or more departments or
28 agencies of the State Government must be directly purchased or contracted for by the
29 Director of the Bureau of General Services, as may be determined from time to time by
30 rules adopted pursuant to chapters 141 to 155 and chapter 168, which rules the Department
31 of Administrative and Financial Services is authorized and empowered to make. It is the
32 intent and purpose of this chapter that the Director of the Bureau of General Services
33 purchase collectively all services, supplies, materials and equipment for the State or any
34 department or agency thereof in a manner that will best secure the greatest possible
35 economy consistent with the grade or quality of the services, supplies, materials and
36 equipment best adapted for the purposes for which they are needed. Whenever supplies
37 and materials are available for purchase that are composed in whole or in part of recycled
38 materials and are shown by the seller, supplier or manufacturer to be equal in quality and
39 are competitively priced, except for paper and paper products, the Director of the Bureau
40 of General Services shall purchase such recycled supplies and materials. The Director of
41 the Bureau of General Services shall also review procurement procedures and bid
42 specifications for the purchase of products and materials to ensure, to the maximum extent
43 feasible, the purchase of products or materials that are made with recycled materials or may
44 be recycled or reused once discarded. For the purposes of this section and section 1812-B,

1 "recycled materials" means materials that are composed in whole or in part of elements that
2 are reused or reclaimed.

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

4 **§1819. Unlawful purchases**

5 Whenever any department or agency of the State Government, required by chapters
6 141 to 155 and chapter 168 and rules ~~and regulations~~ adopted pursuant ~~thereto~~, to those
7 chapters applying to the purchase of services, supplies, materials or equipment through the
8 State Purchasing Agent, ~~shall contract contracts~~ for the purchase of such services, supplies,
9 materials or equipment contrary to chapters 141 to 155 and chapter 168 or the rules ~~and~~
10 ~~regulations~~ made hereunder under those chapters, such contract ~~shall be~~ is void and ~~have~~
11 has no effect. If any such department or agency purchases any services, supplies, materials
12 or equipment contrary to chapters 141 to 155 and chapter 168 or rules ~~and regulations~~ made
13 ~~hereunder~~ under those chapters, the head of such department or agency ~~shall be~~ is
14 personally liable for the costs thereof, and, if such services, supplies, materials or
15 equipment are so unlawfully purchased and paid for out of state ~~moneys~~ money, the amount
16 thereof may be recovered in the name of the State in an appropriate action instituted
17 ~~therefor~~ for that recovery.

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

19 **CHAPTER 168**

20 **MAINE BUY AMERICAN AND BUILD MAINE ACT**

21 **§2046. Short title**

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

23 **§2047. Definitions**

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

26 **1. Department.** "Department" means the Department of Administrative and Financial
27 Services.

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

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

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

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

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

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

13 (3) If the business or a subsidiary of the business does not meet the requirements
14 of subparagraph (1) or (2), at least 60% of the individuals employed by the business
15 are residents of this State. For purposes of this subparagraph, an individual is a
16 resident of this State if the individual meets the requirements of Title 21-A, section
17 112 and filed a Maine income tax return the previous year.

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

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

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

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

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

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

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

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

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

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

37 **7. Public building or public work.** "Public building or public work" means any
38 structure, building, highway, waterway, street, bridge, transit system, airport or other
39 betterment, work or improvement whether of a permanent or temporary nature and whether
40 for governmental or proprietary use. "Public building or public work" includes, but is not
41 limited to, any railway; street railway; locomotive; passenger bus; wires, poles and
42 equipment for electrification of a transit system; rails; tracks; roadbed; guideway; elevated

1 structure; school; hospital; station; terminal; dock; shelter; and repairs to any such public
2 building or public work.

3 **8. Public improvement.** "Public improvement" means the construction,
4 reconstruction, alteration, repair, improvement or maintenance of a public building or
5 public work made by a public agency other than the Department of Transportation or the
6 Maine Turnpike Authority.

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

9 **§2048. Use of American-made materials**

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

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

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

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

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

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

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

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

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

40 A. Affixed a label bearing a "Made in America" inscription, or any inscription with
41 the same meaning, to any manufactured good, including iron, cement and steel, used

1 in a project to which this section applies when that manufactured good was not
2 manufactured in the United States;

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

6 C. Violated any provision of this chapter.

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

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

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

14 **§2049. Preference for in-state contractors**

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

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

22 **2. Opportunity to match; public improvements.** If, pursuant to section 1743-A, an
23 in-state contractor submits a bid for a public improvement that is substantially similar to
24 but substantially higher than other submitted bids, the public agency shall give the in-state
25 contractor the opportunity to match the lowest bid submitted. If more than one in-state
26 contractor submits a bid that is substantially similar to but substantially higher than other
27 submitted bids, the public agency shall give each in-state contractor the opportunity to
28 revise and resubmit that in-state contractor's bid.

29 **3. Opportunity to match; procurements.** If, pursuant to section 1825-B, an in-state
30 contractor submits a bid that is substantially similar to but substantially higher than other
31 submitted bids, the public agency shall give the in-state contractor the opportunity to match
32 the lowest bid submitted. If more than one in-state contractor submits a bid that is
33 substantially similar to but substantially higher than other submitted bids, the public agency
34 shall give each in-state contractor the opportunity to revise and resubmit that in-state
35 contractor's bid.

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

40 **5. Grievance; investigation; mediation.** An in-state contractor that is not awarded a
41 bid pursuant to subsection 1, 2 or 3 may request, within 30 days of the award of the bid,
42 the Attorney General to investigate the bidding process and award to determine whether
43 the procedure in subsection 1, 2 or 3 was adhered to by the public agency or, if the contract

1 was not awarded pursuant to subsection 4, whether the agency's determination was valid.
2 If the Attorney General determines that the agency has not followed the procedure specified
3 in subsection 1, 2 or 3, the Attorney General may act as a mediator in a dispute between
4 the in-state contractor and the agency.

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

7 **§2050. Rules**

8 The department shall adopt rules necessary to implement this chapter. Rules adopted
9 pursuant to this section are routine technical rules as defined in chapter 375, subchapter
10 2-A.

11 **Sec. 6. Effective date.** This Act takes effect September 1, 2022.

12 **SUMMARY**

13 This bill establishes the Maine Buy American and Build Maine Act and requires that
14 all contracts for the construction, reconstruction, alteration, repair, improvement or
15 maintenance of a public building or public work made by a state agency, board, commission
16 or institution, except for the Department of Transportation and the Maine Turnpike
17 Authority, contain a provision that any manufactured good valued over \$500, including
18 iron, cement and steel, and any article, material or supply acquired for public use used or
19 supplied in the performance of the contract or any subcontract to the contract must be
20 manufactured in the United States. This requirement does not apply to counties,
21 municipalities or school administrative units.

22 The bill requires, in the case of a manufactured good valued over \$500, other than an
23 iron, cement or steel product, all of the manufacturing processes to take place in the United
24 States, the origin of the manufactured good's components to meet a minimum level of
25 domestic content as established by rule or the manufactured good to be assembled in the
26 United States.

27 Under the Act, a public agency may apply to the Governor or the Governor's designee
28 for a waiver of the requirement if the executive head of the public agency finds that the
29 application of the requirement would be inconsistent with the public interest, that the
30 necessary manufactured goods are not produced in the United States in sufficient and
31 reasonably available quantities and of a satisfactory quality, that inclusion of manufactured
32 goods made in the United States will increase the cost of the overall project contract by an
33 unreasonable amount or that the total cost of the contract is below a minimum project cost
34 established by rule. The Department of Administrative and Financial Services is directed
35 to adopt rules to implement the Act.

36 The bill requires that, if the department has reason to believe that any person, business
37 or other entity has intentionally made fraudulent representations about the domestic content
38 of a manufactured good or has intentionally violated any provision of the Act, the
39 department must, after a hearing, debar that person, business or other entity from contracts
40 or subcontracts with the State for 2 years.

41 The bill provides that the provisions of this legislation must be applied in a manner
42 consistent with the State's obligations under any applicable international agreements

1 pertaining to government procurement and do not apply to emergency life safety and
2 property safety goods.

3 The bill also requires that, in the award of a bid for the construction, reconstruction,
4 alteration, repair, improvement or maintenance of a public building or public work, for
5 services to be provided to or on behalf of the State or for the purchase of manufactured
6 goods, if 2 or more bids are submitted that are substantially similar, preference must be
7 given to the bid submitted by an in-state contractor, which includes a business at which at
8 least 60% of the employees are residents of Maine. If the bid submitted by an in-state
9 contractor is higher than the lowest bid submitted by a contractor that is not an in-state
10 contractor, the in-state contractor must be given the opportunity to match the lowest bid
11 submitted. The preference provisions do not apply to the extent they violate or are
12 inconsistent with federal funding requirements.

13 An in-state contractor may request that the Attorney General investigate the bidding
14 and award process and act as a mediator between the in-state contractor and the public
15 agency.