

# MAINE STATE LEGISLATURE

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L.D. 1983

Date: 4/9/24

(Filing No. S-677)

**MAJORITY**  
**STATE AND LOCAL GOVERNMENT**

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**STATE OF MAINE**  
**SENATE**  
**131ST LEGISLATURE**  
**SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 812, L.D. 1983, "An Act to Establish the Maine Buy American and Build Maine Act"

Amend the bill by striking out all of sections 5, 6 and 7 and inserting the following:

**Sec. 5. 5 MRSA §1815**, as amended by PL 2023, c. 516, Pt. B, §11, is further amended to read:

**§1815. Requisitions required**

Except as otherwise provided in chapters 141 to 154, chapter 160 and this chapter and the rules and regulations adopted under those chapters and this chapter, services, supplies, materials and equipment may be purchased by or furnished to the State or any department or agency thereof only upon requisition to the Chief Procurement Officer. The Chief Procurement Officer, or the officer's authorized representative, shall examine each requisition submitted to the officer by any department or agency of the State and may revise it as to quantity, quality or estimated cost after consultation with the department or agency concerned.

**Sec. 6. 5 MRSA §1819**, as amended by PL 2023, c. 516, Pt. B, §15, is further amended to read:

**§1819. Unlawful purchases**

Whenever any department or agency of the State, pursuant to chapters 141 to 154, chapter 160 and this chapter and rules and regulations adopted under those chapters and this chapter applying to the purchase of services, supplies, materials or equipment through the Chief Procurement Officer, contracts for the purchase of such services, supplies, materials or equipment contrary to chapters 141 to 154, chapter 160 and this chapter or the rules and regulations adopted under those chapters and this chapter, that contract is void and has no effect. If any such department or agency purchases any services, supplies, materials or equipment contrary to chapters 141 to 154, chapter 160 and this chapter or rules and regulations adopted under those chapters and this chapter, the head of that department or agency is personally liable for the costs thereof, and if the services, supplies,

**COMMITTEE AMENDMENT**

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1 materials or equipment are so unlawfully purchased and paid for out of state money, the  
2 amount thereof may be recovered in the name of the State in an appropriate action instituted  
3 therefor.

4 Sec. 7. 5 MRSA c. 160 is enacted to read:

5 CHAPTER 160

6 MAINE BUY AMERICAN AND BUILD MAINE ACT

7 §1911. Short title

8 This chapter may be known and cited as "the Maine Buy American and Build Maine  
9 Act."

10 §1912. Definitions

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

13 1. Department. "Department" means the Department of Administrative and Financial  
14 Services.

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

24 3. Employer. "Employer" means a person, firm or corporation that employs one or  
25 more employees on a public improvement, including contractors and subcontractors, and  
26 that is required or eligible to make contributions or other payments into the Unemployment  
27 Compensation Fund under Title 26, section 1141.

28 4. Hiring hall. "Hiring hall" means a service provided by a labor organization or an  
29 entity associated with a labor organization that places employees with an employer under  
30 a collective bargaining agreement or otherwise places employees with employers. For  
31 purposes of this subsection, "labor organization" has the same meaning as in Title 35-A,  
32 section 3210-H, subsection 1, paragraph B.

33 5. In-state contractor. "In-state contractor" means an individual residing in this State  
34 or a business based in this State. "In-state contractor" includes:

35 A. An individual who has a physical address in this State at which the individual has  
36 established residency and has filed a Maine income tax return for at least the 2 years  
37 immediately prior to bidding on a state contract;

38 B. A business or a subsidiary of the business that has a physical address in this State  
39 at which it conducts business, including, but not limited to, interviewing applicants for  
40 employment and hiring and employing staff at the prevailing wage rate for the

1 occupational classification in the area of employment in accordance with Title 26,  
2 section 1308; and

3 C. A business that uses the services of contractors or subcontractors that use a hiring  
4 hall within the local labor market in order to meet their local workforce needs and:

5 (1) Has filed a Maine income tax return or paid employment taxes in the State for  
6 at least the 2 years immediately prior to bidding on a state contract;

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

11 (3) If the business or a subsidiary of the business does not meet the requirements  
12 of subparagraph (1) or (2), at least 65% of the individuals employed by the business  
13 or subsidiary are residents of this State. For purposes of this subparagraph, an  
14 individual is a resident of this State if the individual meets the requirements of Title  
15 21-A, section 112 and has filed a Maine income tax return the previous year.

16 **6. Local labor market.** "Local labor market" means labor market areas in this State  
17 as defined by the Department of Labor and any labor market outside of this State if any  
18 portion of that labor market is within 75 miles of the border of this State or has a hiring hall  
19 within the local labor market.

20 **7. Manufactured good.** "Manufactured good" means:

21 A. An article, material or supply valued over \$5,000 per item or per single purchase  
22 order, including any preassembled items, brought to a construction site for  
23 incorporation into a public building or public work; and

24 B. Articles, materials or supplies acquired by a public agency and valued over \$5,000  
25 per item or per single purchase order.

26 "Manufactured good" does not include aggregates, such as cement and cementitious  
27 materials or aggregates such as stone, sand, gravel or aggregate binding agents or additives.

28 **8. Manufactured in the United States.** "Manufactured in the United States" means:

29 A. In the case of an iron or steel product, all manufacturing takes place in the United  
30 States from the initial melting stage through the application of coatings; and

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

32 (1) The manufactured good was manufactured in the United States;

33 (2) The cost of the components of the manufactured good that are mined, produced  
34 or manufactured in the United States is greater than 65% of the total cost of all  
35 components of the manufactured good, unless another standard for determining the  
36 minimum amount of domestic content of the manufactured good has been  
37 established under state law or department rule; or

38 (3) In the case of construction materials, all manufacturing processes for the  
39 construction material occurred in the United States.

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**9. Public agency.** "Public agency" means the State and its departments, agencies, boards, commissions and institutions, county and municipal governmental units and school administrative units.

**10. Public building or public work.** "Public building or public work" means any structure, building, highway, waterway, street, bridge, transit system, airport or other betterment, work or improvement whether of a permanent or temporary nature and whether for governmental or proprietary use. "Public building or public work" includes, but is not limited to, any railway; street railway; locomotive; passenger bus; wires, poles and equipment for electrification of a transit system; rails; tracks; roadbed; guideway; elevated structure; school; hospital; station; terminal; dock; shelter; and repairs to any such public building or public work. "Public building or public work" includes water systems, including drinking water and wastewater systems; electric transmission facilities and systems; utilities; and broadband infrastructure.

**11. Public improvement.** "Public improvement" means the construction, reconstruction, alteration, repair, improvement or maintenance of a public building or public work made by a public agency.

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

**§1913. Use of materials manufactured in the United States**

**1. Mandatory contract provision.** Notwithstanding any provision of law to the contrary, a contract for a public improvement must contain a provision that the manufactured goods, including but not limited to iron and steel, used or supplied in the performance of the contract or any subcontract to the contract must be manufactured in the United States.

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

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

- A. That the application of the requirements of subsection 1 or 2 would be inconsistent with the public interest;
- B. That the types of iron, steel, manufactured goods or construction materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- C. That inclusion of iron, steel, manufactured goods or construction materials produced in the United States will increase the cost of the overall public improvement or procurement contract by more than 25%.

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

# COMMITTEE AMENDMENT

1 5. Intentional violations. The department shall, after a hearing, debar an individual,  
2 business or other entity from participation in contracts or subcontracts with the State for 2  
3 years if the department has reason to believe that individual, business or other entity has  
4 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 but not limited to iron and  
7 steel, used in a project to which this section applies when that manufactured good was  
8 not manufactured in the United States;

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

12 C. Violated any provision of this chapter.

13 6. International trade obligations. The requirements of this section do not apply to  
14 the extent they violate or are inconsistent with international agreements pertaining to  
15 government procurement.

16 7. Exception for emergency life safety and property safety goods. The provisions  
17 of this chapter do not apply to emergency life safety and property safety goods.

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

20 **§1914. Preference for in-state contractors and use of local labor markets**

21 Notwithstanding any provision of law to the contrary, a public agency shall follow the  
22 requirements of this section.

23 1. Substantially similar bids; award of contract. In addition to the requirements of  
24 Title 26, chapter 15, public agencies, in awarding a contract for a public improvement,  
25 services provided to or on behalf of the State or the procurement of manufactured goods,  
26 shall award the contract to an in-state contractor if that in-state contractor's bid is  
27 substantially similar to other submitted bids. In consideration of substantially similar bids  
28 for public improvements or procurement of manufactured goods, public agencies shall  
29 award the contract to an in-state contractor that has a registered apprenticeship program  
30 under Title 26, chapter 37.

31 2. Public improvements. Public agencies, in awarding a contract for a public  
32 improvement project, shall require that at least 75% of employees hired by the contractor  
33 or a subcontractor of a public improvement be domiciled in a local labor market.

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

38 4. Grievance; investigation; mediation. An in-state contractor that is not awarded a  
39 contract pursuant to subsection 1 or 2 may request, within 30 days of the award of the  
40 contract, the Attorney General to investigate the bidding process and award to determine  
41 whether the procedure in subsection 1 or 2 was adhered to by the public agency awarding  
42 the contract or, if the contract was not awarded pursuant to subsection 3, whether the public  
43 agency's determination was valid. If the Attorney General determines that the public

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1 agency has not followed the procedure specified in subsection 1 or 2, the Attorney General  
2 may act as a mediator in a dispute between the in-state contractor and the public agency.

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

5 **§1915. Rules**

6 The department may adopt rules necessary to implement this chapter. Rules adopted  
7 pursuant to this section are major substantive rules as defined in chapter 375, subchapter  
8 2-A.

9 **§1916. Exception**

10 The provisions of this chapter do not apply to public improvement projects for which  
11 financing bonds have been approved before September 1, 2025.

12 **Sec. 8. 26 MRSA §1301, first ¶** is amended to read:

13 The Except as otherwise provided in Title 5, chapter 160, the State, counties, cities and  
14 towns, and every charitable or educational institution ~~which~~ that is supported in whole or  
15 in part by aid granted by the State or by any municipality shall, in the awarding of contracts  
16 for constructing, altering, repairing, furnishing or equipping its buildings or public works,  
17 give preference to ~~workmen~~ workers and to bidders for such contracts who are residents of  
18 this State, ~~provided as long as~~ the bids submitted by such resident bidders are equally  
19 favorable with bids submitted by contractors from without the State. This section ~~shall~~ does  
20 not apply to construction or repairs amounting to less than \$1,000 or to emergency work or  
21 to state road work.'

22 Amend the bill by striking out all of section 9 and inserting the following:

23 '**Sec. 9. Effective date.** This Act takes effect September 1, 2025.'

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

26 **SUMMARY**

27 This amendment, which is the majority report of the committee, makes the following  
28 changes to the Maine Buy American and Build Maine Act proposed in the bill.

29 1. It adds definitions of "employer," "hiring hall" and "local labor market."

30 2. It amends several other definitions in the Act.

31 3. It removes references to cement from several provisions in the Act.

32 4. It adds an exception to certain requirements of the Act when the requirements would  
33 increase the cost of the overall project by more than 25%.

34 5. It requires public agencies, and not just the Department of Administrative and  
35 Financial Services, to engage in a public comment period when requesting a waiver to the  
36 requirement that certain manufactured goods be manufactured in the United States.

37 6. It adds a preference for public improvements or procurement bids from in-state  
38 contractors with registered apprenticeship programs under the Maine Apprenticeship  
39 Program.

1 7. It adds a requirement that at least 75% of the employees hired by a contractor  
2 awarded a bid for a public improvement project be domiciled in a local labor market.

3 8. It removes the provision setting out a preference for in-state contractors bidding on  
4 procurement contracts.

5 9. It clarifies that construction materials are a manufactured good.

6 10. It changes the provision for rulemaking by the Department of Administrative and  
7 Financial Services from mandatory to optional and categorizes the rules as major  
8 substantive.

9 11. It adds an exception to the Act for public improvement projects for which financing  
10 bonds have been approved before the effective date of the Act.

11 12. It changes the effective date of the legislation to September 1, 2025.

12 The amendment also makes technical changes to the bill to update language to reflect  
13 laws passed during the Second Regular Session of the 131st Legislature.

14 **FISCAL NOTE REQUIRED**

15 (See attached)





# 131st MAINE LEGISLATURE

LD 1983

LR 80(02)

## An Act to Establish the Maine Buy American and Build Maine Act

Fiscal Note for Bill as Amended by Committee Amendment "A'(5677)"

Committee: State and Local Government

Fiscal Note Required: Yes

### Fiscal Note

Potential State Mandate - Unfunded  
Potential current biennium cost increase - All Funds

	FY 2023-24	FY 2024-25	Projections FY 2025-26	Projections FY 2026-27
<b>Net Cost (Savings)</b>				
Highway Fund	\$0	\$0	\$12,197,984	\$12,203,124
<b>Appropriations/Allocations</b>				
Highway Fund	\$0	\$0	\$12,197,984	\$12,203,124

#### State Mandates

##### Required Activity

Requires local units of government to include a provision in procurement bids and subsequent contracts for public improvements that manufactured goods used or supplied in the performance of the contract or any subcontract to the contract must be manufactured in the United States unless a waiver is received or certain exceptions are met.

Unit Affected	Local Cost
Counties	Significant
Municipalities	statewide
Schools	

The required local activities in this bill may represent a state mandate pursuant to the Constitution of Maine. If the bill does require a local unit of government to expand or modify its activities so as to necessitate additional expenditures from local revenue, the state mandate provisions of the Constitution of Maine require either: (1) General Fund appropriations be provided to fund at least 90% of any additional necessitated local costs of the mandate; or (2) a Mandate Preamble be added to the bill and two-thirds of the members of each House vote to exempt the mandate from the funding requirement. If the bill does represent a state mandate and neither one of these actions occurs, the local units of government will not be required to implement the mandated activities.

#### Fiscal Detail and Notes

The Department of Administrative and Financial Services (DAFS) has indicated it will require additional positions to review all contracts and to implement and enforce a waiver process. The annual costs for 2 Procurement Analyst I positions and 2 Planning and Research Associate I positions would be approximately \$380,000 starting in fiscal year 2024-25. As the bill requires DAFS administer the provisions of the bill within existing resources, no funding for positions is included. What this may mean to DAFS cannot be determined at this time.

CALS 6/7/78

The Department of Transportation (DOT) anticipates increased project construction costs as a result of decreased competition from out-of-state contractors and in-state contractors who choose not to bid because of the additional requirements and administrative costs associated with compliance with the requirements. The DOT will require a Highway Fund allocation of \$11,750,000 for All Other and Capital Expenditures funding beginning in fiscal year 2025-26 to cover these increased costs and another \$447,984 for 2 EEO Program Analyst positions and 2 Procurement Analyst/Technician positions to implement, administer and ensure compliance with the Maine Buy American and Build Maine Act. It is noted that the original bill, which excluded DOT from its provisions, required DAFS to administer the bill within its existing resources. The committee amendment removed the exclusion of DOT from the bill but did not add DOT to the language requiring administration within existing resources. If the intent is that both DAFS and DOT implement the bill within existing resources, it is most likely to require a reduction or postponement of projects anticipated to be undertaken in order to remain within budgeted resources.

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 and other public agencies, including higher educational institutions, county and municipal units of government and local school administrative units, if contracted goods currently manufactured by non-United States sources are less expensive than those manufactured in the United States and a waiver is not granted. The provision of the bill that provides for the Office of the Attorney General, upon request within a 30 day period of contract award, to investigate and mediate grievances of in-state contractors may increase costs to the Office.