

# MAINE STATE LEGISLATURE

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# 131st MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2023

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Legislative Document

No. 1983

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S.P. 812

In Senate, May 22, 2023

### An Act to Establish the Maine Buy American 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 black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by President JACKSON of Aroostook.

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2 **Sec. 1. 5 MRSA §1743, first ¶**, as repealed and replaced by PL 2001, c. 271, §1, is  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 160 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 §1745, first ¶**, as amended by PL 2011, c. 691, Pt. B, §12, is  
13 further amended to read:

14 The trustees, commissioners or other persons in charge of any public improvement in  
15 an amount in excess of \$100,000, which is subject to chapters 141 to 155 and chapter 160  
16 shall, after consultation with the Director of the Bureau of General Services, advertise for  
17 sealed proposals not less than 2 weeks in such papers as the Governor may direct. The last  
18 advertisement must be at least one week before the time named in the advertisement for the  
19 closing of such bids. Sealed proposals for any public improvements must be addressed to  
20 the trustees, commissioners or such other persons having the construction in charge and  
21 remain sealed until opened at the time and place stated in the advertisement or as the  
22 Governor may direct.

23 **Sec. 3. 5 MRSA §1811, sub-§1**, as amended by PL 1991, c. 780, Pt. Y, §62, is  
24 further amended to read:

25 **1. Purchases.** To purchase all services, supplies, materials and equipment required  
26 by the State Government or by any department or agency thereof, subject to chapters 141  
27 to 155; and chapter 160.

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

32 **Sec. 4. 5 MRSA §1812, first ¶**, as amended by PL 1991, c. 780, Pt. Y, §67, is  
33 further amended to read:

34 The terms "services," "supplies," "materials" and "equipment" as used in this chapter  
35 mean any and all services, articles or things that are used by or furnished to the State or any  
36 department or agency thereof, and any and all printing, binding, publication of laws,  
37 journals and reports. Except as provided in chapters 141 to 155 and chapter 160, any and  
38 all services, supplies, materials and equipment needed by one or more departments or  
39 agencies of the State Government must be directly purchased or contracted for by the  
40 Director of the Bureau of General Services, as may be determined from time to time by  
41 rules adopted pursuant to chapters 141 to 155 and chapter 160, which rules the Department  
42 of Administrative and Financial Services is authorized and empowered to make. It is the  
43 intent and purpose of this chapter that the Director of the Bureau of General Services

1 purchase collectively all services, supplies, materials and equipment for the State or any  
2 department or agency thereof in a manner that will best secure the greatest possible  
3 economy consistent with the grade or quality of the services, supplies, materials and  
4 equipment best adapted for the purposes for which they are needed. Whenever supplies and  
5 materials are available for purchase that are composed in whole or in part of recycled  
6 materials and are shown by the seller, supplier or manufacturer to be equal in quality and  
7 are competitively priced, except for paper and paper products, the Director of the Bureau  
8 of General Services shall purchase such recycled supplies and materials. The Director of  
9 the Bureau of General Services shall also review procurement procedures and bid  
10 specifications for the purchase of products and materials to ensure, to the maximum extent  
11 feasible, the purchase of products or materials that are made with recycled materials or may  
12 be recycled or reused once discarded. For the purposes of this section and section 1812-B,  
13 "recycled materials" means materials that are composed in whole or in part of elements that  
14 are reused or reclaimed.

15 **Sec. 5. 5 MRSA §1815** is amended to read:

16 **§1815. Requisitions required**

17 Except as otherwise provided in chapters 141 to 155 and chapter 160 and the rules ~~and~~  
18 ~~regulations~~ adopted ~~hereunder~~ pursuant to those chapters, services, supplies, materials and  
19 equipment shall must be purchased by or furnished to the State Government or any  
20 department or agency thereof only upon requisition to the State Purchasing Agent. The  
21 State Purchasing Agent, or ~~his~~ the State Purchasing Agent's authorized representative, shall  
22 examine each requisition submitted to ~~him~~ the State Purchasing Agent by any department  
23 or agency of the State Government and may revise it as to quantity, quality or estimated  
24 cost after consultation with the department or agency concerned.

25 **Sec. 6. 5 MRSA §1819** is amended to read:

26 **§1819. Unlawful purchases**

27 Whenever any department or agency of the State Government, required by chapters  
28 141 to 155 and chapter 160 and rules ~~and regulations~~ adopted pursuant ~~thereto~~, to those  
29 chapters applying to the purchase of services, supplies, materials or equipment through the  
30 State Purchasing Agent, ~~shall contract~~ contracts for the purchase of such services, supplies,  
31 materials or equipment contrary to chapters 141 to 155 and chapter 160 or the rules ~~and~~  
32 ~~regulations~~ made ~~hereunder~~ under those chapters, such contract ~~shall be~~ is void and ~~have~~  
33 has no effect. If any such department or agency purchases any services, supplies, materials  
34 or equipment contrary to chapters 141 to 155 and chapter 160 or rules ~~and regulations~~ made  
35 ~~hereunder~~ under those chapters, the head of such department or agency ~~shall be~~ is  
36 personally liable for the costs thereof, and, if such services, supplies, materials or  
37 equipment are so unlawfully purchased and paid for out of state ~~moneys~~ money, the amount  
38 thereof may be recovered in the name of the State in an appropriate action instituted  
39 ~~therefor~~ for that recovery.

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

41 **CHAPTER 160**

42 **MAINE BUY AMERICAN AND BUILD MAINE ACT**

1           **§1911. Short title**

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

3           **§1912. Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7                 (2) The origin of the manufactured good's components meets a minimum level of  
8                 domestic content, as defined in rules established by the department pursuant to  
9                 section 1915; or

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

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

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

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

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

28           **§1913. Use of materials manufactured in the United States**

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

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

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

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

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

1 C. That inclusion of manufactured goods manufactured in the United States will  
2 increase the cost of the overall public improvement or procurement contract by an  
3 unreasonable amount, as defined in rules established by the department pursuant to  
4 section 1915; or

5 D. The total cost of the contract for a public improvement or purchase of manufactured  
6 goods by a public agency is below a minimum project cost as established by rules of  
7 the department pursuant to section 1915.

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

14 **5. Intentional violations.** The department shall, after a hearing, debar an individual,  
15 business or other entity from participation in contracts or subcontracts with the State for 2  
16 years if the department has reason to believe that individual, business or other entity has  
17 intentionally:

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

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

25 C. Violated any provision of this chapter.

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

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

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

33 **§1914. Preference for in-state contractors**

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

36 **1. Substantially similar bids; award of contract.** In addition to the requirements of  
37 Title 26, chapter 15, public agencies, in awarding a contract for a public improvement,  
38 services provided to or on behalf of the State or the purchase of manufactured goods, shall  
39 award the contract to an in-state contractor if that in-state contractor's bid is substantially  
40 similar to other submitted bids.

41 **2. Public improvements.** If, pursuant to section 1743-A, an in-state contractor  
42 submits a bid for a public improvement that is substantially similar to but substantially

1 higher than other submitted bids, the public agency shall give the bid from the in-state  
2 contractor a preference of 10% applied in a manner determined by the department in rules  
3 adopted pursuant to section 1915. If more than one in-state contractor submits a bid that is  
4 substantially similar to but substantially higher than other submitted bids, the public agency  
5 shall give each in-state contractor a preference of 10% applied in a manner determined by  
6 the department in rules adopted pursuant to section 1915.

7 **3. Procurements.** If, pursuant to section 1825-B, an in-state contractor submits a bid  
8 for a procurement that is substantially similar to but substantially higher than other  
9 submitted bids, the public agency shall give the bid from the in-state contractor a preference  
10 of 10% applied in a manner determined by the department in rules adopted pursuant to  
11 section 1915. If more than one in-state contractor submits a bid that is substantially similar  
12 to but substantially higher than other submitted bids, the public agency shall give each in-  
13 state contractor a preference of 10% applied in a manner determined by the department in  
14 rules adopted pursuant to section 1915.

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

19 **5. Grievance; investigation; mediation.** An in-state contractor that is not awarded a  
20 contract pursuant to subsection 1, 2 or 3 may request, within 30 days of the award of the  
21 contract, the Attorney General to investigate the bidding process and award to determine  
22 whether the procedure in subsection 1, 2 or 3 was adhered to by the public agency or, if the  
23 contract was not awarded pursuant to subsection 4, whether the public agency's  
24 determination was valid. If the Attorney General determines that the public agency has not  
25 followed the procedure specified in subsection 1, 2 or 3, the Attorney General may act as  
26 a mediator in a dispute between the in-state contractor and the public agency.

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

29 **§1915. 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. 8. Legislative intent.** It is the intent of the Legislature that the Department of  
34 Administrative and Financial Services administer the provisions of the Maine Buy  
35 American and Build Maine Act within existing resources.

36 **Sec. 9. Effective date.** This Act takes effect September 1, 2024.

37 **SUMMARY**

38 This bill establishes the Maine Buy American and Build Maine Act and requires that  
39 all contracts for the construction, reconstruction, alteration, repair, improvement or  
40 maintenance of a public building or public work made by a state agency, board, commission  
41 or institution, except for the Department of Transportation and the Maine Turnpike  
42 Authority, contain a provision that any manufactured good valued over \$5,000, including  
43 iron, cement and steel, and any article, material or supply acquired for public use used or



1 supplied in the performance of the contract or any subcontract to the contract must be  
2 manufactured in the United States. This requirement does not apply to counties,  
3 municipalities or school administrative units.

4 The bill requires, in the case of a manufactured good valued over \$5,000, other than an  
5 iron, cement or steel product, all of the manufacturing processes to take place in the United  
6 States, the origin of the manufactured good's components to meet a minimum level of  
7 domestic content as established by rule or the manufactured good to be assembled in the  
8 United States.

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

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

23 The bill provides that the provisions of this legislation must be applied in a manner  
24 consistent with the State's obligations under any applicable international agreements  
25 pertaining to government procurement and do not apply to emergency life safety and  
26 property safety goods.

27 The bill also requires that, in the award of a contract for the construction,  
28 reconstruction, alteration, repair, improvement or maintenance of a public building or  
29 public work, for services to be provided to or on behalf of the State or for the purchase of  
30 manufactured goods, if 2 or more bids are submitted that are substantially similar, the  
31 public agency shall give the bid from an in-state contractor a preference of 10% applied in  
32 a manner determined by the department in rules.

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

36 The department is required to administer the Maine Buy American and Build Maine  
37 Act within existing resources.