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Date: (Filing No. S-)

STATE AND LOCAL GOVERNMENT

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

COMMITTEE AMENDMENT “ ” to S.P. 374, L.D. 877, “An Act to Prohibit State Contracts with Companies Owned or Operated by the Government of the People's Republic of China”

Amend the bill by striking out the title and substituting the following:

'An Act to Increase Cybersecurity in Maine'

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

'Sec. 1. 5 MRSA c. 164 is enacted to read:

CHAPTER 164

CYBERSECURITY AND PROTECTION OF CRITICAL INFRASTRUCTURE

§2021. Definitions

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

1. Chief Information Officer. "Chief Information Officer" has the same meaning as in section 1972, subsection 2.

2. Foreign adversary. "Foreign adversary" means a foreign government or foreign nongovernment person whom the United States Secretary of Commerce has determined, pursuant to 15 Code of Federal Regulations, Section 7.4 (2024), has engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or the security and safety of United States persons.

3. Foreign adversary business entity. "Foreign adversary business entity" means any type of organization, entity or enterprise engaged in commerce, whether operated for profit, that is organized under the laws or rules of a foreign adversary, directly or indirectly

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1 owned or controlled by a foreign adversary or domiciled within the geographic borders of
2 a foreign adversary.

3 **4. Local governmental entity.** "Local governmental entity" means any local
4 government, political subdivision or school district and any other public or private agency,
5 person, partnership, corporation or business entity acting on behalf of any local
6 governmental entity.

7 **5. State agency.** "State agency" means the State, or any department, agency, board,
8 commission or other body of State Government, including publicly funded institutions of
9 higher education.

10 **§2022. Chief Information Officer to establish lists**

11 The Chief Information Officer shall establish and maintain:

12 **1. List of prohibited companies.** A list of companies, including foreign adversary
13 business entities, that pose a national security risk or a risk to the security and safety of
14 persons of the United States. The list must include, but is not limited to, all companies
15 identified by statute, regulation or official guidance from the United States Department of
16 Commerce, the Federal Communications Commission, the United States Department of
17 Homeland Security or any other appropriate federal agency as posing a national security
18 risk or a risk to the security and safety of persons of the United States; and

19 **2. List of prohibited information and communications technology and services.**
20 A list of information and communications technology and services that pose a national
21 security risk or a risk to the security and safety of persons of the United States. The list
22 must include, but is not limited to, all information and communications technology and
23 services identified by statute, regulation or official guidance from the United States
24 Department of Commerce, the Federal Communications Commission, the United States
25 Department of Homeland Security or any other appropriate federal agency as posing a
26 national security risk or a risk to the security and safety of persons of the United States.

27 The lists must be published on the publicly accessible website of the Department of
28 Administrative and Financial Services, Office of Information Technology and updated at
29 least annually.

30 **§2023. Prohibited contract, use or purchase by state agency**

31 Except as provided in sections 2027 and 2028, a state agency may not contract with a
32 company included on the list of prohibited companies established and maintained by the
33 Chief Information Officer pursuant to section 2022, subsection 1 or use, obtain or purchase
34 any information or communications technology or services included on the list of
35 prohibited information and communications technology and services established and
36 maintained by the Chief Information Officer pursuant to section 2022, subsection 2.

37 **§2024. Prohibited contract, use or purchase by local governmental entity**

38 Except as provided in section 2027, a local governmental entity may not use state funds
39 in a contract with a company included on the list of prohibited companies established and
40 maintained by the Chief Information Officer pursuant to section 2022, subsection 1 or use,
41 obtain or purchase any information or communications technology or services included on
42 the list of prohibited information and communications technology and services established
43 and maintained by the Chief Information Officer pursuant to section 2022, subsection 2.

1 **§2025. Indirect transfer of state funds**

2 A local governmental entity, when purchasing information or communications
3 technology or services or entering into a contract for goods or services, shall take all
4 reasonable steps to ensure state funds are not indirectly transferred to a company on the list
5 of prohibited companies maintained by the Chief Information Officer pursuant to section
6 2022, subsection 1.

7 **§2026. Prohibited contract, use or purchase by judicial branch and legislative branch**

8 Except as provided in sections 2027, 2029 and 2030, an office of the legislative branch
9 or judicial branch may not contract with a company included on the list of prohibited
10 companies established and maintained by the Chief Information Officer pursuant to section
11 2022, subsection 1 or use, obtain or purchase any information or communications
12 technology or services included on the list of prohibited information and communications
13 technology and services established and maintained by the Chief Information Officer
14 pursuant to section 2022, subsection 2.

15 **§2027. Exemption; law enforcement**

16 The prohibitions in sections 2023 and 2024 do not apply to law enforcement entities,
17 such as the State Police, a county sheriff's office and local law enforcement departments,
18 to the extent the prohibitions restrict a law enforcement entity's ability to protect the public
19 or investigate criminal activity.

20 **§2028. Waiver of prohibitions; executive branch**

21 Upon written request from a state agency, the Chief Information Officer may waive the
22 prohibitions imposed in sections 2023 and 2024 as long as the waiver does not pose a
23 national security risk or a risk to the security and safety of persons of the United States.

24 **§2029. Waiver of prohibitions; legislative branch**

25 The Legislative Council, established in Title 3, section 161, or its designee, may waive
26 the prohibitions imposed in sections 2023 and 2024 as long as the waiver does not pose a
27 national security risk or a risk to the security and safety of persons of the United States.

28 **§2030. Waiver of prohibitions; judicial branch**

29 The State Court Administrator under Title 4, section 15, or the State Court
30 Administrator's designee, may waive the prohibitions imposed in sections 2023 and 2024
31 as long as the waiver does not pose a national security risk or a risk to the security and
32 safety of persons of the United States.

33 **§2030-A. Certification required; civil violation**

34 A person that submits a bid or proposal for a contract with the State for goods or
35 services shall certify that the person is not a foreign adversary business entity. A person
36 that submits a false certification under this section commits a civil violation for which a
37 fine may be adjudged in an amount that is twice the amount of the contract for which the
38 bid or proposal was submitted or \$250,000, whichever is greater.

39 **§2030-B. Contracts void**

40 The following contracts entered into by a state agency on or after the effective date of
41 this chapter are void:

1 1. Foreign adversary business entity. A contract with a foreign adversary business
2 entity;

3 2. Prohibited company. A contract with a company included on the list of prohibited
4 companies established and maintained by the Chief Information Officer pursuant to section
5 2022, subsection 1 that was not granted a waiver under section 2028; and

6 3. Prohibited information or communications technology or services. A contract
7 to purchase information or communications technology or services included on the list of
8 prohibited information or communications technology or services established and
9 maintained by the Chief Information Officer pursuant to section 2022, subsection 2 that
10 was not granted a waiver under section 2028.

11 **§2030-C. Rules**

12 The department may adopt rules to implement this chapter. Rules adopted pursuant to
13 this section are routine technical rules as defined in chapter 375, subchapter 2-A.'

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

16 **SUMMARY**

17 This amendment, which is the majority report of the committee, replaces the bill and
18 changes the title. It requires the Chief Information Officer in the Department of
19 Administrative and Financial Services to establish and maintain a list of companies that
20 pose a national security risk or a risk to the security and safety of persons of the United
21 States and a list of information and communications technology and services that pose a
22 national security risk or a risk to the security and safety of persons of the United States,
23 which must be published on the department's publicly accessible website and must be
24 updated at least annually. The Chief Information Officer must include on the lists
25 companies and information and communications technology and services identified as
26 posing a national security risk or a risk to the security and safety of persons of the United
27 States by statute, regulation or official guidance from appropriate federal agencies. With
28 certain exceptions, state agencies, local governmental entities, the judicial branch and the
29 legislative branch are prohibited from contracting with a company or using, obtaining or
30 purchasing information and communications technology and services included on the lists.
31 Law enforcement agencies are also exempt from the prohibitions in the law to the extent
32 the prohibitions restrict law enforcement agencies' ability to protect the public or
33 investigate criminal activity.

34 The amendment defines "foreign adversary" as a foreign government or foreign
35 nongovernment person that the United States Secretary of Commerce has determined has
36 engaged in a long-term pattern or serious instances of conduct significantly adverse to the
37 national security of the United States or the security and safety of persons of the United
38 States. The amendment also requires a person that submits a bid for a contract with the
39 State for goods or services to certify that the person is not a foreign adversary. If a person
40 submits a false certification, that person commits a civil violation for which a fine may be
41 adjudged in an amount that is twice the amount of the contract or \$250,000, whichever is

1 greater. The amendment also provides that a contract entered into on or after the effective
2 date of this legislation is void if the contract violates the prohibitions in the amendment.

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FISCAL NOTE REQUIRED

(See attached)