

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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**Sec. 1. 5 MRSA §1743, first ¶**, as repealed and replaced by PL 2001, c. 271, §1, is amended to read: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 any department or agency thereof, and any and all printing, binding, publication of laws, journals and reports. Except as provided in chapters 141 to 155 and chapter 168, any and all services, supplies, materials and equipment needed by one or more departments or agencies of the State Government must be directly purchased or contracted for by the Director of the Bureau of General Services, as may be determined from time to time by rules adopted pursuant to chapters 141 to 155 and chapter 168, which rules the Department of Administrative and Financial Services is authorized and empowered to make. It is the intent and purpose of this chapter that the Director of the Bureau of General Services purchase collectively all services, supplies, materials and equipment for the State or any department or agency thereof in a manner that will best secure the greatest possible economy consistent with the grade or quality of the services, supplies, materials and equipment best adapted for the purposes for which they are needed. Whenever supplies and materials are available for purchase that are composed in whole or in part of recycled materials and are shown by the seller, supplier or manufacturer to be equal in quality and are competitively priced, except for paper and paper products, the Director of the Bureau of General Services shall purchase such recycled supplies and materials. The Director of the Bureau of General Services shall also review procurement procedures and bid specifications for the purchase of products and materials to ensure, to the maximum extent feasible,

the purchase of products or materials that are made with recycled materials or may be recycled or reused once discarded. For the purposes of this section and section 1812-B, "recycled materials" means materials that are composed in whole or in part of elements that are reused or reclaimed.

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

### **§ 1819. Unlawful purchases**

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

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

## **CHAPTER 168**

### **MAINE BUY AMERICAN AND BUILD MAINE ACT**

#### **§ 2046. Short title**

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

#### **§ 2047. Definitions**

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

- 1. Department.** "Department" means the Department of Administrative and Financial Services.
- 2. Emergency life safety and property safety goods.** "Emergency life safety and property safety goods" means any goods that are part of or for addition to a system designed to prevent, respond to, alert regarding, suppress, control or extinguish an emergency or the cause of an emergency, or goods used to assist evacuation in the event of an emergency, that threatens life or property. "Emergency life safety and property safety goods" includes, but is not limited to, goods relating to systems or items for fire alarm, fire sprinkling, fire suppression, fire extinguishing, security, gas detection, intrusion detection, access control, video surveillance and recording, mass notification, public address, emergency lighting, patient wandering, infant tagging and nurse call.
- 3. In-state contractor.** "In-state contractor" means an individual residing in this State or a business based in this State. "In-state contractor" includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**7. 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.

**8. 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 other than the Department of Transportation or the Maine Turnpike Authority.

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

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

**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 iron, cement 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 necessary manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

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

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

**4. Public review and comment.** The department 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 department'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.

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

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

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

C. Violated any provision of this chapter.

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

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

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

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

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

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

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

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

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

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

### **§ 2050. Rules**

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

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

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

## **SUMMARY**

This amendment, which strikes and replaces the bill, applies the buy American requirement and the opportunity to match portions of the bill to procurements by state agencies. It exempts the Department of Transportation and the Maine Turnpike Authority from the buy American requirement. It adds subsidiaries of businesses to the definition of "in-state contractor." It limits the buy American requirement to goods costing more than \$500. It clarifies that both the buy and build requirements must be applied consistent with federal funding requirements. It prevents application of the buy American requirements when they violate or are inconsistent with international agreements or federal funding requirements.