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Date: (Filing No. S-)

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**STATE OF MAINE
SENATE
128TH LEGISLATURE
FIRST REGULAR SESSION**

SENATE AMENDMENT “ ” to S.P. 311, L.D. 956, Bill, “An Act To Establish the Maine Buy America and Build Maine Act”

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

'Resolve, To Encourage the Purchasing of Materials Made in America and the Use of Maine Workers by State Agencies'

Amend the bill by striking out everything after the title and before the summary and inserting the following:

'Sec. 1. Maine Buy America and Build Maine Pilot Project established. Resolved: That the Maine Buy America and Build Maine Pilot Project is established; and be it further

Sec. 2. Definitions. Resolved: That, as used in this resolve, 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

SENATE AMENDMENT

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

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

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

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

10 A. An article, material or supply, including any preassembled items, brought to a
11 construction site for incorporation into a public building or public work; and

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

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

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

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

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

19 (2) The origin of the manufactured good's components or subcomponents meets
20 a minimum level of domestic content, as defined in rules established by the
21 department pursuant to section 1780.

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

25 **7. Public building or public work.** "Public building or public work" means any
26 structure, building, highway, waterway, street, bridge, transit system, airport or other
27 betterment, work or improvement whether of a permanent or temporary nature and
28 whether for governmental or proprietary use. "Public building or public work" includes,
29 but is not limited to, any railway; street railway; subway; elevated and monorail
30 passenger rolling stock; passenger and rail rolling stock; self-propelled car; gallery car;
31 locomotive; passenger bus; wires, poles and equipment for electrification of a transit
32 system; rails; tracks; roadbed; guideway; elevated structure; school; hospital; station;
33 terminal; dock; and shelter; and repairs to any such public building or public work.

34 **8. United States.** "United States" means the United States of America and any
35 territory or insular possession subject to the jurisdiction of the United States; and be it
36 further

37 **Sec. 3. Use of American-made materials. Resolved:** That, notwithstanding
38 any other provision of law to the contrary, a contract for the construction, reconstruction,
39 alteration, repair, improvement or maintenance of a public building or public work made
40 by a public agency may contain a provision that the manufactured goods, including iron

1 and steel, used or supplied in the performance of the contract or any subcontract to the
2 contract must be manufactured in the United States.

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

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

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

14 C. Violated any provision of this resolve.

15 **2. International trade obligations.** This section must be applied in a manner
16 consistent with the State's obligations under any applicable international agreements
17 pertaining to government procurement.

18 **3. Exception for emergency life safety and property safety goods.** The provisions
19 of this resolve do not apply to emergency life safety and property safety goods; and be it
20 further

21 **Sec. 4. Preference for in-state contractors. Resolved:** That, in addition to
22 the requirements of the Maine Revised Statutes, Title 26, chapter 15 and notwithstanding
23 any other provision of law to the contrary, the department, in awarding a bid for the
24 construction, reconstruction, alteration, repair, improvement or maintenance of a public
25 building or public work or for services provided to or on behalf of the State, may award
26 the bid to an in-state contractor if that in-state contractor's bid is substantially similar to
27 other submitted bids. If an in-state contractor submits a bid that is substantially higher
28 than other submitted bids, the department may give that in-state contractor the
29 opportunity to match the lowest bid submitted. If more than one in-state contractor
30 submits a bid that is substantially similar to other submitted bids, each must be given the
31 opportunity to revise and resubmit that contractor's bid.

32 **1. Exception.** If the department determines, by a preponderance of evidence, that a
33 bid submitted by an in-state contractor is frivolous or that the in-state contractor is
34 incapable of satisfactorily completing the contract, the department may refuse to award
35 the bid to that in-state contractor; and be it further

36 **Sec. 5. Rules. Resolved:** That the department shall adopt routine technical rules
37 as described in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A to
38 implement this resolve; and be it further

39 **Sec. 6. Effective date; repeal. Resolved:** That this resolve takes effect
40 November 1, 2017 and is repealed November 1, 2019.'

SUMMARY

This amendment replaces the bill and instead establishes the Maine Buy America and Build Maine Pilot Project. Under the pilot project, public agencies are authorized, but not required, to issue contracts that contain a provision that requires any manufactured goods, including iron and steel, used or supplied in the performance of the contract or any subcontract to the contract to be manufactured in the United States when that contract is for the construction, reconstruction, alteration, repair, improvement or maintenance of a public building or public work made by a state agency, board, commission or institution.

The pilot project also authorizes a state agency, in the award of a bid for the construction, reconstruction, alteration, repair, improvement or maintenance of a public building or public work or for services to be provided to or on behalf of the State, if 2 or more bids are submitted that are substantially similar, to give preference to the bid submitted by an in-state contractor. If the bid submitted by an in-state contractor is higher than the lowest bid submitted by a contractor that is not an in-state contractor, the state agency is authorized to give the in-state contractor the opportunity to match the lowest bid submitted.

The pilot project is repealed after 2 years.

FISCAL NOTE REQUIRED

(See attached)

SPONSORED BY: _____

(Senator CUSHING III)

COUNTY: Penobscot