

**LD 1411 An Act To Establish the Maine Buy American and Build Maine Act (Jackson)**

To: Members, Joint Standing Committee on State and Local Government

From: Lynne Caswell, Esq., Legislative Analyst

Date: May 17, 2021

*electronic record* <http://legislature.maine.gov/ctl/SLG/05-05-2021?panel=1&time=0&sortdir=0&sortby=2>**SUMMARY****Buy American****Applies to:**

State and its departments, agencies, boards, commissions &amp; institutions

**Does NOT apply to:** counties, municipalities or school administrative units**Requires**

1. Manufactured goods purchased by state agency must be manufactured in the US if:
  - value of article, material of supply valued exceeds \$500; and
  - Article, material of supply purchased for public use
2. Manufactured goods, including iron, cement or steel, used or supplied on a public improvement project must be manufactured in the US. (by contract or subcontract)

**Definitions*****Manufactured in the US*** means:

1. For iron, cement or steel – all manufacturing takes place in the US (except metallurgical processes)
2. For goods other than iron, cement or steel:
  - All the Manufacture processes take place in US; or
  - The origin of the components or subcomponents meet minimum level of domestic content (as defined by DAFS); or
  - The good is assembled in the US

Exception for emergency life safety and property safety goods***Public Improvement*** means:

- construction, reconstruction, alteration, repair, improvement or maintenance of public building or public work, which includes (but is not limited to):
  - structure, building (e.g. school, hospital, airport, station terminal, dock, shelter);
  - highway, waterway, street, bridge;
  - locomotive, passenger bus;
  - wires, poles, and equipment for electrification of a transit system; and
  - rails, tracks, roadbeds, guideways

whether permanent or temporary in nature;

whether for government or proprietary use

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**Buy American**

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**Exception Process**

Executive head of public agency may apply for an exception (to the Governor or designee)

1. Buy Maine Requirement is inconsistent with the public interest;
2. Goods aren't produced in the US in sufficient and reasonably available quantities and of a satisfactory quality;
3. Inclusion of US goods will increase the cost of the overall project contract by an unreasonable amount; or
4. Total contract cost is below minimum cost set in rule by DAFS

Public review and comment period are required before decision on waiver

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**Intentional Violations**

If DAFS has reason to believe:

- Person, business or entity made intentionally fraudulent representations about domestic content; or
- violated any other provision of Act

Then debar for 2 years – after hearing

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**Compliance**

Buy American requirements must be applied consistent with international obligations and federal funding requirements

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***In-state contractor*** means

1. an individual with
  - physical address in State
  - established residency; and
  - filed Maine tax return for the 2 years immediately prior
2. Business or subsidiary that
  - Has a physical address in this State at which it conducts business, including
    - i. interviewing applicants for employment
    - ii. hiring and employing staff, and:
    - iii. filed a Maine tax return or paid Maine employment taxes for at least the 2 years immediately prior or
  - officer, partner or the sole proprietor meets the requirements as an individual; or
  - 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.

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**Build Maine**

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***Applies to:***

State and its departments, agencies, boards, commissions & institutions

***When they contract or subcontract for:***

- public improvement project (see definition in Buy America)
- services provided to or on behalf of state
- purchase of manufactured goods (over \$500 in value)

**Does NOT apply to:** counties, municipalities or school administrative units

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**Requires**

1. Award bid to in-state contractor if substantially similar to other bids submitted
2. If in-state bid is substantially similar but substantially higher then opportunity to match lowest bid

**Unless** DAFS determines bid frivolous or contractor incapable of satisfactorily completing the contract

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**Grievance Process**

- In-state contractor not awarded a bid may request OAG investigate bidding process (within 30 days)
  - OAG may mediate dispute between in-state bidder and agency
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Build Maine **does not apply** to the extent it violates or is inconsistent with federal funding requirements

**TESTIMONY\***

**Sponsor:** President Jackson

- Put Maine workers and businesses first; Keep taxpayer dollars with Maine workers and business
- Federal government has well established Buy American provisions
- Changes from LD 1280 (129<sup>th</sup>)
  - Reduce complexity of determining origins for every nut and bolt - products that cost over \$500
  - MDOT excluded to prevent conflicts with federal highway fund administration's prohibition against in-state preferences

**Cosponsors:** Senator Raffety; Representative Bryant; Representative Doudera

**Proponents:** American Roots by Ben Waxman; ME AFL-CIO by Adam Goode; Alliance for American Manufacturing by Brian Lombardozzi; Iron Workers by Grant Provost; Machinists' Union Local S89 by Carol Sanborn; MSEA by Jeff McCabe; Shane McDougall; Chris Lausier

- Buy American preferences in many states
- Feds require Buy American so many contractors are already familiar with the requirements
- Defines "out-of-state" appropriately

**Opponents:** Associated Builders and Contractors of Maine by Jason Stutheit, AGC Maine by Matt Marks; Maine Turnpike Authority by Peter Mills

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\* The section is not intended to reflect all comments and may include unintentionally errors.

- US products will cost more increasing costs to taxpayers
- Awarding contract section is problematic
- Most contracts already go to in-state business (MDOT @ 96%)
- Retaliation provisions in other states

**NFNA:** Manufacturers Association of Maine by Jessica LaLiberte

- Definition of “in-state contractor” is problematic – could mean Amazon

**written only:** Auburn Manufacturing Inc by Kathie Leonard; Caleb Burges; Dragon Cement by Tim Kuebler; George Vercelli; Maine Community College System by Becky Smith; MDOT by Nina Fisher; Meredith Besson; MMA by Rebecca Graham; Sen Chloe Maxmin; Thomas Kent; Steel Fabricators of New England by Catherine Flaherty; Tim Ouellette; Tim Walton; UMS by Samantha Warren

### PRIOR SESSIONS

This committee worked LD 1280 in the 129<sup>th</sup> Legislature. LD 1280 was reported out of committee OTPA(7) / ONTP(5) / OTPA(1). The OTPA minority report provided a 10%

Fiscal note to Majority OTPA report states

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 agencies and public higher educational institutions if contracted goods are less expensive than those manufactured in the United States and a waiver is not granted. This provision does not apply to the Department of Transportation's construction contracts. The Department of Administrative and Financial Services (DAFS) has indicated it will require additional positions to review all contracts and to implement and enforce the waiver process. However, full information was not provided pertaining to the salary grade and ranges required for these positions and no positions are included in the bill at this time.

### MATTERS FOR CONSIDERATION

- Interplay with Title 26, chapter 15. Preference to Maine Workers and Contractors

#### **§1301. Local residents preferred; exception**

The State, counties, cities and towns, and every charitable or educational institution which is supported in whole or in part by aid granted by the State or by any municipality shall, in the awarding of contracts for constructing, altering, repairing, furnishing or equipping its buildings or public works, give preference to workmen and to bidders for such contracts who are residents of this State, provided the bids submitted by such resident bidders are equally favorable with bids submitted by contractors from without the State. This section shall not apply to construction or repairs amounting to less than \$1,000 or to emergency work or to state road work.

Any contract for public improvement that is awarded by the State or any department or agency of the State is subject to the competitive bidding process established under Title 5, chapter 155, subchapter I-A.

- \$500 in value – for one item or collective purchase
- Purchase for public use
- Goods with multiple components

- Multiple in-state bidders substantially similar but substantially higher
- Definition of “in-state contractor”

**FISCAL IMPACT - Preliminary (OFPR)**

None provided as of this date.