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**Testimony of Nina Fisher
Maine Department of Transportation
Before the Joint Standing Committee on State and Local Government
May 5, 2021**

In Opposition to LD 1411

Senator Baldacci, Representative Matlack, and members of Joint Standing Committee on State and Local Government, I am Nina Fisher, Deputy Commissioner at MaineDOT. MaineDOT respectfully opposes LD 1411, *An Act to Establish the Maine Buy American and Build Maine Act*.

LD 1411 requires that all contracts 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 contain a provision that any manufactured good valued over \$500, be manufactured in the United States. The bill also requires that, in the award of a bid for those services, if two or more bids are submitted that are substantially similar, preference must be given to the bid submitted by an in-state contractor.

By way of background, in 2020, during a worldwide pandemic, MaineDOT opened 618 bids on 185 projects with a total construction value of \$339,190,506. National estimates indicate that these contracts provided direct, indirect, and induced jobs for 4,409 people.

MaineDOT appreciates the sponsor's attempt to exclude MaineDOT from the sections of the bill that reference "public improvement". However, we do not believe that this exclusion exempts us from the *entire bill*, therefore passage of LD 1411 will have negative implications on our department operations, contracts, and contractors.

Buy America

The "Buy American" provision of this bill would require that any manufactured good purchased by a public agency must be American made. A manufactured good, as defined in the bill is any "article, material or supply" valued over \$500 that is "brought to a construction site for incorporation into a public building or public work", or any "article, material or supply acquired for public use." Without exempting MaineDOT, this provision would apply to almost any purchase we make. We also believe that the bill as drafted could be interpreted to encompass all goods bought by a contractor *working for* MaineDOT.

Currently, in the construction industry, materials can be sourced from many countries, including the United States. At times, certain materials may only be found outside of the US. Establishing the requirement that our contractors ensure that all the materials they and their subcontractors use, are made in America will significantly add to contractors' costs. These costs will be projected back onto MaineDOT and taxpayers, ultimately raising the overall price of projects. The increases will derive from not only the administrative burden this requirement places on contractors, but also the expected rise in the cost of materials. There is no way to accurately quantify what this increased cost will be, but we expect it would be significant.

While we understand that the bill allows for MaineDOT to apply to the chief executive for a waiver should provisions in this law increase the overall cost of a project by an unreasonable amount, it is very likely this will occur on most, if not all, projects. This would result in construction delays as well as increased costs associated with those delays. With Maine's limited construction season, delays of any kind will prove detrimental. We also question how MaineDOT would ensure that the "Buy America" requirements set forth in this legislation are adhered to by our contractors on our projects. Is this something that MaineDOT would be required to police and enforce? If so, this could also raise our administrative costs significantly.

Build Maine

The "Build Maine" component of LD 1411 is equally problematic. While we believe it was the sponsors intent to exempt us from this provision of LD 1411, we feel that it falls short and would still apply to the procurement of equipment, materials, and supplies.

The Federal Highway Administration (FHWA) strictly prohibits the use of in-state preferences in the selection of contractors, labor, and materials. This guidance can be found within FHWA's Contract Administration Core Curriculum Manual, and states: the "*State transportation agency (STA) shall not impose any requirement or enforce any procedure which requires the use of, or provides a price differential in favor of contractors, labor, articles or materials produced within the State.*" Federal funding used to purchase materials that would be subject to in-state preference would be in jeopardy.

The latest news from the Revenue Forecasting Committee officially released earlier this week projected Highway Fund revenue to be down another \$7.2 million through the FY22-FY23 biennium. When combined with the huge drop last year as a result of the pandemic, and very modest growth moving forward, we estimate based upon the latest RFC figures that HF revenue losses from the start of the pandemic through FY25 will be about \$91 million. Should MaineDOT lose the ability to use federal funding on equipment, materials, and supplies, this will significantly exacerbate an already challenging funding situation.

It is for these reasons that we urge this committee to vote in opposition to LD 1411. We are available to answer any questions the committee might have regarding our testimony or position on the bill.