

Testimony of Peter Mills of the Maine Turnpike Authority
to oppose LD 1411, An Act to Establish the Maine Buy American and Build Maine Act

Senator Baldacci, Representative Matlack and the Joint Standing Committee on State and Local Government.

The Build Maine Provisions

Twenty-five years ago, Maine adopted the following law to prohibit states from competing unfairly on price in the awarding of public contracts when out-of-state contractors are bidding:

the State shall . . . add a percent increase on the bid of a nonresident bidder equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides.
5 MRSA § 1825-B ¶9.

37 states have passed identical laws. This means that if any other state discriminates against a Maine contractor on price, we will do the same to theirs. As a result, we have a Mexican standoff. No one on the list discriminates against anyone else. This is important to Maine contractors who frequently win contracts in other states---much to the benefit of Maine people who work for them.

LD 1411 would discriminate in another way: If an out-of-state contractor submits a winning bid, then all the Maine bidders are allowed to reopen their bids and put in a price to match the one that came from another state. (Which Maine contractor will get the work is a question not answered by the bill.)

If this bill passes, one thing is likely: Other states and provinces will pass anti-discrimination measures on bidding as was done 25 years ago against price discrimination. If Maine persists in discriminating, we will be the only state whose contractors are unable to get work beyond our borders. Maine will lose a pointless war.

In supporting this bill last year, the sponsor told of a Massachusetts contractor who was awarded public work in Maine even though his bid was \$1M more than the bid of a contractor from Aroostook. It is not clear why current law did not protect the Aroostook contractor. The award to the higher bidder is unexplainable unless the low bid was disqualified or not comparable. If that's the case, LD 1411 would not change the result.

The Buy American Provisions

The other part of the bill would require Maine public agencies to verify "**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.**"

Many things built from iron, cement or steel are heavy. Because it costs money to transport them over long distances, the chances are good that they will be made in America anyway. It is not worth the trouble, delay and red tape of tracking down the origin.

If the project is at all complicated, like a school building, a university dormitory or a toll system, it is humanly impossible to track where everything comes from. Most buildings today include telephones, TVs, intercoms, heat pumps, cameras, appliances, computers, 5G internet, and HVAC controls. If a contractor takes pains to ensure that each of the brands is from an American company, he is not protected. If any component---a diode, transistor, switch, motor, capacitor, sensor, dial, screen, battery, or a single two by four---comes from another country, then the builder may violate this statute and be debarred from public work for two years---even if the foreign component is made by an American company.

There is no way for the most conscientious contractor to comply with this law in today's world. The U.S. government wisely forbids the states from spending federal money on a project where any such law applies.

Turnpike Bidding Statistics

In the four years from January 2016 through December 2019, the Turnpike conducted 54 competitive bids and awarded \$278.7 million in capital construction work.

On these 54 projects, we received 161 bids. 97% of the bids came from Maine contractors. Out-of-state contractors bid on only 5 projects:

- On one bridge repair, the Massachusetts bidder was the highest of 6 bids. The work was awarded to Reed & Reed who was a million dollars lower on a \$1.8 million job.
- On a sign job awarded for \$886 thousand, a MA contractor was the only bidder.
- On a fuel system replacement job, the MA bidder was the lower of two bidders for \$1.7 million. The other bidder was from Maine but without the bid from out of state, there would have been no competition.
- On a sign modification job, awarded for \$1.6 million, there were only two bids, both from MA.
- On a contract to clean and repaint four steel bridges awarded for \$1.5 million, we received 8 bids, none of which came from Maine or New England. The low bidder was from Tarpon Springs, Florida.

The total amount awarded to out-of-state contractors was \$5.7 million, or 2% of the total work awarded in those four years. For some work, like bridge painting, we know of no contractors in Maine or New England who will bid.

All of these statistics are drawn from a stack of "bid tab" files retained in the office of the Executive Director. They are believed to be comprehensive but a few jobs may have been inadvertently omitted. Preparing the bids themselves represents a huge commitment of time by the construction industry. The Turnpike is grateful to these contractors for supporting a competitive environment in which to award public work with integrity.