

Attorney Jon Arey's analysis. May 3, 2021

### **Whether LD 1411, the Buy American & Build Maine Act, applies to MaineDOT and the Maine Turnpike.**

Section 2048(1) does not apply to us or the MaineDOT because of its use of the defined term “Public Improvement.”

However, the next section, 2048(2) says that any “manufactured good” purchased by a public agency must be American made. A “manufactured good” 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.” So this section does not exclude us and would apply to practically any purchases we would make and it does not exclude us. Also, the way it is written it could be interpreted to encompass goods bought by a contractor working for us, although that kind of makes Section 2048(1) superfluous.

The next section, 2049, deals with preference for in state contractors. Section 2049(1) again, does not exclude us, and would require us to give preference to Maine contractors when awarding a contract for “the purchase of manufactured goods.” Again, this seems to intend only when we are purchasing the goods directly but it does not say that explicitly. Section 2049(3) requires that in state bidders on all state procurements be given a chance to match the lowest bid if that bid is submitted by an out of state contractor. This only applies to purchases made under the umbrella of the Bureau of General Services so would not apply to the MTA but could affect MaineDOT.

So this probably does not affect our construction contracts, but I think it should say that more explicitly if we want to feel safe. It would affect our purchasing process significantly. I don't know what the process for purchasing is at the MaineDOT and how many of their goods they buy directly as opposed to them being purchased by the Bureau of General Services, but it would affect whatever they purchase as well.