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Date: (Filing No. S-)

LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
SENATE
126TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 311, L.D. 890, Bill, “An Act To Buy American-made Products”

Amend the bill by striking out everything after the enacting clause and inserting the following:

Sec. 1. 5 MRSA c. 153, sub-c. 3 is enacted to read:

SUBCHAPTER 3

MAINE BUY AMERICA ACT

§1777. Short title

This Act may be known and cited as "the Maine Buy America Act."

§1778. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. 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.

2. Manufactured good. "Manufactured good" means:

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

COMMITTEE AMENDMENT

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

2 **3. Manufactured in the United States.** "Manufactured in the United States" means:

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

5 B. In the case of a manufactured good, other than an iron or steel product, all the
6 manufacturing processes for the manufactured good takes place in the United States.

7 **4. Public agency.** "Public agency" means the State and its departments, agencies,
8 boards, commissions and institutions, but does not mean a municipality or school
9 administrative unit.

10 **5. Public building or public work.** "Public building or public work" means any
11 structure, building, highway, waterway, street, bridge, transit system, airport or other
12 betterment, work or improvement whether of a permanent or temporary nature and
13 whether for governmental or proprietary use. "Public building or public work" includes,
14 but is not limited to, any railway; street railway; subway; elevated and monorail
15 passenger rolling stock; passenger and rail rolling stock; self-propelled car; gallery car;
16 locomotive; passenger bus; wires, poles and equipment for electrification of a transit
17 system; rails; tracks; roadbed; guideway; elevated structure; buildings; schools; hospitals;
18 stations; terminals; docks; and shelters, and repairs to any such public buildings and
19 public works.

20 **6. United States.** "United States" means the United States of America and any
21 territory or insular possession subject to the jurisdiction of the United States.

22 **§1779. Use of American-made materials**

23 **1. Mandatory contract provision.** Notwithstanding any other provision of law,
24 each contract for the construction, reconstruction, alteration, repair, improvement or
25 maintenance of a public building or public work made by a public agency must contain a
26 provision that the manufactured goods, including iron and steel, used or supplied in the
27 performance of the contract or any subcontract to the contract must be manufactured in
28 the United States.

29 **2. Exceptions.** A public agency may apply to the Governor or the Governor's
30 designee for a waiver of the requirements of subsection 1 in any case or category of cases
31 in which the executive head of a public agency finds:

32 A. That the application of the requirements of subsection 1 would be inconsistent
33 with the public interest;

34 B. That the necessary manufactured goods are not produced in the United States in
35 sufficient and reasonably available quantities and of a satisfactory quality;

36 C. That inclusion of manufactured goods manufactured in the United States will
37 increase the cost of the overall project contract by an unreasonable amount, as
38 defined in rules established by the Department of Administrative and Financial
39 Services pursuant to section 1780; or

40 D. The cost of the total contract for the construction, reconstruction, alteration,
41 repair, improvement or maintenance of a public building or public work is below a

1 minimum project cost as established by rules of the Department of Administrative
2 and Financial Services pursuant to section 1780.

3 **3. Public review and comment.** The Department of Administrative and Financial
4 Services shall implement procedures to allow a reasonable amount of time for public
5 review and comment on a requested waiver under subsection 2 before making a finding
6 based on the request and shall publish on the department's publicly accessible website, or
7 in a newspaper of general circulation in the area of the proposed work, a detailed
8 justification for any waiver granted.

9 **4. Intentional violations.** The Department of Administrative and Financial Services
10 shall, after a hearing, debar a person, business or other entity from participation in
11 contracts or subcontracts with the State for 2 years if the department has reason to believe
12 that person, business or other entity has intentionally:

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

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

20 C. Violated any provision of this subchapter.

21 **5. International trade obligations.** This section must be applied in a manner
22 consistent with the State's obligations under any applicable international agreements
23 pertaining to government procurement.

24 **6. Exception for emergency life safety and property safety goods.** The provisions
25 of this subchapter do not apply to emergency life safety and property safety goods.

26 **§1780. Rules**

27 The Department of Administrative and Financial Services shall adopt routine
28 technical rules as described in chapter 375, subchapter 2-A to implement this subchapter.

29 **Sec. 2. Appropriations and allocations.** The following appropriations and
30 allocations are made.

31 **ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF**

32 **Purchases - Division of 0007**

33 Initiative: Provides funds for 2 Management Analyst I positions and related costs to
34 comply with the Maine Buy America Act.

35	GENERAL FUND	2013-14	2014-15
36	POSITIONS - LEGISLATIVE COUNT	2.000	2.000
37	Personal Services	\$105,370	\$168,219
38	All Other	\$5,366	\$8,049

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GENERAL FUND TOTAL

\$110,736

\$176,268

Sec. 3. Effective date. This Act takes effect June 1, 2014.'

SUMMARY

This amendment, which is the minority report of the Joint Standing Committee on Labor, Commerce, Research and Economic Development, establishes the Maine Buy America Act and 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 the manufactured goods, including iron and steel, used or supplied in the performance of the contract or any subcontract under the contract must be manufactured in the United States. This requirement does not apply to municipalities or school administrative units.

This amendment requires that, in the case of a manufactured good other than an iron or steel product, all of the manufacturing processes take place in the United States.

Under the amendment, a public agency may apply to the Governor or the Governor's designee for a waiver of the requirement if the executive head of the public agency finds that the application of the requirement would be inconsistent with the public interest, that the necessary manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality or that inclusion of manufactured goods made in the United States will increase the cost of the overall project contract by an unreasonable amount. The Department of Administrative and Financial Services must develop rules regarding the Act, including rules to guide the waiver process and the process for public review and comment regarding requests for a waiver.

The amendment requires that if the Department of Administrative and Financial Services has reason to believe that any person, business or other entity has intentionally made fraudulent representations about the domestic content of a manufactured good or has intentionally violated any provision of the legislation, the department must, after a hearing, debar that person, business or other entity from contracts or subcontracts with the State for 2 years.

The amendment provides that the provisions of this legislation will be applied only if they are consistent with the State's obligations under any applicable international agreements pertaining to government procurement.

The amendment also adds an appropriations and allocations section.

FISCAL NOTE REQUIRED

(See attached)