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GOVERNOR

STATE OF MAINE
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AUGUSTA, MAINE
04333-0001

July 13, 2021

The 130th Legislature of the State of Maine
State House
Augusta, Maine

Dear Honorable Members of the 130th Legislature:

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing L.D. 1411, *An Act to Establish the Maine Buy American and Build Maine Act*.

L.D. 1411 would require 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 \$5000 be manufactured in the United States. The bill also requires that if an in-state contractor submits a bid that is similar to but substantially higher than other submitted bids, the public agency shall give the in-state contractor a preference of 10 percent.

The provisions of this bill are problematic for several reasons.

First, the Federal Highway Administration (FHWA) strictly prohibits the use of in-state preferences in the selection of contractors, labor, and materials, FHWA's Contract Manual stating that "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." L.D. 1411 would jeopardize a source of substantial federal funding and significantly impede our ability to repair and upgrade our public infrastructure.

Allowing the bill to become law would also create confusion in the bidding process and pose other serious financial consequences. Maine's contractors are not land-locked and often rely on work outside the state. Many states have adopted reciprocal laws, so that a 10 percent advantage for Maine businesses in Maine would result in a 10 percent *disadvantage* when Maine companies compete for bids out-of-state. This bill would therefore harm the very same Maine contractors it proposes to favor, many of whom are already struggling with increased materials costs and labor shortages.



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Like most states, Maine already offers preference to Maine-based companies in two ways: 1) tie-bid preference, and 2) reciprocal preference. The tie-bid preference favors the in-state bidder in the event of a tie-bid. In the event of another state applying an in-state preference that works against a Maine business, then the reciprocal preference requires Maine to apply the same preference against that state's businesses when they bid on Maine State contract. These preferences are legal under federal law and widely-used across many states.

Existing preferences are working in Maine. Because of these existing preferences and strong competitive bids by Maine companies, more than 90 percent of State contracts are awarded to Maine-based companies. In fact, the Maine Department of Transportation reports that, on average, 93 percent of their work is awarded to Maine firms, and the Bureau of General Services reports that in FY20 97.6 percent of the total spent was awarded to 62 companies with an established presence in Maine.

Maine work is going to Maine firms. And based upon an analysis of the State's actual construction contracts and procurement of services and goods, it is difficult to see how this bill would substantially grow the number of successful Maine contractors and vendors without jeopardizing quality or increasing costs. Finally, it goes without saying that it is virtually impossible to determine the exact origin of each component of each "article, material or supply" valued over \$5,000 purchased by a public agency, whether a vehicle, heat pump, ventilation equipment, engine, camera or plow attachment.

Finally, this bill had a substantial fiscal note that included General Fund appropriations of \$252,784 in fiscal year 2021-22 and \$260,873 in fiscal year 2022-23 for two Planning and Research Associate I positions in the Bureau of General Services (BGS) Division of Planning/Design/Construction and two Procurement Analyst I positions in the BGS Division of Procurement Services. The fiscal note was deleted by a floor amendment which stated simply that the added responsibilities required by the bill would have to be accomplished "within existing resources." This amendment was unrealistic and fiscally irresponsible, rendering the bill even more unacceptable despite its bright sounding title.

For the above reasons, I return L.D. 1411 unsigned and vetoed. I urge the Legislature to sustain it.

Respectfully,



Janet T. Mills
Governor



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