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DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
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SERVING THE PUBLIC AND DELIVERING ESSENTIAL SERVICES TO STATE GOVERNMENT

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*Testimony of Anya Trundy, Director of Legislative Affairs
Department of Administrative and Financial Services
testifying in opposition to*

L.D. 1280, An Act to Establish the Maine Buy American and Build Maine Act
Sponsored by Senate President Jackson
Before the Joint Standing Committee on State and Local Government

Senator Claxton, Representative Martin, and esteemed members of the Committee on State and Local Government, I am Anya Trundy, Director of Legislative Affairs for the Department of Administrative and Financial Services, and today I am testifying in opposition to L.D. 1280, "An Act To Establish the Maine Buy American and Build Maine Act" as it is currently written.

Senate President Jackson's desire to harness the State's purchasing power and reinvest our tax dollar into the Maine and American economy is respectable. In fact, an informal review of the construction contracts awarded by the Bureau of General Services shows that the State of Maine is already overwhelmingly meeting the "Build Maine" objectives of this legislation. Maine-based contractors are competitive and have won 198 out of the 200 (99%) construction contracts we've awarded over the last eight years. Of those two exceptions, we know that one was for a specialty rubberized gym floor for which there was no in-state contractor.

DAFS is concerned that the "Buy American" components of this legislation will produce higher than expected bids. We are already adjusting project budgets to reflect the current tight-labor market. The higher the cost for each project, the fewer projects we are able to complete with the limited funds appropriated and I know that this committee is aware of the condition of our State Buildings.

Furthermore, DAFS has two major areas of concern with how we would administer the law if this bill were to pass as currently written. The Bureau of General Services strives to maintain a predictable framework for bidding and contracting that balances the government's desire to get the best value for its dollar while ensuring that the process is fair, open to the maximum number of participants, and easily navigable.

Most concerning to us is the "Opportunity to Match" which states that if an in-state contractor submits a bid that is substantially higher than other submitted bids, the department shall give that in-state contractor the opportunity to match the lowest bid submitted. The Department believes that allowing in-state contractors who significantly priced themselves out of competition initially a second

opportunity to undercut their out-of-state counterparts isn't soliciting bids in good faith and this practice would draw appeals and lawsuits. If the in-state contractors can match the lowest bid, we question why their bid wasn't substantially similar in the first place. DAFS strongly urges the committee to remove this provision of the bill.

Additionally, the "grievance; investigation; mediation" process laid out in this legislation deviates from the one already in place under 5 M.R.S. §1749, which requires that any contractor dissatisfied with the Director of BGS's decision appeal the decision to the Commissioner of DAFS within five calendar days. The commissioner must then conduct the appeal process and render a final decision within five days. DAFS would ask that §1780, sub-§3 refer to the existing appeals process rather than establishing a conflicting one.

Thank you for allowing me to testify before you today. I am happy to respond to any questions you might have at this time and will be available to you at the work session.