

STATE OF NEW YORK

3908

2021-2022 Regular Sessions

IN SENATE

February 1, 2021

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts

AN ACT to amend the state finance law, the general municipal law, the public authorities law and the highway law, in relation to enacting the New York state buy American salt act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York state buy American salt act".

3 § 2. The state finance law is amended by adding a new section 162-a to
4 read as follows:

5 § 162-a. The New York state buy American salt act. 1. Use of American
6 materials. (a) Notwithstanding any other provision of law, each
7 contract for purchase or procurement made by a public agency shall
8 contain a provision that the rock salt, or sodium chloride, used or
9 supplied in the performance of the contract or any subcontract thereto
10 shall be mined in the United States.

11 (b) For the purposes of section one hundred sixty-three of this arti-
12 cle, no bidder shall be deemed to be the lowest responsible and reliable
13 bidder and no bid shall be deemed the best value unless the bid offered
14 by such bidder will comply with the contract term required by paragraph
15 (a) of this subdivision.

16 (c) The provisions of paragraph (a) of this subdivision shall not
17 apply in any case or category of cases in which the executive head of a
18 public agency finds:

19 (i) that the application of this section would be inconsistent with
20 the public interest;

21 (ii) that such materials and products are not produced in the United
22 States in sufficient and reasonably available quantities and of a satis-
23 factory quality; or

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (iii) that inclusion of domestic material will increase the cost of
2 the overall procurement contract by more than twenty-five percent.

3 (d) If the executive receives a request for a waiver under paragraph
4 (c) of this subdivision, the executive shall provide notice of and an
5 opportunity for public comment on the request at least thirty days
6 before making a finding based on the request.

7 (e) A notice provided under paragraph (d) of this subdivision shall:

8 (i) summarize the information available to the executive concerning
9 the request, including whether the request is being made under subpara-
10 graph (i), (ii) or (iii) of paragraph (c) of this subdivision;

11 (ii) be posted prominently on the official public internet web site of
12 the agency; and

13 (iii) be provided by electronic means to any person, firm or corpo-
14 ration that has made a written or electronic request to the public agen-
15 cy for notice of waiver actions by the executive within five years prior
16 to the date of notice.

17 (f) If the executive issues a waiver under paragraph (c) of this
18 subdivision, the executive shall publish in the same manner as the
19 original notice a detailed justification for the waiver that:

20 (i) addresses the public comments received under paragraph (d) of this
21 subdivision; and

22 (ii) is published before the waiver takes effect.

23 (g) If it has been determined by a court or federal or state agency
24 that any person intentionally:

25 (i) affixed a label bearing a "Made in America" inscription, or any
26 inscription with the same meaning, to any rock salt, or sodium chloride
27 product used in projects to which this section applies, sold in or
28 shipped to the United States that was not mined in the United States; or

29 (ii) represented that any rock salt, or sodium chloride product
30 procured in a contract to which this section applies that was not
31 produced in the United States, was produced in the United States; then
32 that person shall be ineligible to receive any contract or subcontract
33 with this state pursuant to the debarment or suspension provisions
34 provided under section one hundred thirty-nine-a of this chapter.

35 (h) This section shall be applied in a manner consistent with the
36 state's obligations under any applicable international agreements
37 pertaining to government procurement.

38 2. Definitions. For the purposes of this section, the following words
39 shall have the following meanings unless specified otherwise:

40 (a) "Executive" means the executive head of a public agency subject to
41 this section;

42 (b) "Public agency" means a governmental entity as that term is
43 defined in section one hundred thirty-nine-j of this chapter;

44 (c) "Mined in the United States" means: extracted from land within the
45 boundary of the United States, from the initial separation from the
46 earth through the addition of any additives necessary for commercial
47 sale;

48 (d) "United States" means the United States of America and includes
49 all territory, continental or insular, subject to the jurisdiction of
50 the United States.

51 § 3. The general municipal law is amended by adding a new section
52 104-d to read as follows:

53 § 104-d. The New York state buy American salt act. 1. Use of American
54 materials. (a) Notwithstanding any other provision of law, each
55 contract for purchase or procurement made by a public agency of a poli-
56 tical subdivision shall contain a provision that the rock salt, or sodi-

1 um chloride, used or supplied in the performance of the contract or any
2 subcontract thereto shall be mined in the United States.

3 (b) No bidder shall be deemed to be the lowest responsible and reli-
4 able bidder and no bid shall be deemed the best value unless the bid
5 offered by such bidder will comply with the contract term required by
6 paragraph (a) of this subdivision.

7 (c) The provisions of paragraph (a) of this subdivision shall not
8 apply in any case or category of cases in which the executive head of a
9 public agency finds:

10 (i) that the application of this section would be inconsistent with
11 the public interest;

12 (ii) that such materials and products are not produced in the United
13 States in sufficient and reasonably available quantities and of a satis-
14 factory quality; or

15 (iii) that inclusion of domestic material will increase the cost of
16 the overall procurement contract by more than twenty-five percent.

17 (d) If the executive receives a request for a waiver under paragraph
18 (c) of this subdivision, the executive shall provide notice of and an
19 opportunity for public comment on the request at least thirty days
20 before making a finding based on the request.

21 (e) A notice provided under paragraph (d) of this subdivision shall:

22 (i) summarize the information available to the executive concerning
23 the request, including whether the request is being made under subpara-
24 graph (i), (ii) or (iii) of paragraph (c) of this subdivision;

25 (ii) be posted prominently on the official public internet web site of
26 the agency; and

27 (iii) be provided by electronic means to any person, firm or corpo-
28 ration that has made a written or electronic request to the public agen-
29 cy for notice of waiver actions by the executive within five years prior
30 to the date of notice.

31 (f) If the executive issues a waiver under paragraph (c) of this
32 subdivision, the executive shall publish in the same manner as the
33 original notice a detailed justification for the waiver that:

34 (i) addresses the public comments received under paragraph (d) of this
35 subdivision; and

36 (ii) is published before the waiver takes effect.

37 (g) If it has been determined by a court or federal or state agency
38 that any person intentionally:

39 (i) affixed a label bearing a "Made in America" inscription, or any
40 inscription with the same meaning, to any rock salt, or sodium chloride
41 product used in projects to which this section applies, sold in or
42 shipped to the United States that was not mined in the United States; or

43 (ii) represented that any rock salt, or sodium chloride product
44 procured in a contract to which this section applies that was not
45 produced in the United States, was produced in the United States; then
46 that person shall be ineligible to receive any contract or subcontract
47 with this state pursuant to the debarment or suspension provisions
48 provided under section one hundred thirty-nine-a of the state finance
49 law.

50 (h) This section shall be applied in a manner consistent with the
51 state's obligations under any applicable international agreements
52 pertaining to government procurement.

53 2. Definitions. For the purposes of this section, the following words
54 shall have the following meanings unless specified otherwise:

55 (a) "Executive" means the executive head of a public agency subject to
56 this section;

1 (b) "Public agency" means a governmental entity as that term is
2 defined in section one hundred thirty-nine-j of the state finance law;

3 (c) "Mined in the United States" means: extracted from land within the
4 boundary of the United States, from the initial separation from the
5 earth through the addition of any additives necessary for commercial
6 sale;

7 (d) "United States" means the United States of America and includes
8 all territory, continental or insular, subject to the jurisdiction of
9 the United States.

10 § 4. The public authorities law is amended by adding a new section
11 2877-a to read as follows:

12 § 2877-a. The New York state buy American salt act. 1. Use of American
13 materials. (a) Notwithstanding any other provision of law, each
14 contract for purchase or procurement made by a public authority shall
15 contain a provision that the rock salt, or sodium chloride, used or
16 supplied in the performance of the contract or any subcontract thereto
17 shall be mined in the United States.

18 (b) No bidder shall be deemed to be the lowest responsible and reli-
19 able bidder and no bid shall be deemed the best value unless the bid
20 offered by such bidder will comply with the contract term required by
21 paragraph (a) of this subdivision.

22 (c) The provisions of paragraph (a) of this subdivision shall not
23 apply in any case or category of cases in which the executive head of a
24 public agency finds:

25 (i) that the application of this section would be inconsistent with
26 the public interest;

27 (ii) that such materials and products are not produced in the United
28 States in sufficient and reasonably available quantities and of a satis-
29 factory quality; or

30 (iii) that inclusion of domestic material will increase the cost of
31 the overall procurement contract by more than twenty-five percent.

32 (d) If the executive receives a request for a waiver under paragraph
33 (c) of this subdivision, the executive shall provide notice of and an
34 opportunity for public comment on the request at least thirty days
35 before making a finding based on the request.

36 (e) A notice provided under paragraph (d) of this subdivision shall:

37 (i) summarize the information available to the executive concerning
38 the request, including whether the request is being made under subpara-
39 graph (i), (ii) or (iii) of paragraph (c) of this subdivision;

40 (ii) be posted prominently on the official public internet web site of
41 the agency; and

42 (iii) be provided by electronic means to any person, firm or corpo-
43 ration that has made a written or electronic request to the public agen-
44 cy for notice of waiver actions by the executive within five years prior
45 to the date of notice.

46 (f) If the executive issues a waiver under paragraph (c) of this
47 subdivision, the executive shall publish in the same manner as the
48 original notice a detailed justification for the waiver that:

49 (i) addresses the public comments received under paragraph (d) of this
50 subdivision; and

51 (ii) is published before the waiver takes effect.

52 (g) If it has been determined by a court or federal or state agency
53 that any person intentionally:

54 (i) affixed a label bearing a "Made in America" inscription, or any
55 inscription with the same meaning, to any rock salt, or sodium chloride

1 product used in projects to which this section applies, sold in or
2 shipped to the United States that was not mined in the United States; or
3 (ii) represented that any rock salt, or sodium chloride product
4 procured in a contract to which this section applies that was not
5 produced in the United States, was produced in the United States; then
6 that person shall be ineligible to receive any contract or subcontract
7 with this state pursuant to the debarment or suspension provisions
8 provided under section one hundred thirty-nine-a of the state finance
9 law.

10 (h) This section shall be applied in a manner consistent with the
11 state's obligations under any applicable international agreements
12 pertaining to government procurement.

13 2. Definitions. For the purposes of this section, the following words
14 shall have the following meanings unless specified otherwise:

15 (a) "Executive" means the executive head of a public agency subject to
16 this section;

17 (b) "Public agency" means a state, local or interstate authority as
18 those terms are defined in section two of this chapter;

19 (c) "Mined in the United States" means: extracted from land within the
20 boundary of the United States, from the initial separation from the
21 earth through the addition of any additives necessary for commercial
22 sale;

23 (d) "United States" means the United States of America and includes
24 all territory, continental or insular, subject to the jurisdiction of
25 the United States.

26 § 5. The highway law is amended by adding a new section 12-a to read
27 as follows:

28 § 12-a. The New York state buy American salt act. 1. Use of American
29 materials. (a) Notwithstanding any other provision of law, each contract
30 for purchase or procurement made by a public authority shall contain a
31 provision that the rock salt, or sodium chloride, used or supplied in
32 the performance of the contract or any subcontract thereto shall be
33 mined in the United States.

34 (b) No bidder shall be deemed to be the lowest responsible and reli-
35 able bidder and no bid shall be deemed the best value unless the bid
36 offered by such bidder will comply with the contract term required by
37 paragraph (a) of this subdivision.

38 (c) The provisions of paragraph (a) of this subdivision shall not
39 apply in any case or category of cases in which the executive head of a
40 public agency finds:

41 (i) that the application of this section would be inconsistent with
42 the public interest;

43 (ii) that such materials and products are not produced in the United
44 States in sufficient and reasonably available quantities and of a satis-
45 factory quality; or

46 (iii) that inclusion of domestic material will increase the cost of
47 the overall procurement contract by more than twenty-five percent.

48 (d) If the executive receives a request for a waiver under paragraph
49 (c) of this subdivision, the executive shall provide notice of and an
50 opportunity for public comment on the request at least thirty days
51 before making a finding based on the request.

52 (e) A notice provided under paragraph (d) of this subdivision shall:

53 (i) summarize the information available to the executive concerning
54 the request, including whether the request is being made under subpara-
55 graph (i), (ii) or (iii) of paragraph (c) of this subdivision;

1 (ii) be posted prominently on the official public internet web site of
2 the agency; and

3 (iii) be provided by electronic means to any person, firm or corpo-
4 ration that has made a written or electronic request to the public agen-
5 cy for notice of waiver actions by the executive within five years prior
6 to the date of notice.

7 (f) If the executive issues a waiver under paragraph (c) of this
8 subdivision, the executive shall publish in the same manner as the
9 original notice a detailed justification for the waiver that:

10 (i) addresses the public comments received under paragraph (d) of this
11 subdivision; and

12 (ii) is published before the waiver takes effect.

13 (g) If it has been determined by a court or federal or state agency
14 that any person intentionally:

15 (i) affixed a label bearing a "Made in America" inscription, or any
16 inscription with the same meaning, to any rock salt, or sodium chloride
17 product used in projects to which this section applies, sold in or
18 shipped to the United States that was not mined in the United States; or

19 (ii) represented that any rock salt, or sodium chloride product
20 procured in a contract to which this section applies that was not
21 produced in the United States, was produced in the United States; then
22 that person shall be ineligible to receive any contract or subcontract
23 with this state pursuant to the debarment or suspension provisions
24 provided under section one hundred thirty-nine-a of the state finance
25 law.

26 (h) This section shall be applied in a manner consistent with the
27 state's obligations under any applicable international agreements
28 pertaining to government procurement.

29 2. Definitions. For the purposes of this section, the following words
30 shall have the following meanings unless specified otherwise:

31 (a) "Executive" means the executive head of a public agency subject to
32 this section;

33 (b) "Public agency" means a governmental entity as that term is
34 defined in section one hundred thirty-nine-j of the state finance law;

35 (c) "Mined in the United States" means: extracted from land within the
36 boundary of the United States, from the initial separation from the
37 earth through the addition of any additives necessary for commercial
38 sale;

39 (d) "United States" means the United States of America and includes
40 all territory, continental or insular, subject to the jurisdiction of
41 the United States.

42 § 6. Severability. If any provision of this act, or any application of
43 any provision of this act, is held to be invalid, that shall not affect
44 the validity or effectiveness of any other provision of this act, or of
45 any other application of any provision of this act, which can be given
46 effect without that provision or application; and to that end, the
47 provisions and applications of this act are severable.

48 § 7. This act shall take effect immediately.