

STATE OF NEW YORK

3908--A

2021-2022 Regular Sessions

IN SENATE

February 1, 2021

Introduced by Sens. KENNEDY, GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 or hand harvested 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

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

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

LBD07974-02-1

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

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

(i) summarize the information available to the executive concerning the request, including whether the request is being made under subparagraph (i), (ii) or (iii) of paragraph (c) of this subdivision;

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

(iii) be provided by electronic means to any person, firm or corporation that has made a written or electronic request to the public agency for notice of waiver actions by the executive within five years prior to the date of notice.

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

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

(ii) is published before the waiver takes effect.

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

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

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

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

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

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

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

(c) "Mined or hand harvested in the United States" means: extracted or collected from land or ponds within the boundary of the United States, from the initial separation from the earth through the addition of any additives necessary for commercial sale;

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

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

§ 104-d. The New York state buy American salt act. 1. Use of American materials. (a) Notwithstanding any other provision of law, each contract for purchase or procurement made by a public agency of a political subdivision shall contain a provision that the rock salt, or sodium chloride, used or supplied in the performance of the contract or any

1 subcontract thereto shall be mined or hand harvested in the United
2 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 or hand harvested in the
43 United States; or

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

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

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

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

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

5 (c) "Mined or hand harvested in the United States" means: extracted or
6 collected from land or ponds within the boundary of the United States,
7 from the initial separation from the earth through the addition of any
8 additives necessary for commercial sale;

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

12 § 4. The public authorities law is amended by adding a new section
13 2877-a to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (i) affixed a label bearing a "Made in America" inscription, or any
2 inscription with the same meaning, to any rock salt, or sodium chloride
3 product used in projects to which this section applies, sold in or
4 shipped to the United States that was not mined or hand harvested in the
5 United States; or

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

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

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

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

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

22 (c) "Mined or hand harvested in the United States" means: extracted or
23 collected from land or ponds within the boundary of the United States,
24 from the initial separation from the earth through the addition of any
25 additives necessary for commercial sale;

26 (d) "United States" means the United States of America and includes
27 all territory, continental or insular, subject to the jurisdiction of
28 the United States.

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

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

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

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

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

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

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

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

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

(i) summarize the information available to the executive concerning the request, including whether the request is being made under subparagraph (i), (ii) or (iii) of paragraph (c) of this subdivision;

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

(iii) be provided by electronic means to any person, firm or corporation that has made a written or electronic request to the public agency for notice of waiver actions by the executive within five years prior to the date of notice.

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

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

(ii) is published before the waiver takes effect.

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

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

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

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

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

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

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

(c) "Mined or hand harvested in the United States" means: extracted or collected from land or ponds within the boundary of the United States, from the initial separation from the earth through the addition of any additives necessary for commercial sale;

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

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

§ 7. This act shall take effect immediately.