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I N   S E N A T E

March 2, 2010

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Introduced by Sens. LIBOUS, BONACIC, LARKIN, LITTLE, MAZIARZ, McDONALD, RANZENHOFER, SALAND, SEWARD, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law and the agriculture and markets law, in relation to enacting the "buy from the backyard 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 "buy from the backyard act".

3     S 2. Subdivision 4 of section 165 of the state finance law, as amended  
4     by chapter 137 of the laws of 2008, is amended to read as follows:

5     4. Special provisions for purchase of available New York food  
6     products.

7     a. Except as otherwise provided in this subdivision, when letting  
8     contracts for the purchase of food products on behalf of facilities and  
9     institutions of the state, solicitation specifications of the office of  
10    general services and any other agency, department, office, board or  
11    commission [may] SHALL require provisions that mandate that [all or  
12    some], DURING EACH STATE FISCAL YEAR, NOT LESS THAN TWENTY PERCENT of  
13    the required food products are grown, produced or harvested in New York  
14    state, or that any processing of such food products take place in facil-  
15    ities located within New York state.

16    b. The commissioner of agriculture and markets shall determine AND  
17    CERTIFY, using uniform criteria, those food products for which the  
18    requirements of this subdivision are deemed MOST beneficial and shall  
19    promulgate and forward to the appropriate agencies a list of such food  
20    products, and shall in addition ascertain those periods of time each  
21    year that those food products are available in sufficient quantities for  
22    competitive purchasing and shall forward such information to purchasing  
23    agencies. The commissioner of agriculture and markets shall update such  
24    list as often as is deemed by him or her to be necessary. FOR THE  
25    PURPOSES OF THIS SUBDIVISION, "COMPETITIVE PURCHASING" OF NEW YORK FOOD  
26    PRODUCTS SHALL BE DEEMED TO BE ESTABLISHED WHEN THE COST OF SUCH  
27    PRODUCTS ARE NOT MORE THAN TEN PERCENT HIGHER THAN OTHER FOOD PRODUCTS.

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

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1 c. (i) Prior to issuing a solicitation for such food products,  
2 purchasing agencies shall advise the commissioner of agriculture and  
3 markets of the quantities of each food product on the list promulgated  
4 by the commissioner of agriculture and markets to fulfill that agency's  
5 purchasing needs.

6 (ii) The commissioner of agriculture and markets will then make a  
7 determination of whether those products required by the purchasing agen-  
8 cy are available in sufficient quantities to satisfy the purchasing  
9 agency's requirements.

10 (iii) Upon a determination by the commissioner of agriculture and  
11 markets that the food products required by the purchasing agency are  
12 available in sufficient quantities to fulfill the agency's purchasing  
13 needs, the purchasing agency [may] SHALL include in its solicitation a  
14 requirement that all or some of those food products are grown, produced  
15 or harvested in New York state, or that any processing of such food  
16 products take place in facilities located within New York state.

17 (iv) Upon a determination by the commissioner of agriculture and  
18 markets that such food products are not available in sufficient quanti-  
19 ties to fulfill the agency's purchasing needs, the purchasing agency  
20 shall issue a solicitation that does not require that all or some of  
21 those food products are grown, produced or harvested in New York state,  
22 or that any processing of such food products take place in facilities  
23 located within New York state. In such cases, the purchasing agency  
24 [may] SHALL include such requirements in the next contract for such food  
25 products that is let if at such time those food products are available  
26 in sufficient quantities. If at that time, those food products are not  
27 available in sufficient quantities, the requirement shall again be  
28 waived until such time as the products are available.

29 (v) In the event that the purchasing agency receives no offers that  
30 meet the agency's requirement that all or some of the food products are  
31 grown, produced or harvested in New York state, or that any processing  
32 of such food products take place in facilities located within New York  
33 state, it may waive the provisions of this subdivision and award a  
34 contract in accordance with other applicable statutes. [In addition, if  
35 the commissioners of agriculture and markets, economic development and  
36 any such individual agency shall agree as to the deleterious economic  
37 impact of specifications requiring such purchases, such agencies may  
38 waive the provisions of this subdivision for such purchases.]

39 d. The commissioner, and the commissioner of agriculture and markets,  
40 may issue such regulations as they deem necessary and proper for the  
41 implementation of this subdivision.

42 e. Notwithstanding any other section of law, rule, regulation or stat-  
43 ute, the department of agriculture and markets shall supply information  
44 required by paragraph b of this subdivision to the office of general  
45 services and to all other appropriate agencies.

46 f. (i) With each offer, the offerer shall certify that the food  
47 products provided pursuant to that solicitation will be in conformity  
48 with the provisions of the [percentage required to meet or exceed the]  
49 requirements in the solicitation specifying that all [or some] of the  
50 food products be grown, produced, or harvested within New York state or  
51 that any processing of such food products take place in facilities  
52 located within New York state.

53 (ii) Any successful offerer who fails to comply with the provisions of  
54 this subdivision, at the discretion of such agency, board, office or  
55 commission, shall forfeit the right to bid on contracts let under the

1 provisions of this subdivision for a period of time to be determined by  
2 the commissioner and the commissioner of agriculture and markets.

3 g. The commissioner and the commissioner of agriculture and markets,  
4 shall advise and assist the chancellor of the state university of New  
5 York in [extending the benefits] THE IMPLEMENTATION of the provisions of  
6 this subdivision [to] BY the STATE university [and shall modify any  
7 regulations or procedures heretofore established pursuant to this subdivi-  
8 vision, in order to facilitate such participation] OF NEW YORK.

9 S 3. The agriculture and markets law is amended by adding a new  
10 section 5-a to read as follows:

11 S 5-A. REPORT ON PURCHASE OF NEW YORK FOOD PRODUCTS. ON OR BEFORE  
12 MARCH FIRST EACH YEAR, THE COMMISSIONER SHALL REPORT TO THE GOVERNOR AND  
13 THE LEGISLATURE ON THE IMPLEMENTATION OF THE PROVISIONS OF SUBDIVISION  
14 FOUR OF SECTION ONE HUNDRED SIXTY-FIVE OF THE STATE FINANCE LAW. SUCH  
15 REPORT SHALL INCLUDE THE LEVEL OF COMPLIANCE BY STATE AGENCIES WITH THE  
16 PROVISIONS OF SUCH SUBDIVISION, THE AVAILABLE NEW YORK FOOD PRODUCTS AND  
17 THE PRODUCERS AND/OR PROCESSORS THEREOF WHICH WERE PURCHASED AND RECOM-  
18 MENDATIONS FOR THE IMPROVED IMPLEMENTATION OF SUCH SUBDIVISION.

19 S 4. This act shall take effect on the first of April next succeeding  
20 the date on which it shall have become a law.