S T A T E O F N E W Y O R K

8038

2011-2012 Regular Sessions

I N A S S E M B L Y

May 27, 2011

Introduced by M. of A. SPANO -- read once and referred to the Committee on Agriculture

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:

Section 1. Short title. This act shall be known and may be cited as the "buy from the backyard act".

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

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

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

b. The commissioner of agriculture and markets shall determine AND CERTIFY, using uniform criteria, those food products for which the requirements of this subdivision are deemed MOST beneficial and shall promulgate and forward to the appropriate agencies a list of such food products, and shall in addition ascertain those periods of time each year that those food products are available in sufficient quantities for competitive purchasing and shall forward such information to purchasing agencies. The commissioner of agriculture and markets shall update such list as often as is deemed by him or her to be necessary. FOR THE PURPOSES OF THIS SUBDIVISION, "COMPETITIVE PURCHASING" OF NEW YORK FOOD

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

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PRODUCTS SHALL BE DEEMED TO BE ESTABLISHED WHEN THE COST OF SUCH PRODUCTS ARE NOT MORE THAN TEN PERCENT HIGHER THAN OTHER FOOD PRODUCTS.

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

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

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

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

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

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

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

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

(ii) Any successful offerer who fails to comply with the provisions of this subdivision, at the discretion of such agency, board, office or

commission, shall forfeit the right to bid on contracts let under the provisions of this subdivision for a period of time to be determined by the commissioner and the commissioner of agriculture and markets.

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

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

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

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