

2468

2011-2012 Regular Sessions

I N S E N A T E

January 21, 2011

Introduced by Sen. LIBOUS -- 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

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

LBD07264-01-1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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