

7572

2013-2014 Regular Sessions

I N A S S E M B L Y

May 23, 2013

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

AN ACT to amend the agriculture and markets law and the state finance
law, in relation to local product procurement; and in relation to a
procurement training program for agricultural business

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Section 2 of the agriculture and markets law is amended by
2 adding a new subdivision 6 to read as follows:
3 6. "LOCAL FOOD PRODUCTS" MEANS ANY FOOD PRODUCTS THAT ARE GROWN,
4 PRODUCED, HARVESTED, AND/OR PROCESSED BY NEW YORK CITIZENS OR BUSINESSES
5 LOCATED WITHIN THE BORDERS OF NEW YORK STATE, OR PREDOMINANTLY CONTAIN
6 NEW YORK-GROWN INGREDIENTS.
7 S 2. Subdivision 4 of section 165 of the state finance law, as amended
8 by chapter 137 of the laws of 2008, is amended to read as follows:
9 4. Special provisions for purchase of available New York food
10 products.
11 a. Except as otherwise provided in this subdivision, when letting
12 contracts for the purchase of food products on behalf of facilities and
13 institutions of the state, solicitation specifications of the office of
14 general services and any other agency, department, office, board or
15 commission may require provisions that mandate that all or some of the
16 required food products are [grown, produced or harvested in New York
17 state, or that any processing of such food products take place in facil-
18 ities located within New York state] LOCAL FOOD PRODUCTS, AS SUCH TERM
19 IS DEFINED IN SUBDIVISION SIX OF SECTION TWO OF THE AGRICULTURE AND
20 MARKETS LAW.
21 b. The commissioner of agriculture and markets shall determine, using
22 uniform criteria, those LOCAL food products, AS SUCH TERM IS DEFINED IN
23 SUBDIVISION SIX OF SECTION TWO OF THE AGRICULTURE AND MARKETS LAW, for
24 which the requirements of this subdivision are deemed beneficial and

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

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1 shall promulgate and forward to the appropriate agencies a list of such
2 LOCAL food products, and shall in addition ascertain those periods of
3 time each year that those LOCAL food products are available in suffi-
4 cient quantities for competitive purchasing and shall forward such
5 information to purchasing agencies. The commissioner of agriculture and
6 markets shall update such list as often as is deemed by him or her to be
7 necessary.

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

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

17 (iii) Upon a determination by the commissioner of agriculture and
18 markets that the food products required by the purchasing agency are
19 available in sufficient quantities to fulfill the agency's purchasing
20 needs, the purchasing agency may include in its solicitation a require-
21 ment that all or some of those food products are [grown, produced or
22 harvested in New York state, or that any processing of such food
23 products take place in facilities located within New York state] LOCAL
24 FOOD PRODUCTS, AS SUCH TERM IS DEFINED IN SUBDIVISION SIX OF SECTION TWO
25 OF THE AGRICULTURE AND MARKETS LAW. THE PURCHASING AGENCY MAY THEN GIVE
26 PREFERENCE TO PROCURING LOCAL FOOD PRODUCTS, IF THE PRODUCTS COST NO
27 MORE THAN TEN PERCENT MORE THAN FOOD PRODUCTS THAT ARE NOT GROWN,
28 PRODUCED, HARVESTED, AND/OR PROCESSED WITHIN THIS STATE.

29 (iv) Upon a determination by the commissioner of agriculture and
30 markets that such food products are not available in sufficient quanti-
31 ties to fulfill the agency's purchasing needs, the purchasing agency
32 shall issue a solicitation that does not require that all or some of
33 those food products are [grown, produced or harvested in New York state,
34 or that any processing of such food products take place in facilities
35 located within New York state] LOCAL FOOD PRODUCTS, AS SUCH TERM IS
36 DEFINED IN SUBDIVISION SIX OF SECTION TWO OF THE AGRICULTURE AND MARKETS
37 LAW. In such cases, the purchasing agency may include such requirements
38 in the next contract for such food products that is let if at such time
39 those food products are available in sufficient quantities. If at that
40 time, those food products are not available in sufficient quantities,
41 the requirement shall again be waived until such time as the products
42 are available.

43 (v) In the event that the purchasing agency receives no offers that
44 meet the agency's requirement that all or some of the food products are
45 [grown, produced or harvested in New York state, or that any processing
46 of such food products take place in facilities located within New York
47 state] LOCAL FOOD PRODUCTS, AS SUCH TERM IS DEFINED IN SUBDIVISION SIX
48 OF SECTION TWO OF THE AGRICULTURE AND MARKETS LAW, it may waive the
49 provisions of this subdivision and award a contract in accordance with
50 other applicable statutes. In addition, if the commissioners of agricul-
51 ture and markets, economic development and any such individual agency
52 shall agree as to the deleterious economic impact of specifications
53 requiring such purchases, such agencies may waive the provisions of this
54 subdivision for such purchases.

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

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

8 f. (i) With each offer, the offerer shall certify that the food
9 products provided pursuant to that solicitation will be in conformity
10 with the provisions of the percentage required to meet or exceed the
11 requirements in the solicitation specifying that all or some of the food
12 products be [grown, produced, or harvested within New York state or that
13 any processing of such food products take place in facilities located
14 within New York state] LOCAL FOOD PRODUCTS, AS SUCH TERM IS DEFINED IN
15 SUBDIVISION SIX OF SECTION TWO OF THE AGRICULTURE AND MARKETS LAW.

16 (ii) Any successful offerer who fails to comply with the provisions of
17 this subdivision, at the discretion of such agency, board, office or
18 commission, shall forfeit the right to bid on contracts let under the
19 provisions of this subdivision for a period of time to be determined by
20 the commissioner and the commissioner of agriculture and markets.

21 g. The commissioner and the commissioner of agriculture and markets,
22 shall advise and assist the chancellor of the state university of New
23 York in extending the benefits of the provisions of this subdivision to
24 the university and shall modify any regulations or procedures heretofore
25 established pursuant to this subdivision, in order to facilitate such
26 participation.

27 S 3. Subparagraphs (vii), (viii), (ix), (x) and (xi) of paragraph b of
28 subdivision 3 of section 163 of the state finance law, subparagraph
29 (vii) as added by chapter 584 of the laws of 2005, and subparagraphs
30 (viii), (ix), (x) and (xi) as added by chapter 137 of the laws of 2008,
31 are amended to read as follows:

32 (vii) WITH THE ASSISTANCE OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT
33 AND THE DEPARTMENT OF AGRICULTURE AND MARKETS, PROVIDE A TRAINING
34 PROGRAM ONCE PER YEAR, IN EACH ECONOMIC DEVELOPMENT REGION, AS ESTAB-
35 LISHED IN ARTICLE ELEVEN OF THE ECONOMIC DEVELOPMENT LAW, BEGINNING
36 JANUARY FIRST, TWO THOUSAND FOURTEEN, FOR AGRICULTURAL BUSINESSES. SUCH
37 TRAINING PROGRAM SHALL PROVIDE ASSISTANCE WITH RESPECT TO PARTICIPATION
38 AS A VENDOR IN THE PROCUREMENT PROCESS, AS ESTABLISHED IN THIS ARTICLE,
39 AND THE DEVELOPMENT OF LOCAL FOOD PRODUCTS WHICH ARE NOT GROWN,
40 PRODUCED, HARVESTED, AND/OR PROCESSED IN SUFFICIENT QUANTITIES TO
41 FULFILL STATE AGENCIES' NEEDS.

42 (VIII) maintain a list of contractors which produce or manufacture or
43 offer for sale environmentally-sensitive cleaning and maintenance
44 products in the form, function and utility generally used by elementary
45 and secondary schools in accordance with specifications or guidelines
46 promulgated pursuant to section four hundred nine-i of the education
47 law.

48 [(viii)] (IX) review and consider prior to issuance of bid solicita-
49 tions the term of the proposed contract based on factors, including, but
50 not limited to; (A) the nature of the commodity, (B) the complexity of
51 the procurement, (C) the identity and type of purchasers, (D) the suit-
52 ability of the contract for adding additional contractors during the
53 term, and (E) the estimated contract value. This determination shall be
54 documented in the procurement record.

55 [(ix)] (X) reasonably consider aggregate amount of public sales by
56 potential vendors.

1 [(x)] (XI) review and consider the feasibility of creating regional
2 contracts for commodities being procured by the state.
3 [(xi)] (XII) maintain a procurement record for each centralized
4 contract procurement identifying, with supporting documentation, deci-
5 sions made by the commissioner during the procurement process. The
6 procurement record shall include, but not be limited to, each contract
7 amendment, and the justification for each.
8 S 4. This act shall take effect immediately; provided however that the
9 amendments made to subparagraphs (vii), (viii), (ix), (x) and (xi) of
10 paragraph b of subdivision 3 of section 163 of the state finance law by
11 section three of this act shall not affect the repeal of such section
12 and shall be deemed repealed therewith.