

5552

2013-2014 Regular Sessions

I N   S E N A T E

May 17, 2013

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Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed 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 ASSEMBLY, 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, AND PREDOMINANTLY CONTAINS  
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)  
28 of 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  
11 by section three of this act shall not affect the repeal of such section  
12 and shall be deemed repealed therewith.