

# STATE OF NEW YORK

2086

2017-2018 Regular Sessions

## IN ASSEMBLY

January 17, 2017

Introduced by M. of A. MORELLE, BRAUNSTEIN, GOTTFRIED, ENGLEBRIGHT, BRINDISI, MOSLEY, STIRPE, SKOUFIS, ARROYO, JAFFEE, CYMBROWITZ, TITONE, MAYER, ROZIC, ZEBROWSKI, CUSICK, GALEF, GUNTHER, LUPARDO, MAGNARELLI, OTIS, PERRY, SANTABARBARA, BRONSON, MOYA, QUART, FARRELL, ABBATE, BARRETT, STECK, HOOPER, FAHY, LIFTON, KEARNS, RYAN, JOYNER, ABINANTI, ROSENTHAL -- Multi-Sponsored by -- M. of A. COOK, GRAF, LUPINACCI, MAGEE, McDONOUGH, MONTESANO, RAIA, RAMOS, RIVERA, SIMON, THIELE -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, the public authorities law, the highway law, the general municipal law, and the public buildings law, in relation to requiring the use of American made iron, steel and manufactured products in certain government contracts, and to repeal certain provisions of the public authorities law and the state finance law relating thereto

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 as the "New York State  
2 Buy American Act".

3 § 2. Section 146 of the state finance law is REPEALED and a new  
4 section 146 is added to read as follows:

5 § 146. The New York State Buy American Act. 1. Use of American materi-  
6 als. (a) Notwithstanding any other provision of law, each contract for  
7 the construction, reconstruction, alteration or improvement of a public  
8 building of public works made by a public agency shall contain a  
9 provision that the iron, steel, and manufactured products used or  
10 supplied in the performance of the contract or any subcontract thereto  
11 and permanently incorporated into the public building or public works  
12 shall be manufactured in the United States.

13 (b) For the purposes of section one hundred sixty-three of this chap-  
14 ter, no bidder shall be deemed to be the lowest responsible and reliable  
15 bidder and no bid shall be deemed the best value unless the bid offered

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

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1 by such bidder will comply with the contract term required by paragraph  
2 (a) of this subdivision.

3 (c) The provisions of paragraph (a) of this subdivision shall not  
4 apply in any case or category of cases in which the executive head of a  
5 public agency finds:

6 (i) that the application of this section would be inconsistent with  
7 the public interest;

8 (ii) that such materials and products are not produced in the United  
9 States in sufficient and reasonably available quantities and of a satis-  
10 factory quality; or

11 (iii) that inclusion of domestic material will increase the cost of  
12 the overall project contract by more than twenty-five percent.

13 (d) If the executive receives a request for a waiver under paragraph  
14 (c) of this subdivision, the executive shall provide notice of and an  
15 opportunity for public comment on the request at least thirty days  
16 before making a finding based on the request.

17 (e) A notice provided under paragraph (d) of this subdivision shall:

18 (i) summarize the information available to the executive concerning  
19 the request, including whether the request is being made under subpara-  
20 graph (i), (ii) or (iii) of paragraph (c) of this subdivision;

21 (ii) be posted prominently on the official public internet web site of  
22 the agency; and

23 (iii) be provided by electronic means to any person, firm or corpo-  
24 ration that has made a written or electronic request to the public agen-  
25 cy for notice of waiver actions by the executive within five (5) years  
26 prior to the date of notice.

27 (f) If the executive issues a waiver under paragraph (c) of this  
28 subdivision, the executive shall publish in the same manner as the  
29 original notice a detailed justification for the waiver that:

30 (i) addresses the public comments received under paragraph (d) of this  
31 subdivision; and

32 (ii) is published before the waiver takes effect.

33 (g) If it has been determined by a court or federal or state agency  
34 that any person intentionally:

35 (i) affixed a label bearing a "Made in America" inscription, or any  
36 inscription with the same meaning, to any iron, steel or manufactured  
37 product used in projects to which this section applies, sold in or  
38 shipped to the United States that was not made in the United States; or

39 (ii) represented that any iron, steel or manufactured product used in  
40 projects to which this section applies that was not produced in the  
41 United States, was produced in the United States;

42 then that person shall be ineligible to receive any contract or subcon-  
43 tract with this state pursuant to the debarment or suspension provisions  
44 provided under section one hundred thirty-nine-a of this article.

45 (h) This section shall be applied in a manner consistent with the  
46 state's obligations under any applicable international agreements  
47 pertaining to government procurement.

48 2. Definitions. For the purposes of this section, the following words  
49 shall have the following meanings unless specified otherwise:

50 (a) "Executive" means the executive head of a public agency subject to  
51 this section;

52 (b) "Public agency" means a governmental entity as that term is  
53 defined in section one hundred thirty-nine-j of this article;

54 (c) "manufactured in the United States" means: (i) in the case of an  
55 iron or steel product all manufacturing must take place in the United  
56 States, from the initial melting stage through the application of coat-

ings, except metallurgical processes involving the refinement of steel additives; and

(ii) in the case of a manufactured product, a product will be considered manufactured in the United States if:

(A) all of its manufacturing processes take place in the United States, and

(B) more than sixty percent of the components of the manufactured good, by cost, are of domestic origin. If, under the terms of this subparagraph, a component is determined to be of domestic origin, its entire cost may be used in calculating the cost of domestic content of an end product.

(d) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

§ 3. Section 2603-a of the public authorities law is REPEALED and a new section 2877-a is added to read as follows:

§ 2877-a. The New York State Buy American Act. 1. Use of American materials. (a) Notwithstanding any other provision of law, each contract for the construction, reconstruction, alteration or improvement of a public building or public works made by a public authority shall contain a provision that the iron, steel, and manufactured products used or supplied in the performance of the contract or any subcontract thereto and permanently incorporated into the public building or public works shall be manufactured in the United States.

(b) No bidder shall be deemed to be the lowest responsible and reliable bidder and no bid shall be deemed the best value unless the bid offered by such bidder will comply with the contract term required by paragraph (a) of this subdivision.

(c) The provisions of paragraph (a) of this subdivision shall not apply in any case or category of cases in which the executive head of a public agency finds:

(i) that the application of this section would be inconsistent with the public interest;

(ii) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) that inclusion of domestic material will increase the cost of the overall project contract by more than twenty-five percent.

(d) If the executive receives a request for a waiver under paragraph (c) of this subdivision, the executive shall provide notice of and an opportunity for public comment on the request at least thirty days before making a finding based on the request.

(e) A notice provided under paragraph (d) of this subdivision shall:

(i) summarize the information available to the executive concerning the request, including whether the request is being made under subparagraph (i), (ii) or (iii) of paragraph (c) of this subdivision;

(ii) be posted prominently on the official public internet web site of the agency; and

(iii) be provided by electronic means to any person, firm or corporation that has made a written or electronic request to the public agency for notice of waiver actions by the executive within five (5) years prior to the date of notice.

(f) If the executive issues a waiver under paragraph (c) of this subdivision, the executive shall publish in the same manner as the original notice a detailed justification for the waiver that:

1 (i) addresses the public comments received under paragraph (d) of this  
2 subdivision; and

3 (ii) is published before the waiver takes effect.

4 (g) If it has been determined by a court or federal or state agency  
5 that any person intentionally:

6 (i) affixed a label bearing a "Made in America" inscription, or any  
7 inscription with the same meaning, to any iron, steel or manufactured  
8 product used in projects to which this section applies, sold in or  
9 shipped to the United States that was not made in the United States; or

10 (ii) represented that any iron, steel, or manufactured product used in  
11 projects to which this section applies that was not produced in the  
12 United States, was produced in the United States;

13 then that person shall be ineligible to receive any contract or subcon-  
14 tract with this State pursuant to the debarment and suspension  
15 provisions provided under section one hundred thirty-nine-a of the state  
16 finance law.

17 (h) This section shall be applied in a manner consistent with the  
18 state's obligations under any applicable international agreements  
19 pertaining to government procurement.

20 2. Definitions. For the purpose of this section, the following words  
21 shall have the following meanings unless specified otherwise:

22 (a) "Executive" means the executive head of a public agency subject to  
23 this section;

24 (b) "Public agency" means a state, local or interstate authority as  
25 those terms are defined in section two of this chapter;

26 (c) "Manufactured in the United States" means: (i) in the case of an  
27 iron or steel product all manufacturing must take place in the United  
28 States, from the initial melting stage through the application of coat-  
29 ings, except metallurgical processes involving the refinement of steel  
30 additives; and

31 (ii) in the case of a manufactured product, a product will be consid-  
32 ered manufactured in the United States if:

33 (A) all of its manufacturing processes take place in the United  
34 States, and

35 (B) more than sixty percent of the components of the manufactured  
36 good, by cost, are of domestic origin. If, under the terms of this part,  
37 a component is determined to be of domestic origin, its entire cost may  
38 be used in calculating the cost of domestic content of an end product.

39 (d) "United States" means the United States of America and includes  
40 all territory, continental or insular, subject to the jurisdiction of  
41 the United States.

42 § 4. Section 38 of the highway law is amended by adding a new subdivi-  
43 sion 10 to read as follows:

44 10. Use of American materials. (a) Notwithstanding any other provision  
45 of law, each contract for the construction, reconstruction, alteration  
46 or improvement of a highway or other public works made by a public agen-  
47 cy shall contain a provision that the iron, steel, and manufactured  
48 products used or supplied in the performance of the contract or any  
49 subcontract thereto and permanently incorporated into the public build-  
50 ing or public works shall be manufactured in the United States.

51 (b) No bidder shall be deemed to be the lowest responsible and reli-  
52 able bidder and no bid shall be deemed the best value unless the bid  
53 offered by such bidder will comply with the contract term required by  
54 paragraph (a) of this subdivision.

1 (c) The provisions of paragraph (a) of this subdivision shall not  
2 apply in any case or category of cases in which the executive head of a  
3 public agency finds:

4 (i) that the application of this subdivision would be inconsistent  
5 with the public interest;

6 (ii) that such materials and products are not produced in the United  
7 States in sufficient and reasonably available quantities and of a satis-  
8 factory quality; or

9 (iii) that inclusion of domestic material will increase the cost of  
10 the overall project contract by more than twenty-five percent.

11 (d) If the executive receives a request for a waiver under paragraph  
12 (c) of this subdivision, the executive shall provide notice of and an  
13 opportunity for public comment on the request of at least thirty days  
14 before making a finding based on the request.

15 (e) A notice provided under paragraph (d) of this subdivision shall:

16 (i) summarize the information available to the executive concerning  
17 the request, including whether the request is being made under subpara-  
18 graph (i), (ii) or (iii) of paragraph (c) of this subdivision;

19 (ii) be posted prominently on the official public internet web site of  
20 the agency; and

21 (iii) be provided by electronic means to any person, firm or corpo-  
22 ration that has made a written or electronic request to the public agen-  
23 cy for notice of waiver actions by the executive within five (5) years  
24 prior to the date of notice.

25 (f) If the executive issues a waiver under paragraph (c) of this  
26 subdivision, the executive shall publish in the same manner as the  
27 original notice a detailed justification for the waiver that:

28 (i) addresses the public comments received under paragraph (d) of this  
29 subdivision; and

30 (ii) is published before the waiver takes effect.

31 (g) If it has been determined by a court of federal or state agency  
32 that any person intentionally:

33 (i) affixed a label bearing a "Made in America" inscription, or any  
34 inscription with the same meaning, to any iron, steel or manufactured  
35 product used in projects to which this subdivision applies, sold in or  
36 shipped to the United States that was not made in the United States; or

37 (ii) represented that any iron, steel, or manufactured product used in  
38 projects to which this section applies that was not produced in the  
39 United States, was produced in the United States;

40 then that person shall be ineligible to receive any contract or subcon-  
41 tract with this state pursuant to the debarment or suspension provisions  
42 provided under section one hundred thirty-nine-a of the state finance  
43 law.

44 (h) This subdivision shall be applied in a manner consistent with the  
45 state's obligations under any applicable international agreements  
46 pertaining to government procurement.

47 (i) Definitions. For the purpose of this subdivision, the following  
48 words shall have the following meanings unless specified otherwise:

49 (i) "Executive" means the executive head of a public agency subject to  
50 this subdivision.

51 (ii) "Public agency" means a governmental entity as that term is  
52 defined in section one hundred thirty-nine-j of the state finance law;

53 (iii) "Manufactured in the United States" means: (A) in the case of an  
54 iron or steel product all manufacturing must take place in the United  
55 States, from the initial melting stage through the application of coat-



ings, except metallurgical processes involving the refinement of steel additives; and

(B) in the case of a manufactured product, a product will be considered manufactured in the United States if:

(1) all of its manufacturing processes take place in the United States, and

(2) more than sixty percent of the components of the manufactured good, by cost, are of domestic origin. If, under the terms of this part, a component is determined to be of domestic origin, its entire cost may be used in calculating the cost of domestic content of an end product.

(iv) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

§ 5. Section 103 of the general municipal law is amended by adding a new subdivision 17 to read as follows:

17. Use of American materials. (a) Notwithstanding any other provision of law, each contract for the construction, reconstruction, alteration or improvement of a public building or public works made by a public agency of a political subdivision shall contain a provision that the iron, steel, and manufactured products used or supplied in the performance of the contract or any subcontract thereto and permanently incorporated into the public building or public works shall be manufactured in the United States.

(b) No bidder shall be deemed to be the lowest responsible and reliable bidder and no bid shall be deemed the best value unless the bid offered by such bidder will comply with the contract term required by paragraph (a) of this subdivision.

(c) The provisions of paragraph (a) of this subdivision shall not apply in any case or category of cases in which the executive head of a public agency finds:

(i) that the application of this subdivision would be inconsistent with the public interest;

(ii) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) that inclusion of domestic material will increase the cost of the overall project contract by more than twenty-five percent.

(d) If the executive receives a request for a waiver under paragraph (c) of this subdivision, the executive shall provide notice of an opportunity for public comment on the request at least thirty days before making a finding based on the request.

(e) A notice provided under paragraph (d) of this subdivision shall:

(i) summarize the information available to the executive concerning the request, including whether the request is being made under subparagraph (i), (ii) or (iii) of paragraph (c) of this subdivision;

(ii) be posted prominently on the official public internet web site of the agency; and

(iii) be provided by electronic means to any person, firm or corporation that has made a written or electronic request to the public agency for notice of waiver actions by the executive within five (5) years prior to the date of notice.

(f) If the executive issues a waiver under paragraph (c) of this subdivision, the executive shall publish in the same manner as the original notice a detailed justification for the waiver that:

(i) addresses the public comments received under paragraph (d) of this subdivision; and

1 (ii) is published before the waiver takes effect.

2 (g) If it has been determined by a court or federal or state agency  
3 that any person intentionally:

4 (i) affixed a label bearing a "Made in America" inscription, or any  
5 inscription with the same meaning, to any iron, steel or manufactured  
6 product used in projects to which this subdivision applies, sold in or  
7 shipped to the United States that was not made in the United States; or

8 (ii) represented that any iron, steel, or manufactured product used in  
9 projects to which this section applies that was not produced in the  
10 United States, was produced in the United States;

11 then that person shall be ineligible to receive any contract or subcon-  
12 tract with this state pursuant to the debarment or suspension provisions  
13 provided under section one hundred thirty-nine-a of the state finance  
14 law.

15 (h) This subdivision shall be applied in a manner consistent with the  
16 state's obligations under any applicable international agreements  
17 pertaining to government procurement.

18 (i) Definitions. For the purpose of this subdivision, the following  
19 words shall have the following meanings unless specified otherwise:

20 (i) "Executive" means the executive head of a public agency subject to  
21 this subdivision;

22 (ii) "Public agency" means a governmental entity as that term is  
23 defined in section one hundred thirty-nine-j of the state finance law;

24 (iii) "Manufactured in the United States" means: (A) in the case of an  
25 iron or steel product all manufacturing must take place in the United  
26 States, from the initial melting stage through the application of coat-  
27 ings, except metallurgical processes involving the refinement of steel  
28 additives; and

29 (B) in the case of a manufactured product, a product will be consid-  
30 ered manufactured in the United States if:

31 (1) all of its manufacturing processes take place in the United  
32 States, and

33 (2) more than sixty percent of the components of the manufactured  
34 good, by cost, are of domestic origin. If, under the terms of this part,  
35 a component is determined to be of domestic origin, its entire cost may  
36 be used in calculating the cost of domestic content of an end product.

37 (iv) "United States" means the United States of America and includes  
38 all territory, continental or insular, subject to the jurisdiction of  
39 the United States.

40 § 6. Section 8 of the public buildings law is amended by adding a new  
41 subdivision 8 to read as follows:

42 8. Use of American materials. (a) Notwithstanding any other provision  
43 of law, each contract for the construction, reconstruction, alteration  
44 or improvement of a state building made by a public agency shall contain  
45 a provision that the iron, steel, and manufactured products used or  
46 supplied in the performance of the contract of any subcontract thereto  
47 and permanently incorporated into the public building or public works  
48 shall be manufactured in the United States.

49 (b) No bidder shall be deemed to be the lowest responsible and reli-  
50 able bidder and no bid shall be deemed the best value unless the bid  
51 offered by such bidder will comply with the contract term required by  
52 paragraph (a) of this subdivision.

53 (c) The provisions of paragraph (a) of this subdivision shall not  
54 apply in any case or category of cases in which the executive head of a  
55 public agency finds:

1 (i) that the application of this subdivision would be inconsistent  
2 with the public interest;

3 (ii) that such materials and products are not produced in the United  
4 States in sufficient and reasonably available quantities and of a satis-  
5 factory quality; or

6 (iii) that inclusion of domestic material will increase the cost of  
7 the overall project contract by more than twenty-five percent.

8 (d) If the executive receives a request for a waiver under paragraph  
9 (c) of this subdivision, the executive shall provide notice of and an  
10 opportunity for public comment on the request at least thirty days  
11 before making a finding based on the request.

12 (e) A notice provided under paragraph (d) of this subdivision shall:

13 (i) summarize the information available to the executive concerning  
14 the request, including whether the request is being made under subpara-  
15 graph (i), (ii) or (iii) of paragraph (c) of this subdivision;

16 (ii) be posted prominently on the official public internet web site of  
17 the agency; and

18 (iii) be provided by electronic means to any person, firm or corpo-  
19 ration that has made a written or electronic request to the public agen-  
20 cy for notice of waiver actions by the executive within five (5) years  
21 prior to the date of notice.

22 (f) If the executive issues a waiver under paragraph (c) of this  
23 subdivision, the executive shall publish in the same manner as the  
24 original notice a detailed justification of the waiver that:

25 (i) addresses the public comments received under paragraph (d) of this  
26 subdivision; and

27 (ii) is published before the waiver takes effect.

28 (g) If it has been determined by a court or federal or state agency  
29 that any person intentionally:

30 (i) affixed a label bearing a "Made in America" inscription, or any  
31 inscription with the same meaning, to any iron, steel or manufactured  
32 product used in projects to which this subdivision applies, sold in or  
33 shipped to the United States that was not made in the United States; or

34 (ii) represented that any iron, steel, or manufactured product used in  
35 projects to which this section applies that was not produced in the  
36 United States, was produced in the United States;

37 then that person shall be ineligible to receive any contract or subcon-  
38 tract with this state pursuant to the debarment or suspension provisions  
39 provided under section one hundred thirty-nine-a of the state finance  
40 law.

41 (h) This subdivision shall be applied in a manner consistent with the  
42 state's obligations under any applicable international agreements  
43 pertaining to government procurement.

44 (i) Definitions. For the purpose of this subdivision, the following  
45 words shall have the following meanings unless otherwise specified:

46 (i) "Executive" means the executive head of a public agency subject to  
47 this subdivision;

48 (ii) "Public agency" means a governmental entity as that term is  
49 defined in section one hundred thirty-nine-j of the state finance law;

50 (iii) "Manufactured in the United States" means: (A) in the case of an  
51 iron or steel product all manufacturing must take place in the United  
52 States, from the initial melting stage through the application of coat-  
53 ings, except metallurgical processes involving the refinement of steel  
54 additives; and

55 (B) in the case of a manufactured product, a product will be consid-  
56 ered manufactured in the United States if:



1     (1) all of its manufacturing processes take place in the United  
2     States, and

3     (2) more than sixty percent of the components of the manufactured  
4     good, by cost, are of domestic origin. If, under the terms of this part,  
5     a component is determined to be of domestic origin, its entire cost may  
6     be used in calculating the cost of domestic content of an end product.

7     (iv) "United States" means the United States of America and includes  
8     all territory, continental or insular, subject to the jurisdiction of  
9     the United States.

10    § 7. Severability. If any provisions of this act, or the application  
11    thereof to any person or circumstance, is held invalid, such invalidity  
12    shall not affect other provisions or applications of this act which can  
13    be given effect without the invalid provisions or application, and to  
14    that extent, the provisions of this act are declared to be severable.

15    § 8. This act shall take effect immediately.