

# STATE OF NEW YORK

4386

2017-2018 Regular Sessions

## IN ASSEMBLY

February 2, 2017

Introduced by M. of A. CUSICK, BRABENEC, TITONE -- 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 establishing a rating system to prioritize the selection of such products; 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. Title. This act shall be known as the "made in America  
2 rating system act" or the "MARS 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 Section 146 of the state finance law is REPEALED and a new  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. Made in America rating system. 1. Use of American materials.  
6 (a) Notwithstanding any other provision of law, each contract for the  
7 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 awarded to the bidder whose product or material has the highest  
13 rating on the made in America rating system scale.

14 (b) The provisions of paragraph (a) of this subdivision shall not  
15 apply in any case or category of cases in which it is found that:

16 (i) such materials and products do not meet state standards for  
17 construction in the state; or

18 (ii) inclusion of domestic material will increase the cost of the  
19 overall project contract by more than twenty percent.

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

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(c) The made in America rating system shall include the following ratings, listed in order from highest to lowest rating:

(i) Empire State AAA - one hundred percent of the product is assembled in the state and one hundred percent of the raw materials are American;

(ii) Empire State AA - one hundred percent of the product is assembled in the state and at least sixty percent of the raw materials are American;

(iii) Empire State A - one hundred percent of the product is assembled in the state;

(iv) USA 100 - one hundred percent of the product is assembled in the United States and one hundred percent of the raw materials are American;

(v) USA 60 - one hundred percent of the product is assembled in the United States and at least sixty percent of the raw materials are American;

(vi) USA Rating - one hundred percent of the product is assembled in the United States.

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

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

(ii) represented that any iron, steel or manufactured product used in projects to which this section applies that was not produced in the United States, was produced in the United States; then that person shall be ineligible to receive any contract or subcontract with this state pursuant to the debarment or suspension provisions provided under section one hundred thirty-nine-a of this article.

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

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

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

(b) "made in America" means: (i) in the case of an iron or steel product all manufacturing must take place in the United States, from the initial melting stage through the application of coatings, 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.

(c) "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. Made in America rating system. 1. Use of American materials.

(a) Notwithstanding any other provision of law, each contract for the construction, reconstruction, alteration or improvement of a public

1 building of public works made by a public agency shall contain a  
2 provision that the iron, steel, and manufactured products used or  
3 supplied in the performance of the contract or any subcontract thereto  
4 and permanently incorporated into the public building or public works  
5 shall be awarded to the bidder whose product or material has the highest  
6 rating on the made in America rating system scale.

7 (b) The provisions of paragraph (a) of this subdivision shall not  
8 apply in any case or category of cases in which it is found that:

9 (i) such materials and products do not meet state standards for  
10 construction in the state; or

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

13 (c) The made in America rating system shall include the following  
14 ratings, listed in order from highest to lowest rating:

15 (i) Empire State AAA - one hundred percent of the product is assembled  
16 in the state and one hundred percent of the raw materials are American;

17 (ii) Empire State AA - one hundred percent of the product is assembled  
18 in the state and at least sixty percent of the raw materials are Ameri-  
19 can;

20 (iii) Empire State A - one hundred percent of the product is assembled  
21 in the state;

22 (iv) USA 100 - one hundred percent of the product is assembled in the  
23 United States and one hundred percent of the raw materials are American;

24 (v) USA 60 - one hundred percent of the product is assembled in the  
25 United States and at least sixty percent of the raw materials are Ameri-  
26 can;

27 (vi) USA Rating - one hundred percent of the product is assembled in  
28 the United States.

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

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

35 (ii) represented that any iron, steel or manufactured product used in  
36 projects to which this section applies that was not produced in the  
37 United States, was produced in the United States; then that person shall  
38 be ineligible to receive any contract or subcontract with this state  
39 pursuant to the debarment or suspension provisions provided under  
40 section one hundred thirty-nine-a of the state finance law.

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

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

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

49 (b) "made in America" means: (i) in the case of an iron or steel prod-  
50 uct all manufacturing must take place in the United States, from the  
51 initial melting stage through the application of coatings, except metal-  
52 lurgical processes involving the refinement of steel additives; and

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

55 (A) all of its manufacturing processes take place in the United  
56 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.

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

§ 4. Section 38 of the highway law is amended by adding a new subdivision 10 to read as follows:

10. Use of American materials. (a) Notwithstanding any other provision of law, each contract for the construction, reconstruction, alteration or improvement of a public building of public works made by a public agency 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 awarded to the bidder whose product or material has the highest rating on the made in America rating system scale.

(b) The provisions of paragraph (a) of this subdivision shall not apply in any case or category of cases in which it is found that:

(i) such materials and products do not meet state standards for construction in the state; or

(ii) inclusion of domestic material will increase the cost of the overall project contract by more than twenty percent.

(c) The made in America rating system shall include the following ratings, listed in order from highest to lowest rating:

(i) Empire State AAA - one hundred percent of the product is assembled in the state and one hundred percent of the raw materials are American;

(ii) Empire State AA - one hundred percent of the product is assembled in the state and at least sixty percent of the raw materials are American;

(iii) Empire State A - one hundred percent of the product is assembled in the state;

(iv) USA 100 - one hundred percent of the product is assembled in the United States and one hundred percent of the raw materials are American;

(v) USA 60 - one hundred percent of the product is assembled in the United States and at least sixty percent of the raw materials are American;

(vi) USA Rating - one hundred percent of the product is assembled in the United States.

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

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

(ii) represented that any iron, steel or manufactured product used in projects to which this section applies that was not produced in the United States, was produced in the United States; then that person shall be ineligible to receive any contract or subcontract with this state pursuant to the debarment or suspension provisions provided under section one hundred thirty-nine-a of the state finance law.

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

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

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

5 (b) "made in America" means: (i) in the case of an iron or steel prod-  
6 uct all manufacturing must take place in the United States, from the  
7 initial melting stage through the application of coatings, except metal-  
8 lurgical processes involving the refinement of steel additives; and

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

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

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

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

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

23 17. Use of American materials. (a) Notwithstanding any other provision  
24 of law, each contract for the construction, reconstruction, alteration  
25 or improvement of a public building of public works made by a public  
26 agency shall contain a provision that the iron, steel, and manufactured  
27 products used or supplied in the performance of the contract or any  
28 subcontract thereto and permanently incorporated into the public build-  
29 ing or public works shall be awarded to the bidder whose product or  
30 material has the highest rating on the made in America rating system  
31 scale.

32 (b) The provisions of paragraph (a) of this subdivision shall not  
33 apply in any case or category of cases in which it is found that:

34 (i) such materials and products do not meet state standards for  
35 construction in the state; or

36 (ii) inclusion of domestic material will increase the cost of the  
37 overall project contract by more than twenty percent.

38 (c) The made in America rating system shall include the following  
39 ratings, listed in order from highest to lowest rating:

40 (i) Empire State AAA - one hundred percent of the product is assembled  
41 in the state and one hundred percent of the raw materials are American;

42 (ii) Empire State AA - one hundred percent of the product is assembled  
43 in the state and at least sixty percent of the raw materials are Ameri-  
44 can;

45 (iii) Empire State A - one hundred percent of the product is assembled  
46 in the state;

47 (iv) USA 100 - one hundred percent of the product is assembled in the  
48 United States and one hundred percent of the raw materials are American;

49 (v) USA 60 - one hundred percent of the product is assembled in the  
50 United States and at least sixty percent of the raw materials are Ameri-  
51 can;

52 (vi) USA Rating - one hundred percent of the product is assembled in  
53 the United States.

54 (d) If it has been determined by a court or federal or state agency  
55 that any person intentionally:

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

5 (ii) represented that any iron, steel or manufactured product used in  
6 projects to which this section applies that was not produced in the  
7 United States, was produced in the United States; then that person shall  
8 be ineligible to receive any contract or subcontract with this state  
9 pursuant to the debarment or suspension provisions provided under  
10 section one hundred thirty-nine-a of the state finance law.

11 (e) This section shall be applied in a manner consistent with the  
12 state's obligations under any applicable international agreements  
13 pertaining to government procurement.

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

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

18 (b) "made in America" means: (i) in the case of an iron or steel prod-  
19 uct all manufacturing must take place in the United States, from the  
20 initial melting stage through the application of coatings, except metal-  
21 lurgical processes involving the refinement of steel additives; and

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

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

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

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

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

36 8. Use of American materials. (a) Notwithstanding any other provision  
37 of law, each contract for the construction, reconstruction, alteration  
38 or improvement of a public building of public works made by a public  
39 agency shall contain a provision that the iron, steel, and manufactured  
40 products used or supplied in the performance of the contract or any  
41 subcontract thereto and permanently incorporated into the public build-  
42 ing or public works shall be awarded to the bidder whose product or  
43 material has the highest rating on the made in America rating system  
44 scale.

45 (b) The provisions of paragraph (a) of this subdivision shall not  
46 apply in any case or category of cases in which it is found that:

47 (i) such materials and products do not meet state standards for  
48 construction in the state; or

49 (ii) inclusion of domestic material will increase the cost of the  
50 overall project contract by more than twenty percent.

51 (c) The made in America rating system shall include the following  
52 ratings, listed in order from highest to lowest rating:

53 (i) Empire State AAA - one hundred percent of the product is assembled  
54 in the state and one hundred percent of the raw materials are American;



1 (ii) Empire State AA - one hundred percent of the product is assembled  
2 in the state and at least sixty percent of the raw materials are Ameri-  
3 can;

4 (iii) Empire State A - one hundred percent of the product is assembled  
5 in the state;

6 (iv) USA 100 - one hundred percent of the product is assembled in the  
7 United States and one hundred percent of the raw materials are American;

8 (v) USA 60 - one hundred percent of the product is assembled in the  
9 United States and at least sixty percent of the raw materials are Ameri-  
10 can;

11 (vi) USA Rating - one hundred percent of the product is assembled in  
12 the United States.

13 (d) If it has been determined by a court or federal or state agency  
14 that any person intentionally:

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

19 (ii) represented that any iron, steel or manufactured product used in  
20 projects to which this section applies that was not produced in the  
21 United States, was produced in the United States; then that person shall  
22 be ineligible to receive any contract or subcontract with this state  
23 pursuant to the debarment or suspension provisions provided under  
24 section one hundred thirty-nine-a of the state finance law.

25 (e) This section shall be applied in a manner consistent with the  
26 state's obligations under any applicable international agreements  
27 pertaining to government procurement.

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

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

32 (b) "made in America" means: (i) in the case of an iron or steel prod-  
33 uct all manufacturing must take place in the United States, from the  
34 initial melting stage through the application of coatings, except metal-  
35 lurgical processes involving the refinement of steel additives; and

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

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

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

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

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

53 § 8. This act shall take effect immediately.