

# STATE OF NEW YORK

8427

2017-2018 Regular Sessions

## IN ASSEMBLY

June 15, 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, BLAKE -- Multi-Sponsored by -- M. of A. BARNWELL, 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 and the public authorities law, in relation to enacting the "New York Buy American Act"; and providing for the repeal of certain provisions upon expiration thereof

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 "New York Buy American Act".  
3 § 2. Section 146 of the state finance law, as added by chapter 1014 of  
4 the laws of 1981, is amended to read as follows:  
5 § 146. Certain construction contracts involving steel. 1. Notwith-  
6 standing any other provisions of law, all contracts over one hundred  
7 thousand dollars in value made and awarded by any department or agency  
8 of the state for the construction, reconstruction, alteration, repair,  
9 maintenance or improvement of any public works shall require that struc-  
10 tural steel, reinforcing steel and/or other major steel items to be  
11 incorporated in the work of the contract shall be produced or made in  
12 whole or substantial part in the United States, its territories or  
13 possessions.  
14 2. Notwithstanding the provisions of subdivision one of this section,  
15 all contracts over one million dollars in value and made and awarded by  
16 any department or agency of the state for the construction, recon-  
17 struction, alteration, repair, maintenance or improvement of any roads

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

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1 or bridges, shall contain a provision that the iron, steel and concrete  
2 used or supplied in the performance of the contract or any subcontract  
3 thereto and permanently incorporated into such road or bridge, shall be  
4 produced or made in whole or substantial part in the United States, its  
5 territories or possessions. In the case of an iron or steel product all  
6 manufacturing must take place in the United States, from the initial  
7 melting stage through the application of coatings, except metallurgical  
8 processes involving the refinement of steel additives. For the purposes  
9 of this section, "permanently incorporated" shall mean an iron, steel or  
10 concrete product that is required to remain in place at the end of the  
11 project contract, in a fixed location, affixed to the public work or  
12 public building to which it was incorporated. Iron, steel and concrete  
13 products that are capable of being moved from one location to another  
14 are not permanently incorporated into a public building or public work.

15 3. The provisions of this section shall not apply if the head of the  
16 department or agency constructing the public works, in his or her sole  
17 discretion, determines that such provisions would not be in the public  
18 interest, would result in unreasonable costs or that such iron or steel  
19 cannot be produced or made in the United States in sufficient and  
20 reasonably available quantities and of satisfactory quality, or would  
21 result in the loss or reduction of federal funding for the subject  
22 contract.

23 4. For the purposes of this section, "contractor" shall mean any  
24 person, firm, business enterprise, including a sole proprietorship,  
25 partnership, limited liability company or corporation, association,  
26 not-for-profit corporation, or any other party to a state contract with  
27 a state entity.

28 § 3. Section 2603-a of the public authorities law, as added by chapter  
29 441 of the laws of 1983, is amended to read as follows:

30 § 2603-a. Letting of certain contracts involving steel products. 1.  
31 Notwithstanding any other provision of law, all public authorities shall  
32 award contracts involving steel products as follows:

33 a. All purchase contracts for supplies, material or equipment involv-  
34 ing an estimated expenditure in excess of fifty thousand dollars shall  
35 require with respect to materials, supplies and equipment made of,  
36 fabricated from, or containing steel components, that such steel compo-  
37 nents be produced or made in whole or substantial part in the United  
38 States, its territories or possessions. The provisions of this paragraph  
39 shall not apply to motor vehicles and automobile equipment assembled in  
40 Canada in conformity with the United States-Canadian trade agreements  
41 known as the "Automotive Products Trade Act of 1965" or any amendments  
42 thereto.

43 b. All contracts in excess of one hundred thousand dollars for the  
44 construction, reconstruction, alteration, repair, maintenance or  
45 improvement of public works shall require that all structural steel,  
46 reinforcing steel or other major steel items to be incorporated in the  
47 work of the contract shall be produced or made in whole or substantial  
48 part in the United States, its territories or possessions.

49 2. Notwithstanding the provisions of subdivision one of this section,  
50 all contracts over one million dollars in value made and awarded by any  
51 public authority for the construction, reconstruction, alteration,  
52 repair, maintenance or improvement of any road or bridge, shall contain  
53 a provision that the iron, steel and concrete used or supplied in the  
54 performance of the contract or any subcontract thereto and permanently  
55 incorporated into the road or bridge shall be produced or made in whole  
56 or substantial part in the United States, its territories or

1 possessions. In the case of an iron or steel product all manufacturing  
2 must take place in the United States, from the initial melting stage  
3 through the application of coatings, except metallurgical processes  
4 involving the refinement of steel additives. For purposes of this  
5 section, "permanently incorporated" shall mean an iron, steel or  
6 concrete product that is required to remain in place at the end of the  
7 project contract, in a fixed location, affixed to the public work or  
8 public building to which it was incorporated. Iron and steel products  
9 that are capable of being moved from one location to another are not  
10 permanently incorporated into a public building or public work.

11 3. The provisions of this section shall not apply if the governing  
12 board or body of such public authority, in its discretion, determines  
13 that such provisions would result in unreasonable costs or that such  
14 iron, steel products or steel components cannot be produced or made in  
15 the United States in sufficient and reasonably available quantities or  
16 of satisfactory quality or design, or would result in the loss or  
17 reduction of federal funding for the subject contract.

18 § 4. A workgroup consisting of representatives from New York state,  
19 Canada and the provinces of Ontario and Quebec, shall hold its first  
20 meeting within sixty days of the effective date of this act, and shall  
21 meet as long as necessary for the purposes of Canadian and New York  
22 reciprocal access for its manufacturers to projects that are covered by  
23 this act and which are in New York state, Ontario and Quebec. Such  
24 agreements shall be consistent and not supersede any provisions of  
25 formal trade agreements established by the governments of the United  
26 States and Canada. There shall be twelve representatives from New York  
27 state, four appointed by the governor, three appointed by the temporary  
28 president of the senate, three appointed by the speaker of the assembly,  
29 one appointed by the minority leader of the senate, and one appointed by  
30 the minority leader of the assembly.

31 § 5. This act shall take effect January 1, 2018 and shall apply to any  
32 state contracts executed and entered into on or after such date and  
33 shall exclude such contracts that have been previously awarded or have  
34 pending bids or pending requests for proposals issued as of January 1,  
35 2018, and shall not apply to projects that have completed project design  
36 and environmental studies prior to such date; provided, however, that  
37 section four of this act shall expire and be deemed repealed two years  
38 after this act shall have become a law.