STATE OF NEW YORK

8427--A

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 -- reference changed to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "New York Buy American Act".

§ 2. Section 146 of the state finance law, as added by chapter 1014 of the laws of 1981, is amended to read as follows:

§ 146. Certain construction contracts involving steel. **1.** Notwithstanding any other provisions of law, all contracts over one hundred thousand dollars in value made and awarded by any department or agency of the state for the construction, reconstruction, alteration, repair, maintenance or improvement of any public works shall require that structural steel, reinforcing steel and/or other major steel items to be incorporated in the work of the contract shall be produced or made in whole or substantial part in the United States, its territories or possessions.

2. Notwithstanding the provisions of subdivision one of this section, all contracts over one million dollars in value and made and awarded by

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

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the department of transportation, the office of general services, and the state university of New York construction fund for the construction, reconstruction, alteration, repair, maintenance or improvement of any surface roads or bridges, shall contain a provision that the structural iron and structural steel used or supplied in the performance of the contract or any subcontract thereto and permanently incorporated into such surface road or bridge, shall be produced or made in whole or substantial part in the United States, its territories or possessions. In the case of a structural iron or structural 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. For the purposes of this section, "permanently incorporated" shall mean an iron or steel product that is required to remain in place at the end of the project contract, in a fixed location, affixed to the public work to which it was incorporated. Iron and steel products that are capable of being moved from one location to another are not permanently incorporated into a public work.

3. The provisions of this section shall not apply if the head of the department or agency constructing the public works, in his or her sole discretion, determines that such provisions would not be in the public interest, would result in unreasonable costs or that such iron or steel, including without limitation structural iron and structural steel, cannot be produced or made in the United States in sufficient and reasonably available quantities and of satisfactory quality[.], or would result in the loss or reduction of federal funding for the subject contract or the ability to obtain such federal funding would be limited or jeopardized by compliance with this section; or there is an immediate or emergency need existing for the structural steel or structural iron; or the structural steel or structural iron is not manufactured in the United States in sufficient and reasonably available quantities or of satisfactory quality or design to meet the department's or agency's requirements; or obtaining such steel or iron in the United States would increase the cost of the contract by an unreasonable amount; or such steel or iron is necessary for the operation of or repairs of critical infrastructure that is necessary to avoid a delay in the delivery of critical services that could compromise the public welfare; or a reciprocal trade agreement or treaty has been negotiated by the state or by the United States government on behalf of or including this state with a foreign nation or government for nondiscriminatory governmental procurement practices or policies with such foreign nation or government.

4. Nothing in this section is intended to contravene any existing treaties, laws, trade agreements, or regulations of the United States or subsequent trade agreements entered into between any foreign countries and the state or the United States.

5. Any agency subject to the provisions of this section shall be authorized to establish rules and regulations for the effective administration of this section, provided however, nothing in this section shall be interpreted to require a contractor to certify that the structural iron or structural steel used in a road or bridge pursuant to this section is made in whole or in substantial part in the United States.

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

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

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

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

2. **Notwithstanding the provisions of subdivision one of this section, all contracts over one million dollars in value made and awarded by the dormitory authority, the metropolitan transportation authority, the bridge authority or the thruway authority, on its account or for the benefit of a state agency or authority, for the construction, reconstruction, alteration, repair, maintenance or improvement of any road or bridge, shall contain a provision that the structural iron and structural steel used or supplied in the performance of the contract or any subcontract thereto and permanently incorporated into the surface road or bridge shall be produced or made in whole or substantial part in the United States, its territories or possessions. In the case of a structural iron or structural 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. For purposes of this section, "permanently incorporated" shall mean an iron or steel product that is required to remain in place at the end of the project contract, in a fixed location, affixed to the public work to which it was incorporated. Iron and steel products that are capable of being moved from one location to another are not permanently incorporated into a public building or public work.**

3. The provisions of this section shall not apply if the governing board or body of such public authority, in its discretion, determines that such provisions would result in unreasonable costs or that such **iron,** steel products or steel components **including without limitation structural iron and steel;** cannot be produced or made in the United States in sufficient and reasonably available quantities or of satisfactory quality or design[~~.~~]**, or would result in the loss or reduction of federal funding for the subject contract or the ability to obtain such federal funding would be limited or jeopardized by compliance with this section; or there is an immediate or emergency need existing for such structural iron, structural steel products or structural steel components; or such steel or iron is not manufactured in the United States in sufficient and reasonably available quantities or of satisfactory quality or design to meet the authority's requirements; or obtaining for such iron, steel products or steel components in the United States would increase the cost of the contract by an unreasonable amount; or for such iron, steel products or steel components is necessary for the operation of or repairs of critical infrastructure that is necessary to avoid a delay in the delivery of critical services that could compromise the public welfare; or a reciprocal trade agreement or treaty has been**

negotiated by the state or by the United States government on behalf of or including this state with a foreign nation or government for nondiscriminatory governmental procurement practices or policies with such foreign nation or government.

4. Nothing in this section is intended to contravene any existing treaties, laws, trade agreements, or regulations of the United States or subsequent trade agreements entered into between any foreign countries and the state or the United States.

5. Any authority subject to the provisions of this section shall be authorized to establish rules and regulations for the effective administration of this section, provided however, nothing in this section shall be interpreted to require a contractor to certify that the iron or steel used in a road or bridge pursuant to this section is made in whole or in substantial part in the United States.

§ 4. A workgroup shall be convened to evaluate reciprocal trade access for any foreign state that may be significantly impacted by the implementation of this act to the detriment of New York state, the provisions of any formal trade agreements established by the governments of the United States and such foreign state, the expansion of the application of this act to include other products manufactured in the United States, which shall include but not be limited to concrete, cement and aluminum, the certification processes for these products, and the fiscal impact of such implementation and expansion of this act. Additionally, the workgroup shall report on the impact of this act on the capital plans of the department of transportation, the metropolitan transportation authority, and the thruway authority, including but not limited to any amendments to such capital plans necessary as a result of this act, any change in cost of projects as a result of this act, and any cost savings discernible due to quality improvements or maintenance reductions due to materials used as a result of this act. The members of the workgroup shall consist of seven representatives appointed by the governor, two appointed by the temporary president of the senate, two appointed by the speaker of the assembly, one appointed by the minority leader of the senate, and one appointed by the minority leader of the assembly. The workgroup shall be chaired by a designee of the governor. The chair may appoint other state agencies or public authorities which may prove beneficial to the workgroup as ad hoc members. The chair may also appoint individuals and representatives of organizations other than state agencies and public authorities to an advisory committee to advise on any aspect of its functions and duties. The workgroup shall provide an interim report on their findings to the governor, the temporary president of the senate and the speaker of the assembly on or before January 1, 2019 and a final report on January 1, 2020.

§ 5. This act shall take effect April 1, 2018 and shall apply to any state contracts executed and entered into on or after such date and shall exclude such contracts that have been previously awarded or have pending bids or pending requests for proposals issued as of April 1, 2018, and shall not apply to projects that have commenced project design and environmental studies prior to such date; provided, however, that this act shall expire and be deemed repealed April 15, 2020.