

# STATE OF NEW YORK

3918

2017-2018 Regular Sessions

## IN SENATE

January 30, 2017

Introduced by Sens. RITCHIE, AVELLA, BONACIC, DeFRANCISCO, GALLIVAN, LARKIN, MARCHIONE, ORTT, RANZENHOFER, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law and the agriculture and markets law, in relation to enacting the "buy from the backyard act"

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 "buy from the backyard act".

3 § 2. The opening paragraph of paragraph a, paragraphs b, c, subpara-  
4 graph (i) of paragraph f and paragraph h of subdivision 4 of section 165  
5 of the state finance law, the opening paragraph of paragraph a, subpara-  
6 graph (i) of paragraph f and paragraph h as amended by chapter 533 of  
7 the laws of 2013, and paragraphs b and c as amended by chapter 137 of  
8 the laws of 2008, are amended to read as follows:

9 Except as otherwise provided in this subdivision, when letting  
10 contracts for the purchase of food products on behalf of facilities and  
11 institutions of the state, solicitation specifications of the office of  
12 general services and any other agency, department, office, board or  
13 commission [~~may~~] shall require provisions that mandate that [~~all or~~  
14 ~~some~~], during each state fiscal year, not less than twenty percent of  
15 the required food products are grown, produced or harvested in New York  
16 state, or that any processing of such food products take place in facil-  
17 ities located within New York state.

18 b. The commissioner of agriculture and markets shall determine and  
19 certify, using uniform criteria, those food products for which the  
20 requirements of this subdivision are deemed most beneficial and shall  
21 promulgate and forward to the appropriate agencies a list of such food  
22 products, and shall in addition ascertain those periods of time each  
23 year that those food products are available in sufficient quantities for  
24 competitive purchasing and shall forward such information to purchasing

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

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1 agencies. The commissioner of agriculture and markets shall update such  
2 list as often as is deemed by him or her to be necessary. For the  
3 purposes of this subdivision, "competitive purchasing" of New York food  
4 products shall be deemed to be established when the cost of such  
5 products are not more than ten percent higher than other food products.

6 c. (i) Prior to issuing a solicitation for such food products,  
7 purchasing agencies shall advise the commissioner of agriculture and  
8 markets of the quantities of each food product on the list promulgated  
9 by the commissioner of agriculture and markets to fulfill that agency's  
10 purchasing needs.

11 (ii) The commissioner of agriculture and markets will then make a  
12 determination of whether those products required by the purchasing agen-  
13 cy are available in sufficient quantities to satisfy the purchasing  
14 agency's requirements.

15 (iii) Upon a determination by the commissioner of agriculture and  
16 markets that the food products required by the purchasing agency are  
17 available in sufficient quantities to fulfill the agency's purchasing  
18 needs, the purchasing agency ~~may~~ shall include in its solicitation a  
19 requirement that all or some of those food products are grown, produced  
20 or harvested in New York state, or that any processing of such food  
21 products take place in facilities located within New York state.

22 (iv) Upon a determination by the commissioner of agriculture and  
23 markets that such food products are not available in sufficient quanti-  
24 ties to fulfill the agency's purchasing needs, the purchasing agency  
25 shall issue a solicitation that does not require that all or some of  
26 those food products are grown, produced or harvested in New York state,  
27 or that any processing of such food products take place in facilities  
28 located within New York state. In such cases, the purchasing agency  
29 ~~may~~ shall include such requirements in the next contract for such food  
30 products that is let if at such time those food products are available  
31 in sufficient quantities. If at that time, those food products are not  
32 available in sufficient quantities, the requirement shall again be  
33 waived until such time as the products are available.

34 (v) In the event that the purchasing agency receives no offers that  
35 meet the agency's requirement that all or some of the food products are  
36 grown, produced or harvested in New York state, or that any processing  
37 of such food products take place in facilities located within New York  
38 state, it may waive the provisions of this subdivision and award a  
39 contract in accordance with other applicable statutes. ~~[In addition, if~~  
40 ~~the commissioners of agriculture and markets, economic development and~~  
41 ~~any such individual agency shall agree as to the deleterious economic~~  
42 ~~impact of specifications requiring such purchases, such agencies may~~  
43 ~~wave the provisions of this subdivision for such purchases.]~~

44 (i) With each offer, the offerer shall certify that the food products  
45 provided pursuant to that solicitation will be in conformity with the  
46 provisions of the ~~[percentage required to meet or exceed the]~~ require-  
47 ments in the solicitation specifying that all ~~[or some]~~ of the food  
48 products be grown, produced, or harvested within New York state or that  
49 any processing of such food products take place in facilities located  
50 within New York state.

51 h. The commissioner and the commissioner of agriculture and markets,  
52 shall advise and assist the chancellor of the state university of New  
53 York in ~~[extending the benefits]~~ the implementation of the provisions of  
54 this subdivision ~~[to]~~ by the state university ~~[and shall modify any~~  
55 ~~regulations or procedures heretofore established pursuant to this subdi-~~  
56 ~~vision, in order to facilitate such participation]~~ of New York.

1 § 3. The agriculture and markets law is amended by adding a new  
2 section 5-a to read as follows:

3 § 5-a. Report on purchase of New York food products. On or before  
4 March first each year, the commissioner shall report to the governor and  
5 the legislature on the implementation of the provisions of subdivision  
6 four of section one hundred sixty-five of the state finance law. Such  
7 report shall include the level of compliance by state agencies with the  
8 provisions of such subdivision, the available New York food products and  
9 the producers and/or processors thereof which were purchased and recom-  
10 mendations for the improved implementation of such subdivision.

11 § 4. This act shall take effect on the first of April next succeeding  
12 the date on which it shall have become a law.