

# STATE OF NEW YORK

87

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sens. KAMINSKY, BROOKS -- read twice and ordered printed,  
and when printed to be committed to the Committee on Environmental  
Conservation

AN ACT to amend the environmental conservation law, the general municip-  
al law, the state finance law and the infrastructure investment act,  
in relation to construction and demolition diversion practices of  
state contractors

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

1 Section 1. The environmental conservation law is amended by adding a  
2 new section 27-0111 to read as follows:

3 § 27-0111. Construction and demolition waste diversion policy.

4 1. Definitions. As used in this section:

5 (a) "Contractor" means a general contractor and shall also include any  
6 subcontractor engaged in the building, demolition or wrecking of a  
7 structure for which a permit is required.

8 (b) "Construction and demolition debris" shall include, but not be  
9 limited to, metals, cardboard, drywall, glass, wood, concrete, brick and  
10 asphalt, but shall not include any material that is contaminated by  
11 lead, asbestos or other hazardous material such that recycling thereof  
12 would be illegal or unfeasible.

13 (c) "Diverted" means the recycle or reuse of construction and demoli-  
14 tion debris that would otherwise be disposed of at a landfill or  
15 disposal facility.

16 (d) "Recycle" means the process of sending construction and demolition  
17 debris to a recycling facility, transfer station or other waste handling  
18 facility permitted pursuant to this article, which accepts construction  
19 and demolition debris for recycling or for further transfer to a recycl-  
20 ing facility.

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

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1 (e) "Reuse" means: (i) the on-site use of reprocessed construction and  
2 demolition debris if the use of such debris is authorized by the commis-  
3 sioner; and (ii) the off-site redistribution of a material which would  
4 otherwise be disposed of, for use in the same or similar form as it was  
5 produced.

6 2. The commissioner shall promulgate rules and regulations, in consul-  
7 tation with the state procurement council established by section one  
8 hundred sixty-one of the state finance law, setting forth a goal for the  
9 percent of construction and demolition debris diverted by contractors  
10 submitting bids or proposals in connection with the award of a state  
11 contract. Such rules and regulation shall at a minimum take into  
12 account: the cost, feasibility, and human and environmental health  
13 impacts of recycling particular types of debris; the availability of  
14 secondary markets and proximity of processing facilities; the toxicity  
15 of different types of debris and ability to remediate or separate any  
16 toxic debris from non-toxic debris; the environmental impact of dispos-  
17 ing debris without recycling; the existence of local laws and regu-  
18 lations and policies governing debris diversion.

19 3. Each bid or proposal shall be analyzed on an individual per bid or  
20 per proposal basis with the contractor's construction and demolition  
21 waste diversion practices considered as only a part of a wider consider-  
22 ation of several factors when deciding to award or decline to award a  
23 bid or proposal. Such assessment shall not in any way permit the auto-  
24 matic rejection of a bid or procurement contract proposal based on lack  
25 of adherence to construction and demolition waste diversion practices.

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

28 17. Notwithstanding the foregoing provisions of this section, the  
29 commissioner of the office of general services may authorize any offi-  
30 cer, board or agency of a political subdivision to consider whether such  
31 contracts can reasonably be expected to meet or further the goal estab-  
32 lished pursuant to section 27-0111 of the environmental conservation law  
33 or comparable local law or regulation, and contractor's history of  
34 achieving such participation goals on previous contracts; provided,  
35 however, that such consideration shall not affect the responsibilities  
36 of an officer, board, or agency of a political subdivision in relation  
37 to subdivision one of this section.

38 § 3. Subdivision 10 of section 163 of the state finance law is amended  
39 by adding a new paragraph g to read as follows:

40 g. The commissioner may authorize state agencies or other authorized  
41 purchasers to consider whether such contracts can reasonably be expected  
42 to meet or further the goal established pursuant to section 27-0111 of  
43 the environmental conservation law or comparable local law or regu-  
44 lation, and contractor's history of achieving such participation goals  
45 on previous contracts.

46 § 4. Subdivision (a) of section 4 of part F of chapter 60 of the laws  
47 of 2015 constituting the infrastructure investment act, as amended by  
48 section 4 of part RRR of chapter 59 of the laws of 2017, is amended to  
49 read as follows:

50 (a) Step one. Generation of a list of entities that have demonstrated  
51 the general capability to perform the design-build contract. Such list  
52 shall consist of a specified number of entities, as determined by an  
53 authorized state entity, and shall be generated based upon the author-  
54 ized state entity's review of responses to a publicly advertised request  
55 for qualifications. The authorized state entity's request for qualifica-  
56 tions shall include a general description of the project, the maximum

1 number of entities to be included on the list, the selection criteria to  
2 be used and the relative weight of each criteria in generating the list.  
3 Such selection criteria shall include the qualifications and experience  
4 of the design and construction team, organization, demonstrated respon-  
5 sibility, ability of the team or of a member or members of the team to  
6 comply with applicable requirements, including the provisions of arti-  
7 cles 145, 147 and 148 of the education law, past record of compliance  
8 with goals established pursuant to section 27-0111 of the environmental  
9 conservation law or comparable local law or regulation, past record of  
10 compliance with the labor law, and such other qualifications the author-  
11 ized state entity deems appropriate which may include but are not limit-  
12 ed to project understanding, financial capability and record of past  
13 performance. The authorized state entity shall evaluate and rate all  
14 entities responding to the request for qualifications. Based upon such  
15 ratings, the authorized state entity shall list the entities that shall  
16 receive a request for proposals in accordance with subdivision (b) of  
17 this section. To the extent consistent with applicable federal law, the  
18 authorized state entity shall consider, when awarding any contract  
19 pursuant to this section, the participation of: (i) firms certified  
20 pursuant to article 15-A of the executive law as minority or women-owned  
21 businesses and the ability of other businesses under consideration to  
22 work with minority and women-owned businesses so as to promote and  
23 assist participation by such businesses; and (ii) small business  
24 concerns identified pursuant to subdivision (b) of section 139-g of the  
25 state finance law.

26 § 5. This act shall take effect immediately; provided, however, that  
27 that amendments to subdivision 10 of section 163 of the state finance  
28 law made by section three of this act shall not affect the repeal of  
29 such section as provided in subdivision 5 of section 362 of chapter 83  
30 of the laws of 1995, as amended, and shall be deemed repealed therewith;  
31 provided further, that the amendments to part F of chapter 60 of the  
32 laws of 2015 constituting the infrastructure investment act, made by  
33 section four of this act shall not affect the repeal of such part and  
34 shall be deemed repealed therewith.