

# STATE OF NEW YORK

8966

## IN SENATE

September 4, 2020

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the state finance law, the general municipal law, the public authorities law and the highway law, in relation to enacting the New York state buy American salt 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 "New York state buy American salt act".

3 § 2. The state finance law is amended by adding a new section 162-a to  
4 read as follows:

5 § 162-a. The New York state buy American salt act. 1. Use of American  
6 materials. (a) Notwithstanding any other provision of law, each  
7 contract for purchase or procurement made by a public agency shall  
8 contain a provision that the rock salt, or sodium chloride, used or  
9 supplied in the performance of the contract or any subcontract thereto  
10 shall be mined in the United States.

11 (b) For the purposes of section one hundred sixty-three of this arti-  
12 cle, no bidder shall be deemed to be the lowest responsible and reliable  
13 bidder and no bid shall be deemed the best value unless the bid offered  
14 by such bidder will comply with the contract term required by paragraph  
15 (a) of this subdivision.

16 (c) The provisions of paragraph (a) of this subdivision shall not  
17 apply in any case or category of cases in which the executive head of a  
18 public agency finds:

19 (i) that the application of this section would be inconsistent with  
20 the public interest;

21 (ii) that such materials and products are not produced in the United  
22 States in sufficient and reasonably available quantities and of a satis-  
23 factory quality; or

24 (iii) that inclusion of domestic material will increase the cost of  
25 the overall procurement contract by more than twenty-five percent.

26 (d) If the executive receives a request for a waiver under paragraph  
27 (c) of this subdivision, the executive shall provide notice of and an

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

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1 opportunity for public comment on the request at least thirty days  
2 before making a finding based on the request.

3 (e) A notice provided under paragraph (d) of this subdivision shall:

4 (i) summarize the information available to the executive concerning  
5 the request, including whether the request is being made under subpara-  
6 graph (i), (ii) or (iii) of paragraph (c) of this subdivision;

7 (ii) be posted prominently on the official public internet web site of  
8 the agency; and

9 (iii) be provided by electronic means to any person, firm or corpo-  
10 ration that has made a written or electronic request to the public agen-  
11 cy for notice of waiver actions by the executive within five years prior  
12 to the date of notice.

13 (f) If the executive issues a waiver under paragraph (c) of this  
14 subdivision, the executive shall publish in the same manner as the  
15 original notice a detailed justification for the waiver that:

16 (i) addresses the public comments received under paragraph (d) of this  
17 subdivision; and

18 (ii) is published before the waiver takes effect.

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

21 (i) affixed a label bearing a "Made in America" inscription, or any  
22 inscription with the same meaning, to any rock salt, or sodium chloride  
23 product used in projects to which this section applies, sold in or  
24 shipped to the United States that was not mined in the United States; or

25 (ii) represented that any rock salt, or sodium chloride product  
26 procured in a contract to which this section applies that was not  
27 produced in the United States, was produced in the United States; then  
28 that person shall be ineligible to receive any contract or subcontract  
29 with this state pursuant to the debarment or suspension provisions  
30 provided under section one hundred thirty-nine-a of this article.

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

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

36 (a) "Executive" means the executive head of a public agency subject to  
37 this section;

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

40 (c) "Mined in the United States" means: extracted from land within the  
41 boundary of the United States, from the initial separation from the  
42 earth through the addition of any additives necessary for commercial  
43 sale;

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

47 § 3. The general municipal law is amended by adding a new section  
48 104-d to read as follows:

49 § 104-d. The New York state buy American salt act. 1. Use of American  
50 materials. (a) Notwithstanding any other provision of law, each  
51 contract for purchase or procurement made by a public agency of a poli-  
52 tical subdivision shall contain a provision that the rock salt, or sodi-  
53 um chloride, used or supplied in the performance of the contract or any  
54 subcontract thereto shall be mined in the United States.

55 (b) No bidder shall be deemed to be the lowest responsible and reli-  
56 able bidder and no bid shall be deemed the best value unless the bid

1 offered by such bidder will comply with the contract term required by  
2 paragraph (a) of this subdivision.

3 (c) The provisions of paragraph (a) of this subdivision shall not  
4 apply in any case or category of cases in which the executive head of a  
5 public agency finds:

6 (i) that the application of this section would be inconsistent with  
7 the public interest;

8 (ii) that such materials and products are not produced in the United  
9 States in sufficient and reasonably available quantities and of a satis-  
10 factory quality; or

11 (iii) that inclusion of domestic material will increase the cost of  
12 the overall procurement contract by more than twenty-five percent.

13 (d) If the executive receives a request for a waiver under paragraph  
14 (c) of this subdivision, the executive shall provide notice of and an  
15 opportunity for public comment on the request at least thirty days  
16 before making a finding based on the request.

17 (e) A notice provided under paragraph (d) of this subdivision shall:

18 (i) summarize the information available to the executive concerning  
19 the request, including whether the request is being made under subpara-  
20 graph (i), (ii) or (iii) of paragraph (c) of this subdivision;

21 (ii) be posted prominently on the official public internet web site of  
22 the agency; and

23 (iii) be provided by electronic means to any person, firm or corpo-  
24 ration that has made a written or electronic request to the public agen-  
25 cy for notice of waiver actions by the executive within five years prior  
26 to the date of notice.

27 (f) If the executive issues a waiver under paragraph (c) of this  
28 subdivision, the executive shall publish in the same manner as the  
29 original notice a detailed justification for the waiver that:

30 (i) addresses the public comments received under paragraph (d) of this  
31 subdivision; and

32 (ii) is published before the waiver takes effect.

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

35 (i) affixed a label bearing a "Made in America" inscription, or any  
36 inscription with the same meaning, to any rock salt, or sodium chloride  
37 product used in projects to which this section applies, sold in or  
38 shipped to the United States that was not mined in the United States; or

39 (ii) represented that any rock salt, or sodium chloride product  
40 procured in a contract to which this section applies that was not  
41 produced in the United States, was produced in the United States; then  
42 that person shall be ineligible to receive any contract or subcontract  
43 with this state pursuant to the debarment or suspension provisions  
44 provided under section one hundred thirty-nine-a of the state finance  
45 law.

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

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

51 (a) "Executive" means the executive head of a public agency subject to  
52 this section;

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

55 (c) "Mined in the United States" means: extracted from land within the  
56 boundary of the United States, from the initial separation from the

1 earth through the addition of any additives necessary for commercial  
2 sale;

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

6 § 4. The public authorities law is amended by adding a new section  
7 2877-a to read as follows:

8 § 2877-a. The New York state buy American salt act. 1. Use of American  
9 materials. (a) Notwithstanding any other provision of law, each  
10 contract for purchase or procurement made by a public authority shall  
11 contain a provision that the rock salt, or sodium chloride, used or  
12 supplied in the performance of the contract or any subcontract thereto  
13 shall be mined in the United States.

14 (b) No bidder shall be deemed to be the lowest responsible and reli-  
15 able bidder and no bid shall be deemed the best value unless the bid  
16 offered by such bidder will comply with the contract term required by  
17 paragraph (a) of this subdivision.

18 (c) The provisions of paragraph (a) of this subdivision shall not  
19 apply in any case or category of cases in which the executive head of a  
20 public agency finds:

21 (i) that the application of this section would be inconsistent with  
22 the public interest;

23 (ii) that such materials and products are not produced in the United  
24 States in sufficient and reasonably available quantities and of a satis-  
25 factory quality; or

26 (iii) that inclusion of domestic material will increase the cost of  
27 the overall procurement contract by more than twenty-five percent.

28 (d) If the executive receives a request for a waiver under paragraph  
29 (c) of this subdivision, the executive shall provide notice of and an  
30 opportunity for public comment on the request at least thirty days  
31 before making a finding based on the request.

32 (e) A notice provided under paragraph (d) of this subdivision shall:

33 (i) summarize the information available to the executive concerning  
34 the request, including whether the request is being made under subpara-  
35 graph (i), (ii) or (iii) of paragraph (c) of this subdivision;

36 (ii) be posted prominently on the official public internet web site of  
37 the agency; and

38 (iii) be provided by electronic means to any person, firm or corpo-  
39 ration that has made a written or electronic request to the public agen-  
40 cy for notice of waiver actions by the executive within five years prior  
41 to the date of notice.

42 (f) If the executive issues a waiver under paragraph (c) of this  
43 subdivision, the executive shall publish in the same manner as the  
44 original notice a detailed justification for the waiver that:

45 (i) addresses the public comments received under paragraph (d) of this  
46 subdivision; and

47 (ii) is published before the waiver takes effect.

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

50 (i) affixed a label bearing a "Made in America" inscription, or any  
51 inscription with the same meaning, to any rock salt, or sodium chloride  
52 product used in projects to which this section applies, sold in or  
53 shipped to the United States that was not mined in the United States; or

54 (ii) represented that any rock salt, or sodium chloride product  
55 procured in a contract to which this section applies that was not  
56 produced in the United States, was produced in the United States; then

1 that person shall be ineligible to receive any contract or subcontract  
2 with this state pursuant to the debarment or suspension provisions  
3 provided under section one hundred thirty-nine-a of the state finance  
4 law.

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

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

10 (a) "Executive" means the executive head of a public agency subject to  
11 this section;

12 (b) "Public agency" means a state, local or interstate authority as  
13 those terms are defined in section two of this chapter;

14 (c) "Mined in the United States" means: extracted from land within the  
15 boundary of the United States, from the initial separation from the  
16 earth through the addition of any additives necessary for commercial  
17 sale;

18 (d) "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. The highway law is amended by adding a new section 12-a to read  
22 as follows:

23 § 12-a. The New York state buy American salt act. 1. Use of American  
24 materials. (a) Notwithstanding any other provision of law, each contract  
25 for purchase or procurement made by a public authority shall contain a  
26 provision that the rock salt, or sodium chloride, used or supplied in  
27 the performance of the contract or any subcontract thereto shall be  
28 mined in the United States.

29 (b) No bidder shall be deemed to be the lowest responsible and reli-  
30 able bidder and no bid shall be deemed the best value unless the bid  
31 offered by such bidder will comply with the contract term required by  
32 paragraph (a) of this subdivision.

33 (c) The provisions of paragraph (a) of this subdivision shall not  
34 apply in any case or category of cases in which the executive head of a  
35 public agency finds:

36 (i) that the application of this section would be inconsistent with  
37 the public interest;

38 (ii) that such materials and products are not produced in the United  
39 States in sufficient and reasonably available quantities and of a satis-  
40 factory quality; or

41 (iii) that inclusion of domestic material will increase the cost of  
42 the overall procurement contract by more than twenty-five percent.

43 (d) If the executive receives a request for a waiver under paragraph  
44 (c) of this subdivision, the executive shall provide notice of and an  
45 opportunity for public comment on the request at least thirty days  
46 before making a finding based on the request.

47 (e) A notice provided under paragraph (d) of this subdivision shall:

48 (i) summarize the information available to the executive concerning  
49 the request, including whether the request is being made under subpara-  
50 graph (i), (ii) or (iii) of paragraph (c) of this subdivision;

51 (ii) be posted prominently on the official public internet web site of  
52 the agency; and

53 (iii) be provided by electronic means to any person, firm or corpo-  
54 ration that has made a written or electronic request to the public agen-  
55 cy for notice of waiver actions by the executive within five years prior  
56 to the date of notice.

1 (f) If the executive issues a waiver under paragraph (c) of this  
2 subdivision, the executive shall publish in the same manner as the  
3 original notice a detailed justification for the waiver that:

4 (i) addresses the public comments received under paragraph (d) of this  
5 subdivision; and

6 (ii) is published before the waiver takes effect.

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

9 (i) affixed a label bearing a "Made in America" inscription, or any  
10 inscription with the same meaning, to any rock salt, or sodium chloride  
11 product used in projects to which this section applies, sold in or  
12 shipped to the United States that was not mined in the United States; or

13 (ii) represented that any rock salt, or sodium chloride product  
14 procured in a contract to which this section applies that was not  
15 produced in the United States, was produced in the United States; then  
16 that person shall be ineligible to receive any contract or subcontract  
17 with this state pursuant to the debarment or suspension provisions  
18 provided under section one hundred thirty-nine-a of the state finance  
19 law.

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

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

25 (a) "Executive" means the executive head of a public agency subject to  
26 this section;

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

29 (c) "Mined in the United States" means: extracted from land within the  
30 boundary of the United States, from the initial separation from the  
31 earth through the addition of any additives necessary for commercial  
32 sale;

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

36 § 6. Severability. If any provision of this act, or any application of  
37 any provision of this act, is held to be invalid, that shall not affect  
38 the validity or effectiveness of any other provision of this act, or of  
39 any other application of any provision of this act, which can be given  
40 effect without that provision or application; and to that end, the  
41 provisions and applications of this act are severable.

42 § 7. This act shall take effect immediately.