

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.