

# STATE OF NEW YORK

7919

2021-2022 Regular Sessions

## IN ASSEMBLY

May 28, 2021

Introduced by M. of A. BRONSON -- read once and referred to the Committee on Governmental Operations

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 or hand harvested 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

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

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

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

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

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

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

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

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

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

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

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

25 (i) affixed a label bearing a "Made in America" inscription, or any  
26 inscription with the same meaning, to any rock salt, or sodium chloride  
27 product used in projects to which this section applies, sold in or  
28 shipped to the United States that was not mined or hand harvested in the  
29 United States; or

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

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

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

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

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

45 (c) "Mined or hand harvested in the United States" means: extracted or  
46 collected from land or ponds within the boundary of the United States,  
47 from the initial separation from the earth through the addition of any  
48 additives necessary for commercial sale;

49 (d) "United States" means the United States of America and includes  
50 all territory, continental or insular, subject to the jurisdiction of  
51 the United States.

52 § 3. The general municipal law is amended by adding a new section  
53 104-d to read as follows:

54 § 104-d. The New York state buy American salt act. 1. Use of American  
55 materials. (a) Notwithstanding any other provision of law, each  
56 contract for purchase or procurement made by a public agency of a poli-

1 tical subdivision shall contain a provision that the rock salt, or sodium  
2 chloride, used or supplied in the performance of the contract or any  
3 subcontract thereto shall be mined or hand harvested in the United  
4 States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (i) affixed a label bearing a "Made in America" inscription, or any  
42 inscription with the same meaning, to any rock salt, or sodium chloride  
43 product used in projects to which this section applies, sold in or  
44 shipped to the United States that was not mined or hand harvested in the  
45 United States; or

46 (ii) represented that any rock salt, or sodium chloride product  
47 procured in a contract to which this section applies that was not  
48 produced in the United States, was produced in the United States; then  
49 that person shall be ineligible to receive any contract or subcontract  
50 with this state pursuant to the debarment or suspension provisions  
51 provided under section one hundred thirty-nine-a of the state finance  
52 law.

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

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

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

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

7     (c) "Mined or hand harvested in the United States" means: extracted or  
8 collected from land or ponds within the boundary of the United States,  
9 from the initial separation from the earth through the addition of any  
10 additives necessary for commercial sale;

11     (d) "United States" means the United States of America and includes  
12 all territory, continental or insular, subject to the jurisdiction of  
13 the United States.

14     § 4. The public authorities law is amended by adding a new section  
15 2877-a to read as follows:

16     § 2877-a. The New York state buy American salt act. 1. Use of American  
17 materials. (a) Notwithstanding any other provision of law, each  
18 contract for purchase or procurement made by a public authority shall  
19 contain a provision that the rock salt, or sodium chloride, used or  
20 supplied in the performance of the contract or any subcontract thereto  
21 shall be mined or hand harvested in the United States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (i) affixed a label bearing a "Made in America" inscription, or any  
4 inscription with the same meaning, to any rock salt, or sodium chloride  
5 product used in projects to which this section applies, sold in or  
6 shipped to the United States that was not mined or hand harvested in the  
7 United States; or

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

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

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

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

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

24 (c) "Mined or hand harvested in the United States" means: extracted or  
25 collected from land or ponds within the boundary of the United States,  
26 from the initial separation from the earth through the addition of any  
27 additives necessary for commercial sale;

28 (d) "United States" means the United States of America and includes  
29 all territory, continental or insular, subject to the jurisdiction of  
30 the United States.

31 § 5. The highway law is amended by adding a new section 12-a to read  
32 as follows:

33 § 12-a. The New York state buy American salt act. 1. Use of American  
34 materials. (a) Notwithstanding any other provision of law, each contract  
35 for purchase or procurement made by a public authority shall contain a  
36 provision that the rock salt, or sodium chloride, used or supplied in  
37 the performance of the contract or any subcontract thereto shall be  
38 mined or hand harvested in the United States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 the state finance law;

40 (c) "Mined or hand harvested in the United States" means: extracted or  
41 collected from land or ponds within the boundary of the United States,  
42 from the initial separation from the earth through the addition of any  
43 additives necessary for commercial 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 § 6. Severability. If any provision of this act, or any application of  
48 any provision of this act, is held to be invalid, that shall not affect  
49 the validity or effectiveness of any other provision of this act, or of  
50 any other application of any provision of this act, which can be given  
51 effect without that provision or application; and to that end, the  
52 provisions and applications of this act are severable.

53 § 7. This act shall take effect immediately.