

# STATE OF NEW YORK

3908--A

2021-2022 Regular Sessions

## IN SENATE

February 1, 2021

Introduced by Sens. KENNEDY, GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50 § 3. The general municipal law is amended by adding a new section  
51 104-d to read as follows:

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

1 subcontract thereto shall be mined or hand harvested in the United  
2 States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 § 4. The public authorities law is amended by adding a new section  
13 2877-a to read as follows:

14 § 2877-a. The New York state buy American salt act. 1. Use of American  
15 materials. (a) Notwithstanding any other provision of law, each  
16 contract for purchase or procurement made by a public authority shall  
17 contain a provision that the rock salt, or sodium chloride, used or  
18 supplied in the performance of the contract or any subcontract thereto  
19 shall be mined or hand harvested in the United States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 § 12-a. The New York state buy American salt act. 1. Use of American  
32 materials. (a) Notwithstanding any other provision of law, each contract  
33 for purchase or procurement made by a public authority shall contain a  
34 provision that the rock salt, or sodium chloride, used or supplied in  
35 the performance of the contract or any subcontract thereto shall be  
36 mined or hand harvested in the United States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 § 6. Severability. If any provision of this act, or any application of  
47 any provision of this act, is held to be invalid, that shall not affect  
48 the validity or effectiveness of any other provision of this act, or of  
49 any other application of any provision of this act, which can be given  
50 effect without that provision or application; and to that end, the  
51 provisions and applications of this act are severable.

52 § 7. This act shall take effect immediately.