

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.