

# STATE OF NEW YORK

3908

2021-2022 Regular Sessions

## IN SENATE

February 1, 2021

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

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

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 in the United States; or

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

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

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

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

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

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

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

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

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

1 um chloride, used or supplied in the performance of the contract or any  
2 subcontract thereto shall be mined in the United 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 in the United States; or

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

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

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

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

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

3 (c) "Mined in the United States" means: extracted from land within the  
4 boundary of the United States, from the initial separation from the  
5 earth through the addition of any additives necessary for commercial  
6 sale;

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

10 § 4. The public authorities law is amended by adding a new section  
11 2877-a to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (i) affixed a label bearing a "Made in America" inscription, or any  
55 inscription with the same meaning, to any rock salt, or sodium chloride

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

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

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

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

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

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

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

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

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

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

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

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

(ii) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

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

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

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

(i) summarize the information available to the executive concerning the request, including whether the request is being made under subparagraph (i), (ii) or (iii) of paragraph (c) of this subdivision;

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

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

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

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

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

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

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

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

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

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

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

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

35 (c) "Mined in the United States" means: extracted from land within the  
36 boundary of the United States, from the initial separation from the  
37 earth through the addition of any additives necessary for commercial  
38 sale;

39 (d) "United States" means the United States of America and includes  
40 all territory, continental or insular, subject to the jurisdiction of  
41 the United States.

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

48 § 7. This act shall take effect immediately.