

# STATE OF NEW YORK

1091

2023-2024 Regular Sessions

## IN SENATE

January 10, 2023

Introduced by Sen. BAILEY -- 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, in relation to purchasing restrictions on persons that contract to build a border wall; to amend the retirement and social security law, in relation to the investment of certain public funds in persons that contract to build a border wall; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The state finance law is amended by adding a new section  
2 165-b to read as follows:

3 § 165-b. Purchasing restrictions; persons that contract to build a  
4 border wall. 1. As used in this section, the following definitions shall  
5 apply:

6 (a) "contracts to build a border wall" shall mean entering into a  
7 contract with the federal government for the purposes of building a wall  
8 along the border of Mexico and the United States of America.

9 (b) "person" shall mean any natural person, corporation, limited  
10 liability company, unincorporated association or any other nongovern-  
11 mental entity, organization, or group, or any successor, subunit,  
12 parent, or subsidiary of the same.

13 2. (a) Any person that is identified on a list created pursuant to  
14 paragraph (b) of this subdivision as a person that contracts to build a  
15 border wall, as defined in paragraph (a) of subdivision one of this  
16 section, shall not be deemed a responsive bidder or offerer, pursuant to  
17 section one hundred sixty-three of this article.

18 (b) Not later than ninety days after the effective date of this  
19 section, and then annually thereafter, the commissioner shall develop  
20 and publish, using credible information available to the public, a list  
21 of persons determined by the commissioner, that have contracted to build

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

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1 a border wall. Such list, when developed and published, shall be posted  
2 on the website of the office of general services.

3 (c) In the event a person included by the commissioner on the list to  
4 be developed and published in accordance with paragraph (b) of this  
5 subdivision, demonstrates to the commissioner that such person has  
6 permanently ceased contracting to build a border wall, or obtains a  
7 court order from a supreme court that such person shall be removed from  
8 such list due to the court's determination that such person has perma-  
9 nently ceased contracting to build a border wall, then the commissioner  
10 shall remove such person from such list so developed and published in  
11 accordance with paragraph (b) of this subdivision.

12 (d) Prior to the final development and publication of the list  
13 required to be produced pursuant to paragraph (b) of this subdivision,  
14 the commissioner shall provide written notice of all persons to be  
15 included on the list, of the commissioner's intent to so include such  
16 person on such list, together with written notice informing such person  
17 that inclusion on such list would make such person a non-responsive  
18 bidder or offerer, and that such person may apply to the commissioner,  
19 or to a supreme court, to be removed from such list pursuant to the  
20 requirements of paragraph (c) of this subdivision.

21 (e) Notwithstanding paragraph (a) of this subdivision, a state agency  
22 may permit a person contracting to build a border wall to be deemed a  
23 responsive bidder or offerer, on a case-by-case basis with a state agen-  
24 cy if:

25 (i) the contracting to build a border wall occurred prior to the  
26 effective date of this section, such activities have not been expanded  
27 or renewed after the effective date of this section, and the person has  
28 adopted, publicized, and is implementing a formal plan to cease  
29 contracting to build a border wall and to refrain from engaging in any  
30 new contracting to build a border wall; or

31 (ii) the state agency makes a formal, written determination that the  
32 commodities or services offered by the person named on this list  
33 produced by the commissioner pursuant to paragraph (b) of this subdivi-  
34 sion, are necessary for the state agency to perform its functions and  
35 that, absent such an exemption, the state agency would be unable to  
36 obtain the commodities or services for which the contract is offered.

37 3. (a) A state agency shall require all persons that submit a bid or  
38 offer in response to a notice of procurement, or that propose to renew  
39 an existing procurement contract, or that propose to assume the respon-  
40 sibility of a contractor pursuant to a procurement contract, or other-  
41 wise propose to enter into a contract with a state agency with respect  
42 to a contract for commodities, services, construction, or contracts  
43 entered into pursuant to section eight of the public buildings law or  
44 section thirty-eight of the highway law, to certify, at the time the bid  
45 is submitted, or the contract is renewed or assigned, that the person or  
46 the assignee is not identified on the list developed and published  
47 pursuant to paragraph (b) of subdivision two of this section, and all  
48 state agencies shall include such certification information in the  
49 procurement record.

50 (b) All persons that submit a bid or offer in response to a notice of  
51 procurement, or that propose to renew an existing procurement contract  
52 with a state agency, or that propose to assume the responsibility of a  
53 contractor pursuant to a procurement contract with a state agency, or  
54 otherwise propose to enter into a contract with a state agency with  
55 respect to a contract for commodities, services, construction, or  
56 contracts entered into pursuant to section eight of the public buildings

1 law or section thirty-eight of the highway law, shall certify that they  
2 have not contracted to build a border wall, and that they are not iden-  
3 tified on the list developed and published pursuant to paragraph (b) of  
4 subdivision two of this section.

5 4. Upon receiving information that a person who has made the certif-  
6 ication required by subdivision three of this section, is, in fact, in  
7 violation of such certification, the state agency shall review such  
8 information, notify such person and offer them an opportunity to respond  
9 to such information, within thirty days of such notice, and if such  
10 person fails to demonstrate that they have ceased contracting to build a  
11 border wall, then, the state agency shall take such action as may be  
12 appropriate and provided for by law, rule or contract, including, but  
13 not limited to, notifying the commissioner of such person's contracts to  
14 build a border wall, imposing sanctions, seeking compliance, recovering  
15 damages, and/or declaring such person in default.

16 5. On or before December fifteenth, two thousand twenty-three, and  
17 every year thereafter, the commissioner shall issue a report to the  
18 governor, the comptroller, the temporary president of the senate, and  
19 the speaker of the assembly, on all the actions taken, and all determi-  
20 nations made, by the commissioner pursuant to this section, and any and  
21 all rules or regulations adopted.

22 § 2. The retirement and social security law is amended by adding a new  
23 section 423-d to read as follows:

24 § 423-d. Prohibition on investment of certain public funds in persons  
25 that contract to build a border wall. 1. As used in this section, the  
26 following definitions shall apply:

27 (a) "contracts to build a border wall" shall mean entering into a  
28 contract with the federal government for the purposes of building a wall  
29 along the border of Mexico and the United States of America.

30 (b) "person" shall mean any natural person, corporation, limited  
31 liability company, unincorporated association or any other nongovern-  
32 mental entity, organization, or group, or any successor, subunit,  
33 parent, or subsidiary of the same.

34 2. (a) Any person that is identified on the list created pursuant to  
35 paragraph (b) of subdivision two of section one hundred sixty-five-b of  
36 the state finance law, as being a person that contracts to build a  
37 border wall, shall not be eligible to receive investment of any moneys  
38 or assets of the common retirement fund in any stocks, securities or  
39 other obligations of such person so identified on such list developed  
40 and published by the commissioner of general services.

41 (b) Notwithstanding any provision of law to the contrary, no assets of  
42 any pension or annuity fund under the jurisdiction of the comptroller,  
43 shall further be invested in any bank or financial institution which  
44 directly, or through a parent or subsidiary contracts to build a border  
45 wall and no such assets shall otherwise be invested in the stocks, secu-  
46 rities or other obligations of any person which directly, or through a  
47 parent or subsidiary entity, contracts to build a border wall.

48 3. The comptroller shall take appropriate action to sell, redeem,  
49 divest or withdraw any investment held in violation of the provisions of  
50 this section. This section shall not be construed to require the prema-  
51 ture or otherwise imprudent sale, redemption, divestment or withdrawal  
52 of an investment, but such sale, divestment or withdrawal shall be  
53 completed no later than three years following the effective date of this  
54 section.

55 4. On or before December fifteenth, two thousand twenty-three, and  
56 every year thereafter, the comptroller shall issue a report to the

1 governor, the commissioner of general services, the temporary president  
2 of the senate, and the speaker of the assembly, on all the actions  
3 taken, and all determinations made, by the comptroller, pursuant to this  
4 section, and any and all rules or regulations adopted.

5 § 3. This act shall take effect immediately and shall expire and be  
6 deemed repealed January 20, 2027.