

ISSUE BRIEF

No. 4670 | MARCH 22, 2017

Three Reasons Why “Buy American” Is Bad for New York

Tori K. Whiting

New York Governor Andrew Cuomo’s 2017–2018 executive budget contains a proposal to increase the state’s domestic content requirements for construction contracts. The New York State Buy American Act has been introduced in the state legislature. In addition, both houses of the legislature have proposed budgets containing their own versions of the legislation. The three proposals vary in differing ways, but all three would be detrimental to the state’s economy.

Current state law already requires agencies to use U.S.-sourced and U.S.-manufactured structural steel, reinforcing steel, and other major steel items in construction projects costing more than \$100,000. There are three exemptions: when complying is not in the public interest, when the cost of compliance is unreasonable, or when the steel product needed is not produced in the U.S.¹

This law has not helped New York’s economy; in fact, it has hindered the ability of private businesses to create jobs in the state. Between 2000 and 2015, employment in the primary metal manufacturing sector decreased by 38 percent, despite the existing law.² There has also been no net increase in jobs supported by foreign direct investment in New York between 2000 and 2014.³

The proposed changes would implement additional regulations on producers, increase the costs

of taxpayer-funded state government contracts, and have little if any impact on job growth in the iron and steel sector. The proposed changes would also result in New York’s possessing the strictest “Buy American” laws of any state, with some aspects of the state’s new law being even more burdensome than the federal government’s Buy American laws.

Rather than increase an already burdensome Buy American requirement, New York should consider eliminating the law altogether, thereby reducing costs and increasing the efficiency and competitiveness of the state’s dwindling manufacturing sector.

Governor Cuomo’s Buy American Proposal

The governor’s budget proposal retains provisions of the existing law, including the micropurchase threshold of \$100,000. However, it adds a subsection that makes numerous changes. Among these, the subsection narrowly defines or clarifies 11 key terms and adds eight exemptions, adds certification requirements, and adds a penalty for contractors who intentionally violate the law.⁴

Key changes in the existing law occur in the definition and exemption sections, as well as the section regarding certification requirements:⁵

1. When defining the term “Manufactured in America,” the proposal requires that “the final assembly and/or manufacture of the end product (as applicable) takes place in the United States” and that “more than sixty percent of the components of the end product, by cost, are of United States origin.” Previously, the product was required to be manufactured in substantial part in the U.S.

This paper, in its entirety, can be found at <http://report.heritage.org/ib4670>

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

2. An exemption was added for end products that are available from only one U.S. producer. In this case, the state agency could use a foreign product if it is cheaper and of equal or better quality, or if the foreign product is of better quality and the price is comparable.
3. An exemption was added for end products that are needed for critical repairs to prevent delays of critical services.
4. The proposal requires a contractor to certify in writing that the end product provided is manufactured in America.

State Senate Buy American Proposal

The Senate budget repeals New York's current Buy American law and replaces it with a new law. The new law would not include a micropurchase threshold and instead states that *all* contracts must obey the Buy American provisions. Unlike the governor's proposal, the Senate chose to add an exemption for contracts where "buying American" would increase the overall cost of the project by 20 percent.⁶

The Senate proposal also strengthens the language present in New York's current law in regard to the meaning of "Manufactured in the United States" and even goes a step further than the governor's proposal. In order for an end product to fulfill "Made in the U.S." standards in the Senate proposal, *all* manufacturing of iron and steel products "must take place in the United States, from the initial melting stage

through the application of coatings, except metallurgical processes involving the refinement of steel additives."⁷

State Assembly Buy American Proposal

The Assembly's budget proposal also repeals New York's current Buy American law and replaces it with a new law. The Assembly does not include a micropurchase threshold, making all state contracts subject to the new law. The proposal does include an exemption for contracts where compliance would increase the overall cost of the project by 25 percent, a greater percentage than the Senate proposal's.⁸

Like the governor, the Assembly also included a component definition. It would allow an end product to be considered "manufactured in the United States" if "all of its manufacturing processes take place in the United States" and "more than sixty percent of the components of the manufactured good, by cost, are of domestic origin."⁹

"Buy American"—Bad for New York

New York's economy is already suffering. The state was ranked last in economic outlook in the American Legislative Exchange Council's latest edition of *Rich States, Poor States*. Areas of concern include the personal income tax (ranked 49); corporate income tax (ranked 50); property taxes (ranked 45); death tax (ranked 50); and right to work (ranked 50). These policies are strangling businesses and individuals in the state, driving nearly 1.5 million people to leave New York between 2005 and 2014.¹⁰

-
1. New York State Finance Law, Section 146, <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO> (accessed March 20, 2017).
 2. New York State, Department of Labor, Quarterly Census of Employment and Wages (QCEW), 2000-2015, <https://www.labor.ny.gov/stats/ins.asp> (accessed March 20, 2017).
 3. U.S. Department of Commerce, Bureau of Labor Statistics, "Direct Investment & Multinational Enterprises (MNEs)," https://www.bea.gov/iTable/index_MNC.cfm (accessed March 21, 2017).
 4. New York State, Office of Governor Andrew M. Cuomo, *FY 2018 New York State Executive Budget: Public Protection and General Government, Article VII Legislation*, <https://www.budget.ny.gov/pubs/executive/eBudget1718/fy18artVIIbills/PPGGArticleVII.pdf> (accessed March 20, 2017).
 5. *Ibid.*
 6. New York State Senate, An Act Making Appropriations for the Support of Government, S. 02005, § 146, http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S02005&term=2017&Actions=Y&Text=Y (accessed March 20, 2017).
 7. *Ibid.*
 8. New York State Assembly, An Act Making Appropriations for the Support of Government, A. 03005, § 146, http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A03005&term=2017&Text=Y (accessed March 20, 2017).
 9. *Ibid.*
 10. Arthur B. Laffer, Stephen Moore, and Jonathan Williams, *Rich States, Poor States: ALEC-Laffer State Economic Competitiveness Index* (Arlington, VA: American Legislative Exchange Council, 2016), https://www.alec.org/app/uploads/2016/04/2016-RSPS-Final_WEB.pdf (accessed March 20, 2017).
-

Added to this economic malaise, increasing Buy American restrictions would not only create additional regulatory hurdles for New York producers, but would also cost New York taxpayers more than they would otherwise pay for government projects. Meanwhile, the extra burdens to producers and taxpayers are unlikely to yield job growth in target industries, like the primary metal manufacturing sector. The three reasons why “Buy American” is bad for New York are:

1. A Regulatory Burden on Producers. Following the release of Governor Cuomo’s budget in January, a coalition of 30 business groups submitted a letter to the governor and the state legislature. In this letter, they highlighted that the stringent domestic content requirements proposed would be extremely burdensome for New York businesses, particularly in the manufacturing sector that proponents of the change are claiming to be helping.¹¹

This policy approach directly undermines thousands of small businesses and large employers that rely on cross-border supply chains to compete in today’s global economy and provide goods at competitive prices for customers. Small businesses would face the highest burden under the proposed Buy American approach because they are less capable of reinventing their supply chain and manufacturing networks while ensuring customer satisfaction at competitive prices.

Each of the three proposals currently on the table would in some way increase the number of hoops through which potential contractors have to jump in order to bid on a state contract. The certification requirements found in the governor’s proposal are perhaps the most egregious in terms of costs and difficulty to implement. Speaking of similar requirements at the federal level, Ron Collins, President of Texas-based JCM Industries, has noted that “[t]he burden of the [American Iron and Steel] paperwork chain is both slowing and reducing the number of project starts.”¹²

The most troubling provision in the Senate and Assembly budget proposals is elimination of the existing micropurchase threshold. Requiring all contracts, even ones as little as \$500, to comply with domestic-content requirements would create additional administrative burdens for small contractors who are often the least able to comply.

For example, Environment One Corporation is a sewer system manufacturer based in Niskayuna, New York. The company imports some of its components from Canada, but stricter Buy American laws on water infrastructure projects at the federal level are already affecting the company. Additional restrictions at the state level would make it almost impossible for Environment One to bid on state contracts.

Environment One Director of Global Sourcing Bill Bashant highlights the struggle to comply with current requirements: “Our challenge is not a lack of interest in buying local. We sometimes cannot get the parts from American suppliers at costs that allow us to compete. Take away the globally sourced components and we do not have a competitive product to sell.”

2. Increased Costs for Taxpayers. The coalition letter also highlights the impact of increased domestic content requirements on the cost of contracts.¹³

Forced localization requirements undermine manufacturing in the state and limit the ability of New York-based companies to succeed and compete in the global economy. Localization requirements would increase costs for taxpayers and affect hundreds of thousands of New York workers whose jobs rely on the global economy.

The effects vary among the three proposals, but all three would be costly for New York taxpayers. The Senate and Assembly proposals, for example, would allow the cost of a \$6 million contract with a foreign producer to increase to between \$7.2 million and \$7.5 million for one with a domestic producer.¹⁴

11. Letter from Information Technology Industry Council and 29 other organizations to Governor Andrew Cuomo, Senators, and Assembly Members, February 16, 2017, <http://www.itic.org/dotAsset/d3f18380-a460-4273-91bf-d8c8b100937a.pdf> (accessed March 20, 2017).

12. Trade Partnership Worldwide, LLC, “Economic Impact of U.S.–Canada Supply Chains,” May 2016, http://tradepartnership.com/wp-content/uploads/2016/05/Canada-Supply-Chain_Final.pdf (accessed March 20, 2017).

13. Letter from Information Technology Industry Council and other organizations.

14. New York State Senate, An Act Making Appropriations for the Support of Government, S. 02005, § 146, and New York State Assembly, An Act making appropriations for the support of government, A. 03005, § 146.

3. No Correlation to Job Growth in Target Industries. Proponents of the increased domestic content requirements in New York argue that these laws will support jobs in New York as well as jobs in the U.S. overall. New York State AFL-CIO President Mario Cilento is one such proponent, stating recently that “with Buy American we will be creating good manufacturing jobs and strengthening local economies, including right here at home in New York.”¹⁵

That is a great sound bite, but New York’s employment data tell a different story about the impact of domestic content requirements on manufacturing jobs. Each of the proposals specifically mentions iron and steel products, making employment in these sectors a perfect case to examine. In 2000, approximately 16,600 New Yorkers were employed in the primary metal manufacturing sector.¹⁶ By 2005, that number had dropped to 12,600, and it continued to drop leading up to the Great Recession in 2009. Most recent employment numbers from 2015 show that around 10,300 New Yorkers are currently employed in primary metal manufacturing, a decrease of 38 percent over 15 years.¹⁷

Despite the existing laws on domestic content in state procurement, New York has not experienced a net gain in primary metal manufacturing jobs since 2000. Rather than focusing on ways to limit a company’s ability to contract with the state government, New York should look to increase competition in state procurement.

New Yorkers Should Say No to Costly Buy American Laws

Despite the appeal of promises for economic growth and more manufacturing jobs in New York, passing any form of the New York State Buy American Act will do more harm than good. Rather than focusing on ways to restrict market competition in state procurement, the New York legislature should reduce the state’s real barriers to growth.

—*Tori K. Whiting is a Research Associate in the Center for Free Markets and Regulatory Reform, of the Institute for Economic Freedom, at The Heritage Foundation. Kyle Ferrebee and Kelly Cousoulis, participants in The Heritage Foundation Young Leaders Program, made valuable contributions to this Issue Brief.*

15. Ginger Adams Otis, “Cuomo Says N.Y. State Government Will Push to Buy Only American-Made Products,” *New York Daily News*, January 11, 2017, <http://www.nydailynews.com/new-york/cuomo-n-y-state-government-push-buy-american-article-1.2943849> (accessed March 20, 2017).

16. Primary Metal Manufacturing is NAICS 331 and includes Iron and Steel Mills and Ferroalloy Manufacturing, Steel Product Manufacturing from Purchased Steel, Alumina and Aluminum Production and Processing, Nonferrous Metal (except Aluminum) Production and Processing, and Foundries. New York State, Department of Labor, Quarterly Census of Employment and Wages (QCEW), 2000–2015.

17. *Ibid.*