

Legislation 2009

STATUS:

S4085 STACHOWSKI No Same as

Governor Program # 9

ON FILE: 04/13/09 Economic Development Law

TITLE....Relates to the availability of federal funding

04/09/09 REFERRED TO COMMERCE, ECONOMIC DEVELOPMENT AND SMALL BUSINESS

SUMMARY:

STACHOWSKI

Amd S142, Ec Dev L; amd S139-j, add S164-a, St Fin L

Relates to the availability of federal funding; further relates to governmental procurement and the purchase of iron, steel and manufactured good produced in the United States.

Governor's Program

SPONSORS MEMO:

NEW YORK STATE SENATE

INTRODUCER'S MEMORANDUM IN SUPPORT

submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S4085

SPONSOR: STACHOWSKI

TITLE OF BILL:

An act to amend the economic development law, in relation to the availability of federal funding; and to amend the state finance law, in relation to governmental procurement and the purchase of iron, steel and manufactured goods produced in the United States

PURPOSE:

This bill makes certain statutory changes to allow for efficient use of funding provided for by the American Recovery and Reinvestment Act of 2009 (ARRA), and to avoid any conflict between ARRA and New York law.


SUMMARY OF PROVISIONS:


Section 1 of the bill would amend the Economic Development Law (EDL) § 142(2) to add a new paragraph (d) to allow notifications for the availability of federal funds to be published in the procurement opportunities newsletter (the "State Contract Reporter"), and sets forth the necessary elements of such publication.

Section 2 of the bill would amend EDL § 142(2), as it has been amended by chapter 137 of the laws of 2008, to add a new paragraph (d) to allow notifications for the availability of federal funds to be published in the State Contract Reporter, and sets forth the necessary elements of such publication.

Section 3 of the bill amends State Finance Law § 139-j(2)(a) to allow a governmental entity involved in a procurement to designate a person or persons who may be contacted relative to such procurement, including persons at a state agency, as necessary.

Section 4 of the bill would amend State Finance Law § 139-j(3)(a)(7)(c) to remove the requirement that communications with the Office of State Comptroller (OSC) during the process of contract approval be in writing, but requires OSC to make a written record of any such communications.

 Section 5 of the bill would create a new State Finance Law § 164-a, which would require purchase of iron, steel and manufactured goods produced in the United States to the extent required by ARRA.

 Section 6 of the bill provides that it would be effective immediately.

EXISTING LAW:

Exec. Law § 146(4-a) requires notice of the availability of any state or federal funding to be published in the State Register, except that it does not require such notice whenever a notice has been published in the State Contract Reporter pursuant to article four-C of the economic development law.

EDL § 142 provides for the publication of certain procurement opportunities in the State Contract Reporter.

State Finance Law § 139-j imposes certain restrictions on contacts between bidders and State agencies during the procurement process, and permits only written protests, appeals or complaints to the Office of the State Comptroller (OSC) during the process of contract approval, so long as the State Comptroller's approval is required by law, and such communications and any responses to them are made in writing.

STATEMENT IN SUPPORT:

ARRA makes available billions of dollars in federal aid to New York State, which will be crucial to the State in these difficult economic times. ARRA requires that the money be spent in certain limited time frames, and subject to certain restrictions. This bill would remove obstacles to the timely and legally permissible spending of ARRA funds, in several ways.

First, Exec. Law § 146 presently requires notice of the availability of State and federal funding to be posted in the State Register for 45 days of notice and comment. Moreover, more than a week may be spent between the time the notice is submitted and the time of publication. This proposed amendment would allow notices of ARRA funding to be made in the State Contract Reporter for a 15-day period. This would avoid unnecessary delay that could limit the State's ability to timely disperse ARRA funds, while still allowing for transparency and wide public dissemination of information on funding availability.

Second, the bill would revise a provision in the 2005 Procurement Lobbying Reform Act (the Act) that banned all oral communications between bidders and the Office of State Comptroller (OSC) during the review of a contract award. This provision, because it prevents necessary informational inquiries from being presented and answered orally, has greatly slowed the protest process. In light of the time limits imposed by ARRA, a number of agencies - including OSC and the Office of General Services - have suggested that such requirements will impede compliance with ARRA's time limits. Moreover, the goal these provisions seek to advance - to make transparent bidder discussions with OSC - can be advanced by requiring that any such conversations be memorialized. This bill therefore amends the Act to allow for oral communications between OSC and bidders during the contract review process, provided a written record is kept of such conversations. It also allows any agencies involved in a procurement to designate their own contacts. Because the advantage of such revision is not limited to ARRA, this provision would apply to all future procurements.

Third, ARRA requires all steel, iron and manufactured goods used in ARRA funded projects to be made in the United States, except where there is a

federal certification that this is not in the public interest, or will raise prices more than 25%. New York courts, however, have in the past struck down such "buy American" provisions as inconsistent with State Finance Law competitive bidding requirements. See *Am. Institute for Imported Steel v. Office of General Svcs.*, 365 N.Y.S.2d 56 (3d Dep't 1975), *aff'd* 38 N.Y.2d 991 (1976). Therefore, a legislative change is necessary to implement this provision of ARRA.

In sum, this legislation will remove statutory obstacles to the implementation of ARRA in New York State, and thereby will facilitate to use of ARRA funds for economic recovery.

BUDGET IMPLICATIONS:

None.

EFFECTIVE DATE:

This bill will be effective upon enactment.