



## Legislation Text

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Int. No. 902

By: Council Members Freed, Fiala, Malave-Dilan, Henry, Linares, Marshall, Nelson, Perkins, Abel and Oddo; also Council Members Carrion, Foster, Harrison, Leffler, Michels, McCaffrey, O'Donovan, Pinkett, Quinn and Robinson

A Local Law to amend the administrative code of the city of New York, in relation to requiring contractors providing meat food products to city agencies to provide certification that meat food products sold to the city are in full compliance with federal regulations, prohibiting the use of certain animal proteins in cattle feed.

Be it enacted by the Council as follows:

Section 1. Declaration of Legislative Findings and Intent. City agencies buy approximately \$65 to \$70 million worth of food each year. In relation to the supply and delivery of food service contracts, the Department of Citywide Administrative Services (DCAS) is responsible for providing support to various municipal entities that serve the public, including the City's hospitals, jails, homeless shelters and other facilities.

The Council of the City of New York finds that there are growing nationwide concerns regarding the spread of bovine spongiform encephalopathy (BSE), commonly known as "mad cow disease." According to the Food and Drug Administration (FDA), BSE is a fatal disease that causes progressive neurological degeneration in cattle. Similar to BSE, Creutzfeldt-Jakob disease (CJD) is a rare disease that occurs in humans. Both diseases are invariably fatal and there is no know treatment or cure. The FDA has reported that, while it is not certain how BSE may spread to humans, evidence indicates that humans may acquire CJD after consuming BSE-contaminated cattle products.

Federal agencies have responded with precautionary steps to prevent BSE in cattle. These steps include: (1) prohibiting the importation of live ruminant animals and most ruminant products from Europe; (2) examining U.S. cattle exhibiting abnormal neurological behavior to test for BSE; (3) prohibiting the use of

most mammalian protein in the manufacture of animal feeds given to ruminant animals; (4) conducting regular surveillance for any cases of CJD among humans; and (5) conducting research on BSE, CJD and related neurological diseases.

On June 5, 1997, the FDA published a final rule regulation that prohibits the use of most mammalian protein in the manufacture of animal feeds given to ruminant animals, such as cows, sheep and goats. The regulation also requires process and control systems to ensure that feed for ruminants do not contain prohibited mammalian tissue. This important prohibition is a preventative measure designed to protect animals from potential transmissible degenerative neurological diseases such as BSE and to minimize any potential risk to humans. The rule took effect on August 4, 1997.

Despite the regulation, a recent study by the FDA has reported that hundreds of animal feed producers have violated the regulations designed to keep BSE out of the United States. Specifically, the study found that of 347 FDA-licensed feed mills that handle risky feed, 20 percent lacked warning labels and 9 percent lacked mix-up prevention systems. The report also found that of 1,593 unlicensed feed mills that handle risky feed, almost half lacked warning labels and 26 percent lacked mix-up prevention systems.

In response to this growing concern, the McDonald's Corporation, one of the largest beef purchasers in the world will begin demanding proof that the cattle used in its hamburgers are fed pursuant to FDA regulations enacted to prevent the spread of BSE. Beef processors will be audited by the company that they have the required records in order to ensure compliance. According to reports in the media, the cattle and feed industries are welcoming the requirement because it will focus ranchers and farmers on the mad cow disease threat from tainted cattle feed.

It is in the City's best interest to procure items from responsible contractors that provide quality and safe goods. The risk of the spread of BSE is of a national concern and the City should ensure that its food service providers are in full compliance with FDA regulations.

Section 2. Title 6 of the Administrative Code of the City of New York is hereby amended by adding a

new section 6-125, to read as follows:

Section 6-124. a. For purposes of this section only, the following terms

shall have the following meanings:

(1) “Contract” means any written agreement, purchase order or instrument

whereby the city is committed to expend or does expend funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing.

(2) “Contracting agency” means a city, county, borough, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, that purchases, leases, or contracts for the purchase or lease of goods or services financed in whole or in part from the city treasury, except where partial federal or state funding precludes the city from attaching the procurement conditions provided herein.

(3) “Contractor” means any individual, sole proprietorship, partnership, joint venture or corporation which enters into a contract or contracts with a contracting agency to provide meat food products.

(4) “Subcontractor” means any person or enterprise who contracts with a contractor, either directly or through other intermediary subcontractors, for the manufacture or supply of meat food products.

(5) “Meat Food Products” means all products and by-products of the slaughtering and meat packing industry - if edible.

b. A contracting agency shall not enter into a contract to purchase or obtain meat food products from any contractor unable to provide certified documentation in writing that such meat food products are in full compliance with the requirements of title 21 of the code of the federal regulations, chapter 1, subchapter e, part 589, regarding substances prohibited from use in animal food or feed; animal proteins prohibited in ruminant feed. The contracting agency shall maintain this information in the agency contract file and make it available for public inspection.

c. Upon information and belief that a contractor or subcontractor may be in violation of this section, it shall be the duty of the contracting agency to take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the contractor in default and/or seeking debarment or suspension of the contractor or subcontractor. Where such evidence indicates a violation of the subcontractor, the contractor shall be responsible for such violation. In circumstances where a contractor or subcontractor fails to perform in accordance with any of the requirements of this section, and there is a continued need for the service, a contracting agency may obtain the required service as specified in the original contract, or any part thereof, by issuing a new

solicitation, and charging the non-performing contractor or subcontractor for any difference in price resulting from the new solicitation, any administrative charge established by the contracting agency, and shall, as appropriate, invoke such other sanctions as are available under the contract and applicable law.

c. A contractor shall be liable for a civil penalty of not less than \$250,000 upon a determination that a contractor or subcontractor has been found, through litigation or arbitration, to have made a false claim under the provisions of this section with the contracting agency.

e. Every contract for or on behalf of all contracting agencies for the supply of meat food products shall contain a provision or provisions detailing the requirements of this section.

f. This section shall not apply to any contract with a contracting agency entered into prior to the effective date of this local law, except that renewal, amendment or modification of such contract occurring on or after the effective date shall be subject to the conditions specified in this section.

g. Nothing in this section shall be construed to limit the city's authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification, or otherwise deny a person or entity city business.

§3. This local law shall take effect immediately.

LS # 4040  
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