

2663--A

2011-2012 Regular Sessions

I N S E N A T E

January 28, 2011

Introduced by Sens. GRISANTI, MARCELLINO, AVELLA, KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state finance law, the economic development law and the environmental conservation law, in relation to the state procurement process and to healthy and green procurement

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "New York
2 state healthy and green procurement act".
3 S 2. Legislative findings and declaration. The legislature hereby
4 finds and declares that:
5 (a) As New York moves into the twenty-first century the state should
6 serve as a role model for practices that will create and maintain a
7 healthy environment and vibrant economy. The manufacture, use and
8 disposal of commodities and technologies, the construction of buildings
9 and the provision of services utilizing toxic chemicals may have adverse
10 impacts on public health and the environment. Persistent, bioaccumula-
11 tive toxic chemicals, such as mercury, lead, dioxin and poly brominated
12 diphenyl ethers, are toxic in small amounts, remain in the environment
13 for long periods of time, and build to dangerous levels in humans, fish
14 and other animals; and this group of pollutants known as persistent
15 bioaccumulative toxic chemicals (PBT) pose risks to public health and
16 the environment through their ability to cause cancer, birth defects and
17 endocrine disruption. Such chemicals have polluted hundreds of water
18 bodies, fish and waterfowl in the state. These adverse impacts impose
19 costs on the state and, ultimately, society as a whole in the form of
20 injury, disease and death; health care expenses; disposal, liability and
21 cleanup costs; the waste of resources and raw materials; and an impaired
22 natural environment. PBT and cancer-causing chemicals may be found in a

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

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1 wide range of consumer products purchased by state agencies, including
2 lighting supplies, computers and other office equipment, vehicles,
3 medical equipment, building supplies and printing inks. Encouraging
4 innovation, and creating and choosing the safest, most sustainable
5 commodities, services and technologies will help to ensure a higher
6 quality of life for present and future generations. It will put New York
7 businesses in an advantageous position to compete in the global market-
8 place.

9 (b) New York looks forward to the time when the state's power is
10 generated from renewable and clean sources, when our homes, schools,
11 businesses and government facilities are energy efficient and
12 constructed, refurbished and maintained using healthy and green products
13 and practices, when pollution prevention is embraced by government and
14 businesses as a way to save money and protect public health and the
15 environment, when government and citizens use energy efficient and clean
16 vehicles, when pests are controlled with nontoxic or least toxic alter-
17 natives, when our production of waste is significantly reduced and the
18 rest is recycled, and when our homes, schools, workplaces, food, air and
19 water are free from toxic contaminants.

20 (c) Protecting public health and the environment is consistent with
21 the traditional considerations associated with state procurement prac-
22 tice, including lowest price, best value, quality, cost and efficiency.
23 Determining quality, value and efficiency should include the consider-
24 ation of public health and environmental impacts. Considering such
25 impacts early in the procurement process and adopting an ethic of
26 pollution prevention will not only reduce pollution and waste, it will
27 reduce costs throughout a commodity, service or technology's life cycle.

28 (d) Through the volume of government procurement, government can play
29 a significant role in spurring private sector development of high value
30 commodities and services. This, in turn, will create business and
31 employment opportunities in New York state, foster competition and
32 harness the energy of the market to produce products and services that
33 perform better and cost less. As supply increases, prices will decrease,
34 and high performance, healthy and green commodities, services and tech-
35 nologies will become more affordable for all consumers.

36 S 3. Subdivision 5 of section 160 of the state finance law, as added
37 by chapter 83 of the laws of 1995, is amended to read as follows:

38 5. "Costs" as used in this article shall be quantifiable and may
39 include, without limitation, the price of the given good or service
40 being purchased; the administrative, training, storage, maintenance or
41 other overhead associated with a given good or service; the value of
42 warranties, delivery schedules, financing costs and foregone opportunity
43 costs associated with a given good or service; and the life span and
44 associated life cycle costs of the given good or service being
45 purchased. Life cycle costs may include, but shall not be limited to,
46 costs or savings associated with RAW MATERIALS, PRODUCTION, MANUFACTUR-
47 ING, construction, PACKAGING, DISTRIBUTION, USE, energy use, mainte-
48 nance, operation, and salvage or disposal, AND, IF SUCH INFORMATION IS
49 READILY AVAILABLE, ANY INDIRECT ASSOCIATED PUBLIC HEALTH AND ENVIRON-
50 MENTAL COSTS.

51 S 4. Paragraph a of subdivision 1 of section 161 of the state finance
52 law, as added by chapter 175 of the laws of 2010, is amended to read as
53 follows:

54 a. The state procurement council shall continuously strive to improve
55 the state's procurement process. Such council shall consist of [twenty]
56 TWENTY-FOUR members, including the commissioner, the state comptroller,

1 the director of the budget, the chief diversity officer [and], the
2 commissioner of economic development, THE COMMISSIONER OF HEALTH, AND
3 THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, or their respective
4 designees; [seven] FIVE members who shall be the heads of other large
5 and small state agencies chosen by the governor, or their respective
6 designees; and [eight] TWELVE at large members appointed as follows:
7 [three] FIVE appointed by the temporary president of the senate, one of
8 whom shall be a representative of local government [and], one of whom
9 shall be a representative of private business AND ONE OF WHOM SHALL BE A
10 REPRESENTATIVE OF AN ORGANIZATION WHOSE PRIME FUNCTION IS THE ENHANCE-
11 MENT OF PUBLIC HEALTH OR THE ENVIRONMENT; [three] FIVE appointed by the
12 speaker of the assembly, one of whom shall be a representative of local
13 government [and], one of whom shall be a representative of private busi-
14 ness AND ONE OF WHOM SHALL BE A REPRESENTATIVE OF AN ORGANIZATION WHOSE
15 PRIME FUNCTION IS THE ENHANCEMENT OF PUBLIC HEALTH OR THE ENVIRONMENT;
16 one appointed by the minority leader of the senate; and, one appointed
17 by the minority leader of the assembly; and two non-voting observers
18 appointed as follows: one appointed by the temporary president of the
19 senate and one appointed by the speaker of the assembly. The non-voting
20 observers shall be provided, contemporaneously, all documentation and
21 materials distributed to members. The council shall be chaired by the
22 commissioner and shall meet at least quarterly.

23 S 5. The state finance law is amended by adding a new section 164-a to
24 read as follows:

25 S 164-A. HEALTHY AND GREEN PROCUREMENT. 1. HEALTHY AND GREEN PROCURE-
26 MENT POLICY. IT IS HEREBY DECLARED TO BE THE POLICY OF THE STATE TO THE
27 EXTENT PRACTICABLE TO PURCHASE COMMODITIES, SERVICES AND TECHNOLOGIES
28 THAT MINIMIZE POTENTIAL ADVERSE IMPACTS ON PUBLIC HEALTH AND THE ENVI-
29 RONMENT WHEN COMPARED WITH COMPETING COMMODITIES, SERVICES OR TECHNOLO-
30 GIES THAT SERVE THE SAME PURPOSE.

31 2. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS
32 SHALL HAVE THE FOLLOWING MEANINGS UNLESS OTHERWISE SPECIFIED:

33 A. "POLLUTION PREVENTION" SHALL MEAN POLLUTION PREVENTION AS DEFINED
34 IN ARTICLE TWENTY-EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW.

35 B. "PRIORITY TOXIC SUBSTANCES OF CONCERN" SHALL INCLUDE, BUT NOT BE
36 LIMITED TO, ANY SUBSTANCE LISTED AS KNOWN TO BE OR REASONABLY ANTIC-
37 IPATED, PURSUANT TO THE NATIONAL TOXICOLOGY PROGRAM REPORT ON CARCINO-
38 GENES, TO BE A HUMAN CARCINOGEN IN THE NATIONAL TOXICOLOGY PROGRAM'S
39 BIENNIAL REPORT ON CARCINOGENS SUBMITTED TO THE UNITED STATES CONGRESS
40 BY THE SECRETARY OF HEALTH AND HUMAN SERVICES; AND ANY SUBSTANCE IDENTI-
41 FIED AS A PERSISTENT AND/OR BIOACCUMULATIVE TOXIC SUBSTANCE ON LISTS
42 MAINTAINED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, INCLUD-
43 ING THE NATIONAL PARTNERSHIP FOR ENVIRONMENTAL PRIORITIES; OR THE INTER-
44 NATIONAL JOINT COMMISSION CREATED PURSUANT TO THE GREAT LAKES WATER
45 QUALITY AGREEMENT OF 1978; AND PERFLUORINATED COMPOUNDS, DIOXIN, BROMI-
46 NATED FLAME RETARDANTS AND BISPHENOL A DUE TO THEIR TOXICITY IN
47 PRODUCTION, USE AND DISPOSAL.

48 3. MINIMUM SPECIFICATIONS FOR HEALTHY AND GREEN PROCUREMENT. CONSIST-
49 ENT WITH DETERMINATIONS OF NEED REQUIRED BY SUBDIVISION FIVE OF SECTION
50 ONE HUNDRED SIXTY-THREE OF THIS ARTICLE, ALL STATE AGENCIES SHALL
51 PROCURE COMMODITIES, SERVICES AND TECHNOLOGIES THAT MEET OR EXCEED THE
52 FOLLOWING MINIMUM SPECIFICATIONS:

53 A. RECYCLED CONTENT. ALL COPY PAPER AND OTHER PAPER SUPPLIES FOR WHICH
54 THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY HAS DEVELOPED RECYCLED
55 CONTENT RECOMMENDATIONS PURSUANT TO SECTION SIX THOUSAND TWO OF THE
56 FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT SHALL BE REQUIRED TO MEET

1 OR EXCEED THE AGENCY'S MINIMUM POST-CONSUMER MATERIAL CONTENT PERCENT-
2 AGES RECOMMENDED IN THE MOST RECENT RECOVERED MATERIALS ADVISORY NOTICE
3 ISSUED FOR SUCH COMMODITY IN THE FEDERAL REGISTER; PROVIDED, HOWEVER,
4 THAT XEROGRAPHIC PAPER SHALL CONTAIN NO LESS THAN THIRTY PERCENT
5 POST-CONSUMER RECYCLED CONTENT. THE COMMISSIONER SHALL ALSO MAKE AVAIL-
6 ABLE TO ALL AGENCIES, ONE HUNDRED PERCENT POST-CONSUMER, PROCESSED CHLO-
7 RINE-FREE COPY PAPER. ALL AGENCIES SHALL PRINT PUBLICATIONS ON RECYCLED
8 PAPER, AND MINIMUM PERCENTAGES SHALL BE MET UNLESS COSTS FOR SUCH PAPER
9 EXCEED THE COST OF OTHER AVAILABLE COMMODITIES BY MORE THAN TEN PERCENT.

10 B. WASTE REDUCTION. AGENCIES SHALL SEEK TO REDUCE WASTE IN PRODUCTS
11 AND PACKAGING, INCLUDING THE FORMULATION OF POLICIES TO PROMOTE THE USE
12 OF DOUBLE-SIDED COPYING AND PRINTING TO THE GREATEST EXTENT PRACTICABLE.
13 AGENCIES SHALL FAVOR DURABILITY, REPAIRABILITY AND REUSE WHEN PURCHASING
14 SUPPLIES. THE COMMISSIONER SHALL ESTABLISH MINIMUM SPECIFICATIONS FOR
15 WASTE REDUCTION WITHIN TWELVE MONTHS OF THE EFFECTIVE DATE OF THIS
16 SECTION.

17 C. ENERGY EFFICIENCY. ALL COMMODITIES FOR WHICH THE FEDERAL ENERGY
18 MANAGEMENT PROGRAM OF THE UNITED STATES DEPARTMENT OF ENERGY HAS ISSUED
19 PRODUCT ENERGY EFFICIENCY RECOMMENDATIONS SHALL MEET OR EXCEED SUCH
20 RECOMMENDATIONS. AGENCIES SHALL SEEK TO ACHIEVE REDUCTIONS IN ENERGY
21 AND PETROLEUM CONSUMPTION; ADHERE TO ENERGY STAR BUILDING CRITERIA; SEEK
22 OUT OFFICE SPACE AND REAL ESTATE INVESTMENTS IN BUILDINGS WITH ENERGY
23 STAR RATING; AND FOLLOW THE PUBLIC SERVICE COMMISSION'S RENEWABLE PORT-
24 FOLIO STANDARD TO INCREASE THE PURCHASE OF RENEWABLE ENERGY SO THAT AT
25 LEAST TWENTY-FIVE PERCENT OF THE OVERALL ANNUAL ELECTRIC ENERGY REQUIRE-
26 MENTS OF BUILDINGS OWNED, LEASED OR OPERATED BY STATE AGENCIES WILL BE
27 RENEWABLE ENERGY BY TWO THOUSAND SIXTEEN.

28 D. GREEN BUILDINGS. ALL CAPITAL PROJECTS WITH AN ESTIMATED
29 CONSTRUCTION COST OF TWO MILLION DOLLARS OR MORE INVOLVING (1) THE
30 CONSTRUCTION OF A NEW BUILDING, (2) AN ADDITION TO AN EXISTING BUILDING,
31 OR (3) THE SUBSTANTIAL RECONSTRUCTION OF AN EXISTING BUILDING SHALL BE
32 DESIGNATED AND CONSTRUCTED TO COMPLY WITH BUILDING STANDARDS NOT LESS
33 STRINGENT THAN THE STANDARDS PRESCRIBED BY THE UNITED STATES GREEN
34 BUILDING COUNCIL LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN SILVER
35 RATING AND STANDARDS SET FORTH IN THE DEFINITION OF A "GREEN BASE BUILD-
36 ING" AS DEFINED IN SECTION NINETEEN OF THE TAX LAW, OR ANY PORTION THER-
37 EOF, ANY MODIFICATION OF OR AMENDMENTS THERETO, AND TO UTILIZE MATERIALS
38 WHICH DO NOT CONTAIN POLYVINYL CHLORIDE TO THE GREATEST EXTENT PRACTICA-
39 BLE. IN ADDITION, ALL STATE-OWNED AND OPERATED BUILDINGS OF FIFTY THOU-
40 SAND SQUARE FEET OR LARGER SHALL BE OPERATED TO MEET SUCH STANDARDS FOR
41 EXISTING BUILDINGS TO THE MAXIMUM EXTENT PRACTICABLE THAT IS COST EFFEC-
42 TIVE BY NOT LATER THAN TWO THOUSAND FIFTEEN.

43 4. SPECIFICATIONS TO INCORPORATE HEALTHY AND GREEN PROCUREMENT. A.
44 BEGINNING ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION, ALL STATE
45 AGENCIES, WHEN PROCURING COMMODITIES, SERVICES OR TECHNOLOGY PURSUANT TO
46 SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE, SHALL FOLLOW PRACTICES
47 AND DEVELOP SOLICITATION SPECIFICATIONS THAT MEET OR EXCEED THE MINIMUM
48 SPECIFICATIONS FOR HEALTHY AND GREEN PROCUREMENT ESTABLISHED IN SUBDIVI-
49 SION THREE OF THIS SECTION. ALL SUCH CONTRACTS SHALL INCLUDE A STATEMENT
50 DESCRIBING HOW SUCH MINIMUM SPECIFICATIONS WERE MET.

51 B. IN THE EVENT THAT AN AGENCY RECEIVES NO BIDS OR PROPOSALS THAT MEET
52 THE SPECIFICATIONS DEVELOPED PURSUANT TO PARAGRAPH A OF THIS SUBDIVI-
53 SION, SUCH AGENCY MAY WITHDRAW THE REQUEST FOR BIDS OR PROPOSALS AND
54 BEGIN A NEW PROCUREMENT WITH NEW SPECIFICATIONS WITHOUT SUCH SPECIFICA-
55 TIONS AND AWARD A CONTRACT IN ACCORDANCE WITH OTHER APPLICABLE STATUTES;
56 PROVIDED, HOWEVER THAT SUCH AGENCY SHALL DOCUMENT THE REASONS WHY SUCH

1 PROCUREMENT DOES NOT MEET THE MINIMUM SPECIFICATIONS FOR HEALTHY AND
2 GREEN PROCUREMENT ESTABLISHED IN THIS SUBDIVISION AND SUBMIT SUCH
3 DOCUMENTATION TO THE COMMISSIONER FOR INCLUSION IN THE ANNUAL REPORT
4 REQUIRED PURSUANT TO THIS SECTION AND TO THE OFFICE OF THE COMPTROLLER
5 FOR INCLUSION IN THE PROCUREMENT RECORD.

6 5. BALANCING HEALTHY AND GREEN PROCUREMENT WITH PRICE, LOWEST COST AND
7 BEST VALUE.

8 A. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS REQUIRING A STATE
9 AGENCY TO PROCURE A COMMODITY, SERVICE OR TECHNOLOGY THAT DOES NOT MEET
10 THE FORM, FUNCTION AND UTILITY REQUIRED BY SUCH AGENCY, OR AS REQUIRING
11 A STATE AGENCY TO PROCURE A COMMODITY, SERVICE OR TECHNOLOGY THE COST OF
12 WHICH EXCEEDS THE COST OF AN ALTERNATIVE AVAILABLE COMMODITY OR SERVICE
13 BY MORE THAN TEN PERCENT.

14 B. WHEN DETERMINING AND COMPARING COSTS, STATE AGENCIES SHALL CONSIDER
15 COST AS DEFINED IN SECTION ONE HUNDRED SIXTY OF THIS ARTICLE.

16 6. HEALTHY AND GREEN PROCUREMENT OFFICER, COORDINATORS, COORDINATING
17 COUNCIL.

18 A. WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE DATE OF THIS
19 SECTION, THE COMMISSIONER SHALL ASSIGN AN INDIVIDUAL WITHIN THE OFFICE
20 OF GENERAL SERVICES TO SERVE AS THE STATE HEALTHY AND GREEN PROCUREMENT
21 OFFICER. SUCH OFFICER SHALL ASSIST THE COMMISSIONER WITH CARRYING OUT
22 HIS OR HER DUTIES UNDER THIS SECTION, INCLUDING BUT NOT LIMITED TO:

23 (I) ASSISTING THE COMMISSIONER WITH THE DEVELOPMENT AND PROVISION OF
24 GUIDANCE FOR HEALTHY AND GREEN PROCUREMENT PURSUANT TO THIS SECTION;

25 (II) THE IDENTIFICATION OF AT LEAST THREE "TARGET CATEGORIES" OF
26 COMMODITIES, SERVICES AND/OR TECHNOLOGIES ANNUALLY PURSUANT TO THIS
27 SECTION;

28 (III) THE DEVELOPMENT OF CRITERIA FOR THE EVALUATION OF COMMODITIES,
29 SERVICES AND/OR TECHNOLOGIES WITHIN TARGETED CATEGORIES;

30 (IV) THE CREATION OF APPROVED HEALTHY AND GREEN SUPPLIES LISTS;

31 (V) THE EVALUATION OF CURRENT STATE AGENCY PROCUREMENT PRACTICES AND
32 THE TRACKING OF PROGRESS IN IMPLEMENTING THE HEALTHY AND GREEN PROCURE-
33 MENT POLICY, INCLUDING THE INTEGRATION OF ENVIRONMENTALLY PREFERABLE
34 PURCHASING AND HEALTHY AND GREEN SUPPLIES LISTS FOR ALL NEW PURCHASING
35 OF PRODUCTS, SERVICES AND TECHNOLOGIES IN TARGET CATEGORIES;

36 (VI) THE DEVELOPMENT OF THE ENVIRONMENTAL AUDIT PROGRAM;

37 (VII) CONSIDERATION OF ADDITIONAL PRIORITY TOXIC SUBSTANCES OF CONCERN
38 AS RECOMMENDED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE
39 DEPARTMENT OF HEALTH;

40 (VIII) THE DEVELOPMENT OF GUIDELINES FOR PUBLIC PARTICIPATION;

41 (IX) THE DESIGN AND IMPLEMENTATION OF TRAINING, OUTREACH AND EDUCATION
42 PROGRAMS;

43 (X) DEVELOP METRICS FOR MEASURING PROGRESS IN IMPLEMENTING THE HEALTHY
44 AND GREEN PROCUREMENT POLICY, CRITERIA AND MINIMUM SPECIFICATIONS,
45 INCLUDING THE IDENTIFICATION OF MILESTONES AND QUANTIFIABLE GOALS THAT
46 CAN BE USED TO MEASURE SUCH PROGRESS;

47 (XI) THE PREPARATION AND SUBMITTAL OF ANNUAL REPORTS AND THE PERFORM-
48 ANCE OF A COMPREHENSIVE FIVE YEAR REVIEW; AND

49 (XII) ADVISE THE GOVERNOR AND THE LEGISLATURE REGARDING THE IMPLEMEN-
50 TATION OF THE HEALTHY AND GREEN PROCUREMENT POLICY.

51 B. WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE DATE OF THIS
52 SECTION, EACH STATE AGENCY WITH ONE HUNDRED EMPLOYEES OR MORE SHALL
53 ASSIGN AN INDIVIDUAL WITHIN SUCH AGENCY TO SERVE AS THE AGENCY'S
54 SUSTAINABLE PROCUREMENT COORDINATOR.

55 7. TARGET COMMODITY, SERVICE AND/OR TECHNOLOGY CATEGORIES. WITHIN
56 TWELVE MONTHS OF THE EFFECTIVE DATE OF THIS SECTION AND ANNUALLY THERE-

1 AFTER, THE COMMISSIONER, IN CONSULTATION WITH THE STATE PROCUREMENT
2 COUNCIL, SHALL IDENTIFY A MINIMUM OF THREE "TARGET CATEGORIES" OF
3 COMMODITIES, SERVICES AND/OR TECHNOLOGIES, WHICH FOR THE PURPOSES OF
4 THIS CHAPTER SHALL MEAN CATEGORIES OF COMMODITIES, SERVICES AND/OR TECH-
5 NOLOGIES PROCURED BY THE STATE WHICH MAY HAVE AN ADVERSE IMPACT ON
6 PUBLIC HEALTH OR THE ENVIRONMENT AND FOR WHICH HEALTHY AND GREEN COMMOD-
7 ITIES, SERVICES OR TECHNOLOGIES SHOULD BE IDENTIFIED AND SUBSTITUTED.

8 8. ENVIRONMENTALLY PREFERABLE PURCHASING CRITERIA FOR HEALTHY AND
9 GREEN PROCUREMENT. WITHIN TWELVE MONTHS OF THE IDENTIFICATION AND RECOM-
10 MENDATION OF AT LEAST THREE "TARGET CATEGORIES" PURSUANT TO SUBDIVISION
11 SEVEN OF THIS SECTION, THE COMMISSIONER, IN CONSULTATION WITH THE STATE
12 PROCUREMENT COUNCIL SHALL DEVELOP ENVIRONMENTALLY PREFERABLE PURCHASING
13 CRITERIA FOR THE EVALUATION AND PROCUREMENT OF PRODUCTS, SERVICES AND/OR
14 TECHNOLOGIES WITHIN SUCH TARGETED CATEGORIES. THE FOLLOWING FACTORS
15 SHALL BE CONSIDERED IN THE DEVELOPMENT OF SUCH CRITERIA:

16 A. PROTECTION OF PUBLIC HEALTH AND THE ENVIRONMENT AND THE CONSERVA-
17 TION OF NATURAL RESOURCES;

18 B. THE PROTECTION OF DRINKING WATER, GROUNDWATER, SURFACE WATER AND
19 AIR (INCLUDING INDOOR AIR); AND THE PROTECTION OF ECOLOGICAL SYSTEMS;

20 C. POLLUTION PREVENTION, INCLUDING, BUT NOT LIMITED TO, CONSIDERING
21 HEALTHY AND GREEN PROCUREMENT DURING THE DESIGN PHASE OF CUSTOMIZED
22 COMMODITIES, SERVICES OR TECHNOLOGIES;

23 D. AVOIDANCE OF PRIORITY TOXIC SUBSTANCES; AND

24 E. POSITIVE LIFE CYCLE ATTRIBUTES, INCLUDING BUT NOT LIMITED TO THE
25 MINIMIZATION OF POTENTIAL ADVERSE IMPACTS ON PUBLIC HEALTH AND THE ENVI-
26 RONMENT ASSOCIATED WITH RAW MATERIALS ACQUISITION, PRODUCTION, MANUFAC-
27 TURING, PACKAGING, TRANSPORTATION, DISTRIBUTION, USE, OPERATION, MAINTENANCE AND DISPOSAL.

28 9. HEALTHY AND GREEN SUPPLY LISTS.

29 A. FOR EACH TARGET COMMODITY, SERVICE AND/OR TECHNOLOGY CATEGORY IDEN-
30 TIFIED AND RECOMMENDED PURSUANT TO SUBDIVISION SEVEN OF THIS SECTION,
31 THE COMMISSIONER, IN CONSULTATION WITH THE STATE PROCUREMENT COUNCIL,
32 SHALL APPROVE SPECIFIC COMMODITIES, SERVICES AND/OR TECHNOLOGIES AS
33 CONSISTENT WITH THE HEALTHY AND GREEN PROCUREMENT POLICY, MINIMUM SPEC-
34 IFICATIONS, AND ENVIRONMENTALLY PREFERABLE PURCHASING CRITERIA ESTAB-
35 LISHED IN SUBDIVISIONS ONE, THREE AND EIGHT OF THIS SECTION. SUCH
36 COMMODITY, SERVICE OR TECHNOLOGY SHALL THEN BE ADDED TO AN APPROVED
37 HEALTHY AND GREEN SUPPLY LIST FOR SUCH CATEGORY.

38 B. THE COMMISSIONER SHALL CREATE AN APPROVED HEALTHY AND GREEN SUPPLY
39 LIST PURSUANT TO THE REQUIREMENTS OF THE STATE ADMINISTRATIVE PROCEDURE
40 ACT, FOR A TARGET COMMODITY, SERVICE AND/OR TECHNOLOGY CATEGORY NO LATER
41 THAN TWELVE MONTHS FOLLOWING THE IDENTIFICATION AND RECOMMENDATION OF
42 SUCH CATEGORY PURSUANT TO SUBDIVISION SEVEN OF THIS SECTION, AND SHALL
43 REVIEW AND REVISE APPROVED LISTS ANNUALLY.

44 10. PROCUREMENT FROM HEALTHY AND GREEN SUPPLY LISTS. A. WHEN PROCUR-
45 ING A COMMODITY, SERVICE OR TECHNOLOGY WITHIN A TARGETED CATEGORY FOR
46 WHICH AN APPROVED HEALTHY AND GREEN SUPPLY LIST HAS BEEN CREATED, STATE
47 AGENCIES SHALL PROCURE SUCH COMMODITY, SERVICE OR TECHNOLOGY FROM SUCH
48 LIST.

49 B. WHEN A STATE AGENCY WANTS TO PROCURE A COMMODITY, SERVICE OR TECH-
50 NOLOGY WITHIN A TARGETED CATEGORY FOR WHICH AN APPROVED HEALTHY AND
51 GREEN SUPPLY LIST HAS BEEN CREATED, BUT SUCH COMMODITY, SERVICE OR TECH-
52 NOLOGY DOES NOT APPEAR ON SUCH LIST, SUCH AGENCY MUST OBTAIN A WAIVER
53 FROM THE REQUIREMENTS OF THIS SUBDIVISION FROM THE COMMISSIONER,
54 PROVIDED, HOWEVER, THAT SUCH WAIVER SHALL NOT BE REQUIRED FOR THE
55 PURCHASE OF COMMODITIES, SERVICES AND/OR TECHNOLOGIES FROM THE LIST
56

1 AVAILABLE FOR PURCHASE FROM PREFERRED SOURCES MAINTAINED BY THE COMMIS-
2 SIONER PURSUANT TO SECTION ONE HUNDRED SIXTY-TWO OF THIS ARTICLE. AN
3 APPLICATION FOR SUCH A WAIVER SHALL BE FILED WITH THE COMMISSIONER, WHO
4 SHALL NOTIFY THE PUBLIC, PROVIDE FOR A PUBLIC COMMENT PERIOD, AND RENDER
5 A WRITTEN DECISION ON SUCH APPLICATION WITHIN FORTY-FIVE DAYS. A WAIVER
6 MAY BE GRANTED WHEN NO COMMODITY, SERVICE AND/OR TECHNOLOGY ON SUCH
7 APPROVED ALTERNATIVES LIST MEETS AN AGENCY'S PERFORMANCE STANDARDS. IN
8 ORDER TO OBTAIN A WAIVER, THE STATE AGENCY REQUESTING THE WAIVER MUST
9 SHOW THAT IT HAS:

10 (I) THOROUGHLY TESTED EACH COMMODITY OR TECHNOLOGY, OR THOROUGHLY
11 INVESTIGATED EACH SERVICE, ON THE APPROVED SUPPLY LIST AND NONE MEET THE
12 AGENCY'S PERFORMANCE STANDARDS;

13 (II) DISCLOSED THE USE AND INTENSITY OF USE FOR THE COMMODITY, SERVICE
14 OR TECHNOLOGY AND DEVELOPED A REASONABLE PLAN TO MINIMIZE THE USE OF THE
15 SELECTED COMMODITY, SERVICE OR TECHNOLOGY AND PROTECT EMPLOYEES AND THE
16 PUBLIC FROM EXPOSURE TO ANY PRIORITY TOXIC SUBSTANCE OF CONCERN; AND

17 (III) PREPARED A PLAN TO INVESTIGATE ALTERNATIVES TO THE SELECTED
18 COMMODITY, SERVICE OR TECHNOLOGY DURING THE WAIVER PERIOD.

19 C. A STATE AGENCY MAY PROCURE A COMMODITY, SERVICE OR TECHNOLOGY
20 THROUGH A PROCESS THAT DOES NOT COMPLY WITH THIS SUBDIVISION WHEN THE
21 PURCHASE OF A COMMODITY, SERVICE OR TECHNOLOGY IS NECESSARY TO RESPOND
22 TO AN EMERGENCY WHICH ENDANGERS PUBLIC HEALTH OR SAFETY, PROVIDED SUCH
23 AGENCY SHALL WITHIN SEVEN BUSINESS DAYS FILE A WRITTEN REPORT WITH THE
24 COMMISSIONER AND THE OFFICE OF THE COMPTROLLER, WHICH SHALL BECOME PART
25 OF THE PROCUREMENT RECORD. THE REPORT SHALL CONTAIN THE FOLLOWING INFOR-
26 MATION:

27 (I) A DESCRIPTION OF THE EMERGENCY THAT PREVENTED COMPLIANCE WITH THIS
28 SUBDIVISION;

29 (II) THE NAME OF THE COMMODITY OR TECHNOLOGY, OR A DESCRIPTION OF THE
30 SERVICE, ITS USE AND INTENSITY OF USE;

31 (III) A DESCRIPTION OF THE STEPS BEING TAKEN TO SAFEGUARD PUBLIC
32 HEALTH AND SAFETY DURING THE EMERGENCY; AND

33 (IV) AN EXPLANATION OF HOW SUCH AN EMERGENCY CAN BE AVOIDED IN THE
34 FUTURE.

35 11. TRACKING OF PROCUREMENT PRACTICES AND DATA. WITHIN TWELVE MONTHS
36 OF THE EFFECTIVE DATE OF THIS SECTION, THE COMMISSIONER, IN CONSULTATION
37 WITH THE STATE PROCUREMENT COUNCIL, SHALL:

38 A. REVIEW ALL PROCUREMENT REGULATIONS, GENERIC SOLICITATION LANGUAGE,
39 SPECIFICATIONS AND PROCEDURES TO ENSURE THAT THEY DO NOT CONFLICT WITH
40 THE HEALTHY AND GREEN PROCUREMENT POLICY, MINIMUM SPECIFICATIONS AND
41 CRITERIA ESTABLISHED PURSUANT TO SUBDIVISIONS ONE, THREE AND EIGHT OF
42 THIS SECTION.

43 B. DEVELOP METRICS AND IDENTIFICATION OF MILESTONES AND QUANTIFIABLE
44 GOALS THAT CAN BE USED TO MEASURE PROGRESS IN IMPLEMENTING THE STATE'S
45 HEALTHY AND GREEN PROCUREMENT POLICY.

46 C. DEVELOP AN EFFICIENT AND PRACTICABLE METHOD FOR COLLECTING AND
47 COMPILING PROCUREMENT DATA FROM STATE AGENCIES, INCLUDING BUT NOT LIMIT-
48 ED TO ESTIMATES OF THE VOLUME SPENT, QUANTITY PURCHASED, AND GENERAL
49 PURCHASING TRENDS FOR COMMODITIES, SERVICES AND TECHNOLOGIES, INCLUDING
50 HEALTHY AND GREEN COMMODITIES, SERVICES AND TECHNOLOGIES INCLUDED IN AN
51 APPROVED SUPPLY LIST OR A CENTRALIZED CONTRACT.

52 12. TRAINING, OUTREACH AND EDUCATION. A. WITH THE ASSISTANCE OF THE
53 DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF HEALTH, AND
54 THE OFFICE OF THE COMPTROLLER, THE COMMISSIONER, WITHIN TWELVE MONTHS OF
55 THE EFFECTIVE DATE OF THIS SECTION, SHALL DESIGN AND BEGIN IMPLEMENTA-
56 TION OF A HEALTHY AND GREEN PROCUREMENT TRAINING PROGRAM FOR SENIOR

MANAGERS AND STATE AGENCY STAFF INVOLVED IN PROCUREMENT TO FAMILIARIZE THEM WITH THEIR RESPONSIBILITIES UNDER THIS SECTION AND ENSURE THE EFFECTIVE AND EFFICIENT IMPLEMENTATION OF THE PROVISIONS OF THIS SECTION. SUCH PROGRAM SHALL PROVIDE FOR NEW EMPLOYEE TRAINING AND ONGOING TRAINING.

B. WITH THE ASSISTANCE OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH, THE COMMISSIONER, WITHIN EIGHTEEN MONTHS OF THE EFFECTIVE DATE OF THIS SECTION, SHALL:

(I) DESIGN AND BEGIN IMPLEMENTATION OF A HEALTHY AND GREEN EDUCATION AND OUTREACH PROGRAM FOR AGENCY PROCUREMENT STAFF, TO ENSURE THAT ALL PROCUREMENT STAFF ARE AWARE OF THE STATE'S PREFERENCE FOR HEALTHY AND GREEN COMMODITIES, SERVICES AND TECHNOLOGIES.

(II) DESIGN AND BEGIN IMPLEMENTATION OF AN EDUCATION AND OUTREACH PROGRAM FOR CONTRACTORS AND VENDORS TO PROVIDE THEM WITH INFORMATION ABOUT THE DEVELOPMENT OF HEALTHY AND GREEN COMMODITIES, SERVICES AND TECHNOLOGIES AND IMPLEMENTATION OF THE PROVISIONS OF THIS SECTION.

13. ANNUAL REPORT TO THE GOVERNOR AND LEGISLATURE. WITHIN EIGHTEEN MONTHS OF THE EFFECTIVE DATE OF THIS SECTION, AND ANNUALLY THEREAFTER IN NOVEMBER, THE COMMISSIONER SHALL SUBMIT A WRITTEN REPORT TO THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE SENATE. SUCH REPORT SHALL INCLUDE:

A. IDENTIFICATION OF THE SPECIFIC MEASURES TAKEN BY STATE AGENCIES, AND AN EVALUATION OF THE EFFECTIVENESS OF SUCH MEASURES, TO IMPLEMENT THE HEALTHY AND GREEN PROCUREMENT POLICY, INCLUDING PROGRESS MADE TOWARD THE ACHIEVEMENT OF ANY MILESTONES OR QUANTIFIABLE GOALS IDENTIFIED BY THE COMMISSIONER PURSUANT TO SUBDIVISION ELEVEN OF THIS SECTION AND, TO THE EXTENT PRACTICABLE, A QUALITATIVE ASSESSMENT OF THE HEALTH AND ENVIRONMENTAL BENEFITS OF THE POLICY;

B. EVALUATION OF THE RESOURCES AVAILABLE TO IMPLEMENT SUCH POLICY, AND WHETHER SUCH RESOURCES ARE SUFFICIENT;

C. RECOMMENDATIONS FOR LEGISLATION OR ANY OTHER SPECIFIC ACTIONS OR CHANGES NEEDED TO EFFECTIVELY IMPLEMENT THE PROVISIONS OF THIS SECTION;

D. A LIST OF TARGET COMMODITY, SERVICE AND/OR TECHNOLOGY CATEGORIES AND APPROVED HEALTHY AND GREEN SUPPLY LISTS IDENTIFIED AND CREATED PURSUANT TO SUBDIVISIONS SEVEN AND NINE OF THIS SECTION;

E. A LIST OF HEALTHY AND GREEN COMMODITIES, SERVICES AND TECHNOLOGIES AVAILABLE FOR PURCHASE THROUGH CENTRALIZED CONTRACTS;

F. A COMPILATION OF PROCUREMENT DATA COLLECTED USING METHODS DEVELOPED PURSUANT TO SUBDIVISION ELEVEN OF THIS SECTION;

G. ADDITIONS TO THE LIST OF PRIORITY TOXIC SUBSTANCES OF CONCERN MADE BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH;

H. AN ANALYSIS OF THE MEASURES TAKEN TO TRAIN, EDUCATE AND ASSIST STATE AGENCY STAFF, VENDORS AND CONTRACTORS; AND

I. A PLAN FOR THE NEXT REPORTING PERIOD THAT IDENTIFIES SPECIFIC GOALS, ACTIONS AND TIMELINES NECESSARY TO IMPLEMENT THE HEALTHY AND GREEN PROCUREMENT POLICY.

S 6. Paragraphs b and h of subdivision 1 of section 261 of the economic development law, paragraph b as amended by chapter 471 of the laws of 1998, and paragraph h as amended by section 14 of part SS of chapter 59 of the laws of 2009, are amended and a new paragraph i is added to read as follows:

b. "Eligible applicant" or "applicant" shall mean: a small to medium size business or nonprofit organization which employs less than five hundred workers or has gross annual sales of less than ten million dollars; OR ANY ENTITY GRANTED PREFERRED SOURCE STATUS FOR THE PURPOSES

1 OF STATE PROCUREMENT PURSUANT TO SECTION ONE HUNDRED SIXTY-TWO OF THE
2 STATE FINANCE LAW.

3 h. "Eligible project" shall mean actions taken by or on behalf of [a
4 New York business] AN ELIGIBLE APPLICANT involving the acquisition,
5 construction, alteration, repair or improvement of a building, fixtures,
6 machinery or equipment; THE REDESIGN, MODIFICATION, UPGRADE OR REPLACE-
7 MENT OF PROCESSES, PROCEDURES, WORK PRACTICES OR TECHNOLOGY; THE REFOR-
8 MULATION OR REDESIGN OF PRODUCTS; OR IMPROVEMENTS IN HOUSEKEEPING, MAIN-
9 TENANCE, TRAINING OR INVENTORY CONTROL, provided that such project
10 results in:

11 (i) source reduction or material substitution, provided that the
12 substitution of one hazardous substance, product or nonproduct output
13 for another does not result in the creation of a new risk,

14 (ii) in-process recycling,

15 (iii) recycling or reuse of non-hazardous solid wastes,

16 (iv) increased energy efficiency,

17 (v) conservation of the use of water or other natural resources
18 improvements in process economics,

19 (vi) elimination of the purchase of materials, the production of which
20 for the use of said firm would result in more waste or resource consump-
21 tion, [or]

22 (vii) THE DEVELOPMENT, MANUFACTURE, PRODUCTION OR PROVISION OF HEALTHY
23 AND GREEN COMMODITIES, SERVICES OR TECHNOLOGIES AS DEFINED IN SECTION
24 ONE HUNDRED SIXTY-FOUR-A OF THE STATE FINANCE LAW, OR

25 (VIII) other practices or technologies that reduce the use of hazard-
26 ous materials or otherwise improve air or water quality.

27 The term "eligible project" shall also include actions taken by or on
28 behalf of a business to support costs of equipment, and/or the acquisi-
29 tion and/or rehabilitation of real property or structures located or to
30 be located in the state related to the collecting, sorting, and packag-
31 ing of empty beverage containers as such terms are defined in title ten
32 of article twenty-seven of the environmental conservation law. Such
33 actions shall be eligible for state assistance payments under the bever-
34 age container assistance program pursuant to section 27-1018 of the
35 environmental conservation law.

36 The term "eligible project" shall not include end of pipe pollution
37 control technologies or practices where such controls or practices are
38 designed primarily to achieve compliance with the environmental conser-
39 vation law or regulations promulgated pursuant thereto, or energy recov-
40 ery or incineration, or out-of-process recycling or reuse of hazardous
41 waste or hazardous substances.

42 I. "HEALTHY AND GREEN COMMODITY, SERVICE OR TECHNOLOGY" SHALL MEAN ANY
43 COMMODITY, SERVICE OR TECHNOLOGY CONSISTENT WITH THE HEALTHY AND GREEN
44 PROCUREMENT POLICY, CRITERIA AND MINIMUM SPECIFICATIONS ESTABLISHED IN
45 SUBDIVISIONS ONE, THREE AND FOUR OF SECTION ONE HUNDRED SIXTY-FOUR-A OF
46 THE STATE FINANCE LAW.

47 S 7. Paragraphs c, d, e, f, g, h, i, l and o of subdivision 4 of
48 section 261 of the economic development law, paragraphs c, d, e, f, g,
49 h, i and l as amended by chapter 471 of the laws of 1998 and paragraph o
50 as amended by chapter 180 of the laws of 2006, are amended to read as
51 follows:

52 c. maintain, provide and market a compilation of existing programs
53 providing incentives for new or expanded business enterprises which
54 could be utilized by the secondary materials processing industry OR
55 WHICH MANUFACTURE, PRODUCE OR PROVIDE HEALTHY AND GREEN COMMODITIES,
56 SERVICES OR TECHNOLOGIES;

d. promote the utilization of such incentives for new or expanded business enterprises which process or utilize secondary materials OR WHICH MANUFACTURE, PRODUCE OR PROVIDE HEALTHY AND GREEN COMMODITIES, SERVICES OR TECHNOLOGIES to locate in New York state;

e. promote incentives for existing businesses to expand their utilization of secondary materials [and], their adoption of waste prevention technologies and practices AND THEIR DEVELOPMENT, MANUFACTURE, PRODUCTION AND PROVISION OF HEALTHY AND GREEN COMMODITIES, SERVICES OR TECHNOLOGIES;

f. identify special needs and problems facing the secondary materials processing industry [and], THE implementation of waste prevention AND THE DEVELOPMENT, MANUFACTURE, PRODUCTION AND PROVISION OF HEALTHY AND GREEN COMMODITIES, SERVICES OR TECHNOLOGIES within New York state;

g. contact institutions, organizations and commercial enterprises that are potential consumers of secondary materials and products manufactured with secondary materials OR HEALTHY AND GREEN COMMODITIES, SERVICES OR TECHNOLOGIES; urging their expanded consumption of [secondary] SUCH materials [and], products, COMMODITIES, SERVICES AND TECHNOLOGIES and establishing markets for such [secondary] materials [and], products, COMMODITIES, SERVICES AND TECHNOLOGIES through the use of letters of intent and such other techniques as the commissioner may deem appropriate;

h. conduct market surveys of the potential consumers of secondary materials and products manufactured with secondary materials AND OF HEALTHY AND GREEN COMMODITIES, SERVICES OR TECHNOLOGIES;

i. conduct surveys to determine the potential supply of secondary materials AND HEALTHY AND GREEN COMMODITIES, SERVICES OR TECHNOLOGIES in the state;

l. provide information concerning local and regional markets for secondary materials AND HEALTHY AND GREEN COMMODITIES, SERVICES OR TECHNOLOGIES;

o. provide other technical assistance to assist businesses in reducing the amount of waste generated by their processes and productively use or provide for the productive use [of others] of wastes which are generated;

S 8. Subdivision 5 of section 261 of the economic development law, as amended by chapter 471 of the laws of 1998, is amended to read as follows:

5. The department shall fund feasibility studies for testing of waste prevention technologies or practices [or both] AND HEALTHY AND GREEN COMMODITIES, SERVICES AND TECHNOLOGIES to reduce the amount of waste and to promote energy and resource conservation by the adoption OR USE of such technologies [or], practices, COMMODITIES AND SERVICES by small and medium sized firms in New York state.

S 9. Subdivision 10 of section 261 of the economic development law, as amended by chapter 471 of the laws of 1998, is amended to read as follows:

10. Technical feasibility study. The department shall require the applicant to submit a technical feasibility study which identifies and analyzes in detail the waste prevention projects which the applicant wishes to implement. All feasibility studies must include the cost of implementation, a construction schedule and, a description of how the project will minimize, reduce or eliminate the generation of wastes, use or reuse wastes, increase energy efficiency or water conservation, INCREASE THE MANUFACTURE, PRODUCTION, PROVISION OR USE OF HEALTHY AND

1 GREEN COMMODITIES, SERVICES OR TECHNOLOGIES, improve air or water quali-
2 ty and/or improve process economics.

3 S 10. Subdivision 14 of section 261 of the economic development law,
4 as amended by chapter 524 of the laws of 2005, is amended to read as
5 follows:

6 14. Reports. Beginning on January first, nineteen hundred eighty-nine,
7 the commissioner shall make an annual report to the governor and the
8 legislature which shall include, at a minimum, the status of the activ-
9 ities undertaken pursuant to paragraphs a, c, d, e, f, i, j and k of
10 subdivision four of this section, the status of any other activities
11 undertaken pursuant to this article, and recommendations for programs or
12 policies that will further the objectives of expanding the utilization
13 of secondary materials recovered for reuse INCREASING WASTE PREVENTION
14 AND SOURCE REDUCTION, AND INCREASING THE MANUFACTURE, PRODUCTION,
15 PROVISION AND USE OF HEALTHY AND GREEN COMMODITIES, SERVICES AND TECH-
16 NOLOGIES within the state. The provisions of this subdivision shall not
17 be deemed to require or authorize the disclosure of confidential infor-
18 mation or trade secrets. This report may be consolidated with the
19 report required by subdivision four of section two hundred sixty-three
20 of this article.

21 S 11. The opening paragraph of subdivision 1 of section 3-0311 of the
22 environmental conservation law, as amended by chapter 741 of the laws of
23 1991, is amended to read as follows:

24 Each state agency as defined in subdivision five of this section shall
25 annually audit the environmental problems created by its operations or
26 the operations of contractors it has hired and over whom it has exer-
27 cised or is required to exercise direct oversight, acting in fulfillment
28 of their contracts. Such audit shall identify the extent to which these
29 operations are in violation of this chapter, or regulations adopted
30 thereunder. SUCH AUDIT ALSO SHALL EVALUATE THE ENVIRONMENTAL PROBLEMS
31 CREATED BY THE AGENCY'S PROCUREMENT OF COMMODITIES, ITS ENERGY USE,
32 WASTE PRODUCTION, WATER AND PAPER USE, AND THE USE OF ANY TOXIC MATERI-
33 ALS OF PRODUCTS REASONABLY ANTICIPATED TO BE CARCINOGENS. Each such
34 state agency shall submit a report to the department on or before April
35 first of each year. The report shall:

36 S 12. This act shall take effect on the one hundred eightieth day
37 after it shall have become a law and shall apply only to state procure-
38 ment contracts where the request for proposals or the request for bids
39 was issued after the effective date of this act; provided, however, that
40 effective immediately, the addition, amendment and/or repeal of any rule
41 or regulation necessary for the implementation of this act on its effec-
42 tive date are authorized and directed to be made and completed on or
43 before such effective date.