

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. CAHILL -- Multi-Sponsored by -- M. of A. GREENE  
-- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, the economic development law, the general municipal law and the public authorities law, in relation to considering net economic impact in procurement contracts

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "competitive procurement act".

3 S 2. Legislative findings. The legislature hereby finds that in order  
4 to assure the economically sound use of public funds for the benefit of  
5 the entire state and to facilitate the acquisition of facilities and  
6 commodities of maximum quality, this article shall require the negoti-  
7 ation of such procurement contracts for public works and public  
8 purchases to make the net economic impact of such contract a priority in  
9 awarding such procurement contracts. Although the economic impact tradi-  
10 tionally includes evaluation of the direct, indirect, and induced  
11 impacts of a contract on the economy of this state, the legislature  
12 further finds that the "net economic impact" must include consideration  
13 of the lowest responsible bid and best value as additional component  
14 criteria in determining the overall economic impact of a contract on the  
15 state's economy. Therefore, it is in the public's best interest to  
16 incorporate the lowest responsible bid and best value criteria into the  
17 net economic impact criterion in order to award the most economically  
18 viable procurement contracts in New York state.

19 S 3. The state finance law is amended by adding a new section 139-1 to  
20 read as follows:

21 S 139-L. NET ECONOMIC IMPACT IN PROCUREMENT CONTRACTS. 1. NOTWITH-  
22 STANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHERE A CONTRACT IS  
23 TO BE AWARDED BY A STATE AGENCY, PUBLIC AUTHORITY OR MUNICIPALITY PURSU-

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

1 ANT TO A COMPETITIVE BIDDING PROCESS OR A REQUEST FOR PROPOSAL PROCESS,  
2 SUCH STATE AGENCY, PUBLIC AUTHORITY OR MUNICIPALITY SHALL REQUIRE THAT  
3 ANY PROPOSAL SUBMITTED BY A PROSPECTIVE CONTRACTOR IN RESPONSE THERETO  
4 INCLUDE AN ECONOMIC IMPACT STATEMENT DETAILING HOW AN AWARD OF THE  
5 CONTRACT TO THE PARTICULAR CONTRACTOR WOULD BENEFIT THE ECONOMY OF NEW  
6 YORK STATE AND SHALL PROVIDE THAT NET ECONOMIC IMPACT WILL BE CONSIDERED  
7 IN MAKING THE AWARD. THE WEIGHT TO BE GIVEN TO SUCH NET ECONOMIC IMPACT  
8 CRITERION RELATIVE TO OTHER CRITERIA USED TO EVALUATE THE PROPOSALS,  
9 INCLUDING LOWEST RESPONSIBLE BIDDER AND BEST VALUE, SHALL BE DETERMINED  
10 BY THE CONTRACTING AGENCY, AUTHORITY OR MUNICIPALITY ON A CASE BY CASE  
11 BASIS. THE STATE AGENCY, PUBLIC AUTHORITY, OR MUNICIPALITY SHALL GIVE  
12 PRIORITY TO THE NET ECONOMIC IMPACT CRITERION WHEREVER PRACTICABLE AND  
13 SET FORTH THE BASIS FOR ITS AWARD IN WRITING.

14 2. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE  
15 THE FOLLOWING DEFINITIONS:

16 (A) "NET ECONOMIC IMPACT" MEANS THE MEASURE OF ECONOMIC STIMULATION  
17 THAT OCCURS FROM PURCHASING TRANSACTIONS THAT HAVE OCCURRED WITHIN THE  
18 LOCAL ECONOMY OF NEW YORK STATE AND THE LOWEST RESPONSIBLE BID. NET  
19 ECONOMIC IMPACT SHALL BE MEASURED BY DIRECT IMPACT, INDIRECT IMPACT AND  
20 INDUCED IMPACT, AS WELL AS LOWEST RESPONSIBLE BID AND BEST VALUE, WHICH  
21 ARE DEFINED AS:

22 (1) "DIRECT IMPACT" MEANS THE AMOUNT OF DIRECT ECONOMIC ACTIVITY  
23 GENERATED BY THE PURCHASING TRANSACTION, OR BUSINESS TRANSACTIONS, IN  
24 QUESTION. THE SETS OF NUMBERS USED TO DETERMINE DIRECT IMPACT ARE A  
25 RESULT OF DEVELOPING PER CAPITA NUMBERS BASED ON ACTUAL ECONOMIC DATA  
26 SUPPLIED BY TRANSACTION MANAGEMENT, ATTENDANCE FIGURES, AND OTHER FINAN-  
27 CIAL INFORMATION FOR ALL TRANSACTION-RELATED ACTIVITIES, AS WELL AS  
28 USING AVAILABLE TRANSACTION INDUSTRY AVERAGE PER CAPITA EXPENDITURE  
29 LEVELS FOR VARIOUS ITEMS.

30 (2) "INDIRECT IMPACT" INCLUDES ECONOMIC ACTIVITY FELT BY BUSINESSES AS  
31 AN INDIRECT RESULT OF THE PURCHASING OR BUSINESS TRANSACTION.

32 (3) "INDUCED IMPACT" IS THE IMPACT GENERATED WHEN THOSE SURROUNDING  
33 BUSINESSES PURCHASE ADDITIONAL PRODUCTS AND SERVICES, AND HIRE MORE  
34 EMPLOYEES TO MEET THE DEMAND BROUGHT ON BY DIRECT AND INDIRECT IMPACTS.

35 (4) "LOWEST RESPONSIBLE BIDDER" MEANS ANY PERSON, FIRM, CORPORATION,  
36 SUCCESSOR CORPORATION, CONTRACTOR OR SUBCONTRACTOR WHO (I) SUBMITS THE  
37 LOWEST RESPONSIBLE BID AND (II) IS NOT DISQUALIFIED ON ANY OF THE  
38 GROUNDS PROVIDED BY LAW, RULE OR REGULATION.

39 (5) "BEST VALUE" MEANS THE SAME AS IN SUBDIVISION ONE OF SECTION ONE  
40 HUNDRED SIXTY-THREE OF THIS CHAPTER.

41 (B) "MUNICIPALITY" SHALL MEAN ANY CITY, TOWN, VILLAGE, COUNTY, MUNICI-  
42 PAL CORPORATION, DISTRICT CORPORATION, DISTRICT OR ANY OFFICE, DEPART-  
43 MENT OR AGENCY, THEREOF.

44 (C) "STATE AGENCY" SHALL, NOTWITHSTANDING ANY OTHER PROVISION OF LAW,  
45 MEAN ANY STATE DEPARTMENT, BOARD, BUREAU, DIVISION, OFFICE, COUNCIL,  
46 COMMITTEE OR OFFICER OF THE STATE, OR THE STATE UNIVERSITY OF NEW YORK,  
47 OR THE SENIOR COLLEGES OF THE CITY UNIVERSITY OF NEW YORK, OR ANY PUBLIC  
48 BENEFIT CORPORATION OR COMMISSION AT LEAST ONE OF WHOSE MEMBERS ARE  
49 APPOINTED BY THE GOVERNOR.

50 3. THE COMPTROLLER AND THE COMMISSIONER OF THE DEPARTMENT OF ECONOMIC  
51 DEVELOPMENT SHALL ESTABLISH, THROUGH THE PROMULGATION OF RULES AND REGU-  
52 LATIONS, AND IN CONSULTATION WITH THE HEADS OF STATE AGENCIES, A METHOD  
53 FOR STRUCTURING REQUESTS FOR PROPOSALS TO REQUIRE INCLUSION OF AN  
54 ECONOMIC IMPACT STATEMENT AND IN EVALUATING RESPONSES TO SUCH REQUESTS  
55 FOR PROPOSALS. THE COMPTROLLER SHALL ALSO ESTABLISH THROUGH THE PROMUL-  
56 GATION OF RULES AND REGULATIONS GUIDELINES FOR AGENCIES, AUTHORITIES AND

1 MUNICIPALITIES TO INCORPORATE CONSIDERATION OF THE LOWEST RESPONSIBLE  
2 BIDDER CRITERIA INTO THE NET ECONOMIC IMPACT FORMULA. SUCH NET ECONOMIC  
3 IMPACT SHALL INCLUDE, BUT NOT BE LIMITED TO, CONSIDERATION OF WHERE  
4 SUBCONTRACTORS USED BY CONTRACTORS TO FULFILL A CONTRACT ARE LOCATED,  
5 HOW MANY JOBS IN THE STATE, IF ANY, WILL BE CREATED BY THE AWARDING OF  
6 SUCH A CONTRACT, AND THE ESTIMATED TAX REVENUE AND ANCILLARY ECONOMIC  
7 ACTIVITY THAT WOULD BE GENERATED IN THE STATE THROUGH THE AWARDING OF  
8 SUCH CONTRACTS AND SUBSEQUENT SUBCONTRACTS, LOWEST RESPONSIBLE BID, AND  
9 BEST VALUE. SUCH RULES AND REGULATIONS SHALL INCLUDE A PROCEDURE WHEREBY  
10 A STATE AGENCY, PUBLIC AUTHORITY OR MUNICIPALITY MAY REQUEST A WAIVER  
11 FROM THE REQUIREMENTS OF THIS SECTION.

12 4. (A) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO CONTRACTS FOR  
13 WHICH A STATE AGENCY, PUBLIC AUTHORITY, OR MUNICIPALITY RECEIVES FUNDS  
14 ADMINISTERED BY THE FEDERAL GOVERNMENT, EXCEPT TO THE EXTENT THAT THE  
15 FEDERAL GOVERNMENT WOULD NOT WITHHOLD SUCH FUNDS OWING TO THE STATE  
16 AGENCY'S, PUBLIC AUTHORITY'S, OR MUNICIPALITY'S COMPLIANCE WITH THIS  
17 SECTION.

18 (B) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO CONTRACTS  
19 BETWEEN A STATE AGENCY, PUBLIC AUTHORITY, OR MUNICIPALITY IN NEGOTIATED  
20 RECIPROCITY FOR GOODS OR SERVICES, EXCEPT TO THE EXTENT THAT SUCH NET  
21 ECONOMIC IMPACT SHALL NOT UNDERMINE SUCH RECIPROCAL CONTRACT AGREEMENT.

22 5. ANY PERSON, FIRM, CORPORATION, SUCCESSOR CORPORATION, LABOR ORGAN-  
23 IZATION, CONTRACTOR OR SUBCONTRACTOR MAY, WITHIN TEN DAYS AFTER A BID IS  
24 ACCEPTED, FILE AN APPLICATION TO CHALLENGE THE DETERMINATION. UPON  
25 RECEIPT OF SUCH APPLICATION, THE COMPTROLLER, OR HIS OR HER DESIGNEE,  
26 SHALL CONDUCT A HEARING TO DETERMINE THE VALIDITY OF THE APPLICATION.  
27 NOTICE SHALL BE GIVEN TO THE APPLICANT AND TO THE PROPOSED CONTRACT BID  
28 AWARDEE OF THE DATE, TIME AND PLACE OF THE HEARING. THE APPLICANT AND  
29 THE PROPOSED CONTRACT BID AWARDEE SHALL BE GIVEN THE OPPORTUNITY TO  
30 PRESENT EVIDENCE AND WITNESSES ON THEIR BEHALF. THE COMPTROLLER, OR HIS  
31 OR HER DESIGNEE, PRESIDING OVER SUCH HEARING SHALL ISSUE A WRITTEN DECI-  
32 SION WITH FINDINGS OF FACT WHETHER THE PROPOSED CONTRACT BID AWARDEE IS  
33 VALID DETERMINATION. SUCH CONTRACT SHALL NOT BE AWARDED PRIOR TO SUCH  
34 DECISION. THE AWARDING AGENCY, AUTHORITY, OR MUNICIPALITY SHALL NOTIFY  
35 ALL BIDDERS REGARDING THE SELECTION OF ITS PROPOSED CONTRACT BID AWAR-  
36 DEE.

37 S 4. The opening paragraph and paragraph c of subdivision 2, the open-  
38 ing paragraph and subparagraphs (ii), (v) and (vi) of paragraph a and  
39 subparagraph (i) of paragraph b of subdivision 3 of section 163 of the  
40 state finance law, as added by chapter 83 of the laws of 1995, are  
41 amended to read as follows:

42 The objective of state procurement is to facilitate each state agen-  
43 cy's mission while protecting the interests of the state and its taxpay-  
44 ers and promoting fairness in contracting with the business community.  
45 The state's procurement process shall be guided by the NET ECONOMIC  
46 IMPACT, PURSUANT TO SECTION ONE HUNDRED THIRTY-NINE-L OF THIS CHAPTER,  
47 OF A CONTRACT ON THE STATE AND THE following principles:

48 c. To encourage the investment of the private and not-for-profit  
49 sectors in New York state by making reasonable efforts to ensure that  
50 offerers are apprised of procurement opportunities; by specifying the  
51 elements of a responsive bid and disclosing the process for awarding  
52 contracts including, if applicable, the relative importance and/or  
53 weight of [cost] NET ECONOMIC IMPACT and the overall technical criterion  
54 for evaluating offers; and by ensuring the procurement is conducted  
55 accordingly.

1 State agency procurement practices for commodities shall incorporate  
2 NET ECONOMIC IMPACT, PURSUANT TO SECTION ONE HUNDRED THIRTY-NINE-L OF  
3 THIS CHAPTER, AND THEN the following:

4 (ii) Commodities contracts shall be awarded on the basis of [lowest  
5 price to] NET ECONOMIC IMPACT OF a responsive and responsible offerer;  
6 or, in the case of multiple awards, in accordance with paragraph c of  
7 subdivision ten of this section.

8 (v) Consistent with guidelines issued by the state procurement coun-  
9 cil, state agencies may competitively purchase commodities procured in  
10 accordance with this article in lieu of using centralized contracts when  
11 the resultant [price is less] NET ECONOMIC IMPACT IS GREATER than the  
12 centralized contract [price].

13 (vi) When justified by [price] NET ECONOMIC IMPACT, state agencies,  
14 and hospitals and facilities managed and controlled by state agencies  
15 eligible pursuant to section twenty-eight hundred three-a of the public  
16 health law, shall be eligible to make purchases pursuant to guidelines  
17 issued by the state procurement council from a consortium or comparable  
18 entity in lieu of using centralized contracts for commodities.

19 (i) determine, in cooperation with the state procurement council and  
20 state agencies, the identity, form, function and utility of those  
21 commodities which shall be made available on or through centralized  
22 contracts. CRITERIA SHALL INCLUDE THE NET ECONOMIC IMPACT, AS DEFINED IN  
23 SECTION ONE HUNDRED THIRTY-NINE-L OF THIS CHAPTER, ON NEW YORK STATE'S  
24 ECONOMY. Criteria may include, but need not be limited to, the avail-  
25 ability of a volume discount, prior use of the commodity among state  
26 agencies and the relative cost of establishing the contract, its antic-  
27 ipated use and expected actual savings for the state. The commissioner  
28 may also act as a broker for state agencies to procure commodities.

29 S 5. The opening paragraph and paragraph d of subdivision 4 of section  
30 163 of the state finance law, as added by chapter 83 of the laws of  
31 1995, are amended to read as follows:

32 State agency procurement practices for services shall incorporate THE  
33 NET ECONOMIC IMPACT, AS DEFINED IN SECTION ONE HUNDRED THIRTY-NINE-L OF  
34 THIS CHAPTER, AND THEN the following:

35 d. Service contracts shall be awarded on the basis of [best value to]  
36 NET ECONOMIC IMPACT OF a responsive and responsible offerer; or, in the  
37 case of multiple awards, in accordance with paragraph c of subdivision  
38 ten of this section.

39 S 6. Subdivision 7, paragraphs a and b of subdivision 9, the opening  
40 paragraph and paragraph a of subdivision 10, the opening paragraph of  
41 subdivision 11 and paragraph (i) of subdivision 14 of section 163 of the  
42 state finance law, as added by chapter 83 of the laws of 1995, subdivi-  
43 sion 7 as separately amended by sections 12 and 20 of chapter 137 of the  
44 laws of 2008, and paragraph (i) of subdivision 14 as amended by chapter  
45 95 of the laws of 2000, are amended to read as follows:

46 7. Method of procurement. Consistent with the requirements of subdivi-  
47 sions three and four of this section, state agencies shall select among  
48 permissible methods of procurement including, but not limited to, an  
49 invitation for bid, request for proposals or other means of solicitation  
50 pursuant to guidelines issued by the state procurement council. State  
51 agencies may accept bids electronically and may, for technology  
52 contracts only, require electronic submission as the sole method for the  
53 submission of bids for the solicitation, provided that the agency has  
54 made a determination, which shall be documented in the procurement  
55 record, that such method affords a fair and equal opportunity for offer-  
56 ers to submit responsive offers. Except where otherwise provided by law,

1 procurements shall be competitive, and state agencies shall conduct  
2 formal competitive procurements to the maximum extent practicable. State  
3 agencies shall document the determination of the method of procurement  
4 and the basis of award in the procurement record. Where the basis for  
5 award is the best [value] NET ECONOMIC IMPACT offer, the state agency  
6 shall document, in the procurement record and in advance of the initial  
7 receipt of offers, the determination of the evaluation criteria, which  
8 whenever possible, shall be quantifiable, and the process to be used in  
9 the determination of best [value] NET ECONOMIC IMPACT and the manner in  
10 which the evaluation process and selection shall be conducted.

11 a. The commissioner or a state agency shall select a formal compet-  
12 itive procurement process in accordance with guidelines established by  
13 the state procurement council and document its determination in the  
14 procurement record. The process shall include, but is not limited to, a  
15 clear statement of need; a description of the required specifications  
16 governing performance and related factors; a reasonable process for  
17 ensuring a competitive field; a fair and equal opportunity for offerers  
18 to submit responsive offers; and a balanced and fair method of award.  
19 Where the basis for the award is best [value] NET ECONOMIC IMPACT,  
20 documentation in the procurement record shall, where practicable,  
21 include a quantification of the application of the criteria to the  
22 rating of proposals and the evaluation results, or, where not practica-  
23 ble, such other justification which demonstrates that best [value] NET  
24 ECONOMIC IMPACT will be achieved.

25 b. The solicitation shall prescribe the minimum specifications or  
26 requirements that must be met in order to be considered responsive and  
27 shall describe and disclose the general manner in which the evaluation  
28 and selection shall be conducted. Where appropriate, the solicitation  
29 shall identify the relative importance and/or weight of [cost] NET  
30 ECONOMIC IMPACT and the overall technical criterion to be considered by  
31 a state agency in its determination of best [value] NET ECONOMIC IMPACT.

32 Contracts for commodities shall be awarded on the basis of [lowest  
33 price to] NET ECONOMIC IMPACT OF a responsive and responsible offerer,  
34 PURSUANT TO SECTION ONE HUNDRED THIRTY-NINE-L OF THIS CHAPTER.  
35 Contracts for services shall be awarded on the basis of best [value] NET  
36 ECONOMIC IMPACT from a responsive and responsible offerer, PURSUANT TO  
37 SECTION ONE HUNDRED THIRTY-NINE-L OF THIS CHAPTER. Multiple awards for  
38 services and commodities shall be conducted in accordance with paragraph  
39 c of this subdivision.

40 a. Selection and award shall be a written determination in the  
41 procurement record made by the commissioner or a state agency in a  
42 manner consistent with the provisions of the solicitation. In the event  
43 two offers are found to be substantially equivalent, [price] NET ECONOM-  
44 IC IMPACT shall be the basis for determining the award recipient or,  
45 when [price] NET ECONOMIC IMPACT and other factors are found to be  
46 substantially equivalent, the determination of the commissioner or agen-  
47 cy head to award a contract to one or more of such bidders shall be  
48 final. The basis for determining the award shall be documented in the  
49 procurement record.

50 It shall be the responsibility of the head of each state agency to  
51 periodically sample the results of the procurement process to test for  
52 reasonableness; to ensure that the results withstand public scrutiny and  
53 that the quality and the price of the purchase makes sense; and to  
54 ensure that purchasing is conducted in a manner consistent with the best  
55 NET ECONOMIC IMPACT interests of the state.

1 (i) a listing of individual and centralized contracts, including  
2 vendor name, comptroller approval dates, NET ECONOMIC IMPACT OF SUCH  
3 CONTRACTS, dollar value of such contracts, the state agency which let  
4 the contract and/or state agencies which purchased off centralized  
5 contracts, expenditures made on each such contract and by which agencies  
6 during the fiscal year and life to date, citing contract category codes,  
7 source selection method, including ["lowest price", "best value",] NET  
8 ECONOMIC IMPACT, sole source, single source, negotiated and emergency  
9 procurement subtotaled by agency and by type of commodity or service;

10 S 7. Subdivision 1 of section 142 of the economic development law, as  
11 amended by chapter 137 of the laws of 2008, is amended to read as  
12 follows:

13 1. The commissioner shall publish on a daily basis a procurement  
14 opportunities newsletter, which shall contain notices of procurement  
15 contract opportunities and any other information the commissioner deems  
16 necessary to effectuate the purposes of this article INCLUDING, BUT NOT  
17 LIMITED TO, ANY CHANGES IN THE LAW, RULES AND REGULATIONS REGARDING  
18 PROCUREMENT CONTRACTS. Notices of procurement contract opportunities  
19 shall be available on the internet for at least fifteen days.

20 S 8. Section 100-a of the general municipal law, as added by chapter  
21 363 of the laws of 1964, is amended to read as follows:

22 S 100-a. Declaration of policy. [It] NOTWITHSTANDING ANY PROVISION OF  
23 THIS ARTICLE TO THE CONTRARY, IT is hereby declared to be the policy of  
24 this state that this article shall [be construed] CONSIDER THE NET  
25 ECONOMIC IMPACT, AS DEFINED IN SECTION ONE HUNDRED THIRTY-NINE-L OF THE  
26 STATE FINANCE LAW, AS THE PRIORITY in the negotiation of contracts for  
27 public works and public purchases to which political subdivisions [or  
28 and district] AND/OR DISTRICTS therein [is] ARE a party so as to assure  
29 the prudent and economical use of public moneys for the benefit of all  
30 the inhabitants of the state and to facilitate the acquisition of facil-  
31 ities and commodities of maximum quality [at the lowest possible cost].

32 S 9. Subdivision 1 of section 2879 of the public authorities law, as  
33 amended by chapter 564 of the laws of 1988, is amended to read as  
34 follows:

35 1. Every public authority and public benefit corporation, a majority  
36 of the members of which consist of persons either appointed by the  
37 governor or who serve as members by virtue of holding a civil office of  
38 the state, or a combination thereof, (such entities to be hereinafter in  
39 this section referred to as "corporation") shall adopt by resolution  
40 comprehensive guidelines which detail the corporation's operative policy  
41 and instructions regarding the use, awarding, monitoring and reporting  
42 of procurement contracts. NOTWITHSTANDING ANY OTHER PROVISION OF LAW,  
43 RULE OR REGULATION, SUCH GUIDELINES SHALL INCLUDE, BUT NOT BE LIMITED  
44 TO, MAKING CONSIDERATION OF THE NET ECONOMIC IMPACT, AS DEFINED IN  
45 SECTION ONE HUNDRED THIRTY-NINE-L OF THE STATE FINANCE LAW, THE PRIORITY  
46 IN AWARDING PROCUREMENT CONTRACTS. Guidelines approved by the corpo-  
47 ration shall be annually reviewed and approved by the corporation.

48 S 10. This act shall take effect on the one hundred eightieth day  
49 after it shall have become a law; provided, however, the provisions of  
50 this act shall be applied to all contracts entered into on or after  
51 April 1, 2009; provided, further, however, that the amendments to the  
52 provisions of section 163 of the state finance law made by sections  
53 four, five and six of this act shall not affect the repeal of such  
54 section and shall be deemed repealed therewith; and provided, further,  
55 that section seven of this act shall take effect on the same date and in  
56 the same manner as section 6 of chapter 137 of the laws of 2008, takes

1 effect. Effective immediately, the addition, amendment and/or repeal of  
2 any rule or regulation necessary for the implementation of this act on  
3 its effective date is authorized and directed to be made and completed  
4 on or before such date.