S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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:

Section 1. This act shall be known and may be cited as the "New York state healthy and green procurement act".

S 2. Legislative findings and declaration. The legislature hereby finds and declares that:

(a) As New York moves into the twenty-first century the state should serve as a role model for practices that will create and maintain a healthy environment and vibrant economy. The manufacture, use and disposal of commodities and technologies, the construction of buildings and the provision of services utilizing toxic chemicals may have adverse impacts on public health and the environment. Persistent, bioaccumulative toxic chemicals, such as mercury, lead, dioxin and poly brominated diphenyl ethers, are toxic in small amounts, remain in the environment for long periods of time, and build to dangerous levels in humans, fish and other animals; and this group of pollutants known as persistent bioaccumulative toxic chemicals (PBT) pose risks to public health and the environment through their ability to cause cancer, birth defects and endocrine disruption. Such chemicals have polluted hundreds of water bodies, fish and waterfowl in the state. These adverse impacts impose costs on the state and, ultimately, society as a whole in the form of injury, disease and death; health care expenses; disposal, liability and cleanup costs; the waste of resources and raw materials; and an impaired natural environment. PBT and cancer-causing chemicals may be found in a wide range of consumer products purchased by state agencies, including lighting supplies, computers and other office equipment, vehicles,

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

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medical equipment, building supplies and printing inks. Encouraging innovation, and creating and choosing the safest, most sustainable commodities, services and technologies will help to ensure a higher quality of life for present and future generations. It will put New York businesses in an advantageous position to compete in the global marketplace.

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

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

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

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

5. "Costs" as used in this article shall be quantifiable and may include, without limitation, the price of the given good or service being purchased; the administrative, training, storage, maintenance or other overhead associated with a given good or service; the value of warranties, delivery schedules, financing costs and foregone opportunity costs associated with a given good or service; and the life span and associated life cycle costs of the given good or service being purchased. Life cycle costs may include, but shall not be limited to, costs or savings associated with RAW MATERIALS, PRODUCTION, MANUFACTURING, construction, PACKAGING, DISTRIBUTION, USE, energy use, maintenance, operation, and salvage or disposal, AND, IF SUCH INFORMATION IS READILY AVAILABLE, ANY INDIRECT ASSOCIATED PUBLIC HEALTH AND ENVIRONMENTAL COSTS.

S 4. Paragraph a of subdivision 1 of section 161 of the state finance law, as added by chapter 83 of the laws of 1995, is amended to read as follows:

a. The state procurement council shall continuously strive to improve the state's procurement process. Such council shall consist of [nineteen] TWENTY-ONE members, including the commissioner, the state comptroller, the director of the budget [and], the commissioner of economic development, THE COMMISSIONER OF HEALTH, AND THE COMMISSIONER OF ENVI-

RONMENTAL CONSERVATION, or their respective designees; [seven] FIVE members who shall be the heads of other large and small state agencies chosen by the governor, or their respective designees; and [eight] TEN at large members appointed as follows: [three] FOUR appointed by the temporary president of the senate, one of whom shall be a representative of local government [and], one of whom shall be a representative of private business AND ONE OF WHOM SHALL BE A REPRESENTATIVE OF AN ORGANIZATION WHOSE PRIME FUNCTION IS THE ENHANCEMENT OF PUBLIC HEALTH OR THE ENVIRONMENT; [three] FOUR appointed by the speaker of the assembly, one of whom shall be a representative of local government [and], one of whom shall be a representative of private business AND ONE OF WHOM SHALL BE A REPRESENTATIVE OF AN ORGANIZATION WHOSE PRIME FUNCTION IS THE ENHANCEMENT OF PUBLIC HEALTH OR THE ENVIRONMENT; one appointed by the minority leader of the senate; and, one appointed by the minority leader of the assembly; and two non-voting observers appointed as follows: one appointed by the temporary president of the senate and one appointed by the speaker of the assembly. The non-voting observers shall be provided, contemporaneously, all documentation and materials distributed to members. The council shall be chaired by the commissioner and shall meet at least quarterly.

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

S 164-A. HEALTHY AND GREEN PROCUREMENT. 1. HEALTHY AND GREEN PROCUREMENT POLICY. IT IS HEREBY DECLARED TO BE THE POLICY OF THE STATE TO THE EXTENT PRACTICABLE TO PURCHASE COMMODITIES, SERVICES AND TECHNOLOGIES THAT MINIMIZE POTENTIAL ADVERSE IMPACTS ON PUBLIC HEALTH AND THE ENVIRONMENT WHEN COMPARED WITH COMPETING COMMODITIES, SERVICES OR TECHNOLOGIES THAT SERVE THE SAME PURPOSE.

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

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

B. "PRIORITY TOXIC SUBSTANCES OF CONCERN" SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY SUBSTANCE LISTED AS KNOWN TO BE OR REASONABLY ANTICIPATED, PURSUANT TO THE NATIONAL TOXICOLOGY PROGRAM REPORT ON CARCINOGENS, TO BE A HUMAN CARCINOGEN IN THE NATIONAL TOXICOLOGY PROGRAM'S BIENNIAL REPORT ON CARCINOGENS SUBMITTED TO THE UNITED STATES CONGRESS BY THE SECRETARY OF HEALTH AND HUMAN SERVICES; AND ANY SUBSTANCE IDENTIFIED AS A PERSISTENT AND/OR BIOACCUMULATIVE TOXIC SUBSTANCE ON LISTS MAINTAINED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, INCLUDING THE NATIONAL PARTNERSHIP FOR ENVIRONMENTAL PRIORITIES; OR THE INTERNATIONAL JOINT COMMISSION CREATED PURSUANT TO THE GREAT LAKES WATER QUALITY AGREEMENT OF 1978; AND PERFLUORINATED COMPOUNDS, DIOXIN, BROMINATED FLAME RETARDANTS AND BISPHENOL A DUE TO THEIR TOXICITY IN PRODUCTION, USE AND DISPOSAL.

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

A. RECYCLED CONTENT. ALL COPY PAPER AND OTHER PAPER SUPPLIES FOR WHICH THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY HAS DEVELOPED RECYCLED CONTENT RECOMMENDATIONS PURSUANT TO SECTION SIX THOUSAND TWO OF THE RESOURCE CONSERVATION AND RECOVERY ACT SHALL BE REQUIRED TO MEET OR EXCEED THE AGENCY'S MINIMUM POST-CONSUMER MATERIAL CONTENT PERCENTAGES RECOMMENDED IN THE MOST RECENT RECOVERED MATERIALS ADVISORY NOTICE

ISSUED FOR SUCH COMMODITY IN THE FEDERAL REGISTER; PROVIDED, HOWEVER, THAT XEROGRAPHIC PAPER SHALL CONTAIN NO LESS THAN THIRTY PERCENT POST-CONSUMER RECYCLED CONTENT. THE COMMISSIONER SHALL ALSO MAKE AVAILABLE TO ALL AGENCIES, ONE HUNDRED PERCENT POST-CONSUMER, PROCESSED CHLORINE-FREE COPY PAPER. ALL AGENCIES SHALL PRINT PUBLICATIONS ON RECYCLED PAPER, AND MINIMUM PERCENTAGES SHALL BE MET UNLESS COSTS FOR SUCH PAPER EXCEED THE COST OF OTHER AVAILABLE COMMODITIES BY MORE THAN TEN PERCENT.

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

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

D. GREEN BUILDINGS. ALL CAPITAL PROJECTS WITH AN ESTIMATED CONSTRUCTION COST OF TWO MILLION DOLLARS OR MORE INVOLVING (1) THE CONSTRUCTION OF A NEW BUILDING, (2) AN ADDITION TO AN EXISTING BUILDING, OR (3) THE SUBSTANTIAL RECONSTRUCTION OF AN EXISTING BUILDING SHALL BE DESIGNATED AND CONSTRUCTED TO COMPLY WITH BUILDING STANDARDS NOT LESS STRINGENT THAN THE STANDARDS PRESCRIBED BY THE UNITED STATES GREEN BUILDING COUNCIL LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN SILVER RATING AND STANDARDS SET FORTH IN THE DEFINITION OF A "GREEN BASE BUILDING" AS DEFINED IN SECTION NINETEEN OF THE TAX LAW, OR ANY PORTION THEREOF, ANY MODIFICATION OF OR AMENDMENTS THERETO, AND TO UTILIZE MATERIALS WHICH DO NOT CONTAIN POLYVINYL CHLORIDE TO THE GREATEST EXTENT PRACTICABLE. IN ADDITION, ALL STATE-OWNED AND OPERATED BUILDINGS OF FIFTY THOUSAND SQUARE FEET OR LARGER SHALL BE OPERATED TO MEET SUCH STANDARDS FOR EXISTING BUILDINGS TO THE MAXIMUM EXTENT PRACTICABLE THAT IS COST EFFECTIVE BY NOT LATER THAN TWO THOUSAND FOURTEEN.

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

B. IN THE EVENT THAT AN AGENCY RECEIVES NO BIDS OR PROPOSALS THAT MEET THE SPECIFICATIONS DEVELOPED PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION, SUCH AGENCY MAY WITHDRAW THE REQUEST FOR BIDS OR PROPOSALS AND BEGIN A NEW PROCUREMENT WITH NEW SPECIFICATIONS WITHOUT SUCH SPECIFICATIONS AND AWARD A CONTRACT IN ACCORDANCE WITH OTHER APPLICABLE STATUTES; PROVIDED, HOWEVER THAT SUCH AGENCY SHALL DOCUMENT THE REASONS WHY SUCH PROCUREMENT DOES NOT MEET THE MINIMUM SPECIFICATIONS FOR HEALTHY AND GREEN PROCUREMENT ESTABLISHED IN THIS SUBDIVISION AND SUBMIT SUCH

DOCUMENTATION TO THE COMMISSIONER FOR INCLUSION IN THE ANNUAL REPORT REQUIRED PURSUANT TO THIS SECTION AND TO THE OFFICE OF THE COMPTROLLER FOR INCLUSION IN THE PROCUREMENT RECORD.

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

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

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

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

A. WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, THE COMMISSIONER SHALL ASSIGN AN INDIVIDUAL WITHIN THE OFFICE OF GENERAL SERVICES TO SERVE AS THE STATE HEALTHY AND GREEN PROCUREMENT OFFICER. SUCH OFFICER SHALL ASSIST THE COMMISSIONER WITH CARRYING OUT HIS OR HER DUTIES UNDER THIS SECTION AND SERVE AS THE CHAIRPERSON OF THE HEALTHY AND GREEN PROCUREMENT COORDINATING COUNCIL ESTABLISHED IN PARAGRAPH C OF THIS SUBDIVISION.

B. WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, EACH STATE AGENCY WITH ONE HUNDRED EMPLOYEES OR MORE SHALL ASSIGN AN INDIVIDUAL WITHIN SUCH AGENCY TO SERVE AS THE AGENCY'S SUSTAINABLE PROCUREMENT COORDINATOR. THE HEALTHY AND GREEN PROCUREMENT COORDINATOR FOR EACH STATE AGENCY WITH FIVE HUNDRED EMPLOYEES OR MORE SHALL SERVE ON THE HEALTHY AND GREEN PROCUREMENT COORDINATING COUNCIL ESTABLISHED IN PARAGRAPH C OF THIS SUBDIVISION.

C. THERE IS HEREBY ESTABLISHED A HEALTHY AND GREEN PROCUREMENT COORDINATING COUNCIL WHICH SHALL BE COMPOSED OF THE HEALTHY AND GREEN PROCUREMENT OFFICERS AND COORDINATORS APPOINTED PURSUANT TO PARAGRAPHS A AND B OF THIS SUBDIVISION, ONE EXPERT IN THE PROTECTION OF PUBLIC HEALTH DESIGNATED BY THE COMMISSIONER OF HEALTH, ONE EXPERT IN POLLUTION PREVENTION AND HEALTHY AND GREEN PROCUREMENT DESIGNATED BY THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION AND ONE EXPERT IN WASTE PREVENTION DESIGNATED BY THE COMMISSIONER OF ECONOMIC DEVELOPMENT. THE PRESIDENT OF THE ENVIRONMENTAL FACILITIES CORPORATION AND THE NEW YORK STATE ENERGY AND RESEARCH AUTHORITY OR THEIR DESIGNEES SHALL ALSO SERVE ON THE COUNCIL. ONE MEMBER SHALL BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE, ONE MEMBER SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY. THE FIRST MEETING OF SUCH COUNCIL SHALL BE HELD WITHIN TWO HUNDRED FORTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, AND SUCH COUNCIL SHALL MEET AT LEAST SIX TIMES PER YEAR. THE STATE HEALTHY AND GREEN PROCUREMENT OFFICER SHALL SERVE AS THE CHAIRPERSON OF SUCH COUNCIL. SUCH COUNCIL SHALL HAVE THE POWER AND DUTY TO ASSIST THE COMMISSIONER WITH CARRYING OUT HIS OR HER DUTIES UNDER THIS SECTION, INCLUDING BUT NOT LIMITED TO:

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

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

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

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

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

(VI) THE DEVELOPMENT OF THE ENVIRONMENTAL AUDIT PROGRAM;

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

(VIII) THE DEVELOPMENT OF GUIDELINES FOR PUBLIC PARTICIPATION;

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

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

(XI) THE PREPARATION AND SUBMITTAL OF ANNUAL REPORTS AND THE PERFORMANCE OF A COMPREHENSIVE FIVE YEAR REVIEW; AND

(XII) ADVISE THE GOVERNOR AND THE LEGISLATURE REGARDING THE IMPLEMENTATION OF THE HEALTHY AND GREEN PROCUREMENT POLICY.

7. TARGET COMMODITY, SERVICE AND/OR TECHNOLOGY CATEGORIES. WITHIN TWELVE MONTHS OF THE EFFECTIVE DATE OF THIS SECTION AND ANNUALLY THEREAFTER, THE COMMISSIONER, IN CONSULTATION WITH THE HEALTHY AND GREEN PROCUREMENT COORDINATING COUNCIL, SHALL IDENTIFY A MINIMUM OF THREE "TARGET CATEGORIES" OF COMMODITIES, SERVICES AND/OR TECHNOLOGIES, WHICH FOR THE PURPOSES OF THIS CHAPTER SHALL MEAN CATEGORIES OF COMMODITIES, SERVICES AND/OR TECHNOLOGIES PROCURED BY THE STATE WHICH MAY HAVE AN ADVERSE IMPACT ON PUBLIC HEALTH OR THE ENVIRONMENT AND FOR WHICH HEALTHY AND GREEN COMMODITIES, SERVICES OR TECHNOLOGIES SHOULD BE IDENTIFIED AND SUBSTITUTED.

8. ENVIRONMENTALLY PREFERABLE PURCHASING CRITERIA FOR HEALTHY AND GREEN PROCUREMENT. WITHIN TWELVE MONTHS OF THE IDENTIFICATION AND RECOMMENDATION OF AT LEAST THREE "TARGET CATEGORIES" PURSUANT TO SUBDIVISION SEVEN OF THIS SECTION, THE COMMISSIONER, IN CONSULTATION WITH THE HEALTHY AND GREEN PROCUREMENT COORDINATING COUNCIL SHALL DEVELOP ENVIRONMENTALLY PREFERABLE PURCHASING CRITERIA FOR THE EVALUATION AND PROCUREMENT OF PRODUCTS, SERVICES AND/OR TECHNOLOGIES WITHIN SUCH TARGETED CATEGORIES. THE FOLLOWING FACTORS SHALL BE CONSIDERED IN THE DEVELOPMENT OF SUCH CRITERIA:

A. PROTECTION OF PUBLIC HEALTH AND THE ENVIRONMENT AND THE CONSERVATION OF NATURAL RESOURCES;

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

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

D. AVOIDANCE OF PRIORITY TOXIC SUBSTANCES; AND

E. POSITIVE LIFE CYCLE ATTRIBUTES, INCLUDING BUT NOT LIMITED TO THE MINIMIZATION OF POTENTIAL ADVERSE IMPACTS ON PUBLIC HEALTH AND THE ENVIRONMENT ASSOCIATED WITH RAW MATERIALS ACQUISITION, PRODUCTION, MANUFACTURING, PACKAGING, TRANSPORTATION, DISTRIBUTION, USE, OPERATION, MAINTENANCE AND DISPOSAL.

9. HEALTHY AND GREEN SUPPLY LISTS.

A. FOR EACH TARGET COMMODITY, SERVICE AND/OR TECHNOLOGY CATEGORY IDENTIFIED AND RECOMMENDED PURSUANT TO SUBDIVISION SEVEN OF THIS SECTION, THE COMMISSIONER, IN CONSULTATION WITH THE HEALTHY AND GREEN PROCUREMENT

COORDINATING COUNCIL, SHALL APPROVE SPECIFIC COMMODITIES, SERVICES AND/OR TECHNOLOGIES AS CONSISTENT WITH THE HEALTHY AND GREEN PROCUREMENT POLICY, MINIMUM SPECIFICATIONS, AND ENVIRONMENTALLY PREFERABLE PURCHASING CRITERIA ESTABLISHED IN SUBDIVISIONS ONE, THREE AND EIGHT OF THIS SECTION. SUCH COMMODITY, SERVICE OR TECHNOLOGY SHALL THEN BE ADDED TO AN APPROVED HEALTHY AND GREEN SUPPLY LIST FOR SUCH CATEGORY.

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

10. PROCUREMENT FROM HEALTHY AND GREEN SUPPLY LISTS. A. WHEN PROCURING A COMMODITY, SERVICE OR TECHNOLOGY WITHIN A TARGETED CATEGORY FOR WHICH AN APPROVED HEALTHY AND GREEN SUPPLY LIST HAS BEEN CREATED, STATE AGENCIES SHALL PROCURE SUCH COMMODITY, SERVICE OR TECHNOLOGY FROM SUCH LIST.

B. WHEN A STATE AGENCY WANTS TO PROCURE A COMMODITY, SERVICE OR TECHNOLOGY WITHIN A TARGETED CATEGORY FOR WHICH AN APPROVED HEALTHY AND GREEN SUPPLY LIST HAS BEEN CREATED, BUT SUCH COMMODITY, SERVICE OR TECHNOLOGY DOES NOT APPEAR ON SUCH LIST, SUCH AGENCY MUST OBTAIN A WAIVER FROM THE REQUIREMENTS OF THIS SUBDIVISION FROM THE COMMISSIONER, PROVIDED, HOWEVER, THAT SUCH WAIVER SHALL NOT BE REQUIRED FOR THE PURCHASE OF COMMODITIES, SERVICES AND/OR TECHNOLOGIES FROM THE LIST AVAILABLE FOR PURCHASE FROM PREFERRED SOURCES MAINTAINED BY THE COMMISSIONER PURSUANT TO SECTION ONE HUNDRED SIXTY-TWO OF THIS ARTICLE. AN APPLICATION FOR SUCH A WAIVER SHALL BE FILED WITH THE COMMISSIONER, WHO SHALL NOTIFY THE PUBLIC, PROVIDE FOR A PUBLIC COMMENT PERIOD, AND RENDER A WRITTEN DECISION ON SUCH APPLICATION WITHIN FORTY-FIVE DAYS. A WAIVER MAY BE GRANTED WHEN NO COMMODITY, SERVICE AND/OR TECHNOLOGY ON SUCH APPROVED ALTERNATIVES LIST MEETS AN AGENCY'S PERFORMANCE STANDARDS. IN ORDER TO OBTAIN A WAIVER, THE STATE AGENCY REQUESTING THE WAIVER MUST SHOW THAT IT HAS:

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

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

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

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

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

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

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

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

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

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

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

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

12. TRAINING, OUTREACH AND EDUCATION. A. WITH THE ASSISTANCE OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF HEALTH, AND THE OFFICE OF THE COMPTROLLER, THE COMMISSIONER, WITHIN TWELVE MONTHS OF THE EFFECTIVE DATE OF THIS SECTION, SHALL DESIGN AND BEGIN IMPLEMENTATION 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, as amended by chapter 471 of the laws of 1998, 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 OF STATE PROCUREMENT PURSUANT TO SECTION ONE HUNDRED SIXTY-TWO OF THE STATE FINANCE LAW.

h. "Eligible project" shall mean actions taken by or on behalf of [a New York business] AN ELIGIBLE APPLICANT involving the acquisition, construction, alteration, repair or improvement of a building, fixtures, machinery or equipment; THE REDESIGN, MODIFICATION, UPGRADE OR REPLACEMENT OF PROCESSES, PROCEDURES, WORK PRACTICES OR TECHNOLOGY; THE REFORMULATION OR REDESIGN OF PRODUCTS; OR IMPROVEMENTS IN HOUSEKEEPING, MAINTENANCE, TRAINING OR INVENTORY CONTROL, provided that such project results in:

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

(ii) in-process recycling,

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

(iv) increased energy efficiency,

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

(vi) elimination of the purchase of materials, the production of which for the use of said firm would result in more waste or resource consumption, [or]

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

(VIII) other practices or technologies that reduce the use of hazardous materials or otherwise improve air or water quality.

The term "eligible project" shall not include end of pipe pollution control technologies or practices where such controls or practices are designed primarily to achieve compliance with the environmental conservation law or regulations promulgated pursuant thereto, or energy recovery or incineration, or out-of-process recycling or reuse of hazardous waste or hazardous substances.

I. "HEALTHY AND GREEN COMMODITY, SERVICE OR TECHNOLOGY" SHALL MEAN ANY COMMODITY, SERVICE OR TECHNOLOGY CONSISTENT WITH THE HEALTHY AND GREEN

PROCUREMENT POLICY, CRITERIA AND MINIMUM SPECIFICATIONS ESTABLISHED IN SUBDIVISIONS ONE, THREE AND FOUR OF SECTION ONE HUNDRED SIXTY-FOUR-A OF THE STATE FINANCE LAW.

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

c. maintain, provide and market a compilation of existing programs providing incentives for new or expanded business enterprises which could be utilized by the secondary materials processing industry OR WHICH MANUFACTURE, PRODUCE OR PROVIDE HEALTHY AND GREEN COMMODITIES, 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, SERVICES AND TECHNOLOGIES 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 GREEN COMMODITIES, SERVICES OR TECHNOLOGIES, improve air or water quality and/or improve process economics.

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

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

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

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

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