

2009-2010 Regular Sessions

I N S E N A T E

January 22, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, the economic development law, the public authorities law and the state finance law, in relation to recycling programs

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

1 Section 1. The general business law is amended by adding a new  
2 section 399-ff to read as follows:

3 S 399-FF. RECYCLED CONTENT OF PACKAGING. 1. FOR PURPOSES OF THIS  
4 SECTION:

5 (A) "CONSUMER COMMODITY" OR "COMMODITY" SHALL MEAN THE FOLLOWING, IF  
6 SOLD IN A PACKAGE:

7 (I) FOOD, WHETHER SOLID, LIQUID OR MIXED, AND ALL SUBSTANCES OR INGRE-  
8 DIENTS ADDED THERETO FOR ANY PURPOSE, USED OR INTENDED FOR CONSUMPTION  
9 BY HUMAN BEINGS OR DOMESTIC ANIMALS NORMALLY KEPT AS HOUSEHOLD PETS; AND

10 (II) GOODS, CUSTOMARILY SOLD AT RETAIL, THAT ARE USED BY CONSUMERS IN  
11 THE PERFORMANCE OF SERVICES ORDINARILY RENDERED WITHIN THE HOUSEHOLD,  
12 AND THAT ARE USUALLY CONSUMED OR EXPENDED IN THE COURSE OF SUCH USE.

13 (B) "LABEL" SHALL MEAN ANY WRITTEN, PRINTED OR GRAPHIC MATTER AFFIXED  
14 TO ANY PACKAGE CONTAINING A CONSUMER COMMODITY.

15 (C) "PACKAGE" SHALL MEAN A CONTAINER IN WHICH ANY CONSUMER COMMODITY  
16 IS ENCLOSED FOR SALE AT RETAIL, AND WHICH CONTAINS A SINGLE ITEM, A  
17 QUANTITY OF THE SAME ITEM, A SET OR AN ITEM WITH ALL ITS COMPONENT  
18 PARTS.

19 (D) "PRODUCT" SHALL MEAN THAT PORTION OF A CONSUMER COMMODITY OFFERED  
20 FOR SALE AT RETAIL THAT IS NOT A PACKAGE.

21 2. NO MERCHANT, MANUFACTURER, FIRM, CORPORATION, ASSOCIATION OR AGENT  
22 OR EMPLOYEE THEREOF SHALL IMPORT, MANUFACTURE, SELL, HOLD FOR SALE OR  
23 DISTRIBUTION ANY CONSUMER COMMODITY WHICH FAILS TO DISCLOSE ON THE LABEL  
24 OF ITS PACKAGE THE RECYCLED CONTENT OF THE PACKAGE. THE LABEL SHALL

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

1 CONTAIN A CIRCLE WITH AT LEAST THREE ARROWS ON THE CIRCUMFERENCE OF THE  
2 CIRCLE ALL FACING THE SAME DIRECTION, WITH THE PERCENTAGE OF THE RECY-  
3 CLED CONTENT OF THE PACKAGE LOCATED WITHIN SUCH CIRCLE.

4 3. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, APPLICATION  
5 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE  
6 STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL  
7 PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF  
8 NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH  
9 VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR  
10 JUSTICE, THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN  
11 INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND  
12 RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY  
13 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH  
14 PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS  
15 PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE  
16 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-  
17 TION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS  
18 SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE  
19 THAN FIVE THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY  
20 SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE  
21 PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE  
22 SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

23 S 2. The general business law is amended by adding a new section 399-  
24 fff to read as follows:

25 S 399-FFF. CONTRACTS FOR THE COLLECTION AND TRANSPORTATION OF COMMER-  
26 CIAL WASTE. 1. DEFINITIONS.

27 A. "COMMERCIAL WASTE" SHALL MEAN WASTE GENERATED BY STORES, OFFICES,  
28 INSTITUTIONS, RESTAURANTS, WAREHOUSES, AND NONMANUFACTURING ACTIVITIES  
29 AT INDUSTRIAL FACILITIES.

30 B. "PERSON" SHALL MEAN ANY NATURAL PERSON, FIRM, ORGANIZATION, PART-  
31 NERSHIP, ASSOCIATION OR CORPORATION.

32 C. "SOLID WASTE" SHALL HAVE THE SAME MEANING AS DEFINED IN SECTION  
33 27-0701 OF THE ENVIRONMENTAL CONSERVATION LAW.

34 2. EVERY WRITTEN CONTRACT FOR THE COLLECTION AND TRANSPORTATION OF  
35 COMMERCIAL WASTE FROM A PLACE AT WHICH SUCH WASTE IS GENERATED, SHALL  
36 SPECIFY THE RECYCLABLE, REUSABLE OR OTHER COMPONENTS OF SUCH WASTE THAT  
37 ARE REQUIRED TO BE SEPARATED IN ACCORDANCE WITH A LOCAL LAW OR ORDINANCE  
38 ADOPTED PURSUANT TO SECTION ONE HUNDRED TWENTY-AA OF THE GENERAL MUNICI-  
39 PAL LAW AND ANY PENALTIES IMPOSED BY SUCH LAW OR ORDINANCE FOR THE FAIL-  
40 URE TO SEPARATE SUCH WASTE.

41 3. EVERY GENERATOR OF COMMERCIAL WASTE WHO CONTRACTS WITH ANOTHER  
42 PERSON FOR THE COLLECTION AND TRANSPORTATION OF SUCH WASTE, SHALL  
43 DISPLAY PROMINENTLY A NOTICE STATING THE RECYCLABLE, REUSABLE OR OTHER  
44 COMPONENTS OF SUCH WASTE THAT THE GENERATOR IS REQUIRED TO SEPARATE  
45 PURSUANT TO A LOCAL LAW OR ORDINANCE ADOPTED IN ACCORDANCE WITH SECTION  
46 ONE HUNDRED TWENTY-AA OF THE GENERAL MUNICIPAL LAW.

47 4. A KNOWING VIOLATION OF THIS SECTION SHALL BE PUNISHABLE BY A CIVIL  
48 FINE NOT TO EXCEED ONE THOUSAND DOLLARS.

49 S 3. The economic development law is amended by adding a new section  
50 187-a to read as follows:

51 S 187-A. RECYCLING MARKET DEVELOPMENT PROGRAMS. NOTWITHSTANDING ANY  
52 PROVISION OF SECTIONS ONE HUNDRED EIGHTY-FOUR AND ONE HUNDRED  
53 EIGHTY-FIVE OF THIS ARTICLE OR ANY RULE OR REGULATION PROMULGATED PURSU-  
54 ANT THERETO, AN ECONOMIC DEVELOPMENT POWER ALLOCATION MAY BE MADE TO A  
55 BUSINESS ENGAGED IN THE UTILIZATION OF SECONDARY MATERIALS AS RAW MATE-  
56 RIALS IN A MANUFACTURING PROCESS; PROVIDED THAT SUCH SECONDARY MATERIALS

1 ARE RECOVERED FROM SOLID WASTE PURSUANT TO SECTION ONE HUNDRED TWENTY-AA  
2 OF THE GENERAL MUNICIPAL LAW. APPLICATIONS FOR AN ALLOCATION OF ECONOM-  
3 IC DEVELOPMENT POWER PURSUANT TO THIS SECTION SHALL BE EVALUATED UNDER  
4 CRITERIA ADOPTED BY THE BOARD. SUCH CRITERIA SHALL ADDRESS, BUT NEED NOT  
5 BE LIMITED TO:

6 (A) THE APPLICANT'S LONG TERM COMMITMENT TO THE DEVELOPMENT OF MARKETS  
7 FOR SECONDARY MATERIALS IN NEW YORK STATE, AS EVIDENCED BY THE APPLI-  
8 CANT'S CURRENT AND PLANNED CAPITAL INVESTMENT IN FACILITIES IN THE STATE  
9 DESIGNED TO UTILIZE SECONDARY MATERIALS;

10 (B) THE EXTENT TO WHICH THE BUSINESS WILL SERVE AS A REGIONAL OR  
11 STATEWIDE MARKET OUTLET FOR SECONDARY MATERIALS;

12 (C) THE TYPES OF SECONDARY MATERIALS TO BE UTILIZED BY THE APPLICANT,  
13 AND THE EXTENT TO WHICH SUCH USE REPRESENTS A NEW MARKET OUTLET FOR  
14 SECONDARY MATERIALS;

15 (D) THE EXTENT TO WHICH THE APPLICANT'S UTILIZATION OF SECONDARY MATE-  
16 RIALS WILL SERVE TO DISPLACE THE CURRENT USE OF VIRGIN MATERIALS;

17 (E) THE EXTENT TO WHICH AN ALLOCATION OF ECONOMIC DEVELOPMENT POWER  
18 WILL AFFECT THE OVERALL PRODUCTIVITY OR COMPETITIVENESS OF THE APPLI-  
19 CANT'S BUSINESS AND THE BUSINESS'S UTILIZATION OF SECONDARY MATERIALS;

20 (F) THE GROWTH POTENTIAL OF THE BUSINESS FACILITY AND THE CONTRIBUTION  
21 OF ECONOMIC STRENGTH TO THE AREA IN WHICH THE BUSINESS FACILITY IS OR  
22 WOULD BE LOCATED;

23 (G) THE EXTENT TO WHICH AN ALLOCATION OF ECONOMIC DEVELOPMENT POWER IS  
24 CONSISTENT WITH STATE, REGIONAL AND LOCAL ECONOMIC DEVELOPMENT AND SOLID  
25 WASTE MANAGEMENT STRATEGIES, PLANS AND PRIORITIES AND SUPPORTED BY LOCAL  
26 UNITS OF GOVERNMENT IN THE AREA WHERE THE BUSINESS IS OR WOULD BE  
27 LOCATED; AND

28 (H) THE IMPACT OF THE ALLOCATION ON THE OPERATION OF ANY OTHER FACILI-  
29 TIES OF THE APPLICANT, ON OTHER BUSINESSES ENGAGED IN THE USE OF SECOND-  
30 ARY MATERIALS WITHIN THE STATE, AND UPON OTHER ELECTRIC RATEPAYERS.

31 FOR PURPOSES OF THIS SECTION AND SECTION ONE HUNDRED EIGHTY-SEVEN OF  
32 THIS ARTICLE, "SECONDARY MATERIALS" SHALL HAVE THE DEFINITION SET FORTH  
33 IN SUBDIVISION ONE OF SECTION TWO HUNDRED SIXTY-ONE OF THIS CHAPTER.

34 S 4. Subdivision (c) of section 187 of the economic development law,  
35 as amended by chapter 316 of the laws of 1997, is amended to read as  
36 follows:

37 (c) The board shall review the applications received and shall deter-  
38 mine the applications which best meet the criteria established for the  
39 allocations authorized under this article and it shall recommend such  
40 applications to the power authority of the state of New York with such  
41 terms and conditions as it deems appropriate. Except for allocations  
42 subject to subdivision (g) of this section and section one hundred  
43 eighty-five OR SECTION ONE HUNDRED EIGHTY-SEVEN-A of this article, each  
44 allocation of economic development power recommended by the board shall  
45 be to serve new electrical demand at facilities at which new jobs are  
46 created. Such terms and conditions shall include reasonable provisions  
47 providing for the partial or complete withdrawal of the economic devel-  
48 opment power in the event the recipient fails to maintain mutually  
49 agreed upon levels of employment and power utilization OR SECONDARY  
50 MATERIALS USE.

51 S 5. Subdivision (c) of section 187 of the economic development law,  
52 as added by chapter 32 of the laws of 1987, is amended to read as  
53 follows:

54 (c) The board shall review the applications received and shall deter-  
55 mine the applications which best meet the criteria and it shall recom-  
56 mend such applications to the power authority of the state of New York

1 with such terms and conditions as it deems appropriate. Except for allo-  
2 cations subject to subdivision (g) of this section and section one  
3 hundred eighty-five OR SECTION ONE HUNDRED EIGHTY-SEVEN-A of this arti-  
4 cle, each allocation recommended by the board shall be to serve new  
5 electrical demand at facilities at which new jobs are created. Such  
6 terms and conditions shall include reasonable provisions providing for  
7 the partial or complete withdrawal of the economic development power in  
8 the event the recipient fails to maintain mutually agreed levels of  
9 employment and power utilization OR SECONDARY MATERIALS USE.

10 S 6. Subdivision 13 of section 1005 of the public authorities law is  
11 amended by adding a new paragraph (c) to read as follows:

12 (C) RECYCLING MARKET DEVELOPMENT. NOTWITHSTANDING ANY PROVISIONS OF  
13 PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION OR ANY RULE OR REGULATION  
14 PROMULGATED PURSUANT THERETO, THE TRUSTEES SHALL ESTABLISH SPECIAL  
15 CRITERIA FOR THE EVALUATION OF APPLICATIONS FOR AN ALLOCATION OF EXPAN-  
16 SION POWER TO BUSINESSES ENGAGED IN THE UTILIZATION OF SECONDARY MATERI-  
17 ALS AS RAW MATERIALS IN A MANUFACTURING PROCESS; PROVIDED THAT SUCH  
18 SECONDARY MATERIALS ARE RECOVERED FROM SOLID WASTE PURSUANT TO SECTION  
19 ONE HUNDRED TWENTY-AA OF THE GENERAL MUNICIPAL LAW. SUCH CRITERIA SHALL  
20 INCLUDE, BUT NEED NOT BE LIMITED TO:

21 (1) THE APPLICANT'S LONG TERM COMMITMENT TO THE DEVELOPMENT OF MARKETS  
22 FOR SECONDARY MATERIALS IN NEW YORK STATE, AS EVIDENCED BY THE APPLI-  
23 CANT'S CURRENT AND PLANNED CAPITAL INVESTMENT IN FACILITIES IN THE STATE  
24 DESIGNED TO UTILIZE SECONDARY MATERIALS;

25 (2) THE EXTENT TO WHICH THE BUSINESS WILL SERVE AS A REGIONAL OR  
26 STATEWIDE MARKET OUTLET FOR SECONDARY MATERIALS;

27 (3) THE TYPES OF SECONDARY MATERIALS TO BE UTILIZED BY THE APPLICANT,  
28 AND THE EXTENT TO WHICH SUCH USE REPRESENTS A NEW MARKET OUTLET FOR  
29 SECONDARY MATERIALS;

30 (4) THE EXTENT TO WHICH THE APPLICANT'S UTILIZATION OF SECONDARY MATE-  
31 RIALS WILL SERVE TO DISPLACE THE CURRENT USE OF VIRGIN MATERIALS;

32 (5) THE EXTENT TO WHICH AN ALLOCATION OF EXPANSION POWER WILL AFFECT  
33 THE OVERALL PRODUCTIVITY OR COMPETITIVENESS OF THE APPLICANT'S BUSINESS  
34 AND THE BUSINESS'S UTILIZATION OF SECONDARY MATERIALS;

35 (6) THE GROWTH POTENTIAL OF THE BUSINESS FACILITY AND THE CONTRIBUTION  
36 OF ECONOMIC STRENGTH TO THE AREA IN WHICH THE BUSINESS FACILITY IS OR  
37 WOULD BE LOCATED;

38 (7) THE EXTENT TO WHICH AN ALLOCATION OR EXPANSION POWER IS CONSISTENT  
39 WITH STATE, REGIONAL AND LOCAL ECONOMIC DEVELOPMENT AND SOLID WASTE  
40 MANAGEMENT STRATEGIES, PLANS AND PRIORITIES AND SUPPORTED BY LOCAL UNITS  
41 OF GOVERNMENT IN THE AREA WHERE THE BUSINESS IS OR WOULD BE LOCATED; AND

42 (8) THE IMPACT OF THE ALLOCATION ON THE OPERATION OF ANY OTHER FACILI-  
43 TIES OF THE APPLICANT, ON OTHER BUSINESSES ENGAGED IN THE USE OF SECOND-  
44 ARY MATERIALS WITHIN THE STATE, AND UPON OTHER ELECTRIC RATEPAYERS.

45 FOR PURPOSES OF THIS SUBDIVISION, "SECONDARY MATERIALS" SHALL HAVE THE  
46 DEFINITION SET FORTH IN SUBDIVISION ONE OF SECTION TWO HUNDRED SIXTY-ONE  
47 OF THE ECONOMIC DEVELOPMENT LAW.

48 S 7. Subdivision 3 of section 165 of the state finance law is amended  
49 by adding a new paragraph k to read as follows:

50 K. NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE REQUIREMENTS SET FORTH  
51 IN THIS SUBDIVISION PERTAINING TO THE RECYCLED CONTENT OF MATERIALS  
52 PROCURED BY THE STATE SHALL APPLY TO ALL FIRMS AND ORGANIZATIONS, PUBLIC  
53 AND PRIVATE, HAVING CONTRACTED WITH THE STATE ONE OR MORE TIMES IN A  
54 GIVEN YEAR FOR ANY PURPOSE. THE RESPECTIVE TIMETABLES AND EFFECTIVE  
55 DATES SET FORTH IN THIS SECTION PERTAINING TO THE RECYCLED CONTENT OF

1 MATERIALS PROCURED BY THE STATE SHALL APPLY TO THE AFOREMENTIONED  
2 VENDORS.

3 NOTHING IN THIS SECTION SHALL REQUIRE ANY ENTITY OTHER THAN THE STATE  
4 TO PROVIDE ANNUAL REPORTS OR ADHERE TO THE PRICE PREMIUMS STIPULATED FOR  
5 PROCURING SUPPLIES CONTAINING SECONDARY MATERIALS.

6 S 8. This act shall take effect October 1, 2009, provided that the  
7 amendments to subdivision (c) of section 187 of the economic development  
8 law made by section four of this act shall be subject to the expiration  
9 and reversion of such subdivision pursuant to chapter 316 of the laws of  
10 1997, as amended, when upon such date the provisions of section five of  
11 this act shall take effect.