

875

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I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. GRISANTI, MARCELLINO -- 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:

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
23 wide range of consumer products purchased by state agencies, including

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

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

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

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

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

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

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

50 S 4. Paragraph a of subdivision 1 of section 161 of the state finance
51 law, as amended by chapter 452 of the laws of 2012, is amended to read
52 as follows:

53 a. The state procurement council shall continuously strive to improve
54 the state's procurement process. Such council shall consist of [twen-
55 ty-one] TWENTY-FIVE members, including the commissioner, the state comp-
56 troller, the director of the budget, the chief diversity officer [and],

1 the commissioner of economic development, THE COMMISSIONER OF HEALTH,
2 AND THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, or their respective
3 designees; [seven] FIVE members who shall be the heads of other large
4 and small state agencies chosen by the governor, or their respective
5 designees; one member, appointed by the governor, representing a not-
6 for-profit New York-based organization engaged in the marketing and/or
7 promotion of New York grown farm and agricultural products or a not-for-
8 profit New York-based organization engaged solely in the advocacy,
9 marketing and/or promotion of organic New York grown farm and agricul-
10 tural products to be limited to a two year term; and [eight] TWELVE at
11 large members appointed as follows: [three] FIVE appointed by the tempo-
12 rary president of the senate, one of whom shall be a representative of
13 local government [and], one of whom shall be a representative of private
14 business, AND ONE OF WHOM SHALL BE A REPRESENTATIVE OF AN ORGANIZATION
15 WHOSE PRIME FUNCTION IS THE ENHANCEMENT OF PUBLIC HEALTH OR THE ENVIRON-
16 MENT; [three] FIVE appointed by the speaker of the assembly, one of whom
17 shall be a representative of local government [and], one of whom shall
18 be a representative of private business, AND ONE OF WHOM SHALL BE A
19 REPRESENTATIVE OF AN ORGANIZATION WHOSE PRIME FUNCTION IS THE ENHANCE-
20 MENT OF PUBLIC HEALTH OR THE ENVIRONMENT; one appointed by the minority
21 leader of the senate; and, one appointed by the minority leader of the
22 assembly; and two non-voting observers appointed as follows: one
23 appointed by the temporary president of the senate and one appointed by
24 the speaker of the assembly. The non-voting observers shall be provided,
25 contemporaneously, all documentation and materials distributed to
26 members. The council shall be chaired by the commissioner and shall meet
27 at least quarterly.

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

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

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

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

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

53 3. MINIMUM SPECIFICATIONS FOR HEALTHY AND GREEN PROCUREMENT. CONSIST-
54 ENT WITH DETERMINATIONS OF NEED REQUIRED BY SUBDIVISION FIVE OF SECTION
55 ONE HUNDRED SIXTY-THREE OF THIS ARTICLE, ALL STATE AGENCIES SHALL

1 PROCURE COMMODITIES, SERVICES AND TECHNOLOGIES THAT MEET OR EXCEED THE
2 FOLLOWING MINIMUM SPECIFICATIONS:

3 A. RECYCLED CONTENT. ALL COPY PAPER AND OTHER PAPER SUPPLIES FOR WHICH
4 THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY HAS DEVELOPED RECYCLED
5 CONTENT RECOMMENDATIONS PURSUANT TO SECTION SIX THOUSAND TWO OF THE
6 FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT SHALL BE REQUIRED TO MEET
7 OR EXCEED THE AGENCY'S MINIMUM POST-CONSUMER MATERIAL CONTENT PERCENT-
8 AGES RECOMMENDED IN THE MOST RECENT RECOVERED MATERIALS ADVISORY NOTICE
9 ISSUED FOR SUCH COMMODITY IN THE FEDERAL REGISTER; PROVIDED, HOWEVER,
10 THAT XEROGRAPHIC PAPER SHALL CONTAIN NO LESS THAN THIRTY PERCENT
11 POST-CONSUMER RECYCLED CONTENT. THE COMMISSIONER SHALL ALSO MAKE AVAIL-
12 ABLE TO ALL AGENCIES, ONE HUNDRED PERCENT POST-CONSUMER, PROCESSED CHLO-
13 RINE-FREE COPY PAPER. ALL AGENCIES SHALL PRINT PUBLICATIONS ON RECYCLED
14 PAPER, AND MINIMUM PERCENTAGES SHALL BE MET UNLESS COSTS FOR SUCH PAPER
15 EXCEED THE COST OF OTHER AVAILABLE COMMODITIES BY MORE THAN TEN PERCENT.

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

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

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

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

1 B. IN THE EVENT THAT AN AGENCY RECEIVES NO BIDS OR PROPOSALS THAT MEET
2 THE SPECIFICATIONS DEVELOPED PURSUANT TO PARAGRAPH A OF THIS SUBDIVI-
3 SION, SUCH AGENCY MAY WITHDRAW THE REQUEST FOR BIDS OR PROPOSALS AND
4 BEGIN A NEW PROCUREMENT WITH NEW SPECIFICATIONS WITHOUT SUCH SPECIFICA-
5 TIONS AND AWARD A CONTRACT IN ACCORDANCE WITH OTHER APPLICABLE STATUTES;
6 PROVIDED, HOWEVER THAT SUCH AGENCY SHALL DOCUMENT THE REASONS WHY SUCH
7 PROCUREMENT DOES NOT MEET THE MINIMUM SPECIFICATIONS FOR HEALTHY AND
8 GREEN PROCUREMENT ESTABLISHED IN THIS SUBDIVISION AND SUBMIT SUCH
9 DOCUMENTATION TO THE COMMISSIONER FOR INCLUSION IN THE ANNUAL REPORT
10 REQUIRED PURSUANT TO THIS SECTION AND TO THE OFFICE OF THE COMPTROLLER
11 FOR INCLUSION IN THE PROCUREMENT RECORD.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 7. TARGET COMMODITY, SERVICE AND/OR TECHNOLOGY CATEGORIES. WITHIN
6 TWELVE MONTHS OF THE EFFECTIVE DATE OF THIS SECTION AND ANNUALLY THERE-
7 AFTER, THE COMMISSIONER, IN CONSULTATION WITH THE STATE PROCUREMENT
8 COUNCIL, SHALL IDENTIFY A MINIMUM OF THREE "TARGET CATEGORIES" OF
9 COMMODITIES, SERVICES AND/OR TECHNOLOGIES, WHICH FOR THE PURPOSES OF
10 THIS CHAPTER SHALL MEAN CATEGORIES OF COMMODITIES, SERVICES AND/OR TECH-
11 NOLOGIES PROCURED BY THE STATE WHICH MAY HAVE AN ADVERSE IMPACT ON
12 PUBLIC HEALTH OR THE ENVIRONMENT AND FOR WHICH HEALTHY AND GREEN COMMOD-
13 ITIES, SERVICES OR TECHNOLOGIES SHOULD BE IDENTIFIED AND SUBSTITUTED.

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

22 A. PROTECTION OF PUBLIC HEALTH AND THE ENVIRONMENT AND THE CONSERVA-
23 TION OF NATURAL RESOURCES;

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

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

29 D. AVOIDANCE OF PRIORITY TOXIC SUBSTANCES; AND

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

34 9. HEALTHY AND GREEN SUPPLY LISTS.

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

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

50 10. PROCUREMENT FROM HEALTHY AND GREEN SUPPLY LISTS. A. WHEN PROCUR-
51 ING A COMMODITY, SERVICE OR TECHNOLOGY WITHIN A TARGETED CATEGORY FOR
52 WHICH AN APPROVED HEALTHY AND GREEN SUPPLY LIST HAS BEEN CREATED, STATE
53 AGENCIES SHALL PROCURE SUCH COMMODITY, SERVICE OR TECHNOLOGY FROM SUCH
54 LIST.
55

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

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

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

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

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

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

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

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

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

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

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

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

53 C. DEVELOP AN EFFICIENT AND PRACTICABLE METHOD FOR COLLECTING AND
54 COMPILING PROCUREMENT DATA FROM STATE AGENCIES, INCLUDING BUT NOT LIMIT-
55 ED TO ESTIMATES OF THE VOLUME SPENT, QUANTITY PURCHASED, AND GENERAL
56 PURCHASING TRENDS FOR COMMODITIES, SERVICES AND TECHNOLOGIES, INCLUDING

1 HEALTHY AND GREEN COMMODITIES, SERVICES AND TECHNOLOGIES INCLUDED IN AN
2 APPROVED SUPPLY LIST OR A CENTRALIZED CONTRACT.

3 12. TRAINING, OUTREACH AND EDUCATION. A. WITH THE ASSISTANCE OF THE
4 DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF HEALTH, AND
5 THE OFFICE OF THE COMPTROLLER, THE COMMISSIONER, WITHIN TWELVE MONTHS OF
6 THE EFFECTIVE DATE OF THIS SECTION, SHALL DESIGN AND BEGIN IMPLEMENTA-
7 TION OF A HEALTHY AND GREEN PROCUREMENT TRAINING PROGRAM FOR SENIOR
8 MANAGERS AND STATE AGENCY STAFF INVOLVED IN PROCUREMENT TO FAMILIARIZE
9 THEM WITH THEIR RESPONSIBILITIES UNDER THIS SECTION AND ENSURE THE
10 EFFECTIVE AND EFFICIENT IMPLEMENTATION OF THE PROVISIONS OF THIS
11 SECTION. SUCH PROGRAM SHALL PROVIDE FOR NEW EMPLOYEE TRAINING AND ONGO-
12 ING TRAINING.

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

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

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

24 13. ANNUAL REPORT TO THE GOVERNOR AND LEGISLATURE. WITHIN EIGHTEEN
25 MONTHS OF THE EFFECTIVE DATE OF THIS SECTION, AND ANNUALLY THEREAFTER IN
26 NOVEMBER, THE COMMISSIONER SHALL SUBMIT A WRITTEN REPORT TO THE GOVER-
27 NOR, THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE
28 SENATE. SUCH REPORT SHALL INCLUDE:

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

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

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

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

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

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

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

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

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

55 S 6. Paragraphs b and h of subdivision 1 of section 261 of the econom-
56 ic 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 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 REFORMATION 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 also include actions taken by or on behalf of a business to support costs of equipment, and/or the acquisition and/or rehabilitation of real property or structures located or to be located in the state related to the collecting, sorting, and packaging of empty beverage containers as such terms are defined in title ten of article twenty-seven of the environmental conservation law. Such actions shall be eligible for state assistance payments under the beverage container assistance program pursuant to section 27-1018 of the environmental conservation law.

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 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

1 analyzes in detail the waste prevention projects which the applicant
2 wishes to implement. All feasibility studies must include the cost of
3 implementation, a construction schedule and, a description of how the
4 project will minimize, reduce or eliminate the generation of wastes, use
5 or reuse wastes, increase energy efficiency or water conservation,
6 INCREASE THE MANUFACTURE, PRODUCTION, PROVISION OR USE OF HEALTHY AND
7 GREEN COMMODITIES, SERVICES OR TECHNOLOGIES, improve air or water quality
8 and/or improve process economics.

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

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

27 S 11. The opening paragraph of subdivision 1 of section 3-0311 of the
28 environmental conservation law, as amended by chapter 741 of the laws of
29 1991, is amended to read as follows:

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

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