STATE OF NEW YORK

5682

2023-2024 Regular Sessions

IN ASSEMBLY

March 20, 2023

Introduced by M. of A. ZEBROWSKI -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, in relation to enacting the New York tropical deforestation-free procurement act; and to amend the economic development law, in relation to establishing the supply chain transparency assistance program

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 tropical deforestation-free procurement act".

§ 2. Legislative findings. The legislature finds and declares the following:

1. Tropical forests cover roughly 7 percent of Earth's surface, but harbor close to 50 percent of all species on Earth.

2. Human activity is the driving force behind the current rate of species extinction, which is at least 100 to 1,000 times higher than historical levels. The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services reported in 2019 that around 1 million animal and plant species are now threatened with extinction, many within decades, more than ever before in human history. This is directly linked to habitat loss, with more than a third of the world's land surface and nearly 75 percent of freshwater resources now devoted to crop or livestock production.

3. Globally, an estimated 18,000,000 acres of forest, an area more than half the size of New York state, are lost every year to deforestation according to the Food and Agriculture Organization of the United Nations, with over one-half of Earth's tropical forests already gone. At the current pace, the entirety of Earth's tropical rainforests will be degraded or destroyed within the next 100 years.

4. It has been estimated that at least 30 percent of the world's greenhouse gas emissions come from deforestation and forest degradation.

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

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Taking into account carbon sequestration potential, stopping the loss of tropical forests, mangroves, and wetlands could provide over 20 percent of climate mitigation by 2030.

5. Loss of biodiversity resulting from forest degradation and deforestation, as well as human encroachment on formerly undisturbed ecosystems, increases the risks of zoonotic disease pandemics such as COVID-19.

6. New York state is a leader in addressing the climate crisis, with a statutory goal of achieving net-zero greenhouse gas emissions economy-wide by 2050.

7. Tropical deforestation in many countries is closely associated with violations of the land rights of indigenous peoples and local communities and with the exploitation of workers, including forced labor and child labor, and in many cases is enabled by corruption, criminality, and violence against conservationists and land defenders.

8. Tropical deforestation in many countries is also closely associated with illegal wildlife trafficking, including, but not limited to, various bird and reptile species, many primate species, including great apes, pangolins, and orangutans.

9. The primary factors leading to tropical deforestation are degradation and road-building associated with logging for timber, which opens the door for deforestation caused by industrial-scale production of agricultural commodities and conversion of forests into plantations for the timber, pulp, paper, palm oil, soy, and livestock industries, among others. Together, these are increasingly known as "forest-risk commodities".

10. New York is inadvertently promoting and sanctioning deforestation and primary forest degradation through the purchase of goods and products that have been produced in supply chains that contribute to tropical deforestation and tropical primary forest degradation.

11. New York has one of the largest economies in the world and its purchasing power has significant market force, allowing it to play a leadership role in preventing forest loss and supporting markets for sustainably-sourced products.

12. It is the intent of the legislature that it be the policy of this state to ensure companies contracting with the state are not contributing to tropical deforestation or tropical primary forest degradation directly or through their supply chains.

§ 3. Paragraphs b, c, d and e of subdivision 1 of section 165 of the state finance law, as added by chapter 83 of the laws of 1995, are amended to read as follows:

b. "Tropical hardwood" shall mean any and all hardwood, scientifically classified as angiosperm, that grows in any tropical [~~moist~~] forest. Tropical hardwoods shall [~~be~~] **include but not be limited to** the following species:

Scientific Name	**Examples of** Common [~~Name~~] **Names**
Prunus africana	**African cherry, Red stinkwood**
Caryocar costaricense	**Ajo, Aji**
Calophyllum spp.	**Bintangor**
Cedrela spp.	**Cedar**
Neobalanocarpus heimii, Balanocarpus heimii	**Chengal**
Octomeles sumatrana Miq.	**Erima, benuang**
Myroxylon balsamum	**Estoraque**
Apuleia leiocarpa	**Garapa**

Parastemon urophyllus, Parastemon spicatus Ridley	Malas
Hopea spp.	Merawan
Araucaria araucana	Monkey Puzzle, Chilean pine
Pterocarpus tinctorius	Mukula
Senna siamea	Siamese senna
Pometia pinata	Taun
Milletia leucantha Kurz	Thinwin
Bulnesia arborea, Bulnesia sarmientoi	Verawood, Argentine lignum vitae
Tristaniopsis laurina	Water gum
Terminalia spp.	
Homalium foetidum	Malas
Dillenia papuana	Dillenia
Canarium spp.	Red Canarium, Grey Canarium
Burkrella macropoda	Rang rang
Octomeles sumatrana	Erima, Benuang
Dracontomelon dao	New Guinea walnut
Planchonella spp.	White Planchonella, Red Planchonella
Lophopetalum spp.	Perupok
Carinian pyriformis	Abarco, Jequitiba
Mitragyna ciliate	Abura
Vouacapous americana	Acapu
Amburana caerensis	Amburana, Cerejeira
Dalbergia melanoxylon	African Blackwood
Lovoa spp.	African Walnut, Tigerwood
Pericopsis elata	[~~Afrormosis~~] Afrormosia
[~~Shorea almon~~]	[~~Almon~~]
Aspidosperma megalocarpon	Acaretto
Peltogyne spp.	Amaranth, purpleheart
Terminalia amazonia	Amarillo Real
[~~Guibourtis~~] Guibourtia ehie	Amazaque
Amburana cearensis	Amburana, Cerejeira, cumare
Pterogyne nitens	Amendoim
Carapa guianensis	Andiroba, False Mahogany
Dicorynia guianensis	Angilique Cris
[~~Aningeris~~] Aningeria spp.	Aningeria, anegre, anigre
Dipterocarpus [~~grandiflorus~~] spp.	[~~Apilong~~] Apitong, Keruing
Centrolobium spp.	Arariba, Amarillo
Brosimum utile	Baco
Shorea spp.	Balau, Selangan batu
Ochroma lagopus	Balsa
Ochroma pyramidale	Balsa
Myroxylon balsamum	Balsamo
[~~Virola spp.~~]	[~~Banak~~]
Anisoptera thurifera	Bella [~~Rose~~] Rosa
[~~Guibourtis~~] Guibourtia arnoldiana	Benge, Mutenye
Berlinia spp.	Berlinia, Rose Zebrano
Symphonia globulifera	Boar Wood
Deterium [~~Senegalese~~] senegalese	Boire
Caesalpinia echintata, Paubrasilia eschinata	Brazilwood, Pernambuco

Bertholletia excels	Brazil Tree
Brosimum alicastrum	Breadnut
Guilbourtia spp. (G. demusei, G. pellegriniana, G. tessmannii)	Bubinga, African Rosewood, Kevazingo
Toona calantas, Cedrela calantas	Calantas, Kalantas
Priora copaifera	Cativo
Cedrela odorata, Cedrela fissilis	Cedro, Cedar, Spanish cedar, South American cedar
Ceiba pentandra	Ceiba
Antiaris africana	Chenchen, Antiaris
Couratari guianensis	Coco Blanco
[~~Dalbergis~~] Dalbergia retusa	[~~Concobola~~] Cocobolo, Granadillo
Tabebuia donnell-smithii	Copal
Daniellia spp.	Copal, Daniellia
Cordia spp.	Cordia, Bocote, Ziricote, Louro
Hymenaea courbaril	Courbaril, West Indian Locust
Dipteryx odorata	Cumaru
Piptadeniastrum africanum	Dahoma, Banzu
Calycophyllum candidissimum	Degame, Legame Lancewood, Lemonwood
Afzelia spp.	Doussie, Lingue
[~~Diospyros~~] Diospyrus spp.	Ebony, Macassar ebony, Ceylon ebony
Lophira alata	Ekki, Azobe, Bangassi, Akoura, Red Ironwood
Combretodendron macrocarpum	Esia, Essia
Cordia goeldiana	Freijo, Cordia Wood
Chlorophora tinctoria	Fustic, Yellow Wood, Tatajuba
[~~Aucoumes~~] Aucoumea klaineana	Gaboon, Okoume
Astronium spp.	Goncalo Alves, Zebrawood, Tigerwood
Ocotea rodiaei	Greenheart
Enterolobium cyclocarpum	Guanacaste, Rain Tree, Elephant Ear
Guarea spp.	Guarea, Bosse
Terminalia ivorensis	Idigbo, Framire, Black Afara
Phoebe porosa	Imbuia, Imbuya, Embuia, Brazilian Walnut
Handroanthus spp.	Ipe, Brazilian walnut, bethabarra, Pau d'arco, Ironwood, Lapacho
Chlorophors excelsa	Iroko
Hymenaea courbaril	Jatoba, "Brazilian Cherry"
Jacaranda copaia	Jacaranda
Machaerium villosum	Jacaranda Pardo
Dyera costulata	Jelutong
Dryobalanops spp.	Kapur, Keladan
Koompassia malaccensis	Kempas, Impas
Acacia koa	Koa
[~~Entandrophragm a~~] Entandrophragma c	Kosipo,iOmu
Pterygota macrocarpa	Koto, African Pterygota, Ware
Oxandra lanceolate	Lancewood

Shorea spp. [negrosensis]	[Red] Lauan, Luan, Lawaan, Meranti, White meranti, yellow meranti, dark red meranti, light red meranti, Seraya, Tanguile, Bang, Philippine Mahogany
[Pentacme contorta]	[White Lauan]
[Shores ploysprma]	[Tanguile]
Nothofagus pumilio	Lenga
Guaiacum officinale	Lignum Vitae, Guayacan, Ironwood
Terminalia superba	Limba, Afara, Ofram
[Aniba duckei] Aniba rosedora	[Louro] Brazilian rosewood, pau rosa, bois de rose
Nectandra spp.	Louro Preto
[Kyaya ivorensis] Khaya spp.	[Africa] African Mahogany
[Swletenia macrophylla]	[Amer. Mahogany]
Swietenia spp.	American Mahogany, West Indian Mahogany, Central American Mahogany, Honduran Mahogany, South American Mahogany, Mexican Mahogany, Bigleaf Mahogany, Little Leaf Mahogany, Acajou, Caoba Mogno
Tieghemella [leckellii] heckelii	[Makora] Makore, Baku
Diospyros marmorata	Marblewood, Zebrawood
Intsia bijuga, Intsia palembanica	Merbau, Ipil, Kwila
Anisoptera spp.	Mersawa, Krabak, Palosapis
Mora excelsa	Mora
Distemonanthus benthamianus	Movingui, Ayan
Terminalia amazonia	Nargusta
Pterocarpus spp.	Narra, Ambyna, Papua New Guinea Rosewood, Red Sanders, Mukula, Kosso, zitan, Hongmu
Palaquium spp.	Nyatoh, Padang, Pencil Cedar
Triplochiton scleroxylon	Obeche, Samba
Nauclea diderrichii	Opepe, Sibo
Pterocarpus [soyauxii] spp.	[African] Padauk, Vermillion Wood
[Pterocarpus angolensis]	[Angola Padauk]
Millettia stuhlmannii	Panga Panga
Balfourodendron riedelianum	Pau Marfim
Aspidosperma spp.	Peroba, Rosa
Paratecoma peroba	Peroba Branca
Dalbergia frutescens, D. tomentosa	Pinkwood, Brazilia Tulipwood
Tabebuia donnell-smithii	Prima Vera, Roble, Durango
Peltogyne spp.	Purpleheart
Gonystylus spp.	Ramin
Melanorrhoea curtisii	Rengas, Borneo Rosewood
Nothofagus obliqua	Roble
Hevea brasiliensis	Rubberwood

Dalbergia spp.	Rosewood, Indian Rosewood, Honduras Rosewood, cocobolo, granadillo
Aniba duckei	Brazilian Rosewood
[~~Entandrophragm a~~] Entandrophragma cylindricum	[~~Sapela~~] Sapele, Sapelli
Acanthopanax ricinofolius	Sen, Castor Arabia
Brosimum aubletti, Piratinera guianensis	Snakewood, Letterwood, Leopard Wood
[~~Shores phillippinensis~~]	[~~Sonora~~]
Juglans spp. (juglans australis, J. neotropica, J. Olanchana, etc.)	South American Walnut, Peruvian Walnut
Sterculia rhinopetala	Sterculia
Bagassa guianensis	Tatajuba, Bagasse
Tectona grandis	Teak
Lovoa trichilloides	Tigerwood
Entandrophragma utile	Utile, Sipo
Virola spp.	Virola, Cumala, Banak, Tapsava
Milletia laurentii	Wenge
Pentacme contorta	White Lauan
Microberlinia [~~brazzavillensis~~] spp.	Zebrawood, Zebrano, Zingana

c. "Tropical [~~rain~~] forests" shall mean [~~any and all forests classified by the scientific term "Tropical moist forests", the classification determined by the equatorial region of the forest and average rainfall~~] a natural ecosystem within the tropical regions, approximately bounded geographically by the tropics of Cancer and Capricorn, but possibly affected by other factors such as prevailing winds, containing native species composition, structure, and ecological function, with a tree canopy cover of more than ten percent over an area of at least 0.5 hectares. "Tropical forests" shall include all of the following: (i) human-managed tropical forests or partially degraded tropical forests that are regenerating; and (ii) tropical forests identified by multi-objective conservation based assessment methodologies, such as High Conservation Value (HCV) areas, as defined by the HCV Resource Network, or High Carbon Stock forests, as defined by the High Carbon Stock Approach, or by another methodology with equivalent or higher standards that includes primary forests and tropical peatlands of any depth. "Tropical forests" shall not include tree plantations of any type.

d. "Tropical wood products" shall mean any wood products, wholesale or retail, in any form, including but not limited to plywood, veneer, furniture, cabinets, paneling, siding, moldings, doors, doorskins, joinery, flooring or sawnwood, which are composed, in whole or in part, of tropical hardwood [~~except plywood~~].

e. "Peat" means a soil that is rich in organic matter composed of partially decomposed plant materials equal to or greater than 40 centimeters of the top 100 centimeters of the soil.

f. "Tropical peatlands" means wetlands with a layer of peat made up of dead and decaying plant material. Tropical peatlands includes moors, bogs, mires, and peat swamp forests.

g. "Secondary materials" means any material recovered from or otherwise destined for the waste stream, including, but not limited to, post-consumer material, industrial scrap material and overstock or obsolete inventories from distributors, wholesalers and other companies but such

term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

§ 4. Paragraphs b and d of subdivision 2 of section 165 of the state finance law, as added by chapter 83 of the laws of 1995, are amended to read as follows:

b. The provisions of paragraph a of this subdivision shall not apply to:

(i) [~~Any hardwoods purchased from a sustained, managed forest; or~~

~~(ii)~~] Any binding contractual obligations for purchase of commodities entered into prior to August twenty-fifth, nineteen hundred ninety-one; or

[~~(iii) The purchase of any tropical hardwood or tropical hardwood product for which there is no acceptable non-tropical hardwood species; or~~

~~(iv) Where the contracting officer finds that no person or entity doing business in the state is capable of providing acceptable non-tropical hardwood species sufficient to meet the particular contract requirements; or~~

~~(v)~~] **(ii)** Where the inclusion or application of such provisions will violate or be inconsistent with the terms or conditions of a grant, subvention or contract in an agency of the United States or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or contract[~~; or~~

~~(vi) Where inclusion or application of such provisions results in a substantial cost increase to the state, government agency, political subdivision, public corporation or public benefit corporation~~].

d. The provisions of paragraph c of this subdivision shall not apply:

(i) To bid packages advertised and made available to the public or any competitive and sealed bids received or entered into prior to August twenty-fifth, nineteen hundred ninety-one; or

(ii) To any amendment, modification or renewal of a contract, which contract was entered into prior to August twenty-fifth, nineteen hundred ninety-one, where such application would delay timely completion of a project or involve an increase in the total monies to be paid under that contract; or

(iii) Where the contracting officer finds that[~~:~~

~~(A) No person or entity doing business in the state is capable of performing the contract using acceptable non-tropical hardwood species; or~~

~~(B) The~~] **the** inclusion or application of such provisions will violate or be inconsistent with the terms or conditions of a grant, subvention or contract with an agency of the United States or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or contract[~~; or~~

~~(C) The use of tropical woods is deemed necessary for purposes of historical restoration and there exists no available acceptable non-tropical wood species~~].

§ 5. Section 165 of the state finance law is amended by adding a new subdivision 9 to read as follows:

9. Tropical deforestation-free procurement. a. For purposes of this subdivision, the following definitions shall apply:

(i) "Contractor" means any person or entity that has a contract with a state agency or state authority for public works or improvements to be performed, for a franchise, concession or lease of property, for grant monies or goods and services or supplies to be purchased at the expense of the agency or authority or to be paid out of monies deposited in the

treasury or out of trust monies under the control or collected by the agency or authority.

(ii) "Tropical forest-risk commodity" means any commodity and its derived products, including agricultural and non-agricultural commodities but excluding tropical hardwood and tropical wood products covered by subdivisions one and two of this section, whether in raw or processed form, that is commonly extracted from, or grown, derived, harvested, reared, or produced on land where tropical deforestation or tropical primary forest degradation has occurred or is likely to occur. Tropical forest-risk commodities include palm oil, soy, beef, coffee, cocoa, wood pulp, paper, logs, lumber, and any additional commodities defined by the commissioner of the office of general services pursuant to subparagraph (i) of paragraph g of this subdivision, but do not include recovered fiber.

(iii) "Free, prior, and informed consent" means the principle that a community has the right to give or withhold its consent to proposed developments that may affect the land and waters it legally or customarily owns, occupies, or otherwise uses, as described in the United Nations Declaration on the Rights of Indigenous Peoples, the Indigenous and Tribal Peoples Convention of 1989, also known as the International Labor Organization Convention 169, and other international instruments. "Free, prior, and informed consent" means informed, noncoercive negotiations between investors, companies, or governments, and indigenous peoples and local communities, prior to project development.

(iv) "Large contractor" means any contractor whose annual revenue, or that of their parent company, is equal to or greater than one hundred million dollars.

(v) "Point-of-origin" means the geographical location, as identified by the smallest administrative unit of land, where a commodity was grown, derived, harvested, reared, or produced.

(vi) "Recovered Fiber" means postconsumer fiber such as paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after having passed through their end usage, including used corrugated boxes, old newspapers, old magazines, mixed waste paper, tabulating cards, and used cordage, and all paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; and manufacturing wastes such as dry paper and paperboard waste generated after completion of the papermaking process, including envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations, bag, box, and carton manufacturing wastes, and butt rolls, mill wrappers, and rejected unused stock, and repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, and others.

(vii) "Tropical deforestation" means direct human-induced conversion of tropical forest to agriculture, a tree plantation, or other non-forest land use.

(viii) "Tropical primary forest degradation" means severe and sustained degradation of a tropical forest resulting in significant primary forest loss and/or a profound change in species composition, structure, or ecological function of that forest.

(ix) "Primary forest" means a forest that has never been industrially logged and has developed following natural disturbances and under natural processes, regardless of its age. Primary forests include forests that have experienced non-industrial-scale human impacts,

including traditional or subsistence activities carried out by indigenous communities.

(x) "New York state products" means products that are grown, harvested, or produced in this state, or processed inside or outside this state comprising over fifty-one percent raw materials grown, harvested, or produced in this state, by weight or volume.

(xi) "Small business" means small business as defined in section one hundred thirty-one of the economic development law.

(xii) "Medium-sized business" shall mean a business that is resident in this state, independently owned and operated, not dominant in its field, and employs between one hundred and five hundred persons.

(xiii) "Minority-owned business enterprise" shall have the same meaning as in article fifteen-A of the executive law.

(xiv) "Women-owned business enterprise" shall have the same meaning as in article fifteen-A of the executive law.

b. (i) Every contract entered into by a state agency or authority that includes the procurement of any product comprised wholly or in part of a tropical forest-risk commodity shall require that the contractor certify that the commodity furnished to the state pursuant to the contract was not extracted from, grown, derived, harvested, reared, or produced on land where tropical deforestation or tropical primary forest degradation occurred on or after January first, two thousand twenty-three. The contractor shall agree to comply with this provision of the contract.

(ii) The contract shall specify that the contractor is required to cooperate fully in providing reasonable access to the contractor's records, documents, agents, employees, or premises if reasonably required by authorized officials of the contracting agency or authority, the office of general services, the office of the attorney general, or the department of environmental conservation, to determine the contractor's compliance with the requirements under subparagraph (i) of this paragraph.

(iii) Contractors shall exercise due diligence in ensuring that their subcontractors comply with the requirements under subparagraph (i) of this paragraph. Contractors shall require each subcontractor to certify that the subcontractor is in compliance with the requirements of subparagraph (i) of this paragraph.

(iv) In addition to the requirements of subparagraphs (i), (ii) and (iii) of this paragraph, large contractors subject to subparagraph (i) of this paragraph must certify that they have adopted a tropical forest policy that complies with regulations issued pursuant to subparagraph (vii) of paragraph g of this subdivision. The adoption of a tropical forest policy by a contractor, subcontractor, or supplier that is not a large contractor is not required by this subparagraph but may be used to demonstrate compliance with subparagraph (i) of this paragraph. Such tropical forest policy and all corresponding data shall be made publicly available, and shall contain at a minimum all of the following:

A. Due diligence measures to identify the point-of-origin of tropical forest-risk commodities and ensure compliance with the policy where supply chain risks are present.

B. Data detailing the complete list of direct and indirect suppliers and supply chain traceability information, including refineries, processing plants, farms, and plantations, and their respective owners, parent companies, and farmers, maps, and geo-locations, for each tropical forest-risk commodity found in products that may be furnished to the state.

C. Measures taken to ensure the product does not contribute to tropical deforestation or tropical primary forest degradation, including:

(1) no development in tropical primary forests, and that the product does not originate from a site where commodity production has replaced tropical primary forests after January first, two thousand twenty-three;

(2) no development of High Carbon Stock (HCS) Forests;

(3) no development of High Conservation Value (HCV) Areas;

(4) no burning;

(5) efforts to ensure progressive reductions of greenhouse gas emissions on existing plantations;

(6) no development on peat, regardless of depth;

(7) best management practices for existing plantations on peat; and

(8) where feasible, activities oriented towards peat restoration.

D. Measures taken to prevent exploitation and redress grievances of workers and local communities, including:

(1) Respect for and recognition of the rights of all workers including contract, temporary, and migrant workers.

(2) Respect for and recognition of land tenure rights of communities.

(3) Respect for the rights of indigenous and local communities to give or withhold their free, prior, and informed consent to operations on lands to which they hold legal, communal, or customary rights.

(4) Explicit policies and processes to prevent violence, intimidation, and coercion of workers and local communities.

(5) Formal, open, transparent, and consultative processes to address and redress all complaints and conflicts.

E. Measures taken to protect biodiversity and prevent the poaching of endangered species in all operations and adjacent areas.

F. Measures taken to ensure compliance with the laws of countries where tropical forest-risk commodities in a company's supply chain were produced.

G. Measures to deter violence, threats, and harassment against environmental human rights defenders (EHRDs), including respecting internationally recognized human rights standards, and educating employees, contractors, and partners on the rights of EHRDs to express their views, conduct peaceful protests, and criticize practices without intimidation or retaliation.

(v) The provisions of subparagraph (i) of this paragraph shall not apply when the inclusion or application of such provisions will violate or be inconsistent with the terms or conditions of a grant, subvention or contract with an agency of the United States or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or contract.

c. (i) If it is determined that any contractor contracting with the state knew or should have known that a product comprised wholly or in part of a tropical forest-risk commodity was furnished to the state in violation of paragraph b of this subdivision, the contracting agency or authority shall issue a written notice of violation and provide an opportunity for such contractor to come into compliance. If, after such notice, a contractor fails to come into compliance within a timeframe established by the department, such contractor may, subject to subparagraph (ii) of paragraph b of this subdivision, have either or both of the following sanctions imposed:

A. The contract under which the prohibited tropical forest-risk commodity was furnished may be voided at the option of the state agency or authority to which the commodity was furnished.

B. The contractor may be assessed a penalty that shall be the greater of one thousand dollars or an amount equaling twenty percent of the value of the product that the state agency or authority demonstrates was comprised wholly or in part of a tropical forest-risk commodity and furnished to the state in violation of paragraph b of this subdivision. A hearing or opportunity to be heard shall be provided prior to the assessment of any penalty.

(ii) Notwithstanding subparagraph (i) of this paragraph, a contractor that has complied with the provisions of subparagraph (iii) of paragraph b of this subdivision shall not be subject to sanctions for violations, of which the contractor had no knowledge, of the requirements of paragraph b of this subdivision that were committed solely by a subcontractor. Sanctions described under subparagraph (i) of this paragraph shall instead be imposed against the subcontractor that committed the violation.

d. (i) Any state agency or authority that investigates a complaint against a contractor or subcontractor for violation of this subdivision may limit its investigation to evaluating the information provided by the person or entity submitting the complaint and the information provided by the contractor or subcontractor.

(ii) Whenever a contracting officer of the contracting agency or authority has reason to believe that the contractor failed to comply with paragraph b of this subdivision, the agency or authority shall refer the matter for investigation to the head of the agency or authority and, as the head of the agency or authority determines appropriate, to either the office of general services, the office of the attorney general, or the department of environmental conservation.

e. (i) When a state agency or authority's contract for the purchase of a commodity or product covered by this subdivision is to be awarded to the lowest responsible bidder, an otherwise qualified bidder who is a small or medium-sized business or a minority or women-owned business enterprise, or who will fulfill the contract through the use of New York state products, may be given preference over other bidders, provided that the cost included in the bid is not more than ten percent greater than the cost included in a bid that is not from a small or medium-sized business or a minority or women-owned business enterprise or fulfilled through the use of New York state products.

(ii) The provisions of this paragraph shall not apply if the head of the contracting state agency or authority purchasing such products, in his or her sole discretion, determines that giving preference to bidders pursuant to the provisions of this paragraph would be:

(a) against the public interest;

(b) would increase the cost of the contract by an unreasonable amount; or

(c) New York state products cannot be obtained in sufficient and reasonable available quantities and of satisfactory quality to meet the contracting state agency or authority's requirements.

(iii) Nothing in this paragraph shall be construed to conflict with or otherwise limit the goals and requirements set forth by section one hundred sixty-two of this article and articles fifteen-A and seventeen-B of the executive law.

f. (i) The commissioner of the office of general services shall convene a stakeholder advisory group which shall be consulted on the creation of regulations pursuant to paragraph g of this subdivision. Members of the advisory group shall be selected by the commissioner and shall consist of at least:

(A) representatives of current or former state contractors dealing in each of the tropical forest-risk commodities specified in subparagraph (ii) of paragraph a of this subdivision, with an emphasis on small and medium-sized businesses;

(B) representatives from civil society with relevant expertise in supply chain traceability, tropical forest sustainability, biodiversity, climate science, human and labor rights, and indigenous rights. Members selected pursuant to this clause should be of at least equal number to members selected pursuant to clause (A) of this subparagraph; and

(C) a minimum of two additional representatives from indigenous communities within the geographic areas containing tropical forests covered by this subdivision.

(ii) Members of the stakeholder advisory group shall receive no salary, but shall be reimbursed by the office of general services for any necessary travel expenses related to participating in the stakeholder advisory group.

g. On or before July first, two thousand twenty-four, the office of general services shall issue regulations for the implementation of this subdivision. Such regulations shall be developed in consultation with the stakeholder advisory group established in paragraph f of this subdivision and the commissioner of the department of environmental conservation. Such regulations shall include, but not be limited to, all of the following:

(i) A list of tropical forest-risk commodities subject to the requirements of this subdivision, including, but not limited to, palm oil, soy, beef, coffee, cocoa, wood pulp, paper, logs, and lumber. The list shall be reviewed and updated at least every three years. When evaluating inclusion of additional commodities in the list, the commissioner of the office of general services shall consider the impact of the commodity as a driver of tropical deforestation or tropical primary forest degradation, the state of existing supply chain transparency and traceability systems for the commodity, and the feasibility of including the commodity in the requirements of paragraph b of this subdivision. The first review shall include, but not be limited to evaluation of rubber, leather and other cattle-derived products, and mining products including coal, iron, copper, gold, tin, diamonds, manganese, bauxite and nickel.

(ii) A list of products derived wholly or in part from tropical forest-risk commodities.

(iii) A list of products furnished to the state or used by state contractors in high-volume purchases that contain or are comprised wholly or in part of tropical forest-risk commodities.

(iv) A set of responsible sourcing guidelines and policies derived from best practices in supply chain transparency to the point-of-origin.

(v) Guidance to assist contractors in identifying tropical forest-risk commodities in their supply chain, performing necessary due diligence to meet the requirements of this subdivision, and certifying that the commodity did not contribute to tropical deforestation or tropical primary forest degradation.

(vi) A list of favored suppliers of tropical forest-risk commodities and products derived therefrom whose products have been determined to meet the requirements of this subdivision.

(vii) The full set of requirements for a large contractor's tropical forest policy pursuant to subparagraph (iv) of paragraph b of this subdivision.

(viii) The process through which contractors shall certify to the office of general services that they are in compliance with paragraph b of this subdivision.

(ix) A process for ensuring that details of certified contracts are made available for public inspection on the website of the office of general services.

(x) An easily accessible procedure to receive public complaints and information regarding violations of this subdivision.

h. (i) The certification requirements set forth in this subdivision shall not apply to a credit card purchase of goods of two thousand five hundred dollars or less.

(ii) The total amount of goods exempted pursuant to subparagraph (i) of this paragraph shall not exceed seven thousand five hundred dollars per year for each contractor from which a state agency or authority is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on these purchases.

i. This subdivision shall apply to all contracts entered into, extended, or renewed on or after January first, two thousand twenty-five.

j. Commencing two years after the effective date of this subdivision and biennially thereafter, the commissioner of the office of general services shall issue a report to the governor, the temporary president of the senate, and the speaker of the assembly, on the implementation of this subdivision and subdivisions one and two of this section.

§ 6. The economic development law is amended by adding a new article 27 to read as follows:

ARTICLE 27

SUPPLY CHAIN TRANSPARENCY ASSISTANCE PROGRAM

Section 490. Definitions.

491. The supply chain transparency assistance program.

§ 490. Definitions. For purposes of this article:

1. "Small business" means a small business as defined in section one hundred thirty-one of this chapter.

2. "Medium-sized business" shall mean a business that is resident in this state, independently owned and operated, not dominant in its field, and employs between one hundred and five hundred persons.

3. "Eligible business" shall mean any small and medium-sized business as defined in this article, and any minority or women-owned business enterprise as defined in article fifteen-A of the executive law.

4. "Supply chain" shall mean a system of extraction, production, transportation, and distribution involving multiple processes, organizations, individuals, and resources, beginning with raw materials and culminating in the delivery of a product or service to a consumer.

§ 491. The supply chain transparency assistance program. 1. The department is hereby authorized and directed, within one year of the effective date of this article, to establish, develop, implement, and maintain, within available appropriations, a supply chain transparency assistance program to assist small and medium-sized businesses and minority and women-owned businesses in achieving supply chains that are:

(a) Transparent, meaning a supply chain for which sufficient information has been disclosed regarding all relevant units of production from the raw material stage to the delivery of a product or service to a consumer, including, but not limited to, extraction sites, suppliers, manufacturers, transporters, wholesalers, and retailers, to allow

consumers to determine whether the supply chain is ethical and sustainable.

(b) Traceable, meaning a supply chain for which distributors, retailers, and other businesses down the supply chain are able to gather sufficient and relevant information regarding all units of production further up the supply chain to determine whether a supply chain is ethical and sustainable.

(c) Ethical, meaning a supply chain that upholds the human rights and all other legal rights, supports the well-being, and prevents the exploitation, of workers and communities, and guarantees the free, prior, and informed consent, land, and other legal rights of affected indigenous peoples and other local and traditional communities.

(d) Sustainable, meaning a supply chain that takes all necessary measures to avoid, minimize, and reduce degradation of natural environmental systems, and maximizes efforts to contribute to the restoration and regeneration of impacted ecosystems.

2. The purpose of such program shall be to:

(a) Develop and share best practices and provide technical assistance to help participating eligible businesses develop and implement standards, plans, and benchmarks for transparency and traceability, environmental sustainability, and ethical practices throughout their supply chains.

(b) Assist participating eligible businesses with compliance with supply chain related regulations, procurement standards, or contracting requirements.

(c) Identify funding streams, grant monies, financial assistance and other resources that may be available to help participating eligible businesses achieve transparent, traceable, ethical, and sustainable supply chains.

(d) Help participating eligible businesses with marketing, communication, and other activities to achieve maximum competitive advantage from their transparent, traceable, ethical, and sustainable supply chains.

(e) Conduct market analysis to identify opportunities for participating eligible businesses to access new markets and increase competitiveness through achieving transparent, traceable, ethical, and sustainable supply chains.

(f) Conduct outreach to promote awareness of the program among eligible businesses, business organizations, and regional and local economic development agencies.

§ 7. This act shall take effect immediately and shall apply to all contracts and binding contractual obligations entered into on and after such effective date.