

STATE OF NEW YORK

4859--A

2023-2024 Regular Sessions

IN SENATE

February 16, 2023

Introduced by Sens. KRUEGER, COONEY, MAY, BRESLIN, BRISPORT, CHU, CLEARE, COMRIE, FERNANDEZ, HARCKHAM, HINCHEY, HOYLMAN-SIGAL, JACKSON, SALAZAR, SANDERS, SEPULVEDA, SERRANO, SKOUFIS, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1 Section 1. This act shall be known and may be cited as the "New York
2 tropical deforestation-free procurement act".

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

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

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

16 3. Globally, an estimated 18,000,000 acres of forest, an area more
17 than half the size of New York state, are lost every year to deforesta-

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

LBD07504-04-3

1 tion according to the Food and Agriculture Organization of the United
2 Nations, with over one-half of Earth's tropical forests already gone. At
3 the current pace, the entirety of Earth's tropical rainforests will be
4 degraded or destroyed within the next 100 years.

5 4. It has been estimated that at least 30 percent of the world's
6 greenhouse gas emissions come from deforestation and forest degradation.
7 Taking into account carbon sequestration potential, stopping the loss of
8 tropical forests, mangroves, and wetlands could provide over 20 percent
9 of climate mitigation by 2030.

10 5. Loss of biodiversity resulting from forest degradation and defores-
11 tation, as well as human encroachment on formerly undisturbed ecosys-
12 tems, increases the risks of zoonotic disease pandemics such as COVID-
13 19.

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

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

22 8. Tropical deforestation in many countries is also closely associated
23 with illegal wildlife trafficking, including, but not limited to, vari-
24 ous bird and reptile species, and many primate species, including great
25 apes, pangolins, and orangutans, as well as many tree and plant species,
26 including mahoganies, rosewoods, ebony, and ipe, all of which have
27 recently been listed on the Convention of International Trade in Endan-
28 gered Species of Fauna and Flora (CITES).

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

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

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

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

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

51 b. "Tropical hardwood" shall mean any and all hardwood, scientifically
52 classified as angiosperm, that grows in any tropical [~~moist~~] forest.
53 Tropical hardwoods shall [~~be~~] include but not be limited to the follow-
54 ing species:

55 Scientific Name

Examples of Common [~~Name~~]
Names

56

1	<u>Prunus africana</u>	<u>African cherry, Red stinkwood</u>
2	<u>Caryocar costaricense</u>	<u>Ajo, Aji</u>
3	<u>Calophyllum spp.</u>	<u>Bintangor</u>
4	<u>Cedrela spp.</u>	<u>Cedar</u>
5	<u>Neobalanocarpus heimii,</u>	<u>Chengal</u>
6	<u>Balanocarpus heimii</u>	
7	<u>Octomeles sumatrana Miq.</u>	<u>Erima, benuang</u>
8	<u>Myroxylon balsamum</u>	<u>Estoraque</u>
9	<u>Apuleia leiocarpa</u>	<u>Garapa</u>
10	<u>Parastemon urophyllus, Parastemon</u>	<u>Malas</u>
11	<u>spicatus Ridley</u>	
12	<u>Hopea spp.</u>	<u>Merawan</u>
13	<u>Araucaria araucana</u>	<u>Monkey Puzzle, Chilean pine</u>
14	<u>Pterocarpus tinctorius</u>	<u>Mukula</u>
15	<u>Senna siamea</u>	<u>Siamese senna</u>
16	<u>Pometia pinata</u>	<u>Taun</u>
17	<u>Millettia leucantha Kurz</u>	<u>Thinwin</u>
18	<u>Bulnesia arborea, Bulnesia</u>	<u>Verawood, Argentine lignum</u>
19	<u>sarmientoi</u>	<u>vitae</u>
20	<u>Tristaniopsis laurina</u>	<u>Water gum</u>
21	<u>Terminalia spp.</u>	
22	<u>Homalium foetidum</u>	<u>Malas</u>
23	<u>Dillenia papuana</u>	<u>Dillenia</u>
24	<u>Canarium spp.</u>	<u>Red Canarium, Grey Canarium</u>
25	<u>Burkrella macropoda</u>	<u>Rang rang</u>
26	<u>Octomeles sumatrana</u>	<u>Erima, Benuang</u>
27	<u>Dracontomelon dao</u>	<u>New Guinea walnut</u>
28	<u>Planchonella spp.</u>	<u>White Planchonella, Red</u>
29		<u>Planchonella</u>
30	<u>Lophopetalum spp.</u>	<u>Perupok</u>
31	<u>Carinian pyriformis</u>	<u>Abarco, Jequitiba</u>
32	<u>Mitragyna ciliate</u>	<u>Abura</u>
33	<u>Vouacapous americana</u>	<u>Acapu</u>
34	<u>Amburana caerensis</u>	<u>Amburana, Cerejeira</u>
35	<u>Dalbergia melanoxylon</u>	<u>African Blackwood</u>
36	<u>Lovoa spp.</u>	<u>African Walnut, Tigerwood</u>
37	<u>Pericopsis elata</u>	<u>[Afrormosis] Afrormosia</u>
38	<u>[Shorea almon]</u>	<u>[Almon]</u>
39	<u>Aspidosperma megalocarpon</u>	<u>Acaretto</u>
40	<u>Peltogyne spp.</u>	<u>Amaranth, purpleheart</u>
41	<u>Terminalia amazonia</u>	<u>Amarillo Real</u>
42	<u>[Guibourtia] Guibourtia ehie</u>	<u>Amazaque</u>
43	<u>Amburana cearensis</u>	<u>Amburana, Cerejeira, cumare</u>
44	<u>Pterogyne nitens</u>	<u>Amendoim</u>
45	<u>Carapa guianensis</u>	<u>Andiroba, False Mahogany</u>
46	<u>Dicorynia guianensis</u>	<u>Angilique Cris</u>
47	<u>[Aningeris] Aningeria spp.</u>	<u>Aningeria, anegre,</u>
48		<u>anigre</u>
49	<u>Dipterocarpus [grandiflorus]</u>	<u>[Apilong] Apitong, Keruing</u>
50	<u>spp.</u>	
51	<u>Centrolobium spp.</u>	<u>Arariba, Amarillo</u>
52	<u>Brosimum utile</u>	<u>Baco</u>
53	<u>Shorea spp.</u>	<u>Balau, Selangan batu</u>
54	<u>Ochroma lagopus</u>	<u>Balsa</u>
55	<u>Ochroma pyramidale</u>	<u>Balsa</u>
56	<u>Myroxylon balsamum</u>	<u>Balsamo</u>

1	[Vireola spp.]	[Banak]
2	Anisoptera thurifera	Bella [Rose] <u>Rosa</u>
3	[Guibourtia] <u>Guibourtia</u> arnoldiana	
4		<u>Benge, Mutenye</u>
5	<u>Berlinia</u> spp.	<u>Berlinia, Rose Zebrano</u>
6	<u>Symphonia globulifera</u>	<u>Boar Wood</u>
7	Deterium [Senegalese] <u>senegalese</u>	Boire
8	<u>Caesalpinia echinata,</u>	<u>Brazilwood, Pernambuco</u>
9	<u>Paubrasilia eschinata</u>	
10	<u>Bertholletia excels</u>	<u>Brazil Tree</u>
11	<u>Brosimum alicastrum</u>	<u>Breadnut</u>
12	<u>Guilbourtia</u> spp.	<u>Bubinga, African</u>
13	<u>(G. demusei, G. pellegriniana,</u>	<u>Rosewood, Kevazingo</u>
14	<u>G. tessmannii)</u>	
15	<u>Toona calantas, Cedrela calantas</u>	<u>Calantas, Kalantas</u>
16	Priora copaifera	Cativo
17	<u>Cedrela odorata, Cedrela fissilis</u>	<u>Cedro, Cedar, Spanish cedar,</u>
18		<u>South American cedar</u>
19	<u>Ceiba pentandra</u>	<u>Ceiba</u>
20	Antiaris africana	Chenchen, <u>Antiaris</u>
21	<u>Couratari guianensis</u>	<u>Coco Blanco</u>
22	[Dalbergia] <u>Dalbergia</u>	
23	retusa	[Cocobola] <u>Cocobolo,</u>
24		<u>Granadillo</u>
25	<u>Tabebuia donnell-smithii</u>	<u>Copal</u>
26	<u>Daniellia</u> spp.	<u>Copal, Daniellia</u>
27	Cordia spp.	<u>Cordia, Bocote, Ziricote, Louro</u>
28	<u>Hymenaea courbaril</u>	<u>Courbaril, West Indian Locust</u>
29	<u>Dipteryx odorata</u>	<u>Cumaru</u>
30	<u>Piptadeniastrum africanum</u>	<u>Dahoma, Banzu</u>
31	<u>Calycophyllum candidissimum</u>	<u>Degame, Legame Lancewood,</u>
32		<u>Lemonwood</u>
33	<u>Afzelia</u> spp.	<u>Doussie, Lingue</u>
34	[Diospyres] <u>Diospyrus</u> spp.	<u>Ebony, Macassar</u>
35		<u>ebony,</u>
36		<u>Ceylon ebony</u>
37	<u>Lophira alata</u>	<u>Ekki, Azobe, Bangassi, Akoura,</u>
38		<u>Red Ironwood</u>
39	<u>Combretodendron macrocarpum</u>	<u>Esia, Essia</u>
40	<u>Cordia goeldiana</u>	<u>Freijo, Cordia Wood</u>
41	<u>Chlorophora tinctoria</u>	<u>Fustic, Yellow Wood, Tatajuba</u>
42	[Aucoumes] <u>Aucoumea</u> klaineana	<u>Gaboon, Okoume</u>
43	<u>Astronium</u> spp.	<u>Goncalo Alves, Zebrawood,</u>
44		<u>Tigerwood</u>
45	<u>Ocotea rodiaei</u>	<u>Greenheart</u>
46	<u>Enterolobium cyclocarpum</u>	<u>Guanacaste, Rain Tree,</u>
47		<u>Elephant Ear</u>
48	<u>Guarea</u> spp.	<u>Guarea, Bosse</u>
49	<u>Terminalia ivorensis</u>	<u>Idigbo, Framire, Black Afara</u>
50	<u>Phoebe porosa</u>	<u>Imbuia, Imbuya, Embuia,</u>
51		<u>Brazilian Walnut</u>
52	<u>Handroanthus</u> spp.	<u>Ipe, Brazilian walnut,</u>
53		<u>bethabarra, Pau d'arco,</u>
54		<u>Ironwood, Lapacho</u>
55	Chlorophors excelsa	Iroko

1	<u>Hymenaea courbaril</u>	<u>Jatoba, "Brazilian Cherry"</u>
2	<u>Jacaranda copaia</u>	<u>Jacaranda</u>
3	<u>Machaerium villosum</u>	<u>Jacaranda Pardo</u>
4	<u>Dyera costulata</u>	<u>Jelutong</u>
5	<u>Dryobalanops spp.</u>	<u>Kapur, Keladan</u>
6	<u>Koompassia malaccensis</u>	<u>Kempas, Impas</u>
7	Acacia koa	Koa
8	[Entandrophragma] <u>Entandrophragma</u>	<u>Kosipo, iOmu</u>
9	Pterygota macrocarpa	<u>Koto, African Pterygota, Ware</u>
10	<u>Oxandra lanceolate</u>	<u>Lancewood</u>
11	Shorea spp. [negrosensis]	[Red] <u>Lauan, Luan,</u>
12		<u>Lawaan, Meranti, White</u>
13		<u>meranti, yellow meranti, dark</u>
14		<u>red meranti, light red meranti,</u>
15		<u>Seraya, Tanguile, Bang,</u>
16		<u>Philippine Mahogany</u>
17	[Pentacme contorta]	[White Lauan]
18	[Shorea ployssprma]	[Tanguile]
19	<u>Nothofagus pumilio</u>	<u>Lenga</u>
20	<u>Guaiacum officinale</u>	<u>Lignum Vitae, Guayacan,</u>
21		<u>Ironwood</u>
22	Terminalia superba	<u>Limba, Afara, Ofram</u>
23	[Aniba duekei] <u>Aniba rosedora</u>	[Loure] <u>Brazilian</u>
24		<u>rosewood, pau rosa, bois</u>
25		<u>de rose</u>
26	<u>Nectandra spp.</u>	<u>Louro Preto</u>
27	[Kyaya ivorensis] <u>Khaya spp.</u>	[Africa] <u>African</u>
28		<u>Mahogany</u>
29	[Swietenia macrophylla]	[Amer. Mahogany]
30	<u>Swietenia spp.</u>	<u>American Mahogany, West Indian</u>
31		<u>Mahogany, Central American</u>
32		<u>Mahogany, Honduran Mahogany,</u>
33		<u>South American Mahogany,</u>
34		<u>Mexican Mahogany, Bigleaf</u>
35		<u>Mahogany, Little Leaf</u>
36		<u>Mahogany, Acajou, Caoba</u>
37		<u>Mogno</u>
38	Tieghemella [heckelii] <u>heckelii</u>	[Makora]
39		<u>Makore,</u>
40		<u>Baku</u>
41	<u>Diospyros marmorata</u>	<u>Marblewood, Zebra wood</u>
42	<u>Intsia bijuga, Intsia palembanica</u>	<u>Merbau, Ipil, Kwila</u>
43	<u>Anisoptera spp.</u>	<u>Mersawa, Krabak, Palosapis</u>
44	<u>Mora excelsa</u>	<u>Mora</u>
45	Distemonanthus benthamianus	<u>Movingui, Ayan</u>
46	<u>Terminalia amazonia</u>	<u>Nargusta</u>
47	<u>Pterocarpus spp.</u>	<u>Narra, Ambyna, Papua New Guinea</u>
48		<u>Rosewood, Red Sanders, Mukula,</u>
49		<u>Kosso, zitan, Hongmu</u>
50	<u>Palaquium spp.</u>	<u>Nyatoh, Padang, Pencil Cedar</u>
51	<u>Triplochiton scleroxylon</u>	<u>Obeche, Samba</u>
52	<u>Nauclea diderrichii</u>	<u>Opepe, Sibö</u>
53	Pterocarpus [soyawii] spp.	[African] <u>Padauk,</u>
54		<u>Vermillion Wood</u>
55	[Pterocarpus angolensis]	[Angola Padauk]

1	<u>Millettia stuhlmannii</u>	<u>Panga Panga</u>
2	<u>Balfourodendron riedelianum</u>	<u>Pau Marfim</u>
3	Aspidosperma spp.	Peroba, <u>Rosa</u>
4	<u>Paratecoma peroba</u>	<u>Peroba Branca</u>
5	<u>Dalbergia frutescens, D. tomentosa</u>	<u>Pinkwood, Brazilia Tulipwood</u>
6	<u>Tabebuia donnell-smithii</u>	<u>Prima Vera, Roble, Durango</u>
7	Peltogyne spp.	Purpleheart
8	Gonystylus spp.	Ramin
9	<u>Melanorrhoea curtisii</u>	<u>Rengas, Borneo Rosewood</u>
10	<u>Nothofagus obliqua</u>	<u>Roble</u>
11	<u>Hevea brasiliensis</u>	<u>Rubberwood</u>
12	Dalbergia spp.	Rosewood, <u>Indian Rosewood,</u>
13		<u>Honduras Rosewood, cocobolo,</u>
14		<u>granadillo</u>
15	<u>Aniba duckei</u>	<u>Brazilian Rosewood</u>
16	[Entandrophragm-a] <u>Entandrophragma</u>	
17	cylindricum	[Sapela] <u>Sapele, Sapelli</u>
18	<u>Acanthopanax ricinofolius</u>	<u>Sen, Castor Arabia</u>
19	<u>Brosimum aubletti, Piratinera</u>	<u>Snakewood, Letterwood, Leopard</u>
20	<u>guianensis</u>	<u>Wood</u>
21	[Shores-phillippinensis]	[Senora]
22	<u>Juglans spp. (juglans</u>	<u>South American Walnut, Peruvian</u>
23	<u>australis, J. neotropica,</u>	<u>Walnut, Tropical Walnut</u>
24	<u>J. Olanchana, etc.)</u>	
25	<u>Sterculia rhinopetala</u>	<u>Sterculia</u>
26	<u>Bagassa guianensis</u>	<u>Tatajuba, Bagasse</u>
27	Tectona grandis	Teak
28	Lovoa trichilloides	Tigerwood
29	<u>Entandrophragma utile</u>	<u>Utile, Sipo</u>
30	<u>Virola spp.</u>	<u>Virola, Cumala, Banak, Tapsava</u>
31	Millettia laurentii	Wenge
32	<u>Pentacme contorta</u>	<u>White Lauan</u>
33	Microberlinia [brazzavillensis]	Zebrawood,
34	<u>spp.</u>	<u>Zebrano, Zingana</u>

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

52 d. "Tropical hardwood products" shall mean any wood products, whole-
53 sale or retail, in any form, including but not limited to plywood,
54 veneer, furniture, cabinets, paneling, siding, moldings, doors, doors-

kins, 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 hardwood 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 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

1 manufacturers, merchants, wholesalers, dealers, printers, converters,
2 and others.

3 (vii) "Tree plantation" means an area of land predominantly composed
4 of trees established through planting and/or deliberate seeding, usually
5 by planting one or two species, for the purpose of producing and
6 harvesting a particular commodity. Tree plantation does not include
7 forest planted for ecosystem restoration.

8 (viii) "Tropical deforestation" means direct human-induced conversion
9 of tropical forest to agriculture, a tree plantation, or other non-for-
10 est land use.

11 (ix) "Tropical primary forest degradation" means direct human-induced
12 severe and sustained degradation of a tropical forest resulting in
13 significant primary forest loss and/or a profound change in species
14 composition, structure, or ecological function of that forest.

15 (x) "Primary forest" means a forest that has never been industrially
16 logged or harvested and has developed following natural disturbances and
17 under natural processes, regardless of its age. Primary forests include
18 forests that have experienced non-industrial-scale human impacts,
19 including traditional or subsistence activities carried out by indige-
20 nous communities.

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

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

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

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

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

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

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

50 (iii) Contractors shall exercise due diligence in ensuring that their
51 subcontractors comply with the requirements under subparagraph (i) of
52 this paragraph. Contractors shall require each subcontractor to certify
53 that the subcontractor is in compliance with the requirements of subpar-
54 agraph (i) of this paragraph.

55 (iv) In addition to the requirements of subparagraphs (i), (ii) and
56 (iii) of this paragraph, large contractors subject to subparagraph (i)

1 of this paragraph must certify that they have adopted a tropical forest
2 policy that complies with regulations issued pursuant to subparagraph
3 (vii) of paragraph g of this subdivision. The adoption of a tropical
4 forest policy by a contractor, subcontractor, or supplier that is not a
5 large contractor is not required by this subparagraph but may be used to
6 demonstrate compliance with subparagraph (i) of this paragraph. Such
7 tropical forest policy and all corresponding data shall be made publicly
8 available, and shall contain at a minimum all of the following:

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

12 B. Data detailing the complete list of direct and indirect suppliers
13 and supply chain traceability information, including refineries, proc-
14 essing plants, farms, and plantations, and their respective owners,
15 parent companies, and farmers, maps, and geo-locations, for each trop-
16 ical forest-risk commodity found in products that may be furnished to
17 the state.

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

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

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

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

25 (4) no burning;

26 (5) efforts to ensure progressive reductions of greenhouse gas emis-
27 sions on existing plantations;

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

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

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

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

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

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

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

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

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

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

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

48 G. Measures to deter violence, threats, and harassment against envi-
49 ronmental human rights defenders (EHRDs), including respecting interna-
50 tionally recognized human rights standards, and educating employees,
51 contractors, and partners on the rights of EHRDs to express their views,
52 conduct peaceful protests, and criticize practices without intimidation
53 or retaliation.

54 (v) The provisions of subparagraph (i) of this paragraph shall not
55 apply to primary, secondary, or tertiary packaging used for the purpose

1 of containment, protection, handling, delivery, transport, distribution,
2 or presentation of a covered product.

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

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

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

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

29 (ii) Notwithstanding subparagraph (i) of this paragraph, a contractor
30 that has complied with the provisions of subparagraph (iii) of paragraph
31 b of this subdivision shall not be subject to sanctions for violations,
32 of which the contractor had no knowledge, of the requirements of para-
33 graph b of this subdivision that were committed solely by a subcontrac-
34 tor. Sanctions described under subparagraph (i) of this paragraph shall
35 instead be imposed against the subcontractor that committed the
36 violation.

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

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

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

1 business or a minority or women-owned business enterprise or fulfilled
2 through the use of New York state products.

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

7 (a) against the public interest;

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

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

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

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

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

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

31 (C) a minimum of two additional representatives from indigenous commu-
32 nities within the geographic areas containing tropical forests covered
33 by this subdivision.

34 (ii) Members of the stakeholder advisory group shall receive no sala-
35 ry, but shall be reimbursed by the office of general services for any
36 necessary travel expenses related to participating in the stakeholder
37 advisory group.

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

45 (i) A list of tropical forest-risk commodities subject to the require-
46 ments of this subdivision, including, but not limited to, palm oil, soy,
47 beef, coffee, cocoa, wood pulp and paper. The list shall be reviewed and
48 updated at least every three years. When evaluating inclusion of addi-
49 tional commodities in the list, the commissioner of the office of gener-
50 al services shall consider the impact of the commodity as a driver of
51 tropical deforestation or tropical primary forest degradation, the state
52 of existing supply chain transparency and traceability systems for the
53 commodity, and the feasibility of including the commodity in the
54 requirements of paragraph b of this subdivision. The first review shall
55 include, but not be limited to, evaluation of rubber, bananas, corn,
56 sugarcane, leather and other cattle-derived products, and mining

1 products including petroleum, coal, iron, copper, gold, tin, diamonds,
2 manganese, bauxite and nickel. Following a review of the list of trop-
3 ical forest-risk commodities, the commissioner shall issue a report to
4 the governor, the temporary president of the senate, and the speaker of
5 the assembly, outlining the reasons for the inclusion or non-inclusion
6 of any reviewed commodities.

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

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

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

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

19 (vi) A list of favored suppliers of tropical forest-risk commodities
20 and products derived therefrom whose products have been determined to
21 meet the requirements of this subdivision, and a process through which
22 suppliers may apply for inclusion on such list.

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

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

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

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

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

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

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

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

51 § 6. The economic development law is amended by adding a new article
52 27 to read as follows:

53 ARTICLE 27

54 SUPPLY CHAIN TRANSPARENCY ASSISTANCE PROGRAM

55 Section 490. Definitions.

56 491. The supply chain transparency assistance program.

1 § 490. Definitions. For purposes of this article:

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

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

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

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

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

20 (a) Transparent, meaning a supply chain for which sufficient informa-
21 tion has been disclosed regarding all relevant units of production from
22 the raw material stage to the delivery of a product or service to a
23 consumer, including, but not limited to, extraction sites, suppliers,
24 manufacturers, transporters, wholesalers, and retailers, to allow
25 consumers to determine whether the supply chain is ethical and sustaina-
26 ble.

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

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

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

41 2. The purpose of such program shall be to:

42 (a) Develop and share best practices and provide technical assistance
43 to help participating eligible businesses develop and implement stand-
44 ards, plans, and benchmarks for transparency and traceability, environ-
45 mental sustainability, and ethical practices throughout their supply
46 chains.

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

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

54 (d) Help participating eligible businesses with marketing, communi-
55 cation, and other activities to achieve maximum competitive advantage

1 from their transparent, traceable, ethical, and sustainable supply
2 chains.

3 (e) Conduct market analysis to identify opportunities for participat-
4 ing eligible businesses to access new markets and increase competitive-
5 ness through achieving transparent, traceable, ethical, and sustainable
6 supply chains.

7 (f) Conduct outreach to promote awareness of the program among eligi-
8 ble businesses, business organizations, and regional and local economic
9 development agencies.

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