

ENERGY LAW

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ARTICLE 1

SHORT TITLE; DEFINITIONS

- Section 1-101. Short title.
- 1-103. Definitions.

§ 1-101. Short title. This chapter shall be known and may be cited as the "energy law."

§ 1-103. Definitions. As used in this chapter, unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of this chapter:

1. "Agency" shall mean any state department, agency, board, public

benefit corporation, public authority or commission.

2. "Office" as used in sections 5-108, 5-111, 5-113, and 5-117 of article five and articles six, seven, eight and ten of this chapter shall mean the New York state energy research and development authority established pursuant to article eight of the public authorities law.

3. "Coal" shall include bituminuous coal, anthracite coal, and lignite.

4. "Commissioner" as used in sections 5-108, 5-111, 5-113, and 5-117 of article five and articles six, seven, eight and ten of this chapter shall mean the president of the New York state energy research and development authority.

5. "Energy" means work or heat that is, or may be, produced from any fuel or source whatsoever.

6. "Energy resources" shall mean any force or material which yields or has the potential to yield energy, including but not limited to electrical, fossil, geothermal, wind, hydro, solid waste, tidal, wood, solar and nuclear sources.

7. "Fossil fuel" shall mean coal, petroleum products and fuel gases.

8. "Fuel gases" shall include but not be limited to methane, natural gas, liquefied natural gas, and manufactured fuel gases.

9. "Municipality" or "municipal corporation" shall mean a city, county, town, village, school district, special purpose district, or an agency thereof.

10. "Person" shall mean any individual, trustee, agency, partnership, association, corporation, company, municipality, political subdivision or other legal entity.

11. "Petroleum products" shall include all products refined or

rerefined from synthetic or crude oil or oil extracted from other sources, including natural gas liquids.

12. "Renewable energy resources" shall include sources which are capable of being continuously restored by natural or other means or are so large as to be useable for centuries without significant depletion and include but are not limited to solar, wind, plant and forest products, wastes, tidal, hydro, geothermal, deuterium, and hydrogen.

13. "Telecommuting" shall mean the conservation of energy through the reduction of travel by employees of the office to and from their designated workplace through the use of telecommunication and computer technology in tasks including, but not limited to, information transfer and processing.

14. "Critical energy infrastructure" means systems, including industrial control systems, assets, places or things, whether physical or virtual, so vital to the state that the disruption, incapacitation or destruction of such systems, including industrial control systems, assets, places or things could jeopardize the health, safety, welfare, energy distribution, transmission, reliability, or security of the state, its residents or its economy.

15. "Industrial control systems" means an information system used to monitor and/or control industrial processes, including supervisory control and data acquisition systems used to monitor and/or control geographically dispersed assets, distributed control systems, human-machine interfaces, and programmable logic controllers that control localized processes.

ARTICLE 3

STATE ENERGY POLICY

Section 3-101. State energy policy.

3-103. Conformance with state energy policy.

§ 3-101. State energy policy. It shall be the energy policy of the state:

1. to obtain and maintain an adequate and continuous supply of safe, dependable and economical energy for the people of the state, including through the protection of critical energy infrastructure as defined in subdivision fourteen of section 1-103 of this chapter, and to accelerate development and use within the state of renewable energy sources, all in order to promote the state's economic growth, to create employment within the state, to protect its environmental values and agricultural heritage, to husband its resources for future generations, and to promote the health and welfare of its people;

2. to encourage conservation of energy and to promote the clean energy and climate agenda, including but not limited to greenhouse gas reduction, set forth within chapter one hundred six of the laws of two thousand nineteen, also known as the New York state climate leadership and community protection act, in the construction and operation of new commercial, industrial, agricultural and residential buildings, and in the rehabilitation of existing structures, through heating, cooling, ventilation, lighting, insulation and design techniques and the use of energy audits and life-cycle costing analysis;

3. to encourage the use of performance standards in all energy-using appliances, and in industrial, agricultural and commercial applications of energy-using apparatus and processes;

4. to encourage transportation modes and equipment which conserve the use of energy;

5. to foster, encourage and promote the prudent development and wise use of all indigenous state energy resources including, but not limited to, on-shore oil and natural gas, off-shore oil and natural gas, natural gas from Devonian shale formations, small head hydro, wood, solar, wind, solid waste, energy from biomass, fuel cells and cogeneration; and

6. to encourage a new ethic among its citizens to conserve rather than

waste precious fuels; and to foster public and private initiative to achieve these ends at the state and local levels.

* 7. to conduct energy planning in an integrated and comprehensive manner through development of a long-range energy master plan which shall provide the framework for energy related decisions made throughout the state.

* NB Expired January 1, 1984

§ 3-103. Conformance with state energy policy. Every agency of the state shall conduct its affairs so as to conform to the state energy policy expressed in this chapter.

ARTICLE 5

STATE ENERGY OFFICE; ORGANIZATION AND POWERS, FUNCTIONS AND DUTIES

Section 5-108. Purchase of passenger automobiles.

5-108-a. Energy efficient appliances.

5-111. State energy conservation plan.

5-113. Coordination with environmental conservation law.

5-117. Powers during energy or fuel emergency.

5-119. Violations; sanctions.

5-121. Reserved power of the governor.

5-127. New York state business energy conservation loan program.

§ 5-108. Purchase of passenger automobiles. a. The commissioner, in consultation with the commissioner of the office of general services, shall promulgate rules and regulations which shall require, at a minimum, that all passenger automobiles purchased by or for the state or any agency or public authority thereof, of which a majority of the members are appointed by the governor, in any fiscal year which commences on or after April first, nineteen hundred eighty-one, achieve an average fuel economy not less than the applicable average fuel economy standard established pursuant to the provisions of this section for the model year which includes January first of such fiscal year.

b. The commissioner, in consultation with the office of general services, shall be further authorized to establish minimum fuel economy standards for different classes of passenger automobiles, as appropriate, which shall be applicable to such vehicles purchased by or for the state or any agency or public authority thereof subject to the requirements of subdivision a of this section.

c. As used in this section:

(1) The term "passenger automobile" means any four wheeled vehicle propelled by fuel which is manufactured for use on public streets, roads and highways, which is rated at six thousand pounds gross vehicle weight or less, and which the commissioner determines by rule is manufactured primarily for use in the transportation of not more than ten individuals.

(2) The term "passenger automobile" shall not include police, fire, or other emergency vehicles, as defined by the commissioner, or snow removal, salt-spreader, and garbage disposal vehicles, or any vehicles which the commissioner determines, by regulation, should be excluded from being defined as "passenger vehicles".

(3) The term "average fuel economy" means the total number of passenger automobiles acquired in a fiscal year to which this section applies divided by a sum of terms, each term of which is a fraction created by dividing (i) the number of passenger automobiles so acquired of a given model type, by (ii) the rated fuel economy of such model type as determined and published by the federal agency with jurisdiction over the determination and publication of such fuel economy ratings during that fiscal year.

(4) The term "average fuel economy standard" means the average miles per gallon to be achieved in the operation of passenger automobiles manufactured in a particular model year and shall be as follows:

Model year	Fuel economy standard (miles per gallon)
1981	22.0
1982	24.0
1983	26.0
1984	27.0

1985	27.5
1991 and thereafter	29.0

§ 5-108-a. Energy efficient appliances. 1. The president of the New York state energy research and development authority, in consultation with the commissioner of the office of general services, shall promulgate minimum energy efficiency standards for appliances and energy using products purchased by or for the state or any agency thereof in accordance with the following schedule: by April first, two thousand two, fluorescent lamp ballasts, central air conditioners, room air conditioners, package terminal air conditioners and heat pumps; by October first, two thousand two, electric motors, refrigerators, freezers, refrigerator-freezers, water heaters, lamps and luminaries; and by April first, two thousand three, dishwashers, clothes washers, clothes dryers, furnaces, boilers and chillers. Additional minimum energy efficiency standards for appliances and energy using products may be added by the president of the New York state energy research and development authority, in consultation with the commissioner of the office of general services. Establishing minimum energy efficiency standards for appliances and energy using products shall be based on cost-effectiveness criteria and may be waived in the event that such appliances or products are not widely available, or for other reasons as determined by the president of the New York state energy research and development authority, in consultation with the commissioner of the office of general services. Such standards shall be designed to achieve cost effective savings to the maximum extent practicable, taking into account market availability.

2. New or replacement appliances or products purchased by or for the state or any agency thereof shall meet or exceed standards promulgated pursuant to this section, and all building designs or specifications for new construction or substantial renovation for any building owned or leased in whole by the state or any agency thereof shall incorporate appliances or products which meet or exceed such standards.

§ 5-111. State energy conservation plan. The office shall formulate and from time to time revise a state energy conservation plan to be submitted pursuant to the federal Energy Policy and Conservation Act of 1975 or any acts amendatory or supplemental thereto.

§ 5-113. Coordination with environmental conservation law. The office may review and comment in writing upon the statements of effects on the use and conservation of energy resources made pursuant to section 8-0109 of the environmental conservation law. Such written comment shall be made public.

§ 5-117. Powers during energy or fuel emergency. 1. Upon a finding and declaration by the governor that there exists or impends an energy or fuel supply emergency, which declaration shall state the governor's reasons for such finding, the commissioner shall be authorized, in addition to the powers and duties set forth elsewhere in this chapter, to the extent not in conflict with federal law, notwithstanding any state or local law or contractual agreement, to:

(a) Allocate available supplies of energy or energy resources among areas, users, persons or categories of persons or users. In allocating available supplies, the commissioner shall give priority to energy and energy resources use essential to public health and safety, and shall thereafter attempt to allocate the remaining supply equitably and in a manner designed to avoid undue hardship.

(b) Impose restrictions on any wasteful, inefficient, or non-essential use of energy or energy resources, and upon the promotion of such uses.

(c) Waive state and local environmental protection requirements to the extent necessary for emergency use of energy resources not meeting such requirements for a period of not more than thirty days; provided, however, that an additional thirty days may be granted for good cause. Only one such waiver and one extension thereof may be granted any facility within any six month period.

2. The powers granted to the commissioner pursuant to subdivision one of this section shall be in addition to and not in limitation of any

emergency powers now vested in the governor which the governor may choose to delegate to the commissioner.

3. In exercising the powers granted pursuant to subdivisions one and two of this section, the commissioner may supersede any emergency power heretofore vested in any other state agency.

4. No declaration of an energy or fuel supply emergency shall be deemed effective for a period in excess of six months, and no power exercised pursuant to this section shall be effective for a period in excess of six months, unless each house of the legislature shall consent to an extension for a specific period of time.

§ 5-119. Violations; sanctions. 1. Every person shall obey, observe and comply with the provisions of this chapter and with every order, rule or regulation issued or made pursuant to this chapter, so long as the same shall be and remain in force. Any person who violates any provision of this chapter or who fails, omits or neglects to obey, observe or comply with any order, rule or regulation issued pursuant to this chapter, either personally or through an agent or employee, shall forfeit to the people of the state of New York a civil penalty not to exceed one thousand dollars for each and every offense or three times the profit received from each violation, whichever is greater, except to the extent that a different civil penalty is specifically provided for by another provision of this chapter. Every violation pursuant thereto, shall be a separate and distinct offense, and, in the case of a continuing violation, every day's continuance thereof shall be a separate and distinct offense, except to the extent that another provision of this chapter specifically provides otherwise.

2. At the request of the commissioner, the attorney general may bring an action or special proceeding to recover a civil penalty provided for by this chapter in any court of competent jurisdiction in this state, in the name of the people of the state of New York, except where another provision of this chapter specifically provides for a different means of recovering such penalty. A penalty may be released or compromised, and

an action or proceeding to recover the same may be settled and discontinued, by the attorney general with the consent of the commissioner. In any action or proceeding pursuant to this section, all penalties incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action or proceeding shall not be a waiver of the right to recover any other penalty. All moneys recovered in any such action or proceeding, together with the costs thereof, shall be paid into the state treasury to the credit of the general fund.

3. Alternatively, or in addition to any action or special proceeding to recover a civil penalty provided for by this chapter, the attorney general, at the request of the commissioner, may bring an action or special proceeding in any court of competent jurisdiction to enjoin the violation of any provision of this chapter, or any order, rule or regulation issued pursuant to this chapter, and to seek other appropriate relief, including but not limited to abatement of the violation and restitution; provided, however, that to the extent that another provision of this chapter specifically provides for injunctive or other appropriate relief, its terms shall apply to such action or proceeding. Upon a proper showing, a temporary restraining order, a preliminary injunction, a permanent injunction and other appropriate relief shall be granted.

§ 5-121. Reserved power of the governor. Nothing contained in this chapter shall be construed to limit, curtail, abolish or terminate any function or power of the governor which he had prior to the effective date hereof.

§ 5-127. New York state business energy conservation loan program. 1. As used in this section, unless a different meaning clearly appears from the context, the term:

a. "Agri-business" shall mean (i) an individual, partnership or corporation involved in farm production which (1) has had twenty

thousand dollars or more in gross farm production related sales in the twelve-month period prior to the submission of a program application, or from which at least fifty percent of the applicant's income was derived during such period, or (2) if the applicant has not been in operation for the prior twelve-month period, certifies that sales are projected in excess of twenty thousand dollars, or at least fifty percent of the applicant's income is projected to be derived, from farm production during the next twelve-month period; or (ii) a business involved in food processing.

b. "Financing institution" shall mean and include all banks, trust companies, savings banks, savings and loan associations and credit unions, whether incorporated, chartered, organized or licensed under the laws of this state, any other state of the United States or the federal government.

This term may also include public authorities, public benefit corporations, units of local government, domestic insurance companies and not-for-profit corporations, which make loans for improvements for the benefit of eligible applicants.

c. "Eligible applicant" or "applicant" shall mean (i) a small to medium size business or a not-for-profit corporation that is a veteran's organization which employs less than five hundred workers or has gross annual sales of less than ten million dollars, or (ii) an agri-business, and which is the owner or which has a lease or management agreement extending beyond the loan term of a building located within the state for which an eligible energy conservation improvement is made, provided that the commissioner may qualify this definition by rule and regulation.

d. "Eligible energy conservation improvement" or "improvement" shall mean the construction, alteration, repair or improvement to a building or equipment affixed to, contained in or on the grounds of the building which reduces energy consumption provided that: (i) the cost of such improvement will be returned in savings in energy costs within a period of not less than one year nor more than ten years as identified in an

energy audit, (ii) work on such improvement commenced after submittal of an application under the program, and (iii) such construction, alteration, repair or improvement is permissible under federal requirements and court decisions applicable to overcharge funds appropriated to this program.

e. "Energy audit" shall mean a process which identifies and specifies the energy and cost savings which are likely to be realized by an eligible energy conservation improvement.

f. "Loan" or "program loan" shall mean a loan from a financing institution pursuant to an agreement with the office as part of the New York state business energy conservation loan program.

g. "Program" shall mean the New York state business energy conservation loan program.

h. "Region" shall mean one or more of the following named areas comprised of the counties indicated:

(1) Buffalo-Rochester: Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Seneca, Wayne, Wyoming and Yates counties;

(2) Syracuse-Southern Tier: Allegany, Broome, Cayuga, Chemung, Chenango, Cortland, Delaware, Madison, Onondaga, Oswego, Otsego, Schuyler, Steuben, Tioga and Tompkins counties;

(3) Central-Northern: Albany, Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Montgomery, Oneida, Rensselaer, Saratoga, Schenectady, Schoharie, St. Lawrence, Warren and Washington counties;

(4) Westchester-Mid-Hudson: Columbia, Dutchess, Greene, Orange, Putnam, Rockland, Sullivan, Ulster and Westchester counties;

(5) Long Island: Nassau and Suffolk counties;

(6) New York City: the five counties comprising the city of New York.

2. The commissioner is hereby authorized and directed to establish the New York state business energy conservation loan program. The program shall facilitate below market interest rate loans by financing

institutions within the state for eligible energy conservation improvements made to eligible applicants as hereinafter provided.

3. The commissioner may enter into cooperative agreements with financing institutions within the state for the financing with the institution's own assets of eligible energy conservation improvements by eligible applicants at a rate that is at least twenty-five percent below the prime interest rate. Such interest rate shall initially be five percent. The commissioner shall agree to utilize such funds as are appropriated to this program and the earnings produced on such funds to underwrite interest subsidies on loans made to eligible applicants, if not inconsistent with federal requirements and court decisions directing the payment of petroleum overcharge funds to the state. Such agreements shall provide that: (i) the maximum loan per applicant shall be five hundred thousand dollars, except that the commissioner may increase the maximum loan amount up to one million dollars for specific types of improvements by rule and regulation, (ii) the duration of the loan shall not to exceed ten years, (iii) program loans shall be made only after an application has been made to the office, the office has approved the technical merits of the proposed improvement and the office has notified the financing institution of its approval and the amount of interest reduction upon the loan to be funded pursuant to such agreement, and (iv) loan agreements with program applicants shall provide for a post installation inspection, as deemed necessary by the office.

4. The commissioner shall apportion the moneys appropriated for this program for the purpose of providing interest subsidies to applicants within each of the six regions of the state identified in paragraph g of subdivision one of this section based on the ratio, calculated by the commissioner, which reflects:

a. the volume of refined petroleum products consumed within that region during the period beginning September first, nineteen hundred seventy-three, and ending January twenty-eighth, nineteen hundred eighty-one, compared to

b. the volume of refined petroleum products consumed within the six

regions during such period.

Such calculation shall be made by the commissioner upon estimates determined by him in reliance upon reasonably available information.

The commissioner may reapportion the funds available for interest subsidies for applicants within any region under this subdivision for use in one or more of the other regions upon finding that participation in the program within the former region would not be adversely affected, and that there exists in the latter region or regions inadequate funds to satisfy the demand for program participation. In any fiscal year of the state, the amount of funds available to applicants within any region may be reduced by not more than twenty-five percent of the total amount apportioned for such region. A copy of the commissioner's finding shall be given to the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

5. In addition to the authority granted under subdivision three of this section, the commissioner shall be authorized to utilize monies appropriated to this program for the purpose of providing loan guaranties and principal reductions for eligible applicants, if such uses are permissible under the conditions applicable to the appropriated overcharge funds. Principal reductions shall be limited to the amount of the interest subsidy which would otherwise be available to an eligible applicant under subdivision three of this section.

6. In implementing the program, the commissioner is authorized to take such action as he deems necessary and appropriate which may include but not be limited to the promulgation of rules and regulations formulated after consultation with the energy research and development authority, the department of commerce and the department of financial services. Such rules and regulations may include but not be limited to requirements for applications and supporting materials and criteria for the selection of cooperating financing institutions.

ARTICLE 6

ENERGY PLANNING

Section 6-102. State energy planning board.

6-104. State energy plan.

6-106. Conduct of the state energy planning proceeding.

6-108. Supplemental studies for future energy planning.

§ 6-102. State energy planning board. 1. There shall be established a state energy planning board, hereinafter referred to as the "board", which shall consist of the chair of the public service commission, the commissioner of environmental conservation, the chief executive officer of the New York power authority, the commissioner of economic development, the commissioner of transportation, the commissioner of labor, the commissioner of the division of homeland security and emergency services, the commissioner of agriculture and markets, the commissioner of health, the secretary of state and the president of the New York state energy research and development authority. The governor, the speaker of the assembly and the temporary president of the senate shall each appoint one additional representative to serve on the board; in addition, the secretary of state shall appoint, from the utility intervention unit with the consumer protection division established in section ninety-four-a of the executive law, an additional person to serve on the board. The presiding officer of the federally designated electric bulk system operator (BSO) shall serve as a non-voting member of the board. Any decision or action by the board shall be by majority vote. The president of the New York state energy research and development authority shall serve as chair of the board. Members of the board may designate an executive staff representative to participate on the board on their behalf.

2. Regional planning councils shall be established. Two regions shall be established as follows:

(a) Downstate region - New York City and Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, Ulster and Westchester counties;

(b) Upstate region - Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer,

Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Tompkins, Warren, Washington, Wayne, Wyoming and Yates counties.

The governor, temporary president of the senate and the speaker of the assembly shall each appoint three regional planning council members per region. Regional planning council members shall serve without compensation, and shall have their principal residence within the region for which they are appointed. Such regional council members may solicit input from stakeholder interests within their region, including but not limited to local governments, municipal utilities, rural electric cooperatives, utilities, labor unions, ratepayers, businesses, trade associations, generators, and community organizations. Each regional planning council shall transmit to the board a report containing any recommendations specific to its region on a schedule determined by the board to be appropriate for consideration of such report in the development of the draft energy plan.

3. Staff services shall be performed by personnel of the department of public service, the department of environmental conservation, the New York power authority, the department of transportation, the department of economic development, the division of homeland security and emergency services and the New York state energy research and development authority, as directed by the board. Assistance shall also be made available, as requested by the board, from other agencies, departments and public authorities of the state. The board may provide for its own representation in all actions or proceedings in which it is a party.

4. The board shall have the powers: (a) to adopt a state energy plan in accordance with the provisions of this article;

(b) to adopt rules and regulations as necessary or appropriate to implement this article;

(c) to issue subpoenas and subpoenas duces tecum; and

(d) to authorize any person to conduct hearings which the board is authorized to conduct, to take testimony with respect to the subject or

matter under investigation, and to report the testimony to the board. In the conduct of such hearings, any person so authorized by the board shall have all the powers of the board.

5. The board shall in the consideration and development of policies, programs, and other actions, be guided by the goals of: improving the reliability of the state's energy systems; insulating consumers from volatility in market prices; reducing the overall cost of energy in the state; and minimizing public health and environmental impacts, in particular, environmental impacts related to climate change. Each energy plan shall also identify policies and programs designed to maximize cost-effective energy efficiency and conservation activities to meet projected demand growth.

(a) The board shall identify the most appropriate state agency or authority with the responsibility for implementing or overseeing such prioritized policies and programs.

(b) Each agency or authority charged with implementing a specific policy or program in the energy plan shall report to the board annually regarding the original goal of such policy or program, steps that have been taken to implement such policy or program, progress in attaining goals, adjustments to the program or goals and reasons why adjustments are needed, and anticipated date of completion.

(c) The board shall use such progress reports in the completion of each subsequent energy plan and in each of the required biennial reports as stated in section 6-106 of this article.

6. The board shall require any contractor or subcontractor awarded a contract pursuant to the provisions of this article to comply, and otherwise exercise all of its responsibilities and conduct all of its activities consistent with the provisions of article fifteen-A of the executive law with regards to the utilization and participation of certified minority and women-owned business enterprises.

§ 6-104. State energy plan. 1. The board shall adopt a state energy plan in accordance with the provisions of this article.

2. The state energy plan shall include: (a) forecasts for a minimum period of ten years, and for such other periods as the board may determine, of: (i) demand for electricity, natural gas, coal, petroleum products, including heating and transportation fuels, and alternate fuels, including ethanol and other biofuels, to the extent possible, taking into account energy conservation, load management and other demand-reducing measures which can be achieved in a cost-effective manner, including the basis for such projection, including an examination of possible alternate levels of demand and discussion of the forecasting methodologies and input variables used in making the forecasts;

(ii) energy supply requirements needed to satisfy demand for electricity, natural gas, coal, petroleum products, including heating and transportation fuels, and alternate energy sources and fuels, for each region of the state, and for the state as a whole, including with respect to electricity, the amount of capacity needed to provide adequate reserve margins and capacity needed to ensure reliability and competitive markets in the various regions of the state;

(iii) an assessment of the ability of the existing energy supply sources and the existing transmission or fuel transportation systems, to satisfy, together with those sources or systems reasonably certain to be available, such energy supply requirements, indicating planned additions, retirements, deratings, substantial planned outages, and any other expected changes in levels of generating and production capacity;

(iv) additional electric capacity and/or transmission or fuel transportation systems needed to meet such energy supply requirements that will not be met by existing sources of supply and those reasonably certain to be available, where such analysis should identify system constraints and possible alternatives available, both supply-side and demand-side alternatives, including but not limited to distributed generation, energy efficiency and conservation measures, to redress such constraint; and

(v) projected greenhouse emissions.

(b) Identification and assessment of the costs, risks, benefits, uncertainties and market potential of energy supply source alternatives, including demand-reducing measures, renewable energy resources of electric generation, distributed generation technologies, cogeneration

technologies, biofuels and other methods and technologies reasonably available for satisfying energy supply requirements which are not reasonably certain to be met by the energy supply sources identified in paragraph (a) of this subdivision, provided that such analysis shall include the factors identified in paragraph (d) of this subdivision;

(c) Identification and analysis of emerging trends related to energy supply, price and demand, including trends related to the transportation sector;

(d) An assessment of current energy policies and programs, and their contributions to achieving long-range energy planning objectives including, but not limited to, the least cost integration of energy supply sources, energy transportation and distribution system and demand-reducing measures for satisfying energy supply requirements, giving due regard to such factors as required capital investments, cost, ratepayer impacts, security and diversity of fuel supplies and generating modes, protection of public health and safety, adverse and beneficial environmental impacts, conservation of energy and energy resources, the ability of the state to compete economically, and any other policy objectives deemed appropriate;

(e) In order to assist the board in such evaluation, the power authority of the state of New York and the Long Island power authority shall individually submit to the planning board: (i) a strategic plan specifying the mission and goals of the authority, the policies and programs utilized to fulfill such mission and goals, and an explanation of how such policies and programs relate to the state energy plan, (ii) an annual five-year operating plan, and (iii) a ten-year projected capital budget for their respective operations. Such plans shall include major new capital and programmatic initiatives, as well as descriptions and achievements of existing programs, including program objectives and the numbers of clients and/or customers served for each service or program;

(f) An analysis of security issues, considering both natural and human threats to the state's energy systems;

(g) An environmental justice analysis;

(h) An assessment of the ability of urban planning alternative, including but not limited to smart growth and mass transportation improvements to reduce energy and transportation fuel demand;

(i) An inventory of greenhouse gas emissions, and strategies for facilitating and accelerating the use of low carbon energy sources and/or carbon mitigation measures;

(j) Recommendations, as appropriate and desirable, for administrative and legislative actions to implement such policies, objectives and strategies;

(k) Assessment of the impacts of implementation of the plan upon economic development, health, safety and welfare, environmental quality, and energy costs for consumers, specifically low-income consumers; and

(l) Such additional information as the board deems appropriate, such as but not limited to, information developed from consultation with the BSO.

3. The elements of the state energy plan as enumerated in subdivision two of this section shall be provided on a statewide basis, and as determined feasible and necessary by the board, for the two regions described in subdivision two of section 6-102 of this article.

4. In the development of the state energy plan the board shall, to the extent practicable, take cognizance of any comprehensive reliability planning process undertaken by the BSO.

5. (a) The state energy plan shall provide guidance for energy-related decisions to be made by the public and private sectors within the state.

(b) Any energy-related action or decision of a state agency, board, commission or authority shall be reasonably consistent with the forecasts and the policies and long-range energy planning objectives and strategies contained in the plan, including its most recent update; provided, however, that any such action or decision which is not reasonably consistent with the plan shall be deemed in compliance with this section, provided that such action or decision includes a finding that the relevant provisions of the plan are no longer reasonable or probable based on a material and substantial change in fact or circumstance, and a statement explaining the basis for this finding.

(c) Nothing in this section shall limit the authority of any state agency, board, commission or authority to deny an application to construct, operate or modify an energy facility on environmental or

public health and safety grounds, or that alternate means of energy procurement or alternate location for an energy facility can be secured.

(d) A state agency, board, commission or authority may take official notice of the most recent final state energy plan adopted by the board prior to any final energy-related decision by such agency, board, commission or authority.

§ 6-106. Conduct of the state energy planning proceeding. 1. Every four years, the board shall adopt a state energy plan, which addresses each item identified in subdivision two of section 6-104 of this article provided, however, the board may adopt such a plan more frequently for good cause shown. The board shall prepare biennial reports, every second year following the issuance of the final state energy plan, including a discussion and evaluation of the ability of the state and private markets to implement the policies, programs, and other recommendations as found in the state energy plan, and recommendations for new or amended policies as needed to continue successful movement towards implementation and realization of such policies and programs.

2. The board shall conduct a state energy planning proceeding, consistent with the need to develop the plan in a timely manner, which shall provide for the following at a minimum:

(a) The filing of information by energy suppliers as specified in subdivision three of this section;

(b) The preparation and issuance of a draft plan, subsequent to the filing of information as specified in subdivision three of this section, which shall address each item identified in subdivision two of section 6-104 of this article;

(c) Public comment hearings, with at least three in each region described in subdivision two of section 6-102 of this article and provide an opportunity to submit written comments, subsequent to the issuance of a draft plan, to obtain views and comments of interested persons on any aspect of, or issue addressed in, such draft plan;

(d) Evidentiary hearings may be held, at the discretion of the board, in response to a written request by an interested person or persons seeking to provide evidentiary material or data subsequent to the

issuance of a draft plan, on issues identified in subdivision two of section 6-104 of this article; and

(e) Submission of a notice for any hearing or opportunity for comment provided for pursuant to this subdivision for publication within the state register.

3. As determined by the board in each instance to be appropriate with respect to the particular entity or entities from which information, if any, shall be required, the information to be provided to the board by energy transmission and distribution companies, electric, gas, or steam corporations, major energy suppliers including owners or operators of electric generation facilities, commodity and/or end-use energy service providers, state agencies or authorities, including the power authority of the state of New York and the Long Island power authority, and/or others, shall include the following:

(a) Comprehensive long-range plans for future operations:

(i) a forecast of electricity demands over a period as the board may determine appropriate, including annual in-state electric energy sales and summer and winter peak loads by utility service area where applicable, and total any annual in-state electric energy sales and coincident peak load, specifically identifying the extent to which energy conservation, load management and other demand-reducing measures, and electric energy generated by cogeneration, small hydro and alternate energy production facilities, including renewable energy technologies and fuel cells, consumed on site, have been incorporated within such forecast;

(ii) a forecast of electricity supply requirements over a period as the board may determine appropriate, by utility service area where applicable, specifically identifying the reserve margins required for reliable electric service, the transmission and distribution losses assumed, and the amount of out-of-state sales commitments;

(iii) an assessment of the ability of existing electricity supply sources, and those reasonably certain to be available, to satisfy electricity supply requirements, including electric generating facilities which can be retained in service beyond their original design life through routine maintenance and repairs;

(iv) an inventory of: (A) all existing electric generating and

transmission facilities including those owned or operated by the power authority of the state of New York and the Long Island power authority; (B) electric generating and transmission facilities planned or under construction including the power authority of the state of New York and the Long Island power authority, including the dates for completion and operation; (C) the anticipated retirement dates for any electric generating facilities currently operated including those owned or operated by the power authority of the state of New York and the Long Island power authority; (D) land owned or leased including that owned or leased by the power authority of the state of New York and the Long Island power authority and held for future use as sites for major electric generating facilities; and (E) electric generating, transmission, and related facilities operated, or planned to be operated, by others, to the extent information concerning the same is known;

(v) recommended supply additions and demand reducing measures for satisfying the electricity supply requirements, not reasonably certain to be met by electricity supply sources identified in subparagraph (iii) of this paragraph, including the life extension of existing electric generating facilities, and reasons therefor;

(vi) a statement of research and development plans, including objectives and programs in the areas of energy conservation, load management, electric generation and transmission, new energy technologies and pollution abatement and control, which are not funded through regulatory required programs, recent results of such programs undertaken or funded to date, and an assessment of the potential impacts of such results;

(vii) a projection of estimated electricity prices to consumers over the forecast period, and a sensitivity analysis of that forecast relating to a number of factors including fuel prices and the levels of available capacity and demand in the regions of the state;

(viii) a description of the load forecasting methodology and the assumptions and data used in the preparation of the forecasts, specifically including projections of demographic and economic activity and such other factors, statewide and by service area, which may influence electricity demand, and the bases for such projections;

(ix) proposed policies, objectives and strategies for meeting the

state's future electricity needs; and

(x) such additional information as the board may, by regulation, require to carry out the purposes of this article.

(b) All providers of natural gas transmission, distribution and/or marketing services to customers shall individually prepare and submit a comprehensive long-range plan for future operations, which shall include, as appropriate:

(i) a forecast over a period as the board may determine appropriate, by utility service area, of estimated annual in-state gas sales, winter season sales and peak day sales by appropriate end-use classifications, specifically identifying the extent to which energy conservation measures and the sale of gas owned by persons other than natural gas transmission and distribution utilities have been incorporated within such forecast;

(ii) a forecast of gas supply requirements over a period as the board may determine appropriate, by utility service area, specifically identifying the amounts of gas needed to meet severe weather conditions, lost and unaccounted for gas, out-of-state sales commitments and internal use;

(iii) an assessment of the ability of existing gas supply sources, and those reasonably certain to be available, to satisfy gas supply requirements;

(iv) an inventory of: (A) all existing supply sources, storage facilities, and transmission facilities which are used in providing service within the state, (B) the transmission and storage facilities under construction which would be used in providing service within the state, their projected costs and capacities, including peaking capacity, (C) transmission facility additions proposed to be constructed by natural gas transmission and distribution utilities, (D) transmission facilities operated, or planned to be operated, by others, to the extent information concerning the same is known;

(v) recommended supply additions and demand-reducing measures for satisfying the gas supply requirements, not reasonably certain to be met by gas supply sources identified in subparagraph (iii) of this paragraph and the reasons therefor;

(vi) a projection of estimated gas prices to consumers over the forecast period, and a sensitivity analysis of that forecast relating to

a number of factors including the levels of commodity supply availability, of available pipeline and storage capacity, and of demand in the regions of the state;

(vii) a description of the load forecasting methodology and the assumptions and data used in the preparation of the forecasts, specifically including projections of demographic and economic activity and such other factors, statewide and by service area where applicable, which may influence demand for natural gas, and the bases for such projections;

(viii) a statement of research and development plans, including objectives and programs in the areas of energy conservation and new energy technologies, recent results of such programs undertaken or funded to date, and an assessment of the potential impacts of such results;

(ix) proposed policies, objectives and strategies for meeting the state's future gas needs; and

(x) such additional information as the board may, by regulation, require to carry out the purposes of this article.

(c) Such information from major petroleum suppliers and major coal suppliers as the board may require to carry out the purposes of this article.

(d) Such other information from owners and operators of electric generating power plants as the board may require to carry out the purposes of this article.

(e) A single comprehensive submission from industry groups, trade associations, or combinations of such groups and associations in place of submissions by individual member companies.

4. Any information filed under this section that is claimed to be confidential shall be treated in accordance with regulations adopted by the board pertaining to the determination of confidential status and the retention of confidential records.

5. Copies of the draft plan, and all non-confidential information and comments filed pursuant to this section shall be made available to the public for inspection.

6. The board may amend the state energy plan, or aspects thereof, upon its own initiative or upon the written application of any interested person. In connection with any such amendment, the board may require the filing of such information as may be required, consistent with regulation. Prior to adopting any proposed amendment to an element of the plan identified in subdivision two of section 6-104 of this article, the board shall hold public comment hearings and may hold evidentiary hearings upon the written application of an interested party. Prior to adopting a proposed amendment to any element of the plan, the board shall prepare and publish in the state register notice of any draft amendment and reasons therefor and shall solicit public comments thereon. The board shall adopt an amendment to the state energy plan, or aspects thereof, upon a finding by the board that there has been a material and substantial change in fact or circumstance since the most recent plan was adopted. A decision of the board that no amendment is necessary, together with the reasons supporting such determination, shall be final.

* 7. Any person who participated in the state energy planning proceeding or any person who sought an amendment of the state energy plan pursuant to subdivision six of this section, may obtain, pursuant to article seventy-eight of the civil practice law and rules, judicial review of the board's decision adopting a plan, or any amendment thereto, or of the board's decision not to amend such plan pursuant to subdivision six of this section. Any such special proceeding shall be brought in the appellate division of the supreme court of the state of New York for the third judicial department. Such proceeding shall be initiated by the filing of a petition in such court within thirty days after the issuance of a decision by the board. The proceeding shall have a lawful preference over any other matter, shall be heard on an expedited basis and shall be completed in all respects, including any subsequent appeal, within one hundred eighty days of the filing of the petition. Where more than one such petition is filed, the court may provide for consolidation of the proceedings. Notwithstanding the provisions of articles seven and eight of the public service law, the procedure set forth in this section shall constitute the exclusive means for seeking judicial review of any element of the plan.

* NB Effective until December 31, 2040

* 7. Any person who participated in the state energy planning proceeding or any person who sought an amendment of the state energy plan pursuant to subdivision six of this section, may obtain, pursuant to article seventy-eight of the civil practice law and rules, judicial review of the board's decision adopting a plan, or any amendment thereto, or of the board's decision not to amend such plan pursuant to subdivision six of this section. Any such special proceeding shall be brought in the appellate division of the supreme court of the state of New York for the third judicial department. Such proceeding shall be initiated by the filing of a petition in such court within thirty days after the issuance of a decision by the board. The proceeding shall have a lawful preference over any other matter, shall be heard on an expedited basis and shall be completed in all respects, including any subsequent appeal, within one hundred eighty days of the filing of the petition. Where more than one such petition is filed, the court may provide for consolidation of the proceedings. Notwithstanding the provisions of article seven of the public service law, the procedure set forth in this section shall constitute the exclusive means for seeking judicial review of any element of the plan.

* NB Effective December 31, 2040

8. Proceedings conducted pursuant to this section shall not be considered part of an adjudicatory proceeding as defined in subdivision three of section one hundred two of the state administrative procedure act, or part of a rule making proceeding held under subdivision one of section two hundred two of the state administrative procedure act.

§ 6-108. Supplemental studies for future energy planning. The board shall undertake the following studies to supplement information for future energy planning:

1. On or before September first, two thousand twelve, and every four years thereafter, the board shall undertake a study of the overall reliability of the state's electric transmission and distribution system. The board may contract with an independent and competitively selected contractor to undertake such study. The board shall prepare a

report on such study's findings and legislative recommendations. The board shall transmit such report along with the reliability study to the governor, the speaker of the assembly, the temporary president of the senate, the chair of the assembly energy committee, and the chair of the senate energy and telecommunications committee.

2. Such study shall include, at a minimum, an assessment of each of the following:

(a) the current and projected reliability of the electric power system over the term of the planning period, with specific focus on transmission systems and distribution systems within the state. The assessment shall examine: (i) investment in infrastructure, including capital improvements, expansions, and maintenance; and (ii) workforce utilization.

(b) the potential impact of the following on distribution system reliability and on each factor enumerated in paragraph (a) of this subdivision: (i) distributed electric generation, especially generation using renewable or innovative energy resources; (ii) energy conservation and efficiency; (iii) load control and peak saving measures; (iv) corporate reorganization of electric utilities; (v) performance ratemaking, multi-year rate agreements, and other departures from traditional regulatory mechanisms; and (vi) large scale industrial development.

(c) the potential impact of the following on transmission system reliability: (i) each factor enumerated in paragraph (b) of this subdivision; (ii) changes in protocols for electricity dispatched through the BSO or its successor or successors; (iii) accommodation of proposed new electric generation facilities or repowering or life extension of existing facilities; and (iv) the market-driven nature of decisions to build, size, and locate such facilities.

3. The board and any contractors it may retain for such purposes shall consult with entities that have resources and expertise to assist in such study, including, but not limited to, the BSO, public utilities, and any other electric company or trade organizations.

(a) The Long Island power authority, the power authority of the state of New York, the department of public service, and the BSO shall

cooperate with the board and its contractor.

(b) The Long Island power authority and the power authority of the state of New York are authorized, as deemed feasible and advisable by their respective boards, to make a voluntary contribution toward the study.

ARTICLE 7

TRANSFER OF FUNCTIONS

Section 7-101. Transfer of functions of the atomic energy council.

7-103. Transitional provisions.

§ 7-101. Transfer of functions of the atomic energy council. All the functions and powers possessed by and all the obligations and duties of the atomic energy council, created and established in the commerce law pursuant to and by chapter nine hundred forty-seven of the laws of nineteen hundred sixty-eight, which council is hereby abolished, are hereby transferred and assigned to, assumed by and devolved upon the state energy office.

§ 7-103. Transitional provisions. 1. Upon the transfer of functions pursuant to this article within the state fiscal year within which this act shall take effect, provision shall be made for the transfer to the state energy office of employees of all directly affected state agencies whom the commissioner determines to be required by the office, subject to the approval of the director of budget. Employees so transferred shall be transferred without further examination or qualification and shall retain their respective civil service classifications and status until or unless reclassified or reallocated. For the purpose of determining the employees holding permanent appointments in competitive class positions to be transferred, such employees shall be selected in each class of positions in the order of their original appointment, with due regard to the right of preference in retention of disabled and nondisabled veterans. Any such employee who, at the time of such transfer, has a temporary or provisional appointment shall be

transferred subject to the same right of removal, examination or termination as though such transfer had not been made. Employees holding permanent appointments in competitive class positions who are not transferred pursuant to this section shall have their names entered upon an appropriate preferred list for reinstatement pursuant to the civil service law.

2. The directors and officers of state agencies, the functions, powers, duties and obligations of which are transferred by this chapter shall deliver to the state energy office all books, papers, records and property of such agencies, and of the directors and officers thereof pertaining to the functions herein transferred.

3. For the purpose of succession to all functions, powers, duties and obligations of state agencies, or directors and officers thereof, transferred and assigned to, devolved upon and assumed by the state energy office, such office shall be deemed and held to constitute the continuation of such agencies and not a different agency or authority.

4. Any business or other matter undertaken or commenced by any agency or the officers and directors thereof, pertaining to or connected with the functions, powers, obligations and duties hereby transferred and assigned, and pending on the effective date of this chapter, may be conducted and completed by the state energy office in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by such agencies, directors and officers thereof.

5. All rules, regulations, acts, determinations and decisions of all agencies and directors and officers thereof, pertaining to the functions transferred and assigned by this chapter to the state energy office in force at the time of such transfer, assignment, assumption or devolution shall continue in force and effect as rules, regulations, acts, determinations and decisions of the state energy office until duly modified or repealed.

6. Whenever any agencies or directors and officers thereof, the

functions, powers obligations and duties of which are transferred by this chapter to the state energy office are referred to or designated in any law, contract or document pertaining to the functions, powers, obligations and duties hereby transferred and assigned, such reference or designation shall be deemed to refer to the state energy office.

7. No existing right or remedy of any character shall be lost, impaired or affected by reason of this chapter.

8. No action or proceeding pending at the time when this chapter shall take effect, brought by or against any agencies or directors and officers thereof, the functions, powers, obligations and duties of which are transferred by this chapter to the state energy office shall be affected by any provisions of this chapter, but the same may be prosecuted or defended in the name of the state energy office. In all such actions and proceedings, the state energy office, upon application to the court, shall be substituted as a party.

9. All appropriations or reappropriations heretofore made to any agency for the functions and purposes herein transferred to the state energy office by this chapter, segregated pursuant to law, or for employees transferred pursuant to this chapter, to the extent of remaining unexpended or unencumbered balances thereof, whether allocated or unallocated and whether obligated or unobligated, are hereby transferred to and made available for use and expenditure by the state energy office subject to the approval of the director of the budget for the same purposes for which originally appropriated or reappropriated and shall be payable on vouchers certified or approved by the commissioner on audit and warrant of the comptroller. Payments for liabilities for expenses of personal service, maintenance and operation heretofore incurred by such agencies, in connection with the functions herein transferred, shall also be made on vouchers or certificates approved by the commissioner on audit and warrant of the comptroller.

ARTICLE 8

STATE LIGHTING EFFICIENCY STANDARDS FOR EXISTING

PUBLIC BUILDINGS ACT

Section 8-101. Purpose.

8-102. Definitions.

8-103. Application.

8-104. State lighting efficiency standards for existing public buildings.

8-105. Limitation of application.

8-106. Administration and enforcement.

8-107. Municipal regulations.

§ 8-101. Purpose. In furtherance of the policy set forth in subdivision two of section 3-101 of this chapter, the legislature hereby directs that state lighting efficiency standards for existing buildings be promulgated to protect the health, safety, security and welfare of the people of the state, to conserve energy by ways including eliminating wasteful artificial night lighting and to reduce public expenditure for energy; and that such standards ensure that economically reasonable energy conservation techniques be used in the lighting of all such buildings in the state. It is a further purpose of this article to encourage, assist and promote compliance with such standards by the owners and lessors of such buildings.

§ 8-102. Definitions. For the purposes of this article, the following words and phrases shall have the following meanings unless a different meaning is plainly required by the context:

1. "Municipality." Any county, city, town, village, school district, district corporation, public authority or the port authority of New York and New Jersey to the extent its facilities are located within the state of New York.

2. "Existing buildings." Any building, other than a residence or apartment building, whose operation requires on the average in excess of 5000 kwh of electricity per month for lighting purposes in any twelve month period and which was in existence or under construction, or for

which an application for a building permit was made and plans filed in this state on or before January first, nineteen hundred seventy-nine.

3. "Standards." The state lighting efficiency standards for existing buildings provided for in this article, or any portion thereof, any modification of or amendments thereto.

§ 8-103. Application. On or before April first, nineteen hundred eighty, the commissioner shall promulgate, and thereafter may amend from time to time, standards relating to the lighting of all existing buildings, or classes of such buildings, for purposes of minimizing the consumption of energy and providing for the efficient utilization of the energy expended for lighting in the use and occupancy of such buildings. Such standards shall be cost effective and shall not impair the health and safety of the occupants of the property. The standards shall be deemed cost effective if the cost of implementing them would be equal to or less than the present value of energy and maintenance savings that would be expected over a seven-year period in a building to which the standards are applicable.

§ 8-104. State lighting efficiency standards for existing public buildings. In addition to meeting the purposes set forth in section 8-101 of this article, the standards shall be designed to satisfy the following specific criteria:

1. The standards, so far as may be practicable, shall be formulated in terms of performance objectives.

2. The standards, so far as may be practicable, shall further the improvement of energy conservation lighting practices, methods, equipment, materials and techniques.

3. The standards shall encourage economically reasonable energy conserving lighting techniques to be used in the lighting of all existing buildings.

4. The standards shall provide reasonable uniform standards and requirements for lighting and lighting materials for the improvement in efficiency of lighting systems.

§ 8-105. Limitation of application. Notwithstanding the provisions of subdivision one of section 8-103 of this article, the commissioner may limit by regulation the application of any standards so as to include or exclude classes or types of buildings, according to the use thereof, or according to any other distinction as may make differentiation of separate classification or regulation necessary, proper or desirable, so long as such limitations of the application of the standards are consistent with the purposes of this article, as set forth in section 8-101 of this article, and the criteria set forth in section 8-104 of this article.

§ 8-106. Administration and enforcement. 1. With respect to existing buildings owned by the state, this article shall be administered by the commissioner and the standards enforced by the office of general services in accordance with procedures to be developed by the commissioner after consultation with the commissioner of the office of general services. The commissioner may request any department, division, board, bureau, commission, or other state agency to provide such information, data and assistance as is necessary to enable the commissioner to effectuate the purposes of this article, and such departments, divisions, boards, bureaus, commissions and other state agencies are authorized to provide, to the extent feasible, such information, data and assistance.

2. With respect to existing buildings owned by any municipality, the administration and enforcement of the standards shall be the responsibility of such municipality and the manner of such administration and enforcement shall be prescribed by local law or ordinance or by order or resolution of the governing body of any such municipality.

3. a. With respect to all other existing buildings, the administration and enforcement of the standards shall be the responsibility of the office, provided, however, that the commissioner may enter into an agreement with any city, town or village delegating all or part of such responsibility. On or before April first, nineteen hundred eighty, the office shall adopt regulations providing for the administration and enforcement of such standards as well as providing for the wide dissemination of such standards to the general public. Such regulations shall include a requirement that the owner of record of an existing building or a real estate management company responsible for the management and operation of any such building or the tenant or tenants of leased premises in any such building, submit sworn statements to the office, or where applicable, to such a city, town or village, certifying that the building or leased premises are in full compliance with the standards, or alternatively, that the building or leased premises will be in such compliance on or before October first, nineteen hundred eighty-one.

b. Any person who knowingly fails to submit such a certification statement as required by this subdivision or the regulations adopted hereunder or who knowingly fails to bring such a building or leased premises into compliance with the standards by October first, nineteen hundred eighty-one, shall be liable for a civil penalty of up to one thousand dollars. The attorney general is hereby authorized to commence an action or special proceeding in any court of competent jurisdiction in the state in the name of the people of the state to recover any such penalty, or for injunctive relief to compel compliance with the standards, when requested to do so by the commissioner. All monies recovered in any such action or special proceeding, together with the costs thereof shall be paid into the state treasury to the credit of the general fund. Any such action or proceeding may be compromised or discontinued on application of the commissioner upon such terms as the court shall approve and order.

4. Where the commissioner has entered into an agreement with any city, town or village, delegating all or part of the office's responsibility

for the administration and enforcement of the standards, any officer or department designated by a local law or ordinance of any such city, town or village shall have power to conduct investigations regarding the compliance with the provisions of this subdivision and to institute an action or special proceeding in any court of competent jurisdiction to enjoin any violation of this subdivision and to recover the penalty specified. All monies recovered in any such action or special proceeding together with the costs thereof, shall be paid to the treasurer of any such city, town or village and be available for any lawful city, town or village purpose.

§ 8-107. Municipal regulations. 1. Nothing in this article shall be construed as abrogating or impairing the power of any municipality to enforce the provisions of any local building regulations pertaining to lighting standards in existing buildings, provided that such provisions are not inconsistent with the standards.

2. Any municipality which adopts local lighting efficiency standards for existing buildings in accordance with this section shall file a copy of such standards and any amendments or revisions thereof with the commissioner within thirty days after promulgation or adoption of such standards, amendments or revisions. The failure to comply with the provisions of this subdivision shall not impair or otherwise affect the validity of such local standards or amendments or revisions thereof.

ARTICLE 9

ENERGY PERFORMANCE CONTRACTS IN CONNECTION WITH PUBLIC BUILDINGS AND FACILITIES

Section 9-101. Purpose.

9-102. Definitions.

9-103. Energy performance contracts.

§ 9-101. Purpose. The purpose of this article is to obtain long-term energy and cost savings for agencies and municipalities by facilitating

prompt incorporation of energy conservation improvements or energy production equipment, or both, in connection with buildings or facilities owned, operated or under the supervision and control of agencies or municipalities, in cooperation with providers of such services and associated materials from the private sector. Such arrangements will improve and protect the health, safety, security, and welfare of the people of the state by promoting energy conservation and independence, developing alternate sources of energy, and fostering business activity.

§ 9-102. Definitions. For the purposes of this article, the following words and phrases shall have the following meanings unless a different meaning is plainly required by the context.

1. "Agency" means any state department, agency, board, commission, office, or division.

2. "Municipality" means a municipal corporation, as defined in section two of the general municipal law, school district, board of cooperative educational services, fire district, district corporation or special improvement district governed by a separate board of commissioners.

3. "Public authority" means any public authority, public benefit corporation, or the port authority of New York and New Jersey, to the extent its facilities are located within the state of New York.

4. "Energy performance contract" means an agreement for the provision of energy services, including but not limited to electricity, heating, ventilation, cooling, steam or hot water, in which a person agrees to install, maintain or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a building or facility in exchange for a portion of the energy savings or revenues.

§ 9-103. Energy performance contracts. 1. Notwithstanding any other provision of law, any agency, municipality, or public authority, in

addition to existing powers, is authorized to enter into energy performance contracts of up to thirty-five years duration, provided, that the duration of any such contract shall not exceed the reasonably expected useful life of the energy facilities or equipment subject to such contract.

2. Any energy performance contract entered into by any agency or municipality shall contain the following clause: "This contract shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account therefor shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract."

3. In the case of a school district or a board of cooperative educational services, an energy performance contract shall be an ordinary contingent expense, and shall in no event be construed as or deemed a lease or lease-purchase of a building or facility, for purposes of the education law.

4. Agencies, municipalities, and public authorities are encouraged to consult with and seek advice and assistance from the New York state energy research and development authority concerning energy performance contracts.

5. Notwithstanding any other provision of law, in order to convey an interest in real property necessary for the construction of facilities or the operation of equipment provided for in an energy performance contract, any agency, municipality or public authority may enter into a lease of such real property to which it holds title or which is under its administrative jurisdiction as is necessary for such construction or operation, with an energy performance contractor, for the same length of time as the term of such energy performance contract, and on such terms and conditions as may be agreeable to the parties thereto and are not otherwise inconsistent with law, and notwithstanding that such real

property may remain useful to such agency, municipality or public authority for the purpose for which such real property was originally acquired or devoted or for which such real property is being used.

6. In lieu of any other competitive procurement or acquisition process that may apply pursuant to any other provision of law, an agency, municipality, or public authority may procure an energy performance contractor by issuing and advertising a written request for proposals in accordance with procurement or internal control policies, procedures, or guidelines that the agency, municipality, or public authority has adopted pursuant to applicable provisions of the state finance law, the executive law, the general municipal law, or the public authorities law, as the case may be.

7. Sections one hundred three and one hundred nine-b of the general municipal law shall not apply to an energy performance contract for which a written request for proposals is issued pursuant to subdivision six of this section.

8. In the case of a school district or a board of cooperative educational services, an energy performance contract shall be developed and approved pursuant to the requirements of this section and pursuant to regulations promulgated by the commissioner of education in consultation with the New York state energy research and development authority. Such regulations shall include, but shall not be limited to: a list of the appropriate type of projects that qualify as energy performance contracts; an approval process that includes review of the type and nature of the proposed project, the scope and nature of the work to be performed, and a detailed breakdown of the energy savings to be derived each year and for the duration of the energy performance contract; and a process for ensuring that districts have obtained financing at the lowest cost possible. Such regulations shall require that all energy performance contracts which contain maintenance and monitoring charges as part of the energy performance contract price state such maintenance and monitoring charges separately in the contract in a clear and conspicuous manner. Such regulations shall not apply to energy performance contracts entered into prior to the effective date of

such regulations, nor shall they apply to energy performance contracts for which a request for proposals was issued prior to such effective date.

ARTICLE 10

FUEL SET-ASIDE ACT

Section 10-101. Legislative intent and purpose.

10-103. Definitions.

10-105. Fuel set-aside.

10-107. Violation; penalties.

§ 10-101. Legislative intent and purpose. The legislature hereby finds and declares: that adequate supplies of fuel are essential to the health, welfare and safety of the people of the state of New York; that any severe disruption in fuel supplied for use within the state would cause grave hardship and pose a threat to the health and economic well-being of the people of the state; that the federal government has enacted into law the Emergency Petroleum Allocation Act of 1973, as amended by the Energy Policy and Conservation Act of 1975, pursuant to which the state of New York has established a fuel set-aside program; and that temporary and concurrent state authority for a fuel set-aside program should be in place as the federal government terminates, suspends or fails to implement all or part of the federal program during the vacation or heating seasons.

§ 10-103. Definitions. As used in this article:

1. "Consumer" means any individual, trustee, agency, partnership, association, corporation, company, municipality, political subdivision or other legal entity which purchases liquid fossil fuels for ultimate consumption within New York state.

2. "Distributor" means any individual, trustee, agency, partnership, association, corporation, company, municipality, political subdivision

or other legal entity which purchases or markets liquid fossil fuels from a prime supplier or any other source and resells such fuels to consumers within New York state.

3. "Fuel set-aside" means the amount of liquid fossil fuel which is made available from the total supply of a prime supplier for utilization by the state energy office pursuant to this article to resolve hardships and emergencies due to energy shortages.

4. "Prime supplier" means any individual, trustee, agency, partnership, association, corporation, company, municipality, political subdivision or other legal entity which makes the first sale of any liquid fossil fuel into the state distribution system for consumption within the state.

5. "Liquid fossil fuel" means heating oils, light and heavy diesel oil, motor gasoline, methanol, propane, butane, residual fuel oils, kerosene and aviation fuels.

§ 10-105. Fuel set-aside. 1. The commissioner shall promulgate rules and regulations establishing a fuel set-aside system for liquid fossil fuels. The fuel set-aside system established pursuant to this article shall not go into effect in whole or in part except where the federal government terminates, suspends or fails to implement all or part of the federal petroleum allocation program. The commissioner shall implement only that portion of the state set-aside program necessary to prevent and alleviate any energy hardships or shortages. Such rules and regulations shall direct that prime suppliers set aside an amount of liquid fossil fuel, as determined by the commissioner, which amount shall be a percentage of the monthly volume of liquid fossil fuels which prime suppliers intend to sell into the state distribution system for consumption within the state.

2. In addition to meeting the purposes set forth in section 10-101 of this article and the requirements of subdivision one of this section, the rules and regulations establishing the fuel set-aside system shall

provide that:

(a) A prime supplier inform the office each month of the monthly volume of each product subject to fuel set-aside which is intended to be sold into the state distribution system for consumption within the state, provided the commissioner determines that such information is needed.

(b) The commissioner shall notify each prime supplier of the monthly fuel set-aside percentage, not exceeding three percent, applicable to each product subject to fuel set-aside. The commissioner may review and revise such percentages from time to time as he deems appropriate.

(c) The amount of fuel to be set aside for a particular month cannot be accumulated or deferred; it shall be made available from stocks of prime suppliers, whether directly or through distributors.

(d) Procedures shall be established for making an application for an allocation from the fuel set-aside reserves and for approval or disapproval of such application by the commissioner.

§ 10-107. Violation; penalties. 1. Any person who violates any provision of this article or any rule, regulation or order issued pursuant thereto shall be liable to the people of the state for a civil penalty in an amount of not less than two thousand five hundred dollars nor more than ten thousand dollars for every such violation.

2. The penalty provided for in subdivision one of this section shall be recovered in an action or special proceeding brought by the attorney general at the request and in the name of the commissioner in any court of competent jurisdiction.

3. Alternatively, or in addition to the action or proceeding to recover the civil penalty provided by subdivision one of this section, the attorney general, upon the request of the commissioner, may institute an action or proceeding to enjoin any violation of or to enforce any provision of this article or any rule, regulation or order issued pursuant thereto.

4. Any action or proceeding commenced to recover a penalty may be

settled or discontinued by the attorney general with the consent of the commissioner.

ARTICLE 11

STATE ENERGY CONSERVATION CONSTRUCTION CODE ACT

Section 11-101. Purpose.

11-102. Definitions.

11-103. Applications.

11-104. State energy conservation construction code.

11-105. Limitation of application.

11-106. Variances and modifications.

11-107. Administration and enforcement.

11-108. Penalties.

11-109. Municipal regulations.

11-110. Reporting; cooperation of other agencies.

§ 11-101. Purpose. In furtherance of the policy set forth in subdivision two of section 3-101 of this chapter, the legislature hereby directs that a state energy conservation construction code be adopted to protect the health, safety and security of the people of the state and to assure a continuing supply of energy for future generations and that such code mandate that economically reasonable energy conservation techniques be used in the design and construction of all public and private buildings in the state.

§ 11-102. Definitions. For the purposes of this article, the following words and phrases shall have the following meanings unless a different meaning is plainly required by the context:

1. "Addition." An extension or increase in the conditioned space floor area or height of any building.

2. "Alteration." Any renovation, reconstruction or renewal of or to an existing building, or portion thereof, other than an addition. The word

"alteration" shall include any change in equipment that involves an extension, addition or change to the arrangement, type or purpose of the original installation.

3. "ASHRAE 90.1." ANSI/ASHRAE/IES Standard 90.1, entitled "Energy Standard for Buildings Except Low-Rise Residential Buildings," published by American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

4. "Building." Any structure used or intended for supporting or sheltering any use or occupancy or for affording shelter to persons, animals or property, including any equipment therein.

5. "Code." The state energy conservation construction code provided for in this article, or any portion thereof, any modification of or amendments thereto.

6. "Commercial building." Any building that is not a residential building.

7. "Conditioned space." An area or room which is within a building and which is (a) being heated or cooled, (b) contains uninsulated ducts, or (c) has a fixed opening directly into an adjacent conditioned space.

8. "Equipment." Plumbing, heating, electrical, lighting, insulating, ventilating, air conditioning, and refrigerating equipment, elevators, escalators, and other mechanical additions or installations but does not include any items constituting an industrial or commercial process.

9. "Historic building." Any building that is one or more of the following: (a) listed, or certified as eligible for listing, on the national register of historic places or on the state register of historic places, (b) designated as historic under an applicable state or local law, or (c) certified as a contributing resource within a national register-listed, state register-listed, or locally designated historic district.

10. "IECC" or "International Energy Conservation Code." The International Energy Conservation Code, published by International Code Council, Inc.

11. "Life-cycle cost." An estimate of the total cost of acquisition, operation, maintenance, and construction of any energy system within or related to a building over the design life of the building. "Life-cycle cost" includes, but is not limited to, the cost of fuel, materials, machinery, ancillary devices, labor, service, replacement, and repairs.

12. "Local government." Any village, town (outside the area of any incorporated village) or city.

13. "Municipality." Any county, city, town, village, school district or district corporation.

14. "Owner." The owner or owners of the freehold of a premises or any lesser estate therein, a mortgagee or vendee in possession, a contract vendee, assignee of rents, receiver, executor, trustee, lessee, or any other person, firm or corporation in control of a building.

15. "Residential building." Any building which is designed or is to be used primarily as a dwelling or household as defined by the state fire prevention and building code council, including any factory manufactured home as defined in subdivision eight of section three hundred seventy-two of the executive law and any mobile home as defined in subdivision thirteen of section three hundred seventy-two of the executive law.

16. "Uniform code." The New York state uniform fire prevention and building code adopted, and as may be amended, pursuant to article eighteen of the executive law.

§ 11-103. Applications. 1. (a) The state energy conservation construction code adopted by the state fire prevention and building code council and consisting of a building energy code for residential

buildings throughout the state and a building energy code for commercial buildings throughout the state is continued until amended or a new code is adopted and effective.

(b) The code shall apply to the construction of any new building. The code shall also apply to an addition to, and alteration of, any existing building or building system; provided, however, that the code shall not be interpreted to require any unaltered portion of the existing building or building system to comply with the code. The code shall be subject to such other exceptions as may be adopted by the state fire prevention and building code council provided that such exceptions shall not prevent the attainment of the compliance goals set forth in section 410(2)(c) of the American Recovery and Reinvestment Act of 2009.

2. (a) The state fire prevention and building code council is authorized, from time to time as it deems appropriate and consistent with the purposes of this article, to review and amend the code, or adopt a new code, through rules and regulations provided that the code remains cost effective with respect to building construction in the state. In determining whether the code remains cost effective, the code council shall consider (i) whether the life-cycle costs for a building will be recovered through savings in energy costs over the design life of the building under a life-cycle cost analysis performed under methodology as established by the New York state energy research and development authority in regulations which may be updated from time to time, and (ii) secondary or societal effects, such as reductions in greenhouse gas emissions, as defined in regulations. Before publication of a notice of proposed rule making establishing the methodology or defining secondary or societal effects, the president of the authority shall conduct public meetings to provide meaningful opportunities for public comment from all segments of the population that would be impacted by the regulations, including persons living in disadvantaged communities as identified by the climate justice working group established under section 75-0111 of the environmental conservation law. For residential buildings, the code shall meet or exceed the then most recently published International Energy Conservation Code, or achieve equivalent or greater energy savings; and for commercial buildings, the code shall meet or exceed the then most recently published ASHRAE 90.1,

or achieve equivalent or greater energy savings.

(b) When adopting the first amended version of the code next following the effective date of the chapter of the laws of two thousand twenty-two that added this paragraph and any subsequent codes, the state fire prevention and building code council shall use its best efforts to adopt provisions for residential buildings that achieve energy savings greater than energy savings achieved by the then most recently published International Energy Conservation Code and to adopt provisions for commercial buildings that achieve energy savings greater than energy savings achieved by the then most recently published ASHRAE 90.1, both at levels recommended by the New York state energy research and development authority, provided that the state fire prevention and building code council determines that such advanced energy savings can be achieved while still meeting the cost effectiveness considerations contemplated by this subdivision.

* 3. Notwithstanding any other provision of law, the state fire prevention and building code council in accordance with the mandate under this article shall have exclusive authority among state agencies to promulgate a construction code incorporating energy conservation features and clean energy features applicable to the construction of any building, including but not limited to greenhouse gas reduction. Any other code, rule or regulation heretofore promulgated or enacted by any other state agency, incorporating specific energy conservation and clean energy requirements applicable to the construction of any building, shall be superseded by the code promulgated pursuant to this section. Notwithstanding the foregoing, nothing in this section shall be deemed to expand the powers of the council to include matters that are exclusively within the statutory jurisdiction of the public service commission, the department of environmental conservation, or another state entity.

* NB Effective until December 31, 2040

* 3. Notwithstanding any other provision of law, the state fire prevention and building code council in accordance with the mandate under this article shall have exclusive authority among state agencies to promulgate a construction code incorporating energy conservation features and clean energy features applicable to the construction of any building, including but not limited to greenhouse gas reduction. Any

other code, rule or regulation heretofore promulgated or enacted by any other state agency, incorporating specific energy conservation and clean energy requirements applicable to the construction of any building, shall be superseded by the code promulgated pursuant to this section. Notwithstanding the foregoing, nothing in this section shall be deemed to expand the powers of the council to include matters that are exclusively within the statutory jurisdiction of the public service commission, the department of environmental conservation, the office of renewable energy siting or another state entity.

* NB Effective December 31, 2040

4. The secretary of state is authorized to issue written interpretations of the code upon written request of a permit applicant or the official responsible for the administration and enforcement of the provisions of the code. Subsequent enforcement of the code shall be consistent with such written interpretations.

§ 11-104. State energy conservation construction code. In addition to meeting the purposes set forth in section 11-101 of this article, the code shall be designed to satisfy the following specific criteria:

1. The code's standards and requirements, so far as may be practicable, shall be formulated in terms of performance objectives.

2. To the fullest extent feasible, use of modern technical methods, devices and improvements which tend to minimize consumption of energy and utilize to the greatest extent practical solar and other renewable sources of energy without affecting reasonable requirements for the health, safety and security of the occupants or users of buildings shall be permitted.

3. As far as may be practicable, the improvement of energy conservation construction practices, methods, equipment, materials and techniques shall be encouraged.

4. The code shall provide reasonable uniform standards and

requirements for construction and construction materials for the improvement of energy conservation construction practices.

5. The state fire prevention and building code council, in consultation with the commissioner of the department of parks, recreation and historic preservation, is authorized to adopt exemptions to such uniform standards and requirements for historic buildings as defined in section 11-102 of this article, to the extent that the uniform standards and requirements would threaten, degrade, or destroy the historic form, fabric, or function of such historic buildings.

6. (a) To the fullest extent feasible, the standards for construction of buildings in the code shall be designed to help achieve the state's clean energy and climate agenda, including but not limited to greenhouse gas reduction, set forth within chapter one hundred six of the laws of two thousand nineteen, also known as the New York state climate leadership and community protection act, and as further identified by the New York state climate action council established pursuant to section 75-0103 of the environmental conservation law.

(b) In addition to the foregoing, to support the goal of zero on-site greenhouse gas emissions and help achieve the state's clean energy and climate agenda, including but not limited to greenhouse gas reduction requirements set forth within chapter one hundred six of the laws of two thousand nineteen, also known as the New York state climate leadership and community protection act, the code shall prohibit the installation of fossil-fuel equipment and building systems, in any new building not more than seven stories in height, except for a new commercial or industrial building greater than one hundred thousand square feet in conditioned floor area, on or after December thirty-first, two thousand twenty-five, and the code shall prohibit the installation of fossil-fuel equipment and building systems, in all new buildings after December thirty-first, two thousand twenty-eight.

7. (a) The provisions set forth in paragraph (b) of subdivision six of this section shall not be construed as applying to buildings existing prior to the effective date of the applicable prohibition, including to:

(i) the repair, alteration, addition, relocation, or change of

occupancy or use of such buildings; and

(ii) the installation or continued use and maintenance of fossil-fuel equipment and building systems, including as related to cooking equipment, in any such buildings.

(b) In addition, in effectuating the provisions set forth in paragraph (b) of subdivision six of this section the code shall include exemptions for the purposes of allowing the installation and use of fossil-fuel equipment and building systems where such are installed and used:

(i) for generation of emergency back-up power and standby power systems;

(ii) in a manufactured home as defined in subdivision seven of section six hundred one of the executive law; or

(iii) in a building or part of a building that is used as a manufacturing facility, commercial food establishment, laboratory, car wash, laundromat, hospital, other medical facility, critical infrastructure, including but not limited to emergency management facilities, wastewater treatment facilities, and water treatment and pumping facilities, agricultural building, fuel cell system, or crematorium, as such terms are defined by the code council.

(c) Where the code includes an allowed exemption pursuant to subparagraph (i) or (iii) of paragraph (b) of this subdivision, other than agricultural buildings as defined by the council, such exemption shall include provisions that, to the fullest extent feasible, limit the use of fossil-fuel equipment and building systems to the system and area of the building for which a prohibition on fossil-fuel equipment and building systems is infeasible; require the area or service within a new building where fossil-fuel equipment and building systems are installed be electrification ready, except with respect to servicing manufacturing or industrial processes; and minimize emissions from the fossil-fuel equipment and building systems that are allowed to be used, provided that the provisions set forth in this paragraph do not adversely affect health, safety, security, or fire protection. Financial considerations shall not be sufficient basis to determine physical or technical infeasibility.

(d) Exemptions included in the code pursuant to this subdivision shall be periodically reviewed by the state fire prevention and building code council to assure that they continue to effectuate the purposes of

subdivision six of this section to the fullest extent feasible.

(e) The code shall allow for exemption of a new building construction project that requires an application for new or expanded electric service, pursuant to subdivision one of section thirty-one of the public service law and/or section twelve of the transportation corporations law, when electric service cannot be reasonably provided by the grid as operated by the local electric corporation or municipality pursuant to subdivision one of section sixty-five of the public service law; provided, however, that the public service commission shall determine reasonableness for purposes of this exemption. For the purposes of this paragraph, "grid" shall have the same meaning as electric plant, as defined in subdivision twelve of section two of the public service law.

8. For the purposes of this section:

(a) "Fossil-fuel equipment and building systems" shall mean (i) equipment, as such term is defined in section 11-102 of this article, that uses fossil-fuel for combustion; or (ii) systems, other than items supporting an industrial or commercial process as referred to in the definition of equipment in section 11-102 of the energy law, associated with a building that will be used for or to support the supply, distribution, or delivery of fossil-fuel for any purpose, other than for use by motor vehicles.

(b) "Electrification ready" means the new building or portion thereof where fossil-fuel equipment and building systems are allowed to be used which contains electrical systems and designs that provide sufficient capacity for a future replacement of such fossil-fuel equipment and building systems with electric-powered equipment, including but not limited to sufficient space, drainage, electrical conductors or raceways, bus bar capacity, and overcurrent protective devices for such electric-powered equipment.

9. Standards to require new buildings that include new dedicated off-street parking involving a garage, driveway, parking lot or other off-street parking to have electric vehicle ready infrastructure and electric vehicle charging stations that comply with the requirements set forth in this subdivision. Such standards shall not be included in the life cycle analysis performed pursuant to subdivision two of section

11-103 of this article.

(a) For the purposes of this subdivision:

(i) "electric vehicle ready infrastructure" shall mean all electrical components, terminating in a receptacle or outlet, as necessary to enable electric vehicle charging and support electric vehicle charging stations; and

(ii) "electric vehicle charging station" shall mean all the equipment necessary to deliver electricity from a source outside an electric vehicle into one or more electric vehicles, as defined by the code council.

(b) When adopting a new code after December thirty-first, two thousand twenty-six, such code shall include provisions that require any new building where new off-street parking is associated with such new building to have electric vehicle ready infrastructure and electric vehicle charging stations in accordance with paragraph (d) of this subdivision.

(c) The provisions set forth in paragraph (b) of this subdivision shall not be construed as applying to buildings existing prior to the adoption of a new code after December thirty-first, two thousand twenty-six, including to the repair, alteration, addition, relocation, or change of occupancy or use of such buildings.

(d) Code provisions promulgated by the state fire prevention and building code council pursuant to this subdivision:

(i) may, for detached one- and two-family dwellings, provide for electric vehicle ready infrastructure;

(ii) shall, for occupancies other than detached one- and two-family dwellings, require a minimum number of parking spaces with electric vehicle ready infrastructure and a minimum number of parking spaces with electric vehicle charging stations, with minimum charging capacity standards established by the council. When establishing minimum standards, the council shall consider:

A. the goals of section 19-0306-b of the environmental conservation law;

B. the differing needs of various building types;

C. maximizing equity of access to electric vehicle charging across income levels, housing types, geographic locations, and employment types;

D. for commercial buildings, the electric vehicle charging access needs of both employees and customers; and

E. for multi-family residential buildings, standards that allow electric vehicle charging stations be wired directly to a meter or electric vehicle submeter serving a residential unit;

(iii) include requirements for clear and prominent signage denoting the availability and location of electric vehicle ready infrastructure and electric vehicle charging stations; and

(iv) provide exemptions to such code provisions for:

A. projects with local, state, or federal approval subject to an actual or anticipated agreement with a local, state, or federal governmental entity for the purposes of providing affordable housing in a given locality or region; and

B. additional exemptions due to technical infeasibility, geographic location, or building type, as the code council deems appropriate.

§ 11-105. Limitation of application. Notwithstanding the provisions of subdivision one of section 11-103 of this article, the state fire prevention and building code council, by regulation, may limit the application of any portion of the code so as to include or exclude classes or types of buildings, according to the use thereof or the cost effectiveness of the code with respect to any such class or type of building, or according to any other distinction as may make differentiation or separate classification or regulation necessary, proper or desirable, provided however, that such limitation: (1) is consistent with the purposes of this article and the criteria set forth in section 11-104 of this article, (2) does not render the code inconsistent with the energy savings requirements of subdivision two of section 11-103 of this article, and (3) whether considered individually

or collectively with other limitations, will not prevent the attainment of the compliance goals set forth in section 410(2)(c) of the American Recovery and Reinvestment Act of 2009.

§ 11-106. Variances and modifications. 1. Any standard or requirement of the code may be varied or modified, in whole or part, with regard to specific construction upon application made by or on behalf of an owner, where strict compliance with such standard or requirement would entail practical difficulty or cause any unnecessary hardship in relation to such construction, provided, however, that any such variance or modification shall provide for alternative energy conservation standards or requirements to achieve to the extent practicable the purposes of this article.

2. An application for a variance or modification of any standard or requirement of the code shall be made to the secretary of state.

§ 11-107. Administration and enforcement. Except as otherwise provided in regulations adopted pursuant to section three hundred eighty-one of the executive law, the administration and enforcement of the provisions of the code with respect to any building shall be the responsibility of that governmental entity which is responsible for the administration and enforcement of the provisions of the uniform code or other applicable fire prevention and building construction code with respect to such building. The code shall be administered and enforced in the manner prescribed by applicable local law or ordinance consistent with the standards and procedures adopted pursuant to section three hundred eighty-one of the executive law.

§ 11-108. Penalties. 1. Any person having been served with an order to remedy a violation of the code pursuant to the provisions of any local law or ordinance, or the procedures adopted pursuant to section three hundred eighty-one of the executive law, who shall fail to comply with such order within thirty days after such service or within the time

fixed by such order for compliance, whichever is greater, and any owner, builder, architect, engineer, contractor or subcontractor taking part or assisting in the construction or use of any building who shall knowingly violate any applicable provisions of the code or any lawful order of the governmental entity responsible for the administration and enforcement thereof shall be punishable by a fine of not more than one thousand dollars or by imprisonment of not more than thirty days in jail, or both.

2. Except as provided otherwise by law, any such violation shall not be a crime and the penalty or punishment imposed therefor shall not be deemed for any purpose a penal or criminal penalty or punishment, and shall not impose any disability upon or affect or impair the credibility as a witness, or otherwise, of any person convicted thereof.

§ 11-109. Municipal regulations. 1. Nothing in this article shall be construed as abrogating or impairing the power of any municipality or the secretary of state to enforce the provisions of any local building regulations or the state uniform fire prevention and building code, provided that such local building regulations are not inconsistent with the code. Nor shall anything in this article be construed as abrogating or impairing the power of any municipality to promulgate a local energy conservation construction code more stringent than the code, including but not limited to requirements for mandatory energy efficiency testing and ratings.

2. Any municipality which adopts a local energy conservation construction code in accordance with this section shall file a copy of such code and any amendments or revisions thereof with the state fire prevention and building code council within thirty days after promulgation or adoption of such local code or any amendments or revisions thereof. If the municipality files such copy within such thirty day time period, the municipality may enforce such local code, amendment or revision until and unless the state fire prevention and building code council shall determine that such local code, amendment or revision is not more restrictive than the code. If the municipality

fails to file such copy within such thirty day time period, the municipality may not enforce such local code, amendment or revision until and unless the state fire prevention and building code council shall determine that such local code, amendment or revision is more restrictive than the code.

§ 11-110. Reporting; cooperation of other agencies. 1. The secretary of state shall report yearly to the legislature and the governor as to the operation and effectiveness of the state energy conservation construction code.

2. Agencies and municipalities of the state shall provide the secretary of state with such cooperation and assistance as he or she may deem necessary to carry out the purposes of this article.

ARTICLE 12

SOLAR ENERGY PRODUCTS WARRANTY ACT

- Section 12-101. Title.
- 12-101-a. Administration.
 - 12-102. Purpose.
 - 12-103. Definitions.
 - 12-104. Contracts and sales practices.
 - 12-106. Warranties and service agreements.
 - 12-108. Rules and regulations.
 - 12-110. Violations.
 - 12-112. Prohibition of waiver.

§ 12-101. Title. This act shall be known and may be cited as the "Solar Energy Products Warranty Act."

§ 12-101-a. Administration. Notwithstanding any other provision of law, the New York state energy research and development authority shall be deemed to have the responsibility and authority to implement the

provisions of this article.

§ 12-102. Purpose. The legislature hereby finds and declares that the use of renewable energy technologies, such as solar energy, within the state should be encouraged to the maximum extent possible; that effective, well-designed, carefully manufactured and properly serviced solar thermal systems are essential for the development of a viable solar industry; that false claims, fraudulent sales practices, shoddy workmanship, equipment failures and poor servicing of products would inhibit the growth of the solar industry; that adequate warranty protections should be made available to consumers in order to prevent such deceptions; that certain warranty protections are presently made available to consumers of products normally used for personal, family or household purposes pursuant to the Federal Magnuson-Moss Warranty Act; and that warranty protections should be made available to purchasers of all solar energy products in this state, regardless of use.

§ 12-103. Definitions. 1. "Building" means any combination of materials, whether portable or fixed, having a roof to form a structure which is heated or cooled in the normal course, affording shelter for persons, animals or property, including any equipment therein or attached thereto.

2. "Component" means any device or element of a solar thermal system which can generally be purchased separately from the entire system but is essential to the normal operation of that system, including, collectors, heat exchangers, tanks, pumps, controllers, temperature sensors, meters and fans. Components shall not include standard pipes, ducts, switchboxes or hardware.

3. "Customer" means any person who purchases, or contracts with an installer for the installation of, a solar thermal system.

4. "Installer" means any person who for a fee offers to install or installs a solar thermal system.

5. "Solar thermal system" means an arrangement or combination of components designed to provide heating, cooling or hot water by the collection or storage of solar energy.

6. "At retail" means the first transfer of goods, for lawful consideration, from any person who is regularly in the business of buying and selling new solar thermal systems for profit to any person who is not regularly in the business of buying and selling new solar thermal systems for profit.

7. "Seller" means any person who offers for sale or sells, at retail, a solar thermal system.

8. "System manufacturer" means any person who manufactures or assembles or designs and packages a solar thermal system.

§ 12-104. Contracts and sales practices. 1. Every agreement for the sale or installation of a solar thermal system shall be in writing and be subscribed by the seller or installer, or his lawful agent, and by the customer or his lawful agent.

2. Every such agreement shall contain or have annexed thereto:

(a) The name and address of the system manufacturer of the solar thermal system together with the system's name and model number;

(b) Operation, maintenance and installation instructions, except that installation instructions need not be provided in an installation agreement;

(c) Copies of all express warranties provided to the customer; and

(d) Other such information as may be required by the commissioner.

3. Every such agreement shall display the following statement on the face of the agreement in a clear and conspicuous manner: "No specific thermal performance for this solar system is warranted unless stated herein".

4. No seller shall offer for sale a solar thermal system unless such seller makes available to a prospective customer the information specified in subdivisions two and three of this section.

§ 12-106. Warranties and service agreements. 1. All express warranties and service agreements pertaining to any solar thermal system or component thereof which is sold in the state shall be in writing and shall be in compliance with rules and regulations to be promulgated by the commissioner. Such rules and regulations shall contain standards no less stringent than those contained in the Federal Magnuson-Moss Warranty Act (15 U.S.C. §§ 2301 et seq.) and the rules and regulations issued pursuant thereto.

2. All customers shall be provided with express warranties which shall include at a minimum the following:

(a) A full one year warranty by the installer against malfunction or failure of a solar thermal system due to improper installation or a defect in standard pipe, ducts, switchboxes and hardware utilized in installation;

(b) A full one year warranty by the system manufacturer and the seller against a defect in materials, manufacture or design of a solar thermal system; and

(c) A full three year warranty by the system manufacturer and the seller against a defect in materials, manufacture or design of a solar collector, tank or heat exchanger.

3. No person shall offer a service agreement for a solar thermal system unless such person shall have developed a service capability for such system.

§ 12-108. Rules and regulations. Not later than six months from the effective date of this act, the commissioner shall promulgate rules and regulations as necessary for the effective implementation of this article.

§ 12-110. Violations. 1. Whenever the attorney general has reason to believe that any violation of this article is a repeated or persistent practice, he may bring an action to enjoin such practice and to obtain restitution for any aggrieved party or parties. In such action preliminary relief may be granted under article sixty-three of the civil practice law and rules. Before any violation of this article is sought to be enjoined, the attorney general shall be required to give the person against whom such proceeding is contemplated notice by certified mail and an opportunity to show in writing within five business days after receipt of notice why proceedings should not be instituted against him, unless the attorney general shall find, in any case in which he seeks preliminary relief, that to give such notice and opportunity is not in the public interest.

2. Any owner of a solar thermal system injured by a violation of any provision of this article issued pursuant thereto may bring an action in his own name to enjoin such violation and to recover his actual damages. In such action, there may be awarded reasonable attorney's fees and costs to the plaintiff. Nothing in this section shall be construed to abridge or limit any other right or remedy an owner may have at law or in equity, statutory or otherwise. Provided, however, that such individual action shall be precluded if, prior to its commencement, the attorney general has commenced an action for an injunction and restitution pursuant to the provisions of subdivision one of this section.

§ 12-112. Prohibition of waiver. Any waiver by the owner of a solar thermal system of the provisions of this article shall be deemed contrary to public policy and shall be unenforceable and void.

ARTICLE 16

APPLIANCE AND EQUIPMENT EFFICIENCY STANDARDS

Section 16-102. Definitions.

16-104. Applicability, conduct prohibited.

- 16-105. Adoption of certain federal efficiency standards.
- 16-106. Powers and duties of the president and the secretary.
- 16-107. Subpoenas, information and document production, enforcement procedures, referrals.
- 16-108. Violations, civil liability.
- 16-109. Conflicts with other laws.

§ 16-102. Definitions. As used in this article:

1. "Active mode" means the condition in which the input of a power supply or consumer audio and video equipment is connected to the line voltage AC and the output is connected to a DC or an AC load, fulfilling one or more of its main functions and drawing a fraction of the power supply's nameplate power output greater than zero.

1-a. "Product" means any appliance or equipment, other than a motor vehicle, which in operation consumes or is designed to consume energy or to result in the consumption of energy, including any water-related appliance, equipment or fixture that is designed to consume or result in the consumption of energy in its operation or use.

2. "Authority" means the New York state energy research and development authority.

3. "Automatic commercial ice-cube maker" means a factory-made assembly, not necessarily shipped in one package, consisting of a condensing unit and ice-making section operating as an integrated unit, with means for making and harvesting cube-type ice. It may also include means for storing or dispensing cube-type ice, or both.

4. "Ballast" means a device used with an electric discharge lamp to obtain necessary circuit conditions (voltage, current, and waveform) for starting and operating the lamp.

4-a. The following definitions refer to water coolers:

(a) "Bottle-type" means a water dispenser that uses a bottle or

reservoir as the source of potable water.

(b) "Water cooler" means a freestanding device that consumes energy to cool and/or heat potable water.

(c) "Cold only units" means units that dispense cold water only.

(d) "Hot and cold units" means units that dispense both hot and cold water. Some units may also offer room-temperature water.

(e) "Cook and cold units" means units that dispense both cold and room-temperature water.

(f) "Point of use (POU)" means the water cooler is connected to a pressurized water source.

(g) "Conversion-type" means a unit that ships as either bottle-type or POU and includes a conversion kit intended to convert the water cooler from a bottle-type unit to a POU unit or to convert a POU unit to a bottle-type unit.

(h) "Storage-type" means thermally conditioned water is stored in a tank in the water cooler and is available instantaneously.

(i) "On demand" means the water cooler heats water as it is requested, which typically takes a few minutes to deliver.

5. "Ceiling fan" means a non-portable device that is suspended from a ceiling for circulating air via the rotation of fan blades.

6. "Ceiling fan light kit" means the equipment used to provide light from a ceiling fan. This equipment may be part of the unit such that the ceiling fan light kit is hardwired to the ceiling fan, or attachable such that the ceiling fan light kit is not, at the time of sale, physically attached to the fan. Attachable ceiling fan light kits may be included inside the ceiling fan package at the time of sale, or sold separately for subsequent attachment to the fan.

6-a. "Commercial hot food holding cabinet" means a heated, fully enclosed compartment, with one or more solid or partial glass doors, that is designed to maintain the temperature of hot food that has been cooked in a separate appliance. "Commercial hot food holding cabinet" does not include heated glass merchandising cabinets, drawer warmers or cook-and-hold appliances.

7. "Very large commercial package air conditioning and heating equipment" means air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application rated at or above two hundred forty thousand BTU per hour and below seven hundred sixty thousand BTU per hour (cooling capacity).

8. "Commercial pre-rinse spray valve" means a hand-held device designed to spray water on dishes, flatware and other food service items for the purpose of removing food residue prior to the placement of such items in a commercial automatic dishwasher.

9. (a) "Commercial refrigerator, freezer, and refrigerator-freezer" means refrigeration equipment that:

(i) is not a consumer product as defined by 42 USC 6291;

(ii) is not designed and marketed exclusively for medical, scientific, or research purposes;

(iii) operates at a chilled, frozen, combination chilled/frozen, or variable temperature;

(iv) displays or stores merchandise and other perishable materials either horizontally, semivertically, or vertically;

(v) has transparent or solid doors, sliding or hinged doors, a combination of hinged, sliding, transparent or solid doors;

(vi) is designed for pull-down temperature applications or holding temperature applications; and

(vii) is connected to a self-contained condensing unit.

(b) The term "pull-down temperature application" means a commercial refrigerator with doors that, when fully loaded with twelve ounce beverage cans at ninety degrees Fahrenheit, can cool these beverages to an average stable temperature of thirty-eight degrees Fahrenheit in twelve hours or less.

(c) The term "holding temperature application" means a use of commercial refrigeration equipment other than a pull-down temperature application, excluding a blast chiller or freezer.

(d) The term "self-contained condensing unit" means a factory-made assembly of refrigerating components designed to compress and liquefy a

specific refrigerant that is an integral part of the refrigerated equipment and consists of one or more refrigerant compressors, refrigerant condensers, condenser fans and motors, and factory supplied accessories.

(e) The term "integrated average temperature" means the average temperature of all test package measurements taken during the test.

(f) The term 'AV' means the adjusted volume (cubic feet) defined as $1.63 \times \text{frozen temperature compartment volume (cubic feet)} + \text{chilled temperature compartment volume (cubic feet)}$ with compartment volumes measured in accordance with the association of home appliance manufacturers standard HRF1-1979.

(g) The term 'V' means the chilled or frozen compartment volume (cubic feet) as defined in the association of home appliance manufacturers standard HRF1-1979.

10. "Compact audio product", also known as a mini, mid, micro, or shelf audio system, means an integrated audio system encased in a single housing that includes an amplifier and radio tuner, attached or separable speakers, and can reproduce audio from one or more of the following media: magnetic tape, CD, DVD, or flash memory. "Compact audio product" does not include products that can be independently powered by internal batteries or that have a powered external satellite antenna, or that can provide a video output signal.

11. "Consumer audio and video product" means a mains-connected product that amplifies audio, offers optical, offers disc player functionality, and/or receives and plays audio and/or video content. Examples of consumer audio and video products include compact audio products, digital versatile disc players, digital versatile disc recorders, digital television adapters and streaming media players. Televisions are specifically excluded from consumer audio and video products.

12. "Digital television adapter" means a commercially available electronic product for which the sole purpose is the conversion of digital video terrestrial broadcast signals to analog NTSC video signals for use by a TV or VCR.

13. "Digital versatile disk (DVD)" means a laser-encoded plastic medium capable of storing a large amount of digital audio, video, and computer data.

14. "Digital versatile disc (DVD) player" means a commercially available electronic product encased in a single housing that includes an integral power supply and for which the sole purpose is the decoding of digitized video signals on a DVD.

15. "Digital versatile disc (DVD) recorder" means a commercially available electronic product encased in a single housing that includes an integral power supply and for which the sole purpose is the production or recording of digitized audio and video signals on a DVD. "DVD recorder" does not include models that have an EPG function.

16. "Digital video recorder (DVR)" means a device which can record video signals onto a hard disk drive or other device that can store the images digitally. "DVR" does not include models that have an EPG function.

17. "Electronic programming guide (EPG)" means an application that provides an interactive, onscreen menu of TV listings, and that downloads program information from the vertical blanking interval of a regular TV signal.

18. "Efficiency standard" means a standard that defines performance metrics and/or defines prescriptive design requirements associated with the regulated category of product in order to reduce energy consumption, reduce water consumption, and reduce greenhouse gas emissions associated with energy consumption and/or increase demand flexibility.

18-a. "Greenhouse gas" means "greenhouse gas" as defined in subdivision seven of section 75-0101 of the environmental conservation law.

18-b. "Demand flexibility" means the capability to schedule, shift, or curtail the electrical demand of a load-serving entity's customer

through direct action by the customer or through action by a third party, the load-serving entity, or a grid balancing authority, with the customer's consent.

19. "High-intensity discharge lamp" means a lamp in which light is produced by the passage of an electric current through a vapor or gas, and in which the light-producing arc is stabilized by bulb wall temperature and the arc tube has a bulb wall loading in excess of three watts per square centimeter.

20. "Illuminated exit sign" means an internally-illuminated sign that is designed to be permanently fixed in place and used to identify an exit; a light source illuminates the sign or letters from within, and the background of the exit sign is not transparent.

21. "Incandescent reflector lamp" means a lamp which is not colored or designed for rough or vibration service applications, that has an inner reflective coating on the outer bulb to direct the light, an E26 medium screw base, and a rated voltage or voltage range that lies at least partially within one hundred fifteen to one hundred thirty volts, and that falls into one of the following categories:

(a) a bulged reflector or elliptical reflector bulb shape and which has a diameter which equals or exceeds 2.25 inches; or

(b) a reflector, parabolic aluminized reflector, or similar bulb shape and which has a diameter of 2.25 to 2.75 inches.

21-a. "Lamp" means an electrical appliance that includes a glass envelope and produces optical radiation for the purpose of visual illumination, designed to be installed into a light fixture by means of an integral lamp-holder or socket.

21-b. "Light fixture" means a product designed to provide light that includes at least one lamp-holder or socket and parts to distribute the light, to position or protect one or more lamps and to connect one or more lamps to a power supply.

21-c. "Duv" means a metric that quantifies the distance between the

chromaticity of a given light source and a blackbody radiator of equal correlated color temperature (CCT) on a CIE 1976 (u, v) chromatic diagram demonstrating how different two light sources of the same color temperature appear.

21-d. "Light Emitting Diode (LED) lamp" means a lamp capable of producing light with Duv between -0.012 and 0.012, and that has an E12, E17, E26, or GU-24 base, including LED lamps that are designed for retrofit within existing recessed can housings that contain one of the preceding bases. LED lamp does not include a lamp with a brightness of more than two thousand six hundred lumens or a lamp that cannot produce light with a correlated color temperature between two thousand two hundred Kelvin and seven thousand Kelvin.

22. "Metal halide lamp" means a high intensity discharge lamp in which the major portion of the light is produced by radiation of metal halides and their products of dissociation, possibly in combination with metallic vapors.

23. "Metal halide lamp fixture" means a light fixture designed to be operated with a metal halide lamp and a ballast for a metal halide lamp.

24. "No load mode" means the condition in which the input of a power supply is connected to an AC source consistent with the power supply's nameplate AC voltage, and the output is not connected to a product or any other load.

25. "Pedestrian traffic signal module" means an electrically operated traffic control device composed of one or more indications which is erected for the exclusive purpose of directing pedestrian traffic at signalized locations. It consists of a light source, lens, and all parts necessary for operation.

26. "Person" means any individual, trustee, agency, partnership, association, corporation, company, municipality, political subdivision, or other legal entity.

27. "Point of deployment (POD)" means a card which enables a TV to have secure conditional access to a cable or satellite system.

27-a. "Portable electric spa" means a factory-built electric spa or hot tub, which may or may not include any combination of integral controls, water heating or water circulating equipment.

27-b. "Portable light fixture" means a light fixture which has a flexible cord and an attachment plug for connection to a nominal one hundred twenty-volt, fifteen- or twenty-ampere branch circuit; which can be relocated by the user without any rewiring; which is typically controlled with a switch located on the light fixture itself or on the power cord; and which are intended for use in accordance with the national electrical code, ANSI/NFPA 70-2002. "Portable light fixture" does not include direct plug-in nightlights; sun and heat lamps; aquarium lamps; medical and dental lights; portable electric hand lamps; signs and commercial advertising displays; photographic lamps; germicidal lamps; illuminated vanity mirrors; lava lamps not providing general or task illumination; industrial work lights rated for use with a lamp providing greater than seven thousand lumens; portable lamp fixtures for marine use or for use in hazardous locations as defined in the national electrical code, ANSI/NFPA 70; or decorative lighting outfits or electric candles and candelabras without lampshades that are covered by the standard for safety of seasonal and holiday decorative products, UL 588.

28. "Power supply" means a single voltage external AC to DC or AC to AC power supply included with other retail products and single voltage external AC to DC or AC to AC power supply sold separately.

29. "President" means the president of the New York state energy research and development authority.

29-a. "Replacement dedicated-purpose pool pump motor" means an electric motor that:

- (a) is single-phase or polyphase;
- (b) has a dedicated purpose pool pump motor total horsepower of less

than or equal to five horsepower;

(c) is marketed for use as a replacement motor in self-priming pool filter pump, non-self-priming pool filter pump or pressure cleaner booster pump applications; and

(d) excludes polyphase replacement dedicated-purpose pool pump motors capable of operating without a drive, and is sold or offered for sale without a drive that converts single-phase power to polyphase power.

30. "Secretary" means the secretary of state.

31. "Single-voltage external AC to DC or AC to AC power supply" means a device that:

(a) is designed to convert line voltage AC input into lower voltage DC or AC output;

(b) is able to convert to only one DC or AC output voltage at a time;

(c) is sold with, or intended to be used with, a separate end-use product that constitutes the primary load;

(d) is contained within a separate physical enclosure from the end-use product;

(e) is connected to the end-use product via a removable or hard-wired male/female electrical connection, cable, cord, or other wiring;

(f) does not have batteries or battery packs that physically attach directly (including those that are removable) to the power supply unit;

(g) does not have a battery chemistry or type selector switch and an indicator light; or does not have a battery chemistry or type selector switch and a state of charge meter;

(h) has a nameplate output power less than or equal to two hundred fifty watts.

32. "Standby-passive mode" means the condition in which a power supply or consumer audio and video product is connected to a power source, and does not fulfill its main function, and can be switched to active mode with the remote control unit or an internal signal.

33. "Television (TV)" means an analog or digital device primarily designed to receive and display terrestrial, satellite, cable, Internet Protocol TV (IPTV), or other broadcast or recorded transmissions of

analog or digital video and audio signals. TVs include combination TVs, television monitors, component TVs, and any unit that is marketed to the consumer as a TV. "Television" does not include computer monitors.

34. "Torchiere lighting fixture" means a portable electric lighting fixture with a reflective bowl that is designed to direct light upward onto a ceiling so as to produce indirect illumination on the surfaces below.

35. "Unit heater" means a self-contained, vented fan-type commercial space heater that uses natural gas or propane, and that is designed to be installed without ducts within a heated space, except that such term does not include any products covered by federal standards established pursuant to 42 U.S. Code section 6291 and subsequent sections or any product that is a direct vent, forced flue heater with a sealed combustion burner.

36. "Vehicular traffic signal module" means an electrically operated standard 8-inch (200mm) or 12-inch (300mm) round traffic control device composed of one or more indications which is erected for the exclusive purpose of directing vehicular traffic at signalized locations. It consists of a light source, lens, and all parts necessary for operation. It communicates traffic control messages through red, amber and green colors.

37. "Video cassette recorder (VCR)" means a commercially available analog recording device that includes an integral power supply and which records television signals onto a tape medium for subsequent viewing.

38. The following definitions refer to air compressors:

(a) "Air compressor" means a compressor designed to compress air that has an inlet open to the atmosphere or other source of air, and is made up of a compression element (bare compressor), driver or drivers mechanical equipment to drive the compressor element, and any ancillary equipment.

(b) "Compressor" means a machine or apparatus that converts different types of energy into the potential energy of gas pressure for

displacement and compression of gaseous media to any higher-pressure values above atmospheric pressure and has a pressure ratio at full-load operating pressure greater than 1.3.

39. The following definitions refer to air purifiers:

(a) "Air purifier", also known as "room air cleaner", means an electric, cord-connected, portable appliance with the primary function of removing particulate matter from the air and which can be moved from room to room.

(b) "Industrial air purifier" means an indoor air cleaning device manufactured, advertised, marketed, labeled, and used solely for industrial use that are marketed solely through industrial supply outlets or businesses and prominently labeled as "Solely for industrial use. Potential health hazard: emits ozone."

40. "Commercial dishwasher" means a machine designed to clean and sanitize plates, pots, pans, glasses, cups, bowls, utensils, and trays by applying sprays of detergent solution (with or without blasting media granules) and a sanitizing rinse and is not a "compact dishwasher" or "standard dishwasher" (capacity less than eight place settings plus six serving pieces as specified in ANSI/AHAM DW-1 using the test load specified in section 2.7 of appendix C in subpart B of 10 CFR 430.2).

41. "Commercial fryer" means an appliance for non-residential use, including a cooking vessel, in which oil is placed to such a depth that the cooking food is essentially supported by displacement of the cooking fluid rather than by the bottom of the vessel. Heat is delivered to the cooking fluid by means of an immersed electric element of band-wrapped vessel (electric fryers) or by heat transfer from gas burners through either the walls of the fryer or through tubes passing through the cooking fluid (gas fryers).

41-a. "Commercial oven" means a chamber designed for heating, roasting, or baking food by conduction, convection, radiation, and/or electromagnetic energy.

42. "Commercial steam cooker" also known as "compartment steamer",

means a device for non-residential use with one or more food-steaming compartments in which the energy in the steam is transferred to the food by direct contact. Models may include countertop models, wall-mounted models, and floor models mounted on a stand, pedestal, or cabinet-style base.

42-a. "Commercial hot food holding cabinet" means a heated, fully enclosed compartment, with one or more solid or partial glass doors, that is designed to maintain the temperature of hot food that has been cooked in a separate appliance. "Commercial hot food holding cabinet" does not include heated glass merchandising cabinets, drawer warmers or cook-and-hold appliances.

43. "Computer" means a device that performs logical operations and processes data. A computer includes both stationary and portable units and includes a desktop computer, a portable all-in-one, a notebook computer, a mobile gaming system, a high-expandability computer, a small-scale server, a thin client, and a workstation. Although a computer is capable of using input devices and displays, such devices are not required to be included with the computer when the computer is shipped. A computer is composed of, at a minimum, (a) a central processing unit (CPU) to perform operations or, if no CPU is present, then the device must function as a client gateway to a server, and the server acts as a computational CPU; (b) the ability to support user input devices such as a keyboard, mouse, or touch pad; and (c) an integrated display screen or the ability to support an external display screen to output information. The term "computer" does not include a tablet, a game console, a television, a device with an integrated and primary display that has a screen size of twenty square inches or less, a server other than a small-scale server, or an industrial computer.

43-a. "Computer monitor" means an analog or digital device of size greater than or equal to seventeen inches and less than or equal to sixty-one inches, that has a pixel density of greater than five thousand pixels per square inch, and that is designed primarily for the display of computer-generated signals for viewing by one person in a desk-based environment. A computer monitor is composed of a display screen and

associated electronics. A computer monitor does not include, (a) displays with integrated or replaceable batteries designed to support primary operation without AC mains or external DC power (e.g. electronic readers, mobile phones, portable tablets, battery-powered digital picture frames); or (b) a television or signage display.

44. "General service lamp" shall include the following definitions:

(a) "Compact fluorescent lamp (CFL)" means an integrated or non-integrated single-base, low-pressure mercury, electric-discharge source in which a fluorescing coating transforms some of the ultraviolet energy generated by the mercury discharge into light; this term shall not include circline or U-shaped lamps.

(b) "General service incandescent lamp" means a standard incandescent or halogen type lamp that is intended for general service applications, has a medium screw base, has a lumen range of not less than three hundred ten lumens and not more than two thousand six hundred lumens, or in the case of a modified spectrum lamp, not less than two hundred thirty-two lumens and not more than one thousand nine hundred fifty lumens, and is capable of being operated at a voltage range at least partially within one hundred ten and one hundred thirty volts; provided, however, that this definition shall not apply to the following incandescent lamps:

- (i) Appliance lamps;
- (ii) Black light lamps;
- (iii) Bug lamps;
- (iv) Colored lamps;
- (v) G shape lamps (as defined in ANSI C78.20 and C79.1-2002) with a diameter of five inches or more;
- (vi) Infrared lamps;
- (vii) Left-hand thread lamps;
- (viii) Marine lamps;
- (ix) Marine signal service lamps;
- (x) Mine service lamps;
- (xi) Plant light lamps;
- (xii) Reflector lamps;
- (xiii) Sign service lamps;
- (xiv) Silver bowl lamps;

- (xv) Showcase lamps;
- (xvi) Rough service lamps;
- (xvii) Shatter-resistant lamps (including shatter-proof lamps and shatter-protected lamps);
- (xviii) 3-way incandescent lamps;
- (xix) Vibration service lamps;
- (xx) AB, BA, CA, F, G16-1/2, G-25, G30, S, or M-14 lamps (as defined in ANSI C79.1-2002 and ANSI C78.20) of forty watts or less;
- (xxi) T shape lamps (as defined in ANSI C78.20 and ANSI C79.1-2002) and that uses not more than forty watts or has a length of more than ten inches; and
- (xxii) Traffic signal lamps.

(c) "General service lamp" means a lamp that has an ANSI base, is able to operate at a voltage of twelve volts or twenty-four volts, at or between one hundred to one hundred thirty volts, at or between two hundred twenty to two hundred forty volts, or of two hundred seventy-seven volts for integrated lamps, or is able to operate at any voltage for non-integrated lamps, has an initial lumen output of greater than or equal to three hundred ten lumens (or two hundred thirty-two lumens for modified spectrum general service incandescent lamps) and less than or equal to three thousand three hundred lumens, is not a light fixture, is not an LED downlight retrofit kit, and is used in general lighting applications. General service lamps shall include, but not be limited to, general service incandescent lamps, incandescent reflector lamps, compact fluorescent lamps, general service light emitting diode lamps, and general service organic light emitting diode lamps. General service lamps shall not include:

- (i) Appliance lamps;
- (ii) Black light lamps;
- (iii) Bug lamps;
- (iv) Colored lamps;
- (v) G shape lamps with a diameter of five inches or more as defined in ANSI C79.1-2002;
- (vi) General service fluorescent lamps;
- (vii) High intensity discharge lamps;
- (viii) Infrared lamps;
- (ix) J, JC, JCD, JCS, JCV, JCX, JD, JS, and JT shape lamps that do not

have Edison screw bases;

(x) Lamps that have a wedge base or prefocus base;

(xi) Left-hand thread lamps;

(xii) Marine lamps;

(xiii) Marine signal service lamps;

(xiv) Mine service lamps;

(xv) MR shape lamps that have a first number symbol equal to sixteen (diameter equal to two inches) as defined in ANSI C79.1-2002, operate at twelve volts and have a lumen output greater than or equal to 800;

(xvi) Other fluorescent lamps;

(xvii) Plant light lamps;

(xviii) R20 short lamps;

(xix) Reflector lamps that have a first number symbol less than sixteen (diameter less than two inches) as defined in ANSI C79.1-2002 and that do not have E26/E24, E26d, E26/50x39, E26/53x39, E29/28, E29/53x39, E39, E39d, EP39, or EX39 bases;

(xx) S shape or G shape lamps that have a first number symbol less than or equal to 12.5 (diameter less than or equal to 1.5625 inches) as defined in ANSI C79.1-2002;

(xxi) Sign service lamps;

(xxii) Silver bowl lamps;

(xxiii) Showcase lamps;

(xxiv) Specialty MR lamps;

(xxv) T shape lamps that have a first number symbol less than or equal to 8 (diameter less than or equal to one inch) as defined in ANSI C79.1-2002, nominal overall length less than twelve inches, and that are not compact fluorescent lamps; and

(xxvi) Traffic signal lamps.

(d) "General service light-emitting diode (LED) lamp" means an integrated or non-integrated LED lamp designed for use in general lighting applications and that uses light-emitting diodes as the primary source of light.

(e) "General service organic light-emitting diode (OLED) lamp" means a thin-film light-emitting device that typically consists of a series of organic layers between two electrical contacts (electrodes).

(f) "Incandescent reflector lamp" or "reflector lamp" means any lamp in which light is produced by a filament heated to incandescence by an

electric current, which: contains an inner reflective coating on the outer bulb to direct the light; is not colored; is not designed for rough or vibration service applications; is not an R20 short lamp; has an R, PAR, ER, BR, BPAR, or similar bulb shapes with an E26 medium screw base; has a rated voltage or voltage range that lies at least partially in the range of one hundred fifteen and one hundred thirty volts; has a diameter that exceeds 2.25 inches; and has a rated wattage that is forty watts or higher.

45. "Federally exempt fluorescent lamp" means any linear lamps excluded from the definition of general service fluorescent lamps in 10 CFR 430.32(n). Federally exempt fluorescent lamps include high-CRI linear fluorescent lamps, impact-resistant linear fluorescent lamps, cold-temperature linear fluorescent lamps, and less than four-foot linear fluorescent lamps.

46. The following definitions refer to portable air conditioners:

(a) "Portable air conditioner" means a portable encased assembly, other than a packaged terminal air conditioner, room air conditioner, or dehumidifier, that delivers cooled, conditioned air to an enclosed space, and is powered by single-phase electric current. Such portable air conditioner includes a source of refrigeration and may include additional means for air circulation and heating and may be a single-duct or a dual-duct portable air conditioner.

(b) "Single-duct portable air conditioner" means a portable air conditioner that draws all of the condenser inlet air from the conditioned space without the means of a duct and discharges the condenser outlet air outside the conditioned space through a single-duct attached to an adjustable window bracket.

(c) "Dual-duct portable air conditioner" means a portable air conditioner that draws some or all of the condenser inlet air from outside the conditioned space through a duct attached to an adjustable window bracket, may draw additional condenser inlet air from the conditioned space, and discharges the condenser outlet air outside the conditioned space by means of a separate duct attached to an adjustable window bracket.

46-a. "Residential ventilating fan" means a fan with the purpose to actively supply air to or remove air from the inside of a residence. This includes ceiling and wall-mounted fans or remotely mounted in-line fans designed to be used in a bathroom or utility room, supply fans designed to provide air to indoor space and kitchen range hoods. Supply fans may also be designed to filter incoming air.

47. "Telephone" means an electronic product whose primary purpose is to transmit and receive sound over a distance using a voice or data network.

48. The following definitions refer to faucets and showerheads:

(a) "Faucet" means a lavatory faucet, kitchen faucet, metering faucet, public lavatory faucet, or replacement aerator for a lavatory, public lavatory or kitchen faucet.

(b) "Public lavatory faucet" means a fitting intended to be installed in nonresidential bathrooms that are exposed to walk-in traffic.

(c) "Metering faucet" means a faucet that, when turned on, will gradually shut itself off over a period of several seconds.

(d) "Replacement aerator" means an aerator sold as a replacement, separate from the faucet to which it is intended to be attached.

(e) "Showerhead" means a device through which water is discharged for a shower bath and includes a hand-held showerhead but does not include a safety shower showerhead.

(f) "Hand-held showerhead" means a showerhead that can be held or fixed in place for the purpose of spraying water onto a bather and that is connected to a flexible hose.

49. The following definitions refer to urinals and water closets:

(a) "Plumbing fixture" means an exchangeable device, which connects to a plumbing system to deliver and drain away water and waste.

(b) "Urinal" means a plumbing fixture that receives only liquid body waste and, conveys the waste through a trap into a drainage system.

(c) "Water closet" means a plumbing fixture having a water-containing receptor that receives liquid and solid body waste through an exposed integral trap into a drainage system.

(d) "Dual-flush effective flush volume" means the average flush volume

of two reduced flushes and one full flush.

(e) "Dual-flush water closet" means a water closet incorporating a feature that allows the user to flush the water closet with either a reduced or a full volume of water.

(f) "Trough-type urinal" means a urinal designed for simultaneous use by two or more persons.

50. The following definitions refer to spray sprinkler bodies:

(a) "Pressure regulator" means a device that maintains constant operating pressure immediately downstream from the device, given higher pressure upstream.

(b) "Spray sprinkler body" means the exterior case or shell of a sprinkler incorporating a means of connection to the piping system designed to convey water to a nozzle or orifice.

51. "Uninterruptable power supply" means a battery charger consisting of a combination of convertors, switches and energy storage devices (such as batteries), constituting a power system for maintaining continuity of load power in case of input power failure.

52. "Commercial battery charger system (BCS)" or "state-regulated BCS" means a battery charger coupled with its batteries or battery chargers coupled with their batteries, which together are referred to as state-regulated battery charger systems. This term covers all rechargeable batteries or devices incorporating a rechargeable battery and the chargers used with them. Battery charger systems include, but are not limited to:

(a) electronic devices with a battery that are normally charged from AC line voltage or DC input voltage through an internal or external power supply and a dedicated battery charger;

(b) the battery and battery charger components of devices that are designed to run on battery power during part or all of their operations;

(c) dedicated battery systems primarily designed for electrical or emergency backup; and

(d) devices whose primary function is to charge batteries, along with the batteries they are designed to charge. These units include chargers for power tool batteries and chargers for automotive, AA, AAA, C, D, or

9V rechargeable batteries, as well as chargers for batteries used in larger industrial motive equipment and a la carte chargers.

The charging circuitry of battery charger systems may or may not be located within the housing of the end-use device itself. In many cases, the battery may be charged with a dedicated external charger and power supply combination that is separate from the device that runs on power from the battery. State-regulated battery charger systems do not include federally regulated battery chargers that are covered under standards in 10 C.F.R. section 430.32(z).

53. "Gas fireplace" means a decorative gas fireplace or a heating gas fireplace.

(a) "Decorative gas fireplace" means a vented fireplace, including appliances that are freestanding, recessed, zero clearance, or a gas fireplace insert, that is fueled by natural gas or propane, is marked for decorative use only, and is not equipped with a thermostat or intended for use as a heater.

(b) "Heating gas fireplace" means a vented fireplace, including appliances that are freestanding, recessed, zero clearance, or a gas fireplace insert, that is fueled by natural gas or propane and is not a decorative fireplace.

54. "Manufactured home" has the meaning ascribed to that term by subdivision seven of section six hundred one of the executive law.

55. "Recreational vehicle" means a van or utility vehicle used for recreational purposes.

56. "Uniform code" means the New York state uniform fire prevention and building code adopted pursuant to article eighteen of the executive law.

57. "Energy code" means the New York state energy conservation construction code adopted pursuant to article eleven of this chapter.

58. "Electric vehicle supply equipment (EVSE)" means equipment that

supplies electricity in an appropriate form to storage devices, including batteries and super capacitors, that are part of electric vehicles. Such term shall include equipment that performs this function and equipment that is embedded in electric vehicles.

59. "Electric vehicle" means an on-road vehicle that draws electricity for propulsion from a traction battery with a least five kilowatt-hours (kWh) of capacity, and uses an external source of energy to recharge the battery. Such term shall include a plug-in hybrid electric vehicle (PHEV) with a second source of energy for propulsion, and a battery electric vehicle (BEV), which is powered solely by externally supplied electricity stored on-board such electric vehicle.

60. "Commercial clothes dryer" means a clothes dryer designed to dry fabrics in a tumble-type drum with forced air circulation and is designed for use in:

(a) Applications in which the occupants of more than one household will be using the clothes dryer, including multi-family housing common areas and coin laundries; or

(b) Other commercial applications.

61. "Commercial and industrial fans and blowers" means a rotary-bladed machine used to convert power to air power, with a brake horsepower greater than or equal to either one kilowatt or one horsepower, and an air horsepower less than or equal to one hundred fifty, and used for commercial and industrial purposes.

62. "Imaging equipment" means copiers, printers, scanners, fax machines, and multifunction devices used both in homes and businesses.

63. "Landscape irrigation controller" means a device intended to remotely control valves to operate an irrigation system for landscapes, which may consist of grass, shrubs, trees and/or other vegetation. This term shall not include devices that are typically sold separately and used primarily for other purposes, such as a network router, and may be used incidentally for a landscape irrigation controller. This term shall not include battery powered hose-end timers or devices used primarily in

agricultural applications.

64. "Outdoor lighting" means electrical lighting used to illuminate outdoor areas, including parking lots, streetlights, highways and area luminaires.

65. "Plug-in luminous signs" means a self-contained, luminous sign unit that plugs into 120V AC building mains power and is intended for indoor use only. Signs may be intended for use in commercial outlets in business establishments or in residences.

66. "Small network equipment" means a device whose primary function is to pass internet protocol (IP) traffic among various network interfaces or ports intended for use in residential and small business settings.

67. "Tub spout diverters" means the following definitions:

(a) A bath and shower diverter whose diverter mechanism is located in the tub spout; and/or

(b) Bath and shower diverter means a device used to direct the flow of water either toward a tub spout or toward a secondary outlet intended for showering purposes, including a showerhead or body spray.

§ 16-104. Applicability, conduct prohibited. 1. The provisions of this article apply to the establishment of, testing for compliance with, certification of compliance with, and enforcement of efficiency standards for the following new products which are sold, or offered for sale, leased or offered for lease, rented or offered for rent or installed or offered to install in New York state unless preempting federal appliance standards are in effect: (a) automatic commercial ice cube machines; (b) ceiling fan light kits; (c) commercial pre-rinse spray valves; (d) commercial refrigerators, freezers and refrigerator-freezers; (e) consumer audio and video products; (f) illuminated exit signs; (g) incandescent reflector lamps; (h) very large commercial packaged air-conditioning and heating equipment; (i) metal halide lamp fixtures; (j) pedestrian traffic signal modules; (k) power supplies; (l) torchiere lighting fixtures; (m) unit heaters; (n)

vehicular traffic signal modules; (o) portable light fixtures; (p) bottle-type water dispensers; (q) commercial hot food holding cabinets; (r) portable electric spas; (s) replacement dedicated-purpose pool pump motors; (t) air compressors; (u) air purifiers; (v) commercial dishwashers; (w) commercial fryers; (x) commercial steam cookers; (y) computers and computer monitors; (z) general service lamps; (aa) federally exempt fluorescent lamps; (bb) portable air conditioners; (cc) residential ventilating fans; (dd) telephones; (ee) faucets; (ff) showerheads; (gg) urinals; (hh) water closets; (ii) sprinkler bodies; (jj) uninterruptable power supplies; (kk) light emitting diode lamps; (ll) electric vehicle supply equipment; (mm) commercial battery charger systems; (nn) commercial ovens; (oo) commercial clothes dryers; (pp) commercial and industrial fans and blowers; (qq) imaging equipment; (rr) landscape irrigation controllers; (ss) outdoor lighting; (tt) plug-in luminous signs; (uu) small network equipment; (vv) tub spout diverters; (ww) commercial hot food holding cabinets; (xx) gas fireplaces; (yy) products for which efficiency standards shall have been established pursuant to paragraph (b) or (c) of subdivision one of section 16-106 of this article; and (zz) products that had been subject to any federal efficiency standard referred to in section 16-105 of this article that have been continued in this state pursuant to such section.

2. No person shall sell or offer for sale, lease or offer to lease, or rent or offer to rent, or install or offer to install in New York state any new product of the types enumerated in paragraphs (a) through (xx) of subdivision one of this section, or any new product for which efficiency standards shall have been established pursuant to paragraph (b) or (c) of subdivision one of section 16-106 of this article, or any new product that is subject to any federal efficiency standard that shall have been continued in this state pursuant to section 16-105 of this article, unless:

(a) it meets the efficiency standards applicable to such product as of the date of manufacture of such product or as of such other date as may be determined in accordance with the regulation establishing the standard for such product; and

(b) if required by regulations adopted pursuant to this article, the manufacturer of such product certifies that the product meets said

efficiency standards. As used within this subdivision, reference to any new product means any individual product subject to the requirements of this article.

3. The prohibitions contained in subdivision two of this section shall not apply to:

- (a) products manufactured in the state and sold outside the state;
- (b) products manufactured outside the state and sold at wholesale inside the state for final retail sale outside the state;
- (c) products installed in manufactured homes at the time of construction;
- (d) products designed expressly for installation and use in recreational vehicles; or
- (e) urinals and water closets designed and marketed exclusively for use at prisons or mental health care facilities.

4. The adoption of efficiency standards for any water-related appliances, equipment or fixtures shall be subject to approval by the commissioner of environmental conservation. Any such standard which would conflict with the provisions of section 15-0314 of the environmental conservation law shall not take effect until and unless waived by the commissioner of environmental conservation.

5. In adopting the flexible demand appliance standards, the New York state energy research and development authority shall consider the National Institute of Standards and Technology reliability and cybersecurity protocols, relevant New York cybersecurity laws, regulations, and advisories, or other cybersecurity protocols that are equally or more protective, and shall adopt, at a minimum, the North American Electric Reliability Corporation's Critical Infrastructure Protection standards.

§ 16-105. Adoption of certain federal efficiency standards. 1. The federal efficiency standard established in 10CFR Parts 430 and 431, as in effect on January first, two thousand eighteen shall be applicable to products which are subject to such federal efficiency standards and

which are sold, offered for sale, or installed in New York state. So long as such federal efficiency standards remain in effect as federal efficiency standards, they shall be enforced as provided by federal law. The president shall adopt by regulation all such federal efficiency standards and provided that, if any such federal efficiency standard is withdrawn, repealed, voided, or otherwise ceases to remain in effect as a federal efficiency standard:

(a) such efficiency standard shall be continued in this state;

(b) until and unless amended or repealed pursuant to this article, the president shall be authorized to adopt regulations establishing procedures for testing the energy reduction, water conservation, greenhouse gas reduction, and/or increased demand flexibility associated with such product;

(c) the president shall be authorized to adopt regulations establishing procedures for manufacturers of such product to certify that such product meets such efficiency standard, if the president determines that such manufacturer's certifications should be required;

(d) the president shall be authorized to adopt regulations amending such efficiency standard from time to time, including regulations that repeal such efficiency standard, or increase the stringency of such efficiency standard; and

(e) if federal preemption has been waived for any particular federal efficiency standard or standards, the president may adopt such standard or may adopt a different standard.

2. This section shall not apply to any federal efficiency standard set aside by a court upon the petition of a person who will be adversely affected, as provided in 42 U.S.C. § 6306(b).

§ 16-106. Powers and duties of the president and the secretary. 1. The president in consultation with the secretary shall have and be entitled to exercise the following powers and duties:

(a) To adopt regulations establishing efficiency standards for the products listed in paragraphs (a) through (xx) of subdivision one of section 16-104 of this article, including but not limited to, establishing efficiency standards for power supplies in the active mode

and no-load mode or other such products while in the active mode and in the standby-passive-mode;

(b) To adopt regulations establishing efficiency standards for products not specifically listed in paragraphs (a) through (xx) of subdivision one of section 16-104 of this article, provided that the president determines that establishing such efficiency standards would serve to promote energy reduction, water conservation, greenhouse gas reduction, and/or increased demand flexibility associated with the regulated product categories in this state. To the maximum extent feasible the president shall coordinate any such adoption with similar efforts by other states. Any regulation adopted pursuant to this paragraph may include provisions establishing procedures for testing the efficiency of the covered products and provisions establishing procedures for manufacturers of such product to certify that such products meet the efficiency standards, if the president determines that such manufacturer's certifications should be required;

(c) To review efficiency standards as adopted from time to time by other states for products not listed in paragraphs (a) through (xx) of subdivision one of section 16-104 of this article, and to adopt regulations establishing efficiency standards similar to those adopted by any other state for such products, provided that the president determines that establishing such efficiency standards would serve to promote energy reduction, water conservation, greenhouse gas reduction, and/or increased demand flexibility associated with the regulated product categories in this state. Any regulation adopted pursuant to this paragraph may include provisions establishing procedures for testing the efficiency of the covered products and provisions establishing procedures for manufacturers of such product to certify that such products meet the efficiency standards, if the president determines that such manufacturer's certifications should be required;

(d) To adopt regulations to achieve the purposes of this article. Such regulations shall ensure that compliance therewith will not result in a net increase in co-pollutant emissions or otherwise disproportionately burden disadvantaged communities as identified by the climate justice working group established under section 75-0111 of the environmental conservation law. In order to increase public participation and improve the efficacy of any efficiency standards adopted pursuant to subdivision

(b) or (c) of this section, the president shall, before publication of a notice of proposed rule making, conduct public meetings to provide meaningful opportunities for public comment from all segments of the population that would be impacted by the standards or regulations, including persons living in disadvantaged communities as identified by the climate justice working group established under section 75-0111 of the environmental conservation law;

(e) To conduct investigations, test, and obtain data with respect to research experiments and demonstrations, and to collect and disseminate information regarding the purposes to be achieved pursuant to this article;

(f) To accept grants or funds for purposes of administration and enforcement of this article. Notwithstanding any other provision of law to the contrary, the president is hereby authorized to accept grants or funds, including funds directed through negotiated settlements or consent orders pursuant to this article. All funds accepted by the president for the purposes of this article shall be deposited in the efficiency standards administration account established by the New York state energy research and development authority and maintained in a segregated account in the custody of the commissioner of taxation and finance. All expenditures from the efficiency standards administration account pursuant to this article shall be made by the New York state energy research and development authority to carry out studies, investigations, research, expenses to provide for expert witness, consultant, enforcement, administrative and legal fees, including disbursements to the department of state to support enforcement activities authorized by the secretary pursuant to this section, and other related expenses pursuant to this article. All deposits made to the efficiency standards administration account made by the New York state energy research and development authority, all funds maintained in the efficiency standards administration account, and disbursements therefrom, made pursuant to this article shall be subject to an annual independent audit as part of such authority's audited financial statements, and such authority shall prepare an annual report summarizing efficiency standards administration account balance and activities for each fiscal year ending March thirty-first. In addition to submitting such report as provided in section one thousand eight

hundred sixty-seven of the public authorities law, the authority shall provide such report to the secretary no later than ninety days after commencement of such fiscal year;

(g) To consult with the appropriate federal agencies, including, but not limited to, the federal department of energy and other potentially affected parties in carrying out the provisions of this article; and

(h) To conduct investigations, in consultation with the secretary, to determine if products covered by standards adopted pursuant to this article comply with such standards; to conduct tests to determine if products covered by standards adopted pursuant to this article comply with such standards; to prepare written reports of the results of such investigations and tests; to provide such reports to the secretary; in consultation with the secretary, to negotiate settlement agreements with any person that violates the provisions of subdivision two of section 16-104 of this article, or fails to perform any duty imposed by this article, or violates or fails to comply with any rule, regulation, determination, or order adopted, made, or issued by the president or the secretary pursuant to this article, pursuant to which such person shall agree to cease such violation and to pay such civil penalty as may be specified in such agreement, the terms of which will be incorporated into a consent order signed by such person, the president, and the secretary; to consult with the secretary in connection with determinations made by the secretary pursuant to paragraph (b) of subdivision five of this section; and to cooperate with the secretary in enforcement proceedings conducted by the secretary pursuant to this article.

1-a. Notwithstanding any other provision of this article, no efficiency standard adopted pursuant to paragraph (a) of subdivision one of this section shall become effective less than one hundred eighty days after publication of the notice of adoption of such standard in the state register; no efficiency standard adopted pursuant to paragraph (b) or (c) of subdivision one of this section shall become effective less than one year after publication of the notice of adoption of such efficiency standard in the state register; no amendment of any efficiency standard adopted pursuant to this article or of any efficiency standard continued in this state pursuant to section 16-105

of this article shall become effective less than one hundred eighty days after publication of the notice of adoption of such amendment in the state register; and no new or amended efficiency standard adopted pursuant to this article shall go into effect if federal government efficiency standards regarding such product preempt state standards unless preemption has been waived pursuant to federal law.

2. (a) On or before January first, two thousand twenty-three, the president, in consultation with the secretary, shall adopt regulations in accordance with the provisions of this article establishing:

(i) efficiency standards for new products of the types referred to in paragraphs (a) through (f), paragraphs (h) through (y), paragraphs (aa) through (jj) and paragraphs (mm) through (xx) of subdivision one of section 16-104 of this article;

(ii) procedures for testing the efficiency of the new products of the types referred to in paragraphs (a) through (f) and paragraphs (h) through (xx) of subdivision one of section 16-104 of this article;

(iii) procedures for manufacturers to certify that new products of the types referred to in paragraphs (a) through (f) and paragraphs (h) through (xx) of subdivision one of section 16-104 of this article meet the efficiency standards to be adopted pursuant to this article, if the president determines that such manufacturer's certifications should be required; and

(iv) such further matters as are necessary to insure the proper implementation and enforcement of the provisions of this article.

(b) With respect to the types of products referred to in paragraph (g), (z) or (kk) of subdivision one of section 16-104 of this article (incandescent reflector lamps, general service lamps, and light emitting diode lamps), the president shall conduct a study by December thirty-first, two thousand twenty-three to determine whether an efficiency standard for such products should be established, taking into account factors including the potential impact on electricity usage, product availability and consumer and environmental benefits. If the president determines based on this study that such a standard would reduce energy use and would not be preempted by the federal law, the president shall adopt regulations in accordance with the provisions of this article establishing efficiency standards for such products.

3. Subsequent to adopting regulations pursuant to subdivisions one and two of this section, the president, in consultation with the secretary, may amend such regulations, including increasing the stringency of the efficiency standards.

** 4. By March fifteenth of two thousand twenty-one, the secretary and the president shall produce a report to the governor, the speaker of the assembly, the temporary president of the senate, the chair of the assembly committee on energy and the chair of the senate committee on energy and telecommunications on the status of regulations establishing efficiency standards pursuant to this article, which shall indicate for each product enumerated in subdivision one of section 16-104 of this article the status of the implementation of efficiency standards. The report shall also set forth the estimated potential annual reductions in energy use and potential utility bill savings resulting from adopted efficiency standards for the years two thousand twenty-five and two thousand thirty-five and the potential cumulative reductions in energy use through the year two thousand thirty-five. Such report shall be updated in the same manner by March fifteenth, two thousand twenty-six and two thousand thirty and copies of such updates shall be posted by March fifteenth, two thousand twenty-seven and March fifteenth, two thousand thirty on the websites of the authority and the department of state.

** NB Repealed December 31, 2030

5. (a) In addition to all other powers and authority given to the secretary by this article, the secretary shall have and be entitled to exercise the following powers and duties:

(i) To request the president to conduct investigations to determine if products covered by efficiency standards adopted pursuant to this article comply with such efficiency standards; to consult with the president in connection with the president's performance of such investigations; to request the president to conduct tests to determine if products covered by efficiency standards adopted pursuant to this article comply with such efficiency standards; and to request the president's cooperation in connection with enforcement proceedings conducted by the secretary pursuant to this article;

(ii) To order the immediate cessation of any distribution, sale or offer for sale, lease or offer to lease, rent or offer to rent, import, or offer to import, or installation or offer of installation of any product listed in paragraphs (a) through (xx) of subdivision one of section 16-104 of this article, or of any product for which efficiency standards shall have been established pursuant to paragraph (b) or (c) of subdivision one of this section, or any product that is subject to a federal efficiency standard that shall have been continued in this state pursuant to section 16-105 of this article, if the secretary, in consultation with the president, determines that such product does not meet the applicable efficiency standard or if such product does not satisfy the testing procedures or manufacturer's certification procedures adopted pursuant to the regulations authorized by this article;

(iii) To accept grants or funds for purposes of administration and enforcement of this article;

(iv) To impose, after notice and an opportunity to be heard, civil penalties and/or injunctive relief for any violation of this article or any regulation adopted pursuant to this article. Any penalties collected by the secretary under this section shall be placed in the account established under section ninety-seven-ww of the state finance law, relating to the consumer protection account; and

(v) To adopt such rules and regulations as the secretary may deem necessary or appropriate for the purpose of carrying out the powers and duties granted to the secretary by this article.

(b) The secretary may exercise the powers and authority granted to the secretary by this subdivision, or by any other provision of this article, through the consumer protection division established by the secretary pursuant to section ninety-four-a of the executive law or through such other divisions, officers, or employees of the department of state as the secretary may designate from time to time.

§ 16-107. Subpoenas, information and document production, enforcement procedures, referrals. 1. (a) In addition to all other powers provided by this article, the secretary or his or her designee shall have the power and authority to subpoena and require the attendance of witnesses

and the production of books, papers, contracts and any other documents pertaining to any investigation or hearing conducted pursuant to this article. The secretary may issue such subpoenas on his or her own initiative or at the request of the president.

(b) If any person refuses to comply with a subpoena issued under this section, the department may petition a court of competent jurisdiction to enforce the subpoena and such sanctions as the court may direct.

(c) A subpoena issued under this subdivision shall be regulated by the civil practice law and rules, and is in addition to and not in limitation of the power to make information and document requests under subdivision two of this section.

2. Any person that sells or offers for sale, leases or offers for lease, rents or offers for rent, or installs or offers to install, manufactures or tests in New York state any new product of a type listed in paragraphs (a) through (xx) of subdivision one of section 16-104 of this article, or any new product for which efficiency standards shall have been established pursuant to paragraph (b) or (c) of subdivision one of section 16-106 of this article, or any product that is subject to federal efficiency standards that shall have been continued in this state pursuant to section 16-105 of this article, shall be obliged, on the request of the secretary or his or her designee, or the request of the president or his or her designee, to supply the secretary and/or the president with such information and documentation as may be required concerning such person's business, business practices, or business methods, or proposed business practices or methods. The obligations contained in this subdivision shall not apply to any person that sells or offers for sale, leases or offers for lease, rents or offers for rent, or installs or offers to install only products described in subdivision three of section 16-104 of this article. The power to make information and document requests is in addition to and not in limitation of the power to issue subpoenas.

3. The secretary shall, before ordering the immediate cessation of any distribution, sale or offer for sale, lease or offer to lease, rent or offer to rent, import or offer to import, or installation or offer of installation of any product, or imposing any civil penalty, injunctive

relief, or other relief pursuant to this article upon any person who is alleged to be in violation of any provision of this article or of any regulation adopted pursuant to this article, and at least ten days prior to the date set for the hearing, notify in writing and shall afford such person an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally, or by mailing same by certified mail to the last known business address of such person, or by any method authorized by the civil practice law and rules. The hearing on such charges shall be at such time and place as the department of state shall prescribe. A hearing held by this subdivision shall be held pursuant to the state administrative procedure act, and any applicable regulations adopted by the secretary.

4. A final action of the secretary in imposing a civil penalty, or other order, may be subject to review by a proceeding instituted under article seventy-eight of the civil practice law and rules.

5. In addition to all other powers provided by this article, the secretary and the president, are authorized, individually or jointly, to refer the results of any investigation conducted by the president pursuant to this article to the attorney general and to request the attorney general to institute, in the name of the secretary and/or the president, an action or proceeding to enforce the provisions of this article. The attorney general shall, at the request of the secretary or president, or may, on his or her own initiative, institute proceedings to enforce the provisions of this article including the imposition of civil penalties or injunctive relief. Nothing in this subdivision shall limit or impair the power and authority of the secretary to conduct enforcement proceedings, to issue orders pursuant to paragraph (b) of subdivision five of section 16-106 of this article, and to impose penalties pursuant to section 16-108 of this article.

§ 16-108. Violations, civil liability. 1. Any person who issues:

(a) a certification that a product listed in paragraphs (a) through (xx) of subdivision one of section 16-104 of this article complies with

the efficiency standards for such product established by or pursuant to this article;

(b) a certification that a product not listed in paragraphs (a) through (xx) of subdivision one of section 16-104 of this article complies with efficiency standards for such product established pursuant to paragraph (b) or (c) of subdivision one of section 16-104 of this article; or

(c) a certification that a product that is subject to federal efficiency standards that shall have been continued in this state pursuant to section 16-105 of this article complies with such efficiency standards, knowing that such product does not comply with such efficiency standards, shall be liable for a civil penalty of not more than ten thousand dollars for each such product certified and an additional penalty of not more than ten thousand dollars for each day during which such violation continues.

2. Any person who violates the provisions of subdivision two of section 16-104 of this article, or fails to perform any duty imposed by this article, or violates or fails to comply with any rule, regulation, determination, or order adopted, made, or issued by the president or the secretary pursuant to this article, shall be liable for a civil penalty of not more than five hundred dollars for each such violation and an additional civil penalty of not more than one hundred dollars for each day during which such violation continues, and, in addition thereto, such person may be enjoined from continuing such violation.

3. An action or cause of action for the recovery of a penalty under this section may be settled or compromised in an amount to be approved by the secretary either before or after proceedings are brought to recover such penalties and prior to the entry for judgment therefor.

§ 16-109. Conflicts with other laws. Nothing in this article or in any regulation adopted pursuant to this article shall limit, impair, or supersede the provisions of subdivision one of section three hundred eighty-three of the executive law or the provisions of subdivision three of section 11-103 of this chapter.

ARTICLE 17
ENERGY INFORMATION

Section 17-101. Definitions.

17-102. Administration.

17-103. Truth in heating.

17-105. Heating system efficiency tests.

§ 17-101. Definitions. For the purpose of this article, the following terms shall have the following meanings:

1. "Residential structure" shall mean a one or two family dwelling or a single unit of a multiple dwelling, including an individual condominium unit or cooperative unit, which is offered for sale or rental on or after January first, nineteen hundred eighty-one by any person other than the original contractor or builder of any such dwelling.

2. "Heating and/or cooling bills" shall mean all bills rendered by a retail vendor for energy used for heating and/or cooling purposes in a residential structure, including any bills where the cost of energy used for heating and/or cooling purposes is not differentiated from the costs of energy used for any other purpose.

3. "Lessor" shall mean any person who offers any residential structure for lease to the general public.

4. "Seller" shall mean any person who offers a residential structure for sale to the general public.

§ 17-102. Administration. Notwithstanding any other provision of law, the New York state energy research and development authority shall be deemed to have the responsibility and authority to implement the provisions of this article.

§ 17-103. Truth in heating. 1. (a) On or after January first, nineteen hundred eighty-one, the seller of a residential structure shall, within fifteen days of receipt of a written request from a prospective purchaser, furnish such purchaser a complete set of heating and/or cooling bills, or a summary of such heating and/or cooling bills, for the life of the structure or for the preceding two years, whichever is shorter. A seller need not honor a request for heating or cooling bills if such request is initially made after the signing of a purchase contract.

(b) (1) On or after January first, nineteen hundred eighty-four, the seller of a residential structure shall, within fifteen days of receipt of a written request from a prospective purchaser, furnish such purchaser with a statement of the following:

(i) The type and areas of insulation installed by the seller in such structure during his ownership.

(ii) The type and areas of insulation installed in such structure by any previous owner, known to the seller.

(iii) As used in this paragraph, "insulation" shall include but shall not be limited to any type of material permanently placed within or contiguous to a wall, ceiling or floor of a room or building for the purpose of reducing heat transfer and thus the energy requirements for heating and cooling the building.

(2) The seller need not honor a request for the information described in this paragraph if such request is initially made after the signing of a purchase contract.

(3) A seller shall be subject to the imposition of penalties under this article, including section 5-119, for failure to provide the statement required by subparagraph one of this paragraph.

(4) The commissioner shall not evaluate the sufficiency or accuracy of any statement concerning insulation furnished, pursuant to this paragraph, to a prospective purchaser.

(c) On or after January first, nineteen hundred eighty-one, the lessor of a residential structure where the lessee is responsible for payment of the heating and/or cooling bills shall, immediately upon receipt of a request from a prospective lessee, furnish such lessee a complete set of

heating and/or cooling bills, or a summary of heating and/or cooling bills, for the life of the structure or for the preceding two years, whichever is shorter.

(d) All heating and/or cooling bills furnished by a seller or lessor shall indicate whether the residential structure was occupied during the period of time for which the heating and/or cooling bills are supplied.

(e) A seller who lacks all or part of such heating and/or cooling bills shall request the retail vendor of fuel or utility services to provide such seller with a complete set of heating and/or cooling bills, or a summary thereof. Where a seller is still unable to furnish a prospective purchaser with a complete set of heating and/or cooling bills, or a summary thereof, he shall nevertheless provide the prospective purchaser with whatever records he has been able to obtain, or a summary thereof, and indicate which periods of time and/or which fuel or utility services are not covered by the incomplete records or summary provided.

(f) No charge or fee shall be imposed on any purchaser or lessee by any seller or lessor for furnishing heating and/or cooling bills or summaries thereof pursuant to the provisions of this section. No lessor or seller shall disclose the name of a tenant in connection with the furnishing of heating and/or cooling bills or summaries thereof without the consent of such tenant.

2. (a) Every retail vendor of fuel or utility services used for heating and/or cooling residential structures shall maintain records of the cost of fuel or utility services provided such structures for at least two calendar years.

(b) Within ten days after receiving a request from the seller or lessor of a residential structure, a retail vendor shall furnish such owner with duplicate copies of the heating and/or cooling bills, or a summary of the heating and/or cooling bills, for the life of the structure or the preceding two year period, whichever is shorter. A retail vendor shall not require the consent of a current tenant or prior owner to provide such duplicate copies or summaries, provided that no such copy or summary shall contain information relating to the status of such tenant's or prior owner's account with the retail vendor.

(c) A retail vendor may charge a fee of five dollars for providing

such duplicate copies of heating and/or cooling bills, or a summary of such bills, to any such owner.

3. (a) The maximum penalty which may be recovered pursuant to section 5-119 of this chapter, for a violation of this section by any seller, lessor or vendor shall be one hundred dollars for each separate and distinct violation; provided, however, that (i) a seller shall not be in violation of this section due to the failure by a vendor to furnish heating and/or cooling bills upon receipt of such a request by the seller, and (ii) a lessor shall not be in violation of this section if the lessor commenced an act to obtain immediately the heating and/or cooling bills upon receiving notice that the structure was to be vacated and had not yet received such bills from the vendor.

(b) The failure of a seller or lessor to furnish the heating and/or cooling bills required pursuant to this section to a prospective purchaser or lessee shall not affect legal title to any residential structure or permit any purchaser or lessee of any such structure to avoid any obligations he may have under any purchase contract or lease.

4. (a) The commissioner, after consultation with the department of public service, shall promulgate rules and regulations to implement the provisions of this section relating to the furnishing and maintenance of heating and/or cooling bills. The commissioner shall waive in whole or in part a requirement that records be furnished for any period prior to the promulgation of such rules and regulations if such records have not been maintained by a retail vendor.

(b) On or before September first, nineteen hundred eighty the commissioner shall notify all retail vendors of fuel or utility services of the requirements of this section, and of their obligations to maintain and supply heating and/or cooling bills, or summaries thereof, under this section.

§ 17-105. Heating system efficiency tests. 1. For the purposes of this section:

a. "Contractor" means any person who contracts to install, repair or

service oil or gas heating systems for customers.

b. "Oil heating system" means a device which burns either No. 2 or No. 4 fuel oil for heating purposes.

c. "Gas heating system" means a device which burns either natural gas or propane for central heating purposes.

d. "Service contract" means an oral or written agreement between a contractor and a customer which requires the contractor to service the customer's oil or gas heating system.

e. "Customer" means any person who resides in, or is the owner of, a one, two or three-family dwelling or a single unit of a multiple dwelling, including an individual condominium unit or cooperative unit, who uses an oil or gas heating system for heating such dwelling or unit and who is responsible for the operation and maintenance of such oil or gas heating system.

f. "Efficiency test" means a test of steady-state efficiency and shall include the following procedures: (1) with respect to an oil heating system, measuring the carbon monoxide, measuring the carbon dioxide or oxygen content, measuring the net stack temperature, measuring the smoke level, and such other procedures as the contractor shall deem appropriate; and (2) with respect to a gas heating system, measuring the carbon monoxide, measuring the carbon dioxide or oxygen content, measuring the net stack temperature, and such other procedures as the contractor shall deem appropriate.

2. Every contractor who offers to perform service contracts for customers shall offer to include in such contracts a yearly efficiency test. Such test, which shall be at a customer's option, shall be performed after any repairs or adjustments have been completed pursuant to the service contract, and the additional cost, if any, for such test shall be separately charged. Upon the completion of any such test, the contractor shall provide the customer with a form listing the values for carbon monoxide, carbon dioxide or oxygen content, the net stack

temperature, and the smoke level, as appropriate, and the steady-state efficiency (expressed in a percentage) determined therefrom.

3. The commissioner shall make reasonable efforts to notify all contractors of their obligation to offer efficiency tests to customers as provided by the provisions of this section.

ARTICLE 18

TEMPORARY NUCLEAR WASTE REPOSITORIES

Section 18-101. Definitions.

18-103. Establishment of temporary nuclear waste repositories.

18-105. State board on temporary nuclear waste repository siting.

18-107. Filing of application for certificate; docketing; convening of board.

18-109. Contents of application.

18-111. Action of the board.

18-113. Judicial review.

§ 18-101. Definitions. As used in this article, unless the context otherwise requires:

1. "Commissioner" means the commissioner of environmental conservation.

2. "Board" means the state board on temporary nuclear waste repository siting established by section 18-105 of this article.

3. "Application" means an application for a certificate.

4. "Certificate" means a temporary nuclear waste repository siting certificate issued pursuant to the provisions of this article.

5. "Person" means any individual, partnership, association, corporation, public benefit corporation, municipality, political

subdivision, governmental agency (including any agency of the federal government), trust, estate, or other legal entity.

6. "Municipality" means a county, city, town or village.

7. "Temporary nuclear waste repository" means any facility where spent fuel rods from nuclear reactors are received on or after the effective date of this article and are stored pending further or final disposal, except a facility located in the immediate vicinity of a nuclear power generating facility or an operating nuclear reactor which is used to store, on an interim or temporary basis, spent nuclear fuel from nuclear power generating facilities or operating nuclear reactors located in this state.

§ 18-103. Establishment of temporary nuclear waste repositories. 1.

No person shall establish or operate a temporary nuclear waste repository within this state unless he has been granted a certificate by the board. Any such temporary nuclear waste repository with respect to which a certificate is issued shall not thereafter be built, maintained or operated except in conformity with such certificate and any terms, limitations or conditions contained therein, provided that nothing herein shall exempt such temporary nuclear waste repository from compliance with state law and regulations thereunder subsequently adopted or with municipal laws and regulations thereunder not inconsistent with the provisions of such certificate. A certificate for a temporary nuclear waste repository may be issued only pursuant to this article.

2. Notwithstanding any other provision of law, no state agency, municipality or any agency thereof may, except as expressly authorized by this article by the board, require any approval, consent, permit, certificate or other condition for the construction or operation of a temporary nuclear waste repository with respect to which an application for a certificate hereunder has been filed, other than those provided by otherwise applicable state law for the protection of employees engaged in the construction and operation of such facility, and provided that in

the case of a municipality or an agency thereof, such municipality has received notice of the filing of the application therefor.

3. Neither the St. Lawrence eastern Ontario commission nor the Adirondack park agency shall hold public hearings for a temporary nuclear waste repository with respect to which an application hereunder has been filed, provided that such commission or agency has received notice of the filing of such application.

§ 18-105. State board on temporary nuclear waste repository siting.

1. There is hereby created the state board on temporary nuclear waste repository siting. The board shall consist of the commissioner of environmental conservation, the commissioner of health, and three ad hoc members appointed by the governor, one of whom shall be from the judicial district in which the proposed facility is located, one of whom shall be upon the recommendation of the temporary president of senate, and one of whom shall be upon the recommendation of the speaker of the assembly. No person may be so designated who retains or holds any official relation to or financial interest in an electric utility corporation in the state, or in the applicant or any subsidiary or entity affiliated with the applicant, nor shall such person have been a director, officer or employee thereof; provided, however, that prior employment with an agency of the state or federal government shall not disqualify any person from being designated for appointment to the board. Each such designee, unless he holds another state or local office, except the office of notary public, and for which he receives compensation, shall receive the sum of two hundred dollars for each day in which he is actually engaged in the performance of his duties herein. Every member shall be entitled to receive reimbursement for the actual and necessary expenses incurred by him in the performance of such duties.

2. The commissioner of environmental conservation shall serve as chairman. Three of the five persons on the board shall constitute a quorum for the transaction of any business on the board, and the decision of three members of the board shall constitute action of the

board. The board shall have the power to adopt regulations and establish procedures to be used in acting upon applications filed pursuant to this article.

3. The board may employ such hearing examiners and such legal, technical and other consultants and other personnel as it deems necessary. The board may provide for its own representation and appearance in all actions and proceedings involving issues under this article. The department of environmental conservation shall provide such meeting rooms, hearing rooms, and other facilities as the board may request in the performance of its duties.

§ 18-107. Filing of application for certificate; docketing; convening of board. 1. Any person seeking to establish or operate a temporary nuclear waste repository shall file an application for a certificate with the commissioner. Copies of such application shall be served on each municipality within which the facility is proposed to be situated or operated, as well as with any other governmental agency specified in subdivision two or three of section 18-103 of this article having jurisdiction. Such application shall meet requirements of section 18-109 of this article. Such application shall be accompanied by a deposit of three hundred thousand dollars, which shall be used by the board to defray its expenses; provided, however, that upon the termination of a proceeding under this article, any unexpended balance shall be returned to the applicant.

2. Within sixty days after the receipt of an application filed pursuant to this section, the commissioner shall determine whether the application complies with section 18-109 of this article. If he finds that the application does not so comply, he shall so inform the applicant.

3. Notwithstanding paragraphs one or two of section 18-107, upon a determination that an application is sufficiently complete for the board to make a decision on the findings in section 18-111 the commissioner shall transmit a copy of the application to the commissioner of health,

and shall transmit to the governor, the temporary president of the senate and the speaker of the assembly, notification that the application has been filed seeking a certificate pursuant to this article, and that a board will be convened pursuant to the provisions of this article.

4. The commissioner shall transmit to each of the municipalities, agencies and persons required to receive a copy of the application pursuant to section 18-103 of this article or subdivision three of this section, a notice stating that the application has been docketed and stating the time and place of the first meeting of the board, which shall be not more than forty-five days after the date of such notice.

5. Upon receipt of notice from the commissioner convening a board, the temporary president of the senate and the speaker of the assembly shall each designate one person to be appointed by the governor to serve on the board.

§ 18-109. Contents of application. An application for a certificate filed pursuant to this article shall contain the following information and materials:

1. A description of the site and of the facility, including maps, present and proposed development, and geological, seismic, ecological, biological, aesthetic, social, demographic and related data as appropriate;

2. A statement of the ownership and other financial interests in the facility;

3. An estimate of the site acquisition costs, if any, and the source of the funds therefor;

4. An estimate of the facility construction costs, and the source of the funds therefor;

5. A statement of the need for the facility, including the sources, type, and composition of the nuclear waste proposed to be received for temporary storage at the facility;

6. An assessment of the safety and adequacy of in-state transportation access to the site for construction, maintenance and operational purposes, including the risks of accident and contamination of persons residing in areas adjacent to such transportation access routes;

7. A statement of the anticipated operating life of the facility;

8. An operating plan, including an evaluation of the risks of radioactive and other contamination of the environment;

9. An estimate of costs of maintaining and operating the facility for each year of the facility's anticipated operating life, and the source of the necessary funds for each year;

10. A proposed disposal plan and assured funding mechanism for the nuclear waste proposed to be stored temporarily at the facility, including the costs of such disposal and the source of the funds therefor;

11. A proposed plan for decontamination and decommissioning of the facility and restoration of the site to unrestricted use, including the costs thereof and the source of the funds therefor; and

12. A statement of the environmental impact of the proposed action, including short-term and long-term effects; mitigation measures proposed to minimize the environmental impact; and any adverse environmental effects which could not be avoided should the facility be constructed, maintained and operated.

§ 18-111. Action of the board. 1. After being convened, the board shall commission such studies as it deems necessary, and shall hold a series of public hearings and meetings. Notice of such studies,

hearings and meetings shall be published in the state register and in at least one newspaper of general circulation in the county in which such facility is proposed to be located. Such public hearings shall afford interested parties a reasonable opportunity to sponsor witnesses and to question witnesses sponsored by the applicant and others. Such meetings shall include at least one meeting held at a location within the county in which the facility is proposed to be located and at a time convenient to afford the applicant a reasonable opportunity to present an explanation of the application and to afford local residents and others a reasonable opportunity to question the applicant and present their views concerning the same. The public hearings and meetings established hereunder shall not be considered part of an adjudicatory proceeding, as defined in subdivision three of section one hundred two of the state administrative procedure act, or as part of a rule making proceeding held under subdivision one of section two hundred two of such act.

2. The board shall render a decision upon the record either granting the certificate, denying it, or granting it upon such terms, conditions, limitations or modifications as the board may deem appropriate. With its decision, the board shall issue an opinion stating in full its reasons for its decision, and an order embodying in full the terms and conditions of such decision. No order granting a certificate shall be issued unless the board further finds and determines:

(a) the public need for the facility and the basis thereof;

(b) the nature of the probable environmental impact, including a specification of the predictable adverse effect on the normal environment, public health and safety, aesthetics, scenic, historic and recreational value, forest and parks, air and water quality, fish and other marine life and wildlife;

(c) that the facility (i) represents the minimum adverse environmental impact, considering the state of available technology, the nature and economics of the various alternatives, the interests of the state with respect to aesthetics, preservation of historic sites, forest and parks, fish and wildlife, viable agricultural lands, and other pertinent considerations, (ii) is compatible with public health and safety and (iii) will not discharge any effluent that will be in contravention of the standards adopted by the department of environmental conservation,

or in case no classification has been made of the receiving waters associated with the facility, will not discharge any effluent that will be unduly injurious to the propagation and protection of fish and wildlife, the industrial development of the state, and public health and public enjoyment of the receiving waters;

(d) that the facility is designed to operate in compliance with applicable laws and regulations concerning, among other matters, the environment, public health and safety, all of which shall be binding upon the applicant, except that the board may refuse to apply any local ordinance, law, resolution or other action or any regulation issued thereunder or any local standards or requirement which would be otherwise applicable if it finds that as applied to the proposed facility such is unreasonably restrictive in view of the existing technology or the needs of or costs to residents of the state whether located inside or outside of such municipality. The board shall provide the municipality an opportunity to present evidence in support of such ordinance, law, resolution, regulation, or other local action issued thereunder;

(e) that the facility will be constructed, maintained and operated in such a way as to adequately safeguard the health and safety of the state's residents and the quality of its environment, and that the proposed plans for decontamination and decommissioning of the facility and for removal of the nuclear waste proposed to be stored therein provide reasonable assurance that the health and safety of the state's residents and the quality of its environment will be adequately protected;

(f) that neither the state nor any of its agencies, public benefit corporations, municipalities or political subdivisions will bear any financial liability in connection with the construction, maintenance, operation, decontamination or decommissioning of the facility, beyond that stated and disclosed in the application; and

(g) that the facility will be in the public interest.

3. The board shall hold a final meeting open to the public and shall issue a final decision within eighteen months of the date of its first meeting on the application.

4. The board shall cause to be kept a stenographic record of each hearing and meeting had pursuant to this article which, together with the written report of the results of any study introduced therein, shall constitute the record of the case.

§ 18-113. Judicial review. 1. A judicial proceeding to review a final decision of the board shall be brought in the appellate division of the supreme court in the judicial department embracing the county wherein the facility is proposed to be located. Such proceeding shall be initiated by the filing of a petition in such court within thirty days after the issuance of a final decision by the board together with proof of service of a demand on the board to file with said court a copy of a written transcript of the record of the proceeding and a copy of the board's decision and opinion. The board's copy of said transcript, decision and opinion, shall be available at all reasonable times to all parties for examination without cost. Upon receipt of such petition and demand the board shall forthwith deliver to the court a copy of the record and a copy of the board's decision and opinion. Thereupon, the court shall have jurisdiction of the proceeding and shall have the power to grant such relief as it deems just and proper, and to make and enter an order enforcing, modifying and enforcing as so modified, remanding for further specific evidence or findings or setting aside in whole or in part such decision. The appeal shall be heard on the record, without requirement of reproduction, and upon briefs to the court. The findings of fact on which such decision is based shall be conclusive if supported by substantial evidence on the record considered as a whole and matters of judicial notice set forth in the opinion. The jurisdiction of the appellate division of the supreme court shall be exclusive and its judgment and order shall be final, subject to review by the court of appeals in the same manner and form and with the same effect as provides for appeals in a special proceeding. All such proceedings shall be heard and determined by the appellate division of the supreme court and by the court of appeals as expeditiously as possible and with lawful precedence over all other matters.

2. The grounds for and scope of review of the court shall be limited

to whether the decision and opinion of the board are:

(a) in conformity with the constitution of the state and the United States; and

(b) supported by substantial evidence in the record and matters of judicial notice properly considered and applied in the opinion;

(c) within the board's statutory jurisdiction or authority;

(d) made in accordance with procedures set forth in this article or established by rule or regulation pursuant to this article;

(e) arbitrary, capricious or an abuse of discretion.

3. Except as herein provided article seventy-eight of the civil practice law and rules shall apply to appeals taken hereunder.

ARTICLE 21

ENERGY SUPPLY AND PRODUCTION

Section 21-106. Co-generation, small hydro and alternate energy production facilities.

§ 21-106. Co-generation, small hydro and alternate energy production facilities. 1. For the purposes of this article:

a. The term "co-generation facility" shall include any facility with an electric generating capacity of up to eighty megawatts, together with any related facilities located at the same project site, which is fueled by coal, gas, wood, alcohol, solid wastes, refuse-derived fuel, water or oil, to the extent any such oil fueled facility was fueled by oil prior to the effective date of this article and there is no increase in the amount of oil used at the facility or to the extent oil is used as a backup fuel for such facility, and which simultaneously or sequentially produces either electricity or shaft horsepower and useful thermal energy.

b. The term "alternate energy production facility" shall include any solar, wind turbine, waste management, resource recovery, refuse-derived fuel or wood burning facility, together with any related facilities

located at the same project site, with an electric generating capacity of up to eighty megawatts, which produces electricity, gas or useful thermal energy.

c. The term "small hydro facility" shall include (i) any hydroelectric facility of up to eighty megawatts at an existing dam, together with any related facilities located at the same project site, or (ii) any hydroelectric facility of up to two and one-half megawatts that requires the construction of a new dam, together with any related facilities located at the same project site; provided however, that such term shall not include any such facility within either the Adirondack Park or the Catskill Park.

d. The term "related facilities" shall mean any land, work, system, building, improvement, instrumentality or thing necessary or convenient to the construction, completion or operation of any co-generation, alternate energy production or small hydro facility and include also such transmission or distribution facilities as may be necessary to conduct electricity, gas or useful thermal energy to users located at or near a project site.

2. Notwithstanding any other provision of law other than the public service law, no state department, board, agency, authority or commission, and no political subdivision, municipality, or any agency thereof may require any approval, consent, permit, certificate, statement, report or other condition for the construction or operation of: (a) a co-generation or alternate energy production facility, when such facilities are located in any area of the state other than in a city of one million persons or more or other than within the boundaries of the Adirondack Park and Catskill Park other than those provided by otherwise applicable state laws (i) for the protection of employees engaged in the construction and operation of any such facility or (ii) for protection of freshwater or tidal wetlands or other than those necessary to comply with local zoning or building laws or ordinances or other than those issued by a state agency pursuant to a delegation of authority pursuant to federal law or other than article eight, article nineteen, article twenty-seven or title five of article fifteen of the

environmental conservation law; or (b) a small hydro facility, other than those provided by otherwise applicable state law for the protection of fresh water wetlands or of employees engaged in the construction and operation of any such facility or other than those necessary to comply with local zoning and building laws or ordinances or other than those issued by a state agency pursuant to a delegation of authority pursuant to federal law, or other than article eight or title five of article fifteen of the environmental conservation law; provided, however, that construction or operation of a small hydro facility shall not be identified by the commissioner of environmental conservation as an action or class of actions that is likely to require preparation of an environmental impact statement pursuant to such article eight.

3. Nothing herein shall be construed to exempt any co-generation, small hydro or alternate energy production facility from meeting any applicable requirement of federal law.

4. Any owner or operator of a co-generation, small hydro or alternate energy production facility constructed and placed in operation on or after June twenty-sixth, nineteen hundred eighty shall comply with the rules and regulations of the state energy office with respect to matters affecting public health and safety provided, however, that such rules or regulations shall not apply to any such facilities which produce electricity, gas or useful thermal energy for on-site residential use in residential dwellings of four or fewer units. The state energy office, in consultation with the public service commission, shall promulgate rules and regulations to implement this section by January first, nineteen hundred eighty-one.

5. The maximum penalty which may be recovered pursuant to section 5-119 of this chapter for a continuing violation of any rule or regulation promulgated by the office pursuant to subdivision four of this section shall be ten thousand dollars.