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S T A T E O F N E W Y O R K

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2005-2006 Regular Sessions

I N A S S E M B L Y

April 12, 2005

Introduced by M. of A. DiNAPOLI, GRANNIS, COLTON, LAVINE -- Multi-Sponsored by -- M. of A. BENEDETTO, BOYLAND, BRENNAN, CAHILL, CLARK, COOK, R. DIAZ, GLICK, GORDON, GOTTFRIED, JACOBS, LUPARDO, McENENY, NOLAN, PEOPLES, SWEENEY, WEINSTEIN, WEISENBERG -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law and the economic development law, in relation to safe and sustainable procurement

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

1 Section 1. This act shall be known and may be cited as the "New York
2 state safe and sustainable procurement act".

3 S 2. Legislative findings and declaration. The legislature hereby
4 finds and declares that:

5 (a) As New York moves into the twenty-first century the state should
6 serve as a role model for practices that will create and maintain a
7 healthy environment and vibrant economy. The manufacture, use and
8 disposal of certain commodities and technologies, the construction of
9 buildings and other structures, and the provision of services may have
10 adverse impacts on public health and the environment. These impacts
11 impose costs on the state and, ultimately, society as a whole in the
12 form of injury, disability and death; health care expenses; disposal,
13 liability and cleanup costs; the waste of resources and raw materials;
14 and an impaired natural environment. Encouraging innovation, and creat-
15 ing and choosing the safest, most sustainable commodities, services and
16 technologies will help to ensure a higher quality of life for present
17 and future generations. It will also put New York businesses in an
18 economically advantageous position to compete in an increasingly global
19 marketplace.

20 (b) New York looks forward to the time when the state's power is
21 generated from renewable and clean sources; when our homes, schools,

22 businesses and government facilities are energy efficient and

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

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1 constructed, refurbished and maintained using safe and sustainable
2 products and practices; when pollution prevention is embraced by govern-
3 ment and businesses as a way to save money and protect public health and
4 the environment; when government and citizens use energy efficient and
5 clean vehicles; when pests are controlled with nontoxic or least toxic
6 alternatives; when our production of waste is significantly reduced and
7 the rest is recycled; and when our homes, schools, workplaces, food, air
8 and water are free from toxic contaminants.

9 (c) Including public health and environmental considerations in state
10 purchasing decisions can help New York attain these goals by promoting
11 and investing in commodities, services and technologies that improve
12 public health, conserve natural resources, and reward environmentally
13 conscious manufacturers. Protecting public health and the environment
14 is a natural extension of, and consistent with, the traditional consid-
15 erations associated with state procurement practice, including lowest
16 price, best value, quality, cost and efficiency. Historically, New York
17 has been willing to pay more for high quality commodities, services and
18 technologies. Now, determining quality, value and efficiency shall
19 include the consideration of public health and environmental impacts.
20 Considering such impacts early in the procurement process and adopting
21 an ethic of pollution prevention will not only reduce pollution and
22 waste, it will save money throughout a commodity, service or technolo-
23 gy's life cycle. A major benefit of safe and sustainable procurement is
24 increased efficiency and reduced overall cost to government, taxpayers
25 and society as a whole.

26 (d) Those commodity or service providers who can optimize safety,
27 sustainability, price and performance will capture and maintain the
28 largest market-share of state government customers. In light of the
29 volume of government procurement, the government can play a significant
30 role in spurring private sector development, use and marketing of high
31 value commodities and services. This, in turn, will create business and
32 employment opportunities in New York state, foster competition and
33 harness the energy of the market to produce products and services that
34 perform better and cost less. As supply increases, prices will decrease,
35 and high performance, safe and sustainable commodities, services and
36 technologies will become more affordable for all consumers.

37 S 3. Subdivision 5 of section 160 of the state finance law, as added

52 S 4. Paragraph a of subdivision 1 of section 161 of the state finance
53 law, as added by chapter 83 of the laws of 1995, is amended to read as
54 follows:

55 a. The state procurement council shall continuously strive to improve
56 the state's procurement process. Such council shall consist of {nine-

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1 teen} TWENTY-ONE members, including the commissioner, the state comp-
2 troller, the director of the budget {and}, the commissioner of economic
3 development AND THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL
4 CONSERVATION, or their respective designees; {seven} SIX members who
5 shall be the heads of other large and small state agencies chosen by the
6 governor, or their respective designees; and {eight} TEN at large
7 members appointed as follows: {three} FOUR appointed by the temporary
8 president of the senate, one of whom shall be a representative of local
9 government {and}, one of whom shall be a representative of private busi-
10 ness AND ONE OF WHOM SHALL BE A REPRESENTATIVE OF AN ORGANIZATION WHOSE
11 PRIME FUNCTION IS THE ENHANCEMENT OF PUBLIC HEALTH OR THE ENVIRONMENT;
12 {three} FOUR appointed by the speaker of the assembly, one of whom shall
13 be a representative of local government {and}, one of whom shall be a
14 representative of private business AND ONE OF WHOM SHALL BE A REPRESENTATIVE OF AN ORGANIZATION WHOSE PRIME FUNCTION IS THE ENHANCEMENT OF
15 PUBLIC HEALTH OR THE ENVIRONMENT; one appointed by the minority leader
16 of the senate; and, one appointed by the minority leader of the assem-
17 bly; and two non-voting observers appointed as follows: one appointed by
18 the temporary president of the senate and one appointed by the speaker
19 of the assembly. The non-voting observers shall be provided, contempora-
20 neously, all documentation and materials distributed to members. The
21 council shall be chaired by the commissioner and shall meet at least
22 quarterly.
23

24 S 5. Paragraphs k, l and m of subdivision 2 of section 161 of the
25 state finance law, paragraphs k and l as added by chapter 83 of the laws
26 of 1995, paragraph m as added by chapter 95 of the laws of 2000, are
27 amended and a new paragraph n is added to read as follows:

28 k. Report by December thirty-first, nineteen hundred ninety-five and
29 thereafter biennially to the governor, the legislature and the director
30 of the budget, the significant findings of the council including, but
31 not limited to, substantial savings generated by council initiatives and
32 the recommendations of the council concerning the state's procurement
33 practices; {and}

34 l. Undertake other related activities as are necessary to effectuate
35 this article including the development of a strategic plan for the
36 improvement of state procurement{.};

37 m. Establish and, from time to time, amend guidelines with respect to
38 publishing by state agencies of quarterly listings of projected procure-
39 ments having a value greater than five thousand dollars but less than
40 fifteen thousand dollars in the procurement opportunities newsletter
41 established by article four-C of the economic development law{.}; AND

42 N. MAKE RECOMMENDATIONS TO THE COMMISSIONER FOR "TARGET CATEGORIES"
43 OF COMMODITIES, SERVICES AND/OR TECHNOLOGIES WHICH FOR THE PURPOSES OF
44 THIS SECTION SHALL MEAN BROAD CATEGORIES OF COMMODITIES, SERVICES AND/OR
45 TECHNOLOGIES ROUTINELY PROCURED BY THE STATE WHICH MAY HAVE AN ADVERSE
46 IMPACT ON PUBLIC HEALTH OR THE ENVIRONMENT AND FOR WHICH MORE SAFE
47 AND/OR SUSTAINABLE COMMODITIES, SERVICES OR TECHNOLOGIES SHOULD BE IDEN-
48 TIFIED AND SUBSTITUTED. SUCH TARGET COMMODITY, SERVICE AND/OR TECHNOLOGY
49 CATEGORIES MAY INCLUDE, BUT SHALL NOT BE LIMITED TO, AUTOMOTIVE VEHI-
50 CLES, INCLUDING THE CONSIDERATION OF HYBRID ELECTRIC OR ALTERNATIVE FUEL
51 VEHICLES; AUTOMOTIVE PRODUCTS AND VEHICLE MAINTENANCE PRODUCTS AND

52 SERVICES; CLEANING PRODUCTS AND SERVICES; BUILDING MATERIALS AND
53 CONSTRUCTION SERVICES, INCLUDING RENOVATION AND NEW CONSTRUCTION; ENER-
54 GY, INCLUDING THE CONSIDERATION OF RENEWABLE SOURCES OF ELECTRICITY;
55 FURNITURE; LANDSCAPING PRODUCTS AND SERVICES; PAINT AND COATING PRODUCTS
56 AND SERVICES; PAPER PRODUCTS; AND PEST MANAGEMENT PRODUCTS AND SERVICES.

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1 S 6. Section 164 of the state finance law is renumbered section 163-b
2 and a new section 164 is added to read as follows:

3 S 164. SAFE AND SUSTAINABLE PROCUREMENT. 1. SAFE AND SUSTAINABLE
4 PROCUREMENT POLICY. IT IS HEREBY DECLARED TO BE THE POLICY OF THE STATE
5 OF NEW YORK TO ESTABLISH A PREFERENCE FOR THE PURCHASE OF COMMODITIES,
6 SERVICES AND TECHNOLOGIES THAT MINIMIZE POTENTIAL ADVERSE IMPACTS ON
7 PUBLIC HEALTH AND THE ENVIRONMENT WHEN COMPARED WITH COMPETING COMMOD-
8 ITIES, SERVICES OR TECHNOLOGIES THAT SERVE THE SAME PURPOSE. WHERE
9 THREATS OF HARM TO HUMAN HEALTH OR THE ENVIRONMENT EXIST, LACK OF FULL
10 SCIENTIFIC CERTAINTY ABOUT CAUSE AND EFFECT SHALL NOT BE VIEWED AS
11 SUFFICIENT REASON FOR AGENCIES TO FAIL TO APPLY SUCH PREFERENCE.

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

14 A. "HARM" SHALL INCLUDE, BUT NOT BE LIMITED TO, DAMAGE TO INDIVIDUAL
15 HUMANS OR OTHER ORGANISMS OR COMMUNITIES OR POPULATIONS OF SUCH INDIVID-
16 UALS THAT MAY BE MANIFEST AS: ACUTE TOXICITY; CANCER; ASTHMA; BIRTH
17 DEFECTS; FAILURE TO REPRODUCE NORMALLY; DEVELOPMENTAL ABNORMALITIES;
18 AUTOIMMUNE DISEASE, NEUROLOGICAL DISORDERS, OR IMMUNE AND NERVOUS SYSTEM
19 ALTERATIONS; BEHAVIORAL CHANGES; DNA DAMAGE OR GENETIC MUTATIONS;
20 DISRUPTION OF BIOLOGICAL SIGNALING SYSTEMS, INCLUDING HORMONE
21 DISRUPTION; OR OTHER MANIFESTATIONS OF DAMAGE TO BIOLOGICAL SYSTEMS,
22 INCLUDING CELLULAR MALFUNCTION, THAT RESULT IN DISEASE OR SUBOPTIMAL
23 FUNCTIONING. HARM TO HUMAN HEALTH OR THE ENVIRONMENT SHALL INCLUDE, BUT
24 NOT BE LIMITED TO, HARM TO FUTURE GENERATIONS, CHILDREN, SENSITIVE POPU-
25 LATIONS AND WORKERS, INCLUDING STATE EMPLOYEES, CUSTODIAL WORKERS AND
26 VISITORS TO STATE FACILITIES; AND HARM TO ECOLOGICAL SYSTEMS, INCLUDING
27 FISH, WILDLIFE AND ENDANGERED SPECIES.

28 B. "CREDIBLE EVIDENCE OF A THREAT OF HARM TO HUMAN HEALTH OR THE ENVI-
29 RONMENT" SHALL INCLUDE, BUT NOT BE LIMITED TO: WELL-ESTABLISHED INDE-
30 PENDENT SCIENTIFIC EVIDENCE OF HARM; EMERGING SCIENTIFIC EVIDENCE OF
31 HARM; VERIFIABLE EVIDENCE OF ALTERED FUNCTIONING OF EXPOSED ORGANISMS,
32 INCLUDING DAMAGE TO DNA AND BIOLOGICAL SYSTEMS AND CELLULAR MALFUNCTION;
33 RESULTS OF COMPREHENSIVE OR PARTIAL TESTING AND CONTROLLED OBSERVATIONS,
34 INCLUDING ANIMAL STUDIES; OBSERVATIONS FROM FORMAL MONITORING; EPIDEMIO-
35 LOGICAL EVIDENCE; HEALTH SURVEYS OR VERIFIABLE OBSERVATIONS BY WORKERS,
36 COMMUNITY RESIDENTS, EXPOSED POPULATIONS, AND MEDICAL PERSONNEL; VERIFI-
37 ABLE EVIDENCE OF PERSISTENCE OR BIOACCUMULATION IN HUMANS OR THE ENVI-
38 RONMENT; EXTRAPOLATION FROM EXISTING, WELL-ESTABLISHED SCIENTIFIC
39 EVIDENCE ON EXISTING SUBSTANCES TO NEW SUBSTANCES WITH SIMILAR STRUC-
40 TURES AND PHYSICO-CHEMICAL PROPERTIES; AND PREDICTIVE MODELS BASED ON
41 EMPIRICAL DATA.

42 C. "POLLUTION PREVENTION" SHALL MEAN CHANGES IN PRODUCTION METHODS,
43 WORK PRACTICES OR RAW MATERIALS THAT REDUCE ENERGY OR RESOURCE CONSUMP-
44 TION, OR THAT REDUCE, AVOID OR ELIMINATE THE USE OF HAZARDOUS SUBSTANCES
45 OR THE GENERATION OF SUCH SUBSTANCES, POLLUTANTS OR WASTE PER UNIT OF
46 PRODUCT, SO AS TO REDUCE RISKS TO THE HEALTH OF WORKERS, CONSUMERS OR
47 THE ENVIRONMENT, WITHOUT SHIFTING RISKS BETWEEN WORKERS, CONSUMERS OR
48 ENVIRONMENTAL MEDIA. SUCH TERM SHALL INCLUDE THE REDESIGN, MODIFICA-
49 TION, UPGRADE OR REPLACEMENT OF PROCESSES, PROCEDURES, EQUIPMENT OR
50 TECHNOLOGY; REFORMULATION OR REDESIGN OF PRODUCTS; SUBSTITUTION OF
51 INPUTS OR RAW MATERIALS; IMPROVEMENTS IN HOUSEKEEPING, MAINTENANCE,

52 TRAINING OR INVENTORY CONTROL; AND EXTENDED USE OR REUSE OF MATERIALS
53 THROUGH METHODS INTEGRAL TO THE PRODUCTION PROCESS, SUCH AS IN-PROCESS,
54 CLOSED-LOOP RECYCLING. SUCH TERM SHALL NOT INCLUDE INCINERATION, ENERGY
55 RECOVERY FROM THE COMBUSTION OF WASTE, TRANSFER FROM ONE MEDIUM OF
56 RELEASE OR DISCHARGE TO ANOTHER MEDIUM, OFF-SITE OR OUT-OF-PRODUCTION

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1 RECYCLING, END-OF-PIPE TREATMENT, OR ANY PRACTICE WHICH ALTERS THE PHYS-
2 ICAL, CHEMICAL OR BIOLOGICAL CHARACTERISTICS OR VOLUME OF A HAZARDOUS
3 SUBSTANCE, POLLUTANT OR SOLID WASTE THROUGH A PROCESS OR ACTIVITY WHICH
4 ITSELF IS NOT INTEGRAL TO AND NECESSARY FOR THE PRODUCTION OF A PRODUCT
5 OR THE PROVIDING OF A SERVICE.

6 D. "PRIORITY TOXIC SUBSTANCES OF CONCERN" SHALL INCLUDE, BUT NOT BE
7 LIMITED TO, ANY SUBSTANCE LISTED AS KNOWN TO BE OR REASONABLY ANTIC-
8 IPATED TO BE A HUMAN CARCINOGEN IN THE NATIONAL TOXICOLOGY PROGRAM'S
9 BIENNIAL REPORT ON CARCINOGENS SUBMITTED TO THE UNITED STATES CONGRESS
10 BY THE SECRETARY OF HEALTH AND HUMAN SERVICES; ANY SUBSTANCE LISTED AS
11 CARCINOGENIC TO HUMANS OR AS PROBABLY OR POSSIBLY CARCINOGENIC TO HUMANS
12 BY THE WORLD HEALTH ORGANIZATION'S INTERNATIONAL AGENCY FOR RESEARCH ON
13 CANCER; ANY SUBSTANCE ON THE LIST OF SUBSTANCES CONSIDERED TO BE POTEN-
14 TIAL OCCUPATIONAL CARCINOGENS MAINTAINED BY THE NATIONAL INSTITUTE OF
15 OCCUPATIONAL SAFETY AND HEALTH; ANY SUBSTANCE ON THE LIST OF CHEMICALS
16 EVALUATED FOR CARCINOGENIC POTENTIAL MAINTAINED BY THE UNITED STATES
17 ENVIRONMENTAL PROTECTION AGENCY OFFICE OF PESTICIDE PROGRAMS; ANY
18 SUBSTANCE ON THE LIST OF CHEMICALS KNOWN TO THE STATE TO CAUSE CANCER OR
19 REPRODUCTIVE TOXICITY MAINTAINED BY THE STATE OF CALIFORNIA ENVIRON-
20 MENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESS-
21 MENT PURSUANT TO THE CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCE-
22 MENT ACT OF 1986; ANY SUBSTANCE FOR WHICH AN EXPERT PANEL REPORT HAS
23 BEEN ISSUED IDENTIFYING SUCH SUBSTANCE AS A RISK TO HUMAN REPRODUCTION
24 BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES NATIONAL
25 TOXICOLOGY PROGRAM'S CENTER FOR THE EVALUATION OF RISKS TO HUMAN REPROD-
26 UCTION; ANY SUBSTANCE ON THE LIST OF CHEMICALS KNOWN TO CAUSE HAZARDS TO
27 REPRODUCTIVE SYSTEMS MAINTAINED BY THE UNITED STATES OCCUPATIONAL SAFETY
28 AND HEALTH ADMINISTRATION; ANY SUBSTANCE IDENTIFIED AS AN ENDOCRINE
29 DISRUPTOR BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY'S ENDOC-
30 RINE DISRUPTORS RESEARCH INITIATIVE; ANY SUBSTANCE IDENTIFIED AS
31 ADVERSELY AFFECTING THE NERVOUS SYSTEM BY THE NATIONAL INSTITUTE OF
32 OCCUPATIONAL SAFETY AND HEALTH; ANY SUBSTANCE ON THE LISTS OF OZONE-DE-
33 PLETING SUBSTANCES MAINTAINED BY THE UNITED STATES ENVIRONMENTAL
34 PROTECTION AGENCY; ANY SUBSTANCE IDENTIFIED AS A PERSISTENT AND/OR
35 BIOACCUMULATIVE TOXIC SUBSTANCE ON LISTS MAINTAINED BY THE UNITED STATES
36 ENVIRONMENTAL PROTECTION AGENCY OR THE INTERNATIONAL JOINT COMMISSION
37 CREATED PURSUANT TO THE GREAT LAKES WATER QUALITY AGREEMENT OF 1978; ANY
38 SUBSTANCE ON THE LIST OF PRIORITY CHEMICALS CREATED BY THE UNITED STATES
39 ENVIRONMENTAL PROTECTION AGENCY'S NATIONAL PARTNERSHIP FOR ENVIRONMENTAL
40 PRIORITIES; AND ANY SUBSTANCE REGULATED AS A RADIOACTIVE SUBSTANCE BY
41 THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION OR THE NEW
42 YORK STATE DEPARTMENT OF HEALTH.

43 3. SAFE AND SUSTAINABLE PROCUREMENT CRITERIA. TO THE MAXIMUM EXTENT
44 PRACTICABLE, ALL STATE AGENCIES SHALL CONSIDER THE FOLLOWING CRITERIA
45 WHEN PROCURING COMMODITIES, SERVICES OR TECHNOLOGY:

46 A. PROTECTION OF PUBLIC HEALTH AND THE ENVIRONMENT; PRICE; AND
47 PERFORMANCE SHALL BE CONSIDERED EQUAL AND CONSISTENT COMPONENTS OF SAFE
48 AND SUSTAINABLE PROCUREMENT. CONSIDERING THE PROTECTION OF PUBLIC HEALTH
49 AND THE ENVIRONMENT SHALL BECOME PART OF NORMAL STATE PROCUREMENT PRAC-
50 TICE, ALONG WITH SUCH TRADITIONAL FACTORS AS LOWEST PRICE, BEST VALUE,
51 QUALITY, COST AND EFFICIENCY. PROTECTION OF PUBLIC HEALTH AND THE ENVI-

52 ENVIRONMENT INCLUDES, BUT IS NOT LIMITED TO, THE PROTECTION OF CHILDREN,
53 SENSITIVE POPULATIONS AND WORKERS, INCLUDING STATE EMPLOYEES, CUSTODIAL
54 WORKERS, AND VISITORS TO STATE FACILITIES; THE PROTECTION OF DRINKING
55 WATER, GROUNDWATER, SURFACE WATER AND AIR (INCLUDING INDOOR AIR); THE
56 PROTECTION OF ECOLOGICAL SYSTEMS, INCLUDING FISH, WILDLIFE, AND ENDAN-

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1 GERED SPECIES; AND THE CONSERVATION OF NATURAL RESOURCES, INCLUDING
2 ENERGY AND WATER.

3 B. CONSIDERATION OF SAFETY AND SUSTAINABILITY SHALL BEGIN EARLY IN THE
4 PROCUREMENT PROCESS AND EMPHASIZE POLLUTION PREVENTION. WAYS TO CONSIDER
5 POLLUTION PREVENTION IN THE PROCUREMENT PROCESS INCLUDE, BUT ARE NOT
6 LIMITED TO:

7 (I) DURING THE DESIGN PHASE OF CUSTOMIZED COMMODITIES, SERVICES OR
8 TECHNOLOGIES, INCLUDING BUT NOT LIMITED TO DECISIONS ABOUT DIFFERENT
9 APPROACHES, MATERIALS, AND MANUFACTURING PROCESSES. EARLY INVOLVEMENT
10 CAN PROVIDE AGENCIES WITH A UNIQUE POINT OF LEVERAGE FROM WHICH TO
11 ADDRESS POTENTIAL ADVERSE PUBLIC HEALTH AND ENVIRONMENTAL IMPACTS.

12 (II) APPLICATION OF A SYSTEMS ANALYSIS APPROACH DURING THE EARLY STAG-
13 ES OF ACQUISITION FOR CERTAIN COMMODITIES, SERVICES OR TECHNOLOGIES
14 (SUCH AS COMPUTERS, BUILDINGS, AND TRANSPORTATION SYSTEMS) IN WHICH A
15 NUMBER OF COMPONENTS HAVE INTERDEPENDENT FUNCTIONS. A SYSTEMS ANALYSIS
16 APPROACH TAKES INTO CONSIDERATION THE FULL SET OF COMMODITY, SERVICE OR
17 TECHNOLOGY ELEMENTS, FOCUSING ON HOW THEY INTERACT FROM A LIFE CYCLE
18 PERSPECTIVE AND HELPING TO IDENTIFY THE MOST EFFICIENT OPTIONS FOR MEET-
19 ING GOVERNMENT NEEDS.

20 (III) QUESTIONING WHETHER A COMMODITY, SERVICE OR TECHNOLOGY IS EVEN
21 NECESSARY, OR CAN BE REPLACED BY A LESS DAMAGING PROCESS, OR WHETHER A
22 FUNCTION NEEDS TO BE PERFORMED AND HOW IT CAN BEST BE PERFORMED TO MINI-
23 MIZE POTENTIAL ADVERSE IMPACTS ON PUBLIC HEALTH AND THE ENVIRONMENT.

24 C. WHEN DETERMINING THE SAFETY AND SUSTAINABILITY OF COMMODITIES,
25 SERVICES OR TECHNOLOGY, THE FOLLOWING ATTRIBUTES SHALL BE CONSIDERED TO
26 THE MAXIMUM EXTENT PRACTICABLE:

27 (I) POTENTIAL ADVERSE IMPACTS ON PUBLIC HEALTH OR THE ENVIRONMENT,
28 INCLUDING, BUT NOT LIMITED TO, THE PRODUCTION, USE AND/OR RELEASE OF
29 PRIORITY TOXIC SUBSTANCES OF CONCERN OR OTHER SUBSTANCES WHICH POSE A
30 THREAT OF HARM TO HUMAN HEALTH OR THE ENVIRONMENT; THE RELEASE OF SUCH
31 SUBSTANCES AND CONVENTIONAL POLLUTANTS (INCLUDING PRIORITY AIR POLLU-
32 TANTS AND PARTICULATES) TO DRINKING WATER, GROUNDWATER, SURFACE WATER,
33 AMBIENT AIR, AND INDOOR AIR; THE PRODUCTION AND/OR RELEASE OF HAZARDOUS
34 WASTE OR NON-HAZARDOUS SOLID WASTE (INCLUDING MUNICIPAL SOLID WASTE,
35 LARGE VOLUME WASTE, AND SURFACE IMPOUNDMENTS); THE POTENTIAL FOR EXPO-
36 SURE OF THE GENERAL PUBLIC, CHILDREN, SENSITIVE POPULATIONS AND WORKERS,
37 INCLUDING STATE EMPLOYEES, CUSTODIAL WORKERS AND VISITORS TO STATE
38 FACILITIES, TO SUCH SUBSTANCES, POLLUTANTS, OR WASTES; THE PRODUCTION OF
39 GREENHOUSE GASES OR OZONE DEPLETING CHEMICALS; ADVERSE IMPACTS ON
40 ECOLOGICAL SYSTEMS, FISH, WILDLIFE AND ENDANGERED SPECIES; WETLANDS
41 LOSS; AND SOIL EROSION.

42 (II) NATURAL RESOURCE USE, INCLUDING, BUT NOT LIMITED TO, ENERGY
43 CONSUMPTION; WATER CONSUMPTION; NON-RENEWABLE RESOURCE CONSUMPTION;
44 RENEWABLE RESOURCE CONSUMPTION; RECYCLED CONTENT (INCLUDING POST CONSUM-
45 ER RECYCLED CONTENT); RECYCLABILITY (INCLUDING READILY COMPOSTABLE MATE-
46 RIALS); PRODUCT DISASSEMBLY POTENTIAL; REMANUFACTURED CONTENT; BIO-BASED
47 CONTENT; AND THE POTENTIAL FOR LONG-TERM USE THROUGH PRODUCT DURABILITY,
48 REPAIRABILITY, AND REUSE.

49 (III) POSITIVE LIFE CYCLE ATTRIBUTES. A COMMODITY, SERVICE OR TECHNOL-
50 OGY'S SAFETY AND SUSTAINABILITY ARE A FUNCTION OF MULTIPLE ATTRIBUTES
51 OVER ITS ENTIRE LIFE CYCLE, INCLUDING BUT NOT LIMITED TO RAW MATERIALS

52 ACQUISITION, PRODUCTION, MANUFACTURING, PACKAGING, DISTRIBUTION, USE,
53 OPERATION, MAINTENANCE AND DISPOSAL, INCLUDING THE POTENTIAL FOR REUSE
54 OR ABILITY TO BE RECYCLED. TO THE MAXIMUM EXTENT PRACTICABLE, STATE
55 AGENCIES SHALL SEEK COMMODITIES, SERVICES OR TECHNOLOGIES WITH MINIMAL
56 POTENTIAL ADVERSE IMPACTS ON PUBLIC HEALTH AND THE ENVIRONMENT DUE TO

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1 THE WAY THEY ARE MADE, PACKAGED, TRANSPORTED, STORED, USED AND DISPOSED
2 OF. A DETAILED LIFE CYCLE ASSESSMENT SHALL NOT BE REQUIRED; BUT MAY BE
3 PERFORMED AT THE AGENCY'S DISCRETION. CERTAIN POSITIVE ATTRIBUTES,
4 INCLUDING BUT NOT LIMITED TO THOSE LISTED BELOW, ARE COMMONLY ACCEPTED
5 INDICATORS OF SAFETY AND SUSTAINABILITY OVER A COMMODITY, SERVICE, OR
6 TECHNOLOGY'S LIFE CYCLE: BIOBASED; BIODEGRADABLE; COMPOSTABLE; DURABLE;
7 ENERGY EFFICIENT; FREE OF CHLORINE; FREE OF POLYVINYL CHLORIDE; FREE OF
8 PRIORITY TOXIC SUBSTANCES OF CONCERN; LESS HAZARDOUS; LOCALLY MANUFAC-
9 TURED; LOW IN RESPIRATORY TOXINS AND IRRITANTS, INCLUDING SUBSTANCES
10 THAT TRIGGER OR EXACERBATE ASTHMA; LOW IN TOXICITY; LOW IN VOLATILE
11 ORGANIC COMPOUNDS (VOCS); MADE FROM RAPIDLY RENEWABLE MATERIALS; RECYCL-
12 ABLE; HIGH IN RECYCLED CONTENT; REDUCED GREENHOUSE GAS EMISSIONS;
13 REDUCED PACKAGING; REFURBISHED; REMANUFACTURED; RESOURCE EFFICIENT;
14 REUSABLE; UPGRADEABLE; AND WATER EFFICIENT.

15 D. COMPARISON OF POTENTIAL ADVERSE PUBLIC HEALTH AND ENVIRONMENTAL
16 IMPACTS AMONG COMPETING COMMODITIES, SERVICES OR TECHNOLOGIES. THE
17 FOLLOWING THREE FACTORS SHALL BE CONSIDERED WHEN TRADE-OFFS MUST BE MADE
18 AMONG PUBLIC HEALTH OR ENVIRONMENTAL IMPACTS:

19 (I) THE OVERRIDING IMPORTANCE OF PROTECTING HUMAN HEALTH. A COMMODITY,
20 SERVICE OR TECHNOLOGY SHALL AT LEAST BE EQUIVALENT TO COMPARABLE COMMOD-
21 ITIES, SERVICES OR TECHNOLOGIES IN PROTECTING PUBLIC HEALTH TO BE
22 CONSIDERED PREFERABLE.

23 (II) REVERSIBILITY AND GEOGRAPHIC SCALE. AN IMPACT IS LESS ACCEPTABLE
24 IF IT HAS A LONGER RECOVERY TIME. IN GENERAL, STATE-WIDE OR GLOBAL
25 IMPACTS ARE MORE SIGNIFICANT THAN LOCAL OR REGIONAL IMPACTS; HOWEVER
26 AGENCIES SHALL ALSO CONSIDER UNIQUE LOCAL IMPACTS AND SITE-SPECIFIC
27 USES.

28 (III) THE DEGREE OF DIFFERENCE IN PERFORMANCE AMONG COMPETING COMMOD-
29 ITIES, SERVICES OR TECHNOLOGIES. IF A COMMODITY, SERVICE OR TECHNOLOGY
30 PROVIDES A SIGNIFICANT IMPROVEMENT OVER OTHER COMPETING COMMODITIES,
31 SERVICES OR TECHNOLOGIES IN REGARD TO THE ATTRIBUTES LISTED IN PARAGRAPH
32 C OF THIS SUBDIVISION, AGENCIES MAY CHOOSE THAT COMMODITY, SERVICE OR
33 TECHNOLOGY WITHOUT MAKING A DETERMINATION THAT ONE TYPE OF POTENTIAL
34 ADVERSE IMPACT IS MORE SIGNIFICANT THAN ANOTHER.

35 E. GOVERNMENT HAS A DUTY TO TAKE ANTICIPATORY ACTION TO PREVENT HARM
36 WHERE CREDIBLE EVIDENCE OF A THREAT OF HARM TO HUMAN HEALTH OR THE ENVI-
37 RONMENT EXISTS, EVEN WHEN THE EXACT NATURE AND FULL MAGNITUDE OF HARM IS
38 NOT YET PROVEN. LACK OF FULL SCIENTIFIC CERTAINTY ABOUT CAUSE AND EFFECT
39 SHALL NOT BE VIEWED AS A SUFFICIENT REASON TO FAIL TO CONSIDER A POTEN-
40 TIAL ADVERSE IMPACT ON PUBLIC HEALTH OR THE ENVIRONMENT WHEN DETERMINING
41 THE PREFERABILITY OF A COMMODITY, SERVICE OR TECHNOLOGY. ANY GAPS IN
42 SCIENTIFIC DATA UNCOVERED BY THE ANALYSIS OF COMMODITIES, SERVICES OR
43 TECHNOLOGIES PURSUANT TO THIS SUBDIVISION SHALL PROVIDE A GUIDEPOST FOR
44 FUTURE RESEARCH, BUT SHALL NOT PREVENT SELECTION OF THE COMMODITY,
45 SERVICE OR TECHNOLOGY WITH THE LEAST POTENTIAL ADVERSE IMPACT ON PUBLIC
46 HEALTH AND THE ENVIRONMENT.

47 F. COMPREHENSIVE, ACCURATE AND MEANINGFUL INFORMATION IS NECESSARY IN
48 ORDER TO DETERMINE SAFETY AND SUSTAINABILITY. TO THE MAXIMUM EXTENT
49 PRACTICABLE, STATE AGENCIES SHALL SEEK, AND COMMODITY AND SERVICE
50 PROVIDERS SHALL PROVIDE, COMPREHENSIVE, ACCURATE AND MEANINGFUL INFORMA-
51 TION ABOUT THE POTENTIAL ADVERSE PUBLIC HEALTH AND ENVIRONMENTAL

52 IMPACTS, NATURAL RESOURCE USE, LIFE CYCLE ATTRIBUTES AND PERFORMANCE OF
53 COMMODITIES, SERVICES OR TECHNOLOGIES. THIS INFORMATION SHALL BE SOUGHT
54 AND PROVIDED IN ALL APPROPRIATE STAGES OF THE ACQUISITION PROCESS,
55 INCLUDING BUT NOT LIMITED TO MARKET SURVEYS AND REQUESTS FOR PROPOSALS.

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1 G. THE PUBLIC HAS A RIGHT TO KNOW COMPLETE, ACCURATE AND MEANINGFUL
2 INFORMATION ON THE POTENTIAL ADVERSE PUBLIC HEALTH AND ENVIRONMENTAL
3 IMPACTS ASSOCIATED WITH THE SELECTION OF COMMODITIES, SERVICES AND TECH-
4 NOLOGIES BY GOVERNMENT. THE BURDEN TO SUPPLY THIS INFORMATION LIES WITH
5 VENDORS AND STATE AGENCIES, NOT WITH THE GENERAL PUBLIC.

6 H. PUBLIC PARTICIPATION AND AN OPEN AND TRANSPARENT DECISION MAKING
7 PROCESS ARE CRITICAL TO THE IDENTIFICATION AND SELECTION OF SAFE AND
8 SUSTAINABLE COMMODITIES, SERVICES AND TECHNOLOGIES. TO THE MAXIMUM
9 EXTENT PRACTICABLE, PROCUREMENT DECISIONS SHALL BE TRANSPARENT AND
10 PROVIDE OPPORTUNITIES FOR EARLY AND MEANINGFUL PUBLIC PARTICIPATION.

11 4. MINIMUM SPECIFICATIONS FOR SAFETY AND SUSTAINABILITY. CONSISTENT
12 WITH DETERMINATIONS OF NEED REQUIRED BY SUBDIVISION FIVE OF SECTION ONE
13 HUNDRED SIXTY-THREE OF THIS ARTICLE, ALL STATE AGENCIES SHALL PROCURE
14 COMMODITIES, SERVICES AND TECHNOLOGIES THAT MEET OR EXCEED THE FOLLOWING
15 MINIMUM SPECIFICATIONS:

16 A. AVOIDANCE OF PRIORITY TOXIC SUBSTANCES OF CONCERN. NO COMMODITY,
17 SERVICE OR TECHNOLOGY SHALL CONTAIN, USE, OR CAUSE THE RELEASE OF A
18 PRIORITY TOXIC SUBSTANCE OF CONCERN AS DEFINED IN SUBDIVISION TWO OF
19 THIS SECTION UNLESS NO COMMODITY, SERVICE OR TECHNOLOGY MEETING SUCH
20 SPECIFICATION IS AVAILABLE IN THE FORM, FUNCTION AND UTILITY CONSISTENT
21 WITH AN AGENCY'S NEEDS.

22 B. RECYCLED CONTENT. ALL COMMODITIES FOR WHICH THE UNITED STATES
23 ENVIRONMENTAL PROTECTION AGENCY HAS DEVELOPED RECYCLED CONTENT RECOMMEN-
24 DATIONS PURSUANT TO SECTION 6002 OF THE RESOURCE CONSERVATION AND RECOV-
25 ERY ACT SHALL BE REQUIRED TO MEET OR EXCEED THE MINIMUM RECOVERED MATE-
26 RIAL AND POST-CONSUMER MATERIAL CONTENT PERCENTAGES RECOMMENDED IN THE
27 MOST RECENT RECOVERED MATERIALS ADVISORY NOTICE ISSUED FOR SUCH COMMOD-
28 ITY IN THE FEDERAL REGISTER; PROVIDED, HOWEVER, THAT XEROGRAPHIC COPY
29 PAPER SHALL CONTAIN NO LESS THAN THIRTY PERCENT POST-CONSUMER RECYCLED
30 CONTENT. SUCH MINIMUM PERCENTAGES SHALL BE MET UNLESS COSTS ARE PROHIB-
31 ITIVE OR OTHER PUBLIC HEALTH OR ENVIRONMENTAL CONSIDERATIONS ARE DETER-
32 MINED TO BE MORE IMPORTANT.

33 C. ENERGY EFFICIENCY. ALL COMMODITIES FOR WHICH THE FEDERAL ENERGY
34 MANAGEMENT PROGRAM OF THE UNITED STATES DEPARTMENT OF ENERGY (COMMONLY
35 KNOWN AS "ENERGY STAR") HAS ISSUED PRODUCT ENERGY EFFICIENCY RECOMMENDA-
36 TIONS SHALL ACHIEVE NO LESS ENERGY EFFICIENCY OR FLOW RATE THAN THE
37 MINIMUM RECOMMENDATION UNLESS COSTS ARE PROHIBITIVE OR OTHER PUBLIC
38 HEALTH OR ENVIRONMENTAL CONSIDERATIONS ARE DETERMINED TO BE MORE IMPOR-
39 TANT.

40 5. BALANCING SAFETY AND SUSTAINABILITY WITH PRICE, COST AND BEST
41 VALUE. A. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS PROHIBITING A
42 STATE AGENCY FROM PROCURING A COMMODITY, SERVICE OR TECHNOLOGY IN THE
43 FORM, FUNCTION AND UTILITY REQUIRED BY SUCH AGENCY, OR AS REQUIRING A
44 STATE AGENCY TO PROCURE A COMMODITY, SERVICE OR TECHNOLOGY THAT DOES NOT
45 PERFORM ADEQUATELY FOR ITS INTENDED USE OR PURPOSE; EXCLUDES ADEQUATE
46 COMPETITION; OR IS ONLY AVAILABLE AT A PROHIBITIVE COST OR WITHIN AN
47 UNREASONABLY LONG PERIOD OF TIME.

48 B. WHEN DETERMINING AND COMPARING COSTS, STATE AGENCIES SHALL NOT
49 FOCUS EXCLUSIVELY ON PRICE. INSTEAD, STATE AGENCIES SHALL CONSIDER COST
50 AS DEFINED IN SECTION ONE HUNDRED SIXTY OF THIS ARTICLE, WHICH INCLUDES
51 PRICE AND LIFE CYCLE COSTS. EXAMINING LIFE CYCLE COSTS WILL SAVE MONEY
52 BY ENSURING THAT THE TOTAL COST OF OWNERSHIP OR IMPLEMENTATION IS

53 CONSIDERED BEFORE MAKING PROCUREMENT DECISIONS.

54 C. COMPETITION EXISTS NOT ONLY IN PRICES, BUT ALSO IN THE TECHNICAL
55 COMPETENCE OF SUPPLIERS AND PROVIDERS; IN THEIR ABILITY TO MAKE TIMELY
56 DELIVERIES; AND THE QUALITY AND PERFORMANCE, INCLUDING THE SAFETY AND

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1 SUSTAINABILITY, OF THEIR COMMODITIES, SERVICES, AND TECHNOLOGIES.
2 BALANCING THESE SOMETIMES COMPETING FACTORS MEANS THAT LOWEST PRICE IS
3 NOT THE ONLY CONSIDERATION. IT ALSO MEANS THAT STATE GOVERNMENT WILL
4 SOMETIMES PAY MORE FOR HIGHER PERFORMING COMMODITIES, SERVICES, AND
5 TECHNOLOGIES, INCLUDING THOSE WITH SUPERIOR SAFETY AND SUSTAINABILITY.

6 6. SPECIFICATIONS TO INCORPORATE SAFETY AND SUSTAINABILITY. A. BEGIN-
7 NING TWO YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION, ALL STATE AGEN-
8 CIES, WHEN LETTING CONTRACTS, INCLUDING BUT NOT LIMITED TO CENTRALIZED
9 CONTRACTS, FOR THE PROCUREMENT OF COMMODITIES, SERVICES OR TECHNOLOGY
10 PURSUANT TO SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE, SHALL
11 FOLLOW PRACTICES AND DEVELOP SOLICITATION SPECIFICATIONS THAT MEET OR
12 EXCEED THE MINIMUM SPECIFICATIONS FOR SAFETY AND SUSTAINABILITY ESTAB-
13 LISHED IN SUBDIVISION FOUR OF THIS SECTION, AND ARE, TO THE MAXIMUM
14 EXTENT PRACTICABLE, CONSISTENT WITH THE SAFE AND SUSTAINABLE PROCUREMENT
15 POLICY AND CRITERIA ESTABLISHED IN SUBDIVISIONS ONE AND THREE OF THIS
16 SECTION. ALL SUCH CONTRACTS SHALL INCLUDE A STATEMENT DESCRIBING HOW
17 SUCH MINIMUM SPECIFICATIONS WERE MET AND HOW SUCH POLICY AND CRITERIA
18 WERE CONSIDERED DURING THE PROCUREMENT PROCESS. IN DETERMINING SAFETY
19 AND SUSTAINABILITY STATE AGENCIES MAY PERFORM THEIR OWN INDEPENDENT
20 ANALYSES, BUT ARE ENCOURAGED TO AVOID DUPLICATING EFFORTS AND TO POOL
21 RESOURCES TO THE MAXIMUM EXTENT PRACTICABLE, INCLUDING BUT NOT LIMITED
22 TO RELIANCE ON GUIDANCE PROVIDED BY THE COMMISSIONER PURSUANT TO SUBDI-
23 VISION EIGHT OF THIS SECTION AND THE PROCUREMENT OF COMMODITIES,
24 SERVICES OR TECHNOLOGIES IDENTIFIED BY THE COMMISSIONER AS CONSISTENT
25 WITH SUCH POLICY AND CRITERIA THROUGH CENTRALIZED CONTRACTS.

26 B. IN THE EVENT THAT AN AGENCY RECEIVES NO OFFERS THAT MEET THE SPEC-
27 IFICATIONS DEVELOPED PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION, SUCH
28 AGENCY MAY RELET THE CONTRACT WITHOUT SUCH SPECIFICATIONS AND AWARD A
29 CONTRACT IN ACCORDANCE WITH OTHER APPLICABLE STATUTES; PROVIDED, HOWEVER
30 THAT SUCH AGENCY SHALL DOCUMENT THE REASONS WHY SUCH PROCUREMENT DOES
31 NOT MEET THE MINIMUM SPECIFICATIONS FOR SAFETY AND SUSTAINABILITY ESTAB-
32 LISHED IN SUBDIVISION FOUR OF THIS SECTION OR IS NOT CONSISTENT WITH THE
33 SAFE AND SUSTAINABLE PROCUREMENT POLICY AND CRITERIA ESTABLISHED IN
34 SUBDIVISIONS ONE AND THREE OF THIS SECTION, AND SUBMIT SUCH DOCUMENTA-
35 TION TO THE COMMISSIONER FOR INCLUSION IN THE ANNUAL REPORT REQUIRED
36 PURSUANT TO SUBDIVISION FOURTEEN OF THIS SECTION.

37 7. TARGET COMMODITY, SERVICE AND/OR TECHNOLOGY CATEGORIES AND APPROVED
38 SAFE AND SUSTAINABLE ALTERNATIVES LISTS. A. WITHIN TWELVE MONTHS OF THE
39 EFFECTIVE DATE OF THIS SECTION, THE STATE PROCUREMENT COUNCIL SHALL
40 IDENTIFY AND RECOMMEND TO THE COMMISSIONER "TARGET CATEGORIES" OF
41 COMMODITIES, SERVICES AND/OR TECHNOLOGIES WHICH FOR THE PURPOSES OF THIS
42 SECTION SHALL MEAN BROAD CATEGORIES OF COMMODITIES, SERVICES AND/OR
43 TECHNOLOGIES ROUTINELY PROCURED BY THE STATE WHICH MAY HAVE AN ADVERSE
44 IMPACT ON PUBLIC HEALTH OR THE ENVIRONMENT AND FOR WHICH MORE SAFE
45 AND/OR SUSTAINABLE COMMODITIES, SERVICES OR TECHNOLOGIES SHOULD BE IDEN-
46 TIFIED AND SUBSTITUTED. SUCH TARGET CATEGORIES MAY INCLUDE, BUT SHALL
47 NOT BE LIMITED TO, AUTOMOTIVE VEHICLES, INCLUDING THE CONSIDERATION OF
48 HYBRID ELECTRIC OR ALTERNATIVE FUEL VEHICLES; AUTOMOTIVE PRODUCTS AND
49 VEHICLE MAINTENANCE PRODUCTS AND SERVICES; CLEANING PRODUCTS AND
50 SERVICES; BUILDING MATERIALS AND CONSTRUCTION SERVICES, INCLUDING RENO-
51 VATION AND NEW CONSTRUCTION; ENERGY, INCLUDING THE CONSIDERATION OF
52 RENEWABLE SOURCES OF ELECTRICITY; FURNITURE; LANDSCAPING PRODUCTS AND

53 SERVICES; PAINT AND COATING PRODUCTS AND SERVICES; PAPER PRODUCTS; AND
54 PEST MANAGEMENT PRODUCTS AND SERVICES.

55 B. THE COMMISSIONER, FOR EACH TARGET COMMODITY, SERVICE AND/OR TECH-
56 NOLOGY CATEGORY IDENTIFIED AND RECOMMENDED BY THE STATE PROCUREMENT

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1 COUNCIL, SHALL APPROVE SPECIFIC COMMODITIES, SERVICES AND/OR TECHNOLO-
2 GIES AS CONSISTENT WITH THE SAFE AND SUSTAINABLE PROCUREMENT POLICY,
3 CRITERIA AND MINIMUM SPECIFICATIONS ESTABLISHED IN SUBDIVISIONS ONE,
4 THREE AND FOUR OF THIS SECTION. SUCH COMMODITY, SERVICE OR TECHNOLOGY
5 SHALL THEN BE ADDED TO AN APPROVED SAFE AND SUSTAINABLE ALTERNATIVES
6 LIST FOR SUCH CATEGORY. TO DETERMINE IF A COMMODITY, SERVICE OR TECH-
7 NOLOGY IS CONSISTENT WITH SUCH POLICY, CRITERIA AND SPECIFICATIONS THE
8 COMMISSIONER SHALL CONSULT WITH THE DEPARTMENT OF ENVIRONMENTAL CONSER-
9 VATION, THE DEPARTMENT OF HEALTH, ANY OTHER APPROPRIATE GOVERNMENT AGEN-
10 CIES, EXPERTS FROM ACADEMIA, AND REPRESENTATIVES OF MANUFACTURERS,
11 VENDORS AND ORGANIZATIONS WHOSE PRIME FUNCTION IS THE ENHANCEMENT OF
12 PUBLIC HEALTH OR THE ENVIRONMENT.

13 C. THE COMMISSIONER SHALL CREATE AN APPROVED SAFE AND SUSTAINABLE
14 ALTERNATIVES LIST FOR A TARGET COMMODITY, SERVICE AND/OR TECHNOLOGY
15 CATEGORY NO LATER THAN TWELVE MONTHS FOLLOWING THE IDENTIFICATION AND
16 RECOMMENDATION OF SUCH CATEGORY BY THE STATE PROCUREMENT COUNCIL PURSU-
17 ANT TO PARAGRAPH A OF THIS SUBDIVISION, AND SHALL REVIEW AND REVISE
18 APPROVED ALTERNATIVES LISTS ANNUALLY. THE APPROVAL AND REVIEW PROCESS
19 SHALL PROVIDE OPPORTUNITY FOR PUBLIC REVIEW AND COMMENT.

20 D. WHEN PROCURING A COMMODITY, SERVICE OR TECHNOLOGY WITHIN A TARGETED
21 CATEGORY FOR WHICH AN APPROVED SAFE AND SUSTAINABLE ALTERNATIVES LIST
22 HAS BEEN CREATED, STATE AGENCIES SHALL PROCURE SUCH COMMODITY, SERVICE
23 OR TECHNOLOGY FROM SUCH LIST.

24 E. WHEN A STATE AGENCY WANTS TO PROCURE A COMMODITY, SERVICE AND/OR
25 TECHNOLOGY WITHIN A TARGETED CATEGORY FOR WHICH AN APPROVED SAFE AND
26 SUSTAINABLE ALTERNATIVES LIST HAS BEEN CREATED, BUT SUCH COMMODITY,
27 SERVICE OR TECHNOLOGY DOES NOT APPEAR ON SUCH LIST, SUCH AGENCY MUST
28 OBTAIN A WAIVER FROM THE REQUIREMENTS OF THIS SUBDIVISION FROM THE
29 COMMISSIONER. PROVIDED, HOWEVER, THAT SUCH WAIVER SHALL NOT BE REQUIRED
30 FOR THE PURCHASE OF COMMODITIES, SERVICES AND/OR TECHNOLOGIES FROM THE
31 LIST OF COMMODITIES, SERVICES AND TECHNOLOGIES AVAILABLE FOR PURCHASE
32 FROM PREFERRED SOURCES MAINTAINED BY THE COMMISSIONER PURSUANT TO
33 SECTION ONE HUNDRED SIXTY-TWO OF THIS ARTICLE. AN APPLICATION FOR SUCH A
34 WAIVER SHALL BE FILED WITH THE COMMISSIONER, WHO SHALL NOTIFY THE
35 PUBLIC, PROVIDE FOR A PUBLIC COMMENT PERIOD, AND RENDER A WRITTEN DECI-
36 SION ON SUCH APPLICATION WITHIN FORTY-FIVE DAYS. A WAIVER MAY BE GRANTED
37 WHEN NO COMMODITY, SERVICE AND/OR TECHNOLOGY ON SUCH APPROVED ALTERNA-
38 TIVES LIST MEETS AN AGENCY'S PERFORMANCE STANDARDS. IN ORDER TO OBTAIN A
39 WAIVER, THE STATE AGENCY REQUESTING THE WAIVER MUST SHOW THAT IT HAS:

40 (I) THOROUGHLY TESTED EACH COMMODITY OR TECHNOLOGY, OR THOROUGHLY
41 INVESTIGATED EACH SERVICE, ON THE APPROVED ALTERNATIVES LIST AND NONE
42 MEET THE AGENCY'S PERFORMANCE STANDARDS (INCLUDING TIMING NEEDS); AND

43 (II) DISCLOSED THE USE AND INTENSITY OF USE FOR THE COMMODITY, SERVICE
44 OR TECHNOLOGY AND DEVELOPED A REASONABLE PLAN TO MINIMIZE THE USE OF THE
45 SELECTED COMMODITY, SERVICE OR TECHNOLOGY AND/OR PROTECT EMPLOYEES AND
46 THE PUBLIC FROM EXPOSURE; AND

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

49 F. A STATE AGENCY MAY GRANT ITSELF AN IMMEDIATE EMERGENCY WAIVER FROM
50 THE PROVISIONS OF THIS SUBDIVISION WHEN THE PURCHASE OF A COMMODITY,
51 SERVICE OR TECHNOLOGY IS NECESSARY TO RESPOND TO AN EMERGENCY WHICH
52 ENDANGERS PUBLIC HEALTH OR SAFETY. PROVIDED HOWEVER, THAT UPON GRANTING

53 ITSELF SUCH AN EMERGENCY WAIVER, SUCH STATE AGENCY SHALL WITHIN TWO
54 BUSINESS DAYS FILE A WRITTEN REPORT WITH THE COMMISSIONER CONTAINING THE
55 FOLLOWING INFORMATION:

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1 (I) A DESCRIPTION OF THE EMERGENCY THAT PREVENTED COMPLIANCE WITH THIS
2 SUBDIVISION;

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

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

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

9 8. DEVELOPMENT OF GUIDANCE FOR SAFE AND SUSTAINABLE PROCUREMENT. A.
10 WITHIN EIGHTEEN MONTHS OF THE EFFECTIVE DATE OF THIS SECTION, THE
11 COMMISSIONER SHALL DEVELOP AND PROVIDE GUIDANCE TO STATE AGENCIES
12 REGARDING THE DESIGN AND IMPLEMENTATION OF MANAGEMENT AND PROCUREMENT
13 PRACTICES AND THE IDENTIFICATION, SELECTION, PROCUREMENT AND USE OF
14 COMMODITIES, SERVICES AND TECHNOLOGIES CONSISTENT WITH THE SAFE AND
15 SUSTAINABLE PROCUREMENT POLICY, CRITERIA AND MINIMUM SPECIFICATIONS
16 ESTABLISHED IN SUBDIVISIONS ONE, THREE AND FOUR OF THIS SECTION.

17 B. IN CREATING APPROVED SAFE AND SUSTAINABLE ALTERNATIVES LISTS PURSU-
18 ANT TO SUBDIVISION SEVEN OF THIS SECTION, AND DEVELOPING GUIDANCE PURSU-
19 ANT TO PARAGRAPH A OF THIS SUBDIVISION, THE COMMISSIONER IS ENCOURAGED
20 TO AVOID DUPLICATING EFFORTS AND TO POOL RESOURCES TO THE MAXIMUM EXTENT
21 PRACTICABLE. THE COMMISSIONER IS ENCOURAGED TO:

22 (I) REVIEW AND CONSIDER ADOPTING BY INCORPORATION LISTS OF PREFERRED
23 COMMODITIES, SERVICES AND TECHNOLOGIES, SPECIFICATIONS AND STANDARDS
24 COMPILED OR EXECUTED BY THE FEDERAL GOVERNMENT, OTHER STATE AND LOCAL
25 GOVERNMENTS, THE GOVERNMENT OF COUNTRIES OR JURISDICTIONS OUTSIDE THE
26 UNITED STATES, AND NON-GOVERNMENT ENTITIES, INCLUDING BUT NOT LIMITED TO
27 THIRD-PARTY CERTIFICATION PROGRAMS THAT EVALUATE THE PUBLIC HEALTH AND
28 ENVIRONMENTAL ATTRIBUTES OF COMMODITIES, SERVICES AND/OR TECHNOLOGIES,
29 AWARD SYMBOLS, COMPILER REPORT CARDS, AND/OR VERIFY CLAIMS MADE BY
30 MANUFACTURERS; AND

31 (II) REVIEW AND CONSIDER BECOMING A PARTY TO CONTRACTS LET BY THE
32 FEDERAL GOVERNMENT, OTHER STATE OR LOCAL GOVERNMENTS OR PURCHASING
33 CONSORTIA.

34 BEFORE ADOPTING ANY SUCH LIST OR BECOMING A PARTY TO ANY SUCH
35 CONTRACT, THE COMMISSIONER SHALL MAKE A DETERMINATION THAT SUCH LIST OR
36 CONTRACT IS CONSISTENT WITH THE SAFE AND SUSTAINABLE PROCUREMENT POLICY,
37 CRITERIA AND MINIMUM SPECIFICATIONS ESTABLISHED IN SUBDIVISIONS ONE,
38 THREE AND FOUR OF THIS SECTION. IN MAKING SUCH DETERMINATION, THE
39 COMMISSIONER SHALL FOCUS ON THE BROAD ATTRIBUTES OF SUCH LIST OR
40 CONTRACT, AND MAY ADOPT SUCH LIST OR CONTRACT IN WHOLE OR IN PART AND
41 WITH OR WITHOUT LIMITATIONS OR MODIFICATIONS.

42 C. IN DEVELOPING GUIDANCE PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION
43 THE COMMISSIONER SHALL CONSULT WITH THE DEPARTMENT OF ENVIRONMENTAL
44 CONSERVATION; THE DEPARTMENT OF HEALTH; ANY OTHER APPROPRIATE GOVERNMENT
45 AGENCIES; EXPERTS FROM ACADEMIA; AND REPRESENTATIVES OF MANUFACTURERS,
46 VENDORS AND ORGANIZATIONS WHOSE PRIME FUNCTION IS THE ENHANCEMENT OF
47 PUBLIC HEALTH OR THE ENVIRONMENT. THE DEVELOPMENT OF GUIDANCE AND THE
48 REVIEW AND APPROVAL PROCESS FOR LISTS AND CONTRACTS PURSUANT TO PARA-
49 GRAPH B OF THIS SUBDIVISION SHALL ALSO PROVIDE OPPORTUNITIES FOR PUBLIC
50 REVIEW AND COMMENT.

51 9. GUIDELINES FOR PUBLIC PARTICIPATION. WITHIN EIGHT MONTHS OF THE
52 EFFECTIVE DATE OF THIS SECTION, THE COMMISSIONER SHALL DEVELOP GUIDE-
53 LINES FOR PUBLIC PARTICIPATION IN THE PROCUREMENT DECISION MAKING PROC-

54 ESS CONSISTENT WITH PARAGRAPH H OF SUBDIVISION THREE OF THIS SECTION,
55 AND INCLUDING BUT NOT LIMITED TO THE DEVELOPMENT OF GUIDANCE FOR SAFE
56 AND SUSTAINABLE PROCUREMENT, THE IDENTIFICATION OF TARGET COMMODITY,

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1 SERVICE AND/OR TECHNOLOGY CATEGORIES, AND THE APPROVAL OF SAFE AND
2 SUSTAINABLE ALTERNATIVES LISTS PURSUANT TO SUBDIVISIONS SEVEN AND EIGHT
3 OF THIS SECTION.

4 10. REVIEW OF EXISTING REGULATIONS, SPECIFICATIONS AND PROCEDURES.
5 WITHIN TWELVE MONTHS OF THE EFFECTIVE DATE OF THIS SECTION, THE COMMIS-
6 SIONER SHALL ENSURE THAT PROCEDURES ARE IN PLACE TO REVIEW ALL PROCURE-
7 MENT REGULATIONS, GENERIC SOLICITATION LANGUAGE, SPECIFICATIONS AND
8 PROCEDURES TO ENSURE THAT THEY DO NOT CONFLICT WITH THE SAFE AND
9 SUSTAINABLE PROCUREMENT POLICY, CRITERIA AND MINIMUM SPECIFICATIONS
10 ESTABLISHED IN SUBDIVISIONS ONE, THREE AND FOUR OF THIS SECTION.

11 11. TRAINING, OUTREACH AND EDUCATION. A. WITH THE ASSISTANCE OF THE
12 DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH,
13 THE COMMISSIONER, WITHIN TWELVE MONTHS OF THE EFFECTIVE DATE OF THIS
14 SECTION, SHALL DESIGN AND BEGIN IMPLEMENTATION OF A SAFE AND SUSTAINABLE
15 PROCUREMENT TRAINING PROGRAM FOR ALL SENIOR MANAGERS AND STATE AGENCY
16 STAFF INVOLVED IN PROCUREMENT TO FAMILIARIZE THEM WITH THEIR RESPONSI-
17 BILITIES UNDER THIS SECTION AND ENSURE THE EFFECTIVE AND EFFICIENT
18 IMPLEMENTATION OF THE PROVISIONS OF THIS SECTION. SUCH PROGRAM SHALL
19 PROVIDE FOR NEW EMPLOYEE TRAINING AND ONGOING TRAINING.

20 B. WITH THE ASSISTANCE OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
21 AND THE DEPARTMENT OF HEALTH, THE COMMISSIONER, WITHIN EIGHTEEN MONTHS
22 OF THE EFFECTIVE DATE OF THIS SECTION, SHALL DESIGN AND BEGIN IMPLEMEN-
23 TATION OF A SAFE AND SUSTAINABLE EDUCATION AND OUTREACH PROGRAM FOR ALL
24 AGENCY STAFF, TO ENSURE THAT ALL STAFF ARE AWARE OF THE STATE'S PREFER-
25 ENCE FOR SAFE AND SUSTAINABLE COMMODITIES, SERVICES AND TECHNOLOGIES.
26 SUCH PROGRAM SHALL PROVIDE FOR NEW EMPLOYEE OUTREACH AND EDUCATION AND
27 ONGOING OUTREACH AND EDUCATION.

28 C. WITH THE ASSISTANCE OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
29 AND THE DEPARTMENT OF HEALTH, THE COMMISSIONER, WITHIN EIGHTEEN MONTHS
30 OF THE EFFECTIVE DATE OF THIS SECTION, SHALL DESIGN AND BEGIN IMPLEMEN-
31 TATION OF AN EDUCATION AND OUTREACH PROGRAM FOR CONTRACTORS AND VENDORS
32 TO PROVIDE THEM WITH INFORMATION ABOUT THE DEVELOPMENT OF SAFE AND
33 SUSTAINABLE COMMODITIES, SERVICES AND TECHNOLOGIES AND IMPLEMENTATION OF
34 THE PROVISIONS OF THIS SECTION. SUCH PROGRAM SHALL INCLUDE THE
35 PROVISION OF WORKSHOPS AND TECHNICAL ASSISTANCE REGARDING THE DEVELOP-
36 MENT, MANUFACTURE, PRODUCTION AND PROVISION OF SAFE AND SUSTAINABLE
37 COMMODITIES, SERVICES AND TECHNOLOGIES TO PROVIDERS ACCORDED PREFERRED
38 SOURCE STATUS PURSUANT TO SECTION ONE HUNDRED SIXTY-TWO OF THIS ARTICLE,
39 BUSINESSES CERTIFIED PURSUANT TO ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW,
40 AND SMALL BUSINESSES. SUCH PROGRAM SHALL BE COORDINATED WITH THE ANNUAL
41 TRAINING OF BUSINESSES CONDUCTED PURSUANT TO SUBPARAGRAPH (V) OF PARA-
42 GRAPH B OF SUBDIVISION THREE OF SECTION ONE HUNDRED SIXTY-THREE OF THIS
43 ARTICLE AND SHALL INCLUDE INFORMATION REGARDING NEW AND EXISTING
44 PROGRAMS WHICH PROVIDE INCENTIVES, TECHNICAL ASSISTANCE AND FINANCIAL
45 ASSISTANCE TO BUSINESSES, NONPROFIT ORGANIZATIONS AND PREFERRED SOURCES
46 FOR THE DEVELOPMENT, MANUFACTURE, PRODUCTION OR PROVISION OF SAFE AND
47 SUSTAINABLE COMMODITIES, SERVICES OR TECHNOLOGIES, INCLUDING BUT NOT
48 LIMITED TO THE NEW YORK STATE WASTE PREVENTION PROGRAM ESTABLISHED
49 PURSUANT TO SECTION TWO HUNDRED SIXTY-ONE OF THE ECONOMIC DEVELOPMENT
50 LAW.

51 12. PROMOTION OF SAFE AND SUSTAINABLE PROCUREMENT. A. THE COMMISSIONER
52 SHALL PROMOTE THE ADOPTION OF PRACTICES CONSISTENT WITH THIS SECTION,
53 INCLUDING BUT NOT LIMITED TO:

54 (I) CREATING INCENTIVE AND REWARD PROGRAMS THAT RECOGNIZE STATE AGEN-
55 CIES, DIVISIONS AND INDIVIDUALS THAT MAKE EXEMPLARY EFFORTS TO ADOPT AND
56 IMPLEMENT SAFE AND SUSTAINABLE MANAGEMENT AND PROCUREMENT PRACTICES, OR

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1 ARE THE MOST SUCCESSFUL AT IMPLEMENTING THE GOALS OF THE SAFE AND
2 SUSTAINABLE PROCUREMENT POLICY;

3 (II) THE DEVELOPMENT OF METHODS TO INTEGRATE ADHERENCE TO THE REQUIRE-
4 MENTS OF THIS SECTION INTO EMPLOYEE PERFORMANCE REVIEWS;

5 (III) ENCOURAGING VENDORS AND CONTRACTORS WHICH SUPPLY COMMODITIES,
6 SERVICES AND TECHNOLOGIES TO STATE AGENCIES TO SUPPLY COMMODITIES,
7 SERVICES AND TECHNOLOGIES CONSISTENT WITH THE SAFE AND SUSTAINABLE
8 PROCUREMENT POLICY, CRITERIA AND MINIMUM SPECIFICATIONS ESTABLISHED IN
9 SUBDIVISIONS ONE, THREE AND FOUR OF THIS SECTION; AND

10 (IV) ENCOURAGING LESSORS AND BUILDING MANAGERS TO PROVIDE LEASED SPACE
11 TO STATE AGENCIES TO ASSIST IN THE SELECTION AND PROCUREMENT OF SAFE AND
12 SUSTAINABLE COMMODITIES, SERVICES AND TECHNOLOGIES.

13 B. EVERY STATE AGENCY SHALL PROMOTE THE ADOPTION OF PRACTICES CONSIST-
14 ENT WITH THIS SECTION, INCLUDING BUT NOT LIMITED TO:

15 (I) ENSURING THAT AGENCY STAFF ARE FAMILIAR WITH THE TRAINING, EDUCA-
16 TION AND OUTREACH MATERIALS DEVELOPED PURSUANT TO SUBDIVISION ELEVEN OF
17 THIS SECTION;

18 (II) ENSURING THAT AGENCY STAFF, VENDORS AND CONTRACTORS ARE AWARE OF
19 THE STATE'S POLICY TO PROCURE SAFE AND SUSTAINABLE COMMODITIES, SERVICES
20 AND TECHNOLOGIES FROM COMPANIES THAT SHARE THE STATE'S COMMITMENT TO
21 PROTECTING PUBLIC HEALTH AND THE ENVIRONMENT; AND

22 (III) ENSURING THAT CONTRACTORS AND CONSULTANTS USE SAFE AND SUSTAINA-
23 BLE COMMODITIES, SERVICES AND TECHNOLOGIES TO THE MAXIMUM EXTENT PRACTI-
24 CABLE FOR ALL WORK COMPLETED ON BEHALF OF SUCH AGENCY.

25 13. SAFE AND SUSTAINABLE PROCUREMENT OFFICER, COORDINATORS AND COORDI-
26 NATING COUNCIL. A. WITHIN TWO MONTHS OF THE EFFECTIVE DATE OF THIS
27 SECTION, THE COMMISSIONER SHALL ASSIGN AN INDIVIDUAL WITHIN THE OFFICE
28 OF GENERAL SERVICES TO SERVE AS THE STATE SAFE AND SUSTAINABLE PROCURE-
29 MENT OFFICER. SUCH OFFICER SHALL ASSIST THE COMMISSIONER WITH CARRYING
30 OUT HIS OR HER DUTIES UNDER THIS SECTION AND SERVE AS THE CHAIRPERSON OF
31 THE SAFE AND SUSTAINABLE PROCUREMENT COORDINATING COUNCIL ESTABLISHED IN
32 PARAGRAPH C OF THIS SUBDIVISION.

33 B. WITHIN TWO MONTHS OF THE EFFECTIVE DATE OF THIS SECTION, EACH STATE
34 AGENCY WITH ONE HUNDRED EMPLOYEES OR MORE SHALL ASSIGN AN INDIVIDUAL
35 WITHIN SUCH AGENCY TO SERVE AS THE AGENCY'S SAFE AND SUSTAINABLE
36 PROCUREMENT COORDINATOR. THE SAFE AND SUSTAINABLE PROCUREMENT COORDINA-
37 TOR FOR EACH STATE AGENCY WITH FIVE HUNDRED EMPLOYEES OR MORE SHALL
38 SERVE ON THE SAFE AND SUSTAINABLE PROCUREMENT COORDINATING COUNCIL
39 ESTABLISHED IN PARAGRAPH C OF THIS SUBDIVISION.

40 C. THERE IS HEREBY ESTABLISHED A SAFE AND SUSTAINABLE PROCUREMENT
41 COORDINATING COUNCIL WHICH SHALL BE COMPOSED OF THE SAFE AND SUSTAINABLE
42 PROCUREMENT OFFICER AND COORDINATORS APPOINTED PURSUANT TO PARAGRAPHS A
43 AND B OF THIS SUBDIVISION, ONE EXPERT IN THE PROTECTION OF PUBLIC HEALTH
44 DESIGNATED BY THE COMMISSIONER OF THE DEPARTMENT OF HEALTH, ONE EXPERT
45 IN POLLUTION PREVENTION AND SAFE AND SUSTAINABLE PROCUREMENT DESIGNATED
46 BY THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND
47 ONE EXPERT IN WASTE PREVENTION DESIGNATED BY THE COMMISSIONER OF THE
48 DEPARTMENT OF ECONOMIC DEVELOPMENT. THE FIRST MEETING OF SUCH COUNCIL
49 SHALL BE HELD WITHIN FOUR MONTHS OF THE EFFECTIVE DATE OF THIS SECTION,
50 AND SUCH COUNCIL SHALL MEET AT LEAST SIX TIMES PER YEAR. THE STATE SAFE
51 AND SUSTAINABLE PROCUREMENT OFFICER SHALL SERVE AS THE CHAIRPERSON OF
52 SUCH COUNCIL. SUCH COUNCIL SHALL HAVE THE POWER AND DUTY TO:

53 (I) ASSESS CURRENT STATE AGENCY AND FACILITY MANAGEMENT AND PROCURE-

54 MENT PRACTICES TO EVALUATE WHETHER SUCH PRACTICES ARE CONSISTENT WITH
55 THE SAFE AND SUSTAINABLE PROCUREMENT POLICY, CRITERIA AND MINIMUM SPEC-

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1 IFICATIONS ESTABLISHED IN SUBDIVISIONS ONE, THREE AND FOUR OF THIS
2 SECTION;

3 (II) ASSIST THE COMMISSIONER WITH THE DEVELOPMENT AND PROVISION OF
4 GUIDANCE FOR SAFE AND SUSTAINABLE PROCUREMENT PURSUANT TO SUBDIVISION
5 EIGHT OF THIS SECTION;

6 (III) ASSIST THE STATE PROCUREMENT COUNCIL WITH THE IDENTIFICATION OF
7 "TARGET CATEGORIES" OF COMMODITIES, SERVICES AND/OR TECHNOLOGIES PURSU-
8 ANT TO SUBDIVISION SEVEN OF THIS SECTION;

9 (IV) ASSIST THE COMMISSIONER IN THE CREATION OF APPROVED SAFE AND
10 SUSTAINABLE ALTERNATIVES LISTS FOR TARGET COMMODITY, SERVICE AND/OR
11 TECHNOLOGY CATEGORIES PURSUANT TO SUBDIVISION SEVEN OF THIS SECTION;

12 (V) ASSIST THE COMMISSIONER IN THE DEVELOPMENT OF GUIDELINES FOR
13 PUBLIC PARTICIPATION PURSUANT TO SUBDIVISION NINE OF THIS SECTION;

14 (VI) ASSIST THE COMMISSIONER IN REVIEWING PROCUREMENT REGULATIONS,
15 GENERIC SOLICITATION LANGUAGE, SPECIFICATIONS AND PROCEDURES PURSUANT TO
16 SUBDIVISION TEN OF THIS SECTION;

17 (VII) ASSIST THE COMMISSIONER IN THE DESIGN AND IMPLEMENTATION OF
18 TRAINING, OUTREACH AND EDUCATION PROGRAMS PURSUANT TO SUBDIVISION ELEVEN
19 OF THIS SECTION, INCLUDING, BUT NOT LIMITED TO, THE PREPARATION OF
20 USER-FRIENDLY OUTREACH AND EDUCATIONAL MATERIALS AND TOOLS TO PROMOTE
21 UNDERSTANDING OF THE SAFE AND SUSTAINABLE PROCUREMENT POLICY, CRITERIA
22 AND MINIMUM SPECIFICATIONS AMONG ALL STATE AGENCY STAFF, VENDORS, AND
23 CONTRACTORS;

24 (VIII) MAKE RECOMMENDATIONS TO THE COMMISSIONER REGARDING THE DESIGN
25 AND IMPLEMENTATION OF INCENTIVE AND REWARD PROGRAMS PURSUANT TO SUBDIVI-
26 SION TWELVE OF THIS SECTION;

27 (IX) GATHER INFORMATION REGARDING THE POTENTIAL ADVERSE PUBLIC HEALTH
28 AND ENVIRONMENTAL IMPACTS, NATURAL RESOURCE USE, LIFE CYCLE ATTRIBUTES
29 AND PERFORMANCE OF COMMODITIES, SERVICES AND TECHNOLOGIES, AND TRACK THE
30 DEVELOPMENT OF LISTS, STANDARDS, SPECIFICATIONS AND CONTRACTS THAT MAY
31 BE SUITABLE FOR INTEGRATION INTO GUIDANCE, SPECIFICATIONS AND APPROVED
32 SAFE AND SUSTAINABLE ALTERNATIVES LISTS CREATED BY STATE AGENCIES OR THE
33 COMMISSIONER PURSUANT TO THIS SECTION, INCLUDING BUT NOT LIMITED TO
34 LISTS OF PREFERRED COMMODITIES, SERVICES AND/OR TECHNOLOGIES, SPECIFICA-
35 TIONS, STANDARDS OR CONTRACTS COMPILED OR LET BY THE FEDERAL GOVERNMENT,
36 OTHER STATE OR LOCAL GOVERNMENTS, THE GOVERNMENT OF COUNTRIES OR JURIS-
37 DITIONS OUTSIDE THE UNITED STATES, AND PURCHASING CONSORTIA; AND LISTS
38 OF PREFERRED COMMODITIES, SERVICES AND/OR TECHNOLOGIES, SPECIFICATIONS
39 OR STANDARDS COMPILED BY NON-GOVERNMENT ENTITIES, INCLUDING BUT NOT
40 LIMITED TO THIRD-PARTY CERTIFICATION PROGRAMS THAT EVALUATE THE PUBLIC
41 HEALTH AND ENVIRONMENTAL ATTRIBUTES OF COMMODITIES, SERVICES AND/OR
42 TECHNOLOGIES, AWARD SYMBOLS, COMPILE REPORT CARDS, AND/OR VERIFY CLAIMS
43 MADE BY MANUFACTURERS;

44 (X) ASSIST STATE AGENCIES WITH THE PROVISION OF COMPLETE, ACCURATE AND
45 MEANINGFUL INFORMATION TO THE PUBLIC REGARDING THE POTENTIAL ADVERSE
46 PUBLIC HEALTH AND ENVIRONMENTAL IMPACTS ASSOCIATED WITH THE SELECTION OF
47 COMMODITIES, SERVICES AND TECHNOLOGIES CONSISTENT WITH PARAGRAPHS G AND
48 H OF SUBDIVISION THREE OF THIS SECTION;

49 (XI) REVIEW CURRENT STATE AGENCY PROCUREMENT REPORT PROCEDURES AND
50 RECOMMEND CHANGES NEEDED TO FACILITATE TRACKING THE PROCUREMENT OF SAFE
51 AND SUSTAINABLE COMMODITIES, SERVICES AND TECHNOLOGIES BY STATE AGENCIES
52 AND OTHERS THROUGH BOTH CENTRALIZED AND INDEPENDENTLY ISSUED CONTRACTS;

53 (XII) DEVELOP METRICS FOR MEASURING PROGRESS IN IMPLEMENTING THE SAFE
54 AND SUSTAINABLE PROCUREMENT POLICY, CRITERIA AND MINIMUM SPECIFICATIONS

55 ESTABLISHED IN SUBDIVISIONS ONE, THREE AND FOUR OF THIS SECTION, INCLUD-

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1 ING THE IDENTIFICATION OF MILESTONES AND QUANTIFIABLE GOALS THAT CAN BE
2 USED TO MEASURE SUCH PROGRESS;

3 (XIII) MAKE RECOMMENDATIONS REGARDING THE MOST EFFICIENT AND PRACTICA-
4 BLE METHODS FOR COLLECTING AND COMPILING PROCUREMENT DATA FROM STATE
5 AGENCIES, INCLUDING DATA ON THE PROCUREMENT OF SAFE AND SUSTAINABLE
6 COMMODITIES, SERVICES AND TECHNOLOGIES BY STATE AGENCIES AND OTHERS
7 THROUGH BOTH CENTRALIZED AND INDEPENDENTLY ISSUED CONTRACTS AND ESTI-
8 MATES OF THE VOLUME SPENT, QUANTITY PURCHASED, OR GENERAL PURCHASING
9 TRENDS FOR EACH SAFE AND SUSTAINABLE COMMODITY, SERVICE OR TECHNOLOGY
10 INCLUDED IN AN APPROVED ALTERNATIVES LIST OR A CENTRALIZED CONTRACT,
11 BASED ON ACTUAL PURCHASING DATA OR A SCIENTIFICALLY VALID SAMPLING METH-
12 OD; AND

13 (XIV) ASSIST THE COMMISSIONER IN THE PREPARATION AND SUBMITTAL OF
14 ANNUAL REPORTS AND THE PERFORMANCE OF A COMPREHENSIVE FIVE YEAR REVIEW
15 PURSUANT TO SUBDIVISIONS FOURTEEN AND FIFTEEN OF THIS SECTION.

16 14. ANNUAL REPORT TO THE GOVERNOR AND LEGISLATURE. WITHIN EIGHTEEN
17 MONTHS OF THE EFFECTIVE DATE OF THIS SECTION, AND ANNUALLY THEREAFTER IN
18 NOVEMBER, THE COMMISSIONER SHALL SUBMIT A WRITTEN REPORT TO THE GOVER-
19 NOR, THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE
20 SENATE. SUCH REPORT SHALL INCLUDE:

21 A. AN IDENTIFICATION OF THE SPECIFIC MEASURES TAKEN BY STATE AGENCIES,
22 AND A GENERAL EVALUATION OF THE EFFECTIVENESS OF SUCH MEASURES, TO
23 IMPLEMENT THE SAFE AND SUSTAINABLE POLICY, CRITERIA AND MINIMUM SPECIFI-
24 CATIONS ESTABLISHED IN SUBDIVISIONS ONE, THREE AND FOUR OF THIS SECTION,
25 INCLUDING PROGRESS MADE TOWARD THE ACHIEVEMENT OF ANY MILESTONES OR
26 QUANTIFIABLE GOALS IDENTIFIED BY THE SAFE AND SUSTAINABLE PROCUREMENT
27 COORDINATING COUNCIL PURSUANT TO SUBPARAGRAPH (XII) OF PARAGRAPH C OF
28 SUBDIVISION THIRTEEN OF THIS SECTION;

29 B. AN EVALUATION OF THE RESOURCES AVAILABLE TO IMPLEMENT SUCH POLICY,
30 CRITERIA AND SPECIFICATIONS, AND WHETHER SUCH RESOURCES ARE SUFFICIENT;

31 C. RECOMMENDATIONS FOR LEGISLATION OR ANY OTHER SPECIFIC ACTIONS OR
32 CHANGES NEEDED, INCLUDING THE PROVISION OF ADDITIONAL FUNDING, TO EFFEC-
33 TIVELY IMPLEMENT THE PROVISIONS OF THIS SECTION;

34 D. A CURRENT LIST OF TARGET COMMODITY, SERVICE AND/OR TECHNOLOGY CATE-
35 GORIES AND SPECIFIC COMMODITIES, SERVICES AND/OR TECHNOLOGIES INCLUDED
36 IN APPROVED SAFE AND SUSTAINABLE ALTERNATIVES LISTS IDENTIFIED AND
37 CREATED PURSUANT TO SUBDIVISION SEVEN OF THIS SECTION;

38 E. A CURRENT LIST OF SAFE AND SUSTAINABLE COMMODITIES, SERVICES AND
39 TECHNOLOGIES AVAILABLE FOR PURCHASE THROUGH CENTRALIZED CONTRACTS;

40 F. A COMPILATION OF PROCUREMENT DATA COLLECTED USING METHODS RECOM-
41 MENDED BY THE SAFE AND SUSTAINABLE PROCUREMENT COORDINATING COUNCIL
42 PURSUANT TO SUBPARAGRAPH (XIII) OF PARAGRAPH C OF SUBDIVISION THIRTEEN
43 OF THIS SECTION;

44 G. A LIST OF COMMODITIES, SERVICES AND TECHNOLOGIES FOR WHICH SAFE AND
45 SUSTAINABLE SPECIFICATIONS OR STANDARDS ARE BEING DEVELOPED;

46 H. AN UPDATE ON AND ANALYSIS OF THE EFFICACY OF MEASURES TAKEN TO
47 TRAIN, EDUCATE AND ASSIST STATE AGENCY STAFF, VENDORS AND CONTRACTORS
48 REGARDING IMPLEMENTATION OF THE SAFE AND SUSTAINABLE PROCUREMENT POLICY,
49 CRITERIA AND MINIMUM SPECIFICATIONS AND THE DEVELOPMENT OF SAFE AND
50 SUSTAINABLE COMMODITIES, SERVICES, AND TECHNOLOGIES; AND

51 I. A WORK PLAN FOR THE NEXT REPORTING PERIOD THAT IDENTIFIES SPECIFIC
52 GOALS, ACTIONS AND TIMELINES NECESSARY TO IMPLEMENT THE SAFE AND
53 SUSTAINABLE PROCUREMENT POLICY, INCLUDING THE IDENTIFICATION OF PROMIS-
54 SING OPPORTUNITIES TO FURTHER THE PURPOSES OF SUCH POLICY.

55 15. REVIEW OF THE SAFE AND SUSTAINABLE PROCUREMENT POLICY. WITHIN FIVE

56 YEARS OF THE EFFECTIVE DATE OF THIS SECTION, THE COMMISSIONER, IN

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1 CONSULTATION WITH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE
2 DEPARTMENT OF HEALTH, SHALL UNDERTAKE A COMPREHENSIVE REVIEW OF ALL
3 PROGRAMS, GUIDELINES AND PRACTICES DEVELOPED PURSUANT TO THIS SECTION
4 AND REPORT ON SUCH REVIEW FOLLOWING THE FORMAT AND INFORMATION REQUIRED
5 IN THE ANNUAL REPORT DESCRIBED IN SUBDIVISION FOURTEEN OF THIS SECTION.

6 S 7. Paragraphs b and h of subdivision 1 of section 261 of the econom-
7 ic development law, as amended by chapter 471 of the laws of 1998, are
8 amended and a new paragraph i is added to read as follows:

9 b. "Eligible applicant" or "applicant" shall mean: a small to medium
10 size business or nonprofit organization which employs less than five
11 hundred workers or has gross annual sales of less than ten million
12 dollars; OR ANY ENTITY GRANTED PREFERRED SOURCE STATUS FOR THE PURPOSES
13 OF STATE PROCUREMENT PURSUANT TO SECTION ONE HUNDRED SIXTY-TWO OF THE
14 STATE FINANCE LAW.

15 h. "Eligible project" shall mean actions taken by or on behalf of {a
16 New York business} AN ELIGIBLE APPLICANT involving the acquisition,
17 construction, alteration, repair or improvement of a building, fixtures,
18 machinery or equipment; THE REDESIGN, MODIFICATION, UPGRADE OR REPLACE-
19 MENT OF PROCESSES, PROCEDURES, WORK PRACTICES OR TECHNOLOGY; THE REFOR-
20 MULATION OR REDESIGN OF PRODUCTS; OR IMPROVEMENTS IN HOUSEKEEPING, MAIN-
21 TENANCE, TRAINING OR INVENTORY CONTROL, provided that such project
22 results in:

23 (i) source reduction or material substitution, provided that the
24 substitution of one hazardous substance, product or nonproduct output
25 for another does not result in the creation of a new risk,

26 (ii) in-process recycling,

27 (iii) recycling or reuse of non-hazardous solid wastes,

28 (iv) increased energy efficiency,

29 (v) conservation of the use of water or other natural resources
30 improvements in process economics,

31 (vi) elimination of the purchase of materials, the production of which
32 for the use of said firm would result in more waste or resource consump-
33 tion, {or}

34 (vii) THE DEVELOPMENT, MANUFACTURE, PRODUCTION OR PROVISION OF SAFE
35 AND SUSTAINABLE COMMODITIES, SERVICES OR TECHNOLOGIES, OR

36 (VIII) other practices or technologies that reduce the use of hazard-
37 ous materials or otherwise improve air or water quality.

38 The term "eligible project" shall not include end of pipe pollution
39 control technologies or practices where such controls or practices are
40 designed primarily to achieve compliance with the environmental conser-
41 vation law or regulations promulgated pursuant thereto, or energy recov-
42 ery or incineration, or out-of-process recycling or reuse of hazardous
43 waste or hazardous substances.

44 I. "SAFE AND SUSTAINABLE COMMODITY, SERVICE OR TECHNOLOGY" SHALL MEAN
45 ANY COMMODITY, SERVICE OR TECHNOLOGY CONSISTENT WITH THE SAFE AND
46 SUSTAINABLE PROCUREMENT POLICY, CRITERIA AND MINIMUM SPECIFICATIONS
47 ESTABLISHED IN SUBDIVISIONS ONE, THREE AND FOUR OF SECTION ONE HUNDRED
48 SIXTY-FOUR OF THE STATE FINANCE LAW.

49 S 8. Paragraphs c, d, e, f, g, h, i, l and o of subdivision 4 of
50 section 261 of the economic development law, as amended by chapter 471
51 of the laws of 1998, are amended to read as follows:

52 c. maintain, provide and market a compilation of existing programs
53 providing incentives for new or expanded business enterprises which
54 could be utilized by the secondary materials processing industry OR
55 WHICH MANUFACTURE, PRODUCE OR PROVIDE SAFE AND SUSTAINABLE COMMODITIES,

56 SERVICES OR TECHNOLOGIES;

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1 d. promote the utilization of such incentives for new or expanded
2 business enterprises which process or utilize secondary materials OR
3 WHICH MANUFACTURE, PRODUCE OR PROVIDE SAFE AND SUSTAINABLE COMMODITIES,
4 SERVICES OR TECHNOLOGIES to locate in New York state;

5 e. promote incentives for existing businesses to expand their utiliza-
6 tion of secondary materials {and}, their adoption of waste prevention
7 technologies and practices AND THEIR DEVELOPMENT, MANUFACTURE,
8 PRODUCTION AND PROVISION OF SAFE AND SUSTAINABLE COMMODITIES, SERVICES
9 OR TECHNOLOGIES;

10 f. identify special needs and problems facing the secondary materials
11 processing industry {and}, THE implementation of waste prevention AND
12 THE DEVELOPMENT, MANUFACTURE, PRODUCTION AND PROVISION OF SAFE AND
13 SUSTAINABLE COMMODITIES, SERVICES OR TECHNOLOGIES within New York state;

14 g. contact institutions, organizations and commercial enterprises that
15 are potential consumers of secondary materials and products manufactured
16 with secondary materials OR SAFE AND SUSTAINABLE COMMODITIES, SERVICES
17 OR TECHNOLOGIES; urging their expanded consumption of {secondary} SUCH
18 materials {and}, products, COMMODITIES, SERVICES AND TECHNOLOGIES and
19 establishing markets for such {secondary} materials {and}, products,
20 COMMODITIES, SERVICES AND TECHNOLOGIES through the use of letters of
21 intent and such other techniques as the commissioner may deem appropri-
22 ate;

23 h. conduct market surveys of the potential consumers of secondary
24 materials and products manufactured with secondary materials AND OF SAFE
25 AND SUSTAINABLE COMMODITIES, SERVICES OR TECHNOLOGIES;

26 i. conduct surveys to determine the potential supply of secondary
27 materials AND SAFE AND SUSTAINABLE COMMODITIES, SERVICES OR TECHNOLOGIES
28 in the state;

29 l. provide information concerning local and regional markets for
30 secondary materials AND SAFE AND SUSTAINABLE COMMODITIES, SERVICES OR
31 TECHNOLOGIES;

32 o. provide other technical assistance to assist businesses in reducing
33 the amount of waste generated by their processes and productively use or
34 provide for the productive use {of others} of wastes which are gener-
35 ated; and

36 S 9. Subdivision 5 of section 261 of the economic development law, as
37 amended by chapter 471 of the laws of 1998, is amended to read as
38 follows:

39 5. The department shall fund feasibility studies for testing of waste
40 prevention technologies or practices {or both} AND SAFE AND SUSTAINABLE
41 COMMODITIES, SERVICES AND TECHNOLOGIES to reduce the amount of waste and
42 to promote energy and resource conservation by the adoption OR USE of
43 such technologies {or}, practices, COMMODITIES, SERVICES AND TECHNOLO-
44 GIES by small and medium sized firms in New York state.

45 S 10. Subdivision 10 of section 261 of the economic development law,
46 as amended by chapter 471 of the laws of 1998, is amended to read as
47 follows:

48 10. Technical feasibility study. The department shall require the
49 applicant to submit a technical feasibility study which identifies and
50 analyzes in detail the waste prevention projects which the applicant
51 wishes to implement. All feasibility studies must include the cost of
52 implementation, a construction schedule and, a description of how the
53 project will minimize, reduce or eliminate the generation of wastes, use
54 or reuse wastes, increase energy efficiency or water conservation,
55 INCREASE THE MANUFACTURE, PRODUCTION, PROVISION OR USE OF SAFE AND

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1 SUSTAINABLE COMMODITIES, SERVICES OR TECHNOLOGIES, improve air or water
2 quality and/or improve process economics.

3 S 11. Subdivision 14 of section 261 of the economic development law,
4 as amended by chapter 471 of the laws of 1998, is amended to read as
5 follows:

6 14. Reports. Beginning on January first, nineteen hundred eighty-nine,
7 the commissioner shall make an annual report to the governor and the
8 legislature which shall include, at a minimum, the status of the activ-
9 ities undertaken pursuant to paragraphs a, c, d, e, f, i, j and k of
10 subdivision four of this section, the status of any other activities
11 undertaken pursuant to this article, and recommendations for programs or
12 policies that will further the objectives of expanding the utilization
13 of secondary materials recovered for reuse, INCREASING WASTE PREVENTION
14 AND SOURCE REDUCTION, AND INCREASING THE MANUFACTURE, PRODUCTION,
15 PROVISION AND USE OF SAFE AND SUSTAINABLE COMMODITIES, SERVICES AND
16 TECHNOLOGIES within the state. The provisions of this subdivision shall
17 not be deemed to require or authorize the disclosure of confidential
18 information or trade secrets.

19 S 12. This act shall take effect immediately.

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Contact Webmaster