

# EXECUTIVE ORDERS

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## **Executive Order No. 9: Designation Pursuant to Section 6 of the Executive Law.**

WHEREAS, in the course of and following an audit of the practices and procedures of the Nassau County Police Department Forensic Evidence Bureau (“Forensic Evidence Bureau”), errors in analysis of evidence were uncovered and issues were raised as to whether personnel in such facility had prior knowledge of and reported such errors; and

WHEREAS, such errors as alleged, if committed, could seriously imperil the rights of the innocent, compromise public safety, and undermine public confidence in the criminal justice system; and

WHEREAS, the New York State Division of Criminal Justice Services Office of Forensic Services (“the Office”) and the Commission on Forensic Science (“the Commission”) have oversight of public forensic laboratories including the Forensic Evidence Bureau; and

WHEREAS, pursuant to 42 U.S.C. section 3797k (4) (the Paul Coverdell Forensic Science Improvement Grant Program) and agreements entered into pursuant thereto, the New York State Inspector General (“the Inspector General”) is empowered to investigate allegations of serious negligence and misconduct substantially affecting the integrity of the forensic results in the Forensic Evidence Bureau, which receives funds pursuant to such program, and the Inspector General has been so investigating such allegations; and

WHEREAS, the Forensic Evidence Bureau receives funding from New York State, among other sources, for its operations; and

WHEREAS, pursuant to Article 4-A of the Executive Law, the Inspector General has jurisdiction to investigate and review the operation of the Commission and the Office and their oversight of public forensic laboratories such as the Forensic Evidence Bureau; and

WHEREAS, the exercise of my powers under the law will allow for a more comprehensive and independent investigation of the oversight and operation of the Forensic Evidence Bureau;

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws, do hereby order as follows:

1. Pursuant to section six of the Executive Law, I hereby appoint Ellen Biben, the New York State Inspector General, to study, examine, investigate, review and make recommendations with respect to the forensic testing practices and procedures of the Nassau County Police Department Forensic Evidence Bureau including, but not limited to, compliance with relevant laws, standards, and protocols.
2. The New York State Inspector General is hereby empowered to subpoena and enforce the attendance of witnesses; to administer oaths or affirmations and examine witnesses under oath; to require the production of any books, records or papers deemed relevant or material to any investigation, examination or review; and to perform any other functions that are necessary or appropriate to fulfill the duties and responsibilities of office, and I hereby give and grant to her all powers and authorities which may be given or granted to persons appointed by me for such purpose under authority of section six of the Executive Law. She may exercise any such powers in cooperation with any other body or government agency. This order shall not in any way limit her powers or responsibilities to inquire into these or any other matters as New York State Inspector General.
3. Every State department, agency, office, division, board, bureau,

council, authority and public benefit corporation shall cooperate with the New York State Inspector General and shall furnish such information and assistance as she determines is reasonably necessary to fulfill her duties.

(L.S.)

GIVEN under my hand and the Privy Seal of the State in the City of Albany, this twenty-fifth day of February in the year two thousand eleven.

*BY THE GOVERNOR*

/S/ Andrew M. Cuomo

/s/ Steven M. Cohen

*Secretary to the Governor*

## **Executive Order No. 10: Reducing Costs For Personal Services Contracts.**

WHEREAS, the State is in a fiscal crisis, and must take all feasible measures to control its expenditures and achieve cost savings;

WHEREAS, the 2011-12 Executive Budget sets forth a program to address this crisis, premised on the principle of shared sacrifice and reducing expenditures, through which the burden of putting the State’s fiscal house in order is spread across a wide spectrum of interests;

WHEREAS, the 2011-12 Executive Budget requires particularly significant cost reductions from state agencies, for whom the proposed budget would bring about a ten percent reduction in operating expenses;

WHEREAS, the State is continually reviewing personal services contracts to reduce the number and cost of such contracts;

WHEREAS, the State must do all it can to ensure that it is getting the best possible price of contracts paid for with taxpayer dollars, and cannot merely follow the contracting practices of the past;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order as follows:

1. The following definitions will apply for purposes of this order:
  - a. “Closely Affiliated Not for Profit Organization” shall mean corporations closely affiliated with specific state agencies as defined by paragraph (d) of subdivision five of section fifty-three-a of the state finance law or their successors
  - b. “Personal Services Contract” shall mean any contract entered into by a state agency with any private party, under which the agency believes that a majority of the costs of the contract are attributable to compensation of the contractor’s personnel. Personnel services contracts shall include contracts whose primary purpose is evaluation, research and analysis, data processing, computer programming, engineering, environmental assessment, health and mental health services, accounting, auditing, legal or similar services, with a total value of over two hundred thousand dollars. A “personal services contract,” for purposes of this order, shall not include any contract:
    - i. whose price is governed by federal or state law;
    - ii. for the purchase of commodities;
    - iii. whose renewal must be subject to a competitive bid;

- iv. with a preferred source, as that term is defined by State Finance Law § 162; or
  - v. necessary for compliance with Article 15-A of the Executive Law and any regulations issued thereunder.
  - c. "State agency" shall mean any state agency, department, office, board, bureau, division, committee, council or office.
  - d. "Single source" shall have the meaning set forth in State Finance Law § 163.
  - e. "Renewal" shall mean the negotiation of a new contract with an entity already providing services to the State of a kind equivalent to that to be provided for in such new contract, but which shall not include a contract extension whose price is specifically provided for in the existing contract.
2. Each state agency shall, upon the expiration of a personal services Single source contract, agree to a renewal of such contract only if the contractor agrees to a reduction in the State's annual costs of no less than ten per cent off the annual cost of the prior contract (the "mandatory reduction target"), except as provided for in paragraph 4. Such reduction may be reached by adjustment of the price, or by such other measures whose combined value to the State totals at least ten per cent of the annual cost of the prior contract.
3. Any state agency that determines that it cannot secure the reduction in contract price provided for by section 2 of this Order shall, in writing to the Director of State Operations prior to any signing of or agreement to such contract renewal:
- a. State the reduction that was achieved; and
  - b. (1) Describe all efforts that the agency has made to secure such a reduction, including any efforts to seek an alternative contractor at a lower price, and set forth the reasons for the agency's determination that such a reduction cannot be achieved; or (2) set forth any reasons as to why such efforts cannot be made, including any legal restrictions not set forth in section 1 of this Order, provided that past practice shall not by itself be a sufficient reason not to comply with this Order.
- An agency submitting the statement provided for by this paragraph shall not proceed with the contract renewal without the approval of the Director of State Operations or his or her designee.
4. In addition to contracts covered by paragraph 2, each state agency shall, prior to the expiration of a Personal Services Contract that provides the agency the option to continue the contract at an equal or higher cost, take all reasonable measures to ensure that the same services may not be acquired at a lower price. Such measures shall include: (a) discussions with the contractor regarding its acceptance of lower price terms; (b) evaluation of whether re-bidding the contract will produce greater cost savings; and (c) consultation with the Director of State Agency Redesign and Efficiency to determine if savings can be achieved by aggregating such the contract with other contracts with the same contractor. Prior to any such renewal, the state agency shall advise the Director of State Operations of such steps, and the basis for its decision to seek renewal.
5. The Director of State Operations may from time to time review the application of the mandatory reduction target to particular classes of contracts or contracts by particular agencies, and may in writing to affected agencies reduce or increase such target for such contracts.
6. All state agencies are directed to seek reductions in contracting expenses in addition to those set forth in this order, including through reductions in the costs of contract renewals that exceed those of the mandatory reduction targets.
7. Agencies are encouraged to seek all other reasonable and lawful means to reduce the costs of their personal services contracts. Agencies should provide whatever assistance and support may be warranted to assist contractors in reducing their costs, including the costs of subcontracts, so that they may achieve the savings provided for in this Order.
8. The Spending and Government Efficiency Commission ("Commission"), created by Executive Order No. 4, shall review the

State's practices regarding contracts for personal services, to examine ways to reduce their number and cost.

9. Nothing in this Order shall:
- a. affect the validity of any contract entered into by any agency in a manner permissible by law;
  - b. relieve any agency of any competitive bidding or other procurement requirements set forth in law or regulation;
  - c. provide any legal right to any third party to enforce the terms of this order;
  - d. apply to any contracts with another public entity, including a public authority, closely affiliated not-for-profit organization, or subdivision of the state; or
  - e. affect, in any manner, the process by which the Office of the State Comptroller or Department of Law reviews state contracts.

(L.S.)

GIVEN under my hand and the Privy Seal of the State in the City of Albany, this second day of March in the year two thousand eleven.

BY THE GOVERNOR

/S/ Andrew M. Cuomo

/s/ Steven M. Cohen

Secretary to the Governor

**Executive Order No. 11: Prescribing Procedures to Allocate the State Low Income Housing Credit under Section 42 of the United States Internal Revenue Code.**

WHEREAS, section 42 of the United States Internal Revenue Code ("the Code") establishes a federal tax credit for housing persons of low income to be administered by state housing agencies ("Low Income Housing Tax Credit");

WHEREAS, the Code authorizes the governor of each state to establish a formula for allocating the Low Income Housing Tax Credit limit among governmental units and other issuing authorities in the State;

WHEREAS, the Code requires that the allocation of Low Income Housing Tax Credits be coordinated by a single state housing agency;

WHEREAS, the Code requires each agency allocating the Low Income Housing Tax Credits to prepare a qualified allocation plan which sets forth the criteria and preferences by which Low Income Housing Tax Credits will be allocated to projects;

WHEREAS, the amount of the Low Income Housing Tax Credit Ceiling is established pursuant to the Revenue Procedure for each calendar year, based upon the most recent population estimate released by the United States Bureau of the Census;

WHEREAS, the Low Income Housing Tax Credit should be allocated in a manner which maximizes the public benefit by addressing the State's need for low income housing and community revitalization incentives in distressed areas of the State;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order as follows:

A. Definitions

As used herein, the following terms shall have the following meanings:

- 1. "Code" shall mean the United State Internal Revenue Code.
- 2. "Commissioner" shall mean the Commissioner of the Division of Housing and Community Renewal.
- 3. "Low Income Housing Tax Credit Ceiling" shall mean the dollar amount of allocation authority apportioned to New York State pursuant to the Revenue Procedure referenced in the Code for a calendar year.
- 4. "Tax Credit" shall mean the Low Income Housing Tax Credit allocated to specific projects under Section 42 (b) of the Code.
- 5. "State Qualified Allocation Plan" shall mean the plan to guide

the allocation and monitoring of the Low Income Housing Tax Credit Ceiling in a manner which addresses State and local housing needs and, where possible, addresses the most pressing State and local housing needs, fosters community revitalization, saves social services and public assistance expenses and leverages economic development.

6. "Housing Credit Agency" or "HCA" shall mean any State Housing Credit Agency or Local Housing Credit Agency.

7. "State Housing Credit Agency" shall mean the New York State Division of Housing and Community Renewal or any other New York State agency, governmental unit or public benefit corporation concerned with housing and designated by the Commissioner as an HCA, within the meaning of section 42 (h) (7) (A) of the Code. The Division of Housing and Community Renewal shall be the main HCA in New York State.

8. "Local Credit Agency" or "LCA" shall mean any political subdivision, or any other local governmental unit or issuing authority concerned with housing and designated by the Commissioner as an HCA, within the meaning of Section 42 (h) (7) (A) of the Code.

**B. Allocation of Low Income Housing Credit Ceiling**

1. The Commissioner shall, in accordance with the State Qualified Allocation Plan, allocate the annual Low Income Housing Credit Ceiling to State and Local Housing Credit Agencies.

2. The Commissioner shall monitor the allocation of Tax Credits to insure that at least 10 percent of the overall Low Income Housing Tax Credit Ceiling is reserved and set aside for use by qualified non-profit organizations that materially participate in the development and operation of projects. The Commissioner may increase an allocation of the Low Income Housing Tax Credit Ceiling in order to insure sufficient means to implement a complete program of credit activity and provide for innovative initiatives for addressing State and local housing needs.

3. State and Local Housing Credit Agencies that seek to receive an initial allocation of the Low Income Housing Tax Credit Ceiling shall submit an application to the Commissioner as specified by the Commissioner on or before January 1 of each calendar year. The application shall include:

- a. a qualified allocation plan, as defined by the Code;
- b. a request for an allocation of Low Income Housing Tax Credit Ceiling consistent with the qualified allocation plan;
- c. a certification that all necessary steps will be taken to fulfill the responsibilities of an HCA as set forth under the Code and that the applicant will comply with all procedures and guidelines promulgated by the Commissioner; and
- d. such other information as the Commissioner may require.

4. The Commissioner shall make an initial allocation of the Low Income Housing Tax Credit Ceiling to HCAs within thirty days of receipt of the HCA applications as specified above, and by February 15 of each calendar year or as soon thereafter as practicable. The Commissioner from time to time may make additional allocations to such credit agencies from the Statewide Reserve.

5. After receiving an allocation of the Low Income Housing Tax Credit Ceiling from the Commissioner, each HCA shall submit to the Commissioner on July 1 of each calendar year a report on the progress of its program which shall include a statement of the amount of its Low Income Housing Tax Credit Ceiling that is expected to remain unused. On and after September 15, or as soon thereafter as practicable, any of the Low Income Housing Tax Credit Ceiling which the Commissioner determines is likely to remain unused shall revert to the Statewide Reserve for reallocation by the Commissioner.

**C. Procedures and Guidelines**

The Commissioner is authorized to establish procedures and guidelines to implement the provisions of this order. Such procedures and guidelines shall set forth the amount of the Low Income Housing Tax Credit Ceiling for the State and provide guidance to HCA's in applying for an allocation and submitting reports and certifications sufficient to enable the Commissioner to make any report required by Section 42 of the Code and this Executive Order. Such procedures and guidelines may address processing and monitoring costs and any other matters the Commissioner deems appropriate.

**D. Effectiveness**

Nothing contained in this order shall be deemed to supersede, alter or impair any provision of the Act, or any regulations promulgated thereunder. Executive Order No.135, issued on February 27, 1990, is hereby revoked and superseded by this Executive Order as of the date hereof.

(L.S.)

GIVEN under my hand and the Privy Seal of the State in the City of Albany, this second day of March in the year two thousand eleven.

*BY THE GOVERNOR*

/S/ Andrew M. Cuomo

/s/ Steven M. Cohen

*Secretary to the Governor*

**Executive Order No. 12: Revocation of Prior Executive Orders.**

WHEREAS, pursuant to Executive Order No. 2, issued on January 1, 2011, further review has been completed of those Executive Orders and amendments thereto that are in effect as of this date;

WHEREAS, during the course of that review, it has been determined that certain Executive Orders are unnecessary, outdated, or otherwise should not be continued, as detailed below; and

WHEREAS, the Co-Chair of the Spending and Government Efficiency ("SAGE") Commission, established pursuant to Executive Order No. 4, issued on January 5, 2011, in furtherance of the goal of reducing New York State government by 20 percent, has reviewed and recommended that the following Executive Orders be discontinued;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order that upon due consideration, deliberation and review, the below Executive Orders issued by previous Governors are hereby repealed, cancelled and revoked in their entirety.

**Executive Orders of Governor David A. Paterson**

WHEREAS, the State Energy Planning Board created by Executive Order No. 2, issued April 9, 2008, fulfilled its mission and published a comprehensive State Energy Plan in December, 2009; and whereas a new Energy Planning Board was created by chapter 433 of the laws of 2009 to adopt a new State Energy Plan on or before March 15, 2013;

NOW, THEREFORE, Executive Order No. 2, issued April 9, 2008 (Establishing a State Energy Planning Board and Authorizing the Creation and Implementation of a State Energy Plan), is hereby revoked.

WHEREAS, Inspector General Ellen Biben as been appointed to study, examine, investigate and review the management and affairs of the Waterfront Commission of New York Harbor;

NOW, THEREFORE, Executive Order No. 5, issued May 27, 2008 (Appointing a Prior Commissioner to Study, Examine, Investigate and Review the Management and Affairs of the Waterfront Commission of New York Harbor), is hereby revoked.

WHEREAS, all State agencies have completed the solicitation of public comment and review of their regulations pursuant to the Regulatory Review and Reform Program created by Executive Order No. 25; and whereas those recommendations will be reviewed by the SAGE Commission consistent with the goal of creating a more efficient and effective State government;

NOW, THEREFORE, Executive Order No. 25, issued August 6, 2009 (Establishing a Regulatory Review and Reform Program), is hereby revoked.

WHEREAS, Executive Order No. 27 authorized the New York City Off-Track Betting Corporation ("NYC OTB") to file a petition under provisions of the laws of the United States for composition or adjustment of municipal indebtedness; and whereas NYC OTB has filed such petition;

NOW, THEREFORE, Executive Order No. 27, issued September 1, 2009 (Authorizing New York City Off-Track Betting Corporation

to File Petition Under Provisions of the Laws of the United States for Composition or Adjustment of Municipal Indebtedness), is hereby revoked.

WHEREAS, Executive Order No. 44 provided for the reallocation of unused Recovery Zone Facility Bond (“RZFB”) authorizations to the Empire State Development Corporation prior to the federally mandated date of January 1, 2011 by which all RZFBs had to have been issued;

NOW, THEREFORE, Executive Order No. 44, issued December 17, 2010 (Directing the Reallocation of Deemed Waived Recovery Zone Facility Bond Allocations), is hereby revoked.

**Executive Orders of Governor Eliot L. Spitzer**

WHEREAS, Executive Order No. 8, Establishing the MWBE Executive Leadership Council and the MWBE Corporate Roundtable is superseded by Executive Order 8, issued on February 17, 2011, Establishing a Task Force Removing Barriers to Minority and Women Business Enterprises’ Participation in State Contracting;

NOW, THEREFORE, Executive Order No. 8, issued February 18, 2007 (Establishing the MWBE Executive Leadership Council and the MWBE Corporate Roundtable), is hereby revoked.

WHEREAS, the Governor’s Children’s Cabinet established pursuant to Executive Order No. 16 has completed its work as set forth in the Executive Order;

NOW, THEREFORE, Executive Order No. 16, issued June 12, 2007 (Establishing the Governor’s Children’s Cabinet), is hereby revoked.

WHEREAS, the Governor’s Smart Growth Cabinet (“Cabinet”) created by Executive Order No. 20, fulfilled its mission by recommending effective mechanisms to incorporate “smart growth” principles into State policies; and whereas, with the recommendation of the Cabinet, the State Smart Growth Public Infrastructure Policy Act was enacted into law as chapter 433 of the laws of 2010, to promote “smart growth”;

NOW, THEREFORE, Executive Order No. 20, issued December 4, 2007 (Establishing the Governor’s Smart Growth Cabinet), is hereby revoked.

**Executive Orders of Governor George E. Pataki**

WHEREAS, the services of the Governmental Commission to Investigate the Recovery of Holocaust Victims’ Assets, established pursuant to Executive Order No. 50, are now provided by the Holocaust Claims Processing Office established in 1997 within the Banking Department;

NOW, THEREFORE, Executive Order No. 50, issued October 1, 1996 (Establishing a Governmental Commission to Investigate the Recovery of Holocaust Victims’ Assets), is hereby revoked.

**Executive Orders of Governor Mario M. Cuomo**

WHEREAS, the functions and responsibilities formerly performed by the State Director of Criminal Justice, as established by Executive Order No. 2, are now performed by the Deputy Secretary for Public Safety;

NOW, THEREFORE, Executive Order No. 2, issued January 11, 1983 (Establishing the position of State Director of Criminal Justice), is hereby revoked.

IT IS FURTHER ORDERED, with the exception of the Executive Orders revoked pursuant to this order, all Executive Orders continued pursuant to Executive Order No. 2, issued on January 1, 2011, shall be continued and remain in full force and effect until otherwise revoked, superseded or modified.

(L.S.)

GIVEN under my hand and the Privy Seal of the State in the City of Albany, this second day of March in the year two thousand eleven.

BY THE GOVERNOR

/S/ Andrew M. Cuomo

/s/ Steven M. Cohen

Secretary to the Governor