

**First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 07-0562.01 Bob Lackner

HOUSE BILL 07-1220

HOUSE SPONSORSHIP

Kefalas, and Weissmann

SENATE SPONSORSHIP

Groff,

House Committees

State, Veterans, & Military Affairs

Senate Committees

State, Veterans & Military Affairs

SENATE
3rd Reading Unamended
March 27, 2007

SENATE
2nd Reading Unamended
March 26, 2007

A BILL FOR AN ACT

101 **CONCERNING A PREFERENCE FOR THE PURCHASE OF**
102 **ENVIRONMENTALLY PREFERABLE PRODUCTS BY**
103 **GOVERNMENTAL ENTITIES.**

HOUSE
3rd Reading Unamended
February 27, 2007

HOUSE
Amended 2nd Reading
February 26, 2007

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

In connection with the purchase of services or supplies, requires a governmental body to award the contract to a bidder who is able to offer environmentally preferable products subject to the conditions specified in the act.

Specifies that the preference created in the act shall apply only if all of the following conditions are met:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

The quality of the environmentally preferable products meets the specification of the bidder.

The environmentally preferable products are suitable for the use required by the purchasing entity.

Any bidder able to offer environmentally preferable products is able to supply such products in sufficient quantity, as indicated in the invitation for bids.

The bid or quoted price for environmentally preferable products does not exceed the lowest bid or quoted price for products that are not environmentally preferable by more than a specified amount.

The head of the governmental body or other official charged by law with the duty to purchase products has made a determination that the governmental body is able to purchase the environmentally preferable products out of the governmental body's existing budget without any further supplemental or additional appropriation.

Selecting an environmentally preferable product would not be disadvantageous to the state.

If the bid or quoted price for environmentally preferable products exceeds the bid or quoted price for products that are not environmentally preferable by more than a specified amount, authorizes a governmental body to award the contract to a bidder who offers environmentally preferable products where the governmental body demonstrates, on the basis of a life-cycle cost analysis, that long-term savings to the state will result from environmentally preferable purchasing in accordance with the requirements of the act. Specifies that nothing in the act shall require that a governmental body perform a life-cycle cost analysis in connection with the purchase of any products.

Requires any bidder that seeks to qualify for the preference created by the act to provide documentation to the governmental body inviting the bid that the products offered by the bidder are environmentally preferable. Specifies how the documentation requirement may be satisfied. Permits the governmental body to rely in good faith on any form of documentation that satisfies the requirement of the act. Specifies that, if none of the forms of documentation specified in the act apply to the product or service being purchased, the requirements of the act shall not apply to the purchase of the product or service.

Requires a governmental body to report to the joint budget committee the results of any life-cycle cost analysis used to justify the purchase of any environmentally preferable products in accordance with the requirements of the act during the previous fiscal year.

1 *Be it enacted by the General Assembly of the State of Colorado:*

1 **SECTION 1.** Part 2 of article 103 of title 24, Colorado Revised
2 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
3 read:

4 **24-103-207.5. Purchasing preference for environmentally**
5 **preferable products - definitions.** (1) AS USED IN THIS SECTION, UNLESS
6 THE CONTEXT OTHERWISE REQUIRES, "ENVIRONMENTALLY PREFERABLE
7 PRODUCTS" MEANS PRODUCTS OR SERVICES THAT HAVE A LESSER OR
8 REDUCED ADVERSE EFFECT ON HUMAN HEALTH AND THE ENVIRONMENT
9 WHEN COMPARED WITH COMPETING PRODUCTS OR SERVICES THAT SERVE
10 THE SAME PURPOSE. THE PRODUCT OR SERVICE COMPARISON MAY
11 CONSIDER SUCH FACTORS AS THE AVAILABILITY OF ANY RAW MATERIALS
12 USED IN THE PRODUCT OR SERVICE BEING PURCHASED AND THE
13 AVAILABILITY, USE, PRODUCTION, SAFE OPERATION, MAINTENANCE,
14 PACKAGING, DISTRIBUTION, DISPOSAL, OR RECYCLABILITY OF THE
15 PRODUCT OR SERVICE BEING PURCHASED.

16 (2) IN CONNECTION WITH THE PURCHASE OF PRODUCTS OR
17 SERVICES, A GOVERNMENTAL BODY SHALL AWARD THE CONTRACT TO A
18 BIDDER WHO OFFERS ENVIRONMENTALLY PREFERABLE PRODUCTS SUBJECT
19 TO THE CONDITIONS SPECIFIED IN SUBSECTION (3) OF THIS SECTION.

20 (3) THE PREFERENCE SPECIFIED IN SUBSECTION (2) OF THIS SECTION
21 SHALL APPLY ONLY IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

22 (a) THE QUALITY OF THE ENVIRONMENTALLY PREFERABLE
23 PRODUCTS MEETS THE SPECIFICATION OF THE BID.

24 (b) THE ENVIRONMENTALLY PREFERABLE PRODUCTS ARE SUITABLE
25 FOR THE USE REQUIRED BY THE PURCHASING ENTITY.

26 (c) ANY BIDDER ABLE TO OFFER ENVIRONMENTALLY PREFERABLE
27 PRODUCTS IS ABLE TO SUPPLY SUCH PRODUCTS IN SUFFICIENT QUANTITY,

1 AS INDICATED IN THE INVITATION FOR BIDS.

2 (d) THE BID OR QUOTED PRICE FOR ENVIRONMENTALLY
3 PREFERABLE PRODUCTS DOES NOT EXCEED THE LOWEST BID OR QUOTED
4 PRICE FOR PRODUCTS THAT ARE NOT ENVIRONMENTALLY PREFERABLE BY
5 MORE THAN FIVE PERCENT.

6 (e) THE HEAD OF THE GOVERNMENTAL BODY OR OTHER OFFICIAL
7 CHARGED BY LAW WITH THE DUTY TO PURCHASE PRODUCTS HAS MADE A
8 DETERMINATION THAT THE GOVERNMENTAL BODY IS ABLE TO PURCHASE
9 THE ENVIRONMENTALLY PREFERABLE PRODUCTS OUT OF THE
10 GOVERNMENTAL BODY'S EXISTING BUDGET WITHOUT ANY FURTHER
11 SUPPLEMENTAL OR ADDITIONAL APPROPRIATION.

12 (f) SELECTING AN ENVIRONMENTALLY PREFERABLE PRODUCT
13 WOULD NOT BE OTHERWISE DISADVANTAGEOUS TO THE STATE UPON
14 CONSIDERATION OF ANY ONE OR MORE OF THE FACTORS SPECIFIED IN
15 PARAGRAPHS (a) TO (e) OF THIS SUBSECTION (3), SINGLY OR IN
16 COMBINATION.

17 (4) IF THE BID OR QUOTED PRICE FOR ENVIRONMENTALLY
18 PREFERABLE PRODUCTS EXCEEDS THE BID OR QUOTED PRICE FOR
19 PRODUCTS THAT ARE NOT ENVIRONMENTALLY PREFERABLE BY MORE THAN
20 FIVE PERCENT, A GOVERNMENTAL BODY MAY AWARD THE CONTRACT TO
21 A BIDDER WHO OFFERS ENVIRONMENTALLY PREFERABLE PRODUCTS WHERE
22 THE GOVERNMENTAL BODY DEMONSTRATES, ON THE BASIS OF A COST OF
23 OWNERSHIP LIFE-CYCLE ANALYSIS, THAT LONG-TERM SAVINGS TO THE
24 STATE WILL RESULT FROM ENVIRONMENTALLY PREFERABLE PURCHASING
25 IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION. NOTHING IN
26 THIS SECTION SHALL REQUIRE THAT A GOVERNMENTAL BODY PERFORM A
27 COST OF OWNERSHIP LIFE-CYCLE ANALYSIS IN CONNECTION WITH THE

1 PURCHASE OF ANY PRODUCTS.

2 (5) (a) ANY BIDDER THAT SEEKS TO QUALIFY FOR THE PREFERENCE
3 CREATED BY SUBSECTION (2) OF THIS SECTION SHALL PROVIDE
4 DOCUMENTATION TO THE GOVERNMENTAL BODY INVITING THE BID THAT
5 THE PRODUCTS OFFERED BY THE BIDDER ARE ENVIRONMENTALLY
6 PREFERABLE. THIS REQUIREMENT MAY BE SATISFIED BY SUBMISSION OF
7 ANY OF THE FOLLOWING:

8 (I) A COST OF OWNERSHIP LIFE-CYCLE ANALYSIS CONDUCTED ON
9 THE APPLICABLE PRODUCT OR SERVICE THAT HAS BEEN CONDUCTED IN
10 ACCORDANCE WITH APPLICABLE STANDARDS AS DETERMINED BY THE
11 PURCHASING GOVERNMENTAL BODY OR BY THE INTERNATIONAL
12 ORGANIZATION FOR STANDARDIZATION OR ANY SUCCESSOR
13 ORGANIZATION;

14 (II) A REFERENCE TO AN EXISTING ENVIRONMENTALLY
15 PREFERABLE PRODUCT LIST MAINTAINED BY A STATE OR THE FEDERAL
16 GOVERNMENT THAT CONTAINS THE PRODUCT OR SERVICE; OR

17 (III) A REFERENCE TO A NATIONALLY RECOGNIZED THIRD-PARTY
18 CERTIFICATION ENTITY THAT HAS CERTIFIED THE PRODUCT OR SERVICE AS
19 ENVIRONMENTALLY PREFERABLE ON THE BASIS OF A VALID COST OF
20 OWNERSHIP LIFE-CYCLE ANALYSIS.

21 (b) THE GOVERNMENTAL BODY MAY RELY IN GOOD FAITH ON ANY
22 FORM OF DOCUMENTATION THAT SATISFIES THE REQUIREMENT OF
23 PARAGRAPH (a) OF THIS SUBSECTION (5).

24 (c) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
25 IF NONE OF THE FORMS OF DOCUMENTATION SPECIFIED IN PARAGRAPH (a)
26 OF THIS SUBSECTION (5) APPLY TO THE PRODUCT OR SERVICE BEING
27 PURCHASED, THE REQUIREMENTS OF THIS SECTION SHALL NOT APPLY TO

1 THE PURCHASE OF THE PRODUCT OR SERVICE.

2 (6) A GOVERNMENTAL BODY SHALL REPORT TO THE JOINT BUDGET
3 COMMITTEE OF THE GENERAL ASSEMBLY THE RESULTS OF ANY COST OF
4 OWNERSHIP LIFE-CYCLE ANALYSIS USED TO JUSTIFY THE PURCHASE OF
5 ANY ENVIRONMENTALLY PREFERABLE PRODUCTS IN ACCORDANCE WITH
6 THE REQUIREMENTS OF SUBSECTION (4) OF THIS SECTION DURING THE
7 PREVIOUS FISCAL YEAR.

8 (7) IN CONNECTION WITH ANY COST OF OWNERSHIP LIFE-CYCLE
9 ANALYSIS UNDERTAKEN IN CONNECTION WITH ANY PURCHASE UNDER THIS
10 SECTION OF A PRODUCT OR SERVICE THAT INVOLVES THE REPLACEMENT OF
11 EXISTING ELECTRICAL, NATURAL GAS, OR STEAM SERVICE, THE COST
12 ANALYSIS SHALL CONSIDER ANY STRANDED UTILITY COSTS.

13 **SECTION 2. Effective date - applicability.** (1) This act shall
14 take effect at 12:01 a.m. on the day following the expiration of the
15 ninety-day period after final adjournment of the general assembly that is
16 allowed for submitting a referendum petition pursuant to article V,
17 section 1 (3) of the state constitution, (August 8, 2007, if adjournment
18 sine die is on May 9, 2007); except that, if a referendum petition is filed
19 against this act or an item, section, or part of this act within such period,
20 then the act, item, section, or part, if approved by the people, shall take
21 effect on the date of the official declaration of the vote thereon by
22 proclamation of the governor.

23 (2) The provisions of this act shall apply to bids for contracts
24 solicited on or after the applicable effective date of this act.