

First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 09-1101.01 Jason Gelender

SENATE BILL 09-297

SENATE SPONSORSHIP

Sandoval,

HOUSE SPONSORSHIP

Judd,

Senate Committees
Finance

House Committees

A BILL FOR AN ACT

101 **CONCERNING PROJECTS FUNDED WITH MONEYS RECEIVED PURSUANT**
102 **TO THE FEDERAL "AMERICAN RECOVERY AND REINVESTMENT**
103 **ACT OF 2009", AND, IN CONNECTION THEREWITH, ESTABLISHING**
104 **A PROCESS FOR THE WAIVING OF STATE CONTRACTING**
105 **REQUIREMENTS FOR CONTRACTS FOR SUCH PROJECTS IN**
106 **CIRCUMSTANCES IN WHICH A WAIVER IS NECESSARY IN ORDER**
107 **TO ENSURE THAT THE MONEYS CAN BE TIMELY AND EFFICIENTLY**
108 **EXPENDED FOR THEIR INTENDED PURPOSES, REQUIRING THE**
109 **PUBLIC UTILITIES COMMISSION TO GIVE THE FULLEST**
110 **CONSIDERATION FOR INCENTIVES TO SPECIFIED TYPES OF SUCH**
111 **PROJECTS, AND INCLUDING MONEYS RECEIVED BY THE**
112 **GOVERNOR'S ENERGY OFFICE PURSUANT TO THE FEDERAL ACT**

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.

101
102

**AND FROM SPECIFIED OTHER SOURCES AS PRINCIPAL OF THE
CLEAN ENERGY FUND.**

Bill Summary

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

Until July 1, 2013:

- ! Authorizes the executive director of a principal department of the executive branch of the state government or the director of a state government office that is not part of a principal department of the state government to request a waiver of any provision of the state "Procurement Code" (code) for any procurement being funded in whole or in part with moneys received pursuant to the federal "American Recovery and Reinvestment Act of 2009" (ARRA) if the waiver is necessary in order to expedite the use of the moneys in a manner consistent with the goals and purposes of ARRA or if strict adherence to the code would substantially impede the ability of the state to expend the moneys in the manner or within the time required by ARRA or any applicable federal law.
- ! Allows a waiver only if the waiver is approved in writing by the attorney general and the state controller.
- ! Authorizes the executive director of the department of transportation to award a highway project contract that is being funded in whole or in part with moneys received pursuant to ARRA and that is bid on by fewer than 3 bidders to a low responsible bidder whose bid exceeds the department's project estimate by more than the applicable existing statutory maximum percentage if the award is necessary in order to expedite the use of the moneys in a manner consistent with the goals and purposes of ARRA.
- ! Requires a written determination that a waiver of a code provision or an award to a low responsible bidder whose bid exceeds the department of transportation's project estimate is necessary to be provided to the Colorado economic recovery accountability board and made publicly available on the internet.
- ! Requires the public utilities commission to give the fullest consideration for incentives to specified types of projects eligible for ARRA funding.

Specifies that moneys received by the governor's energy office pursuant to ARRA and specified other sources are principal of the clean energy fund.

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

2 **SECTION 1.** 24-75-1201 (1) (a), Colorado Revised Statutes, is
3 amended to read:

4 **24-75-1201. Clean energy fund - creation - use of fund -**
5 **definitions.** (1) (a) The clean energy fund is hereby created in the state
6 treasury. The principal of the fund shall consist of moneys transferred to
7 the fund at the end of the 2006-07 state fiscal year and at the end of each
8 succeeding state fiscal year from the limited gaming fund created in
9 section 12-47.1-701 (1), C.R.S., in accordance with section 12-47.1-701
10 (5), C.R.S., ~~and from~~ moneys received by the governor's energy office
11 pursuant to section 39-29-109.3 (2) (f) (I) (C), C.R.S., in accordance with
12 section 40-8.7-112 (3) (g), C.R.S., MONEYS RECEIVED PURSUANT TO THE
13 FEDERAL "AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009",
14 PUB.L. 111-5, OR ANY AMENDMENTS THERETO, OR FROM REVENUE
15 CONTRACTS, COURT SETTLEMENT FUNDS, SUPPLEMENTAL
16 ENVIRONMENTAL PROGRAM FUNDS, REPAYMENT OR RETURN OF FUNDS
17 FROM ELIGIBLE PUBLIC DEPOSITORIES, AND GIFTS, GRANTS, AND
18 DONATIONS, AND ANY OTHER MONEYS RECEIVED BY THE GOVERNOR'S
19 ENERGY OFFICE. Interest and income earned on the deposit and
20 investment of moneys in the clean energy fund shall be credited to the
21 fund. Moneys in the fund at the end of any state fiscal year shall remain
22 in the fund and shall not be credited to the state general fund or any other
23 fund.

24 **SECTION 2.** Part 2 of article 103 of title 24, Colorado Revised

1 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
2 read:

3 **24-103-206.5. Procurements funded with federal "American**
4 **Recovery and Reinvestment Act of 2009" moneys - waiver of**
5 **"Procurement Code" requirements - repeal.** (1) NOTWITHSTANDING
6 ANY OTHER PROVISION OF THIS CODE, IF FUNDING FOR A PROCUREMENT
7 INCLUDES MONEYS RECEIVED PURSUANT TO THE FEDERAL "AMERICAN
8 RECOVERY AND REINVESTMENT ACT OF 2009", PUB.L. 111-5, OR ANY
9 AMENDMENTS THERETO, AN EXECUTIVE DIRECTOR OF A PRINCIPAL
10 DEPARTMENT OF STATE GOVERNMENT OR A DIRECTOR OF AN EXECUTIVE
11 BRANCH STATE GOVERNMENT OFFICE THAT IS NOT PART OF A PRINCIPAL
12 DEPARTMENT OF STATE GOVERNMENT MAY REQUEST A WAIVER OF ONE OR
13 MORE PROVISIONS OF THIS CODE IF THE WAIVER IS NECESSARY TO
14 EXPEDITE THE USE OF THE MONEYS IN A MANNER CONSISTENT WITH THE
15 GOALS AND PURPOSES OF THE FEDERAL ACT OR IF STRICT ADHERENCE TO
16 THE CODE WOULD SUBSTANTIALLY IMPEDE THE ABILITY OF THE STATE TO
17 EXPEND THE MONEYS IN THE MANNER OR WITHIN THE TIME REQUIRED BY
18 THE FEDERAL ACT OR ANY OTHER APPLICABLE FEDERAL LAW. A WAIVER
19 SHALL BE GRANTED UPON THE WRITTEN APPROVAL OF BOTH THE
20 ATTORNEY GENERAL AND THE STATE CONTROLLER, OR SUCH OFFICIALS'
21 RESPECTIVE DESIGNEES, CONFIRMING THAT THE REQUESTED WAIVER
22 MEETS THE CRITERIA SET FORTH IN THIS SUBSECTION (1). A WRITTEN
23 DETERMINATION OF THE BASIS FOR THE WAIVER OF THE CODE SHALL BE
24 SIGNED BY THE REQUESTING EXECUTIVE DIRECTOR OR DIRECTOR, THE
25 ATTORNEY GENERAL, AND THE CONTROLLER, OR, AS APPLICABLE, SUCH
26 OFFICIALS' DESIGNEES, AND SHALL BE INCLUDED IN THE CONTRACT FILE,
27 PROVIDED TO THE COLORADO ECONOMIC RECOVERY ACCOUNTABILITY

1 BOARD, OR ANY SUCCESSOR BOARD, AND MADE PUBLICLY AVAILABLE BY
2 POSTING ON THE OFFICIAL COLORADO ECONOMIC RECOVERY AND
3 ACCOUNTABILITY WEB SITE.

4 (2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2013.

5 **SECTION 3.** 40-2-123, Colorado Revised Statutes, is amended
6 BY THE ADDITION OF A NEW SUBSECTION to read:

7 **40-2-123. New energy technologies - consideration by**
8 **commission - incentives - demonstration projects - definitions -**
9 **legislative declaration - repeal.** (3.5) (a) THE COMMISSION SHALL GIVE
10 THE FULLEST POSSIBLE CONSIDERATION TO PROJECTS THAT ARE ELIGIBLE
11 FOR FULL OR PARTIAL FUNDING UNDER THE FEDERAL "AMERICAN
12 RECOVERY AND REINVESTMENT ACT OF 2009", PUB.L. 111-5, REFERRED
13 TO IN THIS SUBSECTION (3.5) AS THE "FEDERAL ACT", OR ANY
14 AMENDMENTS THERETO.

15 (b) THE COMMISSION MAY CREATE INCENTIVES AND ESTABLISH
16 PERFORMANCE GOALS FOR A UTILITY RELATED TO ANY PROJECT THAT THE
17 UTILITY PROPOSES THAT:

18 (I) PROMOTES RENEWABLE ENERGY, DEMAND SIDE MANAGEMENT,
19 ENERGY STORAGE, TRANSMISSION, SMART GRID, ADVANCED FOSSIL FUEL
20 TECHNOLOGIES, OR CARBON CAPTURE AND SEQUESTRATION; AND

21 (II) USES TAX CREDITS, GRANTS, LOAN GUARANTEES, OR OTHER
22 INCENTIVES THAT ARE PROVIDED FOR IN OR DERIVED FROM THE FEDERAL
23 ACT.

24 (c) THE COMMISSION MAY PROVIDE AN INCENTIVE FOR A PROJECT
25 PURSUANT TO THIS SUBSECTION (3.5) ONLY IF THE COMMISSION
26 DETERMINES THAT THE PROJECT WILL RECEIVE FEDERAL ACT FUNDING AND
27 THAT THE PROJECT BENEFITS THE ECONOMY AND EMPLOYMENT IN THE

1 STATE.

2 (d) THIS SUBSECTION (3.5) IS REPEALED, EFFECTIVE JULY 1, 2013.

3 **SECTION 4.** 43-1-113 (16), Colorado Revised Statutes, is
4 amended to read:

5 **43-1-113. Funds - budgets - fiscal year - reports and**
6 **publications - repeal.** (16) (a) ~~In the event that~~ IF there are less FEWER
7 than three bidders on a highway project, no award shall be made if ~~such~~
8 THE award is more than ten percent over the estimate of the department
9 of transportation on the project; except that, if the estimate of the
10 department on the project is less than one million dollars and there are
11 fewer than three bidders, the executive director may make an award of
12 more than ten percent, but less than twenty-five percent over the estimate
13 of the department to the low responsible bidder, as defined in section
14 24-103-101 (3), C.R.S.

15 (b) (I) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION
16 (16) TO THE CONTRARY, IF FUNDING FOR A HIGHWAY PROJECT INCLUDES
17 MONEYS RECEIVED PURSUANT TO THE FEDERAL "AMERICAN RECOVERY
18 AND REINVESTMENT ACT OF 2009", PUB.L. 111-5, OR ANY AMENDMENTS
19 THERETO, THE EXECUTIVE DIRECTOR MAY MAKE AN AWARD TO THE LOW
20 RESPONSIBLE BIDDER REGARDLESS OF THE ESTIMATE OF THE DEPARTMENT
21 IF THE EXECUTIVE DIRECTOR DETERMINES IN WRITING THAT IT IS
22 NECESSARY TO DO SO IN ORDER TO EXPEDITE THE USE OF THE MONEYS IN
23 A MANNER CONSISTENT WITH THE GOALS AND PURPOSES OF THE FEDERAL
24 ACT. THE WRITTEN DETERMINATION SHALL BE INCLUDED IN THE
25 CONTRACT FILE, PROVIDED TO THE COLORADO ECONOMIC RECOVERY
26 ACCOUNTABILITY BOARD, OR ANY SUCCESSOR BOARD, AND MADE
27 PUBLICLY AVAILABLE BY POSTING ON THE OFFICIAL COLORADO ECONOMIC

1 RECOVERY AND ACCOUNTABILITY WEB SITE.

2 (II) THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JULY 1, 2013.

3 **SECTION 5. Safety clause.** The general assembly hereby finds,
4 determines, and declares that this act is necessary for the immediate
5 preservation of the public peace, health, and safety.