

CHAPTER 285

GOVERNMENT - STATE

SENATE BILL 09-297

BY SENATOR(S) Sandoval, Hudak, Boyd, Williams;
also REPRESENTATIVE(S) Judd, Fischer, Kagan.

AN ACT

CONCERNING PROJECTS FUNDED WITH MONEYS RECEIVED PURSUANT TO THE FEDERAL "AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009", AND, IN CONNECTION THEREWITH, ESTABLISHING A PROCESS FOR THE WAIVING OF STATE CONTRACTING REQUIREMENTS FOR CONTRACTS FOR SUCH PROJECTS IN CIRCUMSTANCES IN WHICH A WAIVER IS NECESSARY IN ORDER TO ENSURE THAT THE MONEYS CAN BE TIMELY AND EFFICIENTLY EXPENDED FOR THEIR INTENDED PURPOSES, REQUIRING THE PUBLIC UTILITIES COMMISSION TO GIVE THE FULLEST CONSIDERATION FOR INCENTIVES TO SPECIFIED TYPES OF SUCH PROJECTS, AND INCLUDING MONEYS RECEIVED BY THE GOVERNOR'S ENERGY OFFICE PURSUANT TO THE FEDERAL ACT AND FROM SPECIFIED OTHER SOURCES AS PRINCIPAL OF THE CLEAN ENERGY FUND.

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

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

24-75-1201. Clean energy fund - creation - use of fund - definitions.

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

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

general fund or any other fund.

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

24-103-206.5. Procurements funded with federal "American Recovery and Reinvestment Act of 2009" moneys - waiver of "Procurement Code" requirements - repeal. (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS CODE, IF FUNDING FOR A PROCUREMENT INCLUDES MONEYS RECEIVED PURSUANT TO THE FEDERAL "AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009", PUB.L. 111-5, OR ANY AMENDMENTS THERETO, AN EXECUTIVE DIRECTOR OF A PRINCIPAL DEPARTMENT OF STATE GOVERNMENT OR A DIRECTOR OF AN EXECUTIVE BRANCH STATE GOVERNMENT OFFICE THAT IS NOT PART OF A PRINCIPAL DEPARTMENT OF STATE GOVERNMENT MAY REQUEST A WAIVER OF ONE OR MORE PROVISIONS OF THIS CODE TO THE EXTENT THE WAIVER IS NECESSARY TO EXPEDITE THE USE OF THE MONEYS IN A TRANSPARENT AND ACCOUNTABLE MANNER CONSISTENT WITH THE GOALS AND PURPOSES OF THE FEDERAL ACT OR TO THE EXTENT 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 THE FEDERAL ACT OR ANY OTHER APPLICABLE FEDERAL LAW. A WAIVER SHALL BE GRANTED UPON THE WRITTEN APPROVAL OF BOTH THE ATTORNEY GENERAL AND THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL, OR SUCH OFFICIALS' RESPECTIVE DESIGNEES, CONFIRMING THAT THE REQUESTED WAIVER MEETS THE CRITERIA SET FORTH IN THIS SUBSECTION (1). A WRITTEN DETERMINATION OF THE BASIS FOR AND SCOPE OF THE WAIVER, INCLUDING BUT NOT LIMITED TO THE SPECIFIC CODE PROVISION BEING WAIVED AND THE ALTERNATIVE SELECTION PROCESS TO BE USED, SHALL BE SIGNED BY THE REQUESTING EXECUTIVE DIRECTOR OR DIRECTOR, THE ATTORNEY GENERAL, AND THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL, OR, AS APPLICABLE, SUCH OFFICIALS' DESIGNEES, AND SHALL BE INCLUDED IN THE CONTRACT FILE, PROVIDED TO THE COLORADO ECONOMIC RECOVERY ACCOUNTABILITY BOARD, OR ANY SUCCESSOR BOARD, AND MADE PUBLICLY AVAILABLE BY POSTING ON THE OFFICIAL COLORADO ECONOMIC RECOVERY AND ACCOUNTABILITY WEB SITE.

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

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

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

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

(1) PROMOTES RENEWABLE ENERGY, DEMAND SIDE MANAGEMENT, ENERGY

STORAGE, TRANSMISSION, SMART GRID, ADVANCED FOSSIL FUEL TECHNOLOGIES, OR CARBON CAPTURE AND SEQUESTRATION; AND

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

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

(d) THIS SUBSECTION (3.5) APPLIES ONLY TO RATE-REGULATED UTILITIES.

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

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

43-1-113. Funds - budgets - fiscal year - reports and publications - repeal.

(16) (a) ~~In the event that~~ If there are ~~less~~ FEWER than three bidders on a highway project, no award shall be made if ~~such~~ THE award is more than ten percent over the estimate of the department of transportation on the project; except that, if the estimate of the department on the project is less than one million dollars and there are fewer than three bidders, the executive director may make an award of more than ten percent, but less than twenty-five percent over the estimate of the department to the low responsible bidder, as defined in section 24-103-101 (3), C.R.S.

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

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

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

Approved: May 20, 2009