

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 12-0416.01 Jason Gelender x4330

SENATE BILL 12-001

SENATE SPONSORSHIP

Hudak, Bacon, Boyd, Foster, Heath, Shaffer B., Steadman

HOUSE SPONSORSHIP

Duran and Ryden,

Senate Committees

Local Government
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING CONTRACTING PREFERENCES FOR PERSONS WHO**
102 **EMPLOY AT LEAST A SPECIFIED PERCENTAGE OF COLORADO**
103 **RESIDENTS TO PERFORM THE REQUIREMENTS OF A**
104 **GOVERNMENT CONTRACT.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

On and after July 1, 2012, if a state agency (agency) or governmental body (body) issues an invitation for bids or a request for

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.

proposals for a construction contract for a public project (construction contract) or for a services contract that is, in either case, worth more than \$1 million, the agency or body must grant a 3% preference to the bidder or offeror (contractor) if the contractor certifies that at least 90% of the employees who will perform the requirements of the contract are Colorado residents. With respect to a construction contract, an agency or body must also grant a contractor who receives the 3% preference:

- ! An additional 1% preference if the contractor certifies that it offers health care and retirement benefits to the employees who will perform the contract requirements; and
- ! An additional 1% preference if the contractor certifies that the employees who will perform the contract requirements have access to a federally qualified apprenticeship training program.

With respect to a services contract, an agency or body must also grant a contractor who receives the 3% preference an additional 2% preference if the contractor certifies that it offers health care benefits and retirement benefits to the employees who will perform the requirements of the contract.

An agency or body may not allow any of the preferences to a noncompliant contractor, and the contractor may not use the preference to satisfy a minimum requirement of a contract. A contractor that seeks a preference for a bid or offer must certify its eligibility for the preference to the agency or body that issued the invitation for bids or request for proposals. The agency or body may rely on the certification but may also require the contractor to submit substantiating documentation or other information needed to verify the contractor's eligibility for the preference.

The executive director of the department of personnel must promulgate rules for the administration of each preference, including processes for a contractor to certify and an agency or body to verify the contractor's eligibility for the preference.

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

2 **SECTION 1. Short title.** This act shall be known and may be
3 cited as the "Hiring Coloradans First Act".

4 **SECTION 2.** In Colorado Revised Statutes, 24-92-102, **amend**
5 (6) as follows:

6 **24-92-102. Definitions.** As used in this article, unless the context
7 otherwise requires:

1 (6) "Low responsible bidder" means any contractor who has bid
2 in compliance with the invitation to bid and within the requirements of
3 the plans and specifications for a public project, who is the low bidder
4 AFTER ANY PREFERENCES ALLOWED PURSUANT TO THIS ARTICLE HAVE
5 BEEN APPLIED, and who has furnished bonds or their equivalent as
6 required by law.

7 **SECTION 3.** In Colorado Revised Statutes, **add** 24-92-103.5 as
8 follows:

9 **24-92-103.5. Preferences for contractors that employ Colorado**
10 **residents - definitions.** (1) FOR PURPOSES OF THIS SECTION:

11 (a) "APPRENTICESHIP TRAINING PROGRAM" MEANS A PROGRAM
12 THAT IS REGISTERED WITH THE UNITED STATES DEPARTMENT OF LABOR,
13 OFFICE OF APPRENTICESHIP AND TRAINING.

14 (b) "COLORADO RESIDENT" MEANS AN INDIVIDUAL WHOSE
15 DOMICILE IS IN COLORADO.

16 (c) "DOMICILE" MEANS AN INDIVIDUAL'S TRUE, FIXED, AND
17 PERMANENT HOME AND PLACE OF HABITATION. IT IS THE PLACE WHERE HE
18 OR SHE INTENDS TO REMAIN AND TO WHICH HE OR SHE EXPECTS TO RETURN
19 WHEN HE OR SHE LEAVES WITHOUT INTENDING TO ESTABLISH A NEW
20 DOMICILE ELSEWHERE.

21 (d) "HEALTH CARE BENEFITS" MEANS A HEALTH CARE PLAN
22 PROVIDED BY AN EMPLOYER TO AN EMPLOYEE THAT CONFORMS TO ALL
23 REQUIREMENTS OF FEDERAL LAW AND REGULATIONS INCLUDING, BUT NOT
24 LIMITED TO, THE "PATIENT PROTECTION AND AFFORDABLE CARE ACT",
25 PUB.L. 111-148, AS AMENDED BY THE "HEALTH CARE AND EDUCATION
26 RECONCILIATION ACT OF 2010", PUB.L. 111-152, AND AS MAY BE
27 FURTHER AMENDED, AND ITS IMPLEMENTING REGULATIONS.

1 (e) "RETIREMENT BENEFITS" MEANS A PENSION PLAN OR OTHER
2 RETIREMENT PLAN PROVIDED BY AN EMPLOYER TO AN EMPLOYEE THAT
3 CONFORMS TO ALL REQUIREMENTS OF FEDERAL LAW AND REGULATIONS,
4 INCLUDING, BUT NOT LIMITED TO, THE "EMPLOYEE RETIREMENT INCOME
5 SECURITY ACT OF 1974", PUB.L. 93-406, AS AMENDED, AND ITS
6 IMPLEMENTING REGULATIONS, AND THAT DOES NOT REQUIRE A GREATER
7 MONETARY CONTRIBUTION FROM AN EMPLOYEE THAN IT DOES FROM THE
8 EMPLOYER.

9 (2) AN AGENCY OF GOVERNMENT THAT ISSUES AN INVITATION FOR
10 BIDS ON OR AFTER JULY 1, 2012, FOR A CONSTRUCTION CONTRACT FOR A
11 PUBLIC PROJECT FOR WHICH APPROPRIATION OR EXPENDITURE OF MONEYS
12 IS REASONABLY EXPECTED TO EXCEED ONE MILLION DOLLARS IN THE
13 AGGREGATE SHALL PROVIDE ONE OR MORE PREFERENCES TO A
14 CONTRACTOR THAT RESPONDS TO THE INVITATION FOR BIDS AS FOLLOWS:

15 (a) THE AGENCY SHALL SUBTRACT AN AMOUNT EQUAL TO THREE
16 PERCENT OF THE BID PRICE FROM THE BID OF EACH CONTRACTOR THAT
17 CERTIFIES THAT AT LEAST NINETY PERCENT OF THE EMPLOYEES WHO WILL
18 PERFORM THE REQUIREMENTS OF THE CONTRACT ARE COLORADO
19 RESIDENTS;

20 (b) FOR A CONTRACTOR THAT IS ALLOWED A PREFERENCE
21 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), THE AGENCY
22 SHALL SUBTRACT AN ADDITIONAL AMOUNT EQUAL TO ONE PERCENT OF
23 THE BID PRICE FROM THE CONTRACTOR'S BID IF THE CONTRACTOR
24 CERTIFIES THAT IT OFFERS HEALTH CARE BENEFITS AND RETIREMENT
25 BENEFITS TO ALL OF THE EMPLOYEES WHO WILL PERFORM THE
26 REQUIREMENTS OF THE CONTRACT; AND

27 (c) FOR A CONTRACTOR THAT IS ALLOWED A PREFERENCE

1 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), THE AGENCY
2 SHALL SUBTRACT AN ADDITIONAL AMOUNT EQUAL TO ONE PERCENT OF
3 THE BID PRICE FROM THE CONTRACTOR'S BID IF THE CONTRACTOR
4 CERTIFIES THAT THE EMPLOYEES WHO WILL PERFORM THE REQUIREMENTS
5 OF THE CONTRACT HAVE ACCESS TO AN APPRENTICESHIP TRAINING
6 PROGRAM.

7 (3) A NONCOMPLIANT BIDDER IS NOT ELIGIBLE FOR THE
8 PREFERENCES ALLOWED PURSUANT TO SUBSECTION (2) OF THIS SECTION.
9 A CONTRACTOR MAY NOT USE SAID PREFERENCES TO SATISFY ANY
10 APPLICABLE MINIMUM REQUIREMENTS OF A CONTRACT.

11 (4) A CONTRACTOR THAT SEEKS TO HAVE A PREFERENCE SPECIFIED
12 IN SUBSECTION (2) OF THIS SECTION ALLOWED FOR A BID SHALL CERTIFY
13 ITS ELIGIBILITY FOR THE PREFERENCE TO THE AGENCY OF GOVERNMENT
14 THAT ISSUED THE INVITATION FOR BIDS. THE AGENCY MAY RELY ON THE
15 CERTIFICATION BUT MAY ALSO REQUIRE THE CONTRACTOR TO SUBMIT
16 SUBSTANTIATING DOCUMENTATION OR OTHER INFORMATION THAT WILL
17 ENABLE THE AGENCY TO VERIFY THAT THE CONTRACTOR IS ELIGIBLE FOR
18 THE PREFERENCE.

19 (5) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL
20 SHALL PROMULGATE RULES FOR THE ADMINISTRATION OF THIS SECTION,
21 INCLUDING A PROCESS FOR A CONTRACTOR TO CERTIFY ITS ELIGIBILITY FOR
22 A PREFERENCE ALLOWED PURSUANT TO SUBSECTION (2) OF THIS SECTION
23 AND A PROCESS BY WHICH AN AGENCY OF GOVERNMENT MAY VERIFY SUCH
24 A CERTIFICATION. THE EXECUTIVE DIRECTOR SHALL PROMULGATE RULES
25 PURSUANT TO THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE
26 4 OF THIS TITLE.

27 (6) IF THE PROCUREMENT OFFICER DETERMINES THAT COMPLIANCE

1 WITH THIS SECTION WILL CAUSE DENIAL OF FEDERAL MONEYS OR
2 PRECLUDE THE ABILITY TO ACCESS FEDERAL MONEYS THAT WOULD
3 OTHERWISE BE AVAILABLE OR WILL OTHERWISE BE INCONSISTENT WITH
4 FEDERAL LAW, THIS SECTION SHALL BE SUSPENDED, BUT ONLY TO THE
5 EXTENT NECESSARY TO PREVENT DENIAL OF THE MONEYS OR TO
6 ELIMINATE THE INCONSISTENCY WITH FEDERAL LAW.

7 **SECTION 4.** In Colorado Revised Statutes, 24-93-106, **amend**
8 (4) as follows:

9 **24-93-106. Requests for proposals - evaluation and award of**
10 **integrated project delivery contracts.** (4) After obtaining and
11 evaluating proposals according to the criteria and procedures set forth in
12 the request for proposals in accordance with the requirements specified
13 in subsection (1) of this section AND AFTER APPLYING ANY PREFERENCE
14 ALLOWED PURSUANT TO SECTION 24-93-109, an agency may accept the
15 proposal that, in its estimation, represents the best value to the agency.
16 Acceptance of a proposal shall be by written notice to the participating
17 entity that submitted the accepted proposal.

18 **SECTION 5.** In Colorado Revised Statutes, **add** 24-93-109 as
19 follows:

20 **24-93-109. Preferences for participating entities that employ**
21 **Colorado residents - definitions.** (1) FOR PURPOSES OF THIS SECTION:

22 ==

23 (a) "COLORADO RESIDENT" MEANS AN INDIVIDUAL WHOSE
24 DOMICILE IS IN COLORADO.

25 (b) "DOMICILE" MEANS AN INDIVIDUAL'S TRUE, FIXED, AND
26 PERMANENT HOME AND PLACE OF HABITATION. IT IS THE PLACE WHERE HE
27 OR SHE INTENDS TO REMAIN AND TO WHICH HE OR SHE EXPECTS TO RETURN

1 WHEN HE OR SHE LEAVES WITHOUT INTENDING TO ESTABLISH A NEW
2 DOMICILE ELSEWHERE.

3 (c) "HEALTH CARE BENEFITS" MEANS A HEALTH CARE PLAN
4 PROVIDED BY AN EMPLOYER TO AN EMPLOYEE THAT CONFORMS TO ALL
5 REQUIREMENTS OF FEDERAL LAW AND REGULATIONS INCLUDING, BUT NOT
6 LIMITED TO, THE "PATIENT PROTECTION AND AFFORDABLE CARE ACT",
7 PUB.L. 111-148, AS AMENDED BY THE "HEALTH CARE AND EDUCATION
8 RECONCILIATION ACT OF 2010", PUB.L. 111-152, AND AS MAY BE
9 FURTHER AMENDED, AND ITS IMPLEMENTING REGULATIONS.

10 (d) "RETIREMENT BENEFITS" MEANS A PENSION PLAN OR OTHER
11 RETIREMENT PLAN PROVIDED BY AN EMPLOYER TO AN EMPLOYEE THAT
12 CONFORMS TO ALL REQUIREMENTS OF FEDERAL LAW AND REGULATIONS,
13 INCLUDING, BUT NOT LIMITED TO, THE "EMPLOYEE RETIREMENT INCOME
14 SECURITY ACT OF 1974", PUB.L. 93-406, AS AMENDED, AND ITS
15 IMPLEMENTING REGULATIONS, AND THAT DOES NOT REQUIRE A GREATER
16 MONETARY CONTRIBUTION FROM THE EMPLOYEE THAN IT DOES FROM THE
17 EMPLOYER.

18 (2) AN AGENCY THAT ISSUES A REQUEST FOR PROPOSALS ON OR
19 AFTER JULY 1, 2012, FOR AN IPD CONTRACT FOR A PUBLIC PROJECT FOR
20 WHICH APPROPRIATION OR EXPENDITURE OF MONEYS IS REASONABLY
21 EXPECTED TO EXCEED ONE MILLION DOLLARS IN THE AGGREGATE SHALL
22 PROVIDE ONE OR MORE PREFERENCES TO A PARTICIPATING ENTITY THAT
23 RESPONDS TO THE REQUEST FOR PROPOSALS AS FOLLOWS:

24 (a) THE AGENCY SHALL ASSIGN A RELATIVE WEIGHT OF THREE
25 PERCENT TO A PARTICIPATING ENTITY THAT CERTIFIES THAT AT LEAST
26 NINETY PERCENT OF THE EMPLOYEES WHO WILL PERFORM THE
27 REQUIREMENTS OF THE CONTRACT ARE COLORADO RESIDENTS; AND

1 (b) FOR A PARTICIPATING ENTITY THAT IS ALLOWED A PREFERENCE
2 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), THE AGENCY
3 SHALL ASSIGN A RELATIVE WEIGHT OF AN ADDITIONAL TWO PERCENT TO
4 THE PARTICIPATING ENTITY IF THE PARTICIPATING ENTITY CERTIFIES THAT
5 IT OFFERS HEALTH CARE BENEFITS AND RETIREMENT BENEFITS TO ALL OF
6 THE EMPLOYEES WHO WILL PERFORM THE REQUIREMENTS OF THE
7 CONTRACT.

8 ==
9 (3) A NONCOMPLIANT PARTICIPATING ENTITY IS NOT ELIGIBLE FOR
10 THE PREFERENCES ALLOWED PURSUANT TO SUBSECTION (2) OF THIS
11 SECTION. A PARTICIPATING ENTITY MAY NOT USE SAID PREFERENCES TO
12 SATISFY ANY APPLICABLE MINIMUM REQUIREMENTS OF A CONTRACT.

13 (4) A PARTICIPATING ENTITY THAT SEEKS TO HAVE A PREFERENCE
14 SPECIFIED IN SUBSECTION (2) OF THIS SECTION ALLOWED FOR A BID SHALL
15 CERTIFY ITS ELIGIBILITY FOR THE PREFERENCE TO THE AGENCY THAT
16 ISSUED THE REQUEST FOR PROPOSALS. THE AGENCY MAY RELY ON THE
17 CERTIFICATION BUT MAY ALSO REQUIRE THE PARTICIPATING ENTITY TO
18 SUBMIT SUBSTANTIATING DOCUMENTATION OR OTHER INFORMATION THAT
19 WILL ENABLE THE AGENCY TO VERIFY THAT THE PARTICIPATING ENTITY IS
20 ELIGIBLE FOR THE PREFERENCE.

21 (5) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL
22 SHALL PROMULGATE RULES FOR THE ADMINISTRATION OF THIS SECTION,
23 INCLUDING A PROCESS FOR A PARTICIPATING ENTITY TO CERTIFY ITS
24 ELIGIBILITY FOR A PREFERENCE ALLOWED PURSUANT TO SUBSECTION (2)
25 OF THIS SECTION AND A PROCESS BY WHICH AN AGENCY OF GOVERNMENT
26 MAY VERIFY SUCH A CERTIFICATION. THE EXECUTIVE DIRECTOR SHALL
27 PROMULGATE RULES PURSUANT TO THE "STATE ADMINISTRATIVE

1 PROCEDURE ACT", ARTICLE 4 OF THIS TITLE.

2 (6) IF THE PROCUREMENT OFFICER DETERMINES THAT COMPLIANCE
3 WITH THIS SECTION WILL CAUSE DENIAL OF FEDERAL MONEYS OR
4 PRECLUDE THE ABILITY TO ACCESS FEDERAL MONEYS THAT WOULD
5 OTHERWISE BE AVAILABLE OR WILL OTHERWISE BE INCONSISTENT WITH
6 FEDERAL LAW, THIS SECTION SHALL BE SUSPENDED, BUT ONLY TO THE
7 EXTENT NECESSARY TO PREVENT DENIAL OF THE MONEYS OR TO
8 ELIMINATE THE INCONSISTENCY WITH FEDERAL LAW.

9 **SECTION 6.** In Colorado Revised Statutes, 24-103-101, **amend**
10 (3) as follows:

11 **24-103-101. Definitions.** As used in this article, unless the context
12 otherwise requires:

13 (3) "Low responsible bidder" means any person who has bid in
14 compliance with the invitation to bid and within the requirements of the
15 plans and specifications for a public contract who is the low bidder AFTER
16 ANY PREFERENCES ALLOWED PURSUANT TO THIS ARTICLE HAVE BEEN
17 APPLIED and who has furnished bonds or their equivalent if required by
18 law.

19 **SECTION 7.** In Colorado Revised Statutes, **add** 24-103-210 as
20 follows:

21 **24-103-210. Preferences for persons that employ Colorado**
22 **residents - definitions.** (1) FOR PURPOSES OF THIS SECTION:

23 (a) "COLORADO RESIDENT" MEANS AN INDIVIDUAL WHOSE
24 DOMICILE IS IN COLORADO.

25 (b) "DOMICILE" MEANS AN INDIVIDUAL'S TRUE, FIXED, AND
26 PERMANENT HOME AND PLACE OF HABITATION. IT IS THE PLACE WHERE HE
27 OR SHE INTENDS TO REMAIN AND TO WHICH HE OR SHE EXPECTS TO RETURN

1 WHEN HE OR SHE LEAVES WITHOUT INTENDING TO ESTABLISH A NEW
2 DOMICILE ELSEWHERE.

3 (c) "HEALTH CARE BENEFITS" MEANS A HEALTH CARE PLAN
4 PROVIDED BY AN EMPLOYER TO AN EMPLOYEE THAT CONFORMS TO ALL
5 REQUIREMENTS OF FEDERAL LAW AND REGULATIONS INCLUDING, BUT NOT
6 LIMITED TO, THE "PATIENT PROTECTION AND AFFORDABLE CARE ACT",
7 PUB.L. 111-148, AS AMENDED BY THE "HEALTH CARE AND EDUCATION
8 RECONCILIATION ACT OF 2010", PUB.L. 111-152, AND AS MAY BE
9 FURTHER AMENDED, AND ITS IMPLEMENTING REGULATIONS.

10 (d) "RETIREMENT BENEFITS" MEANS A PENSION PLAN OR OTHER
11 RETIREMENT PLAN PROVIDED BY AN EMPLOYER TO AN EMPLOYEE THAT
12 CONFORMS TO ALL REQUIREMENTS OF FEDERAL LAW AND REGULATIONS,
13 INCLUDING, BUT NOT LIMITED TO, THE "EMPLOYEE RETIREMENT INCOME
14 SECURITY ACT OF 1974", PUB.L. 93-406, AS AMENDED, AND ITS
15 IMPLEMENTING REGULATIONS, AND THAT DOES NOT REQUIRE A GREATER
16 MONETARY CONTRIBUTION FROM THE EMPLOYEE THAN IT DOES FROM THE
17 EMPLOYER.

18 (2) A GOVERNMENTAL BODY THAT ISSUES AN INVITATION FOR BIDS
19 FOR A SERVICES CONTRACT ON OR AFTER JULY 1, 2012, FOR WHICH
20 APPROPRIATION OR EXPENDITURE OF MONEYS IS REASONABLY EXPECTED
21 TO EXCEED ONE MILLION DOLLARS IN THE AGGREGATE SHALL PROVIDE ONE
22 OR MORE PREFERENCES TO A PERSON THAT RESPONDS TO THE INVITATION
23 FOR BIDS AS FOLLOWS:

24 (a) THE GOVERNMENTAL BODY SHALL SUBTRACT THREE PERCENT
25 OF THE BID PRICE FROM THE BID OF EACH PERSON THAT CERTIFIES THAT AT
26 LEAST NINETY PERCENT OF THE EMPLOYEES WHO WILL PERFORM THE
27 REQUIREMENTS OF THE CONTRACT ARE COLORADO RESIDENTS; AND

1 (b) FOR A PERSON THAT IS ALLOWED A PREFERENCE PURSUANT TO
2 PARAGRAPH (a) OF THIS SUBSECTION (2), THE GOVERNMENTAL BODY
3 SHALL SUBTRACT AN ADDITIONAL AMOUNT EQUAL TO TWO PERCENT OF
4 THE BID PRICE FROM THE PERSON'S BID IF THE PERSON CERTIFIES THAT IT
5 OFFERS HEALTH CARE BENEFITS AND RETIREMENT BENEFITS TO ALL OF THE
6 EMPLOYEES WHO WILL PERFORM THE REQUIREMENTS OF THE CONTRACT.

7 (3) A GOVERNMENTAL BODY THAT ISSUES A REQUEST FOR
8 PROPOSALS FOR A SERVICES CONTRACT ON OR AFTER JULY 1, 2012, FOR
9 WHICH APPROPRIATION OR EXPENDITURE OF MONEYS IS REASONABLY
10 EXPECTED TO EXCEED ONE MILLION DOLLARS IN THE AGGREGATE SHALL
11 PROVIDE ONE OR MORE PREFERENCES TO A PERSON THAT RESPONDS TO THE
12 REQUEST FOR PROPOSALS AS FOLLOWS:

13 (a) THE GOVERNMENTAL BODY SHALL ASSIGN A RELATIVE WEIGHT
14 OF THREE PERCENT TO A PERSON THAT CERTIFIES THAT AT LEAST NINETY
15 PERCENT OF THE EMPLOYEES WHO WILL PERFORM THE REQUIREMENTS OF
16 THE CONTRACT ARE COLORADO RESIDENTS; AND

17 (b) FOR A PERSON THAT IS ALLOWED A PREFERENCE PURSUANT TO
18 PARAGRAPH (a) OF THIS SUBSECTION (3), THE GOVERNMENTAL BODY
19 SHALL ASSIGN A RELATIVE WEIGHT OF AN ADDITIONAL TWO PERCENT TO
20 THE PERSON IF THE PERSON CERTIFIES THAT IT OFFERS HEALTH CARE
21 BENEFITS AND RETIREMENT BENEFITS TO ALL OF THE EMPLOYEES WHO
22 WILL PERFORM THE REQUIREMENTS OF THE CONTRACT.

23 (4) A NONCOMPLIANT BIDDER OR OFFEROR IS NOT ELIGIBLE FOR
24 THE PREFERENCES ALLOWED PURSUANT TO SUBSECTIONS (2) AND (3) OF
25 THIS SECTION. A BIDDER OR OFFEROR MAY NOT USE SAID PREFERENCES TO
26 SATISFY ANY APPLICABLE MINIMUM REQUIREMENTS OF A CONTRACT.

27 (5) A PERSON THAT SEEKS TO HAVE A PREFERENCE SPECIFIED IN

1 SUBSECTION (2) OR (3) OF THIS SECTION ALLOWED FOR A BID OR OFFER
2 SHALL CERTIFY ITS ELIGIBILITY FOR THE PREFERENCE TO THE
3 GOVERNMENTAL BODY. THE GOVERNMENTAL BODY MAY RELY ON THE
4 CERTIFICATION BUT MAY ALSO REQUIRE THE PERSON TO SUBMIT
5 SUBSTANTIATING DOCUMENTATION OR OTHER INFORMATION THAT THE
6 GOVERNMENTAL BODY NEEDS TO VERIFY THAT THE PERSON IS ELIGIBLE
7 FOR THE PREFERENCE.

8 (6) THE EXECUTIVE DIRECTOR SHALL PROMULGATE RULES FOR THE
9 ADMINISTRATION OF THIS SECTION, INCLUDING A PROCESS FOR A PERSON
10 TO CERTIFY ITS ELIGIBILITY FOR A PREFERENCE ALLOWED PURSUANT TO
11 SUBSECTION (2) OR (3) OF THIS SECTION AND A PROCESS BY WHICH A
12 GOVERNMENTAL BODY MAY VERIFY SUCH A CERTIFICATION. THE
13 EXECUTIVE DIRECTOR SHALL PROMULGATE RULES PURSUANT TO THE
14 "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF THIS TITLE.

15 (7) IF THE PROCUREMENT OFFICER DETERMINES THAT COMPLIANCE
16 WITH THIS SECTION WILL CAUSE DENIAL OF FEDERAL MONEYS OR
17 PRECLUDE THE ABILITY TO ACCESS FEDERAL MONEYS THAT WOULD
18 OTHERWISE BE AVAILABLE OR WILL OTHERWISE BE INCONSISTENT WITH
19 FEDERAL LAW, THIS SECTION SHALL BE SUSPENDED, BUT ONLY TO THE
20 EXTENT NECESSARY TO PREVENT DENIAL OF THE MONEYS OR TO
21 ELIMINATE THE INCONSISTENCY WITH FEDERAL LAW.

22 **SECTION 8. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.