

ASSEMBLY, No. 293

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman ROONEY

1 AN ACT concerning the purchase of tropical hardwoods and tropical  
2 hardwood products, and supplementing Title 52 of the Revised  
3 Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7

8 1. The Legislature finds that the equatorial tropical forests are the  
9 earth's oldest and richest terrestrial ecological systems, and are home  
10 to at least half of all the earth's plant and animal species as well as  
11 thousands of indigenous tribal peoples; that the tropical forests are  
12 being destroyed worldwide, through commercial logging, burning, and  
13 other activities, at a rate of 115,000 acres per day, and this rate is  
14 accelerating; that over one-fourth of all tropical forest destruction  
15 results from logging to support the international trade in tropical  
16 hardwoods; and that 70 percent of all deforestation is the direct result  
17 of increased access that is only made possible by the construction of  
18 extensive networks of logging roads.

19 The Legislature further finds that deforestation of the tropical  
20 forests has been scientifically linked to atmospheric imbalance and  
21 global warming, which cause drought, floods, melting of the polar ice  
22 caps, and changes in weather patterns worldwide; that destruction of  
23 the tropical forests at the current rate results in the extinction of an  
24 estimated 30 species of plant and animal life each day and a  
25 consequent loss of genetic diversity invaluable to the production of  
26 medicines, foods, and industrial products; and that tropical  
27 deforestation causes the death and displacement of indigenous tribal  
28 peoples, resulting in the destruction of their culture and the loss of  
29 their intimate knowledge of commercial, medicinal, and nutritional  
30 uses of tropical forest species, which is often superior to that of any  
31 western-trained scientist.

32 The Legislature further finds that the United States is the third  
33 largest importer of tropical hardwoods; that the International Tropical  
34 Timber Organization (ITTO) has committed to exclusively trading  
35 tropical hardwoods harvested only from sustainably managed sources

1 by the year 2000; that limiting the State to the use of sustainably  
2 produced tropical hardwoods will help the ITTO to meet its goal by  
3 the year 2000 and will encourage the development of markets for  
4 tropical hardwoods originating from sustainably managed forests; that  
5 a limitation on the State's use and purchase of tropical hardwoods to  
6 those which are sustainably produced would not create shortages of  
7 building materials for the State inasmuch as many acceptable  
8 equivalents to tropical hardwoods are grown domestically in the  
9 United States; and that this limitation would therefore stimulate  
10 domestic business and create jobs for American timber workers.

11 The Legislature therefore declares that it is critical to the well-being  
12 of the planet that the United States and other industrialized nations  
13 take immediate measures to curb consumption of tropical hardwoods  
14 in order to halt the destruction of the tropical forests and to avert  
15 irreversible global environmental destruction; and that the State can  
16 contribute to these measures by ending State purchases of tropical  
17 hardwood and hardwood products.

18

19 2. As used in this act:

20 "Public work" means any public building or other public betterment,  
21 or work or improvements constructed, repaired or improved wholly or  
22 in part at the expense of the public.

23 "State agency" means a principal department in the Executive  
24 Branch of State Government or any division, board, bureau, office,  
25 commission, agency, or other instrumentality within or created by a  
26 principal department, or any independent authority, commission,  
27 instrumentality, or agency.

28 "Sustainably produced" means the providing of marketable timber  
29 or timber products through various technologies, which include, but  
30 are not limited to, plantation forestry, agroforestry, and management  
31 of natural forests that actualizes ongoing timber yields with no  
32 foreseeable future expiration or reduction of those yields and without  
33 threatening the extinction of or endangering plant or animal  
34 populations and species, either locally or globally.

35 "Tropical forest" means any and all forest formations occurring in,  
36 and also in several cases outside of, the region known as "the tropics"  
37 in the Torrid zone, including, but not limited to, the scientific  
38 classifications of tropical moist forest, tropical monsoon forest,  
39 tropical dry forest, and subtropical moist forest.

40 "Tropical hardwood" means any hardwood taken from a tree or  
41 other plant, scientifically classified as angiosperme, that grew in and  
42 was harvested or otherwise obtained from any tropical forest.  
43 Tropical hardwoods include, but are not limited to, the following  
44 species:

| 1  | <u>Scientific Name</u>                    | <u>Common Name</u> |
|----|---|--------------------|
| 2  |   |                    |
| 3  | <i>Vouacapoua americana</i> .....         | Acapu              |
| 4  | <i>Pericopsis elata</i> .....             | Afrormosis         |
| 5  | <i>Shorea almon</i> .....                 | Almon              |
| 6  | <i>Peltogyne</i> spp. ....                | Amaranth           |
| 7  | <i>Guibourtia ehie</i> .....              | Amazaque           |
| 8  | <i>Aningeria</i> spp. ....                | Anlingeria         |
| 9  | <i>Dipterocarpus grandiflorus</i> .....   | Apitong            |
| 10 | <i>Ochroma lagopus</i> .....              | Balsa              |
| 11 | <i>Virola</i> spp. ....                   | Banak              |
| 12 | <i>Anisoptera thurifera</i> .....         | Bella Rosa         |
| 13 | <i>Guibourtia arnoldiana</i> .....        | Benge              |
| 14 | <i>Detarium Senagalese</i> .....          | Boire              |
| 15 | <i>Guibourtia demeusil</i> .....          | Bubinga            |
| 16 | <i>Prioria copaifera</i> .....            | Cativo             |
| 17 | <i>Antiaris africana</i> .....            | Chenchen           |
| 18 | <i>Dalbergia retusa</i> .....             | Cocobolo           |
| 19 | <i>Cordia</i> spp. ....                   | Cordia             |
| 20 | <i>Diospyros</i> spp. ....                | Ebony              |
| 21 | <i>Aucoumea klaineana</i> .....           | Gaboon             |
| 22 | <i>Chlorophora excelsa</i> .....          | Iroko              |
| 23 | <i>Acacia koa</i> .....                   | Koa                |
| 24 | <i>Pterygota macrocarpa</i> .....         | Koto               |
| 25 | <i>Shorea negrosensis</i> .....           | Red Lauan          |
| 26 | <i>Pentacme contorta</i> .....            | White Lauan        |
| 27 | <i>Shorea polysperma</i> .....            | Tanguile           |
| 28 | <i>Terminalis superba</i> .....           | Limba              |
| 29 | <i>Aniba duckel</i> .....                 | Lemiro             |
| 30 | <i>Khaya ivorensis</i> .....              | Africa Mahogany    |
| 31 | <i>Swietenia macrophylla</i> .....        | Amer. Mahogany     |
| 32 | <i>Tieghemella hackelii</i> .....         | Makore             |
| 33 | <i>Distemonanthus benthamianus</i> .....  | Movingui           |
| 34 | <i>Pterocarpus soyauxii</i> .....         | African Paduak     |
| 35 | <i>Pterocarpus angolensis</i> .....       | Angola Paduak      |
| 36 | <i>Aspidosperma</i> spp. ....             | Peroba             |
| 37 | <i>Peltogyne</i> spp. ....                | Purpleheart        |
| 38 | <i>Gonystylus</i> spp. ....               | Ramin              |
| 39 | <i>Dalbergia</i> spp. ....                | Rosewood           |
| 40 | <i>Entandrophragma cylindricum</i> .....  | Sapele             |
| 41 | <i>Shorea philippinensis</i> .....        | Sonora             |
| 42 | <i>Tactona grandis</i> .....              | Teak               |
| 43 | <i>Lovoa trichilioides</i> .....          | Tigerwood          |
| 44 | <i>Milletia laurentii</i> .....           | Wenge              |
| 45 | <i>Microberlinia brazzavillensis</i> .... | Zebrawood          |

1 "Tropical hardwood product" means any hardwood product,  
2 wholesale or retail, in any form, including, but not limited to, veneer,  
3 plywood, furniture, cabinets, paneling, moldings, doorskins, joinery,  
4 or sawnwood, that is composed in whole or in part of tropical  
5 hardwood.

6  
7 3. a. Notwithstanding the provisions of any other law to the  
8 contrary, the Director of the Division of Purchase and Property in the  
9 Department of the Treasury, the Director of the Division of Building  
10 and Construction in the Department of the Treasury, or any State  
11 agency having authority to contract for the purchase of goods or  
12 services shall not enter into or renew any contract with any individual  
13 or business entity for the purchase of goods or services, including but  
14 not limited to a contract for the construction, improvement, or  
15 maintenance of any public work, that requires the use of any tropical  
16 hardwood or tropical hardwood product, wholesale or retail, in any  
17 form. In addition, where a contract entered into prior to the effective  
18 date of this act allows either of the directors or a State agency to  
19 exercise discretion with regard to future purchases under the contract,  
20 the director or agency shall not purchase or accept any tropical  
21 hardwood or tropical hardwood product, wholesale or retail, in any  
22 form, pursuant to that contract. The provisions of this section shall  
23 also apply to any purchase of goods or services not made pursuant to  
24 a contract.

25 In preparing the specifications for any contract for the purchase of  
26 goods or services, including but not limited to a contract for the  
27 construction, improvement, or maintenance of any public work, the  
28 Director of the Division of Purchase and Property, the Director of the  
29 Division of Building and Construction, or any State agency having  
30 authority to contract for the purchase of goods or services shall not  
31 require or permit the use of any tropical hardwood or tropical  
32 hardwood product, and shall include in the invitation to bid, where  
33 relevant, a statement that any response to the invitation that proposes  
34 or calls for the use of any tropical hardwood or tropical hardwood  
35 product shall be deemed to be unresponsive. Any such contract that  
36 in any way involves the use of wood products shall include the  
37 following as a material condition of the contract:

38 "Except as expressly permitted pursuant to P.L. , c. C. ) (now  
39 before the Legislature as this bill), the contractor shall not provide any  
40 items to the State in performance of this contract that are tropical  
41 hardwoods or tropical hardwood products."

42 b. The provisions of subsection a. of this section shall not apply:  
43 (1) To any binding contractual obligations for the purchase of  
44 goods or services entered into prior to the effective date of this act;  
45 (2) To bid packages advertised and made available to the public,  
46 or to any competitive and sealed bids received by the State, prior to

1 the effective date of this act;

2 (3) To any amendment, modification, or renewal of a contract,  
3 which contract was entered into prior to the effective date of this act  
4 where the application would delay timely completion of a project or  
5 involve an increase in the total moneys to be paid by the State under  
6 that contract; or

7 (4) Upon a finding by the Director of the Division of Purchase and  
8 Property, the Director of the Division of Building and Construction,  
9 or a State agency having authority to contract for the purchase of  
10 goods or services, as appropriate, that:

11 (a) No person or entity doing business in the State is capable of  
12 performing the contract using acceptable nontropical hardwood  
13 equivalents;

14 (b) The inclusion or application of the provisions of subsection a.  
15 of this section will violate or be inconsistent with the terms or  
16 conditions of a grant from or contract with an agency of the United  
17 States or the instructions of an authorized representative of any agency  
18 with respect to any grant or contract;

19 (c) The use of tropical hardwoods is necessary for purposes of  
20 historical restoration and there exists no available acceptable  
21 nontropical hardwood equivalent; or

22 (d) The tropical hardwood has been verified as sustainably  
23 produced by a comprehensive, reliable, and independent tropical  
24 hardwood certification program approved by the Department of  
25 Environmental Protection.

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27 4. a. Whenever the Director of the Division of Purchase and  
28 Property, the Director of the Division of Building and Construction,  
29 or any State agency having authority to enter into contracts for the  
30 purchase of goods or services, including but not limited to contracts  
31 for the construction, improvement, or maintenance of any public work,  
32 discovers, after an investigation by the director or State agency, as  
33 appropriate, and the Attorney General, that a person or entity being  
34 considered for a contract or under contract with the State has, in  
35 connection with the bidding, execution, or performance of any State  
36 contract, falsely represented to the State the nature or certification  
37 status of any tropical hardwood or tropical hardwood product offered,  
38 used, or supplied under the contract, or provided the State with any  
39 tropical hardwood or tropical hardwood product in violation of this  
40 act, any rules and regulations adopted pursuant to this act, or any  
41 contract provisions pertaining to the prohibition against the use or  
42 purchase of tropical hardwoods or tropical hardwood products, the  
43 director or State agency may impose sanctions or take other actions  
44 designed to ensure compliance with the provisions of this act, which  
45 may include, but are not limited to:

46 (1) Refusal to certify the award of a contract;

- 1 (2) Suspension of a contract;  
2 (3) Ordering the withholding of funds due the contractor under any  
3 contract with the State;  
4 (4) Ordering the revision of a contract based upon a material  
5 breach of contract provisions or pertaining to representations made in  
6 bidding, execution, or performance of the contract; and  
7 (5) Disqualification of a bidder or contractor from eligibility for  
8 providing goods or services to the State for a period not to exceed five  
9 years, with a right to review and reconsideration after two years upon  
10 a showing of corrective action indicating violations are not likely to  
11 reoccur.

12 b. A contract with the State shall provide that in the event any  
13 bidder or contractor fails to comply in good faith with any of the  
14 provisions of this act, the bidder or contractor shall be liable for  
15 liquidated damages in an amount equal to the bidder's or contractor's  
16 net profit under the contract, or five percent of the total amount of the  
17 contract, whichever is greater. All contracts shall also contain a  
18 provision whereby the bidder or contractor acknowledges and agrees  
19 that the liquidated damages assessed shall be payable to the State upon  
20 demand and may be set off against any moneys due the bidder or  
21 contractor from any contract with the State.

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23 5. a. The Director of the Division of Purchase and Property and  
24 the Director of the Division of Building and Construction may adopt,  
25 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
26 (C.52:14B-1 et seq.), any rules and regulations necessary to implement  
27 the provisions of this act.

28 b. The Department of Environmental Protection shall adopt,  
29 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
30 (C.52:14B-1 et seq.), any rules and regulations necessary to implement  
31 a method for approving tropical hardwood certification programs as  
32 required by this act.

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34 6. This act shall take effect immediately.

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#### STATEMENT

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39 This bill would prohibit Executive Branch State departments, as  
40 well their agencies and independent authorities, from purchasing  
41 tropical hardwoods, unless the hardwoods are verified as sustainably  
42 produced by a comprehensive, reliable and independent tropical  
43 hardwood certification program approved by the Department of  
44 Environmental Protection.

45 The bill prohibits the Director of the Division of Purchase and  
46 Property in the Department of the Treasury, the Director of the

1 Division of Building and Construction in the Department of the  
2 Treasury, and any agency having the authority to purchase goods or  
3 services, from entering into contracts for the provision of services that  
4 require the use of any tropical hardwood or hardwood product. This  
5 prohibition does not apply when bids have been made or contracts  
6 entered into prior to the bill's effective date, where project delays or  
7 increased costs would result under existing contracts, or when the  
8 director finds in certain cases that nontropical hardwood equivalents  
9 are not available, that the prohibition would conflict with federal  
10 grants or contracts, that the use of tropical hardwoods is necessary for  
11 purposes of historical restoration and there exists no available  
12 acceptable nontropical hardwood equivalent, or that the tropical  
13 hardwood has been verified as sustainably produced.

14 Contracts with the State would be required to contain an express  
15 condition that the contractor shall not provide any tropical hardwood  
16 items. Upon a finding that a person has falsely represented the nature  
17 or certification status of tropical hardwood offered, used or supplied  
18 under a contract, or provided the State with tropical hardwood in  
19 violation of the act, the director would have authority to impose  
20 various contract-related sanctions. These sanctions include, but are  
21 not limited to, the refusal to certify the award of a contract,  
22 suspension of the contract, the withholding of funds due to the  
23 contractor, ordering a revision of the contract, and disqualifying the  
24 bidder or contractor from eligibility for providing goods or services to  
25 the State for a period not to exceed five years. Disqualified bidders or  
26 contractors would have the right to reconsideration after two years  
27 upon a showing of corrective action indicating violations are not likely  
28 to reoccur.

29 The bill would also require that contracts with the State contain  
30 provisions subjecting contractors to liability for liquidated damages for  
31 failure to comply in good faith with the provisions of the bill.

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36 Prohibits State purchase of certain tropical hardwoods.