

ASSEMBLY, No. 922

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman ROCCO

1 AN ACT concerning the purchase of environmentally preferable
2 building materials by the State and local governments and
3 supplementing P.L.1971, c.198 (C.40A:11-1 et seq.) and Title 52
4 of the Revised Statutes.

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

8
9 1. The Legislature finds and declares that the world's forests,
10 especially the tropical rainforests, are the Earth's richest terrestrial
11 ecological systems; that these forests are threatened by a number of
12 factors, including subsistence and permanent agriculture, harvesting
13 for fuel, cattle ranching, forestry activities, and infrastructure
14 development; that poverty and population pressures are among the
15 root causes of the massive deforestation occurring worldwide; and that
16 although recent research indicates that tropical deforestation rates may
17 not be as high as have been widely publicized in recent years and that
18 new and more aggressive government policies in many tropical
19 countries are seriously addressing deforestation, it is still a critical
20 problem worldwide that must be solved.

21 The Legislature further finds and declares that the International
22 Tropical Timber Organization (ITTO) and the International Tropical
23 Timber Agreement adopted in 1983 by the United Nations Conference
24 on Trade and Development at the United Nations Conference on
25 Tropical Timber are key shapers of international public policy with
26 regard to managing and protecting tropical forests; that one of the
27 eight objectives of the ITTO is to encourage the development of
28 national policies aimed at the sustainable utilization and conservation
29 of tropical forests and their genetic resources and at maintaining the
30 ecological balance in the regions concerned; that, according to the
31 ITTO, approximately 78% of tropical wood and tropical wood
32 products produced in 1990 were used in the domestic markets of the
33 producer countries; that the United States currently accounts for 8%
34 of the world tropical timber market, which ranks it fourth among the
35 world's nations in that regard; that most of the tropical timber that the

1 United States imports is plywood, a value-added product that provides
2 much needed income to the indigenous people of the producing
3 countries; that recognizing the need to protect these precious
4 resources and ensure their survival, the ITTO developed its Target
5 2000 program, calling for, by the year 2000, all internationally traded
6 timber to originate in sustainably managed forests, and drafted
7 guidelines and criteria for determining sustainability at the national and
8 at the forest management levels; that producing member nations of
9 ITTO have either established or are developing Tropical Forest Action
10 Programs based upon the ITTO guidelines and criteria that allow for
11 the wise use and continued husbandry of forest resources and typically
12 call for significant portions of old growth forests to be designated as
13 preserves or parks and therefore exempt from any development.

14 The Legislature further finds and declares that many leading experts
15 on tropical forests have concluded that bans or boycotts of tropical
16 woods or wood products, except in specific circumstances such as
17 with endangered species, do not promote sustainable forestry in
18 producing countries at this time, that tropical forests will be preserved
19 only if they are accorded economic value, that blanket bans and
20 embargoes on the purchase or use of non-endangered tropical
21 hardwoods will tend to depress the value of these hardwoods and the
22 forests that contain them, thereby generally diminishing economic
23 incentives to conserve and manage them in the face of alternative land
24 uses that lead to their destruction; and that promoting economic
25 growth and sustainable development in all countries will also help to
26 address problems of environmental degradation.

27 The Legislature further finds and declares that another international
28 organization, the Convention on International Trade in Endangered
29 Species of Flora and Fauna (CITES), develops and maintains lists of
30 species either endangered (Appendix I) or threatened (Appendix II) by
31 international trade, and that the lists developed by this international
32 treaty are scientifically based and recognized throughout the world;
33 and that the work of this organization has been credited with saving
34 several species, including the African Elephant, through the use of
35 severe and stringent international trade sanctions on Appendix I listed
36 products, such as ivory.

37 The Legislature further finds and declares that it is critical to the
38 survival of the world's tropical forests and the planet that the United
39 States and other industrialized nations recognize their role in
40 eradicating the root causes of deforestation; that a wisely run and
41 sustainably managed forestry industry can contribute to the solution of
42 this problem by providing needed jobs and income and by keeping the
43 land from being cleared for alternative uses; that the State and local
44 government can contribute to these measures by ensuring that
45 purchases and expenditures of public monies are made in a manner
46 consistent with sound environmental policies and practices; and for

1 that reason it is appropriate to enact legislation to prohibit the use,
 2 requisition, or purchase, directly or indirectly, by any department or
 3 agency of the State or local government of any product of any
 4 endangered timber species contained in Appendix I of CITES.

5 The Legislature further finds and declares that wood is the only
 6 renewable building material and that the use of wood, where
 7 appropriate, is environmentally preferable to the use of materials that
 8 are more resource and energy intensive and that may have a
 9 detrimental effect on the environment; that encouraging the State's use
 10 of wood in general and prohibiting the purchase by the State and local
 11 government of any product of any timber species that appears on the
 12 CITES Appendix I list will positively contribute to the preservation
 13 of endangered species; and that such a prohibition would not create
 14 shortages of building supplies in the State because many alternatives
 15 to CITES Appendix I listed species are readily available.

16
 17 2. As used in sections 1 through 7 of this act:

18 "CITES Appendix I listed species" means any timber species listed
 19 in Appendix I of the Convention on International Trade in Endangered
 20 Species of Flora, effective May 1977, and which species is considered
 21 thereunder to be threatened with extinction and affected, or may be
 22 affected, by trade, and shall include the following species on that list:

<u>Scientific Name</u>	<u>Common Name</u>
Abies guatemalensis	Guatemalan fir
Araucaria araucana	Monkey-puzzle tree
(Chile only)	
Balmea stormiae	Ayuque
Dalbergia nigra	Brazilian rosewood
Fitz-Roya cupressoides	Alerce
Pilgerodendron uviferum	Pilgerodendron
Podocarpus parlatorei	Parlatore's Podocarp

33
 34 "Public work" means any public building or other public betterment,
 35 or work or improvements constructed, repaired or improved wholly or
 36 in part at the expense of the public.

37 "State agency" means a principal department in the Executive
 38 Branch of State Government or any division, board, bureau, office,
 39 commission, agency, or other instrumentality within or created by a
 40 principal department, or any independent authority, commission,
 41 instrumentality, or agency.

42
 43 3. a. Notwithstanding the provisions of any other law to the
 44 contrary, a State agency, when entering into a new contract, or
 45 renewing an existing contract, involving, in any way, the purchase of
 46 building or restoration materials shall make every effort possible to

1 specify, if and where appropriate, the use of wood products as an
2 environmentally preferable material.

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

22 In preparing the specifications for any contract for the purchase of
23 goods or services, including but not limited to a contract for the
24 construction, improvement, or maintenance of any public work, the
25 Director of the Division of Purchase and Property, the Director of the
26 Division of Building and Construction, or any State agency having
27 authority to contract for the purchase of goods or services shall not
28 require or permit the use of any product of a CITES Appendix I listed
29 species, and shall include in the invitation to bid, where relevant, a
30 statement that any response to the invitation that proposes or calls for
31 the use of any product of any CITES Appendix I listed species shall be
32 deemed to be unresponsive. Any contract that might, in any way,
33 involve the use of a product of a CITES Appendix I listed species shall
34 include the following as a material condition of the contract:

35 "Except as expressly permitted pursuant to P.L. , c. (C.)
36 (now before the Legislature as this bill), the contractor shall not
37 provide any product of any CITES Appendix I listed species to the
38 State in performance of this contract." Every contract shall also
39 contain a statement urging companies not to import, purchase, obtain,
40 or use for any purpose, any product of a CITES Appendix I listed
41 species.

42 c. The provisions of subsection b. of this section shall not apply
43 upon a finding of the Director of the Division of Purchase and
44 Property, the Director of the Division of Building and Construction,
45 or any State agency having authority to contract for the purchase of
46 goods or services, as appropriate, that the respondent is in possession

1 of verifiably authentic pre-CITES documents attesting to the taking
2 from the wild of that specific item chronologically prior to the species
3 being listed in Appendix I of CITES. In any instance of
4 non-applicability under this section, the contract can be fulfilled only
5 by utilizing products from inventory amassed, or imported, prior to the
6 effective date of CITES Appendix I listing of the specific species.

7
8 4. a. Whenever the Director of the Division of Purchase and
9 Property, the Director of the Division of Building and Construction,
10 or any State agency having authority to enter into contracts for the
11 purchase of goods or services, including but not limited to contracts
12 for the construction, improvement, or maintenance of any public work,
13 discovers, after an investigation by the director or State agency, as
14 appropriate, and the Attorney General, that a person or entity being
15 considered for a contract or under contract with the State has, in
16 connection with the bidding, execution, or performance of any State
17 contract, falsely represented to the State the nature of the product
18 offered, used, or supplied under the contract, or provided the State
19 with a product of a CITES APPENDIX I listed species in violation of
20 this act, any rules and regulations adopted pursuant to this act, or any
21 contract provisions pertaining to the prohibition against the use of
22 products of CITES Appendix I listed species, the director or State
23 agency may impose sanctions or take other actions designed to ensure
24 compliance with the provisions of this act, which may include, but are
25 not limited to:

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

27 (2) Suspension of a contract;

28 (3) Ordering the withholding of funds due the contractor under any
29 contract with the State;

30 (4) Ordering the revision of a contract based upon a material
31 breach of a contract provision or based upon representations made in
32 the bidding, execution, or performance of the contract; and

33 (5) Disqualification of a bidder or contractor from eligibility for
34 providing goods or services to the State for a period not to exceed five
35 years, with a right to review and reconsideration after two years upon
36 a showing of corrective action indicating violations are not likely to
37 reoccur.

38 b. A contract with the State shall provide that in the event any
39 bidder or contractor fails to comply in good faith with any of the
40 provisions of this act, the bidder or contractor shall be liable for
41 liquidated damages in an amount equal to the bidder's or contractor's
42 net profit under the contract, or five percent of the total amount of the
43 contract, whichever is greater. All contracts shall also contain a
44 provision whereby the bidder or contractor acknowledges and agrees
45 that the liquidated damages assessed shall be payable to the State upon
46 demand and may be set off against any moneys due the bidder or

1 contractor from any contract with the State.

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3 5. The Director of the Division of Purchase and Property and the
4 Director of the Division of Building and Construction shall each obtain
5 from the United States Fish and Wildlife Service or another
6 appropriate agency, and keep for public reference, the most recent
7 CITES Appendix I species list. The availability of this list, its
8 contents, and its location in each division's office shall be referenced
9 in all future invitations to bid issued by a State agency.

10

11 6. The Director of the Division of Purchase and Property and the
12 Director of the Division of Building and Construction shall adopt,
13 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
14 (C.52:14B-1 et seq.), any rules and regulations necessary to implement
15 sections 1 through 6 of this act.

16

17 7. Within 90 days of the effective date of this act, the Legislature
18 shall establish a task force with the objective of researching the
19 feasibility of forming partnership arrangements with one or more
20 foreign nations or provinces located in a tropical forest region of the
21 world for the purpose of fostering a better understanding by the
22 citizens of the State of the concerns and issues affecting nations and
23 provinces in those regions and of providing support and
24 encouragement to those peoples as they address those difficult
25 concerns and issues. The task force shall report back to the
26 Legislature on a quarterly basis until such time as a determination has
27 been made on the feasibility of forming such partnership arrangements.

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29 8. As used in sections 8 through 12 of this act:

30 "CITES Appendix I listed species" means any timber species listed
31 in Appendix I of the Convention on International Trade in Endangered
32 Species of Flora, effective May 1977, and which species is considered
33 thereunder to be threatened with extinction and affected, or may be
34 affected, by trade, and shall include the following species on that list:

35

36 <u>Scientific Name</u>	<u>Common Name</u>
37 <i>Abies guatemalensis</i>	Guatemalan fir
38 <i>Araucaria araucana</i>	Monkey-puzzle tree
39 (Chile only)	
40 <i>Balmea stormiae</i>	Ayuque
41 <i>Dalbergia nigra</i>	Brazilian rosewood
42 <i>Fitz-Roya cupressoides</i>	Alerce
43 <i>Pilgerodendron uviform</i>	Pilgerodendron
44 <i>Podocarpus parlatorei</i>	Parlatore's Podocarp

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46 "Contracting unit" means the same as that term is defined pursuant

1 to section 2 of P.L.1971, c.198 (C.40A:11-2).

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3 9. a. Notwithstanding the provisions of any other law to the
4 contrary, a contracting unit, when entering into a new contract, or
5 renewing an existing contract, involving, in any way, the purchase of
6 building or restoration materials shall make every effort possible to
7 specify, if and where appropriate, the use of wood products as an
8 environmentally preferable material.

9 b. Notwithstanding the provisions of any other law to the contrary,
10 a contracting unit shall not enter into or renew any contract with any
11 individual or business entity for the purchase of goods or services,
12 including but not limited to a contract for the construction,
13 improvement, or maintenance of any project, if an invitation to bid on
14 the contract was made on or after the effective date of this act, that
15 requires the use of any product of any CITES Appendix I listed
16 species, wholesale or retail, in any form. In addition, when a contract
17 entered into prior to the effective date allows a contracting unit to
18 exercise discretion with regard to future purchases under the contract,
19 the contracting unit shall not purchase or accept any product of a
20 CITES Appendix I listed species, wholesale or retail, in any form,
21 pursuant to that contract. The provisions of this section shall also
22 apply to any purchase of goods or services not made pursuant to a
23 contract.

24 In preparing the specifications for any contract for the purchase of
25 goods or services, including but not limited to a contract for the
26 construction, improvement, or maintenance of any project, the
27 contracting unit having authority to contract for the purchase of goods
28 or services shall not require or permit the use of any product of any
29 CITES Appendix I listed species, and shall include in the invitation to
30 bid, where relevant, a statement that any response to the invitation that
31 proposes or calls for the use of any product of any CITES Appendix
32 I listed species shall be deemed to be unresponsive. Any contract that
33 might, in any way, involve the use of a product of a CITES Appendix
34 I listed species shall include the following as a material condition of
35 the contract:

36 "Except as expressly permitted pursuant to P.L. , c. (C.)
37 (now before the Legislature as this bill), the contractor shall not
38 provide any product of any CITES Appendix I listed species to the
39 contracting unit in performance of this contract." Every contract shall
40 also contain a statement urging companies not to import, purchase,
41 obtain, or use for any purpose, any product of a CITES Appendix I
42 listed species.

43 c. The provisions of subsection b. of this section shall not apply
44 upon a finding of the contracting unit having authority to contract for
45 the purchase of goods or services, as appropriate, that the respondent
46 is in possession of verifiably authentic pre-CITES documents attesting

1 to the taking from the wild of that specific item chronologically prior
2 to the species being listed in Appendix I of CITES. In any instance of
3 non-applicability under this section, the contract can be fulfilled only
4 by utilizing products from inventory amassed, or imported, prior to the
5 effective date of CITES Appendix I listing of the specific species.

6
7 10. a. Whenever the contracting unit having authority to enter into
8 contracts for the purchases of goods or services, including but not
9 limited to contracts for the construction, improvement, or maintenance
10 of any project, discovers, after an investigation by the contracting unit,
11 that a person or entity being considered for a contract or under
12 contract with the contracting unit has, in connection with the bidding,
13 execution, or performance of any contracting unit contract, falsely
14 represented to the contracting unit the nature of the product offered,
15 used, or supplied under the contract, or provided the contracting unit
16 with a product of a CITES Appendix I listed species in violation of
17 this act, any rules and regulations adopted pursuant to this act, or any
18 contract provisions pertaining to the prohibition against the use of
19 products of CITES Appendix I listed species, the contracting unit may
20 impose sanctions or take other actions designed to ensure compliance
21 with the provisions of this act, which may include, but are not limited
22 to:

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

24 (2) Suspension of a contract;

25 (3) Ordering the withholding of funds due the contractor under any
26 contract with the contracting unit;

27 (4) Ordering the revision of a contract based upon a material
28 breach of a contract provision or based upon representations made in
29 the bidding, execution, or performance of the contract; and

30 (5) Disqualification of a bidder or contractor from eligibility for
31 providing goods or services to the contracting unit for a period not to
32 exceed five years, with a right to review and reconsideration after two
33 years and upon a showing of corrective action indicating violations are
34 not likely to recur.

35 b. A contract with the contracting unit shall provide that in the
36 event any bidder or contractor fails to comply in good faith with any
37 of the provisions of this act, the bidder or contractor shall be liable for
38 liquidated damages in an amount equal to the bidder's or contractor's
39 net profit under the contract, or five percent of the total amount of the
40 contract, whichever is greater. All contracts shall also contain a
41 provision whereby the bidder or contractor acknowledges and agrees
42 that the liquidated damages assessed shall be payable to the
43 contracting unit upon demand and may be set off against any moneys
44 due the bidder or contractor from any contract with the contracting
45 unit.

1 determination has been made on the feasibility of forming such
2 partnership arrangements.

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7 Restricts purchase and use of certain endangered tropical wood
8 products by State and local government.