Government Purchasing Preferences that Support Local Farmers: 
A 50 State Review

State food procurement preferences have the potential to improve community health and strengthen rural economies. The U.S. Department of Agriculture has found that vibrant local food and farm systems support economic development, health and nutrition, food security and safety, farmland preservation efforts, and reduce energy use and greenhouse gas emissions.

The majority of state governments support local farmers and food systems through state procurement policies favoring local food purchases over non-local food purchases. Government agencies procure goods and services for employees, students and community members. They may buy food for correctional facilities, public hospitals, public universities, child-care centers, schools, senior programs and residences, and government-facilitated events and meetings. Government offices often provide food for state employees to purchase through vending machines, cafeterias and concessions.

In an effort to support the use of locally grown food in schools, Colorado’s Farm to School Task Force is examining state procurement policies governing in-state food purchases. To this end, the Task Force and the

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1 This report was authored by Meghan Scully, JD, a recent graduate of the University of Colorado Law School. Technical and editorial review was provided by Susan M. Motika, JD, Senior Legal Analyst and Policy Manager and Taber Ward, JD, Legal and Policy Analyst at the Colorado Department of Public Health and Environment (CDPHE). This research is part of an ongoing partnership among the University of Colorado Law School, the Colorado School of Public Health and CDPHE. CDPHE gratefully acknowledges the Farm to School Task Force members and staff who provided feedback on this document: Jane Brand, Colorado Department of Education; Wendy White, Colorado Department of Agriculture; Kristin Tucker, Western Dairy Association; and Lyn Kathlene, Spark Policy Institute. Also providing review were Lisa Walvoord, Vice President of Policy at Live Well Colorado and Carol Pfarr, Director of Finance and Procurement at the Colorado Department of Personnel Administration.


3 For an additional perspective on state and local government procurement policies, please see Public Health Law & Policy’s (PHLP) Local Food For Local Government report (December 2011) available at http://www.phlpnet.org/phlp/products/local-food-for-local-gov. The PHLP report provides an overview of factors affecting whether a state or local agency may procure locally produced food and agricultural products. PHLP also provides a chart highlighting state and local laws that promote the use of locally grown food and agricultural products in public contracts.

4 In 2010, Colorado’s General Assembly passed Senate Bill 10-081, creating the Farm to School Task Force. The Task Force is charged with studying, developing and recommending policies and methods to best implement farm to school programs in Colorado.

5 See also, the U.S. Dept. of Agriculture’s Geographic Preference regulation, 76 FR 22603, enacted in April 2011. The geographic preference regulation provides guidance to schools on how local agriculture products can be preferred over non-local products in school meal purchasing. See USDA guidance on the application of geographic preference at http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2011/SP18-2011_os.pdf and 76 FR 22603.
Colorado Department of Public Health and Environment commissioned this report to survey state procurement laws in the 50 states. Research reflects the findings of a 50-state survey of enacted, pending and unsuccessful legislative proposals. The report examines individual procurement statutes, describes six nationwide trends and details Colorado’s current procurement statute governing local food purchases. In sum, the District of Columbia and 28 states use statutory preference policies to promote the purchase of food produced within the state.

Nationwide trends for local food purchasing preference policies include: (1) Tie-Breaker Preference, (2) Price Reasonably Exceeds Preference, (3) Price Percentage Preference, (4) Reciprocal Preference, (5) Quotas and (6) Grants. The results of the 50-state legislative survey and summary of the six nationwide procurement preference trends are described in further detail below.

**NATIONWIDE PROCUREMENT PREFERENCE TRENDS**

1. **Tie-Breaker Preference** – A tie-breaker preference is used when two or more producers can provide the same product for equal terms, but only one of the producers is producing the food within the state. Frequently, tie-breaker preference laws govern food purchasing decisions made by school districts, requiring schools to purchase in-state food over out-of-state food under certain circumstances.

States vary in the criteria they consider when deciding whether the in-state and out-of-state bids are equal (e.g., quality, quantity, availability), but all states adopting this type of preference require the price to be equal. When producers are tied on price and terms, the purchaser is required to favor the home-state producer.

*Enacted in six states, plus the District of Columbia; a bill is currently pending in one state*

**Florida**
- Requires the in-state bidder to receive preference when competing bids are equal in price, quality and service.

**Iowa**
- Requires the purchase of in-state products as long as they are: 1) in marketable quantities; 2) of a quality reasonably suited to the purpose intended; and 3) can be secured without additional cost.
  - However, if a school district is participating in the federal school lunch or breakfast program, then this section will not apply.

**Kentucky**

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6 The status of pending and unsuccessful legislative measures contained in this Report is accurate as of May 15, 2012. Also note that nothing in this report should be regarded as reflecting an official position of the University of Colorado Law School, which supplied student researchers through an externship program.


8 IOWA CODE § 73.1 (2010).

Requires Kentucky-grown agricultural products to be purchased if available and the vendor can meet quality and pricing requirements.

- The vendor must be a participant in the Kentucky Proud Program and certify in writing that products are Kentucky-grown agricultural products.
- Purchasers are required to submit an annual report detailing the type, quantity and cost of each product purchased.

**Maine**

- Requires school purchasers to give preference to Maine products if products are similar to an out-of-state producer’s product in quality, quantity and availability.
  - Applies to purchases of fresh fruit and vegetables, meat, fish and dairy products; but not fluid milk and eggs.
  - Goes to the lowest price bid if two or more Maine producers qualify.

**Tennessee**

- Requires schools using state funds to give preference to an in-state producer if the terms, conditions and quality are equal to those from another producer.
  - Applies only to the purchase of meat.

**Texas**

- Requires a school district purchasing agricultural products to give a preference to products produced, processed or grown in state, so long as the cost and quality of the products are equal.

**D.C.**

- Requires public schools and public charter schools to give a preference to locally grown, locally processed, and unprocessed foods produced in D.C., Maryland, or Virginia.
  - Schools are required to serve local foods from growers “engaged in sustainable agriculture practices” whenever possible.
  - “Sustainable agriculture practices” is defined as “an integrated system of plant and animal production practices having a site-specific application that will, over the long-term: a) satisfy human food and fiber needs; b) enhance environmental quality and the natural resource base upon which the agricultural economy depends; c) make the most efficient use of nonrenewable resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls; d) sustain the economic viability of farm operations; and e) enhance the quality of life for farmers and society as a whole.”

**North Carolina**

- Would require schools to give preference to fresh, unprocessed agricultural products grown in the state or in contiguous states.
  - Schools are required to serve locally grown, locally processed, and unprocessed foods from growers “engaged in sustainable agriculture practices” whenever possible.
  - North Carolina uses the same definition as the District of Columbia for “sustainable agriculture practices.” See the definition in the previous entry.

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11 TENN. CODE ANN. § 12-3-810 (1975).
12 TEX. EDUC. CODE ANN. § 44.042 (2011).
13 D.C. CODE § 38-823.01 (2010).
14 Id. § 38-821.01 (2010).
15 H.B. 840, 2011 Gen. Assem., Reg. Sess. (N.C. 2011). On April 7, 2011 the bill was referred to the Committee on Education. In North Carolina, legislation may carry over from odd numbered to even-numbered years. There has been no further movement in 2012.
2. **Price “Reasonably Exceeds” Preference** — Though similar to the tie-breaker preference summarized above, this procurement policy goes one step further by allowing higher priced, in-state items to be preferred if the price “reasonably exceeds” the out-of-state product. With the “reasonably exceeds” preference policy, if two producers can provide the same product and the products are equal on other criteria (e.g. quality, quantity, availability), then the in-state producer will be favored, despite the higher price. The higher price may only “reasonably exceed” the lower bid in order to be eligible for the preference. “Reasonably exceeds” is generally defined as a price that is both “reasonable” and one that can be covered by the purchaser’s existing budget.

*Enacted in three states*

**Colorado**
- Requires a government purchaser to give preference to an in-state producer’s bid, so long as the quality is equal, the product is suitable for use, the producer is able to supply sufficient quantity, and the price is either equal to or “reasonably exceeds” the lowest price.
- The government purchaser has the sole discretion to determine whether the higher price “reasonably exceeds” the lower price. To meet this standard, the higher price must be 1) reasonable, and 2) fit within the existing budget.
- This procurement preference does not apply to school districts.
- Nearly 10 years ago, a legislatively-mandated task force convened to consider state government procurement preference options for Colorado-grown food in an effort to support local farmers and food systems. At the time, Colorado followed a reciprocal purchasing preference that was specific to contracts for commodities or services. After considering a number of alternatives, in 2005, the task force recommended that the *price “reasonably exceeds” preference* was the best option for Colorado.

**Georgia**
- Requires public elementary and secondary schools to give preference to in-state products if “reasonable and practical,” as long as quality is not sacrificed.
  - Requirement only applies to public schools.
  - When the purchase exceeds $100,000, the local school district is required to consider other factors, including the effect on the local and state economy.

**Montana**
- Permits direct purchase of food products produced in Montana when the quality is substantially equivalent to that of out-of-state producers, the producer is able to provide sufficient quantity, and price is equal to or “reasonably exceeds” the lowest price.
  - This preference only applies to public schools.

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16 In these statutes, the term “reasonable” is not defined more specifically.
17 If the purchaser would require additional appropriations to the current budget to be able to pay the higher price, then the price does not qualify as one that “reasonably exceeds.”
19 The Colorado procurement preference only applies to the “governmental bodies of the executive branch” and school districts are not included in this definition. Governmental bodies only include: “any department, commission, council, board, bureau, committee, institution of higher education, agency, government corporation, or other establishment or official, other than an elected official, of the executive branch of state government,” See, COLO. REV. STAT. ANN. §§ 24-101-301(10); 105(1)(a).
• If the higher price qualifies as “reasonably exceeding” the lower price, it can be purchased regardless of higher cost. To meet this standard, the higher bid must be 1) reasonable and 2) “capable of being paid” from the existing budget, without any additional appropriations.

<table>
<thead>
<tr>
<th>Preference When Price “Reasonably Exceeds” Hypotheticals*</th>
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<td>Two producers submit bids to provide apples to a school.</td>
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<td>purchaser thinks that $50 is a reasonable price and there</td>
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<td>is enough money in the budget to cover it.</td>
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<td><strong>RESULT</strong> → Producer A receives the preference and is</td>
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<td>awarded the contract because the price only</td>
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<td>“reasonably exceeds” Producer B’s bid.</td>
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Two producers submit bids to provide apples to a school. Producer A’s bid is to provide 100 apples for $50. Producer B’s bid is to provide 100 apples for $35. The apples from Producer A and Producer B are of the same quality and are available at the same time. The school’s purchaser thinks that $50 is a reasonable price, but there is not enough money in the budget to cover it.

**RESULT** → Producer B is awarded the contract because Producer A’s price more than reasonably exceeds Producer B’s price.

Two producers submit bids to provide apples to a school. Producer A’s bid is to provide 100 apples for $50. Producer B’s bid is to provide 100 apples for $35. The apples from Producer A and Producer B are of the same quality and are available at the same time. The school’s purchaser does not think that $50 is a reasonable price, despite the fact that there is enough money in the budget to cover it.

**RESULT** → Producer B is awarded the contract because Producer A’s price more than reasonably exceeds Producer B’s price.

### 3. Price Percentage Preference – Similar to the “reasonably exceeds” approach above, this preference permits or sometimes requires governments to purchase higher priced products from an in-state producer, so long as the higher price is within a certain percentage range of the lower priced item. If two producers can provide the same product and are equal on quality, quantity and availability, the in-state producer will be favored despite the higher price. In-state preferences are limited by the percentage set, which varies from state to state.

*Enacted in eight states and pending in two states*

- **Alaska**
  - School districts receiving state money are required to purchase agricultural and fisheries products harvested in-state when available. Products must be of comparable quality, and the in-state price may be as much as 7 percent higher than the out-of-state price.
  - If out-of-state products are purchased, the purchasing officer is required to certify in writing the reasons in-state products were not purchased.

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*ALASKA STAT. § 36.15.050 (1986). There is currently a bill pending (H.B. 205, 27th Leg., 2d Sess. (Alaska 2011)) that would eliminate the availability and quality requirements. A fiscal note was prepared in relation to this bill on April 10, 2012.*
Failure to comply will result in the withholding of state funding unless non-compliance is due to participation in a federal program that prohibits use of such preferences.

**Illinois**
- Permits a state procurement contract to give preference to local farmers whose prices are as much as 10 percent higher than non-local food producers.
  - “Local farm or food products” are products grown, processed, packaged and distributed by “Illinois citizens or businesses located wholly within the borders of Illinois.”

**Indiana**
- Permits a governmental body to give a producer as much as 10 percent price preference for agricultural products grown, produced or processed in the state.

**Louisiana**
- Requires the purchase of products planted, grown, harvested or processed in the state if the producer certifies the origin and quality is equal to or better than non-local products.
  - For meat and meat products, domesticated or wild catfish, crawfish, eggs and produce, the price cannot exceed 7 percent of the out-of-state product.
  - For milk and dairy products produced or processed in the state, the price cannot exceed the out-of-state product by more than 10 percent.

**Maryland**
- Requires the Board of Education to adopt regulations requiring state schools and facilities to set a price preference percentage, not to exceed 5 percent, to purchase locally grown food. Each school may set its own percentage below the limit.
  - Compliance is not required if it would cause the denial of federal funding.

**Massachusetts**
- Permits a governmental body, by majority vote, to establish a price percentage preference of as much as 10 percent for products grown or produced in the state.

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Price Percentage Preference Hypotheticals*
*Producer A is in-state; Producer B is out-of-state.

Two producers submit bids to provide apples to a school. Producer A's bid is to provide 100 apples for $49.50. Producer B's bid is to provide 100 apples for $45. The apples from Producer A and Producer B are of the same quality and are available at the same time. Producer A lives in a state that has a 10% price preference.

RESULT → Producer A receives the preference and is awarded the contract because the price is only 10% higher than Producer B's.

Two producers submit bids to provide apples to a school. Producer A's bid is to provide 100 apples for $51. Producer B's bid is to provide 100 apples for $45. The apples from Producer A and Producer B are of the same quality and are available at the same time. Producer A lives in a state that has a 10% price preference.

RESULT → Producer B is awarded the contract because Producer A's price is more than 10% higher than Producer B's.

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24 30 ILL. COMP. STAT. ANN. 595/10 (2009).
25 Id. 595/5.
A “governmental body” is defined as a city, town, district, regional school district, county, or any agency, board, commission, authority, department or instrumentality of a city, town, district, regional school district or county.³⁰

Rhode Island³¹
- Requires in-state milk producers and distributors to receive a one quarter of one percent (0.25%) preference over any out-of-state milk provider.
  - Preference only applies to milk.

Washington³²
- Permits a school district to develop and implement policies and procedures to facilitate and maximize to the extent practicable, purchases of Washington-grown food. These policies may include a price percentage preference to enable schools to procure Washington grown foods.
  - The school district has discretion to determine the price percentage value.

Hawaii³³ (pending)
- Would require public schools to purchase Hawaii-grown produce if the price is within 3 percent of an out-of-state product.
  - Compliance would not be required if it would impair any other funding.

New York³⁴ (pending)
- Would require purchase of food products grown, produced or harvested in the state if ten or fewer producers together are able to meet quantity requirements and the price is within 10 percent of the out-of-state product.
  - A price that falls within the 10 percent price preference percentage is defined as “reasonably competitive.”
  - Would permit the quantity to be met by an association of ten or fewer growers.
  - Would apply to eggs, livestock, fish, dairy products, juice, grains, and species of fresh fruit and vegetables; it excludes fluid milk.

4. Reciprocal Preference – A reciprocal preference is one utilized by states without price percentage preferences. These states do, however, permit the application of another state’s price percentage preference to benefit in-state producers if an out-of-state competitor would receive such a preference in its own state.

Enacted in two states

Utah³⁵
- Requires the purchase of products produced or grown in-state if, with the benefit of the reciprocal price preference percentage, the price is equal to or lower than the lowest price of the out-of-state producer.

³⁰ id. 30B § 2.
³² WASH. REV. CODE ANN. § 28A.335.190 (2008). There is currently a bill pending (S.B. 6183, 62nd Leg., Regular Sess. (Washington 2012)) that would allow Washington state farmers to apply this preference to school district contracts even if the farmer supplements his/her in-state foods with a portion of out-of-state foods, so long as the out-of-state foods do not exceed 25 percent of the total value of the annual orders or contracts with the school.
³³ H.B. 1718, 26th Leg., Reg. Sess. (Haw. 2012). The bill was introduced, passed first reading, and was referred to the Committees on Agriculture, Education, and Finance on January 18, 2012.
³⁵ UTAH CODE ANN. § 63G-6-404 (2008).
• The reciprocal preference is waived if the in-state producer does not certify that the products were produced or grown within Utah.

**Georgia**
- Citizens of Georgia receive the reciprocal price percentage preference when bidding against a non-resident from a state that awards a price percentage preference.

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<th>Reciprocal Preference Hypotheticals*</th>
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Two producers submit bids to provide apples to a school in State X. State X has a reciprocal preference policy. Producer A is from State X. Producers A’s bid is to provide 100 apples for $49.50. Producer B is from State Y. State Y has a 10% price percentage preference. Producers B’s bid is to provide 100 apples for $45. The apples from Producer A and Producer B are of the same quality and are available at the same time. Because State X adheres to reciprocal preference procurement policy, State X applies State Y’s 10% price percentage preference when reviewing the bids.

**RESULT** → Producer A receives the preference and is awarded the contract because State X applies State Y’s 10% price percentage preference and Producer A’s price is only 10% higher than Producer B’s.

If the fact pattern is the same as above, but Producer A’s bid is to provide 100 apples for $51 and Producer B’s bid is to provide 100 apples for $45, then the result would be different.

**RESULT** → Producer B is awarded the contract even though State X applies the 10% price percentage preference because Producer A’s price is more than 10% higher than Producer B’s.

5. **Quotas** – Some states set “quotas” for the purchase of in-state food products. Generally, quotas establish a percentage of the total food products that should be purchased from in-state producers and are tied to predetermined timelines. Quotas are designed to incrementally increase the percentage of food that comes from in-state producers. Quota-based approaches sometimes set incentives with reimbursement opportunities.

**Enacted in one state, pending in one state, and unsuccessful in three states**

**Illinois**
- Establishes a statewide goal for state agencies and state-owned facilities that requires 20 percent of all food and food products to be purchased from local farm or food producers by 2020.
  - Local farm or food products include those products grown, processed, packaged or distributed by Illinois citizens in Illinois businesses or farms.
- Establishes a statewide goal of 10 percent of food products purchased locally by 2020 for entities funded in part or in whole by State dollars and spending more than $25,000 per year on food products. These entities include, without limitation, public schools, child care facilities, after-school programs, and hospitals.

**New York** (pending)

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37 30 ILL. COMP. STAT. ANN. 595/10 (2009).
Would require that the office of general services and other state agencies buy 20% of all their food products from producers and/or processors in New York State.

**California**³⁹ (unsuccessful⁴⁰)
- This bill would have authorized school districts to submit an application to the State Department of Education for funding under the state’s Farm to School Program if 80% of the school district’s expenditure for fresh produce was in-state produce.
  - The school would have been reimbursed .05 cents per meal served as part of the federal National School Lunch or School Breakfast Programs.

**Missouri**⁴¹ (unsuccessful)
- Would have set a goal that 10 percent of total food purchased by school cafeterias be sourced from “local small farmers and small agribusinesses” by 2013, and 20 percent by 2018.

**New Mexico**⁴² (unsuccessful)
- Would have required a minimum percentage of the food purchased by state agencies and local public bodies to be purchased in state by a certain date.
  - The minimum percentage would be no less than 2 percent by July 1, 2012, and no less than 5 percent by July 1, 2014, and no less than 10 percent by July 1, 2016.

6. Grants – States have devised a number of different grant programs to provide opportunities for schools to off-set some of the costs associated with the purchase of fresh, in-state food products. Some programs reimburse schools on a per meal basis when local foods are incorporated, while others provide funds that can be used in a variety of ways, including the purchase of the kitchen equipment necessary to prepare fresh food products.

*Enacted in four states, pending in one state, and unsuccessful in one state*

**Maine**³³
- Established a Local Produce Fund in the Department of Education that matches $1 for every $3 a school spends on produce or minimally processed foods purchased directly from a Maine farmer, fisherman, farmer’s cooperative or fisherman’s cooperative.
  - A school can receive a maximum of $1,000 in matching funds per year.

**Oregon**⁴⁴
- Established a grant program to reimburse school districts for the additional costs incurred by purchasing in-state food products.
  - A school district will be reimbursed the lesser of 15 cents per lunch, or the per meal cost of purchasing in-state food products.

**Vermont**⁴⁵
- Established a grant program to help schools develop relationships with local food producers.

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⁴⁰ This bill died on February 2, 2012.
⁴⁵ VT. STAT. ANN. tit. 6, § 4721 (2007).
Grantees can receive a maximum of $15,000 to be used to fund equipment, resources or training.

**Washington**

- Established a grant program to facilitate consumption of Washington-grown foods in schools and expand the market for locally-grown fresh produce.
  - The grant program will fund one or two-year grants to urban and rural schools to enable grantees to provide free Washington grown fresh fruits and vegetables throughout the school day.
  - Grantees will be selected using the following criteria: (i) applicant’s plan for ensuring the use of Washington grown fruits and vegetables within the school meal program; (ii) applicant’s plan for incorporating nutrition, agricultural stewardship education, and environmental education into the snack program; (iii) the applicant’s plan for establishing partnerships with state, local, and private entities to further the program's objectives.

**Michigan** (pending)

- Would establish a grant program to encourage the purchase of food products from local farmers in school food service programs.
  - Applicants could receive a maximum grant of $15,000 to provide funds for equipment, resources, training or materials.

**New Mexico** (unsuccessful)

- Would have appropriated $1.4 million to the Department of Agriculture for the purchase of New Mexico-grown foods for school lunch programs across the state.

### 7. Miscellaneous Approaches

**Maine**

- Establishes a Farm and Fish to School Pilot Program.
  - Requires interagency cooperation between the Department of Agriculture, Food and Rural Resources, the Department of Education and the Department of Marine Resources to support and assist nonprofit organizations in the development and implementation of a pilot program to examine the benefits of using Maine food products in primary and secondary school meal programs.
  - Two schools may participate – one rural and one urban school.
  - The government agencies listed above may combine their resources to provide the pilot schools up to 6 cents per meal to promote local Maine foods. Schools may receive funds from the Pilot Program for as long as two years.

**Rhode Island**

- Provides an income tax credit for purchases of produce grown in state that are used to satisfy the purchaser’s contract to provide food to schools.
  - The tax credit is 5 percent of the cost of the food product grown or produced in the state.

**Virginia** (unsuccessful)

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48 S.B. 86, 50th Leg., 2d Sess. (N.M. 2012). This bill died in 2012.
49 H. Paper 1060, 125th Leg. 1st Reg. Sess. (Me. 2011); became law without Governor’s signature on June 20, 2011. Resolve Ch. 91.
Would have permitted local school districts to purchase food products grown in state without going through the competitive bidding process.

- The competitive bidding process could have been avoided if in-state and out-of-state vendor quality and quantity requirements were equal and the price was reasonable and fell within the school’s existing budget.

GLOSSARY

**Tie-Breaker Preference** – When two producers (one from out-of-state and one from in state) submit identical bids, the in-state producer receives the preference and is awarded the contract. Bids must be identical on price, quality, quantity and availability.

**Price “Reasonably Exceeds” Preference** – When two producers (one from out-of-state and one from in state) submit bids that are equal on everything but the price, the higher-priced, in-state producer will receive a preference so long as the in-state producer’s price only “reasonably exceeds” the out-of-state producer’s price. “Reasonably exceeds” is generally defined as a price that is both “reasonable” and one that can be covered by the purchaser’s existing budget.

**Price Percentage Preference** – When two producers (one from out-of-state and one from in-state) submit bids that are identical on everything but the price, the higher-priced, in-state producer gets a preference so long as the in-state producer’s price is only a certain percentage higher than the out-of-state producer’s price.

**Reciprocal Preference** – When two producers (one from out-of-state and one from in state) submit bids that are identical on everything but the price, the higher-priced, in-state producer receives a preference if the out-of-state producer would receive a price percentage preference in his/her home state.

**Quotas** – Requires that X% of the food purchased by schools come from in-state producers by a date certain.

**Grants** – Schools can apply for grant money to help cover the costs of purchasing food from in-state producers or for kitchen equipment and trainings necessary to purchase and prepare local foods.