

FIRST REGULAR SESSION

HOUSE BILL NO. 85

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BECK.

0591H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 34, RSMo, by adding thereto one new section relating to reciprocal resident bidding, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 34, RSMo, is amended by adding thereto one new section, to be known as section 34.075, to read as follows:

34.075. 1. For purposes of this section, the following terms shall mean:

(1) “Department”, the department of labor and industrial relations;

(2) “Director”, the director of the department of labor and industrial relations or the director’s designee;

(3) “Nonresident bidder”, a person or entity who does not meet the definition of a resident bidder;

(4) “Public body”, the state and any of its political subdivisions including, but not limited to, a school district or public utility;

(5) “Public improvement”, a building or other construction work to be paid for in whole or in part by the use of funds of the state, its agencies, or any of its political subdivisions, including road construction, reconstruction, and maintenance projects;

(6) “Public utility”, includes municipally owned utilities and municipally owned waterworks;

(7) “Resident bidder”, a person or entity authorized to transact business in this state and having a place of business for transacting business within the state at which it is conducting and has conducted business for at least three years prior to the date of the first advertisement for the public improvement. If another state or foreign country has a more

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 stringent definition of a resident bidder, the more stringent definition is applicable as to
19 bidders from that state or foreign country;

20 (8) “Resident labor force preference”, a requirement in which all or a portion of a
21 labor force working on a public improvement is a resident of a particular state or country.

22 2. Notwithstanding this chapter, when a contract for a public improvement is to be
23 awarded to the lowest and best bidder, a resident bidder shall be allowed a preference as
24 against a nonresident bidder from a state or foreign country if that state or foreign country
25 gives or requires any preference to bidders from that state or foreign country including,
26 but not limited to, any preference to bidders, the imposition of any type of labor force
27 preference, or any other form of preferential treatment to bidders or laborers from that
28 state or foreign country. The preference allowed shall be equal to the preference given or
29 required by the state or foreign country in which the nonresident bidder is a resident. In
30 the instance of a resident labor force preference, a nonresident bidder shall apply the same
31 resident labor force preference to a public improvement in this state as would be required
32 in the construction of a public improvement by the state or foreign country in which the
33 nonresident bidder is a resident.

34 3. If it is determined that this section shall cause denial of federal funds which
35 would otherwise be available or would otherwise be inconsistent with requirements of any
36 federal law or regulation, this section shall be suspended, but only to the extent necessary
37 to prevent denial of the funds or to eliminate the inconsistency with federal requirements.

38 4. The public body involved in a public improvement shall require a nonresident
39 bidder to specify on all project bid specifications and contract documents whether any
40 preference as described in subsection 2 is in effect in the nonresident bidder’s state or
41 country of domicile at the time of a bid submittal.

42 5. The director and the department shall administer and enforce this section, and
43 the director shall adopt rules for the administration and enforcement of this section.

44 6. The director shall have the following powers and duties for the purposes of this
45 section:

46 (1) The director shall hold hearings and investigate charges of violations of this
47 section;

48 (2) The director shall, consistent with due process of law, enter any place of
49 employment to inspect records concerning labor force residency; to question an employer
50 or employee; and to investigate such facts, conditions, or matters as are deemed
51 appropriate in determining whether any person has violated the provisions of this section.

52 The director shall only make such an entry in response to a written complaint;

53 (3) The director shall develop a written complaint form applicable to this section
54 and make it available in department offices and on the department's interest site;

55 (4) The director shall sue for injunctive relief against the awarding of a contract,
56 the undertaking of a public improvement, or the continuation of a public improvement in
57 response to a violation of this section;

58 (5) The director shall investigate and ascertain the residency of a worker engaged
59 in any public improvement in this state;

60 (6) The director shall administer oaths, take or cause to be taken deposition of
61 witnesses, and require by subpoena the attendance and testimony of witnesses and the
62 production of all books, registers, payrolls, and other evidence relevant to a matter under
63 investigation or hearing;

64 (7) The director shall employ qualified personnel as are necessary for the
65 enforcement of this section; and

66 (8) The director shall require a contractor or subcontractor to file, within ten days
67 of receipt of a request, any records enumerated in subsection 7. If the contractor or
68 subcontractor fails to provide the requested records within ten days, the director shall
69 direct, within fifteen days after the end of the ten-day period, the fiscal or financial office
70 charged with the custody and disbursement of funds of the public body that contracted for
71 construction of the public improvement or undertook the public improvement, to
72 immediately withhold from payment to the contractor or subcontractor up to twenty-five
73 percent of the amount to be paid to the contractor or subcontractor under the terms of the
74 contract or written instrument under which the public improvement is being performed.
75 The amount withheld shall be immediately released upon receipt by the public body of a
76 notice from the director indicating that the request for records as required by this section
77 has been satisfied.

78 7. While participating in a public improvement, a nonresident bidder domiciled in
79 a state or country that has established a resident labor force preference shall make and
80 keep, for a period of not less than three years, accurate records of all workers employed
81 by the contractor or subcontractor on the public improvement. The records shall include
82 each worker's name, address, telephone number if available, Social Security number, trade
83 classification, and the starting and ending time of employment.

84 8. Any person or entity that violates the provisions of this section is subject to a civil
85 penalty in an amount not to exceed one thousand dollars for each violation found in a first
86 investigation by the department, not to exceed five thousand dollars for each violation
87 found in a second investigation by the department, and not to exceed fifteen thousand
88 dollars for a third or subsequent violation found in any subsequent investigation by the

89 department. Each violation of this section for each worker and for each day the violation
90 continues constitutes a separate and distinct violation. In determining the amount of the
91 penalty, the department shall consider the appropriateness of the penalty to the person or
92 entity charged, upon determination of the gravity of the violations. The collection of these
93 penalties shall be enforced in a civil action brought by the attorney general on behalf of the
94 department.

95 9. A party seeking review of the department's determination pursuant to this
96 section shall file a written request for an informal conference. The request shall be received
97 by the department within fifteen days after the date of issuance of the department's
98 determination. During the conference, the party seeking review shall present written or
99 oral information and arguments as to why the department's determination should be
100 amended or vacated. The department shall consider the information and arguments
101 presented and issue a written decision advising all parties of the outcome of the conference.

102 10. Any rule or portion of a rule, as that term is defined in section 536.010, that is
103 created under the authority delegated in this section shall become effective only if it
104 complies with and is subject to all of the provisions of chapter 536 and, if applicable,
105 section 536.028. This section and chapter 536 are nonseverable, and if any of the powers
106 vested with the general assembly pursuant to chapter 536 to review, to delay the effective
107 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
108 grant of rulemaking authority and any rule proposed or adopted after August 28, 2019,
109 shall be invalid and void.

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