

SENATE BILL REPORT

SB 5176

AS OF FEBRUARY 4, 1991

Brief Description: Establishing preferences for in-state contractors for public works.

SPONSORS: Senators Vognild, Patterson, Owen, Matson, Conner, Sutherland, Moore, Rasmussen, Wojahn and Gaspard.

SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

Staff: Barbara Howard (786-7410)

Hearing Dates: February 5, 1991

BACKGROUND:

Under RCW 39.16.005, 95 percent of the employees on public works contracts by state agencies and local governments must be bona fide residents of the state. In 1982, the State Supreme Court struck down that provision as violating the privileges and immunities clause of the U.S. Constitution (Laborers Local 374 v. Felton Construction Company, 98 Wn.2d 121).

It has been suggested that in-state preferences be established for contractors in line with the dissenting opinion of the case, which concluded that the statute in question "assures that state residents enjoy the benefits of state spending....(and) the state should be deemed free to deal with its own residents when it builds public works."

SUMMARY:

State and local agencies must award a public contract for public works to the lowest responsible resident bidder whose bid does not exceed 10 percent over the lowest responsible nonresident bidder. The preference applies whether the law requires advertisement for bids and to contracts involving federal funds unless expressly forbidden by federal law or regulation.

"Resident bidder" is defined as including (1) actual residence of an individual in this state for more than one year prior to bidding; (2) actual residence of the majority of partners or memberships in a partnership or association for more than one year; and (3) a domestic corporation organized under Washington law, unless the corporation is a wholly owned subsidiary of a foreign corporation or was formed to circumvent residency requirements.

The Department of General Administration (GA) must determine whether contractors registered to do business in the state

comply with the residency requirements created. Any public agency responsible for executing a contract may request the department to determine resident/nonresident status. If a nonresident licensed contractor later qualifies as a resident, the contractor may apply for redetermination of residence.

Public agencies may not show any partiality in awarding contracts and must be fair and impartial. If the bids are the same, the 10 percent resident preference applies. GA must adopt rules necessary to administer these provisions.

Appropriation: none

Revenue: none

Fiscal Note: requested January 29, 1991