
**State Government & Tribal Affairs
Committee**

HB 1809

Brief Description: Establishing a preference for resident contractors on public works.

Sponsors: Representatives Van De Wege, Angel, Hunt, Dammeier, Eddy, Armstrong, Dunshee, Pettigrew, Moeller, Seaquist, Fitzgibbon, Reykdal, Billig, McCoy, Blake, Tharinger, Roberts, Stanford, Liias, Maxwell, Orwall, Walsh, Green, Frockt, Kirby and Kelley.

Brief Summary of Bill

- Applies a 7 percent in-state preference for resident contractors on public works contracts.

Hearing Date: 2/14/11

Staff: Marsha Reilly (786-7135).

Background:

Award of Public Works Contracts.

Contracts for public works projects are generally awarded to the responsible bidder submitting the lowest responsive bid. A responsible bidder must be licensed; have a current state unified business identifier number if applicable; have industrial insurance coverage for the bidder's employees working in Washington, an Employment Security Department number, and a state excise tax registration number; and not be disqualified from bidding based on noncompliance with licensing requirements, noncompliance with state apprenticeship requirements, or prevailing wage violations.

Resident Worker Preferences.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In 1943 the Legislature enacted a resident worker preference law that was amended in 1972. The statute required that 95 percent or more Washington residents be employed in all contracts let by the state, its departments, and municipalities on public works projects. In 1982 the Washington Supreme Court found the law to be unconstitutional. The opinion was based on the absence of proof and documentation that (1) hiring out-of-state workers would constitute a "peculiar evil" by diverting wages out of the state; (2) out-of-state contractors or subcontractors would bring employees to the jobsite rather than hire locally; and (3) compared the disadvantage of lost wages with the advantage of lower bids. The worker preference law was repealed in 1995.

Resident Contractor Preferences.

Resident contractor preference laws give residents a bidding advantage over nonresident contractors. Often such statutes mandate that public works contracts be awarded to resident contractors when their bids are not more than a certain percent higher than the bids of nonresident contractors. While resident contractor laws have been challenged, the majority of courts have upheld these laws.

Reciprocal Contractor Preference Laws.

Some states have reciprocal contractor preference laws. These laws apply a preference only against contractors from states with a contractor preference law in place, applying the same degree of discrimination against nonresident contractors that the nonresident's state applies against out-of-state contractors.

Summary of Bill:

A resident contractor preference law is established. A public works contract shall be awarded to the responsible bidder with the lowest responsive bid after a resident contractor preference of 7 percent is applied. To receive the preference, a contractor must be certified as a resident contractor by the Department of General Administration (GA).

The GA is directed to prepare an application form requiring such information and proof as deemed necessary to certify the applicant as a resident contractor. The contractor must complete and submit the application form to the GA prior to submission of a bid in which the contractor seeks a preference. Once certification is approved, the GA must issue the contractor a certification number which, when used on a contract bid, entitles the contractor to be considered a resident contractor.

Definition of Resident Contractor.

A "resident contractor" is defined as a contractor:

- registered under chapter 18.27 RCW or licensed as an electrical contractor under chapter 19.28 RCW;
- who maintains a place of business within the state staffed by the contractor or an employee of the contractor for a period of six months immediately preceding the date of the bid; and
- who employs at least 85 percent of state residents as its employees or pays at least 85 percent of its payroll in dollar volume to state residents.

In addition, the contractor must be:

- incorporated or qualified to do business under the Uniform Limited Partnership Act;
- a sole proprietorship and the proprietor is a resident of the state;
- a limited liability company organized under chapter 25.15 RCW whose members are residents of the state;
- a partnership under chapter 25.05 or 25.10 RCW whose partners are residents of the state; or
- if a joint venture, composed entirely of ventures that employ 85 percent of its workers as state residents or pays 85 percent of its payroll to state residents.

The GA has the authority to revoke the certification number issued to a contractor when the contractor no longer meets the definition of resident contractor.

Penalties are established in the event a contractor receives a resident contractor preference based on false information provided in the application. The contractor must pay the state an assessment equal to the difference between the contract amount and what the state's cost would have been if the contract had been properly awarded and must pay a civil penalty of 10 percent of the amount of the contract involved or \$1,000, whichever is less. In addition, the contractor is ineligible to directly or indirectly conduct any business with the state for a period of not less than six months and not more than three years. The ineligibility applies to the principals of the business and any subsequent businesses formed by those principals.

A contractor who knowingly and with intent to defraud makes a false statement or fails to provide or conceals, or attempts to conceal, material information for the purpose of obtaining, or aiding another in obtaining, a resident preference is subject to a civil penalty of 10 percent of the amount of the contract involved or \$10,000, whichever is greater.

An appeal process is established for contractors subjected to sanctions.

If the act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds, the conflicting part is inoperative, and rules adopted under the act must meet federal requirements that are a necessary condition to receiving federal funds by the state.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.