

SENATE BILL REPORT

SB 5662

As of February 23, 2011

Title: An act relating to establishing a preference for resident contractors on public works.

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

Sponsors: Senators Conway, Chase, Kline, Shin, Keiser, Kohl-Welles, White, Roach, Hobbs, Nelson, Prentice, Haugen and Fraser.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 2/15/11, 2/21/11 [DPS-WM, DNP].

Ways & Means:

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 5662 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Keiser and Kline.

Minority Report: Do not pass.

Signed by Senators Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Hewitt.

Staff: Mac Nicholson (786-7445)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Brian Sims (786-7431)

Background: 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, state apprenticeship requirements, or prevailing wage violations.

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.

Summary of Bill (Recommended Substitute): Resident contractors are given a preference of 5 percent by the state or municipality when determining the lowest responsible bidder.

A resident contractor is a registered contractor certified by the Department of General Administration (GA) in one of two ways:

- maintaining a staffed place of business in Washington for the six months preceding the date of bid and being incorporated or organized to do business in Washington with owners or partners being in-state residents; or
- paying residents at at least 85 percent of payroll, or having residents make up at least 85 percent of the total employees, on in-state public works projects.

Contractors must continue to meet the 85 percent threshold, or have a staffed place of business, to maintain certification as a resident contractor.

GA is to develop application forms for contractors seeking certification as resident contractors. Contractors meeting the resident contractor qualification criteria are issued a certification number, which can be revoked when the contractor no longer meets the qualifications of a resident contractor.

A contractor that is awarded a public works contract based on a resident contractor preference secured with false information is subject to:

- an assessment equal to the difference between the contract amount and what the state's cost would have been had the contract been properly awarded;
- a civil penalty of \$1,000 or 10 percent of the contract amount, whichever is less; and
- an ineligibility period of six months to three years, during which the contractor cannot directly or indirectly transact any business with the state or a municipality.

Contractors that knowingly, and with intent to defraud, make a false statement, fail to provide, or conceal any material information for the purpose of obtaining a resident contractor preference are subject to a civil penalty of \$10,000 or 10 percent of the contract amount, whichever is greater.

A contractor subject to sanction may request a hearing within 30 days. The Attorney General may recover final assessments or penalties from contractors who fail to pay.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute): The substitute lowers the preference from 7 percent to 5 percent, and changes the certification criteria so that a contractor can be certified in one of two ways. The substitute also provides that the ineligibility period imposed for obtaining a preference with false information and using the preference to secure a contract applies to both state and municipal governments.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Labor, Commerce & Consumer Protection): PRO: The goal of this bill is to reinvest Washington tax dollars in Washington employers and workers. The bill does what other states have already done. Courts have supported states' rights to provide an advantage to and preference for local bidders. Other states and local governments have similar preference provisions. This bill will put Washington residents back to work. The construction unemployment rate is high, and this bill levels the playing field with other states. The bill keeps public construction money in-state and is needed more than ever now. Capital budget dollars are being sent out-of-state while in-state construction workers are unemployed and losing their homes. Out-of-state contractors bring out-of-state workers to work on in-state projects. Tax dollars should stay in the state. In-state contractors are very competitive. Construction workers are hurting, and want to get back to work. This bill creates jobs in Washington.

CON: Contractors weren't involved in drafting the legislation. Times are difficult, but this kind of protectionism was tried in the state before and didn't accomplish what it intended to do. This will increase costs for contractors and projects could cost up to 7 percent more. The 85 percent threshold in the bill would exclude many in-state contractors who have a long history of doing business in Washington and those who do a lot of work out-of-state. Reciprocal preference statutes would negatively impact in-state contractors who do out-of-state work, particularly for those along the borders. The bill is unconstitutional in multiple ways. The bill creates a four part test that is problematic. School districts are concerned about the impact on the bidding environment, and would like to get as many bids on a job as possible. Federal funding for transportation projects includes federal requirements for open competition, and the language in the bill is in conflict and would preclude receipt of federal funding.

OTHER: In-state contractors should be getting the job, but there are some concerns as the definitions in the bill would exclude some in-state contractors who do work in-state and out-of-state. Large administrative costs are created with the certification requirements imposed on GA, as well as revocation of certification. This bill addresses only general contractors, and wouldn't affect subcontractors. Local governments in border areas rely on out-of-state contractors to get experienced contractors on public works. Costs will be increased, and now is not the time to increase costs.

Persons Testifying (Labor, Commerce & Consumer Protection): PRO: Randy Loomans, International Union of Operators; Dave Johnson, Washington Building and Construction Trades; Nicole Grant, Stephanie McPherson, International Brotherhood of Electrical Workers 46; Evan Leonard, Artisan Electric; Cody Arledge, Sheet Metal Workers 66.

CON: Van Collins, Associated General Contractors; Charlie Brown, Puget Sound School Coalition; Jeff Carpenter, Washington State Department of Transportation.

OTHER: John Lynch, GA; Larry Stevens, Mechanical Contractors Association, National Electrical Contractors Association; Steve Lindstrom, Sno-King Water District Coalition; Marcia Fromhold, Evergreen and Vancouver school districts and Educational Service District 112.