
Labor & Workforce Development Committee

HB 1026

Brief Description: Requiring use of resident workers on public works.

Sponsors: Representatives Moeller, Appleton, Stanford, Ormsby and Riccelli.

Brief Summary of Bill

- Requires that at least 75 percent of labor hours on public works contracts, including publicly subsidized works, be performed by Washington residents.
- Permits a waiver if a sufficient number of qualified residents are unavailable.
- Provides that companies qualify for certain construction-related tax incentive programs only if they comply with the resident worker preference law.

Hearing Date: 1/23/13

Staff: Alexa Silver (786-7190).

Background:

A public work is defined as all work, construction, alteration, repair, or improvement (other than ordinary maintenance) that is executed at the cost of the state or a local public agency.

Several other states, including Idaho, Alaska, Arizona, Hawaii, Montana, and Colorado, have enacted statutes that grant a hiring preference on public works contracts to resident workers.

In *Laborers Local Union No. 374 v. Felton*, decided in 1982, the Washington State Supreme Court struck down a law that required contractors and subcontractors to employ a minimum percentage of Washington residents on public works contracts. The Court held that the law violated the privileges and immunities clause of the U.S. Constitution, which provides: "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." The test for determining whether a statute violates the privileges and immunities clause

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is first, whether the statute affects a fundamental interest protected by the clause, and second, whether the state demonstrates a valid reason for the discrimination. Discrimination against nonresidents is valid if the nonresidents "constitute a peculiar source of evil" and the statute is closely tailored to solving that problem.

With respect to the first step of the test, the Court found that the clause guarantees the right to pursue a livelihood in a state other than one's own. With respect to the second step of the test, the Court rejected the state's argument that strengthening the economy constitutes a valid reason for discriminating against nonresidents. The Court found no evidence to justify the discrimination, such as evidence that hiring nonresidents would divert wages out of state or that out-of-state contractors would not hire locally.

Four dissenting justices would have upheld the law, arguing that the state acted in a proprietary capacity. The dissent concluded that the statute had no effect on the private labor market, because it applied only to public works.

Summary of Bill:

Contracts for public works must include a provision requiring that 75 percent of the labor hours be performed by Washington residents. Residents of a state bordering on Washington may be considered Washington residents if the bordering state does not restrict the right of Washington residents to be employed on public works.

Public work is defined to include publicly subsidized work. Work is subsidized by the public if:

- a party to the contract received or will receive a qualifying tax preference;
- a party to the contract received or will receive a public loan;
- the work takes place on land that a party to the contract leases from the state or a county, municipality, or political subdivision; or
- the work takes place on land that a party to the contract purchased from the state or a county, municipality, or political subdivision for less than fair market value, as determined at the time of the sale.

The construction-related sales and use tax incentive programs that require compliance with the resident worker preference law are those for: (1) construction of warehouses, distribution centers, grain elevators, and cold storage; (2) purchases to construct structures used for retail sales of biofuels; (3) installing and constructing anaerobic digesters; (4) construction and equipment purchases for manufacturing facilities in high unemployment counties; (5) construction and equipment purchases for high technology; (6) construction and equipment purchases for biotechnology and medical device manufacturing; and (7) construction of a corporate headquarters facility in a community empowerment zone. An entity is qualified for one of these tax incentive programs only if it complies with the resident worker preference law.

A contractor or subcontractor may apply to the Department of Labor & Industries (Department) for a waiver from the resident worker preference law. The Department may grant a waiver if it determines, in consultation with the Employment Security Department, that the contractor or subcontractor made a good faith effort to recruit and hire residents and a sufficient number of qualified residents is unavailable.

If the Department determines that a contractor or subcontractor violated the resident worker preference law, the contractor or subcontractor is subject to a civil penalty of at least \$1,000 per displaced resident worker, or 20 percent of the amount of the prevailing wages that would have been paid to displaced workers, whichever is greater. The contractor or subcontractor may not bid on public works until the penalty is paid. A contractor or subcontractor that twice violates the law in a five-year period is barred from bidding on public works for two years. Civil penalties are deposited in the Public Works Administration Account.

A federal severability clause is included in case of conflict with federal requirements that are a condition of receiving federal funds.

Appropriation: None.

Fiscal Note: Requested on 1/17/13.

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