

SENATE BILL NO. 925

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BECK.

3220S.01H

ADRIANE D. CROUSE, Secretary

AN ACT

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

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

Section A. Chapter 34, RSMo, is amended by adding thereto
2 one new section, to be known as section 34.700, to read as
3 follows:

**34.700. 1. For purposes of this section, the
2 following terms mean:**

3 (1) "Department", the department of labor and
4 industrial relations;

5 (2) "Director", the director of the department of
6 labor and industrial relations or the director's designee;

7 (3) "Nonresident bidder", a person or entity who is
8 not a resident bidder;

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

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

17 (6) "Public utility", includes municipally owned
18 utilities and municipally owned waterworks;

19 (7) "Resident bidder", a person or entity authorized
20 to transact business in this state and having a place of
21 business for transacting business within the state at which
22 it is conducting and has conducted business for at least
23 three years prior to the date of the first advertisement for
24 the public improvement. If another state or foreign country
25 has a more stringent definition of a resident bidder, the
26 more stringent definition is applicable as to bidders from
27 that state or foreign country;

28 (8) "Resident labor force preference", a requirement
29 in which all or a portion of a labor force working on a
30 public improvement is a resident of a particular state or
31 country.

32 2. Notwithstanding any provision of this chapter to
33 the contrary, when a contract for a public improvement is to
34 be awarded to the lowest and best bidder, a resident bidder
35 shall be allowed a preference as against a nonresident
36 bidder from a state or foreign country if that state or
37 foreign country gives or requires any preference to bidders
38 from that state or foreign country including, but not
39 limited to, any preference to bidders, the imposition of any
40 type of labor force preference, or any other form of
41 preferential treatment to bidders or laborers from that
42 state or foreign country. The preference allowed a resident
43 bidder shall be equal to the preference given or required by
44 the state or foreign country in which the nonresident bidder
45 is a resident. In the instance of a resident labor force
46 preference, a nonresident bidder shall apply the same
47 resident labor force preference to a public improvement in
48 this state as would be required in the construction of a
49 public improvement by the state or foreign country in which
50 the nonresident bidder is a resident.

51 3. If it is determined by the director that
52 enforcement of this section would cause the denial of
53 federal funds which would otherwise be available, or would
54 otherwise be inconsistent with requirements of any federal
55 law or regulation, this section may be waived to the extent
56 necessary to prevent denial of the funds or to eliminate the
57 inconsistency with federal requirements.

58 4. A public body awarding a contract for public
59 improvement shall require a nonresident bidder to specify on
60 all project bid specifications and contract documents
61 whether any preference as described in subsection 2 of this
62 section is in effect in the nonresident bidder's state or
63 country of domicile at the time of a bid submittal.

64 5. The director and the department shall administer
65 and enforce this section, and the department shall adopt
66 rules for the administration and enforcement of this section.

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

69 (1) The director shall hold hearings and investigate
70 complaints of violations of this section;

71 (2) The director shall, consistent with due process of
72 law, enter any place of employment to inspect records
73 concerning labor force residency and to question an employer
74 or employee and to investigate such facts, conditions, or
75 matters as are deemed appropriate in determining whether any
76 person has violated the provisions of this section. The
77 director shall only make such an entry in response to a
78 written complaint;

79 (3) The director shall develop a written complaint
80 form applicable to this section and make it available in
81 department offices and on the department's internet website;

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

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

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

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

96 (8) The director shall require a contractor or
97 subcontractor to file, within ten days of receipt of a
98 request, any records enumerated in subsection 7 of this
99 section. If the contractor or subcontractor fails to
100 provide the requested records within ten days, the director
101 shall direct, within fifteen days after the end of the ten-
102 day period, the fiscal or financial office charged with the
103 custody and disbursement of funds of the public body that
104 contracted for construction of the public improvement or
105 undertook the public improvement, to immediately withhold
106 from payment to the contractor or subcontractor up to twenty-
107 five percent of the amount to be paid to the contractor or
108 subcontractor under the terms of the contract or written
109 instrument under which the public improvement is being
110 performed. The amount withheld shall be immediately
111 released upon receipt by the public body of a notice from
112 the director indicating that the request for records as
113 required by this section has been satisfied.

114 7. While participating in a public improvement, a
115 nonresident bidder domiciled in a state or country that has
116 established a resident labor force preference shall make and
117 keep, for a period of no less than three years, accurate
118 records of all workers employed by the contractor or
119 subcontractor on the public improvement. The records shall
120 include each worker's name, address, telephone number if
121 available, Social Security number, trade classification, and
122 the starting and ending time of employment.

123 8. Any person or entity that violates the provisions
124 of this section shall be subject to a civil penalty in an
125 amount not to exceed one thousand dollars for each violation
126 found in a first investigation by the director, not to
127 exceed five thousand dollars for each violation found in a
128 second investigation by the director, and not to exceed
129 fifteen thousand dollars for a third or subsequent violation
130 found in any subsequent investigation by the director. Each
131 violation of this section for each worker and for each day
132 the violation continues constitutes a separate and distinct
133 violation. In determining the amount of the penalty, the
134 director shall consider the appropriateness of the penalty
135 to the person or entity charged, upon determination of the
136 gravity of the violations. The collection of these
137 penalties shall be enforced in a civil action brought by the
138 attorney general on behalf of the department.

139 9. A party seeking review of the director's
140 determination pursuant to this section shall file a written
141 request for an informal conference with the department. The
142 request shall be received by the department within fifteen
143 days after the date of issuance of the director's
144 determination that a violation has occurred. During the
145 conference, the party seeking review shall present written

146 or oral information and arguments as to why the director's
147 determination should be amended or vacated. The department
148 shall consider the information and arguments presented and
149 issue a written decision advising all parties of the outcome
150 of the conference.

151 10. Any rule or portion of a rule, as that term is
152 defined in section 536.010, that is created under the
153 authority delegated in this section shall become effective
154 only if it complies with and is subject to all of the
155 provisions of chapter 536 and, if applicable, section
156 536.028. This section and chapter 536 are nonseverable and
157 if any of the powers vested with the general assembly
158 pursuant to chapter 536 to review, to delay the effective
159 date, or to disapprove and annul a rule are subsequently
160 held unconstitutional, then the grant of rulemaking
161 authority and any rule proposed or adopted after August 28,
162 2022, shall be invalid and void.

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