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HOUSE BILL 1809

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State of Washington

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

Read first time 02/03/11. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to establishing a preference for resident  
2 contractors on public works; amending RCW 39.04.010; adding a new  
3 section to chapter 39.04 RCW; creating new sections; and prescribing  
4 penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 39.04.010 and 2008 c 130 s 16 are each amended to read  
7 as follows:

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

10 (1) "Award" means the formal decision by the state or municipality  
11 notifying a responsible bidder with the lowest responsive bid of the  
12 state's or municipality's acceptance of the bid and intent to enter  
13 into a contract with the bidder.

14 (2) "Contract" means a contract in writing for the execution of  
15 public work for a fixed or determinable amount duly awarded after  
16 advertisement and competitive bid, or a contract awarded under the  
17 small works roster process in RCW 39.04.155.

18 (3) "Municipality" means every city, county, town, port district,  
19 district, or other public agency authorized by law to require the

1 execution of public work, except drainage districts, diking districts,  
2 diking and drainage improvement districts, drainage improvement  
3 districts, diking improvement districts, consolidated diking and  
4 drainage improvement districts, consolidated drainage improvement  
5 districts, consolidated diking improvement districts, irrigation  
6 districts, or other districts authorized by law for the reclamation or  
7 development of waste or undeveloped lands.

8 (4) "Public work" means all work, construction, alteration, repair,  
9 or improvement other than ordinary maintenance, executed at the cost of  
10 the state or of any municipality, or which is by law a lien or charge  
11 on any property therein. All public works, including maintenance when  
12 performed by contract shall comply with chapter 39.12 RCW. "Public  
13 work" does not include work, construction, alteration, repair, or  
14 improvement performed under contracts entered into under RCW  
15 36.102.060(4) or under development agreements entered into under RCW  
16 36.102.060(7) or leases entered into under RCW 36.102.060(8).

17 (5) "Resident contractor" means a contractor certified by the  
18 department of general administration as:

19 (a) Registered as a contractor under chapter 18.27 RCW or licensed  
20 as an electrical contractor under chapter 19.28 RCW;

21 (b) Maintaining a place of business within the state staffed by the  
22 contractor or an employee of the contractor for a period of six months  
23 immediately preceding the date of the bid;

24 (c)(i) Paying residents of the state at least eighty-five percent  
25 of its payroll, in dollar volume; or

26 (ii) Employing residents of the state as at least eighty-five  
27 percent of its employees; and

28 (d)(i) Incorporated or qualified to do business under Title 25 RCW;

29 (ii) A sole proprietorship and the proprietor is a resident of the  
30 state;

31 (iii) A limited liability company organized under chapter 25.15 RCW  
32 and all members are residents of the state;

33 (iv) A partnership under chapter 25.05 or 25.10 RCW and all  
34 partners are residents of the state; or

35 (v) If a joint venture, composed entirely of ventures that qualify  
36 under (c) of this subsection.

37 (6) "Responsible bidder" means a contractor who meets the criteria  
38 in RCW 39.04.350.

1           ((+6+)) (7) "State" means the state of Washington and all  
2 departments, supervisors, commissioners, and agencies of the state.

3           NEW SECTION. **Sec. 2.** A new section is added to chapter 39.04 RCW  
4 to read as follows:

5           (1) The state or municipality shall award a contract to the  
6 responsible bidder with the lowest responsive bid after a resident  
7 contractor preference of seven percent has been applied.

8           (2) A contractor shall be considered a resident contractor only if  
9 the contractor is certified as a resident contractor by the department.  
10 The procedure for application and certification is as follows:

11           (a) The department shall prepare an application form for  
12 certification as a resident contractor, and require such information  
13 and proof as the department deems necessary to certify the applicant as  
14 a resident contractor;

15           (b) The contractor seeking certification as a resident contractor  
16 shall complete the application form and submit it to the department  
17 prior to the submission of a bid on which the contractor desires to be  
18 given a preference;

19           (c) The department shall examine the application and may seek  
20 additional information or proof if necessary;

21           (d) The department shall issue the contractor a certification  
22 number which shall be valid until revoked and which, when used on a bid  
23 for a contract, entitles the contractor to be considered as a resident  
24 contractor; and

25           (e) The department shall revoke the certification number issued to  
26 a contractor upon making a determination that the contractor no longer  
27 meets the definition of resident contractor in RCW 39.04.010.

28           (3)(a) A contractor that receives the resident contractor  
29 preference provided for in this section based on false information,  
30 whether that information was provided or withheld, and which by reason  
31 of the information has been awarded a contract to which it would not  
32 otherwise have been entitled:

33           (i) Must pay the state an assessment equal to the difference  
34 between the contract amount and what the state's cost would have been  
35 if the contract had been properly awarded;

36           (ii) In addition to the amount specified in this subsection (3)(a)

1 and except as provided in (b) of this subsection, must pay a civil  
2 penalty of ten percent of the amount of the contract involved or one  
3 thousand dollars, whichever is less; and

4 (iii) Is ineligible to directly or indirectly transact any business  
5 with the state for a period of not less than six months and not more  
6 than three years, as determined by the director of the department.  
7 This ineligibility applies to the principals of the business and any  
8 subsequent businesses formed by those principals.

9 (b) In addition to being subject to the penalties under (a)(i) and  
10 (iii) of this subsection, a contractor that knowingly and with intent  
11 to defraud makes a false statement or fails to provide or conceals, or  
12 attempts to conceal, material information for the purpose of obtaining,  
13 or aiding another in obtaining, a preference under this section is  
14 subject to a civil penalty of ten percent of the amount of the contract  
15 involved or ten thousand dollars, whichever is greater.

16 (c)(i) A contractor subject to sanction under this subsection may  
17 request, within thirty days of the date of issuance of the notice of  
18 sanction, a hearing conducted pursuant to chapter 34.05 RCW.

19 (ii) If a contractor fails to pay an assessment or civil penalty  
20 after it has become final and not subject to further appeal, or after  
21 the court has entered final judgment in favor of the state, the  
22 attorney general may recover the assessment or penalty by action in the  
23 appropriate superior court. In such action, the validity and  
24 appropriateness of the final order imposing the assessment or penalty  
25 is not subject to review.

26 (4) For the purposes of this section, "department" means the  
27 department of general administration.

28 NEW SECTION. **Sec. 3.** All contracts entered into under this  
29 chapter on or after the effective date of this section are subject to  
30 the requirements established under section 2 of this act.

31 NEW SECTION. **Sec. 4.** If any part of this act is found to be in  
32 conflict with federal requirements that are a prescribed condition to  
33 the allocation of federal funds to the state, the conflicting part of  
34 this act is inoperative solely to the extent of the conflict and with  
35 respect to the agencies directly affected, and this finding does not  
36 affect the operation of the remainder of this act in its application to

1 the agencies concerned. Rules adopted under this act must meet federal  
2 requirements that are a necessary condition to the receipt of federal  
3 funds by the state.

4 NEW SECTION. **Sec. 5.** If any provision of this act or its  
5 application to any person or circumstance is held invalid, the  
6 remainder of the act or the application of the provision to other  
7 persons or circumstances is not affected.

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