

HOUSE BILL NO. 1494

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BECK.

3625H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

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

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

Section A. Chapter 34, RSMo, is amended by adding thereto one new section, to be known as section 34.075, to read as follows:

34.075. 1. For purposes of this section, the following terms shall mean:

(1) “Department”, the department of labor and industrial relations;

(2) “Director”, the director of the department of labor and industrial relations or the director’s designee;

(3) “Nonresident bidder”, a person or entity who does not meet the definition of a resident bidder;

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

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

(6) “Public utility”, includes municipally owned utilities and municipally owned waterworks;

(7) “Resident bidder”, a person or entity authorized to transact business in this state and having a place of business for transacting business within the state at which it is conducting and has conducted business for at least three years prior to the date of the first advertisement for the public improvement. If another state or foreign country has a more

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 **stringent definition of a resident bidder, the more stringent definition is applicable as to**
19 **bidders from that state or foreign country;**

20 **(8) “Resident labor force preference”, a requirement in which all or a portion of a**
21 **labor force working on a public improvement is a resident of a particular state or country.**

22 **2. Notwithstanding this chapter, when a contract for a public improvement is to be**
23 **awarded to the lowest and best bidder, a resident bidder shall be allowed a preference as**
24 **against a nonresident bidder from a state or foreign country if that state or foreign country**
25 **gives or requires any preference to bidders from that state or foreign country including,**
26 **but not limited to, any preference to bidders, the imposition of any type of labor force**
27 **preference, or any other form of preferential treatment to bidders or laborers from that**
28 **state or foreign country. The preference allowed a resident bidder shall be equal to the**
29 **preference given or required by the state or foreign country in which the nonresident**
30 **bidder is a resident. In the instance of a resident labor force preference, a nonresident**
31 **bidder shall apply the same resident labor force preference to a public improvement in this**
32 **state as would be required in the construction of a public improvement by the state or**
33 **foreign country in which the nonresident bidder is a resident.**

34 **3. If it is determined that this section shall cause denial of federal funds which**
35 **would otherwise be available, or would otherwise be inconsistent with requirements of any**
36 **federal law or regulation, this section shall be suspended, but only to the extent necessary**
37 **to prevent denial of the funds or to eliminate the inconsistency with federal requirements.**

38 **4. The public body involved in a public improvement shall require a nonresident**
39 **bidder to specify on all project bid specifications and contract documents whether any**
40 **preference as described in subsection 2 is in effect in the nonresident bidder’s state or**
41 **country of domicile at the time of a bid submittal.**

42 **5. The director and the department shall administer and enforce this section, and**
43 **the director shall adopt rules for the administration and enforcement of this section.**

44 **6. The director shall have the following powers and duties for the purposes of this**
45 **section:**

46 **(1) The director shall hold hearings and investigate charges of violations of this**
47 **section;**

48 **(2) The director shall, consistent with due process of law, enter any place of**
49 **employment to inspect records concerning labor force residency; to question an employer**
50 **or employee; and to investigate such facts, conditions, or matters as are deemed**
51 **appropriate in determining whether any person has violated the provisions of this section.**

52 **The director shall only make such an entry in response to a written complaint;**

53 **(3) The director shall develop a written complaint form applicable to this section**
54 **and make it available in department offices and on the department's interest site;**

55 **(4) The director shall sue for injunctive relief against the awarding of a contract,**
56 **the undertaking of a public improvement, or the continuation of a public improvement in**
57 **response to a violation of this section;**

58 **(5) The director shall investigate and ascertain the residency of a worker engaged**
59 **in any public improvement in this state;**

60 **(6) The director shall administer oaths, take or cause to be taken deposition of**
61 **witnesses, and require by subpoena the attendance and testimony of witnesses and the**
62 **production of all books, registers, payrolls, and other evidence relevant to a matter under**
63 **investigation or hearing;**

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

66 **(8) The director shall require a contractor or subcontractor to file, within ten days**
67 **of receipt of a request, any records enumerated in subsection 7 of this section. If the**
68 **contractor or subcontractor fails to provide the requested records within ten days, the**
69 **director shall direct, within fifteen days after the end of the ten-day period, the fiscal or**
70 **financial office charged with the custody and disbursement of funds of the public body that**
71 **contracted for construction of the public improvement or undertook the public**
72 **improvement, to immediately withhold from payment to the contractor or subcontractor**
73 **up to twenty-five percent of the amount to be paid to the contractor or subcontractor**
74 **under the terms of the contract or written instrument under which the public improvement**
75 **is being performed. The amount withheld shall be immediately released upon receipt by**
76 **the public body of a notice from the director indicating that the request for records as**
77 **required by this section has been satisfied.**

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

84 **8. Any person or entity that violates the provisions of this section is subject to a civil**
85 **penalty in an amount not to exceed one thousand dollars for each violation found in a first**
86 **investigation by the department, not to exceed five thousand dollars for each violation**
87 **found in a second investigation by the department, and not to exceed fifteen thousand**
88 **dollars for a third or subsequent violation found in any subsequent investigation by the**

89 **department. Each violation of this section for each worker and for each day the violation**
90 **continues constitutes a separate and distinct violation. In determining the amount of the**
91 **penalty, the department shall consider the appropriateness of the penalty to the person or**
92 **entity charged, upon determination of the gravity of the violations. The collection of these**
93 **penalties shall be enforced in a civil action brought by the attorney general on behalf of the**
94 **department.**

95 **9. A party seeking review of the department's determination pursuant to this**
96 **section shall file a written request for an informal conference. The request shall be received**
97 **by the department within fifteen days after the date of issuance of the department's**
98 **determination. During the conference, the party seeking review shall present written or**
99 **oral information and arguments as to why the department's determination should be**
100 **amended or vacated. The department shall consider the information and arguments**
101 **presented and issue a written decision advising all parties of the outcome of the conference.**

102 **10. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
103 **created under the authority delegated in this section shall become effective only if it**
104 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
105 **section 536.028. This section and chapter 536 are nonseverable, and if any of the powers**
106 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
107 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
108 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2020,**
109 **shall be invalid and void.**

✓