

HOUSE BILL 1850

By Johnson G

AN ACT to amend Tennessee Code Annotated, Title 4,
Chapter 15 and Title 54, Chapter 5, relative to
state construction projects.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Keep Jobs in Tennessee Act."

SECTION 2. Tennessee Code Annotated, Title 4, Chapter 15, Part 1, is amended by adding the following as new sections:

4-15-108.

(a) Tennessee labor shall be employed to perform at least eighty percent (80%) of the work for any project under § 4-15-102(a)(1) or (2). The commission may waive the requirement, if it finds:

(1) There is reasonable evidence that there is insufficient Tennessee labor to perform the work of the project; and

(2) Compliance with this section would substantially delay or prevent completion of the project.

(b) If the commission waives the requirement under this section, it shall post notice of the waiver and a justification for the waiver on its web site.

(c) The commission may not impose or seek contractual damages on a contractor for a delay in the project if the contractor has properly filed for a waiver and the delay in construction results from a delay in the commission's waiver approval process.

(d) Upon receipt of a complaint alleging that a contractor is not employing sufficient Tennessee labor, the commission shall notify the contractor against whom a complaint was made that a complaint has been received by the commission.

(e) The commission shall not begin investigating the complaint until after the project has been substantially completed. After commencing the investigation, the commission must complete its investigation within ninety (90) days.

(f) The commission shall not investigate or take any action regarding a complaint filed more than ninety (90) days after the project has been completed.

(g) If the commission determines that a contractor knowingly violated the requirements of employing sufficient Tennessee labor by clear and convincing evidence, the commission shall impose a fine on such contractor as follows:

(1) For the first violation, five thousand dollars (\$5,000) or an amount equal to one percent (1%) of the cost of the contract, whichever is less;

(2) For the second violation, ten thousand dollars (\$10,000) or an amount equal to one percent (1%) of the cost of the contract, whichever is less;

(3) For the third violation or subsequent violation, twenty-five thousand dollars (\$25,000) or an amount equal to one percent (1%) of the cost of the contract, whichever is less; or

(4) If the commission has imposed three (3) fines on a contractor under this section within five (5) years and finds the violations to be egregious, the commission may initiate proceedings to debar the contractor.

(h) The commission may dismiss a complaint if, after conducting an investigation, the commission determines that the circumstances that led to the complaint resulted from clerical error.

(i) A contractor who is found to have violated this section may appeal the finding. If the finding is appealed, the commission shall hold a hearing in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The commission

may either conduct the hearing or appoint an administrative law judge from the secretary of state to preside over the hearing.

(j) The commission shall promulgate rules implementing this section in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, including:

(1) A procedure for filing a complaint alleging that a contractor is violating this section;

(2) A procedure for the investigation of any complaint alleging a violation of this section; and

(3) A procedure for filing an appeal under this section.

4-15-109.

(a) In any bidding process for a project in which a bid is received from a bidder who is not a resident bidder and who is from a state that provides a percentage bidding preference to resident bidders of that state, a comparable percentage disadvantage shall be applied to the bid of that bidder.

(b) Any request for proposals issued by a state agency or political subdivision of this state must include a notice to nonresident bidders that if the nonresident bidder is from a state that provides a bidding preference to bidders from that state, then a comparable percentage disadvantage will be applied to the bid of that nonresident bidder. The notice must also specify that the bidder may obtain additional information from the commission's web site.

(c)(1) Whenever the lowest bidder on a project under § 4-15-102(a)(1) or (2) is a resident of another state that is contiguous to this state and allows a preference to a resident contractor of that state, a like reciprocal preference is allowed to the lowest responsible and responsive bidder on such project who is either a resident of this state

or is a resident of another state that does not allow for a preference to a resident contractor of that state.

(2) The commission shall survey and compile a list of states providing a bidding preference in construction contracts to resident bidders. The list must include:

- (A) Details on the type of preference provided by each state;
- (B) The amount of the preference; and
- (C) The manner in which the preference is applied.

(3) The commission shall complete the initial list on or before July 1, 2015, and shall update the list annually thereafter. The commission shall submit the list to the General Assembly including the annual compiled list and any recommendations necessary to implement this section. The commission shall also make the list available to the public on the commission's web site.

SECTION 3. Tennessee Code Annotated, Section 4-15-107, is amended by adding the following language as new appropriately designated subdivisions:

() "Contractor" means a means any person or entity that undertakes to, attempts to or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct or in any manner assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down or furnishing labor to install material or equipment for any building, sewer, grading, excavation, pipeline, public utility structure, project development, housing, housing development, improvement or any other necessarily related construction;

() "Nonresident bidder" means a bidder that does not satisfy the criteria to be a resident bidder;

() "Resident bidder" means:

(A) A person, partnership, corporation, or joint venture authorized to transact business in this state and maintaining its principal place of business in this state; or

(B) A person, partnership, corporation, or joint venture authorized to transact business in in this state who also:

(1) Maintains a place of business in this state; and

(2) Has paid unemployment compensation premiums in this state for at least six (6) of the eight (8) quarters immediately prior to bidding on a construction contract for a public works project;

() "Tennessee labor" means a resident of this state at the time of employment or at the time the public works project commences without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion, except when sex or age is a legal occupational qualification;

() "Resident of this state" means a person who maintains a bona fide residence in this state. Proof of residency in this state may be demonstrated by producing any two (2) of the following documents that are current at the time of employment or at the commencement of a project under § 4-15-102(a)(1) or (2):

(A) Bank statement;

(B) Form I-94 or I-551 issued by the United States citizenship and immigration service;

(C) Motor vehicle registration issued by this state;

(D) Receipt for personal property or real estate taxes paid within the last year prior to employment or commencement of the public works project;

(E) Rental or mortgage contract fully signed and executed;

(F) Valid driver license issued by this state;

(G) Valid photo identification issued by this state;

(H) Voter registration issued by this state; or

(I) W-2 form issued by the United States internal revenue service.

SECTION 4. Tennessee Code Annotated, Section 54-5-103, is amended by adding the following new subsections:

() "Contractor" means any person or entity that undertakes to, attempts to or submits a price or bid or offers to construct, reconstruct, develop, enlarge, maintain, repair, provide drainage to a street, road, highway, freeway, or parking lot or any necessarily related construction;

() "Nonresident bidder" means a bidder that does not satisfy the criteria to be a resident bidder;

() "Resident bidder" means:

(A) A person, partnership, corporation, or joint venture authorized to transact business in this state and maintaining its principal place of business in this state; or

(B) A person, partnership, corporation, or joint venture authorized to transact business in this state who also:

(1) Maintains a place of business in this state; and

(2) Has paid unemployment compensation premiums in this state for at least six (6) of the eight (8) quarters immediately prior to bidding on a construction contract for a public works project;

() "Tennessee labor" means a resident of this state at the time of employment or at the time the road or highway construction project commences without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion, except when sex or age is a legal occupational qualification;

() “Resident of this state” means a person who maintains a bona fide residence in this state. Proof of residency in this state may be demonstrated by producing any two (2) of the following documents that are current at the time of employment or at the commencement of a road or highway project:

(A) Bank statement;

(B) Form I-94 or I-551 issued by the United States citizenship and immigration service;

(C) Motor vehicle registration issued by this state;

(D) Receipt for personal property or real estate taxes paid within the last year prior to employment or commencement of the public works project;

(E) Rental or mortgage contract fully signed and executed;

(F) Valid driver license issued by this state;

(G) Valid photo identification issued by this state;

(H) Voter registration issued by this state; or

(I) W-2 form issued by the United States internal revenue service;

() “Road and highway construction project” means the construction, reconstruction, development, enlargement, maintenance, repair, or drainage of a public street, road, highway, freeway, parking lot, including any necessarily related construction;

SECTION 5. Tennessee Code Annotated, Title 54, Chapter 5, Part 1, is amended by adding the following new sections:

54-5-146.

(a) Tennessee labor shall be employed to perform at least eighty percent (80%) of the work for any road or highway construction project. The commissioner may waive the requirement, if:

(1) There is reasonable evidence that there is insufficient Tennessee labor to perform the work of the road or highway construction project; and

(2) Compliance with this section would create an undue burden substantially delay or prevent completion of the project.

(b) If the commissioner waives the requirement under this section, it shall post notice of the waiver and a justification for the waiver on its web site.

(c) The commissioner may not impose or seek contractual damages on a contractor for a delay in the project if the contractor has properly filed for a waiver and the delay in construction results from a delay in the commissioner's waiver approval process.

(d) Upon receipt of a complaint alleging that a contractor is not employing sufficient Tennessee labor, the commissioner shall notify the contractor against whom a complaint was made that a complaint has been received.

(e) The commissioner shall not begin investigating the complaint until after the project has been substantially completed. After commencing the investigation, the commissioner must complete the investigation within ninety (90) days.

(f) The commissioner shall not investigate or take any action regarding a complaint filed more than ninety (90) days after the project has been completed.

(g) If the commissioner determines that a contractor knowingly violated the requirements of employing sufficient Tennessee labor by clear and convincing evidence, the commissioner shall impose a fine on such contractor as follows:

(1) For the first violation, five thousand dollars (\$5,000) or an amount equal to one percent (1%) of the cost of the contract, whichever is less;

(2) For the second violation, ten thousand dollars (\$10,000) or an amount equal to one percent (1%) of the cost of the contract, whichever is less;

(3) For the third violation or subsequent violation, twenty-five thousand dollars (\$25,000) or an amount equal to one percent (1%) of the cost of the contract, whichever is less; and

(4) If the commissioner has imposed three (3) fines on a contractor under this section within five (5) years and finds the violations to be egregious, the commissioner may initiate proceedings to debar the contractor.

(h) The commissioner may dismiss a complaint if, after conducting an investigation, the commissioner determines that the circumstances that led to the complaint resulted from clerical error.

(i) A contractor who is found to have violated this section may appeal the finding. If the finding is appealed, the commissioner shall hold a hearing in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The commissioner may either conduct the hearing or appoint an administrative law judge from the secretary of state to preside over the hearing.

(j) The commissioner shall promulgate rules implementing this section in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, including:

(1) A procedure for filing a complaint alleging that a contractor is violating this section;

(2) A procedure for the investigation of any complaint alleging a violation of this section; and

(3) A procedure for filing an appeal under this section.

54-5-147.

(a) In any bidding process for a road or highway construction project in which a bid is received from a bidder who is not a resident bidder and who is from a state that

provides a percentage bidding preference to resident bidders of that state, a comparable percentage disadvantage shall be applied to the bid of that bidder unless this subsection conflicts with this state's eligibility to receive federal funds..

(b) Any request for proposals issued by a state agency or political subdivision of this state must include a notice to nonresident bidders that if the nonresident bidder is from a state that provides a bidding preference to bidders from that state, then a comparable percentage disadvantage will be applied to the bid of that nonresident bidder. The notice must also specify that the bidder may obtain additional information from the department's web site.

(c) Whenever the lowest bidder on a project in this state is a resident of another state that is contiguous to this state and allows a preference to a resident contractor of that state, a like reciprocal preference is allowed to the lowest bidder on the project who is either a resident of this state or is a resident of another state that does not allow for a preference to a resident contractor of that state unless this subsection conflicts with this state's eligibility to receive federal funds..

(d) The commissioner shall survey and compile a list of states providing a bidding preference in public works contracts to resident bidders. The list must include:

- (1) Details on the type of preference provided by each state;
- (2) The amount of the preference; and
- (3) The manner in which the preference is applied.

(e) The commissioner shall complete the initial list on or before July 1, 2015, and shall update the list annually thereafter. The commissioner shall submit the list to the General Assembly including the annual compiled list and any recommendations necessary to implement this section. The commissioner shall also make the list available to the public on the commissioner's web site.

SECTION 6. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part that can be given effect without the invalid provision or application, and to this end, the provisions of this act are severable.

SECTION 7. For purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect on January 1, 2015, the public welfare requiring it.