

# SENATE BILL NO. 242

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BECK.

0661S.01H

ADRIANE D. CROUSE, Secretary

## AN ACT

To amend chapter 105, 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 105, RSMo, is amended by adding thereto one new section, to be known as section 105.1550, to read as follows:

**105.1550. 1. For purposes of this section, the following terms 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 is not 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;

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 this  
52 section shall cause denial of federal funds which would  
53 otherwise be available, or would otherwise be inconsistent  
54 with requirements of any federal law or regulation, this  
55 section may be waived to the extent necessary to prevent  
56 denial of the funds or to eliminate the inconsistency with  
57 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 director shall adopt rules  
66 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 2021, shall be invalid and void.

✓