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**SUBSTITUTE SENATE BILL 5662**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Conway, Chase, Kline, Shin, Keiser, Kohl-Welles, White, Roach, Hobbs, Nelson, Prentice, Haugen, and Fraser)

READ FIRST TIME 02/21/11.

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 registered under  
18 chapter 18.27 RCW or licensed as an electrical contractor under chapter  
19 19.28 RCW and certified by the department of general administration as  
20 meeting the criteria specified in either (a) or (b) of this subsection.

21 (a) A registered contractor or licensed electrical contractor can  
22 be certified as a resident contractor by providing the department of  
23 general administration with evidence sufficient to demonstrate that the  
24 contractor:

25 (i) Maintained a place of business within the state staffed by the  
26 contractor or an employee of the contractor for a period of six months  
27 immediately preceding the date of initial application for certification  
28 as a resident contractor, and for the six-month period immediately  
29 preceding the date of the bid on which the contractor desires to be  
30 given a preference; and

31 (ii)(A) Incorporated or qualified to do business under Title 25  
32 RCW;

33 (B) Is a sole proprietorship and the proprietor is a resident of  
34 the state;

35 (C) Is a limited liability company organized under chapter 25.15  
36 RCW and all members are residents of the state;

37 (D) Is a partnership under chapter 25.05 or 25.10 RCW and all  
38 partners are residents of the state; or

1 (E) Is a joint venture, composed entirely of ventures that qualify  
2 under (b) of this subsection.

3 (b) A registered contractor or licensed electrical contractor can  
4 be certified as a resident contractor by providing the department of  
5 general administration with evidence sufficient to demonstrate that the  
6 contractor, at the time of application for certification as a resident  
7 contractor, is:

8 (i) Paying residents of the state at least eighty-five percent of  
9 its payroll, in dollar volume, on public work being performed for the  
10 state or any municipality; or

11 (ii) Employing residents of the state as at least eighty-five  
12 percent of its employees on public work being performed for the state  
13 or any municipality.

14 (c) A contractor certified as a resident contractor under this  
15 subsection must continue to meet the payroll or employment threshold  
16 through the period of certification.

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

19 ~~((+6))~~ (7) "State" means the state of Washington and all  
20 departments, supervisors, commissioners, and agencies of the state.

21 NEW SECTION. Sec. 2. A new section is added to chapter 39.04 RCW  
22 to read as follows:

23 (1) The state or municipality shall award a contract to the  
24 responsible bidder with the lowest responsive bid after a resident  
25 contractor preference of five percent has been applied.

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

29 (a) The department shall prepare an application form for  
30 certification as a resident contractor, and require such information  
31 and proof as the department deems necessary to certify the applicant as  
32 a resident contractor;

33 (b) The contractor seeking certification as a resident contractor  
34 shall complete the application form and submit it to the department  
35 prior to the submission of a bid on which the contractor desires to be  
36 given a preference;

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

3 (d) The department shall issue the contractor a certification  
4 number which shall be valid until revoked and which, when used on a bid  
5 for a contract, entitles the contractor to be considered as a resident  
6 contractor; and

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

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

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

18 (ii) In addition to the amount specified in this subsection (3)(a)  
19 and except as provided in (b) of this subsection, must pay a civil  
20 penalty of ten percent of the amount of the contract involved or one  
21 thousand dollars, whichever is less; and

22 (iii) Is ineligible to directly or indirectly transact any business  
23 with the state or any municipality for a period of not less than six  
24 months and not more than three years, as determined by the director of  
25 the department. This ineligibility applies to the principals of the  
26 business and any subsequent businesses formed by those principals.

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

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

37 (ii) If a contractor fails to pay an assessment or civil penalty  
38 after it has become final and not subject to further appeal, or after

1 the court has entered final judgment in favor of the state, the  
2 attorney general may recover the assessment or penalty by action in the  
3 appropriate superior court. In such action, the validity and  
4 appropriateness of the final order imposing the assessment or penalty  
5 is not subject to review.

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

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

11 NEW SECTION. **Sec. 4.** If any part of this act is found to be in  
12 conflict with federal requirements that are a prescribed condition to  
13 the allocation of federal funds to the state, the conflicting part of  
14 this act is inoperative solely to the extent of the conflict and with  
15 respect to the agencies directly affected, and this finding does not  
16 affect the operation of the remainder of this act in its application to  
17 the agencies concerned. Rules adopted under this act must meet federal  
18 requirements that are a necessary condition to the receipt of federal  
19 funds by the state.

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

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