

Senate File 533

S-3325

1 Amend Senate File 533 as follows:

2 1. Page 33, after line 17 by inserting:

3 <DIVISION  
4 PUBLIC IMPROVEMENT CONTRACTS

5 Sec. \_\_\_\_\_. Section 73A.21, Code 2011, is amended to  
6 read as follows:

7 73A.21 Reciprocal resident bidder and resident labor  
8 force preference by state, its agencies, and political  
9 subdivisions — penalties.

10 1. For purposes of this section:

11 a. "Commissioner" means the labor commissioner  
12 appointed pursuant to section 91.2, or the labor  
13 commissioner's designee.

14 b. "Division" means the division of labor of the  
15 department of workforce development.

16 c. "Nonresident bidder" means a person or entity who  
17 does not meet the definition of a resident bidder.

18 d. "Public body" means the state and any of its  
19 political subdivisions, including a school district,  
20 public utility, or the state board of regents.

21 ~~a-~~ e. "Public improvement" means public  
22 improvements as defined in section 73A.1 a building or  
23 other construction work to be paid for in whole or in  
24 part by the use of funds of the state, its agencies,  
25 and any of its political subdivisions and includes road  
26 construction, reconstruction, and maintenance projects.

27 f. "Public utility" includes municipally owned  
28 utilities and municipally owned waterworks.

29 ~~b-~~ g. "Resident bidder" means a person or entity  
30 authorized to transact business in this state and  
31 having a place of business for transacting business  
32 within the state at which it is conducting and has  
33 conducted business for at least ~~six months~~ three years  
34 prior to the date of the first advertisement for the  
35 public improvement and in the case of a corporation,  
36 having at least fifty percent of its common stock  
37 owned by residents of this state. If another state  
38 or foreign country has a more stringent definition of  
39 a resident bidder, the more stringent definition is  
40 applicable as to bidders from that state or foreign  
41 country.

42 h. "Resident labor force preference" means a  
43 requirement in which all or a portion of a labor force  
44 working on a public improvement is a resident of a  
45 particular state or country.

46 2. Notwithstanding this chapter, chapter 73,  
47 chapter 309, chapter 310, chapter 331, or chapter  
48 384, when a contract for a public improvement is  
49 to be awarded to the lowest responsible bidder, a  
50 resident bidder shall be allowed a preference as

1 against a nonresident bidder from a state or foreign  
2 country ~~which~~ if that state or foreign country gives  
3 or requires a any preference to bidders from that  
4 state or foreign country, including but not limited  
5 to any preference to bidders, the imposition of any  
6 type of labor force preference, or any other form of  
7 preferential treatment to bidders or laborers from that  
8 state or foreign country. The preference ~~is~~ allowed  
9 shall be equal to the preference given or required by  
10 the state or foreign country in which the nonresident  
11 bidder is a resident. In the instance of a resident  
12 labor force preference, a nonresident bidder shall  
13 apply the same resident labor force preference to a  
14 public improvement in this state as would be required  
15 in the construction of a public improvement by the  
16 state or foreign country in which the nonresident  
17 bidder is a resident.

18 ~~3. This section applies to the state, its agencies,~~  
19 ~~and any political subdivisions of the state.~~

20 ~~4.~~ 3. If it is determined that this may cause  
21 denial of federal funds which would otherwise be  
22 available, or would otherwise be inconsistent with  
23 requirements of any federal law or regulation, this  
24 section shall be suspended, but only to the extent  
25 necessary to prevent denial of the funds or to  
26 eliminate the inconsistency with federal requirements.

27 4. The public body involved in a public improvement  
28 shall require a nonresident bidder to specify on all  
29 project bid specifications and contract documents  
30 whether any preference as described in subsection 2 is  
31 in effect in the nonresident bidder's state or country  
32 of domicile at the time of a bid submittal.

33 5. The commissioner and the division shall  
34 administer and enforce this section, and the  
35 commissioner shall adopt rules for the administration  
36 and enforcement of this section as provided in section  
37 91.6.

38 6. The commissioner shall have the following powers  
39 and duties for the purposes of this section:

40 a. The commissioner may hold hearings and  
41 investigate charges of violations of this section.

42 b. The commissioner may, consistent with due  
43 process of law, enter any place of employment to  
44 inspect records concerning labor force residency, to  
45 question an employer or employee, and to investigate  
46 such facts, conditions, or matters as are deemed  
47 appropriate in determining whether any person  
48 has violated the provisions of this section. The  
49 commissioner shall only make such an entry in response  
50 to a written complaint.

1 c. The commissioner shall develop a written  
2 complaint form applicable to this section and make it  
3 available in division offices and on the department of  
4 workforce development's internet site.  
5 d. The commissioner may sue for injunctive relief  
6 against the awarding of a contract, the undertaking of  
7 a public improvement, or the continuation of a public  
8 improvement in response to a violation of this section.  
9 e. The commissioner may investigate and ascertain  
10 the residency of a worker engaged in any public  
11 improvement in this state.  
12 f. The commissioner may administer oaths, take  
13 or cause to be taken deposition of witnesses, and  
14 require by subpoena the attendance and testimony of  
15 witnesses and the production of all books, registers,  
16 payrolls, and other evidence relevant to a matter under  
17 investigation or hearing.  
18 g. The commissioner shall require a contractor or  
19 subcontractor to file, within ten days of receipt of a  
20 request, any records enumerated in subsection 8. If  
21 the contractor or subcontractor fails to provide the  
22 requested records within ten days, the commissioner  
23 may direct, within fifteen days after the end of the  
24 ten-day period, that the fiscal or financial office  
25 charged with the custody and disbursement of funds of  
26 the public body that contracted for construction of the  
27 public improvement or undertook the public improvement,  
28 to immediately withhold from payment to the contractor  
29 or subcontractor up to twenty-five percent of the  
30 amount to be paid to the contractor or subcontractor  
31 under the terms of the contract or written instrument  
32 under which the public improvement is being performed.  
33 The amount withheld shall be immediately released  
34 upon receipt by the public body of a notice from the  
35 commissioner indicating that the request for records as  
36 required by this section has been satisfied.  
37 7. While participating in a public improvement,  
38 a nonresident bidder domiciled in a state or country  
39 that has established a resident labor force preference  
40 shall make and keep, for a period of not less than  
41 three years, accurate records of all workers employed  
42 by the contractor or subcontractor on the public  
43 improvement. The records shall include each worker's  
44 name, address, telephone number when available, social  
45 security number, trade classification, and the starting  
46 and ending time of employment.  
47 8. Any person or entity that violates the  
48 provisions of this section is subject to a civil  
49 penalty in an amount not to exceed one thousand dollars  
50 for each violation found in a first investigation by

1 the division, not to exceed five thousand dollars  
2 for each violation found in a second investigation  
3 by the division, and not to exceed fifteen thousand  
4 dollars for a third or subsequent violation found  
5 in any subsequent investigation by the division.  
6 Each violation of this section for each worker and  
7 for each day the violation continues constitutes a  
8 separate and distinct violation. In determining the  
9 amount of the penalty, the division shall consider the  
10 appropriateness of the penalty to the person or entity  
11 charged, upon determination of the gravity of the  
12 violations. The collection of these penalties shall  
13 be enforced in a civil action brought by the attorney  
14 general on behalf of the division.

15 9. A party seeking review of the division's  
16 determination pursuant to this section may file a  
17 written request for an informal conference. The  
18 request must be received by the division within fifteen  
19 days after the date of issuance of the division's  
20 determination. During the conference, the party  
21 seeking review may present written or oral information  
22 and arguments as to why the division's determination  
23 should be amended or vacated. The division shall  
24 consider the information and arguments presented and  
25 issue a written decision advising all parties of the  
26 outcome of the conference.

27 Sec. \_\_\_\_. Section 331.341, subsection 2, Code 2011,  
28 is amended to read as follows:

29 2. The board shall give preference to Iowa products  
30 and labor in accordance with chapter 73 and shall  
31 comply with bid and contract requirements in chapter  
32 26.

33 Sec. \_\_\_\_. REPEAL. Sections 73.3 and 73.4, Code  
34 2011, are repealed.

35 Sec. \_\_\_\_. EFFECTIVE UPON ENACTMENT. This division  
36 of this Act, being deemed of immediate importance,  
37 takes effect upon enactment.

38 Sec. \_\_\_\_. APPLICABILITY. This division of this  
39 Act applies to all public improvement projects, and to  
40 public improvement contracts entered into on or after  
41 July 1, 2011.>

42 2. By renumbering as necessary.

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