

**Senate File 276 - Introduced**

SENATE FILE 276

BY SODDERS

**A BILL FOR**

1 An Act relating to reciprocal preferences for bidders on public  
2 improvement contracts and including effective date and  
3 applicability provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 73A.21, Code 2011, is amended to read as  
2 follows:

3 **73A.21 Reciprocal resident bidder and resident labor force**  
4 **preference by state, its agencies, and political subdivisions —**  
5 **penalties.**

6 1. For purposes of this section:

7 a. "Commissioner" means the labor commissioner appointed  
8 pursuant to section 91.2, or the labor commissioner's designee.

9 b. "Division" means the division of labor of the department  
10 of workforce development.

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

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

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

22 f. "Public utility" includes municipally owned utilities and  
23 municipally owned waterworks.

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

35 h. "Resident labor force preference" means a requirement in

1 which all or a portion of a labor force working on a public  
2 improvement is a resident of a particular state or country.

3 2. Notwithstanding this chapter, chapter 73, chapter 309,  
4 chapter 310, chapter 331, or chapter 384, when a contract for a  
5 public improvement is to be awarded to the lowest responsible  
6 bidder, a resident bidder shall be allowed a preference as  
7 against a nonresident bidder from a state or foreign country  
8 ~~which~~ if that state or foreign country gives or requires a  
9 any preference to bidders from that state or foreign country,  
10 including but not limited to any preference to bidders, the  
11 imposition of any type of labor force preference, or any other  
12 form of preferential treatment to bidders or laborers from that  
13 state or foreign country. The preference is allowed shall  
14 be equal to the preference given or required by the state or  
15 foreign country in which the nonresident bidder is a resident.  
16 In the instance of a resident labor force preference, a  
17 nonresident bidder shall apply the same resident labor force  
18 preference to a public improvement in this state as would be  
19 required in the construction of a public improvement by the  
20 state or foreign country in which the nonresident bidder is a  
21 resident.

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

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

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

1     5. The commissioner and the division shall administer and  
2 enforce this section, and the commissioner shall adopt rules  
3 for the administration and enforcement of this section as  
4 provided in section 91.6.

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

7     a. The commissioner may hold hearings and investigate  
8 charges of violations of this section.

9     b. The commissioner may, consistent with due process of law,  
10 enter any place of employment to inspect records concerning  
11 labor force residency, to question an employer or employee, and  
12 to investigate such facts, conditions, or matters as are deemed  
13 appropriate in determining whether any person has violated the  
14 provisions of this section. The commissioner shall only make  
15 such an entry in response to a written complaint.

16     c. The commissioner shall develop a written complaint form  
17 applicable to this section and make it available in division  
18 offices and on the department of workforce development's  
19 internet site.

20     d. The commissioner may sue for injunctive relief against  
21 the awarding of a contract, the undertaking of a public  
22 improvement, or the continuation of a public improvement in  
23 response to a violation of this section.

24     e. The commissioner may investigate and ascertain the  
25 residency of a worker engaged in any public improvement in this  
26 state.

27     f. The commissioner may administer oaths, take or cause to  
28 be taken deposition of witnesses, and require by subpoena the  
29 attendance and testimony of witnesses and the production of all  
30 books, registers, payrolls, and other evidence relevant to a  
31 matter under investigation or hearing.

32     g. The commissioner shall require a contractor or  
33 subcontractor to file, within ten days of receipt of a request,  
34 any records enumerated in subsection 8. If the contractor or  
35 subcontractor fails to provide the requested records within ten

1 days, the commissioner may direct, within fifteen days after  
2 the end of the ten-day period, that the fiscal or financial  
3 office charged with the custody and disbursement of funds of  
4 the public body that contracted for construction of the public  
5 improvement or undertook the public improvement, to immediately  
6 withhold from payment to the contractor or subcontractor  
7 up to twenty-five percent of the amount to be paid to the  
8 contractor or subcontractor under the terms of the contract  
9 or written instrument under which the public improvement is  
10 being performed. The amount withheld shall be immediately  
11 released upon receipt by the public body of a notice from  
12 the commissioner indicating that the request for records as  
13 required by this section has been satisfied.

14 7. While participating in a public improvement, a  
15 nonresident bidder domiciled in a state or country that  
16 has established a resident labor force preference shall  
17 make and keep, for a period of not less than three years,  
18 accurate records of all workers employed by the contractor or  
19 subcontractor on the public improvement. The records shall  
20 include each worker's name, address, telephone number when  
21 available, social security number, trade classification, and  
22 the starting and ending time of employment.

23 8. Any person or entity that violates the provisions of  
24 this section is subject to a civil penalty in an amount not to  
25 exceed one thousand dollars for each violation found in a first  
26 investigation by the division, not to exceed five thousand  
27 dollars for each violation found in a second investigation  
28 by the division, and not to exceed fifteen thousand dollars  
29 for a third or subsequent violation found in any subsequent  
30 investigation by the division. Each violation of this section  
31 for each worker and for each day the violation continues  
32 constitutes a separate and distinct violation. In determining  
33 the amount of the penalty, the division shall consider the  
34 appropriateness of the penalty to the person or entity charged,  
35 upon determination of the gravity of the violations. The

1 collection of these penalties shall be enforced in a civil  
2 action brought by the attorney general on behalf of the  
3 division.

4 9. A party seeking review of the division's determination  
5 pursuant to this section may file a written request for an  
6 informal conference. The request must be received by the  
7 division within fifteen days after the date of issuance of  
8 the division's determination. During the conference, the  
9 party seeking review may present written or oral information  
10 and arguments as to why the division's determination should  
11 be amended or vacated. The division shall consider the  
12 information and arguments presented and issue a written  
13 decision advising all parties of the outcome of the conference.

14 Sec. 2. EFFECTIVE UPON ENACTMENT. This Act, being deemed of  
15 immediate importance, takes effect upon enactment.

16 Sec. 3. APPLICABILITY. This Act applies to all public  
17 improvement projects, and to public improvement contracts  
18 entered into on or after July 1, 2011.

19 EXPLANATION

20 This bill requires the labor commissioner to administer  
21 and enforce Code section 73A.21, which allows the state  
22 and political subdivisions awarding a contract for a public  
23 improvement to give a preference to an Iowa resident bidder  
24 over a nonresident bidder. The preference must be reciprocal  
25 to any preference given to in-state resident bidders over  
26 nonresident bidders by the state or foreign country of a  
27 nonresident bidder. The bill directs the labor commissioner to  
28 adopt rules as necessary to administer Code section 73A.21.

29 The bill includes in the reciprocity requirement nonresident  
30 bidders from a state or foreign country which gives any type  
31 of labor force preference or any other form of preference  
32 to resident bidders or laborers. The bill provides that if  
33 the provisions of Code section 73A.21 may cause denial of  
34 federal funds which would otherwise be available, or would  
35 otherwise be inconsistent with requirements of any federal law

1 or regulation, the Code section will be suspended, but only  
2 to the extent necessary to prevent denial of the funds or to  
3 eliminate the inconsistency with federal requirements. The  
4 bill requires a public body involved in a public improvement to  
5 require all nonresident bidders to specify on all project bid  
6 specifications and contract documents whether the nonresident  
7 bidder's state or country of residence has any type of resident  
8 bidder preference in effect at the time of a bid submittal.

9 The bill provides the labor commissioner with certain powers  
10 relating to nonresident bidders for public improvement projects  
11 to enforce Code section 73A.21. The bill provides the labor  
12 commissioner with investigative powers concerning nonresident  
13 bidders. Such powers include the power to hold hearings, to  
14 enter a place of employment to inspect records regarding labor  
15 force residency, to question employees, and to take depositions  
16 and subpoenas. The bill provides that the labor commissioner  
17 may sue for injunctive relief for violations of Code section  
18 73A.21. The bill requires the labor commissioner to develop  
19 a written complaint form for violations. The bill requires a  
20 nonresident contractor domiciled in a state or country that  
21 has a resident labor force preference to keep for at least  
22 three years accurate records containing certain identifying  
23 information including residency for all workers employed by  
24 the contractor. The bill provides that the labor commissioner  
25 may direct that up to 25 percent of the contract price be  
26 withheld from the contractor if the contractor does not file  
27 such records until the records are filed. The bill provides  
28 for a civil penalty of \$1,000 for each violation found during  
29 a first investigation, \$5,000 for each violation found during  
30 a second investigation, and \$15,000 for each violation found  
31 during a subsequent investigation. The bill provides that a  
32 separate and distinct violation occurs for each worker employed  
33 by the contractor for each day the worker is employed by the  
34 contractor. The bill provides for a review process with the  
35 division of labor and sets out procedural requirements. The

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1 bill modifies and adds applicable definitions for Code section  
2 73A.21.

3 The bill is effective upon enactment.

4 The bill applies to all public improvement projects, and to  
5 public improvement contracts entered into on or after July 1,  
6 2011.