

8A.311B Reciprocal resident bidder and resident labor force preference by state, its agencies, and political subdivisions — penalties.

1. For purposes of [this section](#):

a. “*Nonresident bidder*” means a person or entity who does not meet the definition of a resident bidder.

b. “*Public body*” means the state and any of its political subdivisions, including a school district, public utility, or the state board of regents.

c. “*Public improvement*” means 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, and any of its political subdivisions and includes road construction, reconstruction, and maintenance projects.

d. “*Public utility*” includes municipally owned utilities and municipally owned waterworks.

e. “*Resident bidder*” means a person or entity authorized to transact business in this state and having a place of business for transacting business within the state at which it is conducting and has conducted business for at least three years prior to the date of the first advertisement for the public improvement. If another state or foreign country has a more stringent definition of a resident bidder, the more stringent definition is applicable as to bidders from that state or foreign country.

f. “*Resident labor force preference*” means a requirement in which all or a portion of a labor force working on a public improvement is a resident of a particular state or country.

2. Notwithstanding [this chapter](#), [chapter 73](#), [chapter 309](#), [chapter 310](#), [chapter 331](#), or [chapter 384](#), when a contract for a public improvement is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference as against a nonresident bidder from a state or foreign country if that state or foreign country gives or requires any preference to bidders from that state or foreign country, including but not limited to any preference to bidders, the imposition of any type of labor force preference, or any other form of preferential treatment to bidders or laborers from that state or foreign country. The preference allowed shall be equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident. In the instance of a resident labor force preference, a nonresident bidder shall apply the same resident labor force preference to a public improvement in this state as would be required in the construction of a public improvement by the state or foreign country in which the nonresident bidder is a resident.

3. If it is determined that this may cause denial of federal funds which would otherwise be available, or would otherwise be inconsistent with requirements of any federal law or regulation, [this section](#) shall be suspended, but only to the extent necessary to prevent denial of the funds or to eliminate the inconsistency with federal requirements.

4. The public body involved in a public improvement shall require a nonresident bidder to specify on all project bid specifications and contract documents whether any preference as described in [subsection 2](#) is in effect in the nonresident bidder’s state or country of domicile at the time of a bid submittal.

5. The director and the department shall administer and enforce [this section](#), and the director shall adopt rules for the administration and enforcement of [this section](#).

6. The director shall have the following powers and duties for the purposes of [this section](#):

a. The director may hold hearings and investigate charges of violations of [this section](#).

b. The director may, consistent with due process of law, enter any place of employment to inspect records concerning labor force residency, to question an employer or employee, and to investigate such facts, conditions, or matters as are deemed appropriate in determining whether any person has violated the provisions of [this section](#). The director shall only make such an entry in response to a written complaint.

c. The director shall develop a written complaint form applicable to [this section](#) and make it available in department offices and on the department’s internet site.

d. The director may sue for injunctive relief against the awarding of a contract, the undertaking of a public improvement, or the continuation of a public improvement in response to a violation of [this section](#).

e. The director may investigate and ascertain the residency of a worker engaged in any public improvement in this state.

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

g. The director may employ qualified personnel as are necessary for the enforcement of [this section](#). Such personnel shall be employed pursuant to the merit system provisions of [subchapter IV](#) of [this chapter](#).

h. The director shall require a contractor or subcontractor to file, within ten days of receipt of a request, any records enumerated in [subsection 7](#). If the contractor or subcontractor fails to provide the requested records within ten days, the director may direct, within fifteen days after the end of the ten-day period, the fiscal or financial office charged with the custody and disbursement of funds of the public body that contracted for construction of the public improvement or undertook the public improvement, to immediately withhold from payment to the contractor or subcontractor up to twenty-five percent of the amount to be paid to the contractor or subcontractor under the terms of the contract or written instrument under which the public improvement is being performed. The amount withheld shall be immediately released upon receipt by the public body of a notice from the commissioner* indicating that the request for records as required by [this section](#) has been satisfied.

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

8. Any person or entity that violates the provisions of [this section](#) is subject to a civil penalty in an amount not to exceed one thousand dollars for each violation found in a first investigation by the department, not to exceed five thousand dollars for each violation found in a second investigation by the department, and not to exceed fifteen thousand dollars for a third or subsequent violation found in any subsequent investigation by the department. Each violation of [this section](#) for each worker and for each day the violation continues constitutes a separate and distinct violation. In determining the amount of the penalty, the department shall consider the appropriateness of the penalty to the person or entity charged, upon determination of the gravity of the violations. The collection of these penalties shall be enforced in a civil action brought by the attorney general on behalf of the department.

9. A party seeking review of the department's determination pursuant to [this section](#) may file a written request for an informal conference. The request must be received by the department within fifteen days after the date of issuance of the department's determination. During the conference, the party seeking review may present written or oral information and arguments as to why the department's determination should be amended or vacated. The department shall consider the information and arguments presented and issue a written decision advising all parties of the outcome of the conference.

84 Acts, ch 1045, §1; 85 Acts, ch 67, §5

C85, §23.21

C93, §73A.21

2008 Acts, ch 1031, §86; 2011 Acts, ch 133, §7, 10, 11; 2014 Acts, ch 1026, §17; 2022 Acts, ch 1032, §16; 2023 Acts, ch 19, §1446, 1447, 1459

C2024, §8A.311B

Referred to in §26.9, 26.16

See also §8A.311

**Director* probably intended; corrective legislation is pending

Section transferred from §73A.21 in Code 2024 pursuant to directive in 2023 Acts, ch 19, §1459

Subsection 1, paragraphs a and b stricken and paragraphs c - h redesignated as a - f

Subsections 5, 6, 8, and 9 amended