

SENATE FILE NO. SF0144

State funded construction projects/preference provisions.

Sponsored by: Senator(s) Nicholas, P., Hastert, Meier and
Peterson and Representative(s) Berger,
Harshman, Pedersen and Steward

A BILL

for

1 AN ACT relating to administration of government; modifying
2 procurement requirements for expenditures for capital
3 construction projects through the remainder of the fiscal
4 biennium; modifying and specifying preference requirements;
5 providing for waivers of the requirements; authorizing
6 modifications by executive order; providing for further
7 study; and providing for an effective date.

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9 *Be It Enacted by the Legislature of the State of Wyoming:*

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11 **Section 1.** W.S. 16-6-1001 is created to read:

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ARTICLE 10

14

CAPITAL CONSTRUCTION PROJECTS TEMPORARY RESTRICTIONS

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1 **16-6-1001. Capital construction projects**
2 **restrictions; preference requirements; waivers; sunset of**
3 **section.**

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5 (a) Unless otherwise prohibited by federal law, any
6 funds appropriated or authorized for expenditure during the
7 fiscal biennium ending June 30, 2012, which have not been
8 encumbered or obligated by contract as of January 17, 2011,
9 for capital construction projects shall be subject to the
10 restrictions of this section which shall be construed where
11 possible as complimentary and consistent with other
12 statutory requirements relating to competitive bidding and
13 contractor preferences. To the extent the restrictions in
14 this section are inconsistent with other state statutes,
15 this section shall supersede all such inconsistent
16 provisions and shall govern. This section shall be applied
17 as follows:

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19 (i) This paragraph shall apply to any alternate
20 design and construction delivery method as defined in W.S.
21 16-6-701(a)(v):

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23 (A) All contracts shall require the
24 construction manager at risk or design builder to conduct

1 an open bid process in compliance with Wyoming contractor
2 preference laws before awarding any subcontracts for work
3 to be performed for the project and before acceptance of
4 any guaranteed maximum price;

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6 (B) Unless exempted pursuant to
7 subparagraph (C) of this paragraph the construction manager
8 at risk or design builder shall award to Wyoming resident
9 contractors not less than seventy percent (70%) of the
10 value of the total subcontract work to be performed for the
11 project;

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13 (C) The requirement of subparagraph (B) of
14 this paragraph may be waived upon a written determination
15 that:

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17 (I) The work to be performed is
18 specialized or of such a scale that it can be more suitably
19 performed by out-of-state contractors;

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21 (II) The bid amounts submitted by
22 Wyoming subcontractors exceed one hundred five percent
23 (105%) of the costs of out-of-state providers for
24 equivalent quality of work or services; or

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(III) The enforcement of the requirement would unreasonably delay completion of construction.

(D) Any waiver shall be approved in writing by the following persons:

(I) For projects to be completed by the state of Wyoming, by the director of the department of administration and information;

(II) For projects to be completed by the University of Wyoming, by the president of the university and the president of the board of trustees;

(III) For projects subject to review by the school facilities commission, by the director of the school facilities commission and the chairman of the board of the school facilities commission; and

(IV) For projects completed by a community college, by the community college president and its chairman of the board of trustees.

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(E) Any approved waiver shall be documented in writing and provided to the governor and chairs of the joint appropriations interim committee.

(ii) This paragraph shall apply to all construction delivery methods:

(A) The procurement of furniture, fixtures and equipment shall be done by competitive bid based upon either:

(I) Generic specifications; or

(II) Specifications addressing performance standards and functional requirements determined by the agency, but without specification of individual brands or manufacturers.

(B) No person who was employed by the agency to prepare the bid documents, whether with or without compensation, shall be eligible to bid on the final bid package;

1 (C) A five percent (5%) preference shall be
2 granted to Wyoming resident suppliers for procurements
3 subject to this paragraph.

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5 (iii) All bids shall be open in public in an
6 office of the agency soliciting the bid;

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8 (iv) Contractor progress payments shall be made
9 only after the agency has been supplied with applicable
10 lien waivers signed by the materialman, subcontractor or
11 laborer, as applicable, or upon the contractor's affidavit
12 that all materialmen, subcontractors and laborers have been
13 paid for that portion of payment requested, less any
14 contracted amounts held for retainage or which the
15 contractor has a reasonable basis for dispute.

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17 (b) No funds subject to this section shall be
18 expended unless the contracting agency has submitted a plan
19 to the governor and cochairman of the joint appropriations
20 interim committee which promotes the employment of Wyoming
21 resident architects in the planning and design phases of
22 facilities funded with monies subject to this section. The
23 plans shall allow for partnerships between Wyoming

1 architectural firms and nonresident firms when necessary to
2 secure specialized services required for a project.

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4 (c) Any agency which has received an appropriation of
5 state funds on or after July 1, 2008, for any capital
6 construction project shall conduct a review of each project
7 funded with state funds to assess whether contractors that
8 were awarded contracts using a resident preference complied
9 in all respects to applicable resident preference laws. If
10 the agency determines that there is reasonable suspicion
11 that a contractor failed to comply with the resident
12 preference laws, the agency shall report the matter to the
13 attorney general. The attorney general shall take such
14 enforcement action on behalf of the state of Wyoming and
15 the agency against the contractor as he deems appropriate.

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17 (d) The governor may modify any requirement of this
18 section by executive order if he determines it to be
19 necessary to promote effective competitive bidding. Any
20 order shall be effective only until June 30, 2012 or until
21 superseded by law.

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23 (e) This section is repealed effective June 30, 2012.

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1 **Section 2.** The joint appropriations interim committee
2 shall study the impacts of the statutory changes under this
3 act and shall propose permanent changes to contractor
4 preference laws consistent with this act. The committee
5 shall further propose changes to the resident preference
6 laws as it determines necessary to effectively enforce
7 those laws and to deter violations of those provisions.
8 The committee shall present its recommendations for
9 consideration in the 2012 budget session.

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11 **Section 3.** This act is effective immediately upon
12 completion of all acts necessary for a bill to become law
13 as provided by Article 4, Section 8 of the Wyoming
14 Constitution.

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(END)