

IN THE SENATE

SENATE BILL NO. 1279

BY WERK AND MALEPEAI

AN ACT

RELATING TO PUBLIC WORKS CONTRACTS; TO PROVIDE A SHORT TITLE; REPEALING CHAPTER 10, TITLE 44, IDAHO CODE, RELATING TO PUBLIC WORKS CONTRACTS; AMENDING TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 10, TITLE 44, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE PREFERENCE FOR RESIDENT CONTRACTORS WITH LIMITATIONS, TO PROVIDE FOR DECERTIFICATION, TO PROVIDE DENIAL OF APPLICATION FOR RESIDENCY, TO PROVIDE LIMITATION ON SUBCONTRACTING BY RESIDENT CONTRACTORS, TO PROVIDE PREFERENCE FOR IDAHO LABOR AND MATERIALS IN CONTRACTS, TO PROVIDE PREFERENCE FOR IDAHO MATERIALS AND IDAHO AGRICULTURAL PRODUCTS REQUIRED IN PUBLIC PURCHASES WITH EXCEPTIONS, TO PROVIDE FOR STATEMENT OF IDAHO MATERIALS PREFERENCE IN REQUESTS FOR BIDS AND PROPOSALS, TO REQUIRE IDAHO MATERIALS PREFERENCE REQUIRED IN CONSTRUCTION OR MAINTENANCE OF PUBLIC STRUCTURES AND TO PROVIDE FOR GOVERNING OF FEDERAL FUNDS BY FEDERAL LAW; DECLARING AN EMERGENCY AND PROVIDING APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. SHORT TITLE. This act shall be known and may be designated as "The Idaho Business Opportunity and Jobs Act."

SECTION 2. That Chapter 10, Title 44, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Title 44, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 10, Title 44, Idaho Code, and to read as follows:

CHAPTER 10  
PUBLIC WORKS CONTRACTS

44-1001. DEFINITIONS. As used in this chapter:

(1) "Office and place of business" means a headquarters or administrative center where business activities are conducted or controlled.

(2) "Resident" means a person, partnership, association, firm, limited liability company or corporation certified as a resident by the department of labor prior to bidding upon the contract or responding to a request for proposal, subject to the following criteria:

(a) Any person who has been a resident of the state for one (1) year or more immediately prior to bidding upon the contract or responding to a request for proposal;

(b) A partnership, association, firm, limited liability company or corporation, each member or shareholder of which has been a resident of the state for one (1) year or more immediately prior to bidding upon the contract or responding to a request for proposal;

1 (c) A corporation organized under the laws of the state with at least  
 2 fifty percent (50%) of the issued and outstanding shares of stock in the  
 3 corporation owned by persons who have been residents of the state for  
 4 one (1) year or more prior to bidding upon the contract or responding  
 5 to a request for proposal, and which maintains its principal office and  
 6 place of business within the state, and the president of the corporation  
 7 has been a resident of the state for one (1) year or more immediately  
 8 prior to bidding upon the contract or responding to a request for  
 9 proposal;

10 (d) A corporation organized under the laws of the state which has  
 11 been in existence in the state for one (1) year or more and whose  
 12 president has been a resident of the state for one (1) year or more  
 13 immediately prior to bidding upon the contract or responding to a  
 14 request for proposal and maintains its principal office and place of  
 15 business within the state. If at least fifty percent (50%) of the  
 16 issued and outstanding shares of stock in the corporation are owned by  
 17 nonresidents, shares of the corporation shall:

18 (i) Have been acquired by nonresidents one (1) year or more  
 19 immediately prior to bidding upon the contract or responding to a  
 20 request for proposal; or

21 (ii) Be publicly traded and registered under section 13 or 15(d)  
 22 of the securities exchange act of 1934 for one (1) or more classes  
 23 of its shares.

24 (e) A limited liability company organized under the laws of the state  
 25 and which maintains its principal office and place of business in the  
 26 state and the managing members or the appointed managers of which have  
 27 been residents of the state for one (1) year or more immediately prior to  
 28 bidding upon the contract or responding to a request for proposal; or

29 (f) A person, partnership, limited liability company or corporation  
 30 which has satisfied the following requirements for the period of one  
 31 (1) year or more immediately prior to bidding upon the contract or  
 32 responding to a request for proposal:

33 (i) Has continuously maintained an office or place of business  
 34 within the state; and

35 (ii) Has continuously employed not less than one (1) full-time  
 36 employee within the state.

37 44-1002. RESIDENT CONTRACTORS -- PREFERENCE LIMITATION WITH  
 38 REFERENCE TO LOWEST BID OR QUALIFIED RESPONSE -- DECERTIFICATION -- DENIAL  
 39 OF APPLICATION FOR RESIDENCY. (1) If a contract is let by the state, any  
 40 department thereof, or any county, city, town, school district, community  
 41 college district or other public corporation of the state for the erection,  
 42 construction, alteration or repair of any public building, or other public  
 43 structure, or for making any addition thereto, or for any public work or  
 44 improvements, the contract shall be let, or the provision of services to  
 45 the governmental entity, if advertisement for bids or request for proposal  
 46 is not required, to a resident of the state. Unless an alternate design  
 47 and construction delivery method is used, if advertisement for bids or  
 48 request for proposal is required the contract shall be let to the responsible  
 49 certified resident making the lowest bid if the certified resident's bid is

1 not more than five percent (5%) higher than that of the lowest responsible  
2 nonresident bidder.

3 (2) If any person who is certified as a resident contractor for any  
4 reason loses that certification, that person may not be recertified as a  
5 resident for a period of one (1) year from the date of decertification.

6 (3) If any person who applies for certification as a resident  
7 contractor is denied certification because of not meeting the residency  
8 requirements, that person may not reapply for certification for a period  
9 of one hundred eighty (180) days from the date certification is denied.  
10 No person shall be denied certification because of inadvertent omission  
11 of information, as determined by the department of employment, on an  
12 application for resident certification.

13 (4) The department may make investigations as necessary to determine  
14 whether any person is eligible to receive or continue to hold a certificate  
15 of residency. The department may require or permit any person to file  
16 a statement in writing, under oath or otherwise as to all the facts and  
17 circumstances concerning the matter to be investigated. For the purpose  
18 of any investigation under this section, the director of the department  
19 or any person designated by him may administer oaths and affirmations,  
20 subpoena witnesses, and compel their attendance, take evidence and require  
21 the production of any books, papers, correspondence, memoranda, agreements  
22 or other documents or records, which the director or designated person deems  
23 relevant or material to the inquiry. In case of refusal to obey a subpoena  
24 issued to any person, any Idaho district court, upon application by the  
25 director, may issue to the person an order requiring him to appear before the  
26 director or the officer designated by him, to produce documentary evidence  
27 if so ordered, or to give evidence touching the matter under investigation  
28 or in question. Failure to obey the order of the court may be punished by the  
29 court as contempt of court.

30 (5) If, after investigation, the department believes that a  
31 certificate of residency should be denied or revoked, it shall provide  
32 notice to the applicant or certificate holder of its intent to deny or revoke  
33 the certificate and of the applicant or certificate holder's opportunity for  
34 a hearing if requested. Any hearing conducted under this subsection shall be  
35 conducted in accordance with chapter 52, title 67, Idaho Code. No less than a  
36 notice of thirty (30) calendar days shall be provided.

37 44-1003. LIMITATION ON SUBCONTRACTING BY RESIDENT CONTRACTORS. A  
38 successful resident bidder shall not subcontract more than twenty-five  
39 percent (25%) of the work covered by his contract to nonresident  
40 contractors.

41 44-1004. PREFERENCE FOR IDAHO LABOR AND MATERIALS REQUIRED IN  
42 CONTRACTS. Resident Idaho laborers, workmen and mechanics shall be used upon  
43 all work enumerated in section 44-1002, Idaho Code, whenever possible and  
44 any contract let shall so provide. Idaho materials and products of equal  
45 quality and desirability shall have preference over materials or products  
46 produced outside the state and any contract let shall so provide.

1 44-1005. PREFERENCE FOR IDAHO MATERIALS AND IDAHO AGRICULTURAL  
2 PRODUCTS REQUIRED IN PUBLIC PURCHASES -- EXCEPTION -- COST DIFFERENTIAL  
3 -- DEFINITION. (1) Every board, commission or other governing body of  
4 any state institution, and every person acting as purchasing agent for  
5 the board, commission or other governing body of any state institution or  
6 department, and every county, municipality, school district and community  
7 college district, shall prefer in all purchases for supplies, material,  
8 agricultural products, equipment, machinery and provisions to be used in  
9 the maintenance and upkeep of their respective institutions, supplies,  
10 materials, agricultural products, equipment, machinery and provisions  
11 produced, manufactured or grown in this state, and supplies, materials,  
12 agricultural products, equipment, machinery and provisions supplied by  
13 a resident of the state, competent and capable to provide service for the  
14 supplies, materials, agricultural products, equipment, machinery and  
15 provisions within the state of Idaho. Preference shall not be granted for  
16 articles of inferior quality to those offered by competitors outside of the  
17 state, but a differential of not to exceed five percent (5%) may be allowed  
18 in cost of contracts less than five million dollars (\$5,000,000) for the  
19 Idaho materials, supplies, agricultural products, equipment, machinery and  
20 provisions of quality equal to those of any other state or country.

21 (2) As used in this section, "agricultural products" means any  
22 horticultural, viticultural, vegetable product, livestock, livestock  
23 product, bees or honey, poultry or poultry product, sheep or wool product and  
24 timber or timber product.

25 44-1006. STATEMENT OF IDAHO MATERIALS PREFERENCE IN REQUESTS FOR  
26 BIDS AND PROPOSALS. All requests for bids and proposals for materials,  
27 supplies, agricultural products, equipment, machinery and provisions for  
28 the construction, maintenance and upkeep of every state, county, municipal,  
29 community college district or school district institution shall contain  
30 the words "preference is hereby given to materials, supplies, agricultural  
31 products, equipment, machinery and provisions produced, manufactured or  
32 grown in Idaho, or supplied by a resident of the state, quality being equal to  
33 articles offered by the competitors outside of the state."

34 44-1007. IDAHO MATERIALS PREFERENCE REQUIRED IN CONSTRUCTION OR  
35 MAINTENANCE OF PUBLIC STRUCTURES -- EXCEPTION -- COST DIFFERENTIAL. All  
36 public buildings, courthouses, public school buildings, public monuments  
37 and other public structures constructed in this state shall be constructed  
38 and maintained by materials produced or manufactured in Idaho if Idaho  
39 materials are suitable and can be furnished in marketable quantities.  
40 Preference shall not be granted for materials of an inferior quality to those  
41 offered by competitors outside of the state, but a differential of not to  
42 exceed five percent (5%) may be allowed in cost of contracts less than five  
43 million dollars (\$5,000,000) for the Idaho materials of equal quality as  
44 against materials from states having or enforcing a preference rule against  
45 "out of state" products.

46 44-1008. GOVERNING OF FEDERAL FUNDS BY FEDERAL LAW. The operation of  
47 this chapter upon the letting of any public works contract above mentioned,

1 in connection with which funds are granted or advanced by the United States  
2 of America, shall be subject to the effect, if any, of related laws of the  
3 United States and valid rules and regulations of federal agencies in charge,  
4 governing use and payment of the federal funds.

5 SECTION 4. An emergency existing therefor, which emergency is hereby  
6 declared to exist, this act shall be in full force and effect on and after  
7 its passage and approval and shall apply to all contracts entered into on and  
8 after the effective date of this act.