

IN THE SENATE

SENATE BILL NO. 1211

BY WERK

AN ACT

1 RELATING TO PUBLIC WORKS CONTRACTS; TO PROVIDE A SHORT TITLE; REPEALING  
2 CHAPTER 10, TITLE 44, IDAHO CODE, RELATING TO PUBLIC WORKS CONTRACTS;  
3 AMENDING TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 10,  
4 TITLE 44, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE PREFERENCE FOR RES-  
5 IDENT CONTRACTORS WITH LIMITATIONS, TO PROVIDE FOR DECERTIFICATION,  
6 TO PROVIDE DENIAL OF APPLICATION FOR RESIDENCY, TO PROVIDE LIMITATION  
7 ON SUBCONTRACTING BY RESIDENT CONTRACTORS, TO PROVIDE PREFERENCE FOR  
8 IDAHO LABOR AND MATERIALS IN CONTRACTS, TO PROVIDE PREFERENCE FOR IDAHO  
9 MATERIALS AND IDAHO AGRICULTURAL PRODUCTS REQUIRED IN PUBLIC PURCHASES  
10 WITH EXCEPTIONS, TO PROVIDE FOR STATEMENT OF IDAHO MATERIALS PREFERENCE  
11 IN REQUESTS FOR BIDS AND PROPOSALS, TO REQUIRE IDAHO MATERIALS PREFER-  
12 ENCE REQUIRED IN CONSTRUCTION OR MAINTENANCE OF PUBLIC STRUCTURES AND  
13 TO PROVIDE FOR GOVERNING OF FEDERAL FUNDS BY FEDERAL LAW; DECLARING AN  
14 EMERGENCY AND PROVIDING APPLICATION.  
15

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

17 SECTION 1. SHORT TITLE. This act shall be known and may be designated as  
18 the "Hire Idaho Act."

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20 hereby repealed.

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

24 CHAPTER 10  
25 PUBLIC WORKS CONTRACTS

26 44-1001. DEFINITIONS. As used in this chapter:

27 (1) "Office and place of business" means a headquarters or administra-  
28 tive center where business activities are conducted or controlled.

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

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

36 (b) A partnership, association, firm, limited liability company or  
37 corporation, each member or shareholder of which has been a resident of  
38 the state for one (1) year or more immediately prior to bidding upon the  
39 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 corpora-  
7 tion has been a resident of the state for one (1) year or more immedi-  
8 ately 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 been  
11 in existence in the state for one (1) year or more and whose president  
12 has been a resident of the state for one (1) year or more immediately  
13 prior to bidding upon the contract or responding to a request for pro-  
14 posal and maintains its principal office and place of business within  
15 the state. If at least fifty percent (50%) of the issued and outstanding  
16 shares of stock in the corporation are owned by nonresidents, shares of  
17 the corporation shall:

18 (i) Have been acquired by nonresidents one (1) year or more imme-  
19 diately prior to bidding upon the contract or responding to a re-  
20 quest 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 (1)  
31 year or more immediately prior to bidding upon the contract or respond-  
32 ing 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 em-  
36 ployee within the state.

37 44-1002. RESIDENT CONTRACTORS -- PREFERENCE LIMITATION WITH REFER-  
38 ENCE TO LOWEST BID OR QUALIFIED RESPONSE -- DECERTIFICATION -- DENIAL OF  
39 APPLICATION FOR RESIDENCY. (1) If a contract is let by the state, any de-  
40 partment 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 the  
45 governmental entity, if advertisement for bids or request for proposal is  
46 not required, to a resident of the state. Unless an alternate design and con-  
47 struction delivery method is used, if advertisement for bids or request for  
48 proposal is required the contract shall be let to the responsible certified  
49 resident making the lowest bid if the certified resident's bid is not more

1 than five percent (5%) higher than that of the lowest responsible nonresi-  
2 dent bidder.

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

6 (3) If any person who applies for certification as a resident contrac-  
7 tor is denied certification because of not meeting the residency require-  
8 ments, that person may not reapply for certification for a period of one  
9 hundred eighty (180) days from the date certification is denied. No person  
10 shall be denied certification because of inadvertent omission of informa-  
11 tion, as determined by the department of employment, on an application for  
12 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 a  
16 statement in writing, under oath or otherwise as to all the facts and cir-  
17 cumstances concerning the matter to be investigated. For the purpose of  
18 any investigation under this section, the director of the department or  
19 any person designated by him may administer oaths and affirmations, sub-  
20 poena witnesses, and compel their attendance, take evidence and require the  
21 production of any books, papers, correspondence, memoranda, agreements or  
22 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 di-  
25 rector, 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 certifi-  
31 cate of residency should be denied or revoked, it shall provide notice to the  
32 applicant or certificate holder of its intent to deny or revoke the certifi-  
33 cate and of the applicant or certificate holder's opportunity for a hear-  
34 ing if requested. Any hearing conducted under this subsection shall be con-  
35 ducted 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 suc-  
38 cessful resident bidder shall not subcontract more than twenty-five percent  
39 (25%) of the work covered by his contract to nonresident contractors.

40 44-1004. PREFERENCE FOR IDAHO LABOR AND MATERIALS REQUIRED IN CON-  
41 TRACTS. Resident Idaho laborers, workmen and mechanics shall be used upon  
42 all work enumerated in section 44-1002, Idaho Code, whenever possible and  
43 any contract let shall so provide. Idaho materials and products of equal  
44 quality and desirability shall have preference over materials or products  
45 produced outside the state and any contract let shall so provide.

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

21           (2) As used in this section, "agricultural products" means any horti-  
22 cultural, viticultural, vegetable product, livestock, livestock product,  
23 bees or honey, poultry or poultry product, sheep or wool product and timber  
24 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, sup-  
27 plies, agricultural products, equipment, machinery and provisions for the  
28 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 MAIN-  
35 TENANCE OF PUBLIC STRUCTURES -- EXCEPTION -- COST DIFFERENTIAL. All public  
36 buildings, courthouses, public school buildings, public monuments and other  
37 public structures constructed in this state shall be constructed and main-  
38 tained by materials produced or manufactured in Idaho if Idaho materials are  
39 suitable and can be furnished in marketable quantities. Preference shall  
40 not be granted for materials of an inferior quality to those offered by com-  
41 petitors outside of the state, but a differential of not to exceed five per-  
42 cent (5%) may be allowed in cost of contracts less than five million dol-  
43 lars (\$5,000,000) for the Idaho materials of equal quality as against ma-  
44 terials from states having or enforcing a preference rule against "out of  
45 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.