

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Bill No. 214, Page 5, Section 34.047, Line 12, by inserting after all of said line the
2 following:

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4 "34.075. 1. For purposes of this section, the following terms shall mean:

5 (1) "Department", the department of labor and industrial relations;

6 (2) "Director", the director of the department of labor and industrial relations or the
7 director's designee;

8 (3) "Nonresident bidder", a person or entity who does not meet the definition of a resident
9 bidder;

10 (4) "Public body", the state and any of its political subdivisions including, but not limited to,
11 a school district or public utility;

12 (5) "Public improvement", a building or other construction work to be paid for in whole or
13 in part by the use of funds of the state, its agencies, or any of its political subdivisions, including
14 road construction, reconstruction, and maintenance projects;

15 (6) "Public utility", includes municipally owned utilities and municipally owned
16 waterworks;

17 (7) "Resident bidder", a person or entity authorized to transact business in this state and
18 having a place of business for transacting business within the state at which it is conducting and has
19 conducted business for at least three years prior to the date of the first advertisement for the public
20 improvement. If another state or foreign country has a more stringent definition of a resident bidder,
21 the more stringent definition is applicable as to bidders from that state or foreign country;

22 (8) "Resident labor force preference", a requirement in which all or a portion of a labor force
23 working on a public improvement is a resident of a particular state or country.

24 2. Notwithstanding this chapter, when a contract for a public improvement is to be awarded
25 to the lowest and best bidder, a resident bidder shall be allowed a preference as against a nonresident
26 bidder from a state or foreign country if that state or foreign country gives or requires any
27 preference to bidders from that state or foreign country including, but not limited to, any preference
28 to bidders, the imposition of any type of labor force preference, or any other form of preferential
29 treatment to bidders or laborers from that state or foreign country. The preference allowed shall be
30 equal to the preference given or required by the state or foreign country in which the nonresident
31 bidder is a resident. In the instance of a resident labor force preference, a nonresident bidder shall
32 apply the same resident labor force preference to a public improvement in this state as would be
33 required in the construction of a public improvement by the state or foreign country in which the
34 nonresident bidder is a resident.

35 3. If it is determined that this section shall cause denial of federal funds which would
36 otherwise be available or would otherwise be inconsistent with requirements of any federal law or

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1 regulation, this section shall be suspended, but only to the extent necessary to prevent denial of the
2 funds or to eliminate the inconsistency with federal requirements.

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

7 5. The director and the department shall administer and enforce this section, and the director
8 shall adopt rules for the administration and enforcement of this section.

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

10 (1) The director shall hold hearings and investigate charges of violations of this section;

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

16 (3) The director shall develop a written complaint form applicable to this section and make
17 it available in department offices and on the department's interest site;

18 (4) The director shall sue for injunctive relief against the awarding of a contract, the
19 undertaking of a public improvement, or the continuation of a public improvement in response to a
20 violation of this section;

21 (5) The director shall investigate and ascertain the residency of a worker engaged in any
22 public improvement in this state;

23 (6) The director shall administer oaths, take or cause to be taken deposition of witnesses,
24 and require by subpoena the attendance and testimony of witnesses and the production of all books,
25 registers, payrolls, and other evidence relevant to a matter under investigation or hearing;

26 (7) The director shall employ qualified personnel as are necessary for the enforcement of
27 this section; and

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

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

44 8. Any person or entity that violates the provisions of this section is subject to a civil penalty
45 in an amount not to exceed one thousand dollars for each violation found in a first investigation by
46 the department, not to exceed five thousand dollars for each violation found in a second
47 investigation by the department, and not to exceed fifteen thousand dollars for a third or subsequent
48 violation found in any subsequent investigation by the department. Each violation of this section for
49 each worker and for each day the violation continues constitutes a separate and distinct violation. In

1 determining the amount of the penalty, the department shall consider the appropriateness of the
2 penalty to the person or entity charged, upon determination of the gravity of the violations. The
3 collection of these penalties shall be enforced in a civil action brought by the attorney general on
4 behalf of the department.

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

12 10. Any rule or portion of a rule, as that term is defined in section 536.010, that is created
13 under the authority delegated in this section shall become effective only if it complies with and is
14 subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and
15 chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to
16 chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
17 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after
18 August 28, 2019, shall be invalid and void."; and

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20 Further amend said bill by amending the title, enacting clause, and intersectional references
21 accordingly.