HOUSE BILL 967

By Shaw

AN ACT to amend Tennessee Code Annotated, Title 12 and Title 67, relative to state contracts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 4, Part 8, is amended by adding the following language as a new section:

(a) This section shall be known and may be cited as the "Tennessee First Act."

(b) As used in this section, "Tennessee business" means a business that is a continuing, independent, for-profit business which performs a commercially useful function with residence in Tennessee.

(c)

(1) Except for public construction contracts and contracts with the department of transportation, whenever the lowest responsible and responsive bidder on a state contract for goods and services is a resident of another state which is contiguous to this state and which allows a preference to a resident contractor of that state, then a like reciprocal preference is allowed to the lowest responsible and responsive bidder on the contract who is a Tennessee business.

(2) Subdivision (c)(1) shall only apply to state contracts for goods and services where the preference allowed in the contiguous state is equal to or exceeds the allowance in subdivision (d)(2).

(d)

(1) Notwithstanding any law to the contrary, the chief procurement officer shall promulgate rules authorizing an allowance for Tennessee businesses in the

evaluation of bids and proposals for state contracts for goods and services in accordance with this section.

(2) The allowance to be given to a Tennessee business shall not exceed five percent (5%) of the lowest responsive, responsible bidder meeting specifications and shall be applied on a sliding scale in the following manner:

(A) Five percent (5%) shall be allowed for contracts up to one million dollars ($1,000,000);

(B) Four percent (4%) shall be allowed for contracts between one million dollars ($1,000,000) up to ten million dollars ($10,000,000);

(C) Three percent (3%) shall be allowed for contracts between ten million dollars ($10,000,000) up to twenty-five million dollars ($25,000,000);

(D) Two percent (2%) shall be allowed for contracts between twenty-five million dollars ($25,000,000) and up to fifty million dollars ($50,000,000); and

(E) One percent (1%) shall be allowed for contracts that exceed fifty million dollars ($50,000,000).

SECTION 2. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act shall be severable.

SECTION 3. This act shall take effect January 1, 2016, the public welfare requiring it, and shall apply to contracts entered into or renewed on and after that date.

Research Plan: House Bill 967 by Shaw, Preference to Tennessee Vendors

Research Manager:	Melissa Brown		
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Deputy Executive Director Approval:	Initial:	Date:	5/26/15
Executive Director Approval:	Initial:	Date:	5/26/15

Purpose

Study the effect of giving preference to Tennessee bidders when the lowest bidder on state contracts for goods and services is from a contiguous state that gives its own resident contractors similar preferences.

Background

The House State Government Subcommittee asked the Commission to study House Bill 967 by Shaw. The companion bill, Senate Bill 1081 by Harris, was referred to the Senate State and Local Government Committee. The bill would allow the state to give a reciprocal preference to the lowest responsible and responsive Tennessee business bidding on contracts when the lowest bidder is a resident of a contiguous state that gives its own resident contractors a preference and when that preference equals or exceeds

5% for contracts up to $1 million,

4% for contracts from $1 million to $10 million,

3% for contracts from $10 million to $25 million,

2% for contracts from $25 million to $50 million, and

1% for contracts that exceed $50 million.

The bill would require the state's chief procurement officer to promulgate rules authorizing these amounts as allowances for Tennessee businesses in the evaluation of bids and proposals for state contracts for goods and services. Staff of the state's central procurement office expressed concern that implementing the Tennessee First Act would be difficult because many state contracts are awarded not based simply on "low bid" but using a point system or in some cases are negotiated. They were also concerned that the bill would discourage out-of-state companies from bidding and that in-state bidders would increase bids to take advantage of the in-state preference.

The state's chief procurement officer estimates that half of current contracts in states contiguous to Tennessee would have been awarded to businesses residing in Tennessee had the preferences in the bill been in place. Tennessee's eight border states all give preference to in-state contractors over out-of-state contractors when awarding state contracts. Besides applying their own preferences, seven of the eight reciprocate other states' in-state preference laws. So does Tennessee, which reciprocates contiguous states' instate preference laws and gives in-state preference to agricultural products, meat products and by-products, and coal.

Step 1. Define the Problem

What is the most efficient and effective way to ensure Tennessee vendors are not at a competitive disadvantage in the contracting process?

Step 2. Assemble Some Evidence

- Review House Bill 967 and related statutes to determine what the bill does.
    - Review committee hearings on the bill and its companion and summarize comments and concerns of committee members, the bill sponsor, and others speaking for or against the bill.
    - Interview the sponsor, bill opponents, and other stakeholders to determine what is driving the issue.
    - Review the fiscal note. Consult with Fiscal Review Committee staff and follow up with agencies submitting support forms to determine the estimated cost and the method and rationale for the estimates.
- Review similar bills from the past several general assemblies to identify related issues.
- Review laws, regulations, and executive orders in other states.
- Review model procurement laws, including the American Bar Association's Model Procurement Law.
- Review literature and seek opinions of subject matter experts.

Step 3. Construct Alternatives

Alternatives will be based on

- current law,
- proposed changes in the current law, and
- any additional alternatives drawn from the research and analysis in Step 2.

Each alternative will be described specifically enough to project outcomes in Step 5.

Step 4. Select Criteria

- Cost

    - To the state
    - To Tennessee businesses that lose contracts because of other states' in-state preference laws or benefit because of Tennessee's in-state preference laws
    - To the economy
- Effect on the state's ability to acquire needed products and services
- Fairness to vendors

Step 5. Project Outcomes

For any alternatives constructed in Step 3, the staff will estimate the

- cost to state government
- cost or benefit to in-state businesses
- cost or benefit to the Tennessee's economy
- state's ability to acquire products and services of the same quality
- perception of fairness

Step 6. Confront Trade-offs

- How will the differences between the current law and the other alternatives affect state government, state businesses, and Tennessee's economy?
- What are the pros and cons of potential solutions?

Step 7. Decide which alternatives to present to the Commission

Based on the results of Step 6, choose the policy that most practically and realistically resolves the problems.

Step 8. Produce the Draft Report

Develop and present a draft for review and comment to the Commission.

Revisit Steps 5 through 8.

- Respond to feedback from Commission regarding outcome projections, trade-offs, and selection of alternatives.
- Revise and edit the draft to reflect comments of the Commission.

Submit final report to the Commission for approval.

- **Problem Statement and Research Plan**
  - April 2015
- **Research**
  - Step 2 (April 2015 to July 2015)
  - Step 3-4 (August 2015)
  - Steps 5-7 (Auguts 2015)
- **Storyboard, Outline, and Write the Report**
  - September 2015 to October 2015
- **Draft Report to Commission for Comments**
  - November 2015 Commission Meeting
- **Final Report to Commission for Approval**
  - January 2016 Commission Meeting