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MIND OF A LAWYER. HEART OF A CONTRACTOR.

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## **New Mississippi Resident Preference Law Is Important for Louisiana Contractors Crossing Border**

Earlier this year, Mississippi passed into law Senate Bill 2370, amending the resident preference statute for Mississippi public works projects: Miss. Code Ann. § 31-3-21 (3). The bill is extremely important to Louisiana contractors who do (are want to do) business on public projects in Mississippi. If you fail to abide, you're bid will be considered non-responsive.

### **What Is A "Resident Preference Statute?"**

So, you may be wondering...what in the world is a "resident preference statute?"

As we live in a country of independent states, our nation has a rich history of state governments and trade associations fighting very hard to protect the jobs within their state. And how do you protect those jobs? You restrict out-of-state folks from coming in and taking those jobs.

One result of this tendency are "resident preference statutes" like they have in Mississippi. The statute does not prevent out-of-state contractors from bidding on public projects in Mississippi (the Constitution doesn't allow that), but it does allow the state to give a slight preference to Mississippi contractors.

[Kean Miller's Louisiana Law Blog](#) has a great summary on how these preference statutes work with the following:

Each state has different resident bidder preference laws. Some states require either that a non-resident's bid amount be reduced by a certain percentage or that a resident's bid be increased by a certain percentage if a non-resident bidder also bids on the project. Other states require that a resident bidder's amount be increased only to the same percentage as

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allowed in a non-resident's state, if a non-resident bids on the contract. Still other states have no bidder preference laws at all.

## What Changed in Mississippi?

Mississippi's new law only amends a statute that already exists, it doesn't create a new concept for public bidders. Previously, it was "mandatory" that a non-resident bidder attach to its bid a copy of their state's bidder preference laws. The State of Mississippi wanted to know how your state would treat a Mississippi contractor, so it can determine how to treat you.

The problem was an opinion from the Mississippi Attorney General that a failure to provide the attachment wasn't enough to reject the out-of-state bid.

The amendment changes that. The new language is quite specific about the mandatory nature of the requirement, and the consequence for failing to attach your state's preference laws to the bid:

When a nonresident contractor submits a bid for a public project, he shall attach thereto a copy of his resident state's current law pertaining to such state's treatment of nonresident contractors. Any bid submitted by a nonresident contractor which does not include the nonresident contractor's current state law shall be rejected and not considered for award.

The changes are now in effect, and took effect on July 1, 2010.

Good Resource: Blog Post on [Construction Law Toolbox](#)

## Where Do I Find Louisiana's Law?

Now that you know that the Louisiana preference law must be attached, you're now likely wondering...where do I find the Louisiana preference law?

It's really best to consult with a Louisiana attorney who can review the bid materials to ensure that all applicable preference laws are attached. State laws can be complex, and there may be a preference law for various components of your project.

With that said, here are the basic statutes related to Louisiana's residence preferences on public works project. You can click on the statute link to go to the legislature's website with full text of the statute:

[La. R.S. 38:2225](#): This statute is referred to as providing reciprocal preference. It requires that if an out-of-state bidder is low, a Louisiana bidder maybe given the job if

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the home state of the out-of-state bidder gives him a preference in his own state, and the Louisiana bidder is within the margin of that state's preference for its own state bidders. (Summary compliments of [Richard McGimsey, Assistant Attorney General for Louisiana Department of Justice, in "Understanding The Public Bid Law" workshop](#)).

[La. R.S. 38:2251](#): Relates to preferences for Louisiana products....not Louisiana vendors! This statute is a bit more complex to summarize here, but you can click on the link and read all the juicy details.