

JAN 18 2008

S.B. NO. 2409

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# A BILL FOR AN ACT

RELATING TO PUBLIC PROCUREMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the State and  
2 counties spend millions of dollars in public funds on garments,  
3 uniforms, materials, and other equipment and supplies provided  
4 by private contractors and manufacturers.

5           The legislature recognizes a public interest in avoiding  
6 vendors and contractors who maintain sweatshop working  
7 conditions, including below-subsistence wages, excessively long  
8 working hours, and unhealthy and unsafe working environments.  
9 These contractors also promote child, indentured, and prison  
10 labor, disregard local and international labor laws and  
11 workplace regulations, disregard fundamental women's rights, and  
12 repress workers' rights to assemble and bargain collectively.

13           Contractors and subcontractors who use sweatshop labor are  
14 able to underbid responsible contractors who pay fair wages and  
15 maintain humane work environments and conditions. Sweatshop  
16 practices place responsible vendors and contractors at a  
17 competitive disadvantage and may dissuade them from  
18 participating in the public procurement process.



1           As market participants, the state and county governments  
2 must ensure that the integrity of the public procurement process  
3 is not undermined by vendors and contractors who engage in  
4 sweatshop practices. Humane working conditions for all workers  
5 produce consistently better quality goods by providing fewer  
6 disruptions in the workplace due to workers' grievances, fewer  
7 absences due to illnesses and fatigue, fewer workplace injuries,  
8 less worker turnover, and greater incentives for workers to  
9 perform.

10           The purpose of this Act is to protect the interests of  
11 state residents, workers, and businesses by establishing a  
12 "sweatfree" public procurement policy and code of conduct that  
13 ensures that apparel, garments and related accessories, and  
14 other equipment, materials, and supplies procured by the State  
15 and counties, including their agencies and employees, through  
16 contracts, purchase orders, or uniform allowances and voucher  
17 programs are produced in workplaces free of sweatshop  
18 conditions.

19           SECTION 2. Chapter 103D, Hawaii Revised Statutes, is  
20 amended by adding a new part to be appropriately designated and  
21 to read as follows:

22           **"PART . CODE OF CONDUCT AND SWEATFREE PROCUREMENT POLICY**



1           **§103D-A Application.** This part applies to the procurement  
2 and laundering of apparel, garments, and related accessories,  
3 and the procurement of services, equipment, materials, and other  
4 supplies by the State and counties.

5           For purposes of this part, "procurement" has the same  
6 meaning as defined in section 103D-104 and includes contract,  
7 purchase, rental, lease, or allowance and voucher programs.

8           **§103D-B Definitions.** As used in this part:

9           "Administrator" means the administrator of the state  
10 procurement office.

11           "Consortium" means the state and county sweatfree  
12 consortium as provided in section 103D-C.

13           "Contractor" means a person or entity that provides  
14 applicable goods or services to the State or any county pursuant  
15 to a contract.

16           "Independent monitor" means an organization that is  
17 retained by the consortium to monitor compliance with this part.  
18 The independent monitor shall be an organization with expertise  
19 in monitoring factory working conditions that is not owned or  
20 controlled in whole or in part by, nor obtains any revenue from,  
21 any vendor, manufacturer, contractor or subcontractor or any



1 other entity that derives its primary income from the sale of  
2 any product or service covered by this part.

3 "Nonpoverty wage" means the wage earned in the United  
4 States that is required for a full-time worker to produce an  
5 annual income equal to, or greater than the United States  
6 Department of Health and Human Services' most recent poverty  
7 guideline for a family of three plus an additional twenty per  
8 cent of the wage level paid either as hourly wage, health  
9 benefits, or pension benefits.

10 Outside the United States, a nonpoverty wage is a  
11 comparable nationwide wage and benefit level, adjusted to  
12 reflect the local cost of living, sufficient to raise a family  
13 of average size, out of poverty.

14 "Production facility" or "facility" means a workplace that  
15 provides or manufactures (including cutting and assembly by  
16 weaving, sewing, knitting, or felting), finishes, applies marks,  
17 warehouses, launders, or engages in any other processes or  
18 service that contribute significantly to a finished apparel or  
19 other product.

20 "Subcontractor" means a person, partnership, corporation,  
21 or other entity that contracts with a contractor or another



1 subcontractor for the provision of goods or services covered by  
2 this part.

3 "Worker" or "employee" means a person engaged in the  
4 production of the goods or services covered by this part.

5 **§103D-C Administration of this part; state and county**  
6 **sweatfree consortium; rules.** (a) The administrator shall  
7 administer this part consistent with this chapter and other  
8 applicable laws of the State.

9 (b) The administrator shall be the chairperson of the  
10 state and county sweatfree consortium that shall consist of the  
11 chief procurement officers under section 103D-203. The  
12 consortium may appoint an independent monitor or any other state  
13 or county agency or personnel to monitor compliance with this  
14 part and carry out any other duties required by this chapter.

15 (c) The administrator may adopt rules pursuant to chapter  
16 91 to effectuate this part.

17 **§103D-D Prohibition of sweatshop conditions; sweatfree**  
18 **code of conduct requirements.** (a) Notwithstanding any other  
19 law to the contrary, contractors and subcontractors shall ensure  
20 that all production facilities adhere to or exceed the  
21 requirements of this section in their practices and policies



1 regarding workers engaged in the production of goods and  
2 services covered by this part.

3 (b) Production facilities shall comply with all applicable  
4 domestic labor, employment, health and safety, environmental,  
5 and building laws, and the fundamental conventions of  
6 international labor organizations with respect to forced and  
7 child labor and freedom of association.

8 (c) Production facilities shall pay wages that meet the  
9 higher standard of:

10 (1) The legal minimum wage;

11 (2) The prevailing wage in the industry in the country of  
12 production; or

13 (3) A nonpoverty wage.

14 (d) Production facilities shall maintain verifiable wage  
15 and hour records for each production worker. The records shall  
16 include the following for each production worker:

17 (1) The name and job classification;

18 (2) A general description of the work the worker performed  
19 each day and the rate of pay (including rates of  
20 contributions for, or costs assumed to provide fringe  
21 benefits);

22 (3) The daily and weekly number of hours worked;



1 (4) Wage deductions made; and

2 (5) The actual wages paid.

3 (e) Production facilities shall not require hourly and  
4 quota-based employees to work more than forty-eight hours per  
5 week or the limits on regular hours allowed by the law of the  
6 country of the manufactured product, whichever is lower.

7 Contractors shall provide workers with at least one day off for  
8 every seven-day period, as well as holidays and vacations.

9 (f) Production facilities shall ensure that all hours  
10 worked beyond the limits established under this part are  
11 voluntary, except when each of the following conditions exists:

12 (1) National law permits mandatory overtime;

13 (2) The facility is party to a collectively negotiated  
14 contract with a representative labor union and the  
15 contract permits mandatory overtime; and

16 (3) Mandatory overtime does not exceed the amount allowed  
17 by the contract.

18 In addition to compensation for regular hours of work,  
19 hourly and quota-based employees shall be compensated for  
20 overtime hours at a premium rate that is legally required in the  
21 country of the manufactured product or, in those locations where



1 similar laws do not exist, at a rate at least one-and-one-half  
2 times their regular hourly compensation rate.

3 (g) Production facilities shall not discriminate in  
4 employment, including issues related to hiring, salary,  
5 benefits, advancement, discipline, termination, retirement,  
6 gender (including pregnancy), race, religion, age, disability,  
7 sexual orientation, nationality, political opinion, or social or  
8 ethnic origin, or any other term or condition of employment or  
9 employer practice.

10 (h) Production facilities shall not harass or abuse  
11 workers sexually, psychologically, or verbally, or use corporal  
12 punishment.

13 (i) Production facilities shall not require pregnancy  
14 tests as a condition of employment nor demand pregnancy tests of  
15 employees. Female workers shall receive equal remuneration,  
16 including equal pay, benefits, treatment, and an opportunity to  
17 fill positions open to male workers.

18 (j) Production facilities shall not terminate employees  
19 without just cause. Contractors shall provide for a mediation  
20 or grievance process to resolve workplace disputes. For  
21 production in the United States, the disputes are limited to  
22 those not regulated by the National Labor Relations Board.





1 (k) Production facilities shall respect employees' rights  
2 to freedom of association, collective bargaining, striking or  
3 other concerted protest, and the filing of grievances.

4 Production facilities or any of its agents shall not retaliate  
5 against, intimidate, coerce, harass, or take any other adverse  
6 action against employees for exercising these rights.

7 Production facilities or any of its agents shall not  
8 initiate, dominate, or support organizations in which employees  
9 participate or are represented. Production facilities shall  
10 allow union organizers free access to employees and shall  
11 recognize the union of the employees' choice. Production  
12 facilities shall demonstrate their commitment to freedom of  
13 association by taking steps to:

14 (1) Communicate to the workforce the facility's openness  
15 to workers' exercise of their associational rights;

16 (2) Negotiate in good faith with any union or other  
17 representative worker body duly constituted by  
18 employees;

19 (3) Implement effective procedures and training programs  
20 to safeguard workers against retaliation,  
21 intimidation, coercion, harassment, or other adverse  
22 action by managers, supervisors, or co-workers; and



1           (4) Remain strictly neutral on the matter of workers'  
2           choice to unionize or not. Employers shall not  
3           campaign in any way against, or in favor of workers'  
4           efforts to unionize. However, employers are not  
5           barred from stating that workers have a right to  
6           unionize in the exercise of their freedom of  
7           association.

8           (1) Production facilities shall not engage in any  
9           reprisal, coercion, intimidation, or take any other adverse  
10          action against employees for filing complaints, giving evidence,  
11          or otherwise cooperating with monitoring, enforcement,  
12          remediation, or any other activity by the consortium or its  
13          members, the independent monitor, any government agency, or  
14          other entity authorized to enforce the employers' obligations  
15          under this part.

16          (m) Contractors, subcontractors, or production facilities  
17          shall not shut down or reduce orders for a production facility  
18          in order to deny workers any right or standard protected by this  
19          part, including their right to freely associate.

20          **§103D-E Phase-in period.** During the first full fiscal  
21          year after the effective date of this part, the State and  
22          counties shall target for enforcement, only purchases and



1 contracts for apparel, garments and corresponding accessories,  
2 materials, supplies or equipment, and laundry services.  
3 Agreements for other goods and services shall be targeted for  
4 enforcement in accordance with the procedure set forth in this  
5 part.

6 **§103D-F Contractor affidavits, public records, and**  
7 **reporting.** (a) The State and counties shall not enter into  
8 contracts with a contractor if:

9 (1) Based on information submitted by the consortium, its  
10 independent monitor organization, or other employees  
11 or agents authorized to assist in the implementation,  
12 administration, or enforcement of this part, the  
13 administrator finds that the contractor or one of its  
14 subcontractors violated this part and that the  
15 contractor or subcontractor refuses or fails to remedy  
16 the violation in a timely manner; or

17 (2) The contractor failed to submit the information  
18 required in the affidavit described in subsection (b).  
19 However, during the first three years during which  
20 this part is in effect, the State or counties may  
21 contract with a noncompliant bidder if the State or



1            counties receive no bids or proposals that are fully  
2            compliant with this part.

3            (b) After final award of a contract for production of  
4 goods or provision of services covered by this part, the  
5 contractor or vendor shall submit affidavits that include the  
6 information set forth in this subsection. To ensure public  
7 access and confidence, the administrator shall post this  
8 information on its internet website as soon as possible but not  
9 later than fourteen days after final award of a contract. The  
10 information shall include:

11            (1) The names, addresses, phone numbers, and contact  
12            persons of each production facility involved in the  
13            production of goods or the provision of services;

14            (2) Where applicable, the names, addresses, contact  
15            persons, and telephone numbers of any agent or parent  
16            company of each facility involved in the production of  
17            goods or the provision of services;

18            (3) The amount, or increments thereof, to be paid each  
19            subcontractor. This information shall be updated in  
20            writing to show changes in the amount to be paid any  
21            subcontractor or amounts to be paid subcontractors



1 after submittal of the most recent statement to the  
2 administrator;

3 (4) The names of any association or organization in which  
4 workers participate or are represented for purposes of  
5 collective bargaining in the facilities. The  
6 administrator may request copies of any current  
7 collective bargaining agreement covering workers in  
8 the facilities;

9 (5) A statement by a contractor or subcontractor  
10 indicating the following:

11 (A) The contractor or subcontractor understands their  
12 obligation to ensure that all applicable  
13 production facilities adhere to this part and the  
14 sweatfree code of conduct under section 103D-D;

15 (B) The contractor or subcontractor understands their  
16 obligation to conduct their business operations  
17 in a manner that facilitates the achievement and  
18 maintenance of compliance by production  
19 facilities;

20 (C) The contractor or subcontractor understands that  
21 if the consortium's independent monitor finds any  
22 of its production facilities to be contrary to



1           this part, and the facility fails to remedy the  
2           noncompliance within a time period specified by  
3           the consortium or its independent monitor, the  
4           contractor or subcontractors shall be in  
5           violation of this part; and

6           (D) The contractor or subcontractor has furnished a  
7           copy of the sweatfree code of conduct to each  
8           covered production facility;

9           (6) A statement by the contractor or subcontractor  
10          indicating the following:

11          (A) As to each production facility, the facility's  
12          current compliance or noncompliance with this  
13          part;

14          (B) For each instance of noncompliance under  
15          subparagraph (A), a plan of corrective steps to  
16          remedy the noncompliance and the time period  
17          within which each step will be taken. The plan  
18          shall not replace or limit the consortium's or  
19          independent monitor's authority or responsibility  
20          to formulate remediation plans under section  
21          103D-I or to take any other action under this  
22          part; and



1 (C) Following the awarding of a contract, as to each  
2 remedial step indicated in subparagraph (B), a  
3 statement indicating whether the step has been  
4 taken and the noncompliance remedied, at the time  
5 the step is taken. If no statement is filed by  
6 the time indicated in the corrective action plan,  
7 it shall be presumed that the facility has failed  
8 to implement the step by that time. Fulfillment  
9 of this requirement shall not exempt a contractor  
10 or subcontractor from their responsibility to  
11 cooperate with the consortium's or independent  
12 monitor's investigation of worksites or to take  
13 remedial action otherwise required under section  
14 103D-I; and

15 (7) Any other information deemed necessary by the  
16 administrator for the administration and enforcement  
17 of this part.

18 (c) If any information provided by a contractor or  
19 subcontractor pursuant to this section changes during the  
20 specified time period of the contract, the contractor or  
21 subcontractor shall submit or cause to be submitted to the  
22 administrator, affidavits with the updated information.



1 (d) Each contractor or subcontractor shall maintain weekly  
2 certified payroll records from each of their applicable  
3 production facilities for submission to the administrator upon  
4 demand. The contractor shall be responsible for submitting the  
5 payroll records of its subcontractors and their facilities,  
6 although subcontractors shall submit their records directly to  
7 the administrator upon request. All certified payroll records  
8 shall be accompanied by a statement signed by the contractor or  
9 subcontractor if requested by the administrator, stating that  
10 the records are complete and correct.

11 **§103D-G Verification and compliance.** (a) It shall be the  
12 responsibility of contractors to ensure compliance with this  
13 part and the requirements of section 103D-D in all production  
14 facilities. Contractors and subcontractors shall establish and  
15 implement managerial systems, rules, procedures, and audits  
16 sufficient to effectively ensure compliance with this part.  
17 Contractors and subcontractors shall also ensure that:

18 (1) Prices paid to production facilities for goods or  
19 services are sufficient to enable the facility to meet  
20 the costs of compliance with this part;

21 (2) Dates for delivery of products or the provision of  
22 services and other logistical requirements imposed on





1 subcontractors do not induce violations of hours,  
2 overtime, or other provisions of this part; and

3 (3) The contractor's relationship with subcontractors is  
4 sufficiently stable to enable the subcontractors to  
5 fully comply with this part.

6 (b) The refusal by a contractor, subcontractor, or  
7 production facility to permit monitoring by, or to cooperate  
8 fully in the monitoring process with the consortium or its  
9 independent monitor organization shall result in  
10 disqualification for state or county bidding, in termination of  
11 a contract, or in other sanctions under section 103D-I.

12 (c) Contractors and subcontractors shall cooperate fully  
13 with any investigation by the administrator, including without  
14 limitation, any independent monitor or state or county employee  
15 or agent authorized to assist in the implementation,  
16 administration, or enforcement of this part.

17 These persons or entities, in the performance of their  
18 duties, shall have the right to engage in unannounced  
19 inspections of any worksite where the contract or subcontract is  
20 performed, interview any manager, supervisor, or worker, and  
21 view and copy any document that is relevant to the inspection or  
22 other activity related to this part.



1           **§103D-H Sweatfree advisory group.** (a) The administrator  
2 shall establish a sweatfree procurement advisory group to  
3 address implementation and enforcement issues. The advisory  
4 group shall consist of advocates for garment workers and other  
5 workers experiencing sweatshop working conditions, unions of  
6 uniformed personnel, representatives of agencies that employ  
7 uniformed state or county personnel, administrators responsible  
8 for implementing this part, and other interested parties.

9           (b) The purpose of the sweatfree procurement advisory  
10 group shall be to:

11           (1) Receive and assess evidence of bidders' and  
12 contractors' noncompliance with this part, including  
13 the requirements of section 103D-D, from the  
14 consortium or an independent monitor, workers, labor  
15 unions, the State and counties, businesses,  
16 nongovernment organizations, and human rights  
17 advocates;

18           (2) Provide advice on bidding guidelines, dissemination of  
19 information to workers, and collaboration with other  
20 public entities;

21           (3) Evaluate the implementation of this part; and



1 (4) Evaluate industries engaged in the manufacture and  
2 sale of goods other than apparel and garments to  
3 determine whether the procurement of goods, in  
4 addition to apparel and garments, should be subject to  
5 this part. To recommend whether a particular good  
6 shall be targeted for enforcement, the factors that  
7 the sweatfree advisory group shall consider include,  
8 but not be limited to:

9 (A) The amount the State or counties have spent and  
10 anticipate spending for goods;

11 (B) Evidence of sweatshop labor or other conditions  
12 prohibited by this part in the manufacturing,  
13 assemblage or distribution of goods; and

14 (C) Any financial impact that targeting goods for  
15 enforcement will have on the State or counties.

16 **§103D-I Violations and enforcement.** (a) Any person may  
17 file a complaint for a violation of this part. The  
18 administrator or any independent monitor agency acting on behalf  
19 of the State or any county shall investigate the merits of all  
20 complaints. At the request of the party submitting the  
21 complaint, or when deemed necessary by the independent monitor  
22 in cases where the complainant has not explicitly requested, the



1 administrator shall keep the name and contact information of the  
2 complainant confidential.

3 (b) The consortium or the independent monitor may conduct  
4 proactive monitoring for compliance with this part. The  
5 monitoring may include but is not limited to:

6 (1) Confidential interviews with workers conducted outside  
7 of the workplace;

8 (2) Interviews with local nongovernmental organizations  
9 and labor unions;

10 (3) Monitoring of local media and government reports  
11 regarding labor conditions at the facilities;

12 (4) Physical inspection of facilities; and

13 (5) Interviews with management or supervisors.

14 When information gathered in the course of the monitoring  
15 indicates a likelihood of noncompliance by a production  
16 facility, the consortium or the independent monitor shall  
17 initiate an investigation.

18 (c) Any contractor or subcontractor shall provide the  
19 administrator and agents authorized to assist in the  
20 administration and enforcement of this part, immediate access to  
21 the production facility or operation where the violation or  
22 alleged violation occurred to:



- 1 (1) Inspect the production facility;
- 2 (2) Inspect and copy all relevant documents; and
- 3 (3) Interview managers, supervisors, workers, and other
- 4 personnel.

5 (d) Upon the determination of a violation of this part at  
6 a production facility by a contractor or its supplier, including  
7 all subcontractors, the administrator and the contractor shall  
8 meet for the purpose of drafting a remediation plan. However,  
9 in the event of disagreement, the consortium or the independent  
10 monitoring organization shall retain ultimate authority in the  
11 matter. Corrective action includes all steps necessary to  
12 correct the violations, including, but not limited to:

- 13 (1) Paying back wages to workers who made manufactured
- 14 products or provided services supplied to the State or
- 15 any county;
- 16 (2) Reinstating any worker unlawfully dismissed; or
- 17 (3) Providing training on worker rights and best practices
- 18 education for managers and workers at the production
- 19 facility or operation where the violation occurred to
- 20 ensure future compliance. Any training and education
- 21 shall be at the expense of the contractor or
- 22 subcontractor. Upon request by the administrator or



1           the independent monitor, the contractor or  
2           subcontractor shall submit the materials for training  
3           and education for the administrator or monitor's  
4           review and approval prior to distribution to managers  
5           and employees.

6           (e) After formulating a remediation plan, the consortium  
7           or the independent monitoring, as it sees fit, may engage in any  
8           follow-up inspections, interviews, and viewing and copying of  
9           documents, to ensure that the contractor or subcontractor  
10          implements the remediation plan in a timely manner. The  
11          consortium or its independent monitoring organization may  
12          collaborate with the contractor or subcontractor to solve  
13          problems encountered in remediation and to ensure that  
14          remediation is complete and sustainable.

15          (f) Sanctions shall be used as a last resort if the  
16          consortium or its independent monitoring organization finds:

17           (1) That the contractor or one of its subcontractors  
18           violates this part; and

19           (2) The contractor or subcontractor refuses or fails to  
20           remedy the violation in a timely manner.

21          Sanctions may include termination of a contract without  
22          notice and without liability for unpaid amounts that otherwise



1 would have been payable, a financial penalty, or removal of the  
2 contractor from the bidder's list for a period determined by the  
3 administrator.

4       **§103D-J Award of contract absent a sweatfree-compliant bid**  
5 **or proposal.** (a) In the absence of bids or proposals that are  
6 fully compliant with this part, the administrator may award  
7 contracts to bidders or proposers that are or will be the most  
8 compliant with this part. This exemption from full compliance  
9 shall expire after the first full year after the effective date  
10 of this part.

11       (b) The exemption under subsection (a) shall comply with  
12 the following:

13       (1) No contract awarded under this section may exceed one  
14 year unless the administrator, no later than six  
15 months prior to the expiration of the original term of  
16 the contract, finds that the contractor has achieved  
17 an additional level of compliance with the terms of  
18 this part that warrants an extension of the contract  
19 for an additional year;

20       (2) Standards for determining compliance and additional  
21 levels of compliance shall be adopted by the



1 administrator following consultation with the  
 2 sweatfree procurement advisory group; and  
 3 (3) A noncompliant contractor shall provide a plan for  
 4 corrective action pursuant to this part, implement the  
 5 corrective action plan in a timely manner, and provide  
 6 timely updated statements accounting for each remedial  
 7 step taken; and

8 Nothing in this part shall compromise the administrator's  
 9 authority to reject all bids or take any other authorized action  
 10 under this part.

11 **§103D-K Preemption.** Nothing in this part shall be  
 12 interpreted or applied to create any power or duty in conflict  
 13 with federal law.

14 **§103D-L Severability.** If any provision of this part, or  
 15 the application thereof to any person or circumstance is held  
 16 invalid, the invalidity does not affect other provisions or  
 17 applications of the part, which can be given effect without the  
 18 invalid provision or application, and to this end the provisions  
 19 of this Act are severable."

20 SECTION 3. There is appropriated out of the general  
 21 revenues of the State of Hawaii the sum of \$ or so much





1 thereof as may be necessary for fiscal year 2008-2009 for the  
2 purposes of this Act.

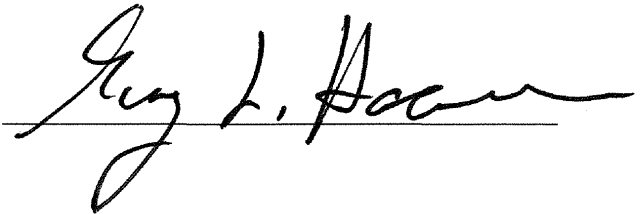
3 The sum appropriated shall be expended by the state  
4 procurement office for the purposes of this Act.

5 SECTION 4. In codifying the new sections added by section  
6 2 of this Act, the revisor of statutes shall substitute  
7 appropriate section numbers for the letters used in designating  
8 the new sections in this Act.

9 SECTION 5. This Act shall take effect on January 1, 2009;  
10 provided that section 3 shall take effect on July 1, 2008.

11

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "Greg L. Hoover", is written over a horizontal line.

**Report Title:**

Sweatshops; Public Procurement

**Description:**

Establishes procedures and criteria and appropriates funds to prevent state or county purchases from businesses that operate sweatshops.

