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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, "contractor" has the same  
6 meaning as defined in section 103D-104. "Procurement" has the  
7 same meaning as defined in section 103D-104 and includes  
8 contract, purchase, rental, lease, or allowance and voucher  
9 programs.

10           **§103D-B Definitions.** As used in this part:

11           "Administrator" means the administrator of the state  
12 procurement office.

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

15           "Independent monitor" means an organization that is  
16 retained by the consortium to monitor compliance with this part.  
17 The independent monitor shall be an organization with expertise  
18 in monitoring factory working conditions that is not owned or  
19 controlled in whole or in part by, nor obtains any revenue from,  
20 any vendor, manufacturer, contractor or subcontractor or any  
21 other entity that derives its primary income from the sale of  
22 any product or service covered by this part.



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

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

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

18 "Subcontractor" means a person, partnership, corporation,  
19 or other entity that contracts with a contractor or another  
20 subcontractor for the provision of goods or services covered by  
21 this part.



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

3 **§103D-C Administration of this part; state and county**  
4 **sweatfree consortium; rules.** (a) The administrator shall  
5 administer this part consistent with this chapter and other  
6 applicable laws of the State.

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

13 (c) The state procurement policy board may adopt rules  
14 pursuant to chapter 91 to effectuate this part.

15 **§103D-D Prohibition of sweatshop conditions; sweatfree**  
16 **code of conduct requirements.** (a) Notwithstanding any other  
17 law to the contrary, contractors and subcontractors shall ensure  
18 that all production facilities adhere to or exceed the  
19 requirements of this section in their practices and policies  
20 regarding workers engaged in the production of goods and  
21 services covered by this part.



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

6 (c) Production facilities shall pay wages that meet the  
7 higher standard of:

8 (1) The legal minimum wage;

9 (2) The prevailing wage in the industry in the country of  
10 production; or

11 (3) A nonpoverty wage.

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

15 (1) The name and job classification;

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

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

21 (4) Wage deductions made; and

22 (5) The actual wages paid.



1           (e) Production facilities shall not require hourly and  
2 quota-based employees to work more than forty-eight hours per  
3 week or the limits on regular hours allowed by the law of the  
4 country of the manufactured product, whichever is lower.  
5 Contractors shall provide workers with at least one day off for  
6 every seven-day period, as well as holidays and vacations.

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

- 10           (1) National law permits mandatory overtime;
- 11           (2) The facility is party to a collectively negotiated  
12 contract with a representative labor union and the  
13 contract permits mandatory overtime; and
- 14           (3) Mandatory overtime does not exceed the amount allowed  
15 by the contract.

16           In addition to compensation for regular hours of work,  
17 hourly and quota-based employees shall be compensated for  
18 overtime hours at a premium rate that is legally required in the  
19 country of the manufactured product or, in those locations where  
20 similar laws do not exist, at a rate at least one-and-one-half  
21 times their regular hourly compensation rate.



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

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

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

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

21 (k) Production facilities shall respect employees' rights  
22 to freedom of association, collective bargaining, striking or





1 other concerted protest, and the filing of grievances.  
2 Production facilities or any of its agents shall not retaliate  
3 against, intimidate, coerce, harass, or take any other adverse  
4 action against employees for exercising these rights.

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

- 12 (1) Communicate to the workforce the facility's openness  
13 to workers' exercise of their associational rights;
- 14 (2) Negotiate in good faith with any union or other  
15 representative worker body duly constituted by  
16 employees;
- 17 (3) Implement effective procedures and training programs  
18 to safeguard workers against retaliation,  
19 intimidation, coercion, harassment, or other adverse  
20 action by managers, supervisors, or co-workers; and
- 21 (4) Remain strictly neutral on the matter of workers'  
22 choice to unionize or not. Employers shall not



1 campaign in any way against, or in favor of workers'  
2 efforts to unionize. However, employers are not  
3 barred from stating that workers have a right to  
4 unionize in the exercise of their freedom of  
5 association.

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

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

18 **§103D-E Phase-in period.** During the first full fiscal  
19 year after the effective date of this part, the State and  
20 counties shall target for enforcement, only purchases and  
21 contracts for apparel, garments and corresponding accessories,  
22 materials, supplies or equipment, and laundry services.



1 Contracts for other goods and services shall be targeted for  
2 enforcement in accordance with the procedure set forth in this  
3 part.

4 **§103D-F Contractor affidavits, public records, and**  
5 **reporting.** (a) The State and counties shall not enter into  
6 contracts with a contractor if:

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

15 (2) The contractor failed to submit the information  
16 required in the affidavit described in subsection (b).  
17 However, during the first three years during which  
18 this part is in effect, the State or counties may  
19 contract with a noncompliant bidder if the State or  
20 counties receive no other bids or proposals that are  
21 fully compliant with this part.



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

- 9           (1) The names, addresses, phone numbers, and contact  
10 persons of each production facility involved in the  
11 production of goods or the provision of services;
- 12           (2) Where applicable, the names, addresses, contact  
13 persons, and telephone numbers of any agent or parent  
14 company of each facility involved in the production of  
15 goods or the provision of services;
- 16           (3) The amount, or increments thereof, to be paid each  
17 subcontractor. This information shall be updated in  
18 writing to show changes in the amount to be paid any  
19 subcontractor or amounts to be paid subcontractors  
20 after submittal of the most recent statement to the  
21 administrator;



1           (4) The names of any association or organization in which  
2           workers participate or are represented for purposes of  
3           collective bargaining in the facilities. Upon the  
4           request of the contractor or subcontractor, the  
5           administrator shall provide copies of any current  
6           collective bargaining agreement covering workers in  
7           the facilities to the administrator;

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

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

15           (B) The contractor or subcontractor understands the  
16           contractor or subcontractor's obligation to  
17           conduct their business operations in a manner  
18           that facilitates the achievement and maintenance  
19           of compliance by production 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 subcontractor shall be in violation  
5 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 (E) As to each production facility, the facility's  
10 current compliance or noncompliance with this  
11 part;

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

21 (G) Following the awarding of a contract, as to each  
22 remedial step indicated in subparagraph (F),



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

13          (6) Any other information deemed necessary by the  
14          administrator for the administration and enforcement  
15          of this part.

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

21          (d) Each contractor or subcontractor shall maintain weekly  
22          certified payroll records from each of the contractor or



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

10 **§103D-G Verification and compliance.** (a) It shall be the  
11 responsibility of contractors to ensure compliance with this  
12 part and the requirements of section 103D-D in all production  
13 facilities. Contractors and subcontractors shall establish and  
14 implement managerial systems, rules, procedures, and audits  
15 sufficient to effectively ensure compliance with this part.  
16 Contractors and subcontractors shall also ensure that:

- 17 (1) Prices paid to production facilities for goods or  
18 services are sufficient to enable the facility to meet  
19 the costs of compliance with this part;
- 20 (2) Dates for delivery of products or the provision of  
21 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. These persons, in  
17 the performance of the persons' duties, shall have the right to  
18 engage in unannounced inspections of any worksite where the  
19 contract or subcontract is performed, interview any manager,  
20 supervisor, or worker, and view and copy any document that is  
21 relevant to the inspection or other activity related to this  
22 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 under this part.  
4 The advisory group shall consist of advocates for garment  
5 workers and other workers experiencing sweatshop working  
6 conditions, unions of uniformed personnel, representatives of  
7 agencies that employ uniformed state or county personnel,  
8 administrators responsible for implementing this part, and other  
9 interested parties.

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

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

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

22           (3) Evaluate the implementation of this part;



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; and

6 (5) Recommend whether a particular good shall be targeted  
7 for enforcement, considering factors, including but  
8 not 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. The administrator shall keep the name and contact  
21 information of the complainant confidential:



1 (1) At the request of the party submitting the complaint;

2 or

3 (2) When deemed necessary by the independent monitor in

4 cases where the complainant has not explicitly

5 requested confidentiality.

6 (b) The consortium or the independent monitor may conduct

7 proactive monitoring for compliance with this part. The

8 monitoring may include, but is not limited to:

9 (1) Confidential interviews with workers conducted outside

10 of the workplace;

11 (2) Interviews with local nongovernmental organizations

12 and labor unions;

13 (3) Monitoring of local media and government reports

14 regarding labor conditions at the facilities;

15 (4) Physical inspection of facilities; and

16 (5) Interviews with management or supervisors.

17 If information gathered in the course of the monitoring

18 indicates a likelihood of noncompliance by a production

19 facility, the consortium or the independent monitor shall

20 initiate an investigation.

21 (c) Any contractor or subcontractor shall provide the

22 administrator and agents authorized to assist in the



1 administration and enforcement of this part, immediate access to  
2 the production facility or operation where the violation or  
3 alleged violation occurred, to:

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

8 (d) Upon the determination of a violation of this part at  
9 a production facility by a contractor or its supplier, including  
10 all subcontractors, the administrator and the contractor shall  
11 agree to a remediation plan; provided that if a disagreement  
12 occurs, the consortium or the independent monitoring  
13 organization shall retain ultimate authority in the matter to  
14 mandate corrective action to correct the violations, including,  
15 but not limited to:

- 16 (1) Paying back wages to workers who made manufactured  
17 products or provided services supplied to the State or  
18 any county;
- 19 (2) Reinstating any worker unlawfully dismissed; or
- 20 (3) Providing training on worker rights and best practices  
21 education for managers and workers at the production  
22 facility or operation where the violation occurred to



1 ensure future compliance. Any training and education  
2 shall be at the expense of the contractor or  
3 subcontractor. Upon request by the administrator or  
4 the independent monitor, the contractor or  
5 subcontractor shall submit the materials for training  
6 and education for the administrator or monitor's  
7 review and approval prior to distribution to managers  
8 and employees.

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

17 (f) Sanctions shall be used as a last resort if the  
18 consortium or its independent monitor finds:

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

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



1 Sanctions may include termination of a contract without  
2 notice and without liability for unpaid amounts that otherwise  
3 would have been payable, a financial penalty, or removal of the  
4 contractor from the bidder's list for a period determined by the  
5 administrator.

6 **§103D-J Award of temporary contract absent a sweatfree-**  
7 **compliant bid or proposal.** (a) In the absence of bids or  
8 proposals that are fully compliant with this part, the  
9 administrator may award contracts to bidders or proposers deemed  
10 to be the most compliant with this part; provided that the  
11 bidder or proposer shall become compliant with the first full  
12 year after awarding of the contract; and provided further that:

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 shall 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





1 much thereof as may be necessary for fiscal year 2008-2009 for  
2 the implementation 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.



**Report Title:**

Sweatshops; Public Procurement

**Description:**

Establishes procedures and criteria and appropriates funds to prevent state or county purchases from businesses that operate sweatshops. (SD1)

