

JAN 26 2009

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# A BILL FOR AN ACT

RELATING TO HAWAII PUBLIC PROCUREMENT CODE.

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

1           SECTION 1. At one time, Hawaii was entirely self-sufficient  
2 in meeting its population's food needs. Now, approximately  
3 ninety per cent of our food is imported from the United States  
4 mainland and foreign sources. As an island state, we are  
5 extremely vulnerable to any disruption in supply. Further, this  
6 dependence on sources of supply outside of Hawaii means that we  
7 are spending approximately \$3,100,000,000 annually to support  
8 agribusinesses in other states and countries. If just ten per  
9 cent of this payment to outside sources could be replaced by  
10 purchases of locally raised, grown, or harvested products, the  
11 economy-wide impact would be \$188,000,000 in sales, \$47,000,000  
12 in earnings, \$6,000,000 in state tax revenues, and more than  
13 2,300 jobs. While we can never expect to return to the days of  
14 complete self-sufficiency, we can make a commitment to increasing  
15 consumption of Hawaii products and thereby benefit our economy,  
16 increase our food independence, reduce the influx of invasive  
17 species, and improve residents' nutrition.

18           There is a growing awareness among Hawaii consumers that  
19 supporting local agriculture makes sense and is "the right thing

1 to do." Not only does purchasing local products support our own  
2 farmers, it also reduces the carbon footprint created by the  
3 imported goods. At the 2008 Hawaii farm fair, over eighty per  
4 cent of attendees stated that they prefer to "buy local."

5 This measure complements the Hawaii department of  
6 agriculture's buy fresh, buy local campaign to encourage Hawaii  
7 consumers to buy local agricultural products whenever possible by  
8 encouraging the same by governmental agencies, including those  
9 purchasing for state-supported institutions. The current  
10 procurement preferences do not provide enough of an incentive for  
11 Hawaii farmers to be competitive in selling to the State. If new  
12 local markets are accessible to Hawaii farmers, in the long term  
13 they will become more efficient and thus more price competitive.  
14 Enhanced efficiency will lead to more production and ultimately,  
15 greater consumption of local products by institutions and the  
16 general public and lowered dependency on imports.

17 SECTION 2. Section 103D-1001, Hawaii Revised Statutes, is  
18 amended by amending the definition of "Hawaii products" to read  
19 as follows:

20 "Hawaii products" means products that are mined, excavated,  
21 produced, manufactured, raised, [or] grown, or harvested in the  
22 State where the input constitutes no less than twenty-five per  
23 cent of the manufactured cost; provided that:

24 (1) Where the value of the input constitutes twenty-five  
25 per cent or more, but less than fifty per cent, of the

1 manufactured cost, the product shall be classified as  
2 class I;

3 (2) Where the value of the input constitutes fifty per cent  
4 or more, but less than seventy-five per cent, of the  
5 manufactured cost, the product shall be classified as  
6 class II; ~~and~~

7 (3) Where the value of the input constitutes seventy-five  
8 per cent or more of the manufactured cost, the product  
9 shall be classified as class III ~~[-]~~; and

10 (4) Where the product is a fruit, nut, or vegetable that is  
11 raised, grown, or harvested in the State, or where any  
12 aquacultural, horticultural, silvicultural,  
13 floricultural, or livestock product is raised, grown,  
14 or harvested in the State, the product shall be  
15 classified as class IV."

16 SECTION 3. Section 103D-1002, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "**§103D-1002 Hawaii products.** (a) A purchasing agency  
19 shall review all specifications in a bid or proposal for purchase  
20 from the Hawaii products list where these products are available;  
21 provided that the products:

22 (1) Meet the minimum specifications and the selling price  
23 f.o.b. jobsite;

1           (2) Unloaded including applicable general excise tax and  
2           use tax does not exceed the lowest delivered price in  
3           Hawaii f.o.b. jobsite; and

4           (3) Unloaded, including applicable general excise tax and  
5           use tax, does not exceed the lowest delivered price of  
6           a similar non-Hawaii product by more than:

7           (A) Three per cent where class I Hawaii products are  
8           involved;

9           (B) Five per cent where class II Hawaii products are  
10          involved; [~~or~~]

11          (C) Ten per cent where class III Hawaii products are  
12          involved[~~-~~]; or

13          (D) Fifteen per cent where class IV Hawaii products  
14          are involved.

15          (b) All invitations for bids and requests for proposals  
16          shall include a description of the products that are listed in  
17          the Hawaii products list established pursuant to this section,  
18          and their established classes, which may be used to complete  
19          the scope of work specified in the invitation for bids or  
20          request for proposals, where the products are available and  
21          meet the minimum specifications.

22          (c) If the purchasing agency purchases products raised,  
23          grown, or harvested outside the State that are similar to class  
24          IV Hawaii products, the officer responsible for the purchase  
25          shall certify in writing the reasons that similar products of

1 equal quality raised, grown, or harvested in the State were not  
2 purchased.

3 [~~(e)~~] (d) All persons submitting bids or proposals to claim  
4 a Hawaii products preference shall designate in their bids which  
5 individual product and its price is to be supplied as a Hawaii  
6 product.

7 [~~(d)~~] (e) Where a bid or proposal contains both Hawaii and  
8 non-Hawaii products, then for the purpose of selecting the lowest  
9 bid or purchase price only, the price bid or offered for a Hawaii  
10 product item shall be decreased by subtracting therefrom: three  
11 per cent, five per cent, [~~or~~] ten per cent, or fifteen per cent  
12 for the class I, class II, [~~or~~] class III, or class IV Hawaii  
13 product items bid or offered, respectively. The lowest total bid  
14 or proposal, taking the preference into consideration, shall be  
15 awarded the contract unless the bid or offer provides for  
16 additional award criteria. The contract amount of any contract  
17 awarded, however, shall be the amount of the bid or price  
18 offered, exclusive of the preferences.

19 [~~(e)~~] (f) Upon receipt and approval of application for  
20 Hawaii products preference, the administrator shall include  
21 within the Hawaii products list, the names of producers and  
22 manufacturers in the State who are authorized to supply locally  
23 manufactured soil enhancement products to state agencies under  
24 subsection [~~(h)~~] (i). The administrator of the state procurement

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1 office shall maintain and distribute copies of the list to the  
2 purchasing agencies of the various governmental agencies.

3 ~~[(f)]~~ (g) This section shall not apply whenever its  
4 application will disqualify any governmental agency from  
5 receiving federal funds or aid.

6 ~~[(g)]~~ (h) Any purchase made or any contract awarded or  
7 executed in violation of this section shall be void and no  
8 payment shall be made by any purchasing agency on account of the  
9 purchase or contract.

10 ~~[(h)]~~ (i) For the purposes of this section, "soil  
11 enhancement product" means any nonchemical soil preparation,  
12 conditioner, or compost mixture designed to supplement aeration  
13 or add organic, green waste, or decaying matter to the soil;  
14 provided that the term does not include any plant fertilizer  
15 intended to stimulate or induce plant growth through chemical  
16 means. All state agencies shall include in their solicitations,  
17 when required, the soil enhancement products identified on the  
18 Hawaii products list pursuant to subsection ~~[(e)]~~ (f)."

19 SECTION 4. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21 SECTION 5. This Act shall take effect on July 1, 2009.

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23  
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INTRODUCED BY: \_\_\_\_\_

  
BY REQUEST

**Report Title:**

Hawaii Public Procurement Code; Preferences

**Description:**

To expand and modify the Hawaii products preferences to create a class IV preference for agricultural products raised, grown, or harvested in the State.

Impact on the department and other agencies:

There will be a need for the Hawaii Department of Agriculture to work with both the state institutions and Hawaii's farmers and ranchers so both are aware of the requirements and concerns of the other.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: AGR-171.

OTHER AFFECTED  
AGENCIES: State Procurement Office.

EFFECTIVE DATE: July 1, 2009.