

JAN 27 2010

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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 state and local  
2 spending on public works projects and construction procurement  
3 drives a significant portion of Hawaii's economy. However,  
4 because of Hawaii's higher cost of living, state contractors  
5 often find it cheaper to employ nonresidents to work on public  
6 works projects and construction procurement contracts. As a  
7 result, Hawaii residents face difficulties acquiring employment  
8 in this important sector of the Hawaiian economy. Furthermore,  
9 non-resident employees working on public works projects and  
10 construction procurement contracts contribute very little to the  
11 State's economy while they work in Hawaii, and return a  
12 disproportionately large amount of their wages to their home  
13 states upon the completion of their employment in Hawaii.

14           The legislature further finds that the inability of state  
15 residents to acquire employment on public works projects and  
16 construction procurement contracts contributes to unemployment  
17 in the State, deprives the State of fiscal resources and  
18 capital, and dampens the State's economic development. The



1 intent of this Act is to level the playing field for Hawaii  
2 residents and to remedy the negative effects of nonresident  
3 employment on public works projects and construction procurement  
4 contracts, while preserving contractors' flexibility to employ  
5 nonresidents where necessary.

6 The purpose of this Act is to require that state residents  
7 comprise eighty per cent of the labor force working on some  
8 public works projects and construction procurement contracts.

9 SECTION 2. The Hawaii Revised Statutes is amended by  
10 adding a new chapter to be appropriately designated and to read  
11 as follows:

12 "CHAPTER

13 EMPLOYMENT OF STATE RESIDENTS ON PUBLIC WORKS PROJECTS AND  
14 CONSTRUCTION PROCUREMENT CONTRACTS

15 § -A Definitions. As used in this chapter:

16 "Contract" means public works contracts under chapter 103  
17 and contracts for construction under chapter 103D.

18 "Contractor" shall have the same meaning as in section  
19 103D-104 and as the term is applied to public works contracts  
20 under chapter 103; provided that "contractor" includes a  
21 subcontractor where applicable.



1 "Construction" shall have the same meaning as in section  
2 103D-4 and includes public works and contracts under chapter  
3 103.

4 "Procurement officer" shall have the same meaning as in  
5 section 103D-4, and as used for purposes of chapter 103.

6 "Resident" means a person who is physically present in the  
7 State at the time the person claims to have established the  
8 person's domicile in the State and shows the person's intent is  
9 to make Hawaii the person's primary residence.

10 **§ -B Application of chapter.** (a) This chapter shall  
11 apply to all public works contracts under chapter 103 and to all  
12 construction procurements under chapter 103D; provided that this  
13 chapter shall not apply to procurements for professional  
14 services under section 103D-304 and procurements for small  
15 purchases under chapter 103D-305.

16 (b) This chapter shall apply to any subcontract of \$50,000  
17 or more in connection with any general contract otherwise  
18 covered by this chapter.

19 **§ -C Requirements of contractor.** (a) A contractor  
20 awarded any contract shall ensure that Hawaii residents comprise  
21 not less than eighty per cent of the workforce employed to



1 perform the contract on a particular construction, as determined  
2 under subsection (b).

3 (b) The eighty per cent requirement under subsection (a)  
4 shall be determined by dividing the total number of hours worked  
5 on a contract by residents, by the total number of hours worked  
6 by all employees of the contractor in the performance of the  
7 contract. Hours worked for any subcontractor of the contractor  
8 shall count towards the calculation for purposes of this  
9 subsection. The hours worked by employees within shortage  
10 trades, as determined by the department of labor and industrial  
11 relations, shall not be included in the calculations for  
12 purposes of this subsection.

13 (c) Every contractor shall comply with this chapter for  
14 the entire duration of the contract. Certification of  
15 compliance with this chapter shall be made under oath by an  
16 officer of the contractor to the procurement officer on a  
17 monthly basis.

18 (d) A contractor who fails to comply with this chapter  
19 shall be subject to any of the following sanctions:

20 (1) Temporary suspension of work on the project until the  
21 contractor or subcontractor complies this chapter;



1           (2) Withholding of payment on the contract or subcontract,  
2                    as applicable, until the contractor or subcontractor  
3                    complies with this chapter;

4           (3) Permanent disqualification of the contractor or  
5                    subcontractor from any further work on the project;

6           (4) Recovery by the State or county, as applicable, of any  
7                    moneys expended on the contract or subcontract, as  
8                    applicable; or

9           (5) Proceedings for debarment or suspension of the  
10                   contractor or subcontractor under section 103D-702.

11           § -D **Conflict with federal law.** This chapter shall not  
12 apply if the application of this chapter is in conflict with any  
13 federal law, or if the application of this chapter will  
14 disqualify any state or county agency from receiving federal  
15 funds or aid."

16           SECTION 3. This Act does not affect rights and duties that  
17 matured, penalties that were incurred, and proceedings that were  
18 begun before its effective date.

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1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

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**Report Title:**

Procurement; Construction Projects

**Description:**

Requires at least eighty per cent of workers on public works and construction contracts to be Hawaii residents.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

