
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. As a result,
4 Hawaii residents face difficulties acquiring employment in this
5 important sector of the Hawaii economy. Furthermore, non-
6 resident employees working on public works projects and
7 construction procurement contracts contribute very little to the
8 State's economy while they work in Hawaii, and return a
9 disproportionately large amount of their wages to their home
10 state upon the completion of their employment in Hawaii.

11 The legislature further finds that in recent years the
12 number of resident construction workers who have been unemployed
13 or underemployed have been substantial and that the rate of
14 unemployment in Hawaii has reached levels that have not been
15 experienced locally for a number of years. In addition, the
16 unique geographic isolation of Hawaii compounds the rate of
17 unemployment because it restricts the ability of its residents

1 to find work in, or relocate to, other states. The high
2 unemployment problem is further exacerbated for residents
3 employed in the construction industry by contractors bringing in
4 non-resident workers for public works and construction
5 procurement contracts.

6 The United States Supreme Court ruled in *United Building &*
7 *Construction Trades Council of Camden County & Vicinity v. Mayor*
8 *and Council of the City of Camden*, 465 U.S. 208 (1984) that a
9 specific local preference in hiring decisions to lessen local
10 unemployment rates is constitutional under the Privileges and
11 Immunities Clause if they are substantially related to the
12 important governmental goal of reducing unemployment. The
13 legislature finds that the inability of residents to acquire
14 employment on public works projects and construction procurement
15 contracts contributes to unemployment in the State, deprives the
16 State of fiscal resources and capital, and dampens the State's
17 economic development. Thus, the purpose of this Act is
18 substantially related to the important governmental goal of
19 reducing unemployment.

20 The intent of this Act is to level the playing field for
21 Hawaii residents and to remedy the negative effects of
22 non-resident employment on public works projects and

1 construction procurement contracts, while preserving
2 contractors' flexibility to employ non-residents when necessary.

3 The purpose of this Act is to require that residents of
4 Hawaii comprise of at least eighty per cent of the labor force
5 working on certain public works projects and construction
6 procurement contracts.

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

10 **"CHAPTER**

11 **EMPLOYMENT OF STATE RESIDENTS ON PUBLIC WORKS PROJECTS AND**
12 **CONSTRUCTION PROCUREMENT CONTRACTS**

13 **§ -A Definitions.** As used in this chapter:

14 "Contract" means public works contracts under chapter 103
15 and contracts for construction under chapter 103D.

16 "Contractor" shall have the same meaning as in section
17 103D-104 and as the term is applied to public works contracts
18 under chapter 103; provided that "contractor" includes a
19 subcontractor where applicable.

20 "Construction" shall have the same meaning as in section
21 103D-104 and includes public works and contracts under chapter
22 103.

1 "Procurement officer" shall have the same meaning as in
2 section 103D-104, and as used for purposes of chapter 103.

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

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

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

16 § -C **Requirements of contractor.** (a) A contractor
17 awarded any contract shall ensure that Hawaii residents comprise
18 not less than eighty per cent of the workforce employed to
19 perform the contract on a particular construction, as determined
20 under subsection (b).

21 (b) The eighty per cent requirement under subsection (a)
22 shall be determined by dividing the total number of hours worked

1 on a contract by residents, by the total number of hours worked
2 by all employees of the contractor in the performance of the
3 contract. Hours worked for any subcontractor of the contractor
4 shall count towards the calculation for purposes of this
5 subsection. The hours worked by employees within shortage
6 trades, as determined by the department of labor and industrial
7 relations, shall not be included in the calculations for
8 purposes of this subsection.

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

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

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

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

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

1 (4) Recovery by the State or county, as applicable, of any
2 moneys expended on the contract or subcontract, as
3 applicable; or

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

6 § -D **Conflict with federal law.** This chapter shall not
7 apply if the application of this chapter is in conflict with any
8 federal law, or if the application of this chapter will
9 disqualify any state or county agency from receiving federal
10 funds or aid."

11 SECTION 3. In codifying the new sections added by
12 section 2 of this Act, the revisor of statutes shall substitute
13 appropriate section numbers for the letters used in designating
14 the new sections in this Act.

15 SECTION 4. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 5. This Act shall take effect upon its approval.
19

Report Title:

Procurement; Construction Projects; Resident

Description:

Requires at least eighty per cent of workers on certain public works contracts and construction procurements to be Hawaii residents. (SD1)

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