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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. 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  
18 to find work in, or relocate to, other states. The high



1 unemployment problem is further exacerbated for residents  
2 employed in the construction industry by contractors bringing in  
3 non-resident workers for public works and construction  
4 procurement contracts.

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

19       The intent of this Act is to level the playing field for  
20 Hawaii residents and to remedy the negative effects of  
21 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 make up 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" has the same meaning as in section 103D-104  
17 and as the term is applied to public works contracts under  
18 chapter 103; provided that "contractor" includes a subcontractor  
19 where applicable.

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



1 "Procurement officer" has the same meaning as in section  
2 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 make up  
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) Upon request, a contractor shall provide the  
15 procurement officer with documentation sufficient to demonstrate  
16 compliance with this chapter.

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

19 (1) Temporary suspension of work on the project until the  
20 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 it conflicts with any federal law or its application  
13 will disqualify any state or county agency from receiving  
14 federal funds or aid."

15 SECTION 3. In codifying the new sections added by  
16 section 2 of this Act, the revisor of statutes shall substitute  
17 appropriate section numbers for the letters used in designating  
18 the new sections in this Act.

19 SECTION 4. This Act does not affect rights and duties that  
20 matured, penalties that were incurred, and proceedings that were  
21 begun before its effective date.

22 SECTION 5. This Act shall take effect on July 1, 2050.



**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. Requires contractor to provide proof of compliance, if challenged. Effective date 07/01/2050. (SD2)

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

