

JAN 27 2010

S.B. NO. 2841

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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 establish a preference to  
7 hire state residents on procurement contracts for construction.

8 SECTION 2. Chapter 103D, Hawaii Revised Statutes, is  
9 amended by adding a new section to part X to be appropriately  
10 designated and to read as follows:

11 "§103D- Hawaii residents on construction contracts. (a)

12 There shall be a preference to hire Hawaii residents on  
13 construction contracts under this chapter. This section shall  
14 apply to a contract under section 103D-302 or section 103D-303.

15 (b) In awarding a contract under this section, a  
16 purchasing agency shall require that the contractor certify,  
17 under oath, that Hawaii residents comprise not less than eighty  
18 per cent of the workforce employed to perform the contract on a  
19 particular construction. The eighty per cent requirement shall  
20 be determined by dividing the total number of hours worked on a  
21 contract by residents, by the total number of hours worked by  
22 all employees of the contractor in the performance of the



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

7 (c) A competitive sealed bid or a competitive sealed  
8 proposal that includes a certification under subsection (b) may  
9 be awarded the contract only if the amount of the offer  
10 contained in the bid or proposal is not more than fifteen per  
11 cent higher than the amount offered by any competing contractor  
12 whose bid does not include the certification under subsection  
13 (b).

14 (d) The preference under this section shall not be deemed  
15 to exclude the application of any other preference under this  
16 part or under federal law.

17 (e) A contractor or subcontractor who is awarded a  
18 contract after certifying eligibility for the preference under  
19 this section but who thereafter fails to employ a workforce for  
20 the contract of not less than eight per cent Hawaii residents  
21 shall be subject to any of the following sanctions:



- 1        (1) Temporary suspension of work on the project until the  
2                    contractor or subcontractor employs the required  
3                    number of Hawaii residents;
- 4        (2) Withholding of payment on the contract or subcontract,  
5                    as applicable, until the contractor or subcontractor  
6                    employs the required number of Hawaii residents;
- 7        (3) Permanent disqualification of the contractor or  
8                    subcontractor from any further work on the project;
- 9        (4) Recovery by the State or county, as applicable, of any  
10                   moneys expended on the contract or subcontract, as  
11                   applicable; and
- 12        (5) Proceedings for debarment or suspension of the  
13                   contractor or subcontractor under section 103D-702.
- 14        (f) This section shall not apply if the application of  
15                   this chapter is in conflict with any federal law, or if the  
16                   application of this chapter will disqualify any state or county  
17                   agency from receiving federal funds or aid."

18                SECTION 3. Section 103D-1001, Hawaii Revised Statutes, is  
19 amended by adding a new definition to be appropriately inserted  
20 and to read as follows:

21                "Resident" means a person who is physically present in the  
22 State at the time the person claims to have established the

1 person's domicile in the State and shows the person's intent is  
2 to make Hawaii the person's primary residence."

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

6 SECTION 5. New statutory material is underscored.

7 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

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**Report Title:**

Procurement; Hawaii Residents Preference; Construction

**Description:**

Establishes a preference to hire Hawaii residents on public procurement construction contracts.

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

