
A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 SECTION 1. The legislature finds that section 103-55.6,
2 Hawaii Revised Statutes, is cumbersome and encounters
3 enforcement problems across all applicable agencies. This
4 provision, enacted in 2009, provides a procurement preference to
5 a contractor in a public works construction contract of not less
6 than \$250,000 if the contractor is a party to an apprenticeship
7 agreement registered with the department of labor and industrial
8 relations for each apprenticeable trade that the contractor will
9 employ to construct the public works.

10 The legislature finds that ambiguities in section 103-55.6,
11 Hawaii Revised Statutes, cause procurement officers to interpret
12 it differently. As a result, contract awards are protested,
13 causing the State to spend more money and time reviewing bids
14 and contract awards.

15 The legislature also finds that the preference often
16 results in contracts being awarded to higher bidders, thus
17 providing less value to the contracting agency and taxpayers.



1 The legislature further finds that the law causes unfair
2 results when applied throughout Hawaii. Section 103-55.6,
3 Hawaii Revised Statutes, does not provide the same advantage to
4 neighbor island contractors because they do not have access to
5 apprentice training that is largely conducted on Oahu only.
6 This causes neighbor island contractors to be disadvantaged when
7 bidding against contractors based on Oahu. Also, there are some
8 trades that do not have apprentice programs, for example, non-
9 union civil contractors performing machine and labor work do not
10 have apprentice programs available. These contractors are
11 unfairly disadvantaged when competing for contracts against
12 contractors from trades that have apprenticeship programs.

13 The legislature further finds that amending section 103-
14 55.6, Hawaii Revised Statutes, to address the inconsistencies
15 will not solve these problems. Therefore, the purpose of this
16 Act is to repeal section 103-55.6, Hawaii Revised Statutes,
17 relating to procurement preferences for contractors with
18 apprenticeship agreements because the law is ambiguous, unfair,
19 and unenforceable.

20 SECTION 2. Section 103-55.6, Hawaii Revised Statutes, is
21 repealed.



1 ~~["§103-55.6] Public works construction; apprenticeship~~
2 ~~agreement. (a) A governmental body, as defined in section~~
3 ~~103D-104, that enters into a public works contract under this~~
4 ~~chapter having an estimated value of not less than \$250,000,~~
5 ~~shall decrease the bid amount of a bidder by five per cent if~~
6 ~~the bidder is a party to an apprenticeship agreement registered~~
7 ~~with the department of labor and industrial relations for each~~
8 ~~apprenticeable trade the bidder will employ to construct the~~
9 ~~public works, and in conformance with chapter 372. The lowest~~
10 ~~total bid, taking the preference into consideration, shall be~~
11 ~~awarded the contract unless the solicitation provides for~~
12 ~~additional award criteria. The contract amount awarded,~~
13 ~~however, shall be the amount of the price offered, exclusive of~~
14 ~~the preference.~~

15 ~~(b) For purposes of subsection (a), in determining whether~~
16 ~~there is conformance with chapter 372, the procurement officer~~
17 ~~shall consider the actual number of apprentices enrolled in and~~
18 ~~the annual number of graduates of the apprenticeship program.~~

19 ~~(c) At the time of submission of a competitive sealed bid~~
20 ~~or a competitive sealed proposal by a bidder, the bidder shall~~
21 ~~furnish written proof of being a party to a registered~~



1 ~~apprenticeship agreement for each apprenticeable trade the~~
2 ~~bidder will employ to construct the public works and, if awarded~~
3 ~~the contract, shall continue to certify monthly in writing that~~
4 ~~the bidder is a party to a registered apprenticeship agreement~~
5 ~~for each apprenticeable trade the bidder will employ to~~
6 ~~construct the public works for the entire duration of the~~
7 ~~bidder's work on the project. This subsection shall be deemed~~
8 ~~to be incorporated into a public works contract. A bidder who~~
9 ~~is awarded a contract shall be subject to the following~~
10 ~~sanctions if, after commencement of work, the bidder at any time~~
11 ~~during the construction is no longer a party to a registered~~
12 ~~apprenticeship agreement for each apprenticeable trade the~~
13 ~~bidder will employ to construct the public works.~~

14 ~~(1) Temporary or permanent cessation of work on the~~
15 ~~project, without recourse to breach of contract claims~~
16 ~~by the bidder; provided that the governmental body~~
17 ~~shall be entitled to restitution for nonperformance or~~
18 ~~liquidated damages, as appropriate; or~~

19 ~~(2) Proceedings to debar or suspend under section 103D-~~
20 ~~702.~~



H.B. NO. 517

1 ~~(d) For purposes of this section, "bidder" means an entity~~
2 ~~that submits a competitive sealed bid under section 103D 302 or~~
3 ~~submits a competitive sealed proposal under section 103D 303.] "~~




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

7 SECTION 4. Statutory material to be repealed is bracketed
8 and stricken.

9 SECTION 5. This Act shall take effect upon its approval.

10

INTRODUCED BY:

JAN 23 2015



H.B. NO. 517

Report Title:

Procurement; Public Works Construction; Apprenticeship Agreement

Description:

Repeals section 103-55.6, Hawaii Revised statutes, the provision requiring a procurement preference to a bidder in a public works construction contract of not less than \$250,000, if the bidder is a party to an apprenticeship agreement registered with the department of labor and industrial relations for each apprenticeable trade the bidder will employ to construct the public works.

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

