

HB 2548

**RELATING TO
PROCUREMENT**

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

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



1 2. By amending subsection (c) to read:
2 "(c) At the time of submission of a competitive sealed bid
3 or a competitive sealed proposal by a bidder, the bidder shall
4 furnish written proof of being a party to a registered
5 apprenticeship agreement for each [~~apprenticeable trade the~~
6 ~~bidder will employ~~] type of classification that the bidder will
7 list on the certified payroll affidavit to construct the public
8 works and, if awarded the contract, shall continue to certify
9 monthly in writing that the bidder is a party to a registered
10 apprenticeship agreement for each [~~apprenticeable trade the~~
11 ~~bidder will employ~~] type of classification that the bidder will
12 list on the certified payroll affidavit to construct the public
13 works for the entire duration of the bidder's work on the
14 project. This subsection shall be deemed to be incorporated
15 into a public works contract. A bidder who is awarded a
16 contract shall be subject to the following sanctions if, after
17 commencement of work, the bidder at any time during the
18 construction is no longer a party to a registered apprenticeship
19 agreement for each [~~apprenticeable trade the bidder will employ~~]
20 type of classification that the bidder will list on the
21 certified payroll affidavit to construct the public works:



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1 (1) Temporary or permanent cessation of work on the
2 project, without recourse to breach of contract claims
3 by the bidder; provided that the governmental body
4 shall be entitled to restitution for nonperformance or
5 liquidated damages, as appropriate; or


6 (2) Proceedings to debar or suspend under section 103D-
7 702."

8 SECTION 2. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

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

14

INTRODUCED BY:  _____

JAN 24 2018



H.B. NO. 2548

Report Title:

Public Works; Apprenticeship Agreement

Description:

Clarifies requirements for public works projects for a bidder who is a party to an apprenticeship agreement.

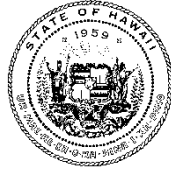
The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



HB 2548

TESTIMONY

DAVID Y. IGE
GOVERNOR



RODERICK K. BECKER
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

TESTIMONY OF
RODERICK K. BECKER, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
ON
TUESDAY, FEBRUARY 13, 2018
9:15 A.M.
CONFERENCE ROOM 309

H.B. 2548

RELATING TO PROCUREMENT.

Chair Johanson, Vice Chair Holt, and Members of the Committee, thank you for the opportunity to submit testimony on H.B. 2548.

The proposed bill would amend HRS Section 103-55.6 regarding the bid preference accorded to participants in registered apprenticeship programs. The Department of Accounting and General Services (DAGS) instead recommends repeal of HRS Section 103-55.6. This recommendation is based on the findings of the Task Force established by Senate Concurrent Resolution 92, Senate Draft 2 of the 2013 Regular Legislation Session, which by majority vote recommended the repeal of the cited section (also known as Act 17) for the following reasons:

1. Act 17's bid preference effectively increases the cost of construction for projects by artificially decreasing bid prices by five percent for the purposes of bid evaluation. When that preference affects the award outcome, the State effectively pays up to five percent more than if the project had been awarded to the low

bidder without regard to the preference. Given that the Act 17's provisions have not had the intended effect, the premium paid by the State results in no benefit.

2. The provisions of Act 17 have increased the time, effort, and cost borne by the State in administering construction contracts through the award process.
 - a. The provisions have made the bid evaluation process more difficult because agencies are often required to determine whether the contractor claiming the preference is actually self-performing the work covered by the Act. The language proposed by the present bill merely clarifies who the bidder will employ, which imposes additional administrative burden and is unlikely to contribute to achievement of the goal to provide a larger skilled labor force.
 - b. The provisions of Act 17 have had the unintended effect of creating a source of bid protests. The proposed bill does not address, and will not lessen, that unintended effect.

Thank you for the opportunity to submit testimony on this matter.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

TO: HONORABLE AARON JOHANSON, CHAIR, HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **OPPOSITION TO H.B. 2548, RELATING TO PROCUREMENT.** Clarifies requirements for public works projects for a bidder who is a party to an apprenticeship agreement.

HEARING

DATE: Tuesday, February 13, 2018
TIME: 9:15 a.m.
PLACE: Conference Room 309

Dear Chair Johanson, Vice Chair Holt and Members of the Committee,

The General Contractors Association (GCA) is an organization comprised of over 500 general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA is in opposition to H.B. 2548, Relating to Procurement because it proposes an amendment that would invite more bid protests with the requirement of bidder providing proof of being party to a registered apprenticeship agreement for each type of classification that bidder would list on payroll affidavits to construct public works. The amendment proposed in H.B. 2548 is not practical since bidder is often receiving subcontractor bids minutes before bids are due and the proposed requirement under H.B. 2548 for proof of registered apprenticeship agreement would create an administrative nightmare just minutes before a bid is tendered. The chaos that H.B. 2548 would cause a bidder will only result in more bid protests when the apparent low bidder is protested and then denied the 5% discount on the grounds that their bid was defective due to an error or omission relating to inclusion of proof of being a party to a registered apprenticeship agreement. This measure is a flawed attempt to fix Section 103-55.6 of the Hawaii Revised Statutes, commonly known as "Act 17" (Act 17).

Proposed Amendment will make implementation more Difficult

Currently bidders are only required to submit forms for trades they use on the project that they “directly” employ. H.B. 2548 would require the bidder to submit a form for “each type of classification that the bidder will list on the certified payroll affidavit.” This proposed change would change the use of the apprenticeship program quite significantly as it would require collection of forms from every trade on the job – some departments require an originally submitted documents which must be obtained from the state approved apprenticeship program. While the intent of this legislation appears to improve reporting requirements and enable special interest parties to verify who is working on a public works project – this is the wrong approach – and will result in increased bid protests, delays in awarding contracts and, in the end, increased costs. H.B. 2548 will lead to significant unintended consequences in the bid submission process and overall procurement that would be obstructive.

Background

Under current law, Act 17 offers a bid preference for public works contracts having an estimated value of not less than \$250,000 if the bidder is a party to an apprenticeship agreement registered with the state. This measure was passed in 2009 and has been the cause of bid protests since its inception. The original intent of Act 17 was to incentivize the use of apprenticeship programs certified by the State to ensure a highly trained workforce. However, the implementation of Act 17 has caused problems regarding how each agency accounts for a prime bidder’s participation in an apprenticeship program.

Pursuant to Senate Concurrent Resolution 92, Senate Draft 2 of the 2013 Regular Session a Task Force was formed to study procurement in public works construction and how to increase its efficiency. The Task Force included all major departments that procured public works construction projects and private sector representatives. One area studied was Act 17 (2009) and the bid preference it permits. The Task Force identified inconsistencies in the application of the preference between agencies which have caused confusion and concern on part of the contractors. A Comptroller’s Memorandum following the law’s passage provided some guidance and has been used by bidders that choose to utilize the apprenticeship preference.

In August 2014, upon a vote by the Task Force regarding whether Act 17 should be repealed – a majority voted to repeal Act 17. The 2013 Procurement Task Force recommended a complete repeal of Act 17 and the Apprenticeship Preference. See attached Vote Tally Form of vote taken on August 8, 2014. This proposed measure would not resolve the areas of inconsistencies, and could instead make it more complex to administer, monitor and execute. The Task Force concluded that

Task Force members were in general agreement that there is no evidence that the intent and purpose of the law has been effective in increasing the usage of apprenticeship programs. The Department of Labor and Industrial Relations did not notice a significant difference in the usage of apprenticeship programs which correlated with the passage of Act 17. Usage appears to continue to follow the business cycles of the construction industry (i.e. many apprentices when the industry is busy; a reduction when the industry is slow.”) Neighbor island contractors have greater difficulty executing the required forms than contractors located on

Oahu because authorizing agents for the apprenticeship programs are on Oahu. See Procurement Task Force Report to be provided upon request.

For these reasons we request this measure be deferred. Thank you for the opportunity to share our opposition to H.B. 2548.

APPENDIX A

PREFERENCES

Tally Sheet of Votes Taken

DECISION MAKING - VOTING

STATE PROCUREMENT CODE TASK FORCE

(S.C.R. 92, S.D. 2, 2013 LEGISLATIVE SESSION)

KALANIMOKU BUILDING, ROOM 426

1151 PUNCHBOWL STREET

MONDAY - AUGUST 8, 2014

1:30 P.M.

Name	Organization	Affiliation	Present	Not Present	Recycled Products			Hawaii Products			Apprenticeship Preference		
					Repeal	Modify	No Change	Repeal	Modify	No Change	Repeal	Modify	No Change
Kika G. Bukoski	Hawaii Building & Constr. Trade Council (HBCTC)	Constr. Industry	X		X			X			X		
Peter Lee	Hawaii Construction Alliance	Constr. Industry	X				X			X			X
						10	0	2	10	0	2	10	1 1

Note: Names in **bold print** are the designated Task Force Members. Non-bold names are designated alternates.

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**LATE
TESTIMONY**