

JAN 27 2021

A BILL FOR AN ACT

RELATING TO HAWAII PRODUCTS.

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

1 SECTION 1. Section 103D-1002, Hawaii Revised Statutes, is
2 amended by amending subsection (i) to read as follows:

3 "(i) This section shall not apply [~~whenever~~] when at least
4 one of the following conditions is met:

5 (1) Its application will disqualify any government agency
6 from receiving federal funds or aid[-]; or

7 (2) The solicitation is for public works construction."

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 Statutory material to be repealed is bracketed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.

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INTRODUCED BY: 

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BY REQUEST

Report Title:

Hawaii Products Preference; Construction Procurements

S.B. NO. 1032

Description:

Exempts construction procurements from section 103D-1002, Hawaii Revised Statutes, as it applies to construction procurements.

JUSTIFICATION SHEET

DEPARTMENT: Accounting and General Services

TITLE: A BILL FOR AN ACT RELATING TO HAWAII PRODUCTS.

PURPOSE: To exempt construction procurements from section 103D-1002, Hawaii Revised Statutes(HRS).

MEANS: Amend section 103D-1002(i), HRS.

JUSTIFICATION: Section 103D-1002, HRS, is intended to encourage the use of Hawaii products by bidders to support local industry.

Contractors and subcontractors have indicated that they now choose to use Hawaii products even without the incentive provided by this statute because of availability and competitive pricing. There are also Leadership in Energy and Environmental Design (LEED) incentives for the use of regionally extracted or manufactured products associated with new construction.

Since the Hawaii products preference can reduce the bid amount (for the purposes of evaluation) by ten or fifteen percent of the cost of the Hawaii products a bidder proposes to use, it may increase the cost of construction. If the industry no longer requires this incentive to use Hawaii products, there is no benefit to the public associated with the added construction cost associated with the preference and it is contrary to the Legislature's goal to increase the economy, efficiency, effectiveness, and impartiality of the public works construction procurement process.

Further, the preference has also decreased the efficiency of the construction procurement process because it can be difficult for agencies to determine whether

it is being fairly assessed. This occurs because some bidders claim the preference by providing a lump sum price (instead of using the appropriate unit for the material) or have a quantity that is very different from that of other bidders. Since some differences in quantity can be attributed to the contractor's method of work, it is difficult for agencies to discern when a bidder is attempting to gain a competitive advantage using this preference by skewing the pricing of the Hawaii products.

In summary, the Hawaii products preference should be removed from the procurement process for construction services because it is no longer required to incentivize the use of Hawaii products and therefore does not justify the increase in construction cost when the preference is applied. The preference is also contrary to the Legislature's goal to increase the economy, efficiency, effectiveness, and impartiality of the public works construction procurement process.

Impact on the public: Elimination of this preference as proposed may yield potential savings in the cost of construction and reduce the effort necessary to prepare a construction bid.

Impact on the department and other agencies: Elimination of this preference as it applies to construction would simplify the solicitation documents, increase the efficiency of the bid evaluation process, and eliminate the possibility of the State paying more for construction without justifiable benefit due to application of the Hawaii products preference.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: AGS 221.

OTHER AFFECTED
AGENCIES: Governmental bodies, as defined in section
103D-104, HRS that enter into public works
construction contracts.

EFFECTIVE DATE: Upon approval.