

ACT 177

S.B. NO. 1053

A Bill for an Act Relating to Public Contracts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that section 103-34, Hawaii Revised Statutes, which requires a public contractor for other than public works to provide a bond in an amount equal to fifty per cent of the contract price, works to the disadvantage of nonprofit rehabilitation facilities serving the handicapped. This present statute is an obstacle to the development of job training and employment for handicapped persons. The legislature further finds that:

- (1) Bonding companies and local banks have refused bonding to rehabilitation facilities contracting work with the counties on grounds that as nonprofit organizations there are no means of indemnifying the bonding company against losses.
- (2) In lieu of obtaining a surety bond, a nonprofit organization must borrow the fifty per cent of the contract amount and deposit it as a performance guaranty. At today's interest rates, it is often necessary to pay twenty-five per cent interest for such loans. This amount then must be charged to the State or county as a direct cost on the part of the contractor. As such, it is a substantial and unnecessary expense to the State or county.

- (3) Since commercial enterprises are able to obtain surety bonding, they can bid at a lower cost. Further, since state agencies are exempt from the bonding requirement, they can submit a contract budget which excludes the cost for providing performance guaranty.
- (4) The effects of the bonding requirement is to prohibit rehabilitation facilities from contracting government jobs which provide training and employment for handicapped persons.

The purpose of this Act is to waive the public contract bonding requirements for qualified rehabilitation facilities serving handicapped persons.

SECTION 2. Section 103-34, Hawaii Revised Statutes, is amended to read as follows:

"§103-34 Contractor's bond; conditions. (a) Before any contract is entered into, the party with whom the contract is proposed to be made shall give security for the performance thereof by a good and sufficient bond conditioned for the full and faithful performance of the contract in accordance with the terms and intent thereof and also for the prompt payment to all others for all labor and materials furnished by them to the party and used in the prosecution of the work provided for in the contract. The bond shall be in an amount equal to fifty per cent of the contract price including amounts estimated to be required for extra work, or in the case of a price-term, open-end, or requirements contract under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded, the bond amount shall be as designated in the bid documents; provided that in the case of a contract for the construction of public works, buildings, roads, or other site improvements, the bond shall be in an amount equal to one hundred per cent of the contract price, including amounts estimated to be required for extra work. The bond shall also by its terms inure to the benefit of any and all persons entitled to file claims for labor performed or materials furnished in the work so as to give them a right of action as contemplated by section 507-17.

(b) The bonding requirements for nonprofit qualified rehabilitation facilities as defined in section 103-81 shall be waived with respect to contracts which provide job training and employment for handicapped persons."

SECTION 3. This Act shall not affect rights and duties which matured, penalties which were incurred, or proceedings which were begun prior to its effective date.

SECTION 4. New statutory material is underscored.

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

(Approved June 6, 1987.)