

ACT 286

H.B. NO. 139

A Bill for an Act Relating to Federal Construction.

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

PART I

SECTION 1. (a) Beginning with section 8078 of the United States Defense Appropriations Act of 1986, all subsequent Defense Appropriations Acts require the contractor on a military construction or services project to employ Hawaii residents when Hawaii's unemployment rate exceeds the national average. The unemployment rate in Hawaii has been above the national average since 1994, but the federal law has not been strictly enforced. Many defense construction and service contracts have been awarded to out-of-state contractors that hire individuals that move to Hawaii just to work on these particular federal contracts. This apparently is within the scope of the law, though clearly not the intent of section 8078. One reason given for the failure to strictly enforce the requirement to employ Hawaii residents is that the term "state resident" is not defined in section 8078, in its related provisions, or in the Federal Acquisition Regulations.

The purpose of this part is to establish a definition of "state resident" that will provide a clear, objective, measurable standard that can be easily followed, copied, and enforced by federal contracting officers in enforcing the preference provisions in federal law. A clear definition of "state resident" will help keep profits and wages from military construction projects in the State.

(b) For purposes of the employment preference provided in federal law in favor of state residents, "state resident" means an individual who:

- (1) Resides in the State at least two hundred days of the year;
- (2) Has filed a Hawaii resident income tax return in the taxable year immediately preceding a bid for a federal contract by the individual's employer or business that is a state contractor and has paid all amounts owing on that tax return; provided that an individual who was a state resident, left the State to attend school or serve in the armed forces of the United States of America, and returned to the State to work for a state contractor is a state resident, even though the individual has not yet resided in the State for at least two hundred days or filed a Hawaii

- resident income tax return or paid all amounts owing on that tax return; and
- (3) In the case of a business entity:
- (A) Is licensed as a contractor pursuant to chapter 444;
 - (B) Is licensed to conduct business in this State pursuant to section 237-9;
 - (C) Submits a bid under the name appearing on the person's current contracting or business license;
 - (D) Is a domestic corporation, partnership, or business organized or formed under the laws of the State;
 - (E) Has maintained its principal place of business within the State for at least two-hundred consecutive days prior to the submission of a bid;
 - (F) Has filed a Hawaii resident income tax and all other applicable tax returns for the preceding tax year and has paid all amounts owing on those tax returns;
 - (G) Has complied with all applicable Hawaii employment, insurance, and worker's compensation laws;
 - (H) If an employer with one or more employees, eighty-five per cent of its employees are state residents; and
 - (I) If a joint venture, is composed of entities that a majority of which qualify under paragraphs (A) to (H) and eighty-five per cent of all the employees of the joint venture are state residents.

PART II

SECTION 2. The purpose of this part is to clarify that the definition of contractors in chapter 444, Hawaii Revised Statutes, includes all contractors working in the State directly or indirectly for the federal government to the extent allowed under federal law. Therefore, those contractors, including out-of-state contractors, are subject to the licensing and other provisions of chapter 444, Hawaii Revised Statutes.

SECTION 3. Section 444-1, Hawaii Revised Statutes, is amended by amending the definition of "contractor" to read as follows:

"Contractor" means any person who by oneself or through others offers to undertake, or holds oneself out as being able to undertake, or does undertake to alter, add to, subtract from, improve, enhance, or beautify any realty or construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement, or do any part thereof, including the erection of scaffolding or other structures or works in connection therewith.

"Contractor", to the extent allowed under federal law includes a subcontractor, a specialty contractor, and any person, general engineering, general building, or specialty contractor who performs any of the activities listed in the previous paragraph directly or indirectly for the federal government."

PART III

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

SECTION 6. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2000.

(Approved June 30, 2000.)

Note

1. No bracketed material.