

ACT 5

H.B. NO. 16

A Bill for an Act Relating to Procurement.

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

SECTION 1. The terrible terrorist incidents on September 11, 2001, resulted in an immense and tragic loss of life and security, and have truly stunned the nation. As a result, the United States has increased its vigilance and implemented numerous heightened security measures designed to guard against further attacks.

Due largely to the terrorist attacks and their far-ranging impacts, air travel throughout the country has decreased dramatically. This has had an especially damaging effect on Hawaii's economy because tourism, our main industry, is almost completely dependent on air travel. Airlines, hotels, and other businesses have been laying off significant numbers of employees. Consequently, Hawaii is facing what may be its worst economic crisis in history.

As part of the effort to revive the economy, the legislature finds that amending or repealing certain public contract requirements will enable government agencies to make timely awards of contracts and infuse needed moneys into businesses that are seeking ways to recover their losses and curtail numerous layoffs. The Hawaii public procurement code, chapter 103D, Hawaii Revised Statutes, treats small purchases of less than \$25,000 for goods, services, or construction, in such a way as to ensure administrative simplicity and as much competition as practicable.

Since September 11, 2001, business activity slowed down to a virtual standstill, causing the statewide number of initial claims filed for unemployment benefits to increase by more than two hundred per cent from the same period last year. The legislature further finds that the slowdown of business activity in the State, the resulting increase in unemployment benefit claims, and the inability of these unemployed residents to maintain their payments for their medical, food, and shelter costs poses an imminent danger to public health, safety, and welfare. The legislature believes that this imminent danger to public health, safety, and welfare presents a compelling state interest during this time of economic emergency to give preference to state residents for the limited number of jobs currently available in this State.

The purposes of this Act are to raise the small purchase thresholds and to ensure that the primary beneficiaries of the relaxed public contract requirements are state residents whose livelihood have been severely compromised by the events of September 11, 2001.

SECTION 2. Notwithstanding any provision of law to the contrary, including chapter 103D, Hawaii Revised Statutes, procurements of \$50,000 or less for goods and services shall be treated as small purchases under section 103D-305, Hawaii Revised Statutes.

SECTION 3. Notwithstanding any provision of law to the contrary, including chapter 103D, Hawaii Revised Statutes, construction contracts of less than \$250,000 shall be treated as small purchases under section 103D-305, Hawaii Revised Statutes; provided, each construction contract shall require a performance bond to be secured and delivered to the purchasing agency that is in a form prescribed by the rules of the policy board, executed by a surety company authorized to do business in this State, or otherwise secured in a manner satisfactory to the purchasing agency, in an amount equal to one hundred per cent of the price specified in the contract.

SECTION 4. All contracts entered into, or commencement of any established procedure prior to entering into a contract, including bid solicitation, under statutes or portions of statutes affected by this Act, shall continue to be honored until their termination. The provisions of this Act shall not be applied so as to impair any contract existing as of the effective date of this Act or to otherwise violate the provisions of either the Hawaii Constitution or the United States Constitution.

SECTION 5. (a) During the economic emergency period from September 11, 2001, to June 30, 2002, if the governor suspends any statute, rule, or order as authorized by the third special session of the 2001 Hawaii state legislature to facilitate the awarding of contracts for goods, services, or construction, all such contracts shall be awarded with a view toward revitalizing the economy of the State. For all such contracts not involving federal funds, preference shall be given to contractors who affirm that:

- (1) Immediately prior to the date of the governor's declaration of an economic emergency they were, and are on the date of any award of a contract, licensed to conduct business and other activities in the State, in good standing, and in full compliance with registration requirements, all tax laws, wage and hour, employment, insurance, worker's compensation, and employee health and benefits laws of the State; and
- (2) At least seventy-five per cent of their workforce consists of state residents. For purposes of this paragraph, a person shall be deemed to be a "state resident" if the person has lived continuously in the State for a period of six months prior to the effective date of this Act, and has not established residency in another state by living continuously therein or filing tax returns in that jurisdiction during that time.

(b) Any contractor found to have made a false affirmation under subsection (a) may have its offer rejected and may be debarred or suspended pursuant to section 103D-702, Hawaii Revised Statutes. If work on a project has commenced prior to institution of a challenge against the contractor's affirmation, the contractor may be permitted to continue working during resolution of the challenge.

(c) The preference provisions of this section shall also be applied to all contracts with a total value of \$100,000 or more under section 3.

SECTION 6. The names of all contractors, a brief description of the contract, and the amount of each contract awarded, shall be submitted to the legislature in a monthly report regarding every construction contract with a total value of \$100,000 or more awarded under the increased small purchase dollar ceilings pursuant to this Act or pursuant to a suspension of any statute, rule, or order in the exercise of the governor's powers.

SECTION 7. 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 this Act which can be given effect without the invalid provision or application, and to that extent the provisions of this Act are severable.

SECTION 8. This Act shall take effect upon its approval and shall be repealed on June 30, 2002.

(Approved November 2, 2001.)