

ACT 68

S.B. NO. 2840

A Bill for an Act Relating to Public Procurement.

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

SECTION 1. The legislature finds that state and local spending on construction procurement drives a significant portion of Hawaii's economy. However, because of Hawaii's higher cost of living, state contractors often find it cheaper to employ nonresidents to work on construction procurement contracts. As a result, Hawaii residents face difficulties acquiring employment in this important sector of the Hawaii's economy. Furthermore, nonresident employees working on construction procurement contracts contribute very little to the state's economy while they work in Hawaii, and return a disproportionately large amount of their wages to their home states upon the completion of their employment in Hawaii.

The legislature further finds that the inability of state residents to acquire employment on construction procurement contracts contributes to unemployment in the state, deprives the state of fiscal resources and capital, and dampens the state's economic development. The intent of this Act is to level the playing field for Hawaii residents and to remedy the adverse effects of nonresident employment on construction procurement contracts, while preserving contractors' flexibility to employ nonresidents where necessary.

The purpose of this Act is to require that state residents compose not less than eighty per cent of the labor force working on construction procurement contracts.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER
EMPLOYMENT OF STATE RESIDENTS ON
CONSTRUCTION PROCUREMENT CONTRACTS**

§ -1 Definitions. As used in this chapter:

"Contract" means contracts for construction under chapter 103D.

"Contractor" has the same meaning as in section 103D-104; provided that "contractor" includes a subcontractor where applicable.

"Construction" has the same meaning as in section 103D-104.

"Procurement officer" has the same meaning as in section 103D-104.

"Resident" means a person who is physically present in the state at the time the person claims to have established the person's domicile in the state and shows the person's intent is to make Hawaii the person's primary residence.

"Shortage trade" means a construction trade in which there is a shortage of Hawaii residents qualified to work in the trade.

§ -2 Application of chapter. (a) This chapter shall apply to all construction procurements under chapter 103D; provided that this chapter shall not apply to procurements for professional services under section 103D-304 and procurements for small purchases under chapter 103D-305.

(b) This chapter shall apply to any subcontract of \$50,000 or more in connection with any general contract otherwise covered by this chapter.

§ -3 Requirements of contractor. (a) A contractor awarded any contract shall ensure that Hawaii residents compose not less than eighty per cent of the workforce employed to perform the contract on a particular construction project, as determined under subsection (b).

(b) The eighty per cent requirement under subsection (a) shall be determined by dividing the total number of hours worked on a contract by residents, by the total number of hours worked by all employees of the contractor in the performance of the contract. Hours worked for any subcontractor of the contractor shall count towards the calculation for purposes of this subsection. The hours worked by employees within shortage trades, as determined by the department of labor and industrial relations, shall not be included in the calculations for purposes of this subsection.

(c) Every contractor shall comply with this chapter for the entire duration of the contract. Certification of compliance with this chapter shall be made under oath by an officer of the contractor to the procurement officer on a monthly basis.

(d) A contractor who fails to comply with this chapter shall be subject to any of the following sanctions:

- (1) Temporary suspension of work on the project until the contractor or subcontractor complies with this chapter;
- (2) Withholding of payment on the contract or subcontract, as applicable, until the contractor or subcontractor complies with this chapter;

ACT 68

- (3) Permanent disqualification of the contractor or subcontractor from any further work on the project;
- (4) Recovery by the State or county, as applicable, of any moneys expended on the contract or subcontract, as applicable; or
- (5) Proceedings for debarment or suspension of the contractor or subcontractor under section 103D-702.

§ -4 Conflict with federal law. This chapter shall not apply if the application of this chapter is in conflict with any federal law, or if the application of this chapter will disqualify any state or county agency from receiving federal funds or aid.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

(Vetoed by Governor and veto overridden by Legislature on April 29, 2010.)