

VETO

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

S.B. NO. 2840
S.D. 2
H.D. 1

A BILL FOR AN ACT VETO OVERRIDE

RELATING TO PUBLIC PROCUREMENT.

ACT No. 68
Approved: [Signature]
Dated: April 29, 2010

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

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

13 The legislature further finds that the inability of state
14 residents to acquire employment on construction procurement
15 contracts contributes to unemployment in the state, deprives the
16 state of fiscal resources and capital, and dampens the state's
17 economic development. The intent of this Act is to level the
18 playing field for Hawaii residents and to remedy the adverse



1 effects of nonresident employment on construction procurement
2 contracts, while preserving contractors' flexibility to employ
3 nonresidents where necessary.

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

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

10 "CHAPTER

11 EMPLOYMENT OF STATE RESIDENTS ON

12 CONSTRUCTION PROCUREMENT CONTRACTS

13 § -1. Definitions. As used in this chapter:

14 "Contract" means contracts for construction under chapter
15 103D.

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

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

20 "Procurement officer" has the same meaning as in section
21 103D-104.



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

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

8 § -2 Application of chapter. (a) This chapter shall
9 apply to all construction procurements under chapter 103D;
10 provided that this chapter shall not apply to procurements for
11 professional services under section 103D-304 and procurements
12 for small purchases under chapter 103D-305.

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

16 § -3 Requirements of contractor. (a) A contractor
17 awarded any contract shall ensure that Hawaii residents compose
18 not less than eighty per cent of the workforce employed to
19 perform the contract on a particular construction project, as
20 determined under subsection (b).

21 (b) The eighty per cent requirement under subsection (a)
22 shall be determined by dividing the total number of hours worked



1 on a contract by residents, by the total number of hours worked
2 by all employees of the contractor in the performance of the
3 contract. Hours worked for any subcontractor of the contractor
4 shall count towards the calculation for purposes of this
5 subsection. The hours worked by employees within shortage
6 trades, as determined by the department of labor and industrial
7 relations, shall not be included in the calculations for
8 purposes of this subsection.

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

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

16 (1) Temporary suspension of work on the project until the
17 contractor or subcontractor complies with this
18 chapter;

19 (2) Withholding of payment on the contract or subcontract,
20 as applicable, until the contractor or subcontractor
21 complies with this chapter;



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

8 § -4 Conflict with federal law. This chapter shall not
9 apply if the application of this chapter is in conflict with any
10 federal law, or if the application of this chapter will
11 disqualify any state or county agency from receiving federal
12 funds or aid."

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

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



A BILL FOR AN ACT

VETO OVERRIDE

RELATING TO THE PURCHASES OF HEALTH AND HUMAN SERVICES.

Act No.

69

Approved

Dated:

April 29, 2010

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

1 SECTION 1. The legislature finds that procurement laws
2 regarding request for proposal procedures for the purchase of
3 health and human services need to be clarified. Recently, the
4 request for proposal for the QUEST Expanded Access contract
5 allowed for-profit organizations intending to bid for health and
6 human services contracts to submit a "pre-tax" bid. The ability
7 to submit a "pre-tax" bid does not apply to not-for-profit
8 companies because not-for-profits are not subject to the
9 insurance premium tax which is mandated by Hawaii law.

10 In 2008, two for-profit companies bid for, and were
11 awarded, the QUEST Expanded Access Program contracts. In
12 addition, the administration and the department of human
13 services agreed to rebate the amount of the insurance premium
14 tax of 4.265 per cent to these companies, resulting in a higher
15 award amount than the companies had bid. It appears that the
16 state administration, during these difficult financial times,
17 will be "rebating" these companies approximately \$25,000,000 -



1 funds that the companies will be able to use to pay their taxes.
2 Concerned groups have argued that this is not proper, if not
3 illegal, because the legislature is the only branch of
4 government with the power to impose, waive, or rebate a tax by
5 exempting certain types of organizations.

6 Further, under the Hawaii procurement code, a proposed bid
7 should reflect the total amount to be expended by the State on a
8 contract, including all costs and any taxes that may be due and
9 payable. Accordingly, this bill is to ensure transparency in
10 the bidding process.

11 On December 18, 2008, in *Hawaii Insurers Council v. Lingle*,
12 120 Hawai'i 51, 201 P.3d 564 (2008), the Hawaii supreme court
13 held that only the legislature has the power to tax persons or
14 entities. The court further held that "[t]he executive branch
15 is left only with the power to administer and enforce the
16 state's tax laws, not to levy new taxes."

17 The purpose of this Act is to clarify certain award and
18 contract procedures through state procurement laws and the
19 request for proposal process for purchases of health and human
20 services under Chapter 103F, Hawaii Revised Statutes. It
21 further requires bidders to be properly licensed in the state to
22 conduct the business being sought by the request for proposals,



1 unless the business being sought is not required by the State to
2 be licensed.

3 SECTION 2. Chapter 103F, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§103F- Proposals and awards. (a) No contract
7 proposals shall be accepted from any applicant who lacks any
8 license necessary to conduct the business being sought by the
9 request for proposals.

10 (b) Proposals submitted under this chapter shall include
11 all costs, fees, and taxes, and any award or contract shall be
12 for the amount of the proposal. No award or contract shall
13 include any other payment, rebate, or direct or indirect
14 consideration that is not included in the proposal, such as
15 insurance premium or general excise tax rebates to or waivers
16 for an applicant or bidder."

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

20 SECTION 4. New statutory material is underscored.

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



VETO

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

H.B. NO. 2085
H.D. 1
S.D. 2

A BILL FOR AN ACT **VETO OVERRIDE**

RELATING TO HEALTH.

Act No. 71
Approved: CSA/1
Dated: April 29, 2010

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

1 SECTION 1. Now that national health care reform
2 legislation has been signed into law, states must be prepared to
3 implement changes to existing federal health care programs.
4 This is especially crucial given the potential for large-scale
5 changes to medicaid plans likely to be initiated through such
6 reform legislation.

7 The purpose of this Act is to ensure continuity of care for
8 Hawaii's neediest population and to make certain that medicaid
9 contracts reflect expectations outlined in national health care
10 reform by establishing restrictions on the issuance of requests
11 for proposals for QUEST contracts.

12 SECTION 2. Section 103F-402, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) State agencies to which the legislature has
15 appropriated funds for the purchase of health and human services
16 shall solicit proposals to provide health and human services by
17 purchase of health and human services contracts, by publishing a
18 notice requesting the submission of health and human service



1 proposals [-]; provided that a purchasing agency shall not
2 solicit proposals for any QUEST contract under this section if
3 the anticipated contract sum exceeds \$100,000,000 and the
4 commencement date of the contract is after the expiration of the
5 term of office of the head of the purchasing agency. Notice of
6 the request for proposals shall be given a reasonable time
7 before the date set forth in the request for submission of
8 proposals. The policy board shall adopt rules which specify:

- 9 (1) The form of the notice;
- 10 (2) What constitutes a reasonable interim between notice
11 and the proposal submission deadline; and
- 12 (3) How the notice is to be published, including [~~but not~~
13 ~~limited to,~~] whether the publication is to be
14 completed in a newspaper of general circulation, by
15 mail, through a public or private telecommunications
16 network, or any other method or combination of methods
17 which the board deems appropriate."

18 SECTION 3. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

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

21



A BILL FOR AN ACT

RELATING TO THE UNIVERSITY OF HAWAII.

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

1 SECTION 1. Chapter 304A, Hawaii Revised Statutes, is
2 amended by adding four new sections to be appropriately
3 designated and to read as follows:

4 "§304A-A Construction projects. In the solicitation for
5 bids for construction projects with a total estimated contract
6 value of \$1,000,000 or higher, the university shall require each
7 bidder to submit a listing of the bidder's subcontractors who
8 are to perform work with a value that exceeds five per cent of
9 the total bid amount submitted by the bidder.

10 §304A-B Pre-bid conference. (a) At least fifteen days
11 prior to submission of bids similar to those described in
12 section 103D-302 for a construction or design-build project with
13 a total estimated contract value of \$500,000 or more, and at
14 least fifteen days prior to submission of proposals similar to
15 those described in section 103D-303 for a construction or
16 design-build project with a total estimated contract value of
17 \$100,000 or more, the university shall hold a pre-bid conference



1 and shall invite all potential interested bidders, offerors,
2 subcontractors, and union representatives to attend.

3 (b) The university shall comply with the rules adopted
4 pursuant to section 103D-303.5, by the procurement policy board
5 established under section 103D-201.

6 §304A-C Right to audit records. (a) The university, at
7 reasonable times and places, may audit the books and records of
8 any person who has submitted cost or pricing data similar to
9 those described in section 103D-312 to the extent that such
10 books and records relate to such cost or pricing data. Any
11 person who receives a contract, change order, or contract
12 modification for which cost or pricing data is required, shall
13 maintain such books and records that relate to such cost or
14 pricing data for three years from the date of final payment
15 under the contract, unless another period is otherwise
16 authorized in writing.

17 (b) The university shall be entitled to audit the books
18 and records of a contractor or any subcontractor under any
19 negotiated contract or subcontract other than a fixed-price
20 contract to the extent that such books and records relate to the
21 performance of such contract or subcontract. The books and
22 records shall be maintained by the contractor for a period of



1 three years from the date of final payment under the prime
2 contract and by the subcontractor for a period of three years
3 from the date of final payment under the subcontract, unless
4 another period is otherwise authorized in writing.

5 §304A-D Preference for small businesses; set-asides; use
6 as subcontractors. (a) The university shall comply with the
7 rules adopted pursuant to section 103D-906, by the procurement
8 policy board established under section 103D-201."

9 SECTION 2. Section 103D-102, Hawaii Revised Statutes, is
10 amended by amending subsection (c) to read as follows:

11 "(c) Notwithstanding subsection (a), this chapter shall
12 not apply to contracts made by any regional system board of the
13 Hawaii health systems corporation[-], or, except with respect to
14 sections 103D-110, 103D-304 with respect to design professional
15 services furnished by licensees under chapter 464, 103D-324,
16 103D-707, and 103D-1002, the university or the board of regents
17 of the university."

18 SECTION 3. Section 304A-105, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) The board of regents shall develop internal policies
21 and procedures for the procurement of goods, services, and
22 construction, consistent with the goals of public accountability



1 and public procurement practices, which shall be subject to
2 [chapter 103D.] sections 103D-110, 103D-304 with respect to
3 design professional services furnished by licensees under
4 chapter 464, 103D-324, 103D-707, 103D-1002, 304A-A, 304A-B,
5 304A-C, and 304A-D. Except as provided in this subsection,
6 chapter 103D shall not apply to any actions or activities
7 undertaken, conducted, or performed under authority of the board
8 of regents or the university; provided that the board of regents
9 and the university are encouraged to use the provisions of
10 chapter 103D as guidelines; and provided further that in using
11 one or more provisions of chapter 103D as guidelines, neither
12 the board of regents nor the university shall be:

13 (1) Deemed to have waived in any way the exemption from
14 the requirements and applicability of chapter 103D
15 granted in this subsection; or

16 (2) Subject to any of the provisions or requirements of
17 chapter 103D other than those provided for in this
18 subsection."

19 SECTION 4. The board of regents of the University of
20 Hawaii shall submit annual reports to the legislature no later
21 than twenty days prior to the convening of the regular sessions



1 of 2011 and 2012, that shall include but not be limited to the
2 following:

- 3 (1) A description of the University of Hawaii's internal
4 procurement process;
- 5 (2) A description of the University of Hawaii's internal
6 procedures for handling protests of solicitations or
7 awards of contracts, if different from the procedures
8 described under chapter 103D, Hawaii Revised Statutes;
9 and
- 10 (3) A description and summary of any protests or
11 litigation that have arisen during the period of time
12 that the University of Hawaii is exempt from chapter
13 103D, Hawaii Revised Statutes, with certain
14 exceptions, pursuant to this Act.

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

18 SECTION 6. In codifying the new sections added by section
19 1 of this Act, the revisor of statutes shall substitute
20 appropriate section numbers for the letters used in designating
21 the new sections in this Act.



1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect on July 1, 2010;
4 provided that on July 1, 2012, this Act shall be repealed and
5 sections 103D-102(c) and 304A-105(b), Hawaii Revised Statutes,
6 shall be reenacted in the form in which they read on the day
7 prior to the effective date of this Act.

APPROVED this 6 day of MAY, 2010



GOVERNOR OF THE STATE OF HAWAII



A BILL FOR AN ACT

RELATING TO THE PROCUREMENT CODE.

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

1 SECTION 1. Act 175, Session Laws of Hawaii 2009, is
2 amended by amending section 14 to read as follows:

3 "SECTION 14. This Act shall take effect on July 1, 2009;
4 provided that:

5 (1) Part I shall be repealed on July 1, 2012, and sections
6 103D-102 and 103D-305, Hawaii Revised Statutes, shall
7 be reenacted in the form in which they read on the day
8 before the effective date of this Act; and

9 (2) [~~Part III~~] Sections 7, 9, and 10 of this Act shall be
10 repealed on July 1, 2011, and sections [~~103-32.1~~]
11 103D-709, 103D-710(c), and 103D-710(e), Hawaii Revised
12 Statutes, shall be reenacted in the form in which they
13 read on the day before the effective date of this
14 Act."

15 SECTION 2. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 3. This Act shall take effect on July 1, 2010.

18



A BILL FOR AN ACT

RELATING TO THE PROCUREMENT CODE.

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

1 SECTION 1. Act 175, Session Laws of Hawaii 2009, is
2 amended by amending section 14 to read as follows:

3 "SECTION 14. This Act shall take effect on July 1, 2009;
4 provided that:

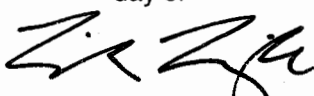
5 (1) Part I shall be repealed on July 1, 2012, and sections
6 103D-102 and 103D-305, Hawaii Revised Statutes, shall
7 be reenacted in the form in which they read on the day
8 before the effective date of this Act; and

9 (2) [~~Part III~~] Sections 7, 9, and 10 of this Act shall be
10 repealed on July 1, 2011, and sections [~~103-32.1,~~
11 103D-709, 103D-710(c), and 103D-710(e), Hawaii Revised
12 Statutes, shall be reenacted in the form in which they
13 read on the day before the effective date of this
14 Act."

15 SECTION 2. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 3. This Act shall take effect on July 1, 2010.

18 APPROVED this 13 day of MAY, 2010


GOVERNOR OF THE STATE OF HAWAII

Approved by the Governor

on MAY 25 2010

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

ACT 140

S.B. NO. 506
S.D. 1
H.D. 3
C.D. 1

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 SECTION 1. Section 103D-309, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§103D-309 Contract not binding unless funds available.**
4 (a) Contracts awarded pursuant to section 103D-302, 103D-303,
5 or 103D-306, shall neither be binding nor have any force and
6 effect of law unless the comptroller, the director of finance of
7 a county, or the respective chief financial officers of the
8 department of education, the judiciary, or the legislative
9 branches of the State or county, as the case may be, endorses
10 thereon a certificate that there is an appropriation or balance
11 of an appropriation over and above all outstanding contracts,
12 sufficient to cover the amount required by the contract;
13 provided that if the contract is a multi-term contract, the
14 comptroller, director of finance, or chief financial officer
15 shall only be required to certify that there is an appropriation
16 or balance of an appropriation over and above all outstanding
17 contracts, that is sufficient to cover the amount required to be
18 paid under the contract during the fiscal year or remaining



1 portion of the fiscal year of each term of the multi-year
2 contract; provided further that the administrator of the state
3 procurement office shall attest in writing to any recommendation
4 or solicitations. This section shall not apply to any contract
5 under which the total amount to be paid to the contractor cannot
6 be accurately estimated at the time the contract is to be
7 awarded, or to any contract for which consideration is in kind
8 or forbearance, or to any contract awarded pursuant to section
9 103D-306 that is a one-time payment through a purchase order.

10 (b) In any contract involving not only state or county
11 funds but supplemental funds from the federal government, this
12 section shall be applicable only to that portion of the contract
13 price as is payable out of state or county funds. As to the
14 portion of the contract price as is expressed in the contract to
15 be payable out of federal funds, the contract shall be construed
16 to be an agreement to pay the portion to the contractor, only
17 out of federal funds to be received from the federal government.
18 This subsection shall be liberally construed so as not to hinder
19 or impede the State in contracting for any project involving
20 financial aid from the federal government.

21 (c) In any contract pursuant to section 264-33 involving
22 not only state or county funds but supplemental funds from a



1 utility, this section shall be applicable to that portion of the
2 contract price payable out of state or county funds as well as
3 that portion of the contract price payable out of funds from a
4 utility, or payable out of state or county funds paid to a
5 utility. The State or county may certify that there are
6 sufficient funds for the utility's portion of the contract price
7 if the amounts that a utility is obligated to pay under a legal
8 agreement between the utility and the State, or a county, are
9 sufficient to pay that portion of the contract price and the
10 legal agreement:

- 11 (1) Includes a specific description of the utility's share
12 of the payment and terms of that payment;
13 (2) Allows the State, county, or utility to provide
14 progress payments or final payment based on the actual
15 cost after a project is completed; and
16 (3) Provides that in the event the State, county, or
17 utility is delinquent in payments under the legal
18 agreement, the State, county, or utility shall be
19 responsible for any and all additional costs
20 attributable to such late payment.



1 Any such legal agreement shall be executed prior to the
2 execution of the state or county contract and shall not
3 jeopardize any federal, state, or county funds.

4 For the purposes of this subsection:

5 "Legal agreement" includes a utility agreement, memorandum
6 of understanding, or memorandum of agreement.

7 "Utility" means a utility company or entity."

8 SECTION 2. New statutory material is underscored.

9 SECTION 3. This Act shall take effect on July 1, 2010.

10

APPROVED this 25 day of MAY, 2010



GOVERNOR OF THE STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO PUBLIC PROCUREMENT.

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

1 SECTION 1. Section 103D-101, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[+]§103D-101[+]~~ ~~[Requirement]~~ Requirements of ~~[good~~
4 ~~faith.]~~ ethical public procurement. (a) All public employees
5 shall conduct and participate in public procurement in an
6 ethical manner. In conducting and participating in procurement,
7 public employees shall:

- 8 (1) Act as a fiduciary and trustee of public moneys;
9 (2) Remain independent from any actual or prospective
10 bidder, offeror, contractor, or business;
11 (3) Act only in the public interest;
12 (4) Abide by the statutes and administrative rules
13 relating to public procurement;
14 (5) Identify and maximize efficiencies in the public
15 procurement process;
16 (6) Encourage economic competition by:



- 1 (A) Ensuring that all persons are afforded an equal
2 opportunity to compete in a fair and open
3 environment; and
- 4 (B) Researching innovative goods and services to meet
5 the public's needs;
- 6 (7) Avoid the intent and appearance of unethical behavior;
7 (8) Avoid social interactions with any actual or
8 prospective bidder, offeror, contractor, business, or
9 other interested parties during the procurement
10 process;
- 11 (9) Maintain confidentiality in a manner that ensures a
12 fair procurement process;
- 13 (10) Remain impartial in dealings with any actual or
14 prospective bidder, offeror, contractor, business, or
15 other interested parties; and
- 16 (11) Identify and eliminate any conflicts of interest.
- 17 (b) Any actual or prospective bidder, offeror, contractor,
18 or business taking part in the conduct of public procurement,
19 shall act in good faith to practice purchasing ethics, and when
20 applicable, display business integrity as a responsible offeror
21 through the public procurement process, including but not
22 limited to the following:



