

107<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 588

To provide authorities to, and impose requirements on, the Secretary of Defense in order to facilitate State enforcement of State tax, employment, and licensing laws against Federal construction contractors.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2001

Mrs. MINK of Hawaii introduced the following bill; which was referred to the Committee on Armed Services

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## A BILL

To provide authorities to, and impose requirements on, the Secretary of Defense in order to facilitate State enforcement of State tax, employment, and licensing laws against Federal construction contractors.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Fairness to Local Con-  
5       tractors Act”.

1 **SEC. 2. ENHANCEMENT OF STATE ENFORCEMENT OF**  
2 **STATE TAX, EMPLOYMENT, AND LICENSING**  
3 **LAWS AGAINST DEFENSE CONSTRUCTION**  
4 **CONTRACTORS.**

5 (a) **REQUIREMENT FOR STATE TAX CLEARANCE**  
6 **FROM POTENTIAL CONSTRUCTION CONTRACTORS.**—Sec-  
7 tion 2305(b) of title 10, United States Code, is amended  
8 by adding at the end the following new paragraph:

9 “(10) In order to be considered a responsible bidder  
10 or offeror for a contract for the construction of a public  
11 building, facility, or work, a bidder or offeror shall submit  
12 with the bid or offer a tax clearance from the State in  
13 which the contract is to be performed. For purposes of  
14 this paragraph, a tax clearance is a document from an  
15 appropriate State agency indicating that the bidder or of-  
16 feror is in compliance with all the tax laws of the State  
17 in which the contract is to be performed.”.

18 (b) **REQUIREMENT TO WITHHOLD FINAL CONTRACT**  
19 **PAYMENT UNTIL RECEIPT OF STATE TAX CLEARANCE**  
20 **AND CERTIFICATION OF COMPLIANCE WITH EMPLOY-**  
21 **MENT LAWS FROM CONTRACTOR.**—Section 2307 of title  
22 10, United States Code, is amended by adding at the end  
23 the following new subsection:

24 “(j) **REQUIREMENT TO WITHHOLD FINAL PAY-**  
25 **MENT.**—(1) The head of an agency shall withhold final  
26 payment under a contract for the construction of a public

1 building, facility, or work until the contractor submits to  
2 the agency both of the following:

3           “(A) A tax clearance from the State in which  
4           the contract is or was performed.

5           “(B) A certification stating that the contractor  
6           is in compliance (or was in compliance during the  
7           performance of the contract) with all applicable  
8           State laws that require employers to make payments  
9           to or for the benefit of employees, including laws re-  
10          lating to unemployment insurance, workers com-  
11          pensation, health insurance, and disability insurance.

12          “(2) For purposes of this subsection, a tax clearance  
13          is a document from an appropriate State agency indicating  
14          that the contractor is or was in compliance with all the  
15          tax laws of the State in which the contract is or was per-  
16          formed.”.

17          (c) **AUTHORITY TO WITHHOLD PAYMENT TO CON-**  
18          **TRACTOR OF AMOUNTS NECESSARY TO MEET STATE TAX**  
19          **OBLIGATIONS.**—Section 2307 of such title is further  
20          amended by adding at the end the following new sub-  
21          section:

22          “(k) **AUTHORITY TO WITHHOLD PAYMENT TO MEET**  
23          **STATE TAX OBLIGATIONS.**—The head of an agency may  
24          withhold, from any payment due to a contractor under a  
25          contract made by the agency for the construction of a pub-

1 lic building, facility, or work, an amount considered nec-  
2 essary by the head of the agency to pay to the State in  
3 which the contract is being performed the amount of the  
4 contractor's State tax liability that is attributable to the  
5 contract. The head of the agency that so withholds a pay-  
6 ment may, upon request of the State in which the contract  
7 is being performed and with such documentation as the  
8 head of the agency considers necessary, pay such tax li-  
9 ability amount directly to the State from the withheld pay-  
10 ment. Any amount of a withheld payment that exceeds the  
11 actual State tax liability amount shall be paid to the con-  
12 tractor.”.

13 (d) REQUIREMENT FOR CONSTRUCTION CONTRAC-  
14 TORS TO OBTAIN APPLICABLE STATE LICENSES.—(1)  
15 Chapter 141 of title 10, United States Code, is amended  
16 by adding at the end the following new section:

17 **“§ 2410n. Construction contracts: requirement to ob-**  
18 **tain applicable State licenses**

19 “The Secretary of Defense shall require, in any con-  
20 tract entered into by the Secretary for the construction  
21 of a public building, facility, or work which is to be per-  
22 formed in a State that requires persons performing the  
23 type of work to be performed under the contract to be  
24 licensed, that the contractor be so licensed.”.

1           (2) The table of sections at the beginning of such  
2 chapter is amended by adding at the end the following  
3 new item:

“2410n. Construction contracts: requirement to obtain applicable State li-  
censes.”.

4           (e) **REQUIREMENT TO EXPLAIN HAWAII EXCISE TAX**  
5 **IN FEDERAL ACQUISITION REGULATION.**—The Federal  
6 Acquisition Regulation shall be revised to contain provi-  
7 sions explaining the general excise tax law of the State  
8 of Hawaii.

9           (f) **EFFECTIVE DATE.**—The amendments made by  
10 this Act shall apply with respect to contracts entered into  
11 after the date of the enactment of this Act.

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