

108TH CONGRESS  
1ST SESSION

# H. R. 3653

To provide authorities to, and impose requirements on, the heads of executive agencies 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

DECEMBER 8, 2003

Mr. CASE (for himself and Mr. ABERCROMBIE) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide authorities to, and impose requirements on, the heads of executive agencies 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 CONSTRUCTION CONTRAC-**  
4 **TORS.**

5 (a) REQUIREMENT FOR STATE TAX CLEARANCE  
6 FROM POTENTIAL CONSTRUCTION CONTRACTORS.—

7 (1) DEFENSE CONTRACTS.—Section 2305(b) of  
8 title 10, United States Code, is amended by adding  
9 at the end the following new paragraph:

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

19 (2) CIVILIAN AGENCY CONTRACTS.—Section  
20 303B of title III of the Federal Property and Ad-  
21 ministrative Services Act of 1949 (41 U.S.C. 253b)  
22 is amended by adding at the end the following new  
23 subsection:

24 “(n) TAX CLEARANCE.—In order to be considered a  
25 responsible bidder or offeror for a contract for the con-  
26 struction of a public building, facility, or work, a bidder

1 or offeror shall submit with the bid or offer a tax clearance  
 2 from the State in which the contract is to be performed.  
 3 For purposes of this paragraph, a tax clearance is a docu-  
 4 ment from an appropriate State agency indicating that the  
 5 bidder or offeror is in compliance with all the tax laws  
 6 of the State in which the contract is to be performed.”.

7 (b) REQUIREMENT TO WITHHOLD FINAL CONTRACT  
 8 PAYMENT UNTIL RECEIPT OF STATE TAX CLEARANCE  
 9 AND CERTIFICATION OF COMPLIANCE WITH EMPLOY-  
 10 MENT LAWS FROM CONTRACTOR.—

11 (1) DEFENSE CONTRACTS.—Section 2307 of  
 12 title 10, United States Code, is amended by adding  
 13 at the end the following new subsection:

14 “(j) REQUIREMENT TO WITHHOLD FINAL PAY-  
 15 MENT.—(1) The head of an agency shall withhold final  
 16 payment under a contract for the construction of a public  
 17 building, facility, or work until the contractor submits to  
 18 the agency both of the following:

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

21 “(B) A certification stating that the contractor  
 22 is in compliance (or was in compliance during the  
 23 performance of the contract) with all applicable  
 24 State laws that require employers to make payments  
 25 to or for the benefit of employees, including laws re-

1       lating to unemployment insurance, workers com-  
2       pensation, health insurance, and disability insurance.

3       “(2) For purposes of this subsection, a tax clearance  
4       is a document from an appropriate State agency indicating  
5       that the contractor is or was in compliance with all the  
6       tax laws of the State in which the contract is or was per-  
7       formed.”.

8               (2) CIVILIAN AGENCY CONTRACTS.—Section  
9       305 of title III of the Federal Property and Admin-  
10      istrative Services Act of 1949 (41 U.S.C. 255) is  
11      amended by adding at the end the following new  
12      subsection:

13      “(h) REQUIREMENT TO WITHHOLD FINAL PAY-  
14      MENT.—(1) The head of an executive agency shall with-  
15      hold final payment under a contract for the construction  
16      of a public building, facility, or work until the contractor  
17      submits to the agency both of the following:

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

20              “(B) A certification stating that the contractor  
21      is in compliance (or was in compliance during the  
22      performance of the contract) with all applicable  
23      State laws that require employers to make payments  
24      to or for the benefit of employees, including laws re-

1       lating to unemployment insurance, workers com-  
2       pensation, health insurance, and disability insurance.

3       “(2) For purposes of this subsection, a tax clearance  
4       is a document from an appropriate State agency indicating  
5       that the contractor is or was in compliance with all the  
6       tax laws of the State in which the contract is or was per-  
7       formed.”.

8       (c) AUTHORITY TO WITHHOLD PAYMENT TO CON-  
9       TRACTOR OF AMOUNTS NECESSARY TO MEET STATE TAX  
10      OBLIGATIONS.—

11           (1) DEFENSE CONTRACTS.—Section 2307 of  
12      title 10, United States Code, is further amended by  
13      adding at the end the following new subsection:

14      “(k) AUTHORITY TO WITHHOLD PAYMENT TO MEET  
15      STATE TAX OBLIGATIONS.—The head of an agency may  
16      withhold, from any payment due to a contractor under a  
17      contract made by the agency for the construction of a pub-  
18      lic building, facility, or work, an amount considered nec-  
19      essary by the head of the agency to pay to the State in  
20      which the contract is being performed the amount of the  
21      contractor’s State tax liability that is attributable to the  
22      contract. The head of the agency that so withholds a pay-  
23      ment may, upon request of the State in which the contract  
24      is being performed and with such documentation as the  
25      head of the agency considers necessary, pay such tax li-

1 ability amount directly to the State from the withheld pay-  
2 ment. Any amount of a withheld payment that exceeds the  
3 actual State tax liability amount shall be paid to the con-  
4 tractor.”.

5 (2) CIVILIAN AGENCY CONTRACTS.—Section  
6 305 of title III of the Federal Property and Admin-  
7 istrative Services Act of 1949 (41 U.S.C. 255) is  
8 further amended by adding at the end the following  
9 new subsection:

10 “(i) AUTHORITY TO WITHHOLD PAYMENT TO MEET  
11 STATE TAX OBLIGATIONS.—The head of an executive  
12 agency may withhold, from any payment due to a con-  
13 tractor under a contract made by the agency for the con-  
14 struction of a public building, facility, or work, an amount  
15 considered necessary by the head of the agency to pay to  
16 the State in which the contract is being performed the  
17 amount of the contractor’s State tax liability that is attrib-  
18 utable to the contract. The head of the executive agency  
19 that so withholds a payment may, upon request of the  
20 State in which the contract is being performed and with  
21 such documentation as the head of the agency considers  
22 necessary, pay such tax liability amount directly to the  
23 State from the withheld payment. Any amount of a with-  
24 held payment that exceeds the actual State tax liability  
25 amount shall be paid to the contractor.”.

1 (d) REQUIREMENT FOR CONSTRUCTION CONTRAC-  
 2 TORS TO OBTAIN APPLICABLE STATE LICENSES.—

3 (1) DEFENSE CONTRACTS.—(A) Chapter 141 of  
 4 title 10, United States Code, is amended by adding  
 5 at the end the following new section:

6 **“§ 2410n. Construction contracts: requirement to ob-**  
 7 **tain applicable State licenses**

8 “The Secretary of Defense shall require, in any con-  
 9 tract entered into by the Secretary for the construction  
 10 of a public building, facility, or work which is to be per-  
 11 formed in a State that requires persons performing the  
 12 type of work to be performed under the contract to be  
 13 licensed, that the contractor be so licensed.”.

14 (B) The table of sections at the beginning of such  
 15 chapter is amended by adding at the end the following  
 16 new item:

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

17 (2) CIVILIAN AGENCY CONTRACTS.—Title III of  
 18 the Federal Property and Administrative Services  
 19 Act of 1949 (41 U.S.C. 251 et seq.) is amended by  
 20 adding at the end the following new section:

21 **“SEC. 318. CONSTRUCTION CONTRACTS: REQUIREMENT TO**  
 22 **OBTAIN APPLICABLE STATE LICENSES.**

23 “The head of an executive agency shall require, in  
 24 any contract entered into by the agency for the construc-

1 tion of a public building, facility, or work which is to be  
2 performed in a State that requires persons performing the  
3 type of work to be performed under the contract to be  
4 licensed, that the contractor be so licensed.”.

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

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

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