A BILL FOR AN ACT

RELATING TO PREVAILING WAGES.

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

SECTION 1. The legislature finds that the purpose of chapter 104, Hawaii Revised Statutes, is to ensure that prevailing wages are paid to, and reasonable work hours are required of, laborers and mechanics on all public work projects where the contract for construction of the public work project exceeds $2,000.

The legislature also finds that there have been instances where laborers and mechanics performing construction on state land have not been paid prevailing wages in accordance with chapter 104, Hawaii Revised Statutes. The failure to pay prevailing wages to laborers and mechanics performing construction on state land is contrary to the intent of chapter 104, Hawaii Revised Statutes.

It is the intent of the legislature that all development, construction, renovation, and maintenance that takes place upon public land or for which public land is used to obtain financing
shall constitute a "public work" to which chapter 104, Hawaii Revised Statutes, applies.

The purpose of this Act is to ensure that all contracts in excess of $2,000 for development, construction, renovation, or maintenance upon state land, unless otherwise exempt, are subject to the requirements of chapter 104, Hawaii Revised Statutes.

SECTION 2. Section 104-1, Hawaii Revised Statutes, is amended:

1. By adding a new definition to be appropriately inserted and to read as follows:

"Public lands" means all lands or interests therein in the State, classified as government or crown lands prior to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including lands accreted after May 20, 2003, and not otherwise awarded, submerged lands, and lands beneath tidal waters that are suitable for reclamation, together with reclaimed lands that have been given the status of public lands under chapter 171;
and shall also include lands to which any state or county
agency, department, branch, or authority holds title."

2. By amending the definition of "public work" to read as
follows:

"Public work" means any project, including development of
any housing pursuant to section 46-15 or chapter 201H and
development, construction, renovation, and maintenance related
to refurbishment of any real or personal property, where [the]:

(1) The funds or resources required to undertake the
project are to any extent derived, either directly or
indirectly, from public revenues of the State or any
county, or from the sale of securities or bonds whose
interest or dividends are exempt from state or federal
taxes; or

(2) The project for development, construction, renovation,
or maintenance is done on public lands regardless of
whether or not the work is paid for from funds or
resources derived from public revenues of the State or
any county, or from the sale of securities or bonds
whose interest or dividends are exempt from state or
federal taxes; or
(3) Public lands are secured as collateral or used to obtain financing for the development, construction, renovation, or maintenance of the project."

SECTION 3. Section 104-2, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) This chapter shall apply to every contract in excess of $2,000 for construction of a public work project to which a governmental contracting agency is a party; provided that this chapter shall not apply to:

1. Experimental and demonstration housing developed pursuant to section 46-15 for housing;

2. Housing developed pursuant to chapter 201H if the cost of the project is less than $500,000 and the eligible bidder or eligible developer is a private nonprofit corporation;

3. Projects for the development, construction, renovation, or maintenance of a single-family dwelling on public lands contracted for by a private lessee of the State where the work on a per dwelling or unit
basis is de minimis in nature, and in no event greater than $100,000 in value; or

(4) Projects for the development, construction, renovation, or maintenance of farm dwellings and related accessory improvements on state-owned agricultural zoned property or within a state agricultural park facility if the total cost of the project is less than $500,000.

For the purposes of this section:

"Contract" includes but is not limited to any agreement, purchase order, or voucher in excess of $2,000 for construction of a public work project.

"Governmental contracting agency" includes:

(1) Any person or entity that causes either directly or indirectly the building or development of a public work or holds title to public lands; and

(2) Any public-private partnership.

"Party" includes eligible bidders for and eligible developers of any public work and any housing under chapter 201H; provided that this subsection shall not apply to any housing developed under section 46-15 or chapter 201H if the
entire cost of the project is less than $500,000 and the eligible bidder or eligible developer is a private nonprofit corporation.

"Private lessee" includes any person or entity, other than a federal, state, or county agency or instrumentality, that holds a leasehold interest in public lands."

2. By amending subsections (g) and (h) to read:

"(g) For any public work project that is subject to this chapter but not directly caused by a governmental contracting agency, including but not limited to a public work project caused, initiated, or contracted for by a private lessee of the State or the private lessee's contractor, for the development, construction, renovation, or maintenance of any real or personal property located on public lands, the director shall be responsible for enforcement of this chapter, including the collection and maintenance of certified copies of all payrolls that are subject to this chapter. The director shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section."
(h) When:

(1) The department of budget and finance enters a project agreement with a project party, as those terms are defined in chapter 39A, to finance or refinance a project with the proceeds of special purpose revenue bonds;

(2) The private lessee of public lands enters into a contract for the development, construction, renovation, or maintenance of any real or personal property where the public work project is located on public lands;

(3) The project party or contractor of the public work project has entered into a collective bargaining agreement with a bona fide labor union governing the project party's or contractor's workforce; and

(4) The collective bargaining agreement has been properly submitted to the director under section 104-34, the terms of the collective bargaining agreement and associated provisions shall be deemed the prevailing wages and terms serving as the basis of compliance with this chapter for work on
the [project by the project party's] public work project by the contractor's workforce; provided that this subsection does not affect the director's enforcement powers contained in subsection (g)."

SECTION 4. Section 104-4, Hawaii Revised Statutes, is amended to read as follows:

"§104-4 Termination of work on failure to pay agreed wages; completion of work; contract and specifications provision. Every contract and the specifications for such contract shall contain a provision that if the governmental contracting agency or director finds that any laborer or mechanic employed on the job site by the contractor or any subcontractor has been or is being paid wages at a rate less than the required rate by the contract or the specifications, or has not received the laborer's or mechanic's full overtime compensation, the governmental contracting agency or director may, by written notice to the contractor, terminate the contractor's right, or the right of any subcontractor, to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid and may complete such work or part by contract or otherwise, and the
contractor and the contractor's sureties shall be liable to the

governmental contracting agency or director, on behalf of the
department, for any excess costs occasioned thereby."

SECTION 5. There is appropriated out of the general
revenues of the State of Hawaii the sum of $ or so much
thereof as may be necessary for fiscal year 2016-2017 for
effectuation of this Act and overall enforcement of chapter 104,
Hawaii Revised Statutes.

The sum appropriated shall be expended by the department of
labor and industrial relations for the purposes of this Act.

SECTION 6. This Act does not affect rights and duties that
matured, penalties that were incurred, and proceedings that were
begun before its effective date.

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

SECTION 8. This Act shall take effect on July 1, 2091;
provided that section 5 shall take effect on July 1, 2091.
Report Title:
Public Works; Wages; Appropriation

Description:
Specifies that development, construction, renovation, and maintenance on public land or financed based on public land are public works subject to state prevailing wage and hour requirements regardless of the contracting parties or funding source, with limited exemptions for certain housing construction. Appropriates funds for enforcement of wage and hour requirements. (SB2724 HD1)

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