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# A BILL FOR AN ACT

RELATING TO PREVAILING WAGES.

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

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

7           The legislature also finds that there have been instances  
8 where laborers and mechanics performing construction on state  
9 land have not been paid prevailing wages in accordance with  
10 chapter 104, Hawaii Revised Statutes. The failure to pay  
11 prevailing wages to laborers and mechanics performing  
12 construction on state land is contrary to the intent of chapter  
13 104, Hawaii Revised Statutes.

14           It is the intent of the legislature that all development,  
15 construction, renovation, and maintenance upon state land or the  
16 use of state land to secure financing for development,  
17 construction, renovation, or maintenance shall constitute a



1 "public work" to the extent the term is used in chapter 104,  
2 Hawaii Revised Statutes.

3 The purpose of this Act is to ensure that all contracts in  
4 excess of \$2,000 for construction upon state land, unless  
5 otherwise exempt, are subject to the requirements of chapter  
6 104, Hawaii Revised Statutes.

7 SECTION 2. Section 104-1, Hawaii Revised Statutes, is  
8 amended by amending the definition of "public work" to read as  
9 follows:

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

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

20 (2) The project for development, construction, renovation,  
21 or maintenance is done on public lands regardless of



1           whether or not the work is paid for from funds or  
2           resources derived from public revenues of the State or  
3           any county, or from the sale of securities or bonds  
4           whose interest or dividends are exempt from state or  
5           federal law; or

6           (3) Public lands are secured as collateral or used to  
7           obtain financing for the development, construction,  
8           renovation, or maintenance of the project."

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

11          1. By amending subsection (a) to read:

12           "(a) This chapter shall apply to every contract in excess  
13          of \$2,000 for construction of a public work project to which a  
14          governmental contracting agency is a party; provided that this  
15          chapter shall not apply to [experimental];

16           (1) Experimental and demonstration housing developed  
17           pursuant to section 46-15 [ex-housing];

18           (2) Housing developed pursuant to chapter 201H if the cost  
19           of the project is less than \$500,000 and the eligible  
20           bidder or eligible developer is a private nonprofit  
21           corporation [-];



- 1        (3) Projects for the development, construction,  
2        renovation, or maintenance of a single-family dwelling  
3        or multi-family unit on public lands contracted for by  
4        a private lessee of the State where the work on a per  
5        dwelling or unit basis is de minimis in nature, and in  
6        no event greater than \$100,000 in value; or
- 7        (4) Projects for the development, construction,  
8        renovation, or maintenance of farm dwellings and  
9        related accessory improvements on state-owned  
10       agricultural zoned property or within a state  
11       agricultural park facility if the total cost of the  
12       project is less than \$500,000.

13       For the purposes of this [~~subsection~~] section:

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

17       "Governmental contracting agency" includes [+

18       ~~(1)~~ Any] any person or entity that causes either directly  
19       or indirectly the building or development of a public  
20       work[+] or holds title to public lands; and

21       (2) Any public-private partnership.



1 "Party" includes eligible bidders for and eligible  
2 developers of any public work and any housing under chapter  
3 201H; provided that this subsection shall not apply to any  
4 housing developed under section 46-15 or chapter 201H if the  
5 entire cost of the project is less than \$500,000 and the  
6 eligible bidder or eligible developer is a private nonprofit  
7 corporation.

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

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



1 state or county agency, department, branch, or authority holds  
2 title."

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

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

16 (h) When:

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



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

6        [~~2~~] (3) The project party or contractor of the public  
7        work project has entered into a collective bargaining  
8        agreement with a bona fide labor union governing the  
9        project party's or contractor's workforce; and

10       [~~3~~] (4) The collective bargaining agreement has been  
11       properly submitted to the director under section  
12       104-34,  
13       the terms of the collective bargaining agreement and associated  
14       provisions shall be deemed the prevailing wages and terms  
15       serving as the basis of compliance with this chapter for work on  
16       the [~~project by the project party's~~] public work project by the  
17       contractor's workforce; provided that this subsection does not  
18       affect the director's enforcement powers contained in subsection  
19       (g)."

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



1           "§104-4 Termination of work on failure to pay agreed  
2 wages; completion of work; contract and specifications  
3 provision. Every contract and the specifications for such  
4 contract shall contain a provision that if the governmental  
5 contracting agency or director finds that any laborer or  
6 mechanic employed on the job site by the contractor or any  
7 subcontractor has been or is being paid wages at a rate less  
8 than the required rate by the contract or the specifications, or  
9 has not received the laborer's or mechanic's full overtime  
10 compensation, the governmental contracting agency or director  
11 may, by written notice to the contractor, terminate the  
12 contractor's right, or the right of any subcontractor, to  
13 proceed with the work or with the part of the work in which the  
14 required wages or overtime compensation have not been paid and  
15 may complete such work or part by contract or otherwise, and the  
16 contractor and the contractor's sureties shall be liable to the  
17 governmental contracting agency or director, on behalf of the  
18 department, for any excess costs occasioned thereby."

19           SECTION 5. There is appropriated out of the general  
20 revenues of the State of Hawaii the sum of \$                    or so much  
21 thereof as may be necessary for fiscal year 2016-2017 for





1 effectuation of this Act and overall enforcement of chapter 104,  
2 Hawaii Revised Statutes.

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

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

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

10 SECTION 8. This Act shall take effect on January 7, 2059;  
11 provided that section 5 shall take effect on July 1, 2059.



**Report Title:**

Public Works; Wages; Appropriation

**Description:**

Expands the types of projects that must comply with wage and hour requirements under chapter 104, HRS, including construction projects on public lands regardless of whether the work is paid from public funds, and projects for which public lands are used as security for financing. Exempts certain projects from chapter 104, HRS. Establishes requirements that apply in situations involving private lessees of public land who contract for certain projects on public land. Appropriates funds for enforcement of chapter 104, HRS. Effective 1/7/2059, except section 5, which takes effect 7/1/2059. (SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

