HOUSE OF REPRESENTATIVES TWENTY-FOURTH LEGISLATURE, 2007 STATE OF HAWAII



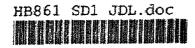
A BILL FOR AN ACT

RELATING TO PUBLIC WORKS.

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

1	SECTION 1. Chapter 39A, Hawaii Revised Statutes, is
2	amended by adding a new section to part I to be appropriately
3	designated and to read as follows:
4	"§39A- Public work project; issuance of special purpose
5	revenue bonds; report to department of labor and industrial
6	relations required. Any issuance of special purpose revenue
7	bonds pursuant to this chapter for a public work project that is
8	subject to chapter 104, but not directly caused by a
9	governmental contracting agency, shall be promptly reported by
10	the director of finance to the department of labor and
11	industrial relations so that the department of labor and
12	industrial relations may expeditiously carry out its duties
13	under chapter 104. The report shall be in a form and contain
14	such information as the director of labor and industrial
15	relations may prescribe."
16	SECTION 2. Section 104-2, Hawaii Revised Statutes, is

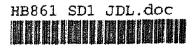
17 amended to read as follows:



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"§104-2 Applicability; wages, hours, and other 1 requirements. (a) This chapter shall apply to every contract 2 3 in excess of \$2,000 for construction of a public work project to which a governmental contracting agency is a party; provided 4 that this chapter shall not apply to experimental and 5 6 demonstration housing developed pursuant to section 46-15 or 7 housing developed pursuant to chapter 201G or 201H if the cost of the project is less than \$500,000 and the eligible bidder or 8 eligible developer is a private nonprofit corporation. 9 10 For the purposes of this subsection: "Contract" includes but is not limited to any agreement, 11 purchase order, or voucher in excess of \$2,000 for construction 12 of a public work project. 13 "Governmental contracting agency" includes any person or 14 entity that causes either directly or indirectly the building or 15 development of a public work. 16 "Party" includes eligible bidders for and eligible 17 developers of any public work and any housing under chapter 18 201G[+] or 201H; provided that this subsection shall not apply 19 to any housing developed under section 46-15 or chapter 201G or 20 201H if the entire cost of the project is less than \$500,000 and 21



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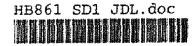
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the eligible bidder or eligible developer is a private nonprofit
 corporation.

3 "Public work" means any project, including development of 4 any housing pursuant to section 46-15 or chapter 201G or 201H 5 and development, construction, renovation, and maintenance related to refurbishment of any real or personal property, where 6 7 the funds or resources required to undertake the project are to 8 any extent derived either directly or indirectly from public 9 revenues of the State or any county, or from the sale of securities or bonds whose interest or dividends are exempt from 10 11 state or federal taxes.

12 (b) Every laborer and mechanic performing work on the job
13 site for the construction of any public work project shall be
14 paid no less than prevailing wages; provided that:

15 (1)The prevailing wages shall be established by the 16 director as the sum of the basic hourly rate and the 17 cost to an employer of providing a laborer or mechanic 18 with fringe benefits. In making prevailing wage 19 determinations, the following shall apply: 20 The director shall make separate findings of: (A) (i) 21 The basic hourly rate; and



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1		(ii) The rate of contribution or cost of fringe
2		benefits paid by the employer when the
3		payment of the fringe benefits by the
4		employer constitutes a prevailing practice.
5		The cost of fringe benefits shall be
6		reflected in the wage rate scheduled as an
7		hourly rate; and
8	(B)	The rates of wages which the director shall
9		regard as prevailing in each corresponding
10		classification of laborers and mechanics shall be
11		the rate of wages paid to the greatest number of
12		those employed in the [State,] <u>state</u> , the modal
13		rate, in the corresponding classes of laborers or
14		mechanics on projects that are similar to the
15		contract work;
16	(2) The	prevailing wages shall be not less than the wages
17	paya	ble under federal law to corresponding classes of
18	labo	erers and mechanics employed on public works
19	proj	ects in the [State] state that are prosecuted
20	unde	er contract or agreement with the government of the
21	Unit	ed States; and



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(3) Notwithstanding the provisions of the original
 contract, the prevailing wages shall be periodically
 adjusted during the performance of the contract in an
 amount equal to the change in the prevailing wage as
 periodically determined by the director.

No laborer or mechanic employed on the job site of any 6 (c)public work of the State or any political subdivision thereof 7 shall be permitted or required to work on Saturday, Sunday, or a 8 9 legal holiday of the State or in excess of eight hours on any 10 other day unless the laborer or mechanic receives overtime compensation for all hours worked on Saturday, Sunday, and a 11 legal holiday of the State or in excess of eight hours on any 12 13 other day. For purposes of determining overtime compensation 14 under this subsection, the basic hourly rate of any laborer or mechanic shall not be less than the basic hourly rate determined 15 by the director to be the prevailing basic hourly rate for 16 17 corresponding classes of laborers and mechanics on projects of similar character in the State. 18

19 (d) The contractor or the contractor's subcontractor shall
20 pay all mechanics and laborers employed on the job site,
21 unconditionally and not less often than once a week, and without
22 deduction or rebate on any account, except as allowed by law,



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the full amounts of their wages including overtime, accrued to 1 2 not more than five working days prior to the time of payment, at 3 wage rates not less than those deemed to be prevailing, regardless of any contractual relationship which may be alleged • 4 5 to exist between the contractor or subcontractor and the 6 laborers and mechanics. The rates of wages to be paid shall be 7 posted by the contractor in a prominent and easily accessible 8 place at the job site, and a copy of the rates of wages required 9 to be posted shall be given to each laborer and mechanic 10 employed under the contract by the contractor at the time each laborer and mechanic is employed, except that where there is a 11 12 collective bargaining agreement the contractor does not have to 13 provide the contractor's employees the wage rate schedules.

(e) The governmental contracting agency may withhold from the contractor so much of the accrued payments as the governmental contracting agency may consider necessary to pay to the laborers and mechanics employed by the contractor or any subcontractor on the job site the difference between the prevailing wages and the wages received and not refunded by the laborers and mechanics.

(f) Every contract in excess of \$2,000 for construction of
 a public work project and the specifications for such contract
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1	shall include provisions that set forth the requirements of
2	subsections (a) to (e); provided that failure by the contracting
3	agency to include those provisions in the contract or
4	specifications shall not be a defense of the contractor or
5	subcontractor for noncompliance with the requirements of this
. 6	chapter.
7	(g) For any public work project that is subject to this
8	chapter but not directly caused by a governmental contracting
9	agency, the director shall be responsible for enforcement of
10	this chapter, including the collection and maintenance of
11	certified copies of all payrolls that are subject to this
12	chapter. The director shall adopt rules pursuant to chapter 91
13	to effectuate the purposes of this section.
14	(h) When the department of budget and finance enters a
15	project agreement with a project party, as those terms are
16	defined in chapter 39A, to finance or refinance a project with
17	the proceeds of special purpose revenue bonds, and such project
18	party has entered into a collective bargaining agreement with a
19	bona fide labor union governing the project party's workforce,
20	the terms of that collective bargaining agreement and associated
21	provisions shall be deemed the prevailing wages and terms
22	serving as the basis of compliance with this section for work on

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1	the project by the project party's workforce, provided, however,
2	that this subsection does not affect the director's enforcement
3	powers contained in subsection (g).*
4	SECTION 3. This Act does not affect rights and duties that
5	matured, penalties that were incurred, and proceedings that were
6	begun, before its effective date.
7	SECTION 4. Statutory material to be repealed is bracketed
8	and stricken. New statutory material is underscored.
9	SECTION 5. This Act shall take effect upon its approval.

