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# 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 to  
10 the department of labor and industrial relations so that the  
11 department of labor and industrial relations may expeditiously  
12 carry out its duties under chapter 104. The report shall be in  
13 a form and contain such information as the director of labor and  
14 industrial relations may prescribe."

15           SECTION 2. Section 104-2, Hawaii Revised Statutes, is  
16 amended to read as follows:

17           "**§104-2 Applicability; wages, hours, and other**  
18 **requirements.** (a) This chapter shall apply to every contract



1 in excess of \$2,000 for construction of a public work project to  
2 which a governmental contracting agency is a party; provided  
3 that this chapter shall not apply to experimental and  
4 demonstration housing developed pursuant to section 46-15 or  
5 housing developed pursuant to chapter 201G if the cost of the  
6 project is less than \$500,000 and the eligible bidder or  
7 eligible developer is a private nonprofit corporation.

8 For the purposes of this subsection:

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

12 "Governmental contracting agency" includes any person or  
13 entity that causes either directly or indirectly the building or  
14 development of a public work.

15 "Party" includes eligible bidders for and eligible  
16 developers of any public work and any housing under chapter  
17 201G; provided that this subsection shall not apply to any  
18 housing developed under section 46-15 or chapter 201G if the  
19 entire cost of the project is less than \$500,000 and the  
20 eligible bidder or eligible developer is a private nonprofit  
21 corporation.



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

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

13 (1) The prevailing wages shall be established by the  
14 director as the sum of the basic hourly rate and the  
15 cost to an employer of providing a laborer or mechanic  
16 with fringe benefits. In making prevailing wage  
17 determinations, the following shall apply:

18 (A) The director shall make separate findings of:

19 (i) The basic hourly rate; and

20 (ii) The rate of contribution or cost of fringe  
21 benefits paid by the employer when the  
22 payment of the fringe benefits by the



1                    employer constitutes a prevailing practice.  
2                    The cost of fringe benefits shall be  
3                    reflected in the wage rate scheduled as an  
4                    hourly rate; and

5                    (B) The rates of wages which the director shall  
6                    regard as prevailing in each corresponding  
7                    classification of laborers and mechanics shall be  
8                    the rate of wages paid to the greatest number of  
9                    those employed in the State, the modal rate, in  
10                    the corresponding classes of laborers or  
11                    mechanics on projects that are similar to the  
12                    contract work;

13                    (2) The prevailing wages shall be not less than the wages  
14                    payable under federal law to corresponding classes of  
15                    laborers and mechanics employed on public works  
16                    projects in the State that are prosecuted under  
17                    contract or agreement with the government of the  
18                    United States; and

19                    (3) Notwithstanding the provisions of the original  
20                    contract, the prevailing wages shall be periodically  
21                    adjusted during the performance of the contract in an

1 amount equal to the change in the prevailing wage as  
2 periodically determined by the director.

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

16 (d) The contractor or the contractor's subcontractor shall  
17 pay all mechanics and laborers employed on the job site,  
18 unconditionally and not less often than once a week, and without  
19 deduction or rebate on any account, except as allowed by law,  
20 the full amounts of their wages including overtime, accrued to  
21 not more than five working days prior to the time of payment, at  
22 wage rates not less than those deemed to be prevailing,



1 regardless of any contractual relationship which may be alleged  
2 to exist between the contractor or subcontractor and the  
3 laborers and mechanics. The rates of wages to be paid shall be  
4 posted by the contractor in a prominent and easily accessible  
5 place at the job site, and a copy of the rates of wages required  
6 to be posted shall be given to each laborer and mechanic  
7 employed under the contract by the contractor at the time each  
8 laborer and mechanic is employed, except that where there is a  
9 collective bargaining agreement the contractor does not have to  
10 provide the contractor's employees the wage rate schedules.

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

18 (f) Every contract in excess of \$2,000 for construction of  
19 a public work project and the specifications for such contract  
20 shall include provisions that set forth the requirements of  
21 subsections (a) to (e); provided that failure by the contracting  
22 agency to include those provisions in the contract or



1 specifications shall not be a defense of the contractor or  
2 subcontractor for noncompliance with the requirements of this  
3 chapter.

4 (g) For any public work project that is subject to this  
5 chapter but not directly caused by a governmental contracting  
6 agency, the director shall be responsible for enforcement of  
7 this chapter, including the collection and maintenance of  
8 certified copies of all payrolls that are subject to this  
9 chapter. The director shall adopt rules pursuant to chapter 91  
10 to effectuate the purposes of this section."

11 SECTION 3. Section 104-24, Hawaii Revised Statutes, is  
12 amended by amending subsection (d) to read as follows:

13 "(d) A first, second, or third violation refers to each  
14 [~~investigation involving one or more projects~~] project in which  
15 the department finds that a contractor has failed to comply with  
16 this chapter."

17 SECTION 4. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

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



1 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: KERIC CALDWELL

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JAN 24 2006





HB 2092

**Report Title:**

Prevailing Wages; Indirect Public Works Projects; Reporting

**Description:**

Requires that, for public works projects that are not directly caused by a governmental contracting agency, the department of labor and industrial relations be the responsible agency for ensuring compliance with the State's prevailing wage law. Requires the department of budget and finance to report the issuance of special purpose revenue bonds. Clarifies that a violation of public works law refers to each project in which DLIR finds a failure to comply.

