

JAN 25 2006

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

3 **"§104-2 Applicability; wages, hours, and other**  
4 **requirements.** (a) This chapter shall apply to every contract  
5 in excess of \$2,000 for construction of a public work project to  
6 which a governmental contracting agency is a party; provided  
7 that this chapter shall not apply to experimental and  
8 demonstration housing developed pursuant to section 46-15 or  
9 housing developed pursuant to chapter 201G if the cost of the  
10 project is less than \$500,000 and the eligible bidder or  
11 eligible developer is a private nonprofit corporation.

12 For the purposes of this subsection:

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

16 "Governmental contracting agency" includes any person or  
17 entity that causes either directly or indirectly the building or  
18 development of a public work.



1 "Party" includes eligible bidders for and eligible  
2 developers of any public work and any housing under chapter  
3 201G; provided that this subsection shall not apply to any  
4 housing developed under section 46-15 or chapter 201G 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 "Public work" means any project, including development of  
9 any housing pursuant to section 46-15 or chapter 201G, and  
10 development, construction, renovation, and maintenance related  
11 to refurbishment of any real or personal property, where the  
12 funds or resources required to undertake the project are to any  
13 extent derived either directly or indirectly from public  
14 revenues of the State or any county, or from the sale of  
15 securities or bonds whose interest or dividends are exempt from  
16 state or federal taxes.

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

20 (1) The prevailing wages shall be established by the  
21 director as the sum of the basic hourly rate and the  
22 cost to an employer of providing a laborer or mechanic



1 with fringe benefits. In making prevailing wage  
2 determinations, the following shall apply:

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

4 (i) The basic hourly rate; and

5 (ii) The rate of contribution or cost of fringe  
6 benefits paid by the employer when the  
7 payment of the fringe benefits by the  
8 employer constitutes a prevailing practice.

9 The cost of fringe benefits shall be  
10 reflected in the wage rate scheduled as an  
11 hourly rate; and

12 (B) The rates of wages which the director shall  
13 regard as prevailing in each corresponding  
14 classification of laborers and mechanics shall be  
15 the rate of wages paid to the greatest number of  
16 those employed in the State, the modal rate, in  
17 the corresponding classes of laborers or  
18 mechanics on projects that are similar to the  
19 contract work;

20 (2) The prevailing wages shall be not less than the wages  
21 payable under federal law to corresponding classes of  
22 laborers and mechanics employed on public works



1 projects in the State that are prosecuted under  
2 contract or agreement with the government of the  
3 United States; and

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

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

1           (d) The contractor or the contractor's subcontractor shall  
2 pay all mechanics and laborers employed on the job site,  
3 unconditionally and not less often than once a week, and without  
4 deduction or rebate on any account, except as allowed by law,  
5 the full amounts of their wages including overtime, accrued to  
6 not more than five working days prior to the time of payment, at  
7 wage rates not less than those deemed to be prevailing,  
8 regardless of any contractual relationship which may be alleged  
9 to exist between the contractor or subcontractor and the  
10 laborers and mechanics. The rates of wages to be paid shall be  
11 posted by the contractor in a prominent and easily accessible  
12 place at the job site, and a copy of the rates of wages required  
13 to be posted shall be given to each laborer and mechanic  
14 employed under the contract by the contractor at the time each  
15 laborer and mechanic is employed, except that where there is a  
16 collective bargaining agreement the contractor does not have to  
17 provide the contractor's employees the wage rate schedules.

18           (e) The governmental contracting agency may withhold from  
19 the contractor so much of the accrued payments as the  
20 governmental contracting agency may consider necessary to pay to  
21 the laborers and mechanics employed by the contractor or any  
22 subcontractor on the job site the difference between the

1 prevailing wages and the wages received and not refunded by the  
2 laborers and mechanics.

3 (f) Every contract in excess of \$2,000 for construction of  
4 a public work project and the specifications for such contract  
5 shall include provisions that set forth the requirements of  
6 subsections (a) to (e); provided that failure by the contracting  
7 agency to include those provisions in the contract or  
8 specifications shall not be a defense of the contractor or  
9 subcontractor for noncompliance with the requirements of this  
10 chapter.

11 (g) The department shall be the governmental entity  
12 responsible for the enforcement of this chapter and the  
13 collection and maintenance of the certified copies of payrolls  
14 for any public work project subject to this chapter that was not  
15 directly built or developed by a governmental contracting  
16 agency."

17 SECTION 2. New statutory material is underscored.

18 SECTION 3. This Act shall take effect upon its approval.

19

INTRODUCED BY:

*Dian Cannon*  
*Janaine G. Hoopes*

*[Signature]*

502209

**Report Title:**

Public Works; Hours and Wages; Enforcement

**Description:**

Requires DLIR to enforce the laws of chapter 104 and the collection and maintenance of the certified copies of all payrolls.

