

1 § -3 **Employment of persons not eligible to work in the**
2 **United States; prohibition.** Contractors shall employ only
3 persons who are eligible to work in the United States. A
4 contractor that intentionally or knowingly employs an ineligible
5 worker shall be in violation of this section.

6 § -4 **Complaints.** (a) On receipt of a complaint that a
7 contractor allegedly intentionally or knowingly employs an
8 ineligible worker, the director shall investigate whether the
9 contractor has violated section -3. In investigating the
10 complaint, the director shall verify the eligibility of the
11 person who is allegedly ineligible to work in the United States.
12 The director shall not attempt to independently make a final
13 determination on whether the person is authorized to work in the
14 United States.

15 (b) If, after an investigation, the director determines
16 that the complaint is not frivolous:

17 (1) The director shall notify the United States
18 Immigration and Customs Enforcement agency of the
19 ineligible worker;

20 (2) The director shall notify the county law enforcement
21 agency of the ineligible worker;



1 (3) The director shall notify the attorney general to
2 bring an action pursuant to section -5.

3 (c) The director may adopt rules under chapter 91 for the
4 purpose of implementing this section.

5 § -5 **Civil action.** An action for violation of section
6 -3 shall be brought against the contractor that employed the
7 ineligible worker.

8 § -6 **Penalties.** The contractor against whom a civil
9 judgment is entered shall pay a fine of \$1,000 for each person
10 the contractor employed in violation of section -3. Nothing
11 in this chapter shall exempt the contractor from liability under
12 any other provision of law.

13 § -7 **Notification to the contractors license board.**
14 When a civil judgment is entered against a contractor on a
15 complaint alleging that the contractor employed an ineligible
16 person, the attorney general shall notify the contractors
17 license board. The board shall consider whether to suspend or
18 revoke the contractor's license, as provided by section 444-17.

19 § -8 **Contractors enforcement special fund.** (a) There
20 is established a contractors enforcement special fund, into
21 which shall be deposited:

22 (1) All fines collected under this chapter; and



1 (2) Any appropriations made by the legislature to the
2 fund.

3 (b) Moneys in the special fund shall be expended by the
4 department of labor and industrial relations for all costs
5 associated with the enforcement of this chapter."

6 SECTION 2. Section 103-55.5, Hawaii Revised Statutes, is
7 amended by amending the title and subsection (a) to read as
8 follows:

9 "[~~f~~]**\$103-55.5[~~f~~]** **Wages and hours of employees on public**
10 **works construction contracts.** (a) Before any bidder or offeror
11 enters into a contract for construction of a public work project
12 in excess of \$2,000, which is subject to chapter 104, the bidder
13 or offeror shall affirm the bidder's or offeror's intent to
14 comply with the requirements of chapter 104 by certifying that:

15 (1) Individuals engaged in the performance of the contract
16 on the job site shall be paid:

17 (A) Not less than the wages that the director of
18 labor and industrial relations shall have
19 determined to be prevailing for corresponding
20 classes of laborers and mechanics employed on
21 public works projects; and



1 (B) Overtime compensation at one and one-half times
2 the basic hourly rate plus fringe benefits for
3 hours worked on Saturday, Sunday, or a legal
4 holiday of the State or in excess of eight hours
5 on any other day; and

6 (2) All applicable laws of the federal and state
7 governments relating to workers' compensation,
8 unemployment compensation, payment of wages, [and]
9 safety, and eligibility of all laborers and mechanics
10 to work in the United States shall be fully complied
11 with."

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

14 "**§104-2 Applicability; wages, hours, and other**
15 **requirements.** (a) This chapter shall apply to every contract
16 in excess of \$2,000 for construction of a public work project to
17 which a governmental contracting agency is a party; provided
18 that this chapter shall not apply to experimental and
19 demonstration housing developed pursuant to section 46-15 or
20 housing developed pursuant to chapter 201H if the cost of the
21 project is less than \$500,000 and the eligible bidder or
22 eligible developer is a private nonprofit corporation.



1 For the purposes of this subsection:

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

5 "Governmental contracting agency" includes any person or
6 entity that causes either directly or indirectly the building or
7 development of a public work.

8 "Party" includes eligible bidders for and eligible
9 developers of any public work and any housing under chapter
10 201H; provided that this subsection shall not apply to any
11 housing developed under section 46-15 or chapter 201H if the
12 entire cost of the project is less than \$500,000 and the
13 eligible bidder or eligible developer is a private nonprofit
14 corporation.

15 "Public work" means any project, including development of
16 any housing pursuant to section 46-15 or chapter 201H and
17 development, construction, renovation, and maintenance related
18 to refurbishment of any real or personal property, where the
19 funds or resources required to undertake the project are to any
20 extent derived, either directly or indirectly, from public
21 revenues of the State or any county, or from the sale of



1 securities or bonds whose interest or dividends are exempt from
2 state or federal taxes.

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

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

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

12 (i) The basic hourly rate; and

13 (ii) The rate of contribution or cost of fringe
14 benefits paid by the employer when the
15 payment of the fringe benefits by the
16 employer constitutes a prevailing practice.
17 The cost of fringe benefits shall be
18 reflected in the wage rate scheduled as an
19 hourly rate; and

20 (B) The rates of wages which the director shall
21 regard as prevailing in each corresponding
22 classification of laborers and mechanics shall be



1 the rate of wages paid to the greatest number of
2 those employed in the State, the modal rate, in
3 the corresponding classes of laborers or
4 mechanics on projects that are similar to the
5 contract work;

6 (2) The prevailing wages shall be not less than the wages
7 payable under federal law to corresponding classes of
8 laborers and mechanics employed on public works
9 projects in the State that are prosecuted under
10 contract or agreement with the government of the
11 United States; and

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

17 (c) No laborer or mechanic employed on the job site of any
18 public work of the State or any political subdivision thereof
19 shall be permitted or required to work on Saturday, Sunday, or a
20 legal holiday of the State or in excess of eight hours on any
21 other day unless the laborer or mechanic receives overtime
22 compensation for all hours worked on Saturday, Sunday, and a

1 legal holiday of the State or in excess of eight hours on any
2 other day. For purposes of determining overtime compensation
3 under this subsection, the basic hourly rate of any laborer or
4 mechanic shall not be less than the basic hourly rate determined
5 by the director to be the prevailing basic hourly rate for
6 corresponding classes of laborers and mechanics on projects of
7 similar character in the State.

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



1 collective bargaining agreement the contractor does not have to
2 provide the contractor's employees the wage rate schedules.

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

10 (f) Every laborer or mechanic performing work on the job
11 site for the construction of any public work of the State or any
12 political subdivision thereof shall be eligible to work in the
13 United States, as set forth by federal law.

14 [~~f~~] (g) Every contract in excess of \$2,000 for
15 construction of a public work project and the specifications for
16 such contract shall include provisions that set forth the
17 requirements of subsections (a) to [~~e~~] (f); provided that
18 failure by the contracting agency to include those provisions in
19 the contract or specifications shall not be a defense of the
20 contractor or subcontractor for noncompliance with the
21 requirements of this chapter.



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

8 [~~h~~] (i) When the department of budget and finance
9 enters a project agreement with a project party, as those terms
10 are defined in chapter 39A, to finance or refinance a project
11 with the proceeds of special purpose revenue bonds, and such
12 project party has entered into a collective bargaining agreement
13 with a bona fide labor union governing the project party's
14 workforce, the terms of that collective bargaining agreement and
15 associated provisions shall be deemed the prevailing wages and
16 terms serving as the basis of compliance with this section for
17 work on the project by the project party's workforce, provided,
18 however, that this subsection does not affect the director's
19 enforcement powers contained in subsection [~~g~~] (h)."

20 SECTION 4. Section 444-11, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:

22 "(a) No license hereunder shall be issued to:



- 1 (1) Any person unless the person has filed an application
2 and paid the applicable fees;
- 3 (2) Any person unless the person meets the experience
4 requirements as prescribed in the board's rules;
5 provided that the board may accept experience acquired
6 on a self-employed or unlicensed basis if the
7 experience can be verified;
- 8 (3) Any person who does not possess a history of honesty,
9 truthfulness, financial integrity, and fair dealing;
10 provided that any person who during the six years
11 prior to application has failed to satisfy an
12 undisputed debt or a judgment relating to services or
13 materials rendered in connection with operations as a
14 contractor shall be presumed not to possess a history
15 of financial integrity;
- 16 (4) Any person unless the person has successfully passed a
17 written examination as prescribed by the board;
- 18 (5) Any individual unless the individual is age eighteen
19 years or more;
- 20 (6) Any joint venture which is not exempt under section
21 444-2(8) unless the contracting business thereof is
22 under the direct management of a member or employee



1 thereof, and unless the member or employee holds an
2 appropriate license;

3 (7) Any individual who is unable to qualify as a
4 contractor or any partnership or corporation, unless
5 the contracting business of the individual,
6 partnership, or corporation is under the direct
7 management of an employee, partner, or officer thereof
8 who holds an appropriate license;

9 (8) Any person unless the person submits satisfactory
10 proof to the board that the person has obtained
11 workers' compensation insurance, or has been
12 authorized to act as a self-insurer under chapter 386
13 or is excluded from the requirements of chapter 386;

14 (9) Any person unless the person submits satisfactory
15 proof to the board that the person has obtained
16 liability insurance; [~~or~~]

17 (10) Any person unless the person submits a bond if
18 required by the board under section 444-16.5[~~-~~]; or

19 (11) Any person against whom a civil judgment was entered
20 on a complaint for violation of chapter , unless
21 the person has paid the penalties imposed by section

1 -6 and satisfied any other order of the court or
2 penalty imposed by any other provision of law."

3 SECTION 5. Section 444-17, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§444-17 Revocation, suspension, and renewal of licenses.**

6 In addition to any other actions authorized by law, the board
7 may revoke any license issued pursuant to this section, or
8 suspend the right of a licensee to use a license, or refuse to
9 renew a license for any cause authorized by law, including but
10 not limited to the following:

- 11 (1) Any dishonest, fraudulent, or deceitful act as a
- 12 contractor that causes substantial damage to another;
- 13 (2) Engaging in any unfair or deceptive act or practice as
- 14 prohibited by section 480-2;
- 15 (3) Abandonment of any construction project or operation
- 16 without reasonable or legal excuse;
- 17 (4) Wilful diversion of funds or property received for
- 18 prosecution or completion of a specific construction
- 19 project or operation, or for a specified purpose in
- 20 the prosecution or completion of any construction
- 21 project or operation, and the use thereof for any
- 22 other purpose;



1 (5) Wilful departure from, or wilful disregard of plans or
2 specifications in any material respect without consent
3 of the owner or the owner's duly authorized
4 representative, that is prejudicial to a person
5 entitled to have the construction project or operation
6 completed in accordance with those plans and
7 specifications;

8 (6) Wilful violation of any law of the State, or any
9 county, relating to building, including any violation
10 of any applicable rule of the department of health, or
11 of any applicable safety or labor law;

12 (7) Failure to make and keep records showing all
13 contracts, documents, records, receipts, and
14 disbursements by a licensee of all the licensee's
15 transactions as a contractor for a period of not less
16 than three years after completion of any construction
17 project or operation to which the records refer or to
18 permit inspection of those records by the board;

19 (8) When the licensee being a partnership or a joint
20 venture permits any partner, member, or employee of
21 the partnership or joint venture who does not hold a



- 1 license to have the direct management of the
2 contracting business thereof;
- 3 (9) When the licensee being a corporation permits any
4 officer or employee of the corporation who does not
5 hold a license to have the direct management of the
6 contracting business thereof;
- 7 (10) Misrepresentation of a material fact by an applicant
8 in obtaining a license;
- 9 (11) Failure of a licensee to complete in a material
10 respect any construction project or operation for the
11 agreed price if the failure is without legal excuse;
- 12 (12) Wilful failure in any material respect to comply with
13 this chapter or the rules adopted pursuant thereto;
- 14 (13) Wilful failure or refusal to prosecute a project or
15 operation to completion with reasonable diligence;
- 16 (14) Wilful failure to pay when due a debt incurred for
17 services or materials rendered or purchased in
18 connection with the licensee's operations as a
19 contractor when the licensee has the ability to pay or
20 when the licensee has received sufficient funds
21 therefor as payment for the particular operation for



1 which the services or materials were rendered or
2 purchased;

3 (15) The false denial of any debt due or the validity of
4 the claim therefor with intent to secure for a
5 licensee, the licensee's employer, or other person,
6 any discount of the debt or with intent to hinder,
7 delay, or defraud the person to whom the debt is due;

8 (16) Failure to secure or maintain workers' compensation
9 insurance, unless the licensee is authorized to act as
10 a self-insurer under chapter 386 or is excluded from
11 the requirements of chapter 386;

12 (17) Entering into a contract with an unlicensed contractor
13 involving work or activity for the performance of
14 which licensing is required under this chapter;

15 (18) Performing service on a residential or commercial air
16 conditioner, utilizing CFCs, without using refrigerant
17 recovery and recycling equipment;

18 (19) Performing service on any air conditioner after
19 January 1, 1994, without successful completion of an
20 appropriate training course in the recovery and
21 recycling of CFC and HCFC refrigerants, which included
22 instruction in the proper use of refrigerant recovery



- 1 and recycling equipment that is certified by
- 2 Underwriters Laboratories, Incorporated;
- 3 (20) Violating chapter 342C; [~~and~~]
- 4 (21) Failure to pay delinquent taxes, interest, and
- 5 penalties assessed under chapter 237 that relate to
- 6 the business of contracting, or to comply with the
- 7 terms of a conditional payment plan with the
- 8 department of taxation for the payment of such
- 9 delinquent taxes, interest, and penalties[~~-~~]; and
- 10 (22) Violating chapter _____."

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

14 SECTION 7. In codifying the new sections added by section
 15 1 of this Act, the revisor of statutes shall substitute
 16 appropriate section numbers for the letters used in designating
 17 the new sections in this Act.

18 SECTION 8. Statutory material to be repealed is bracketed
 19 and stricken. New statutory material is underscored.

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H.B. NO. 643

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Report Title:

Contractors; Public Work Projects; Ineligible Employees

Description:

Prohibits contractors from employing persons not eligible to work in the United States. Imposes fines for violations. Authorizes the contractors license board to suspend or revoke a license if a civil judgment is entered against the contractor on a complaint alleging that the contractor hired ineligible workers. Establishes a special fund.

