

1 § -3 **Employment of persons not eligible to work in the**
2 **United States; prohibition.** (a) Contractors shall employ only
3 persons who are eligible to work in the United States.

4 (b) A contractor shall verify that an employee working in
5 their employ is eligible to work in the United States as part of
6 the certification required under section 103-55.5.

7 (c) The certification of the eligibility of employees to
8 work in the United States by a contractor shall be presumed to
9 have been conducted in good faith if the contractor uses E-
10 verify to verify the status of an employee in question. For the
11 purposes of this subsection, "E-verify" means an online system
12 operated jointly by the department of homeland security and the
13 social security administration containing information on the
14 status of an individual's employment eligibility in the United
15 States.

16 § -4 **Complaints.** (a) On receipt of a complaint that a
17 contractor allegedly employs an ineligible worker, the director
18 shall investigate whether the contractor has violated section
19 -3. In investigating the complaint, the director shall
20 verify the eligibility of the person who is allegedly ineligible
21 to work in the United States. The director shall not attempt to



1 independently make a final determination on whether the person
2 is authorized to work in the United States.

3 (b) If, after an investigation, the director determines
4 that the complaint is not frivolous, the director shall notify:

5 (1) The United States Immigration and Customs Enforcement
6 agency of the ineligible worker;

7 (2) The county law enforcement agency of the ineligible
8 worker; and

9 (3) The attorney general to bring an action pursuant to
10 section -5.

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

13 § -5 **Civil action.** An action for violation of section
14 -3 shall be brought against the contractor that employed the
15 ineligible worker.

16 § -6 **Penalties.** The contractor against whom a civil
17 judgment is entered shall pay a fine of \$1,000 for each person
18 the contractor employed in violation of section -3. Nothing
19 in this chapter shall exempt the contractor from liability under
20 any other provision of law.

21 § -7 **Notification to the contractors license board.**

22 When a civil judgment is entered against a contractor on a



1 complaint alleging that the contractor employed an ineligible
2 person, the attorney general shall notify the contractors
3 license board. The board shall consider whether to suspend or
4 revoke the contractor's license, as provided by section 444-17.

5 **§ -8 Contractors enforcement special fund.** (a) There
6 is established a contractors enforcement special fund, into
7 which shall be deposited:

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

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

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

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

17 "~~§~~103-55.5~~§~~ **Wages and hours of employees on public**
18 **works construction contracts.** (a) Before any bidder or offeror
19 enters into a contract for construction of a public ~~work~~ works
20 project in excess of \$2,000, which is subject to chapter 104,
21 the bidder or offeror shall affirm the bidder's or offeror's



1 intent to comply with the requirements of chapter 104 by
2 certifying that:

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

5 (A) Not less than the wages that the director of
6 labor and industrial relations shall have
7 determined to be prevailing for corresponding
8 classes of laborers and mechanics employed on
9 public works projects;

10 (B) Overtime compensation at one and one-half times
11 the basic hourly rate plus fringe benefits for
12 hours worked on Saturday, Sunday, or a legal
13 holiday of the State or in excess of eight hours
14 on any other day; [~~and~~]

15 and

16 (2) All applicable laws of the federal and state
17 governments relating to workers' compensation,
18 unemployment compensation, payment of wages, [~~and~~]
19 safety, and eligibility of all laborers and mechanics
20 to work in the United States shall be fully complied
21 with."



1 SECTION 3. 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~~] works
6 project to which a governmental contracting agency is a party;
7 provided 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 201H 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~~] works 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.

19 "Party" includes eligible bidders for and eligible
20 developers of any public work and any housing under chapter
21 201H; provided that this subsection shall not apply to any
22 housing developed under section 46-15 or chapter 201H if the



1 entire cost of the project is less than \$500,000 and the
2 eligible bidder or eligible developer is a private nonprofit
3 corporation.

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

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

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

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

22 (i) The basic hourly rate; and



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, the modal rate, in
13 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 payable under federal law to corresponding classes of
18 laborers and mechanics employed on public works
19 projects in the State that are prosecuted under
20 contract or agreement with the government of the
21 United States; and



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

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

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,



1 the full amounts of their wages including overtime, accrued to
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,
4 regardless of any contractual relationship which may be alleged
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
11 laborer and mechanic is employed, except that where there is a
12 collective bargaining agreement the contractor does not have to
13 provide the contractor's employees the wage rate schedules.

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

21 (f) Every laborer or mechanic performing work on the job
22 site for the construction of any public work of the State or any



1 political subdivision thereof shall be eligible to work in the
2 United States, as set forth by federal law.

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

11 ~~(g)~~ (h) For any public ~~work~~ works project that is
12 subject to this chapter but not directly caused by a
13 governmental contracting agency, the director shall be
14 responsible for enforcement of this chapter, including the
15 collection and maintenance of certified copies of all payrolls
16 that are subject to this chapter. The director shall adopt
17 rules pursuant to chapter 91 to effectuate the purposes of this
18 section.

19 ~~(h)~~ (i) When the department of budget and finance
20 enters a project agreement with a project party, as those terms
21 are defined in chapter 39A, to finance or refinance a project
22 with the proceeds of special purpose revenue bonds, and such



1 project party has entered into a collective bargaining agreement
2 with a bona fide labor union governing the project party's
3 workforce, the terms of that collective bargaining agreement and
4 associated provisions shall be deemed the prevailing wages and
5 terms serving as the basis of compliance with this section for
6 work on the project by the project party's workforce[~~r~~];
7 provided, however, that this subsection does not affect the
8 director's enforcement powers contained in subsection [~~g~~].
(h)."

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

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

13 (1) Any person unless the person has filed an application
14 and paid the applicable fees;

15 (2) Any person unless the person meets the experience
16 requirements as prescribed in the board's rules;
17 provided that the board may accept experience acquired
18 on a self-employed or unlicensed basis if the
19 experience can be verified;

20 (3) Any person who does not possess a history of honesty,
21 truthfulness, financial integrity, and fair dealing;
22 provided that any person who during the six years



1 prior to application has failed to satisfy an
2 undisputed debt or a judgment relating to services or
3 materials rendered in connection with operations as a
4 contractor shall be presumed not to possess a history
5 of financial integrity;

6 (4) Any person unless the person has successfully passed a
7 written examination as prescribed by the board;

8 (5) Any individual unless the individual is age eighteen
9 years or more;

10 (6) Any joint venture which is not exempt under section
11 444-2(8) unless the contracting business thereof is
12 under the direct management of a member or employee
13 thereof, and unless the member or employee holds an
14 appropriate license;

15 (7) Any individual who is unable to qualify as a
16 contractor or any partnership or corporation, unless
17 the contracting business of the individual,
18 partnership, or corporation is under the direct
19 management of an employee, partner, or officer thereof
20 who holds an appropriate license;

21 (8) Any person unless the person submits satisfactory
22 proof to the board that the person has obtained



1 workers' compensation insurance, or has been
2 authorized to act as a self-insurer under chapter 386
3 or is excluded from the requirements of chapter 386;

4 (9) Any person unless the person submits satisfactory
5 proof to the board that the person has obtained
6 liability insurance; [~~or~~]

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

9 (11) Any person against whom a civil judgment was entered
10 on a complaint for violation of chapter , unless
11 the person has paid the penalties imposed by section
12 -6 and satisfied any other order of the court or
13 penalty imposed by any other provision of law."

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

16 **"§444-17 Revocation, suspension, and renewal of licenses.**

17 In addition to any other actions authorized by law, the board
18 may revoke any license issued pursuant to this section, or
19 suspend the right of a licensee to use a license, or refuse to
20 renew a license for any cause authorized by law, including but
21 not limited to the following:



- 1 (1) Any dishonest, fraudulent, or deceitful act as a
2 contractor that causes substantial damage to another;
- 3 (2) Engaging in any unfair or deceptive act or practice as
4 prohibited by section 480-2;
- 5 (3) Abandonment of any construction project or operation
6 without reasonable or legal excuse;
- 7 (4) Wilful diversion of funds or property received for
8 prosecution or completion of a specific construction
9 project or operation, or for a specified purpose in
10 the prosecution or completion of any construction
11 project or operation, and the use thereof for any
12 other purpose;
- 13 (5) Wilful departure from, or wilful disregard of plans or
14 specifications in any material respect without consent
15 of the owner or the owner's duly authorized
16 representative, that is prejudicial to a person
17 entitled to have the construction project or operation
18 completed in accordance with those plans and
19 specifications;
- 20 (6) Wilful violation of any law of the State, or any
21 county, relating to building, including any violation



- 1 of any applicable rule of the department of health, or
2 of any applicable safety or labor law;
- 3 (7) Failure to make and keep records showing all
4 contracts, documents, records, receipts, and
5 disbursements by a licensee of all the licensee's
6 transactions as a contractor for a period of not less
7 than three years after completion of any construction
8 project or operation to which the records refer or to
9 permit inspection of those records by the board;
- 10 (8) When the licensee being a partnership or a joint
11 venture permits any partner, member, or employee of
12 the partnership or joint venture who does not hold a
13 license to have the direct management of the
14 contracting business thereof;
- 15 (9) When the licensee being a corporation permits any
16 officer or employee of the corporation who does not
17 hold a license to have the direct management of the
18 contracting business thereof;
- 19 (10) Misrepresentation of a material fact by an applicant
20 in obtaining a license;



- 1 (11) Failure of a licensee to complete in a material
2 respect any construction project or operation for the
3 agreed price if the failure is without legal excuse;
- 4 (12) Wilful failure in any material respect to comply with
5 this chapter or the rules adopted pursuant thereto;
- 6 (13) Wilful failure or refusal to prosecute a project or
7 operation to completion with reasonable diligence;
- 8 (14) Wilful failure to pay when due a debt incurred for
9 services or materials rendered or purchased in
10 connection with the licensee's operations as a
11 contractor when the licensee has the ability to pay or
12 when the licensee has received sufficient funds
13 therefor as payment for the particular operation for
14 which the services or materials were rendered or
15 purchased;
- 16 (15) The false denial of any debt due or the validity of
17 the claim therefor with intent to secure for a
18 licensee, the licensee's employer, or other person,
19 any discount of the debt or with intent to hinder,
20 delay, or defraud the person to whom the debt is due;
- 21 (16) Failure to secure or maintain workers' compensation
22 insurance, unless the licensee is authorized to act as



- 1 a self-insurer under chapter 386 or is excluded from
2 the requirements of chapter 386;
- 3 (17) Entering into a contract with an unlicensed contractor
4 involving work or activity for the performance of
5 which licensing is required under this chapter;
- 6 (18) Performing service on a residential or commercial air
7 conditioner, utilizing CFCs, without using refrigerant
8 recovery and recycling equipment;
- 9 (19) Performing service on any air conditioner after
10 January 1, 1994, without successful completion of an
11 appropriate training course in the recovery and
12 recycling of CFC and HCFC refrigerants, which included
13 instruction in the proper use of refrigerant recovery
14 and recycling equipment that is certified by
15 Underwriters Laboratories, Incorporated;
- 16 (20) Violating chapter 342C; ~~and~~
- 17 (21) Failure to pay delinquent taxes, interest, and
18 penalties assessed under chapter 237 that relate to
19 the business of contracting, or to comply with the
20 terms of a conditional payment plan with the
21 department of taxation for the payment of such
22 delinquent taxes, interest, and penalties~~[]~~; and



1 (22) Violating chapter ."

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

5 SECTION 7. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 8. This Act shall take effect on August 1, 2009.



Report Title:

Contractors; Public Works 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. Requires worker verification by E-Verify. Establishes a special fund. (HB643 HD1)

