



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 "[+]§103-55.5[+] **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 \_\_\_\_\_."

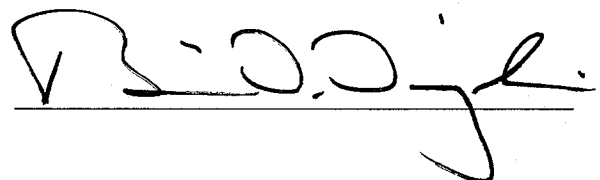
11 SECTION 6. This Act does not affect rights and duties that  
12 matured, penalties that were incurred, and proceedings that were  
13 begun, before its effective date.

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.

20

INTRODUCED BY:



**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.

