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# A BILL FOR AN ACT

RELATING TO WAGES AND HOURS ON PUBLIC WORKS LAW CONTRACTOR  
COMPLIANCE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Chapter 104, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 **"§104- Provisions of law may not be waived by agreement.**

5 No provision of this chapter may in any way be contravened or  
6 set aside by private agreement."

7 SECTION 2. Section 104-1, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 **"§104-1 Definitions.** As used in this chapter, the  
10 following words and phrases shall have the following meanings:

11 [~~1~~] "Basic hourly rate" means the hourly wage paid to a  
12 laborer or mechanic for work performed during non-overtime  
13 hours, but shall not include the cost to an employer of  
14 furnishing fringe benefits whether paid directly or indirectly  
15 to the laborer or mechanic as [~~provided in paragraph (7),~~]  
16 provided under the definition of "wages".



1           [~~(2)~~] "Construction" includes alteration, repair,  
2 painting, and decorating[+].

3           "Contractor" means any person furnishing construction for a  
4 public work under a contract with a governmental contracting  
5 agency, subcontractor, or any other person under a subcontract  
6 arrangement with any person who has a construction contract  
7 subject to this chapter.

8           [~~(3)~~] "Department" means the department of labor and  
9 industrial relations[+].

10          [~~(4)~~] "Director" means the director of labor and industrial  
11 relations of the State[+].

12          [~~(5)~~] "Governmental contracting agency" means the State,  
13 any county and any officer, bureau, board, commission, or other  
14 agency or instrumentality thereof[+].

15          [~~(6)~~] "Overtime compensation" means compensation based on  
16 one and one-half times the laborers or mechanics basic hourly  
17 rate of pay plus the cost to an employer of furnishing a laborer  
18 or mechanic with fringe benefits as described in [~~paragraph~~  
19 ~~(7)~~] the definition of "wages".

20          "Public work" means any project, including development of  
21 any housing pursuant to section 46-15 or chapter 201H and  
22 development, construction, renovation, and maintenance related



1 to refurbishment of any real or personal property, where the  
2 funds or resources required to undertake the project are to any  
3 extent derived, either directly or indirectly, from public  
4 revenues of the State or any county, or from the sale of  
5 securities or bonds whose interest or dividends are exempt from  
6 state or federal taxes.

7 [~~7~~] "Wages", "rate of wages", "wage rates", "minimum  
8 wages" and "prevailing wages" mean the basic hourly rate and the  
9 cost to an employer of furnishing a laborer or mechanic with  
10 fringe benefits, including but not limited to health and welfare  
11 benefits, vacation benefits, and pension benefits, whether paid  
12 directly or indirectly to the laborer or mechanic."

13 SECTION 3. Section 104-2, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15 "(a) This chapter shall apply to every contract in excess  
16 of \$2,000 for construction of a public work project to which a  
17 governmental contracting agency is a party; provided that this  
18 chapter shall not apply to experimental and demonstration  
19 housing developed pursuant to section 46-15 or housing developed  
20 pursuant to chapter 201H if the cost of the project is less than  
21 \$500,000 and the eligible bidder or eligible developer is a  
22 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 SECTION 4. Section 104-22, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§104-22 Investigation; penalties.** (a) The department  
6 may conduct investigations to determine compliance with this  
7 chapter. The department may enter the job site, examine records  
8 of any contractor, either during or after the performance of any  
9 contract, or subpoena the records. The department may also  
10 interview employees during working hours on the job.

11 (b) If any contractor interferes with or delays any  
12 investigation by the department, the governmental contracting  
13 agency, on receipt of written notice from the director of the  
14 interference or delay, shall withhold from the contractor all  
15 further payments until the director has notified the  
16 governmental contracting agency in writing that the interference  
17 or delay has ceased. Interference or delay includes failure to  
18 provide requested records under section 104-3; failure to allow  
19 employees to be interviewed during working hours on the job; and  
20 falsification of records required under this chapter. The  
21 department shall assess a penalty of [~~\$1,000~~] \$10,000 per  
22 project for interference or delay. For each day thereafter that



1 the employer fails to cooperate, the director shall assess a  
2 penalty of [~~\$100~~] \$1,000 per project.

3 (c) Notwithstanding the prompt payment provisions of  
4 section 103-10.5 to the contrary, the general contractor shall  
5 be secondarily liable and shall remain secondarily liable for  
6 the payment of the back wages and penalties assessed against any  
7 of the contractors on the public works construction project that  
8 are unpaid on the later of the twenty-first day after the  
9 notification of violation has been sent or a decision has been  
10 issued pursuant to section 104-23(c). Upon receipt, the  
11 governmental contracting agency shall notify the contractor and  
12 if the contractor is a subcontractor, the governmental  
13 contracting agency shall notify the general contractor of its  
14 intent to pay the amount of back wages and penalties found due  
15 and demanded by the department within twenty-one days from the  
16 date of the notification. The governmental contracting agency  
17 shall pay from any amounts then due to the contractor or general  
18 contractor, the amount assessed as back wages and penalties.  
19 Any such payment made by the governmental contracting agency  
20 shall not be deemed a breach of contract, nor shall such payment  
21 excuse the contractor or general contractor from completing the



1 project for the contract price and in accordance with the  
2 contract completion deadline."

3 SECTION 5. Section 104-23, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

5 "(b) A notification of violation shall be final and  
6 conclusive unless within twenty days after a copy [~~was mailed to~~  
7 ~~the violator, unless within the twenty day period the violator]~~  
8 has been sent to the contractor, the contractor files a written  
9 notice of appeal with the director."

10 SECTION 6. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 7. This Act shall take effect upon its approval;  
13 provided that section 4 of this Act shall be applicable to all  
14 construction contracts entered into after the effective date of  
15 this Act.



**Report Title:**

Prevailing Wage; Public Work; Construction

**Description:**

Increases the prevailing wage penalty from \$1,000 to \$10,000 per project and \$100 to \$1,000 per day. Makes general contractors secondarily liable for wages and penalties remaining unpaid by subcontractors and their agents 21 days after notice of violation is sent. Prohibits private agreements made to contravene the law. Adds a definition for "contractor" and applies definition of "public work" to entire wages and hours for public works chapter of Hawaii Revised Statutes. (HB2323 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

