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# A BILL FOR AN ACT

RELATING TO WAGES AND HOURS ON PUBLIC WORKS.

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

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 nonovertime hours,  
13 but shall not include the cost to an employer of furnishing  
14 fringe benefits, whether paid directly or indirectly to the  
15 laborer or mechanic as provided in [~~paragraph (7)~~] the  
16 definition of "wages".

17 [~~2~~] "Construction" includes alteration, repair,  
18 painting, and decorating [~~7~~].



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

6       ~~[-3]~~ "Department" means the department of labor and  
7 industrial relations ~~[7]~~ .

8       ~~[-4]~~ "Director" means the director of labor and  
9 industrial relations of the State ~~[7]~~ .

10       ~~[-5]~~ "Governmental contracting agency" means the State,  
11 any county and any officer, bureau, board, commission, or other  
12 agency or instrumentality thereof ~~[7]~~ .

13       ~~[-6]~~ "Overtime compensation" means compensation based on  
14 one and one-half times the laborers or mechanics basic hourly  
15 rate of pay plus the cost to an employer of furnishing a laborer  
16 or mechanic with fringe benefits as described in ~~[paragraph~~  
17 ~~(7)7]~~ the definition of "wages".

18       "Public work" means any project, including development of  
19 any housing pursuant to section 46-15 or chapter 201H and  
20 development, construction, renovation, and maintenance related  
21 to refurbishment of any real or personal property, where the  
22 funds or resources required to undertake the project are to any



1 extent derived, either directly or indirectly, from public  
2 revenues of the State or any county, or from the sale of  
3 securities or bonds whose interest or dividends are exempt from  
4 state or federal taxes.

5 [~~7~~] "Wages", "rate of wages", "wage rates", "minimum  
6 wages" and "prevailing wages" mean the basic hourly rate and the  
7 cost to an employer of furnishing a laborer or mechanic with  
8 fringe benefits, including but not limited to health and welfare  
9 benefits, vacation benefits, and pension benefits, whether paid  
10 directly or indirectly to the laborer or mechanic."

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

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

21 For the purposes of this subsection:



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

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

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

14 ~~["Public work" means any project, including development of~~  
15 ~~any housing pursuant to section 46-15 or chapter 201H and~~  
16 ~~development, construction, renovation, and maintenance related~~  
17 ~~to refurbishment of any real or personal property, where the~~  
18 ~~funds or resources required to undertake the project are to any~~  
19 ~~extent derived, either directly or indirectly, from public~~  
20 ~~revenues of the State or any county, or from the sale of~~  
21 ~~securities or bonds whose interest or dividends are exempt from~~  
22 ~~state or federal taxes.] "~~



1 SECTION 4. Section 104-22, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) If any contractor interferes with or delays any  
4 investigation by the department, the governmental contracting  
5 agency, on receipt of written notice from the director of the  
6 interference or delay, shall withhold from the contractor all  
7 further payments until the director has notified the  
8 governmental contracting agency in writing that the interference  
9 or delay has ceased. Interference or delay includes failure to  
10 provide requested records under section 104-3; failure to allow  
11 employees to be interviewed during working hours on the job; and  
12 falsification of records required under this chapter. The  
13 department shall assess a penalty of [~~\$1,000~~] \$10,000 per  
14 project for interference or delay. For each day thereafter that  
15 the employer fails to cooperate, the director shall assess a  
16 penalty of [~~\$100~~] \$1,000 per project."

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

19 "(b) A notification of violation shall be final and  
20 conclusive unless within twenty days after a copy [~~was mailed to~~  
21 ~~the violator, unless within the twenty day period the violator]~~



1 has been sent to the contractor, the contractor files a written  
2 notice of appeal with the director."

3 SECTION 6. Section 104-24, Hawaii Revised Statutes, is  
4 amended by amending subsection (c) to read as follows:

5 "(c) Where the department finds that a third violation of  
6 this chapter has been committed, whether on the same contract or  
7 another, within two years of the second notification of  
8 violation, the department, after proper notice and opportunity  
9 for hearing, shall order the person or firm in violation:

10 (1) To pay a penalty equal to two times the amount of back  
11 wages found due or \$200 for each offense, whichever is  
12 greater; and

13 (2) To be suspended from doing any new work on any public  
14 work of a governmental contracting agency for a period  
15 of three years except as provided in section 104-  
16 25(a)(2). "New work on any public work" includes any  
17 public works project in which the suspended person or  
18 firm has not begun work at the job site as of the date  
19 of the suspension order. The suspension shall be  
20 effective on the later of the twenty-first day after  
21 the notification of violation has been sent, or upon



1           the issuance of a decision pursuant to section  
2           104-23(c)."

3           SECTION 7. Section 104-25, Hawaii Revised Statutes, is  
4 amended by amending subsections (a) and (b) to read as follows:

5           "(a) The director shall suspend a person or firm as  
6 follows:

7           (1) For a first or second violation, if a person or firm  
8 fails to pay wages found due, any penalty assessed, or  
9 both, the person or firm shall be immediately  
10 suspended from doing any work on any public work of a  
11 governmental contracting agency until all wages and  
12 penalties are paid in full;

13           (2) For a third violation, the suspension shall be as  
14 prescribed in section 104-24(c); provided that, if the  
15 person or firm continues to violate this chapter or  
16 fails to pay wages found due or any penalty assessed,  
17 or both, then the [~~contractor~~] person or firm shall  
18 immediately be suspended from doing any work on any  
19 public work of a governmental contracting agency for a  
20 mandatory three-year period. If after the three-year  
21 suspension period the wages found due or penalties



1           assessed are still unpaid, the suspension shall remain  
2           in force until payment is made in full; or

3           (3) For falsification of records, or for delay or  
4           interference with an investigation pursuant to section  
5           104-22, the [~~contractor~~] person or firm shall be  
6           immediately suspended for a period of three years.

7           (b) The director shall immediately notify the governmental  
8           contracting agency, comptroller [and], the auditor or director  
9           of finance of the county, and in the case of a suspended  
10           subcontractor, the general contractor of any suspension order."

11           SECTION 8. Statutory material to be repealed is bracketed  
12           and stricken. New statutory material is underscored.

13           SECTION 9. This Act shall take effect on July 1, 2014, and  
14           shall apply to all contracts entered into on or after the  
15           effective date of this Act.



**Report Title:**

Public Works; Prevailing Wage; Penalties; Suspension

**Description:**

Specifies that no provision of chapter 104, Hawaii Revised Statutes, may be contravened or set aside by private contract. Updates definitions. Increases the penalties imposed on a contractor who interferes with or delays an investigation to determine compliance with wage and hour laws of employees on public works. Clarifies the effective date of suspension. Specifies that suspension for falsification of records or delay or interference with an investigation is immediate. Specifies who the director of labor and industrial relations must notify of any suspension order. (CD1)

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