

JAN 16 2014

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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-       Laws shall not be waived by private agreement.

5 No requirement under this chapter shall be contravened or set  
6 aside in any manner 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  
11 meanings[+], except as otherwise provided:

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



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

3           "Contractor" means the general contractor or any  
4 subcontractor, including any individual, partnership, firm,  
5 corporation, joint venture, or other legal entity, acting  
6 directly or through an agent, employee, consultant, corporate  
7 officer, or corporate director undertaking the execution of a  
8 construction contract over \$2,000 with a governmental  
9 contracting agency.

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

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

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

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



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

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

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

18       "(a) This chapter shall apply to every contract in excess  
19 of \$2,000 for construction of a public work project to which a  
20 governmental contracting agency is a party; provided that this  
21 chapter shall not apply to experimental and demonstration  
22 housing developed pursuant to section 46-15 or housing developed



1 pursuant to chapter 201H if the cost of the project is less than  
2 \$500,000 and the eligible bidder or eligible developer is a  
3 private nonprofit corporation.

4 For the purposes of this subsection:

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

8 "Governmental contracting agency" includes any person or  
9 entity that causes either directly or indirectly the building or  
10 development of a public work.

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

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 SECTION 4. Section 104-22, Hawaii Revised Statutes, is  
6 amended to read as follows:

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

13 (b) If any contractor, subcontractor, of the agent of the  
14 subcontractor or contractor interferes with or delays any  
15 investigation by the department, the governmental contracting  
16 agency, on receipt of written notice from the director of the  
17 interference or delay, shall withhold from the contractor all  
18 further payments until the director has notified the  
19 governmental contracting agency in writing that the interference  
20 or delay has ceased. Interference or delay includes failure to  
21 provide requested records under section 104-3; failure to allow  
22 employees to be interviewed during working hours on the job; and



1 falsification of records required under this chapter. The  
2 department shall assess a penalty of [~~\$1,000~~] \$10,000 per  
3 project for interference or delay. For each day thereafter that  
4 the employer fails to cooperate, the director shall assess a  
5 penalty of [~~\$100~~] \$1,000 per project.

6 (c) The general contractor shall be secondarily liable for  
7 the payment of any back wages and penalties imposed on any of  
8 its subcontractors that are unpaid on the twenty-first day after  
9 the notification of violation has been sent or a decision has  
10 been issued pursuant to section 104-23(c), whichever occurs  
11 later."

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

14 "(b) A notification of violation shall be final and  
15 conclusive unless within twenty days after a copy [~~was mailed to~~  
16 ~~the violator, unless within the twenty-day period the violator]~~  
17 has been sent to the contractor, the contractor files a written  
18 notice of appeal with the director."

19 SECTION 6. This Act does not affect rights and duties that  
20 matured, penalties that were incurred, and proceedings that were  
21 begun before its effective date.



1 SECTION 7. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

*Tom Iloe*



# S.B. NO. 2261

**Report Title:**

Public Work; Contractors; Liability; Penalties; Notice

**Description:**

Prohibits private agreements from contravening or setting aside any requirement under chapter 104, HRS. Adds definitions of "contractor" and "public work". Increases the prevailing wage penalty from \$1,000 per project and \$100 per day to \$10,000 per project and \$1,000 per day. Clarifies that general contractors are secondarily liable for payment of back wages and penalties imposed on any of their subcontractors. Requires notifications of violations to be final and conclusive unless within 20 days after a copy is sent to the contractor, the contractor files a written notice of appeal.

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

