
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 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
11 industrial 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)~~] defined under 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 requirements under
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 the amount
18 assessed as back wages and penalties. Any such payment made by
19 the governmental contracting agency shall not be deemed a breach
20 of contract nor shall such payment excuse the contractor or
21 general contractor from completing the project for the contract
22 price and in accordance with the contract completion deadline."



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

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

8 SECTION 6. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 7. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

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



Report Title:

Public Work; Contractors; Liability; Penalties; Notice

Description:

Prohibits private agreements from contravening or setting aside any requirement under chapter 104, HRS. Adds a definition of "contractor". 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 contractors. 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. (SD1)

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