

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

LEONARD HOSHIJO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 29, 2016

To: The Honorable Jill N. Tokuda, Chair,
The Honorable Donovan M. Dela Cruz, Vice Chair, and
Members of the Senate Committee on Ways and Means

Date: Tuesday, March 1, 2016
Time: 1:40 p.m.
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

Re: S.B. No. 2724, S.D. 1 Relating to Prevailing Wages

I. OVERVIEW OF PROPOSED LEGISLATION

SB2724 SD1 proposes to amend chapter 104, Hawaii Revised Statutes (HRS) by requiring Hawaii's prevailing wage law apply to construction on lands the State or a county leases to private entities, or where public land is used as collateral in financing. The measure also defines the lessor agency as the governmental contracting agency for the purposes of chapter 104, HRS.

The proposal also exempts residential construction less than \$100,000, or construction costing less than \$500,000 for certain agricultural construction. Provides that the director may terminate the work of any contractor or subcontractor where the contractor or subcontractor has not paid prevailing wages on a public work.

DLIR believes that the very broad, existing definition in chapter 104 already covers the intended purpose of the measure, but also believes dialogue pertaining to this matter is beneficial for the public good and is eager to participate in the discussions as the measure moves through the legislative process.

II. CURRENT LAW

Chapter 104, HRS, currently applies to the construction of all public works in excess of \$2,000, and construction financed by special purpose revenue bonds.

The definition of public work in section 104-1, HRS, reads as follows:

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

The Hawaii Administrative Rules (HAR) Title 12, Chapter 22, refines this definition of public work as follows:

"Public work" shall be as defined in section 104-2(a)*, Hawaii Revised Statutes, and includes without limitation: (1) Any building, structure, road, or real property, the construction of which is undertaken:

(A) By authority of; and

(B) Through the use of funds, grants, loans, bonds, **land**, or other resources of the State or any county, board, bureau, authority, commission, or other agency or instrumentality thereof, to serve the interest of the general public, regardless of whether title thereof is held by a state or county agency. However, subsequent construction to fixtures or appurtenances attached to the assigned space of an individual occupant, lessee, or tenant of the building or structure, contracted by other than a state or county agency or instrumentality thereof, shall not be subject to chapter 104, Hawaii Revised Statutes.

* *Note: The definition for "Public Work" was recently moved from §104-2(a), HRS, to the main definition section (§104-1, HRS). [See Act 130, 2014]*

III. COMMENTS ON THE SENATE BILL

Construction undertaken through the use of State or county land is already subject to the requirements of chapter 104. Compliance has been blocked when land owning agencies hold that lands leased to private parties are not State lands, and/or that the land is not a resource through which construction is undertaken. The course for resolution has not been clear thus far, nor has the question of how to administer the requirements across varied land uses.

As in other cases where State or county resources provide a benefit realized through construction, the following items need to be clarified or otherwise established:

- Documented notice of the requirements, such as specifying the prevailing wage requirements in lease provisions.
- The method of reporting and filing of the requirement documentation, i.e. the submittal of the certified payroll records.

Without recovery of lost staff positions after 2009, the department is unable to

investigate a number of the complaints related to chapter 104, HRS, filed each year, resulting in a backlog for investigation and further proceedings. Without information on the lands and public works these proposed amendments would apply to, it is difficult to quantify a request for the additional staffing that would be required.

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committee on
WAYS AND MEANS

Tuesday, March 1, 2016
1:40 P.M.
State Capitol, Conference Room 211

In consideration of
SENATE BILL 2724, SENATE DRAFT 1
RELATING TO PREVAILING WAGES

Senate Bill 2724, Senate Draft 1 proposes to broaden Chapter 104 (wages and hours of employees on public works), Hawaii Revised Statutes, to include private businesses that lease state or county lands without any involvement or interest of the state or county in the businesses. **The Department of Land and Natural Resources (Department) strongly opposes this bill.**

The current law applies to projects built by or for, or funded by, the state or county, such as government offices, schools, libraries, courthouses and other government facilities. Senate Bill 2724 Senate Draft 1 proposes to expand the law to include private projects located on leases of public lands under the jurisdiction of the Department. The Department currently has leases issued to lessees for private operations such hotels, industrial and warehouse operations and retail centers. Examples of these leases include the Sand Island Industrial Park and West Ridge Mall on Oahu, and the Naniloa and Hilo Hawaiian hotels and HPM hardware store in Hilo, which are all leases of public lands. If private businesses on public land are going to be subject to this legislation, then perhaps all projects, whether located on public or private land, should be made subject to the law. Otherwise, public lands will be placed at a significant disadvantage in the marketplace for resort, industrial and commercial operations. Business may choose to locate their operations on private land, which will ultimately lead to a reduction in ceded land revenues for the State as well as the Office of Hawaiian Affairs.

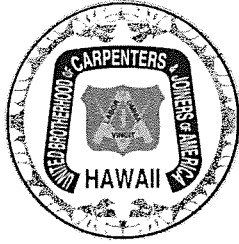
Furthermore, the bill would require the Department to have oversight over lessees and sublessees above and beyond any rights afforded to and responsibilities required of landlords. The Department's land management staff would have to ensure that its lessees and any sublessees are

complying with labor law requirements¹. The Department does not even have the expertise or staff to evaluate payroll data for compliance with Chapter 104.²

Senate Bill 2724, Senate Draft 1 raises legal, economic and implementation issues for the Department. The Department respectfully requests that this bill be deferred.

1 This could be problematic and require a reorganization and consultation with the union for the land management division because the staff are land managers and not labor law specialists. Position descriptions and class specifications may need to be changed, which may make it difficult for current staffers to qualify for the position with the added labor law requirements.

2 With the impact of reduced revenues, it will be very difficult financially for the land management division to afford adding new positions or contracting for labor law specialists.



Hawaii Regional Council of Carpenters

March 1, 2016

The Honorable Senator Jill Tokuda, Chair
The Honorable Donovan Dela Cruz, Vice Chair, and
Members of the Hawaii State Senate Ways and Means Committee

Statement of the Hawaii Regional Council of Carpenters on SB 2724 –
Prevailing Wages

Monday, March 1, 2016
1:40 p.m., State Capitol, Room 221

Dear Chair Tokuda, Vice Chair Dela Cruz, and members of the Committee,

The Hawaii Regional Council of Carpenters (HRCC) strongly supports SB 2724, which requires contracts for construction on public lands to comply with wage and hour requirements set forth in Chapter 104, HRS.

The Department of Labor and Industrial Relations has stated that Chapter 104 does apply to construction that takes place on State land that is leased privately. The interpretation of Chapter 104 by the Department is reflected in their administrative rules, which clearly states that prevailing wages are to be paid for construction undertaken through the use of "...land or other resources of the State or any county..." The purpose of SB 2724 is to clarify that intent within Chapter 104 and enforce the law across the various departments.

In the example of the Naniloa Hotel on Banyan Drive in Hilo, the benefit of using State oceanfront land should not contribute to depressing area standard wages and benefits for Hawaii's construction workers. As we speak, prevailing wages are not being enforced for construction work at Naniloa, allowing public lands to be used to degrade wages and help contractors cheat.

Cheating on State land hurts Hawaii contractors who play by the rules. Enforcing Chapter 104 on leased lands will level the playing field for contractors who follow the law and contribute to the community by providing fringe benefits and fair wages to their workforce.

Thank you for your consideration of our support for the passage of SB 2724.



Randy Perreira
President

HAWAII STATE AFL-CIO

345 Queen Street, Suite 500 • Honolulu, Hawaii 96813

The Twenty-Eighth Legislature, State of Hawaii
Hawaii State Senate
Committee on Ways and Means

Telephone: (808) 597-1441
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Testimony by
Hawaii State AFL-CIO
March 1, 2016

S.B. 2724, S.D.1 – RELATING TO
PREVAILING WAGES

The Hawaii State AFL-CIO strongly supports S.B. 2724, S.D.1, which expands the types of projects that must comply with wage and hour requirements under Chapter 104, HRS, including construction projects on public lands regardless of whether the work is paid from public funds, and projects for which public lands are used as security for financing.

Prevailing wages ensure, at a minimum, construction workers including other workers are paid appropriate wages and benefits in their local jurisdiction. Prevailing wages encourage a more productive workforce which helps ensure projects are constructed efficiently, safely and with quality craftsmanship. At a time with lower wages and fewer benefits, prevailing wages help keep the economy moving forward by guaranteeing workers are provided with above-average wages which in turn leads to more economic spending.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira
President

Hawai'i Construction Alliance

P.O. Box 179441
Honolulu, HI 96817
(808) 348-8885

February 29, 2016

The Honorable Jill N. Tokuda, Chair
The Honorable Donovan Dela Cruz, Vice Chair
and members
Committee on Ways and Means
Hawai'i State Senate
Honolulu, Hawai'i 96813

RE: Strong Support for SB2724 SD1, Relating to Prevailing Wages

Dear Chair Tokuda, Vice Chair Dela Cruz, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

We **strongly support SB2724 SD1, relating to prevailing wages**. SB2724 SD1 would:

- Clarify that for the purposes of Chapter 104, all development, construction, renovation, and maintenance upon state land or the use of state land to secure financing for development, construction, renovation, or maintenance shall constitute a "public work" for which prevailing wages would apply;
- Create two additional exemptions for de minimis work on single- and multi-family dwellings and also projects for farm dwellings and accessory improvements on agricultural properties;
- Clarify that projects caused, initiated, or contracted for by lessees of the State for the development, construction, renovation, or maintenance of any real or personal property located on public lands are subject to Chapter 104; and
- Clarifies that the Director of DLIR, and the governmental contracting agency (if applicable), has enforcement powers for Chapter 104.

This bill is necessary, as it would provide more clarity for an unresolved question of how to treat state lands that are leased to private developers with regard to Chapter 104.

Because there has been a lack of uniform implementation of Chapter 104 on state lands that are leased to private developers, private developers have underpaid and exploited Hawai'i workers by not providing them with wages commensurate to their skills and labor.

SB2724 SD1 seeks to ensure uniform implementation of Chapter 104 and seeks to strengthen Hawai'i's prevailing wage or "Little Davis-Bacon" standards. Prevailing wages are important, as they ensure that local construction workers are paid properly, at living wages, for their skills and labor.

Because of the reporting requirements in Chapter 104, it is more difficult for unscrupulous contractors to cheat on worker protections like licensing, insurance, and workers compensation coverage. Additionally, local contractors benefit when it comes to bidding on jobs, because they can't be undercut by mainland contractors and their out-of-state workers who are paid at a lower rate.

We thank you for the opportunity to provide this testimony, and **respectfully request that your committee pass SB2724 SD1, relating to prevailing wages**, so that further discussion may occur following crossover on this very important matter.

Mahalo,

A handwritten signature in black ink that reads "Tyler Dos Santos-Tam". The signature is written in a cursive, flowing style.

Tyler Dos Santos-Tam
Executive Director
Hawai'i Construction Alliance
execdir@hawaiiconstructionalliance.org



International Union of Bricklayers and Allied Craftworkers Local #1 of Hawaii

2251 North School St.* Honolulu, HI 96819 * Phone (808) 841-0491 *Fax (808) 847-4782

March 1, 2016

Statement of Nolan G. Moriwaki, Financial Secretary-Treasurer/Business Manager
International Union of Bricklayers and Allied Craftworkers, (IUBAC) Local #1 HI
To the Senate committee on Judiciary and Labor,
In strong support of SB2724, relating to prevailing wages

Dear Chair Tokuda, Vice Chair Dela Cruz, and Members of the Committee:

The IUBAC, Local #1 HI strongly supports SB2724, relating to prevailing wages. In the spirit of Hawaii's Little-Davis Bacon law, there is a need to clarify that state and county land leased for private development is indeed subject to the laws and requirements of HRS 104. The "grey area" that exists in the language of HRS 104 has allowed private developers and unscrupulous contractors to access a loophole which they use to pay less than the area standard wages for Hawaii.

Our International organization has taken a strong stance in regard to prevailing wage laws, stating "Protecting federal, state and local prevailing wage laws from repeal or dilution ... is one of IUBAC's highest legislative and political priorities". In this vein, we do not want prevailing wages laws in Hawaii to allow contractors to do work on public lands without paying prevailing wages.

At this lime when the middle class is struggling to keep up with the rising cost of living in Hawaii, we must take every opportunity to protect wages for local people.

Mahalo.



OPERATING ENGINEERS LOCAL UNION No. 3

1075 OPAKAPAKA STREET, KAPOLEI, HI 96707 • (808) 845-7871 • FAX (808) 682-0906

Jurisdiction: Northern California, Northern Nevada, Utah, Hawaii, and the Mid-Pacific Islands

March 1, 2016

The Honorable Jill Tokuda, Chair
The Honorable Donovan Dela Cruz, Vice Chair
and members
Ways and Means Committee
Hawai'i State Senate
Honolulu, Hawai'i 96813

RE: Strong Support for SB2724 SD1, Relating to Prevailing Wages

Dear Chair Tokuda, Vice Chair Dela Cruz, and Members:

The Operating Engineers, Local Union No. 3 strongly supports SB2724 SD1. There is a need to clarify the requirements for the payment of prevailing wages on public works situated on state or county land. The Hawaii Administrative Rules clearly provide for the payment of prevailing wages when there is construction undertaken through the use of " ... land, or other resources of the state or any county ..."
This bill will clarify the language in HRS 104 to apply prevailing wages on state and county lands that are leased privately for development.

Your support of this bill will help Hawaii's construction industry address an unresolved question of how to treat state lands that are leased to private developers. This loophole has been exploited by private developers who have received leases to construct and operate projects on state lands and profit off the backs of skilled labor who are paid less than the area-standard wage. We must protect Hawaii's middle class by protecting their wages.

In the past, Operating Engineers, Local Union No. 3 has worked to clarify provisions of Chapter 104 such as we did last year with HB391, regarding overtime provisions. As such, we support SB2724 SD1, which seeks to clarify that prevailing wages do apply to public works on lands leased by the state to private developers.

Mahalo,
Pane Meatoga
District Representative
Operating Engineers, Local Union No. 3

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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SARAH LOVE
BAYS LUNG ROSE & HOLMA

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Testimony to the Senate Committee on Ways & Means Tuesday, March 1, 2016 1:40 PM. State Capitol - Conference Room 211

RE: SB 2724 SD1 – Relating to Prevailing Wages.

Dear Chair Tokuda, Vice-Chair Dela Cruz, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-Hawaii is in opposition to SB 2724 SD1. This bill would expand the application of prevailing wage rates for laborers and mechanics to all projects built on state lands, including residential dwelling units and agricultural farm dwellings or accessory improvements. While we agree that the prevailing wage should be paid when applicable, we cannot support this proposal because it exceeds the reach of what the prevailing wage law was intended to cover.

Thank you for the opportunity to express our views on this matter.

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Website: www.gcahawaii.org



GCA of Hawaii
GENERAL CONTRACTORS ASSOCIATION OF HAWAII
Quality People. Quality Projects.

Uploaded via Capitol Website

March 1, 2016

TO: HONORABLE JILL TOKUDA, CHAIR, HONORABLE DONOVAN DELA CRUZ,
VICE CHAIR, SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **OPPOSITION REGARDING S.B. 2724, SD1 RELATING TO
PREVAILING WAGE.** Expands the types of projects that must comply with wage
and hour requirements under chapter 104, HRS, including construction projects
on public lands regardless of whether the work is paid from public funds, and
projects for which public lands are used as security for financing. Exempts certain
projects from chapter 104, HRS. Establishes requirements that apply in
situations involving private lessees of public land who contract for certain
projects on public land. Effective January 7, 2059. (SD1)

Decision -Making

DATE: Tuesday, March 1, 2016
TIME: 1:40 p.m.
PLACE: Conference Room 211

Dear Chair Tokuda and Vice Chair Dela Cruz and Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over
hundred five hundred seventy general contractors, subcontractors, and construction related firms.
The GCA was established in 1932 and is the largest construction association in the State of
Hawaii. The mission is to represent its members in all matters related to the construction
industry, while improving the quality of construction and protecting the public interest.

GCA has grave concerns about this measure, particularly because the question remains who will
collect the weekly submissions of certified payroll and whether such expansion of the law is
proper. See attached Hawaii Department of Labor and Industrial Relations Chapter 104 weekly
certified payroll requirements. Furthermore, in March 2014 the U.S. District Court for the
District of Columbia rejected a determination by the U.S. Department of Labor (DOL) applying
the Davis-Bacon Act (DBA) to a privately-funded construction project. In [*District of Columbia
v. Department of Labor et al.*¹](#), 1:13-cv-00730, the court held that development of CityCenter
DC, a large-scale urban redevelopment project in downtown Washington, DC, owned by the
District of Columbia, did not involve construction of a “public building or public work” and
therefore was not subject to DBA coverage.

S.B. 2724, SD1 proposes to expand the application of prevailing wage rates for laborers and
mechanics, also known as “Little Davis Bacon” to include construction projects on public lands
regardless of whether the work is paid from public funds, and projects for which public lands are
used as security for financing. While there are some exemptions, it will still have a significant
impact on current leaseholders on public state lands.

¹ <http://image.exct.net/lib/fefd167774640c/d/1/4.7 Govt K DDC DoL DBA Opinion.pdf>

Under federal law the Davis Bacon Act requires that “each contract over \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, and/or repair of **public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classification of laborers and mechanics employed under contract.**” 21 *U.S.C. 113*. Hawaii’s law defines “public work” in Section 104-1, Hawaii Revised Statute similar to federal law as:

any project, including development of any housing pursuant to section 46-15 or chapter 201H and development, construction, renovation, and maintenance related to refurbishment of any real or personal property, **where the funds or resources required to undertake the project are to any extent derived, either directly or indirectly, from public revenues of the State or any county**, or from the sale of securities and bonds whose interest or dividends are exempt from state or federal taxes.

While GCA agrees that the prevailing wage should be paid when applicable, GCA cannot support this proposal as it exceeds the reach of what the prevailing wage law was intended to cover.

This measure has a far reaching impact and could escalate costs for State lease holders, many of whom are small businesses. Currently, those that are required to comply with Chapter 104, Hawaii Revised Statute, are required to submit weekly certified payroll affidavits and are punishable by fines for violations. Additionally, any work done on weekends or state holidays could be subject to overtime that may be equal to double or triple the cost of prevailing wage rates due to the passage of [Act 165 \(2015\)](#) passed last year. Will these leaseholders be subject to same?

GCA remains gravely concerned about this proposal and objects to the potentially detrimental and far reaching effect this measure will have, particularly to those leaseholders, including Hawaii’s small businesses and farmers that may be on state leased lands.

For these reasons, we respectfully request this measure be held.

Requirements of Chapter 104, HRS Wages and Hours of Employees on Public Works Law

Chapter 104, HRS, applies to every public works construction project over \$2,000, regardless of the method of procurement or financing (purchase order, voucher, bid, contract, lease arrangement, warranty).

Rate of Wages for Laborers and Mechanics

- Minimum prevailing wages (basic hourly rate plus fringe benefits), as determined by the Director of Labor and Industrial Relations and published in wage rate schedules, shall be paid to the various classes of laborers and mechanics working on the job site. [§104-2(a), (b), Hawaii Revised Statutes (HRS)]
- If the Director of Labor determines that prevailing wages have increased during the performance of a public works contract, the rate of pay of laborers and mechanics shall be raised accordingly. [§104-2(a) and (b), HRS; §12-22-3(d) Hawaii Administrative Rules (HAR)]

Overtime

- Laborers and mechanics working on a Saturday, Sunday, or a legal holiday of the State or more than eight hours a day on any other day shall be paid overtime compensation at one and one-half times the basic hourly rate plus the cost of fringe benefits for all hours worked. [§§104-1(5), 104-2(c), HRS]

Weekly Pay

- Laborers and mechanics employed on the job site shall be paid their full wages at least once a week, without deduction or rebate, except for legal deductions, within five working days after the cutoff date. [§104-2(d), HRS]

Posting of Wage Rate Schedules

- Wage rate schedules shall be posted by the contractor in a prominent and easily accessible place at the job site. A copy of the entire wage rate schedule shall be given to each laborer and mechanic employed under the contract, except when the employee is covered by a collective bargaining agreement. [§104-2(d), HRS]

Withholding of Accrued Payments

- If necessary, the contracting agency may withhold accrued payments to the contractor to pay to laborers and mechanics employed by the contractor or subcontractor on the job site any difference between the wages required by the public works contract or specifications and the wages received. [§104-2(e), HRS]

Certified Weekly Payrolls and Payroll Records

- A certified copy of all payrolls shall be submitted weekly to the contracting agency.
- The contractor is responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates listed are not less than the applicable rates contained in the applicable wage rate schedule, and that the classifications for each laborer or mechanic conform with the work the laborer or mechanic performed. [§104-3(a), HRS]
- Payroll records shall be maintained by the contractor and subcontractors for three years after completion of construction. The records shall contain:
 - the name and home address of each employee
 - the employee's correct classification
 - rate of pay (basic hourly rate + fringe benefits)
 - daily and weekly hours worked
 - weekly straight time and overtime earnings
 - amount and type of deductions
 - actual wages paid
 - date of payment
- Records shall be made available for inspection by the contracting agency, the Department of Labor and Industrial Relations, and any of its authorized representatives, who may also interview employees during working hours on the job. [§104-3(b), HRS]

Termination of Work on Failure to Pay Wages

- If the contracting agency finds that any laborer or mechanic employed on the job site by the contractor or any subcontractor has not been paid prevailing wages or overtime, the contracting agency may, by written notice to the contractor, terminate the contractor's or subcontractor's right to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid. The contracting agency may complete this work by contract or otherwise, and the contractor or contractor's sureties shall be liable to the contracting agency for any excess costs incurred. [§104-4, HRS]

Apprentices and Trainees

- In order to be paid apprentice or trainee rates, apprentices and trainees must be parties to an agreement either registered with or recognized as a USDOL nationally approved apprenticeship program by the Department of Labor and Industrial Relations, Workforce Development Division. [§12-22-6(1), HAR]
- The number of apprentices or trainees on any public work in relation to the number of journeyworkers in the same craft classification as the apprentices or trainees employed by the same employer on the same public work may not exceed the ratio allowed under the apprenticeship or trainee standards registered with or recognized by the Department of Labor and Industrial Relations. A registered or recognized apprentice receiving the journeyworker rate will not be considered a journeyworker for the purpose of meeting the ratio requirement. [§12-22-6(2), HAR]

Enforcement

- To ensure compliance with the law, DLIR and the contracting agency will conduct investigations of contractors and subcontractors. If a contractor or subcontractor violates the law, the penalties are:
 - First Violation Equal to 10% of back wages found due or \$25 per offense, whichever is greater.
 - Second Violation Equal to amount of back wages found due or \$100 for each offense, whichever is greater.
 - Third Violation Equal to two times the amount of back wages found due or \$200 for each offense, whichever is greater; and Suspension from doing any new work on any public work of a governmental contracting agency for three years.
- A violation would be deemed a second violation if it occurs within two years of the **first notification of violation**, and a third violation if it occurs within two years of **the second notification of violation**.
- Suspension. For a first or second violation, the department shall immediately suspend a contractor who fails to pay wages or penalties until all wages and penalties are paid in full. For a third violation, the department shall penalize and suspend the contractor as described above, **except that if the contractor continues to violate the law, then the department shall immediately suspend the contractor for a mandatory three years. The contractor shall remain suspended until all wages and penalties are paid in full.** [§§104-24, 104-25]
- Any contractor who fails to make payroll records accessible or provide requested information within 10 days, or fails to keep or falsifies any required record, shall be assessed a penalty as provided in Section 104-22(b), HRS. [§104-3(c)]
- If any contractor interferes with or delays any investigation, the contracting agency shall withhold further payments until the delay has ceased. Interference or delay includes failure to provide requested records or information within ten days, failure to allow employees to be interviewed during working hours on the job, and falsification of payroll records. The department shall assess a penalty of \$1,000 per project, and \$100 per day thereafter, for interference or delay. [§104-22(b)]

For additional information, visit the department's website at <http://dlir.state.hi.us/> or contact any of the following DLIR offices:



Oahu (Wage Standards Division)	586-8777
Maui	243-5322
Hilo	974-6464
West Hawaii	322-4808
Kauai	274-3351