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# A BILL FOR AN ACT

RELATING TO HOUSING.

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

1           SECTION 1. The legislature finds that from 2015 to 2025,  
2 Hawaii will require an additional 64,700 housing units to meet  
3 projected long-term housing demands. Of this amount, 22,247  
4 households of all income levels will require rental units. The  
5 legislature further finds that the need is greatest for  
6 households with low to middle incomes.

7           Approximately ninety-three to ninety-five per cent of  
8 rental unit tenants have a household income of less than one  
9 hundred forty per cent of the Hawaii median income. Until now,  
10 the private sector has been unable to produce sufficient rental  
11 housing because of the difficult economics of building and  
12 operating rental housing in Hawaii. The legislature further  
13 finds that a group of private sector landowners, developers,  
14 contractors, architects, engineers, and labor unions have agreed  
15 to take meaningful steps to improve the economics of building  
16 and operating rental housing in the State.

17           The purpose of this Act is to improve the economics of  
18 building and operating rental housing in the State by:



- 1 (1) Expanding the number of rental housing projects that
- 2 can be exempted from general excise taxes; and
- 3 (2) Allowing the terms of collective bargaining agreements
- 4 and associated provisions to be deemed the prevailing
- 5 wages and terms serving as the basis of compliance
- 6 with chapter 104, Hawaii Revised Statutes, for the
- 7 construction of certain rental housing projects.

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

10 **"§104-2 Applicability; wages, hours, and other**  
 11 **requirements.** (a) This chapter shall apply to every contract  
 12 in excess of \$2,000 for construction of a public work project to  
 13 which a governmental contracting agency is a party; provided  
 14 that this chapter shall not apply to experimental and  
 15 demonstration housing developed pursuant to section 46-15 or  
 16 housing developed pursuant to chapter 201H if the cost of the  
 17 project is less than \$500,000 and the eligible bidder or  
 18 eligible developer is a private nonprofit corporation.

19 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:

5 (1) Any person or entity that causes either directly or  
6 indirectly the building or development of a public  
7 work; and

8 (2) Any public-private partnership.

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

16 (b) Every laborer and mechanic performing work on the job  
17 site for the construction of any public work project shall be  
18 paid no less than prevailing wages; provided that:

19 (1) The prevailing wages shall be established by the  
20 director as the sum of the basic hourly rate and the  
21 cost to an employer of providing a laborer or mechanic



1 with fringe benefits. In making prevailing wage  
2 determinations, the following shall apply:

3 (A) The director shall make separate findings of:

4 (i) The basic hourly rate; and

5 (ii) The rate of contribution or cost of fringe  
6 benefits paid by the employer when the  
7 payment of the fringe benefits by the  
8 employer constitutes a prevailing practice.  
9 The cost of fringe benefits shall be  
10 reflected in the wage rate scheduled as an  
11 hourly rate; and

12 (B) The rates of wages which the director shall  
13 regard as prevailing in each corresponding  
14 classification of laborers and mechanics shall be  
15 the rate of wages paid to the greatest number of  
16 those employed in the State, the modal rate, in  
17 the corresponding classes of laborers or  
18 mechanics on projects that are similar to the  
19 contract work;

20 (2) The prevailing wages shall be not less than the wages  
21 payable under federal law to corresponding classes of



1 laborers and mechanics employed on public works  
2 projects in the State that are prosecuted under  
3 contract or agreement with the government of the  
4 United States; and

5 (3) Notwithstanding the provisions of the original  
6 contract, the prevailing wages shall be periodically  
7 adjusted during the performance of the contract in an  
8 amount equal to the change in the prevailing wage as  
9 periodically determined by the director.

10 (c) No laborer or mechanic employed on the job site of any  
11 public work of the State or any political subdivision thereof  
12 shall be permitted or required to work on Saturday, Sunday, or a  
13 legal holiday of the State or in excess of eight hours on any  
14 other day unless the laborer or mechanic receives overtime  
15 compensation for all hours worked on Saturday, Sunday, and a  
16 legal holiday of the State or in excess of eight hours on any  
17 other day. The rate for overtime compensation and any other  
18 premium rates of pay shall be those rates specified in an  
19 applicable collective bargaining agreement when the basic hourly  
20 rate is established by a collective bargaining agreement.



1 For purposes of determining overtime compensation under  
2 this subsection, the basic hourly rate of any laborer or  
3 mechanic shall not be less than the basic hourly rate determined  
4 by the director to be the prevailing basic hourly rate for  
5 corresponding classes of laborers and mechanics on projects of  
6 similar character in the State.

7 (d) The contractor or the contractor's subcontractor shall  
8 pay all mechanics and laborers employed on the job site,  
9 unconditionally and not less often than once a week, and without  
10 deduction or rebate on any account, except as allowed by law,  
11 the full amounts of their wages including overtime, accrued to  
12 not more than five working days prior to the time of payment, at  
13 wage rates not less than those deemed to be prevailing,  
14 regardless of any contractual relationship which may be alleged  
15 to exist between the contractor or subcontractor and the  
16 laborers and mechanics. The rates of wages to be paid shall be  
17 posted by the contractor in a prominent and easily accessible  
18 place at the job site, and a copy of the rates of wages required  
19 to be posted shall be given to each laborer and mechanic  
20 employed under the contract by the contractor at the time each  
21 laborer and mechanic is employed, except that where there is a



1 collective bargaining agreement the contractor does not have to  
2 provide the contractor's employees the wage rate schedules.

3 (e) The governmental contracting agency may withhold from  
4 the contractor so much of the accrued payments as the  
5 governmental contracting agency may consider necessary to pay to  
6 the laborers and mechanics employed by the contractor or any  
7 subcontractor on the job site the difference between the  
8 prevailing wages and the wages received and not refunded by the  
9 laborers and mechanics.

10 (f) Every contract in excess of \$2,000 for construction of  
11 a public work project and the specifications for such contract  
12 shall include provisions that set forth the requirements of  
13 subsections (a) to (e); provided that failure by the contracting  
14 agency to include those provisions in the contract or  
15 specifications shall not be a defense of the contractor or  
16 subcontractor for noncompliance with the requirements of this  
17 chapter.

18 (g) For any public work project that is subject to this  
19 chapter but not directly caused by a governmental contracting  
20 agency, the director shall be responsible for enforcement of  
21 this chapter, including the collection and maintenance of



1 certified copies of all payrolls that are subject to this  
2 chapter. The director shall adopt rules pursuant to chapter 91  
3 to effectuate the purposes of this section.

4 (h) When:

- 5 (1) The department of budget and finance enters a project  
6 agreement with a project party, as those terms are  
7 defined in chapter 39A, to finance or refinance a  
8 project with the proceeds of special purpose revenue  
9 bonds;
- 10 (2) The project party has entered into a collective  
11 bargaining agreement with a bona fide labor union  
12 governing the project party's workforce; and
- 13 (3) The collective bargaining agreement has been properly  
14 submitted to the director under section 104-34,  
15 the terms of the collective bargaining agreement and associated  
16 provisions shall be deemed the prevailing wages and terms  
17 serving as the basis of compliance with this chapter for work on  
18 the project by the project party's workforce; provided that this  
19 subsection does not affect the director's enforcement powers  
20 contained in subsection (g). If the terms of the collective  
21 bargaining agreement and associated provisions do not include





1 wages, then the prevailing wage shall be no less than the wages  
2 payable under federal law to corresponding classes of laborers  
3 and mechanics employed on public works projects in the State  
4 that are prosecuted under contract or agreement with the  
5 government of the United States.

6 (i) When:

7 (1) The Hawaii housing finance and development corporation  
8 has approved and certified for exemption from general  
9 excise taxes a qualified person or firm involved with  
10 a newly constructed, or moderately or substantially  
11 rehabilitated project under section 201H-36(a)(5);

12 (2) The qualified person or firm has entered into a  
13 contract with a general contractor or subcontractors  
14 whose workforce is subject to a collective bargaining  
15 agreement with a bona fide labor union for the  
16 construction of the project; and

17 (3) The collective bargaining agreement has been properly  
18 submitted to the director under section 104-34,  
19 the terms of the collective bargaining agreement and associated  
20 provisions shall be deemed the prevailing wages and terms  
21 serving as the basis of compliance with this chapter for work on



1 the project; provided that this subsection does not affect the  
 2 director's enforcement powers contained in subsection (g). If  
 3 the terms of the collective bargaining agreement and associated  
 4 provisions do not include wages, then the prevailing wage shall  
 5 be no less than the wages payable under federal law to  
 6 corresponding classes of laborers and mechanics employed on  
 7 public works projects in the State that are prosecuted under  
 8 contract or agreement with the government of the United States."

9 SECTION 3. Section 201H-36, Hawaii Revised Statutes, is  
 10 amended by amending subsection (a) to read as follows:

11 "(a) In accordance with section 237-29, the corporation  
 12 may approve and certify for exemption from general excise taxes  
 13 any qualified person or firm involved with a newly constructed,  
 14 or moderately or substantially rehabilitated project:

- 15 (1) Developed under this part;
- 16 (2) Developed under a government assistance program  
 17 approved by the corporation, including but not limited  
 18 to the United States Department of Agriculture 502  
 19 program and Federal Housing Administration 235  
 20 program;



- 1           (3) Developed under the sponsorship of a private nonprofit  
2           organization providing home rehabilitation or new  
3           homes for qualified families in need of decent, low-  
4           cost housing; [~~or~~]
- 5           (4) Developed by a qualified person or firm to provide  
6           affordable rental housing where at least fifty per  
7           cent of the available units are for households with  
8           incomes at or below eighty per cent of the area median  
9           family income as determined by the United States  
10          Department of Housing and Urban Development, of which  
11          at least twenty per cent of the available units are  
12          for households with incomes at or below sixty per cent  
13          of the area median family income as determined by the  
14          United States Department of Housing and Urban  
15          Development [-]; or
- 16          (5) Developed under a contract described in section  
17          104-2(i)(2) by a qualified person or firm to provide  
18          affordable rental housing where all available units  
19          are for households with incomes at or below one  
20          hundred forty per cent of the area median family  
21          income as determined by the United States Department





**Report Title:**

Rental Housing Projects; Construction; General Excise Tax  
Exemption; Collective Bargaining Agreement; Prevailing Wages

**Description:**

Expands the types of rental housing projects that can be exempt from general excise taxes. Allows the terms of collective bargaining agreements and associated provisions to be deemed the prevailing wages and terms serving as the basis of compliance with chapter 104, Hawaii Revised Statutes, for the construction of certain rental housing projects. Sunsets on an unspecified date. (SD1)

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