

ACT 215

H.B. NO. 2525

A Bill for an Act Relating to Public Works Projects.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to ensure that when contractors bid on public works construction projects, it is done pursuant to standards that are fair, equitable, and uniformly applied. The intent of this Act is to clarify, but not change, existing law.

SECTION 2. Chapter 103, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§103- Wages and hours of employees on public works construction contracts. (a) Before any bidder or offeror enters into a contract for construction of a public work project in excess of \$2,000, which is subject to chapter 104, the bidder or offeror shall affirm the bidder’s or offeror’s intent to comply with the requirements of chapter 104 by certifying that:

- (1) Individuals engaged in the performance of the contract on the job site shall be paid:
 - (A) Not less than the wages that the director of labor and industrial relations shall have determined to be prevailing for corresponding classes of laborers and mechanics employed on public works projects; and
 - (B) Overtime compensation at one and one-half times the basic hourly rate plus fringe benefits for hours worked on Saturday, Sunday, or a legal holiday of the State or in excess of eight hours on any other day; and

- (2) All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety shall be fully complied with.
- (b) No contract for construction of any public work project in excess of \$2,000 shall be granted unless all the conditions of this section are met.
- (c) It shall be the duty of the governmental contracting agency awarding the contract for construction of a public work project in excess of \$2,000 to enforce this section."

SECTION 3. Section 104-2, Hawaii Revised Statutes, is amended to read as follows:

"§104-2 [Rate of wages for laborers and mechanics; contract and specification provisions.] Applicability; wages, hours, and other requirements. (a) ~~[Except as otherwise provided, the specifications of every contract in excess of \$2,000 to which a governmental contracting agency is a party, for construction of any public work, shall state the minimum wages that shall be paid to the various classes of laborers and mechanics engaged in the performance of the contract on the job site, and that the minimum wages shall be periodically increased during the performance of the contract in an amount equal to the increase in the prevailing wages for those kinds of work as periodically determined by the director of labor and industrial relations; provided that this subsection shall be applied individually and on a case by case basis to each public work project, including development of housing under section 46-15 or chapter 201G, for which a contract is required under this section, and that specific terms of each contract shall be mutually exclusive of the terms of any other public work contract; and provided further that this subsection shall not apply to]~~ This chapter shall apply to every contract in excess of \$2,000 for construction of a public work project to which a governmental contracting agency is a party; provided that this chapter shall not apply to experimental and demonstration housing developed pursuant to section 46-15 or housing developed pursuant to chapter 201G if the cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit corporation.

For the purposes of this subsection:

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

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

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

"Public work" means any project, including development of any housing pursuant to section 46-15 or chapter 201G, 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.

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

- (1) The [minimum] prevailing wages shall be not less than the wages that the director of labor and industrial relations, under the rules, shall have

determined to be the prevailing wages for corresponding classes of laborers and mechanics on projects of similar character in the State[-];

- (2) The prevailing wages shall be not less than the wages payable under federal law to corresponding classes of laborers and mechanics employed on public works in the State that are prosecuted under contract or agreement with the government of the United States[-]; and

- (3) Notwithstanding the provisions of the original contract, ~~[if the director determines that the prevailing wage has increased, the rate of pay of laborers and mechanics on a public work project shall be raised accordingly.]~~ the prevailing wages shall be periodically adjusted during the performance of the contract in an amount equal to the change in the prevailing wage as periodically determined by the director.

(c) ~~[The contract and specifications shall contain the provision that no]~~ No laborer or mechanic employed on the job site of any public work of the State or any political subdivision thereof shall be permitted or required to work on Saturday, Sunday, or a legal holiday of the State or in excess of eight hours on any other day unless the laborer or mechanic receives overtime compensation for all hours worked on Saturday, Sunday, and a legal holiday of the State or in excess of eight hours on any other day. For purposes of determining overtime compensation under this subsection, the basic hourly rate of any laborer or mechanic shall not be less than the basic hourly rate determined by the director to be the prevailing basic hourly rate for corresponding classes of laborers and mechanics on projects of similar character in the State.

(d) ~~[Every such contract and the specifications for the contract shall contain (1) a provision that the]~~ The contractor or the contractor's subcontractor shall pay all mechanics and laborers employed on the job site, unconditionally and not less often than once a week, and without deduction or rebate on any account, except as allowed by law, the full amounts of their wages including overtime, accrued to not more than five working days prior to the time of payment, at wage rates not less than those ~~[stated in the contract and specifications,]~~ deemed to be prevailing, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics[-, and (2) a provision that the]. The rates of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the job site, and ~~[that]~~ a copy of the rates of wages required to be posted[-] shall be given to each laborer and mechanic employed under the contract by the contractor at the time each laborer and mechanic is employed, ~~[provided]~~ except that where there is a collective bargaining agreement the contractor does not have to provide the contractor's employees the wage rate schedules.

(e) ~~[Every such contract and the specifications for such contract shall contain a provision that the]~~ The governmental contracting agency may withhold from the contractor so much of the accrued payments as the governmental contracting agency may consider necessary to pay to the laborers and mechanics employed by the contractor or any subcontractor on the job site the difference between the prevailing wages ~~[required by the contract or specifications]~~ and the wages received and not refunded by the laborers and mechanics.

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

SECTION 4. Section 104-34, Hawaii Revised Statutes, is amended to read as follows:

“§104-34 Submission of collective bargaining agreement to the director.

(a) Parties to a collective bargaining agreement covering classes of laborers or mechanics, which are included in the prevailing wage determinations made pursuant to this chapter, shall submit a copy of the agreement to the director within five days after execution of the agreement. [The]

(b) Except as otherwise provided herein, the terms of agreement shall be kept confidential by the director [upon the request of the parties to the collective bargaining agreement and shall be used only pursuant to this chapter]. The director may disclose terms of the agreement to any federal or state agency for the purpose of enforcing this chapter.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

Note

1. Edited pursuant to HRS §23G-16.5.