H.B. NO. ¹¹⁷⁹ H.D. 2 S.D. 2 C.D. 1

1

A BILL FOR AN ACT

RELATING TO HOUSING.

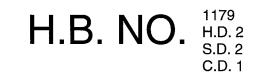
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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

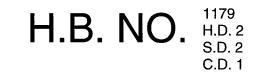
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| 1 | The purpose of this Act is to improve the economics of | | |
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| 2 | building and operating rental housing in the State by: | | |
| 3 | (1) Expanding the types of rental housing projects that | | |
| 4 | can be exempt from general excise taxes; and | | |
| 5 | (2) Allowing the terms of prevailing wages under contracts | | |
| 6 | pursuant to section 201H-36(a)(5), Hawaii Revised | | |
| 7 | Statutes, to be deemed the prevailing wages serving as | | |
| 8 | the basis of compliance with chapter 104, Hawaii | | |
| 9 | Revised Statutes, for the construction of certain | | |
| 10 | rental housing projects. | | |
| 11 | SECTION 2. Section 104-2, Hawaii Revised Statutes, is | | |
| 12 | amended to read as follows: | | |
| 13 | "§104-2 Applicability; wages, hours, and other | | |
| 14 | requirements. (a) This chapter shall apply to every contract | | |
| 15 | in excess of \$2,000 for construction of a public work project to | | |
| 16 | which a governmental contracting agency is a party; provided | | |
| 17 | that this chapter shall not apply to experimental and | | |
| 18 | demonstration housing developed pursuant to section 46-15 or | | |
| 19 | housing developed pursuant to chapter 201H if the cost of the | | |
| 20 | project is less than \$500,000 and the eligible bidder or | | |
| 21 | eligible developer is a private nonprofit corporation. | | |

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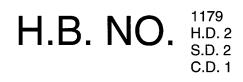


| 1 | For the purposes of this subsection: | | |
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| 2 | "Contract" includes but is not limited to any agreement, | | |
| 3 | purchase order, or voucher in excess of \$2,000 for construction | | |
| 4 | of a public work project. | | |
| 5 | "Governmental contracting agency" includes: | | |
| 6 | (1) Any person or entity that causes either directly or | | |
| 7 | indirectly the building or development of a public | | |
| 8 | work; and | | |
| 9 | (2) Any public-private partnership. | | |
| 10 | "Party" includes eligible bidders for and eligible | | |
| 11 | developers of any public work and any housing under chapter | | |
| 12 | 201H; provided that this subsection shall not apply to any | | |
| 13 | housing developed under section 46-15 or chapter 201H if the | | |
| 14 | entire cost of the project is less than \$500,000 and the | | |
| 15 | eligible bidder or eligible developer is a private nonprofit | | |
| 16 | corporation. | | |
| 17 | (b) Every laborer and mechanic performing work on the job | | |
| 18 | site for the construction of any public work project shall be | | |
| 19 | paid no less than prevailing wages; provided that: | | |

20 (1) The prevailing wages shall be established by the
21 director as the sum of the basic hourly rate and the



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| 1 | cost to an employer of providing a laborer or mechanic |
|----|--|
| 2 | with fringe benefits. In making prevailing wage |
| 3 | determinations, the following shall apply: |
| 4 | (A) The director shall make separate findings of: |
| 5 | (i) The basic hourly rate; and |
| 6 | (ii) The rate of contribution or cost of fringe |
| 7 | benefits paid by the employer when the |
| 8 | payment of the fringe benefits by the |
| 9 | employer constitutes a prevailing practice. |
| 10 | The cost of fringe benefits shall be |
| 11 | reflected in the wage rate scheduled as an |
| 12 | hourly rate; and |
| 13 | (B) The rates of wages which the director shall |
| 14 | regard as prevailing in each corresponding |
| 15 | classification of laborers and mechanics shall be |
| 16 | the rate of wages paid to the greatest number of |
| 17 | those employed in the State, the modal rate, in |
| 18 | the corresponding classes of laborers or |
| 19 | mechanics on projects that are similar to the |
| 20 | contract work; |



| 1 | (2) | [The] Except for the project prevailing wages |
|----|-----------|--|
| 2 | | established by subsections (h) and (i), the prevailing |
| 3 | | wages shall be not less than the wages payable under |
| 4 | | federal law to corresponding classes of laborers and |
| 5 | | mechanics employed on public works projects in the |
| 6 | | State that are prosecuted under contract or agreement |
| 7 | | with the government of the United States; and |
| 8 | (3) | Notwithstanding the provisions of the original |
| 9 | | contract, the prevailing wages shall be periodically |
| 10 | | adjusted during the performance of the contract in an |
| 11 | | amount equal to the change in the prevailing wage as |
| 12 | | periodically determined by the director. |
| 13 | (c) | No laborer or mechanic employed on the job site of any |
| 14 | public wo | rk of the State or any political subdivision thereof |
| 15 | shall be | permitted or required to work on Saturday, Sunday, or a |
| 16 | legal hol | iday of the State or in excess of eight hours on any |
| 17 | other day | unless the laborer or mechanic receives overtime |
| 18 | compensat | ion for all hours worked on Saturday, Sunday, and a |
| 19 | legal hol | iday of the State or in excess of eight hours on any |
| 20 | other day | . The rate for overtime compensation and any other |
| 21 | premium r | ates of pay shall be those rates specified in an |





applicable collective bargaining agreement when the basic hourly
 rate is established by a collective bargaining agreement.

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.

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



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1 employed under the contract by the contractor at the time each 2 laborer and mechanic is employed, except that where there is a 3 collective bargaining agreement the contractor does not have to 4 provide the contractor's employees the wage rate schedules.

(e) 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 and the wages received and not refunded by the
laborers and mechanics.

12 (f) Every contract in excess of \$2,000 for construction of 13 a public work project and the specifications for such contract 14 shall include provisions that set forth the requirements of 15 subsections (a) to (e); provided that failure by the contracting 16 agency to include those provisions in the contract or 17 specifications shall not be a defense of the contractor or 18 subcontractor for noncompliance with the requirements of this 19 chapter.

20 (g) For any public work project that is subject to this21 chapter but not directly caused by a governmental contracting

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| 1 | agency, t | he director shall be responsible for enforcement of | |
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| 2 | this chap | ter, including the collection and maintenance of | |
| 3 | certified | copies of all payrolls that are subject to this | |
| 4 | chapter. | [The director shall adopt rules pursuant to chapter 91 | |
| 5 | to effect | uate the purposes of this section.] | |
| 6 | (h) | When: | |
| 7 | (1) | The department of budget and finance enters a project | |
| 8 | | agreement with a project party, as those terms are | |
| 9 | | defined in chapter 39A, to finance or refinance a | |
| 10 | | project with the proceeds of special purpose revenue | |
| 11 | | bonds; | |
| 12 | (2) | The project party has entered into a collective | |
| 13 | | bargaining agreement with a bona fide labor union | |
| 14 | | governing the project party's workforce; and | |
| 15 | (3) | The collective bargaining agreement has been properly | |
| 16 | | submitted to the director under section 104-34, | |
| 17 | the terms | of the collective bargaining agreement and associated | |
| 18 | provisions shall be deemed the prevailing wages and terms | | |
| 19 | serving a | s the basis of compliance with this chapter for work on | |
| 20 | the proje | ect by the project party's workforce; provided that this | |



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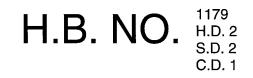
| 1 | subsection does not affect the director's enforcement powers | | |
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| 2 | contained in subsection (g). | | |
| 3 | <u>(i)</u> | The | terms of section 201H-36(a)(5) prevailing wages |
| 4 | shall be | deeme | d the prevailing wages serving as the basis of |
| 5 | complianc | e wit | h this chapter for work on the project when: |
| 6 | (1) | The | Hawaii housing finance and development corporation |
| 7 | | has | approved and certified a qualified person or firm |
| 8 | | invo | lved with a newly constructed, or moderately or |
| 9 | | subs | tantially rehabilitated project under section |
| 10 | | <u>201H</u> | -36(a)(5) for exemption from general excise taxes; |
| 11 | (2) | The | qualified person or firm has entered into a |
| 12 | | cont | ract with a general contractor or subcontractors |
| 13 | | whos | e workforce is subject to either: |
| 14 | | (A) | A collective bargaining agreement with a bona |
| 15 | | | fide labor union for which a section |
| 16 | | | 201H-36(a)(5) prevailing wage for the laborers |
| 17 | | | and mechanics employed for the construction |
| 18 | | | project has been approved by the director; or |
| 19 | | <u>(B)</u> | A project labor agreement with the group whose |
| 20 | | | wages are reflected in the Hawaii prevailing wage |
| 21 | | | schedule for which section 201H-36(a)(5) |
| | | | |



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| 1 | prevailing wages for the laborers and mechanics |
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| 2 | employed for the construction project have been |
| 3 | approved by the director; and |
| 4 | (3) The qualified person or firm has received no other |
| 5 | direct or indirect financing for the construction |
| 6 | project from any other governmental contracting |
| 7 | agency, including the Hawaii housing finance and |
| 8 | development corporation." |
| 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; |

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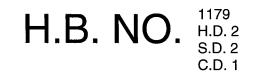
- (3) Developed under the sponsorship of a private nonprofit
 organization providing home rehabilitation or new
 homes for qualified families in need of decent, low cost housing; [er]
- 5 (4)Developed by a gualified person or firm to provide 6 affordable rental housing where at least fifty per 7 cent 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) Effective from July 1, 2018, to June 30, 2022,
- 17 developed under a contract described in section
- 18 104-2(i)(2) by a qualified person or firm to provide
- 19 affordable rental housing; provided that:
- 20(A)The allowable general excise tax and use tax21costs shall apply to contracting only and shall



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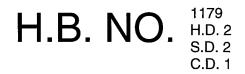
| 1 | | not exceed \$7,000,000 per year in the aggregate |
|----|----------------|---|
| 2 | | for all projects approved and certified by the |
| 3 | | corporation; and |
| 4 | <u>(B)</u> | All available units are for households with |
| 5 | | incomes at or below one hundred forty per cent of |
| 6 | | the area median family income as determined by |
| 7 | | the United States Department of Housing and Urban |
| 8 | | Development, of which at least twenty per cent of |
| 9 | | the available units are for households with |
| 10 | | incomes at or below eighty per cent of the area |
| 11 | | median family income as determined by the United |
| 12 | | States Department of Housing and Urban |
| 13 | | Development." |
| 14 | SECTION 4 | . Statutory material to be repealed is bracketed |
| 15 | and stricken. | New statutory material is underscored. |
| 16 | SECTION 5 | . This Act shall take effect on July 1, 2017, and |
| 17 | shall be repea | led on June 30, 2022; provided that: |
| 18 | (1) Sect | ion 3 of this Act shall apply to taxable years |
| 19 | begi | nning after December 31, 2017; and |
| 20 | (2) Sect | ion 104-2, Hawaii Revised Statutes, and section |
| 21 | 201H | -36, Hawaii Revised Statutes, shall be reenacted |
| | | |





in the form in which they read on the day before the effective date of this Act.





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 Hawaii Housing Finance and Development Corporation to exempt certain affordable rental housing projects from general excise tax and use tax costs. Allows the terms of the section 201H-36(a)(5) prevailing wages to be deemed the prevailing wages serving as the basis of compliance with chapter 104, Hawaii Revised Statutes, for the construction of certain rental housing projects. (HB1179 CD1)

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

