
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.



1 The purpose of this Act is to improve the economics of
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 collective bargaining agreements
- 6 and associated provisions to be deemed the prevailing
- 7 wages and terms serving as the basis of compliance
- 8 with chapter 104, Hawaii Revised Statutes, for the
- 9 construction of certain rental housing projects.

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

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

21 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



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

(A) The director shall make separate findings of:

(i) The basic hourly rate; and

(ii) The rate of contribution or cost of fringe benefits paid by the employer when the payment of the fringe benefits by the employer constitutes a prevailing practice.

The cost of fringe benefits shall be reflected in the wage rate scheduled as an hourly rate; and

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

(2) [The] Except for the prevailing wage established by subsections (h) and (i) for section 201H-36(a)(5)



1 projects, the prevailing wages shall be not less than
2 the wages payable under federal law to corresponding
3 classes of laborers and mechanics employed on public
4 works projects in the State that are prosecuted under
5 contract or agreement with the government of the
6 United States; and

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

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



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

3 For purposes of determining overtime compensation under
4 this subsection, the basic hourly rate of any laborer or
5 mechanic shall not be less than the basic hourly rate determined
6 by the director to be the prevailing basic hourly rate for
7 corresponding classes of laborers and mechanics on projects of
8 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
20 place at the job site, and a copy of the rates of wages required
21 to be posted shall be given to each laborer and mechanic



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.

5 (e) The governmental contracting agency may withhold from
6 the contractor so much of the accrued payments as the
7 governmental contracting agency may consider necessary to pay to
8 the laborers and mechanics employed by the contractor or any
9 subcontractor on the job site the difference between the
10 prevailing wages and the wages received and not refunded by the
11 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 this
21 chapter but not directly caused by a governmental contracting



1 agency, the director shall be responsible for enforcement of
2 this chapter, 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 effectuate the purposes of this section.

6 (h) When:

7 (1) The department of budget and finance enters into a
8 project agreement with a project party, as those terms
9 are 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 as the basis of compliance with this chapter for work on
20 the project by the project party's workforce; provided that this
21 subsection does not affect the director's enforcement powers



1 contained in subsection (g). If the terms of the collective
2 bargaining agreement and associated provisions do not include
3 wages, then the prevailing wage shall be no less than the wages
4 payable under federal law to corresponding classes of laborers
5 and mechanics employed on housing projects in the State that are
6 prosecuted under contract or agreement with the government of
7 the United States.

8 (i) When:

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

14 (2) The qualified person or firm has entered into a
15 contract with a general contractor or subcontractors
16 whose workforce is subject to either:

17 (A) A collective bargaining agreement with a bona
18 fide labor union and for which a special
19 prevailing wage schedule for the laborers and
20 mechanics employed for the construction project
21 has been approved by the director; or



1 (B) A project labor agreement with a group whose
2 wages are reflected in the Hawaii prevailing wage
3 schedule for which a prevailing wage for section
4 201H-36(a)(5) projects, for the laborers and
5 mechanics employed for the construction project
6 has been approved by the director; and

7 (3) The qualified person or firm has received no other
8 direct or indirect financing for the construction
9 project from any other governmental contracting agency
10 including the Hawaii housing finance and development
11 corporation,

12 the terms of the prevailing wages for section 201H-36(a)(5)
13 projects shall be deemed the prevailing wages serving as the
14 basis of compliance with this chapter for work on the project."

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

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

21 (1) Developed under this part;



- 1 (2) Developed under a government assistance program
2 approved by the corporation, including but not limited
3 to the United States Department of Agriculture 502
4 program and Federal Housing Administration 235
5 program;
- 6 (3) Developed under the sponsorship of a private nonprofit
7 organization providing home rehabilitation or new
8 homes for qualified families in need of decent, low-
9 cost housing; [~~e~~]
- 10 (4) Developed by a qualified person or firm to provide
11 affordable rental housing where at least fifty per
12 cent of the available units are for households with
13 incomes at or below eighty per cent of the area median
14 family income as determined by the United States
15 Department of Housing and Urban Development, of which
16 at least twenty per cent of the available units are
17 for households with incomes at or below sixty per cent
18 of the area median family income as determined by the
19 United States Department of Housing and Urban
20 Development [~~-~~]; or



1 (5) Developed under a contract described in section
2 104-2(i)(2) by a qualified person or firm to provide
3 affordable rental housing where all available units
4 are for households with incomes at or below one
5 hundred forty per cent of the area median family
6 income as determined by the United States Department
7 of Housing and Urban Development, of which at least
8 twenty per cent of the available units are for
9 households with incomes at or below eighty per cent of
10 the area median family income as determined by the
11 United States Department of Housing and Urban
12 Development; provided that the tax exemption
13 established under this paragraph shall be available
14 for taxable years beginning after December 31, 2017."

15 SECTION 4. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect on July 1, 2050, and
18 shall be repealed on ; provided that sections 104-2 and
19 201H-36, Hawaii Revised Statutes, shall be reenacted in the form
20 in which they read on the day prior to the effective date of
21 this Act.



Report Title:

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

Description:

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. Expands the types of rental housing projects that can be exempt from general excise taxes. (SB1105 HD2)

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