

ACT 54

H.B. NO. 1179

A Bill for an Act Relating to Housing.

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.

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

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

- (1) Expanding the types of rental housing projects that can be exempt from general excise taxes; and

- (2) Allowing the terms of prevailing wages under contracts pursuant to section 201H-36(a)(5), Hawaii Revised Statutes, 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.

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

“§104-2 Applicability; wages, hours, and other requirements. (a) 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 201H 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:

- (1) Any person or entity that causes either directly or indirectly the building or development of a public work; and
- (2) Any public-private partnership.

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

(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 prevailing wages shall be established by the director as the sum of the basic hourly rate and the cost to an employer of providing a laborer or mechanic 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 project prevailing wages established by subsections (h) and (i), 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 projects 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, 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) 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. The rate for overtime compensation and any other premium rates 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.

(d) 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 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. 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 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, 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) 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.

(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.

(g) For any public work project that is subject to this chapter but not directly caused by a governmental contracting agency, the director shall be responsible for enforcement of this chapter, including the collection and maintenance of certified copies of all payrolls that are subject to this chapter. ~~[The director shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section.]~~

(h) When:

(1) The department of budget and finance enters a project agreement with a project party, as those terms are defined in chapter 39A, to

finance or refinance a project with the proceeds of special purpose revenue bonds;

- (2) The project party has entered into a collective bargaining agreement with a bona fide labor union governing the project party's workforce; and
- (3) The collective bargaining agreement has been properly submitted to the director under section 104-34,

the terms of the collective bargaining agreement and associated provisions shall be deemed the prevailing wages and terms serving as the basis of compliance with this chapter for work on the project by the project party's workforce; provided that this subsection does not affect the director's enforcement powers contained in subsection (g).

(i) The terms of section 201H-36(a)(5) prevailing wages shall be deemed the prevailing wages serving as the basis of compliance with this chapter for work on the project when:

- (1) The Hawaii housing finance and development corporation has approved and certified a qualified person or firm involved with a newly constructed, or moderately or substantially rehabilitated project under section 201H-36(a)(5) for exemption from general excise taxes;
- (2) The qualified person or firm has entered into a contract with a general contractor or subcontractors whose workforce is subject to either:
 - (A) A collective bargaining agreement with a bona fide labor union for which a section 201H-36(a)(5) prevailing wage for the laborers and mechanics employed for the construction project has been approved by the director; or
 - (B) A project labor agreement with the group whose wages are reflected in the Hawaii prevailing wage schedule for which section 201H-36(a)(5) prevailing wages for the laborers and mechanics employed for the construction project have been approved by the director; and
- (3) The qualified person or firm has received no other direct or indirect financing for the construction project from any other governmental contracting agency, including the Hawaii housing finance and development corporation."

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

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

- (1) Developed under this part;
- (2) Developed under a government assistance program approved by the corporation, including but not limited to the United States Department of Agriculture 502 program and Federal Housing Administration 235 program;
- (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; [ø]
- (4) Developed by a qualified person or firm to provide affordable rental housing where at least fifty per cent of the available units are for households with incomes at or below eighty per cent of the area median family income as determined by the United States Department

of Housing and Urban Development, of which at least twenty per cent of the available units are for households with incomes at or below sixty per cent of the area median family income as determined by the United States Department of Housing and Urban Development[-]; or

(5) Effective from July 1, 2018, to June 30, 2022, developed under a contract described in section 104-2(i)(2) by a qualified person or firm to provide affordable rental housing; provided that:

(A) The allowable general excise tax and use tax costs shall apply to contracting only and shall not exceed \$7,000,000 per year in the aggregate for all projects approved and certified by the corporation; and

(B) All available units are for households with incomes at or below one hundred forty per cent of the area median family income as determined by the United States Department of Housing and Urban Development, of which at least twenty per cent of the available units are for households with incomes at or below eighty per cent of the area median family income as determined by the United States Department of Housing and Urban Development.”

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

SECTION 5. This Act shall take effect on July 1, 2017, and shall be repealed on June 30, 2022; provided that:

- (1) Section 3 of this Act shall apply to taxable years beginning after December 31, 2017; and
- (2) Section 104-2, Hawaii Revised Statutes, and section 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.

(Approved June 22, 2017.)