

JAN 22 2008

A BILL FOR AN ACT

RELATING TO CONTRACTORS.

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

1 SECTION 1. Section 444-10.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§444-10.5 Citation for unlicensed activity.** (a) In
4 addition to any other remedy available, the investigator may
5 issue citations to persons acting in the capacity of or engaging
6 in the business of a contractor within the State, without having
7 a license previously obtained under and in compliance with this
8 chapter and the rules promulgated thereunder. If the
9 investigator determines that a person is acting in the capacity
10 of, or engaging in the business of, a contractor within this
11 State without having a license to so act or engage, the
12 investigator may issue a citation to such person.

13 (b) Each citation shall be in writing and shall describe
14 the basis of the citation, including the specific statutory
15 provisions alleged to have been violated, and shall contain an
16 order to cease and desist from the violation, and an assessment
17 of civil penalties as provided in this section and section



1 444-23. The citation shall also include notice of the sanctions
2 for violating the cease and desist order. Upon the issuance of
3 a citation, all work shall cease immediately and shall not
4 resume until a hearing is conducted pursuant to subsection (d)
5 and the person's license is subsequently deemed in good
6 standing. All penalties collected under this section shall be
7 deposited in the special fund established under section 26-9.

8 (c) Service of a citation issued under this section shall
9 be made by personal service whenever possible, or by certified
10 mail, restricted delivery, sent to the last known business or
11 residence address of the person cited.

12 (d) Any person served with a citation under this section
may submit a written request to the director for a hearing,
14 within twenty days from the receipt of the citation, with
15 respect to the violations alleged, the scope of the order to
16 cease and desist, and the amount of the civil penalties
17 assessed.

18 (e) If the person cited under this section timely notifies
19 the director of the request for a hearing, the director shall
20 afford an opportunity for a hearing under chapter 91. The
21 hearing shall be conducted by the director or the director may
22 designate a hearings officer to hold the hearing. The director



1 or any hearings officer designated by the director shall have
2 the power to issue subpoenas, administer oaths, hear testimony,
3 find facts, and make conclusions of law and issue a final order.

4 (f) If the person cited under this section does not submit
5 a written request to the director for a hearing within twenty
6 days from the receipt of the citation, the citation shall be
7 deemed a final order of the director.

8 (g) The director may apply to the appropriate court for a
9 judgment to enforce the provisions of any final order issued by
10 the director or designated hearings officer pursuant to this
11 section, including the provisions to cease and desist and for
12 civil penalties imposed. In any proceeding to enforce the
13 provisions of the final order of the director or designated
14 hearings officer, the director need only show that notice was
15 given, a hearing was held or the time granted for requesting a
16 hearing has run without such a request, and a certified copy of
17 the final order of the director or designated hearings officer.

18 (h) If any party is aggrieved by the decision of the
19 director or the designated hearings officer, the party may
20 appeal in the manner provided in chapter 91 to the circuit court
21 of the circuit in which the party resides or has the party's
22 principal place of business or in which the action in question



1 occurred; provided that the operation of a cease and desist
2 order shall not be stayed on appeal unless specifically ordered
3 by a court of competent jurisdiction after applying the stay
4 criteria enumerated in section 91-14(c).

5 (i) The sanctions and disposition authorized under this
6 section shall be separate from and in addition to all other
7 remedies either civil or criminal provided in any other
8 applicable statutory provision. The director may adopt rules
9 under chapter 91 as may be necessary to fully effectuate this
10 section.

11 (j) The director may apply to the appropriate court for
12 injunctive or any other relief the court deems appropriate,
13 including a fine of not less than \$10,000 for each offense,
14 against any person who has been issued a citation for operating
15 without a license and who violates a cease and desist order.
16 Each day's violation or failure to comply with the license
17 requirements under this chapter or a cease and desist order
18 shall be deemed a separate offense. The allegations in the
19 citation shall be deemed conclusively established for purposes
20 of a proceeding for permanent or temporary relief to enforce the
21 cease and desist order."

22 SECTION 2. New statutory material is underscored.



1 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: *Cy Thomas*



Report Title:

Contractors; License Requirements; Citations; Civil Penalties

Description:

Amends section 444-10.5, Hawaii Revised Statutes, to prohibit the resumption of work for any person who is issued a citation for operating without a license until a hearing is conducted, and provide a \$10,000-per-day fine for operating without a license.

