
A BILL FOR AN ACT

RELATING TO WAGES AND HOURS ON PUBLIC WORKS.

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

1 SECTION 1. Chapter 104, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§104- Provisions of law; waiver. No provision of
5 this chapter may in any way be contravened or set aside by
6 private contract."

7 SECTION 2. Section 104-1, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§104-1 Definitions.** As used in this chapter, the
10 following words and phrases shall have the following meanings:

11 [~~(1)~~] "Basic hourly rate" means the hourly wage paid to a
12 laborer or mechanic for work performed during nonovertime hours,
13 but shall not include the cost to an employer of furnishing
14 fringe benefits, whether paid directly or indirectly to the
15 laborer or mechanic as provided in [~~paragraph (7);~~] the
16 definition of "wages".

17 [~~(2)~~] "Construction" includes alteration, repair,
18 painting, and decorating[~~+~~].



1 "Contractor" means any person furnishing construction for a
2 public work under a contract with a governmental contracting
3 agency, subcontractor, or any other person under a subcontract
4 arrangement with any person who has a construction contract
5 subject to this chapter.

6 ~~[(3)]~~ "Department" means the department of labor and
7 industrial relations~~[(7)]~~.

8 ~~[(4)]~~ "Director" means the director of labor and
9 industrial relations of the State~~[(7)]~~.

10 ~~[(5)]~~ "Governmental contracting agency" means the State,
11 any county and any officer, bureau, board, commission, or other
12 agency or instrumentality thereof~~[(7)]~~.

13 ~~[(6)]~~ "Overtime compensation" means compensation based on
14 one and one-half times the laborers or mechanics basic hourly
15 rate of pay plus the cost to an employer of furnishing a laborer
16 or mechanic with fringe benefits as described in ~~[paragraph~~
17 ~~(7)]~~ the definition of "wages".

18 "Public work" means any project, including development of
19 any housing pursuant to section 46-15 or chapter 201H and
20 development, construction, renovation, and maintenance related
21 to refurbishment of any real or personal property, where the
22 funds or resources required to undertake the project are to any



1 extent derived, either directly or indirectly, from public
2 revenues of the State or any county, or from the sale of
3 securities or bonds whose interest or dividends are exempt from
4 state or federal taxes.

5 [~~7~~] "Wages", "rate of wages", "wage rates", "minimum
6 wages" and "prevailing wages" mean the basic hourly rate and the
7 cost to an employer of furnishing a laborer or mechanic with
8 fringe benefits, including but not limited to health and welfare
9 benefits, vacation benefits, and pension benefits, whether paid
10 directly or indirectly to the laborer or mechanic."

11 SECTION 3. Section 104-2, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) This chapter shall apply to every contract in excess
14 of \$2,000 for construction of a public work project to which a
15 governmental contracting agency is a party; provided that this
16 chapter shall not apply to experimental and demonstration
17 housing developed pursuant to section 46-15 or housing developed
18 pursuant to chapter 201H if the cost of the project is less than
19 \$500,000 and the eligible bidder or eligible developer is a
20 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 any person or
5 entity that causes either directly or indirectly the building or
6 development of a public work.

7 "Party" includes eligible bidders for and eligible
8 developers of any public work and any housing under chapter
9 201H; provided that this subsection shall not apply to any
10 housing developed under section 46-15 or chapter 201H if the
11 entire cost of the project is less than \$500,000 and the
12 eligible bidder or eligible developer is a private nonprofit
13 corporation.

14 [~~"Public work" means any project, including development of~~
15 ~~any housing pursuant to section 46-15 or chapter 201H and~~
16 ~~development, construction, renovation, and maintenance related~~
17 ~~to refurbishment of any real or personal property, where the~~
18 ~~funds or resources required to undertake the project are to any~~
19 ~~extent derived, either directly or indirectly, from public~~
20 ~~revenues of the State or any county, or from the sale of~~
21 ~~securities or bonds whose interest or dividends are exempt from~~
22 ~~state or federal taxes.] "~~



1 SECTION 4. Section 104-22, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§104-22 Investigation; penalties.** (a) The department
4 may conduct investigations to determine compliance with this
5 chapter. The department may enter the job site, examine records
6 of any contractor, either during or after the performance of any
7 contract, or subpoena the records. The department may also
8 interview employees during working hours on the job.

9 (b) If any contractor interferes with or delays any
10 investigation by the department, the governmental contracting
11 agency, on receipt of written notice from the director of the
12 interference or delay, shall withhold from the contractor all
13 further payments until the director has notified the
14 governmental contracting agency in writing that the interference
15 or delay has ceased. Interference or delay includes failure to
16 provide requested records under section 104-3; failure to allow
17 employees to be interviewed during working hours on the job; and
18 falsification of records required under this chapter. The
19 department shall assess a penalty of [~~\$1,000~~] \$10,000 per
20 project for interference or delay. For each day thereafter that
21 the employer fails to cooperate, the director shall assess a
22 penalty of [~~\$100~~] \$1,000 per project.



1 (c) Notwithstanding the prompt payment provisions of
2 section 103-10.5 to the contrary, the general contractor shall
3 be secondarily liable for the payment of the back wages of the
4 contractors on the public works construction project that are
5 unpaid on the later of the twenty-first day after the
6 notification of the violation has been sent or upon the issuance
7 of a decision pursuant to section 104-23(c).

8 Upon receipt, the governmental contracting agency shall
9 notify the contractor and if the contractor is a subcontractor,
10 the governmental contracting agency shall also notify the
11 general contractor of its intent to pay the amount of back wages
12 and penalties found due and demanded by the department within
13 twenty-one days from the date of the notification. The
14 governmental contracting agency shall pay from any amounts then
15 due to the contractor or general contractor, the amount assessed
16 as back wages and penalties.

17 No payment made under this subsection by the governmental
18 contracting agency shall be deemed to be a breach of contract,
19 nor shall the payment excuse the contractor or general
20 contractor from completing the project for the contract price
21 and in accordance with the contract completion deadline."



1 SECTION 5. Section 104-23, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) A notification of violation shall be final and
4 conclusive unless within twenty days after a copy [~~was mailed to~~
5 ~~the violator, unless within the twenty day period the violator]~~
6 has been sent to the contractor, the contractor files a written
7 notice of appeal with the director."

8 SECTION 6. Section 104-24, Hawaii Revised Statutes, is
9 amended by amending subsection (c) to read as follows:

10 "(c) Where the department finds that a third violation of
11 this chapter has been committed, whether on the same contract or
12 another, within two years of the second notification of
13 violation, the department, after proper notice and opportunity
14 for hearing, shall order the person or firm in violation:

15 (1) To pay a penalty equal to two times the amount of back
16 wages found due or \$200 for each offense, whichever is
17 greater; and

18 (2) To be suspended from doing any new work on any public
19 work of a governmental contracting agency for a period
20 of [~~three~~] five years except as provided in section
21 104-25(a)(2). "New work on any public work" includes
22 any public works project in which the suspended person



1 or firm has not begun work at the job site as of the
2 date of the suspension order. The suspension shall be
3 effective on the later of the twenty-first day after
4 the notification of violation has been sent, or upon
5 the issuance of a decision pursuant to section 104-
6 23(c)."

7 SECTION 7. Section 104-25, Hawaii Revised Statutes, is
8 amended by amending subsections (a) and (b) to read as follows:

9 "(a) The director shall suspend a person or firm as
10 follows:

11 (1) For a first or second violation, if a person or firm
12 fails to pay wages found due, any penalty assessed, or
13 both, the person or firm shall be immediately
14 suspended from doing any work on any public work of a
15 governmental contracting agency until all wages and
16 penalties are paid in full;

17 (2) For a third violation, the suspension shall be as
18 prescribed in section 104-24(c); provided that, if the
19 person or firm continues to violate this chapter or
20 fails to pay wages found due or any penalty assessed,
21 or both, then the [~~contractor~~] person or firm shall
22 immediately be suspended from doing any work on any



1 public work of a governmental contracting agency for a
2 mandatory [~~three-year~~] five-year period. If after the
3 [~~three-year~~] five-year suspension period the wages
4 found due or penalties assessed are still unpaid, the
5 suspension shall remain in force until payment is made
6 in full; or

7 (3) For falsification of records, or for delay or
8 interference with an investigation pursuant to section
9 104-22, the [~~contractor~~] person or firm shall be
10 immediately suspended for a period of [~~three~~] five
11 years.

12 (b) The director shall immediately notify the governmental
13 contracting agency, comptroller [and], the auditor or director
14 of finance of the county, and in the case of a suspended
15 subcontractor, the general contractor of any suspension order."

16 SECTION 8. The department of labor and industrial
17 relations shall submit a report to the legislature no later than
18 twenty days prior to the convening of the regular session of
19 2015 and each regular session thereafter. The report shall
20 provide enforcement information for the fiscal year including:

21 (1) The number of notices of violations issued;

22 (2) The types of notices of violations issued;



- 1 (3) The number of suspensions;
- 2 (4) The number of appeals of suspensions and the outcomes
- 3 of the appeals;
- 4 (5) The total amount of back-wages and fines assessed on
- 5 general contractors and subcontractors;
- 6 (6) The amounts of back-wages and fines collected; and
- 7 (7) Any other information the department of labor and
- 8 industrial relations believes is necessary.

9 SECTION 9. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 10. This Act shall take effect on July 1, 2114,
12 and shall apply to all contracts entered into after the
13 effective date of this Act; provided that on June 30, 2018,
14 sections 6, 7, and 8 of this Act shall be repealed and sections
15 104-24 and 104-25, Hawaii Revised Statutes, shall be reenacted
16 in the form in which they read on the day before the effective
17 date of this Act.



Report Title:

Public Works; Prevailing Wage; Penalties; Suspension

Description:

Increases the penalties imposed on a contractor who interferes with or delays an investigation to determine compliance with wage and hour laws of employees on public works. Specifies that a general contractor is secondarily liable for payment of back wages. Increases the suspension period from three to five years for a third violation. Clarifies the effective date of suspension. Specifies that suspension for falsification of records or delay or interference with an investigation is immediate. Specifies who the director of labor and industrial relations must notify of any suspension order. Requires reports from the Department of Labor and Industrial Relations. Repeals certain provisions of the bill on June 30, 2018. (SB2260 HD2)

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

