

S.B. NO. 2872

JAN 23 2014

A BILL FOR AN ACT

RELATING TO PREVAILING WAGE CONTRACTOR PENALTIES.

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

1 SECTION 1. Section 104-24, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

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

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

11 (2) To be suspended from doing any new work on any public
12 work of a governmental contracting agency for a period
13 of [~~three~~] five years except as provided in section
14 104-25(a)(2). "New work on any public work" includes
15 any public works project in which the suspended person
16 or firm has not begun work at the job site as of the
17 date of the suspension order. The suspension shall be

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1 effective on the later of the twenty-first day after
2 the sending of the notification of violation, or a
3 decision has been issued pursuant to section 104-
4 23(c)."

5 SECTION 2. Section 104-25, Hawaii Revised Statutes, is
6 amended by amending subsection (a) and (b) to read as follows:

7 "(a) The director shall suspend a person or firm as
8 follows:

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

15 (2) For a third violation, the suspension shall be as
16 prescribed in section 104-24(c); provided that, if the
17 person or firm continues to violate this chapter or
18 fails to pay wages found due or any penalty assessed,
19 or both, then the contractor shall immediately be
20 suspended from doing any work on any public work of a
21 governmental contracting agency for a mandatory
22 [~~three-year~~] five-year period. If after the [~~three-~~

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1 year] five-year suspension period the wages found due
 2 or penalties assessed are still unpaid, the suspension
 3 shall remain in force until payment is made in full;
 4 or

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

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

14 SECTION 3. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect upon its approval,
 17 and shall be applicable to all construction contracts entered
 18 into after the effective date of this Act.

INTRODUCED BY: 
 BY REQUEST

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Report Title:

Prevailing Wage; Construction

Description:

Conforms all suspension penalties under the Hawaii prevailing wage law and extends suspension from three years to five years.

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

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JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO PREVAILING WAGE CONTRACTOR PENALTIES.

PURPOSE: To ensure that contractors do not unfairly bid or deprive workers of statutorily required wages on public works construction projects by increasing existing penalties as follows: (1) to immediately suspend a contractor for interference and delay and falsification of records; (2) to increase the length of suspension for a third violation, falsification of records or for delay or interference with an investigation from three to five years; and (3) to have the director issue notification of suspensions to include the governmental contracting agency, and the general contractor in the case of suspended subcontractor.

MEANS: Amend sections 104-24(c), 104-25(a), and 104-25(b), Hawaii Revised Statutes (HRS).

JUSTIFICATION: The foundation of chapter 104, HRS, is to create a fair and equitable playing field for contractors who bid on public works construction projects. This chapter requires that contractors comply with prevailing wage, overtime, record keeping and other provisions that keep the labor costs equal, and that completion of work to be performed be based on efficiencies of operations. When cited for violations, these contractors may continue to violate the law due to a shortage of investigators leading to long investigation periods and ability to delay imposition of the penalties due to protections of their legal rights. By the time a case is finally adjudicated, the length of time the contractor is suspended may be already or almost

completed. If a contractor who does not pay prevailing wages is awarded a contract by underbidding other contractors who base their bids on prevailing wages, then the level playing field is eroded.

These proposed amendments would maintain fair bidding and protection of workers' rights and benefits by strengthening the penalty provisions as stated and by providing sufficient notification of the suspension to the entities involved in the construction project.

Impact on the public: These amendments will maintain the fair bidding process on state and county public works construction projects.

Impact on the department and other agencies: These changes will strengthen enforcement of chapter 104, HRS.

GENERAL FUND: None.
OTHER FUNDS: None.
PPBS PROGRAM DESIGNATION: LBR 152.

OTHER AFFECTED AGENCIES: Department of Accounting and General Services
Department of Education
Department of Transportation
State Procurement Office
Office of Hawaiian Affairs
University of Hawaii
City and County of Honolulu
County of Hawaii
County of Kauai
County of Maui

EFFECTIVE DATE: Upon approval.