

ACT 314

S.B. NO. 2913

A Bill for an Act Relating to the Tax Liability of Contractors Contracting With the State or Counties.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 103-53, Hawaii Revised Statutes, is amended to read as follows:

“§103-53 [Prerequisite for final settlement of contracts] Contracts with the State or [subdivisions thereof.] counties; tax clearances, assignments. (a) All state and county officers and agents making contracts on behalf of the State or any [political subdivision thereof] county shall [withhold payment in the final settlement of the contracts until the receipt of a] require, as a prerequisite to entering into these

contracts, tax [clearance] clearances from the director of taxation and the Internal Revenue Service to the effect that all [delinquent] tax returns due have been filed, and all taxes, interest, and penalties levied or accrued under [state statutes] the provisions of title 14 that are administered by the department of taxation and under the Internal Revenue Code against the contractor have been paid[; provided that if, when notice of assignment of any contract is given to the State or any subdivision thereof by the assignee of the contract, the assignee is not informed upon the assignee's request to the director for the information that there are any delinquent taxes due to the State or subdivision thereof, then this section shall not apply as to so much of the amount payable under the contract as is owing to the assignee].

(b) Notwithstanding the provisions under sections 40-57 and 40-58, if a contractor fails to timely file all tax returns and pay all taxes, interest, and penalties due to the State or Internal Revenue Service during the term of a contract, the state or county contracting officer or agent shall immediately assign any progress payment due to the contractor, if any (provided such payment is not subject to any restriction or encumbrance), to the State payable to the department of taxation or to the Internal Revenue Service to the credit of the contractor, whichever the case may be; provided that the department of taxation may first offset its tax debt against the sum owed to the contractor. The state or county contracting officer or agent shall assign as many progress payments as necessary to cover the amount of the tax delinquency.

(c) All state and county contracting officers or agents shall withhold payment in the final settlement of a contract until the receipt of tax clearances from the director of taxation and the Internal Revenue Service. Notwithstanding sections 40-57 and 40-58, if a contractor fails to provide the tax clearances within six months of the notice of final settlement or completion date of the contract, the state or county contracting officer or agent shall assign the final settlement payment in an amount not to exceed the tax liability to the department of taxation or Internal Revenue Service; provided that the department of taxation may first offset its tax debt against the sum owed to the contractor.

(d) Any assignment of a contract shall require the assignee, as a condition precedent to the assignment, to first obtain a bulk sales certificate if required under section 237-43, and present the certificate, or tax clearance as provided under subsection (a) if a bulk sales certificate is not required, to the state or county contracting officer or agent.

(e) Subsection (a) shall not apply to:

(1) Any procurement of less than \$10,000 that qualifies as a small purchase under section 103D-305, except that any state or county department or contracting agency may apply subsection (a) to contracts of less than \$10,000; and

(2) Emergency purchases as set forth in section 103D-307.

(f) This section shall not apply to a contractor if the department of taxation certifies that the contractor is in good standing under a plan in which delinquent taxes are being paid to the department of taxation (and the Internal Revenue Service, if applicable) in installments.

(g) Any officer or employee of any governmental agency who intentionally or knowingly violates any provision under this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(h) The provisions of subsections (a), (b), (c) and (d) shall not apply to the extent and during the period that the validity of the taxes, penalties, or interest is being contested in an administrative or judicial appeal with the department of taxation or Internal Revenue Service."

SECTION 2. Section 237-45, Hawaii Revised Statutes, is amended to read as follows:

“§237-45 [Prerequisite for final settlement of contracts] Contracts with the State or [subdivisions thereof.] counties; tax clearances, assignments. All state and county officers and agents making contracts on behalf of the State or [any political subdivision thereof] county shall [withhold payment in the final settlement of the contracts until the receipt of a certificate from the department of taxation to the effect that all taxes levied or accrued under this chapter against the contractor with respect to the contracts have been paid.] do so in accordance with section 103-53.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval, and shall apply to contracts entered into on or after the effective date of this Act.

(Approved July 3, 1996.)