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S.B. NO. 1149

A Bill for an Act Relating to Enforcement of Wage Laws.

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

SECTION 1. Section 104-24, Hawaii Revised Statutes, is amended to read as follows:

“§104-24 Violations; penalties. (a) Where the department finds that a first violation of this chapter has been committed, the department shall assess a penalty [of not more than \$1,000 for each offense.] equal to ten per cent of the amount of back wages found due or \$25 per offense, whichever is greater.

[(b) Where a second or third violation occurs, whether on the same contract or another, within two years of the first violation, the director, after proper notice and opportunity for hearing, shall order the person or firm in violation:

- (1) If it be a second violation, to pay a penalty of ten per cent of the contract amount; or
- (2) If it be a third violation, to be suspended as prescribed in section 104-25.]

(b) Where the department finds that a second violation of this chapter has been committed, whether on the same contract or another, within two years of the first notification of violation, the department, after proper notice and opportunity for hearing, shall order the person or firm in violation to pay a penalty equal to the amount of back wages found due or \$100 for each offense, whichever is greater.

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

- (1) To pay a penalty equal to two times the amount of back wages found due or \$200 for each offense, whichever is greater; and
- (2) To be suspended from doing any new work on any public work of a governmental contracting agency for a period of three years except as provided in section 104-25(a)(2). "New work on any public work" includes any public works project in which the suspended person or firm has not begun work at the job site as of the date of the suspension order.

(d) A first, second, or third violation refers to each investigation involving one or more projects in which the department finds that a contractor has failed to comply with this chapter.

(e) For purposes of this section, "offense" means each section of this chapter under which the contractor is cited; provided that, with respect to prevailing wage and overtime citations under section 104-2, each employee and each project shall be considered a separate offense."

SECTION 2. Section 104-25, Hawaii Revised Statutes, is amended to read as follows:

"§104-25 Suspension. [(a) The director shall suspend a person or firm from doing any work on any public work of a governmental contracting agency for a period of three years if the person or firm:

- (1) Commits a third violation of this chapter within two years from the date of the first violation;
- (2) Fails to make the person's or firm's employees whole for wages or overtime pay due under the contract; or
- (3) Fails to pay any penalty assessed.] (a) The director shall suspend a person

or firm as follows:

- (1) For a first or second violation, if a person or firm fails to pay wages found due, any penalty assessed, or both, the person or firm shall be immediately suspended from doing any work on any public work of a governmental contracting agency until all wages and penalties are paid in full; and
- (2) For a third violation, the suspension shall be as prescribed in section 104-24(c); provided that, if the person or firm continues to violate this chapter or fails to pay wages found due or any penalty assessed, or both, then the contractor shall immediately be suspended from doing any work on any public work of a governmental contracting agency for a mandatory three-year period. If after the three-year suspension period the wages found due or penalties assessed are still unpaid, the suspension shall remain in force until payment is made in full.

(b) The director shall immediately notify the comptroller and the auditor or director of finance of the county of any suspension order.

[(c) On application by the suspended person or firm, no less than one year from the date of suspension, the director, after a hearing, may shorten the term of suspension; provided that the contractor or subcontractor has made the contractor's or subcontractor's employees whole for wages or overtime pay due and has paid to the director all penalties assessed under this chapter.

(d)] (c) No contract shall be awarded to the person or firm so suspended or to any firm, corporation, partnership, or association in which the person or firm has an interest, direct or indirect, until three years have elapsed from the date of suspension, unless the period of suspension is reduced as herein provided. Any contract awarded in violation of this subsection shall be void."

SECTION 3. Section 387-12, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Collection suits; attorney's fee; assignments; relief from costs. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of oneself or themselves and other employees similarly situated, or the employee or employees may designate an agent or representative to maintain action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, in the event the plaintiff or plaintiffs prevail, allow a reasonable attorney's fee to be paid by the defendant[,] and costs of the action. At the request of any person paid less than the amount to which the person is entitled under this chapter, the director [of labor and industrial relations] may take an assignment in trust for the assigning employee of the full amount to which the employee is entitled under this subsection and may bring any legal action necessary to collect the claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court in the event the director prevails. The director shall not be required to pay the filing fee[,] or other costs[,] in connection with such action[.], including the opposing party's attorney's fees and costs. The director, in case of suit, may join various claimants against the same employer in one cause of action. The right provided by this [paragraph] subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the director in an action in which restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation owing to the employee under section 387-2 or 387-3 by an employer liable therefor under this section."

SECTION 4. Section 388-11, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The court in any action brought under this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow interest of six per cent per year from the date the wages were due, costs of action, including costs of fees of any nature, and reasonable attorney's fees, to be paid by the defendant. The director shall not be required to [pay]:

- (1) Pay the filing fee or other costs or fees of any nature, including the opposing party's fees and costs; or [to file]
- (2) File a bond or other security of any nature, in connection with such action [or], with proceedings supplementary thereto, or as a condition precedent to the availability to the director of any process in aid of such

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action or proceedings. The director may join various claimants in one preferred claim or lien, and in case of suit join them in one cause of action.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 2, 1999.)