

ACT 51

S.B. NO. 435

A Bill for an Act Relating to Public Works.

*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, after proper notice and opportunity for hearing, shall assess and order the person or firm in violation to be jointly and severally liable for a penalty equal to twenty-five per cent of the amount of back wages found due or \$250 ~~[per]~~ for each offense, up to \$2,500, whichever is greater.

(b) Where the department finds that a second violation of this chapter has been committed, whether on the same or another contract, within two years of the first notification of violation, the department, after proper notice and opportunity for hearing, shall assess and order the person or firm in violation to ~~pay~~ be jointly and severally liable for a penalty equal to the amount of back wages found due or \$500 for each offense, up to \$5,000, whichever is greater.

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

- (1) ~~[To pay]~~ Jointly and severally liable for a penalty equal to two times the amount of back wages found due or \$1,000 for each offense, up to \$10,000, whichever is greater; and
- (2) ~~[To be suspended]~~ 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.]~~ The suspension shall be effective on the later of the twenty-first day after the notification of violation has been sent, or upon the issuance of a decision pursuant to section 104-23(c).

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

(e) Both the person and firm shall be listed on each notice of violation.

~~(e)~~ (f) For purposes of this section~~["offense"]~~:

"Firm" includes a corporation, limited liability company, partnership, and limited partnership.

"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.

"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.

"Person" includes a sole proprietor and the principal responsible managing employee that holds the contractors license of the firm."

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~~ and firm as follows:

- (1) For a first or second violation, if a person or firm fails to pay wages found due~~;~~ or any penalty assessed, or both, the person ~~or~~ and 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;
- (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 person ~~or~~ and firm 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 as-

essed are still unpaid, the suspension shall remain in force until payment is made in full; or

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

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

- (c) No contract shall be awarded to the person ~~[or]~~ and 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 or extended as herein provided. Any contract awarded in violation of this subsection shall be void.

- (d) For purposes of this section, "person" shall have the same meaning as in section 104-24."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 1, 2023.)