

## ACT 92

H.B. NO. 1768

A Bill for an Act Relating to Wages and Hours of Employees on Public Works.

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

SECTION 1. Section 104-5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The governmental contracting agency shall:

- (1) [pay] Pay or cause to be paid, directly to laborers and mechanics[,] or to the director, from any accrued payment withheld under the terms of the contract, any wages or overtime compensation found to be due to laborers or mechanics under the terms of the contract subject to this chapter, or any penalty assessed;
- (2) [order] Order any contractor to pay any wages or overtime compensation which the contractor, or any of the contractor’s subcontractors, should have paid to any laborer or mechanic under any contract subject to this chapter, or any penalty assessed which the contractor, or any of the contractor’s subcontractors, should have paid to the director; and
- (3) [report] Report to the director [of labor and industrial relations] any violation of this chapter, the rules adopted thereunder, or [of] the terms of the contract subject to this chapter.

(b) Where the director, either as a result of a report by a contracting agency or as a result of the director's own investigation, finds that a first violation of this chapter or of the terms of the contract subject to this chapter has been committed, the director shall [warn] issue a notification of violation to the contractor or subcontractor involved[,] and [if the contractor or subcontractor promptly makes the contractor's or subcontractor's employees whole for any wages or overtime compensation due, no further action shall be taken.] assess a penalty of not more than \$1,000 for each offense. Enforcement of this subsection shall be subject to the following:

- (1) A notification of violation shall be final and conclusive twenty days after a copy has been mailed to the violator unless within the twenty day period the violator files a written notice of appeal with the director. The director shall notify the labor and industrial relations appeals board of the pendency of the appeal; and
- (2) Any party to the appeal may obtain judicial review of the appeals decision in the manner provided in chapter 91. In any court proceeding, every party to the appeal shall be a respondent, including the director. The proceedings shall be heard in a summary manner and shall be given precedence over all other civil cases.

Where a second or third violation [subsequently] occurs, whether on the same contract or another, within two years of the first violation, the director shall serve a written complaint on the person or firm involved. If, after proper notice and opportunity for hearing [before the labor and industrial appeal board], the [appeal] appeals board finds that the person or firm has knowingly violated this chapter, the rules adopted thereunder, or the terms of the contract subject to this chapter, the [appeal] appeals board shall order the person or firm, if it be a second violation, to pay a penalty of [no] not more than [five] ten per cent of the total contract amount, or if it be a third violation the [appeal] appeals board shall order the person or firm to be suspended from doing any work on any public work of a governmental contracting agency for a period of three years. If any person or firm, after [warning,] notification of violation, or after assessment of [the above] any penalty[,] under this chapter, fails to make the person's or [its] firm's employees whole for wages or overtime pay due [them] under the contract, or fails to pay any penalty assessed, the [appeal] appeals board may suspend [such] the person or firm as herein provided. However, on application by the suspended person or firm, no less than one year from the date of suspension, the [appeal] appeals board may, after hearing, 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. The director shall immediately notify the comptroller [of the State,] and the auditor or director of finance of the county of any suspension order.

Any suspension order [made under this subsection, and any] or order dismissing any complaint under this subsection[,] shall be subject to appeal under chapter 91 and rule 72 of the Hawaii Rules of Civil Procedure by the party aggrieved, whether the person or firm or the director, to the circuit court for trial de novo on the facts and the law. On complaint by the director as in a civil action, the circuit court shall enforce any suspension order made by the [appeal] appeals board by injunction against any contractor, subcontractor, or officer or employee of the State, or any county. Any other judicial review with respect to a second or third violation shall be conducted in the manner provided in subsection (b)(2)."

SECTION 2. Section 104-6, Hawaii Revised Statutes, is amended to read as follows:

“§104-6 [Regulations.] Rules. Subject to chapter 91, the director [of labor and industrial relations] shall [make] adopt reasonable [regulations] rules for determining the prevailing wages [under this chapter], [for the] enforcement and administration [of this chapter], and [for the] general purposes of this chapter. These [regulations] rules shall have the force and effect of law.”

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

SECTION 4. This Act shall take effect on January 1, 1992.

(Approved May 2, 1991.)