

ACT 181

H.B. NO. 2000

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. Chapter 104, Hawaii Revised Statutes, is amended by designating sections 104-1 to 104-4 as part I and inserting a title before section 104-1 to read as follows:

“PART I. GENERAL PROVISIONS”

SECTION 2. Chapter 104, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART II. ADMINISTRATION AND ENFORCEMENT

§104-21 Governmental contracting agency responsibilities. The governmental contracting agency shall:

- (1) Pay or cause to be paid, within sixty days of a determination made by the director, 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 any contractor to pay, within sixty days of a determination made by the director, 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 to the director any violation of this chapter, the rules adopted thereunder, or the terms of the contract subject to this chapter.

§104-22 Investigation. (a) The department may conduct investigations to determine compliance with this chapter. The department may enter the job site, inspect books and records of any contractor, either during or after the performance of any contract, or subpoena the books and records.

(b) If any contractor interferes with or wilfully evades any investigation or inspection by the department, the governmental contracting agency, on receipt of written notice from the director of the interference or wilful evasion, shall withhold from the contractor all further payments until the director has notified the governmental contracting agency in writing that the interference or wilful evasion has ceased.

§104-23 Notification of violation. (a) When the department, either as a result of a report by a contracting agency or as a result of the department’s own investigation, finds that a violation of this chapter or of the terms of the contract subject to this chapter has been committed, the department shall issue a notification of violation to the contractor or subcontractor involved.

(b) A notification of violation shall be final and conclusive twenty days after a copy was mailed to the violator, unless within the twenty-day period the violator files a written notice of appeal with the director.

(c) A hearing on the written notice of appeal shall be held by a hearings officer appointed by the director in conformance with chapter 91.

Hearings on appeal shall be held within sixty days of the notice of appeal and a decision shall be rendered by the director within sixty days after the conclusion of the hearing, stating the findings of fact and conclusions of law. The director may extend the due date for decision for good cause; provided that all parties agree.

§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.

(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.

§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.

(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) 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.

§104-26 Judicial review. (a) Any party to an appeal under this chapter may obtain judicial review of the decision on the appeal in the manner provided in chapter 91.

(b) Any suspension or dismissal of any complaint under this chapter shall be subject to appeal in circuit court by the aggrieved party, under section 91-14 and rule 72 of the Hawaii Rules of Civil Procedure.

§104-27 Liability. If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics for wages or overtime compensation due under this chapter, and the contractor has failed to pay the wages or overtime compensation, the contractor and the contractor's sureties shall be liable to the laborers and mechanics in the amount of the unpaid wages and overtime compensation due, and in an additional equal amount as liquidated damages. However, any claim for liquidated damages, insofar as the surety or sureties are concerned, shall not be paid until the claims of all other creditors have been satisfied.

§104-28 Civil action. (a) Action to recover unpaid wages or overtime compensation may be maintained in any court of competent jurisdiction by any one or more laborers or mechanics for and on behalf of oneself or themselves and others similarly situated.

(b) The court, in its action and in addition to any judgment awarded to the plaintiff or plaintiffs, shall allow reasonable attorney's fee and costs of the action to be paid by the defendant.

(c) It shall be no defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or overtime compensation or voluntarily made refunds.

(d) When a written request is filed by any laborer or mechanic with the director claiming unpaid wages or overtime compensation under this chapter, the director, after receiving an assignment from the laborer or mechanic, may bring an action in any court of competent jurisdiction to recover the amount of the claim. The consent of any laborer or mechanic to the bringing of such action by the director, unless the action is dismissed without prejudice on motion of the director, shall constitute a waiver by the laborer or mechanic of any right of action the laborer or mechanic may have under subsection (a). Any amount recovered by the director before suit and accepted by the laborer or mechanic as payment in full shall constitute a waiver of any rights under this chapter.

§104-29 Rules. Subject to chapter 91, the director shall adopt reasonable rules for determining the prevailing wages, enforcement, administration, and general purposes of this chapter. These rules shall have the force and effect of law.

§104-30 Application of this chapter to contracts entered into without regard to other laws. The fact that a contract is or was entered into without regard to chapter 103D, or upon a cost-plus-a-fixed fee basis, or cost-plus-a-fixed percentage basis, or without advertising for proposals, shall not render this chapter inapplicable to the contract, if otherwise this chapter would be applicable.

§104-31 Effect on other laws. Neither this chapter nor any rule or other action under this chapter shall supersede or impair any minimum wage or maximum hour law or any authority otherwise granted by law to provide for the establishment of specific minimum or other wage rates.

§104-32 Suspension during emergency. During a national emergency declared by the President or the Congress of the United States, or a state of emergency declared by the governor, the governor, by executive order in writing, may suspend this chapter.

§104-33 Inspection. (a) If work performed in accordance with this chapter, in excess of eight hours in any day or on a Saturday, Sunday, or legal holiday of the State, requires inspection by the State or any political subdivision thereof, the inspection shall be conducted by the State or a political subdivision, as the case may be.

(b) In such event, it shall be lawful, notwithstanding any other provision of law to the contrary, for the State or any political subdivision thereof to alter the normal working hours of public employees, as may be needed for these purposes, and to pay these public employees for all hours worked in excess of eight hours per day or on a Saturday, Sunday, or legal holiday of the State.

§104-34 Submission of collective bargaining agreement to the director. Parties to a collective bargaining agreement covering classes of laborers or mechanics, which are included in the prevailing wage determinations made pursuant to this chapter, shall submit a copy of the agreement to the director within five days after execution of the agreement. The terms of the agreement shall be kept confidential by the director upon the request of the parties to the collective bargaining agreement and shall be used only pursuant to this chapter."

SECTION 3. Section 104-1, Hawaii Revised Statutes, is amended to read as follows:

“§104-1 Definitions. As used in this chapter, the following words and phrases shall have the following meanings:

- (1) “Basic hourly rate” means the hourly wage paid to a laborer or mechanic for work performed during nonovertime hours, but shall not include the cost to an employer of furnishing fringe benefits whether paid directly or indirectly to the laborer or mechanic as provided in paragraph [(6);] (7);
- (2) “Construction” includes alteration, repair, painting and decorating;
- (3) “Department” means the department of labor and industrial relations;
- [(3)] (4) “Director” means the director of labor and industrial relations of the State;
- [(4)] (5) “Governmental contracting agency” means the State, any county and any officer, bureau, board, commission, or other agency or instrumentality thereof;
- [(5)] (6) “Overtime compensation” means compensation based on one and one-half times the laborers or mechanics basic hourly rate of pay plus the cost to an employer of furnishing a laborer or mechanic with fringe benefits as described in paragraph [(6);] (7);
- [(6)] (7) “Wages”, “rate of wages”, “wage rates”, “minimum wages” and “prevailing wages” mean the basic hourly rate and the cost to an employer of furnishing a laborer or mechanic with fringe benefits, including but not limited to health and welfare benefits, vacation benefits, and pension benefits, whether paid directly or indirectly to the laborer or mechanic.”

SECTION 4. Section 104-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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 issue a notification of violation to the contractor or subcontractor involved and 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 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, the 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 appeals board shall order the person or firm, if it be a second violation, to pay a penalty of [not more than] ten per cent of the total contract amount, or if it be

a third violation the 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 notification of violation, or after assessment of any penalty under this chapter, fails to make the person's or firm's employees whole for wages or overtime pay due under the contract, or fails to pay any penalty assessed, the appeals board may suspend 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 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 and the auditor or director of finance of the county of any suspension order.

Any suspension order 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 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 5. Sections 104-5 to 104-11, Hawaii Revised Statutes, are repealed.

SECTION 6. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 8. This Act shall take effect upon its approval, except that sections 1, 2, 3, 5, 6, and 7 shall take effect on July 1, 1996.

(Approved June 14, 1995.)

Note

1. Edited pursuant to HRS §23G-16.5.