

## ACT 130

S.B. NO. 2260

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

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

SECTION 1. Chapter 104, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§104- Provisions of law; waiver. No provision of this chapter may in any way be contravened or set aside by private contract.”

SECTION 2. 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 (7)]; the definition of “wages”.

[(2)] “Construction” includes alteration, repair, painting, and decorating[;].

“Contractor” means any person furnishing construction for a public work under a contract with a governmental contracting agency, subcontractor, or any other person under a subcontract arrangement with any person who has a construction contract subject to this chapter.

[(3)] “Department” means the department of labor and industrial relations[;].

[(4)] “Director” means the director of labor and industrial relations of the State[;].

[(5)] “Governmental contracting agency” means the State, any county and any officer, bureau, board, commission, or other agency or instrumentality thereof[;].

[(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 (7)]; the definition of “wages”.

“Public work” means any project, including development of any housing pursuant to section 46-15 or chapter 201H and development, construction, renovation, and maintenance related to refurbishment of any real or personal property, where the funds or resources required to undertake the project are to any extent derived, either directly or indirectly, from public revenues of the State or any county, or from the sale of securities or bonds whose interest or dividends are exempt from state or federal taxes.

[(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 3. Section 104-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This chapter shall apply to every contract in excess of \$2,000 for construction of a public work project to which a governmental contracting agency is a party; provided that this chapter shall not apply to experimental and demonstration housing developed pursuant to section 46-15 or housing developed pursuant to chapter 201H if the cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit corporation.

For the purposes of this subsection:

“Contract” includes but is not limited to any agreement, purchase order, or voucher in excess of \$2,000 for construction of a public work project.

“Governmental contracting agency” includes any person or entity that causes either directly or indirectly the building or development of a public work.

“Party” includes eligible bidders for and eligible developers of any public work and any housing under chapter 201H; provided that this subsection shall not apply to any housing developed under section 46-15 or chapter 201H if the entire cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit corporation.

~~“Public work” means any project, including development of any housing pursuant to section 46-15 or chapter 201H and development, construction, renovation, and maintenance related to refurbishment of any real or personal property, where the funds or resources required to undertake the project are to any extent derived, either directly or indirectly, from public revenues of the State or any county, or from the sale of securities or bonds whose interest or dividends are exempt from state or federal taxes.”~~

SECTION 4. Section 104-22, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If any contractor interferes with or delays any investigation by the department, the governmental contracting agency, on receipt of written notice from the director of the interference or delay, shall withhold from the contractor all further payments until the director has notified the governmental contracting agency in writing that the interference or delay has ceased. Interference or delay includes failure to provide requested records under section 104-3; failure to allow employees to be interviewed during working hours on the job; and falsification of records required under this chapter. The department shall assess a penalty of ~~[\$1,000]~~ \$10,000 per project for interference or delay. For each day thereafter that the employer fails to cooperate, the director shall assess a penalty of ~~[\$100]~~ \$1,000 per project.”

SECTION 5. Section 104-23, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A notification of violation shall be final and conclusive unless within twenty days after a copy ~~[was mailed to the violator, unless within the twenty-day period the violator]~~ has been sent to the contractor, the contractor files a written notice of appeal with the director.”

SECTION 6. Section 104-24, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(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. 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).”

SECTION 7. Section 104-25, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(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;
- (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~~ person or 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 assessed 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 ~~contractor~~ person or firm shall be immediately suspended for a period of three years.

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

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 9. This Act shall take effect on July 1, 2014, and shall apply to all contracts entered into on or after the effective date of this Act.

(Approved June 24, 2014.)

**Note**

1. Edited pursuant to HRS §23G-16.5.