H.B. NO. 3165

A BILL FOR AN ACT

RELATING TO CONTRACTOR SUSPENSION ON PUBLIC WORKS PROJECTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to provide the department of labor and industrial relations with the ability to immediately suspend and begin debarment proceedings against contractors that purposely defrauds the state on a public works project or do not cooperate with the department of labor and industrial relations in determining if there has been a violation of the prevailing wage law should not be allowed to bid on public works.

Currently, contractors can be suspended for failure to pay back wages and penalties, or after the third notice of violation if the second is within two years of the first and the third is within two years of the second. There is currently no method to debar contractors who cheat and get caught unless they fail to pay back wages, which rarely happens. State or county government agencies should not be in business with those who falsify payrolls or do not cooperate. Attaching suspension to the penalty provisions of section 104-22(b) will create a clear line for those who are not willing to comply with the law. Chapter

104, Hawaii Revised Statutes is a law imposed to even the playing field in bidding for public works jobs and pay a prevailing wage to workers. It is not unreasonable to impose a 3-year suspension for those who are not willing to comply.

SECTION 2. Section 104-25, Hawaii Revised Statutes, is amended by amending subsection (a) 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; [~~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[~~.~~]; or

(3) For interference with or delay of an investigation or falsification of records as cited under section 104-22, the suspension shall remain in force for a period of three years."

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 Statutory material to be repealed is bracketed and stricken.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

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

H.B. NO. 3165

Report Title:
Public works; falsification of records; suspension

Description:
Suspends contractors found to be in violation of Chapter 104 for falsification of records or delaying an investigation under the wage and hour statute, section 104-22(b).

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JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO CONTRACTOR SUSPENSION ON PUBLIC WORKS PROJECTS.

PURPOSE: To suspend contractors who interferes or delays prevailing wage investigations under chapter 104, Hawaii Revised Statutes (HRS), from bidding on public works construction projects. Interference or delay is specified in section 104-22(b), HRS, and includes the failure to provide requested records; the failure to allow employees to be interviewed during working hours; and the falsification of records required under this chapter.

MEANS: Amend section 104-22(b), HRS.

JUSTIFICATION: A contractor who interferes with or delays a prevailing wage investigation should not be allowed to bid and work on public works construction projects.

Currently, contractors can be suspended from bidding and working on construction projects for the failure to pay back wages and the associated penalties assessed, or after the third notice of violation if the second is within two years of the first and the third is within two years of the second. There is currently no method to suspend a contractor who interferes with or delays an investigation unless the contractor also fails to pay the back wages found due or the statutory penalty that is assessed. State or county government agencies should not be in business with those who interfere with or delay a prevailing wage investigation.

Authorizing suspension for contractors found in violation of section 104-22(b), will create a clear line for those contractors who are not willing to comply with the law.

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Hawaii's prevailing wage law requires the payment of the prevailing wage to the laborers and mechanics working on public works construction projects in order to level the playing field for contractors bidding on such projects. It is not unreasonable to impose a three-year suspension for those contractors who falsify records and fail to cooperate with an investigation.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: LBR-152

OTHER AFFECTED AGENCIES: Department of the Attorney General, Department of Accounting and General Services State Procurement Office, county building departments, Department of Education, University of Hawaii, and other governmental agencies involved with construction of public works.

EFFECTIVE DATE: Upon approval.