

OVERVIEW

THE AUDITOR
STATE OF HAWAII

Study of the Enforcement of Hawaii's "Little Davis-Bacon" Act

Summary

House Concurrent Resolution No.122, House Draft 2 of 1993, requested the State Auditor to conduct a study of the enforcement of Chapter 104, HRS, Hawaii's "Little Davis-Bacon" Act, to ensure that its purposes are met. Chapter 104 requires construction contracts over \$2,000 for state-funded public works projects to specify the prevailing or minimum wages to be paid to the various classes of laborers and mechanics working on the projects. The intent of Chapter 104 is to maintain certain labor standards for construction workers on these projects. The law also seeks to ensure a level playing field for contractors bidding on the projects. In recent years, concerns have been raised as to whether Chapter 104 is being properly enforced.

Our study found that the Department of Labor and Industrial Relations (DLIR) and governmental contracting agencies are enforcing Chapter 104. They vary, however, in their methods and levels of enforcement. The DLIR places a relatively high priority on Chapter 104 and administers an organized enforcement program. The contracting agencies place a lower priority on Chapter 104 and generally handle enforcement as a routine part of their duties.

We believe that DLIR and the contracting agencies could improve their enforcement. Our study found several problems: duplication of effort within DLIR's Enforcement Division; some confusion among DLIR and the contracting agencies about their respective enforcement responsibilities; inadequate guidance for enforcement personnel in the contracting agencies; and a cumbersome hearing process for violations of Chapter 104 and contractor appeals of such violations.

We also found that DLIR is not yet enforcing monetary penalties for first violations by contractors as required by Chapter 104. These penalty provisions became effective on January 1, 1992, but DLIR has yet to implement them because it has not adopted the required amendments to the administrative rules.

Recommendations and Response

DLIR's Enforcement Division is working on improving enforcement of Chapter 104 through reorganization and automation. We support these efforts and make recommendations for other improvements. We recommend that

DLIR adopt the proposed plan for reorganizing the Enforcement Division as well as the required amendments to Chapter 104's administrative rules so that monetary penalty provisions for first violations of the law can be enforced.

We also recommend that DLIR take the lead in developing a memorandum of agreement with the governmental contracting agencies that clearly delineates the roles and responsibilities of each party in enforcing Chapter 104. Contracting agencies should work with DLIR to provide at least minimal training for all personnel responsible for enforcement. Agencies should also develop written policies and procedures to guide their personnel.

We recommend that the Legislature consider amending Chapter 104 to provide for an administrative hearing process within DLIR's Enforcement Division and to authorize the DLIR director to make final decisions on Chapter 104 appeals, determinations of second and third violations, and other disputes related to Chapter 104.

The Department of Accounting and General Services agrees with our recommendation that contracting agencies should work with DLIR to provide at least minimal training on Chapter 104 for all personnel responsible for enforcement. It also supports our recommendation for the establishment of a memorandum of understanding between DLIR and the contracting agencies to clearly delineate the respective roles and responsibilities of each agency for enforcement of Chapter 104. The City and County of Honolulu concurs with our findings but did not submit any comments regarding our recommendations.

The Department of Labor and Industrial Relations, the Department of Transportation, and the counties of Hawaii, Maui, and Kauai did not submit responses.

Marion M. Higa
State Auditor
State of Hawaii

Office of the Auditor
465 South King Street, Room 500
Honolulu, Hawaii 96813
(808) 587-0800
FAX (808) 587-0830