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

A Report to the
Governor
and the
Legislature of
the State of
Hawaii



THE AUDITOR
STATE OF HAWAII

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

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 93-15
December 1993

Foreword

This report was prepared in response to House Concurrent Resolution No. 122, House Draft 2 of 1993, which requests that the State Auditor conduct a study of the enforcement of Chapter 104, Hawaii Revised Statutes, the State's "Little Davis-Bacon" Act, to ensure that its purposes are met.

We wish to acknowledge the cooperation and assistance extended to us by the officials and staff of the Department of Labor and Industrial Relations, particularly the staff of its Enforcement Division, the Department of Accounting and General Services, the Department of Transportation, the City and County of Honolulu, and the Counties of Hawaii, Kauai, Maui.

Marion M. Higa
State Auditor

Table of Contents

Chapter 1 Introduction

Request for the Study	2
Objectives of the Study	2
Scope and Methodology	2

Chapter 2 Findings and Recommendations

Summary of Findings	3
Agencies Vary in Enforcing Chapter 104	3
Enforcement Can Be Improved	8
Monetary Penalties for First Violations Are Not Enforced	13
Recommendations	14

Notes	15
-------------	----

Responses of the Affected Agencies	17
--	----

Exhibit 2.1 Summary of Key Contract Provisions Required Under Chapter 104	6
--	---

Chapter 1

Introduction

In 1955, the Legislature passed Act 133 which became Chapter 104, Hawaii Revised Statutes, the State's "Little Davis-Bacon" Act. The federal Davis-Bacon Act, the guide for Hawaii's law, requires construction contracts over \$2,000 entered into by the federal government to specify the prevailing or minimum wages to be paid to the various classes of laborers and mechanics working on the projects. Chapter 104 imposes a similar requirement for state-funded public works projects.

The intent of the "Little Davis-Bacon" Act is to maintain certain labor standards for workers on state-funded construction projects. It also seeks to ensure that bids on public works projects are based on the relative skills of the contractors and not on the differences in wages paid.¹ By specifying prevailing wages, the law allows contractors to know their labor costs prior to submitting bids.² It places all contractors at the same starting gate before bidding, with no contractor having an unfair advantage over another.³

The law requires every contract over \$2,000 that uses state funds for the construction of any public work to state the minimum wages to be paid, the hours to be worked, and the manner in which workers are to be paid. Contractors must pay workers not less often than once a week the full amounts due the workers, and they must also submit certified payrolls to the governmental contracting agency every week.

Chapter 104 defines prevailing wages as the hourly wages paid to workers for non-overtime work plus the cost to employers of furnishing employees with fringe benefits.⁴

The Department of Labor and Industrial Relations (DLIR) and the government contracting agencies awarding public works contracts share responsibility for enforcing Chapter 104. The contracting agencies must cause workers to be paid in accordance with the law or order the contractor to pay any amounts due. They must report violations to DLIR. The DLIR, through its director, must develop administrative rules and investigate complaints regarding violations of Chapter 104. The director also issues the current wage rate schedule stating the prevailing wages for each classification of laborer or mechanic. DLIR estimates that approximately 2,000 state and county public works projects each year are covered by Chapter 104.

Request for the Study

In recent years, concerns have been raised as to whether Chapter 104 is being properly enforced. In House Concurrent Resolution No. 122, House Draft 2 of 1993, the Legislature requested the State Auditor to conduct a study of the enforcement of Chapter 104 to ensure that the chapter's purposes are met. The study is to examine the oversight roles of the Department of Accounting and General Services (DAGS), DLIR, and other state and county departments.

Objectives of the Study

Our study had the following objectives:

1. Determine the effectiveness of the enforcement of Chapter 104 by DLIR and the governmental contracting agencies.
2. Determine whether the penalties in Chapter 104 are adequate to ensure compliance.
3. Develop appropriate recommendations.

Scope and Methodology

Our study focused on the processes by which DLIR and selected contracting agencies enforce Chapter 104. Our review of contracting agencies included DAGS, the Department of Transportation (DOT), and the counties. These agencies oversee most of the public works activity in Hawaii in terms of both the number of contracts and the dollar volume.

We reviewed the enforcement practices of these agencies to determine whether they comply with state statutes and rules. We interviewed personnel responsible for enforcement and examined written guidelines, project files, and case files to gain additional understanding of the enforcement process.

We also reviewed the "Little Davis-Bacon" acts of Alaska, New Jersey, New York, and Ohio which are similar to Hawaii's law. We conducted telephone interviews with representatives of these states to obtain information on the laws, enforcement procedures, level of enforcement activity, and problems encountered.

Our work was performed from May 1993 through October 1993 in accordance with generally accepted government auditing standards.

Chapter 2

Findings and Recommendations

Chapter 104, Hawaii’s “Little Davis-Bacon” Act, is intended to ensure (1) adherence to certain labor standards for construction workers on state-funded public works projects, and (2) the placement of all contractors at the same starting gate prior to bidding on these projects. The statute assigns enforcement responsibility to the Department of Labor and Industrial Relations (DLIR) and the government agencies awarding public works contracts. In this chapter we examine the enforcement of Chapter 104 by DLIR—the lead agency in implementing the law—as well as enforcement by agencies that oversee most of the public works projects in Hawaii—the Department of Accounting and General Services (DAGS), the Department of Transportation (DOT), and the four counties.

Summary of Findings

1. DLIR and government contracting agencies vary in their methods and level of enforcement of Chapter 104, reflecting their varying responsibilities, priorities, and preferences.
2. Enforcement of Chapter 104 by the Department of Labor and Industrial Relations and the contracting agencies could be improved.
3. DLIR has yet to implement the monetary penalty provisions of Chapter 104.

Agencies Vary in Enforcing Chapter 104

We found that DLIR and the governmental contracting agencies are enforcing Chapter 104. However, they vary 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.

DLIR enforcement program

Chapter 104 assigns certain enforcement responsibilities to DLIR. The law requires the director of DLIR to periodically determine the prevailing wages for the various classes of laborers and mechanics. The prevailing wage can be no less than the wages paid under federal law to corresponding classes of laborers and mechanics on federal public works projects in Hawaii. To comply with the law, the DLIR director issues a quarterly schedule of the prevailing wage rates and makes it available to contractors.

The director of DLIR also investigates alleged violations of Chapter 104, issues a notification of violation to the affected contractor, and assesses a penalty of not more than \$1000 for each offense. For second or third violations occurring within two years of the first violation, written complaints are served and additional penalties are assessed.

The Enforcement Division of DLIR, with a staff of 16 enforcement specialists, administers and enforces Chapter 104 and six other labor laws. Following criticism in 1990 that it was not enforcing the law, the division made Chapter 104 a priority. Enforcement is basically complaint-driven and the division investigates all the complaints it receives. Complaints may be made by individual workers on public works projects, a union, or an anonymous call, or be referred by the contracting agencies. According to a DLIR official, the contracting agencies defer to the division on complaints because of its expertise in conducting investigations.

In FY1992-93, the division investigated 146 complaints, a 14 percent increase over the prior fiscal year when it investigated 128 complaints. In FY1992-93, the division found \$546,681 in back wages owed by contractors to their workers, an 85 percent increase over the prior fiscal year's total of \$295,000. In the two fiscal years from 1991-93, the division cited 72 contractors for 1,616 violations of Chapter 104.¹ The division credits these increases to its stable work force and trained enforcement staff.

More than half of these violations pertain to incorrect or incomplete certified payrolls. The second most prevalent violation is failure to pay the correct prevailing and overtime wage. Misclassification of workers accounts for some of the violations.

The division routinely educates contractors on the requirements of Chapter 104 and checks their compliance with the law. Each DLIR enforcement specialist is assigned three routine checks a month. The division chooses the contractors to be checked from copies of the "Notice to Proceed" that it receives from contracting agencies. The enforcement specialist checks the general contractor and subcontractors for compliance with Chapter 104. If a violation is discovered, the division investigates it as it would a complaint. When a violation is discovered on one project, the division may conduct "lateral audits" of other projects handled by the same contractor.

The division also has developed a manual of definitions, operating procedures, guidelines, and interpretations of Chapter 104. In addition, the division offers an education program about Chapter 104. Believing that education promotes voluntary compliance, the Enforcement Division conducts workshops for contracting agency personnel,

contractors, labor unions, and workers. At the workshops, the division makes available copies of Chapter 104, posters, a video highlighting the law's requirements, and guide books with answers to the most commonly asked questions. The workshops are offered on Oahu and the neighbor islands.

Enforcement by contracting agencies

Chapter 104 imposes several requirements on the governmental contracting agencies. These provisions, which apply to contracts in excess of \$2,000, are summarized in Exhibit 2.1. Agency contracts and specifications must contain certain provisions concerning the payment of the prevailing wage to workers and the submission of certified payrolls to the contracting agency. In addition, the law requires the contracting agencies to pay laborers and mechanics any wages or overtime they are owed from any payment the agency has withheld from the contractor, order contractors to pay their laborers and mechanics any wages or overtime owed under the law, and report to the DLIR director any violations by contractors.

Generally the contracting agencies handle their enforcement responsibilities as a routine administrative matter and do not consider them to be a priority. Their top priorities are to complete public works projects on time, within budget, and according to plans and specifications. We found that contracting agencies have some common approaches as well as differences in their enforcement activities.

Common approaches to enforcement

The contracting agencies we reviewed—DAGS, DOT, and the counties of Kauai, Oahu, Maui, and Hawaii—share some approaches to enforcing Chapter 104. The agencies' contracts and specifications contain the required provisions (see Exhibit 2.1). Agencies attach to their contracts a copy of DLIR's prevailing wage rate schedule. They designate certain personnel to be responsible for ensuring that contractors pay workers the correct wages and submit certified payrolls.

Each agency we reviewed has a procedure for guaranteeing receipt of the weekly certified payrolls submitted by the general contractor. The agencies seldom receive the payrolls within a week, but one agency official observed that the weekly requirement is unreasonable and if the law were strictly enforced, every contractor would be in violation. However, most contracting agencies require all certified payrolls to be submitted before they make the final payment to the contractor.

Differences in enforcement

The contracting agencies differ in several other respects. Some agencies will not process monthly progress payments for contractors who are not

Exhibit 2.1
Summary of Key Contract Provisions Required under
Chapter 104

- A statement of minimum wages to be paid to the various classes of laborers and mechanics on the job.
- A statement that minimum wages must be increased periodically during the contract to reflect increases in prevailing wages as determined by DLIR's director.
- Laborers or mechanics working on Saturdays, Sundays, or legal holidays, or more than eight hours a day, must receive hourly overtime pay linked to the prevailing wage.
- Laborers or mechanics must be paid at least weekly the full amount of the wages accrued during the five working days preceding payday.
- The contractor must post the wage rates conspicuously.
- The contracting agency may withhold from the contractor the amounts needed to pay laborers or mechanics any differences between contract wages and wages actually paid.
- The contractor must submit certified copies of all payrolls weekly to the contracting agency and must affirm that the payroll wages are not less than the prevailing wage and the classification of each laborer or mechanic conforms with work performed.
- The contracting agency which finds any laborer or mechanic has been paid wages lower than the contract wages or has not received full overtime compensation may, by written notice, terminate the contractor's right to complete the work.

up to date in submitting certified payrolls. DOT is currently discussing with the General Contractors Association of Hawaii (GCA) a possible penalty on contractors of 1 percent of the monthly payment for nonsubmittal of the payrolls. A department official noted that such a penalty may be an incentive for contractors to submit the payroll in a timely manner since monthly payments to contractors may be as high as \$3 million.

Only one of the contracting agencies had written policies, procedures, or guidelines relating to Chapter 104. DOT's Highways Division has procedures on labor compliance but the procedures apparently have not been updated since 1985.

Each agency designates certain personnel to oversee the contractors and to enforce the prevailing wage law. The number and types of personnel vary. Generally, they are engineers or inspectors assigned to projects. Enforcing Chapter 104 is only one of their responsibilities. Their many other project duties limit the time assigned personnel can spend monitoring job sites, reviewing certified payrolls, and checking that workers are assigned the correct wage classifications for the kinds of work they do. For example, individual inspectors at DAGS may handle up to 70 different construction projects during the summer months.

In some instances, the contracting agencies hire private consultants for day-to-day oversight of contractors and construction of projects. One duty of the consultants is to ensure compliance with Chapter 104 by contractors. We found these consultants knowledgeable about their enforcement responsibilities.

We found that agencies' efforts to verify the payroll range from nonexistent to extensive. Verification is usually done through spot checks: comparing the payroll to the prevailing wage schedule or comparing the payroll to the checks received by workers. Some agencies commented that they perform no spot checks because the statute does not require them to do so. An official of the County of Hawaii said it is difficult to verify the payroll information, so the county relies on contractors to assure compliance through their signatures on the certified payrolls.

When performed, spot checks vary in their type and frequency among agencies and within agencies. Depending on the individual involved, the payroll review may be cursory or extensive. At times DAGS inspectors will perform an in-depth check if they have an "intuition" or "a feeling" that there may be violations. Some agencies said that they usually review the payrolls in-depth at the beginning of projects to make sure that the contractor is in compliance; then they follow up with spot checks. Some officials suggested that payrolls from non-union

contractors are checked more frequently than those from union contractors.

The federal Davis-Bacon Act requires that agencies overseeing projects involving federal funds make investigations to ensure compliance. In addition to other requirements, investigations must include interviews with workers. Some state contracting agencies interview construction workers periodically or occasionally to determine whether they are receiving the prevailing wage. Other agencies interview workers only when a worker complains or if the project receives some federal funding. (For a variety of reasons, including fear of losing their job, some workers prefer not to be interviewed.)

Differences in complaint handling

As with verification of certified payrolls, procedures for the handling of complaints differ among agencies and among individuals within agencies.

Generally, the contracting agency informs the contractor of any discrepancy under Chapter 104 and gives the contractor the opportunity to correct it. To maintain good working relationships, contracting agencies prefer to settle violations or discrepancies informally with the contractor rather than contact DLIR. However, some enforcement personnel said they bring any violation immediately to the attention of DLIR, encourage the construction worker to file an official complaint with DLIR, or take both types of action.

The DOT's Highways Division has procedures on labor compliance that outline steps to ensure that contractors provide all payrolls and pay workers properly. According to an official, this allows the division to settle most disputes without involving DLIR.

Generally, those we interviewed at the contracting agencies recall few complaints or violations relating to Chapter 104. One DAGS inspector believes that violations occur every day, but says he cannot prove them.

Enforcement Can Be Improved

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

DLIR's Enforcement Division is already seeking to improve through reorganization and automation. We support these efforts and make recommendations for other improvements.

Current organization inefficient

The current organization of the Enforcement Division leads to duplication of effort in implementing Chapter 104 and the six other labor laws. Individual investigators now handle intake, investigation, and educational activities.

A proposed plan to reorganize the division according to functions would use staff and resources more effectively. The reorganization would establish an Intake and Certification Branch to review complaints; a Compliance Branch to investigate complaints and perform routine compliance checks; and a Hearings Branch to conduct hearings. The proposed Intake and Certification Branch would receive, process, and refer all complaints as well as conduct educational workshops. Specialists in the Compliance Branch would be able to devote their time to investigating complaints and conducting compliance checks. We believe that the proposed reorganization would improve enforcement of Chapter 104 and recommend that it be implemented as soon as possible.

Automation of the Enforcement Division is also underway and should improve enforcement. The division expects its Enforcement Division Information Management System (EDIMS) to consolidate and integrate information statewide on case management and tracking, clients, complainants, investigation data, and statistical reporting functions. According to a DLIR official, the system will give DLIR access to such key information as case status, tracking of contractor violations, projects investigated, sections violated, penalties and appeals, collection and disbursement of back wages found due, and requests to contracting agencies to withhold funds. The division estimates implementation of EDIMS around December 1993.

Some confusion about responsibilities

Chapter 104 outlines the enforcement duties of DLIR and the contracting agencies, but agencies need more clarification about their respective roles. DLIR officials see enforcement as a joint responsibility of DLIR and the contracting agencies, and they note that the agencies usually defer to DLIR due to its expertise in investigating violations. Officials at DAGS see their role as one of monitoring, not enforcement. An official at DOT's Highways Division views the division's role as conducting periodic reviews or spot checks to determine if violations occur while "actual" enforcement is the responsibility of DLIR.

Better communication between DLIR and the contracting agencies could help to clarify these matters. DLIR would also benefit from information

from the contracting agencies about the actual number of ongoing projects subject to Chapter 104. This would enable DLIR to spread its routine compliance checks more widely among contractors. Insufficient knowledge of the number of projects covered by Chapter 104 makes enforcement more difficult.

The DLIR estimates that approximately 2,000 public works contracts subject to Chapter 104 are executed each year. DLIR's estimate is based on a telephone survey of all contracting agencies. It does not know for sure, however, what projects are underway or how many there actually are. Each of the contracting agencies has information on the number of its own contracts, but only DAGS automatically informs DLIR when a project subject to Chapter 104 has been awarded. DAGS sends DLIR a copy of the "Notice to Proceed" that it sends to a contractor when a contract is awarded. DLIR's Enforcement Division conducts routine compliance checks of contractors based on these notices. The division uses these checks to detect violators and to educate contractors towards voluntary compliance. Since only contractors working on projects awarded by DAGS have been given routine compliance checks, DLIR's enforcement of Chapter 104 has been limited.

The Enforcement Division plans to widen the scope of its compliance checks. It recently arranged to have the City and County of Honolulu send it copies of Honolulu's Notices to Proceed. However, the division still has no similar arrangements with DOT, the remaining counties, or other contracting agencies.

In the past, DLIR has recommended the establishment of a memorandum of understanding between DLIR and the contracting agencies to inform and guide them on the implementation of Chapter 104. We agree with this recommendation and propose that DLIR take the lead in developing a memorandum. The memorandum should clearly delineate the respective roles and responsibilities of DLIR and the contracting agencies, including responsibilities for verifying the certified payrolls and for conducting spot checks and interviews. It should also define what is considered a violation of the law. In addition, the memorandum of understanding should require all contracting agencies to submit to DLIR a copy of every "Notice to Proceed" for contracts subject to Chapter 104. This would give DLIR a comprehensive base to draw on for its routine compliance checks.

***Insufficient guidance
for contracting
agency personnel***

Enforcement of Chapter 104 is not a high priority for the contracting agencies. As noted earlier, their priorities are to finish projects on time, within budget, and in conformance with plans and specifications. The lower priority is reflected in insufficient training, policies, and procedures for enforcement.

Even though DLIR offers training workshops, the contracting agencies do not require their personnel to attend. The agencies also do not offer formal in-house training for their employees. Although DAGS provides no specific training, a DAGS official said that inspectors receive instruction about the prevailing wage rates and certified payrolls. However, one DAGS inspector said he was never told anything about how to enforce the law. Another inspector commented that he had to learn the law's requirements from reading the contracts and the general conditions. Two project managers from DOT's Airports Division stated that they were only somewhat familiar with Chapter 104. One project manager was unaware of the requirement for contractors to submit the certified payrolls weekly.

DLIR has sponsored several workshops to educate contracting agencies, labor unions, contractors, construction workers, and others about the requirements of Chapter 104. DLIR reports that it notified all the contracting agencies of these workshops. We found, however, that few of the agencies' personnel knew about the workshops. (Agency personnel who did participate in the workshops felt they were quite helpful.) DLIR should make sure that information about its workshops is circulated more widely, particularly to those branches of agencies that are actually responsible for implementing the law.

Most of the contracting agencies we reviewed also lack written guidelines relating to Chapter 104 and its enforcement. DOT's Highways Division has procedures on labor compliance including standards and procedures for inspection, monitoring, and enforcement. Division personnel use them as a guide for enforcing Chapter 104. The procedures appear not to have been updated since 1985, however, and the division does not strictly follow all of them.

For example, the procedures state that "at least one audit of the prime contractor's and subcontractor's payroll records shall be made during the period of the construction contract." In practice, the division's Oahu District Office audits every contractor who works on its projects once every three years. In addition, the procedures assert that the certified payrolls are not public records. Yet the Office of Information Practices (OIP) in its opinion letter 89-8, states that the certified payrolls are public records under the State's Uniform Information Practices Act, Chapter 92F, HRS.

We recommend that the contracting agencies provide at least minimal training for those responsible for enforcing Chapter 104. They should work with DLIR to ensure that their staffs are familiar with the law. Written policies and procedures could also aid enforcement. DOT's Highways Division should update its procedures on labor compliance to reflect current agency policy and state requirements.

Hearing process cumbersome

DLIR has a cumbersome and time-consuming process for hearing appeals of violations from contractors. Months, in some cases years, lapse before the final disposition of appeals. In the meantime, contractors remain eligible to work on public works projects, giving the appearance that contractors can violate the law with few consequences. In addition, appeals and delays can be expected to increase when DLIR begins to impose monetary penalties for first violations.

DLIR's Enforcement Division investigates all suspected violations of Chapter 104 and computes the amount of back wages owed to workers. The Labor and Industrial Relations Appeals Board handles appeals by contractors who have been served with notifications of first violations. The board also determines whether contractors have knowingly violated the statute for a second or third time within two years of a first violation. The board imposes appropriate penalties for second and third violations.

A representative of the appeals board informed us that the board maintains a goal of hearing a case within six months of its filing. The appeals board also seeks to have a written decision on a case within six months after the post-trial brief has been submitted. It currently fails to meet either of these goals. For example, a contractor filed with the board in January 1991 an appeal on a classification issue involving a prevailing wage and recordkeeping violation. The board heard the case in June 1992, but has yet to issue a decision.

Although DLIR's Enforcement Division investigates suspected violations of Chapter 104, the Labor Division of the Department of the Attorney General (AG) represents the division in cases that come under the purview of the Appeals Board. According to one deputy attorney general, most of the Chapter 104 cases referred by the Enforcement Division require significant work to ensure that a preponderance of the evidence exists. A delay of several months, or even years, can result between the time when DLIR's Enforcement Division refers a case to the AG's Labor Division and the time when final disposition of the case is achieved.

For example, the DLIR Enforcement Division referred a case involving a possible second violation of Chapter 104 to the AG's Labor Division in April 1992. The Enforcement Division forwarded a possible third violation by the same contractor to the AG's Labor Division in August 1992. The AG's Labor Division has yet to file either case with the appeals board. In the meantime, DLIR is continuing to investigate other possible violations of Chapter 104 by this same contractor.

The AG's Labor Division may also choose to settle with the contractor and not take a case to the Appeals Board. In the cases we reviewed, the final settlements reached between the division and the contractors were

less than the amounts of back wages owed to workers. An enforcement specialist expressed concern that such situations set a bad precedent.

DLIR administrative hearings process needed

In contrast with other states with laws similar to Chapter 104, Hawaii did not establish an administrative hearings process within the responsible agency. We believe that the establishment of such a hearings process could resolve appeals and violations in a more timely manner.

Four states with “Little Davis-Bacon” acts similar to Hawaii’s authorize the agency responsible for enforcement to conduct both investigations and hearings as part of its enforcement duties. The hearings officer makes findings of fact and conclusions of law and submits a recommended decision to the director or commissioner of the department. The director or commissioner makes the final decision regarding violations of the prevailing wage law. Decisions of the director or commissioner can be appealed to courts.

The Enforcement Division now has an administrative hearings process for cases falling under Chapter 388, HRS (Payment of Wages and Compensation), and Chapter 378, Part III, HRS (Unlawful Suspension or Discharge). The division’s proposed reorganization includes a new Hearings Branch to conduct hearings pursuant to Chapter 91, HRS (Hawaii’s Administrative Procedure Act), on laws under the jurisdiction of the division. If the Legislature amends the law, the proposed branch could also conduct administrative hearings relating to Chapter 104 appeals, as well as determinations of second and third violations of the law. This would expedite enforcement.

Monetary Penalties for First Violations Are Not Enforced

Amendments to administrative rules needed

Chapter 104 requires DLIR to assess monetary penalties against contractors who violate the law. This penalty provision became effective on January 1, 1992, but DLIR has yet to implement it.

In 1991 the Legislature amended Chapter 104 to assess a penalty of not more than \$1,000 for each offense on a first violation of Chapter 104. Previously, first violators received only a warning letter.

Although the law took effect on January 1, 1992, it remains unenforced because DLIR’s Enforcement Division has not adopted the needed amendments to Chapter 104’s administrative rules. Without these amendments, contractors cannot be assessed the monetary penalty. According to a DLIR official, it will be another four to six months before the division can enforce the new provisions.

According to information received from DLIR, a majority of the violations documented by the division since January 1, 1992, were first violations. The contractors should have been assessed monetary penalties, but they escaped because of delays in adopting new rules. The delays may have been due to some confusion as to whether amended rules were legally required.

In August 1993, the Office of the Attorney General informed the Enforcement Division that amended rules are required by the Administrative Procedure Act, Chapter 91, HRS. The division is currently drafting the amendments. Once the amendments are drafted, the required statewide public hearings will take place. We recommend that DLIR amend the administrative rules as soon as possible so that the monetary penalty provisions can take effect.

Recommendations

1. The Department of Labor and Industrial Relations (DLIR) should adopt the proposed plan for reorganizing the Enforcement Division.
2. The DLIR should take the lead in developing a memorandum of understanding with the governmental contracting agencies that clearly delineates the roles and responsibilities of each party in enforcing Chapter 104, HRS. The memorandum should define "violation" and require each contracting agency to submit to DLIR a copy of every "Notice to Proceed" for projects covered by Chapter 104.
3. DLIR should adopt amendments to the Chapter 104 administrative rules so that monetary penalties for first violations can be enforced as soon as possible.
4. The contracting agencies should work with DLIR to provide at least minimal training on Chapter 104 for all personnel responsible for enforcement. The contracting agencies should also develop written policies and procedures to guide their personnel.
5. The Department of Transportation's Highways Division should update its procedures on labor compliance to be in accord with current statutes and policies.
6. The Legislature should consider amending Chapter 104 to provide for an administrative hearings process within the Enforcement Division of DLIR and to authorize the DLIR director to make final decisions on Chapter 104 appeals of notifications of first violations, determinations of second and third violations, and other disputes related to Chapter 104.

Notes

Chapter 1

1. Senate Standing Committee Report No. 318 on House Bill No. 14, Regular Session of 1955.
2. Senate Standing Committee Report No. 403 on Senate Bill No. 786, and House Standing Committee Report No. 829 on Senate Bill No. 786, Regular Session of 1963.
3. Section 1, Act 288, SLH 1987.
4. Section 104-1 (6), HRS.

Chapter 2

1. Information derived from the program activity reports from FY1991 to FY1993 of the Enforcement Division of the Department of Labor and Industrial Relations.

Responses of the Affected Agencies

Comments on Agency Responses

We transmitted a draft of this study to the Department of Labor and Industrial Relations, the Department of Accounting and General Services, the Department of Transportation, the City and County of Honolulu, and the counties of Hawaii, Maui, and Kauai on November 17, 1993. A copy of the transmittal letter to the Department of Labor and Industrial Relations is included as Attachment 1. Similar letters were sent to the other departments and the counties. The Department of Accounting and General Services and the City and County of Honolulu submitted written responses which are included as Attachments 2 and 3 respectively. The Department of Labor and Industrial Relations, the Department of Transportation, and the counties of Hawaii, Maui, and Kauai did not submit responses.

The Department of Accounting and General Services agrees with our recommendation that contracting agencies should work with the Department of Labor and Industrial Relations to provide at least minimal training on Chapter 104 for all personnel responsible for enforcement. The department also supports our recommendation for the establishment of a memorandum of understanding between the Department of Labor and Industrial Relations 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.

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor
(808) 587-0800
FAX: (808) 587-0830

November 17, 1993

C O P Y

The Honorable Dayton M. Nakanelua, Director
Department of Labor and Industrial Relations
Keelikolani Building
830 Punchbowl Street
Honolulu, Hawaii 96813

Dear Mr. Nakanelua:

Enclosed for your information are three copies, numbered 6 to 8 of our draft report, *Study of the Enforcement of Hawaii's "Little Davis-Bacon" Act*. We ask that you telephone us by Friday, November 19, 1993, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Monday, November 29, 1993.

The Department of Transportation, Department of Accounting and General Services, the counties of Honolulu, Hawaii, Kauai, and Maui, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

JOHN WAIHEE
GOVERNOR



ROBERT P. TAKUSHI
COMPTROLLER

LLOYD I. UNEBASAMI
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P. O. BOX 119, HONOLULU, HAWAII 96810

LETTER NO. S-1716.3

NOV 30 1993

RECEIVED

Nov 30 4 25 PM '93

OFF. OF THE AUDITOR
STATE OF HAWAII

Ms. Marion M. Higa
State Auditor
Office of the Auditor
State of Hawaii
Honolulu, Hawaii

Dear Ms. Higa:

SUBJECT: Study of the Enforcement of Hawaii's "Little Davis-Bacon" Act - A Report to the Governor and the Legislature of the State of Hawaii Pursuant to House Concurrent Resolution No. 122, House Draft 2, 1993 Legislature

Thank you for the opportunity to review the draft of the subject report and to comment on the report and its recommendations.

I concur with the recommendation that "contracting agencies such as DAGS should work with DLIR to provide at least minimal training on Chapter 104 for all personnel responsible for enforcement."

Also, the establishment of a memorandum of understanding between DLIR and the contracting agencies to inform and guide us on the implementation of Chapter 104 is wholeheartedly supported. Clearly stated delineations of the respective roles and responsibilities of each party including responsibilities for verifying the certified payrolls and for conducting spot checks and interviews will reduce duplication of effort between agencies and will further enforce activities.

I should like to point out that the comment that enforcement of Chapter 104 is not a high priority for contracting agencies is due primarily to the fact that public works construction contracts are generally let on a lump sum basis rather than on a cost-reimbursable basis, with itemization for actual costs. My staff is, however, cognizant of the statutory requirements and does submit copies of all "Notices to Proceed" for applicable contracts to DLIR.

Ms. Marion M. Higa
Letter No. S-1716.3
Page Two

If you or your staff have any questions on this matter, please call me at 586-0400 or Mr. Gordon Matsuoka, State Public Works Engineer, at 586-0526.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Robert P. Takushi', written in a cursive style.

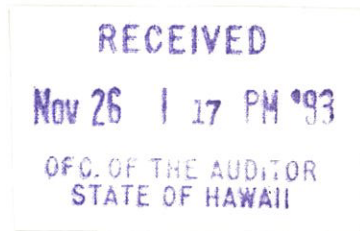
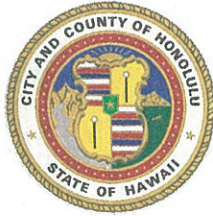
ROBERT P. TAKUSHI
State Comptroller

cc: Mr. Gordon Matsuoka, Public Works Division
Mr. Gary Yamaoka, Administrative Services Office

OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU

HONOLULU, HAWAII 96813 • AREA CODE 808 • 523-4141

FRANK F. FASI
MAYOR



November 22, 1993

Ms. Marion M. Higa
State Auditor
State of Hawaii
465 South King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Ms. Higa: *Marion*

Thank you for the opportunity to review the draft of your report on the enforcement of the "Little Davis-Bacon" Act.

The City and County of Honolulu's Division of Purchasing has reviewed the draft and concurs with its findings. We do not intend to submit further comments for inclusion in the report.

Warm personal regards.

Sincerely,

A handwritten signature in dark ink, appearing to read "Frank".

FFF:jf