

1 that is sufficient for a family of four to live at or above the
2 federal poverty level.

3 § -2 **Definitions.** As used in this chapter, unless the
4 context clearly requires otherwise:

5 "Contracting department" means:

- 6 (1) Any state department established pursuant to section
7 26-4, including any boards, commissions, agencies,
8 offices, or corporations administratively attached
9 thereto, but excluding the University of Hawaii;
- 10 (2) The legislature;
- 11 (3) The judiciary; and
- 12 (4) The office of Hawaiian affairs.

13 The Hawaii health systems corporation shall not be considered a
14 contracting department.

15 "Covered employee" means an individual employed by a
16 covered vendor who directly expends or would directly expend the
17 person's time on the service contract or the service subcontract
18 with the contracting department.

19 "Covered vendor" means any for-profit employer who employs
20 at least twenty-five full-time equivalent employees or any
21 nonprofit employer who employs at least one hundred full-time

1 equivalent employees who has been awarded a service contract or
2 subcontract after the effective date of this chapter.

3 "Department" means the department of labor and industrial
4 relations.

5 "Full-time" means forty working hours per week.

6 "Full-time equivalent" is a formula to calculate the number
7 of employee work hours that equal one full-time position.

8 "Living wage" means the rate established by the department
9 as the minimum hourly wage rate that shall be paid to a covered
10 employee by a covered vendor pursuant to the formula set forth
11 in section -5.

12 "Person" means one or more of the following or their
13 agents, employees, and representatives: individuals,
14 corporations, partnerships, joint ventures, associations, labor
15 organizations, educational institutions, mutual companies,
16 joint-stock companies, trusts, unincorporated organizations,
17 trustees, trustees in bankruptcy, receivers, fiduciaries, and
18 all other entities recognized by law by this State.

19 "Service contract" means any single contract of at least
20 \$100,000 or more awarded to a vendor by a contracting department
21 for the furnishing of services.



1 "Service subcontract" means a subcontract of \$25,000 or
2 more awarded to a vendor by a covered vendor, provided the
3 subcontract is paid for by funds from the service contract.

4 "Vendor agreement" means a written agreement between the
5 State, through a contracting department, and any covered vendor
6 that is executed at the time a service contract is signed with
7 the State or a subcontract is signed with a covered vendor.

8 **§ -3 Administration; applicability, exemptions, and**
9 **waivers.** (a) Except for the exemptions listed in subsection
10 (b), this chapter shall apply to all covered vendors. The
11 department of labor and industrial relations shall be
12 responsible for the overall implementation, compliance, and
13 enforcement of this chapter.

14 (b) The following types of service contracts and
15 subcontracts shall be exempt from the requirements of this
16 chapter:

- 17 (1) Construction contracts awarded by the State that are
18 subject to the state prevailing wage law;
- 19 (2) Contracts awarded to work-study or cooperative
20 educational programs, provided that the contract is
21 for stipends to students in the programs;



1 (3) Contracts awarded to the department of public safety
2 or its attached agencies where contracted employees
3 are inmates of correctional institutions;

4 (4) Contracts awarded to the department of commerce and
5 consumer affairs or its attached agencies where
6 contracted employees are paid stipends for proctoring,
7 grading, supervising, or recording examinations; and

8 (5) Contracts awarded to vendors who provide services to
9 the State and are awarded to vendors who provide
10 trainees a stipend or wage as part of a job-training
11 program; provided that the trainees do not replace
12 current state-funded positions.

13 (c) A covered vendor shall certify and submit to the
14 department an affidavit in a form approved by the department and
15 provided by the contracting department and signed by a principal
16 officer of the covered vendor, that one of the exemptions in
17 this section applies to them before the department may grant an
18 exemption to the covered vendor. The covered vendor shall also
19 submit a copy of the affidavit to the contracting department.

20 (d) The department may grant general and hardship waivers
21 from this chapter as follows:



1 (1) A general waiver may be granted where application of
2 this chapter to a particular service contract or
3 subcontract violates a specific state or federal
4 statute, rule, regulation, or constitutional
5 provision. All general waiver requests shall include
6 the following:

7 (A) The service contract or subcontract to which this
8 chapter applies;

9 (B) The conflicting statutory, regulatory, or
10 constitutional provision that makes compliance
11 with this chapter unlawful, and a copy of each
12 such provision; and

13 (C) An explanation of how compliance with this
14 chapter would violate the cited provision, and
15 the consequences that would result if this
16 violation were to occur.

17 A general waiver request shall be submitted directly
18 to the department and a copy submitted to the
19 contracting department.

20 (2) With respect to hardship waivers, a contracting
21 department shall monitor, and as necessary, recommend
22 to the department, individual or group exemptions

1 necessary in cases where compliance with this chapter
2 would cause undue economic hardship. These waivers
3 shall be subject to the department's approval after a
4 public hearing on the request has been held.

5 All hardship waiver requests shall include the
6 following:

7 (A) The service contract or service subcontract to
8 which this chapter applies;

9 (B) The lower wage paid by the covered vendor; and

10 (C) A detailed explanation of how the payment of a
11 living wage will cause undue economic hardship,
12 including supporting financial statements.

13 **§ -4 Notification requirements.** All contracting
14 departments engaged in the awarding of contracts shall provide
15 in writing, an explanation designed by the department, of the
16 requirements of this chapter in all requests for bids for
17 service contracts with the State. All persons who have signed a
18 service contract with the State shall forward a copy of the
19 requirements to any person submitting a bid for a subcontract on
20 the service contract.



1 **§ -5 Living wage payment to employees.** (a) Covered
2 vendors shall pay no less than the living wage to covered
3 employees.

4 (b) The living wage shall be calculated on an hourly basis
5 and shall be no less than \$9.43 beginning on July 1, 2006. Each
6 July 1 thereafter, the living wage shall be recalculated
7 according to each of the adjustments set forth in paragraphs (1)
8 to (3). The highest of the three figures derived in this manner
9 shall be the living wage applicable until the following June 30:

10 (1) Adjustment to the hourly rate which at forty hours of
11 work a week for fifty-two weeks a year would be equal
12 to but not less than the poverty threshold in Hawaii
13 for a family of four as published by the United States
14 Department of Health and Human Services; or

15 (2) Adjustment in proportion to the increase at the
16 immediately preceding December 31 over the year
17 earlier level of the annual average consumer price
18 index for all urban consumers (CPI-U) Honolulu as
19 published by the Bureau of Labor Statistics, United
20 States Department of Labor applied to \$9.43; or

21 (3) Adjustment to one hundred ten per cent of the current
22 federal minimum wage.

1 § -6 **Duties of covered vendors; payroll records; vendor**
2 **agreements; annual reports.** Covered vendors shall have the
3 following duties:

4 (1) With respect to maintenance of payroll records, each
5 covered vendor shall maintain payrolls for all covered
6 employees and basic records relating thereto for a
7 period of three years. The records shall contain:

- 8 (A) The name and address of each employee;
- 9 (B) Each employee's job title and classification;
- 10 (C) The number of hours worked each day for each
11 employee;
- 12 (D) Each employee's gross wages, deductions made, and
13 actual wages paid;
- 14 (E) A record of fringe benefit payments including:
 - 15 (i) Contributions to approved plans, funds, or
16 programs;
 - 17 (ii) Additional cash payments; or
 - 18 (iii) Both; and
- 19 (F) Any other data that may be required by the
20 contracting department from time to time;

21 (2) With respect to examination of payrolls, each covered
22 vendor shall permit a representative of the department

1 or its designee to observe work being performed upon
2 the work site, to interview employees, and to examine
3 the books and records relating to the payrolls being
4 investigated;

5 (3) With respect to vendor agreements, at the time of
6 signing a service contract with the State or a
7 subcontract with a vendor, the contract with the
8 covered vendor shall include the following:

9 (A) The name of the program or project under which
10 the contract or subcontract is being awarded;

11 (B) A local contact name, address, and phone number
12 for the covered vendor;

13 (C) A written commitment by the covered vendor to pay
14 all covered employees not less than the living
15 wage, subject to adjustment each July 1, and to
16 comply with this chapter;

17 (D) A workforce profile of covered employees paid for
18 by the service contract or subcontract including
19 the employees' job titles with wage ranges; and

20 (E) For service contracts, a list of all service
21 subcontracts either awarded or that will be
22 awarded to vendors with funds from the service



1 contract. Any covered vendor awarded a service
2 contract shall notify the contracting department
3 within three working days of signing a service
4 subcontract with a vendor; and

5 (4) By July 31 of each year, covered vendors shall provide
6 annual reports to the department of their employment
7 activities including the job positions charged to the
8 contract and the wage ranges of those positions.

9 § -7 **Enforcement.** (a) If necessary for the enforcement
10 of this chapter, the department may issue subpoenas, compel the
11 attendance and testimony of witnesses and production of books,
12 papers, records, and documents relating to payroll records
13 necessary for hearing, investigations, and proceedings. The
14 department may apply to a court of competent jurisdiction to
15 enforce these provisions.

16 (b) An individual who believes that the individual is a
17 covered employee, or if the individual is an applicant for a
18 position to be filled by a covered employee, and believes that
19 the employer is not complying with the requirements of this
20 chapter, may file a complaint with the department. Complaints
21 by covered employees of alleged violations may be made at any
22 time. Written or oral statements made by the individual shall



1 be treated as confidential and shall not be disclosed to the
2 covered vendor without the consent of the individual. A
3 complaint of noncompliance with this chapter may be filed by any
4 person with the department, which shall provide a copy of the
5 complaint to each covered vendor against whom the complaint is
6 made within five business days.

7 (c) If a covered vendor discharges, reduces the
8 compensation of, or discriminates against any covered employee
9 or any other individual for making a complaint to the
10 department, otherwise asserting the individual's rights under
11 this chapter, participating in any of the proceedings under this
12 chapter, or using any civil remedies to enforce the individual's
13 rights under this chapter, the covered vendor shall be
14 considered in violation of this chapter. The department shall
15 investigate allegations of retaliation or discrimination and, if
16 found to be true, after notice and a hearing, shall order
17 appropriate relief to the employee or individual and assess
18 penalties against the covered vendor and may suspend the
19 contract or order the service contractor to suspend the
20 subcontract.

21 (d) The department or its designee shall investigate all
22 complaints of noncompliance. Investigations may include routine



1 reviews, spot checks, and investigations pursuant to complaints.
2 The department shall examine promptly all payrolls for
3 compliance upon receiving a complaint in furtherance of any
4 investigation.

5 (e) If the department finds evidence that the covered
6 vendor is not in compliance or has violated any of the
7 provisions of this chapter, the department shall order any
8 remedial measures that may be required to ensure compliance
9 including, but not limited to ordering back pay to covered
10 employees for noncompliance with section -5. If the covered
11 vendor does not comply with the department's order within ten
12 working days, the department shall review the facts of the
13 finding and may proceed with a formal hearing and investigation.
14 If the department decides not to proceed with a hearing, it
15 shall provide a statement of the reasons for the decision.

16 **§ -8 Penalties; remedies.** (a) If the department
17 determines, after notice and hearing, that any covered vendor
18 has failed to pay the living wage rate or has otherwise violated
19 this chapter, the department may impose any or all of the
20 following penalties or remedies:



- 1 (1) A fine not to exceed \$300 for each affected covered
- 2 employee for each day that the covered vendor is in
- 3 violation of this chapter;
- 4 (2) The filing of a complaint with the pertinent state or
- 5 federal agency;
- 6 (3) Wage restitution for each affected employee;
- 7 (4) Suspension of ongoing contract and subcontract
- 8 payments;
- 9 (5) Ineligibility to bid for future contracts with the
- 10 State for three years or until all penalties and
- 11 restitution have been paid in full; and
- 12 (6) Any other action deemed appropriate and within the
- 13 discretion and authority of the State.
- 14 (b) No remedy set forth in this chapter is intended to be
- 15 exclusive or a prerequisite for asserting a claim for relief to
- 16 enforce the right granted under this chapter in a court of law.
- 17 This chapter shall not be construed to limit an employee's right
- 18 to bring a common law cause of action for wrongful termination.
- 19 **§ -9 Earned income credit notification.** Covered vendors
- 20 shall inform their covered employees earning less than \$12 per
- 21 hour, or any other amount as determined by the department, of
- 22 their possible right to apply for and receive the federal earned

1 income credit. The department shall assist any covered vendors
2 to the fullest extent possible to implement this section."

3 SECTION 2. **Living wage advisory committee established;**
4 **duties; composition and term; meetings; rules; conflict of**

5 **interest.** (a) There is established the living wage advisory
6 committee, that shall be attached to the department of labor and
7 industrial relations for administrative purposes only.

8 (b) The living wage advisory committee shall:

- 9 (1) Review and evaluate the effectiveness of chapter ,
10 Hawaii Revised Statutes, in creating and retaining
11 living wage jobs in Hawaii;
- 12 (2) Review and evaluate the implementation and enforcement
13 of chapter , Hawaii Revised Statutes; and
- 14 (3) Submit to the legislature and the governor:
- 15 (A) An interim preliminary report no later than
16 twenty days prior to the convening of the regular
17 session of 2007;
- 18 (B) Two interim annual reports no later than twenty
19 days prior to the convening of the regular
20 sessions of 2008 and 2009; and
- 21 (C) A final report no later than twenty days prior to
22 the convening of the 2010 regular session, that



1 shall include recommendations, including
2 specifically how the living wage law has impacted
3 Hawaii's economy.

4 (c) The living wage advisory committee shall be composed
5 of five members who shall serve until the committee is
6 terminated pursuant to subsection (i) and whom the governor
7 shall appoint as follows:

- 8 (1) One member representing a labor union;
- 9 (2) One member representing a living wage advocacy
10 organization;
- 11 (3) One member representing a community-based organization
12 operating solely within the State;
- 13 (4) One member representing the Chamber of Commerce of
14 Hawaii; and
- 15 (5) One member representing small businesses in Hawaii.

16 The committee shall appoint from its members a chairperson and
17 secretary. Three members shall constitute a quorum, whose
18 affirmative vote shall be necessary for all actions by the
19 committee.

20 (d) Members shall serve without compensation, but may be
21 reimbursed for the necessary expenses, including travel
22 expenses, incurred in the performance of their duties.

1 (e) The committee shall meet quarterly or more frequently
2 as required. All meetings of the committee shall be open to the
3 public.

4 (f) The committee shall adopt rules in accordance with
5 chapter 91, Hawaii Revised Statutes, governing public
6 participation and testimony at hearings and meetings; provided
7 that the committee shall have the power to issue interim rules,
8 that shall be exempt from the public notice, public hearing, and
9 gubernatorial approval requirements of chapter 91, Hawaii
10 Revised Statutes. The interim rules shall be valid for not
11 longer than one year.

12 (g) No person shall serve on the committee who has any
13 actual or potential conflict of interest as defined in chapter
14 84, Hawaii Revised Statutes. No member of the committee shall
15 participate in any proceeding concerning a covered vendor,
16 covered employee, or applicant for waiver or exemption, if the
17 member or any of the member's immediate family has a direct or
18 indirect financial interest in the covered vendor, covered
19 employee, or applicant for waiver or exemption, or in the award
20 of a service contract, subcontract, or the granting of relief to
21 the covered vendor, covered employee, or applicant for waiver or
22 exemption.



1 (h) The department of labor and industrial relations shall
 2 provide staff assistance to the committee and shall provide all
 3 information relating to the implementation of chapter ,
 4 Hawaii Revised Statutes, to the committee at least quarterly and
 5 upon the committee's request for the committee's review and
 6 evaluation.

7 (i) The committee shall terminate on December 31, 2010.

8 SECTION 3. If any provision of this Act, or the
 9 application thereof to any person or circumstance is held
 10 invalid, the invalidity does not affect other provisions or
 11 applications of the Act, which can be given effect without the
 12 invalid provision or application, and to this end the provisions
 13 of this Act are severable.

14 SECTION 4. This Act shall take effect on July 1, 2006.
 15

INTRODUCED BY:

Eric Caldwell

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 Mele Canall

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HB 2949

Report Title:

Living Wage

Description:

Requires private firms contracted by state government to pay covered workers a Hawaii living wage of \$9.43 an hour, to begin on 07/01/06 and adjusted thereafter. Requires the department of labor and industrial relations to implement living wage. Establishes temporary living wage advisory committee to evaluate law.

