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# A BILL FOR AN ACT

RELATING TO THE HAWAII LIVING WAGE LAW.

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

1           SECTION 1. The legislature finds that the state government  
2 awards contracts for services each year for substantial amounts  
3 that result in the creation and maintenance of a wide variety of  
4 employment opportunities in Hawaii. These contracts are paid  
5 for by taxpayer dollars and should be used to promote the  
6 sustenance and creation of jobs that will increase consumer  
7 income, decrease levels of poverty, invigorate neighborhood  
8 business, and reduce the need for taxpayer-funded public  
9 assistance programs.

10           Therefore, it is the intent of this Act to ensure that  
11 employees of private sector vendors who contract with the state  
12 government to provide certain services earn an hourly wage that  
13 is sufficient for a family of four to live at or above the  
14 federal poverty level.

15           SECTION 2. The Hawaii Revised Statutes is amended by  
16 adding a new chapter to be appropriately designated and to read  
17 as follows:



1                                   **"CHAPTER**

2                                   **LIVING WAGE**

3           **§ -1 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. The department shall be responsible for the overall  
5 implementation, compliance, and enforcement of this chapter.

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

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

9 "Living wage" means the rate established by the department  
10 as the minimum hourly wage rate that shall be paid to a covered  
11 employee by a covered vendor pursuant to the formula set forth  
12 in section -4.

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

20 "Service contract" means any single contract of at least  
21 \$100,000 or more awarded to a vendor by a contracting department  
22 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 **§ -2 Applicability, exemptions, and waivers. (a)**

9 Except for the exemptions listed in subsection (b), this chapter  
10 shall apply to all covered vendors. The department shall be  
11 responsible for the overall implementation, compliance, and  
12 enforcement of this chapter.

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

- 16 (1) Construction contracts awarded by the State that are  
17 subject to chapter 104;
- 18 (2) Contracts awarded to work-study or cooperative  
19 educational programs; provided that the contract is  
20 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 under which trainees are paid a stipend or  
10 wage as part of a job-training program; provided that  
11 the trainees do not replace current state-funded  
12 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, attesting that one of the  
17 exemptions in this section applies to the covered vendor before  
18 the department may grant an exemption to the covered vendor.  
19 The covered vendor shall also submit a copy of the affidavit to  
20 the contracting department.

21 (d) The department may grant general and hardship waivers  
22 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 and

21 (2) With respect to hardship waivers, a contracting  
22 department shall monitor, and as necessary, recommend



1 to the department, individual or group exemptions  
2 necessary in cases in which compliance with this  
3 chapter would cause undue economic hardship. These  
4 waivers shall be subject to the department's approval  
5 after a public hearing on the request has been held.  
6 All hardship waiver requests shall include the  
7 following:

- 8 (A) The service contract or service subcontract to  
9 which this chapter applies;
- 10 (B) The lower wage paid by the covered vendor; and
- 11 (C) A detailed explanation of how the payment of a  
12 living wage will cause undue economic hardship,  
13 including supporting financial statements.

14 **§ -3 Notification requirements.** All contracting  
15 departments engaged in the awarding of contracts shall provide  
16 in writing, an explanation designed by the department, of the  
17 requirements of this chapter in all requests for bids for  
18 service contracts with the State. All persons who have signed a  
19 service contract with the State shall forward a copy of the  
20 requirements to any person submitting a bid for a subcontract on  
21 the service contract.



1           **§ -4 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, 2007. 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;

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 in Honolulu as published  
19 by the Bureau of Labor Statistics, United States  
20 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           **§ -5 Duties of covered vendors; payroll records; vendor**  
2 **agreements; annual reports.** Covered vendors shall:

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

7           (A) The name and address of each employee;

8           (B) Each employee's job title and classification;

9           (C) The number of hours worked each day for each  
10 employee;

11           (D) Each employee's gross wages, deductions made, and  
12 actual wages paid;

13           (E) A record of fringe benefit payments, including:

14           (i) Contributions to approved plans, funds, or  
15 programs;

16           (ii) Additional cash payments; or

17           (iii) Both;

18           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:

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;

5 and

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

10 **§ -6 Enforcement.** (a) If necessary for the enforcement  
11 of this chapter, the department may issue subpoenas, compel the  
12 attendance and testimony of witnesses and production of books,  
13 papers, records, and documents relating to payroll records  
14 necessary for hearing, investigations, and proceedings. The  
15 department may apply to a court of competent jurisdiction to  
16 enforce these provisions.

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



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

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



1 (d) The department or its designee shall investigate all  
2 complaints of noncompliance. Investigations may include routine  
3 reviews, spot checks, and investigations pursuant to complaints.  
4 The department shall examine promptly all payrolls for  
5 compliance upon receiving a complaint in furtherance of any  
6 investigation.

7 (e) If the department finds evidence that the covered  
8 vendor is not in compliance or has violated any of the  
9 provisions of this chapter, the department shall order any  
10 remedial measures that may be required to ensure compliance,  
11 including but not limited to ordering back pay to covered  
12 employees for noncompliance with section -4. If the covered  
13 vendor does not comply with the department's order within ten  
14 working days, the department shall review the facts of the  
15 finding and may proceed with a formal hearing and investigation.  
16 If the department decides not to proceed with a hearing, it  
17 shall provide a statement of the reasons for the decision.

18 **§ -7 Penalties; remedies.** (a) In the event that the  
19 department determines, after notice and hearing, that any  
20 covered vendor has failed to pay the living wage rate or has  
21 otherwise violated this chapter, the department may impose any  
22 or all of the 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 **§ -8 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 3. **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, which shall be attached to the department of labor

7 and industrial relations for administrative purposes only.

8 (b) The living wage advisory committee shall:

9 (1) Review and evaluate the effectiveness of this chapter  
10 in creating and retaining living wage jobs in Hawaii;

11 (2) Review and evaluate the implementation and enforcement  
12 of this chapter; and

13 (3) Submit to the legislature and the governor:

14 (A) An interim preliminary report no later than  
15 twenty days prior to the convening of the regular  
16 session of 2008;

17 (B) An interim annual report no later than twenty  
18 days prior to the convening of the regular  
19 session of 2009 and an interim annual report no  
20 later than twenty days prior to the convening of  
21 the regular session of 2010; and



1 (C) A final report no later than twenty days prior to  
2 the convening of the 2011 regular session, which  
3 shall include recommendations, including  
4 specifically whether or not to reenact a living  
5 wage law for Hawaii.

6 (c) The living wage advisory committee shall comprise five  
7 members who shall serve until the committee is terminated  
8 pursuant to subsection (i) and whom the governor shall appoint  
9 as follows:

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

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





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

4 (e) The committee shall meet quarterly or more frequently  
5 as required. All meetings of the committee shall be open to the  
6 public.

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

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



1 subcontract, or the granting of relief to the covered vendor,  
2 covered employee, or applicant for waiver or exemption.

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

9 (i) The committee shall terminate on December 31, 2011.

10 SECTION 4. If any provision of this Act, or the  
11 application thereof to any person or circumstance is held  
12 invalid, the invalidity does not affect other provisions or  
13 applications of the Act, which can be given effect without the  
14 invalid provision or application, and to this end the provisions  
15 of this Act are severable.

16 SECTION 5. This Act shall take effect on July 1, 2034, and  
17 shall be repealed on July 1, 2011; provided that section 3,  
18 which establishes the living wage advisory committee, shall be  
19 repealed on December 31, 2011.



**Report Title:**

Living Wage for Hawaii

**Description:**

Requires private firms contracted by state government to pay covered workers a Hawaii living wage of at least \$9.43 an hour, to begin on 7/1/07 and adjusted thereafter. Requires DLIR to implement living wage. Establishes temporary living wage advisory committee to evaluate law. Repealed 7/1/2011. (HB33 HD1)

