
A BILL FOR AN ACT

RELATING TO A LIVING WAGE FOR WORKERS ON SERVICE CONTRACTS.

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

1 SECTION 1. The legislature finds that service employees
2 working for contractors of the State and counties deserve wage
3 protections. Similarly, even stronger protections were
4 established in 1965 for employees of federal contractors under
5 the McNamara-O'Hara Service Contracts Act (41 U.S.C. §351 et
6 seq.). The legislature further finds that the existing language
7 of section 103-55, Hawaii Revised Statutes, while laudatory in
8 purpose, exempts nearly all employees who might possibly benefit
9 from the section. Section 103-55, Hawaii Revised Statutes,
10 contains insufficient provisions for enforcement, rendering it
11 ineffective in accomplishing the express purpose of the law: to
12 ensure that contracted "services to be rendered shall be
13 performed by employees paid at wages or salaries not less than
14 the wages paid to public officers and employees for similar
15 work."

16 Paraphrasing the report of the senate labor committee in
17 recommending passage of the State's prevailing wage law for



1 construction laborers in 1955, the legislature declared that it
2 is the public policy of the State that bids for the performance
3 of public work shall be based on the relative skill and
4 efficiency of the contractors concerned and not on a difference
5 in wages paid. To state the principle another way, government
6 money, coming from the taxes of all, should not be used to
7 subsidize contractors who are depressing the wages of some.

8 According to the 2006 Poverty Guidelines for Hawaii, as
9 published by the United States Department of Health and Human
10 Services, a family of four needs to earn at least \$23,000 per
11 year. This Act proposes that the wages of employees of a
12 contractor providing services to the State of Hawaii and any of
13 the counties be no less than the prorated hourly equivalent of
14 the poverty threshold (\$11.06 per hour = \$23,000/2,080 hours).

15 SECTION 2. Section 103-55, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§103-55 Wages, hours, and working conditions of employees**
18 **of contractors performing services.** (a) Before any offeror,
19 other than a nonprofit organization, enters into a contract to
20 perform services in excess of [~~\$25,000~~] \$5,000 for any
21 governmental agency, or an offeror who is a nonprofit
22 organization enters into a contract to perform services in



1 excess of \$25,000 for any governmental agency, the offeror shall
2 certify that the services to be performed will be performed
3 under the following conditions:

4 Wages. The services to be rendered shall be performed by
5 employees paid at wages or salaries not less than the wage that
6 provides an annual income equivalent to the annual poverty
7 guideline for Hawaii for a family of four as determined and
8 periodically adjusted by the United States Department of Health
9 and Human Services; provided that employees of nonprofit
10 organizations shall be paid at wages or salaries not less than
11 the wages paid to public officers and employees for similar
12 work.

13 Compliance with labor laws. All applicable laws of the
14 federal and state governments relating to workers' compensation,
15 unemployment compensation, payment of wages, and safety will be
16 fully complied with.

17 (b) No contract to perform services for any governmental
18 contracting agency in excess of [~~\$25,000~~] \$5,000 shall be
19 granted unless all the conditions of this section are met[-];
20 provided that where the contractor is a nonprofit organization,
21 this section shall apply only to contracts in excess of \$25,000.
22 Failure to comply with the conditions of this section during the



1 period of contract to perform services shall result in
2 cancellation of the contract, unless [~~such~~] the noncompliance is
3 corrected within a reasonable period as determined by the
4 procurement officer. Final payment of a contract [~~or~~], release
5 of bonds, or both, shall not be made unless the procurement
6 officer has determined that the noncompliance has been
7 corrected.

8 It shall be the duty of the governmental contracting agency
9 awarding the contract to perform services [~~in excess of \$25,000~~]
10 and the department of labor and industrial relations to enforce
11 this section.

12 (c) [~~This~~] Except as provided in subsections (a) and (b),
13 this section shall apply to all contracts to perform services in
14 excess of [~~\$25,000,~~] \$5,000, including contracts to supply
15 ambulance service and janitorial service.

16 This section shall not apply to:

- 17 (1) Managerial[~~, supervisory, or clerical~~] or supervisory
18 personnel[~~-~~];
19 (2) Contracts for supplies[~~-~~] or materials[~~, or~~
20 ~~printing~~];
21 (3) Contracts for utility services[~~-~~];



1 (4) ~~Contracts [to perform personal services under~~
 2 ~~paragraphs (2), (3), (12), and (15) of section 76-16,~~
 3 ~~paragraphs (7), (8), and (9) of section 46-33, and~~
 4 ~~paragraphs (7), (8), and (12) of section 76-77.~~

5 ~~(5) Contracts for professional services.]~~ with other
 6 governmental bodies; and

7 ~~[(6)]~~ (5) Contracts to operate refreshment concessions in
 8 public parks~~[, or to provide food services to~~
 9 ~~educational institutions.~~

10 ~~(7) Contracts with nonprofit institutions].~~

11 (d) Any bid specification offered or contract entered into
 12 by a governmental body under this section shall contain the
 13 following:

14 (1) A provision requiring the contractor to ensure the
 15 right of all employees under relevant state or federal
 16 law to form, join, or assist labor organizations,
 17 to bargain collectively through representatives of
 18 their own choosing, and to exercise these legal rights
 19 without interference;

20 (2) A provision that, if at any time during the period of
 21 the contract, a labor organization or any employee of
 22 the contractor seeks to organize employees of the



1 contractor, the contractor shall commit no act or make
2 any statement that will directly or indirectly state
3 or imply the contractor's preference or non-preference
4 for unionization of its employees in general or for
5 recognition of any bona fide labor organization as the
6 exclusive representative of the employees working on
7 contracts covered by this section;

8 (3) A provision that, if at any time during the contract
9 period, a labor organization or any employee of the
10 contractor seeks to organize employees of the
11 contractor, the contractor shall grant access to its
12 employees by any bona fide labor organization in the
13 employee lunchrooms, lounges, or other non-public
14 areas on the contractor's premises during employees
15 off-work periods, for organizational purposes;
16 provided that there is no interference with normal
17 work operations; and

18 (4) A provision that, if during the period of the
19 contract, a bona fide labor organization requests
20 recognition within an appropriate bargaining unit, a
21 disinterested neutral party selected by the director
22 of labor and industrial relations shall conduct a



1 review of employee authorization cards submitted by
2 any labor organization in support of its claim to
3 represent a majority of employees in an appropriate
4 bargaining unit. If a majority of employees within a
5 unit have designated the signatory labor organization
6 to represent them, the contractor shall recognize that
7 labor organization as the exclusive representative of
8 the designated bargaining unit, and negotiations will
9 commence for a collective bargaining agreement.

10 (e) Any contractor found in violation of this section
11 shall pay a fine of \$5,000 per violation to the governmental
12 body, in addition to attorney's fees and costs, to the
13 governmental body or the affected employees.

14 (f) Any employer who violates any provision of this
15 section shall be liable to the employee or employees affected
16 for the amount of their unpaid wages or compensation, and in
17 case of wilful violation, for an additional amount equal to the
18 liquidated damages.

19 (g) For the purposes of this section, "nonprofit
20 organization" means a private, nonprofit, tax-exempt entity that
21 is recognized as a tax-exempt organization under Section
22 501(c)(3) of the Internal Revenue Code of 1986, as amended."



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

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



Report Title:

Service Contracts Workers; Living Wage Requirements

Description:

Reduces from \$25,000 to \$5,000 the applicability threshold of service contract wage, hour, and working condition requirements. Provides certain exemptions for nonprofits. Requires wages providing an annual income of at least the U.S. poverty guideline for Hawaii for a family of four. Includes provisions enhancing employees' ability to organize. (HB760 HD2)

