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# A BILL FOR AN ACT

RELATING TO WAGES AND HOURS OF EMPLOYEES ON SERVICE CONTRACTS.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 "CHAPTER

5 WAGES AND HOURS OF EMPLOYEES ON SERVICE CONTRACTS

6 PART I. GENERAL PROVISIONS

7 § -1 **Definitions.** As used in this chapter, the  
8 following words and phrases shall have the following meanings:

9 "Basic hourly rate" means the hourly wage paid to a service  
10 employee for work performed during nonovertime hours, but shall  
11 not include the cost to an employer of furnishing fringe  
12 benefits whether paid directly or indirectly to the service  
13 employee.

14 "Department" means the department of labor and industrial  
15 relations.

16 "Director" means the director of labor and industrial  
17 relations of the State.



1 "Governmental contracting agency" means the State, any  
2 county and any officer, bureau, board, commission, or other  
3 agency or instrumentality thereof.

4 "Overtime compensation" means compensation based on one and  
5 one-half times the service employees basic hourly rate of pay  
6 plus the cost to an employer of furnishing a service employee  
7 with fringe benefits as described.

8 "Party" includes eligible bidders for any service to be  
9 provided to the State.

10 "Service employee" or "employee" means any person engaged  
11 in the performance of a contract entered into by the State, the  
12 principal purpose of which is to furnish services in the State  
13 (other than any person employed in a bona fide executive,  
14 administrative, or professional capacity), and shall include all  
15 such persons regardless of any contractual relationship that may  
16 be alleged to exist between a contractor or subcontractor and  
17 such persons.

18 "Wages", "rate of wages", "wage rates", "minimum wages",  
19 and "prevailing wages" mean the basic hourly rate and the cost  
20 to an employer of furnishing a service employee with fringe  
21 benefits, including but not limited to health and welfare



1 benefits, vacation benefits, and pension benefits, whether paid  
2 directly or indirectly to the service employee.

3 § -2 **Applicability; wages, hours, and other**

4 **requirements.** (a) This chapter shall apply to every contract  
5 in excess of \$2,000 for the furnishing of services to the State  
6 through the use of service employees, in which a governmental  
7 contracting agency is a party.

8 (b) Every service employee performing work under the  
9 contract shall be paid no less than prevailing wages; provided  
10 that:

11 (1) The prevailing wages shall be established by the  
12 director as the sum of the basic hourly rate and the  
13 cost to an employer of providing a service employee  
14 with fringe benefits. In making prevailing wage  
15 determinations, the following shall apply:

16 (A) The director shall make separate findings of:

17 (i) The basic hourly rate; and

18 (ii) The rate of contribution or cost of fringe  
19 benefits paid by the employer when the  
20 payment of the fringe benefits by the  
21 employer constitutes a prevailing practice.

22 The cost of fringe benefits shall be



1 reflected in the wage rate scheduled as an  
2 hourly rate; and

3 (B) The rates of wages which the director shall  
4 regard as prevailing in each corresponding  
5 classification of service employees shall be the  
6 rate of wages paid to the greatest number of  
7 those employed in the State, the modal rate, in  
8 the corresponding classes of service employees  
9 under similar contracts;

10 (2) The prevailing wages shall be not less than the wages  
11 payable under federal law to corresponding classes of  
12 service employees employed under contracts in the  
13 State that are prosecuted under contract or agreement  
14 with the government of the United States; and

15 (3) Notwithstanding the provisions of the original  
16 contract, the prevailing wages shall be periodically  
17 adjusted during the performance of the contract in an  
18 amount equal to the change in the prevailing wage as  
19 periodically determined by the director.

20 (c) No service employee employed under a contract with the  
21 State or any political subdivision thereof shall be permitted or  
22 required to work on Saturday, Sunday, or a legal holiday of the



1 State or in excess of eight hours on any other day unless the  
2 service employee receives overtime compensation for all hours  
3 worked on Saturday, Sunday, and a legal holiday of the State or  
4 in excess of eight hours on any other day. For purposes of  
5 determining overtime compensation under this subsection, the  
6 basic hourly rate of any service employee shall not be less than  
7 the basic hourly rate determined by the director to be the  
8 prevailing basic hourly rate for corresponding classes of  
9 service employees under similar contracts in the State.

10 (d) The contractor or the contractor's subcontractor shall  
11 pay all service employees employed on the job site,  
12 unconditionally and not less often than once a week, and without  
13 deduction or rebate on any account, except as allowed by law,  
14 the full amounts of their wages including overtime, accrued to  
15 not more than five working days prior to the time of payment, at  
16 wage rates not less than those deemed to be prevailing,  
17 regardless of any contractual relationship which may be alleged  
18 to exist between the contractor or subcontractor and the service  
19 employees. The rates of wages to be paid shall be given to each  
20 service employee employed under the contract by the contractor  
21 at the time each service employee is employed, except that where  
22 there is a collective bargaining agreement the contractor does



1 not have to provide the contractor's employees the wage rate  
2 schedules.

3 (e) The governmental contracting agency may withhold from  
4 the contractor so much of the accrued payments as the  
5 governmental contracting agency may consider necessary to pay to  
6 the service employees employed by the contractor or any  
7 subcontractor under the contract the difference between the  
8 prevailing wages and the wages received and not refunded by the  
9 service employees.

10 (f) Every contract in excess of \$2,000 and the  
11 specifications for such contract shall include provisions that  
12 set forth the requirements of subsections (a) to (e); provided  
13 that failure by the contracting agency to include those  
14 provisions in the contract or specifications shall not be a  
15 defense of the contractor or subcontractor for noncompliance  
16 with the requirements of this chapter.

17 (g) For any contract that is subject to this chapter but  
18 not directly caused by a governmental contracting agency, the  
19 director shall be responsible for enforcement of this chapter,  
20 including the collection and maintenance of certified copies of  
21 all payrolls that are subject to this chapter. The director



1 shall adopt rules pursuant to chapter 91 to effectuate the  
2 purposes of this section.

3 (h) When:

4 (1) The department of budget and finance enters a project  
5 agreement with a project party, as those terms are  
6 defined in chapter 39A, to finance or refinance a  
7 project with the proceeds of special purpose revenue  
8 bonds;

9 (2) The project party has entered into a collective  
10 bargaining agreement with a bona fide labor union  
11 governing the project party's workforce; and

12 (3) The collective bargaining agreement has been properly  
13 submitted to the director under this chapter,  
14 the terms of the collective bargaining agreement and associated  
15 provisions shall be deemed the prevailing wages and terms  
16 serving as the basis of compliance with this chapter for work on  
17 the project by the project party's workforce; provided that this  
18 subsection does not affect the director's enforcement powers  
19 contained in subsection (g).

20 § -3 **Exemptions.** This chapter shall not apply to:

21 (1) Any contract covered under chapter 104;



1 (2) Any contract for the carriage of freight or personnel  
2 by vessel, airplane, bus, truck, express, railway line  
3 or oil or gas pipeline where published tariff rates  
4 are in effect;

5 (3) Any contract for the furnishing of services by radio,  
6 telephone, telegraph, or cable companies;

7 (4) Any contract for public utility services, including  
8 electric light and power, water, steam, and gas; and

9 (5) Any employment contract providing direct services to a  
10 governmental contracting agency.

11 § -4 **Payrolls and payroll records.** (a) Every contract  
12 subject to this chapter and the specifications for those  
13 contracts shall contain a provision that a certified copy of all  
14 payrolls and a certified copy of a fringe benefit reporting form  
15 supplied by the department or any certified form that contains  
16 all of the required fringe benefit information shall be  
17 submitted weekly to the governmental contracting agency for  
18 review. The fringe benefit reporting form shall itemize the  
19 cost of fringe benefits paid by the general contractor or  
20 subcontractor for:

21 (1) Health and welfare benefits;

22 (2) Pension and annuity benefits;





- 1           (3) Vacation benefits;
- 2           (4) Continuing education and training benefits; and
- 3           (5) Other fringe benefit costs paid by the general
- 4           contractor or subcontractor.

5 The general contractor shall be responsible for the submission  
6 of certified copies of the payrolls of all subcontractors. The  
7 certification shall affirm that the payrolls are correct and  
8 complete, that the wage rates contained therein are not less  
9 than the applicable rates contained in the wage determination  
10 decision of the director of labor and industrial relations  
11 attached to the contract, and that the classifications set forth  
12 for each service employee conform with the work the service  
13 employee performed. Any certification discrepancy found by the  
14 contracting agency shall be reported to the general contractor  
15 and the director to effect compliance.

16           (b) Payroll records for all service employees working  
17 under the contract shall be maintained by the general contractor  
18 and the general contractor's subcontractors, if any, during the  
19 course of the work and preserved for a period of three years  
20 thereafter. The records shall contain the name of each  
21 employee, the employee's correct classification, rate of pay,  
22 the itemized fringe benefit reporting form pursuant to



1 subsection (a), daily and weekly number of hours worked,  
2 deductions made, and actual wages paid.

3 (c) The contractor shall make payroll records available  
4 for examination within ten days from the date of a written  
5 request by a governmental contracting agency, director, or any  
6 authorized representatives thereof. Any contractor who:

7 (1) Fails to make payroll records accessible within ten  
8 days;

9 (2) Fails to provide information requested for the proper  
10 enforcement of this chapter within ten days; or

11 (3) Fails to keep or falsifies any record required under  
12 this chapter,

13 shall be assessed a penalty as provided in section -22(b).

14 § -5 **Termination of work on failure to pay agreed wages;  
15 completion of work; contract and specifications provision.**

16 Every contract and the specifications for such contract shall  
17 contain a provision that if the governmental contracting agency  
18 finds that any service employee employed under the contract by  
19 the contractor or any subcontractor has been or is being paid  
20 wages at a rate less than the required rate by the contract or  
21 the specifications, or has not received the laborer's or  
22 mechanic's full overtime compensation, the governmental



1 contracting agency, by written notice to the contractor, may  
2 terminate the contractor's right, or the right of any  
3 subcontractor, to proceed with the work or with the part of the  
4 work in which the required wages or overtime compensation have  
5 not been paid and may complete such work or part by contract or  
6 otherwise, and the contractor and the contractor's sureties  
7 shall be liable to the governmental contracting agency for any  
8 excess costs occasioned thereby.

9 **PART II. ADMINISTRATION AND ENFORCEMENT**

10 **§ -21 Governmental contracting agency responsibilities.**

11 The governmental contracting agency shall:

12 (1) Pay or cause to be paid, within sixty days of a  
13 determination made by the director, directly to  
14 service employees or to the director, from any accrued  
15 payment withheld under the terms of the contract, any  
16 wages or overtime compensation found to be due to  
17 service employees under the terms of the contract  
18 subject to this chapter, or any penalty assessed;

19 (2) Order any contractor to pay, within sixty days of a  
20 determination made by the director, any wages or  
21 overtime compensation which the contractor, or any of  
22 the contractor's subcontractors, should have paid to



1           any service employee under any contract subject to  
2           this chapter, or any penalty assessed which the  
3           contractor, or any of the contractor's subcontractors,  
4           should have paid to the director; and

5           (3) Report to the director any violation of this chapter,  
6           the rules adopted thereunder, or the terms of the  
7           contract subject to this chapter.

8           § -22 **Investigation; penalties.** (a) The department may  
9           conduct investigations to determine compliance with this  
10          chapter. The department may enter any job site at which  
11          services under the contract are provided, examine records of any  
12          contractor, either during or after the performance of any  
13          contract, or subpoena the records. The department may also  
14          interview employees during working hours on the job.

15          (b) . If any contractor interferes with or delays any  
16          investigation by the department, the governmental contracting  
17          agency, on receipt of written notice from the director of the  
18          interference or delay, shall withhold from the contractor all  
19          further payments until the director has notified the  
20          governmental contracting agency in writing that the interference  
21          or delay has ceased. Interference or delay includes failure to  
22          provide requested records under section -4; failure to allow



1 employees to be interviewed during working hours on the job; and  
2 falsification of records required under this chapter. The  
3 department shall assess a penalty of \$1,000 per project for  
4 interference or delay. For each day thereafter that the  
5 employer fails to cooperate, the director shall assess a penalty  
6 of \$100 per project.

7       §   -23   **Notification of violation.**   (a) When the  
8 department, either as a result of a report by a contracting  
9 agency or as a result of the department's own investigation,  
10 finds that a violation of this chapter or of the terms of the  
11 contract subject to this chapter has been committed, the  
12 department shall issue a notification of violation to the  
13 contractor or subcontractor involved.

14       (b) A notification of violation shall be final and  
15 conclusive twenty days after a copy was mailed to the violator,  
16 unless within the twenty-day period the violator files a written  
17 notice of appeal with the director.

18       (c) A hearing on the written notice of appeal shall be  
19 held by a hearings officer appointed by the director in  
20 conformance with chapter 91. Hearings on appeal shall be held  
21 within sixty days of the notice of appeal and a decision shall  
22 be rendered by the hearings officer within sixty days after the



1 conclusion of the hearing, stating the findings of fact and  
2 conclusions of law. The hearings officer may extend the due  
3 date for decision for good cause; provided that all parties  
4 agree.

5 § -24 **Violations; penalties.** (a) Where the department  
6 finds that a first violation of this chapter has been committed,  
7 the department shall assess a penalty equal to ten per cent of  
8 the amount of back wages found due or \$25 per offense, whichever  
9 is greater.

10 (b) Where the department finds that a second violation of  
11 this chapter has been committed, whether on the same contract or  
12 another, within two years of the first notification of  
13 violation, the department, after proper notice and opportunity  
14 for hearing, shall order the person or firm in violation to pay  
15 a penalty equal to the amount of back wages found due or \$100  
16 for each offense, whichever is greater.

17 (c) Where the department finds that a third violation of  
18 this chapter has been committed, whether on the same contract or  
19 another, within two years of the second notification of  
20 violation, the department, after proper notice and opportunity  
21 for hearing, shall order the person or firm in violation:



1 (1) To pay a penalty equal to two times the amount of back  
2 wages found due or \$200 for each offense, whichever is  
3 greater; and

4 (2) To be suspended from doing any new work under any  
5 contract with a governmental contracting agency for a  
6 period of three years except as provided in section  
7 -25(a)(2).

8 (d) A first, second, or third violation refers to each  
9 investigation involving one or more contracts in which the  
10 department finds that a contractor has failed to comply with  
11 this chapter.

12 (e) For purposes of this section, "offense" means each  
13 section of this chapter under which the contractor is cited;  
14 provided that, with respect to prevailing wage and overtime  
15 citations under section -2, each employee and each project  
16 shall be considered a separate offense.

17 § -25 Suspension. (a) The director shall suspend a  
18 person or firm as follows:

19 (1) For a first or second violation, if a person or firm  
20 fails to pay wages found due, any penalty assessed, or  
21 both, the person or firm shall be immediately  
22 suspended from doing any work under any contract with



1 a governmental contracting agency until all wages and  
2 penalties are paid in full;

3 (2) For a third violation, the suspension shall be as  
4 prescribed in section -24(c); provided that, if the  
5 person or firm continues to violate this chapter or  
6 fails to pay wages found due or any penalty assessed,  
7 or both, then the contractor shall immediately be  
8 suspended from doing any work under any contract with  
9 a governmental contracting agency for a mandatory  
10 three-year period. If after the three-year suspension  
11 period the wages found due or penalties assessed are  
12 still unpaid, the suspension shall remain in force  
13 until payment is made in full; or

14 (3) For falsification of records, or for delay or  
15 interference with an investigation pursuant to section  
16 -22, the contractor shall be suspended for a period  
17 of three years.

18 (b) The director shall immediately notify the comptroller  
19 and the auditor or director of finance of the county of any  
20 suspension order.

21 (c) No contract shall be awarded to the person or firm so  
22 suspended or to any firm, corporation, partnership, or





1 association in which the person or firm has an interest, direct  
2 or indirect, until three years have elapsed from the date of  
3 suspension, unless the period of suspension is reduced as herein  
4 provided. Any contract awarded in violation of this subsection  
5 shall be void.

6 § -26 **Judicial review.** (a) Any party to an appeal  
7 under this chapter may obtain judicial review of the decision on  
8 the appeal in the manner provided in chapter 91.

9 (b) Any suspension or dismissal of any complaint under  
10 this chapter shall be subject to appeal in circuit court by the  
11 aggrieved party, under section 91-14 and rule 72 of the Hawaii  
12 rules of civil procedure.

13 § -27 **Liability.** If the accrued payments withheld under  
14 the terms of the contract are insufficient to reimburse all the  
15 service employees for wages or overtime compensation due under  
16 this chapter, and the contractor has failed to pay the wages or  
17 overtime compensation, the contractor and the contractor's  
18 sureties shall be liable to the service employees in the amount  
19 of the unpaid wages and overtime compensation due, and in an  
20 additional equal amount as liquidated damages. However, any  
21 claim for liquidated damages, insofar as the surety or sureties



1 are concerned, shall not be paid until the claims of all other  
2 creditors have been satisfied.

3 § -28 Civil action. (a) The following civil actions  
4 may be instituted in any court of competent jurisdiction:

5 (1) An action to recover unpaid wages or overtime  
6 compensation may be maintained by any one or more  
7 service employees for and on behalf of oneself or  
8 themselves and others similarly situated; and

9 (2) An action for injunctive and other relief against an  
10 employer that fails to pay the prevailing wage to its  
11 employees as required by this chapter by a joint  
12 labor-management committee established pursuant to  
13 section 175a of the federal Labor Management  
14 Cooperation Act of 1978 (29 U.S.C. 175a).

15 (b) The court, in its action and in addition to any  
16 judgment awarded to the plaintiff or plaintiffs, shall allow  
17 reasonable attorney's fee and costs of the action to be paid by  
18 the defendant.

19 (c) It shall be no defense that the service employees  
20 accepted or agreed to accept less than the required rate of  
21 wages or overtime compensation or voluntarily made refunds.



1 (d) When a written request is filed by any service  
2 employee with the director claiming unpaid wages or overtime  
3 compensation under this chapter, the director, after receiving  
4 an assignment from the service employee, may bring an action in  
5 any court of competent jurisdiction to recover the amount of the  
6 claim. The consent of any service employee to the bringing of  
7 such action by the director, unless the action is dismissed  
8 without prejudice on motion of the director, shall constitute a  
9 waiver by the service employee of any right of action. the  
10 service employee may have under subsection (a). Any amount  
11 recovered by the director before suit and accepted by the  
12 service employee as payment in full shall constitute a waiver of  
13 any rights under this chapter.

14 § -29 **Rules.** Subject to chapter 91, the director shall  
15 adopt reasonable rules for determining the prevailing wages,  
16 enforcement, administration, and general purposes of this  
17 chapter. These rules shall have the force and effect of law.

18 § -30 **Application of this chapter to contracts entered**  
19 **into without regard to other laws.** The fact that a contract is  
20 or was entered into without regard to chapter 103D, or upon a  
21 cost-plus-a-fixed fee basis, or cost-plus-a-fixed percentage  
22 basis, or without advertising for proposals, shall not render



1 this chapter inapplicable to the contract, if otherwise this  
2 chapter would be applicable.

3       §   -31   **Effect on other laws.** Neither this chapter nor  
4 any rule or other action under this chapter shall supersede or  
5 impair any minimum wage or maximum hour law or any authority  
6 otherwise granted by law to provide for the establishment of  
7 specific minimum or other wage rates.

8       §   -32   **Suspension during emergency.** During a national  
9 emergency declared by the President or the Congress of the  
10 United States, or a state of emergency declared by the governor,  
11 subject to the provisions of section 127-10 or 128-7, the  
12 governor, by executive order in writing, may suspend this  
13 chapter; provided that the governor may not suspend this chapter  
14 except in the event such an emergency occurs and is so  
15 proclaimed.

16       §   -33   **Inspection.** (a) If work performed in accordance  
17 with this chapter, in excess of eight hours in any day or on a  
18 Saturday, Sunday, or legal holiday of the State, requires  
19 inspection by the State or any political subdivision thereof,  
20 the inspection shall be conducted by the State or a political  
21 subdivision, as the case may be.



1           (b) In the event an inspection is required, it shall be  
2 lawful, notwithstanding any other provision of law to the  
3 contrary, for the State or any political subdivision thereof to  
4 alter the normal working hours of public employees, as may be  
5 needed for these purposes, and to pay these public employees for  
6 all hours worked in excess of eight hours per day or on a  
7 Saturday, Sunday, or legal holiday of the State.

8           § -34 **Submission of collective bargaining agreement to**  
9 **the director.** (a) Parties to a collective bargaining agreement  
10 covering classes of service employees, which are included in the  
11 prevailing wage determinations made pursuant to this chapter,  
12 shall submit a copy of the agreement to the director within five  
13 days after execution of the agreement.

14           (b) Except as otherwise provided herein, the terms of  
15 agreement shall be kept confidential by the director. The  
16 director may disclose terms of the agreement to any federal or  
17 state agency for the purpose of enforcing this chapter."

18           SECTION 2. This Act does not affect rights and duties that  
19 matured, penalties that were incurred, and proceedings that were  
20 begun before its effective date.



1 SECTION 3. This Act shall take effect on July 1, 2010.

2

INTRODUCED BY: *Kal Moore*

JAN 19 2010



**Report Title:**

Service Contracts

**Description:**

Extends little Davis-Bacon rights regarding prevailing wages to employees on service contracts with governmental contracting agencies.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

