

JAN 26 2011

S.B. NO. 1436

A BILL FOR AN ACT

RELATING TO LABOR AND INDUSTRIAL RELATIONS.

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. Even stronger protections were established in 1965
4 for employees of federal contractors under the McNamara-O'Hara
5 Service Contracts Act, 41 U.S.C. 351 et seq. The legislature
6 further finds that the existing language of section 103-55,
7 Hawaii Revised Statutes, while laudatory in purpose, exempts
8 nearly all employees who might possibly benefit from that
9 section of law and contains insufficient provisions for
10 enforcement, rendering it unable to accomplish its express
11 purpose to assure that such contracted services are performed by
12 employees paid at wages or salaries not less than the wages paid
13 to public officers and employees for similar work.

14 The legislature finds that it is in the best interest of
15 the State to require that bids for the performance of public
16 work be based on the relative skill and efficiency of the
17 contractors concerned and not on a difference in wages paid.

18 According to the 2009 Poverty Guidelines for Hawaii, as



1 published by the United States Department of Health and Human
2 Services, the poverty threshold for a family of four is \$25,360.
3 The purpose of this Act is to require that the wage employees of
4 a contractor providing services to the State of Hawaii and any
5 of the counties be no less than the prorated hourly equivalent
6 of the poverty threshold.

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

9 "**§103-55 Wages, hours, and working conditions of employees**
10 **of contractors performing services.** (a) Before any offeror
11 enters into a contract to perform services in excess of
12 [~~\$25,000~~] \$5,000 for any governmental agency, the offeror shall
13 certify that the services to be performed will be performed
14 under the following conditions:

15 Wages. The services to be rendered shall be performed by
16 employees paid at wages or salaries not less than [~~the wages~~
17 ~~paid to public officers and employees for similar work.~~] the
18 greater of:

19 (1) The wage that provides an annual income equivalent to
20 the annual Poverty Guidelines for Hawaii for a family
21 of four, as determined and periodically adjusted by



1 the United States Department of Health and Human
2 Services; or

3 (2) The wages paid to public officers and employees for
4 similar work.

5 Compliance with labor laws. All applicable laws of the
6 federal and state governments relating to workers' compensation,
7 unemployment compensation, payment of wages, and safety will be
8 fully complied with.

9 (b) No contract to perform services for any governmental
10 contracting agency in excess of [~~\$25,000~~] \$5,000 shall be
11 granted unless all the conditions of this section are met.
12 Failure to comply with the conditions of this section during the
13 period of contract to perform services shall result in
14 cancellation of the contract, unless such noncompliance is
15 corrected within a reasonable period as determined by the
16 procurement officer. Final payment of a contract or release of
17 bonds or both shall not be made unless the procurement officer
18 has determined that the noncompliance has been corrected.

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



1 (c) This section shall apply to all contracts to perform
2 services in excess of [~~\$25,000,~~] \$5,000, including contracts to
3 supply ambulance service and janitorial service.

4 This section shall not apply to:

5 (1) Managerial [~~, supervisory, or clerical~~] or supervisory
6 personnel [~~-~~] i

7 (2) Contracts for supplies, materials, or printing [~~-~~] i

8 (3) Contracts for utility services [~~-~~] i

9 (4) Contracts [~~to perform personal services under~~
10 ~~paragraphs (2), (3), (12), and (15) of section 76-16,~~
11 ~~paragraphs (7), (8), and (9) of section 46-33, and~~
12 ~~paragraphs (7), (8), and (12) of section 76-77.] with
13 other governmental agencies; and~~

14 [~~(5) Contracts for professional services.~~

15 ~~(6)] (5) Contracts to operate refreshment concessions in~~

16 public parks [~~, or to provide food services to~~
17 ~~educational institutions.~~

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

19 (d) Every contract and bid specification entered into by a
20 governmental contracting agency under this section shall contain
21 the following:



- 1 (1) A provision requiring the contractor to assure the
2 right of all employees under relevant state or federal
3 law to form, join, or assist labor organizations, to
4 bargain collectively through representatives of their
5 own choosing, and to exercise these legal rights
6 without interference;
- 7 (2) A provision stating that if at any time during the
8 contract period a labor organization or any employee
9 of the contractor seeks to organize employees of the
10 contractor, that contractor shall commit no act or
11 make any statement that will directly or indirectly
12 state or imply the contractor's preference or
13 non-preference for unionization of its employees in
14 general, or for recognition of any bona fide labor
15 organization as the exclusive representative of the
16 employees working on contracts covered by this
17 section;
- 18 (3) A provision stating that if at any time during the
19 contract period a labor organization or any employee
20 of the contractor seeks to organize employees of the
21 contractor, that contractor will grant access to its
22 employees by any bona fide labor organization in the



1 employee lunchrooms, lounges, or other non-public
2 areas on the contractor's premises during employees'
3 off work periods for organizational purposes; provided
4 that there is no interference with normal work
5 operations; and

6 (4) A provision stating that if during the contract period
7 a bona fide labor organization requests recognition
8 within an appropriate bargaining unit, a
9 disinterested, neutral party selected by the director
10 will conduct a review of employee authorization cards
11 submitted by that labor organization in support of its
12 claim to represent a majority of employees in an
13 appropriate bargaining unit. If a majority of
14 employees within that unit has designated the
15 signatory labor organization to represent the
16 employees, the contractor shall recognize that labor
17 organization as the exclusive representative of the
18 designated bargaining unit, and negotiations shall
19 commence for a collective bargaining agreement.

20 (e) Any contractor found in violation of this section shall
21 pay a fine of \$5,000 per violation to the agency, plus



1 attorneys' fees and costs to the agency or the affected
2 employees for enforcing this section.

3 (f) Any employer who violates any provision of section
4 103-55 shall be liable to the employee or employees affected in
5 the amount of their unpaid wages or compensation and in the case
6 of wilful violation an additional equal amount as liquidated
7 damages."

8 SECTION 3. Section 103-55.5, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) Before any bidder or offeror enters into a contract
11 for construction of a public work project in excess of \$2,000,
12 which is subject to chapter 104, the bidder or offeror shall
13 affirm the bidder's or offeror's intent to comply with the
14 requirements of chapter 104 by certifying that:

15 (1) Individuals engaged in the performance of the contract
16 on the job site shall be paid:

17 (A) Not less than the [~~wages that the director of~~
18 ~~labor and industrial relations shall have~~
19 ~~determined to be prevailing for corresponding~~
20 ~~classes of laborers and mechanics employed on~~
21 ~~public works projects; and] greater of:~~



1 (i) The wage that provides an annual income
2 equivalent to the annual Poverty Guidelines
3 for Hawaii for a family of four as
4 determined and periodically adjusted by the
5 United States Department of Health and Human
6 Services; or

7 (ii) The wages that the director of labor and
8 industrial relations shall have determined
9 to be prevailing for corresponding classes
10 of laborers and mechanics employed on public
11 works projects.

12 (B) Overtime compensation at one and one-half times
13 the basic hourly rate plus fringe benefits for
14 hours worked on Saturday, Sunday, or a legal
15 holiday of the State or in excess of eight hours
16 on any other day; and

17 (2) All applicable laws of the federal and state
18 governments relating to workers' compensation,
19 unemployment compensation, payment of wages, and
20 safety shall be fully complied with."

21 SECTION 4. Section 104-2, Hawaii Revised Statutes, is
22 amended by amending subsection (b) to read as follows:



1 "(b) Every laborer and mechanic performing work on the job
2 site for the construction of any public work project shall be
3 paid no less than prevailing wages; provided that:

4 (1) The prevailing wages shall be established by the
5 director as the sum of the basic hourly rate and the
6 cost to an employer of providing a laborer or mechanic
7 with fringe benefits. In making prevailing wage
8 determinations, the following shall apply:

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

10 (i) The basic hourly rate; and

11 (ii) The rate of contribution or cost of fringe
12 benefits paid by the employer when the
13 payment of the fringe benefits by the
14 employer constitutes a prevailing practice.

15 The cost of fringe benefits shall be
16 reflected in the wage rate scheduled as an
17 hourly rate; and

18 (B) The rates of wages which the director shall
19 regard as prevailing in each corresponding
20 classification of laborers and mechanics shall be
21 the rate of wages paid to the greatest number of
22 those employed in the State, the modal rate, in



1 the corresponding classes of laborers or
2 mechanics on projects that are similar to the
3 contract work;

4 (2) The prevailing wages shall be not less than the [wages
5 ~~payable under federal law to corresponding classes of~~
6 ~~laborers and mechanics employed on public works~~
7 ~~projects in the State that are prosecuted under~~
8 ~~contract or agreement with the government of the~~
9 ~~United States; and] greater of:~~

10 (A) The wage that provides an annual income
11 equivalent to the annual Poverty Guidelines for
12 Hawaii for a family of four as determined and
13 periodically adjusted by the United States
14 Department of Health and Human Services; or

15 (B) The wages payable under federal law to
16 corresponding classes of laborers and mechanics
17 employed on public works projects in the State
18 that are prosecuted under contract or agreement
19 with the government of the United States; and

20 (3) Notwithstanding the provisions of the original
21 contract, the prevailing wages shall be periodically
22 adjusted during the performance of the contract in an



1 amount equal to the change in the prevailing wage as
2 periodically determined by the director."

3 SECTION 5. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act shall take effect upon its approval.

6

INTRODUCED BY:



By Request



Report Title:

Labor and Industrial Relations; Living Wage

Description:

Requires that the wage employees of a contractor providing services to the State of Hawaii and any of the counties be no less than the prorated hourly equivalent of the annual income necessary to meet or surpass the poverty threshold.

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

