
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 of
2 contractors with state or county contracts require greater wage
3 protection. Employees of federal contractors were provided wage
4 protection under the 1965 McNamara-O'Hara Service Contracts Act,
5 41 United States Code section 351 et seq., which required
6 minimum wages to be paid on certain federal contracts.

7 The legislature further finds that although section 103-55,
8 Hawaii Revised Statutes, expressly states that contracted
9 "services to be rendered shall be performed by employees paid at
10 wages or salaries not less than the wages paid to public
11 officers and employees for similar work", the section also
12 exempts nearly all employees who might possibly benefit from the
13 section and lacks sufficient enforcement provisions. According
14 to the 2011 Poverty Guidelines for Hawaii published by the
15 United States Department of Health and Human Services, a family
16 of four in this State with an income of \$25,710 or less is
17 living at the federal poverty level.



1 The purpose of this Act is to provide wage protection to
2 service employees of state and county contractors, by requiring
3 a contractor who provides services to the State or any county to
4 pay the contractor's employees a wage that provides an annual
5 income not less than the poverty threshold of a family of four
6 in this State.

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 (1) Wages. The services to be rendered shall be performed
16 by employees paid at wages or salaries not less than
17 the greater of:

18 (A) The wage that provides an annual income equal to
19 the annual poverty guidelines for Hawaii for a
20 family of four as determined and periodically
21 adjusted by the United States Department of
22 Health and Human Services; or



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[~~]~~ or supervisory[~~]~~ ~~or clerical~~
6 personnel[~~]~~;

7 (2) Contracts for supplies[~~]~~ or materials[~~]~~ ~~or~~
8 ~~printing.~~];

9 (3) Contracts for utility services[~~]~~;

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

14 Contracts with other governmental agencies; or

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

16 ~~(6)]~~ (5) Contracts to operate refreshment concessions in
17 public parks[~~]~~ ~~or to provide food services to~~
18 ~~educational institutions.~~

19 [~~(7) Contracts with nonprofit institutions].~~

20 (d) Every contract and any bid specification therefor
21 entered into by a governmental contracting agency under this
22 section shall:



- 1 (1) Require the contractor to enforce the right of all
2 employees under relevant state or federal law to form,
3 join, or assist labor organizations; to bargain
4 collectively through representatives of their own
5 choosing; and to exercise these rights without
6 interference;
- 7 (2) Prohibit the contractor from making any act or
8 statement that directly or indirectly states or
9 implies the contractor's preference or non-preference
10 for the unionization of its employees, or for
11 recognizing any bona fide labor organization as the
12 exclusive representative of its employees, if at any
13 time during the contract period a labor organization
14 or an employee of the contractor seeks to organize the
15 contractor's employees;
- 16 (3) Require the contractor to allow access to its
17 employees by any bona fide labor organization, in
18 employee lunchrooms, lounges, or other nonpublic areas
19 on the contractor's premises during the employees' off
20 work periods for organizational purposes, provided
21 that the access does not interfere with normal work
22 operations, if at any time during the contract period



1 a labor organization or an employee of the contractor
2 seeks to organize the contractor's employees; and
3 (4) Require the director of labor and industrial relations
4 to select a disinterested, neutral party to conduct a
5 review of employee authorization cards submitted by
6 any labor organization in support of the labor
7 organization's claim that it represents a majority of
8 employees in an appropriate bargaining unit, if during
9 the contract period a bona fide labor organization
10 requests recognition within an appropriate bargaining
11 unit. If a majority of employees within a bargaining
12 unit has designated a labor organization to represent
13 them, the contractor shall recognize that labor
14 organization as the exclusive representative of the
15 designated bargaining unit, and negotiations shall
16 commence for a collective bargaining agreement.
17 (e) Any contractor who violates this section:
18 (1) Shall pay a fine of \$5,000 per violation to the
19 government agency that is a party to the contract, as
20 well as attorney's fees and costs incurred in
21 enforcing this section to the agency or the affected
22 employees; and



1 (2) Shall be liable to any employee affected in the amount
2 of unpaid wages or compensation, and in the case of a
3 wilful violation, in an additional equal amount as
4 liquidated damages."

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

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

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

14 (A) Not less than the greater of:

15 (i) The wage that provides an annual income
16 equivalent to the annual poverty guidelines
17 for Hawaii for a family of four as
18 determined and periodically adjusted by the
19 United States Department of Health and Human
20 Services; or

21 (ii) The wages that the director of labor and
22 industrial relations shall have determined



1 to be prevailing for corresponding classes
2 of laborers and mechanics employed on public
3 works projects; and

4 (B) Overtime compensation at one and one-half times
5 the basic hourly rate plus fringe benefits for
6 hours worked on Saturday, Sunday, or a legal
7 holiday of the State or in excess of eight hours
8 on any other day; and

9 (2) All applicable laws of the federal and state
10 governments relating to workers' compensation,
11 unemployment compensation, payment of wages, and
12 safety shall be fully complied with."

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

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

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



- 1 (A) The director shall make separate findings of:
 - 2 (i) The basic hourly rate; and
 - 3 (ii) The rate of contribution or cost of fringe
 - 4 benefits paid by the employer when the
 - 5 payment of the fringe benefits by the
 - 6 employer constitutes a prevailing practice.
 - 7 The cost of fringe benefits shall be
 - 8 reflected in the wage rate scheduled as an
 - 9 hourly rate; and
- 10 (B) The rates of wages which the director shall
- 11 regard as prevailing in each corresponding
- 12 classification of laborers and mechanics shall be
- 13 the rate of wages paid to the greatest number of
- 14 those employed in the State, the modal rate, in
- 15 the corresponding classes of laborers or
- 16 mechanics on projects that are similar to the
- 17 contract work;
- 18 (2) The prevailing wages shall be not less than the
- 19 greater of:
 - 20 (A) The wage that provides an annual income
 - 21 equivalent to the annual poverty guidelines for
 - 22 Hawaii for a family of four as determined and



H.B. NO. 2711

Report Title:

Public Works; Wages; Contractors; Public Contracts; Service Employees

Description:

Requires contractors with public contracts greater than \$5,000: (1) to pay their employees wages that provide an annual income equal to the poverty guidelines for Hawaii published by the federal DHHS, or a greater amount; and (2) to allow their employees to have access to and join labor organizations.

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