
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. This Act also allows requires contractors with
7 public contracts greater than \$5,000 to allow their employees to
8 have access to and join labor organizations.

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

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

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

20 (A) The wage that provides an annual income equal to
21 the annual poverty guidelines for Hawaii for a
22 family of four as determined and periodically



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

3 (B) The wages paid to public officers and employees
4 for similar work[-]; and

5 (2) Compliance with labor laws. All applicable laws of
6 the federal government and [state governments] the
7 State relating to workers' compensation, unemployment
8 compensation, payment of wages, and safety [will]
9 shall be fully complied with.

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

20 [~~It shall be the duty of the~~] The governmental contracting
21 agency awarding the contract to perform services [~~in excess of~~
22 ~~\$25,000 to~~] shall enforce 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[~~7~~] or supervisory[~~7~~, ~~or~~ ~~clerical~~]
6 personnel[~~7~~];

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

9 (3) Contracts for utility services[~~7~~];

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[~~7~~, ~~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) Require the contractor to allow access to its
8 employees by any bona fide labor organization, in
9 employee lunchrooms, lounges, or other nonpublic areas
10 on the contractor's premises during the employees' off
11 work periods for organizational purposes, provided
12 that the access does not interfere with normal work
13 operations, if at any time during the contract period
14 a labor organization or an employee of the contractor
15 seeks to organize the contractor's employees; and
- 16 (3) Require the director of labor and industrial relations
17 to select a disinterested, neutral party to conduct a
18 review of employee authorization cards submitted by
19 any labor organization in support of the labor
20 organization's claim that it represents a majority of
21 employees in an appropriate bargaining unit as
22 provided under section 377-4.6, if during the contract



1 period a bona fide labor organization requests
2 recognition within an appropriate bargaining unit. If
3 a majority of employees within a bargaining unit has
4 designated a labor organization to represent them, the
5 contractor shall recognize that labor organization as
6 the exclusive representative of the designated
7 bargaining unit, and negotiations shall commence for a
8 collective bargaining agreement.

9 (e) Any contractor who violates this section:

10 (1) Shall pay a fine of \$5,000 per violation to the
11 government agency that is a party to the contract, as
12 well as attorney's fees and costs incurred in
13 enforcing this section to the agency or the affected
14 employees; and

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

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

21 "(a) Before any bidder or offeror enters into a contract
22 for construction of a public work project in excess of \$2,000,



1 which is subject to chapter 104, the bidder or offeror shall
2 affirm the bidder's or offeror's intent to comply with the
3 requirements of chapter 104 by certifying that:

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

6 (A) Not less than the greater of:

7 (i) The wage that provides an annual income
8 equivalent to the annual poverty guidelines
9 for Hawaii for a family of four as
10 determined and periodically adjusted by the
11 United States Department of Health and Human
12 Services; or

13 (ii) The wages that the director of labor and
14 industrial relations shall have determined
15 to be prevailing for corresponding classes
16 of laborers and mechanics employed on public
17 works projects; and

18 (B) Overtime compensation at one and one-half times
19 the basic hourly rate plus fringe benefits for
20 hours worked on Saturday, Sunday, or a legal
21 holiday of the State or in excess of eight hours
22 on any other day; and



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

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

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

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

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

16 (i) The basic hourly rate; and

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

21 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 laborers and mechanics shall be
6 the rate of wages paid to the greatest number of
7 those employed in the State, the modal rate, in
8 the corresponding classes of laborers or
9 mechanics on projects that are similar to the
10 contract work;

11 (2) The prevailing wages shall be not less than the
12 greater of:

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

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



1 (3) Notwithstanding the provisions of the original
2 contract, the prevailing wages shall be periodically
3 adjusted during the performance of the contract in an
4 amount equal to the change in the prevailing wage as
5 periodically determined by the director."

6 SECTION 5. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

9 SECTION 6. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 7. This Act shall take effect upon its approval.



Report Title:

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

Description:

Requires contractors with public contracts: (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. (HB2711 HD1)

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