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# A BILL FOR AN ACT

RELATING TO LABOR.

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

1           SECTION 1. The legislature finds that the Hawaii supreme  
2 court's decision in Konno v. County of Hawaii, 85 Haw. 61  
3 (1997), affirmed that civil service jobs cannot be performed by  
4 private contractors if the work involved has been customarily  
5 and historically provided by civil servants.

6           The legislature further finds that service employees of  
7 contractors under state or county contracts require greater wage  
8 protection than is currently afforded. Unlike chapter 104,  
9 Hawaii Revised Statutes, which covers public works construction,  
10 section 103-55, Hawaii Revised Statutes, does not provide  
11 sufficient provisions to ensure compliance.

12           The purpose of this Act is to ensure that service employees  
13 of state or county contractors are paid at wages or salaries  
14 that are certified to be accurate and in accordance with  
15 applicable labor laws under chapter 104, Hawaii Revised  
16 Statutes, so as to be consistent with the Hawaii supreme court's  
17 decision in Konno.



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

3 "§103-55 Wages, hours, and working conditions of employees  
4 of contractors performing services. (a) Before any offeror  
5 enters into a contract to perform services in excess of \$25,000  
6 for any governmental agency, the offeror shall certify that the  
7 services to be performed will be performed under the following  
8 conditions:

9 Wages. The services to be rendered shall be performed by  
10 employees paid at wages or salaries not less than the wages paid  
11 to public officers and employees for similar work.

12 The contractor or the contractor's subcontractor shall pay  
13 all mechanics and laborers employed on the job site,  
14 unconditionally and not less often than once a week, and without  
15 deduction or rebate on any account, except as allowed by law,  
16 the full amounts of their wages including overtime, accrued to  
17 not more than five working days prior to the time of payment,  
18 regardless of any contractual relationship which may be alleged  
19 to exist between the contractor or subcontractor and the  
20 laborers and mechanics. A copy of the rates of wages shall be  
21 given to each laborer and mechanic employed under the contract



1 by the contractor at the time each laborer and mechanic is  
2 employed, except that where there is a collective bargaining  
3 agreement the contractor does not have to provide the  
4 contractor's employees the wage rates schedules.

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) The government contracting agency may withhold from  
10 the contractor so much of the accrued payments as the government  
11 contracting agency may consider necessary to pay to the laborers  
12 and mechanics employed by the contractor or any subcontractor on  
13 the job site the difference between the required wages and the  
14 wages received and not refunded by the laborers and mechanics.

15 (c) Every such contract and the specifications for such  
16 contract shall contain a provision that a certified copy of all  
17 payrolls shall be submitted weekly to the governmental  
18 contracting agency for review. The contractor shall be  
19 responsible for the submission of certified copies of the  
20 payrolls of all subcontractors. The certification shall affirm  
21 that the payrolls are correct and complete, that the wage rates



1 contained therein are not less than the applicable rates, and  
2 that the classifications set forth for each laborer or mechanic  
3 conform with the work the laborer or mechanic performed. Any  
4 certification discrepancy found by the contracting agency shall  
5 be reported to the contractor and the director to effect  
6 compliance.

7 Payroll records for all laborers and mechanics working at  
8 the site of the work shall be maintained by the contractor and  
9 the contractor's subcontractors, if any, during the course of  
10 the work and preserved for a period of three years thereafter.  
11 The records shall contain the name of each employee, the  
12 employee's correct classification, rate of pay, daily and weekly  
13 number of hours worked, deductions made, and actual wages paid.  
14 The contractor shall make payroll records available for  
15 examination within ten days from the date of a written request  
16 by a governmental contracting agency, director, or any  
17 authorized representatives thereof. Any contractor who:

- 18 (1) Fails to make payroll records accessible within ten  
19 days;  
20 (2) Fails to provide information requested for the proper  
21 enforcement of this chapter within ten days; or



1        (3) Fails to keep or falsifies any record required under  
2            this chapter,  
3 shall be assessed a penalty as provided in section 104-22(b).

4        The administration and enforcement of the requirement for  
5 certified payroll records shall be in the same manner as  
6 sections 104-4, 104-21 through 104-28, and 104-33 in relation to  
7 service contracts.

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

18        It shall be the duty of the governmental contracting agency  
19 awarding the contract to perform services in excess of \$25,000  
20 to enforce this section.



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

4        This section shall not apply to:

- 5        (1) Managerial, supervisory, or clerical personnel;
- 6        (2) Contracts for supplies, materials, or printing;
- 7        (3) Contracts for utility services;
- 8        (4) Contracts to perform personal services under section  
9            46-33(7), (8), and (9), section 76-16(b)(2), (3),  
10            (12), and (15), and section 76-77(7), (8), and (12);
- 11        (5) Contracts for professional services;
- 12        (6) Contracts to operate refreshment concessions in public  
13            parks, or to provide food services to educational  
14            institutions;
- 15        (7) Contracts to provide transportation services for  
16            school children; or
- 17        (8) Contracts with nonprofit institutions."

18        SECTION 3. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20        SECTION 4. This Act shall take effect on January 1, 2051.



**Report Title:**

Wages; Labor; Contractors; Payroll

**Description:**

Specifies the obligations and conditions of contractors performing services in excess of \$25,000 for any governmental agency. Authorizes a governmental agency to withhold portions of payments for certain reasons. Requires the submission of certified copies of payrolls. Specifies the obligations in connection with payrolls and penalties for failing to comply. (SB292 HD1)

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

