

JAN 23 2025

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# A BILL FOR AN ACT

RELATING TO PREVAILING WAGES.

**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**

6   **HUMAN SERVICES PROVIDERS**

7   **CONTRACTED BY THE STATE OR COUNTIES**

8   **PART I. GENERAL PROVISIONS**

9       §   -1 **Definitions.** As used in this chapter, unless the  
10 context otherwise requires:

11       "Basic hourly rate" means the hourly wage paid to a human  
12 services provider for work performed during nonovertime hours,  
13 but shall not include the cost to an employer of furnishing  
14 fringe benefits, whether paid directly or indirectly to the  
15 human services provider as provided in the definition of  
16 "wages".



1       "Contractor" means any person furnishing human services  
2 under a contract with a governmental contracting agency,  
3 subcontractor, or any other person under a subcontract  
4 arrangement with any person who has a contract subject to this  
5 chapter.

6       "County" means the city and county of Honolulu, county of  
7 Hawaii, county of Kauai, and county of Maui.

8       "Department" means the department of labor and industrial  
9 relations.

10       "Director" means the director of labor and industrial  
11 relations of the State.

12       "Governmental contracting agency" means the State, any  
13 county and any officer, bureau, board, commission, or other  
14 agency or instrumentality thereof.

15       "Human services" includes social work, case work, and  
16 investigative services intended to improve the lives of  
17 individuals and families by, among other duties, evaluating an  
18 individual's needs, creating a treatment plan for the  
19 individual, implementing the plan, and providing emotional  
20 support.



1 "Human services provider" includes a social worker, case  
2 worker, or investigator employed by a private organization  
3 providing human services under a contract with a governmental  
4 contracting agency.

5 "Overtime compensation" means compensation based on not  
6 less than one and one-half times the human services providers'  
7 basic hourly rate of pay plus the cost to an employer of  
8 furnishing a human services provider with fringe benefits as  
9 described in the definition of "wages"; provided that if the  
10 department determines that a prevailing wage is defined by a  
11 collective bargaining agreement, the overtime compensation shall  
12 be at the rates set by the applicable collective bargaining  
13 agreement.

14 "Wages", "rate of wages", "wage rates", "minimum wages" and  
15 "prevailing wages" mean the basic hourly rate and the cost to an  
16 employer of furnishing a human services provider with fringe  
17 benefits, including but not limited to health and welfare  
18 benefits, vacation benefits, and pension benefits, whether paid  
19 directly or indirectly to the human services provider.

20 § -2 **Applicability; wages, hours, and other**

21 **requirements.** (a) This chapter shall apply to every contract



1 in excess of \$2,000 for human services to which a governmental  
2 contracting agency is a party.

3 For the purposes of this subsection:

4 "Contract" includes but is not limited to any agreement,  
5 purchase order, or voucher in excess of \$2,000 for human  
6 services.

7 "Governmental contracting agency" includes:

- 8 (1) Any person or entity that causes either directly or  
9 indirectly the provision of human services; and  
10 (2) Any public-private partnership.

11 "Party" includes eligible bidders for the provision of  
12 human services.

13 (b) Every human services provider performing work pursuant  
14 to this chapter shall be paid no less than prevailing wages;  
15 provided that:

- 16 (1) The prevailing wages shall be established by the  
17 director as the sum of the basic hourly rate and the  
18 cost to an employer of providing a human services  
19 provider with fringe benefits. In making prevailing  
20 wage determinations, the following shall apply:

- 21 (A) The director shall make separate findings of:



1 (i) The basic hourly rate; and

2 (ii) The rate of contribution or cost of fringe  
3 benefits paid by the employer when the  
4 payment of the fringe benefits by the  
5 employer constitutes a prevailing practice.  
6 The cost of fringe benefits shall be  
7 reflected in the wage rate scheduled as an  
8 hourly rate; and

9 (B) The rates of wages that the director shall regard  
10 as prevailing in each corresponding  
11 classification of human services providers shall  
12 be the rate of wages paid to the greatest number  
13 of those employed in the State, the modal rate,  
14 in the corresponding classes of human services  
15 provider in circumstances that are similar to the  
16 contract work;

17 (2) Except for the prevailing wages established by  
18 subsections (h) and (i), the prevailing wages shall be  
19 not less than the wages payable under federal law to  
20 corresponding classes of human services providers  
21 employed in the State that are prosecuted under



1 contract or agreement with the government of the  
2 United States; and

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

8 (c) No human services provider employed pursuant to this  
9 chapter by the State or any county shall be permitted or  
10 required to work on Saturday, Sunday, or a legal holiday of the  
11 State or in excess of eight hours on any other day unless the  
12 human services provider receives overtime compensation for all  
13 hours worked on Saturday, Sunday, and a legal holiday of the  
14 State or in excess of eight hours on any other day. The rate  
15 for overtime compensation and any other premium rates of pay  
16 shall be those rates specified in an applicable collective  
17 bargaining agreement when the basic hourly rate is established  
18 by a collective bargaining agreement.

19 For purposes of determining overtime compensation under  
20 this subsection, the basic hourly rate of any human services  
21 provider shall not be less than the basic hourly rate determined



1 by the director to be the prevailing basic hourly rate for  
2 corresponding classes of human services providers in similar  
3 circumstances in the State.

4 (d) The contractor or the contractor's subcontractor shall  
5 pay all human services providers that it employs,  
6 unconditionally and not less often than once a week, and without  
7 deduction or rebate on any account, except as allowed by law,  
8 the full amounts of their wages including overtime, accrued to  
9 not more than five working days prior to the time of payment, at  
10 wage rates not less than those deemed to be prevailing,  
11 regardless of any contractual relationship that may be alleged  
12 to exist between the contractor or subcontractor and the human  
13 services providers. The rates of wages to be paid shall be  
14 posted by the contractor in a prominent and easily accessible  
15 place, and a copy of the rates of wages required to be posted  
16 shall be given to each human services provider employed under  
17 the contract by the contractor at the time each human services  
18 provider is employed, except that where there is a collective  
19 bargaining agreement, the contractor does not have to provide  
20 the contractor's employees the wage rate schedules.



1           (e) The governmental contracting agency may withhold from  
2 the contractor so much of the accrued payments as the  
3 governmental contracting agency may consider necessary to pay to  
4 the human services providers employed by the contractor or any  
5 subcontractor the difference between the prevailing wages and  
6 the wages received and not refunded by the human services  
7 providers.

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

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

21           (h) When:



(1) A party has entered into a collective bargaining agreement with a bona fide labor union governing the party's workforce; and

(2) The collective bargaining agreement has been properly submitted to the director under section -34, the terms of the collective bargaining agreement and associated provisions shall be deemed the prevailing wages and terms serving as the basis of compliance with this chapter for work on the contract by the party's workforce; provided that this subsection does not affect the director's enforcement powers contained in subsection (g).

As used in this subsection, "party" includes eligible bidders for the provision of human services.

**§ -3 Provisions of law; waiver.** No provision of this chapter may in any way be contravened or set aside by private contract.

**§ -4 Payrolls and payroll records.** (a) Every contract subject to this chapter and the specifications for those contracts shall contain a provision that a certified copy of all payrolls and a certified copy of a fringe benefit reporting form supplied by the department or any certified form that contains



1 all of the required fringe benefit information shall be  
2 submitted weekly to the governmental contracting agency for  
3 review. The fringe benefit reporting form shall itemize the  
4 cost of fringe benefits paid by the general contractor or  
5 subcontractor for:

6 (1) Health and welfare benefits;

7 (2) Pension and annuity benefits;

8 (3) Vacation benefits;

9 (4) Continuing education and training benefits; and

10 (5) Other fringe benefit costs paid by the general

11 contractor or subcontractor.

12 The general contractor shall be responsible for the submission  
13 of certified copies of the payrolls of all subcontractors. The  
14 certification shall affirm that the payrolls are correct and  
15 complete, that the wage rates contained therein are not less  
16 than the applicable rates contained in the wage determination  
17 decision of the director of labor and industrial relations  
18 attached to the contract, and that the classifications set forth  
19 for each human services provider conform with the work the human  
20 services provider performed. Any certification discrepancy



1 found by the contracting agency shall be reported to the general  
2 contractor and the director to effect compliance.

3 (b) Payroll records for all human services providers  
4 performing work shall be maintained by the general contractor  
5 and the general contractor's subcontractors, if any, during the  
6 course of the work and preserved for a period of three years  
7 thereafter. The records shall contain the name of each  
8 employee, the employee's correct classification, rate of pay,  
9 the itemized fringe benefit reporting form pursuant to  
10 subsection (a), daily and weekly number of hours worked,  
11 deductions made, and actual wages paid.

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

16 (1) Fails to make payroll records accessible within ten  
17 days;

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

20 (3) Fails to keep or falsifies any record required under  
21 this chapter,



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

2       §   -5 Termination of work on failure to pay agreed wages;  
3 completion of work; contract and specifications provision.

4 Every contract and the specifications for such contract shall  
5 contain a provision that if the governmental contracting agency  
6 finds that any human services provider employed by the  
7 contractor or any subcontractor has been or is being paid wages  
8 at a rate less than the required rate by the contract or the  
9 specifications, or has not received the human services  
10 provider's full overtime compensation, the governmental  
11 contracting agency may, by written notice to the contractor,  
12 terminate the contractor's right, or the right of any  
13 subcontractor, to proceed with the work or with the part of the  
14 work in which the required wages or overtime compensation have  
15 not been paid and may complete such work or part by contract or  
16 otherwise, and the contractor and the contractor's sureties  
17 shall be liable to the governmental contracting agency for any  
18 excess costs occasioned thereby.

19                   **PART II. ADMINISTRATION AND ENFORCEMENT**

20       §   -21 Governmental contracting agency responsibilities.

21 The governmental contracting agency shall:



1       (1) Pay or cause to be paid, within sixty days of a  
2       determination made by the director, directly to human  
3       services providers or to the director, from any  
4       accrued payment withheld under the terms of the  
5       contract, any wages or overtime compensation found to  
6       be due to human services providers under the terms of  
7       the contract subject to this chapter, or any penalty  
8       assessed;

9       (2) Order any contractor to pay, within sixty days of a  
10      determination made by the director, any wages or  
11      overtime compensation that the contractor, or any of  
12      the contractor's subcontractors, should have paid to  
13      any human services provider under any contract subject  
14      to this chapter, or any penalty assessed which the  
15      contractor, or any of the contractor's subcontractors,  
16      should have paid to the director; and

17      (3) Report to the director any violation of this chapter,  
18      the rules adopted thereunder, or the terms of the  
19      contract subject to this chapter.

20      §   -22   **Investigation; penalties.**   (a) The department may  
21      conduct investigations to determine compliance with this



1 chapter. The department may examine the records of any  
2 contractor, either during or after the performance of any  
3 contract, or subpoena the records. The department may also  
4 interview employees during working hours on the job.

5 (b) If any contractor interferes with or delays any  
6 investigation by the department, the governmental contracting  
7 agency, on receipt of written notice from the director of the  
8 interference or delay, shall withhold from the contractor all  
9 further payments until the director has notified the  
10 governmental contracting agency in writing that the interference  
11 or delay has ceased. Interference or delay includes failure to  
12 provide requested records under section -4; failure to allow  
13 employees to be interviewed during working hours on the job; and  
14 falsification of records required under this chapter. The  
15 department shall assess a penalty of \$10,000 per contract for  
16 interference or delay. For each day thereafter that the  
17 employer fails to cooperate, the director shall assess a penalty  
18 of \$1,000 per contract.

19 (c) The names of all complainants shall be withheld from  
20 the employer unless prior permission is given by the complainant  
21 to release the complainant's name.



1           §    **-23 Notification of violation.**   (a) When the

2 department, either as a result of a report by a contracting  
3 agency or as a result of the department's own investigation,  
4 finds that a violation of this chapter or of the terms of the  
5 contract subject to this chapter has been committed, the  
6 department shall issue a notification of violation to the  
7 contractor or subcontractor involved.

8           (b) A notification of violation shall be final and  
9 conclusive unless within twenty days after a copy has been sent  
10 to the contractor, the contractor files a written notice of  
11 appeal with the director.

12           (c) A hearing on the written notice of appeal shall be  
13 held by a hearings officer appointed by the director in  
14 conformance with chapter 91.

15           Hearings on appeal shall be held within sixty days of the  
16 notice of appeal and a decision shall be rendered by the  
17 hearings officer within sixty days after the conclusion of the  
18 hearing, stating the findings of fact and conclusions of law.  
19 The hearings officer may extend the due date for decision for  
20 good cause; provided that all parties agree.



1       §    **-24 Violations; penalties.**   (a)   Where the department  
2 finds that a first violation of this chapter has been committed,  
3 the department, after proper notice and opportunity for hearing,  
4 shall assess and order the person or firm in violation to be  
5 jointly and severally liable for a penalty equal to twenty-five  
6 per cent of the amount of back wages found due or \$250 for each  
7 offense, up to \$2,500, whichever is greater.

8       (b)   Where the department finds that a second violation of  
9 this chapter has been committed, whether on the same or another  
10 contract, within two years of the first notification of  
11 violation, the department, after proper notice and opportunity  
12 for hearing, shall assess and order the person or firm in  
13 violation to be jointly and severally liable for a penalty equal  
14 to the amount of back wages found due or \$500 for each offense,  
15 up to \$5,000, whichever is greater.

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



(1) Jointly and severally liable for a penalty equal to two times the amount of back wages found due or \$1,000 for each offense, up to \$10,000, whichever is greater; and

(2) Suspended from doing any new work for a governmental contracting agency for a period of three years, except as provided in section -25(a)(2). The suspension shall be effective on the later of the twenty-first day after the notification of violation has been sent, or upon the issuance of a decision pursuant to section -23(c).

(d) A first, second, or third violation refers to each contract in which the department finds that a contractor has failed to comply with this chapter.

(e) Both the person and firm shall be listed on each notice of violation.

(f) As used in this section:

"Firm" includes a non-profit, corporation, limited liability company, partnership, and limited partnership.



1 "New work on a contract" includes any contract in which the  
2 suspended person or firm has not begun work as of the date of  
3 the suspension order.

4 "Offense" means each section of this chapter under which  
5 the contractor is cited; provided that, with respect to  
6 prevailing wage and overtime citations under section -2, each  
7 employee and each contract shall be considered a separate  
8 offense.

9 "Person" includes a sole proprietor and the principal  
10 responsible managing employee of a firm.

11 § -25 **Suspension.** (a) The director shall suspend a  
12 person and firm as follows:

13 (1) For a first or second violation, if a person or firm  
14 fails to pay wages found due or any penalty assessed,  
15 or both, the person and firm shall be immediately  
16 suspended from doing any work on any contract with a  
17 governmental contracting agency until all wages and  
18 penalties are paid in full;

19 (2) For a third violation, the suspension shall be as  
20 prescribed in section -24(c); provided that if the  
21 person or firm continues to violate this chapter or



1 fails to pay wages found due or any penalty assessed,  
2 or both, then the person and firm shall immediately be  
3 suspended from doing any work on any contract with a  
4 governmental contracting agency for a mandatory three-  
5 year period. If after the three-year suspension  
6 period, the wages found due or penalties assessed are  
7 still unpaid, the suspension shall remain in force  
8 until payment is made in full; or

9 (3) For falsification of records, or for delay or  
10 interference with an investigation pursuant to  
11 section -22, the person and firm shall be  
12 immediately suspended for a period of three years.

13 (b) The director shall immediately notify the governmental  
14 contracting agency, comptroller, auditor or director of finance  
15 of the county, and, in the case of a suspended subcontractor,  
16 general contractor of any suspension order.

17 (c) No contract shall be awarded to the person and firm so  
18 suspended or to any firm, corporation, partnership, or  
19 association in which the person or firm has an interest, direct  
20 or indirect, until three years have elapsed from the date of  
21 suspension, unless the period of suspension is reduced or



1 extended as herein provided. Any contract awarded in violation  
2 of this subsection shall be void.

3 (d) As used in this section, "person" includes a sole  
4 proprietor and the principal responsible managing employee of a  
5 firm.

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 human services providers for wages or overtime compensation due  
16 under this chapter, and the contractor has failed to pay the  
17 wages or overtime compensation, the contractor and the  
18 contractor's sureties shall be liable to the human services  
19 providers in the amount of the unpaid wages and overtime  
20 compensation due, and in an additional equal amount as  
21 liquidated damages. However, any claim for liquidated damages,



1 insofar as the surety or sureties are concerned, shall not be  
2 paid until the claims of all other creditors have been  
3 satisfied.

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

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

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

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

20       (c) It shall be no defense that the human services  
21 providers accepted or agreed to accept less than the required



1 rate of wages or overtime compensation or voluntarily made  
2 refunds.

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

16 § -29 **Rules.** The director shall adopt reasonable rules  
17 pursuant to chapter 91 to determine the prevailing wages,  
18 enforcement, administration, and general purposes of this  
19 chapter. These rules shall have the force and effect of law.

20 § -30 **Application of this chapter to contracts entered**  
21 **into without regard to other laws.** The fact that a contract is



1 or was entered into without regard to chapter 103D, or upon a  
2 cost-plus-a-fixed fee basis, or cost-plus-a-fixed percentage  
3 basis, or without advertising for proposals, shall not render  
4 this chapter inapplicable to the contract, if this chapter would  
5 otherwise be applicable.

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

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

19       §    **-33 Inspection.** (a) If work performed in accordance  
20 with this chapter, in excess of eight hours in any day or on a  
21 Saturday, Sunday, or legal holiday of the State, requires



1 inspection by the State or any county, the inspection shall be  
2 conducted by the State or county, as applicable.

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

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

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

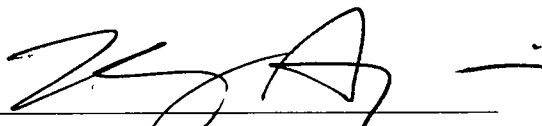
19 SECTION 2. This Act does not affect rights and duties that  
20 matured, penalties that were incurred, and proceedings that were  
21 begun before its effective date.



1 SECTION 3. This Act shall take effect upon its approval.

2

INTRODUCED BY:

  
(B12)



# S.B. NO. 1568

**Report Title:**

Prevailing Wages for Human Services Providers

**Description:**

Requires prevailing wages for human services providers.

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

