
A BILL FOR AN ACT

RELATING TO THE HAWAII LIVING WAGE LAW.

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

1 SECTION 1. The legislature finds that the state government
2 awards contracts for services each year for substantial amounts
3 that result in the creation and maintenance of a wide variety of
4 employment opportunities in Hawaii. These contracts are paid
5 for by taxpayer dollars and should be used to promote the
6 creation and sustenance of jobs that will increase consumer
7 income, decrease levels of poverty, invigorate neighborhood
8 businesses, and reduce the need for taxpayer-funded public
9 assistance programs.

10 Therefore, it is the intent of this Act to ensure that
11 employees of private-sector vendors who contract with the state
12 government to provide certain services earn an hourly wage that
13 is sufficient for a family of four to live at or above the
14 federal poverty level.

15 SECTION 2. The Hawaii Revised Statutes is amended by
16 adding a new chapter to be appropriately designated and to read
17 as follows:



1 "CHAPTER
2 LIVING WAGE

3 § -1 Definitions. As used in this chapter, unless the
4 context clearly requires otherwise:

5 "Contracting department" means:

- 6 (1) Any state department established pursuant to section
- 7 26-4, including any boards, commissions, agencies,
- 8 offices, or corporations administratively attached
- 9 thereto, but excluding the University of Hawaii;
- 10 (2) The legislature;
- 11 (3) The judiciary; and
- 12 (4) The office of Hawaiian affairs.

13 The Hawaii health systems corporation shall not be considered a
14 contracting department.

15 "Covered employee" means an individual employed by a
16 covered vendor who directly expends or would directly expend the
17 person's time on the service contract or the service subcontract
18 with the contracting department.

19 "Covered vendor" means any for-profit employer who employs
20 at least twenty-five full-time equivalent employees or any
21 nonprofit employer who employs at least one hundred full-time



1 equivalent employees who has been awarded a service contract or
2 servicesubcontract after the effective date of this chapter.

3 "Department" means the department of labor and industrial
4 relations. The department shall be responsible for the overall
5 implementation, compliance, and enforcement of this chapter.

6 "Full-time" means forty working hours per week.

7 "Full-time equivalent" is a formula to calculate the number
8 of employee work hours that equal one full-time position.

9 "Living wage" means the rate established by the department
10 as the minimum hourly wage rate that shall be paid to a covered
11 employee by a covered vendor pursuant to the formula set forth
12 in section -4.

13 "Person" means one or more of the following or their
14 agents, employees, and representatives: individuals,
15 corporations, partnerships, joint ventures, associations, labor
16 organizations, educational institutions, mutual companies,
17 joint-stock companies, trusts, unincorporated organizations,
18 trustees, trustees in bankruptcy, receivers, fiduciaries, and
19 all other entities recognized by law by this State.

20 "Service contract" means any single contract of \$100,000 or
21 more awarded to a vendor by a contracting department for the
22 furnishing of services.



1 "Service subcontract" means a subcontract of \$25,000 or
2 more awarded to a vendor by a covered vendor; provided that the
3 subcontract is paid for by funds from the service contract.

4 "Vendor agreement" means a written agreement between the
5 State, through a contracting department, and any covered vendor
6 that is executed at the time a service contract is signed with
7 the State or a subcontract is signed with a covered vendor.

8 § -2 Applicability, exemptions, and waivers. (a)

9 Except for the exemptions listed in subsection (b), this chapter
10 shall apply to all covered vendors. The department shall be
11 responsible for the overall implementation, compliance, and
12 enforcement of this chapter.

13 (b) The following types of service contracts and service
14 subcontracts shall be exempt from the requirements of this
15 chapter:

- 16 (1) Construction contracts awarded by the State that are
17 subject to chapter 104;
- 18 (2) Contracts awarded to work-study or cooperative
19 educational programs; provided that the contract is
20 for stipends to students in the programs;



1 (3) Contracts awarded to the department of public safety
2 or its attached agencies where contracted employees
3 are inmates of correctional institutions;

4 (4) Contracts awarded to the department of commerce and
5 consumer affairs or its attached agencies where
6 contracted employees are paid stipends for proctoring,
7 grading, supervising, or recording examinations; and

8 (5) Contracts awarded to vendors who provide services to
9 the State under which trainees are paid a stipend or
10 wage as part of a job-training program; provided that
11 the trainees do not replace current state-funded
12 positions.

13 (c) A covered vendor shall certify and submit to the
14 department an affidavit in a form approved by the department and
15 provided by the contracting department and signed by a principal
16 officer of the covered vendor, attesting that one of the
17 exemptions in this section applies to the covered vendor before
18 the department may grant an exemption to the covered vendor.
19 The covered vendor shall also submit a copy of the affidavit to
20 the contracting department.

21 (d) The department may grant general and hardship waivers
22 from this chapter as follows:



1 (1) A general waiver may be granted where application of
2 this chapter to a particular service contract or
3 service subcontract violates a specific state or
4 federal statute, rule, regulation, or constitutional
5 provision. All general waiver requests shall include
6 the following:

7 (A) The service contract or service subcontract to
8 which this chapter applies;

9 (B) The conflicting statutory, regulatory, or
10 constitutional provision that makes compliance
11 with this chapter unlawful, and a copy of each
12 such provision; and

13 (C) An explanation of how compliance with this
14 chapter would violate the cited provision, and
15 the consequences that would result if this
16 violation were to occur.

17 A general waiver request shall be submitted directly
18 to the department and a copy submitted to the
19 contracting department;
20 and

21 (2) With respect to hardship waivers, a contracting
22 department shall monitor, and as necessary, recommend



1 to the department, individual or group exemptions
2 necessary in cases in which compliance with this
3 chapter would cause undue economic hardship. These
4 waivers shall be subject to the department's approval
5 after a public hearing on the request has been held.
6 All hardship waiver requests shall include the
7 following:

- 8 (A) The service contract or service subcontract to
9 which this chapter applies;
- 10 (B) The lower wage paid by the covered vendor; and
- 11 (C) A detailed explanation of how the payment of a
12 living wage will cause undue economic hardship,
13 including supporting financial statements.

14 **§ -3 Notification requirements.** All contracting
15 departments engaged in the awarding of contracts shall provide
16 in writing an explanation designed by the department concerning
17 the requirements of this chapter in all requests for bids for
18 service contracts with the State. All persons who have signed a
19 service contract with the State shall forward a copy of the
20 requirements to any person submitting a bid for a service
21 subcontract on the service contract.



1 § -4 Living wage payment to employees. (a) Covered
2 vendors shall pay no less than the living wage to covered
3 employees.

4 (b) The living wage shall be calculated on an hourly basis
5 and shall be no less than \$9.43 beginning on July 1, 2007. Each
6 July 1 thereafter, the living wage shall be recalculated
7 according to each of the adjustments set forth in paragraphs (1)
8 to (3). The highest of the three figures derived in this manner
9 shall be the living wage applicable until the following June 30:

10 (1) Adjustment to the hourly rate which at forty hours of
11 work a week for fifty-two weeks a year would be equal
12 to but not less than the poverty threshold in Hawaii
13 for a family of four as published by the United States
14 Department of Health and Human Services;

15 (2) Adjustment in proportion to the increase at the
16 immediately preceding December 31 over the year-
17 earlier level of the annual average consumer price
18 index for all urban consumers in Honolulu as published
19 by the Bureau of Labor Statistics, United States
20 Department of Labor, applied to \$9.43; or

21 (3) Adjustment to one hundred ten per cent of the current
22 federal minimum wage.



1 § -5 Duties of covered vendors; payroll records; vendor
2 agreements; annual reports. Covered vendors shall:

3 (1) With respect to maintenance of payroll records,
4 maintain payrolls for all covered employees and basic
5 records relating thereto for a period of three years.

6 The records shall contain:

7 (A) The name and address of each employee;

8 (B) Each employee's job title and classification;

9 (C) The number of hours worked each day by each
10 employee;

11 (D) Each employee's gross wages, the deductions made,
12 and the actual wages paid;

13 (E) A record of fringe benefit payments, including:

14 (i) Contributions to approved plans, funds, or
15 programs;

16 (ii) Additional cash payments; or

17 (iii) Both;

18 and

19 (F) Any other data that may be required by the
20 contracting department from time to time;

21 (2) With respect to examination of payrolls, permit a
22 representative of the department or its designee to



1 observe work being performed at the work site, to
2 interview employees, and to examine the books and
3 records relating to the payrolls being investigated;

4 (3) With respect to vendor agreements, at the time of
5 signing a service contract with the State or a service
6 subcontract with a vendor, sign contracts that
7 include:

8 (A) The name of the program or project under which
9 the service contract or service subcontract is
10 being awarded;

11 (B) A local contact name, address, and phone number
12 for the covered vendor;

13 (C) A written commitment by the covered vendor to pay
14 all covered employees not less than the living
15 wage, subject to adjustment each July 1, and to
16 comply with this chapter;

17 (D) A workforce profile of covered employees paid for
18 by the service contract or service subcontract,
19 including the employees' job titles and wage
20 ranges; and

21 (E) For service contracts, a list of all service
22 subcontracts either awarded or that will be



1 awarded to vendors with funds from the service
2 contract. Any covered vendor awarded a service
3 contract shall notify the contracting department
4 within three working days of signing a service
5 subcontract with a vendor;

6 and

7 (4) By July 31 of each year, provide annual reports to the
8 department of their employment activities, including
9 the job positions charged to the contract and the wage
10 ranges of those positions.

11 § -6 **Enforcement.** (a) If necessary for the enforcement
12 of this chapter, the department may issue subpoenas and compel
13 the attendance and testimony of witnesses and production of
14 books, papers, records, and documents relating to payroll
15 records necessary for hearing, investigations, and proceedings.
16 The department may apply to a court of competent jurisdiction to
17 enforce these provisions.

18 (b) If an individual believes that the individual is a
19 covered employee, or if the individual is an applicant for a
20 position to be filled by a covered employee and believes that
21 the employer is not complying with the requirements of this
22 chapter, the individual may file a complaint with the



1 department. Complaints by covered employees of alleged
2 violations may be made at any time. Written or oral statements
3 made by the individual shall be treated as confidential and
4 shall not be disclosed to the covered vendor without the consent
5 of the individual. A complaint of noncompliance with this
6 chapter may be filed with the department by any person, who
7 shall provide a copy of the complaint to each covered vendor
8 against whom the complaint is made within five business days.

9 (c) If a covered vendor discharges, reduces the
10 compensation of, or discriminates against any covered employee
11 or any other individual for making a complaint to the
12 department, otherwise asserting the individual's rights under
13 this chapter, participating in any of the proceedings under this
14 chapter, or using any civil remedies to enforce the individual's
15 rights under this chapter, the covered vendor shall be
16 considered in violation of this chapter. The department shall
17 investigate allegations of retaliation or discrimination and, if
18 found to be true, after notice and a hearing, shall order
19 appropriate relief to the employee or individual and assess
20 penalties against the covered vendor and may suspend the
21 contract or order the service contractor to suspend the service
22 subcontract.



1 (d) The department or its designee shall investigate all
2 complaints of noncompliance. Investigations may include routine
3 reviews, spot checks, and investigations pursuant to complaints.
4 The department shall examine promptly all payrolls for
5 compliance upon receiving a complaint in furtherance of any
6 investigation.

7 (e) If the department finds evidence that the covered
8 vendor is not in compliance or has violated any of the
9 provisions of this chapter, the department shall order any
10 remedial measures that may be required to ensure compliance,
11 including but not limited to ordering back pay to covered
12 employees for noncompliance with section -4. If the covered
13 vendor does not comply with the department's order within ten
14 working days, the department shall review the facts of the
15 finding and may proceed with a formal hearing and investigation.
16 If the department decides not to proceed with a hearing, it
17 shall provide a statement of the reasons for the decision.

18 § -7 Penalties; remedies. (a) In the event that the
19 department determines, after notice and hearing, that any
20 covered vendor has failed to pay the living wage rate or has
21 otherwise violated this chapter, the department may impose any
22 or all of the following penalties or remedies:



- 1 (1) A fine not to exceed \$300 for each affected covered
2 employee for each day that the covered vendor is in
3 violation of this chapter;
- 4 (2) The filing of a complaint with the pertinent state or
5 federal agency;
- 6 (3) Wage restitution for each affected employee;
- 7 (4) Suspension of ongoing service contract and service
8 subcontract payments;
- 9 (5) Ineligibility to bid for future contracts with the
10 State for three years or until all penalties and
11 restitution have been paid in full; and
- 12 (6) Any other action deemed appropriate and within the
13 discretion and authority of the State.

14 (b) No remedy set forth in this chapter is intended to be
15 exclusive or a prerequisite for asserting a claim for relief to
16 enforce the rights granted under this chapter in a court of law.
17 This chapter shall not be construed to limit an employee's right
18 to bring a common law cause of action for wrongful termination.

19 § -8 **Earned income credit notification.** Covered vendors
20 shall inform their covered employees earning less than \$12 per
21 hour, or any other amount as determined by the department, of
22 their possible right to apply for and receive the federal earned



1 income credit. The department shall assist any covered vendors
2 to the fullest extent possible to implement this section."

3 SECTION 3. Living wage advisory committee established;
4 duties; composition and term; meetings; rules; conflict of
5 interest. (a) There is established the living wage advisory
6 committee, which shall be attached to the department of labor
7 and industrial relations for administrative purposes only.

8 (b) The living wage advisory committee shall:

- 9 (1) Review and evaluate the effectiveness of this chapter
10 in creating and retaining living wage jobs in Hawaii;
- 11 (2) Review and evaluate the implementation and enforcement
12 of this chapter; and
- 13 (3) Submit to the legislature and the governor:
- 14 (A) An interim preliminary report no later than
15 twenty days prior to the convening of the regular
16 session of 2008;
- 17 (B) An interim annual report no later than twenty
18 days prior to the convening of the regular
19 session of 2009 and an interim annual report no
20 later than twenty days prior to the convening of
21 the regular session of 2010; and



1 (C) A final report no later than twenty days prior to
2 the convening of the regular session of 2011,
3 which shall include recommendations, including
4 specifically whether or not to reenact a living
5 wage law for Hawaii.

6 (c) The living wage advisory committee shall comprise five
7 members who shall serve until the committee is terminated
8 pursuant to subsection (i) and whom the governor shall appoint
9 as follows:

- 10 (1) One member representing a labor union;
11 (2) One member representing a living wage advocacy
12 organization;
13 (3) One member representing a community-based organization
14 operating solely within the State of Hawaii;
15 (4) One member representing the Chamber of Commerce of
16 Hawaii; and
17 (5) One member representing small businesses in Hawaii.

18 The committee shall appoint from its members a chairperson and
19 secretary. Three members shall constitute a quorum, whose
20 affirmative vote shall be necessary for all actions by the
21 committee.



1 (d) Members shall serve without compensation, but may be
2 reimbursed for the necessary expenses, including travel
3 expenses, incurred in the performance of their duties.

4 (e) The committee shall meet quarterly or more frequently
5 as required. All meetings of the committee shall be open to the
6 public.

7 (f) The committee shall adopt rules in accordance with
8 chapter 91 governing public participation and testimony at
9 hearings and meetings; provided that the committee shall have
10 the power to issue interim rules, which shall be exempt from the
11 public notice, public hearing, and gubernatorial approval
12 requirements of chapter 91. The interim rules shall be valid
13 for not longer than one year.

14 (g) No person shall serve on the committee who has any
15 actual or potential conflict of interest as defined in chapter
16 84. No member of the committee shall participate in any
17 proceeding concerning a covered vendor, covered employee, or
18 applicant for waiver or exemption, if the member or any of the
19 member's immediate family has a direct or indirect financial
20 interest in the covered vendor, covered employee, or applicant
21 for waiver or exemption, or in the award of a service contract,



1 service subcontract, or the granting of relief to the covered
2 vendor, covered employee, or applicant for waiver or exemption.

3 (h) The department of labor and industrial relations shall
4 provide staff assistance to the committee and shall provide all
5 information relating to the implementation of chapter ,
6 Hawaii Revised Statutes, to the committee at least quarterly and
7 upon the committee's request for the committee's review and
8 evaluation of the effectiveness of this chapter.

9 (i) The committee shall terminate on December 31, 2011.

10 SECTION 4. If any provision of this Act, or the
11 application thereof to any person or circumstance is held
12 invalid, the invalidity does not affect other provisions or
13 applications of the Act, which can be given effect without the
14 invalid provision or application, and to this end the provisions
15 of this Act are severable.

16 SECTION 5. This Act shall take effect on July 1, 2059, and
17 shall be repealed on July 1, 2011; provided that section 3,
18 which establishes the living wage advisory committee, shall be
19 repealed on December 31, 2011.



Report Title:

Living Wage for Hawaii

Description:

Requires private firms contracted by state government to pay covered workers a Hawaii living wage of at least \$9.43 an hour, to begin on 7/1/59 and adjusted thereafter. Requires DLIR to implement living wage. Establishes temporary living wage advisory committee to evaluate law. Repealed 7/1/2011. (HB33 HD2)

