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## 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  
2 working for contractors of the State and counties deserve wage  
3 protections. Similarly, even stronger protections were  
4 established in 1965 for employees of federal contractors under  
5 the McNamara-O'Hara Service Contracts Act (41 U.S.C. §351 et  
6 seq.). The legislature further finds that the existing language  
7 of section 103-55, Hawaii Revised Statutes, while laudatory in  
8 purpose, exempts nearly all employees who might possibly benefit  
9 from the section. It contains insufficient provisions for  
10 enforcement, rendering it ineffective in accomplishing the  
11 express purpose of the law: to ensure that contracted "services  
12 to be rendered shall be performed by employees paid at wages or  
13 salaries not less than the wages paid to public officers and  
14 employees for similar work."

15           Paraphrasing the report of the senate labor committee in  
16 recommending passage of the State's prevailing wage law for  
17 construction laborers in 1955, the legislature declare that it



1 is the public policy of the State that bids for the performance  
2 of public work shall be based on the relative skill and  
3 efficiency of the contractors concerned and not on a difference  
4 in wages paid. To state the principle another way, government  
5 money, coming from the taxes of all, should not be used to  
6 subsidize contractors who are depressing the wages of some.

7 According to the 2006 Poverty Guidelines for Hawaii, as  
8 published by the United States Department of Health and Human  
9 Services, a family of four must be earning at least \$23,000.  
10 This Act proposes that the wages of employees of a contractor  
11 providing services to the State of Hawaii and any of the  
12 counties be no less than the prorated hourly equivalent of the  
13 poverty threshold ( $\$11.06 = \$23,000/2,080$ ).

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

16 **"§103-55 Wages, hours, and working conditions of employees**  
17 **of contractors performing services.** (a) Before any offeror  
18 enters into a contract to perform services in excess of  
19 [~~\$25,000~~] \$5,000 for any governmental agency, the offeror shall  
20 certify that the services to be performed will be performed  
21 under the following conditions:



1           Wages. The services to be rendered shall be performed by  
2 employees paid at wages or salaries not less than the [wages  
3 ~~paid to public officers and employees for similar work.~~] wage  
4 based on the annual poverty guidelines for Hawaii for a family  
5 of four as determined and periodically adjusted by the United  
6 States Department of Health & Human Services.

7           Compliance with labor laws. All applicable laws of the  
8 federal and state governments relating to workers' compensation,  
9 unemployment compensation, payment of wages, and safety will be  
10 fully complied with.

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

21           It shall be the duty of the governmental contracting agency  
22 awarding the contract to perform services [~~in excess of \$25,000~~]



1 and the department of labor and industrial relations to enforce  
2 this section.

3 (c) This section shall apply to all contracts to perform  
4 services in excess of [~~\$25,000,~~] \$5,000 including contracts to  
5 supply ambulance service and janitorial service.

6 This section shall not apply to:

7 (1) Managerial[~~, supervisory, or clerical~~] or supervisory  
8 personnel[~~-~~];

9 (2) Contracts for supplies[~~-~~] or materials[~~, or~~  
10 ~~printing-~~];

11 (3) Contracts for utility services[~~-~~];

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

17 [~~Contracts for professional services.~~

18 ~~(6)]~~ Contracts to operate refreshment concessions in public  
19 parks[~~, or to provide food services to educational~~  
20 ~~institutions.~~

21 ~~(7) Contracts with nonprofit institutions].~~



1        (d) Any bid specification offered or contract entered into  
2 by a governmental body under this section shall contain the  
3 following:

4        (1) A provision requiring the contractor to ensure the  
5 right of all employees under relevant state or federal  
6 law to form, join, or assist labor organizations,  
7 to bargain collectively through representatives of  
8 their own choosing, and to exercise these legal rights  
9 without interference;

10       (2) A provision that, if at any time during the contract  
11 period, a labor organization or any employee of the  
12 contractor seeks to organize employees of the  
13 contractor, the contractor shall commit no act or make  
14 any statement that will directly or indirectly state  
15 or imply the contractor's preference or non-preference  
16 for unionization of its employees in general or for  
17 recognition of any bona fide labor organization as the  
18 exclusive representative of the employees working on  
19 contracts covered by this section;

20       (3) A provision that, if at any time during the contract  
21 period, a labor organization or any employee of the  
22 contractor seeks to organize employees of the



1 contractor, the contractor shall grant access to its  
2 employees by any bona fide labor organization in the  
3 employee lunchrooms, lounges, or other non-public  
4 areas on the contractor's premises during employees  
5 off-work periods, for organizational purposes;  
6 provided that there is no interference with normal  
7 work operations; and

8 (4) A provision that, if during the contract period, a  
9 bona fide labor organization requests recognition  
10 within an appropriate bargaining unit, a disinterested  
11 neutral party selected by the director of labor and  
12 industrial relations shall conduct a review of  
13 employee authorization cards submitted by any labor  
14 organization in support of its claim to represent a  
15 majority of employees in an appropriate bargaining  
16 unit. If a majority of employees within a unit has  
17 designated the signatory labor organization to  
18 represent them, the contractor shall recognize that  
19 labor organization as the exclusive representative of  
20 the designated bargaining unit and negotiations will  
21 commence for a collective bargaining agreement.



1        (e) Any contractor found in violation of this section  
 2 shall pay a fine of \$5,000 per violation to the governmental  
 3 body, in addition to attorney's fees and costs, to the  
 4 governmental body or the affected employees.

5        (f) Any employer who violates any provision of this  
 6 section shall be liable to the employee or employees affected  
 7 for the amount of their unpaid wages or compensation, and in  
 8 case of wilful violation, for an additional amount equal to the  
 9 liquidated damages."

10        SECTION 3. Statutory material to be repealed is bracketed  
 11 and stricken. New statutory material is underscored.

12        SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Kirk Caldwell

~~Tom K. Green~~  
 Calvin H. Long

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**Report Title:**

Service Contracts Workers; Living Wage Requirements

**Description:**

Reduces the threshold for service contract worker wage provisions from \$25,000 to \$5,000; requires wages to be based on United States poverty guidelines for Hawaii; requires enforcement by the department of labor and industrial relations; extends additional rights to service contract employees.

