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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 declared 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 other than a nonprofit organization enters into a contract to  
19 perform services in excess of [~~\$25,000~~] \$5,000 for any  
20 governmental agency, or an offeror who is a nonprofit  
21 organization enters into a contract to perform services in  
22 excess of \$25,000 for any governmental agency, the offeror shall



1 certify that the services to be performed will be performed  
2 under the following conditions:

3 Wages. The services to be rendered shall be performed by  
4 employees paid at wages or salaries not less than the wage  
5 providing annual income equivalent to the annual poverty  
6 guideline for Hawaii for a family of four as determined and  
7 periodically adjusted by the United States Department of Health  
8 and Human Services; provided that employees of nonprofit  
9 organizations shall be paid at wages or salaries not less than  
10 the wages paid to public officers and employees for similar  
11 work.

12 Compliance with labor laws. All applicable laws of the  
13 federal and state governments relating to workers' compensation,  
14 unemployment compensation, payment of wages, and safety will be  
15 fully complied with.

16 (b) No contract to perform services for any governmental  
17 contracting agency in excess of [~~\$25,000~~] \$5,000 shall be  
18 granted unless all the conditions of this section are met[-];  
19 provided that where the contractor is a nonprofit organization,  
20 this section shall apply only to contracts in excess of \$25,000.  
21 Failure to comply with the conditions of this section during the  
22 period of contract to perform services shall result in



1 cancellation of the contract, unless [~~such~~] the noncompliance is  
2 corrected within a reasonable period as determined by the  
3 procurement officer. Final payment of a contract or release of  
4 bonds or both shall not be made unless the procurement officer  
5 has determined that the noncompliance has been corrected.

6 It shall be the duty of the governmental contracting agency  
7 awarding the contract to perform services [~~in excess of \$25,000~~]  
8 and the department of labor and industrial relations to enforce  
9 this section.

10 (c) [~~This~~] Except as provided in subsections (a) and (b),  
11 this section shall apply to all contracts to perform services in  
12 excess of [~~\$25,000,~~] \$5,000, including contracts to supply  
13 ambulance service and janitorial service.

14 This section shall not apply to:

- 15 (1) Managerial [~~, supervisory, or clerical~~] or supervisory  
16 personnel[-];
- 17 (2) Contracts for supplies[-] or materials [~~, or~~  
18 ~~printing.~~];
- 19 (3) Contracts for utility services[-];
- 20 (4) Contracts [~~to perform personal services under~~  
21 ~~paragraphs (2), (3), (12), and (15) of section 76-16,~~  
22 ~~paragraphs (7), (8), and (9) of section 46-33, and~~



1 ~~paragraphs (7), (8), and (12) of section 76-77.] with~~  
2 other governmental bodies; and

3 (5) [~~Contracts for professional services.~~

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

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

8 (d) Any bid specification offered or contract entered into  
9 by a governmental body under this section shall contain the  
10 following:

11 (1) A provision requiring the contractor to ensure the  
12 right of all employees under relevant state or federal  
13 law to form, join, or assist labor organizations,  
14 to bargain collectively through representatives of  
15 their own choosing, and to exercise these legal rights  
16 without interference;

17 (2) A provision that, if at any time during the contract  
18 period, a labor organization or any employee of the  
19 contractor seeks to organize employees of the  
20 contractor, the contractor shall commit no act or make  
21 any statement that will directly or indirectly state  
22 or imply the contractor's preference or non-preference



1 for unionization of its employees in general or for  
2 recognition of any bona fide labor organization as the  
3 exclusive representative of the employees working on  
4 contracts covered by this section;

5 (3) A provision that, if at any time during the contract  
6 period, a labor organization or any employee of the  
7 contractor seeks to organize employees of the  
8 contractor, the contractor shall grant access to its  
9 employees by any bona fide labor organization in the  
10 employee lunchrooms, lounges, or other non-public  
11 areas on the contractor's premises during employees  
12 off-work periods, for organizational purposes;  
13 provided that there is no interference with normal  
14 work operations; and

15 (4) A provision that, if during the contract period, a  
16 bona fide labor organization requests recognition  
17 within an appropriate bargaining unit, a disinterested  
18 neutral party selected by the director of labor and  
19 industrial relations shall conduct a review of  
20 employee authorization cards submitted by any labor  
21 organization in support of its claim to represent a  
22 majority of employees in an appropriate bargaining



1 unit. If a majority of employees within a unit has  
2 designated the signatory labor organization to  
3 represent them, the contractor shall recognize that  
4 labor organization as the exclusive representative of  
5 the designated bargaining unit and negotiations will  
6 commence for a collective bargaining agreement.

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

11 (f) Any employer who violates any provision of this  
12 section shall be liable to the employee or employees affected  
13 for the amount of their unpaid wages or compensation, and in  
14 case of wilful violation, for an additional amount equal to the  
15 liquidated damages.

16 (g) For the purposes of this section, "nonprofit  
17 organization" means a private, nonprofit, tax-exempt entity that  
18 is recognized as a tax-exempt organization under section  
19 501(c)(3) of the Internal Revenue Code of 1986, as amended."

20 SECTION 3. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

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



**Report Title:**

Service Contracts Workers; Living Wage Requirements

**Description:**

Reduces from \$25,000 to \$5,000 the applicability threshold of service contract wage, hour, and working condition requirements. Grandfathers nonprofits. Requires wages providing an annual income of at least the U.S. poverty guideline for Hawaii for a family of four. Includes provisions enhancing employees' ability to organize. (HB760 HD1)

