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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. Section 103-55, Hawaii Revised Statutes,  
10 contains insufficient provisions for enforcement, rendering it  
11 ineffective in accomplishing the express purpose of the law: to  
12 ensure that contracted "services to be rendered shall be  
13 performed by employees paid at wages or salaries not less than  
14 the wages paid to public officers and employees for similar  
15 work."

16           Paraphrasing the report of the senate labor committee in  
17 recommending passage of the State's prevailing wage law for



1 construction laborers in 1955, the legislature declared that it  
2 is the public policy of the State that bids for the performance  
3 of public work shall be based on the relative skill and  
4 efficiency of the contractors concerned and not on a difference  
5 in wages paid. To state the principle another way, government  
6 money, coming from the taxes of all, should not be used to  
7 subsidize contractors who are depressing the wages of some.

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

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

17 "**§103-55 Wages, hours, and working conditions of employees**  
18 **of contractors performing services.** (a) Before any offeror,  
19 other than a nonprofit organization, enters into a contract to  
20 perform services in excess of [~~\$25,000~~] \$5,000 for any  
21 governmental agency, or an offeror who is a nonprofit  
22 organization enters into a contract to perform services in



1 excess of \$25,000 for any governmental agency, the offeror shall  
2 certify that the services to be performed will be performed  
3 under the following conditions:

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

13       Compliance with labor laws. [All] The offeror shall comply  
14 with applicable laws of the federal and state governments  
15 relating to workers' compensation, unemployment compensation,  
16 payment of wages, and safety[ will be fully complied with].

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



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

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

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

16 This section shall not apply to:

- 17 (1) Managerial [~~, supervisory, or clerical~~] or supervisory  
18 personnel [~~];~~];
- 19 (2) Contracts for supplies [~~]~~ or materials [~~, or~~  
20 ~~printing~~];];
- 21 (3) Contracts for utility services [~~];~~];



- 1           (4) ~~Contracts [to perform personal services under~~  
2           ~~paragraphs (2), (3), (12), and (15) of section 76-16,~~  
3           ~~paragraphs (7), (8), and (9) of section 46-33, and~~  
4           ~~paragraphs (7), (8), and (12) of section 76-77.~~  
5           ~~(5) Contracts for professional services.]~~ with other  
6           governmental bodies; and  
7           [~~(6)~~] (5) Contracts to operate refreshment concessions in  
8           public parks[, or to provide food services to  
9           educational institutions.  
10          ~~(7) Contracts with nonprofit institutions].~~  
11          (d) Any bid specification offered or contract entered into  
12 by a governmental body under this section shall contain the  
13 following:  
14          (1) A provision requiring the contractor to ensure the  
15          right of all employees under relevant state or federal  
16          law to form, join, or assist labor organizations,  
17          to bargain collectively through representatives of  
18          their own choosing, and to exercise these legal rights  
19          without interference;  
20          (2) A provision that, if at any time during the period of  
21          the contract, a labor organization or any employee of  
22          the contractor seeks to organize employees of the



1 contractor, the contractor shall commit no act nor  
2 make any statement that will directly or indirectly  
3 state or imply the contractor's preference or non-  
4 preference for unionization of its employees in  
5 general or for recognition of any bona fide labor  
6 organization as the exclusive representative of the  
7 employees working on contracts covered by this  
8 section;

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

19 (4) A provision that, if during the period of the  
20 contract, a bona fide labor organization requests  
21 recognition within an appropriate bargaining unit, a  
22 disinterested neutral party selected by the director



1 of labor and industrial relations shall conduct a  
2 review of employee authorization cards submitted by  
3 any labor organization in support of its claim to  
4 represent a majority of employees in an appropriate  
5 bargaining unit. If a majority of employees within a  
6 unit have designated the signatory labor organization  
7 to represent them, the contractor shall recognize that  
8 labor organization as the exclusive representative of  
9 the designated bargaining unit, and negotiations will  
10 commence for a collective bargaining agreement.

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

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

20 (g) For the purposes of this section, "nonprofit  
21 organization" means a private, nonprofit, tax-exempt entity that



1 is recognized as a tax-exempt organization under Section  
2 501(c)(3) of the Internal Revenue Code of 1986, as amended.

3 (h) Excluded from this section are non-profits that  
4 qualify under sections 103D-1009 thru and including 103D-1011  
5 and chapter 103F."

6 SECTION 3. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

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

9



**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. Provides certain exemptions for 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 HD2 SD1)

