

JAN 19 2007

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 (5) [~~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.



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.

