

1 "Contractor" means any person furnishing human services
2 under a contract with a governmental contracting agency,
3 subcontractor, or any other person under a subcontract
4 arrangement with any person who has a contract subject to this
5 chapter.

6 "County" means the city and county of Honolulu, county of
7 Hawaii, county of Kauai, and county of Maui.

8 "Department" means the department of labor and industrial
9 relations.

10 "Director" means the director of labor and industrial
11 relations of the State.

12 "Governmental contracting agency" means the State, any
13 county and any officer, bureau, board, commission, or other
14 agency or instrumentality thereof.

15 "Human services" includes social work, case work, and
16 investigative services intended to improve the lives of
17 individuals and families by, among other duties, evaluating an
18 individual's needs, creating a treatment plan for the
19 individual, implementing the plan, and providing emotional
20 support.



1 "Human services provider" includes a social worker, case
2 worker, or investigator employed by a private organization
3 providing human services under a contract with a governmental
4 contracting agency.

5 "Overtime compensation" means compensation based on not
6 less than one and one-half times the human services providers'
7 basic hourly rate of pay plus the cost to an employer of
8 furnishing a human services provider with fringe benefits as
9 described in the definition of "wages"; provided that if the
10 department determines that a prevailing wage is defined by a
11 collective bargaining agreement, the overtime compensation shall
12 be at the rates set by the applicable collective bargaining
13 agreement.

14 "Wages", "rate of wages", "wage rates", "minimum wages" and
15 "prevailing wages" mean the basic hourly rate and the cost to an
16 employer of furnishing a human services provider with fringe
17 benefits, including but not limited to health and welfare
18 benefits, vacation benefits, and pension benefits, whether paid
19 directly or indirectly to the human services provider.

20 § -2 **Applicability; wages, hours, and other**

21 **requirements.** (a) This chapter shall apply to every contract



1 in excess of \$2,000 for human services to which a governmental
2 contracting agency is a party.

3 For the purposes of this subsection:

4 "Contract" includes but is not limited to any agreement,
5 purchase order, or voucher in excess of \$2,000 for human
6 services.

7 "Governmental contracting agency" includes:

- 8 (1) Any person or entity that causes either directly or
9 indirectly the provision of human services; and
- 10 (2) Any public-private partnership.

11 "Party" includes eligible bidders for the provision of
12 human services.

13 (b) Every human services provider performing work pursuant
14 to this chapter shall be paid no less than prevailing wages;
15 provided that:

- 16 (1) The prevailing wages shall be established by the
17 director as the sum of the basic hourly rate and the
18 cost to an employer of providing a human services
19 provider with fringe benefits. In making prevailing
20 wage determinations, the following shall apply:

21 (A) The director shall make separate findings of:



1 (i) The basic hourly rate; and
2 (ii) The rate of contribution or cost of fringe
3 benefits paid by the employer when the
4 payment of the fringe benefits by the
5 employer constitutes a prevailing practice.
6 The cost of fringe benefits shall be
7 reflected in the wage rate scheduled as an
8 hourly rate; and
9 (B) The rates of wages that the director shall regard
10 as prevailing in each corresponding
11 classification of human services providers shall
12 be the rate of wages paid to the greatest number
13 of those employed in the State, the modal rate,
14 in the corresponding classes of human services
15 provider in circumstances that are similar to the
16 contract work;
17 (2) Except for the prevailing wages established by
18 subsections (h) and (i), the prevailing wages shall be
19 not less than the wages payable under federal law to
20 corresponding classes of human services providers
21 employed in the State that are prosecuted under



1 contract or agreement with the government of the
2 United States; and

3 (3) Notwithstanding the provisions of the original
4 contract, the prevailing wages shall be periodically
5 adjusted during the performance of the contract in an
6 amount equal to the change in the prevailing wage as
7 periodically determined by the director.

8 (c) No human services provider employed pursuant to this
9 chapter by the State or any county shall be permitted or
10 required to work on Saturday, Sunday, or a legal holiday of the
11 State or in excess of eight hours on any other day unless the
12 human services provider receives overtime compensation for all
13 hours worked on Saturday, Sunday, and a legal holiday of the
14 State or in excess of eight hours on any other day. The rate
15 for overtime compensation and any other premium rates of pay
16 shall be those rates specified in an applicable collective
17 bargaining agreement when the basic hourly rate is established
18 by a collective bargaining agreement.

19 For purposes of determining overtime compensation under
20 this subsection, the basic hourly rate of any human services
21 provider shall not be less than the basic hourly rate determined



1 by the director to be the prevailing basic hourly rate for
2 corresponding classes of human services providers in similar
3 circumstances in the State.

4 (d) The contractor or the contractor's subcontractor shall
5 pay all human services providers that it employs,
6 unconditionally and not less often than once a week, and without
7 deduction or rebate on any account, except as allowed by law,
8 the full amounts of their wages including overtime, accrued to
9 not more than five working days prior to the time of payment, at
10 wage rates not less than those deemed to be prevailing,
11 regardless of any contractual relationship that may be alleged
12 to exist between the contractor or subcontractor and the human
13 services providers. The rates of wages to be paid shall be
14 posted by the contractor in a prominent and easily accessible
15 place, and a copy of the rates of wages required to be posted
16 shall be given to each human services provider employed under
17 the contract by the contractor at the time each human services
18 provider is employed, except that where there is a collective
19 bargaining agreement, the contractor does not have to provide
20 the contractor's employees the wage rate schedules.



1 (e) The governmental contracting agency may withhold from
2 the contractor so much of the accrued payments as the
3 governmental contracting agency may consider necessary to pay to
4 the human services providers employed by the contractor or any
5 subcontractor the difference between the prevailing wages and
6 the wages received and not refunded by the human services
7 providers.

8 (f) Every contract in excess of \$2,000 for human services
9 and the specifications for such contract shall include
10 provisions that set forth the requirements of subsections (a) to
11 (e); provided that failure by the contracting agency to include
12 those provisions in the contract or specifications shall not be
13 a defense of the contractor or subcontractor for noncompliance
14 with the requirements of this chapter.

15 (g) For any provision of human services that is subject to
16 this chapter but not directly caused by a governmental
17 contracting agency, the director shall be responsible for
18 enforcement of this chapter, including the collection and
19 maintenance of certified copies of all payrolls that are subject
20 to this chapter.

21 (h) When:



1 (1) A party has entered into a collective bargaining
2 agreement with a bona fide labor union governing the
3 party's workforce; and

4 (2) The collective bargaining agreement has been properly
5 submitted to the director under section -34,
6 the terms of the collective bargaining agreement and associated
7 provisions shall be deemed the prevailing wages and terms
8 serving as the basis of compliance with this chapter for work on
9 the contract by the party's workforce; provided that this
10 subsection does not affect the director's enforcement powers
11 contained in subsection (g).

12 As used in this subsection, "party" includes eligible
13 bidders for the provision of human services.

14 § -3 **Provisions of law; waiver.** No provision of this
15 chapter may in any way be contravened or set aside by private
16 contract.

17 § -4 **Payrolls and payroll records.** (a) Every contract
18 subject to this chapter and the specifications for those
19 contracts shall contain a provision that a certified copy of all
20 payrolls and a certified copy of a fringe benefit reporting form
21 supplied by the department or any certified form that contains



1 all of the required fringe benefit information shall be
2 submitted weekly to the governmental contracting agency for
3 review. The fringe benefit reporting form shall itemize the
4 cost of fringe benefits paid by the general contractor or
5 subcontractor for:

- 6 (1) Health and welfare benefits;
- 7 (2) Pension and annuity benefits;
- 8 (3) Vacation benefits;
- 9 (4) Continuing education and training benefits; and
- 10 (5) Other fringe benefit costs paid by the general
11 contractor or subcontractor.

12 The general contractor shall be responsible for the submission
13 of certified copies of the payrolls of all subcontractors. The
14 certification shall affirm that the payrolls are correct and
15 complete, that the wage rates contained therein are not less
16 than the applicable rates contained in the wage determination
17 decision of the director of labor and industrial relations
18 attached to the contract, and that the classifications set forth
19 for each human services provider conform with the work the human
20 services provider performed. Any certification discrepancy



1 found by the contracting agency shall be reported to the general
2 contractor and the director to effect compliance.

3 (b) Payroll records for all human services providers
4 performing work shall be maintained by the general contractor
5 and the general contractor's subcontractors, if any, during the
6 course of the work and preserved for a period of three years
7 thereafter. The records shall contain the name of each
8 employee, the employee's correct classification, rate of pay,
9 the itemized fringe benefit reporting form pursuant to
10 subsection (a), daily and weekly number of hours worked,
11 deductions made, and actual wages paid.

12 (c) The contractor shall make payroll records available
13 for examination within ten days from the date of a written
14 request by a governmental contracting agency, director, or any
15 authorized representatives thereof. Any contractor who:

16 (1) Fails to make payroll records accessible within ten
17 days;

18 (2) Fails to provide information requested for the proper
19 enforcement of this chapter within ten days; or

20 (3) Fails to keep or falsifies any record required under
21 this chapter,



1 shall be assessed a penalty as provided in section -22(b).

2 § -5 **Termination of work on failure to pay agreed wages;**
3 **completion of work; contract and specifications provision.**

4 Every contract and the specifications for such contract shall
5 contain a provision that if the governmental contracting agency
6 finds that any human services provider employed by the
7 contractor or any subcontractor has been or is being paid wages
8 at a rate less than the required rate by the contract or the
9 specifications, or has not received the human services
10 provider's full overtime compensation, the governmental
11 contracting agency may, by written notice to the contractor,
12 terminate the contractor's right, or the right of any
13 subcontractor, to proceed with the work or with the part of the
14 work in which the required wages or overtime compensation have
15 not been paid and may complete such work or part by contract or
16 otherwise, and the contractor and the contractor's sureties
17 shall be liable to the governmental contracting agency for any
18 excess costs occasioned thereby.

19 **PART II. ADMINISTRATION AND ENFORCEMENT**

20 § -21 **Governmental contracting agency responsibilities.**

21 The governmental contracting agency shall:



1 (1) Pay or cause to be paid, within sixty days of a
2 determination made by the director, directly to human
3 services providers or to the director, from any
4 accrued payment withheld under the terms of the
5 contract, any wages or overtime compensation found to
6 be due to human services providers under the terms of
7 the contract subject to this chapter, or any penalty
8 assessed;

9 (2) Order any contractor to pay, within sixty days of a
10 determination made by the director, any wages or
11 overtime compensation that the contractor, or any of
12 the contractor's subcontractors, should have paid to
13 any human services provider under any contract subject
14 to this chapter, or any penalty assessed which the
15 contractor, or any of the contractor's subcontractors,
16 should have paid to the director; and

17 (3) Report to the director any violation of this chapter,
18 the rules adopted thereunder, or the terms of the
19 contract subject to this chapter.

20 § -22 **Investigation; penalties.** (a) The department may
21 conduct investigations to determine compliance with this



1 chapter. The department may examine the records of any
2 contractor, either during or after the performance of any
3 contract, or subpoena the records. The department may also
4 interview employees during working hours on the job.

5 (b) If any contractor interferes with or delays any
6 investigation by the department, the governmental contracting
7 agency, on receipt of written notice from the director of the
8 interference or delay, shall withhold from the contractor all
9 further payments until the director has notified the
10 governmental contracting agency in writing that the interference
11 or delay has ceased. Interference or delay includes failure to
12 provide requested records under section -4; failure to allow
13 employees to be interviewed during working hours on the job; and
14 falsification of records required under this chapter. The
15 department shall assess a penalty of \$10,000 per contract for
16 interference or delay. For each day thereafter that the
17 employer fails to cooperate, the director shall assess a penalty
18 of \$1,000 per contract.

19 (c) The names of all complainants shall be withheld from
20 the employer unless prior permission is given by the complainant
21 to release the complainant's name.



1 § **-23 Notification of violation.** (a) When the
2 department, either as a result of a report by a contracting
3 agency or as a result of the department's own investigation,
4 finds that a violation of this chapter or of the terms of the
5 contract subject to this chapter has been committed, the
6 department shall issue a notification of violation to the
7 contractor or subcontractor involved.

8 (b) A notification of violation shall be final and
9 conclusive unless within twenty days after a copy has been sent
10 to the contractor, the contractor files a written notice of
11 appeal with the director.

12 (c) A hearing on the written notice of appeal shall be
13 held by a hearings officer appointed by the director in
14 conformance with chapter 91.

15 Hearings on appeal shall be held within sixty days of the
16 notice of appeal and a decision shall be rendered by the
17 hearings officer within sixty days after the conclusion of the
18 hearing, stating the findings of fact and conclusions of law.
19 The hearings officer may extend the due date for decision for
20 good cause; provided that all parties agree.



1 § **-24 Violations; penalties.** (a) Where the department
2 finds that a first violation of this chapter has been committed,
3 the department, after proper notice and opportunity for hearing,
4 shall assess and order the person or firm in violation to be
5 jointly and severally liable for a penalty equal to twenty-five
6 per cent of the amount of back wages found due or \$250 for each
7 offense, up to \$2,500, whichever is greater.

8 (b) Where the department finds that a second violation of
9 this chapter has been committed, whether on the same or another
10 contract, within two years of the first notification of
11 violation, the department, after proper notice and opportunity
12 for hearing, shall assess and order the person or firm in
13 violation to be jointly and severally liable for a penalty equal
14 to the amount of back wages found due or \$500 for each offense,
15 up to \$5,000, whichever is greater.

16 (c) Where the department finds that a third violation of
17 this chapter has been committed, whether on the same or another
18 contract, within three years of the second notification of
19 violation, the department, after proper notice and opportunity
20 for hearing, shall assess and order the person or firm in
21 violation to be:



1 (1) Jointly and severally liable for a penalty equal to
2 two times the amount of back wages found due or \$1,000
3 for each offense, up to \$10,000, whichever is greater;
4 and

5 (2) Suspended from doing any new work for a governmental
6 contracting agency for a period of three years, except
7 as provided in section -25(a)(2). The suspension
8 shall be effective on the later of the twenty-first
9 day after the notification of violation has been sent,
10 or upon the issuance of a decision pursuant to
11 section -23(c).

12 (d) A first, second, or third violation refers to each
13 contract in which the department finds that a contractor has
14 failed to comply with this chapter.

15 (e) Both the person and firm shall be listed on each
16 notice of violation.

17 (f) As used in this section:

18 "Firm" includes a non-profit, corporation, limited
19 liability company, partnership, and limited partnership.



1 "New work on a contract" includes any contract in which the
2 suspended person or firm has not begun work as of the date of
3 the suspension order.

4 "Offense" means each section of this chapter under which
5 the contractor is cited; provided that, with respect to
6 prevailing wage and overtime citations under section -2, each
7 employee and each contract shall be considered a separate
8 offense.

9 "Person" includes a sole proprietor and the principal
10 responsible managing employee of a firm.

11 § -25 **Suspension.** (a) The director shall suspend a
12 person and firm as follows:

13 (1) For a first or second violation, if a person or firm
14 fails to pay wages found due or any penalty assessed,
15 or both, the person and firm shall be immediately
16 suspended from doing any work on any contract with a
17 governmental contracting agency until all wages and
18 penalties are paid in full;

19 (2) For a third violation, the suspension shall be as
20 prescribed in section -24(c); provided that if the
21 person or firm continues to violate this chapter or



1 fails to pay wages found due or any penalty assessed,
2 or both, then the person and firm shall immediately be
3 suspended from doing any work on any contract with a
4 governmental contracting agency for a mandatory three-
5 year period. If after the three-year suspension
6 period, the wages found due or penalties assessed are
7 still unpaid, the suspension shall remain in force
8 until payment is made in full; or

9 (3) For falsification of records, or for delay or
10 interference with an investigation pursuant to
11 section -22, the person and firm shall be
12 immediately suspended for a period of three years.

13 (b) The director shall immediately notify the governmental
14 contracting agency, comptroller, auditor or director of finance
15 of the county, and, in the case of a suspended subcontractor,
16 general contractor of any suspension order.

17 (c) No contract shall be awarded to the person and firm so
18 suspended or to any firm, corporation, partnership, or
19 association in which the person or firm has an interest, direct
20 or indirect, until three years have elapsed from the date of
21 suspension, unless the period of suspension is reduced or



1 extended as herein provided. Any contract awarded in violation
2 of this subsection shall be void.

3 (d) As used in this section, "person" includes a sole
4 proprietor and the principal responsible managing employee of a
5 firm.

6 § -26 **Judicial review.** (a) Any party to an appeal
7 under this chapter may obtain judicial review of the decision on
8 the appeal in the manner provided in chapter 91.

9 (b) Any suspension or dismissal of any complaint under
10 this chapter shall be subject to appeal in circuit court by the
11 aggrieved party, under section 91-14 and rule 72 of the Hawaii
12 rules of civil procedure.

13 § -27 **Liability.** If the accrued payments withheld under
14 the terms of the contract are insufficient to reimburse all the
15 human services providers for wages or overtime compensation due
16 under this chapter, and the contractor has failed to pay the
17 wages or overtime compensation, the contractor and the
18 contractor's sureties shall be liable to the human services
19 providers in the amount of the unpaid wages and overtime
20 compensation due, and in an additional equal amount as
21 liquidated damages. However, any claim for liquidated damages,



1 insofar as the surety or sureties are concerned, shall not be
2 paid until the claims of all other creditors have been
3 satisfied.

4 § -28 **Civil action.** (a) The following civil actions
5 may be instituted in any court of competent jurisdiction:

- 6 (1) An action to recover unpaid wages or overtime
7 compensation may be maintained by any one or more
8 human services providers for and on behalf of oneself
9 or themselves and others similarly situated; and
- 10 (2) An action for injunctive and other relief against an
11 employer that fails to pay the prevailing wage to its
12 employees as required by this chapter by a joint
13 labor-management committee established pursuant to
14 section 175a of the federal Labor Management
15 Cooperation Act of 1978 (29 U.S.C. 175a).

16 (b) The court, in its action and in addition to any
17 judgment awarded to the plaintiff or plaintiffs, shall allow
18 reasonable attorney's fees and costs of the action to be paid by
19 the defendant.

20 (c) It shall be no defense that the human services
21 providers accepted or agreed to accept less than the required



1 rate of wages or overtime compensation or voluntarily made
2 refunds.

3 (d) When a written request is filed by any human services
4 provider with the director claiming unpaid wages or overtime
5 compensation under this chapter, the director, after receiving
6 an assignment from the human services provider, may bring an
7 action in any court of competent jurisdiction to recover the
8 amount of the claim. The consent of any human services provider
9 to the bringing of such action by the director, unless the
10 action is dismissed without prejudice on motion of the director,
11 shall constitute a waiver by the human services provider of any
12 right of action the human services provider may have under
13 subsection (a). Any amount recovered by the director before
14 suit and accepted by the human services provider as payment in
15 full shall constitute a waiver of any rights under this chapter.

16 § -29 **Rules.** The director shall adopt reasonable rules
17 pursuant to chapter 91 to determine the prevailing wages,
18 enforcement, administration, and general purposes of this
19 chapter. These rules shall have the force and effect of law.

20 § -30 **Application of this chapter to contracts entered**
21 **into without regard to other laws.** The fact that a contract is



1 or was entered into without regard to chapter 103D, or upon a
2 cost-plus-a-fixed fee basis, or cost-plus-a-fixed percentage
3 basis, or without advertising for proposals, shall not render
4 this chapter inapplicable to the contract, if this chapter would
5 otherwise be applicable.

6 § **-31 Effect on other laws.** Neither this chapter nor
7 any rule or other action under this chapter shall supersede or
8 impair any minimum wage or maximum hour law or any authority
9 otherwise granted by law to provide for the establishment of
10 specific minimum or other wage rates.

11 § **-32 Suspension during emergency.** During a national
12 emergency declared by the President or the Congress of the
13 United States, or a state of emergency declared by the governor,
14 subject to the provisions of section 127-10 or 128-7, the
15 governor, by executive order in writing, may suspend this
16 chapter; provided that the governor may not suspend this chapter
17 except in the event such an emergency occurs and is so
18 proclaimed.

19 § **-33 Inspection.** (a) If work performed in accordance
20 with this chapter, in excess of eight hours in any day or on a
21 Saturday, Sunday, or legal holiday of the State, requires



1 inspection by the State or any county, the inspection shall be
2 conducted by the State or county, as applicable.

3 (b) In such event, it shall be lawful, notwithstanding any
4 other provision of law to the contrary, for the State or any
5 county to alter the normal working hours of public employees, as
6 may be needed for these purposes, and to pay these public
7 employees for all hours worked in excess of eight hours per day
8 or on a Saturday, Sunday, or legal holiday of the State.

9 § -34 **Submission of collective bargaining agreement to**
10 **the director.** (a) Parties to a collective bargaining agreement
11 covering classes of human services providers, which are included
12 in the prevailing wage determinations made pursuant to this
13 chapter, shall submit a copy of the agreement to the director
14 within five days after execution of the agreement.

15 (b) Except as otherwise provided herein, the terms of the
16 agreement shall be kept confidential by the director. The
17 director may disclose terms of the agreement to any federal or
18 state agency for the purpose of enforcing this chapter."

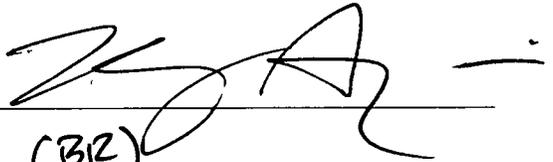
19 SECTION 2. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.



1 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:



(BR)



S.B. NO. 1568

Report Title:

Prevailing Wages for Human Services Providers

Description:

Requires prevailing wages for human services providers.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

