



GOV. MSG. NO. 809

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

May 1, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB861 HD1 SD1, without my approval, and with the statement of objections relating to the measure.

HB861 HD1 SD1

A BILL FOR AN ACT RELATING TO PUBLIC
WORKS.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

May 1, 2007

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 861

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 861, entitled "A Bill for an Act Relating to Public Works."

The purposes of this bill are as follows: (1) to require that public work projects financed through the issuance of special purpose revenue bonds (SPRBs) are reported by the Director of Finance to the Department of Labor and Industrial Relations (DLIR); (2) to require the DLIR to monitor projects where there is no governmental contracting agency for compliance with chapter 104, Hawaii Revised Statutes (H.R.S.), Hawaii's Wages and Hours of Employees on Public Works Law; 3) to make chapter 104, H.R.S., applicable to housing developed by the Hawaii Housing Finance and Development Corporation pursuant to chapter 201H, H.R.S.; and (4) to provide that, when a SPRB project party enters into a collective bargaining agreement with a bona fide labor union governing the project party's workforce, the wages and terms provided by that collective bargaining agreement be deemed the prevailing wage and terms for that project party's work force on the public work construction project.

SPRBs are used to build hospitals, schools, early childhood education centers, utilities, housing projects, and related works deemed to be in the best interests of the general public. Often it is non-profit organizations that seek SPRBs to

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finance a new structure. This funding tool is used to lower interest costs of the financing for such projects. No taxpayer funds are used and taxpayers are not responsible for a default on the bonds.

Subjecting these projects to the administrative burdens in Chapter 104 runs counter to the intent and spirit of using SPRBs to help reduce expenses incurred by strictly private and non-profit entities and may actually act as a deterrent to using this financing mechanism and decrease the number of projects on behalf of the general community.

In 2003, the Attorney General's office opined that SPRB projects are public works projects as defined under Section 104-2(a) HRS and are subject to prevailing wage provisions. However, Chapter 104 requires that the public work is to be performed by a contracting government agency that oversees the work and holds the appropriated funds. However, with SPRBs, funds go directly from the lending institution to the entity building the project and no government agency oversees the work.

This bill attempts to remedy this problem by requiring the Department of Labor and Industrial Relations to act like the governmental contracting agency. However, the Department has no authority to oversee the work of a SPRB project nor would it be able to withhold funds should the non-profit or firm building the SPRB-financed project violate Chapter 104.

Furthermore, this bill specifies when an employer has entered into a collective bargaining agreement with a labor union, the terms of that agreement will be the prevailing wages on that project. This provision has the potential to create a different prevailing wage for each project and would negate current law requiring a single prevailing wage. This provision

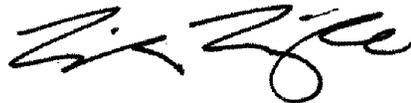
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could also result in a conflict with Section 104-2(b)(2) which requires Hawaii's prevailing wages paid to workers to not be lower than the federal rates for Hawaii.

Additionally, this bill would place enforcement and monitoring functions on the Department of Labor and Industrial Relations without the commensurate resources to carry out these duties.

For the foregoing reasons, I am returning House Bill No. 861 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO PUBLIC WORKS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 39A, Hawaii Revised Statutes, is
2 amended by adding a new section to part I to be appropriately
3 designated and to read as follows:

4 "§39A- Public work project; issuance of special purpose
5 revenue bonds; report to department of labor and industrial
6 relations required. Any issuance of special purpose revenue
7 bonds pursuant to this chapter for a public work project that is
8 subject to chapter 104, but not directly caused by a
9 governmental contracting agency, shall be promptly reported by
10 the director of finance to the department of labor and
11 industrial relations so that the department of labor and
12 industrial relations may expeditiously carry out its duties
13 under chapter 104. The report shall be in a form and contain
14 such information as the director of labor and industrial
15 relations may prescribe."

16 SECTION 2. Section 104-2, Hawaii Revised Statutes, is
17 amended to read as follows:



1 **"§104-2 Applicability; wages, hours, and other**
2 **requirements.** (a) This chapter shall apply to every contract
3 in excess of \$2,000 for construction of a public work project to
4 which a governmental contracting agency is a party; provided
5 that this chapter shall not apply to experimental and
6 demonstration housing developed pursuant to section 46-15 or
7 housing developed pursuant to chapter 201G or 201H if the cost
8 of the project is less than \$500,000 and the eligible bidder or
9 eligible developer is a private nonprofit corporation.

10 For the purposes of this subsection:

11 "Contract" includes but is not limited to any agreement,
12 purchase order, or voucher in excess of \$2,000 for construction
13 of a public work project.

14 "Governmental contracting agency" includes any person or
15 entity that causes either directly or indirectly the building or
16 development of a public work.

17 "Party" includes eligible bidders for and eligible
18 developers of any public work and any housing under chapter
19 201G[+] or 201H; provided that this subsection shall not apply
20 to any housing developed under section 46-15 or chapter 201G or
21 201H if the entire cost of the project is less than \$500,000 and



1 the eligible bidder or eligible developer is a private nonprofit
2 corporation.

3 "Public work" means any project, including development of
4 any housing pursuant to section 46-15 or chapter 201G or 201H
5 and development, construction, renovation, and maintenance
6 related to refurbishment of any real or personal property, where
7 the funds or resources required to undertake the project are to
8 any extent derived either directly or indirectly from public
9 revenues of the State or any county, or from the sale of
10 securities or bonds whose interest or dividends are exempt from
11 state or federal taxes.

12 (b) Every laborer and mechanic performing work on the job
13 site for the construction of any public work project shall be
14 paid no less than prevailing wages; provided that:

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

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

21 (i) The basic hourly rate; and



1 (ii) The rate of contribution or cost of fringe
2 benefits paid by the employer when the
3 payment of the fringe benefits by the
4 employer constitutes a prevailing practice.
5 The cost of fringe benefits shall be
6 reflected in the wage rate scheduled as an
7 hourly rate; and

8 (B) The rates of wages which the director shall
9 regard as prevailing in each corresponding
10 classification of laborers and mechanics shall be
11 the rate of wages paid to the greatest number of
12 those employed in the [~~State,~~] state, the modal
13 rate, in the corresponding classes of laborers or
14 mechanics on projects that are similar to the
15 contract work;

16 (2) The prevailing wages shall be not less than the wages
17 payable under federal law to corresponding classes of
18 laborers and mechanics employed on public works
19 projects in the [~~State~~] state that are prosecuted
20 under contract or agreement with the government of the
21 United States; and



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

6 (c) No laborer or mechanic employed on the job site of any
7 public work of the State or any political subdivision thereof
8 shall be permitted or required to work on Saturday, Sunday, or a
9 legal holiday of the State or in excess of eight hours on any
10 other day unless the laborer or mechanic receives overtime
11 compensation for all hours worked on Saturday, Sunday, and a
12 legal holiday of the State or in excess of eight hours on any
13 other day. For purposes of determining overtime compensation
14 under this subsection, the basic hourly rate of any laborer or
15 mechanic shall not be less than the basic hourly rate determined
16 by the director to be the prevailing basic hourly rate for
17 corresponding classes of laborers and mechanics on projects of
18 similar character in the State.

19 (d) The contractor or the contractor's subcontractor shall
20 pay all mechanics and laborers employed on the job site,
21 unconditionally and not less often than once a week, and without
22 deduction or rebate on any account, except as allowed by law,



1 the full amounts of their wages including overtime, accrued to
2 not more than five working days prior to the time of payment, at
3 wage rates not less than those deemed to be prevailing,
4 regardless of any contractual relationship which may be alleged
5 to exist between the contractor or subcontractor and the
6 laborers and mechanics. The rates of wages to be paid shall be
7 posted by the contractor in a prominent and easily accessible
8 place at the job site, and a copy of the rates of wages required
9 to be posted shall be given to each laborer and mechanic
10 employed under the contract by the contractor at the time each
11 laborer and mechanic is employed, except that where there is a
12 collective bargaining agreement the contractor does not have to
13 provide the contractor's employees the wage rate schedules.

14 (e) The governmental contracting agency may withhold from
15 the contractor so much of the accrued payments as the
16 governmental contracting agency may consider necessary to pay to
17 the laborers and mechanics employed by the contractor or any
18 subcontractor on the job site the difference between the
19 prevailing wages and the wages received and not refunded by the
20 laborers and mechanics.

21 (f) Every contract in excess of \$2,000 for construction of
22 a public work project and the specifications for such contract



1 shall include provisions that set forth the requirements of
2 subsections (a) to (e); provided that failure by the contracting
3 agency to include those provisions in the contract or
4 specifications shall not be a defense of the contractor or
5 subcontractor for noncompliance with the requirements of this
6 chapter.

7 (g) For any public work project that is subject to this
8 chapter but not directly caused by a governmental contracting
9 agency, the director shall be responsible for enforcement of
10 this chapter, including the collection and maintenance of
11 certified copies of all payrolls that are subject to this
12 chapter. The director shall adopt rules pursuant to chapter 91
13 to effectuate the purposes of this section.

14 (h) When the department of budget and finance enters a
15 project agreement with a project party, as those terms are
16 defined in chapter 39A, to finance or refinance a project with
17 the proceeds of special purpose revenue bonds, and such project
18 party has entered into a collective bargaining agreement with a
19 bona fide labor union governing the project party's workforce,
20 the terms of that collective bargaining agreement and associated
21 provisions shall be deemed the prevailing wages and terms
22 serving as the basis of compliance with this section for work on



