



GOV. MSG. NO. **819**

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 15, 2009

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

Dear Madam President and Members of the Senate:

I am transmitting herewith SB19 SD1 HD2 CD1, without my approval, and with the statement of objections relating to the measure.

SB19 SD1 HD2 CD1

A BILL FOR AN ACT  
RELATING TO PROCUREMENT.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 15, 2009

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 19

Honorable Members  
Twenty-Fifth 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, Senate Bill No. 19, entitled "A Bill for an Act Relating to Procurement."

The purpose of this bill is to create a five percent procurement preference for offerors who bid on public works construction contracts valued at not less than \$250,000 if, at the time of bidding, the offerors are parties to an apprenticeship agreement that is registered with the Department of Labor and Industrial Relations for each apprenticeable trade the offeror will employ if awarded the contract. This reduction in bidding price is for evaluation purposes only and does not reduce the cost of the offer to the contracting governmental body.

This bill is objectionable because implementation of this new bid preference will increase the cost of the State's public works projects. If the preference of five percent results in the bidder being awarded the contract, the State must still pay the full contract price, even though there was a lower offer. Given the State's current financial situation, we simply cannot afford to overpay for public works projects in this manner. Additional costs would also be incurred through an unnecessary increase in the administration and oversight

STATEMENT OF OBJECTIONS  
SENATE BILL NO. 19  
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responsibilities of government contracting agencies, which would have to ensure that apprenticeship agreements are being maintained for the length of the contract.

Further, this bill would also place construction contractors that do not have registered apprentice programs at a competitive disadvantage without compelling justification. Apprenticeship programs are useful training programs when a trade requires a length of time to become proficient, but are not necessary to ensure the qualification of contractors to perform State work. The purpose of the public works bidding process is to ensure the State obtains the specified work at the best possible price. An essential element of this process is a level playing field whereby the most efficient, skilled, and well-managed companies are awarded contracts.

For the foregoing reasons, I am returning Senate Bill No. 19 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

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# A BILL FOR AN ACT

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RELATING TO PROCUREMENT.

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

1       SECTION 1. Chapter 103, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4       "§103-   Public works construction; apprenticeship  
5 agreement. (a) A governmental body, as defined in section  
6 103D-104, that enters into a public works contract under this  
7 chapter having an estimated value of not less than \$250,000,  
8 shall decrease the bid amount of a bidder by five per cent if  
9 the bidder is a party to an apprenticeship agreement registered  
10 with the department of labor and industrial relations for each  
11 apprenticeable trade the bidder will employ to construct the  
12 public works, and in conformance with chapter 372. The lowest  
13 total bid, taking the preference into consideration, shall be  
14 awarded the contract unless the solicitation provides for  
15 additional award criteria. The contract amount awarded,  
16 however, shall be the amount of the price offered, exclusive of  
17 the preference.



1        (b) For purposes of subsection (a), in determining whether  
2 there is conformance with chapter 372, the procurement officer  
3 shall consider the actual number of apprentices enrolled in and  
4 the annual number of graduates of the apprenticeship program.

5        (c) At the time of submission of a competitive sealed bid  
6 or a competitive sealed proposal by a bidder, the bidder shall  
7 furnish written proof of being a party to a registered  
8 apprenticeship agreement for each apprenticeable trade the  
9 bidder will employ to construct the public works and, if awarded  
10 the contract, shall continue to certify monthly in writing that  
11 the bidder is a party to a registered apprenticeship agreement  
12 for each apprenticeable trade the bidder will employ to  
13 construct the public works for the entire duration of the  
14 bidder's work on the project. This subsection shall be deemed  
15 to be incorporated into a public works contract. A bidder who  
16 is awarded a contract shall be subject to the following  
17 sanctions if, after commencement of work, the bidder at any time  
18 during the construction is no longer a party to a registered  
19 apprenticeship agreement for each apprenticeable trade the  
20 bidder will employ to construct the public works:

21        (1) Temporary or permanent cessation of work on the  
22 project, without recourse to breach of contract claims



1 by the bidder; provided that the governmental body  
2 shall be entitled to restitution for nonperformance or  
3 liquidated damages, as appropriate; or

4 (2) Proceedings to debar or suspend under section  
5 103D-702.

6 (d) For purposes of this section, "bidder" means an entity  
7 that submits a competitive sealed bid under section 103D-302 or  
8 submits a competitive sealed proposal under section 103D-303."

9 SECTION 2. New statutory material is underscored.

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

