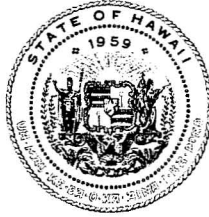


LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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CONSERVATION AND RESOURCES ENFORCEMENT
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES**

On House Bill 3029, House Draft 1 – RELATING TO PUBLIC WORKS

**BEFORE THE HOUSE COMMITTEE ON
FINANCE**

February 26, 2008

House Bill 3029, House Draft 1 proposes to broaden the definition of “public work” to include a construction contract between private persons using state or county land for commercial, profit making activity, and subjecting the construction contract to the wage and hour requirements of Chapter 104, Hawaii Revised Statutes (HRS), as amended. The Department of Land and Natural Resources (Department) strongly opposes this bill.

The intent of Chapter 104, HRS, is to ensure employees of public work projects are paid no less than prevailing public employee wages and receive the same work schedule privileges as public employees. “Public work” projects are intended to be those projects constructed for use by the State or county or are paid for with State or county revenues. This bill, however, would subject lessees of public lands to these public employee wage and hour requirements notwithstanding the fact that the lessee is a private entity operating a private business. These lessees’ operations are not funded by government revenues nor are the leases entered for the purpose of the lessees constructing improvements to be used or occupied by government agencies.

The Department currently manages approximately 1,013 leases of public lands, the majority of which have been issued to private entities for a variety of purposes, including agriculture, pasture, commercial, industrial, and resort uses. Unlike construction contracts for true “public work” projects, the Department acts as a passive landlord in the leases it manages and does not dictate, oversee or participate in the lessees’ operations or management, let alone get involved in personnel issues and decisions. As such, it would be inappropriate as well as impossible for the Department to monitor and enforce any proposed wage and hour provisions.



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February 25, 2008

To: The Honorable Marcus Oshiro, Chair
and Members of the House Committee on Finance

Date: February 26, 2008

Time: 3:30 p.m.

Place: Conference Room 308, State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

Testimony in Opposition
to
H. B. 3029, H.D. 1 - Relating to Public Works

I. OVERVIEW OF PROPOSED LEGISLATION

House Bill 3029 changes the scope of the Wages and Hours of Employees on Public Works, Chapter 104, Hawaii Revised Statutes ("HRS"), to include all construction contracts between private parties that use state or county leased land for commercial, profit making activities. H.B. 3029 also requires copies of the land leases to be filed with the Department of Labor and Industrial Relations ("Department") and certified payrolls to be filed with the agency entering into the agreement for the use of state land.

The measure also makes a requirement to be included in the lease or other agreement for use of the state or county land, but is not specific about what the requirement should be.

H.D. 1 amends the effective date to July 1, 2059.

II. CURRENT LAW

The Wages and Hours of Employees on Public Works Law, Chapter 104, HRS, currently applies to State and county public construction projects. However, Chapter 104, HRS, also covers initial construction on state or county land under Hawaii Administrative Rules 12-22-1, definition of "public work" paragraph (1).

III. HOUSE BILL

The Department opposes this bill for the following reasons:

1. This law is not needed as state law via Hawaii Administrative Rule 12-22-1 definition of "Public work" already requires that any building or structure constructed on state or county land under private contract must follow Chapter 104, HRS, but does not extend to subsequent construction, by individuals, occupants or tenants other than a state or county agency. For example, this applied when Aloha Tower Marketplace was constructed but does not apply to its private tenants currently in the facility.
2. The language contained in H.B. 3029, HD1 seems to expand Chapter 104, HRS, into areas not envisioned or intended by the original crafters.

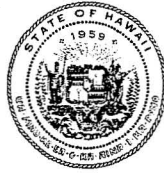
Chapter 104, HRS, is intended to ensure fair bidding for public works projects in which the state or county was funding the construction of a new facility. The legislature has already expanded Chapter 104 in areas not originally envisioned such as Special Purpose Revenue Bonds and into areas where the state or county is leasing 50% or more of the assignable feet. This expansion has already caused uncertainty as to which projects are public works and which are not.

It also has raised issues of existing facilities and whether alteration and maintenance now falls under Chapter 104, HRS. There by increasing the costs to the building owners and to the agencies that lease space as the lease and maintenance costs increase to absorb these new requirements. **E.g., Under this bill Aloha Tower would have to keep and file certified payroll for maintenance and alteration work performed by their staff. They would also need to pay prevailing wages. The same would also be true of business owners leasing store space from Aloha Tower. This would drive up the cost of doing business in Hawaii, as well as be passed on to consumers in the form of higher costs.**

3. The Department understands that this measure is capture all major renovation work as required in the recent land lease that went out for bid for the Naniloa property in Hilo, but as drafted there are serious concerns on who this bill would apply to. How is commercial, profit making activity defined? Is a low-income mixed-use housing development a commercial, profit making activity if the developer is a non-profit organization but includes a portion of commercial square feet to service the community? What about a developer in the business of building residential buildings? If so, this law seems to indicate that the residents who purchase those apartments on state or county leased land also be a public work subject to this law? The bill seems to cover homeowner improvements to an existing residence, as well as private developers of condominiums or commercial property that make improvements to the infrastructure would now be subject to Chapter 104. Again, this would increase the cost of living and obtaining housing in Hawaii. **If this is to capture**

leases put out to bid by DLNR then the appropriate place to put lease requirements is in the public lands law.

4. The Department is concerned with the practicality of such a requirement. **This measure requires that the governmental agency that leases the land would be contracting agency. However, this would be ineffective because that agency, likely the Department of Accounting and General Services (“DAGS”), would have no authority over the project as they are not a party to the contract between the private entities.** Further, they would not have access to private funds that would be withheld for violations of chapter 104. Nor could the Department request DAGS to withhold funding to pay workers that were not paid the prevailing wage.
5. Chapter 104 is set up to monitor public contracts where a governmental contracting agency is a party to the agreement; **its purpose is not to act as a construction regulation law.** If regulation in the construction industry is what is wanted, then it should be addressed in other places in the law instead of trying to make private projects into “public works” by using a broad definition that ignores the purpose and intent of the law.
6. It is unclear exactly what “requirement” on line page 2, line 14, shall be included in the lease. On line 19, the measure only requires submission of certified payrolls for the use of state land, but includes state and county land in other places.



**STATE OF HAWAII
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TESTIMONY OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
FINANCE
ON
February 26, 2008
H.B. 3029, H.D. 1

RELATING TO PUBLIC WORKS

Chair Oshiro and members of the Committee, thank you for the opportunity to testify on H.B. 3029, H.D. 1. This bill expands the definition of a public work to include a construction contract between private persons using State or county land for commercial, profit-making activity. The requirements must be included in a lease or other agreement for use of the State or county land.

The Department of Accounting General Services (DAGS) opposes this bill because it will require government agencies to collect and maintain weekly certified payrolls from the construction project owner for a project in which the government agency has little or no involvement. Such would be the case if DAGS entered into a ground lease with a developer to build a state office building at no cost to the State. The agreement might allow the developer to build other commercial improvements to recoup his cost, and serve as a profit incentive. Under this scenario, DAGS would not be a party

to the contract for commercial improvements and would have little involvement in overseeing the construction. Collecting and maintaining weekly certified payroll in this case would be an unnecessary burden.

DAGS recommends that this bill be held.

Thank you very much for the opportunity to testify on this matter.

The House of Representatives
The Twenty-Fourth Legislature
Committee on Finance
February 26, 2008
3:30 p.m.
Conference Room 308

Statement of the Hawaii Carpenters Union on H.B. 3029, HD1
Relating to Public Works

The Hawaii Carpenters Union supports H.B. 3029, to address in the statute what is currently in the Administrative Rules of Chapter 104, HRS, while narrowing the type of use of State or County land that would be affected.

Currently the administrative rules provide that prevailing wages are to be paid for construction undertaken through the use of "...land, or other resources of the State or any county...". State land is used for a wide variety of private activities, calling for H.B. 3029 to provide the clarification that is needed for enforcement.

H.B. 3029 would narrow the focus to the use of State or county land to commercial, for-profit activity. It would also make it clear that the law must be enforced in this area.

In the example of the Naniloa hotel in Hilo, the benefit of using State oceanfront land should not become a part of depressing area standard wages and benefits for construction work. Prevailing wages are not being required for construction work in that case, including construction required by the State in the agreement for the use of the land.

Where prevailing wages are not required to "level the playing field", Hawaii contractors who contribute to skilled craft training are at a disadvantage. Hawaii contractors who lessen burdens on government and the community by providing family medical and dental insurance, and retirement income programs, not to mention decent wages, are at a disadvantage. State resources should not be used in this manner.

The fact that agreements are reached and documented prior to the use of the land and prior to any construction, provides the mechanism for the administration of the Chapter 104 provision.

Thank you for your consideration of our support for the passage of H.B. 3029.