



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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LATE

February 11, 2008

To: The Honorable Brian T. Taniguchi, Chair
and Members of the Senate Committee on Judiciary and Labor

The Honorable Clarence K. Nishihara, Chair
and Members of the Committee on Tourism and Government Operations

Date: Tuesday, February 12, 2008

Time: 1:15 p.m..

Place: Conference Room 229, State Capitol

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

**Testimony in Opposition
to
S. B. 2780 - Relating to Public Works**

I. OVERVIEW OF PROPOSED LEGISLATION

Senate Bill 2780 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. S.B. 2780 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.

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. SENATE 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 S.B. 2780 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 meant to 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.

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 Land and Natural Resources (“DLNR”), 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 DLNR 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.

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TESTIMONY OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEES
ON
JUDICIARY AND LABOR
AND
TOURISM AND GOVERNMENT OPERATIONS
ON
February 12, 2008

S.B. 2780

RELATING TO PUBLIC WORKS

Chairs Taniguchi, Nishihara, and members of the Committees, thank you for the opportunity to testify on S.B. 2780. 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. It requires that the bill's provisions 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.