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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

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

**On Senate Bill 2780, Senate Draft 2 – RELATING TO PUBLIC WORKS**

**BEFORE THE HOUSE COMMITTEES ON  
LABOR AND PUBLIC EMPLOYMENT**

**and**

**ECONOMIC DEVELOPMENT AND BUSINESS CONCERNS**

**March 18, 2008**

Senate Bill 2780, Senate Draft 2 proposes to broaden the definition of “public work” to include a construction contract valued at \$500,000 or more 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 and would be subject to the requirements imposed by the bill. 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.

Moreover, the bill also requires the government agency leasing the state lands to be the governmental contracting agency for the construction project on the site. Such a requirement would impose an unreasonable burden on government agencies acting as passive landlords by obligating them to enter into and be bound by the terms of a construction contract for purely

private purposes in which they have no interest or control but for the fact that it is situated on public lands.

The Senate  
The Twenty-Fourth Legislature  
Committees on Labor & Public Employment and  
Economic Development & Business Concerns  
March 18, 2008  
8:45 a.m.  
Conference Room 325

Statement of the Hawaii Carpenters Union on S.B. 2780, SD2  
Relating to Public Works

The Hawaii Carpenters Union supports S.B. 2780, SD2 to address in the statute a limited part of what is currently in the Administrative Rules of Chapter 104, HRS, regarding construction utilizing State or County land.

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...". Among the varied uses of State and county land for private activities, S.B. 2780 would clarify one category for administration and enforcement.

This Bill focuses on the use of State or county land to commercial, for-profit activity. We believe it would also make it clear that the law must be enforced in this area. This Senate Bill is similar to HB 3039, passed by the House. SD2 includes a minimum construction cost of \$500,000, which is acceptable if the currently uneven application, or ignoring of the administrative rule can be overcome.

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 for 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 S.B. 2780.