

LINDA LINGLE
GOVERNOR



RUSS K. SAITO
Comptroller

BARBARA A. ANNIS
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P.O. BOX 119
HONOLULU, HAWAII 96810-0119

LATE TESTIMONY

TESTIMONY
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEES
ON
LABOR & PUBLIC EMPLOYMENT
AND
ECONOMIC DEVELOPMENT & BUSINESS CONCERNS
ON
March 18, 2008

S.B. 2780, S.D. 2

RELATING TO PUBLIC WORKS

Chair Sonson, Chair Yamashita, and members of the Committees, thank you for the opportunity to testify on S.B. 2780, S.D. 2. 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 submit copies of all leases to DAGS, and collect and maintain weekly certified payrolls from the construction project owner, 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 initial contract for commercial improvements or the future maintenance, and would have little involvement in overseeing the construction. Collecting and maintaining weekly certified payroll in this case, as well as collecting copies of leases from all government agencies, would be an unnecessary burden.

DAGS recommends that this bill be held.

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



LATE TESTIMONY

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

March 17, 2008

To: The Honorable Alex M. Sonson, Chair
and Members of the House Committee on Labor & Public Employment

The Honorable Kyle T. Yamashita, Chair
and Members of the House Committee on Economic Development
& Business Concerns

Date: March 18, 2008

Time: 8:45 a.m.

Place: Conference Room 325, State Capitol

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

Testimony in Opposition
to
S. B. 2780, S.D. 2 - Relating to Public Works

I. OVERVIEW OF PROPOSED LEGISLATION

Senate Bill 2780, S.D. 2 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 involve state or county leased land for commercial, profit making activities valued at \$500,000 or more.

S.B. 2780, S.D.2 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. This measure also requires that the applicability of Chapter 104, HRS, be inserted in each lease or other agreement related to the use of state or county land and requires a copy of the lease or other agreement to be filed with the Department of Accounting and General Services.

S.D. 1 made the effective date to July 1, 2050.

S.D.2 increased the applicability threshold from \$500 to \$500,000

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, already applies to initial construction on state or county land under the Hawaii Administrative Rules, section 12-22-1(1), definition of “public work”.

III. SENATE BILL

The Department opposes this bill for the following reasons:

1. This law is not needed as state law, via Section 12-22-1, Hawaii Administrative Rules, defines “public work” as follows:

“Public work” shall be as defined in section 104-2(a), Hawaii Revised Statutes, and includes without limitation:

- (1) Any building, structure, road, or real property, the construction of which is undertaken:
 - (A) By authority of; and
 - (B) Through the use of funds, grants, loans, bonds, land, or other resources of the State or any county, board, bureau, authority, commission, or other agency or instrumentality thereof, to serve the interest of the general public, regardless of whether title thereof is held by a state or county agency. *However, subsequent construction to fixtures or appurtenances attached to the assigned space of an individual occupant, lessee, or tenant of the building or structure, contracted by other than a state or county agency or instrumentality thereof, shall not be subject to chapter 104, Hawaii Revised Statutes.*

...

Thus, the administrative rules already require that a contractor must follow Chapter 104, HRS, for any building or structure constructed on state or county land under private contract, but this requirement does not extend to subsequent construction, by individuals, occupants or tenants other than a state or county agency. For example, Chapter 104, HRS, would apply when Aloha Tower Marketplace was constructed, but would not extend to subsequent improvements made by its private tenants currently in the facility.

2. The language contained in S.B. 2780, S.D. 2 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, thereby 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.

3. The Department understands that this measure is to capture all major renovation work, as in the recent land lease that went out for bid for the Naniloa property in Hilo; however, as drafted, there are serious concerns on to whom this bill would apply.

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?

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 the 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 to 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.