

GOV. MSG. NO. 632

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

April 14, 2008

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

Dear Madam President and Members of the Senate:

I am transmitting herewith HB2974 HD2, without my approval, and with the statement of objections relating to the measure.

HB2974 HD2

A BILL FOR AN ACT RELATING TO LABOR.

Sincerely,



LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

April 14, 2008

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2974

Honorable Members  
Twenty-Fourth 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, House Bill No. 2974, entitled "A Bill for an Act Relating to Labor."

This bill would change the union certification process by eliminating the secret ballot system, mandating timelines for collective bargaining, and imposing binding arbitration in labor negotiations.

Current law provides that when a question arises concerning the collective representation of employees, the Hawaii Labor Relations Board ("Board") conducts a secret ballot of employees to determine whether a majority of the employees desire collective representation. Under this bill, rather than holding an election, the Board would conduct an investigation to determine if a majority of the employees opted to be collectively represented. This new procedure is commonly referred to as a "card check." If the Board finds the majority of the employees signed "card check" authorizations, the Board must certify the individual or labor organization as the employees' representative.

This bill also directs that the employer and the newly certified employees' representative must meet and begin to bargain collectively within ten days. Conciliation under section 377-3, Hawaii Revised Statutes, may be requested if no agreement can be reached by the parties after the expiration of

at least a ninety-day bargaining period. If, after the expiration of at least an initial thirty-day conciliation period, the conciliator is not able to bring the parties to agreement, the conciliator shall refer the dispute to binding arbitration. The agreement rendered by the arbitration panel established by the Board shall be binding for at least a two-year period unless amended by the parties.

This bill is objectionable because the "card check" procedure envisioned by this bill is a poor substitute for the secret ballot and is ripe for abuse. Article XIII, Sections 1 and 2 of the Hawaii State Constitution grant Hawaii's employees the constitutional right to "organize for the purpose of collective bargaining." Based on this right, employees have the freedom to elect to participate or not participate in collective bargaining through a confidential ballot process. Chapter 377, HRS, was enacted to protect the rights of both employees and employers.

Nothing in this bill specifies how or when signatures can be obtained and there is no provision for neutral supervision. As a result, there is no way to determine whether a worker's signature was given freely and without intimidation, pressure, or coercion from fellow employees, labor representatives, or the employer. Lacking confidentiality, employees may for any number of reasons feel compelled to sign a petition personally circulated by an agent of management or a labor organization to protect their jobs or relationships with their peers.

Further, the legislative language specifically

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HOUSE BILL NO. 2974  
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precludes the use of a secret ballot to subsequently validate petition results by mandating that the Hawaii Labor Relations Board shall not direct an election if a petition signed by a simple majority is submitted.

The use of the secret ballot election process provides the employee anonymity and the opportunity to carefully consider and weigh individual choices after having the time to be fully informed by both the labor organization and employer of the various advantages and disadvantages of being collectively represented. Maintaining the secret ballot is the fair, appropriate, and democratic way to protect workers' privacy and to ensure workers have the ability to vote their conscience without fear of repercussion or retaliation. Secret ballots are the cornerstone of any truly democratic system. There is no compelling justification for replacing an unbiased, democratic process with one that has the potential to erode a worker's existing rights and protections under law.

This bill is also objectionable because it places arbitrary restrictions and deadlines on the negotiating parties without regard to the complexity of the agreement or the importance of free and non-coercive bargaining. Forcing parties to agree is antithetical to the system of labor relations that has served our country well for nearly 75 years. With the prospect of mandatory mediation, bargaining may become more unrealistic as labor representatives push for very high wages in negotiations and during mediation, while employers counter that union demands would put them out of business.

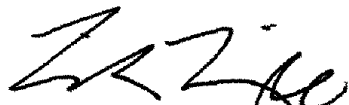
This bill takes away the rights of unions and employers to bargain in good faith and interjects an arbitration

panel to write the contract terms of the two parties. This undermines the purpose of a collective bargaining process. As a result, this bill unnecessarily shifts power to arbitration panels by mandating that the panel's decision remain in effect for two years. It is important to note that under the National Labor Relations Act, interest arbitration may not be legally imposed upon a party absent its consent.

All Hawaii workers deserve the right to a secret ballot to ensure that their true voice is heard. It would be wrong to afford that right to some workers but not others. This bill discriminates against agricultural workers; employees of non-profit organizations; employees of smaller retailers; day care workers; employees who work in museums, restaurants, and bars; small law firms; legal aid programs; and numerous other employees in the State. It strips them of their right to a secret ballot, while allowing employees of larger firms, still covered by the National Labor Relations Act, the right to maintain a secret ballot.

For the foregoing reasons, I am returning House Bill No. 2974 without my approval.

Respectfully,



LINDA LINGLE  
Governor of Hawaii

# VETO

HOUSE OF REPRESENTATIVES  
TWENTY-FOURTH LEGISLATURE, 2008  
STATE OF HAWAII

H.B. NO. 2974  
H.D. 2

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## A BILL FOR AN ACT

RELATING TO LABOR.

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

1 SECTION 1. Chapter 377, Hawaii Revised Statutes, is  
2 amended by adding two new sections to be appropriately  
3 designated and to read as follows:  
4 "§377- Streamlining union certification. Whenever a  
5 petition shall have been filed by an employee or group of  
6 employees or any individual or labor organization acting on  
7 their behalf alleging that a majority of employees in a unit  
8 appropriate for the purposes of collective bargaining wish to be  
9 represented by an individual or labor organization for those  
10 purposes, the board shall investigate the petition. If the  
11 board finds that a majority of the employees in a unit  
12 appropriate for bargaining have signed valid authorizations  
13 designating the individual or labor organization specified in  
14 the petition as their bargaining representative and that no  
15 other individual or labor organization is currently certified or  
16 recognized as the exclusive representative of any of the  
17 employees in the unit, the board shall not direct an election



1 but shall certify the individual or labor organization as the  
2 representative.

3 §377- Facilitating initial collective bargaining

4 agreements. (a) Not later than ten days after receiving a  
5 written request for collective bargaining from an individual or  
6 labor organization that has been newly organized or certified as  
7 a representative, the parties shall meet and commence to bargain  
8 collectively and shall make every reasonable effort to conclude  
9 and sign a collective bargaining agreement.

10 (b) If, after the expiration of the ninety-day period  
11 beginning on the date on which bargaining commenced, or such  
12 additional period as the parties may agree upon, the parties  
13 have failed to reach an agreement, either party may notify the  
14 board of the existence of a dispute and request conciliation  
15 under section 377-3.

16 (c) If, after the expiration of the thirty-day period  
17 beginning on the date on which the request for conciliation is  
18 made under subsection (b), or such additional period as the  
19 parties may agree upon, the conciliator is not able to bring the  
20 parties to agreement by conciliation, the conciliator shall  
21 refer the dispute to an arbitration panel established in  
22 accordance with rules as may be prescribed by the board. The



1 arbitration panel shall render a decision settling the dispute,  
2 and the decision shall be binding upon the parties for a period  
3 of two years, unless amended during that period by written  
4 consent of the parties."

5 SECTION 2. New statutory material is underscored.

6 SECTION 3. This Act shall take effect on July 1, 2008.

