



GOV. MSG. NO. 792

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

April 24, 2007

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 HB863 HD1, without my approval, and with the statement of objections relating to the measure.

HB863 HD1

A BILL FOR AN ACT RELATING TO PUBLIC WORK
PROJECTS.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

April 24, 2007

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 863

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. 863, entitled "A Bill for an Act Relating to Public Work Projects."

The purpose of this bill is to mandate that a private construction project will be considered a public work project subject to chapter 104, Hawaii Revised Statutes, Hawaii's Wages and Hours of Employees on Public Works law, if the State or a political subdivision leases or is assigned more than fifty percent of the project. Copies of the lease agreement must be filed with the Department of Accounting and General Services and the Department of Labor and Industrial Relations.

Additionally, this bill requires the construction project owner submit weekly certified payrolls to the leasing governmental agency or the governmental agency using the leased or assigned space which, for the purposes of chapter 104, shall be deemed the governmental contracting agency.

Finally, this bill requires that prior to the start of construction, the construction project owner sign an agreement with the leasing governmental entity agreeing to pay the prevailing wage to the laborers and mechanics working on this project and to otherwise comply with the requirements of chapter 104.

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This bill is objectionable because it is an unwarranted expansion of the types of projects that could be subject to public works projects rules and statutes. Currently, section 12-22-1 of the Hawaii Administrative Rules defines a public work to encompass a private construction project when the State or a political subdivision leases the entire building or structure and where: (1) the lease was entered into prior to construction of the structure or building; and (2) the construction work was performed according to plans, specifications, or criteria of the leasing governmental entity.

Expanding public works coverage to mixed public-private structures may inject confusion and needlessly increase the associated building costs of a private construction project. Smaller owners in particular may not want to develop commercial space for lease to the government because of the additional burden of complying with unfamiliar labor laws. It is anticipated that this bill will also probably limit or reduce the number of office buildings that will be available for lease to government agencies. This bill may likewise impede the development of mixed use housing projects, wherein some of the units were for market sale or rental and others were leased to a public housing corporation for elderly, Section 8, or transitional housing.

Finally, because this bill directs that certified payrolls be submitted to either the governmental leasing entity or the governmental agency accepting the construction project and not to the Department of Labor and Industrial Relations, this data will go to entities that have no authority to audit or enforce these payrolls, thereby inhibiting the enforcement of wage laws this bill attempts to impose on private projects.

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For the foregoing reasons, I am returning House Bill
No. 863 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO PUBLIC WORK PROJECTS.

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

1 SECTION 1. Chapter 104, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§104- Public work requirements; private construction
5 contracts. (a) Section 104-2 notwithstanding, for purposes of
6 this chapter, public work shall also include a construction
7 contract between private persons if more than fifty per cent of
8 the assignable square feet of a project is leased or assigned
9 for use by the State, any county, or any agency of the State or
10 any county, whether or not the property is privately owned, and:

11 (1) The lease or other agreement is entered into prior to
12 the construction contract becoming effective; or

13 (2) Construction work is performed according to a plan,
14 specifications, or criteria established by the State,
15 any county, or any agency of the State or any county.

16 (b) Prior to the start of construction on a project, the
17 construction project owner shall sign a lease or other agreement
18 with the governmental leasing agency or the governmental agency



1 accepting the construction project for its use to certify the
2 construction project owner's compliance with this chapter,
3 including payment of prevailing wages.

4 (c) Copies of the lease or other agreement under
5 subsection (b) shall be filed with the department and the
6 department of accounting and general services. The construction
7 project owner shall submit weekly certified payrolls to the
8 governmental leasing agency or the governmental agency accepting
9 the construction project for its use, which shall be the
10 governmental contracting agency for the construction project."

11 SECTION 2. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun, before its effective date.

14 SECTION 3. New statutory material is underscored.

15 SECTION 4. This Act shall take effect upon its approval.

APPROVED this day of ,2007

GOVERNOR OF THE STATE OF HAWAII

