

EXECUTIVE CHAMBERS

HONOLULU

May 1, 2007

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 861

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. 861, entitled "A Bill for an Act Relating to Public Works."

The purposes of this bill are as follows: (1) to require that public work projects financed through the issuance of special purpose revenue bonds (SPRBs) are reported by the Director of Finance to the Department of Labor and Industrial Relations (DLIR); (2) to require the DLIR to monitor projects where there is no governmental contracting agency for compliance with chapter 104, Hawaii Revised Statutes (H.R.S.), Hawaii's Wages and Hours of Employees on Public Works Law; 3) to make chapter 104, H.R.S., applicable to housing developed by the Hawaii Housing Finance and Development Corporation pursuant to chapter 201H, H.R.S.; and (4) to provide that, when a SPRB project party enters into a collective bargaining agreement with a bona fide labor union governing the project party's workforce, the wages and terms provided by that collective bargaining agreement be deemed the prevailing wage and terms for that project party's work force on the public work construction project.

SPRBs are used to build hospitals, schools, early childhood education centers, utilities, housing projects, and related works deemed to be in the best interests of the general public. Often it is non-profit organizations that seek SPRBs to

finance a new structure. This funding tool is used to lower interest costs of the financing for such projects. No taxpayer funds are used and taxpayers are not responsible for a default on the bonds.

Subjecting these projects to the administrative burdens in Chapter 104 runs counter to the intent and spirit of using SPRBs to help reduce expenses incurred by strictly private and non-profit entities and may actually act as a deterrent to using this financing mechanism and decrease the number of projects on behalf of the general community.

In 2003, the Attorney General's office opined that SPRB projects are public works projects as defined under Section 104-2(a) HRS and are subject to prevailing wage provisions. However, Chapter 104 requires that the public work is to be performed by a contracting government agency that oversees the work and holds the appropriated funds. However, with SPRBs, funds go directly from the lending institution to the entity building the project and no government agency oversees the work.

This bill attempts to remedy this problem by requiring the Department of Labor and Industrial Relations to act like the governmental contracting agency. However, the Department has no authority to oversee the work of a SPRB project nor would it be able to withhold funds should the non-profit or firm building the SPRB-financed project violate Chapter 104.

Furthermore, this bill specifies when an employer has entered into a collective bargaining agreement with a labor union, the terms of that agreement will be the prevailing wages on that project. This provision has the potential to create a different prevailing wage for each project and would negate current law requiring a single prevailing wage. This provision

could also result in a conflict with Section 104-2(b)(2) which requires Hawaii's prevailing wages paid to workers to not be lower than the federal rates for Hawaii.

Additionally, this bill would place enforcement and monitoring functions on the Department of Labor and Industrial Relations without the commensurate resources to carry out these duties.

For the foregoing reasons, I am returning House Bill No. 861 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