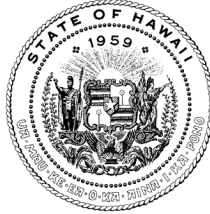


DAVID Y. IGE
GOVERNOR OF
HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
GOVERNMENT OPERATIONS**

**Thursday, January 27, 2022
3:00 P.M.**

State Capitol Conference Room 016 and Videoconference

**In consideration of
SENATE BILL 2139
RELATING TO CAPITAL IMPROVEMENT PROJECTS**

Senate Bill 2139 proposes to limit 15% of a capital improvement project's (CIP) budget for professional services. **The Department of Land and Natural Resources (Department) appreciates the overall concept of this bill as it includes initiatives to provide cost control of a CIP, however, the Department is concerned that this bill may hinder our ability to execute complex CIPs that require land acquisition and project planning as a precursor to determine the total project budget.**

In the Department's experience, land acquisition and planning/feasibility services vary significantly from project to project and involve unique initial user requirements and unknown environmental conditions that ultimately inform the final budget (or viability) of the project. Furthermore, if an Environmental Assessment and/or Environmental Impact Statement is required, planning/feasibility services can easily increase to more than 15% of the initial CIP budget. Accordingly, these services, in conjunction with the multi-phase nature of the projects that the Department oversees, presents inherent difficulty in keeping professional services costs under 15% of the project's budget.

Therefore, the Department respectfully recommends excluding land acquisition and planning/feasibility services from the 15% threshold, thus allowing for existing project control laws in Section 103D-304, Hawaii Revised Statutes (HRS), to prevail as currently practiced.

Alternatively, the Department respectfully submits that the selection criteria¹ of Section 103D-304, HRS, currently provides the means to restrict professional services costs. Rather than capping those costs at 15%, the Department respectfully suggests:

- (1) Amending the fourth criteria of Section 103D-304, HRS, subsection (e) to allow the selection committee to add budgetary constraints as a consideration in the selection of design professionals. This would be preferable over a 15% limit because selection of design professionals is completed once the project's construction costs are more certain, thus allowing the Department to negotiate fair and reasonable fees for professional services; and
- (2) Introducing definition language that provides guideposts for what can be considered the outer-limits of the "fair and reasonable" compensation rates contemplated in Section 103D-304, HRS, subsection (h).² Subsection (h) already provides a mechanism to control the cost of design professional work to bring a project within the appropriated budget because, if a contract cannot be successfully negotiated at a fair and reasonable price with the first ranked professional, the selection committee may resume negotiations with lower ranked professionals.

Thank you for the opportunity to comment on this measure.

¹ The selection criteria employed in descending order of importance shall be:

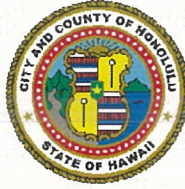
- (1) Experience and professional qualifications relevant to the project type;
- (2) Past performance on projects of similar scope for public agencies or private industry, including corrective actions and other responses to notices of deficiencies;
- (3) Capacity to accomplish the work in the required time; and
- (4) Any additional criteria determined in writing by the selection committee to be relevant to the purchasing agency's needs or necessary and appropriate to ensure full, open, and fair competition for professional services contracts.

² Section 103D-304(h), HRS, states that the head of the purchasing agency or designee shall negotiate a contract with the first ranked person, including a rate of compensation which is fair and reasonable, established in writing, and based upon the estimated value, scope, complexity, and nature of the services to be rendered. If a satisfactory contract cannot be negotiated with the first ranked person, negotiations with that person shall be formally terminated and negotiations with the second ranked person on the list shall commence. Section 103D-304, HRS, also states that if a contract at a fair and reasonable price cannot be negotiated, the selection committee may be asked to submit a minimum of three additional persons for the head of the purchasing agency to resume negotiations in the same manner provided in this subsection. Negotiations shall be conducted confidentially.

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 11TH FLOOR
HONOLULU, HAWAII 96813
Phone: (808) 768-8480 • Fax: (808) 768-4567
Web site: www.honolulu.gov

RICK BLANGIARDI
MAYOR



ALEX KOZLOV, P.E.
DIRECTOR

HAKU MILLES, P.E.
DEPUTY DIRECTOR

January 26, 2022

The Honorable Sharon Y. Moriwaki, Chair
The Honorable Donovan M. Dela Cruz, Vice-Chair
and Members of the Committee on Government Operations
The Senate
State Capitol, Conference Room 016
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Moriwaki, Vice-Chair Dela Cruz, and Members:

SUBJECT: Senate Bill No. 2139
Relating to Capital Improvement Projects

The Department of Design and Construction (DDC) respectfully submits **strong opposition** to Senate Bill No. 2139. The bill proposes to add a new section to Hawaii Revised Statutes (HRS), Section 103 to prohibit the expenditure of more than 15% of a capital improvement project's budget on professional services.

DDC primarily administers professional services and construction contracts for the City and County of Honolulu's capital improvement projects. The proposed bill would severely degrade DDC's ability to execute City capital improvement projects. Limiting professional services, including professional design and construction management services, arbitrarily limits the essential aspects of planning and oversight **absolutely necessary to maintain quality, control cost, and keep projects on schedule.**

For many of DDC's projects, the value of professional services, which includes the practice of architecture, landscape architecture, professional engineering, land surveying, and any other practice defined as professional by the laws of this State or the professional and scientific occupation series contained in the United States Office of Personnel Management's Qualifications Standards Handbook, can be much more than 15% of the total project budget. This is especially true for projects with, but not limited to, the following requirements:

- Environmental impact statements, environmental assessments
- Modeling of drainage, mechanical-electrical, structural, and other complex engineered systems

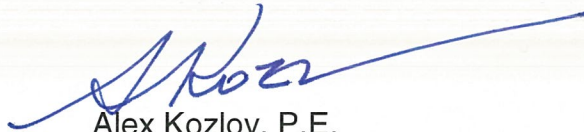
The Honorable Sharon Y. Moriwaki, Chair
The Honorable Donovan M. Dela Cruz, Vice-Chair
and Members of the Committee on Government Operations
January 26, 2022
Page 2

- Assessment of existing conditions and evaluation of repair and rehabilitation options for complex facilities and continually deteriorating infrastructure.
- Construction management services, observation during construction, and/or post-construction services
- Emergency response, repair and reconstruction of bridges, roads, and drainage systems damaged during ever increasing severe rain events.

Based on the above considerations, DDC respectfully **opposes** Senate Bill No. 2139.

Thank you for the opportunity to express our **strong opposition** to this bill.

Sincerely,



Alex Kozlov, P.E.
Director



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Ginny M. Wright
ACECH Executive Director
350 Ward Ave. Ste. #160-83
Honolulu, Hawaii 96814
Ph: (808) 741-4772
Email: gwright@acechawaii.org
Website: www.acechawaii.org

January 26, 2022

Senate Committee on Government Operations

Hearing Date: Thursday, January 27, 2022, 3:00 p.m.

Honorable Senators Sharon Y. Moriwaki, Chair; Donovan M. Dela Cruz, Vice Chair; and Members of the Senate Committee on Government Operations

Subject: SB 2139, Relating to Capitol Improvement Projects
TESTIMONY IN OPPOSITION

Dear Chair Moriwaki, Vice Chair Dela Cruz, and Committee Members:

The American Council of Engineering Companies of Hawaii (ACECH) represents more than 70 member firms with over 1,500 employees throughout Hawaii. ACECH **OPPOSES this bill** for the following reasons:

1. ACECH supports responsible spending of taxpayer monies, however it is our stance that the cap of 15% is too broad and may unintentionally prevent projects from being awarded or disincentive the most qualified firm(s) from pursuing particular projects.
2. The proposed definition of "Total project budget" includes highly variable elements of projects. We're concerned that this "one size fits all" approach may create problems for complex or difficult projects.
3. During the planning, design, and/or construction phases of the projects, the project objectives and direction can change. Such changes can result in additional professional services. Based on the language in this proposed bill, such a restriction may not adequately allow for design cost increases due to changes by the owner during the design process.
4. It is unclear to use of the mechanism that would be used to enforce the proposed statute. Often, the project budget (including construction) is not determined until the design is completed and the owner's design concepts are met.

We appreciate the opportunity to provide testimony on this matter. Please contact us if you have any questions.

Respectfully submitted,
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII

Derek Mukai, P.E.
President

SB-2139

Submitted on: 1/26/2022 11:28:01 AM

Testimony for GVO on 1/27/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Janice Marsters	Testifying for Hart Crowser, a division of Haley & Aldrich	Oppose	No

Comments:

Honorable Senators:

I am a Senior Principal for Hart Crowser, a division of Haley & Aldrich, a geotechnical, environmental, and natural resources consulting firm with offices on Oahu and Maui.

I oppose the bill as I believe that, for most CIP projects, the professional services are less than 15% of the total project budget. For projects where that is not the case, where there are complicated conditions that require more extensive professional services (perhaps including legal, land planning, and archaeological services as well as design professional services), the project may not be feasible with such a limitation. In other words, this bill addresses a situation that doesn't exist in most cases and, in rare occasions where professional services in excess of 15% may be needed, the bill would only hinder the project. With the focus on infrastructure spending, we don't want to be hindering projects.

Please let me know if you have any questions about my testimony.

Respectfully submitted,

Janice Marsters

808.371.8504



Senate Committee on Government Operations
Hearing Date: Thursday, January 27, 2022, 3:00 p.m.

January 26, 2021

Honorable Senators Sharon Y. Moriwaki, Chair; Donovan M. Dela Cruz, Vice Chair; and
Members of the Senate Committee on Government Operations

Subject: **TESTIMONY IN OPPOSITION - SB 2139, Relating to Capital Improvement Projects**

Dear Chair Moriwaki, Vice Chair Dela Cruz, and Committee Members:

CONSOR Engineers, LLC (CONSOR) is a multi-discipline firm providing engineering services for structural engineering, water-wastewater, transportation planning and design, and construction services. CONSOR's project portfolio, spans thousands of transportation projects across North America, Canada, Hawaii, and Overseas. Our firm's extensive roster of clients is comprised of numerous state departments of transportation, the US Army Corps of Engineers, the US Coast Guard, the US Navy, and the US Department of the Interior. CONSOR has conducted engineering work in 49 states and is familiar with numerous state and local procurement and contracting regulations. With 60 offices and more than 1,200 employees, including 330+ professional engineers. *CONSOR is ranked #69 on Engineering News-Record's Top 500 firms list for 2021.*

We support responsible spending of taxpayer monies, however we believe that the cap of 15% is too broad and may unintentionally prevent projects from being awarded or disincentive the most qualified firm(s) from pursuing particular projects.

The proposed definition of "Total project budget" includes highly variable elements of projects. We're concerned that this "one size fits all" approach may create problems for complex or difficult projects.

During the planning, design, and/or construction phases of the projects, the project objectives and direction can change. Such changes can result in additional professional services. Based on the language in this proposed bill, such a restriction may not adequately allow for design cost increases due to changes by the owner during the design process.

It is unclear to use of the mechanism that would be used to enforce the proposed statute. Often, the project budget (including construction) is not determined until the design is completed and the owner's design concepts are met.

Mahalo for hearing our testimony, if you would like to discuss further, I can be available for consultation on this matter.

A handwritten signature in blue ink that reads "Ikaika Kincaid".

Ikaika Kincaid, PE, CCM
Regional Director, Hawaii



Okahara and Associates, Inc.

ENGINEERS AND LANDSCAPE ARCHITECTS

January 26, 2022

Senate Committee on Government Operations

Hearing Date: Thursday, January 27, 2022, 3:00 p.m.

Honorable Senators Sharon Y. Moriwaki, Chair; Donovan M. Dela Cruz, Vice Chair; and Members of the Senate Committee on Government Operations

Subject: **SB 2139, Relating to Capitol Improvement Projects**
TESTIMONY IN OPPOSITION

Dear Chair Moriwaki, Vice Chair Dela Cruz, and Committee Members:

Okahara and Associates, Inc. is a multi-disciplined (civil, mechanical and landscape architecture) consulting engineering firm, which has been doing business in Hawai'i for the past 40 years. We are a Hawai'i based company with offices on Oahu and Hawai'i Island. We provide professional services for the State of Hawaii and are procured under §103D-304. We **OPPOSE** the proposed amendments.

We support responsible spending of taxpayer monies, however it is our stance that the cap of 15% is too broad and may unintentionally prevent projects from being awarded or disincentive the most qualified firm(s) from pursuing particular projects. The proposed definition of "Total project budget" includes highly variable elements of projects. An example of our concern is a project that requires highly specialized skills, heavy computation, and evaluation, but a small construction cost to implement.

We also feel that Section 103D-104 does not sufficiently define "professional services" for this purpose. For example, are geotechnical investigation, historic consultation, environmental work, hazardous material investigation and other disciplines commonly procured under a professional services contract intended to be included in the 15% cap?

Additionally, during the planning, design, and/or construction phases of the projects, the project objectives and direction can change. Such changes can result in additional professional services, however based on the language in this proposed bill, projects may be cancelled and/or delayed if the total project budget does not support the additional services.

Respectfully submitted,
OKAHARA AND ASSOCIATES, INC.

Charles L. Jury, P.E.
Vice President



January 27, 2022

TO: Honorable Sharon Y. Moriwaki, Chair
Senate Committee on Government Operations

FROM: Reid Mizue, AIA
Vice President / Legislative Advocacy Group
American Institute of Architects, Hawaii State Council

SUBJECT: **Re: Senate Bill 2139**
Relating to Capital Improvement Projects

The American Institute of Architects

AIA Hawaii State Council
828 Fort Street Mall, Suite 100
Honolulu, HI 96813

T (808) 628-7243
contact@aiahonolulu.org
aiahonolulu.org/AIAHawaiiStateCouncil

Dear Chair Moriwaki and Members of the Committee,

My name is Reid Mizue VP/President-elect AIA Hawaii Council submitting **COMMENTS** on SB 2139. AIA questions the need for this bill because, based on past comments received from members, public agencies have been strict guardians of the "public purse" when contracting for fees. Capital Improvement Projects (CIP) agencies like DAGS have internal guidelines when budgeting for professional fees upon which they base request for legislative appropriation. These agencies are entities that plan and budget for design fees that are needed to complete projects.

Buildings must be resilient and designed for future challenges

There have been increased design efforts related to accessibility and energy conservation; both mandated by state law to improve public buildings. There are new challenges such sea level rise, increased heat, and adapting to impacts of climate change to the built environment. Improved performance with better long-service buildings will likely increase total construction project delivery cost.

Design-build procurement

Perhaps this bill is intended for design-build procurement; a single contract encompassing design and construction. In this case, AIA will seek to defer this bill because no **subcontractor** of the design-build team should have fee limit imposed by law.

Thank you for this opportunity to **COMMENT** on Senate Bill 2139.

Sincerely,

A handwritten signature in black ink, appearing to read 'Reid T. Mizue'.

Reid Mizue, AIA
American Institute of Architects, Hawaii State Council

SB-2139

Submitted on: 1/26/2022 11:09:59 AM

Testimony for GVO on 1/27/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Sandie Wong	Individual	Oppose	Yes

Comments:

I oppose this Bill. As a citizen, I am all for not wasting taxpayers' money, but the bill as written is too broad and may have unintended consequences; e.g. prevent projects from being awarded to the most qualified firms.