

SB-136

Submitted on: 2/6/2023 2:10:32 PM

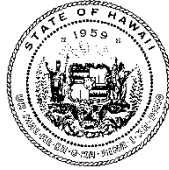
Testimony for HOU on 2/9/2023 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Nani Medeiros	Testifying for Chief Housing Officer, Office of the Governor, State of Hawaii	Comments	Written Testimony Only

Comments:

Mahalo for the opportunity to provide comments and concerns RE: SB 136, Relating to Procurement. While we understand the ultimate goal of this bill appears to be more housing in the areas specified, there is a concern that mandating the number of housing units proposed constitutes forty percent of the evaluation score (regardless of whether it is a housing project being proposed) may drive up the cost of construction and ultimately the cost of any housing in that project. We ask that a cost-benefit analysis be completed on the effects of this mandate should it move forward. Mahalo.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



BONNIE KAHAKUI
ACTING ADMINISTRATOR

STATE OF HAWAI'I | KA MOKU'ĀINA O HAWAI'I
STATE PROCUREMENT OFFICE

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 586-0554
email: state_procurement_office@hawaii.gov
<http://spo.hawaii.gov>

TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEES
ON
HOUSING
AND
WATER AND LAND
FEBRUARY 9, 2023, 1:15 PM

SENATE BILL 136
RELATING TO PROCUREMENT

Chair Chang, Chair Inouye, Vice Chair Kanuha, Vice Chair Elefante, and members of the committees, thank you for the opportunity to submit testimony on Senate Bill 136. The State Procurement Office (SPO) provides the following comments.

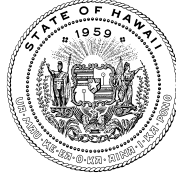
SB 136 proposes to add a new section to part III of Chapter 103D, Hawaii Revised Statutes to define "redevelopment". SB 136 also proposes to amend Sections 103D-302 and 103D-303, Hawaii Revised Statutes to require that in evaluating and determining the award for redevelopment of state or county lands in urban areas located within a one-half mile radius of mass transit stops or stations, through competitive sealed bidding or competitive sealed proposals, the number of housing units proposed shall constitute forty per cent of the evaluation score regardless of whether the development of housing is proposed.

There is no evaluation scoring in the Competitive Sealed Bidding method of procurement. The award is made to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. Therefore, the amendment in Section 103D-302 will cause confusion.

The Competitive Sealed Proposals method of procurement, pursuant to 103D-303, takes into consideration price and the evaluation factors that are set forth in the request for proposals. The award is made to the responsible offeror whose proposal is determined in writing to be the most advantageous. Agencies conducting the competitive sealed proposals method of procurement are already able to determine the priorities and ratings for evaluation factors for different projects, including urban redevelopment projects. Therefore, the amendment in Section 103D-303 is not necessary.

Thank you.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



KEITH A. REGAN
COMPTROLLER
KA LUNA HO'OMALU HANA LAULĀ

MEOH-LENG SILLIMAN
DEPUTY COMPTROLLER
KA HOPE LUNA HO'OMALU HANA LAULĀ

STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES | KA 'OIHANA LOIHELU A LAWELAWÉ LAULĀ
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
KEITH A. REGAN, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE COMMITTEES ON HOUSING/WATER AND LAND

FEBRUARY 9, 2023, 1:15 PM
CONFERENCE ROOM 225 AND VIA VIDEO CONFERENCE

S.B. 136

RELATING TO PROCUREMENT.

Chairs Chang and Inouye, Vice Chairs Kanuha and Elefante, and members of the Committees, thank you for the opportunity to submit testimony on Senate Bill (S.B.) 136, which requires that, in evaluating and determining the award for redevelopment of state or county urban lands within a one-half mile radius of mass transit stops or stations through competitive sealed bidding or competitive sealed proposals, the number of housing units proposed shall constitute forty per cent of the evaluation score regardless of whether the development of housing is proposed. The department offers the following comments:

1. Section 1 of the bill provides a definition of "redevelopment" that includes planning, replanning, and redesign as forms of redevelopment. For projects implemented under Section 103D-302, Hawaii Revised Statutes, planning, replanning, and redesign services are typically procured under the provisions of Section 103D-304, Hawaii

Revised Statutes, which regulates procurement of professional services. At the time of procurement of those professional services, there may be only a very broad conception of the project for which the services are being procured, and there may be no determination of, or way to determine, the location of the project or the number of housing units, if any, proposed by the project. Thus, there may be no reasonable way to apply the provisions of this bill to those procurements.

2. Section 2 of the bill provides that the measure will apply to projects delivered under Section 103D-302, Hawaii Revised Statutes, Competitive Sealed Bidding, which is used to procure construction services for projects to be realized through the conventional Design-Bid-Build (DBB) model and is often referred to as the “low-bid” method. In this type of procurement, the design to be constructed is determined prior to bidding, and the selected bidder is contractually bound to construct the project as designed. If a project is intended to rehabilitate an existing State office building by replacing the facility’s air conditioning system, the project design will not propose inclusion of housing units and the constructor will, in effect, be contractually prohibited from providing housing units as part of the project: in effect, the proposed criterion will not be applicable. It should be anticipated that if a Section 103D-302 project is not proposed to include housing units, the housing criterion cannot be considered in selection of the construction contractor. Also, given that is no evaluation score used in Competitive Sealed Bidding, we recommend that the language added in lines 9-15 on page 2 of the bill be deleted.
3. Section 3 of the bill provides that the measure will also apply to projects to be delivered under Section 103D-303, Hawaii Revised Statutes, Competitive Sealed

Proposals, including projects realized under the Design-Build (DB) project delivery model, in which professional services and construction services are packaged as a single procurement. The restrictions noted above for Section 103D-302 projects would not apply as broadly to projects under Section 103D-303.

The bill provides that the number of housing units proposed shall constitute forty percent of the evaluation points for State and county redevelopment projects located within a one-half mile radius of a mass transit stop or station. As currently written, this requirement raises several concerns for consideration which include:

1. The measure does not specify or otherwise indicate how the forty-percent portion of the evaluation score is to be determined: for example, if one proposal will provide 100 housing units and a second proposal will provide 101 housing units, under the current language of the bill it is not clear if the forty-percent portion of the score should be awarded solely to the second offeror, or if there should be some other method of awarding the housing-related evaluation points.
2. The measure does not specify where the proposed housing units are to be located with relation to the project site. Without such specification, for a hypothetical project in urban Honolulu in which one proposal offers to provide 100 housing units on the project site (i.e., within a one-half mile radius of a mass transit stop or station), a second proposal offers to provide 100 units at a site in Waialua, and a third proposal offers to provide 100 housing units in Wyoming, using the current language of the bill it would be reasonable to judge all three proposals as equal in that they each offer to provide 100 housing units. However, it is difficult to believe that provision of housing units in Wyoming is one of the intents of this bill.

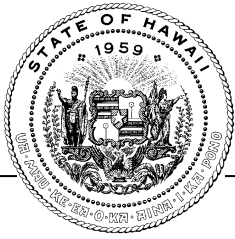
3. While it is typical to apply regulations related to transit-oriented development to sites located within a prescribed distance to a mass transit station, it is uncommon for such regulations to apply to sites located within a prescribed distance to any mass transit stop. It would not be unreasonable to interpret “mass transit stop” to apply to any bus stop, which would greatly expand the number of potential project sites affected by this regulation and may overstep the intents of this bill.
4. Application of this regulation to any State or county redevelopment project within the specified mass transit radius, but without regard to whether the project was proposed to include housing may result in unintended or undesirable outcomes.
 - a. For example, a design-build proposal to redesign and reconstruct a portion of the Daniel K. Inouye Airport that (in order to achieve a high rating under this criterion) offers to provide 100 housing units as part of the project would be building those units in an industrial area that few reasonable people would judge to be desirable for housing: proximity to a mass transit stop or station is not the only criterion that determines whether a site is suitable for housing.
 - b. Strict application of the definition set forth in Section 1, along with the requirement to apply the housing criterion to projects for which housing is not proposed, would make this measure applicable to projects for which such application might seem somewhat bizarre: e.g., highway repaving projects, sewer reconstruction projects, and projects to rehabilitate irrigation systems or sidewalks.
 - c. If a legislative appropriation is made for a project that is not proposed to provide housing, any portion of the appropriation used to fund the provision

of housing would require the scope of that intended project to be reduced in proportion to the reduction in available funds, with the result that intended benefits and effects of the appropriation would not be realized.

We would suggest that it may be most desirable to apply any housing-related evaluation criterion only to projects that propose to provide housing as integral components of those projects. We would also recommend that consideration should be given to the provision of general exemptions for projects clearly unrelated to housing (such as highway repaving) or located in areas unsuitable for housing (such as the airport industrial area).

Lastly, it may also be useful to consider whether the allocation of forty percent of evaluation points solely to the number of housing units to be provided by competitive proposals may overshadow other desirable aspects of those proposals, such as the provision of beneficial services, creation of jobs, provision of vital recreational and learning opportunities, and other community benefits the proposals may offer.

We appreciate this opportunity to provide testimony on this measure and look forward to continuing to work with the committees on this measure.



**STATE OF HAWAII
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT**

JOSH GREEN, M.D.
GOVERNOR

SCOTT J. GLENN
DIRECTOR

235 South Beretania Street, 6th Floor, Honolulu, Hawai'i 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawai'i 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <https://planning.hawaii.gov/>

Statement of
SCOTT GLENN, Director

before the
**SENATE COMMITTEE ON HOUSING AND
SENATE COMMITTEE ON WATER AND LAND**

Thursday, February 9, 2023, 1:15 PM
State Capitol, Conference Room 225

in consideration of
**SB136
RELATING TO PROCUREMENT.**

Chair Chang, Vice Chair Kanuha, and Members of the Senate Committee on Housing, and Chair Inouye, Vice Chair Elefante, and Members of the Senate Committee on Water and Land:

The Office of Planning and Sustainable Development (OPSD) **offers comments** on SB136, which requires that in evaluating and determining an award for redevelopment of state or county lands through competitive sealed bidding or competitive sealed proposals, the number of housing units proposed shall constitute forty per cent of the evaluation score regardless of whether the development of housing is proposed. This applies to the urban areas of state or county land located within a one-half mile radius of mass transit stops or stations.

The OPSD appreciates the bill's purpose of ensuring that a significant amount of housing is built on public lands near transit. OPSD also supports the intent of incentivizing housing production by awarding more points for projects that involve housing. In order to ensure that a significant amount of housing on public lands be affordable and remain affordable for an extended period, OPSD recommends including language in the evaluation criteria to incentivize affordability levels and periods of affordability.

However, not all development in proximity to transit will or should involve housing. As such, procurement documents must remain flexible. Specialty procurements might have technical requirements that should be the primary evaluating criteria. For example, film studios, healthcare or academic buildings, technology or industrial buildings, and the like, may not always have a housing component. In those cases, criteria that prioritize housing may not be warranted, and the bill should be revised to reflect such situations.

Thank you for the opportunity to testify on this measure.