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Testimony by:

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IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 16, 2018
10:00 a.m.
State Capitol, Room 414

HB 2175, H.D. 1
RELATING TO METROPOLITAN PLANNING ORGANIZATIONS

Senate Committee on Transportation and Energy
and
Public Safety, Intergovernmental, and Military Affairs

The Department of Transportation (DOT) **supports** HB 2175, H.D. 1. This bill requires any metropolitan planning organization, which serves a metropolitan planning area within the jurisdiction of a county that includes at least three islands inhabited by permanent residents, to include on its policy board one member and alternate of the senate and one member and alternate of the house of representatives. Legislative representation will provide legislative guidance and perspective to policy decisions as the legislature provides the authority for federal and state fund expenditures for DOT.

Thank you for the opportunity to provide testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

H.B. NO. 2175, H.D. 1, RELATING TO METROPOLITAN PLANNING ORGANIZATIONS.

BEFORE THE:

SENATE COMMITTEES ON TRANSPORTATION AND ENERGY AND ON public safety, intergovernmental and military affa

DATE: Friday, March 16, 2018

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 414

TESTIFIER(S): Russell A. Suzuki, First Deputy Attorney General, or Michael Q.Y. Lau, Deputy Attorney General

Chairs Inouye and Nishihara and Members of the Committees:

The Department of the Attorney General provides the following comments on this measure.

The purpose of this bill is to require that any metropolitan planning organization serving a metropolitan planning area within the jurisdiction of any county with a resident population of more than 125,000 but less than 195,000 that includes at least three islands shall include as members of its policy board: (1) a member of the senate and an alternate member of the senate appointed by the president of the senate; and (2) a member of the house of representatives and an alternate member of the house of representatives appointed by the speaker of the house of representatives.

The bill could be subject to challenge as a special law. Article XI, section 5, of the Hawai'i Constitution provides:

The legislative power over the lands owned by or under the control of the State and its political subdivisions shall be exercised only by general laws, except in respect to transfers to or for the use of the State, or a political subdivision, or any department or agency thereof.

Under *Sierra Club v. Dept. of Transportation*, 120 Hawai'i 181, 202 P.3d 1226 (2009), it appears that restriction to counties of a certain population and containing three inhabited islands is "logically and factually limited to a class of one and thus illusory." A

class is not illusory if it could include other members in the future. The actual probability of other members joining the class must be considered in determining whether a class is illusory.

Only one county comprises three permanently inhabited islands. No other county can reasonably be expected to meet this requirement. The reference to the county with three islands should be deleted.

Thank you for the opportunity to comment on this bill.

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COMMENTS ON HB 2175, HD 1 RELATING TO METROPOLITAN PLANNING ORGANIZATIONS

**SUBMITTED FOR THE FRIDAY 3/16/18 10 AM JOINT PUBLIC HEARING OF THE
SENATE COMMITTEE ON TRANSPORTATION AND ENERGY AND THE
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS
IN CONFERENCE ROOM 414**

Section 2 of HB 2175, HD 1 would impose requirements that would only apply to the County of Maui. This may violate the Hawaii Constitution. Article VIII, Section 1 of the State Constitution does not authorize a special law which can only apply to a single county.

**ARTICLE VIII
LOCAL GOVERNMENT
CREATION; POWERS OF POLITICAL SUBDIVISIONS**

Section 1. The legislature shall create counties, and may create other political subdivisions within the State, and provide for the government thereof. Each political subdivision shall have and exercise such powers as shall be conferred under general laws.

Att. Gen. Op. 61-36. Law specifically repealing statute pertaining to single county is void as special law.

Att. Gen. Op. 62-11. Law conferring power on only certain specified counties is a special law.