



SENATE COMMITTEE ON GOVERNMENT OPERATIONS

The Honorable Laura H. Thielen, Chair
The Honorable Lorraine R. Inouye, Vice Chair

H.B. NO. 118, H.D. 1, PROPOSED S.D. 1, RELATING TO GOVERNMENT

Hearing: Thursday, March 21, 2019, 2:50 p.m.

The Office of the Auditor **offers the following comments on** H.B. No. 118, H.D. 1, Proposed S.D. 1, which: (1) repeals Section 23-14, Hawai‘i Revised Statutes (HRS), which requires the Auditor to conduct annual reviews of “any rapid transportation authority in the State” that receives moneys from a surcharge on the Hawai‘i general excise tax, transient accommodation tax revenues, or both; and (2) requires the Auditor to continue the audit of the Honolulu Authority for Rapid Transportation (HART) authorized by Act 1, Special Session 2017, with an emphasis on “construction management.”

Section 23-14, HRS

In 2017, the Legislature provided additional state funding to HART to pay “capital costs” to complete the Honolulu Rail Transit Project, but required the Department of Accounting and General Services (DAGS) to first verify that HART’s costs are eligible to be paid using the state funds. The Legislature also amended Chapter 23, HRS, to require the Auditor to, annually, confirm that the costs DAGS had verified as being eligible to be paid using the state funds were for capital costs and not otherwise prohibited from being paid.

Section 46-16.8(e), HRS, authorizes HART to use the state funds only for “capital costs” associated with construction of the rail project, but expressly prohibits using the surcharge revenues to build or repair public roads; to support an existing public transportation system; for operating costs or maintenance costs of the rail system; and for HART’s administrative, operating, marketing, or maintenance costs, including personnel costs.

However, to assess whether HART’s costs were for prohibited uses described above requires specialized knowledge and expertise in construction practices and invoicing. For example, construction contractors’ invoices often include a list of “tasks” and “subtasks” for which the contractor seeks payment. Meaningful review of the invoiced tasks requires technical knowledge of each task, its corresponding subtasks, and how these tasks are typically invoiced in the construction industry—knowledge which our office does not have for construction projects of this scale and complexity.

For that reason, we will be required to retain an appropriate consultant to assist us in this review, which also seems to duplicate work being performed by DAGS’ staff, and will require an annual appropriation for that purpose. See Section 40-81.5, HRS. If the Legislature believes that our

annual review of invoices that DAGS previously certified for payment from the Mass Transit Special Fund is unnecessary, we agree that Section 23-14, HRS, should be repealed.

Act 1 Audit of HART

The proposed S.D. 1 also requests that our office “continue the audit of [HART]” to include an analysis of the “construction management of the [Authority].” The analysis must include:

- (1) An assessment of all the oral and written processes, procedures, polices, practices, internal controls, and cost controls associated with the Honolulu authority for rapid transportation's management of the Honolulu rail transit project; and
- (2) An evaluation of change orders as identified by the state auditor, including but not limited to an assessment of expenditures and payments to contractors, subcontractors, and consultants, for the time periods identified by the state auditor.

We recently issued two reports relating to HART: Report No. 19-03, *Audit of the Honolulu Authority for Rapid Transportation: Report 1*, and Report No. 19-04, *Audit of the Honolulu Authority for Rapid Transportation: Report 2*.

We suggest that the Legislature consider the benefit of directing us to perform additional work relating to HART. With our current staffing, we have limited capacity to do the work required by the proposed S.D. 1, the other work that we are currently statutorily mandated to perform before the beginning of the next legislative session (e.g., analyze certain tax incentives pursuant to Section 23-72, HRS); review departments’ special funds, revolving funds, trust funds, and trust accounts (Section 23-12(b)(2)); and the other audits and studies that are contained in 34 pending bills and concurrent resolutions.

While we recognize that the rail project is Hawai‘i’s most expensive public construction project and requires greater accountability, we note that, based on recent media reports, the City and County of Honolulu’s Office of the Auditor may be initiating a forensic audit of HART and the federal government is also investigating HART. Although we do not know the focus of the federal investigation, we anticipate it will “chill” the willingness of HART management and staff to fully participate in our audit and may impair our ability to obtain complete information.

We also suggest there are many state agencies and programs that deserve to be audited. Although the funding for those programs may be only a small fraction of the cost of rail, the impact of those programs and importance of the work they are performing may be as, perhaps even more, significant to state residents and state government, more generally.

Thank you for considering our testimony related to H.B. No. 118, H.D. 1, Proposed S.D. 1.