



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

LATE

ON THE FOLLOWING MEASURE:
S.B. NO. 2640, RELATING TO HOUSING.

BEFORE THE:
SENATE COMMITTEES ON HOUSING AND ON ENERGY, ECONOMIC
DEVELOPMENT, AND TOURISM

DATE: Thursday, February 6, 2020 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Clare E. Connors, Attorney General, or
Dawn T. Apuna, Deputy Attorney General

Chairs Chang and Wakai and Members of the Committees:

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

The purposes of this bill are to: remove restrictions on development plans of property within one-half mile of any rail station along the Honolulu rail transit system, require the Honolulu Authority for Rapid Transportation (HART) to accept a landowner's proposal to build a walkway directly into the rail station from the landowner's adjacent land, and allow the creation of an infrastructure improvement district within one-half mile of any rail station in which a developer of infrastructure may recover the cost of the infrastructure by selling capacity to other private entities.

We believe that, because the bill intends to remove restrictions on development for any state property and allows the creation of an infrastructure improvement district located within one-half mile of any rail station along the Honolulu rail transit system, it raises special legislation concerns under Article VIII, section 1, and Article XI, section 5, of the Hawaii Constitution.

Article VIII, section 1, of the Hawaii Constitution provides in pertinent part:

Each political subdivision shall have and exercise such powers as shall be conferred under general laws.

The Hawaii Supreme Court has held that this provision is unambiguous and "requires the legislature to confer powers upon the counties only by general laws."

Bulgo v. County of Maui, 50 Haw. 51, 58 (1967). In other words, “the thing that is required to have uniform application is the power given to, and exercised by, political subdivisions.” *Id.* at 59. By removing restrictions on development, this bill potentially limits the City and County of Honolulu's power to regulate development different from all other counties, and therefore likely falls within the scope of Article VIII, section 1, of the Hawaii Constitution.

Article XI, section 5, of the Hawaii 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.

The lands at issue are self evidently "State property." Thus, the bill is an exercise of legislative power over State land. The issue then is whether this exercise of power is by way of a general law or special law.

A general law must apply uniformly. *Bulgo v. Cnty of Maui*, 50 Haw. 51, 58, 430 P.2d 321, 326 (1967). In *Sierra Club v. Dept. of Transportation of the State of Hawai'i*, 120 Hawai'i 181, 202 P.2d 1226 (2009), as amended (May 13, 2009) (*Sierra Club*), the court adopted a two-step analysis to determine if a law is special legislation.

The first step is to determine “whether the classification adopted by the legislature is a real or potential class, or whether it is logically and factually limited to a class of one and thus illusory.” *Sierra Club*, 120 Hawai'i at 203-04, 202 P.3d at 1248-49. A class is not illusory if it has potential future applicability and can include other members in the future. *Id.*, 120 Hawai'i at 204, 202 P.3d at 1249. The actual probability of other members joining the class must be considered in determining whether a class is illusory. *Id.*, 120 Hawai'i at 214, 202 P.3d at 1259.

The second step of the analysis requires determination of whether the class is reasonable. *Id.* To be reasonable, the classification must be based on some distinguishing peculiarity and must reasonably relate to the purpose of the statute. *In re*

Interrogatory Propounded by Governor Roy Romer on House Bill 91S-1005, 814 P.2d 875, 887 (Colo. 1991).

This bill only applies to State lands within one-half mile of any rail station along the Honolulu rail transit system, and is therefore categorically limited to lands within the City and County of Honolulu. The class is not generally defined to be applied now or in the future to all counties. Consequently, the bill could be considered special legislation and in violation of article XI, section 5, of the Hawaii Constitution.

To remedy the concerns raised under Article VIII, section 1, and Article XI, section 5, of the Hawaii Constitution, the bill should be amended to uniformly apply throughout all counties, as provided as follows:

Page 1, lines 4 through 7, of the bill should be amended as follows: "(a) Every development or redevelopment plan for any state property located within one-half mile of any rail station along a rail transit system shall have no"

Page 2, lines 7 through 11, of the bill should be amended as follows: "(c) Within one-half mile of any rail station along a rail transit system, there may be created"

By uniformly applying the bill to property within one-half mile of any rail station along a rail transit system, a potential and not illusory class is created because the other counties could in the future develop rail stations along a rail transit system.

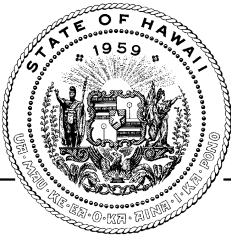
Additionally, as written, the bill removes restrictions on "development and redevelopment plans," not development and redevelopment of projects or land. If the intent of the bill is to remove restrictions on development of property within one-half mile of the rail stations, page 1, lines 4 through 7, of the bill, should read as follows: "Any development or redevelopment of any state property located within one-half mile of any rail station shall have no"

Under subsection (b) on page 2, lines 2 through 6, of the bill, the requirement that "the [HART] shall accept the landowner's proposal" carte blanche without discretion or restrictions is troublesome and could create future legal issues for HART. A landowner could make any unreasonable proposal that may be against public policy or

is practically unfeasible, which HART must accept. If HART is unable to accept a proposal, the landowner would have grounds to file suit against HART under this bill.

Finally, under subsection (b) on page 2, lines 2 through 6, of the bill, the term "accept the landowner's proposal" is vague. It is uncertain whether this term includes the plans and/or physical rights in the landowner's land. Furthermore, under subsection (c) on page 2, lines 7 through 11, of the bill, the term "capacity" is vague, and should therefore be defined.

Thank you for the opportunity to provide comments.



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DAVID Y. IGE
GOVERNOR

MARY ALICE EVANS
DIRECTOR
OFFICE OF PLANNING

Statement of
MARY ALICE EVANS
Director, Office of Planning
before the
SENATE COMMITTEE ON HOUSING
AND
SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
Thursday, February 6, 2020
1:15 PM
State Capitol, Conference Room 225

in consideration of
SB 2640
RELATING TO HOUSING.

Chairs Chang and Wakai, Vice Chairs Kanuha and Taniguchi, and Members of the Senate Committees on Housing and Energy, Economic Development, and Tourism.

The Office of Planning (OP) offers **comments** on SB 2640, which would amend Hawaii Revised Statutes (HRS) Chapter 226—the Hawaii State Plan—to add a new section setting out requirements for high density development on State property located within one-half mile of planned rail stations along the Honolulu rail corridor, including prohibitions on restrictions on height limits and floor area ratios, and prohibiting setbacks and required parking.

While OP strongly supports dense, mixed use development of State properties near planned rail stations, we do not believe that amending the Hawaii State Plan—a broad policy framework—to incorporate the proposed provisions is the appropriate means for achieving the development objectives desired. The proposed amendments are more of a regulatory and permitting nature that could conflict with existing functional agency authorities.

In addition, prohibitions and blanket limitations on development standards eliminate flexibility and the opportunities for multi-party collaboration among State and City agencies and the community on how to achieve the mix of uses, urban form, and supporting infrastructure required to create vibrant, dense transit-oriented communities where people can live, work, play, and connect.

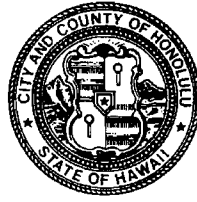
Thank you for the opportunity to testify on this measure.

LATE

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
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ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

February 6, 2020

The Honorable Stanley Chang, Chair
and Members of the Committee on Housing
The Honorable Glenn Wakai, Chair
and Members of the Committee on Energy,
Economic Development, and Tourism
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Chang and Wakai, and Committee Members:

**Subject: Senate Bill No. 2640
Relating to Housing**

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 2640, which amends the Hawaii Revised Statutes (and Hawaii State Plan) to promote construction of high density housing within a one-half mile radius of a rail station.

We strongly support building affordable housing on State and county lands near rail stations. We support the intent of this Bill – to take bold action to increase the supply of affordable homes for local families – but we think simply amending a broad policy document like the Hawaii State Plan is not the most appropriate way to achieve those objectives. The proposed Plan amendments include permitting and regulatory language that conflict with carefully crafted City policies and land use authority.

The proposed blanket override of City policies and regulations – which are based on more than 12 years of community meetings and unprecedented collaboration with State agencies – also conflicts with community visions to create vibrant, well-designed neighborhoods around the rail stations. The City's Neighborhood TOD Plans are based on significant input from relevant State agencies (including their desired height and density). In fact, we are currently working with several State agencies, via the Interagency TOD Council, on potential TOD plan amendments for increased height and density, especially on State lands.

Some of the language in this Bill is not really needed. For instance, all of the TOD plans and zoning allow – even require – active uses at ground level, including retail. We have also recently introduced Bill 2, under review by City Council, which would eliminate parking requirements in TOD areas.

The Honorable Stanley Chang, Chair
and Members of the Committee on Housing
The Honorable Glenn Wakai, Chair
and Members of the Committee on Energy,
Economic Development, and Tourism
Hawaii State Senate
Senate Bill No. 2640
February 6, 2020
Page 2

As we have testified on other bills, we also oppose the proposed waiver of inclusionary housing requirements that could effectively make all housing on the State properties market-rate, completely eliminating any affordability requirements. This focus on supplying only market-rate housing (even if limited to local residents) would fail to address our most critical housing needs. We cannot agree that this approach, which would depend on “trickling down” to reach lower-income households, will be implemented at the scale and pace to make an islandwide difference to most residents with the greatest housing needs.

We support the intent of Senate Bill 2640, but believe that using the Hawaii State Plan – a broad policy document – as a blanket override of key county policies and development regulations is not appropriate. Therefore, we oppose the Bill as drafted.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kathy K. Sokugawa', written in a cursive style.

Kathy K. Sokugawa
Acting Director



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Housing
and
Senate Committee on Energy, Economic Development, and Tourism
February 6, 2020 at 1:15 p.m.
by
Kalbert K. Young
Vice President for Budget and Finance/Chief Financial Officer
University of Hawai'i System

SB 2640 – RELATING TO HOUSING

Chairs Chang and Wakai, Vice Chairs Kanuha and Taniguchi, and members of the Committees:

Thank you for the opportunity to provide supportive comments on SB 2640.

The University of Hawai'i (UH) have three campuses that are within a one-half mile radius of a rail station along the Honolulu rail transit system: UH West O'ahu, Leeward Community College, and Honolulu Community College. These campus lands support our higher education mission and we continue to examine TOD options to address UH student, faculty and/or workforce housing potential to serve our constituents, as well as revenue generating concepts to support the University.

SB 2640 focus is to address high density affordable housing development. The UH supports the production of affordable housing to address the need of the general public. However, this type of high density/high rise development may not be aligned with or suitable to meet our educational mission and needs to be assessed if it can be beneficial to our students.

Thank you for this opportunity to provide our perspective.

LATE



SENATE COMMITTEES ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM, AND HOUSING
State Capitol, Conference Room 225
415 South Beretania Street
1:15 PM

February 6, 2020

.RE: SENATE BILL NO. 2640, RELATING TO HOUSING

Chair s Chang and Wakai, Vice Chairs Kanuha and Taniguchi, and members of the committees:

My name is Dwight Mitsunaga, 2020 President of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA-Hawaii, provides the following comments on S.B. 2640, which proposes to add a section Chapter 226 Hawaii Revised Statutes (HRS) which promotes the construction of high-density housing within a one-half mile radius of a rail station along the Honolulu rail transit system.

We understand the intent of the bill is to maximize the density on state owned lands within transit-oriented development (TOD) areas along the rail transit corridor. While we support the intent, it may be more appropriate and efficient to have one central state authority overseeing this type of effort. A new state TOD Redevelopment Authority, with similar powers to HCDA would give the state the authority it needs to oversee an orderly redevelopment of the areas around the transit stations. This redevelopment authority would upzone properties and increase density at each of the transit stations, and also allow for a more comprehensive land use planning to ensure development in the area achieve a variety of uses that will result in more vibrant communities. Rather than focusing on individual lots or parcels, developing a more comprehensive land use plan may ultimately result in more units with a range of price points and options (i.e. leasehold, fee simple, condominiums, apartments, etc.).

In the 2020 Legislative Session, both chambers of the Hawaii State Legislature, and Governor Ige's administration put forward a comprehensive package of bills to improve the quality of life for Hawaii's middle class families. A large part of the package attempted to address housing affordability. Having the State take the lead on planning for increased density at each of the transit stations, particularly in areas with State owned lands, would expedite the redevelopment process.

We appreciate the opportunity to express our views on S.B. 2640.

SB-2640

Submitted on: 2/4/2020 12:13:58 PM

Testimony for HOU on 2/6/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Deborah Kimball	Individual	Support	No

Comments:

Aloha,

I am Deborah Kimball, and I live in a HUD Section 8 project for seniors. I'm grateful every day to have a home, as I guess I'd be living in the street otherwise, and that I wouldn't survive long.

In my opinion, the severe scarcity of rental units for low-income people is the number 1 crisis in this state. HUD Section 8 projects have been disappearing as owners opted for "market" rents, and state and local governments have done very little to answer that--not even educating landlords of the advantages of renting to Section 8 voucher-holders. State and County have failed us badly for 30 years as the supply of affordable rentals has gone down and down and down. Have you ever faced being houseless, with just a grocery cart to sustain you?

Finally here's a proposal that's land-specific, so that factor is eliminated. And you've appropriated money over several years that sits, as magic doesn't build residences.

I hope that you really care and commit to this bill. I urge you to support it to your utmost, getting the maximum number of units out of this once-in-a-lifetime opportunity. Do something truly essential for a significant number of people--no excuses, delays, goof-ups, well butts, or no-cans.

Just do it--please!

SB-2640

Submitted on: 2/5/2020 10:58:15 AM

Testimony for HOU on 2/6/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ann S Freed	Individual	Support	No

Comments:

Aloha Chair and members,

I strongly support this measure to build up not out. Oahu can no longer afford to pave over any more of our agricultural land. The current permitted projects already threaten our long term food security.

Ann S. Freed