



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

S.B. NO. 1121, RELATING TO TRANSPORTATION.

BEFORE THE:

SENATE COMMITTEES ON GOVERNMENT OPERATIONS AND ON
TRANSPORTATION AND CULTURE AND THE ARTS

DATE: Thursday, February 13, 2025 **TIME:** 3:03 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Stella M.L. Kam, Deputy Attorney General

Chairs McKelvey and Lee and Members of the Committee:

The Department of the Attorney General (Department) offers the following comments on this bill.

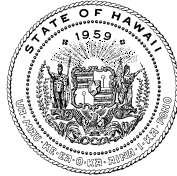
The purpose of this bill is to require the Department of Transportation (DOT) to apply bid preferences for bidders or offerors proposing to use all-electric construction vehicles when performing the requested construction work. Specifically, the bill mandates that DOT apply: (1) a five percent preference to bidders or offerors proposing to use at least twenty-five percent, but less than fifty percent, all-electric construction vehicles; and (2) a ten percent preference to bidders or offerors proposing to use at least fifty percent all-electric construction vehicles.

In a letter dated December 9, 2021, the Federal Highway Administration, U.S. Department of Transportation (FHWA), notified the DOT that federal law requires federal aid projects to be "awarded only on the basis of the lowest responsive bid" 23 U.S.C. §112(b)(1). The FHWA specifically cited a five percent bid adjustment preference for bidders with apprenticeship agreements, codified in section 103-55.6, HRS, as a violation of this federal statutory requirement. After receiving the FHWA letter, the DOT has since omitted such preferences from solicitations for federal aid projects.

To ensure compliance with the federal law, the Department recommends amending the proposed section 103D- (a) (page 2, line 18-21) as follows: "(a) This section shall apply [~~only~~] to construction contracts procured by the department of transportation[~~;~~], except for federal aid projects."

Thank you for the opportunity to present this testimony.

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 LAWELAWE 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

**GOVERNMENT OPERATIONS AND
TRANSPORTATION AND CULTURE AND THE ARTS**

THURSDAY, FEBRUARY 13, 2025, 3:03 P.M.
CONFERENCE ROOM 225 AND VIA VIDEOCONFERENCE, STATE CAPITOL

S.B. 1121

RELATING TO TRANSPORTATION

Chairs McKelvey and Lee, Vice Chairs Gabbard and Inouye, and Members of the Committee, thank you for the opportunity to submit testimony on S.B. 1121.

The Department of Accounting and General Services (DAGS) appreciates the intent of this measure which is to establish a preference in the Hawai'i public procurement code that favors bids or offers from businesses that intend to use a higher proportion of all-electric construction vehicles in department of transportation construction projects. However, after reviewing this proposed measure, we would like to provide the following **comments** and concerns for the committee to consider.

In reviewing Section 1, we note that there was there was no discussion on the availability and/or price effectiveness of electric construction vehicles in the United

States and, more specifically, Hawai'i. Given our experience with procuring light and medium duty electric vehicles in Hawai'i over the past few years, we can attest that it has been a challenge to procure even small quantities of these vehicles for our fleet.

We have conducted some research into the availability of electric construction vehicles and found the following:

- An October 8, 2024 article in the Engineering News Record, titled Group Aims to Boost Adoption of Electric Construction Equipment in the US by Johanna

Knapschaefer, indicated that in the U.S.:

- in general, growth in the use of all-electric construction equipment has been relatively slow; and
- members of the Association of Equipment Management Professionals indicates its members are '...focused on hybrid technology that is easy to adopt, maintain and manage with a clear return on investment'; and
- there are currently pilot programs in parts of the US to examine the aspects of feasibility in major US cities.

In addition, we would recommend consideration be given to conduct additional research to determine whether different means, such as tax credits, could be used to better incentivize the purchase and use of all-electric construction equipment without impacting the procurement process. This bill's focus is only on DOT projects which would likely have little to no impact on the types of construction equipment used in the private sector, county, or federal projects here in Hawai'i; however, a tax credit might encourage broader adoption of all-electric construction equipment in all sectors of construction work.

We also have concerns that the impacts on the construction industry in the State of Hawai'i may need to be further explored. We would recommend engagement and consultation with the broader construction industry be held prior to the adoption of this measure. This would allow the industry to discuss/assess the impact of such a shift in the composition of their fleet of equipment on their ability to perform construction work in Hawai'i. This would also allow for discussions on:

- existing infrastructure, such as charging stations, to facilitate the use of all-electric construction equipment on Hawai'i's jobsites,
- the impact on construction in remote locations where charging stations are unlikely to be readily accessible,
- transportation of equipment between islands to accommodate demand, and,
- the impact on schedules for construction work due to the need to periodically charge construction equipment.

In addition to the above comments, the department would also like to share concerns that we believe may further hinder implementation of the measure. These include the following:

- Lines 1-6 and 7-8 on page 3 of the bill indicates that, to qualify for the preference, the bidder or offeror
 - Must only intend to use to perform the work described (see lines 1-6) or propose to perform the requested work (see lines 7-8), using the threshold percentages of all-electric vehicles detailed in lines 9-15 of page 3.
 - This does not guarantee that any such vehicles will be used on the jobsite.

- It is unclear whether the requirement extends to the overall fleet of equipment used on the jobsite, since subcontractors will also be on-site using construction equipment and are part of the team the bidder would use to perform the work.
- Lines 6-12 on page 4 of the bill are not practical because:
 - To determine whether a contractor is complying with the assertion made at the time of bid, the State must have the capability to monitor every vehicle on a construction site throughout the construction process.
 - Given existing staffing shortages and the potential loss of unfilled positions, the State does not have the resources/capacity to determine whether, overall, the contractor and its subs are complying with its assertion at the time of bid.
 - It is also not in the best interest of the State to detract from its efforts to monitor the quality of the construction work and its compliance with the requirements of the solicitation documents, which should be its primary focus.
- The penalties in lines 10-12 on page 4 of the bill do not help the agency address the issues of non-compliance for the project because: 1) voiding the contract puts the agency in the position of having to find a way to complete the project in a timely, cost-effective manner; and 2) debarment and suspension proceedings will not address the fact that the State may have paid 5-10% more for the construction without having attained any benefit from doing so.

Thank you for the opportunity to provide testimony on this measure.



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TESTIMONY
OF
BONNIE KAHAKUI, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEES
ON
GOVERNMENT OPERATIONS
AND
TRANSPORTATION AND CULTURE AND THE ARTS
FEBRUARY 13, 2025, 3:03 PM

SENATE BILL 1121
RELATING TO TRANSPORTATION

Chairs McKelvey and Lee, Vice Chairs Gabbard and Inouye, and members of the committees, thank you for the opportunity to submit testimony on Senate Bill 1121, which establishes a preference in the Hawaii Public Procurement Code (Code) that favors bids or offers from businesses that intend to use a higher proportion of all-electric construction vehicles in Department of Transportation construction projects. The State Procurement Office (SPO) appreciates the intent to reduce greenhouse gas emissions and promote sustainability in Hawaii's construction sector. Encouraging the use of all-electric construction vehicles aligns with the state's environmental goals and the broader need to mitigate climate change impacts. However, the SPO has several comments and concerns regarding the feasibility of implementing the bill as currently drafted.

Concerns:

1. The Hawaii Public Procurement Code is designed as a general framework to provide consistent and equitable guidance for all state agencies and departments. SB1121 introduces a preference specific to the Department of Transportation (DOT), which may set a precedent for department-specific mandates within the Code, Chapter 103D, Hawaii Revised Statutes. This could undermine the uniformity of procurement processes statewide and create inconsistencies across agencies. It is critical to maintain a procurement system that is consistent in its applicability.
2. Implementing and monitoring the preference system outlined in SB1121 would require substantial administrative resources and introduce new complexities into the procurement process. Contractors would need to disclose the proportion of all-electric construction

vehicles they plan to use, and procurement officers would need to verify these disclosures during the evaluation stage.

Furthermore, ensuring compliance throughout the project's lifecycle presents significant challenges. Monitoring whether contractors meet the promised percentage of electric vehicle usage would require on-site inspections, detailed reporting requirements, and robust enforcement mechanisms. These activities would increase the administrative burden, introduce delays, and create potential disputes, all of which could disrupt or delay of critical infrastructure projects.

3. While all-electric vehicles have the potential to reduce emissions, other environmental factors, such as the carbon footprint of lithium-ion battery production, disposal, and recycling, should be considered. Moreover, Hawaii's electricity grid still partially relies on fossil fuels, which may diminish the net environmental benefit of transitioning to electric vehicles.

Comments/Recommendations:

1. The Procurement Code must preserve its role as a consistent and equitable framework. Consider creating separate policies or pilot programs outside the Code to test the feasibility of electric vehicle adoption in DOT projects.
2. Feasibility Study: Conduct a detailed study to evaluate the availability of all-electric vehicles, particularly equipment used in the construction industry, the state's charging infrastructure, and the economic impact on contractors before implementing the preference system.
3. Incentives and Support: Consider financial incentives, grants, or subsidies to help contractors offset the cost of acquiring all-electric vehicles and investing in necessary equipment charging infrastructure.
4. Robust Monitoring Framework: There needs to be a clear, efficient, and practical procedures to monitor contractor compliance. This could include periodic reporting by contractors, digital tracking of vehicle usage, and audits conducted by the DOT or designated third parties. Additionally, establish clear enforcement mechanisms to address non-compliance, such as penalties, contract voidability, or referral for debarment proceedings.
5. Stakeholder Collaboration: Engage with contractors, environmental organizations, and other stakeholders to develop realistic, practical standards that balance environmental goals with the realities of Hawaii's construction industry.

Thank you for the opportunity to submit testimony on this measure.



STATE OF HAWAII
HAWAII CLIMATE CHANGE MITIGATION & ADAPTATION
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Chairperson, DOE
Director, C+C DPP
Director, Maui DP
Director, Hawai'i DP
Director, Kaua'i DP
The Adjutant General
Manager, CZM

**Testimony of
LEAH LARAMEE
Climate Change Coordinator on behalf of
Climate Change Mitigation and Adaptation Commission Co-Chair Mary Alice Evans and
Co-Chair Dawn N.S. Chang**

**Before the Senate Committees on
GOVERNMENT OPERATIONS
&
TRANSPORTATION AND CULTURE AND THE ARTS**

**February 13, 2025
3:03 P.M.
State Capitol, Room 225 & Videoconference**

**In consideration of
SENATE BILL 1121
RELATING TO THE STATE BUDGET**

Senate Bill 396 establishes a preference in the Hawai'i Public Procurement Code that favors bids or offers from businesses that intend to use a higher proportion of all-electric construction vehicles in Department of Transportation construction projects. **The Hawai'i Climate Change Mitigation and Adaptation Commission (Commission) supports this measure and offers the following comments.**

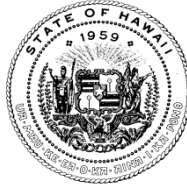
The Commission consists of a multi-jurisdictional effort between 20 different departments, committees, and counties to protect the lives and livelihoods of the people of Hawai'i through accelerate climate action. This bill aligns with the state's goals to reach a carbon net-negative economy by 2045. The Commission respectfully requests that bill be amended to apply to all State Departments and be expanded to apply to all equipment and transportation services procured by the state.

If passes this bill could accelerate the adoption of electrified heavy-duty equipment used in construction projects and electric vehicles (EV) adoption for fleet vehicles. The state is already working on transitioning its public fleet to EVs to reduce emissions by setting a preference to

contractors to do the same this could expand adoption and significantly reduce green house gas emissions in construction and transportation sectors.

Mahalo for the opportunity to testify in support of this measure.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



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LATE

February 13, 2025
3:03 p.m.
State Capitol, Room 225 VC

**S.B. 1121
RELATING TO TRANSPORTATION**

Senate Committee on Transportation and the Culture and the Arts

The Hawai'i Department of Transportation (HDOT) **opposes S.B. 1121**, which proposes a preference for contractors utilizing electric vehicles (EVs) in the execution of public works contracts. While we support efforts to reduce emissions and promote sustainable transportation, HDOT has several concerns regarding the implementation of this bill.

The proposed bill cannot be applied to federally funded projects, as no federal provisions allow for this type of preference. Additionally, enforcing an EV utilization requirement would be challenging, as determining the percentage of EVs at the time of bid and ensuring compliance during construction could lead to increased bid protests, delaying critical infrastructure work.

The bill may also result in the selection of contractors who do not provide the best overall value, potentially raising costs and impacting project timelines. Furthermore, to maintain consistency in procurement policies, any such preference should be applied uniformly across all state agencies rather than in a fragmented manner that creates confusion and inefficiencies.

For these reasons, HDOT respectfully opposes S.B, 1121.

LATE

SB-1121

Submitted on: 2/13/2025 9:06:18 AM

Testimony for GVO on 2/13/2025 3:03:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Arakaki	Testifying for DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES	Comments	Remotely Via Zoom

Comments:

TESTIFIER - ON BEHALF OF DAGS COMPTROLLER KEITH REGAN

DAGS AUTOMOTIVE DIVISION