

REPORT OF THE COMMITTEE ON TRANSPORTATION AND PUBLIC WORKS

Nestor Garcia, Chair; Charles K. Djou, Vice-Chair
Todd K. Apo, Gary H. Okino, Rod Tam, Members

Committee Meeting Held
November 29, 2007

Honorable Barbara Marshall
Chair, City Council
City and County of Honolulu

Madam Chair:

Your Committee on Transportation and Public Works, to which was referred Resolution 07-376 entitled:

“ESTABLISHING A TECHNICAL EXPERT PANEL TO SELECT FIXED GUIDEWAY TECHNOLOGY,”

reports as follows:

The purpose of this Resolution is to request the City administration to develop a request for information for the purpose of soliciting information regarding the performance, cost, and serviceability of technology and establishing a panel of five technology experts to perform the evaluation and final technology selection.

The Chief planner of the Department of Transportation Services testified in support of Resolution 07-376. The Ironworkers Union, Local 625, the Hawaii Building and Construction Trades Council, AFL-CIO, and one individual also testified in support. Four individuals testified in opposition.

Following discussion and debate on this matter, your Committee has amended the Resolution to:

- 1) Add a new “Whereas” clause that highlights the value a technical panel brings to the city’s decision making process, and;
- 2) Amend an existing “Be it further resolved” clause to allow the Council to play a greater participatory role in the selection of this panel of technical experts by reducing the number of Administration selections from four to two, increasing the

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number of Council selections from one to two, clarifying that it will be the Chairperson of the Council and the Chair of Your Committee that will each make one selection from a list of qualified experts, and having the two experts selected by Council and the two experts selected by the Administration have equal say in choosing the fifth and final member of the panel, who will serve as the Chairperson of the panel, and;

- 3) Add an additional "Be it further resolved" clause that states that the Council find that this process for selection of technology is advantageous to the city, and it declares that the Council hereby declines to exercise its right to select the technology as set forth in Ordinance 07-001.

After many months of thorough research and analysis into this important matter following the passage of Ordinance 07-001, your Committee believes that the use of a panel of impartial technical experts, knowledgeable and well-versed in national and international transit operations and technology, to select the technology for Honolulu's submittal to the Federal Transit Administration (FTA) is both: 1) a common and approved operational practice of State and Local agencies procurement processes, and 2) a sound strategy for obtaining maximum funding from the FTA's New Starts program. Your Committee reached this conclusion for the following reasons:

Honolulu Charter Provisions - Separation of Powers

Section 1-103 of the Revised Charter of Honolulu 2000 Edition, 2003 Supplement, Structure of Government, states that "The government provided by this charter shall consist of two coordinate branches to be known as the 'Legislative Branch' and the 'Executive Branch.'" This section of the Charter also identifies in its footnotes that "Under the separation of powers provided in the Honolulu charter, the legislative branch of the city

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and county government is coordinate with the executive branch, and neither branch may exercise the power of the other. City Council of the City and County of Honolulu v. Fasi, 52 Haw. 3, 467 P.2d 576 (1970); Akahane v. Fasi, 58 Haw. 74, 565 P.2d 552 (1977); Harris v. DeSoto, 80 Hawai'i 425, 911 P.2d 60 (1996)."

Section 3-101 of the Charter, Legislative Power, states that "The legislative power of the city shall be vested in and exercised by the city council, except as otherwise provided by this charter." The Merriam-Webster On-line Dictionary defines legislation as "the action of legislating; specifically : the exercise of the power and function of making rules (as laws) that have the force of authority by virtue of their promulgation by an official organ of a state or other organization."

Hawaii Revised Statutes – Chapter 103D, Hawaii State Procurement Code

Your Committee also researched the Hawaii State Procurement Code, HRS 103D, prior to holding a hearing on this Resolution, specifically section 203 (b) (1) and (2), which identifies that "The chief procurement officers for each of the several counties shall be:" for the "executive branch--the respective finance directors of the several counties" and for the "legislative branch--the respective chairpersons of the councils of the several counties."

The use of technical advisory panels that establish criteria for eventual Request For Proposals (RFPs) is a fairly common practice within State and Local governmental agencies. In HRS 103D-213, the Hawaii State Procurement Law also provides a mechanism for the chief procurement officer to "appoint procurement advisory groups to assist in the development of specifications or procurement in specific areas, and any other matters within the authority of the chief procurement officer", and allows that "members of procurement advisory groups may be reimbursed for expenses incurred in the performance of their duties".

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SAFETEA-LU and the New Starts Funding Process

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed by Congress authorizes \$6.6 billion in total funding for New Starts projects in fiscal years 2006, 2007, 2008, and 2009. This includes funding for more than 330 projects for proposed, pending, and existing Full Funding Grant Agreements (FFGA). FFGAs are multi-year contractual agreements between the FTA and project sponsors that formally define the project scope, cost and schedule. They also establish the maximum level of federal financial assistance and outline the terms and conditions of federal financial participation.

While any local or state entity may initiate an Alternatives Analysis for evaluating the costs, benefits, and impacts of a range of transportation alternatives designed to address mobility problems in a defined transportation corridor, a project's entry into the Preliminary Engineering phase, as well as the Final Design phase, of the process MUST be approved by the FTA prior to each submittal. There is no entity that can submit an incomplete or incorrect plan that has not reviewed all feasible alternatives and expect to receive Federal funds on any whim of fancy as has been alleged against the City's current efforts. This check and balance at the Federal level ensures that there are sound operating and financial plans in place for EVERY project moving through the competitive New Starts process to be approved for a federal share of transit funding.

Your Committee recognizes that individual council members and the public at large may have preference favoring one technology over another. However, the decision of which technology is best suited for Oahu should be based on demonstrated performance criteria and technical fact. For that type of analysis of detailed vehicle and running surface specifications, technical experts can, and should, be utilized, for ultimately, the selection of technology has a two-fold purpose: first, it should be based on the goal of maximizing the

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Full Funding Grant Agreement that the City is attempting to get from the Federal Transit Administration's \$6.6 billion competitive New Starts discretionary funding program (49 USC §5309) to reduce the amount of local matching funds needed, and; second, it should comply with all of the parameters set forth in the Alternatives Analysis and Locally Preferred Alternative selected by this Council just last year.

Prior Council Action

Through the passage of Ordinance 07-001, this Council selected fixed guideway as its locally preferred alternative. Your Committee notes that the terms "fixed guideways", "busways", and "HOT lanes" have been incorrectly referred to by some as being similar in nature and interchangeable, and believes that a clarification of the definitions and terms as provided for by the respective Federal governing agencies is necessary to provide clarity to the discussions.

Clarity of Definitions

As defined by the Federal Transit Administration, "Projects eligible for New Starts funding include any fixed guideway system which utilizes and occupies a separate right-of-way, or rail line, for the exclusive use of mass transportation and other high occupancy vehicles, or uses a fixed centenary system and a right-of-way usable by other forms of transportation. This includes, but is not limited to, rapid rail, light rail, commuter rail, automated guideway transit, people movers, and exclusive facilities for buses (such as bus rapid transit) and other high occupancy vehicles."

Further, the FTA defines a busway as "a special highway designed for the exclusive use of buses" and is an eligible use of New Starts funds through the establishment of a

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Bus Rapid Transit (BRT) operation. Although it is possible to permit other authorized vehicles to use the busway facility, such as emergency vehicles, strict guidelines are often established by the transit authorities to limit its use so that those vehicles do not interfere with the operation of transit vehicles.

Such was the case when members of your Committee visited the Port Authority of Allegheny County (PAAC) in Pittsburgh, Pennsylvania to research their operations. The busways operated by PAAC are primarily converted railroad rights-of-way that maintained much of their train infrastructure, such as stations and terminals. Although for-profit bus operations have the opportunity to utilize the facility, in practice, only the authority's buses operate in the busway due to strict operating procedures and liability coverage required by the authority.

By comparison, High Occupancy Toll (HOT) lanes are funded through the Federal Highway Administration's (FHWA) Value Pricing Pilot Program (VPP). According to the FHWA, the VPP is "limited to 15 slots (which the FHWA has reserved for "states") of which only one vacancy remains." As compared to the \$6.6 billion set aside by the FTA for New Starts funding in fiscal years 2006, 2007, 2008, and 2009, just \$48 million is available for VPP funding during the same period "to support studies and implementation aspects of a tolling or pricing project". Additionally, the FHWA goes on to clarify that "value pricing concepts that have become common mainstream and have been adopted, as common practice, such as High Occupancy Vehicle (HOV)-to-High Occupancy Toll (HOT) lane conversions, will not be funded."

Limited Highway Funds Available

In addition to any proposed HOT lanes being the responsibility of the State to construct, only about \$125 million to \$130 million in Federal Highway Administration

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(FHWA) obligation authority is available statewide each fiscal year, and of this amount, Oahu receives \$80 million for both State and City projects. Historically, of the \$80 million, an average ceiling of about \$14 million in federal funds has been programmed each year for City projects, with the remaining \$66 million programmed for State initiated projects. Your committee notes that this past year the City had more projects than available funding on its list of Transportation Improvement Projects, and through the passage of Resolution 07-206 deferred two important projects – Salt Lake Boulevard widening, and Round Top and Tantalus Drive – to future federal funding periods due to the lack of funds.

Reservation of Right to Select Technology Not Needed

Although, through the passage of Ordinance 07-001, the council stated that it “reserves the right to select the technology of the fixed guideway system for the locally preferred alternative.”, the very next statement of the Ordinance contemplated that there could exist the possibility that the Council would not invoke its right by stating that “If the council exercises the right, the council shall select the technology through subsequent ordinance passed on third reading by the council before the city administration issues a public notice soliciting proposals or inviting bids for work that includes design of the system.”

As has been stated by members of your Committee, the Council’s ultimate exercise of power over the City’s choice of technology is found in its veto power over the City’s annual budget process. It is through this process that this Council exercised its right and displeasure with a prior administration’s establishment of a Bus Rapid Transit route through downtown Honolulu and selection of a third boiler at the H-Power Waste to Energy facility and chose not to fund either project any further.

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The decision for the Council to reserve its right to select technology for the City's mass transit project, and only this project, is inconsistent with other large public works projects in place or on the horizon. Your Committee notes that for the City's recent announcement of \$433 million of sewer pipe rehabilitation improvements or replacements that will help improve infrastructure throughout Oahu, the Council did not invoke a right to select the technology or design of these pipes. Yet, projected out over a twenty year period, sewer pipe rehabilitation or replacements will cost the City nearly \$3.5 billion, and an additional \$1.2 billion is estimated to be needed to bring the Sand Island Waste Water Treatment Plant and Honouliuli Waste Water Treatment Plant into compliance with secondary treatment standards if the EPA's denial of the City's 301 H waivers from the Clean Water Act becomes final. In both of these incidences, the Council has allowed the Department of Environmental Services the authority and responsibility to utilize their technical experts to select the appropriate design, materials and technology to rehabilitate or replace aging pipelines for the Request for Proposals and Invitations For Bid. In the same manner and for the same reasons, your Committee believes that the use of technical experts to select the technology for Honolulu's mass transit submittal is the right thing to do.

Your Committee on Transportation and Public Works is in accord with the intent and purpose of Resolution 07-376, as amended herein, and recommends its adoption in the form attached hereto as Resolution 07-376, CD1. (Ayes: Garcia, Apo, Okino, Tam – 4; Noes: Djou – 1.)

Respectfully submitted,

Committee Chair

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