

## COMMITTEE ON FINANCE

Representative Marcus R. Oshiro, Chair  
Representative Marilyn B. Lee, Vice Chair

BILL: Senate Bill 1789  
HEARING DATE: March 26, 2008  
TIME: 12:30 PM  
PLACE: House Conference Room 308

Aloha Chair Oshiro, Vice Chair Lee and Members.

My name is DeGray Vanderbilt.

I am a 30-year resident of Molokai and a former Board member of Akaku Maui Community TV.

I am currently Chair of the Molokai Planning Commission and a member of the Molokai Water Working Group, which is advisory to the State Commission on Water Resource Management.

I am here testifying on this Kuhio Day as an individual, who is strongly in support of the passage of SB 1798.

I was testifying at the legislature on March 18. During a break, I visited a few members of your Finance Committee. The purpose of my visit was to request support for SB 1789 being heard before the April 4, 2008 deadline.

Some of you I spoke with were not familiar with SB1789, which is not surprising when one realizes the staggering number of bills you must evaluate and act on within a very short time frame.

That evening, I put together a 12-page information packet on SB 1789 and included several testimonies that were delivered on the Senate side. The package also included the Senate Committee Report and an article dedicated to SB 1789 published in the Molokai Dispatch and entitled "Keeping the Public in Public Access TV".

The packet is included as Exhibit A to my testimony.

I have also handed out today copies of the March 20, 2008 issue of the Molokai Dispatch that is dedicated in large part as a "Thank you" tribute to Akaku's Molokai Media Center for its dedicated service to our community, as a true community-based asset of the people. The "Keeping the Public in Public Access TV" article is on Page 8.

I then came back the next day, March 19, and was able deliver the packet to each office of your 19-member committee with a cover letter requesting your support for the public's effort to have SB 1789 heard by your Committee. I was fortunate enough to meet with a couple of Committee members.

One of the testimonies I included in the information packet was that of Dave DeLeon who is a member of the State Cable Advisory Committee. Mr. DeLeon's enlightening testimony included the following" As a member of the Cable Advisory Committee I am opposed to the imposition of the Procurement Code in

the contracting of PEG Access Television services. The procurement code is fine when it comes to providing contracts for painter or roofers, but borders on the absurd when applied to what is fundamentally a First Amendment issue: the free and unfettered voice of the public to be heard via free media”

I learned yesterday that today’s hearing had been scheduled and want to thank Chair Oshiro for agreeing to hear this very important piece of legislation.

Last night on Molokai, the Maui County Council held a budget meeting which lasted four hours from 7 pm until 11 pm. Over 150 people attended, which would be equivalent to 20,000 attending a meeting on Oahu when you consider population counts. Akaku’s Dan Emhoff was there filming for Akaku.

It was an inspiring meeting, which included among other things testimony by Oahu Boy Scout Troop 32 in support of funding for Molokai Fishpond restoration being carried on by a local non-profit Ka Honua Momona. The Scouts had been participating during the day with some hands on restoration work of the fishpond and taking some time to learn how to throw net. The scouts’ testimonies captured by Akaku summarized how special their “Molokai experience” had been and what it meant to them.

People in attendance at yesterday’s Molokai budget meeting heard about today’s meeting and most everyone was eager to sign the petition requesting the legislature’s support of SB 1789. Akaku Molokai has 100% community support. They’ve earned it over the years but doing the only thing they are set up to do...serving the community.

I have some of the petitions in hand, and I believe my neighbor Judy Caparida has some more from last night’s meeting.

Thanks to Akaku, these thoughtful testimonies will be shared with those who were unable to attend the meeting, such as Jane Lee, a respected Kupuna on our island.

I have attached as Exhibit B testimony of Jane Lee on an important, long-running, controversial issue that was before our Molokai Planning Commission. At the start of her testimony she said:

“ I just wanted to thank Akaku. We are the shut-outs, we’re home, we’re the old warriors that retired, and, you know, we don’t have a chance to come out to the meetings. We’re either not well enough or, by night time, we go down with the sun. So Akaku has kind of kept us abreast as to what the debate or the -- what was going on. So thank Akaku, because they educated us at home and anytime we didn’t want to listen, we just turned it off. “

Today’s hearing is the last hurdle for this legislation. Your support of the bill will be a great assistance in perpetuating the dedicated, community-based public access television facilities throughout our state.

It’s really heartening to see that many of our legislators have come to understand that Akaku and the other community television station facilities around the State are valued community-assets with only one agenda, which is to serve the people.

The bill has crossed over to your Committee from the senate where it passed successfully through the Committee on Commerce, Consumer Affairs and Affordable Housing and the Committee on Tourism and Government Affairs,

In Senate Committee Report No 2382, the Committee stated that it “finds that community television is an important and valuable forum that has the ability of informing, educating, communicating with, and representing the voices of various communities and groups. For example, residents of the Waianae Coast have benefited from Olelo's (an access organization) efforts in making PEG programs more accessible by placing a media center in Waianae as well as in five other communities with more locations planned for in the future. Authorizing the Director of Commerce and Consumer Affairs to designate an access organization to oversee the development, operation, supervision, management, production, and broadcasting of programs on PEG channels will ensure that access organizations will continue to provide these valuable community media services to the community.

Selecting a PEG organization through an open competition bid process may have a negative social impact on the rural districts in which these organizations serve. Thus, your Committee further finds that exempting designated access organizations from the Procurement Code under chapter 103D, Hawaii Revised Statutes, will ensure that quality PEG programming, which depends largely upon the sensitivity and perception of the provider to the needs and wants of the community, will continue to serve the community. “

Senate Committee Report 2382 said testimony in support was received from 89 individuals and a host of agencies, while only one individual testified in opposition.

If SB 1789 makes it through your Committee today, you will have made a substantial commitment to preserving these free-speech, non-profit, community television venues that have served so effectively as the public's “soapbox” for almost 20-years.

Oahu is served by Olelo Community TV, Kauai by Hoike Community TV, Maui and Molokai by Akaku Community TV and the Big Island by Na Leo Community TV.

For 20 years public access television has been building efficient free speech networks throughout the state through community networking and volunteerism. There is a trust factor that has been developed over many years of the public access providers sticking to one agenda.....serving the public.

These operations are true success stories that have returned exceptional value to communities throughout our state without being burden with the procurement process all this time.

So why start now?

I recall when I was on the board at Akaku, the contract these community service providers had with the Department of Commerce and Consumer Affairs (DCCA) called for each access provider to work towards self sufficiency in the event the revenue stream from the cable subscriber fees dried up in the future.

Over the years, while continuing to serve the public, each public access station worked towards their respective self-sufficiency goal. Through fund raisers and other innovative measures, three of the access providers, Na Leo, Akaku Maui and Olelo now own their own building.

If these the public access facilities are subjected to a bidding process to see who will run the operations from year to year, possibly the real estate assets will be the lure of special interest groups bidding to take over public access, and not a desire on their part to serve as a true free speech venue for the public.

For our working men and women, our youth, the elderly, the "little guy", public access and free speech are about the only true things of value they can pin their hopes on as far as having their message heard.

On Maui, I spoke to a developer who did not like what was being broadcast on public television about his development project. I said, "Well why don't you come on down to Akaku and tape a one hour spot so the public will have a chance to hear your unedited side of the story."

His response," Listen I don't need Akaku, I can afford a two-page spread in the Maui News and get my message across."

My response: "That's exactly why we need Akaku and public access TV because it provided the only extended, free media outlet for those in the public who are unable to afford to buy a two-page spread in the Maui News to get their message out.

The "little guy" doesn't have much to hang his or her hat on these days. Don't take the one proven asset they have away from them by putting their free speech venue out to bid.

A few years ago, the Attorney General said DCCA's contracts with the public access stations should be subject to the procurement code. Why now? Why not 20 years ago?

Certainly the public is not complaining about the value of services being provided to their communities.

Several requests went into the AG in an effort to secure a copy of the opinion rendered to DCCA, but both DCCA and the AG's office claimed "attorney/client privilege".

Soon after, the AG came out with his opinion, DCCA went around the State for public hearings. Hundreds and hundreds of people came out to testify, more than 95% in full support of the respective public access providers and dead set against subjecting their community access stations to the potential dark downsides of the procurement process that would attempt to make free speech a commodity put out to bid.

I attended all the DCCA statewide hearings except the one on Kauai.

On the Senate side you had the State Procurement Office testifying in opposition of the bill. It's Administrator, Aaron Fujioka, claiming that "open procurement procedures assure the State obtains value..." I assume when Mr. Fujioka refers to the State he is referring to the "people".

The people have not complained about the value they have been receiving based on the continual expansion of public access into rural communities throughout the state.

When I was on the Akaku board, most of the board members and all of the employees only were concerned about serving the public and making sure the public's voices were heard. There were no personal agendas burdening the mission. I have visited the other public access facilities and the same level of unselfish commitment is evident among all board members and employees.

It is a refreshing site to see.

When DCCA's Clyde Sonobe, Cable television Administrator for DCCA testified before the Senate Tourism and government Affairs Committee on February 12, 2008 he stated that "the Department takes no position on the majority of SB 1789, opposes one section, and provides the following comments on the measure."

As few days later Mr. Sonobe testifying before the Senate Committee on Commerce and Consumer Protection said, "The Department does not oppose the intent of the bill to exempt the selection or designation of the public, educational, and government ("PEG") access organizations from the State Procurement Code in Hawaii Revised Statutes ("HRS") chapter 103D, but has comments and questions on the bill.

The public and several legislators, including House members Pono Chong, Lyla Berg and Ryan Yamane, put in a lot on time and effort crafting the Hawaii 2050 Sustainability Plan. In that plan is the State's first definition of sustainability.

One sustainability component promotes "A Hawai'i that strikes a balance among economic, social and community, and environmental priorities." Today there is very little balance in favor of the "little guy". Public access television provides a potent balancing tool that some would like to see go away.

Subjecting the successful, community supported public access television operation to the procurement process would provide the "state" with anything of constructive value, but would give others a chance to compromise one of the few balancing tolls left to the "little guy" ...his, unedited, free speech soapbox".

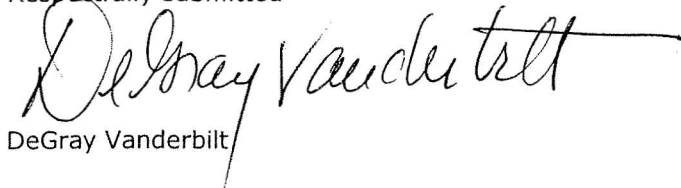
Throughout out state once thriving, sustainable, balanced communities have given away to segregated communities. In a recent speech by Senator Collen Hanabusa entitle Building One Hawaii she noted the following: "I believe we in Hawaii are approaching a point where we are faced with diverging paths. One path will lead us to two Hawaiis, divided between haves and have nots, desirable and undesirable neighborhoods, and high-quality and high-stress neighborhoods".

Please don't let us continue heading down a path towards two Hawaiis. Let's work towards unity. And to give unity a chance, you have to give balance a chance.

Pass SB 1789 today and help preserve the few balancing tools remaining at the disposal of the public have nots.....free speech and their respective community-based public access television stations.

Thank you considering my testimony

Respectfully submitted

  
DeGray Vanderbilt

March 19, 2008

PLEASE SUPPORT AN EFFORT TO HAVE THE HOUSE FINANCE COMMITTEE SCHEDULE A HEARING ON THE WIDELY SUPPORTED SENATE BILL 1789.

THE FINANCE COMMITTEE IS THE FINAL COMMITTEE FOR SB 1789 TO CLEAR. IF THE SB 1789 IS PASSED THE STATE'S PUBLIC ACCESS TELEVISION STATIONS STATEWIDE (Olelo on Oahu, Akaku on Maui and Molokai, Na Leo on the Big Island and Hoike on Kauai) WILL BE EXEMPTED FROM THE PROCUREMENT BID PROCESS.

THESE GRASS-ROOT, COMMUNITY BASED OPERATIONS HAVE SERVED THE PUBLIC WELL FOR TWENTY YEARS WITHOUT BEING SUBJECT TO THE PROCUREMENT PROCESS.

Its is really heartening to see that most of our legislators have come to understand that the community public access television station facilities around the State are valued community-assets with only one agenda, which is to serve the people. If SB 1789 makes it through this legislative session, our legislators will have made a substantial commitment to preserving these the effective and efficient free-speech, non-profit, community television operations that have served so effectively as the public's free speech "soapbox" for almost 20-years"

Senate Bill 1789 successfully crossed over from Senate to the House side. The Senate's Standing Committee Report No. noted the following:


**"Your Committee finds that while an open bid process promotes the public interest generally, in this instance of selecting a PEG organization, open competition would be detrimental to the public. Much of the quality of PEG depends upon the perception and sensitivity of the provider to the needs and wants of the community. The unquantifiable intangibles of social impact would be negated in an open competition bid process, resulting in rural districts being adversely affected."**

Attached are some other testimonies and materials which attest to why the procurement process would be detrimental to the public.

1. Testimony of State Representative Maile S.L. Shimabukuro
2. Testimony of Dave DeLeon member of the State Cable Advisory Committee
3. Testimony of Sparky Rodriques
4. Testimony of Trisha Kehaulani Watson, Executive Director Kako'o Oiwi
5. News article from Molokai Dispatch dated March 18, 2008

Any support you are able to lend to insure that SB 1789 receives a hearing before the House Finance Committee will be much appreciated.

Respectfully submitted



DeGray Vanderbilt, former member of the Akaku Maui Community TV Board of Directors.  
Box 1348, Kaunakakai, Molokai, Hawaii 96748  
(808) 283-8171

EXHIBIT A - 12 PAGES



## HOUSE OF REPRESENTATIVES

STATE OF HAWAII  
STATE CAPITOL  
HONOLULU, HAWAII 96813

The Honorable Senator Clarence Nishihara  
Chair, Committee on Tourism and Government Operations

The Honorable Senator Donna Mercado Kim  
Vice Chair, Committee on Tourism and Government Operations

Re: SB 1789; Public Hearing on 02-12-08 at 1:15 pm in Conference Room 229  
Testimony In Support

Aloha Chair Nishihara and Vice Chair Kim:

Please accept my testimony in support of this measure and in support of Waianae Olelo and its service provider Public, Education and Government (PEG) access television. Olelo provides public service announcements, cultural productions or panel discussion on local environmental, economic and social issues. PEG Access has a diverse mission that involves community building, nurturing local programming and protecting First Amendment rights nationally and/or on the neighbor islands.

For two years, Waianae Olelo Community access television has made a very strong case for exempting access services from the State Procurement Code. Olelo and PEG Access programs educate our communities by televising State and City and County issues as well as Legislative and City Council hearings that the community would otherwise, not be exposed to. On several occasions, many folks in my community have provided compelling testimony to the Department of Commerce and Consumer Affairs and the State Procurement Board and do not feel access television should not be bought, sold or put up for bid.

I humbly request that this measure be passed out of the Committee on Tourism and Government Operations so that access services and/or organizations may be exempt from the competitive bidding process. Thank you for the opportunity to submit this **Testimony in Support of SB 1789**.

A handwritten signature in black ink, appearing to read "Maile S. L. Shimabukuro".

Maile S. L. Shimabukuro  
State Representative  
District 45 – Waianae Makaha Makua

Representative Maile S.L. Shimabukuro, District 45  
(Wai'anae~Mākaha~Mākua)  
Chair, Committee on Human Services & Housing  
Member, Committees on Education, Higher Education, Health & International Affairs  
Hawaii State Capitol, Room 406, Honolulu, Hawaii 96813  
Phone: (808) 586-8460/Fax: (808) 586-8464/E-mail: repshimabukuro@capitol.hawaii.gov

**David DeLeon**

335 Waiama Way  
Haiku, Hi. 96708  
808-281-3269

February 7, 2008

Honorable Clarence Nishihara, Chair  
Committee on Tourism and Government Operations  
State Capitol  
Honolulu, Hi. 96813

**TESTIMONY: In Support of Senate Bill 1789**

**Chair and Members:** Thank you for this opportunity to testify in support of Senate Bill 1789, that would allow the contracting of PEG Access Television services without the necessity of following the state Procurement Code. While I am writing as an individual citizen, I am also currently the Maui County representative on the State Cable Advisory Committee.

As a member of the CAC I am opposed to the imposition of the Procurement Code in the contracting for PEG Access Television services. The procurement code is fine when it comes to providing contracts for painters or roofers, but borders on the absurd when applied to what is fundamentally a First Amendment issue: the free and unfettered voice of the public to be heard via a free media. Giving government a strong say in who can and who can't provide this media and under what terms, gives government too strong of a say in how these community-based agencies can operate. The four operations now serving our counties were created by the communities they serve – not the state. They were developed with much care and aloha by the communities over the years into what they are today. The AKAKU Community Television system on Maui has grown and taken an important position in our community's media mix. Our community has learned to count on it. There were a couple of years, not long ago, in which the AKAKU board split over policy and control, but the board has since self-corrected itself and continues to produce responsible community television programming.

The balance here, as always, is between control and freedom. When it comes to PEG Access, the judgment should come down on the side of freedom. While DCCA should be in a position to make sure the cable access fees are not squandered, its oversight of these operations should be as light as possible. The recent efforts by DCCA to impose its control over these PEG Access agencies have been just the opposite: unnecessarily heavy-handed, resulting in law suits from two of the agencies. While DCCA may believe it is in the state's interest to impose strong controls over the PEG stations, it is definitely not in the interest of unfettered, free speech, the ultimate public interest in a democracy. By eliminating the Procurement process, SB1789 would be a good first step in protecting that interest.



## nishihara2 - Bert

---

From: Sparky Rodrigues [srodrigues@earthlink.net]  
Sent: Monday, February 11, 2008 1:03 PM  
To: nishihara2 - Bert  
Cc: Sparky Rodrigues  
Subject: Support SB 1789 relating to COmmunity Access Television

SB 1789 relating to Community Access Television.

Committee for Tourism & Government Operations Chair Clarence Nishihara

Please support SB 1789.

I started participating with PEG Access in the Wai'anae Community doing programs about issues that aired on 'Olelo Community Television. The networks never allowed the rest of the story from our community perspective. Except in the case of conflict, argument, anger or confrontation did the networks show us as out of control, unreasonable and uncivilized. We were never given a voice to share our point of view. NOT without editing, voiceover or outright censorship. WE could not afford the money it cost to tell our story on network television. WE were underserved and un-represented in media. Even the government officials at that time would not allow these voices to be heard because they did not share that diverse viewpoint.

That was just ten years ago. Eight years ago there was a cost to get trained and certified as a community producer. The pre-requisite with Olelo to use of equipment, facilities and doing programs that go on to be broadcast on the PEG channels. The cost was not a large amount but financially, our family was strapped for cash. I had to choose between buying food, gas or tape to do my production. A round trip drive to and from Mapuanpuna to use equipment or facilities. The cost in time and gas was very high. Finally, our community was allowed to be represented and we had a voice. I believe that these humble beginnings allowed the Waianae community to adopt media into the fabric of the Waianae coast. My children, wife and friends use or are certified in the use of Access resources. Learning the value of Community Access and being able to participate in the democratic process via the media. We have a Community Media Center located on campus of Waianae HS and have partnered with non-profits, schools and everyday citizens. Promoting volunteerism and reinvesting time and resources into our own communities. 'Olelo has helped to lower the entry level cost to zero, allowing access to the poorest of citizens. You don't need to know how to read, write or speak English to use 'Olelo Community Access resources, training or certification. This is a huge equalizer that helps build esteem and community.

I've helped my family, community and 'Olelo become a part of our community. As a community member and now as staff, 'Olelo has allowed me to participate in the democratic process like no other organization has in the past.

I have worked for 'Olelo these last 8 years to help bridge the gap between the underserved and unrepresented community voices. Not to support any view point but to allow all view to be voiced. Trying to build community relations that bring all stakeholders together for the greater good. The greater Waipahu area I currently work now has the same opportunity enjoyed in Waianae and other communities that 'Olelo serves.

I believe that we have and will continue to make a difference in building a strong, positive and democratic community.

By supporting SB1789 we take a positive step to continue allowing a greater participation of all ages and backgrounds in the democratic process by giving all communities a voice.

Please allow us to continue having an alternative that will not be treated by the unknowns of a bid process.

Underserved communities need to know that they have a voice not edited or censored by corporate networks or special interest.

Freedom of Speech is not free, it takes participation, hard work and a willingness to face many challenges. What we have today, comes the closest in delivering that freedom. Protect and sustain our ability to have a voice and grow strong communities.

Please support SB 1789.

Mahalo,

James "Sparky" Rodrigues  
86-222 Puhawai Road  
Waianae, Hawaii 96792  
home # 696-2823  
work# 671-3950

**testimony**

---

**From:** Trisha Kehaulani Watson [kehaulani.watson@gmail.com]  
**Sent:** Monday, February 11, 2008 6:26 AM  
**To:** testimony  
**Subject:** Testimony Re: STRONG SUPPORT for SB 1789: Relating to Public Television Systems (hearing TGS 02-12-08 Room 229 at 1:15p)

COMMITTEE ON TOURISM AND GOVERNMENT OPERATIONS

Re: STRONG SUPPORT for SB 1789: Relating to Public Television Systems

Dear Chair Nishihara, Vice Chair Kim and Members of the Committee:

Thank for you for this opportunity to testify.

I am Trisha Kehaulani Watson. I work in the Office of the Vice Chancellor for Research and Graduate Education at the University of Hawai'i Manoa and am Executive Director of Kako'o O'iwi. I am testifying in neither capacity on this bill nor should my testimony be considered the official position of their entity.

I am testifying in strong support of SB 1789.

PEG Access is not a commodity that should be bought, sold or put up for bid. PEG Access has a diverse mission that involves community building, nurturing local programming and protecting each individual's First Amendment rights.

In a time when community voices are often drowned out by corporate interest, the State has a heightened duty to protect the voice of its community. Exempting PEG access services from the competitive bidding process helps to fulfill this duty. By ensuring that community television is run by the community, we are allowing for a critical range of voices to inform the greater public. It is this diversity and intellectual engagement that allows dialogue about the most critical issues facing our society to continue.

This is not simply about protecting public television systems; this is about protecting people's right to use public media to engage with their community. And there is nothing more important in a free society than the right of people to have a forum in which they can speak their minds.

Thank you for this opportunity to testify.

Trisha Kehaulani Watson

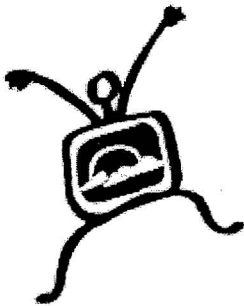
PO Box 61395  
Honolulu, HI 96839

# Keeping the Public in Public Access TV

Tuesday 3-18-08

*Senate Bill would exempt TV stations from bidding process.*

By Jennifer Smith



Years of battles to keep Akaku Maui Community Television a true vehicle for freedom of speech will soon come to a head.

The State wants to put the job of providing public access television up for bid, a process which some say could take the community out of public media.

Public access stations in Hawaii hope to find shelter in the form of legislation. If passed, Senate Bill 1789 would exempt Public, Education and Government (PEG) access television stations from going to bid.

SB 1789 passed in the Senate and now heads to the House Finance Committee.

“This is the single most important event that has happened in the last 20 years, that if successful will preserve Molokai’s Akaku operation as we know it.” former Akaku board member DeGray Vanderbilt said.

For almost two decades, the Department of Commerce and Consumer Affairs (DCCA) has held contracts with PEG access stations in each Hawaiian county. “PEG Access has a broad mission that involves community building, support for local programming and involvement of all of Hawaii’s diverse ethnic and cultural communities,” Milianai Trask said in a written testimony to the Senate.

In 2005 the Attorney General’s office advised the DCCA to regulate PEG stations under the state’s procurement code by creating a request for proposals (RFP). However, an abundance of protests and lawsuits filed by PEG access providers placed procurement procedures on hold and led to the development of SB 1789.

“PEG is not a commodity that should be bought or sold,” Trask said. The testimony echoes the view of hundreds of other concerned citizens who regularly enjoy programming on public access stations.

Opponents of the bill in the State Procurement Office (SPO) argue that the Hawaii Public Procurement Code should apply to PEG stations. “Open procurement procedures assure that the State obtains value, and potential vendors/contractors are treated fairly and that no preferential treatment is provided,” SPO administrator Aaron S. Fujioka said in his testimony.

However, supporters say the proposed procurement process would not be truly open to the public, and that it opens up the bid for the stations to special interests. “I can think of no PEG selection process any less “public” or more harmful to the concept of using the television medium to engage each other for the common good than the secret, inept, punitive and breathtakingly destructive RFP process now being used by the DCCA and SPO,” Akaku CEO Jay April said in written testimony.

Exemption from the procurement process does not guaranteed any of the current station administrators’ jobs, April said, explaining that Akaku regularly receives audits.

“The Department does not oppose the intent of this bill because we previously requested an exemption from the Code for its PEG access services contracts,” DCCA Cable Television Administrator Clyde Sonobe said in his testimony. The department does; however, have questions and concerns if SB 1789 is passed, including how to appropriately award PEG access contracts, and how to respond to public criticism about a lack of open procedures.

“No other state in the country uses the procurement code to designate or regulate access Organizations,” Akaku attorney Lance D. Collins said in his testimony. “Additionally, where such vital public interests are at stake, the procurement code removes significant policy deliberations and considerations away from the public eye and the public process.”

Department of Accounting and General Services Comptroller Russ K. Saito said in his testimony that previous attempts by PEG stations to receive an exemption failed because the procurement code should apply to all government contracts.

“Disappeared News” blogger Larry Geller disagrees in his testimony, noting that the funds generated for the system are different than other public funds. “The procurement of services to provide public access television services is not the same as the state buying goods and services.”

Years of scrutiny have robbed public access stations of valuable time and money. Maui resident John Bruce said in his testimony. The money allotted to the stations comes from cable television subscriber fees and does not belong to the State of Hawaii. A competitive sealed bid process by the state would take the transparent review and public input processes out of the picture, he said.

“SB 1789 would ensure that changes for PEG access would be decided in the open, before the public, and under financially reasonable conditions for PEG access,” Bruce said.

“The idea is to help nurture and grow public access television and make it independent of political pressure as much as possible,” Geller said. “These are the people's television channels, they shouldn't be subjected either to commercial or religious pressure through bidding or to political pressure through the advisory committee.”

Supporters of the bill also argue that potential bidders could not replicate the years of community building the stations have committed. “Olelo's almost 20 years of providing PEG access services has resulted in an enormous amount of social capital that can not be financially quantified,” Olelo Community Television CEO Keali'i Lopez said in a submitted testimony.

“If you distill the essence of our services, you will find that we exist to enable people to exercise their First Amendment rights,” Lopez said. “This is not something that can be put out to bid, or something for which performance standards can be written.”

The Senate Committee found that “While an open bid process promotes the public interest generally,” the report said, “in this instance of selecting a PEG organization, open competition would be detrimental to the public.”

“Much of the quality of PEG depends upon the perception and sensitivity of the provider to the needs and wants of the community,” the Senate Report said. “The unquantifiable intangibles of social impact would be negated in an open competition bid process, resulting in rural districts being adversely affected.”

A hearing date for SB 1789 has not been scheduled. The bill needs to be heard by April 4. 48 hour notice is given for upcoming hearings.

To voice your opinion on the senate bill contact Representative Marcus R. Oshiro, by calling 1-800-468-4644 (ext. 66200 Oshiro's office), faxing 808-586-6201, or mailing in testimony to 39th Representative District, Hawaii State Capitol, Room 306, 415 South Beretania Street, Honolulu, HI 96813.

STAND. COM. REP. NO. 2728

Honolulu, Hawaii

RE: S.B. No. 1789  
S.D. 2

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fourth State Legislature  
Regular Session of 2008  
State of Hawaii

Madam:

Your Committee on Commerce, Consumer Protection, and Affordable Housing, to which was referred S.B. No. 1789, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CABLE TELEVISION SYSTEMS,"

begs leave to report as follows:

The purpose of this measure is to allow community television to develop and respond to the needs of the many diverse communities in the State by authorizing the Director of Commerce and Consumer Affairs to designate an access organization to oversee the development, management, and broadcasting of programs on public education and government (PEG) channels.

Specifically, this measure:

- (1) Authorizes the Director of Commerce and Consumer Affairs to designate an access organization to oversee the development, operation, supervision, management, production, and broadcasting of programs on PEG channels;
- (2) Allows the designation of an access organization to be exempt from the requirements under chapter 103D, Hawaii Revised Statutes, relating to the Procurement Code; and
- (3) Requires the Director of Commerce and Consumer Affairs to seek the advice of the Cable Advisory Committee on any decision designating, modifying, or rescinding a designation of an access organization or the designation requirements.

Testimony in support of this measure was submitted by one private individual.

Your Committee finds that community television is an important and valuable forum that has the ability of informing, educating, communicating with, and representing the voices of various communities and groups. For example, residents of the Waianae Coast have benefited from Olelo's (an access organization) efforts in making PEG programs more accessible by placing a media center in Waianae as well as in five other communities with more locations planned for in the future. Authorizing the Director of Commerce and Consumer Affairs to designate an access organization to oversee the development, operation, supervision, management, production, and broadcasting of programs on PEG channels will ensure that access organizations will continue to provide these valuable community media services to the community.

Selecting a PEG organization through an open competition bid process may have a negative social impact on the rural districts in which these organizations serve. Thus, your Committee further finds that exempting designated access organizations from the Procurement Code under chapter 103D, Hawaii Revised Statutes, will ensure that quality PEG programming, which depends largely upon the sensitivity and perception of the provider to the needs and wants of the community, will continue to serve the community.

Your Committee notes that the previous committee, the Committee on Tourism and Government Operations, inserted into this measure an effective date of July 1, 2050. Your Committee encourages further discussion on the matter as this measure moves through the legislative process.

Your Committee has amended this measure by making technical, nonsubstantive amendments for the purposes of clarity and style.

Your Committee believes that this measure, as amended, fulfills the intent of this measure, which is to allow community television to develop and respond to the needs of the many diverse communities in the State.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Affordable Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1789, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 1789, S.D. 2.

Respectfully submitted on behalf  
of the members of the Committee on



Commerce, Consumer Protection, and  
Affordable Housing,

---

RUSSELL S. KOKUBUN, Chair

Testimony of Molokai Kupuna Jane Lee

Before the Molokai Planning Commission, January 7, 2007 (page 57 of minutes)

Ms. Jane Lee: **I just wanted to thank Akaku. We are the shut-ends, we're home, we're the old warriors that retired, and, you know, we don't have a chance to come out to the meetings. We're either not well enough or, by nighttime, we go down with the sun. So Akaku has kind of kept us abreast as to what the debate or the -- what was going on.**

And I really thank the people in the red shirts who thought fought very hard, and I remember the days when we had to do more with less. And, usually, the other guy had millions and we had 26 dollars. Everybody remember that? The other side had 26 million dollars; we had 26 dollars among all of us. But we won. We won the argument because it was true.

And the truth that I'm hearing now, I really supported the process. I really had hopes for it. These are good people that were on that side. These were leaders that fought very hard for years. And then to see them split was painful. Together, they were a mighty force.

Separated, it was very confusing because they both know each other's strategies.

**So thank Akaku because they educated us at home and anytime we didn't want to listen, we just turned it off.**

But what I've heard so far, and I've taken a position based on what I've heard and the promises made by Molokai Properties, and the plans that they've come up with, I know was hard work, but it doesn't sell anything. It doesn't sell me anything.

And they're empty, and it would be -- we would be a sorry lot to let this development go. I think, given the people on both sides, and how creative and innovative and how they know our island -- how it works, that they can come up with something much, much better that fits our island, yeah? We need change. We have to change. You know, we cannot be stagnant. We gotta change, but we have not even really worked on it.

Let's come up, instead of beefing with each other, let's come up with what we can develop and maybe if we, you know, present it to you, maybe there is something you can see in it, right; it's something we can support; it's built with the spirit of Molokai in it; we preserve what we love best about this island.

I am not in support of Laau development and I did not take that position from the very beginning; it was after I saw and I heard the debates and the discussion. I'm sorry, ranch. I really was hoping that you folks would come up with something. Mahalo.

EXHIBIT B

**Mark D Helmberger**

**From:** "Mark D Helmberger" <romans66@earthlink.net>  
**To:** <FINtestimony@Capitol.hawaii.gov>  
**Sent:** Wednesday, March 26, 2008 8:21 AM  
**Subject:** Written Testimony in support of SB 1789

**LATE**

Dear Members of the Committee,

My name is Mark D. Helmberger. I have had the privilege of volunteering with OLELO Community Television since 2000. In those 8 years I have volunteered in excess of 8000 hours in all facets of program production. I have used virtually every type of equipment OLELO offers, and have been involved in everything from a live van shoot on Hawaii's drug problem to a high school soccer game to a wide array of panel discussions. I have had the privilege of working with everyone in the OLELO organization from the gardener to the CEO. I am here in support of SB 1789.

In the statute regarding RFP'S there is written in provisions for exemption. They are: situations where an RFP would be difficult to manage effectively; and situations where an RFP would not be in the best interests of the people of Hawaii. I believe PEG access channels like OLELO meet both requirements. My reasons are as follows:

1) situations where an RFP would be difficult to manage effectively: OLELO'S function is difficult to near impossible to quantify in an RFP.

a) This is partly due to the incredible variety of clientele PEG access serves. Nowhere is this variety more pronounced than in Hawaii. Hawaii is a true melting pot: one in which most of the cultures in the world are represented. A majority of these cultures have at least one producer with a vision to produce programming on a PEG access station. To provide for the needs of such a wide array of people, languages and programming is daunting at best. To do so with the quality of service that OLELO provides is amazing. This excellence has earned OLELO the number two ranking of all PEG access organizations in the country. (As a side note, we should be rewarding this accomplishment, not complicating it.) To try to codify such an effort would require a RFP the size of a phone book; and even still would be inadequate. This is evidenced in the difficulty that the DCCA has had in trying to comply with an RFP.

b) Even if an RFP were able to be written, there is one glaring disadvantage to such a proposal. One of OLELO'S greatest strengths is in its flexibility to find ways to better serve the needs of its producers. One of the greatest examples is the whole creation of the Waianae outreach. I am sure that by now you have heard from the kids of Waianae. This is one of the truly great success stories. One man had a vision to reach the kids of Waianae. He wanted to provide them with an alternative to the drugs and violence by teaching them how to create programming for PEG access TV. Instead of them being part of the problem, he involved them in being part of the solution. He knew that they would not be able to make the long commute into town. So he pioneered a satellite CMC in Waianae. Seeing the value in what he was doing, OLELO moved in in support of this new program. The results are amazing. If you haven't heard from these kids, I am confident you will at the hearing. They're an impressive group of young people who deserve recognition for their accomplishments. Two things are to be grasped here: it took a man of vision to make it happen; and it took the flexibility that is afforded OLELO to move in and make it happen. This flexibility would vanish in a RFP. Whatever organization wins the RFP would be bound by its parameters. This annihilates the ability to move in and respond to new things. This would be tragic at best. This, in turn brings us to the second option for an exemption: situations where it would not be in Hawaii's best interest.

2) Situations where the implementation of a RFP would not be in the best interests of the people of Hawaii.

a) I have yet to see one instance where the implementation of a RFP would be advantageous to the people of Hawaii. OLELO is already the number 2 PEG access in the country. This means that the PEG access community nationally recognizes the excellence of the service of OLELO. This would be difficult to improve on. Nationally, whenever a PEG access contract is put out for competitive bid, it spells the end of the Public side (P) in PEG. Education and Government find ways to continue. It is the public side that suffers. This is partly due to the lack of flexibility inherent in the RFP process. It also is affected by the difficulty including all services in the RFP.

where corners can be cut while remaining inside the RFP guidelines. For must train people in the production of TV programming. It does not specify es it specify how many. It also does not include the ongoing help that the run into trouble during the production of their programs. It says that facilities oduction of programming. How many facilities, their location, and hours of ould be easy to see where corners could be cut in a competitive bid process. OLELO already excels and where they continue to work on improving. If they ess, however, this continuous upgrade of services would be eliminated by the his instance that the RFP process itself is not in the best interest of the people of

FP process would not be in the best interest of the people of Hawaii is the wealth hough... O. I have previously mentioned how I have considered it a privilege to work with the people of OLELO. From top to bottom, the staff of OLELO bend over backwards to serve anyone who comes through their doors. Many work at OLELO because they choose to. They have worked at broadcast before and they choose to bring this knowledge to the people of PEG access. For many, it is a cut in pay. They do this for their dedication to community access TV. You can't buy that kind of dedication to a cause. You also cannot quantify it in a RFP. If this were the only reason to grant PEG access an exemption, I believe it would be enough. There is also the interconnection of the staff with the community to be considered. We all know that in Hawaii it is not only what you know, it's who you know. For the past 18 years OLELO has worked to establish connections with the communities they serve. This has produced a treasure of connections within the community that helps facilitate helping the people of Hawaii to produce their programming. If another company would win the RFP contract, these connections would be lost. If OLELO would win the RFP contract, the ability to work with the communities they are interconnected with would be hampered at best. The Waianae story is an example of both the connections and how they would be hampered. The annual DARE concert put together in connection with HPD is another. Here again, it is easy to see in this instance that the RFP process itself is not in the best interest of the people of Hawaii.

c) To serve the needs of the people of Hawaii's unique blend of cultures requires someone who is experienced with the people of Hawaii. This is an area where current PEG companies in Hawaii are excelling. The RFP process, however, is not limited to local bid. So a company from outside Hawaii, with little or no knowledge of how the culture of Hawaii works, could potentially win the contract. The learning curve of such a company would be the death of countless programs for PEG access. It would simply become too difficult for them to continue to produce programming. In the process, precious voices that make up the collective expression that is Hawaii community access TV would be silenced. Here again, it is easy to see in this instance that the RFP process itself is not in the best interest of the people of Hawaii.

d) Finally, OLELO, and all of the PEG access channels in Hawaii protect the right of free speech in Hawaii. They may not agree with what you have to say; but they will bend over backwards to help you say it. This is the spirit of community access media. this is the vision of OLELO. Right now, they are working to get the message of community access television out so that more people can take advantage of their services. By having to dedicate personnel to the RFP process, and by diverting precious resources, that could have been used for advancing the collective voice of Hawaii, to the RFP process, we obstruct the use of this outlet of free speech. Here again, it is easy to see in this instance that the RFP process itself is not in the best interest of the people of Hawaii.

One last item before I close. There is one little improvement to SB 1789 that I would suggest. Section 4 lists the effective date as July 1, 2050. Would it be possible to implement this legislation a little sooner, perhaps even this year? 42 years is a long time to wait for what I hope happens this year. Thank You for your time.

Sincerely  
 Mark D. Helmberger  
[romans66@earthlink.net](mailto:romans66@earthlink.net)