

# TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** INCOME, Contributions to underground conversion fund

**BILL NUMBER:** SB 3143; HB 2812 (Identical)

**INTRODUCED BY:** SB by Hanabusa by request; HB by Caldwell

**BRIEF SUMMARY:** Amends HRS section 235-102.5 to allow individuals with a tax refund over \$2 to designate \$2 of the refund to be deposited into the underground conversion fund established under HRS chapter 269. Joint taxpayers may designate up to \$4.

Requires the director of taxation to revise the individual state income tax form to allow the designation of contributions. If no designation is made on the original tax return when filed, a designation may be made by the individual on an amended return filed within 20 months and 10 days after the due date of the original return for such taxable year. Once a designation is made, it cannot be revoked.

Adds a new part to HRS chapter 269 to establish an underground conversion program which shall provide for the systematic conversion of overhead utility lines to underground utility lines. Also establishes an underground conversion fund and a round-up program under which utilities may collect voluntary contributions for the underground conversion fund from ratepayers who choose to contribute the difference between their actual utility bill and their bill payment, which is rounded up to the nearest dollar.

Also makes conforming amendments to HRS chapter 226.

Requires the public utilities commission to submit an interim report of its findings and recommendations on the development of a comprehensive statewide plan for the long-term incremental undergrounding of utility lines, including proposed legislation to the legislature and the governor prior to the 2009 legislative session with a final report to the 2010 legislature.

**EFFECTIVE DATE:** Upon Approval

**STAFF COMMENTS:** This measure allows individuals to make a voluntary contributions to the newly established underground conversion fund. While the proposed measure would provide a convenient means for individuals to contribute money to such a fund, such a mechanism may create costly administrative problems for the department of taxation.

Inasmuch as the cost of administering the designation of these contributions would be added to the cost of government, all taxpayers would be subsidizing this particular program. Utilizing the tax system as a collection agent for such a specific purpose sets poor tax policy. Further, it should be noted that the approval of such a mechanism would set a poor precedent for if such a collection scheme is approved for undergrounding utility lines, it would open the door for other "worthy" causes. In addition, the enactment of this measure and other similar "tax check-off" proposals would complicate the tax form.

Digested 1/29/08

**Testimony before the Senate Committee on  
Commerce, Consumer Protection, and Affordable Housing**

**By Ken T. Morikami  
Manager, Engineering Department  
Hawaiian Electric Company, Inc.**

**January 30, 2008**

**Senate Bill 3143  
Relating to Undergrounding of Overhead Utilities**

Chair Kokubun, Vice Chair Ige and Members of the Committee:

My name is Ken Morikami and I am testifying on behalf of the Hawaiian Electric Company and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company.

We support the intent of SB3143 which establishes a long term program to underground utility lines. We believe that the creation of an underground conversion fund with funding provided by various funding sources is a reasonable approach to the challenge of how to pay for undergrounding. However, we need to be careful that whoever contributes to this fund or is affected by this legislation will not be burdened such that it cannot operate or fulfill its obligation to serve its customers.

Note that over the past few years the State Hawaii Community Development Authority has revitalized the infrastructure in the Kakaako area, including the conversion of overhead utility lines to underground. The costs for this conversion have been shared by the State, the utilities and the property owners. Because of the high costs for underground conversion, we believe various funding sources, including those who benefit, should contribute to this effort.

Thank you for the opportunity to testify on this matter.

TESTIMONY BY GEORGINA K. KAWAMURA  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION,  
AND AFFORDABLE HOUSING  
ON  
SENATE BILL NO. 3143

January 30, 2008

RELATING TO UTILITIES

Senate Bill No. 3143 establishes a policy that conversion of overhead electric and communication facilities to underground facilities is in the public interest, establishes an underground conversion fund to sustain and coordinate conversion of overhead utilities, and directs the Public Utilities Commission to establish an underground conversion program. Revenues to be deposited into the underground conversion fund are: five percent of the State public utility fee, federal and State appropriations and contributions by other public bodies, voluntary conversion funds and round-up program funds.

We are opposed to this bill. As a matter of general policy, this department does not support the creation of any special or revolving fund which does not meet the requirements of Sections 37-52.3 and 37-53.4 of the Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. It is difficult to determine whether the fund will be self-sustaining.

**LATE TESTIMONY**



LINDA LINGLE  
GOVERNOR  
JAMES R. ADNA, JR.  
LT. GOVERNOR

**STATE OF HAWAII**  
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LAWRENCE M. REIFURTH  
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TO THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION,  
AND AFFORDABLE HOUSING

THE TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008

Wednesday, January 30, 2008  
9:00 a.m.

TESTIMONY OF CATHERINE P. AWAKUNI, EXECUTIVE DIRECTOR,  
DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND  
CONSUMER AFFAIRS TO THE HONORABLE SENATOR KOKUBUN, CHAIR  
AND MEMBERS OF THE COMMITTEE

**SENATE BILL NO. 3143 – RELATING TO UTILITIES.**

**DESCRIPTION:**

This measure: (1) Adopts a state policy of favoring underground utilities; (2) Establishes an underground conversion fund for sustained incremental conversion of overhead utilities; (3) Allows income tax refund as a voluntary contribution to the fund; (4) Directs the Hawaii Public Utilities Commission ("Commission") to establish and administer an underground conversion program.

**POSITION:**

The Division of Consumer Advocacy ("Consumer Advocate") appreciates the intent of the bill, which, among other things, establishes an underground conversion fund for sustained incremental conversion of overhead utility facilities. We defer to the Commission as to whether adequate time is provided to complete the requirements set forth in this measure, and as to whether the

Commission believes it is an appropriate entity and has the resources to "make long-term loans . . . to private property owners." We provide the following comments for your consideration.

COMMENTS:

The measure establishes an underground conversion fund and provides four different mechanisms for funding such conversion fund: (1) 5 percent of the state public utility fee; (2) federal and state appropriations and contributions by other public bodies; (3) voluntary conversion funds; and (4) round-up program funds. By this provision, which allows for multiple avenues of funding the conversion costs, the bill appears to recognize that the magnitude of the dollars required for the relocation of utilities' overhead facilities underground will be significant, that the benefits extend beyond just the consumers of regulated utility services, and that the cost of the relocation should not be the sole responsibility of the consumers of regulated utilities. We agree that the costs will be large, that the benefit of locating utility facilities underground extend beyond the customers of regulated utilities, and that multiple sources of funding should be sought to relocate such facilities.

We note, however, that we are uncertain as to whether the moneys made available in the conversion fund will be sufficient to accomplish the goals and requirements included in the instant measure. After a winter storm hit the Nanakuli area in December 2007, we were provided with preliminary estimates for relocating utility facilities located in that area underground of approximately \$12 million per mile by Hawaiian Electric Company, and of approximately \$4.3 million to \$5 million per mile by Hawaiian Telcom. Without knowing how much can be placed into the fund via federal or other appropriations, we question whether the funding sources will provide the conversion fund with enough money to allow the Commission not only to develop and implement the program, but to allow utilities to relocate the facilities as well.

Thank you for this opportunity to testify.

**TESTIMONY OF CARLITO P. CALIBOSO  
CHAIRMAN, PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE  
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION  
AND AFFORDABLE HOUSING  
JANUARY 30, 2008**

**MEASURE: S.B. No. 3143**  
**TITLE: Relating to Utilities.**

Chair Kokubun and Members of the Committee:

**DESCRIPTION:**

This bill proposes to amend chapter 269, of the Hawaii Revised Statutes ("HRS"), by adding a new part that: 1) establishes a policy which provides that the initial installation and the conversion of overhead electric and communication facilities to underground facilities is in the public interest; 2) establishes an underground conversion fund ("Fund") for the sustained and coordinated conversion of overhead utilities; and (3) directs the Public Utilities Commission ("Commission") to establish an underground conversion program ("Program").

**POSITION:**

The Commission appreciates the importance of this proposal to give a high priority to undergrounding utility lines throughout the state, which is a significant policy decision.

The Commission will defer to the Legislature's determination of this proposed policy.

Assuming the Legislature makes this policy decision to underground all utility lines, the Commission has a few concerns and comments regarding the proposed implementation of this policy as drafted in this bill.

**COMMENTS:**

- **The Commission will defer to the Legislature's policy determination, but it has the following suggestions concerning the policy determination:**
  - The Legislature's policy determination (as stated in the preamble of the bill as the purpose of the proposed Act) should be clearly stated and included in the new part to be added to Chapter 269, HRS.
  - If it is the Legislature's policy decision to eventually convert **all** overhead utility lines, both transmission and distribution lines, to underground facilities, the bill should expressly state that policy.

- The policy statement in the preamble includes a reference to the “initial underground installation” facilities as well. If it is the intent of the Legislature to also provide for the planning and funding of initial installations under this Program, the remaining provisions of this bill should also reflect that policy.
- **The bill provides that revenues from various sources are to be deposited into the Underground Conversion Fund for use in this Program:**
  - **Five percent of the state public utility fee:** Public utility fees are paid by various public utility ratepayers to fund regulatory oversight of public utilities and the fund is not established to provide for capital improvements such as undergrounding of facilities. Accordingly, the Commission questions the appropriateness of using public utility fees for the underground conversion program.
  - It is highly probable that the sources of funding listed in the bill will be insufficient to fund the undergrounding effort contemplated by the program.
  - It is not clear how the fund is to be implemented in relationship with the counties, the utilities and their ratepayers, other parties, and how much of the cost burden is expected to be borne by the various parties and interests.
- **Underground Conversion Program Implementation Issues: There are many implementation issues raised by the proposed bill, which include, but may not be limited to, the foregoing:**
  - Will the funding for the Commission to undertake the planning, design, and implementation of the conversion plan come from additional appropriations or from the Fund?
  - The Commission may need additional funding for staff and consultants to assist it in planning and designing this complex program, and it is unclear under the proposed bill, as written, whether the conversion fund would be available for that purpose. An appropriation for funding should be included with this bill to allow the Commission to take immediate action if it is required by this bill.

- Certain provisions of the bill appear to make a distinction for “distribution lines” without mention of “transmission lines”, which should be clarified. See proposed Section 269-B(4), (6).
- The bill also provides that the Commission shall “authorize each county to establish underground conversion zones by ordinance.” It is not clear how this would work with the underground conversion plan to be developed by the Commission and would likely result in inconsistent application of policy.
- This bill authorizes the Commission to make long-term loans of fund moneys to private property owners in areas low on the conversion plan’s list for under-grounding utilities. The Commission has not established loan programs in the past. It may be beneficial to allow the Commission to outsource or privatize this function.
- **In short, the undertaking envisioned in this measure involves the input and cooperation of a multitude of stakeholders, each with their own critical functions and needs. Therefore, the Commission needs clarification of the aforementioned points, and additional time to consider the full ramifications of this measure's underground conversion program.**

Thank you for the opportunity to testify.



**SB 3143  
RELATING TO UTILITIES**

**KEN HIRAKI  
DIRECTOR – GOVERNMENT AFFAIRS  
HAWAIIAN TELCOM**

**JANUARY 30, 2008**

Chair Kokubun, Vice Chair Ige and Members of the Commerce, Consumer Protection, and Affordable Housing Committee:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom on SB 3143, "A Bill for An Act Relating to Utilities." Hawaiian Telcom opposes this measure.

SB 3143 adopts a state policy in favor of the undergrounding of utilities, establishes a conversion fund for incremental conversion, and directs the public utilities commission to establish and administer an undergrounding conversion program. While recognizing the benefits of undergrounding overhead facilities, this policy objective must be balanced against the considerable cost and limited funding sources available for the purpose of undergrounding.

According to the "Oahu Utilities Under-Grounding and Visual Impact Studies" by the American Institute of Architects Hawaii (2003), the estimated cost of undergrounding all utility lines would be between \$8.2 and \$11.3 billion. As currently drafted, SB 3143 does not adequately protect utilities and ultimately the consumer against unfair increases in rates or surcharges to pay for the cost of undergrounding. Based on the aforementioned, we respectfully request that SB 3143 be held in your committee.

Thank you for the opportunity to testify on this measure.

## LATE TESTIMONY

January 28, 2008

The Honorable Senator Russell Kokubun, Chairman  
Senate Committee on Consumer Protection and Affordable Housing  
State Capitol  
Honolulu, HI 96813

RE: Testimony in support of SB 3143 Relating to Utilities

Chair Kokubun, Vice Chair Ige and Members of the Committee:

Thank you for this opportunity to present testimony supporting SB 3143 on behalf of Na Leo Pohai, the public policy affiliate of The Outdoor Circle.

The proliferation of overhead utility wires in Hawaii is one of the state's dirty little secrets. Unfortunately it's a secret only to those who have never been to our islands. For residents and visitors, these wires and the poles that accompany them are one of the biggest eyesores in the state. In almost all communities, regardless of size, it's difficult to find a view of the mountains or ocean that is not defiled by the ugliness of utility lines and poles.

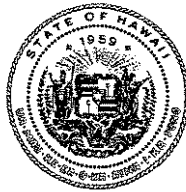
Beyond the visual environment, these lines and poles are primary culprits in the inability of public utility companies to deliver consistent power service to the homes and businesses of our state. The huge task of maintaining the wires and the utility companies' failure ensure proper maintenance results in chronic problems that bring frequent and predictable interruptions of electrical service from South Point to Hanalei.

Even with proper maintenance above ground utilities are subject to destructive forces that regularly result in interruption of services—especially, it seems, in the most economically disadvantaged areas of our state. Whether windstorms, hurricanes or vehicles careening out of control, poles and wires frequently are knocked down and power to hundreds or even thousands of homes knocked out, sometimes isolating communities by blocking the on “escape” routes.

The utility companies say they're all for undergrounding wires, but it's just too expensive. While it is true that the initial costs are much higher than above ground wiring, the electric industry itself cannot deny that the costs of undergrounding can eventually be recovered by the reduced cost of maintaining lines underground versus overhead.

We believe SB3143 provides the mechanisms to help make the dream of a Hawaii with underground utilities a reality. We strongly urge your support.

Bob Loy  
Director of Environmental Programs



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

January 30, 2008

**LATE TESTIMONY**

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

SENATE BILL NO. 3143

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND AFFORDABLE  
HOUSING

We oppose this bill.

There are existing statues in HRS 264-33.5 that require the undergrounding of utilities on Federal Aid Highways when a determination is made that federal funds are available to pay for the cost differential for the federal share between underground and overhead facilities. This subsection further states that Director of Transportation may make exceptions to this requirement due to:

- Any of the following criteria: environmental, safety, research, technology, corridor alignment, or management concern
- State funding impacts, economic feasibility, and federal funding concerns
- Projects that do not lend themselves to the undergrounding of utilities