

S.B. NO. 2756

JAN 25 2010

A BILL FOR AN ACT

RELATING TO COST SHARING IN THE RELOCATION AND UNDERGROUNDING OF
UTILITY FACILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 264-33, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§264-33 Relocation of utility facilities.** (a) Whenever,
4 as the result of the work of construction, reconstruction, or
5 maintenance of any state highway or state or county federal-aid
6 highway, it is necessary to provide for or require the removal,
7 relocation, replacement, or reconstruction of any utility
8 facility, and the expense of removal, relocation, replacement,
9 or reconstruction exceeds \$10,000, one-half of this excess
10 expense shall be a proper charge against the state or county
11 funds available for the construction or maintenance of state or
12 county highways [~~; provided that all of the expense of removal,~~
13 ~~relocation, replacement, or reconstruction of publicly owned~~
14 ~~utility facilities shall be a charge against the state or county~~
15 ~~funds] and the balance of costs shall be borne by the utility
16 owner.~~

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1 (b) The work of the removal, relocation, replacement, or
2 reconstruction may be performed in the following manner, subject
3 to the following conditions:

4 (1) The work shall be performed in accordance with
5 standards of construction currently used by the
6 utility; and

7 (2) Such work may be performed by contract as provided in
8 chapter 103D; or after first calling for bids under
9 that chapter, the director of transportation or other
10 officer having power to award such contract, may
11 contract with the public utility owning the utility
12 facility to have the work performed by it, with the
13 use of its own employees and equipment at not to
14 exceed actual cost or in the amount of the lowest
15 responsible bid (if such bids have been submitted),
16 whichever is the lowest amount, with the adjustments
17 hereinafter provided for.

18 (c) The amount to be paid out of state or county funds
19 shall be computed as follows:

20 (1) The total cost shall first be determined.

21 (2) From the total cost there shall be deducted the
22 following items:

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- 1 (A) Depreciation, except that this shall not be
2 applicable to publicly owned utility facilities,
3 and the salvage value of any materials or parts
4 salvageable and retained by the utility;
- 5 (B) The amount of any betterment to the utility
6 facility resulting from the removal, relocation,
7 replacement, or reconstruction;
- 8 (C) In the case of a privately owned utility facility
9 only, the first \$10,000 of the expense of such
10 work;
- 11 (D) The balance of the cost, in the case of a
12 privately owned utility facility only, shall be
13 paid one-half by the owner thereof, and the
14 remaining one-half shall be the amount payable out
15 of state or county funds.

16 (d) Notwithstanding any other law to the contrary, the
17 utility owner shall pay its full share for any betterment or
18 relocation costs to the state or county highway agency within
19 thirty days when the utility owner's share of the costs is
20 determined. The utility owner's cost share will be determined
21 after the state or county highway agency determines the winning
22 bidder and finalized cost sharing amounts are calculated."

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1 SECTION 2. Section 264-33.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§264-33.5[+] Underground installation of utility
4 facilities along federal-aid highways; when required; when
5 waived. (a) The director of transportation shall arrange for
6 the installation of all utility cables and facilities below the
7 ground, within a [~~berm~~] corridor or away from the alignment of a
8 highway, during the design or redesign and construction or
9 reconstruction phases of any new or existing federal-aid highway
10 project, when a determination is made that federal highway funds
11 are available to pay for the federal share of the cost
12 differential between underground and overhead facilities.

13 (b) The director of transportation may make exceptions to
14 subsection (a) if:

15 (1) The director determines that exceptions are
16 appropriate due to either:

17 (A) Any of the following criteria: environmental,
18 safety, research, technology, corridor alignment,
19 or management concern; or

20 (B) The following criteria collectively: state
21 funding impacts, economic feasibility, and
22 federal funding concerns; or

1 (2) The projects do not lend themselves to undergrounding,
2 such as: resurfacing, traffic signal installation,
3 drainage installation, bikeway markings, guardrail
4 installation, traffic markings, and enhancement
5 improvements.

6 (c) In determining the cost sharing allocation, the
7 following shall apply: First, the basic costs attributable to
8 relocation of an overhead installation to an overhead
9 installation shall be shared in the manner set forth in section
10 264.33. Then the costs differential between underground and
11 overhead installations shall be allocated one-half to the
12 utility owner and one-half to state or county highway agency.

13 (d) Notwithstanding any other law to the contrary, the
14 utility owner shall pay its full share for any betterment or
15 relocation or undergrounding costs to the state or county
16 highway agency within thirty days when the utility owner's share
17 of the costs is determined. The utility owner's cost share will
18 be determined after the state or county highway agency
19 determines the winning bidder and finalized cost sharing amounts
20 are calculated.

21 (e) This section shall apply to any existing and new
22 utility facilities."

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1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect on July 1, 2010.

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INTRODUCED BY: _____
BY REQUEST

Report Title:

Highway; Cost Sharing; Utility Owners; Right-of-Way; Relocation

Description:

Require any utility owners whose facility occupies State Highway right-of-way to provide their share of relocation costs up front to the affected state agency for encumbrance of funds in related contracts.

JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO COST SHARING IN THE RELOCATION AND UNDERGROUNDING OF UTILITY FACILITIES.

PURPOSE: (1) To require any utility owners whose facility occupies State or County Highway rights-of-way to provide their share of relocation costs up front to the affected state or county agency for encumbrance of funds in related contracts. Utility owners include private utilities that are subject to cost sharing such as: HECO, HELCO, MECO, KIUC, Hawaiian Telecom, GASCO, and Oceanic Cable.

(2) Require that public utilities such as County water and sewer facilities that occupy State Highway rights-of-way, participate in relocation costs in accordance with section 264-33, Hawaii Revised Statutes (HRS).

(3) Provide clarification that the total cost sharing for the difference between overhead relocation to undergrounding is to be shared 50/50 between the utility owner and the transportation agency.

(4) Provide clarification on cost sharing for the difference between overhead relocation and undergrounding applies to both existing and new utility facilities.

MEANS: Amend sections 264-33 and 264-33.5, Hawaii Revised Statutes.

JUSTIFICATION: When utility relocations or undergrounding or utilities facilities are performed under transportation (highway) projects, utilities are required to cost share in accordance with sections 264-33 and 264-33.5, HRS. Several items related to these statutes have remained unclear and have been under constant debate. These are:

(1) Requirement for private utility companies to provide their share of

costs up front for encumbrance of funds in government contracts. HECO has argued that certain statutes like section 103D-309, HRS, do not apply to private funds and do not mandate that it provide its share of cost up front in order for the State to properly procure its contracts. Consequently, if the utility company does not provide its share of funds, the transportation agency has to advance the funds for the utility company which places an unfair financial burden on the transportation agency.

- (2) County agencies have maintained a position that they are not required to participate in utility relocation costs for their facilities such as sewer and waterlines. Since they occupy State rights-of-way, at no cost, these agencies should be treated like any other utility owners, and the counties should participate in relocation costs like everyone else.
- (3) The cost sharing for undergrounding and the interpretation of sections 264-33 and 264-33.5, HRS have remained unclear which has resulted in inconsistent application of the law. Applications of the utility's share on past projects has ranged from 50 percent of the cost to 10 percent of the cost (total cost less 80 percent Federal funds, then splitting the remaining 20 percent of the local share 50/50 between the transportation agency and the utility owner). Therefore, clarification of the law is needed for consistent understanding and application of the law.

Impact on the public: For private utility relocations, the State Highways Division sees very little, if any, negative impact to the public in requiring these utility entities to provide their funds up front prior to execution of contracts. Hawaiian Electric Company has argued that it is bad business

practice for them to provide large amounts of up-front deposits for their share of betterments and relocation costs, and has argued that in doing so, it increases their project costs. While there might be lost opportunity costs by HECO for deposited amounts, this amount is seen as immaterial to the HECO rate payers.

In the past, for public utility relocations, such as county water and sewer lines, the State Highway Division has paid 100 percent of the relocation costs. However, since these agencies occupy State rights-of-way at no cost, they should contribute in the relocation costs as well. While splitting of the relocation cost in accordance with section 264-33, HRS, may affect certain utility rates, the cost to the Highways Division will be reduced by the same amount, and this savings is realized by the public.

For private utility undergrounding, the interpretation of the cost sharing was unclear and applied inconsistently. The utility's share in past projects ranged from 50 percent down to 10 percent of the entire cost. Requiring cost sharing by the utility companies in the difference to undergrounding in accordance with section 264-33, HRS may increase the utility's cost, but there is an equivalent decrease in costs to the transportation agency.

Impact on the department and other agencies:
None.

GENERAL FUND:

No negative impact to General Funds.

OTHER FUNDS:

This proposal provides benefits to funds already deposited into the Highway Trust Fund "R" funds for highway projects, Highway Revenue Bond "E" funds, Federal Highway "N" funds, and Highway Special "B" funds.

If the counties are experiencing similar issues from private utility companies, they will realize similar benefits as the State.

PPBS PROGRAM
DESIGNATION:

TRN 501, 511, 531, 541, 551, 561.

OTHER AFFECTED
AGENCIES:

Possibly Department of Land and Natural Resources (other state-owned roads) and Counties.

EFFECTIVE DATE:

July 1, 2010.