

Honolulu, Hawaii
March 19, 2010

RE: S.B. No. 506
S.D. 1
H.D. 2

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2010
State of Hawaii

Sir:

Your Committees on Economic Revitalization, Business, & Military Affairs and Consumer Protection & Commerce, to which was referred S.B. No. 506, S.D. 1, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

beg leave to report as follows:

The purpose of this bill is to encourage Hawaii's agricultural self-sufficiency by:

- (1) Removing certain agricultural product exemptions from the Hawaii Administrative Rules; and
- (2) Amending the Hawaii State Procurement Code (Procurement Code) to strengthen the Hawaii products preference.

Your Committees made a proposed S.B. No. 506, H.D. 2, available to the public that replaced the substance of this bill with provisions dealing with the certification of procurement contracts to relocate or replace utility facilities affected by state or county highway construction.



Specifically, the amended bill provides that in procurement contracts payable by the State or a county and a utility, the portion to be paid by the utility is subject to certification as to the sufficiency of funds to pay contract costs, and certification may be based on amounts to be paid by a utility pursuant to a legal agreement with the State or county.

Hawaiian Electric Company, Inc., supported this bill. The Department of Transportation and Hawaiian Telcom supported this bill with amendments.

Your Committees find that when construction of a state or county highway results in the removal, relocation, replacement, or reconstruction of private utility facilities at an expense exceeding \$10,000, section 264-33, Hawaii Revised Statutes (HRS), requires the excess cost to be shared, half by the government, and half by the utility.

Under the Procurement Code, contracts are not binding until the State or county certifies that there is an appropriation sufficient to cover the amount required by the contract. However, it is unclear how this certification requirement relates to contracts under section 264-33, HRS, where the cost is shared by the government and a utility.

Disagreements between the State and utilities on this point have resulted in utilities refusing to provide funds for certification up front, and the State being required to provide the utility's share before the construction project is certified and can move forward. These funds are thus unavailable to the State for use on other projects, at times for a period from one to two years, until the utility work starts.

This measure applies certification to the portion of a contract to be paid by a utility. It would allow the government to certify that portion of the contract based on a memorandum of agreement between the government and the utility, obligating the utility to make progress payments when construction work actually begins. Under this bill, neither the government nor the utility would be required to set funds aside for certification of the contract.



Your Committees have further amended this measure by:

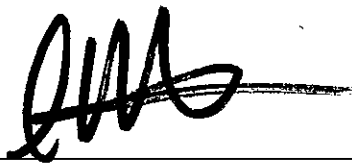
- (1) Restricting its application to contracts for highway construction affecting utility facilities, pursuant to section 264-33, HRS;
- (2) Providing that in addition to the utility, the State or county may agree to make progress payments or final payment under the memorandum of agreement, and is responsible for any additional costs attributable to late payments; and
- (3) Exempting Kauai Island Utility Cooperative.

As affirmed by the records of votes of the members of your Committees on Economic Revitalization, Business, & Military Affairs and Consumer Protection & Commerce that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 506, S.D. 1, H.D. 1, as amended herein, and recommend that it be referred to the Committee on Finance, in the form attached hereto as S.B. No. 506, S.D. 1, H.D. 2.

Respectfully submitted on
behalf of the members of the
Committees on Economic
Revitalization, Business, &
Military Affairs and Consumer
Protection & Commerce,



ROBERT N. HERKES, Chair



ANGUS L.K. MCKELVEY, Chair



State of Hawaii
House of Representatives
The Twenty-fifth Legislature

HSCR 204-10

Record of Votes of the Committee on Economic Revitalization, Business, & Military Affairs *zw*

Bill/Resolution No.: SB 506 HD1 HD1	Committee Referral: CBE EBM/CPC, FIN	Date: 3/15/10		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
EBM Members	Ayes	Ayes (WR)	Nays	Excused
1. McKELVEY, Angus L.K. (C)	✓			
2. CHOY, Isaac W. (VC)	✓			
3. BERG, Lyla B.	✓			
4. EVANS, Cindy	✓			
5. MANAHAN, Joey				✓
6. TAKAI, K. Mark				✓
7. TOKIOKA, James Kunane	/			
8. TSUJI, Clift	/			
9. WAKAI, Glenn	/			
10. WOOLEY, Jessica	/			
11. WARD, Gene	✓			
TOTAL (11)	9			2
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature: <i>Sam O'Keefe</i>				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				

State of Hawaii
House of Representatives
The Twenty-fifth Legislature

HSCR 864-10

Record of Votes of the Committee on Consumer Protection & Commerce

Bill/Resolution No.: SB 506, SD1, HD1		Committee Referral: EBM/CPC, FIN	Date: 3/15/10		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.					
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)					
CPC Members	Ayes	Ayes (WR)	Nays	Excused	
1. HERKES, Robert N. (C)	✓				
2. WAKAI, Glenn (VC)	✓				
3. BELATTI, Della Au	✓				
4. CABANILLA, Rida				✓	
5. CARROLL, Mele				✓	
6. ITO, Ken	✓				
7. KARAMATSU, Jon Riki	✓				
8. LUKE, Sylvia	✓				
9. McKELVEY, Angus L.K.	✓				
10. MIZUNO, John M.				✓	
11. MORITA, Hermina M.				✓	
12. SOUKI, Joseph M.	✓				
13. TSUJI, Clift	✓				
14. MARUMOTO, Barbara C.	✓				
15. THIELEN, Cynthia	✓				
TOTAL (15)		11	Ø	Ø	4
The recommendation is:		<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted			
If joint referral, _____		_____ did not support recommendation.			
		committee acronym(s)			
Vice Chair's or designee's signature: _____					
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO					