

Honolulu, Hawaii

March 16, 2010

RE: S.B. No. 707
S.D. 1
H.D. 1

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

Sir:

Your Committee on Economic Revitalization, Business, & Military Affairs, to which was referred S.B. No. 707, S.D. 1, entitled:

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

begs leave to report as follows:

The purpose of this bill is to improve procedures for providing public, educational, and governmental access (PEG) programming in Hawaii by, among other things:

- (1) Codifying these procedures in statute;
- (2) Providing that requirements for the designation of PEG access organizations (access organizations) must be specified by rule;
- (3) Exempting the designation of access organizations from the Hawaii State Procurement Code (Procurement Code); and
- (4) Providing that upon termination of an access organization's contract with the State, any unspent PEG access funds, and any equipment and other property purchased with those funds, automatically reverts to the State.



Media Council of Hawaii, Akaku: Maui Community Television, and numerous concerned individuals supported this bill. PBS Hawaii and Olelo Community Media (Olelo) supported this measure with amendments. Community Media Producers Association opposed this bill. Comments were received from the State Procurement Office (SPO), Department of Commerce and Consumer Affairs (DCCA), Department of Accounting and General Services.

PEG access was created to provide a free-speech forum and originated in response to disenchantment with the commercial broadcasting system. Fees paid by cable subscribers fund PEG access organizations, which provide any combination of television production equipment, training, and airtime on a local cable system to allow members of the public, accredited educational institutions, and government to televise their message to the community.

DCCA designates PEG access organizations by contract. In recognition of the unique nature of PEG access services, DCCA requested an exemption from the competitive procedures of the Procurement Code, which SPO denied. In light of the unique role PEG access organizations play in providing a voice for the local community, and the community relationships built by PEG access organizations over time, this bill exempts the designation of PEG access organizations from the Procurement Code.

Your Committee finds that DCCA will continue to oversee PEG access organizations and ensure their accountability, as required by Chapter 440G, Hawaii Revised Statutes. In addition, your Committee has amended this bill to put into place a more stringent form of oversight for PEG access funds and property acquired with these funds.

These amendments address concerns that if property purchased with PEG funds were at contract's end required to automatically revert to the State without identification and designation of State property, this requirement might be challenged as a "taking." Thus, instead of the automatic reversion of property, this bill requires the DCCA Director, by contract, to:

- (1) Identify property held by the access organization to which the State retains title and establish the parties' obligations with respect to that property; and
- (2) Require the return of unobligated funds received under the contract upon termination or expiration of the



contract, pursuant to the cost principles of section 103D-601, Hawaii Revised Statutes.

Your Committee respectfully requests the Committees on Legislative Management and Finance, to which this bill is next referred, to more closely examine the "takings" issue, which was raised by Olelo in verbal testimony.

Technical, nonsubstantive amendments were also made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Economic Revitalization, Business, & Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 707, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 707, S.D. 1, H.D. 1, and be referred to the Committees on Legislative Management and Finance.

Respectfully submitted on
behalf of the members of the
Committee on Economic
Revitalization, Business, &
Military Affairs,



ANGUS L.K. MCKELVEY, Chair



