

LINDA LINGLE
GOVERNOR



HB 2603

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IN REPLY REFER TO:

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

February 8, 2010

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 2603, HD 1

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

The Department of Transportation supports this Administration bill, which is designed to address a long-standing problem.

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 applications of the law. Applications of the utility's share on past projects have ranged from 10% to 50% of the cost. Consistent cost sharing should be applied to all utility owners within the DOT right-of-way.

This bill also requires private utility companies to provide their share of costs up front for encumbrance of funds in government contracts, otherwise it places an unfair financial burden on the transportation agency. Application of this requirement should be applied to all private utility owners within DOT right-of-way.

THE GAS COMPANY

P.O. Box 3000
Honolulu, Hawaii 96802-3000
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February 1, 2010

Testimony on HB 2603 HD1 Relating to Cost Sharing in the Relocation and Undergrounding of Utility Facilities

Aloha Chair Herkes, Vice Chair Wakai and Members of the Consumer Protection and Commerce Committee:

My name is Stephanie Ackerman, Vice President Public Policy and Communications of The Gas Company. Thank you for the opportunity to provide testimony on HB 2603 HD1.

The Gas Company (TGC) is a public utility that was founded in 1904 and is Hawaii's only government franchised full-service gas energy company making gas products and services available in Hawaii.

We oppose certain amendments to the statutory language contained in the bill and request necessary clarifications of other parts.

First, we have a concern with the term "utility owner" as used on page 1, lines 15-16, page 3, lines 17, 19, and 20, and page 5 lines 12, 14, and 17, as well as in the title of the bill. "Utility owner" implies the shareholders of the utility company rather than its ratepayers. Yet page 3 of the justification sheet indicates that the proposed legislation is indifferent to how the utility handles its share of the cost, and in fact contemplates that the utility's portion of the relocation or undergrounding costs will eventually be passed through to the utility's rate payers rather than borne by its shareholders. The word "owners" should be deleted for clarity.

Second, TGC opposes the proposal to add a new subsection (d) to HRS Sec. 264-33, requiring a utility to pay its full share of betterment or relocation costs within 30 days from when the state or county highway agency determines the cost sharing amounts. (See page 3, lines 16-22.) Although TGC's cost shares tend to be lower than those for the electric utilities, the requirement for up front-payment is detrimental to cash flow considerations. TGC cannot immediately spread such costs among its ratepayers and must await a subsequent PUC rate case for any such recovery.

Third, we have a concern about an inherent ambiguity in Section 264-33.5, concerning underground installation of utility facilities along federal-aid highways. Specifically, we would like clarified the language in the existing statute concerning cost differentials between "underground and overhead facilities" (p. 4, line 12). We believe the language should read "above-ground" instead of "overhead." The revised language would better address how cost sharing is done when utility facilities located on a state highway bridge, for example, are relocated either to another bridge or underground, even if these facilities were not technically "overhead" to begin with. In this regard, the word "overhead" on page 5, lines 8 and 11, should likewise be changed to "above-ground."

Fourth, TGC would like to see a clarification of the language concerning determination of the cost sharing allocation as among the utilities and the state or county highway agency clarified, once the "federal highway funds that are available to pay for the federal share of the cost differential between underground and above-ground facilities" has been determined. By way of background, TGC and others share a long-term lease of the so-called energy corridor managed by State Harbors, through which our transmission pipeline passes. Although most of our public utility facilities in the energy corridor are underground, in the Waipahu vicinity, our transmission line and public utility facilities of others, pass over a low "at-road-grade" state-owned bridge. The bridge was seriously damaged by flooding and debris build-up in December 2008 and is now in need of replacement. The flooding event was declared a federal disaster and FEMA has earmarked federal funds for Hawaii that are available for projects to remedy that disaster area and prevent future disasters, including hardening of utilities and infrastructure to prevent interruptions to utility service. TGC is seeking to apply for FEMA funds to be used either in building a new, more flood resistant, bridge and relocating its utility facilities there or in aid of undergrounding its utility facilities to avoid use of any bridge. However, TGC is encountering difficulty in finding the necessary state sponsor for this application. TGC would like to see Sections 2 (a) and (c) of the bill clarified to state that, to the extent that a utility independently brings *other* federal funds to the table that are not "federal highway funds," these funds will go solely to reduce the utility's share of relocation or undergrounding costs during the cost-sharing calculations. In that way, only if State Highways agrees to act as the sponsor for an application for the FEMA funds, will a portion of any such funds so awarded be attributable to the cost share of State Highways. To that end, we would like to see the following language added to the end of line 12 on page 5:

"provided that any federal non-highway funds attributable to the relocation, replacement, reconstruction, or undergrounding of any utility facility shall be attributable solely to the utility's cost share unless the state or county highway agency has sponsored the application for such federal non-highway funds. If the state or county highway agency has sponsored the application for such federal non-highway funds, then any such federal non-highway funds shall be apportioned ratably among the cost shares of the state or county highway agency and the affected utility(ies)."

Mahalo for the opportunity to testify on HB 2603 HD1.

Testimony before the House Committee On Consumer Protection & Commerce

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

February 8, 2010

House Bill 2603 HD1 Relating to Cost Sharing in the Relocation and Undergrounding of Utility Facilities

Chair Herkes, Vice Chair Wakai 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 **oppose** HB 2603 HD1 as it is currently written as it will financially burden our utility customers.

There are two items in the bill of which we have concern: 1) upfront payments for betterments and relocations of utility facilities, and 2) 50/50 cost sharing on overhead to underground conversions of utility lines for federal-funded highway work.

Upfront payments: Hawaiian Electric opposes the amendment which would require utilities to make payment within 30 days when the utility share of the cost is determined. The proposed amendment is contrary to State PUC regulatory requirements which prohibit Hawaiian Electric from committing funds earlier than 60 days after filing of the PUC application for project approval. In addition, construction of State or County highway projects is often delayed and accordingly, this proposal which would require upfront payments by utilities will impose an unnecessary and unfair burden on utilities as well as their customers. We suggest that the bill be amended to require upfront payment 30 days prior to construction and to require the State or County agency to also make upfront payments. Often times for utility relocations during highway work, after cost share determinations are made, it is the State or County that

owes the utilities monies. We also suggest that for projects that are over \$1 million, instead of upfront payments, we go to a progress payment scenario.

Cost sharing on overhead to underground conversions for utility lines:

Hawaiian Electric agrees that clarifying the cost sharing provisions in HRS § 264-33.5 is necessary; however, we are opposed to paying 50% of the cost to underground utility facilities as currently proposed for the following reasons.

HRS § 264-33.5 states: “The director of transportation shall arrange for the installation of all utility cables and facilities below the ground... when a determination is made that federal highway funds are available to pay for the federal share of the cost differential between underground and overhead facilities” (emphasis added). The operative language in the above-cited language is “when federal highway funds are available.” Based on the foregoing and the underlying intent of the provision, Hawaiian Electric has established a policy whereby when federal funds are available, an 80/10/10 cost sharing formula is applied: 80% federal funds, 10% utility funds, and 10% State or County funds. Over the past few years, the State Consumer Advocate and the State Public Utilities Commission (PUC) have carefully reviewed and scrutinized Hawaiian Electric’s policy on undergrounding and has determined that the 80/10/10 cost sharing formula is reasonable. Further, in accordance with a recent Decision and Order issued by the PUC, Hawaiian Electric Company recently filed Docket 2009-0356 on 12/23/09 with the PUC to incorporate Hawaiian Electric’s policy on underground lines in Tariff Rule 13. Therefore, to clarify the cost provisions in HRS § 264-33.5, we suggest the 80/10/10 cost sharing formula.

Thank you for the opportunity to testify on this matter.

Testimony Before the House Committee on
Consumer Protection & Commerce

By: Michael V. Yamane, P.E.
Engineering Manager
Kauai Island Utility Cooperative
4463 Pahee Street, Suite 1, Lihue, Hawaii, 96766-2000

Monday, February 8, 2010, 2:00pm
Conference Room #325

**House Bill No. 2603, HD1 – Relating to Cost Sharing in the Relocation
and Undergrounding of Utility Facilities**

To the Honorable Robert N. Herkes, Chair; Glenn Wakai, Vice-Chair,
and members of the Committee:

KIUC opposes House Bill No. 2603, HD1 as drafted.

This bill as drafted would require KIUC to pay 50% of difference between underground and overhead utilities where we would normally pay 50% of the overhead equivalent on a State Highway relocation project that proposes to relocate existing overhead utilities and bury them underground. The cost to install underground utilities can range from 5-15 times the cost to install equivalent overhead utilities. Therefore KIUC's tariff, which is approved by the Public Utilities Commission, requires requestors of underground facilities to pay the full underground cost less the overhead equivalent cost.

As an example, if the relocation of existing electric overhead utilities cost \$100,000, KIUC would pay 50% of the \$100,000 less \$10,000 per HRS 264-33c2 or \$45,000. If the DOT requests these overhead facilities to be relocated and buried underground, the same project cost to install may exceed \$1,000,000. The proposed legislation in HB 2603, HD1 would require KIUC to pay half of the cost differential of the underground and overhead costs, which in this example would be approximately \$450,000 instead of \$45,000 for this project.

KIUC is the only electric cooperative in the State of Hawaii, and the only electric utility serving the people on the island of Kauai. Unlike the for-profit, investor-owned, and much larger utility companies in Hawaii, KIUC is member-owned, its shareholders and ratepayers being one in the same. We feel this is unduly burdensome among KIUC members and request that KIUC be exempted from this measure as proposed below.

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

"§264-33 Relocation of utility facilities. (a) Whenever, as the result of the work of construction, reconstruction, or maintenance of any state highway or state or county federal-aid highway, it is necessary to provide for or require the removal, relocation, replacement, or reconstruction of any utility facility, and the expense of removal, relocation, replacement, or reconstruction exceeds \$10,000, one-half of this excess expense shall be a proper charge

against the state or county funds available for the construction or maintenance of state or county highways[; ~~provided that all of the expense of removal, relocation, replacement, or reconstruction of publicly owned utility facilities shall be a charge against the state or county funds.~~] and the balance of costs shall be borne by the utility owner.

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

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

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

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

(1) The total cost shall first be determined.

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

(A) Depreciation, except that this shall not be applicable to publicly owned utility facilities, and the salvage value of any materials or parts salvageable and retained by the utility;

(B) The amount of any betterment to the utility facility resulting from the removal, relocation, replacement, or reconstruction;

(C) In the case of a privately owned utility facility only, the first \$10,000 of the expense of such work;

(D) The balance of the cost, in the case of a privately owned utility facility only, shall be paid one-half by the owner thereof, and the remaining one-half shall be the amount payable out of state or county funds.

(d) Notwithstanding any other law to the contrary, and with the exception of a telecommunications carrier and electric cooperative, the utility owner shall pay its full share for any betterment or relocation costs to the state or county highway agency within thirty-days after the date that the utility owner's share of the costs is determined. The utility owner's cost share shall be determined after the state or county highway agency determines the winning bidder and finalized cost sharing amounts are calculated."

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

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

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

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

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

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

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

(c) In determining the cost sharing allocation, with the exception of a telecommunications carrier and electric cooperative, the following shall apply:

(1) The basic costs attributable to relocation of an overhead installation to an overhead installation shall be shared in the manner set forth in section 264.33; and

(2) The costs differential between underground and overhead installations shall be allocated one-half to the utility owner and one-half to the state or county highway agency.

(d) Notwithstanding any other law to the contrary, and with the exception of a telecommunications carrier and electric cooperative, the utility owner shall pay its full share for any betterment or relocation or undergrounding costs to the state or county highway agency within thirty days after the date that the utility owner's share of the costs is determined. The utility owner's cost share shall be determined after the state or county highway agency determines the winning bidder and finalized cost sharing amounts are calculated.

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

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

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

Thank you for the opportunity to inform you of KIUC's position on this matter.

HMSA



Blue Cross
Blue Shield
of Hawaii

An Independent Licensee of the Blue Cross and Blue Shield Association

February 8, 2010

The Honorable Robert Herkes, Chair
The Honorable Glenn Wakai, Vice Chair
House Committee on Consumer Protection and Commerce

Re: HB 823 HD1 – Relating to Health Insurance

Dear Chair Herkes, Vice Chair Wakai and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 823 HD1 which would mandate health plans provide expanded coverage for colon cancer screenings and provide information to members on the risks of undiagnosed colorectal cancer.

We would like to take this opportunity to note that as of last month, HMSA's PPO plan is providing colonoscopy screenings as a covered benefit.

As requested by a measure passed last legislative session, the State Auditor just last week published a report on the social and financial impacts of HB 823. The study assessed the impacts of mandating the colorectal cancer screening coverages outlined in this measure. The recommendation of the report is to enact an amended version of HB 823 to include only those screenings recommended by the United States Preventive Services Task Force (USPSTF) in 2008 for adults age 50-75. According to the Auditor's report, "compared to the acceptable screening options endorsed by American Cancer Society, the USPSTF recommends three regimens since two tests – CT colonography and sDNA – lack sufficient evidence..." and "the standard of care for colorectal screening should include the procedures and tests recommended by the USPSTF 2008 guideline."

That being said, we still have concerns with the language that would require health plans to include information in the policy about the risk associated with undiagnosed colorectal cancer and encouraging the member to consult a physician about screening options. While on the surface, this seems like a good idea, there are no parameters set on the outreach a plan would have to provide. HMSA already notifies members about appropriate screenings through our Reminder for Screening & Vaccination Program (RSVP) program which tracks screening for breast, cervical and colorectal cancers; heart disease screening; diabetes screenings; and pneumococcal vaccinations. We would respectfully request the removal of the language pertaining to member notification which is included on page 2, lines 2-6 and lines 16-20. Thank you for the opportunity to testify today.

Sincerely,

A handwritten signature in black ink, appearing to read 'JD' followed by a flourish.

Jennifer Diesman
Vice President
Government Relations