

**SB 2756**

**CPN/TIA**

LINDA LINGLE  
GOVERNOR



BRENNON T. MORIOKA  
DIRECTOR

Deputy Directors  
MICHAEL D. FORMBY  
FRANCIS PAUL KEENO  
BRIAN H. SEKIGUCHI  
JIRO A. SUMADA

IN REPLY REFER TO:

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

February 10, 2010

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

SENATE BILL NO. 2756

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION &  
COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND  
INTERGOVERNMENTAL AFFAIRS

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

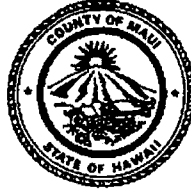
The cost sharing for undergrounding and the interpretation of sections 264-33 and 264-33.5, HRS have remained unclear which has resulted in inconsistent applications of the law. Applications of the utility's share on past projects have ranged from 10% to 50% of the cost. Consistent cost sharing should 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.

CHARMAINE TAVARES  
Mayor

CHERYL K. OKUMA, Esq.  
Director

GREGG KRESGE  
Deputy Director



TRACY TAKAMINE, P.E.  
Solid Waste Division

DAVID TAYLOR, P.E.  
Wastewater Reclamation Division

**COUNTY OF MAUI  
DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**  
2200 MAIN STREET, SUITE 100  
WAILUKU, MAUI, HAWAII 96793

February 5, 2010

The Honorable Rosalyn H. Baker, Chair  
And Members of the Committee on Commerce and  
Consumer Protection

The Honorable Robert N. Herkes, Chair  
and Members of the Committee on Transportation,  
International and Intergovernmental Affairs

**HEARING DATE: Monday, February 8, 2010, 2:00 p.m.**  
**Conference Room 325**  
**State Capitol**  
**415 S. Beretania Street**

**RE: HB 2603 HD 1-RELATING TO COST SHARING IN THE RELOCATION AND  
UNDERGROUNDING OF UTILITY FACILITIES.**

Dear Chairs Herkes and Baker and Members:

I am Cheryl K. Okuma, Director of the Department of Environmental Management and am providing testimony in opposition to the current language set forth in HB 2603 HD1. This proposed bill would require utility owners whose facility occupies State Highway right-of way to provide a share of relocation costs up front to the affected state agency.

Under the current practice when State Department of Transportation (DOT) does roadwork and relocates an existing utility line for sewer, water and drainage, DOT pays for the cost of the relocation. This proposed bill requires the County of Maui to pay towards the cost of relocating its sewer line in the event there is DOT roadwork requiring line relocation. While this proposed bill would result in cost savings to DOT, it would place a financial burden on the County of Maui utilities when the need for relocation is determined by a State Agency such as DOT.

We appreciate the opportunity to provide our comments in opposition to HB 2603 HD1.

Sincerely,

A handwritten signature in black ink that reads "Cheryl K. Okuma".

CHERYL K. OKUMA  
Director, Department of  
Environmental Management

Testimony Before the Senate Committee on  
Commerce and Consumer Protection

And the Senate Committee on  
Transportation, International and Intergovernmental Affairs

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

Wednesday, February 10, 2010, 10:45 a.m.  
Conference Room #229

**Senate Bill No. 2756 – Relating to Cost Sharing in the Relocation  
and Undergrounding of Utility Facilities**

To the Honorable Rosalyn H. Baker, Chair; David Y. Ige, Vice-Chair,  
and members of the Committee:

To the Honorable J. Kalani English, Chair; Mike Gabbard, Vice-Chair,  
and members of the Committee:

KIUC opposes Senate Bill No. 2756 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 this measure be held.

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

**SB 2756**

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

**LYNETTE YOSHIDA  
SENIOR MANAGER - ENGINEERING**

**HAWAIIAN TELCOM**

**February 10, 2010**

Chair Baker, Chair English and members of the Senate Commerce and Consumer Protection and Transportation, International and Intergovernmental Affairs Committees:

I am Lynette Yoshida, testifying on behalf of Hawaiian Telcom on SB 2756, Relating to Cost Sharing in the Relocation and Undergrounding of Utility Facilities. Hawaiian Telcom cannot support this measure in its present form.

SB 2756 requires utilities whose facilities occupies state highway rights-of-way to provide their share of relocation costs up front to the affected state agency and also requires that the total cost sharing for the difference between overhead relocation to underground is to be shared 50/50 between the utility owner and the transportation agency.

Both these proposed changes place an unfair disadvantage upon Hawaiian Telcom and impose a significant negative financial drain on our company that we cannot in our current financial situation absorb. Unlike the other utilities included under this measure, our company should not be included in this bill because we are not a monopoly and do not have the ability to pass on these added costs to our customers. Telecommunications is a highly competitive industry. Today consumers have the freedom to choose from a wide array of other telecommunication providers besides a landline including wireless and VoIP. In addition, this measure will allow some of these same companies to offer the same services but not be burdened by these additional costs.

If the Committee decides to advance this measure, we respectfully request an exemption be provided for a "telecommunication carrier utility owner" on page 3, line 16; page 5, line 6; and page 5, line 13 of the bill.

Based on the aforementioned, unless the bill is amended to address our concerns, Hawaiian Telcom urges this committee to defer SB 2756.

Thank you for the opportunity to testify.

# Testimony before the Senate Committees On Commerce and Consumer Protection and Transportation, International and Intergovernmental Affairs

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

February 10, 2010

## Senate Bill 2756 Relating to Cost Sharing in the Relocation and Undergrounding of Utility Facilities

Chairs Baker and English, Vice Chairs Ige and Gabbard and Members of the Committees:

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** SB 2756 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, any upfront payments by utilities will place 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 Section 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 key language in the language above is “**when federal highway funds are available.**” Based on this intent, Hawaiian Electric 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. We have successfully used that formula in past highway projects. 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 this 80/10/10 cost sharing formula is reasonable. Recently the PUC has ordered Hawaiian Electric to incorporate our underground policy into our tariffs. To summarize, to clarify the cost provisions in HRS 264-33.5, we suggest using the 80/10/10 cost sharing formula.

Thank you for the opportunity to testify on this matter.

# THE GAS COMPANY

P.O. Box 3000  
Honolulu, Hawaii 96802-3000  
[www.hawaiigas.com](http://www.hawaiigas.com)

February 10, 2010

Testimony on SB 2756 Relating to Cost Sharing in the Relocation and Undergrounding of Utility Facilities

Aloha Chair Baker, Vice Chair Ige and Members of the Commerce and Consumer Protection Committee and Chair English, Vice Chair Gabbard, and Members of the Transportation, International and Intergovernmental Affairs 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 SB 2756.

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 SB 2756.