

HB 112, HD1

Measure Title: RELATING TO CABLE TELEVISION SYSTEMS.

Report Title: Cable Television Systems; PEG Access Organizations

Description: Allows the Director of Commerce and Consumer Affairs to designate an access organization to oversee public, educational, and governmental channels on cable television. Effective July 1, 2011. (HB112 HD1)

Companion:

Package: None

Current Referral: CPN



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
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KEALI'I S. LOPEZ
DIRECTOR

EVERETT S. KANESHIGE
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Date: April 5, 2011
Time: 9:30 a.m.

**TESTIMONY ON H.B. No. 112, H.D. 1 - RELATING TO CABLE TELEVISION
SYSTEMS**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Everett Kaneshige and I am the Deputy Director of the Department of Commerce and Consumer Affairs (the "**Department**"). The Department appreciates the opportunity to testify in support and provide comments to HB No. 112, H.D. 1.

The Department recognizes the importance of PEG access to democracy and the exchange of ideas and the opportunity for the public to share their ideas, using a media that would be otherwise cost-prohibitive for most people.

Therefore, the Department supports an exemption from HRS chapter 103 for the designation of access organizations for public, educational, and governmental (PEG) access channels as described in lines 4-10 on page 1 of the bill. The Department's position is consistent with its previous requests to the State Procurement Office in 2005 and 2006 for a similar exemption and also the recommendations of the H.C.R. 358 Task Force Report to the 25th Legislature on December 16, 2008.¹

The remainder of the bill addresses the procedure to be used by the Department in conjunction with designation of the PEG access organizations. The Department

¹ Recommendation #1 of the H.C.R. 358 Task Force Report to the 25th Legislature states, "The Legislature should exempt the designation of PEG access organizations from the provisions of the State Procurement Code."

points out that these procedures are already contained in section 16-131-70 of the Hawaii Administrative Rules.

In addition, section 1, subsection (h) of the bills specifies that the department shall conduct an annual management and financial audit of designated access organizations. Since the access organizations are already required to provide financial information to the department on annual basis, the Department feels that a management and financial audit of these organizations may not be necessary. (The committee might want to solicit feedback from the access organizations on this requirement to extent these organizations choose to testify on this measure.) Nevertheless, should the committee choose to retain this provision, the Department will contract with the appropriate parties to provide these services.

Finally, it is the Department opinion that the sunset provision in section 4 of the measure it too short and that more time should be allowed to implement this new process before the law is repealed. However, this issue could also be addressed at a later date.

Thank you for the opportunity to provide written comments on H.B. No. 112, H.D.
1.



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
SENATE COMMITTEE
ON
COMMERCE AND CONSUMER PROTECTION

April 5, 2011

9:00 AM

HB 112, HD 1

RELATING TO CABLE TELEVISION SYSTEMS.

Chair Baker, Vice Chair Taniguchi, and committee members, thank you for the opportunity to testify on HB 112, HD 1.

The State Procurement Office (SPO) opposes the amendment in SECTION 1 which proposes to exempt from HRS chapter 103D, the Hawaii Public Procurement Code ("Code"), the designation of access organization for public, educational, or governmental access channels.

As historical background on this issue, in 2007 Maui Circuit Court ordered the Department of Commerce and Consumer Affairs (DCCA) to adopt a rule specifying method, factors and criteria used to designate and select a PEG access organization. Subsequently DCCA initiated rulemaking process, held public hearings in Sept 2008, and HAR §16-131-70 became effective Dec. 2008. DCCA amended its Hawaii Administrative Rules (HAR) chapter 131, Subchapter 16 on *Access Organizations* for §16-131-70, *Designation and selection of access organizations* (see Attachment), that states in part, "...director shall comply with the applicable provisions of chapter 103D, HRS, when designating and selecting an access organization to oversee the development, operation, supervision, management, production, or broadcasting of programs on PEG channels obtained under chapter 440G, HRS."

HB 112, HD 1
Senate Committee on Commerce
and Consumer Protection
April 5, 2011
9:00 AM
Page 2

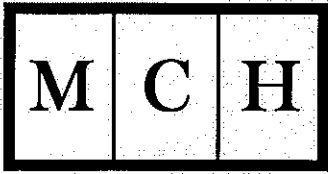
There is currently a solicitation through the request for proposal (RFP) process. RFP-10-007-SW for the services to *Operate, Maintain, and Manage Public, Educational, and Governmental (PEG) Access Channels, Funds, Facilities, and Equipment*, and generally contains the items listed in the proposed bill for the director to consider such as the public need for the proposed services, qualifications and financial responsibility of the applicant, etc. Copies of the solicitation and amendments will be provided upon request.

Public procurement's primary objective is to give everyone equal opportunity to compete for Government contracts; to prevent favoritism, collusion or fraud in awarding of contracts. Meeting this objective requires a single set of statutes and rules that define and mandate the use of selection processes that are competitive, efficient, fair, transparent, open and impartial.

The Code should not be viewed as an obstacle to a purchasing agency's mission, but rather as the single source of public procurement policy to be applied equally and uniformly.

There are several vendors who have indicated interest in submitting proposals for this solicitation. If the Legislature intends to exempt specific programs or funds from the Code, the exemption should include assurances that the agency's exempt process includes fair and open competition, disclosure, transparency, due process for aggrieved parties, a defined selection and awards process, and the various elements contained in the Code to ensure public confidence that this special exemption is fair.

There is no compelling reason to exempt the procurement of contracts to manage and operate PEG access channels, funds, facilities and equipment from fair, transparent and open competition. We request that SECTION 1 be deleted. Thank you.



Media Council of Hawai'i *Since 1970*

April 4, 2011

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Senate CPN Committee Testimony in favor of HB112 HD1

**To: Rosalyn H. Baker, Chair, Brian T. Taniguchi, Vice Chair, and
Members of the Committee**

Testimony in **favor of HB112 HD 1** – Relating to Cable Television
Systems

Dear Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

My name is Chris Conybeare, as president of the Media Council Hawaii, I offer
testimony in strong support of HB112 HD 1.

The content of this bill incorporates draft rules from the 2008 HCR 358 Legislative
Task Force which recommended that this reasonable method of PEG Access
designation be used in lieu of a fatally flawed state procurement process.
Recommendation 3 of the HCR 358 Task Force Report states:

*"The Task Force recommends that in place of competitive procurement, the DCCA
be charged with adopting Administrative Rules that guide a new process for the
designation of a PEG Access organizations in a manner that is similar to the
process used by DCCA for cable franchises, a process that is already well
understood by the DCCA and the public, This process should provide ample
opportunity for input by the public on each island within the local franchise area
and allow for interested parties to intervene*

HB 112 HD1 provides for a necessary and fair regulatory framework to govern
selection, evaluation and continuation of PEG Access services and will permit
Community Television to flourish. We respectfully request that your committee
give approval to this legislation. Thank you.

Aloha,

Chris Conybeare
President

April 1, 2011

The Honorable Rosalyn H. Baker
Chair
Committee on Commerce and Consumer Protection (CPN)
Hawaii State Senate
415 S. Beretania Street, Room 230
Honolulu, HI 96813

COMMUNITY MEDIA

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Roy K. Amemiya, Jr.
Interim President/CEO

Dear Chair Baker, Vice Chair Taniguchi and Members of the CPN Committee;

Subject: Letter in Strong Support of HB 112 HD1 Relating to Cable Television Systems

My name is Roy Amemiya, Chief Operating Officer and Interim President/CEO of 'Ōlelo Community Television, the PEG Access Provider for Oahu. I am writing to strongly support HB 112 HD1 Relating to Cable Television Systems. This bill would change the State's procurement process of PEG Access service providers by designating a new process within HRS 440G that is modeled after the process used to procure cable franchises.

This committee approved the companion bill SB583 unamended. The HD1 adds the audit requirement and provides for a sunset date of June 30, 2014. 'Ōlelo is agreeable to these new provisions.

We ask that you support this measure by moving it out of the CPN Committee unamended.

Thank you for the opportunity to testify. I am pleased to answer any questions that you may have.

Aloha,



Roy K. Amemiya, Jr.
Interim President and CEO

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION (CPN)

Rosalyn H. Baker, Chair
Brian T. Taniguchi, Vice Chair

Tuesday, April 5, 2011 / 9:30 AM Conference Room 229

Testimony of Jay April **IN SUPPORT** of HB112 Relating to Cable Television

My name is Jay April, I am President and CEO of Akaku: Maui Community Television and a member of the HCR358 Legislative Task Force.

The content of this bill incorporates draft rules from the 2008 HCR 358 Legislative Task Force which recommended that this reasonable method of PEG Access designation be used in lieu of a fatally flawed state procurement process initiated six years ago by the previous Administration. This ongoing RFP process has cost the PEG Access organizations and the state many thousands of dollars. It is time that this misguided effort be put aside in favor of a superior method of PEG designation that more accurately reflects the founding principles intended by the framers of the original federal and state legislation.

Although we do not believe that the sunset provision in the bill is necessary and would like to point out that Hawaii PEGs already do submit to independent annual audits, we would like, nevertheless, to respectfully request that your committee approve HB112 in its present form as amended by the House. This will allow these community anchor organizations to achieve stability and build upon their only mission - to provide extended media opportunity and a vibrant voice for all the people of Hawaii Nei.

I would like to sincerely thank the committee for the opportunity to testify before you today.

NA LEO O HAWAII, INC.

In Hilo: 91 Mohouli Street, Hilo, Hawaii 96720

Tel: (808) 935-8874 Fax: (808) 961-3621 e-mail: NALEO001@hawaii.rr.com

In Kona: 74-5565 Luhia Street, Suite C-1A, Kailua-Kona, Hawaii 96740

Tel: (808) 329-9617 Fax: 329-9630

April 4, 2011

The Honorable Rosalyn Baker
Chair
Committee on Commerce and Consumer Protection

Dear Chair Baker and Members of the CPN Committee:

Subject: Strong Support for HB112 HD1 Relating to Public, Education, Government Access

Na Leo O Hawaii, the PEG for Hawaii County, adds its strong support for this Bill, along with all the other Hawaii PEGs, DCCA and the hundreds of individuals who have testified over time in support of the intent of this Bill

Thank you for your consideration of this Bill and I strongly urge the Committee to approve HB112 HD1 for the continued growth and success of the people of Hawaii.

Respectfully,

Juergen Denecke
General Manager
Na Leo O Hawaii



AMERICANS FOR DEMOCRATIC ACTION

OFFICERS	DIRECTORS			MAILING ADDRESS
Brien Hallet, President	Nancy Bey Little	Barbara Polk	Guy Archer (Alt)	PO. Box 617
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Chuck Huxel, Secretary	Jim Olson	George Simson	Marcia Schweitzer (Alt)	Karin Gill (Alt)

April 1, 2011

TO: Senator Baker, Chair; Senator Taniguchi, Vice Chair
Members of the House Committee on Finance

FROM: Americans for Democratic Action/Hawaii
Barbara Polk, Legislative Chair

RE: SUPPORT FOR HB 112 HD1 RELATING TO CABLE TELEVISION SYSTEMS

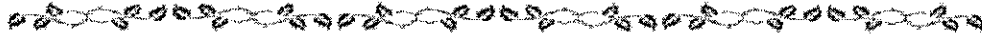
Americans for Democratic Action/Hawaii supports this bill because it offers a method of selecting PEG access providers that takes into account a wider variety of public interests and needs that does the standard procurement procedure.

Public access cable TV gives members of the public a way to air their concerns and interests, in addition to providing access to the political process and to educational programming. In an era of increasing media consolidation, it is important that public access channels continue to be guided by public interest. We believe that HB 112 provides a process that appropriately allows for greater public input and consideration in selecting the providers. We urge your support for the bill.

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Suite 203, Honolulu, Hawai'i 96817

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COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Sen. Rosalyn Baker, Chair

Sen. Brian Taniguchi, Vice Chair

Tuesday, April 5, 2011

Room 229

12:00 p.m.

HB 112 HD1 - STRONG SUPPORT for PEG Access with Amendment

<http://www.capitol.hawaii.gov/emailtestimony>

Aloha Chair Baker, Vice Chair Taniguchi and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working on prison reform and justice issues in Hawai'i for more than a decade. We respectfully offer our testimony always being mindful that Hawai'i has some 6,000 people behind bars with almost 1,800 individuals serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

I am also the producer and host of *Hawai'i Injustice*, an 'Olelo community television show that airs the first Tuesday of every month at 8:30 pm and every Thursday morning at 8 am on Channel 54.

HB 112 allows the Director of Commerce and Consumer Affairs (DCCA) to designate an access organization to oversee public, educational and governmental channels on cable television. The HD1 requires DCCA to conduct annual audits of access organization and establishes sunset date of 6.30.2014.

Community Alliance on Prisons stands in strong support of PEG access that preserves the community voice and clarifies Chapter 440G, outlining the criteria the Director must consider before letting a contract from PEG access. This is especially vital in challenging economic times. We, the people, must always be vigilant that the government doesn't corporatize public assets. These assets are known as The Commons.

We believe, however, that the annual audit is unnecessarily burdensome, especially in these challenging economic times. We, therefore, respectfully ask if this provision be stricken from the bill in the interest of democracy and to reassure the community that our government respects that these assets are part of the public trust and that our voices matter.

PEG (Public, Education, and Government) access is a vital part of a thriving democracy. It provides access to information that is, in some cases available nowhere else. Access to current information is even more important for Hawai'i, as many of our communities are separated by ocean. Access to technology facilitating information to connect our islands is not yesterday's luxury – it is today's necessity.

This bill ensures that the public has a voice in keeping public access, well, public!

Public access (and we mean PEG access) is

- a public right
- democracy in action
- a way to create a more informed citizenry
- a way to build strong, involved, and committed communities
- a window for policymakers to see, hear and understand issues important to their constituents

When we say public access is a public right, we mean just that. This is the rent - and it is indeed low rent considering the corporate benefit cable television operators gain from the use of public-rights-of-way - for the use of public space.

A vibrant democracy demands participation

Many people feel left out of the mainstream media. The community's voice is often relegated to a 30 second sound bite, if anything at all.

Public access/community media provides a venue for the discussion of issues important to the community. This education encourages participation in the democratic process.

Public access/Community media is vital in Hawai'i because we are a multi-cultural society

We have many immigrants who come to Hawai'i and desperately want to connect with what is going on, but find it very difficult to determine how to do this. Mainstream media do not do much to help people fit in.

Freedom of speech is a vital component of democracy

The Constitution has been under siege, and one of the most important freedoms enshrined in the Bill of Rights is freedom of speech. Public Access/community media provides an uncensored venue for our community to learn about issues, to find ways to participate in their communities, and to be more active contributors in shaping Hawai'i's future. Public access promotes the first amendment!

Community media increases civic literacy

Hawai'i has pitiful voting numbers. We rank at the bottom for voter participation. It is obvious from our dismal voting numbers that people feel disenfranchised and separated from the government. Yet we are the government. Public access/community media brings issues to the people and calls for their participation. In election cycles, the community can tune in and hear from candidates running for office. This creates a more engaged and educated voter.

Keep Public Access PUBLIC! We support this measure that ensures the public will have a voice in the PEG process that is made clearer with the amendment to Chapter 440G.

A vibrant democracy demands an involved citizenry and every effort to educate and involve the citizens on important issues should be wholeheartedly supported by our government.

Preserving, enhancing, and amplifying the public, educational, and governmental voices
is what *We the People* is all about!

Mahalo for this chance to share our thoughts.

baker2 - Kelli

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, April 02, 2011 7:18 AM
To: CPN Testimony
Cc: mmmmahalo2000@aol.com
Subject: Testimony for HB112 on 4/5/2011 9:00:00 AM

Testimony for CPN 4/5/2011 9:00:00 AM HB112

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Mike Moran
Organization: Individual
Address:
Phone:
E-mail: mmmmahalo2000@aol.com
Submitted on: 4/2/2011

Comments:

Please support this bill. On Maui we continue to appreciate Akaku Community TV and want to retain it. Mahalo.
Mike Moran, Kihei

Chair Baker, Vice Chair Taniguchi, and CPN Committee members Galuteria, Green, Nishihara, Solomon, and Slom:

I've submitted testimony at various stages of the legislative process pertaining to public-access TV. I believe it still pertinent to your final deliberations and am therefore pasting it below for your consideration.

Regards and aloha, in anticipation of passage of HB 112 HD 1 out of your Committee,

Robert H. Stiver
Pearl City
Tel. 455-9823

Re: HB 112, Hearing date -- April 5, 2011

I am Robert H. Stiver, a retiree from Pearl City. I'm vitally interested in this proposed bill from the following perspectives:

--Although I wouldn't presume to call myself "unique," I do have some elements of my background and current situation that I believe are pertinent here:

----I'm an 'Olelo viewer, a regular consumer of the varied and valuable programs offered by the public-access TV medium.

----I'm a trained 'Olelo cameraperson, editor and producer. I've (together with two co-producers) aired hundreds of programs on 'Olelo – typically on Channels 49 and 54 – since late 2005, or five-plus years. My experience with 'Olelo executive, administrative, and technical people has always been one of satisfaction. It is my distinct pleasure to interact with a staff that has a big-picture sense of what public-access TV is and how it should best be pursued in making free speech and expression a daily part of life in our community.

----I'm a retired Federal civil servant whose career, starting in 1968, was in the procurement and contracting field. I retired in 1999, so I had some 30 years of procurement experience.

For several years now, I've observed, and participated in, the long-term discussions over whether a new procurement contract for operation of public-access TV services should be undertaken, through competitive RFP (Request for Proposals) procedures. My position has been fairly simple and straightforward: whereas, in the Federal sector, people like me were responsible for expending the taxpayers' money properly through stringent contracting rules and procedures – perhaps centrally through price and/or technical competition – the services provided by 'Olelo for over 20 years do not fit that category. (I note in passing that, in 1984, the concept of "competition" was enshrined in Federal law via the Competition in Contracting Act, or CICA. CICA became the "go to" statute governing every procurement, and as far as I know it is still given at least lip service, despite misadventures some of us may have read about

in Iraq, Afghanistan and elsewhere.) My cable franchise fee, and the fees of others, which are allocated in part to make public-access TV a reality on 'Oahu and on the neighbor islands, are not "taxpayer" dollars – and thus the typical competitive environment via a procurement channel does not pertain.

It is thus my firm belief that House Bill 112, which would delegate responsibility to secure and oversee the operations and management of a public-access TV provider to the competent technical folks at DCCA, is the needed step in the right direction.

Thank you for your attention, and for your deliberations and service on behalf of the public.

Robert H. Stiver, 98-434 Hoomailani Street, Pearl City 96782
Tel. 455-9823; E-mail stiver-aloha@hawaii.rr.com
(Prepared March 1, 2011; reviewed/re-submitted April 4, 2011)

baker2 - Kelli

From: mailinglist@capitol.hawaii.gov
Sent: Monday, April 04, 2011 11:10 AM
To: CPN Testimony
Cc: jdenecke-naleo@hawaii.rr.com
Subject: Testimony for HB112 on 4/5/2011 9:00:00 AM

Testimony for CPN 4/5/2011 9:00:00 AM HB112

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Juergen Denecke
Organization: Na Leo O Hawaii
Address:
Phone:
E-mail: jdenecke-naleo@hawaii.rr.com
Submitted on: 4/4/2011

Comments: