

**SB 583**



**STATE OF HAWAII**  
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COMMENTS  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE  
SENATE COMMITTEE  
ON  
WAYS AND MEANS

March 1, 2011

9:20 AM

SB 583

RELATING TO CABLE TELEVISION SYSTEMS.

Chair Ige, Vice-Chair Kidani, and committee members, thank you for the opportunity to comment on SB 583.

The State Procurement Office (SPO) opposes the amendment in SECTION 1 which proposes to exempt from HRS chapter 103D 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."

Another solicitation was issued on May 20, 2010 by SPO on behalf of DCCA, Cable Television Division, and is currently proceeding through the request for proposal (RFP) process. RFP-10-007-SW is 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. The true nature of competition gives government agencies the benefits of knowing that the acquiring of goods and services were conducted in a fair and objective manner. 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.

Statutory exemptions for specific agencies are contrary to the Hawaii Public Procurement Code, section 103D-102, HRS, on the applicability of the chapter that states in part ". . . shall apply to all procurement contracts made by governmental bodies whether the consideration for the contract is cash, revenues, realizations, receipts, or earnings, . . ." Any governmental agency with the authority to expend funds should be in compliance with chapter 103D, which promotes the policy of fair and equitable treatment of all persons who deal with the procurement system; fosters effective broad-based competition and increases public confidence in public procurement.

The SPO opposes statutorily exempting specific agencies from the Code, as it is not in the best interest of government, the business community, and the general public. The Code establishes a time-tested, fair, and reliable process for award of contracts. The competitive procurement processes of the Code are to insure that all potential providers are afforded the opportunity to compete for the required services. To the extent agencies may need specific purchases to be exempted from Code requirements, the Code provides an exemption process on a case by case basis as opposed to a total blanket statutory exemption.

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. It was the legislature's intent for the Code to be a single source of public procurement policy. If individual agencies are exempted and allowed to develop their own individual processes, it becomes problematic and confusing to vendors, contractors and service providers that must comply with a variety of different processes and standards. Fairness, open competition, a level playing field, and government disclosure and transparency in the procurement and contracting process are vital to good government. For this to be accomplished, we must participate in the process with one set of statutes and rules. To legislate that any one entity should be exempt from compliance with the procurement code conveys a sense of disproportionate equality in the law's application.

SB 583  
Senate Committee on Ways and Means  
March 1, 2011  
9:20 AM  
Page 3

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 the exempt procurement process is as fair as the Code.

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

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON WAYS AND MEANS

Sen. David Ige, Chair

Sen. Michelle Kidani, Vice Chair

Tuesday March 1, 2011

Room 211

9:20 a.m.

**SB 583 - STRONG SUPPORT for PEG Access**

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

Aloha Chair Ige, Vice Chair Kidani 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, 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.

SB 583 allows the Director of Commerce and Consumer Affairs (DCCA) to designate an access organization to oversee public, educational and governmental channels on cable television.

Community Alliance on Prisons stands in strong support of this measure 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 important because the community voice is part of the Director's criteria for selection. 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.

PEG (Public, Education, 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.

## **COMMITTEE ON WAYS AND MEANS**

Senator David Y. Ige, Chair

Senator Michelle Kidani, Vice Chair

Tuesday, March 1, 2011, 9:20 AM Room 211

Comments **IN SUPPORT** of SB583 – Relating to Cable Television Systems

My name is Jay April, I am a resident of Maui County, President and CEO of Akaku: Maui County Community Television and a member of the HCR 358 Legislative Task Force. I offer my comments in strong support of SB583

The bill is intended to provide strong accountability and performance standards for Akaku, Maui County's Akaku Community Television, as well as, the community-based public access television providers serving Oahu, Olelo Community Television, the Big Island, Na Leo O Hawaii and Kauai, Hoike Community Television. These community-anchor non-profit public access organizations have been a vibrant part of our public discourse and civic engagement throughout the state for more than twenty years and this bill will ensure that they continue to be fully accountable and responsive to the needs of those respective local communities, the DCCA and the state.

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, an ongoing RFP process that has cost the PEG Access organizations and the state many thousands of dollars with no end in sight.

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*

SB583 provides for a regulatory framework that will silence even the harshest critic of the current PEG access designation. We would like to respectfully request that your committee approve SB583 which will grant Akaku and the other community media organizations a sense of certainty they have earned from decades of dedicated community service. This will allow these community-based organizations to continue to expand 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 thank the committee for the consideration of these comments today.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 25, 2011 7:49 PM  
**To:** WAM Testimony  
**Cc:** mmmmahalo2000@aol.com  
**Subject:** Testimony for SB583 on 3/1/2011 9:20:00 AM

Testimony for WAM 3/1/2011 9:20:00 AM SB583

Conference room: 211  
Testifier position: support  
Testifier will be present: No  
Submitted by: Mike Moran  
Organization: Individual  
Address:  
Phone:  
E-mail: [mmmmahalo2000@aol.com](mailto:mmmmahalo2000@aol.com)  
Submitted on: 2/25/2011

Comments:

Aloha Chair & committee members,  
Please offer your strong support for this bill to preserve our community access TV on Maui,  
Akaku. Mahalo.  
Mike Moran Kihei