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STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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KEALI'I S. LOPEZ
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TO THE SENATE COMMITTEE ON
WAYS AND MEANS

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013

Date: Friday, February 22, 2013
Time: 9:00 a.m.

WRITTEN COMMENTS ON S.B. 1235, S.D. 1 - RELATING TO CABLE TELEVISION

TO THE HONORABLE DAVID Y. IGE, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Donn Yabusaki. I am the Administrator of the Cable Television Division of the Department of Commerce and Consumer Affairs ("Department"). The Department provides comment on this bill as amended.

The Department is willing to work with various interested stakeholders to assess methods to fund the development of a Hawaiian language television channel. The Department understands the intent of the Committee on Commerce and Consumer Protection as stated in its standing report that this process should involve the Office of Hawaiian Affairs (OHA) as an interested stakeholder. The Department believes that OHA is the most appropriate lead in such an endeavor and is consistent with its statutory purpose. The Department is willing to work with OHA in an effort to support a Hawaiian language television channel.

The Department would like to note that franchise fees as currently allocated do not enable the Department to fund an unbudgeted program and will have a negative impact on existing programs.

The Department is willing to work with stakeholders to advance this important effort. Thank you for the opportunity to provide written comments on this measure.

From: [Alberto Rojas](#)
To: [WAM Testimony](#); [Jay April](#); [Gene Zarro](#); [Don Couch](#)
Subject: TESTIMONY STRONGLY AGAINST SB1235
Date: Wednesday, February 20, 2013 9:59:42 PM

COMMITTEE ON WAYS AND MEANS

Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair
Friday, February 22, 2013, 9:00 AM

I, ALBERTO ROJAS JR. Resident of MAUI, HAWAII, hereby submit
TESTIMONY STRONGLY AGAINST SB1235

Community Television operations in Hawaii are recognized as some of the best in the nation. This success is due to the fact that in 1987, the Hawaii Legislature followed the lead of the Federal Government by adopting and putting into effect a “best practice” integrated PEG funding model whereby thousands of independent non-profit PEG access centers created for the specific purpose of serving public, education and government constituencies provided low cost media training to the public and meaningful access to cable television. Empowering NGO's, NPO's, community anchor institutions, schools, educators, individuals and local and native governments, this paradigm in Maui is a vibrant resource for the entire spectrum of Hawaiian thought and continues to enable freedom of expression and maximum civic engagement from diverse and varied points of view across a number of traditional and new media platforms.

SB 1235, as amended by CPN, is a well intentioned bill. Just about everybody I know and work with wants to see Hawaiian cultural values proliferate and Hawaiian language immersion programs succeed. These are worthy recipients too, but this effort needs to be funded, as Senator Malama Solomon has so eloquently and passionately stated, by OHA or from monies other than PEG franchise fees. Over the years, several state studies have recommended against "splitting" franchise fee funds among special interests as very bad practice and it is not a good time to start that practice now. This pits good organizations against each other unnecessarily and will divert funds from intended uses that will result in reduced benefit for all.

Noting the outstanding merit of providing tangible benefit to aid the development of a Hawaiian Language Channel on cable, opening up 440G to siphon money from PEG is not the way to go about this. Splitting the Baby is not the answer. Some glaring problems with SB1235 are as follows:

1. SB1235 sets up a raid on neighbor island PEG funds a year down the road by opening up 440G to tampering by any number of vested interests, a dangerous precedent. This rubric will severely impact if not destroy existing PEG operations particularly in underfunded neighbor islands. It is likely to be in violation of the Cable Act. It directs the DCCA to consider using cable television franchise fees collected pursuant to Chapter 440G to fund the development of an existing commercial Hawaiian Television channel available to only about 49% of subscribers. A federal Court of Appeals has held that it would violate the Cable Act for a government entity to use PEG funds to provide programming that is available on local cable channels. The intended recipient of funds, 'Oiwi TV currently provides Hawaiian language, cultural and entertainment programming on its own commercial channel.

2. SB1235 in Section 2 has the potential to have a negative effect on Maui County's upcoming franchise negotiations. Implicit in Section 2 is what appears to be an advisory message to DCCA in negotiating Maui County's Franchise renewal, to exact some sort of quid pro quo from Oceanic Time Warner to benefit an Oahu cable channel? At whose expense? At what specific benefit to Maui Nui?

3. SB1235 may be a violation of the prohibition on State control of PEG content and related constitutional claims. The Hawaii Supreme Court has ruled that the DCCA deliberately structured PEG channels "in such a way that the State would be shielded from any appearance of content control...." *OLELO v. OIP*, 173 P.3d 487, 488 (2007)

4. If the State starts to control the content of programming produced with PEG funds by mandating certain types of programming, producers who are not among those favored by the state may assert that their first amendment rights to free speech have been violated .

PEG Access Centers have been empowering local democratic voices without censorship, corporate control or commercial consideration for more than twenty years and are perfectly positioned to have an immediate positive impact on Hawaii's and Native Hawaiian broadband future particularly in rural areas of Maui, Molokai and Lanai. On Maui, Akaku is highly regarded as an essential community anchor institution that gives voice to all of our residents on a variety of communications platforms. We currently provide 25% of all franchise fees received directly to DOE and UH and fully support all kinds of robust and thriving Native Hawaiian programs. Some of which in the past several months include the following: Open Mics, Broadband Mobile Journalism training, OHA elections forums, Cultural Resources Commission, Right vs.Rule series on Hawaiian Issues, **Hawaiian Immersion Rally Live**, Kamehameha Schools Maui Intern Program, Malama Honokowai Valley, Molokai Makahiki, The award winning films; Hawaii: A Voice of Sovereignty, Red Turtle Rising, Haleakala: A Sense of Place and Turning the Canoe; Maui Walk of Fame Honorees, George Kahumoku, Amy Hanaleii, and Richard Hoopii, Native Hawaiian Chamber of Commerce, Taro Planting and Blessing at Kaehu, Na Melo O Maui, Hawaiian Medicine Series, etc.

The bottom line is that it is a very bad idea to open up Chapter 440G in order to split Maui Nui's marketplace of ideas into fragments forcing good organizations to compete with one another for limited funds whereby none can be effective. Destroying a valuable proven community resource in order to split the spoils among a few worthy efforts is a high price to pay and something no one on Maui wants. The unintended result of this well intentioned bill's passage will be to silence the many voices of the community that for more than twenty years has been providing tangible benefit to all. It will diminish the open exchange of ideas between government and it's people, stifle the voices we all need to hear and damage local electronic democracy. We can do better than that and I am looking forward to continued dialogue and collaboration in order to find the resources for all so that Hawaii can become even a better place for all of us to communicate with one another. More voices, not less. OHA needs to fund this, not PEG.

Thank you for the opportunity to testify before you today,

Alberto Rojas Jr.
MAUI RESIDENT
CONCERNED CITIZEN

From: [Jay April](#)
To: [WAM Testimony](#)
Subject: TESTIMONY STRONGLY AGAINST SB1235
Date: Wednesday, February 20, 2013 9:10:25 PM

COMMITTEE ON WAYS AND MEANS

Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair
Friday, February 22, 2013, 9:00 AM

TESTIMONY STRONGLY AGAINST SB1235

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silence the many voices of the community that for more than twenty years has been providing tangible benefit to all. It will diminish the open exchange of ideas between government and it's people, stifle the voices we all need to hear and damage local electronic democracy. We can do better than that and I am looking forward to continued dialogue and collaboration in order to find the resources for all so that Hawaii can become even a better place for all of us to communicate with one another. More voices, not less. OHA needs to fund this, not PEG.

Thank you for the opportunity to testify before you today.



SB1235 SD1
RELATING TO CABLE TELEVISION
Senate Committee on Ways and Means

February 22, 2013

9:00 am

Conference Room 211

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB1235 SD1, which would require the Department of Commerce and Consumer Affairs (DCCA) to work with stakeholders in assessing the best method to ensure dedicated funding for a Hawaiian television channel and submit its findings and recommendations to the Legislature. These actions may open the door for allocation of cable franchise fees to support ‘ōlelo Hawai‘i revitalization efforts.

While once spoken throughout Hawai‘i by Native Hawaiians and foreigners alike, ‘ōlelo Hawai‘i was considered to be nearly extinct by the 1980s, when fewer than 50 fluent speakers under the age of 18 were left. However, great strides have been made to bring about a renaissance of the Hawaiian language through programs such as ‘Aha Pūnana Leo’s Hawaiian language immersion schools, the Department of Education’s Hawaiian language immersion program, and the Hawaiian language programs of the University of Hawai‘i system. Although there is much momentum in the revitalization of the Hawaiian language, for ‘Ōlelo Hawai‘i to thrive rather than simply survive, more people need to speak the language.

Research indicates that the use of language in major domains of society—government, education, work and media—increases the prospects for intergenerational continuity and language maintenance. Accordingly, the use of ‘ōlelo Hawai‘i within local governance and mass media plays an important role in assisting the State to fulfill its commitment to revitalization of our native language. The most pronounced example of this commitment can be found in the Hawai‘i Constitution, which recognizes ‘ōlelo Hawai‘i as one of the two official languages of the State. Moreover, the state has consistently expressed its support through legislation and administrative policies and programs.

SB1235 SD1 provides an opportunity for the State to further its commitment by requiring the DCCA to work with various stakeholders to identify the best method to ensure dedicated funding for the development of a Hawaiian television channel. The Director of the DCCA is specifically required to consider allocating funds from cable television franchise fees for production of high-quality multimedia content that serves the needs of the Native Hawaiian community. This would be consistent with the purpose of HRS Chapter 440G, which is to provide access to the media for public, education, and government uses; to contribute to an informed citizenry by giving voice who might not otherwise have one.

Mahalo nui for the opportunity to testify.