

**Testimony before the House Committees On
Economic Revitalization, Business & Military Affairs and
Consumer Protection & Commerce**

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

March 15, 2010

**Senate Bill 506 SD1 HD2 (Proposed)
Relating to Procurement**

Chairs McKelvey and Herkes, Vice Chairs Choy and Wakai 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 **support the intent of** SB 506 SD1 HD2 (Proposed). We suggest amending the procurement language so it is specific to highway projects involving relocation of utilities. Also, we suggest language amendments for clarity and fairness. Attached is the proposed draft with our suggested amendments.

Thank you for the opportunity to testify on this matter.

SB 506 HD2
PROPOSED

RELATING TO PROCUREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 103D-309, Hawaii Revised Statutes, is amended to read as follows:

"§103D-309 Contract not binding unless funds available. (a) Contracts awarded pursuant to section 103D-302, 103D-303, or 103D-306, shall neither be binding nor have any force and effect of law unless the comptroller, the director of finance of a county, or the respective chief financial officers of the department of education, the judiciary, or the legislative branches of the State or county, as the case may be, endorses thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; provided that if the contract is a multi-term contract, the comptroller, director of finance, or chief financial officer shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract; provided further that

the administrator of the state procurement office shall attest in writing to any recommendation or solicitations. This section shall not apply to any contract under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded, or to any contract for which consideration is in kind or forbearance, or to any contract awarded pursuant to section 103D-306 that is a one-time payment through a purchase order.

(b) In any contract involving not only state or county funds but supplemental funds from the federal government, this section shall be applicable only to that portion of the contract price as is payable out of state or county funds. As to the portion of the contract price as is expressed in the contract to be payable out of federal funds, the contract shall be construed to be an agreement to pay the portion to the contractor, only out of federal funds to be received from the federal government. This subsection shall be liberally construed so as not to hinder or impede the State in contracting for any project involving financial aid from the federal government.

(c) In any contract pursuant to section 264-33 involving not only state or county funds but supplemental funds from a utility, this section shall be applicable to that portion of the contract price payable out of state or county funds as well as that portion of the contract price payable out of funds from a utility, or payable out of state or county funds paid to a utility. The state

or county may certify that there are sufficient funds for the utility's portion of the contract price if amounts that a utility is obligated to pay under a legal agreement between the utility and the State or a county are sufficient to pay that portion of the contract price, and the agreement:

- (1) Includes a specific description of the utility's share of the payment and terms of that payment;
- (2) Allows the state, county, or utility to provide [monthly, or other] progress payments and/or final payment based on actual cost after a project is completed; and
- (3) Provides that in the event the state, county or utility is delinquent in payments under the legal agreement, the state, county or utility shall be responsible for any and all additional costs attributable to such late payment.

Any such agreement shall be executed prior to execution of the state or county contract and shall not jeopardize any federal, state, or county funds.

For the purposes of this subsection:

"Utility" means a utility company or entity."

"Legal agreement" includes a utility agreement, memorandum of understanding, or memorandum of agreement."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

LATE TESTIMONY

**SB 506 HD2 - PROPOSED
RELATING TO PROCUREMENT**

**KEN HIRAKI
VICE PRESIDENT
GOVERNMENT & COMMUNITY AFFAIRS**

**HAWAIIAN TELCOM
March 15, 2010**

Chair McKelvey, Chair Herkes, and members of the House Economic Revitalization, Business, & Military Affairs Committee and the House Consumer Protection and Commerce Committee:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom on HB 506 HD2-Proposed, Relating to Procurement. Hawaiian Telcom opposes the proposed HD2 draft; and prefers in its stead, the attached draft for the new SB 506 HD2.

Thank you for the opportunity to testify on this matter.

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amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract; provided further that the administrator of the state procurement office shall attest in writing to any recommendation or solicitations. This section shall not apply to any contract under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded, or to any contract for which consideration is in kind or forbearance, or to any contract awarded pursuant to section 103D-306 that is a one-time payment through a purchase order.

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