

Approved by the Governor

ORIGINAL

on JUN 27 2011

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

ACT 151
H.B. NO.

1342
H.D. 1
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO TELECOMMUNICATIONS.

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

1 SECTION 1. Act 199, Session Laws of Hawaii 2010,
2 established a broadband work group to develop procedures for
3 streamlining permitting functions applicable to the development
4 of broadband services and broadband technology. The legislature
5 finds that the broadband work group has recommended the creation
6 of an exemption from various permitting requirements for the
7 installation of new or upgraded broadband infrastructure along
8 existing poles and conduits that are already used for
9 telecommunications. Another discussion item of the broadband
10 work group is the streamlining of the processing of pole,
11 conduit, and duct applications.

12 The purpose of this Act is to facilitate the deployment of
13 high-speed broadband infrastructure in Hawaii by exempting the
14 installation, improvement, construction, or development of
15 infrastructure relating to broadband service or broadband
16 technology from state and county permitting requirements, under
17 certain conditions, and reducing the time and costs associated
18 with requests for access to utility poles and conduits. This

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1 Act also makes the director of commerce and consumer affairs a
2 member and chairperson of the broadband assistance advisory
3 council and a member and convenor of the broadband work group
4 established under Act 199, Session Laws of Hawaii 2010, and
5 removes the cable television administrator from the broadband
6 assistance advisory council and the broadband work group.

7 SECTION 2. From January 1, 2012, to January 1, 2017,
8 actions relating to the installation, improvement, construction,
9 or development of infrastructure relating to broadband service
10 or broadband technology, including the interconnection of
11 telecommunications cables, shall be exempt from county
12 permitting requirements, state permitting and approval
13 requirements, which includes the requirements of chapters 171,
14 205A, and 343, Hawaii Revised Statutes, and public utilities
15 commission rules under Hawaii Administrative Rules, chapter 6-
16 73, that require existing installations to comply with new pole
17 replacement standards at the time of any construction or
18 alteration to the equipment or installation, except to the
19 extent that such permitting or approval is required by federal
20 law or is necessary to protect eligibility for federal funding,
21 services, or other assistance; provided that the installation,



1 improvement, construction, or development of infrastructure
2 shall:

3 (1) Be directly related to the improvement of existing
4 telecommunications cables or the installation of new
5 telecommunications cables:

6 (A) On existing or replacement utility poles and
7 conduits; and

8 (B) Using existing infrastructure and facilities;

9 (2) Take place within existing rights-of-way or public
10 utility easements or use existing telecommunications
11 infrastructure; and

12 (3) Make no significant changes to the existing public
13 rights-of-way, public utility easements, or
14 telecommunications infrastructure.

15 A person or entity shall use reasonable best efforts to
16 comply with all applicable safety and engineering requirements
17 relating to the installation, improvement, construction, or
18 development of infrastructure relating to broadband service.

19 A person or entity taking any action under this section
20 shall, at least thirty calendar days before the action is taken,
21 provide notice to the director of commerce and consumer affairs



1 by electronic posting in the form and on the site designated by
2 the director for such posting on the designated central State of
3 Hawaii Internet website; provided that notice need not be given
4 by a public utility or government entity for an action relating
5 to the installation, improvement, construction, or development
6 of infrastructure relating to broadband service or broadband
7 technology where the action taken is to provide access as the
8 owner of the existing rights-of-way, utility easements, or
9 telecommunications infrastructure.

10 SECTION 3. Consistent with federal law, no person or
11 entity shall be required to upgrade or replace an existing
12 utility pole when using that utility pole to install new
13 telecommunications cables or to improve existing
14 telecommunications cables; provided that:

15 (1) The overall weight load and the diameter of the
16 attachment on the utility pole following the
17 installation or improvement does not exceed the
18 overall weight load and diameter of the attachment
19 prior to the installation or improvement; and



1 (2) The utility pole is not damaged or made less safe or
2 reliable due to the installation or improvement of
3 telecommunications cables.

4 The public utilities commission may allow a public utility
5 to recover all prudently incurred costs as approved through
6 rates, charges, or clauses approved or established by the public
7 utilities commission pursuant to section 269-16, Hawaii Revised
8 Statutes, including but not limited to planning, engineering,
9 construction, installation, or replacement of utility poles
10 undertaken to accomplish the objectives of this Act. Recovery
11 of all prudently incurred costs shall also apply to a broadband
12 service provider.

13 If access to a utility pole is not granted within forty-five
14 days of a written request for access, the utility must confirm
15 the denial in writing by the forty-fifth day, consistent with
16 the requirements established by the Federal Communications
17 Commission under Title 47, Chapter 1, Code of Federal
18 Regulations. The utility's denial of access shall be specific,
19 shall include all relevant evidence and information supporting
20 its denial, and shall explain how such evidence and information



1 relate to a denial of access for reasons of lack of capacity,
2 safety, reliability, or engineering standards.

3 SECTION 4. No later than January 1, 2016, the director of
4 commerce and consumer affairs shall:

5 (1) Review the state of broadband communications in Hawaii
6 and the permitting exemptions granted pursuant to this
7 Act; and

8 (2) Make a recommendation whether to extend the exemptions
9 provided by this Act.

10 The director of commerce and consumer affairs shall submit a
11 report of the director's findings and recommendations, along
12 with any proposed legislation, to the legislature no later than
13 twenty days prior to the convening of the regular session of
14 2016.

15 SECTION 5. Act 199, Session Laws of Hawaii 2010, is
16 amended by amending section 3 to read as follows:

17 "SECTION 3. **Telework promotion and broadband assistance**
18 **advisory council; establishment; purpose.** (a) The
19 ~~[administrator of the cable television division of the~~
20 ~~department of commerce and consumer affairs]~~ director of
21 commerce and consumer affairs shall convene and chair the



1 broadband assistance advisory council to advise the
2 ~~[administrator]~~ director of commerce and consumer affairs on
3 policy and funding priorities to promote and encourage use of
4 telework alternatives for public and private employees, and
5 expedite deployment of affordable and accessible broadband
6 services in Hawaii.

7 (b) The council shall be composed of the ~~[administrator of~~
8 ~~the cable television division]~~ director of commerce and consumer
9 affairs, or the director's designee, and the following twelve
10 members who shall be equally appointed by the president of the
11 senate and by the speaker of the house of representatives as
12 follows:

- 13 (1) Two members of the senate, appointed by the president
14 of the senate;
- 15 (2) Two members of the house of representatives, appointed
16 by the speaker of the house of representatives;
- 17 (3) Four representatives of federal, state, and county
18 government entities having a role in infrastructure
19 deployment; management of public rights-of-way,
20 regulation, and franchising; information technology;
21 and economic development; and



1 (4) Four representatives of Hawaii's private sector
2 technology, telecommunications, and investment
3 industries.

4 Except for the [~~administrator of the cable television division~~]
5 director of commerce and consumer affairs, all members shall
6 serve for a term of four years. Any vacancies occurring in the
7 membership of the advisory council shall be filled for the
8 remainder of the unexpired term in the same manner as the
9 original appointments.

10 (c) The [~~administrator of the cable television division~~]
11 director of commerce and consumer affairs shall serve as
12 chairperson of the council. The council shall meet at times as
13 may be called by the chairperson. Members shall be reimbursed
14 for reasonable expenses, including travel expenses, necessary
15 for the performance of their duties. Administrative support to
16 the council shall be provided by the department of commerce and
17 consumer affairs.

18 (d) The council shall:

19 (1) Monitor the broadband-based development efforts of
20 other states and nations in areas such as business,
21 education, and health;



- 1 (2) Advise the department on other states' best practices
2 involving telework promotion and policies and
3 strategies related to making affordable broadband
4 services available to every Hawaii home and business;
- 5 (3) Monitor broadband-related activities at the federal
6 level;
- 7 (4) Monitor regulatory and policy changes for potential
8 impact on broadband deployment and sustainability in
9 Hawaii; and
- 10 (5) Encourage public-private partnerships to increase the
11 deployment and adoption of broadband services and
12 applications."

13 SECTION 6. Act 199, Session Laws of Hawaii 2010, is
14 amended by amending subsection (a) of section 4 to read as
15 follows:

16 "(a) The [~~administrator of the cable television division~~
17 ~~of the department of commerce and consumer affairs]~~ director of
18 commerce and consumer affairs shall convene a work group to
19 develop procedures for streamlined permitting functions that are
20 applicable to the development of broadband services and
21 broadband technology that are normally available to state and



1 local governments for the use or development of broadband
2 service or broadband technology. Members of the work group
3 shall include:

- 4 (1) The [~~administrator of the cable television division~~]
5 director of commerce and consumer affairs, or the
6 [~~administrator's~~] director's designee;
- 7 (2) The mayor of the county of Hawaii, or the mayor's
8 designee;
- 9 (3) The mayor of the city and county of Honolulu, or the
10 mayor's designee;
- 11 (4) The mayor of the county of Kauai, or the mayor's
12 designee;
- 13 (5) The mayor of the county of Maui, or the mayor's
14 designee;
- 15 (6) The chairperson of the Hawaii broadband task force
16 established by Act 2, First Special Session Laws of
17 Hawaii 2007; and
- 18 (7) Two representatives of state agencies with
19 jurisdiction over land use and permitting at the state
20 level."



1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect on July 1, 2011.

APPROVED this 21 day of JUN, 2011

Neil Abernethy
GOVERNOR OF THE STATE OF HAWAII

