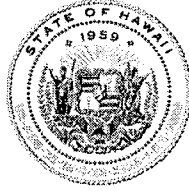


**HB 2698,  
HD2, SD1  
Testimony**



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TO THE SENATE COMMITTEE ON WAYS AND MEANS

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2010

Wednesday, March 31, 2010  
9:30 a.m.

**WRITTEN COMMENTS ON H.B. 2698, H.D. 2, S.D. 1  
RELATING TO TECHNOLOGY**

TO THE HONORABLE DONNA MERCADO KIM, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is Ron Boyer, Acting Director of the Department of Commerce and Consumer Affairs ("Department"). The Department joins the measure's proponents in wishing to promote and encourage broadband development and deployment, but prefers an alternate approach.

H.B. 2698, H.D. 2, S.D. 1 imposes additional duties on the Department by adding the functions of telework promotion and broadband assistance under chapter 440G, HRS, which is related to the administration of cable television. The bill also establishes the Broadband Council within the Department to advise on policy and funding priorities to promote and encourage use of telework alternatives and expedite deployment of affordable and accessible broadband in the State.

### **Telework**

The Department's core mission is to protect consumers from unfair business practices while "upholding fairness in the marketplace." The Department's mission does not include providing centralized services to other Executive branch departments and agencies, as the bill proposes by including as a duty of the Department in conjunction with expanded digital cable programming and services, to advise and assist the State and county agencies in planning, developing, and administering programs and activities to promote telecommuting by State and county employees. The bill would cause the Department to stray from, and lose focus of, its core mission.

### **Broadband**

While the Department appreciates the need to coordinate and expedite the deployment of affordable and accessible broadband service and also to advocate for and facilitate the development and deployment of expanded digital cable programming and applications and is eager to assume that objective as part of a properly designed program, this bill increases the Department's responsibilities without allocating additional funding for the personnel costs or without specifying a funding source to be used for operational costs of the Broadband Council. Because the Department is structured to be self-sufficient, it generally does not have access to the general fund, and therefore must charge fees to cover the costs of the services that we provide. Without the authority to impose fees on a revenue source that has a reasonable nexus to the services that are being provided, and in light of the principles enunciated in the

Supreme Court's 2008 decision in the *HIC v. Lingle* case, the Department will not be able to fund the additional duties imposed on it by this measure.

### **Preferred Approach**

While the general intent of H.B. 2698, H.D. 2, S.D. 1 concerning broadband promotion and advocacy is commendable, the Department prefers H.B. 984, H.D. 4, S.D. 1, proposed C.D. 1, a comprehensive broadband bill, versions of which were introduced in the 2009 Session by the House Majority, the Senate Majority, House Minority, and the Administration. A copy of the Department's annotated proposed conference draft for H.B. 984, H.D. 4, S.D. 1 was attached to the Department's testimony on H.B. 2698, H.D. 2 before the Senate Committee on Economic Development and Technology on March 8, 2010.

The proposed conference draft of H.B. 984, H.D. 4, S.D. 1 tracks key recommendations of the Hawai'i broadband task force by establishing the Hawai'i Communications Commission to be administratively attached to the Department. After many legislative committee hearings, and one-on-one and group meetings on various versions of the broadband bill with communications service providers, governmental agencies, and interested parties, general consensus was reached on the proposed conference draft of H.B. 984, which directs the Commission to achieve various goals such as creating access on a competitive basis at reduced prices, increasing service penetration and quality, streamlining the permit approval process, and providing access to businesses and residents at prices and speeds that will make us world leaders,

attract investment and empower our people, transfers funding from existing fees and transfers existing Department employees to the Commission.

The proposed conference draft differs from the S.D. 1 in part by the deletion of that portion that was intended to address the partial deregulation of telecommunications, in light of the Legislature's adoption last year of Act 180, Session Laws of Hawaii 2009.

In addition, the proposed conference draft does not specifically address any telework issues, but it does include the regulation of communication services (i.e., telecommunications and video programming) as part of the duties of the Hawai'i Communications Commission. In addition, the Commission shall be responsible to designate the entity to maintain the broadband inventory maps which are currently being developed under a federal American Recovery and Reinvestment Act grant.

Thank you for this opportunity to provide written comments on this measure.

Written Statement of  
**YUKA NAGASHIMA**  
**Executive Director & CEO**  
High Technology Development Corporation  
before the  
**SENATE COMMITTEE ON WAYS AND MEANS**  
Wednesday, March 31, 2010  
9:30 AM  
State Capitol, Conference Room 211

In consideration of  
**HB2698 HD2 SD1 RELATING TO TECHNOLOGY.**

Chair Mercado Kim, Vice Chair Tsutsui, and Members of the Senate Committee on Ways and Means.

The High Technology Development Corporation (HTDC) recognizes the significance of the role of ubiquitous broadband in Hawaii and for its economic development and offers comments on HB 2698 HD2 SD1.

HTDC recognizes that there are several bills that address the needs outlined by the Broadband Task Force this session, as well as HB984 HD4 SD1 CD1 from 2009 session. The difference in funding source should not be the only issue. There are also various versions of the broadband bills from the last session (including SB1680 and SB895) from which we can extract ideas. While HTDC recognizes that last year's HB984 HD4 SD1 CD1 still alive is the most comprehensive, and takes a long term view, as it should. As such, HB984 HD4 SD1 CD1 may be considered the right approach. However, we are concerned about the safe passage of any broadband bill that address a streamlined structure that reflect broadband deployment is a priority for this community. The most comprehensive bill was also the most controversial with several industry members wanting to investigate and explore various sections of the bill further. There is more than one right answer. Safe passage of this bill will allow the community and the legislators to build up to a more comprehensive bill together, which will provide for more ownership and a lasting impact.

HTDC believes it is better to pass a smaller, less comprehensive version this year rather than risk the deferral of HB984. The concern stems from the fact that broadband is one of the key topics the economic stimulus package features via American Recovery and Reinvestment Act (ARRA) grants and projects, as well as a priority for private sector entities such as Google with its "Fiber to the Home" request for information that various counties in Hawaii will be filing applications for. Hawaii entities have a better chance of winning these awards if the State government's interest in and support of broadband are reflected in our policies. HTDC would like one of the broadband bills under consideration to be passed this session as there is immediate need to acknowledge the restructuring of how broadband is treated in Hawaii.

**HTDC supports** the section of HB 2698 HD2 SD1 which establishes a **work group to develop procedures for streamlined permitting functions** applicable to development of broadband services or technology, as the State has been often criticized for unnecessary bureaucracy with respect to permitting that gets in the way of businesses. As seen in court battles from the 1990s, issue of open access and broadband has been a hot topic which required government intervention, as broadband is now the utility of the 21<sup>st</sup> century. The state of Hawaii has one of the most liberal telecommunication laws. We have an obligation to leverage it and to ensure that Hawaii does not become a “fly over state” in terms of broadband. To pursue that goal, the State requires a dedicated committee to discuss and implement broadband policies and initiatives recommended by the State’s Broadband Task Force and according to best practices considered by other states, and nations, such as studies by Intelligent Community Forum and The Information Technology and Innovation Foundation, all outlining how broadband is one of the fundamental utilities to establish an innovation-based economy.

However, **HTDC objects to the telework promotion (440G-A (1))**, as it is not clear what the definition or goal of telework promotion is. HTDC recommends that if telework promotion has to do with encouraging the public to telecommute in the private sector, it should not be mandated via this bill. Further, and perhaps more importantly, Department of Commerce and Consumer Affairs should not be taking on promotional activities, nor is it an appropriate role for government when the market has been promoting it effectively already. **HTDC recommends the section on telework be deleted from this bill.** Given limited (and reduced) government resources, the State should not be directing resources to educate the public especially when the public is perhaps more aware of telecommuting and telework opportunities. This area can be addressed by trusting the market to make the most optimal solutions. There are a variety of venues (which HTDC is familiar as we have been part of this type of initiatives) where the public is given information not only on the advantages of telework but on how to implement it (e.g., Pacific Business News’ “Technology for Business” breakfast seminar, for which HTDC is an organizing sponsor and its executive director, the moderator. More information at: <http://pacific.bizjournals.com/pacific/event/21671>). HTDC would prefer to see the State’s limited resources focus on the core broadband issues to enrich its broadband infrastructure and its policies, without which any promotion of telework would be deemed irrelevant (for lack of stable and inexpensive broadband options to facilitate telework).

Thank you for the opportunity to submit testimony.