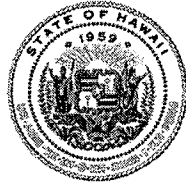


SB 1680



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TO THE SENATE COMMITTEE ON
WAYS AND MEANS

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Monday, March 2, 2009
9:30 a.m.

**COMMENTS ON S.B. No. 1680, S.D. 1
RELATING TO TECHNOLOGY**

TO THE HONORABLE DONNA MERCADO KIM, CHAIR, SHAN S. TSUTSUI, VICE
CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Lawrence M. Reifurth, Director of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to provide comments in **strong support** of S.B. No. 1680, S.D. 1.

The bill consolidates regulation of communications services under one regulator, a new Hawaii Broadband Commissioner ("Commissioner"), in order to expedite the availability of the latest communications services at the earliest possible time to the residents of Hawaii. The Commissioner will be funded from existing fees and will be directed to achieve various goals, including 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 by 2012 at prices

and speeds that will make us world leaders, attract investment and empower our people.

Although the Department strongly supports the bill, we have the following comments and recommended changes:

Federal Funds

As Stand. Com. Rep. No. 353 indicates, the Committees on Economic Development and Technology and Commerce and Consumer Protection “are heartened that the American Recovery and Reinvestment Act of 2009 (“ARRA”) offers several opportunities to help the State identify areas that may be underserved or unserved within its rural communities, and enhance broadband connectivity between Hawaii, the mainland and Asia-Pacific nations.” To help ensure that Hawaii is able to access and use those federal funds, the Department has developed for the Committee’s consideration, proposed language (see attachment) that would authorize the Commissioner to apply for and expend federal moneys, including those from the ARRA. We may propose further amendments to this language in the next several weeks as we learn more about the requirements of the ARRA.

PEGs

The S.D. 1 incorporates several PEG-specific provisions, such as language to exempt the PEG selection process from the Procurement Code (chapter 103D, HRS) into the bill. While the Department has long been and continues to be supportive of the PEGs (we also agree that the selection process should be exempt from the Procurement Code), we believe that S.B. No. 1680, S.D. 1 is not the appropriate vehicle

for those provisions. The PEG-specific provisions will distract from the focus of the bill, which is to promote broadband development in Hawaii and consolidate the regulation of communication services. While the PEG-specific provisions merit further consideration, we respectfully recommend that a more appropriate vehicle be used for that purpose.

Rate Review

The S.D. 1 version of the bill exempts telecommunications carriers from all rate review of retail services. While the Department strongly supports the principle of a level playing field between competitors, the Department also believes that the S.D. 1 exclusion located in section __-38 (page 43, line 15) is overly broad, given that the incumbent local exchange carrier ("ILEC") may also be the carrier of last resort for some customers. If given the discretion to adjust its rates up or down, it is possible that the ILEC could choose to increase rates for certain difficult to serve areas, including rural or remote portions of the Neighbor Islands. Instead of complete pricing freedom, it may be more appropriate to grant the ILEC the limited flexibility to only decrease its rates. The Department suggests returning to the language that was contained in section __-38 (starting on page 44, line 8) of the original version of the bill.

Transfer of Positions

The bill originally required the Department and the Public Utilities Commission ("PUC") to each transfer four positions to the new entity. The Department testified that the Administration did not support transferring any positions from the PUC because of the PUC's increased workload with energy-related matters. The Department testified

that the Administration would support the transfer of four positions from the Department along with 10 other general funded positions from executive agencies.

Although S.B. No. 1680, S.D. 1, removed the transfer of positions from the PUC and added a transfer of an additional 10 positions, the bill now proposes to take all the additional 10 positions from the Department, which means the Department would have to transfer a total of 14 positions (page 163, line 5), which was never the intent, and which cannot be afforded. As such, we recommend that the Committee amend the bill so that the additional 10 positions are transferred from other executive agencies (see page 156, line 3 of S.B. No. 895).

Exemptions

The telecommunications industry and markets continue to evolve and change. As a result, it is necessary to recognize that exemptions from requirements may be necessary. In the bill, the Commissioner is tasked with evaluating the “responsiveness” (page 36, line 4) of the exemption to changes in the structure and technology of the State’s telecommunications industry. Rather than evaluating the “responsiveness” of an exemption, it is more appropriate for the Commissioner to determine the “appropriateness” of the exemption. As such, the Department requests that “responsiveness” in this context be replaced with “appropriateness”.

Thank you for the opportunity to submit comments on this bill.

Insert a new definition in section -1 of the new chapter created in SB1680, SD1:

"American Recovery and Reinvestment Act of 2009" means the federal law, P.L. __, making appropriations for various purposes, including job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization purposes."

Add a new section to the new chapter created in SB1680, SD1:

"§ -24 Use of American Recovery and Reinvestment Act of 2009 and other federal moneys. (a) The commission may apply for, and expend, federal moneys from the American Recovery and Reinvestment Act of 2009 and other applicable federal acts.

(b) The commissioner may purchase broadband facilities, services or equipment, and may enter into contracts for broadband-related projects, through the compliance resolution fund, using moneys from the American Recovery and Reinvestment Act of 2009 and other applicable federal acts.

(c) The commissioner may establish a separate account within the Hawai'i communications commission special fund

and assign to that account federal moneys appropriated under federal laws that authorize principal forgiveness, zero and negative interest loans, and grants, including without limitation the American Recovery and Reinvestment Act of 2009 and other applicable federal acts. The commissioner may use those moneys and in so doing may include additional requirements and subsidization not applicable to the remainder of the Hawai'i communications commission special fund, including forgiveness of principal, zero and negative interest loans.

(d) Any moneys applied for or received by the department under the American Recovery and Reinvestment Act of 2009 for uses related to the purpose of this Act shall be transferred to the Hawai'i communications commission upon its establishment.

(e) The commissioner shall certify that a project is entitled to priority over other eligible projects on the basis of the overall public benefit associated with the project and financial needs as well as a preference to those projects that can be started and completed expeditiously as stipulated under the American Recovery and Reinvestment Act of 2009.

(f) Contracts or purchases hereunder using moneys from the American Recovery and Reinvestment Act of 2009 shall be exempt from chapter 103D."

Add a new section to SB1680, SD1:

SECTION __. There is appropriated out of the federal funds subaccount of the Hawai'i communications commission special fund the sum of \$__ or so much thereof as may be necessary for fiscal years 2008-2009 and 2009-2010 to purchase broadband facilities, services or equipment, or to fund broadband-related infrastructure projects pursuant to this Act.

The sum appropriated shall be expended by the Hawaii communications commission for the purposes of this Act.