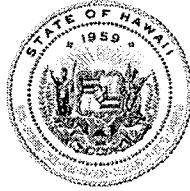


**SB 2543, SD1**



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LAWRENCE M. REIFURTH  
DIRECTOR  
  
RONALD BOYER  
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON WAYS AND MEANS

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2010

Wednesday, February 24, 2010  
10:05 a.m.

**WRITTEN COMMENTS ON S.B. 2543, S.D. 1  
RELATING TO TECHNOLOGY**

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

My name is Lawrence Reifurth, Director of the Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the intent of this bill to promote and encourage broadband development and deployment but it **opposes** this measure.

S.B. 2543, 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 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, 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.

While the general intent of S.B. 2543, H.D. 2 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 S.B. 2543 before the Senate Committee on Economic Development and Technology scheduled for February 1, 2010, at 1:30 p.m.

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.