

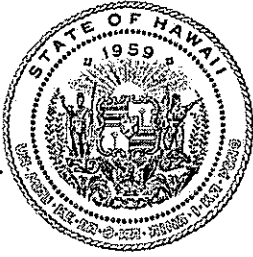
HB1342, hd1

Measure Title:

RELATING TO TELECOMMUNICATIONS

Report Title:

Exempts broadband infrastructure improvements from state or county permitting requirements for five years. Exempts telecommunications companies from replacing existing utility poles when installing new or improving existing telecommunications cables. Effective July 1, 2001. (HB1342 HD1)



NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
INTERIM DIRECTOR

**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

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Statement of
RICHARD C. LIM
Interim Director

Department of Business, Economic Development, and Tourism
before the

**SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND
MILITARY AFFAIRS**
AND

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

Thursday, March 17, 2011

2:45 p.m.

State Capitol, Conference Room 224

in consideration of
HB1342, HD1
RELATING TO TELECOMMUNICATIONS

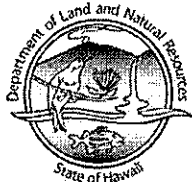
Chairs Espero & Fukunaga, Vice Chairs Kidani and Wakai and Members of the
Committees.

The Department of Business, Economic Development, and Tourism (DBEDT) supports
the intent of this bill. We would fully support the bill if the mechanics of the permitting
exemption can be worked out to the satisfaction of the affected parties.

Based on the recommendations of the broadband working group created by Act 199,
Sessions Laws of Hawaii 2010, DBEDT is working in partnership with other state agencies to
develop a comprehensive strategy to advance broadband capabilities in Hawaii. A key part of
this strategy will undoubtedly be to address the current permitting situation.

Thank you for the opportunity to provide these comments.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committees on
ECONOMIC DEVELOPMENT AND TECHNOLOGY
and
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS**

**Thursday, March 17, 2011
2:45 PM
State Capitol, Conference Room 224**

**HOUSE BILL 1342, HOUSE DRAFT 1
RELATING TO TELECOMMUNICATIONS**

House Bill 1342, House Draft 1, exempts broadband infrastructure improvements from state or county permitting requirements for five years, and exempts telecommunications companies from replacing existing utility poles when installing new or improving existing telecommunications cables. The measure is written to take effect on July 1, 2012. The Department of Land and Natural Resources (Department) offers the following comments and suggestions.

Although the Department supports the overall intent of this measure, the Department has concerns with the broad exemption from all the requirements of Chapter 171, Hawaii Revised Statutes (HRS). An exemption from Chapter 171, HRS, for the installation, improvement, construction, or development of broadband service or broadband technology infrastructure could allow activities that might adversely impact other concurrent uses of the public lands where the existing easements or rights-of-way are situated or those of adjacent lands. More importantly, this broad exemption from Chapter 171, HRS, could be interpreted to allow the use of state lands without the approval or other disposition from the Department or Board of Land and Natural Resources (BLNR), and allow the use of State lands without fair and just compensation to the State. Since broadband infrastructure improvements could result in significant increases in profitability for broadband service providers and utility companies, and given the dire budgetary situation facing the State, the Department firmly believes that the State should not surrender its rights to share in the economic benefits that may result from the use of state lands.¹

¹ To the extent these lands involve public trust lands, then OHA would be entitled to 20% of the proceeds received by the State.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

The Department therefore believes that the proposed measure should be amended so that some Department and BLNR oversight is retained, at least as it relates to determining whether a disposition or other approval would be appropriate (i.e., an easement or consent to sublet), and the determination of whether the State should receive any compensation for the use of State lands.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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KEALI'I S. LOPEZ
INTERIM DIRECTOR

EVERETT S. KANESHIGE
DEPUTY DIRECTOR

TO THE SENATE COMMITTEES ON
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS
AND
ECONOMIC DEVELOPMENT AND TECHNOLOGY
TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Date: March 17, 2011

Time: 2:45 p.m.

TESTIMONY ON H.B. No. 1342, H.D. 1 – RELATING TO TELECOMMUNICATIONS

TO THE HONORABLE WILL ESPERO AND THE HONORABLE CAROL FUKUNAGA,
CHAIRS, AND MEMBERS OF THE COMMITTEES:

My name is Glen Chock, and I am the Acting Cable Television Administrator, Department of Commerce and Consumer Affairs (the "**Department**"). The Department appreciates the opportunity to provide written testimony in support of the intent of H.B. 1342, H.D. 1.

Under Act 199, Session Laws of Hawai'i 2010, the Department's Cable Television Division ("**CATV**") was required to convene a work group to discuss and develop procedures to streamline the State and County permitting process for broadband services. By inviting private wired and wireless broadband providers to share their experiences, the work group gained an overview appreciation of the many permitting and approval obstacles at the State and County levels that impede the expeditious deployment of broadband infrastructure. The work group then turned more specifically to the challenges faced by telecommunications providers when they attempt to attach new fiber cables to existing utility poles.

On March 4, 2011, the Department reconvened a meeting of the permitting work group to discuss S.B. 1161, a companion bill to this measure. Attendees at the meeting included Hawaiian Electric, University of Hawai'i, Oceanic Time Warner, Hawaiian Telcom, tw telecom, County of Maui, City and County of Honolulu, DOT and DLNR.

Testimony before PGM & EDT
H.B. 1342, H.D. 1, March 17, 2011
Page 2

Various issues were discussed including possible revisions to S.B.1161. The Department offered to coordinate any such revisions into a new draft but has not received any proposed revisions from the participants at this time.

The Department plans to convene future meetings to continue the discussion on issues impacting pole attachments and exemptions from permitting requirements.

Thank you for the opportunity to provide written testimony on H.B. No. 1342, H.D.
1.

NEIL ABERCROMBIE
GOVERNOR



LATE TESTIMONY

GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
JAN S. GOUVEIA
RANDY GRUNE
JADINE URASAKI

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 17, 2011

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 1342, H.D. 1

COMMITTEE(S) ON PUBLIC SAFETY, GOVERNMENT OPERATIONS
AND MILITARY AFFAIRS
AND ECONOMIC DEVELOPMENT AND TECHNOLOGY

We support the intent of this bill but with concerns.

This bill proposes to exempt the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, from county and state permitting and approval requirements. The Department of Transportation, Highways Division (DOT), requires permitting and approval for the installation of any infrastructure in its right-of-ways. This process allows DOT to track and coordinate construction in its roadways to ensure that existing infrastructure and future departmental growth are protected from damage or infringement. Additionally, this process ensures that appropriate traffic control plans are in place to protect the public. As such, we ask that the bill be amended to require that any work within the Highways Division right-of-way still requires the entity to obtain the Highway Permit under Section 264-6, HRS.

By bypassing the permitting process, DOT cannot ensure existing infrastructure and the travelling public is protected. As an alternative, therefore, we recommend that the Department of Transportation be immune from any liability for damage or injury resulting from any installation, improvement, or construction activity proceeding under this bill.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
MAYOR



DAVID K. TANOUÉ
DIRECTOR

JIRO A. SUMADA
DEPUTY DIRECTOR

March 17, 2011

The Honorable Carol Fukunaga, Chair
and Members of the Committee on Economic
Development and Technology
The Honorable Will Espero, Chair
and Members of the Committee on Public Safety,
Government Operations and Military Affairs
State Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Fukunaga, Espero, and Members:

**Subject: House Bill No. 1342, HD1
Relating to Telecommunications**

The Department of Planning and Permitting (DPP) **opposes** House Bill No. 1342, HD1.

While we recognize the intent of what the bill is trying to achieve, the permitting process provides a very essential function to ensure efficient and safe construction when these lines, as well as other utility lines, are installed. Bypassing this essential function in the interest of expediting deployment of broadband telecommunications places other interests at potential risk.

County ministerial permitting requirements include entitlement for permittees. In our view, ministerial permitting is a vital process, as it:

1. Supports public safety, convenience, and general interest by:
 - a. Establishing accountability and responsibility. Permittees are held accountable and responsible for their work. This is especially important when permit inspections reveal substandard work or damages. Without permits, there would be no means to pursue enforcement.
 - b. Enabling proper maintenance and restoration of affected infrastructure. Regular inspections of permitted work by the county are critical not only to final restoration of infrastructure, but also to daily, temporary repairs on streets and sidewalks.

The Honorable Carol Fukunaga, Chair
and Members of the Committee on Economic
Development and Technology
The Honorable Will Espero, Chair
and Members of the Committee on Public Safety,
Government Operations and Military Affairs
State Senate
Re: House Bill No. 1342, HD1
March 17, 2011
Page 2

Without permits, immediate attention to potentially hazardous situations by the responsible parties would be hampered.

- c. Providing documentation and records. If broadband companies were to proceed without county permits, there would be no record of their presence in city rights-of-way. Permitting records are usually utilized as a source of information about existing site conditions, including existing lines, on Construction Plans (CP). The absence of this information would increase the chances that the broadband companies' lines would be disturbed or damaged by construction in a city right-of-way.
2. Protects public facilities. In addition to permit inspections, permit procedures include engineering reviews of potential impacts and appropriate remedies to affected roadways, sidewalks, and other improvements on the surface, as well as to underground utilities. Public facilities would be exposed to problems such as open and sunken trenches, leaking pipelines, and unknown damages should permits not be required.
3. Enhances coordination among users. Users include the county, utility companies, contractors, and the general public. Without permits, there would be no notices of upcoming work, no conflict checks, no way to address complaints or inquiries, and no traffic control.

The bill, if amended, should include language stating that the city shall not be responsible or held liable for unapproved improvements placed in city rights-of-way or unauthorized modifications to our rights-of-way by the broadband companies.

The bill, if amended, should also include language requiring broadband companies to indemnify, hold harmless, and defend the counties against any claims arising from any and all work or negligence without permits for their work and facilities in the public rights-of-way.

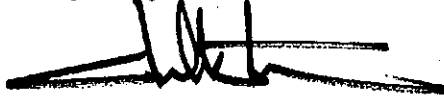
Having gone through several streamlining efforts at reducing the time required to permit public and private construction projects, our experience is that there are other areas in the development process that have extra "fat" that could be cut to speed up project delivery. We will be happy to work with the telecommunications companies to expedite their projects through the permitting process, but exempting broadband projects from obtaining various permits would jeopardize public safety and could add extra costs to projects.

The Honorable Carol Fukunaga, Chair
and Members of the Committee on Economic
Development and Technology
The Honorable Will Espero, Chair
and Members of the Committee on Public Safety,
Government Operations and Military Affairs
State Senate
Re: House Bill No. 1342, HD1
March 17, 2011
Page 3

In conclusion, we respectfully request that the aforementioned concerns and suggested amendments be considered.

Thank you for the opportunity to comment.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David K. Tanoue', with a horizontal line drawn through it.

David K. Tanoue, Director
Department of Planning and Permitting

DKT:jmf

hb1342hd1edtpgm-Telecomm-mf.doc

Council Chair
Danny A. Mateo

Vice-Chair
Joseph Pontanilla

Council Members
Gladys C. Baisa
Robert Carroll
Elle Cochran
Donald G. Couch, Jr.
G. Riki Hokama
Michael P. Victorino
Mike White



Director of Council Services
Ken Fukuoka

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

March 14, 2011

TO: Honorable Will Espero, Chair
Senate Committee on Public Safety, Government Operations, and Military Affairs
Honorable Carol Fukunaga, Chair
Senate Committee on Economic Development and Technology

FROM: Robert Carroll *Robert Carroll*
Council Member, East Maui

DATE: Thursday March 17, 2011

SUBJECT: **OPPOSITION OF HB 1342 HD 1, RELATING TO TELECOMMUNICATIONS**

Thank you for the opportunity to testify in opposition to this important measure. The purpose of this measure is to exempt broadband infrastructure improvements from state or county permitting requirements for five years. Exempts telecommunications companies from replacing existing utility poles when installing new or improving existing telecommunications cables.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I oppose this measure for the following reasons:

1. The County of Maui does not permit the construction or modification of telecommunication towers unless it complies with the Maui County Code, the appropriate community plan, general plan, and land use ordinances. It is imperative that such uses must be reviewed by appropriate agencies to insure its compatibility with surrounding neighborhoods.
2. Furthermore, view corridors must be maintained to prevent visual blight. Our islands attract visitors for their natural beauty, pristine environment and unobstructed open spaces. With the recent economic down turn, counties cannot afford to lose valuable visitors, therefore it is essential that we maintain our natural environment to the best extend possible.
3. Counties throughout the State of Hawaii should have the discretion to enact far reaching and more restrictive legislation to protect their respective environs. Thus HB 1342 HD1, seeks to usurp county authority and repudiates home rule principles. Land use zoning policies are likely to have substantial impacts on local economic, social, and environmental conditions. Therefore, local government should retain authority on decisions about zoning policies to the greatest possible extent.

For the foregoing reasons, I oppose this measure.

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**Testimony to the Senate Committee on Economic Development and
Technology and Public Safety, Government Operations, and Military Affairs
Thursday, March 17, 2011; 2:45 p.m.
Conference Room 224
Hawaii State Capitol**

RE: HOUSE BILL 1342 HD1 RELATING TO TELECOMMUNICATIONS

Chairs Fukunaga and Espero, Vice Chairs Wakai and Kidani and the Members of the Committees:

The Chamber of Commerce of Hawaii ("The Chamber") supports HB 1342 HD1.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The measure exempts broadband infrastructure improvements from state or county permitting requirements for five years. The bill also exempts telecommunications companies from replacing existing utility poles when installing new or improving existing telecommunications cables. Effective July 1, 2012.

Broadband applications and services are essential to spurring investment and innovation in business, education, health care, entertainment, government, and almost every other sector in Hawaii's economy, and the demand is constantly growing. The State of Hawaii, however, is among the slowest in the nation in broadband speeds. Therefore, it is critical that investments are made in broadband infrastructure so that Hawaii can become more competitive in the national and global marketplace. This measure is the first step in the right direction in achieving this goal.

Thank you for the opportunity to provide testimony.

HB 1342 HD1

RELATING TO TELECOMMUNICATIONS

HAWAIIAN TELCOM

March 17, 2011

Chair Fukunaga, Chair Espero, and Members of the Economic Development and Technology and Public Safety, Government Operations, and Military Affairs Committees:

Hawaiian Telcom supports HB 1342 HD1 - "RELATING TO TELECOMMUNICATIONS."

Hawaiian Telcom appreciates the work of the Legislature and the Permits Work Group for spearheading efforts to advance the deployment of our state's broadband infrastructure by streamlining the governmental permit process. Our company wholeheartedly supports exempting broadband infrastructure improvements from state or county permit requirements for five years and encourages the committee to consider making such a change permanent.

Advanced broadband services are essential infrastructure for an innovation economy and a knowledge society in the 21st century. As we are all aware, broadband deployment drives opportunities for business, education, and healthcare. One national study estimated the positive economic impact of advanced broadband in Hawaii at \$578 million per year. Passage of this aggressive and forward-looking measure will be a positive step in aligning Hawaii's policy objectives with governmental regulations that encourage rather than discourage greater investment in broadband infrastructure.

For all of the reasons set forth above, Hawaiian Telcom supports HB 1342 HD1.

Thank you for the opportunity to provide comments.

LATE TESTIMONY

Testimony before the Senate Committees on Economic Development and Technology, and Public Safety, Government Operations, and Military Affairs

**By Paul A. Nakagawa
Superintendent, Planning Division
Construction and Maintenance Department
Hawaiian Electric Company, Inc.**

March 17, 2011

**House Bill 1342, H.D. 1
Relating to Telecommunications**

Chairs Fukunaga and Espero, Vice Chairs Wakai and Kidani, and Members of the Committee:

My name is Paul Nakagawa and I am testifying on behalf of the Hawaiian Electric Company and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company.

HECO and its subsidiaries support the deployment of broadband technology in Hawaii and the intent of HB 1342, HD1 as currently written. However, we do have concerns that this bill does not go far enough to address numerous issues of liability, indemnification by the state, and the clear cost of necessary equipment replacement and remediation despite an exemption period. Our concerns with this bill therefore focus on public safety, reliability, and cost. We look forward to resolving these issues through the Broadband Task Force.

Thank you for the opportunity to testify on this matter.



LATE TESTIMONY

March 17, 2011

Honorable Carol Fukunaga, Chair
Senate Committee on Economic Development and Technology

Honorable Will Espero, Chair
Senate Committee on Public Safety, Government Operations, and Military Affairs

RE: HB 1342, HD1 – Relating to Telecommunications
EDT/PSM Committees – March 17, 2011, Conference Room 224, 2:45 PM

Aloha Chairs Fukunaga and Espero, Vice Chairs Wakai and Kidani, and Members of the Committees:

I am Lyndall Nipps, Vice President of Regulatory Affairs for tw telecom (“TWTC”), which has operated in Hawaii since 1994, providing voice, Internet and data networking, and managing nearly 25,000 access lines to state and local governments, military, and businesses in the State. Thank you for the opportunity to present testimony on HB 1342, HD1.

Section 3 of the bill addresses issues relating to when a person or entity that wishes to install or replace telecommunications cables on a utility pole is required to replace or upgrade a pole. TWTC appreciates the efforts to address this issue, as TWTC frequently encounters delays in deploying its facilities while a determination is made as to whether the pole owner will allow us to install or replace cables. However, the biggest issue that TWTC faces in installing or replacing cables is the length of time it takes to receive a response for a request to attach to a pole. We typically must first contact Hawaiian Telcom, the party with whom we have a contractual relationship to access such facilities, who in turn must interface with the electric utility. The bill provides that a pole owner cannot require a person to upgrade or replace a pole if, among other things, the overall weight load on the utility pole does not exceed maximum utility pole safe weights. However, it does not address the issue of the length of time it typically takes for the pole owner to make this determination. TWTC respectfully requests that this committee consider addressing that issue in this bill.

Current FCC regulations require a utility that owns a pole, duct, conduit or right of way to respond to a request for access to such facilities within 45 days. The FCC rules also require that any denial of access provide specific information supporting the denial. Although TWTC would like to propose tighter guidelines, pole attachment requirements that conflict with FCC requirements could be subject to challenge.

Therefore, TWTC respectfully proposes the following amendments, which generally stems from the FCC regulations for your committee’s consideration:

Amendment # 1:

That Section 1 of the bill is amended to reflect the intent to streamline applications to attach to utility poles, as follows:

SECTION 1. Act 199, Session Laws of Hawaii 2010, established a broadband working group to develop procedures for streamlining permitting functions that are applicable to the development of broadband services and broadband technology. One of the discussion items of the working group is to exempt from many of the permitting requirements the installation of new or upgraded broadband infrastructure along existing conduits that are already used for telecommunications. Another discussion item of the working group is to streamline the processing of pole and duct applications.

The purpose of this Act is to expedite the deployment of high-speed broadband technology in Hawaii by exempting construction of broadband infrastructure from certain permitting requirements, and to reduce the time and costs associated with applications to attach to utility poles.

Amendment #2:

That Section 3 of the bill is amended to include procedures that are consistent with current FCC regulations, with one addition. The addition would require the pole owner to inform the requesting party if alternative poles or conduits are available with sufficient capacity for the telecommunications cable. We also note that it's not clear what state agency would be responsible for administration and enforcement of the new provisions.

SECTION 3. No person or entity shall be required to upgrade or replace an existing utility pole when using that utility pole to install new or improve existing telecommunication cables; provided that:

- (1) The overall weight load on the utility pole following the installation or improvement is not greater than the weight load prior to the installation or improvement;
- (2) The overall weight load on the utility pole does not exceed maximum utility pole safe weight capacities established by the Federal Communications Commission and the Hawaii public utilities commission; and
- (3) The utility pole is not damaged due to the installation or improvement of telecommunications cable.

If access to a utility pole is not granted within 45 days of a written request for access, the utility must confirm the denial in writing by the 45th day. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of capacity, safety, reliability, or engineering standards. In addition, the pole owner shall inform the requesting party if alternative poles or conduits are available that have sufficient capacity to accommodate the telecommunications cable.

As always, we appreciate your consideration of our request.

Sincerely,

/s/

Lyndall Nipps

Vice President, Regulatory Affairs-Western Region

tw telecom

(AZ, CA, CO, HI, ID, NM, OR, UT, WA)

Office: 858-805-6050

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