

HB 1342, HD1

SD1

Measure Title: RELATING TO TELECOMMUNICATIONS.

Report Title: Broadband; Permit Exemptions

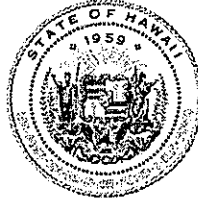
Description: Exempts broadband infrastructure improvements from state or county permitting requirements for five years; exempts telecommunications companies from replacing existing utility poles when installing new or improving existing telecommunications cables. Takes effect 7/1/2050. (SD1)

Companion:

Package: None

Current Referral:

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 Committee on
COMMERCE AND CONSUMER PROTECTION**

**Friday, April 1, 2011
9:00 AM
State Capitol, Conference Room 229**

**In consideration of
HOUSE BILL 1342, HOUSE DRAFT 1, SENATE DRAFT 1
RELATING TO TELECOMMUNICATIONS**

House Bill 1342, House Draft 1, Senate 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 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

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

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
KAIHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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.

NEAL ABERCROMBIE
GOVERNOR OF HAWAII



GARY L. HOOSER
DIRECTOR

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SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

HB 1342 HD1 SD1, RELATING TO TELECOMMUNICATIONS

**Testimony of Gary Hooser
Director of the Office of Environmental Quality Control**

April 1, 2011

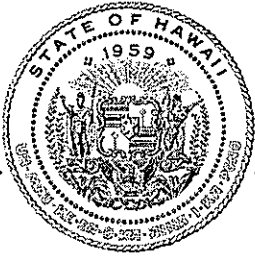
1 **Office's Position:** The Office of Environmental Quality Control supports the general intent of
2 HB 1342 HD1 SD1, in providing for the exemption of telecommunications infrastructure from
3 the requirements of Chapter 343, Hawaii Revised Statutes. However, we are opposed to piece-
4 meal amendments to Chapter 343 and believe this measure is unnecessary and prefer that all
5 exemption requests utilize the existing process of review and concurrence via the Environmental
6 Council.

7 **Fiscal Implications:** There are no immediate fiscal impacts to the OEQC or the State budget.

8 **Purpose and Justification:** Chapter 343, HRS, and Chapter 11-200, Hawaii Administrative
9 Rules, already allows for exempting projects in the right-of-way, providing that the project does
10 not result in significant adverse environmental impacts.

11 So while OEQC supports the intent of HB 1342 HD1 SD1, we are opposed to the piece
12 meal approach of amending Chapter 343, HRS. More importantly, OEQC feels that creating
13 individual exemptions by statute is not in the best interest of environmental protection. An
14 appropriate and efficient process currently exists via the office of the OEQC and the
15 Environmental Council for the review and exemption of projects described in this measure.

16 Thank you for the opportunity to testify.



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

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

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Statement of
RICHARD C. LIM
Director
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Friday, April 1, 2011
9:00 a.m.
State Capitol, Conference Room 229

in consideration of
HB 1342, HD1, SD1
RELATING TO TELECOMMUNICATIONS

Chair Baker, Vice Chair Taniguchi, and Members of the Committee on Commerce and Consumer Protection;

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.

**TESTIMONY OF HERMINA MORITA
CHAIR, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
APRIL 1, 2011**

MEASURE: H.B. No. 1342 HD1 SD1
TITLE: Relating to Telecommunications.

Chair Baker and Members of the Committee:

DESCRIPTION:

The bill:

- 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.

POSITION:

The Public Utilities Commission ("Commission") is concerned with the section of the bill that defers only to the Federal Communications Commission's authority on utility pole weight capacities. The Commission believes that its regulations regarding utility pole attachments should also remain effective for broadband infrastructure.

COMMENTS:

In the previous draft of this bill (HD2), the Commission maintained its authority over utility pole weight capacities, but this was omitted in the current draft (SD1). The Commission's rules on pole attachments are found in Hawaii Administrative Rules ("HAR") Title 6, Section 73: Installation, Operation and Maintenance of Overhead and Underground Electrical Supply and Communication Lines. HAR §6-73 adopts the National Electrical Safety Code ("NESC") in its requirements, and also contains a subchapter that is dedicated to safety requirements specific to Hawaii. Subchapter 3 is titled "Provisions of Particular Applicability to Hawaii", and in this subchapter, consideration of Hawaii's geography, temperature and elevation are incorporated into the rules to specifically address loading for transmission lines.

The Commission believes this section should remain applicable to provide the Hawaii-specific requirements to keep utility workers safe, and to maintain safe and reliable service.

Furthermore, exempting broadband infrastructure from utility pole attachment requirements could result in additional costs to a utility that owns the poles (an electric utility, for example) because they would remain responsible for meeting these safety requirements. The Commission does not believe it is reasonable or fair for the ratepayers of a regulated utility to solely bear the additional costs for improvements for the consumers of unregulated broadband services.

Thank you for the opportunity to testify.

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

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March 24, 2011

TO: Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection

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

DATE: April 1, 2011

SUBJECT: **OPPOSITION TO HB 1342 H.D. 1, S.D. 1, RELATING TO TELECOMMUNICATION**

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, it is the obligation of the local government to ensure that permittees must be held responsible for construction standards. Especially to maintain public safety, protect surrounding neighborhoods and to determine that infrastructure is sufficient to accept such development.
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 Commerce and Consumer Protection
April 1, 2011; 9:00 a.m.
Conference Room 229
Hawaii State Capitol**

RE: HOUSE BILL 1342 HD1 SD1 RELATING TO TELECOMMUNICATIONS

Chair Baker, Vice Chair Taniguchi and the Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") supports HB 1342 HD1 SD1.

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.

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.

Testimony before the Senate Committee on Commerce and Consumer Protection

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

April 1, 2011

House Bill 1342, HD1, SD1
Relating to Telecommunications

Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

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

HB 1342, HD1, SD1 seeks to expedite the deployment of high-speed broadband technology in Hawaii by exempting construction of broadband infrastructure from certain permitting requirements.

HECO and its subsidiaries support the deployment of broadband technology in Hawaii. However, we have concerns that this bill does not fully address the issues of public safety, tort liability, indemnification by the state, and the cost of necessary equipment replacement and remediation despite an exemption period. Our concerns with this bill therefore continue to focus on public safety, reliability, and cost.

As such, we respectfully suggest the follow amendments to HB 1342, HD1, SD1:

- Pg 2, Section 3, line 14 to read: "...telecommunications cables; provided that, in addition to other safety and engineering requirements:
- Pg 2, Section 3 (2), line 21 to read: "...established by the Federal Communications Commission and the Hawaii Public Utilities Commission;"

- Pg 3, line 4, before Section 4, a new paragraph that reads: “Public utilities shall be allowed to recover prudently incurred costs related to the planning, engineering, construction, installation, or replacement of utility poles in order to accomplish the objectives of this Act.”

We appreciate the support of the Legislature and Broadband Task Force in hearing and understanding our concerns as we continue to work to resolve these issues.

Thank you for the opportunity to testify on this matter.

HB 1342 HD1 SD1
RELATING TO TELECOMMUNICATIONS
HAWAIIAN TELCOM

April 1, 2011

Chair Baker and members of the Commerce and Consumer Protection Committee:

Hawaiian Telcom supports HB 1342 HD1 SD1 - "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.

We respectfully request that on page 2, line 21 the bill be amended to also include the state Public Utilities Commission (PUC) because the PUC is the local regulatory body tasked with the regulation of local utilities. The paragraph should be amended as follows:

*"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 state Public Utilities Commission;**"*

In addition, Hawaiian Telcom is opposed to any amendment that requires the utility to provide a requesting party with the required engineering responsibilities to locate alternate poles or conduits to accommodate a telecommunications cable. Hawaiian Telcom believes that this is the responsibility of the requesting party because

the requesting party is the one in the best position to know what alternate route is in the best interest of the requesting party and not Hawaiian Telcom. Selection of alternate poles or conduits depends on a number of factors including ownership, cost, condition, placement etc. Hawaiian Telcom strongly opposes mandating our company to do the design and engineering work that should logically be borne by the requesting party.

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 SD1.

Thank you for the opportunity to provide comments.