

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

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

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

Telephone: (808) 586-2355
Fax: (808) 586-2377

Statement of
RICHARD C. LIM
Director

Department of Business, Economic Development, and Tourism
before the

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Monday, March 21, 2011

2:00 p.m.

State Capitol, Conference Room 325

in consideration of
SB 1161, SD1, HD1
RELATING TO TELECOMMUNICATIONS

Chair Herkes, Vice Chair Yamane and members of the committee.

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



BRUCE A. COPPA
Comptroller

RYAN OKAHARA
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P.O. BOX 119
HONOLULU, HAWAII 96810-0119

TESTIMONY
OF
BRUCE A. COPPA, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
CONSUMER PROTECTION & COMMERCE
ON
March 21, 2011

S.B. 1161, S.D. 1, H.D. 1

RELATING TO TELECOMMUNICATIONS.

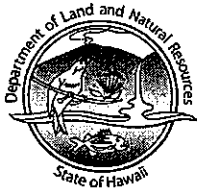
Chair Herkes and members of the Committee, thank you for the opportunity to testify on S.B. 1161, S.D. 1, H.D. 1.

While the Department of Accounting and General Services (DAGS) supports the overall intent of S.B. 1161 S.D. 1, H.D. 1, DAGS would like to suggest some clarifying language to avoid abuses. There are many unused rights-of-way. To avoid any incremental and cumulative impact of no oversight we suggest the following revised language. Changes are in brackets. actions relating to the installation, improvement, construction, or development of infrastructure ... shall be exempt from county permitting requirements and state permitting and approval requirements ... provided that the installation, improvement, construction, or development of infrastructure shall:

(1) Take place within existing rights-of-way or utility easements **[that are currently in use]** or use existing telecommunications infrastructure; and (2) Make no significant **[additions or]** changes to the existing rights-of-way, utility easements, or telecommunications infrastructure.

Thank you for the opportunity to testify on this matter.

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 House Committee on
CONSUMER PROTECTION & COMMERCE**

**Monday, March 21, 2011
2:00 P.M.
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 1161, SENATE DRAFT 1, HOUSE DRAFT 1
RELATING TO TELECOMMUNICATIONS**

Senate Bill 1161, Senate Draft 1, 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 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 in the use of state lands.¹

The Department therefore believes that the proposed measure should be amended so that some the 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.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

EVERETT S. KANESHIGE
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Date: March 21, 2011
Time: 2:00 p.m.

TESTIMONY ON S.B. 1161, S.D. 1, H.D. 1 - RELATING TO TELECOMMUNICATIONS

TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND MEMBERS OF THE
COMMITTEE:

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 for this measure.

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. CATV's then Cable Administrator chaired the work group meetings and the work group met four times in 2010. 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. The work group, to the best of our knowledge, did not come up with any procedures to streamline the permitting process.

On March 4, 2011, the Department reconvened a meeting of the permitting work group to discuss S.B. 1161. 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. 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.

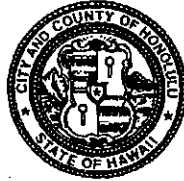
The Department plans to convene future meetings to continue the discussion on issues impacting pole attachments and exemptions from permitting requirements.

Thank you for the opportunity to provide written testimony on this measure.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.dpp.org • CITY WEB SITE: www.honolulu.gov

PETER B. CARLISLE
MAYOR



DAVID K. TANQUE
DIRECTOR

JIRO A. SUMADA
DEPUTY DIRECTOR

March 21, 2011

The Honorable Robert N. Herkes, Chair
and Members of the Consumer Protection &
Commerce
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Herkes and Members:

**Subject: Senate Bill No. 1161, SD1, HD1
Relating to Telecommunications**

The Department of Planning and Permitting (DPP) opposes Senate Bill No. 1161, SD1, HD1.

In our view, this bill might lead to accidental destruction of broadband lines, since their presence in the public right-of-way will not be public knowledge in terms of permits and corresponding records.

In general, 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 broadband 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.

Similar to our recent testimony, we respectfully request that our concerns and suggested amendments, as stated below, be considered.

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.

The Honorable Robert N. Herkes, Chair
and Members of the Consumer Protection &
Commerce
House of Representatives
Re: Senate Bill No. 1161, SD1, HD1
March 21, 2011
Page 2

- 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. 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.

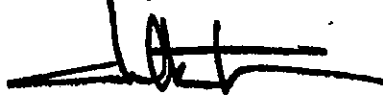
The bill, if amended, should also include language requiring broadband companies to indemnify, hold harmless, and defend the counties against any claims arising from any and all work or negligence without permits for their work and facilities in the public rights-of-way.

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 Robert N. Herkes, Chair
and Members of the Consumer Protection &
Commerce
House of Representatives
Re: Senate Bill No. 1161, SD1, HD1
March 21, 2011
Page 3

Thank you for the opportunity to comment.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Tanoue', with a long horizontal flourish extending to the left.

David K. Tanoue, Director
Department of Planning and Permitting

DKT:jmf

sb1161sd1hd1-Telecomm-mf.doc

SB 1161 SD1 HD1
RELATING TO TELECOMMUNICATIONS
HAWAIIAN TELCOM

March 21, 2011

Chair Herkes and members of the House Committee
on Consumer Protection and Commerce:

Hawaiian Telcom supports the intent of SB 1161 SD1 HD1 but is strongly opposed to the latest draft which includes language contradicting the overall goal of attempting to streamline broadband regulatory requirements by mandating additional regulatory requirements raising both the cost of broadband deployment and unfairly shifting these newborn cost to the utility.

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.

Hawaiian Telcom, however, strongly opposes the recent amendments added to the measure on page three, section 3, lines 8-18 which now mandates the utility to provide the requesting party with the required engineering responsibilities to locate alternative poles or conduits to accommodate a telecommunications cable. Hawaiian Telcom believes that this responsibility is the job 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 alternative

poles or conduits depends on a number of factors including ownership, costs, 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.

In addition, in this same section, Hawaiian Telcom is also strongly opposed to the mandate to provide load information related to utility pole accessibility within 45 days. In order to allow the recipient of the application to comply within that 45-day time period with "evidence," all entities who have facilities on a pole would need to be legally mandated to also respond within a shorter time frame.

Finally, we request the inclusion of the word, "public" be inserted on page two, line 8 before the words, "rights-of-way" and "utility" and page two, line 11 and 12 before the same words to clarify that this requirement applies only to public property and not private property:

- "(1) Take place within existing **public** rights-of-way or **public** utility easements or use existing telecommunications infrastructure; and
- (2) Make no significant changes to the existing **public** rights-of-way or **public** utility easements or use existing telecommunications infrastructure."

For all of the reasons set forth above, Hawaiian Telcom cannot support the current bill as drafted unless the aforementioned amendments are adopted.

Thank you for the opportunity to provide comments



March 21, 2011

Honorable Robert N. Herkes, Chair
Honorable Ryan I. Yamane, Vice Chair
House Committee on Consumer Protection & Commerce

RE: SB 1161, SD1, HD1 – Relating to Telecommunications
CPC Committee – March 21, 2011, Conference Room 325, 2:00 PM

Aloha Chair Herkes, Vice Chair Yamane, and Members of the Committee:

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 **in support** of the House changes to SB 1161, SD1, HD1.

TWTC appreciates the considerable efforts of the House to expedite the deployment of high-speed broadband technology in Hawaii.

Notably, the most recent amendments fulfill this goal by also streamlining the processing of utility pole and duct applications, and reducing the time and costs associated with accessing utility poles. As currently drafted, SB 1161, SD1, HD1 addresses these significant hurdles to securing Hawaii’s broadband future.

TWTC supports this version and we respectfully request that this committee pass SB 1161, SD1, HD1.

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

Email: Lyndall.Nipps@twtelecom.com



**Testimony to the House Committee on Commerce and Consumer Protection
Monday, March 21, 2011
2:00 p.m.
State Capitol - Conference Room 325**

RE: SENATE BILL NO. 1161 SD1 HD1 RELATING TO TELECOMMUNICATIONS

Chair Herkes, Vice Chair Yamane, and members of the committee:

The Chamber of Commerce of Hawaii ("The Chamber") supports SB 1161 SD1 HD1 relating to Telecommunications.

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 HOUSE OF REPRESENTATIVES
COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**

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

March 21, 2011 2:00p.m.

**SB 1161, SD1 HD1
Relating to Telecommunications**

Chair Herkes, Vice Chair Yamane, 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 and Maui Electric Company.

SB1161, SD1, HD1 seeks to expedite the deployment of high-speed broadband technology in Hawaii by exempting construction of broadband infrastructure solely from safe weight factors.

HECO and its subsidiaries support the deployment of broadband technology in Hawaii. However, we do have concerns that this bill does not go far enough to address other numerous issues of public safety, tort liability, indemnification by the state, and the clear cost of necessary equipment replacement and remediation despite an exemption period.

For example, an exemption from permitting based on safe weight loading capacities while not addressing other factors such as pole material integrity, stability, and equipment attachment capacity would be imprudent.

Further, the 45 day period should afford flexibility, rather than stringent time requirements, for the review, technical specification collection, and design analyses that may require more time than is afforded by the proposed period.

Lastly, there may be overlapping and conflicting federal pole attachment requirements which may also govern the attachment of telecommunication equipment to poles. As such, a further review of this legislation should ensure that there is conformity with federal law as well. We look forward to resolving these issues through the Broadband Task Force.

Thank you for the opportunity to testify on this matter.

NEAL ABERCROMBIE
GOVERNOR OF HAWAII



GARY L. HOOSER
DIRECTOR

STATE OF HAWAII
OFFICE OF ENVIRONMENTAL QUALITY CONTROL
235 S BERETANIA ST. SUITE 702
HONOLULU, HAWAII 96813
Tel. (808) 586-4185
Fax. (808) 586-4186
Email: oeqc@doh.hawaii.gov

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

SB 1161 SD1 HD1, RELATING TO TELECOMMUNICATIONS

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

March 21, 2011

1 **Office's Position:** The Office of Environmental Quality Control supports the general intent of
2 SB 1161, SD1, HD1, 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.

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

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

11 So while OEQC supports the intent of SB 1161, SD1, HD1, we are opposed to the piece meal
12 approach of amending Chapter 343, HRS. More importantly, OEQC feels that creating individual
13 exemptions by statute is not in the best interest of environmental protection. An appropriate and
14 efficient process currently exists via the office of the OEQC and the Environmental Council for the
15 review and exemption of projects described in SB 1161, SD1, HD1.

16 Thank you for the opportunity to testify.