

HB 2325, HD 2

EDT-CPN



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

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

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

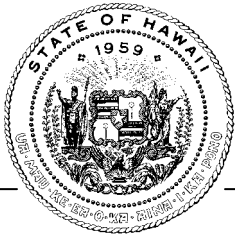
Statement of
RICHARD C. LIM
Director
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY
AND
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Friday, March 16, 2012
1:15 PM
State Capitol, Conference Room 016
In consideration of
HB 2325 HD2 RELATING TO BROADBAND

Chairs Fukunaga and Baker, Vice Chairs Wakai and Taniguchi, and Members of the Committees on Economic Development and Technology and Commerce and Consumer Protection.

The Department of Business, Economic Development and Tourism (DBEDT) **supports the intent and offers comments on HB 2325 HD2.** In leading the Hawaii Broadband Initiative (HBI), DBEDT recognizes the importance of an efficient and reliable permitting process for the wide area deployment and adoption of broadband networks.

DBEDT respectfully offers comment that, **if the specific 45 day limit is deemed to be too short, it may be more practicable to allow agencies 60 days to properly review and act upon broadband permit applications.** DBEDT finds that 120 days does not reflect the streamlining intent of this bill for economic development purposes. We will defer further comment on this to the responsible regulatory agency.

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



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

NEIL ABERCROMBIE
GOVERNOR
RICHARD C. LIM
DIRECTOR
MARY ALICE EVANS
DEPUTY DIRECTOR
JESSE K. SOUKI
DIRECTOR
OFFICE OF PLANNING

OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824

Statement of
JESSE K. SOUKI
Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
**SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY
AND
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**

Friday, March 16, 2012
1:15 PM
State Capitol, Conference Room 016

in consideration of
HB 2325 HD2
RELATING TO BROADBAND.

Chairs Fukunaga and Baker, Vice Chairs Wakai and Taniguchi, and Members of the Senate Committees on Economic Development and Technology and Commerce and Consumer Protection.

The Office of Planning (OP) administers Hawaii Revised Statutes (HRS) Chapter 205A, Hawaii's Coastal Zone Management (CZM) law, which implements the CZM Act passed by the U.S. Congress in 1972. The special management area (SMA) permitting system is part of the federal and state approved Hawaii CZM Program. The SMA, a subset of the larger coastal zone, generally extends inland from the shoreline to the nearest highway. This is the most sensitive area of the coastal zone, within which the legislature determined that special controls on developments were needed to (1) avoid permanent losses of valuable resources and the foreclosure of management options, (2) ensure that adequate access, by dedication or other means, to public owned or used beaches, recreation areas, and natural reserves is provided, and (3) preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii. See HRS §205A-21. Within this narrow band

around the coast, proposed "development" is required to obtain an SMA permit from the respective county within which it is located. For a subset of proposed "development" within the SMA in the community development district designated by the legislature, the SMA approval is sought from OP. See HRS §206E-8.5.

HB 2325 HD2 proposes to add a new section to HRS Chapter 27, part VII, that provides for automatic approval of state permit applications for broadband related permits if action on the permit is not taken within 45 business days of a complete permit application and full payment of any applicable fee. State permits for which approval of a federal agency is explicitly required pursuant to federal law, rule or regulation, prior to granting final permit approval by the State are not subject to the 45 business day action deadline.

The bill also adds similar provisions above to HRS Chapter 46 for broadband related county permits.

OP supports the intent of this bill to streamline permitting for development of broadband facilities. However, for SMA approvals under the jurisdiction of OP (those within a designated community development district), we recommend that the review and action be made within 60 business days of submission of a complete application and full payment of any application fee. This time period will provide consistency with existing OP regulations for the processing of SMA approvals within designated community development districts.

While OP oversees the SMA permitting process statewide, HRS Chapter 205A delegates processing of SMA permits for areas other than those within designated community development districts to the counties, who have developed their own permit processes and timeframes. At minimum, the process requires a public hearing and the right of the applicant to be heard and present evidence. OP defers to the counties with regard to the adequate timeframe to take action on a complete SMA permit application.

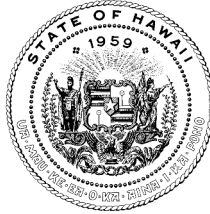
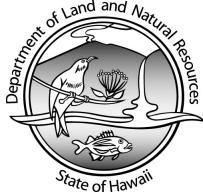
OP is working with state agencies to develop a streamlined process for state projects that maintains consistency with the federal and state approved CZM Program. However, we still need to formalize the process, coordinate with other affected state agencies, and confer

with the National Oceanic and Atmospheric Administration (the federal agency which funds the state's CZM Program). The Administration will have a proposed bill to address these issues in the next legislative session.

In the interim, OP supports certain stop-gap bills that exempt certain state projects from SMA permitting, because those bills include a sunset date, do not change HRS Chapter 205A, and provide that the affected agencies will consult with the CZM Program on consistency.

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

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
COMMERCE AND CONSUMER PROTECTION**

**Friday March 16, 2012
1:15pm
State Capitol, Conference Room 016**

**In consideration of
HOUSE BILL 2325, HOUSE DRAFT 2
RELATING TO BROADBAND**

House Bill 2325, House Draft 2 proposes to require the approval of state and county permits for broadband related permits within forty-five days of submission of a complete permit application. If on the forty-sixth day an application is not approved, approved with modifications, or disapproved, it shall be deemed approved by the State. The Department of Land and Natural Resources (Department) offers the following concerns as it relates to the issuance of a Conservation District Use Permit.

A Conservation District Use Application (CDUA) for commercial broadband facility (e.g., telecommunications tower), within the State Land Use Conservation District requires a public hearing. The hearing is held by the Department after the application is accepted for processing. It would not be possible to complete the processing of a CDUA for a commercial broadband facility within forty-five days in the Conservation District due to the need for a public hearing prior to decision making. Furthermore, the Department is concerned that it will not be able to conduct adequate review of the potential environmental/cultural impacts resulting from broadband facilities, including telecommunication facilities being proposed on our scenic and fragile ridges and hilltops under the stringent processing requirements proposed by this measure. The Department currently processes 95 percent of broadband permits affecting Conservation District lands within 45 days, because it already has implemented streamlining via its rules (Title 13-5, Hawaii Administrative Rules). However, for new broadband facilities that may impact sensitive ecological/cultural resources, the minimum amount of time the Department would need to process a CDUA would be 120 days.

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

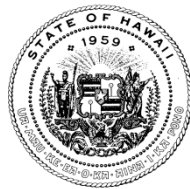
GUY H. KAULUKUKUI
FIRST DEPUTY

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 reiterates that a more reasonable timeframe than forty-five days is required to complete an adequate review of major projects that are proposed in environmentally and culturally sensitive areas of the Conservation District.

NEIL ABERCROMBIE
GOVERNOR



GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
JADE BUTAY
RANDY GRUNE
JADINE URASAKI

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

IN REPLY REFER TO:

March 16, 2012

H.B. 2325 H.D. 2
RELATING TO BROADBAND

SENATE COMMITTEE(S) ON ECONOMIC DEVELOPMENT & TECHNOLOGY
and COMMERCE & CONSUMER PROTECTION

The Department of Transportation (DOT) supports House Bill 2325, House Draft 2.

This bill proposes to exempt the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology if an application is not approved within forty-five days.

The permit process usually takes 60 days to complete. As this is one of the key Administration's initiatives, DOT will do whatever it takes to process the permits in a timely manner and work closely with agencies involved around the State. As a department, we will do all we can such as hiring more employees to assist the State in the performance of this initiative.

Thank you for the opportunity to provide testimony.





Dan Youmans
President –Washington/Hawaii
External Affairs

AT&T Services, Inc.
P.O. Box 97061
RTC1
Redmond, WA 98073-9761

T: 425-580-1833
F: 425-580-8652
daniel.youmans@att.com
www.att.com

March 16, 2012

The Honorable Senator Carol Fukunaga
Chair, Committee on Economic Development and Technology

The Honorable Senator Rosalyn Baker
Chair, Committee on Commerce and Consumer Protection

*Re: Testimony SUPPORTING, WITH AMENDMENTS HB 2325 HD2
Hearing before the Senate Committee on Commerce and Consumer Protection and the
Senate Committee on Economic Development and Technology
1:15 p.m., March 16, Conference Room 016*

Sen. Baker, Sen. Fukunaga and Members of the Committees:

AT&T supports House Bill 2325 HD2 with amendments to include permits for wireless telecommunications facilities. Because wireless broadband services are so highly valued by consumers today – especially the use of smart phones and pads – it only makes sense that streamlined processes are also available to wireless broadband facilities.

The bill can be simply amended by adding the term “wireless telecommunications services” to Section 27 (g) and Section 46 (g) under the types of services that would be defined as “broadband related permits.”

We have arrived at a very exciting time in the wireless industry. Most carriers, including AT&T, are embarking on the deployment of new Long Term Evolution (LTE) technology in our networks. These speeds will be much faster than the current 3rd Generation technology. These network improvements will be most notable in the speed at which hundreds of thousands of applications can run. From business operations to health care to public safety to education, people are finding new and beneficial uses for their smart phones and pads. We want to deliver those great experiences with faster wireless broadband services.

This is especially true in Hawaii where AT&T continues to invest and upgrade our network. In fact, over the period of 2009-2011, AT&T invested nearly \$100 million in its wireless and wireline networks, including adding new cell sites, faster fiber-optic connections, and greater capacity in our cell sites. We plan to continue investing in Hawaii, but would certainly benefit from a more streamlined approach to permitting decisions around our facilities.

Thank you for considering these amendments to HB 2325 HD2

Respectfully Submitted,

Dan Youmans, AT&T

HB 2325 HD2

RELATING TO BROADBAND

**KEN HIRAKI
VICE PRESIDENT-GOVERNMENT & COMMUNITY AFFAIRS
HAWAIIAN TELCOM
March 16, 2012**

Chairs Fukunaga and Baker and members of the Committees:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom (HT) on HB 2325 HD2.

While we support the intent to accelerate broadband infrastructure deployment in the State, we do have concerns with the current language in the bill that would exempt joint utility pole owners the State and County from any liability that may incur as a result of actions taken by either entity in reviewing, approving, modifying, or disapproving a permit application while not including the other joint utility pole owners Hawaiian Electric and Hawaiian Telcom from liability as well.

HT supports the following amendment to address the concern regarding liability:

Same amendment language for two places in the HD2: 1) page 1, lines 15-18; and 2) page 4, lines 1-4:

“(c) No action shall be prosecuted or maintained against the State, its officials, or employees on account of actions taken by them in reviewing, approving, modifying, or disapproving a permit application, or against public utilities resulting from such actions.”

In addition, HT supports the following clarifying amendment to address the concern related to maintaining public safety standards consistent with Act 151 (2011) when upgrading utility poles:

Same amendment language for two places in the proposed HD1: replace existing language on 1) page 2, lines 15-18; and 2) page 4, lines 19-22 and replace with the following:

“(f) Nothing in this section shall affect the provisions of section 3 of Act 151, Session Laws of Hawaii 2011.”

Based on the aforementioned, Hawaiian Telcom respectfully requests the proposed amendment be considered.

Thank you for the opportunity to testify.

Testimony before the Senate Committees on Economic Development & Technology and Commerce & Consumer Protection

By Tracy Nishibun
Facilities Attachment Program Manager
Hawaiian Electric Company, Inc.

Friday, March 16, 2012
1:15 pm, Conference Room 016

House Bill 2325 HD2
Relating to Broadband

Chairs Fukunaga & Baker, Vice Chairs Wakai & Taniguchi, and Members of the Committees:

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

We support the deployment of high-speed broadband infrastructure in Hawaii, and the efforts of the Legislature and the Broadband Assistance Advisory Council (BAAC) to streamline the permitting process applicable to the State's broadband initiative. However we have the following concerns with this bill as written:

1. This bill would exempt the State and the County from any liability against them on account of actions taken by them in reviewing, approving, modifying, or disapproving the permit application. Such actions may be in direct conflict with the review/approval process in place between Hawaiian Electric Company and current telecommunication entities.

We therefore suggest the following amendments for your consideration:

1. In reference to pg. 1, line 15, Section 1(c) should be revised to include and read "*No action shall be prosecuted or maintained against the State, its officials, or employees on account of actions taken by them in reviewing, approving, modifying, or disapproving a permit application, or against public utilities resulting from such actions.*"
2. Similarly, in reference to pg. 4, line 1, Section 2(c) should be revised to include and read "*No action shall be prosecuted or maintained against any county, its officials, or employees on account of actions taken by them in reviewing, approving, modifying, or*

disapproving a permit application, or against public utilities resulting from such actions.”

We appreciate the support of the Legislature and BAAC in hearing and understanding our concerns as we work together to address these issues.

Thank you for the opportunity to testify on this matter.

fukunaga2 - Ashley-Jane

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 15, 2012 5:28 AM
To: EDTTestimony
Cc: friendsoflanai@gmail.com
Subject: Testimony for HB2325 on 3/16/2012 1:15:00 PM

Testimony for EDT/CPN 3/16/2012 1:15:00 PM HB2325

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Friends of Lana'i
Organization: Friends of Lana'i
E-mail: friendsoflanai@gmail.com
Submitted on: 3/15/2012

Comments:

Environmental regulations were created by the legislature to protect the land and its people. There is NO need to exempt or disembowel those regulations for broadband. Vote no on HB2325!



*Sandwich Isles
Communications, Inc.*

A Waimana Company

**ROBERT KIHUNE
CHIEF EXECUTIVE OFFICER
SANDWICH ISLES COMMUNICATIONS, INC.
TO
THE SENATE
COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY AND
COMMITTEE ON COMMERCE AND CONSUMER PROTECTION ON
MARCH 16, 2012 - 1:15 P.M.**

HB2325, HD2 RELATING TO BROADBAND

Chairs Fukunaga and Baker, and members of the Senate Economic Development and Technology and Commerce and Consumer Protection Committees:

I am Robert Kihune, Chief Executive Officer of Sandwich Isles Communications (SIC), providing testimony in support of HB2325, HD2, Relating to Broadband.

SIC has spent nearly two decades building out broadband telecommunications infrastructure across the state to ensure native Hawaiians in remote and rural areas of our state have access to broadband telecommunications services. In order to provide service on Hawaiian Home Lands (HHL), SIC has and will continue to install broadband infrastructure outside of HHL areas. As a result of these critical broadband infrastructure investments, the Hawaiian community today is able to preserve its cultural heritage while capitalizing on opportunities in

the global market, through the advanced technology provided by SIC. We believe that broadband technology is an essential element of the State's economy and vital to the health and welfare of all in the State. From our experience, onerous county and state permitting and approval requirements often cause significant and costly delays to broadband infrastructure deployment. We believe requiring state and county agencies to approve, approve with modifications, or disapprove all broadband related permits within 45 days will help to eliminate these delays thereby attracting much-needed broadband investment in Hawaii.

For these reasons we urge passage of this bill. Thank you for the opportunity to provide testimony.



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.538.6616 hawaii.chapter@sierraclub.org

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

March 16, 2012, 1:15 P.M.
(*Testimony is 1 page long*)

TESTIMONY IN OPPOSITION TO HB 2325 (HD2)

Aloha Chairs Fukunaga and Baker, and Members of the Committees:

The Sierra Club of Hawai'i strongly *opposes* HB 2325 (HD2). This bill requires all permits to be acted upon within forty-five days or be considered automatically approved. It also eliminates any judicial remedy.

First, the "automatic approval" of any project is simply poor policy. Permits should be granted on their merits, not by mistake or governmental inefficiency. No community should suffer because government failed to perform.

Furthermore, to the extent this proposes use of state property, it is alarming that projects using state resources could be "automatically approved." Would this mean a license application to build on a historic property -- like the Iolani Palace -- could be automatically approved if the agency fails to act on the application?

Second, this bill is *per se* unconstitutional. We suggest the State save itself and any projects it wants to advance from a resulting lawsuit by holding this bill.

Mahalo for the opportunity to testify.

MAR 15 2012



**Testimony of Michael Bagley
Director of Public Policy for Verizon
Before the
Consumer Protection and Commerce Committee &
Committee on Economic Development and Technology
On H.B. 2325 H.D.2 with Amendments
March 16th, 2012**

The Honorable Carol Fukunaga
Chair, Economic Development & Technology Committee
Hawaii State Senate

The Honorable Roslyn Baker
Chair, Committee on Consumer Protection & Commerce
Hawaii State Senate

Re: Testimony SUPPORTING, WITH AMENDMENTS Proposed H.B. 2325 H.D.2

Dear Chairwoman Fukunaga and Chairwoman Baker and Members of the Committee,

On behalf of Verizon, I appreciate the opportunity to testify in support of proposed *H.B. 2325 H.D.2* amendments that will extend the 45 day streamline permit approval process to the deployment of wireless broadband facilities. The passage of this legislation will encourage private investment for the more rapid deployment of wireless broadband infrastructure and will help to expedite the availability of advanced services to the people of Hawai'i.

Currently, the local permitting processes that wireless broadband service providers must follow to upgrade or construct new facilities, reflects a fractionalized and inconsistent mix of ordinances and regulatory requirements across counties. The lack of continuity in the application process between counties hinders statewide deployment of advanced broadband services to the communities that we serve. Additionally, the absence of a reasonable timeline that is applicable to all state and county government agencies involved in the permitting process, leads to extensive delays. Such delays discourage private investment and further exacerbate the development and expansion of the broadband communications infrastructure throughout Hawai'i.

Verizon seeks support for *H.B. 2325 H.D.2* amendments to clarify that "wireless" broadband facilities are explicitly included in the streamline permit process and therefore treat wireless broadband deployment with the same deference and priority as cable service broadband deployments. This can be achieved by simply adding "*wireless telecommunications facilities*" to Section 1, Chapter 27 (g) and to Section 2, Chapter 46 (g) under the types of services that qualify for "broadband related permits."

(g) For the purposes of this section, "broadband-related permits" means all county permits required to commence actions with respect to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, including wireless telecommunications facilities, the interconnection of telecommunications cables, cable installation, tower construction, and undersea boring, or the landing of an undersea cable....

The above amendments will help to streamline the permitting process and to avoid the excessive delays that wireless service providers experience today. In addition to strict adherence to a 45 day approval timeline for all state permit approvals, the 10 day window for state to confirm if an application is complete or notify applicant of what is missing, is also a critical component to ensure the expeditious deployment of wireless broadband infrastructure.

Verizon also wants to be a strong partner with the State of Hawaii with regard to broadband deployment however Hawai'i has earned the reputation for long delays in the deployment of wireless facilities. It is not unusual to take four or five years for wireless carriers to erect a new structuring Hawai'i, a process that may require only 18 months in other states. The current permitting process needs to be fixed. Antiquated policies and processes do not adequately serve the wireless users across counties and are also inconsistent with the Governor and the State's commitment to foster innovation and economic development. Considering the challenging topography of the state that geographically isolates many communities, "wireless" high-speed broadband is a key component to a comprehensive and robust statewide deployment of advanced services to the people of Hawai'i.

Verizon commends the Governor, the Legislature, and other key stakeholders in the State for showing leadership with regard to the goal of advancing broadband deployment. As a leading technology company, Verizon is proud of its investments nationwide to deliver high quality broadband services on a 4th Generation platform known as Long-term Evolution (4G LTE). 4G LTE represents the most efficient and highest speed wireless broadband available. In the rapid evolution of wireless broadband, 2G allowed consumers the opportunity to experience digital voice and text messaging. 3G took wireless broadband to the next level, providing a platform for smart phones, web browsing, and numerous apps. 4G LTE establishes a new global standard: ultra-fast speeds that download songs in seconds and movies in minutes; video conferencing; machine-to-machine applications; and more. Our 4G network is not 1G above 3G, but is a broadband network that is ten times faster than current 3G networks.

Verizon doesn't just develop advanced cutting edge broadband technology, we also invest heavily in our network deployment, and are pleased that we have spent over \$300 million in the State of Hawaii since 2000, to ensure that our customers in this State have the best network, an investment that we do not pass the cost on to the customer because we want to earn their trust and loyalty.

The dynamic and exponential growth of the wireless industry is testimony to the value consumers and businesses place on their communications services. The wireless industry consistently drives unparalleled innovation of high technology products and accelerates public adoption of advanced broadband services. *H.B. 2325 H.D.2* takes the appropriate steps to address this problem by streamlining the permitting process for the deployment of advanced cable and wireless broadband services, fostering innovation, economic development and encouraging private investment in the state to build a robust and sophisticated, telecommunications infrastructure.

In closing, Verizon Wireless respectfully asks Chairs Fukunaga and Baker and Members of this Committee, to ***SUPPORT, with AMMENDMENTS, House Bill 2325 H.D.2.***

Thank you.