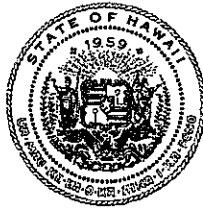
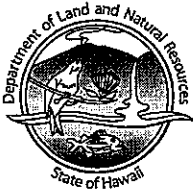


NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**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
FINANCE**

**Monday, April 4, 2011
5:00 P.M.
State Capitol, Conference Room 308**

**In consideration of
SENATE BILL 1161, SENATE DRAFT 1, HOUSE DRAFT 2
RELATING TO TELECOMMUNICATIONS**

Senate Bill 1161, Senate Draft 1, House Draft 2, 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 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

¹ To the extent these lands involve public trust lands, then the Office of Hawaiian Affairs 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 determination of whether the State should receive any compensation for the use of state lands.²

² Although most if not all leases and easements issued by the BLNR to utility companies only allow the utility to sublet the demised premises with the consent of the BLNR, those leases and easements also allow the BLNR to review the sublease rents collected or to be collected by the utility and increase the rent the utility pays to the BLNR for the underlying lease or easement. Typically, this review and decision by the BLNR is performed prior to the utility actually entering into a binding sublease arrangement, but has and can be done after-the-fact. The Department notes the short 45-day turn around time required of the utility to respond to a request to use the demised premises by a broad band provider. Therefore, the Department notes that in complying with this bill if passed into law, as a practical matter, this review, consent and adjustment of rent paid by the utility to the BLNR may actually be performed "after-the-fact" (after the utility already entered a binding sublease arrangement with the broad band provider).



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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KEALI'I S. LOPEZ
DIRECTOR

EVERETT S. KANESHIGE
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Date: April 4, 2011

Time: 5:00 p.m.

**WRITTEN TESTIMONY ON S.B. 1161, S.D. 1, H.D. 2 - RELATING TO
TELECOMMUNICATIONS**

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR, MARILYN B. LEE, VICE 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 of the intent of this measure.

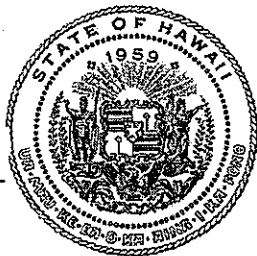
Under Act 199, Session Laws of Hawai'i 2010, the Department's Cable Television Division ("**CATV**") was required to convene a work group to discuss and develop procedures to streamline the State and County permitting process for broadband services. CATV's then Cable Administrator chaired the work group 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.

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 Telecom, tw telecom, County of Maui, City and County of Honolulu, DOT and DLNR. Various issues were discussed including possible revisions to S.B.1161. Since then, revisions have been proposed by Hawaiian Electric and Hawaiian Telecom in their testimony on the companion version of

this bill, including the right of public utilities to recover incurred costs related to the planning, engineering, construction, installation or replacement of utility poles. The Department is concerned whether giving utility companies such a right may be inconsistent with the objective of the bill and would result in a delay in the deployment of broadband infrastructure. Also, various government agencies have voiced concerns that the exempting new or upgraded broadband infrastructure from existing permitting requirements could compromise governmental planning and public safety priorities.

In light of the above, the Department has scheduled another meeting of the permitting work group on April 14, 2011, to see if a consensus can be reached on these issues prior to the end of the current legislative session. To the extent this can be achieved, the Department will work with the other members of the group to submit additional revisions to the bill for the legislature's review.

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



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
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Web site: www.hawaii.gov/dbedt

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Statement of
RICHARD C. LIM
Director

Department of Business, Economic Development, and Tourism
before the

COMMITTEE ON FINANCE

Monday, April 4, 2011

5:00 p.m.

State Capitol, Conference Room 308

in consideration of
SB 1161, SD1, HD2
RELATING TO TELECOMMUNICATIONS

Chair Oshiro, Vice Chair Lee 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.



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HOUSE COMMITTEE ON FINANCE

SB 1161 SD1 HD2, RELATING TO TELECOMMUNICATIONS

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

April 4, 2011

1 **Office's Position:** The Office of Environmental Quality Control supports the general intent of
2 SB 1161, SD1, HD2, 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.

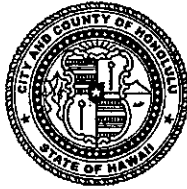
8 **Purpose and Justification:** Chapter 343, HRS, and Chapter 11-200, Hawaii Administrative Rules,
9 already allows for exempting projects in the right-of-way, providing that the project does not result in
10 significant adverse environmental impacts.

11 So while OEQC supports the intent of SB 1161, SD1, HD2, 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, HD2.

16 Thank you for the opportunity to testify.

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

April 4, 2011

The Honorable Marcus R. Oshiro, Chair
and Members of the Committee on Finance
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

**Subject: Senate Bill No. 1161, SD1, HD2
Relating to Telecommunications**

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 1161, SD1, HD2.

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:

The Honorable Marcus R. Oshiro, Chair
and Members of the Committee on Finance
House of Representatives
Re: Senate Bill No. 1161, SD1, HD2
April 4, 2011
Page 2

- 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. 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 Marcus R. Oshiro, Chair
and Members of the Committee on Finance
House of Representatives
Re: Senate Bill No. 1161, SD1, HD2
April 4, 2011
Page 3

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 underneath.

David K. Tanoue, Director
Department of Planning and Permitting

DKT:jmf

sb1161sd1hd2-Telecomm-mf.doc

Testimony before the House Committee on Finance

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

April 4, 2011, 5:00pm
Agenda #3

Senate Bill 1161, SD1, HD2
Relating to Telecommunications

Chair Oshiro, Vice Chair Lee, 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).

SB 1161, SD1, HD2 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 clear 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 SB 1161, SD1, HD2:

- Pg 2, SECTION 3, line 17 to read: "...telecommunications cables; provided that, in addition to other safety and engineering requirements:

- Pg 3, line 8, after SECTION 3, paragraph (3), insertion of a new paragraph to read: “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 continued support of the Legislature and Broadband Task Force in hearing and understanding our concerns as we to work to resolve these issues.

Thank you for the opportunity to testify on this matter.

SB 1161 SD1 HD2
RELATING TO TELECOMMUNICATIONS
HAWAIIAN TELCOM

April 4, 2011

Chair Oshiro and members of the Finance Committee:

Hawaiian Telcom supports SB 1161 SD1 HD2 - "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.

Hawaiian Telcom, however, is opposed to efforts to insert language that require 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 type of work 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 SB 1161 SD1 HD2.

Thank you for the opportunity to provide comments.

-Ken Hiraki