

# **SB 1161**

## RELATING TO TELECOMMUNICATIONS.

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.



NEIL ABERCROMBIE  
GOVERNOR

BRIAN SCHATZ  
LT. GOVERNOR

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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: February 10, 2011  
Time: 2:50 p.m.

**TESTIMONY ON S.B. No. 1161 -- 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**"). I am testifying in support of the intent of S.B. 1161.

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.

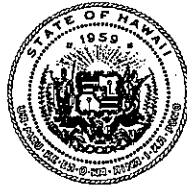
S.B. 1161 exempts broadband providers when installing, improving, constructing or developing infrastructure relating to broadband service or broadband technology from county and state permitting and approval requirements. The Department supports the

intent of this measure since it would temporarily remove one of the biggest obstacles hindering further deployment of broadband service to all parts of the State.

S.B. 1161 also eliminates the requirement that a person or utility upgrade or replace an existing utility pole when using that pole to install new or improved existing telecommunications cables when the weight load on the pole is not increased. Again, the Department believes that this is the right step forward and will greatly assist broadband providers as they attempt to advance broadband services in the State

Thank you for the opportunity to testify on S.B. No. 1161. I will be happy to answer any questions that members of the Committee may have.

NEIL ABERCROMBIE  
GOVERNOR



GLENN M. OKIMOTO  
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Deputy Directors  
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RANDY GRUNE  
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IN REPLY REFER TO:

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

February 10, 2011

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

SENATE BILL NO. 1161

COMMITTEES ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY  
AFFAIRS

AND

ECONOMIC DEVELOPMENT AND TECHNOLOGY

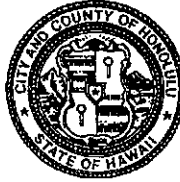
We support the intent of this bill but with concerns.

This bill proposes to exempt the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology. We would recommend adding the requirement that any work within the Highways Division right-of-way still requires the entity to obtain the Highway Permit under Section 264-6, HRS. This would provide the Highways Division to not only track the additional infrastructure in our right-of-way, but to also review the traffic control plans for the installation.

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

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PETER B. CARLISLE  
MAYOR



DAVID K. TANOUE  
DIRECTOR

JIRO A. SUMADA  
DEPUTY DIRECTOR

February 10, 2011

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

Dear Chairs Espero, Fukunaga, and Members:

**Subject: Senate Bill No. 1161  
Relating to Telecommunications**

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

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 Will Espero, Chair  
and Members of the Committee on Public Safety,  
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State Senate  
Re: Senate Bill No. 1161  
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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 Will Espero, Chair  
and Members of the Committee on Public Safety,  
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In conclusion, we respectfully request that the aforementioned concerns and suggested amendments be considered.

Thank you for the opportunity to comment.

Very truly yours,

  
David K. Tanoue, Director  
Department of Planning and Permitting

DKT:jmf

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Director of Council Services  
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February 7, 2011

TO: Honorable Will Espero, Chair  
Committee on Public Safety, Government Operations, and Military Affairs; and

Honorable Carol Fukunaga, Chair  
Committee on Economic Development and Technology

FROM: Robert Carroll  
Council Member, East Maui

Handwritten signature of Robert Carroll in cursive.

DATE: Thursday, February 10, 2011

SUBJECT: **OPPOSITION TO SB 1161, RELATING TO TELECOMMUNICATIONS**

Thank you for the opportunity to testify in opposition to this important measure. The purpose of this measure is to speed the deployment of high-speed broadband technology in Hawaii by exempting construction of broadband infrastructure from certain permitting requirements.

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 SB 1161 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 before the Senate Committees On  
Public Safety, Government Operations, and Military Affairs and  
Economic Development and Technology**

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

**February 10, 2011**

**Senate Bill 1161  
Relating to Telecommunications**

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

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.

SB 1161 seeks to speed the deployment of high-speed broadband technology in Hawaii by exempting construction of broadband infrastructure from certain permitting requirements.

While we appreciate and support the intent of this bill, we have concerns with the bill as it is currently written as it may affect engineering and safety standards.

We therefore suggest an amendment to page 2, line 19, paragraph (2) to read: "The overall weight on the utility pole does not exceed maximum utility pole safe weight capacities established by the Federal Communication Commission and the Hawaii Public Utilities Commission."

This amendment will ensure that the engineering and safety standards that Hawaiian Electric currently complies with are kept in place.

Thank you for the opportunity to testify on this matter.

**SB 1161**

**RELATING TO TELECOMMUNICATIONS**

**HAWAIIAN TELCOM**

**February 10, 2011**

Chair Fukunaga, Chair Espero, and members of the Senate Committees on Economic Development & Technology and Public Safety, Government Operations & Military Affairs:

Hawaiian Telcom supports SB 1161 - "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 21<sup>st</sup> 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.

Thank you for the opportunity to provide comments.