

LATE TESTIMONY

TESTIMONY OF HERMINA MORITA
CHAIR, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON FINANCE

MARCH 29, 2012

MEASURE: S.B. No. 2235, S.D. 2, H.D. 1

TITLE: Relating to Communications Technology

Chair Oshiro and Members of the Committee:

DESCRIPTION:

This measure will require the State and counties to take final action on all applications for "broadband-related permits" within sixty business days after submission, or else a submitted permit will be automatically approved on the sixty-first business day after submission. The term "broadband-related permits" is defined in the bill as including generally all permits required for the setting up, maintenance, and upgrading of broadband technology and all related infrastructure. The bill broadly protects the State and counties from prosecution arising from permit-related actions. In addition, this measure states that any "upgrading and replacement of, and access to, any utility pole in relation to a broadband-related permit...shall be in conformance with section 3 of Act 151, Session Laws of Hawaii 2011." The provisions of this measure will apply to permit applications filed after December 31, 2012, and will be repealed on June 30, 2017.

POSITION:

While the Commission supports the deployment of broadband technology, it has grave concerns regarding the inadvertent consequences of this measure on health and safety issues, as well as the impacts on the public utility ratepayer with regard to liability. We would like to offer the following comments for the Committee's consideration.

COMMENTS:

The Commission is concerned about the language on page 1, lines 15 to 18, and on page 4, lines 1 to 4, that would exempt the government from prosecution associated

with the expedited permitting processes in this bill. Public utilities that own the utility poles affected by broadband deployment activities would be the remaining parties potentially liable for actions decreed by the government. The cost of this risk and liability is actually imposed on the utility customer. Therefore, it is unreasonable and unfair for the customers of a regulated utility to solely bear the risk and liability of actions taken by governmental agencies through an expedited permitting process mandated by the Legislature. In addition, this same language is overly broad and should be clarified by noting that the entities being exempted from prosecution should only be exempted for "actions taken in reviewing, approving, modifying, or disapproving a permit application" under the particular section in which these exemption are contained.

The Commission expressed its concerns over health and safety issues in the legislation that ultimately became Act 151, SLH 2011 ("Act 151"), where the Commission requested that it maintain its authority over utility pole weight capacities, but the wording was deleted in the conference draft version of H.B. No. 1342 that became Act 151.

The Commission would also like to suggest the Committee clarify this bill by appropriately amending:

- Page 3, lines 3 to 4, to read "...or the landing of an undersea communications cable."
- Page 5, lines 7 to 8, to read "...of the landing of an undersea communications cable."

Thank you for the opportunity to testify on this measure.