



EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

GOV. MSG. NO. 1367

July 3, 2013

The Honorable Donna Mercado Kim,
President
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

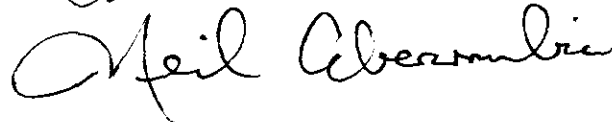
The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Seventh State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 3, 2013, the following bill was signed into law:

HB635 HD2 SD1 CD1

RELATING TO BROADBAND
ACT 264 (13)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor
on JUL 3 2013

ACT 264

HOUSE OF REPRESENTATIVES
TWENTY-SEVENTH LEGISLATURE, 2013
STATE OF HAWAII

H.B. NO. 635
H.D. 2
S.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO BROADBAND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 27, Hawaii Revised Statutes, is amended
2 by adding a new section to part VII to be appropriately
3 designated and to read as follows:

4 "§27- Broadband-related permits; automatic approval.

5 (a) The State shall approve, approve with modification, or
6 disapprove all applications for broadband-related permits within
7 sixty days of submission of a complete permit application and
8 full payment of any applicable fee; provided that this
9 subsection shall not apply to a conservation district use
10 application for broadband facilities. If, on the sixty-first
11 day, an application is not approved, approved with modification,
12 or disapproved by the State, the application shall be deemed
13 approved by the State.

14 (b) The State shall approve, approve with modification, or
15 disapprove use applications for broadband facilities within the
16 conservation district within one hundred forty-five days of
17 submission of a complete application and full payment of any
18 applicable fee. If, on the one hundred forty-sixth day, an



1 application is not approved, approved with modification, or
2 disapproved by the State, the application shall be deemed
3 approved by the State.

4 (c) Permits issued pursuant to this section shall contain
5 the following language: "This is a broadband-related permit
6 issued pursuant to section 27- , Hawaii Revised Statutes."

7 (d) An applicant and a public utility shall comply with
8 all applicable safety and engineering requirements relating to
9 the installation, improvement, construction, or development of
10 infrastructure relating to broadband service or broadband
11 technology.

12 (e) No action shall be prosecuted or maintained against
13 the State, its officials, or employees on account of actions
14 taken in reviewing, approving, modifying, or disapproving a
15 permit application pursuant to this section, or against public
16 utilities resulting from such actions.

17 (f) The sixty day time period established by subsection
18 (a) shall be extended in the event of a natural disaster, state
19 emergency, or union strike that prevents the applicant, agency,
20 or department from fulfilling application review requirements.

21 (g) If an application is incomplete, the State shall
22 notify the applicant in writing within ten business days of



1 submittal of the application. The notice shall inform the
2 applicant of the specific requirements necessary to complete the
3 application. The sixty-first day automatic approval provisions
4 under subsection (a) shall continue to apply to the application
5 only if the applicant satisfies the specific requirements of the
6 notice and submits a complete application within five business
7 days of receipt of the notice.

8 (h) Nothing in this section shall affect the provisions of
9 section 3 of Act 151, Session Laws of Hawaii 2011.

10 (i) For the purposes of this section, "broadband-related
11 permits" means all state permits required to commence actions
12 with respect to the installation, improvement, construction, or
13 development of infrastructure relating to broadband service or
14 broadband technology, including the interconnection of
15 telecommunications cables, cable installation, tower
16 construction, placement of broadband equipment in the road
17 rights-of-way, and undersea boring, or the landing of an
18 undersea communications cable. The term does not include any
19 state permit for which the approval of a federal agency is
20 explicitly required pursuant to federal law, rule, or
21 regulation, prior to granting final permit approval by the
22 State."



1 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§46- Broadband-related permits; automatic approval.

5 (a) A county shall approve, approve with modification, or
6 disapprove all applications for broadband-related permits within
7 sixty days of submission of a complete permit application and
8 full payment of any applicable fee. If, on the sixty-first day,
9 an application is not approved, approved with modification, or
10 disapproved by the county, the application shall be deemed
11 approved by the county.

12 (b) Permits issued pursuant to this section shall contain
13 the following language: "This is a broadband-related permit
14 issued pursuant to section 46- , Hawaii Revised Statutes."

15 (c) An applicant and a public utility shall comply with
16 all applicable safety and engineering requirements relating to
17 the installation, improvement, construction, or development of
18 infrastructure relating to broadband service or broadband
19 technology.

20 (d) No action shall be prosecuted or maintained against
21 any county, its officials, or employees on account of actions
22 taken in reviewing, approving, modifying, or disapproving a



1 permit application pursuant to this section, or against public
2 utilities resulting from such actions.

3 (e) The sixty day time period established by subsection
4 (a) shall be extended in the event of a natural disaster, state
5 emergency, or union strike that prevents the applicant, agency,
6 or department from fulfilling application review requirements.

7 (f) If an application is incomplete, the county agency
8 shall notify the applicant in writing within ten business days
9 of submittal of the application. The notice shall inform the
10 applicant of the specific requirements necessary to complete the
11 application. The sixty-first day automatic approval provisions
12 under subsection (a) shall continue to apply to the application
13 only if the applicant satisfies the specific requirements of the
14 notice and submits a complete application within five business
15 days of receipt of the notice.

16 (g) Nothing in this section shall affect the provisions of
17 section 3 of Act 151, Session Laws of Hawaii 2011.

18 (h) For the purposes of this section, "broadband-related
19 permits" means all county permits required to commence actions
20 with respect to the installation, improvement, construction, or
21 development of infrastructure relating to broadband service or
22 broadband technology, including the interconnection of



1 telecommunications cables, cable installation, tower
2 construction, placement of broadband equipment in the road
3 rights-of-way, and undersea boring, or the landing of an
4 undersea communications cable. The term does not include any
5 county permit for which the approval of a federal agency is
6 explicitly required pursuant to federal law, rule, or
7 regulation, prior to granting final permit approval by the
8 county."

9 SECTION 3. Act 151, Session Laws of Hawaii 2011, is
10 amended by amending sections 2 and 3 to read as follows:

11 "SECTION 2. From January 1, 2012, to January 1, 2017,
12 actions relating to the installation, improvement, construction,
13 or development of infrastructure relating to broadband service
14 or broadband technology, including the interconnection of
15 telecommunications cables, shall be exempt from county
16 permitting requirements, state permitting and approval
17 requirements, which includes the requirements of chapters 171,
18 205A, and 343, Hawaii Revised Statutes, and public utilities
19 commission rules under Hawaii Administrative Rules, chapter
20 6-73, that require existing installations to comply with new
21 pole replacement standards at the time of any construction or
22 alteration to the equipment or installation, except to the



1 extent that such permitting or approval is required by federal
2 law or is necessary to protect eligibility for federal funding,
3 services, or other assistance; provided that the installation,
4 improvement, construction, or development of infrastructure
5 shall:

6 (1) Be directly related to the improvement of existing
7 telecommunications cables or the installation of new
8 telecommunications cables:

9 (A) On existing or replacement utility poles and
10 conduits; and

11 (B) Using existing infrastructure and facilities;

12 (2) Take place within existing rights-of-way or public
13 utility easements or use existing telecommunications
14 infrastructure; and

15 (3) Make no significant changes to the existing public
16 rights-of-way, public utility easements, or
17 telecommunications infrastructure.

18 ~~[A person or entity]~~ An applicant shall ~~[use reasonable~~
19 ~~best efforts to]~~ comply with all applicable safety and
20 engineering requirements relating to the installation,
21 improvement, construction, or development of infrastructure
22 relating to broadband service.



1 A person or entity taking any action under this section
2 shall, at least thirty calendar days before the action is taken,
3 provide notice to the director of commerce and consumer affairs
4 by electronic posting in the form and on the site designated by
5 the director for such posting on the designated central State of
6 Hawaii Internet website; provided that notice need not be given
7 by a public utility or government entity for an action relating
8 to the installation, improvement, construction, or development
9 of infrastructure relating to broadband service or broadband
10 technology where the action taken is to provide access as the
11 owner of the existing rights-of-way, utility easements, or
12 telecommunications infrastructure.

13 SECTION 3. Consistent with federal law, no person or
14 entity shall be required to upgrade or replace an existing
15 utility pole when using that utility pole to install new
16 telecommunications cables or to improve existing
17 telecommunications cables; provided that:

18 (1) The overall weight load and the diameter of the
19 attachment on the utility pole following the
20 installation or improvement does not exceed the
21 overall weight load and diameter of the attachment
22 prior to the installation or improvement; [and]



1 (2) The overall weight load on the utility pole does not
2 exceed maximum utility pole safe weight capacities
3 established by the Federal Communications Commission
4 and the public utilities commission; and

5 [~~2~~] (3) The utility pole is not damaged or made less safe
6 or reliable due to the installation or improvement of
7 telecommunications cables.

8 The public utilities commission may allow a public utility
9 to recover all prudently incurred costs as approved through
10 rates, charges, or clauses approved or established by the public
11 utilities commission pursuant to section 269-16, Hawaii Revised
12 Statutes, including but not limited to planning, engineering,
13 construction, installation, or replacement of utility poles
14 undertaken to accomplish the objectives of this Act. Recovery
15 of all prudently incurred costs shall also apply to a broadband
16 service provider.

17 If access to a utility pole is not granted within forty-
18 five days of a written request for access, the utility must
19 confirm the denial in writing by the forty-fifth day, consistent
20 with the requirements established by the Federal Communications
21 Commission under Title 47, Chapter 1, Code of Federal
22 Regulations. The utility's denial of access shall be specific,



1 shall include all relevant evidence and information supporting
2 its denial, and shall explain how such evidence and information
3 relate to a denial of access for reasons of lack of capacity,
4 safety, reliability, or engineering standards."

5 SECTION 4. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 5. This Act shall take effect on January 1, 2014,
8 and shall be repealed on June 30, 2018; provided that this Act
9 shall apply to permit applications filed with the State or
10 county after December 31, 2013.

APPROVED this 3 day of JUL, 2013



GOVERNOR OF THE STATE OF HAWAII

