



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

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**NEIL ABERCROMBIE**  
GOVERNOR

**RICHARD C. LIM**  
DIRECTOR

**MARY ALICE EVANS**  
DEPUTY DIRECTOR

**AMENDED 2-1-2013**

Amended Statement of  
**RICHARD C. LIM**  
Director

Department of Business, Economic Development & Tourism

before the  
**HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS**

Tuesday, February 5, 2013  
9:00 a.m.

State Capitol, Conference Room 312

in consideration of

**HB635**  
**Relating to Broadband.**

Chair Tsuji, Vice Chair Ward, and Members of the Committee.

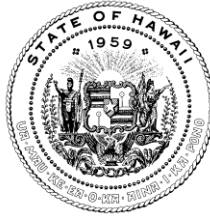
The Department of Business, Economic Development and Tourism supports HB 635, which amends Chapter 27, HRS, to require the State and the counties to approve; approve with modification; or disapprove all broadband related permits within sixty business days of submitting a permit application, provided that if no action is taken by the sixty-first business day, the application will be deemed approved.

Increased broadband capacity is critical to businesses and the growth of Hawaii's economy. Delays in processing broadband permits result in increased costs for carriers that can translate into higher costs for consumers and slower download speeds.

DBEDT defers to other appropriate state agencies for further comments on this measure. DLNR has indicated that 120 days are required to process certain types of broadband permits. DBEDT has no objection to amending this bill to exempt Conservation District Use Applications for major broadband facilities proposed for the Protective Subzone of the Conservation District from the sixty day permit processing requirement.

Thank you for the opportunity to offer comments on this bill.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**

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

**ESTHER KIAAINA**  
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

**Testimony of**  
**WILLIAM J. AILA, JR.**  
**Chairperson**

**Before the House Committee on**  
**ECONOMIC DEVELOPMENT & BUSINESS**

**Tuesday, February 05, 2013**  
**9:00 am**  
**State Capitol, Conference Room 312**

**In consideration of**  
**HOUSE BILL 635**  
**RELATING TO BROADBAND**

House Bill 635 proposes to require the approval of state and county permits for broadband related permits within sixty business days of submission of a complete permit application. If on the sixty-first business 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) **opposes this measure**, as it relates to the issuance of major Conservation District Use Permits, due to the following concerns.

A Conservation District Use Application (CDUA) for broadband facilities (e.g., telecommunications tower), within the State Land Use Conservation District may require a public hearing, if the proposed facility is located in the Protective subzone. Under a typical scenario, a public hearing would be held by the Department after a CDUA is accepted for processing. It would not be possible to complete the processing of a CDUA for a broadband facility within sixty business days in the Conservation District due to the need for a public hearing prior to decision making by the Board of Land and Natural Resources. Furthermore, the Department is concerned that it will not be able to conduct adequate review of the potential environmental/cultural impacts resulting from major 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 permit streamlining procedures via its existing rules (Title 13-5, Hawaii Administrative Rules). However, for major broadband facilities that may impact sensitive ecological/cultural resources, the minimum processing period we could manage would be 120 days.

The Department reiterates that a more reasonable timeframe than sixty business days is required to complete an adequate review of major projects that are proposed in environmentally and culturally sensitive areas of the Conservation District, such as the protective subzone.



**NEIL ABERCROMBIE**  
GOVERNOR

**SHAN S. TSUTSUI**  
LT. GOVERNOR

**STATE OF HAWAII**  
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**KEALI`I S. LOPEZ**  
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**JO ANN M. UCHIDA TAKEUCHI**  
DEPUTY DIRECTOR

**TO THE HOUSE COMMITTEE ON  
ECONOMIC DEVELOPMENT & BUSINESS**

**TWENTY-SEVENTH LEGISLATURE**  
Regular Session of 2013

Date: Tuesday, February 5, 2013

Time: 9:00 a.m.

**WRITTEN TESTIMONY ON  
HB 635 - RELATING TO BROADBAND**  
By Keali`i Lopez, Director  
Department of Commerce and Consumer Affairs.

**TO THE HONORABLE CLIFT TSUJI, CHAIR, AND MEMBERS OF THE COMMITTEE:**

The Department appreciates the opportunity to express its general support for the intent of H.B. No. 635 to expedite the approval process for broadband-related permits by requiring action on applications made to State and county agencies within sixty business days. The acceleration of broadband infrastructure deployment throughout the State will enhance the quality of life of our residents as well as strengthen our State's economic future. With respect to the substantive effects of this bill, however, the Department defers to the impacted government departments and agencies.

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

FEBRUARY 5, 2013  
9:00 a.m.

**WRITTEN COMMENTS ONLY**

**MEASURE:** H.B. No. 635

**TITLE:** Relating to Broadband

Chair Tsuji 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. H.B. No. 635 would excuse 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 or conduit 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, 2013, and will be repealed on June 30, 2018.

**POSITION:**

The Commission supports the deployment of broadband technology, but it also has serious 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 the potential liability of public utilities. The Commission would like to offer the following comments for the Committee’s consideration.

**COMMENTS:**

The Commission requests that the committee consider amending this bill so that public utilities are included as exempted entities in the provisions that would exempt the State and counties from prosecution associated with the proposed expedited permitting processes. Public utilities that own the utility poles that would be 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, for all practical purposes, 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 sections of Chapters 27 and 46, Hawaii Revised Statutes, in which these exemption are contained.

The Commission also requests the Committee to review and reconsider the Commission’s expressed concerns over health and safety issues in the legislation that ultimately became Act 151, SLH 2011 (“Act 151”). The Commission testified prior to the passage of Act 151 that it should be allowed to 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 4 to 5, to read “. . . or the landing of an undersea communications cable.”
- Page 5, lines 9 to 10, to read “. . .or the landing of an undersea communications cable.”

Thank you for the opportunity to submit written comments on this measure.

HB 635

RELATING TO BROADBAND

KEN HIRAKI  
VICE PRESIDENT-GOVERNMENT & COMMUNITY AFFAIRS  
HAWAIIAN TELCOM  
February 5, 2013

Chair Tsuji and members of the Committee:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom (HT) on HB 635.

While we support the overall goal of HB 635 to accelerate broadband infrastructure deployment in the State, we do have concerns with the current language in the bill that selectively exempts the State and County from liability as a result of actions taken by either entity in reviewing, approving, modifying, or disapproving a permit application. In many instances, utility poles that are used to support broadband cables are owned jointly by the State, County, Hawaiian Electric and Hawaiian Telcom. We oppose the language that unfairly grants immunity to the State and County but does not provide the same exemption from liability for the remaining joint utility pole owners Hawaiian Electric and Hawaiian Telcom as well.

HT supports the following amendment to address this inequity:

Same amendment language on two different pages in HB 635: 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 recommends that the bill be amended on page 2, lines 15-19 and page 4, lines 19-22 by replacing the existing language and replacing with the following language to clarify that HB 635 does nothing to weaken the pole public safety standards established under Act 151 (2011):

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

Finally, HT supports amending (g) to also include the placement of broadband equipment in the rights-of- way.

On page 3, line 4 and page 5, line 9 we request the following amendment:

**“g) For the purposes of this section, "broadband-related permits" means all state permits required to commence actions with respect to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, including the interconnection of telecommunications cables, cable installation, tower construction, placement of broadband equipment in the road rights-of-way, and undersea boring, or the landing of an undersea cable. The term does not include any state permit for which the approval of a federal agency is explicitly required pursuant to federal law, rule, or regulation, prior to granting final permit approval by the State.”**

Based on the aforementioned, Hawaiian Telcom respectfully request the proposed amendments be adopted.

Thank you for the opportunity to testify.