

SB 941

RELATING TO BROADBAND.

Requires 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 and a fee; provided that if no action is taken on the sixty-first business day, the application will be deemed approved. Effective upon approval, and repealed on June 30, 2018.

TESTIMONY OF HERMINA MORITA
CHAIR, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
SENATE COMMITTEES ON
TECHNOLOGY & THE ARTS
AND
PUBLIC SAFETY, INTERGOVERNMENTAL & MILITARY AFFAIRS

JANUARY 31, 2013
2:50 p.m.

MEASURE: S.B. No. 941
TITLE: Relating to Broadband

Chair Wakai, Chair Espero, 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. S.B. No. 941 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 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 The provisions of this measure will apply to permit applications filed after December 31, 2013, and will be repealed on June 30, 2018.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 15 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 testify on this measure.



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

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TO THE SENATE COMMITTEES ON
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS
AND
TECHNOLOGY AND THE ARTS

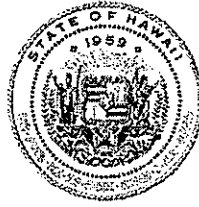
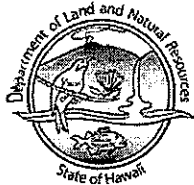
TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013
Date: Thursday, January 31, 2013
Time: 2:50 p.m.

WRITTEN TESTIMONY ON
SB 941 - RELATING TO BROADBAND
By Keali'i Lopez, Director
Department of Commerce and Consumer Affairs.

TO THE HONORABLE WILL ESPERO AND GLENN WAKAI, CHAIRS, AND
MEMBERS OF THE COMMITTEES:

The Department appreciates the opportunity to express its general support for the intent of S.B. No.941 . The acceleration of deployment of broadband infrastructure throughout the State will enhance the quality of life of our residents as well as strengthen our State's economic future. However, because of the broad implications of the deemed automatic approval of broadband-related permits sixty-one business days after submission of an application, the Department defers to the appropriate governmental departments and agencies on the substantive impacts of this bill.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

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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 Senate Committees on
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS
and
TECHNOLOGY AND THE ARTS**

**Thursday, January 31, 2013
2:50pm
State Capitol, Conference Room 224**

**In consideration of
SENATE BILL 941
RELATING TO BROADBAND**

Senate Bill 941 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 Senate Bill 941, 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, HAR). However, for major broadband facilities that may impact sensitive

ecological/cultural resources, the minimum processing period we could manage would be 120 days.

We reiterate 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.

**Testimony before the Senate Committees on
Technology and the Arts and
Public Safety, Intergovernmental, and Military Affairs**

**By Paul A. Nakagawa
Superintendent, T&D Infrastructure
Construction and Maintenance Department
Hawaiian Electric Company, Inc.**

**Thursday, January 31, 2013
2:50 pm, Conference Room 224**

**Senate Bill 941
Relating to Broadband**

Chairs Wakai & Espero, Vice Chairs Nishihara & Baker, and Members of the Committee:

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.

We continue to support the deployment of high-speed broadband infrastructure in Hawaii, and the efforts of the Legislature and the Broadband Assistance Advisory Council (BAAC) to streamline the permitting process applicable to the State's broadband initiative. However we have the following concerns with SB 941 as written:

1. This bill would exempt the State and the County from any liability on account of actions from or results from reviewing, approving, modifying, or disapproving a broadband-related permit application. Such actions may be in direct conflict with the review/approval process in place between Hawaiian Electric Company and current telecommunication entities.
2. While this bill, on pg. 2, line 15, SECTION 1(f) and on pg. 4, line 19, SECTION 2(f), makes reference to SECTION 3 of Act 151, Session Laws of Hawaii 2011, which describes conditions when a pole does not need to be replaced provided certain pre-existing minimum conditions are not exceeded, it does not specifically address the issue of compliance to engineering and safety standards to maintain public safety.

We therefore suggest the following amendments for your consideration:

1. In reference to pg. 1 of SB 941, line 15, SECTION 1(c) should be revised to include and read "*No action shall be prosecuted or maintained against the State, its officials, or employees on account of actions taken in reviewing, approving, modifying, or disapproving a permit application, or against public utilities resulting from such actions.*"
2. Similarly, in reference to pg. 4 of SB 941, line 1, SECTION 2(c) should be revised to include and read "*No action shall be prosecuted or maintained against any county, its officials, or employees on account of actions taken in reviewing, approving, modifying, or disapproving a permit application, or against public utilities resulting from such actions.*"
3. Regarding the issue of compliance, we suggest the following paragraph be added before SECTION 1(c), pg. 1 of SB 941, line 15, and before SECTION 2 (c), pg. 4, line 1, and read "*A public utility shall use reasonable best efforts to comply with all applicable safety and engineering requirements relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology.*"

We appreciate the support of the Legislature and BAAC in hearing and understanding our concerns as we work together to address these issues.

Thank you for the opportunity to testify on this matter.

**SB 941
RELATING TO BROADBAND**

**KEN HIRAKI
VICE PRESIDENT-GOVERNMENT & COMMUNITY AFFAIRS
HAWAIIAN TELCOM
January 31, 2013**

Chairs Wakai and Espero and members of the Committees:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom (HT) on SB 941.

While we support the overall goal of SB 941 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 SB 941: 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 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.