

Written Only

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KATHRYN S. MATAYOSHI
SUPERINTENDENT

LATE

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 03/30/2017

Time: 09:30 AM

Location: 211

Committee: Senate Commerce, Consumer
Protection, and Health
Senate Ways and Means

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 0625, HD3, SD1 RELATING TO INFRASTRUCTURE.

Purpose of Bill: Establishes a collocation permitting, application, review and approval process for telecommunications companies proposing to install broadband infrastructure on state- or county-owned structures, utility poles, light standards, or buildings. Establishes the siting process. Takes effect on 5/22/2050. (SD1)

Department's Position:

The Department of Education (Department) opposes HB 0625, HD3, as drafted. Our opposition is based on the following concerns:

This measure does not ensure that the Department has sufficient jurisdiction to deny the placement of equipment on its property due to safety concerns, and/or interference with present or future operations, particularly in the event of an emergency or disaster.

The Department is not allowed to enter into lease agreements that are longer than 12 months without getting prior approval from the Board of Land and Natural Resources. This measure will pose a problem if all State and County agency's authority to deny applications are revoked.

The current bill does not address procurement procedures for awarding broadband infrastructure and technology contracts. There is current debates on whether broadband infrastructure and technology contracts should be treated as concessions and whether or not these contracts should have to follow common procurement laws.

Thank you for your consideration of this testimony in opposition to HB 0625, HD3, as drafted.



HAWAI'I LODGING & TOURISM
ASSOCIATION

LATE

Testimony of

Mufi Hannemann
President & CEO
Hawai'i Lodging & Tourism Association

Senate Committees on
Commerce, Consumer Protection, and Health
Ways and Means

House Bill 625 HD 3 SD1, Relating to Infrastructure

Chair Baker, Chair Tokuda, and members of the committees:

Mahalo for the opportunity to testify. On behalf of the more than 700 members of the Hawai'i Lodging & Tourism Association, we support House Bill 625 HD3 SD1, which would establish a collocation permitting, application, review and approval process for telecommunications companies proposing to install broadband infrastructure on state- or county-owned structures, utility poles, light standards, or buildings.

Technology has become increasingly important in every phase of a visitor's travels; from booking reservations, to navigating their way through town, to sharing the beauty of our islands through their smart phones via social media outlets. On top of that, there are approximately 18,000 more wireless devices than there are residents in our state. The increased use of smartphones, tablets and other devices in everyday life creates an incessant need for our state to be equipped with the proper infrastructure to ensure that visitors and local residents can enjoy the speed, security, and reliability of our networks.

Though we have come a long way and are excited about advancements to come there is much more work we need to do as a state on this front. Currently, the traffic on the state's wireless infrastructure – combined with the data use of the over 1.4 million kama'aina who populate our islands – results in slower download times, weaker connectivity and frustrated users across the board.

It's time that we make a stronger investment in our statewide network, therefore we support the state's leading wireless carriers and telecom operators in establishing small wireless facilities, or, "small cells," which will ultimately help strengthen our network capacity and create the framework for fifth generation (5G) wireless networks.

Small cells would accommodate the public's insatiable need for more data by paving the way for 5G, giving visitors a connection that is ten times faster. The dense deployment of small cells would also provide faster connectivity in even the most rural parts of the island creating technological incentives for all sectors of the economy.

The installation of small cells throughout the islands will position Hawaii for better business opportunities, a memorable vacation, and a better quality of life for Hawaii's present and future generations. From the mainland to Asia to every destination in between, tourists have a plethora of options on how to spend their vacation dollars. Visitors expect the very best connectivity, no matter where they travel.

For these reasons we support this legislation in streamlining the review processes of such broadband infrastructure.

Mahalo.

OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



LATE

ROY K. AMEMIYA, JR.
MANAGING DIRECTOR

GEORGETTE T. DEEMER
DEPUTY MANAGING DIRECTOR

CITY AND COUNTY OF HONOLULU
BEFORE THE COMMITTEES ON COMMERCE, CONSUMER
PROTECTION, AND HEALTH
AND WAYS AND MEANS
THURSDAY, MARCH 30, 2017; 9:00 AM

TO: THE HONORABLE ROSALYN H. BAKER, CHAIR
THE HONORABLE CLARENCE K. NISHIHARA, VICE CHAIR
AND MEMBERS OF THE COMMITTEE ON COMMERCE, CONSUMER
PROTECTION, AND HEALTH

THE HONORABLE JILL N. TOKUDA, CHAIR
THE HONORABLE DONOVAN M. DELA CRUZ, VICE CHAIR
AND MEMBERS OF THE COMMITTEE ON WAYS AND MEANS

FROM: ROY K. AMEMIYA, JR., MANAGING DIRECTOR
CITY AND COUNTY OF HONOLULU

SUBJECT: OPPOSITION TO HB625, SD1 RELATING TO INFRASTRUCTURE

The City supports the widespread deployment of 4G and 5G technology on City-owned poles; but opposes HB625, HD3, as drafted. Our opposition is based on the following concerns:

Public Safety Concerns are Not Adequately Addressed

The City must emphasize that the installation of small cell infrastructure should not adversely impact or compromise public safety operations and security. Thus, it is important to ensure that City light standards and utility poles are able to bear the weight of additional broadband equipment, particularly because the added equipment was not likely included in the original design, sizing, and selection of the light standards and utility poles. The City also needs to ensure that the small wireless facilities are securely attached to the City's light standards, structures, and utility poles.

It is equally important to ensure that the installed equipment does not pose a

hazard or obstruction to pedestrians, bicyclists, motorists, and people maintaining or repairing other pole mounted equipment, components, or lines. Finally, the equipment must not be placed in sensitive locations that compromise the provision of emergency services or otherwise impact homeland security. Accordingly, the City strongly opposes the language on page 9, lines 1 to 4 and on page 18, lines 15 to 18, which states that the State and counties shall not deny access to wireless providers to place equipment on our poles, structures, and light standards. This essentially gives wireless providers the right to place their equipment on City infrastructure.

While this measure attempts to allow a county to deny a permit if it does not meet applicable laws or rules regarding health and public safety, construction in the public rights-of-way, and building or electrical codes or standards that are of general applicability, this language contradicts the provision that the county shall not deny access to wireless providers to place the equipment on county infrastructure.

Fees Are Inadequate

This measure continues to use the formula adopted by the Federal Communications Commission for pole attachments. This formula is very complex and difficult for the City to apply. The City does not have all of the information required to properly apply the formula for all of its light standards and utility poles. Further, as Hawaii County has pointed out, this formula may limit the county to only receiving \$20 per year per pole, which is far less than other jurisdictions receive. The FCC formula should be removed and replaced with a fairer rate that ensures a county receives adequate funds to cover the costs of inspection and fair rent given that private companies will profit significantly from placing their equipment on county-owned infrastructure.

Equipment can be Placed on Any County Structure

This measure allows small wireless facilities and small wireless facilities networks to be placed on any State or county-owned building, utility pole, light standard, telecommunication antenna/tower and water tower. The State and the counties must be able to retain control over their structures and public safety facilities. The wireless carriers should not be allowed to circumvent the City's processes to ensure public safety and network security.

Future City Uses of City Property May Be Precluded

The current bill does not limit the wireless providers' pole capacity load. This greatly limits future City use of its own property for public safety or other unforeseen enhancements that may be needed.

While language has been inserted to allow a county to reserve space on its own light standards and utility poles for up to twelve months under very specific conditions, this does not address the City's concern about reserving space for future, unforeseen uses. As drafted, this bill requires the City to know exactly how it will use its light standards and utility poles. The City should not have to negotiate its future uses of its own infrastructure with wireless companies.

Minimize Adverse Impact on Public Use of the Right of Way

This bill currently does not ensure that adverse impact to the public from the installation, repair, and maintenance of any equipment installed on City property is minimized. The equipment placed on City property will involve trenching in the public right-of-way. The City would like to ensure that trenching is minimized and that each wireless carrier that wishes to install equipment on City-owned property does not require trenching and re-trenching of the same area.

Conclusion

The City has been actively working with the industry and stakeholders to come up with language that addresses the concerns of all parties. The City looks forward to continuing to collaborate with all interested parties and would welcome the formation of a working group to continue to develop a framework that is fair to all. Thank you for your consideration of this testimony in opposition to HB625, SD1 as drafted.



LATE

HAWAII COUNCIL OF MAYORS
BEFORE THE COMMITTEES ON COMMERCE, CONSUMER
PROTECTION AND HEALTH
AND WAYS AND MEANS
THURSDAY, MARCH 30, 2017; 9:30 AM

TO: THE HONORABLE ROSALYN H. BAKER, CHAIR
THE HONORABLE CLARENCE K. NISHIHARA, VICE CHAIR
AND MEMBERS OF THE COMMITTEE ON COMMERCE, CONSUMER
PROTECTION, AND HEALTH

THE HONORABLE JILL N. TOKUDA, CHAIR
THE HONORABLE DONOVAN M. DELA CRUZ, VICE CHAIR
AND MEMEBRS OF THE COMMITTEE ON WAYS AND MEANS

SUBJECT: OPPOSITION TO HB625, SD1 RELATING TO INFRASTRUCTURE

The Hawaii Council of Mayors (HCOM) opposes HB625, SD1, as drafted. Our opposition is based on the following concerns:

Public Safety Concerns are Not Adequately Addressed

The installation of small cell infrastructure should not adversely impact or compromise public safety. Thus, it is important to ensure that light standards and utility poles are able to bear the weight of additional broadband equipment, particularly because the added equipment was not likely included in the original design, sizing, and selection of the light standards and utility poles. HCOM also needs to ensure that the small wireless facilities are securely attached to the counties' light standards, structures, and utility poles.

It is equally important to ensure that the installed equipment does not pose a hazard or obstruction to pedestrians, bicyclists, motorists, and people maintaining or repairing other pole mounted equipment, components, or lines. Finally, the equipment must not be placed in sensitive locations that compromise the provision of emergency services or otherwise impact homeland security. Accordingly, HCOM strongly opposes



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Mayor Kirk Caldwell
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Mayor Bernard Carvalho, Jr.
County of Kaua'i
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Mayor Alan Arakawa
County of Maui
200 South High Street, 9th Floor
Wailuku, Hawaii 96793

the language on page 9, lines 1 to 4 and on page 18, lines 15 to 18, which states that the State and counties shall not deny access to wireless providers to place equipment on our poles, structures, and light standards. This essentially gives wireless providers the right to place their equipment on county infrastructure.

While this measure attempts to allow a county to deny a permit if it does not meet applicable laws or rules regarding health and public safety, construction in the public rights-of-way, and building or electrical codes or standards that are of general applicability, this language contradicts the provision that the county shall not deny access to wireless providers to place the equipment on county infrastructure.

Equipment can be Placed on Any County Structure

This measure allows small wireless facilities and small wireless facilities networks to be placed on any State or county-owned building, utility pole, light standard, and water tower. The State and the counties must be able to retain control over their structures. The wireless carriers should not be allowed to circumvent a county's processes to ensure public safety.

Equipment Placement Should Not Interfere with Existing Contracts

Coerced collocation of small wireless facilities could interfere with a county's existing or prospective contractual relations. Some county "structures" are on leased or licensed properties that do not allow collocation without the landowner's consent. Landowners may be hesitant to let a county place structures on their properties if doing so automatically allows any and all small wireless facilities or small wireless facilities networks to be placed on their properties, regardless of their consent.

Future County Uses of County Property May Be Precluded

The current bill does not limit the wireless providers' pole capacity load. This greatly limits a county's future use of its own property for public safety or other unforeseen enhancements that may be needed.

Visual Blight is Not Addressed

This measure allows wireless companies to place up to 28 cubic feet of equipment on State- or county-owned poles and buildings. This is the size of a standard refrigerator. While the "small" wireless facilities are smaller than a macro-cell tower, the equipment can be quite large and obtrusive.

HCOM is also very concerned about adverse visual impacts resulting from the installation of the small cell equipment, especially in our most historic and picturesque areas. While wireless carriers have presented photos depicting unobtrusive equipment installed on light standards and buildings, this measure does not require them to take any measures to conceal their equipment. Please see the attached photos that

illustrate what could result if wireless carriers are not required to shroud or conceal the equipment to be installed on county and State poles.

Minimize Adverse Impact on Public Use of the Right of Way

This bill currently does not ensure that adverse impact to the public from the installation, repair, and maintenance of any equipment installed on county property is minimized. The equipment placed on county property will involve trenching in the public right-of-way. HCOM would like to ensure that trenching is minimized and that each wireless carrier that wishes to install equipment on county-owned property does not require trenching and re-trenching of the same area. Similarly, the installation, repair, and maintenance of the equipment should be done at times of the day that minimize adverse impacts to vehicular and pedestrian traffic.

Fees Must be Fair to the State and Counties

This measure imposes a very complicated fee formula based on the Federal Communications Commission's administrative rules. A county may not have all of the information required to utilize the fee formula. Further, it appears that previous drafts of this measure or HB625 have attempted to minimize the amount the State or county may charge for collocation to \$20 per structure per year. This low amount does not reflect proper stewardship of the public trust, especially as the wireless carriers will profit substantially from the installation of equipment on public property. Other states, such as Washington, impose fees that reflect the fair market value of the space occupied. This seems like a much fairer means that will ensure that the State and counties are able to fulfill our duties to the public.

Conclusion

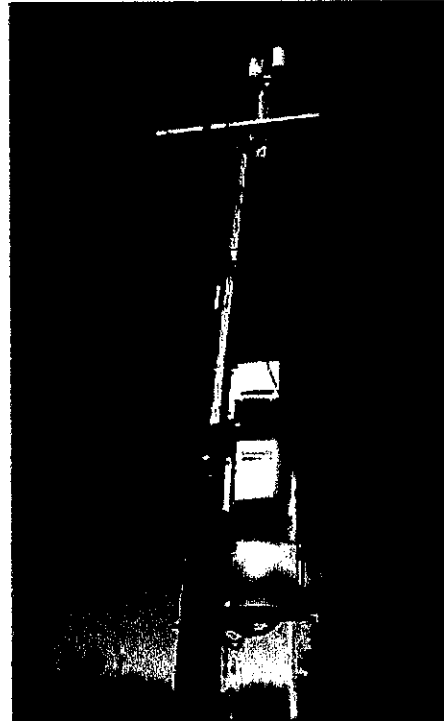
This issue is very complex and has many long-term ramifications. HCOM believes it is better to ensure that these bills do not become law without further meaningful discussion. HCOM supports an amendment to this measure that creates a task force with representatives from the counties, State, industry, and public to look into ways to address the many issues that are not addressed in the current language.

"Small Cells"



**Without collaborative City
input:
"Small Cell" at
4471 Moraga Ave
Oakland** →
*(bulky boxes, tacky
bundles of wiring below
unpainted antennas and
noisy cooling fans)*

← **With collaborative City input:
Verizon at 1367 Jones Street
in San Francisco**
(unobtrusive and sleek)



Other examples of existing Small Cell installations on utility poles.



Testimony to the Senate Committees on
Commerce, Consumer Protection, and Health and
Ways and Means

Thursday, March 30, 2017 9:30 am
Conference Room 211, State Capitol

LATE

RE: SUPPORT OF HB 625, HD3, SD1 Relating to Infrastructure

Dear Chairs Baker and Tokuda, Vice Chairs Nishihara and Dela Cruz, and Members of the Committees:

Today, Hawaii lacks an economically feasible, clear and efficient process for deploying small wireless facilities (SWFs) or "small cells" on government-owned structures within the public rights of way. The legislation before you would accelerate investment in mobile broadband infrastructure, would allow the state to get ahead of business and consumer demand for mobile data, and would establish a statewide policy that is standardized, streamlined and competitively neutral and preserves necessary oversight by local governments.

SWF deployment will increase wireless capacity throughout the state and paves the way for 5G networks. Currently, there are approximately 1,450,000 wireless subscribers in Hawaii. That number is expected to expand by 16 percent by 2020. This infrastructure is needed to meet the increasing demand. Further, 74 percent of all high-speed connections in Hawaii are mobile. In addition, deploying a 5G network will help by reducing commute times, improving public safety, and generating smart grid efficiencies.

The benefits for Kauai and the state are concrete and measurable. Wireless carriers and their partners are prepared to invest and estimated \$1.3 billion in Hawaii, and \$120 million on Kauai, should the legislation become law. This will lead to an estimated \$138 million in GDP growth for Kauai and an estimated 847 new high-wage jobs.

SWFs are required to add capacity to existing wireless networks. They contain antennas and support equipment that can typically be installed on existing utility poles, streetlights, signs, signal light poles, rooftops, and building facades. Unlike large, traditional cell towers that serve roughly 10 square miles, SWFs have a small footprint. They serve a limited area around the antenna and are designed to blend into the existing environment. They are visually unobtrusive and have a minimal impact on installation.

Thank you for considering our views as you deliberate on this important legislation.



Honorable Rosalyn Baker; Chair
Committee on Commerce, Consumer Protection and Health
Hawaii State Senate

LATE TESTIMONY

Honorable Jill Tokuda; Chair
Committee on Ways and Means
Hawaii State Senate

LATE

March 30, 2017, 9:30am Hearing
Re: HB 625, SD1 – Relating to Infrastructure

Dear Chairpersons Baker and Tokuda and Honorable Committee Members:

My name is Doug Lodder and I am the Senior Vice President of Business Development with Boingo Wireless, Inc. (Boingo). Boingo has recently executed a contract with the State of Hawaii and will be installing both Wi-Fi and Distributed Antenna System (DAS) networks at Hawaii's public airports to ensure that fast, reliable and complimentary wireless broadband and voice services are made available to all airport visitors. Also, Boingo has a contract with the US military which provides high speed data, television and voice services to servicemen and women at installations worldwide including Hawaii.

While Boingo supports the concept of this bill, contingent upon the preservation of the provision exempting public airports, Boingo has further concerns about this bill and seeks the following additional changes to the bill:

1. Add a new Section 27(a)(8) to read as follows:
(8) Small wireless facilities and small wireless facilities network permits may be revoked and/or rejected, in the State's discretion, in order to protect contractual rights which have been granted or will be granted by the State.
2. Add a new Section 46(8) to read as follows:
(i) Small wireless facilities and small wireless facilities network permits may be revoked and/or rejected, in the county's discretion, in order to protect contractual rights which have been granted or will be granted by the county.
3. We respectfully request that 1) a right to grant or deny each permit on a case by case basis and 2) a right to revoke a permit, be added to the bill in order to protect the State by protecting contractual rights which may be granted to concessionaires or other parties who pay significant amounts to the State or other governing bodies to: (i) monetize the wireless rights at such locations; and (ii) minimize interference among all wireless systems at a location. Without such initial grant and revocation rights, the

State or other governing body could be in a position where it would inadvertently infringe the contractual rights granted to a third party, and also in a position where the parties have no rules for minimizing operational and technical interference amongst networks which is further counter to the principal objectives of this bill.

There are several reasons that the above changes, which will benefit Hawaii, should be made:

- 1) Boingo is concerned that the bill will adversely impact the contractual rights which have been granted to concessionaires or other third parties who pay significant amounts to the State and/or counties to monetize wireless rights. By allowing small wireless facilities and small wireless facilities networks to install without written approval, the small wireless facilities and small wireless facilities networks can put the State in a position where it could inadvertently affect the contractual rights granted to such third parties.
- 2) Boingo is also concerned that the requirement to allow small wireless facilities and small wireless facilities networks on utility poles, structures or other buildings in or around the airports could interfere with existing wireless communication within the network. Parties are typically required to resolve interference in accordance with a written agreement. In the absence of such agreement there is no obligation to resolve any interference in an equitable manner which will minimize interference for all parties, which could result in a reduction of the quality of coverage and signal in a venue.
- 3) The basis of the included airport exemption, outlined in Item 4 below, may apply to other State-owned venues and we believe the State should reserve both 1) a right of refusal prior to granting permits and 2) a termination right on a case by case basis as more beneficial agreements may be available now or in the future on the same case by case basis. It would benefit the State to preserve the rights to explore and enter into preferential agreements prior to granting the rights anticipated within this bill in the absence of such preferred agreements. We are aware of the existence of similar agreements for other public venues in the US marketplace.
- 4) Consider that the services and benefits provided by Boingo pursuant to the Agreement with the State for Hawaii's public airports obviate the need to install additional wireless antennas and devices for the purposes stated in HB 625, SD1 as: 1) the DAS network will provide superior coverage and delivery of both voice and high speed cellular data services for all cellular carriers and their customers, 2) the Wi-Fi service will introduce complimentary and fast Internet access to airport travelers further enhancing public access, 3) Boingo will invest over \$8 millions dollars to build these networks, and 4) Boingo will provide a revenue share to the State.

I thank you for allowing Boingo to testify. I regret I can't be there in person but I can be reached by telephone at (310)586-4023 and via email at dlodder@boingo.com should you or your staff have any questions.