

JAN 19 2018

A BILL FOR AN ACT

RELATING TO BROADBAND SERVICE.

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

1 SECTION 1. The legislature finds that it is essential to
2 ensure that people can access websites and information freely
3 and fairly over the Internet, which provides worldwide
4 communication and a platform for a global marketplace where even
5 the smallest businesses can participate. In 2015, the Federal
6 Communications Commission adopted strong rules and regulations
7 to protect internet users, as all content over the internet was
8 treated equally and without preferential treatment. However,
9 the more recent Federal Communications Commission's ruling to
10 repeal net neutrality deregulates the internet service industry,
11 jeopardizing the future of access to websites and information
12 and creating an environment that could allow internet service
13 providers the opportunity to limit or prioritize certain access
14 to information at their discretion.

15 The purpose of this Act is to ensure that the Internet
16 remains free and open in the State by:



1 § -1 Definitions. As used in this chapter, unless the
2 context otherwise requires:

3 "Broadband internet access service" means a mass-market
4 retail service, including any service that the Federal
5 Communications Commission finds to be functionally equivalent,
6 by wire or radio that provides the capability to transmit data
7 to and receive data from all or substantially all internet
8 endpoints, including any capabilities that are incidental to and
9 enable the operation of the communications service, but
10 excluding dial-up internet access service.

11 "Edge provider" means any individual or entity that
12 provides any content, application, or service over the Internet,
13 and any individual or entity that provides a device used for
14 accessing any content, application, or service over the
15 Internet.

16 "End user" means any individual or entity that uses a
17 broadband internet access service.

18 "Mobile broadband internet access service" means a
19 broadband internet access service that serves end users
20 primarily using mobile stations.



1 "Paid prioritization" means the management of a broadband
2 provider's network to directly or indirectly favor some traffic
3 over other traffic, including through the use of techniques such
4 as traffic shaping, prioritization, resource reservation, or
5 other forms of preferential traffic management, either:

- 6 (1) In exchange for consideration, monetary or otherwise,
7 from a third party; or
8 (2) To benefit an affiliated entity.

9 "Reasonable network management" means a practice that has a
10 primarily technical network management justification, but does
11 not include other business practices. A network management
12 practice is reasonable if it is primarily used for and tailored
13 to achieving a legitimate network management purpose, taking
14 into account the particular network architecture and technology
15 of the broadband internet access service.

16 **§ -2 Broadband internet access service; disclosure;**
17 **protections.** (a) A person engaged in the provision of
18 broadband internet access service in the State shall publicly
19 disclose accurate information regarding the network management
20 practices, performance, and commercial terms of its broadband
21 internet access services sufficient for consumers to make



1 informed choices regarding use of such services and for content,
2 application, service, and device providers to develop, market,
3 and maintain internet offerings.

4 (b) A person engaged in the provision of broadband
5 internet access service in the State, insofar as such a person
6 is so engaged, shall not:

7 (1) Block lawful content, applications, services, or
8 nonharmful devices, subject to reasonable network
9 management;

10 (2) Impair or degrade lawful internet traffic on the basis
11 of internet content, application, or service, or use
12 of a nonharmful device, subject to reasonable network
13 management;

14 (3) Engage in paid prioritization; or

15 (4) Unreasonably interfere with or unreasonably
16 disadvantage:

17 (A) End users' ability to select, access, and use
18 broadband internet access service or the lawful
19 internet content, applications, services, or
20 devices of their choice; or



1 (B) Edge providers' ability to make lawful content,
2 applications, services, or devices available to
3 end users;
4 provided that the prohibition on paid prioritization pursuant to
5 paragraph (3) of this subsection may be permitted if a
6 petitioner demonstrates that the practice would provide some
7 significant public interest benefit and would not harm the open
8 nature of the internet in the State."

9 SECTION 3. Section 27-45, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~§~~27-45~~§~~ **Broadband-related permits; automatic**
12 **approval.** (a) The State shall approve, approve with
13 modification, or disapprove all applications for broadband-
14 related permits within sixty days of submission of a complete
15 permit application and full payment of any applicable fee;
16 provided that this subsection shall not apply to a conservation
17 district use application for broadband facilities. If, on the
18 sixty-first day, an application is not approved, approved with
19 modification, or disapproved by the State, the application shall
20 be deemed approved by the State.



1 (b) The State shall approve, approve with modification, or
2 disapprove use applications for broadband facilities within the
3 conservation district within one hundred forty-five days of
4 submission of a complete application and full payment of any
5 applicable fee. If, on the one hundred forty-sixth day, an
6 application is not approved, approved with modification, or
7 disapproved by the State, the application shall be deemed
8 approved by the State.

9 (c) Permits issued pursuant to this section shall contain
10 the following language: "This is a broadband-related permit
11 issued pursuant to section 27-45, Hawaii Revised Statutes."

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

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



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

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

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

16 (i) Notwithstanding any law to the contrary, all
17 broadband-related permits approved pursuant to this section that
18 allow an applicant a state-granted right to attach small cell or
19 other broadband wireless communication devices to utility poles
20 shall be contingent upon the applicant complying with the
21 practices set forth pursuant to chapter .



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

14 SECTION 4. Section 46-89, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§46-89 Broadband-related permits; automatic approval.**

17 (a) A county shall approve, approve with modification, or
18 disapprove all applications for broadband-related permits within
19 sixty days of submission of a complete permit application and
20 full payment of any applicable fee. If, on the sixty-first day,
21 an application is not approved, approved with modification, or



1 disapproved by the county, the application shall be deemed
2 approved by the county.

3 (b) Permits issued pursuant to this section shall contain
4 the following language: "This is a broadband-related permit
5 issued pursuant to section 46-89, Hawaii Revised Statutes."

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

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

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

20 (f) If an application is incomplete, the county agency
21 shall notify the applicant in writing within ten business days



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

10 (h) Notwithstanding any law to the contrary, all
11 broadband-related permits approved pursuant to this section that
12 allow an applicant a county-granted right to attach small cell
13 or other broadband wireless communication devices to utility
14 poles shall be contingent upon the applicant complying with the
15 practices set forth pursuant to chapter _____.

16 [~~h~~] (i) For the purposes of this section, "broadband-
17 related permits" means all county permits required to commence
18 actions with respect to the installation, improvement,
19 construction, or development of infrastructure relating to
20 broadband service or broadband technology, including the
21 interconnection of telecommunications cables, cable



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

8 SECTION 5. If any provision of this Act, or the
 9 application thereof to any person or circumstance, is held
 10 invalid, the invalidity does not affect other provisions or
 11 applications of the Act that can be given effect without the
 12 invalid provision or application, and to this end the provisions
 13 of this Act are severable.

14 SECTION 6. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect upon its approval.
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S.B. NO. 2644

Report Title:

Broadband Internet Access Service; Protections; Net Neutrality

Description:

Requires a provider of broadband internet access services to be transparent with network management practices, performance, and commercial terms of its broadband internet access services. Prohibits a provider of broadband internet access services from blocking lawful websites, impairing or degrading lawful internet traffic, engaging in paid prioritization, or interfering with or disadvantaging users of broadband internet access services. Requires an applicant of a broadband-related permit seeking a state-granted or county-granted right to attach small cell or other broadband wireless communication devices to utility poles to comply with certain practices.

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