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# A BILL FOR AN ACT

RELATING TO BROADBAND SERVICE INFRASTRUCTURE.

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

1           SECTION 1. The legislature finds that development and  
2 investment in broadband facilities and services to rural,  
3 unserved, underserved, and urban communities is vital and  
4 necessary to promote industrial and economic development, create  
5 job opportunities, and enhance health care and education within  
6 the State. The legislature believes that the State needs to  
7 take action to ensure the provision of broadband facilities and  
8 services to its citizens.

9           The legislature further finds that electric utilities are  
10 well-positioned to serve as a middle mile infrastructure  
11 provider to communities throughout their service territories as  
12 it serves the public interest with minimal impact or burden on  
13 the underlying property owner. The National Association of  
14 Regulatory Utility Commissioners, a non-profit organization that  
15 seeks to improve the quality and effectiveness of public utility  
16 regulation and ensure that utility services are provided at  
17 rates and conditions that are fair, reasonable, and



1 nondiscriminatory for all consumers, supports both a limited  
2 grant of authorization to electric utilities that provide  
3 broadband facilities and minimal regulation of electric  
4 utilities that contribute to broadband expansion.

5 Therefore, the purpose of this Act is to utilize electric  
6 easements and public rights of way to support broadband  
7 deployment by allowing an electric utility to own, operate,  
8 lease, plan, construct, install, maintain, or replace broadband  
9 facilities, including middle mile infrastructure, to help  
10 facilitate the development of and investment in broadband  
11 facilities and services to rural, unserved, underserved, and  
12 urban communities throughout the State.

13 SECTION 2. The Hawaii Revised Statutes is amended by  
14 adding a new chapter to be appropriately designated and to read  
15 as follows:

16 "CHAPTER

17 BROADBAND DEPLOYMENT OVER ELECTRIC EASEMENTS ACT

18 § -1 Short title. This chapter shall be known as the  
19 Broadband Deployment Over Electric Easements Act.

20 § -2 Definitions. As used in this chapter, unless the  
21 context requires otherwise:



1 "Broadband affiliate" means any person that directly or  
2 indirectly controls, is controlled by, or is under common  
3 control of one or more electric utilities, as defined herein,  
4 and participates in providing broadband services.

5 "Broadband facility" means any facility, including an  
6 electric utility's middle mile infrastructure or other equipment  
7 that can be used to facilitate, support, transmit, or provide,  
8 directly or indirectly, broadband services, including but not  
9 limited to wires; cables, including fiber optic and copper  
10 cables, whether the cables are dark or lit, and whether the  
11 cables are in use or dormant; ducts; conduits; antennas;  
12 equipment; fixtures; switching multiplexers; poles; routers;  
13 switches; servers; appurtenances; facilities; and ancillary or  
14 auxiliary equipment.

15 "Broadband service" has the same meaning as in section  
16 440J-1.

17 "Electric easement" means a right-of-way or an easement,  
18 whether acquired by eminent domain, prescription, franchise, or  
19 conveyance, that is used or may be used for transmitting,  
20 distributing, or providing electrical energy and services by



1 utilizing aboveground or underground wires, cables, lines, or  
2 similar facilities.

3 "Electric utility" means a public utility as defined in  
4 section 269-1.

5 "Middle mile infrastructure" means any broadband  
6 infrastructure that does not connect directly to an end-user  
7 location, including an anchor institution. "Middle mile  
8 infrastructure" includes:

9 (1) Leased dark fiber, interoffice transport, backhaul,  
10 internet exchange facilities, carrier-neutral  
11 submarine cable landing stations, undersea cables,  
12 transport connectivity to data centers, special access  
13 transport, and other similar services; and

14 (2) Wired or private wireless broadband infrastructure,  
15 including microwave capacity, radio tower access, and  
16 other services or infrastructure for a private  
17 wireless broadband network, such as towers, fiber, and  
18 microwave links.

19 "Person" means any individual, partnership, firm,  
20 association, public or private corporation, federal agency, the



1 State or any of its political subdivisions, trust, estate, or  
2 any other legal entity.

3 "Utility support services" means broadband services and  
4 related services, uses, or purposes that support the generation,  
5 transmission, or distribution of electricity by an electric  
6 utility.

7 § -3 **Authorized activities; electric utility.**

8 Notwithstanding any other statute, law, charter provision,  
9 ordinance, or rule to the contrary, an electric utility may  
10 engage in the following activities, in addition to all other  
11 activities authorized by law:

12 (1) Own, operate, lease (as lessor or lessee), plan,  
13 construct, install, maintain, or replace broadband  
14 facilities, including middle mile infrastructure;

15 (2) Provide or support the provision of broadband  
16 services; and

17 (3) Engage in any lawful act or activity necessary or  
18 convenient to carry out the purposes of paragraphs (1)  
19 and (2).

20 § -4 **Electric easements for broadband.** (a) Subject to  
21 compliance with any express prohibitions in a document creating



1 an electric easement, an electric utility may construct,  
2 install, own, operate, lease, maintain, utilize, or replace  
3 broadband facilities, as a middle mile infrastructure provider,  
4 on, over, under, across, or within its electric easements.

5 (b) Subject to compliance with any express prohibitions in  
6 a document creating an electric easement, an electric utility  
7 may allow a broadband affiliate or any other person to  
8 construct, install, own, operate, lease, maintain, or replace  
9 broadband facilities on, over, under, across, or within the  
10 electric utility's electric easements on the agreement of, or  
11 the terms and conditions as specified by, the electric utility.

12 (c) Any person providing broadband services that makes use  
13 of an electric utility's electric easement or an electric  
14 utility's broadband facilities in an electric easement pursuant  
15 to this section shall enter into an agreement with the electric  
16 utility authorizing the person to use the electric easement for  
17 the provision of broadband services, and any other agreements,  
18 including pole attachment, colocation, or underground facility  
19 occupancy license agreements as the electric utility may require  
20 in its reasonable discretion.



1 (d) An electric utility may require any person authorized  
2 by the electric utility to own, construct, install, maintain, or  
3 remove broadband facilities in its electric easements to:

- 4 (1) Defend and indemnify the electric utility;
- 5 (2) Provide the electric utility with security instruments  
6 including bonds or letters of credit; or
- 7 (3) Provide the electric utility with the proof of  
8 insurance as the electric utility may reasonably  
9 require.

10 (e) An electric utility may apportion its electric  
11 easements for purposes of subsections (a) and (b).

12 (f) Utilizing existing electric easements pursuant to this  
13 section and section -3 shall not materially alter the  
14 physical use of the easement, interfere with or impair any  
15 vested rights of the owner or occupier of the real property  
16 subject to the electric easement, or place any material  
17 additional burden on the property interests of the owner or  
18 occupier. Use of the electric easement shall be a compatible  
19 use, especially where the same electric easement is already  
20 being used in connection with utility support services.



1 (g) An electric utility may determine which broadband  
2 affiliate or other person may have access to the broadband  
3 facilities within its electric easements, and, subject to any  
4 required approval by the public utilities commission, to  
5 determine the rates, terms and conditions on which the broadband  
6 affiliate or other person may access the broadband facilities,  
7 including whether the access shall be on an exclusive or non-  
8 exclusive basis.

9 (h) Notwithstanding any other statute, law, charter  
10 provision, ordinance, or rule to the contrary, this chapter  
11 shall not require an electric utility to install or implement  
12 any broadband facilities or provide broadband services.

13 § -5 **Liability; civil actions.** (a) If, following an  
14 electric utility's or other person's exercise of its rights  
15 under this chapter, the owner of an interest in real property  
16 subject to an electric easement contends that the owner's  
17 property has been trespassed upon, taken, injured, damaged, or  
18 destroyed by the construction, installation, operation, use,  
19 enlargement of broadband facilities, or the provision of  
20 broadband services within the electric easement on the owner's  
21 property and the electric easement does not expressly provide





1 for such, the owner may file a civil action in the circuit court  
2 for the county in which the property is located to recover  
3 damages as specified by this section. An action for relief  
4 under this section shall be brought within twelve months of:

- 5 (1) The effective date of this Act; or  
6 (2) The date on which broadband facilities are first  
7 constructed or installed within the electric easement  
8 on the owner's real property,  
9 whichever is later.

10 Nothing in this chapter shall revive any right or remedy  
11 that may have become barred by lapse of time, or by any law of  
12 the State, before the effective date of this Act.

13 (b) In any action under subsection (a), the measure of  
14 damages shall be an amount equal to the difference, if any,  
15 between the following:

- 16 (1) The fair market value of the owner's real property  
17 immediately before the construction or installation of  
18 broadband facilities within the electric easement on  
19 the owner's real property; and  
20 (2) The fair market value of the owner's real property  
21 immediately after the construction or installation of



1 broadband facilities within the electric easement on  
2 the owner's real property.

3 The court shall consider any positive value that access to  
4 broadband services may add to the property's value when  
5 calculating damages. When calculating damages, the court shall  
6 not consider evidence of past, current, or future revenues or  
7 profits derived or to be derived by the electric utility or any  
8 party constructing broadband facilities or providing broadband  
9 services, and such evidence shall not be admissible for any  
10 purpose in any proceeding.

11 (c) An owner of real property shall not bring an action  
12 under this section against an electric utility for an electric  
13 utility's apportionment of its electric easement to another  
14 person that subsequently constructs broadband facilities or  
15 provides broadband services on, over, under, across, or within  
16 the owner's real property.

17 (d) Damages awarded under this section, if any, shall be  
18 fixed and shall not be deemed to continue, accumulate, or  
19 accrue. Payment of the judgment in any action shall vest in the  
20 electric utility all property rights necessary to construct,  
21 use, install, operate, replace, and maintain, from time to time,



1 the broadband facilities within the electric easement on the  
2 owner's real property, and the electric easement shall be  
3 thereafter permanently expanded to include the right to  
4 construct, use, install, operate, replace, and maintain the  
5 broadband facilities and to provide broadband services. The  
6 judgment shall have the same effect as a conveyance executed by  
7 the owner in due form under applicable law and shall run with  
8 the land. The expansion of the electric easement shall include  
9 the broadband facilities within the maintenance, egress, and  
10 ingress provisions of the electric easement.

11 (e) The civil action and measure of damages authorized by  
12 this section shall be the exclusive remedy for any and all  
13 claims that the owner's property has been trespassed upon or  
14 taken, or the scope of the electric easement exceeded, by the  
15 construction, installation, use, or enlargement of broadband  
16 facilities or the provision of broadband services within the  
17 electric easement on the owner's property. The owner shall not  
18 assert:

19 (1) Any other theory, claim, or cause of action, either at  
20 law or in equity, or recover any other damages,



1 including without limitation, consequential,  
2 compensatory, or punitive damages; or

3 (2) A claim for injunctive relief to require the removal  
4 of broadband facilities or to enjoin the operation or  
5 provision of broadband services.

6 (f) An owner of real property who brings an action under  
7 this section shall not bring an action on behalf of a class.  
8 This limitation is a substantive limitation, and allowing an  
9 owner to bring a class action or other representative action for  
10 a violation of this chapter shall be construed to abridge,  
11 enlarge, or modify the substantive rights created by this  
12 chapter.

13 (g) With respect to the installation of broadband  
14 facilities within an electric easement, the electric utility  
15 shall provide the same notice as is required by the express  
16 terms of the electric easement, if any. If there is no written  
17 document creating the electric easement or no express terms in  
18 the document regarding notice, then the electric utility shall  
19 provide notice to the owner of the real property subject to the  
20 electric easement by informing the owner of the installation of  
21 the broadband facilities within the electric easement prior to



1 installation. Notice shall be deemed sufficient if mailed to  
2 the name and address of the owner or owners listed in the real  
3 property ad valorem tax records for the county in which the real  
4 property is located. Nothing in this section shall require  
5 notice from the electric utility when the electric easement is  
6 acquired by condemnation or pursuant to an expansion of the  
7 electric easement by civil action commenced by the owner.

8 (h) This chapter shall not limit the liability of an  
9 electric utility or any other person for any claims or causes of  
10 action except as specifically set forth in this section.

11 § -6 **Public utilities commission; oversight.** (a) The  
12 public utilities commission shall develop an efficient  
13 regulatory review process to support the purposes of this  
14 chapter and the expeditious deployment of broadband by  
15 leveraging an electric utility's middle mile infrastructure and  
16 other broadband facilities in rural, unserved, underserved, and  
17 urban communities in the State.

18 (b) Except as specifically provided in subsection (a),  
19 nothing in this section shall be construed to alter section 269-  
20 19."



1           SECTION 3. If any provision of this Act, or the  
2 application thereof to any person or circumstance, is held  
3 invalid, the invalidity does not affect other provisions or  
4 applications of the Act that can be given effect without the  
5 invalid provision or application, and to this end the provisions  
6 of this Act are severable.

7           SECTION 4. This Act shall take effect upon its approval.

8



**Report Title:**

Broadband Service Infrastructure; Broadband Deployment; Electric Easement

**Description:**

Allows an electric utility to own, operate, lease, plan, construct, install, maintain, or replace broadband facilities, including middle mile infrastructure, to help facilitate the development of and investment in broadband facilities and services to rural, unserved, underserved, and urban communities throughout the State. (HD1)

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