

JAN 20 2022

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, and/or replace
9 broadband facilities, including middle mile infrastructure, to
10 help 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 A**

17 **BROADBAND DEPLOYMENT OVER ELECTRIC EASEMENTS ACT**

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

20 **§A-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 access" or "broadband service" as used in this
6 chapter, is an "always-on" service as defined in section 440J-1.

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

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" as used in this chapter, is a public
4 utility that furnishes power as defined in 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" as used in this chapter, has the same meaning as
20 defined in section 342D-1.



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

5 **§A-3 Authorized activities; electric utility.**

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

- 10 (1) Own, operate, lease (as lessor or lessee), plan,
11 construct, install, maintain, and/or replace broadband
12 facilities, including middle mile infrastructure;
- 13 (2) Provide or support the provision of broadband
14 services; and
- 15 (3) Engage in any lawful act or activity necessary or
16 convenient to affect the foregoing purposes.

17 **§A-4 Electric easements for broadband.** (a) Subject to
18 compliance with any express prohibitions in a document creating
19 an electric easement, an electric utility may construct,
20 install, own, operate, lease, maintain, utilize and/or replace



1 broadband facilities, as a middle mile infrastructure provider,
2 on, over, under, across, or within its electric easements.

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

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

19 (d) An electric utility may require any person that it
20 authorizes to own, construct, install, maintain, or remove
21 broadband facilities in its electric easements to defend and



1 indemnify the electric utility, to provide the electric utility
2 with security instruments including bonds or letters of credit,
3 and/or to provide the electric utility with the proof of
4 insurance as the electric utility may reasonably require.

5 (e) An electric utility shall have the power and authority
6 to apportion its electric easements to accomplish those actions
7 set forth in subsections (a) and (b).

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

17 (g) An electric utility shall have the authority to
18 determine which broadband affiliate or other person may have
19 access to the broadband facilities within its electric
20 easements, and, subject to any required approval by the public
21 utilities commission, to determine the rates, terms and



1 conditions on which the broadband affiliate or other person may
2 access the broadband facilities, including whether the access
3 will be on an exclusive or non-exclusive basis.

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

8 **§A-5 Liability; civil actions.** (a) If, following an
9 electric utility or other person's exercise of its rights under
10 this chapter, the owner of an interest in real property subject
11 to an electric easement contends that the owner's property has
12 been trespassed upon, taken, injured, damaged, or destroyed by
13 the construction, installation, operation, use, enlargement of
14 broadband facilities, or the provision of broadband services
15 within the electric easement on the owner's property and the
16 electric easement does not expressly provide for such, the owner
17 may file a civil action in the circuit court for the county in
18 which the property is located to recover damages as specified by
19 this section. All such actions must be brought within twelve
20 months after the later of the effective date of the enactment of
21 this chapter or the date broadband facilities are first



1 constructed or installed within the electric easement on the
2 owner's real property. Nothing in this chapter shall revive any
3 right or remedy that may have become barred by lapse of time, or
4 by any law of this State, before enactment of this chapter.

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

8 (1) The fair market value of the owner's real property
9 immediately before the construction or installation of
10 broadband facilities within the electric easement on
11 the owner's real property; and

12 (2) The fair market value of the owner's real property
13 immediately after the construction or installation of
14 broadband facilities within the electric easement on
15 the owner's real property.

16 The court shall consider any positive value that access to
17 broadband services may add to the property's value when
18 calculating damages. The court shall not consider, when
19 calculating damages, evidence of past, current, or future
20 revenues or profits derived or to be derived by the electric
21 utility or any party constructing broadband facilities or



1 providing broadband services, and such evidence shall not
2 admissible for any purpose in any proceeding.

3 (c) An owner may not bring an action under this section
4 against an electric utility for an electric utility's
5 apportionment of its electric easement to another person that
6 subsequently constructs broadband facilities or provides
7 broadband services on, over, under, across, or within the
8 owner's real property.

9 (d) The damages, if any, shall be fixed and shall not be
10 deemed to continue, accumulate, or accrue. Payment of the
11 judgment in any action shall vest in the electric utility all
12 property rights necessary to construct, use, install, operate,
13 replace, and maintain, from time to time, the broadband
14 facilities within the electric easement on the owner's real
15 property, and the electric easement shall be thereafter
16 permanently expanded to include the right to construct, use,
17 install, operate, replace, and maintain the broadband facilities
18 and to provide broadband services. The judgment shall have the
19 same effect as a conveyance executed by the owner in due form
20 under applicable law and shall run with the land. The expansion
21 of the electric easement shall include the broadband facilities



1 within the maintenance, egress, and ingress provisions of the
2 electric easement.

3 (e) The civil action and measure of damages authorized by
4 this section shall be the exclusive remedy for any and all
5 claims that the owner's property has been trespassed upon or
6 taken, or the scope of the electric easement exceeded, by the
7 construction, installation, use, or enlargement of broadband
8 facilities or the provision of broadband services within the
9 electric easement on the owner's property, and the owner may not
10 assert any other theory, claim, or cause of action, either at
11 law or in equity, nor recover any other damages, including
12 without limitation, consequential, compensatory, and/or punitive
13 damages, or equitable relief. Further, the owner may not assert
14 a claim for injunctive relief to require the removal of
15 broadband facilities or to enjoin the operation or provision of
16 broadband services.

17 (f) An owner bringing an action under this section may not
18 bring an action on behalf of a class. The limitation in this
19 subsection is a substantive limitation, and allowing an owner to
20 bring a class action or other representative action for a
21 violation of this chapter shall be construed to abridge,



1 enlarge, or modify the substantive rights created by this
2 chapter.

3 (g) With respect to the installation of broadband
4 facilities within an electric easement, the electric utility
5 shall provide the same notice as is required by the express
6 terms of the electric easement, if any. If there is no written
7 document creating the electric easement or no express terms in
8 the document regarding notice, then the electric utility shall
9 provide notice to the owner of the real property subject to the
10 electric easement by informing the owner of the installation of
11 the broadband facilities within the electric easement prior to
12 installation. Notice shall be sufficient if mailed to the name
13 and address of the owner or owners listed in the real property
14 ad valorem tax records for the county where the real property is
15 located. Nothing in this section shall require notice from the
16 electric utility when the electric easement is acquired by
17 condemnation or pursuant to an expansion of the electric
18 easement by civil action commenced by the owner.

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



1 §A-6 Oversight; public utilities commission. (a) The
2 public utilities commission shall develop an efficient
3 regulatory review process to support the purposes of this
4 chapter and the expeditious deployment of broadband by
5 leveraging an electric utility's middle mile infrastructure and
6 other broadband facilities in rural, unserved, underserved, and
7 urban communities.

8 (b) Except as specifically provided in subsection (a),
9 nothing in this section is intended to alter section 269-19."

10 SECTION 3. In codifying the new chapter added by section 2
11 of this Act, the revisor of statutes shall substitute an
12 appropriate chapter number for the letters used in designating
13 the new chapter in this Act.

14 SECTION 4. If any provision of this Act, or the
15 application thereof to any person or circumstance, is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act that can be given effect without the
18 invalid provision or application, and to this end the provisions
19 of this Act are severable.

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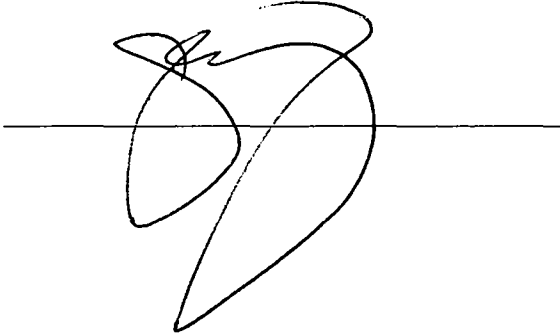


S.B. NO. 2173

1 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

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S.B. NO. 2173

Report Title:

Broadband Service Infrastructure; Broadband Deployment; Electric Easement

Description:

Allows an electric utility to own, operate, lease, plan, construct, install, maintain, and/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.

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