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DEPARTMENT OF LAND AND NATURAL RESOURCES
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the House Committee on
HIGHER EDUCATION & TECHNOLOGY

Friday, February 9, 2024
2:00 p.m.

State Capitol, Conference Room 309 & Videoconference

In consideration of
HOUSE BILL 2710
RELATING TO TELECOMMUNICATIONS

House Bill 2710 proposes to require a wireless telecommunications carrier, as a condition for any conservation district use permit to construct, reconstruct, or alter a telecommunications facility on Kai'wa Ridge, to maintain emergency backup power for a minimum of eight hours. **The Department of Land and Natural Resources (Department) opposes this bill and offers the following comments:**

House Bill 2710 proposes to amend Hawai'i Revised Statutes Chapter 183C regarding the Conservation District by adding a statute that would apply to a single location, a ridge behind Lanikai on O'ahu.

Statewide zoning was established by the first State Legislature with the 1961 Land Use Law (*see* Act 187 Session Laws of Hawai' 160). It was the first statewide land regulatory system in the U.S. The Land Use Law created the Land Use Commission, and directed it to divide the state into four land use districts: Conservation, Agriculture, Rural, and Urban.

Land uses in the new Conservation District were subject to the sole regulation of the Department of Land and Natural Resources. These regulations are applied uniformly throughout the state, and there is no precedent for creating a regulation that only applies to one location.

The Department notes that the Federal Communication Commission and individual states have considered requiring backup power at telecommunications facilities under their respective jurisdictions. If the Legislature were to adopt similar regulations the Department would recommend that they be applied statewide, and not limited to the Conservation District.

Mahalo for the opportunity to provide comments on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 2710, RELATING TO TELECOMMUNICATIONS.

BEFORE THE:

HOUSE COMMITTEE ON HIGHER EDUCATION AND TECHNOLOGY

DATE: Friday, February 9, 2024 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 309 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Colin J. Lau, Deputy Attorney General

Chair Perruso and Members of the Committee:

The Department of the Attorney General offers the following comments.

This bill establishes a new section in chapter 183C, Hawaii Revised Statutes (HRS), to require any conservation district use permit to construct, reconstruct, or alter a telecommunications facility on Ka'iwa ridge to contain a condition to maintain emergency backup power for at least of eight hours.

We believe the application of this requirement in section 1 of the bill only to Ka'iwa ridge of the island of O'ahu could be challenged as violating article XI, section 5, of the Hawai'i Constitution. Article XI, section 5, of the Hawai'i Constitution provides:

The legislative power over the lands owned by or under the control of the State and its political subdivisions shall be exercised only by general laws, except in respect to transfers to or for the use of the State, or a political subdivision, or any department or agency thereof.

The bill only applies to lands zoned in conservation district on the Ka'iwa ridgeline on the island of O'ahu, at least some of which constitute lands "owned by or under the control of the State or its political subdivisions." There is no explanation as to why telecommunication uses of Ka'iwa ridgeline conservation district lands are distinguishable from telecommunication applications of other conservation district lands, or the need for emergency backup power for at least eight hours for those lands. To remedy this issue, we recommend the conditions on the permits required by the new

section to be applied to (1) any conservation district lands, or (2) conservation district lands with certain specified characteristics.

Furthermore, unlike other provisions within chapter 183C, HRS, which has the legislative intent “to conserve, protect, and preserve the important natural resources of the State through appropriate management” (section 183C-1, HRS), this bill addresses an aspect of telecommunication usage. To this end, we suggest that an appropriate amendment could be addressed in section 27-45, HRS, (broadband-related permits; automatic approval) and be applied statewide, and not just to the conservation district lands.

Thank you for the opportunity to testify.



February 8, 2024

The Honorable Amy Perruso
Hawaii House of Representatives
Chair, Committee on Higher Education & Technology
Hawai'i State Capitol
415 South Beretania St.
Honolulu, HI 96813

Dear Chair Perruso:

On behalf of CTIA®, the trade association for the wireless communications industry, I write to respectfully oppose House Bill 2710, which requires a minimum of 8 hours of emergency backup power as a condition for any permit for a wireless telecommunications carrier to construct, reconstruct, or alter a telecommunications facility on Kaiwa Ridge.

Wireless carriers have a history of promptly responding to commercial power loss, emergencies, and disasters to ensure their networks are operational as quickly as possible and to restore communication links for their consumers. To coordinate and prepare for recovery from events that lead to commercial power loss, wireless carriers use several strategies to address network reliability. Recognizing that coordination efforts will vary depending upon the event and available resources, the industry's best practices focus on planning before emergencies occur; coordination during and after emergencies; and education awareness campaigns. These flexible tools enable greater coordination among wireless service providers and local governments to maintain mobile service continuity, promote resiliency efforts, and expedite restoration.

The provision of back-up power at cell sites is impacted by several factors that make it critical that wireless carriers have the flexibility to site back-up power where appropriate, feasible, and safe. Carriers currently provide back-up power to maintain network operations when local commercial power is lost, including by using batteries, onsite and mobile generators, and fuel. However, a mandate, like the one included in HB 2710, would be infeasible and unworkable given the complexity of what determines where back-up power is able to be placed.

HB 2710 fails to recognize that carriers and infrastructure providers collocate facilities, whereby a single site may host several carriers and their equipment. Collocation is a commonly preferred method, for both providers and the communities they serve, to site



wireless infrastructure as it is often the most efficient and economical solution, especially in locations where it is difficult to find new sites. It would be especially challenging for collocated sites to comply with this legislation's back-up generation mandate as sufficient power and separate equipment will be needed for all carriers operating on the collocated site. Any cell site modifications that require the addition of back-up power equipment raises other complicated issues related to the lease terms between carriers and the facility site owners, including the permissible use of this equipment and its exact placement within the site. This outcome would require leases between carriers and site owners to be renegotiated - the possibility of which is far from certain. There may also be environmental restrictions and noise abatement issues with the placement of back-up power.

In addition to the challenges facing wireless carriers in the deployment of back-up power, there are a significant set of issues keeping cell site backhaul connections powered during extended commercial power failure. These backhaul connections carry the mobile traffic from cell towers to mobile switching offices and data centers through the wireline network. If this backhaul transport is not working because of cut fiber lines, for example, having back-up power at sites will not bring service back online.

HB 2710 also presents legal concerns. Back-up power mandates, like those in the bill, are expressly preempted by Section 332 of the federal Communications Act. Longstanding case law has established the principle that any such state regulation that attempts to regulate the adequacy of wireless carriers' network facilities and the level or quality of their services constitutes impermissible regulation of market "entry" and is therefore barred by Section 332(c)(3)(A).

The wireless industry recognizes the importance of network reliability. We stand committed to working with all stakeholders on Oahu and throughout Hawaii to further discuss and address this issue, but for the reasons listed above, we oppose HB 2710.

Sincerely,

Gerard Keegan
Vice President
State Legislative Affairs

HB-2710

Submitted on: 2/9/2024 10:07:41 AM

Testimony for HET on 2/9/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
David Ian Thompson	Bluestone Townhomes Board of Directors	Support	Written Testimony Only

Comments:

it is in the best interests and safety that Backup Power be provided for Telecommunication Facilities on the Ka'iwa Ridge in order that cellphones are able to function in the event of power loss for Bluestone and Lanikai homeowners.

HB-2710

Submitted on: 2/8/2024 8:44:06 PM

Testimony for HET on 2/9/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
James F Moonier	Individual	Support	Written Testimony Only

Comments:

Recently my neighborhood had a several hour power outage which resulted in a loss of ability to use our cell phones. Had there been an emergency like Lahaina, we would have had no way to receive a warning with details of the problem or instructions on how to stay safe. Additionally, if anyone had a health emergency, they could not have dialed 911.

This Bill should be expanded to address this problem Statewide, as California did a few years ago. I would suggest taking the language for the requirement for Ka'iwa Ridge and putting it instead in the section that covers permits Statewide, underlined below as a new part between (d) and (e).

§27-45 Broadband-related permits; automatic approval.

(a) The State shall approve, approve with modification, or disapprove all applications for broadband-related permits within sixty days of submission of a complete permit application and full payment of any applicable fee; provided that this subsection shall not apply to a conservation district use application for broadband facilities. If, on the sixty-first day, an application is not approved, approved with modification, or disapproved by the State, the application shall be deemed approved by the State.

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

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

(d) An applicant and a public utility shall 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.

(new) As a condition for any permit under this chapter for a wireless telecommunications carrier to construct, reconstruct, or alter a telecommunications facility, the telecommunications facility shall maintain emergency back up power for a minimum of 8 hours.

(e) 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 pursuant to this section, or against public utilities resulting from such actions.

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

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

(h) Nothing in this section shall affect the provisions of section 3 of Act 151, Session Laws of Hawaii 2011. (i) (j) 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 communications 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. [L 2013, c 264, § §1, 5; am L 2016, c 193, §2]

HB-2710

Submitted on: 2/9/2024 8:04:30 AM

Testimony for HET on 2/9/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Steven Crisp	Individual	Support	Written Testimony Only

Comments:

Aloha,

As I'm sure you are aware, Lanikai is one lane in and one lane out -- there is NO other vehicular access. As such, it is imperative that warnings and alerts get through to residents and their loved ones in the event of an emergency (e.g., wildfire, hurricane, tsunami, and others). The best communication device we (almost) all use is our cell phone. But coverage is quite spotty in Lanikai to start with, and without cell tower power, it will lack cellular connectivity.

This bill takes lessons from the Lahaina fire, which also had limited vehicular access, and tragically had great loss of life and property. Cell phone connectivity is critical during an emergency, and this straightforward requirement on cell service providers will go a long way during the critical period of an emergency to provide that required coverage and connectivity.

Thank you for supporting this bill!

HB-2710

Submitted on: 2/9/2024 10:27:02 AM

Testimony for HET on 2/9/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Thomas Cestare	Lanikai Association	Support	Written Testimony Only

Comments:

The Lanikai Association strongly supports this bill. It is imperative to have back up power so that the citizens of our community can have access to emergency services and be alerted when there is an impending dangerous situation.

At present, when the power goes out , our community is left withuout the ability to contact police, fire, or ambulances. Lately, the power has gone out for over four hours at a time.

This is a significant danger to the health and safety of our residents and needs to be immediately addressed.