

ACT 151

H.B. NO. 1342

A Bill for an Act Relating to Telecommunications.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 199, Session Laws of Hawaii 2010, established a broadband work group to develop procedures for streamlining permitting functions

applicable to the development of broadband services and broadband technology. The legislature finds that the broadband work group has recommended the creation of an exemption from various permitting requirements for the installation of new or upgraded broadband infrastructure along existing poles and conduits that are already used for telecommunications. Another discussion item of the broadband work group is the streamlining of the processing of pole, conduit, and duct applications.

The purpose of this Act is to facilitate the deployment of high-speed broadband infrastructure in Hawaii by exempting the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology from state and county permitting requirements, under certain conditions, and reducing the time and costs associated with requests for access to utility poles and conduits. This Act also makes the director of commerce and consumer affairs a member and chairperson of the broadband assistance advisory council and a member and convenor of the broadband work group established under Act 199, Session Laws of Hawaii 2010, and removes the cable television administrator from the broadband assistance advisory council and the broadband work group.

SECTION 2. From January 1, 2012, to January 1, 2017, actions relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, including the interconnection of telecommunications cables, shall be exempt from county permitting requirements, state permitting and approval requirements, which includes the requirements of chapters 171, 205A, and 343, Hawaii Revised Statutes, and public utilities commission rules under Hawaii Administrative Rules, chapter 6-73, that require existing installations to comply with new pole replacement standards at the time of any construction or alteration to the equipment or installation, except to the extent that such permitting or approval is required by federal law or is necessary to protect eligibility for federal funding, services, or other assistance; provided that the installation, improvement, construction, or development of infrastructure shall:

- (1) Be directly related to the improvement of existing telecommunications cables or the installation of new telecommunications cables:
 - (A) On existing or replacement utility poles and conduits; and
 - (B) Using existing infrastructure and facilities;
- (2) Take place within existing rights-of-way or public utility easements or use existing telecommunications infrastructure; and
- (3) Make no significant changes to the existing public rights-of-way, public utility easements, or telecommunications infrastructure.

A person or entity shall use reasonable best efforts to comply with all applicable safety and engineering requirements relating to the installation, improvement, construction, or development of infrastructure relating to broadband service.

A person or entity taking any action under this section shall, at least thirty calendar days before the action is taken, provide notice to the director of commerce and consumer affairs by electronic posting in the form and on the site designated by the director for such posting on the designated central State of Hawaii Internet website; provided that notice need not be given by a public utility or government entity for an action relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology where the action taken is to provide access as the owner of the existing rights-of-way, utility easements, or telecommunications infrastructure.

SECTION 3. Consistent with federal law, no person or entity shall be required to upgrade or replace an existing utility pole when using that utility pole to install new telecommunications cables or to improve existing telecommunications cables; provided that:

- (1) The overall weight load and the diameter of the attachment on the utility pole following the installation or improvement does not exceed the overall weight load and diameter of the attachment prior to the installation or improvement; and
- (2) The utility pole is not damaged or made less safe or reliable due to the installation or improvement of telecommunications cables.

The public utilities commission may allow a public utility to recover all prudently incurred costs as approved through rates, charges, or clauses approved or established by the public utilities commission pursuant to section 269-16, Hawaii Revised Statutes, including but not limited to planning, engineering, construction, installation, or replacement of utility poles undertaken to accomplish the objectives of this Act. Recovery of all prudently incurred costs shall also apply to a broadband service provider.

If access to a utility pole is not granted within forty-five days of a written request for access, the utility must confirm the denial in writing by the forty-fifth day, consistent with the requirements established by the Federal Communications Commission under Title 47, Chapter 1, Code of Federal Regulations. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

SECTION 4. No later than January 1, 2016, the director of commerce and consumer affairs shall:

- (1) Review the state of broadband communications in Hawaii and the permitting exemptions granted pursuant to this Act; and
- (2) Make a recommendation whether to extend the exemptions provided by this Act.

The director of commerce and consumer affairs shall submit a report of the director's findings and recommendations, along with any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2016.

SECTION 5. Act 199, Session Laws of Hawaii 2010, is amended by amending section 3 to read as follows:

"SECTION 3. Telework promotion and broadband assistance advisory council; establishment; purpose. (a) ~~The [administrator of the cable television division of the department of commerce and consumer affairs]~~ director of commerce and consumer affairs shall convene and chair the broadband assistance advisory council to advise the ~~[administrator]~~ director of commerce and consumer affairs on policy and funding priorities to promote and encourage use of telework alternatives for public and private employees, and expedite deployment of affordable and accessible broadband services in Hawaii.

(b) The council shall be composed of the ~~[administrator of the cable television division]~~ director of commerce and consumer affairs, or the director's designee, and the following twelve members who shall be equally appointed by the president of the senate and by the speaker of the house of representatives as follows:

- (1) Two members of the senate, appointed by the president of the senate;
- (2) Two members of the house of representatives, appointed by the speaker of the house of representatives;
- (3) Four representatives of federal, state, and county government entities having a role in infrastructure deployment; management of public rights-of-way, regulation, and franchising; information technology; and economic development; and
- (4) Four representatives of Hawaii's private sector technology, telecommunications, and investment industries.

Except for the ~~[administrator of the cable television division]~~ director of commerce and consumer affairs, all members shall serve for a term of four years. Any vacancies occurring in the membership of the advisory council shall be filled for the remainder of the unexpired term in the same manner as the original appointments.

(c) The ~~[administrator of the cable television division]~~ director of commerce and consumer affairs shall serve as chairperson of the council. The council shall meet at times as may be called by the chairperson. Members shall be reimbursed for reasonable expenses, including travel expenses, necessary for the performance of their duties. Administrative support to the council shall be provided by the department of commerce and consumer affairs.

- (d) The council shall:
 - (1) Monitor the broadband-based development efforts of other states and nations in areas such as business, education, and health;
 - (2) Advise the department on other states' best practices involving telework promotion and policies and strategies related to making affordable broadband services available to every Hawaii home and business;
 - (3) Monitor broadband-related activities at the federal level;
 - (4) Monitor regulatory and policy changes for potential impact on broadband deployment and sustainability in Hawaii; and
 - (5) Encourage public-private partnerships to increase the deployment and adoption of broadband services and applications."

SECTION 6. Act 199, Session Laws of Hawaii 2010, is amended by amending subsection (a) of section 4 to read as follows:

"(a) The ~~[administrator of the cable television division of the department of commerce and consumer affairs]~~ director of commerce and consumer affairs shall convene a work group to develop procedures for streamlined permitting functions that are applicable to the development of broadband services and broadband technology that are normally available to state and local governments for the use or development of broadband service or broadband technology. Members of the work group shall include:

- (1) The ~~[administrator of the cable television division]~~ director of commerce and consumer affairs, or the ~~[administrator's]~~ director's designee;
- (2) The mayor of the county of Hawaii, or the mayor's designee;
- (3) The mayor of the city and county of Honolulu, or the mayor's designee;
- (4) The mayor of the county of Kauai, or the mayor's designee;
- (5) The mayor of the county of Maui, or the mayor's designee;
- (6) The chairperson of the Hawaii broadband task force established by Act 2, First Special Session Laws of Hawaii 2007; and

- (7) Two representatives of state agencies with jurisdiction over land use and permitting at the state level.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2011.

(Approved June 21, 2011.)