

ACT 264

H.B. NO. 635

A Bill for an Act Relating to Broadband.

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

SECTION 1. Chapter 27, Hawaii Revised Statutes, is amended by adding a new section to part VII to be appropriately designated and to read as follows:

“§27- 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- , 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.

(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) 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.”

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§46- Broadband-related permits; automatic approval. (a) A county 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. If, on the sixty-first day, an application is not approved, approved with modification, or disapproved by the county, the application shall be deemed approved by the county.

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

(c) 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.

(d) No action shall be prosecuted or maintained against any county, 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.

(e) 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.

(f) If an application is incomplete, the county agency 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.

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

(h) For the purposes of this section, "broadband-related permits" means all county 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 county 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 county."

SECTION 3. Act 151, Session Laws of Hawaii 2011, is amended by amending sections 2 and 3 to read as follows:

"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]~~ An applicant 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 overall weight load on the utility pole does not exceed maximum utility pole safe weight capacities established by the Federal Communications Commission and the public utilities commission; and
- ~~[(2)]~~ (3) 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."

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SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on January 1, 2014, and shall be repealed on June 30, 2018; provided that this Act shall apply to permit applications filed with the State or county after December 31, 2013.

(Approved July 3, 2013.)

Note

1. Edited pursuant to HRS §23G-16.5.