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# A BILL FOR AN ACT

RELATING TO THE REGULATION OF TELECOMMUNICATIONS AND CABLE  
TELEVISION SERVICES.

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

1           SECTION 1. The State of Hawaii recognizes that advanced  
2 broadband capability is essential infrastructure required to  
3 drive innovation, the economy, and job creation in the twenty-  
4 first century as the telephone, interstate highways, and air  
5 travel did in the twentieth century. In Act 199, Session Laws  
6 of Hawaii 2010, the legislature recognized that, for Hawaii to  
7 compete successfully in the global economy of the twenty-first  
8 century, Hawaii must:

9           (1) Ensure access to broadband communications for all  
10 households, businesses, and organizations throughout  
11 Hawaii at speeds and prices comparable to the average  
12 speeds and prices available in the top three  
13 performing countries in the world;

14           (2) Increase availability of advanced broadband  
15 communications service on a competitive basis to  
16 reduce prices, increase service penetration, and  
17 improve service to all persons in Hawaii;



- 1           (3) Increase broadband availability at affordable cost to
- 2           low-income and other disadvantaged groups, including
- 3           making low-cost, broadband-capable computers available
- 4           to eligible recipients;
- 5           (4) Encourage shared use of infrastructure to accelerate
- 6           broadband implementation, where appropriate, reduce
- 7           underlying costs to providers by using incentives
- 8           rather than eminent domain procedures, ease deployment
- 9           of broadband, and ease entry into a competitive
- 10          broadband marketplace;
- 11          (5) Increase flexible, timely, and responsible access to
- 12          public rights-of-way and public facilities for
- 13          broadband service providers; and
- 14          (6) Develop a more streamlined permit approval process
- 15          that reduces the time and cost of infrastructure
- 16          deployment, to be created jointly by disparate
- 17          permitting agencies, stakeholders, and other
- 18          interested parties.

19 Act 199 implemented activities toward these goals.

20           The purpose of this Act is to continue implementation of  
21 activities to achieve these goals. This Act creates a  
22 communications commission composed of two commissioners within

1 the department of commerce and consumer affairs. The  
2 commission's initial charge is to streamline and modernize the  
3 State's regulatory framework, laws, policies, processes, and  
4 procedures for telecommunications to parallel the cable  
5 television regulatory framework, thereby increasing the  
6 deployment of broadband infrastructure related to  
7 telecommunications and cable television providers in order to  
8 increase and expedite the deployment of broadband infrastructure  
9 and the offering of world-class broadband services at affordable  
10 prices throughout the State. In so doing, the commission shall  
11 work with other governmental entities and stakeholders to  
12 develop demonstration projects involving the State of Hawaii's  
13 broadband technology opportunities program grants awarded  
14 through the Department of Commerce's National Telecommunications  
15 and Information Administration, and other applications for state  
16 and county permits that expedite permitting processes to provide  
17 access to public rights of way and public facilities for the  
18 construction of broadband infrastructure.

19 This Act directs the commission to recommend a new  
20 statutory framework for telecommunications carriers and cable  
21 operators that includes recommendations for expediting permit  
22 procedures to the legislature by January 1, 2013. Among other

1 things, the proposed legislation shall streamline regulation of  
2 telecommunications and cable services under the commission by  
3 January 1, 2014; create a modern regulatory and permitting  
4 environment that supports and advances broadband deployment, in  
5 coordination with other state and county government agencies;  
6 authorize the commission to represent the State's interests  
7 related to broadband, telecommunications, and video programming  
8 services before the federal government and other entities; and  
9 require the commission to work closely with stakeholders in  
10 developing telecommunications, broadband, and related policies,  
11 initiatives, and programs to ensure that the stakeholders'  
12 interests and concerns are addressed.

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 **TELECOMMUNICATIONS AND CABLE TELEVISION SERVICES**

18 § -1 **Definitions.** As used in this chapter, unless the  
19 context otherwise requires:

20 "Broadband" means an "always on" service that combines  
21 computer processing capabilities, information provision, and  
22 computing interactivity with data transport, enabling end users



1 to access the Internet and use a variety of applications, at  
2 minimum speeds set by the Federal Communications Commission.

3 "Cable operator" means any person or group of persons who:

- 4 (1) Provides cable service over a cable system and  
5 directly or through one or more affiliates owns a  
6 significant interest in the cable system; or  
7 (2) Otherwise controls or is responsible for, through any  
8 arrangement, the management and operation of a cable  
9 system.

10 "Cable service" means:

- 11 (1) The transmission to subscribers of video programming  
12 or other programming service; and  
13 (2) Subscriber interaction, if any, which is required for  
14 the selection of video programming or other  
15 programming service.

16 "Cable system" means any facility within this State  
17 consisting of a set of closed transmission paths and associated  
18 signal generation, reception, and control equipment that is  
19 designed to provide cable service which includes video  
20 programming and which is provided to multiple subscribers within  
21 a community, but shall not include a facility:



1 (1) That serves only to retransmit the television signals  
2 of one or more television broadcast stations;

3 (2) That serves only subscribers in one or more multiple  
4 unit dwellings under common ownership, control, or  
5 management, unless that facility or those facilities  
6 use any public right-of-way; or

7 (3) Owned, operated, or otherwise controlled by a  
8 telecommunications carrier subject in whole or in part  
9 to chapter 269, except to the extent that those  
10 facilities provide video programming directly to  
11 subscribers.

12 "Commission" means the communications commission.

13 "Department" means the department of commerce and consumer  
14 affairs.

15 "Facility" includes all real property, antennas, poles,  
16 supporting structures, wires, cables, conduits, amplifiers,  
17 instruments, appliances, fixtures, and other personal property  
18 used by a cable operator or telecommunications carrier to  
19 provide service.

20 "Telecommunications" means the transmission, between or  
21 among points specified by a user, of information of the user's  
22 choosing, without change in the form or content of the



1 information as sent and received, and does not include cable  
2 service as defined in section 440G-3.

3 "Telecommunications carrier" or "telecommunications common  
4 carrier" means any person that owns, operates, manages, or  
5 controls any facility used to furnish telecommunications  
6 services for profit to the public, or to classes of users as to  
7 be effectively available directly to the public, engaged in the  
8 provision of services.

9 "Telecommunications service" means the offering of  
10 telecommunications for a fee directly to the public, or to the  
11 classes of users as to be effectively available directly to the  
12 public, regardless of the facilities used.

13 "Video programming" means programming provided by, or  
14 generally considered comparable to programming provided by, a  
15 television broadcast station.

16 § -2 **Communications commission; composition.** (a) There  
17 is established a communications commission within the department  
18 of commerce and consumer affairs. The commission shall be  
19 composed of two members, who shall be appointed by the governor  
20 as provided in section 26-34. The members shall be appointed  
21 for terms of six years each, except that the terms of the  
22 members first appointed shall be for four and six years,



1 respectively, as designated by the governor at the time of  
2 appointment. Each member shall hold office until the member's  
3 successor is appointed and qualified. No member shall serve  
4 more than two consecutive terms. The members shall be selected  
5 on the basis of their knowledge and experience in  
6 telecommunications, cable television regulation, broadband,  
7 government, business, finance, law, or similar fields. The  
8 members shall devote full time to their duties as members of the  
9 commission and no member shall hold any other public office or  
10 other employment during the member's term of office. No  
11 individual owning any stock or bonds of any telecommunications  
12 carrier or cable operator, or having any interest in, or  
13 deriving any remuneration from, any telecommunications carrier,  
14 cable operator, or access organization shall be appointed as a  
15 commissioner.

16 (b) The members shall be paid a salary set at eighty-seven  
17 per cent of the salary of the director of human resources  
18 development. The members shall be exempt from chapters 76 and  
19 89, but shall be members of the state employees' retirement  
20 system and shall be eligible to receive the benefits of any  
21 state or federal employee benefit program generally applicable





1 to officers and employees of the State, including those under  
2 chapter 87A.

3 § -3 **General powers and duties.** The commission shall  
4 have the following powers and duties:

- 5 (1) To regularly study the regulatory framework and  
6 provisions governing telecommunications carriers and  
7 cable operators to develop and update comprehensive  
8 policies and recommendations for administrative and  
9 statutory changes to further the deployment of  
10 broadband services; promote the interests of the  
11 State; and provide incentives, expedite procedures,  
12 and establish policies to increase investment in and  
13 further the deployment of broadband infrastructure  
14 within the State;
- 15 (2) To further the purposes of this chapter with the  
16 authority expressly conferred by, or reasonably  
17 implied from, this chapter;
- 18 (3) To appoint, without regard to chapter 76, one or more  
19 attorneys independent of the attorney general who  
20 shall act as attorneys for the commission; and to  
21 appoint, with or without regard to chapter 76, as



1 appropriate, staff that are necessary for the  
2 performance of the commission's functions;

3 (4) To submit annually to the governor and the legislature  
4 a written report of its activities and recommendations  
5 for administrative and statutory changes required to  
6 further the purposes of this chapter; and

7 (5) To adopt rules pursuant to chapter 91 necessary to  
8 effectuate the purposes of this chapter."

9 SECTION 3. Section 28-8.3, Hawaii Revised Statutes, is  
10 amended as follows:

11 1. By amending subsection (a) to read:

12 "(a) No department of the State other than the attorney  
13 general may employ or retain any attorney, by contract or  
14 otherwise, for the purpose of representing the State or the  
15 department in any litigation, rendering legal counsel to the  
16 department, or drafting legal documents for the department;  
17 provided that the foregoing provision shall not apply to the  
18 employment or retention of attorneys:

19 (1) By the public utilities commission, the labor and  
20 industrial relations appeals board, and the Hawaii  
21 labor relations board;



- 1           (2) By any court or judicial or legislative office of the  
2           State; provided that if the attorney general is  
3           requested to provide representation to a court or  
4           judicial office by the chief justice or the chief  
5           justice's designee, or to a legislative office by the  
6           speaker of the house of representatives and the  
7           president of the senate jointly, and the attorney  
8           general declines to provide [~~such~~] the representation  
9           on the grounds of conflict of interest, the attorney  
10          general shall retain an attorney for the court,  
11          judicial, or legislative office, subject to approval  
12          by the court, judicial, or legislative office;
- 13          (3) By the legislative reference bureau;
- 14          (4) By any compilation commission that may be constituted  
15          from time to time;
- 16          (5) By the real estate commission for any action involving  
17          the real estate recovery fund;
- 18          (6) By the contractors license board for any action  
19          involving the contractors recovery fund;
- 20          (7) By the office of Hawaiian affairs;



- 1 (8) By the department of commerce and consumer affairs for
- 2 the enforcement of violations of chapters 480 and
- 3 485A;
- 4 (9) As grand jury counsel;
- 5 (10) By the Hawaiian home lands trust individual claims
- 6 review panel;
- 7 (11) By the Hawaii health systems corporation, or its
- 8 regional system boards, or any of their facilities;
- 9 (12) By the auditor;
- 10 (13) By the office of ombudsman;
- 11 (14) By the insurance division;
- 12 (15) By the University of Hawaii;
- 13 (16) By the Kahoolawe island reserve commission;
- 14 (17) By the division of consumer advocacy;
- 15 (18) By the office of elections;
- 16 (19) By the campaign spending commission;
- 17 (20) By the Hawaii tourism authority, as provided in
- 18 section 201B-2.5;
- 19 (21) By the division of financial institutions for any
- 20 action involving the mortgage loan recovery fund; [øø]
- 21 (22) By the communications commission; or



1        [~~22~~] (23) By a department, in the event the attorney  
2            general, for reasons deemed by the attorney general to  
3            be good and sufficient, declines to employ or retain  
4            an attorney for a department; provided that the  
5            governor waives the provision of this section."

6            2. By amending subsection (c) to read:

7            "(c) Every attorney employed by any department on a full-  
8            time basis, except an attorney employed by the public utilities  
9            commission, the communications commission, the labor and  
10           industrial relations appeals board, the Hawaii labor relations  
11           board, the office of Hawaiian affairs, the Hawaii health systems  
12           corporation or its regional system boards, the department of  
13           commerce and consumer affairs in prosecution of consumer  
14           complaints, insurance division, the division of consumer  
15           advocacy, the University of Hawaii, the Hawaii tourism authority  
16           as provided in section 201B-2.5, the Hawaiian home lands trust  
17           individual claims review panel, or as grand jury counsel, shall  
18           be a deputy attorney general."

19           SECTION 4. The communications commission shall work with  
20           other governmental entities and stakeholders to develop at least  
21           two demonstration projects that expedite permitting processes to  
22           provide access to public rights-of-way and public facilities for



1 the construction of broadband infrastructure within forty-five  
2 to ninety day timetables, including:

- 3 (1) The State of Hawaii's broadband technology
- 4 opportunities program grants; and
- 5 (2) A private sector application for state and county
- 6 permits.

7 SECTION 5. No later than January 1, 2013, the  
8 communications commission shall develop and submit to the  
9 legislature:

- 10 (1) A status report on the outcomes of the demonstration
- 11 projects to expedite permitting processes for the
- 12 construction of broadband infrastructure, developed
- 13 pursuant to section 4 of this Act; and
- 14 (2) Recommended legislation to streamline the regulation
- 15 of telecommunications carriers and cable operators in
- 16 the State under the communications commission and
- 17 chapter , Hawaii Revised Statutes, that shall take
- 18 effect by January 1, 2014.

19 SECTION 6. There is appropriated out of the cable  
20 television division subaccount in the compliance resolution fund  
21 established under section 26-9(o), Hawaii Revised Statutes, the  
22 sum of \$ or so much thereof as may be necessary for



1 fiscal year 2012-2013 to carry out the purposes of this Act,  
2 including the hiring of one full-time attorney and one full-time  
3 office assistant, who shall be exempt from chapter 76, Hawaii  
4 Revised Statutes, and two full-time members of the  
5 communications commission.

6 The sum appropriated shall be expended by the department of  
7 commerce and consumer affairs for the purposes of this Act.

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

10 SECTION 8. This Act shall take effect on July 1, 2012.



**Report Title:**

Telecommunications and Cable Television Services; Communications Commission; Appropriation

**Description:**

Establishes the communications commission within the DCCA; directs the commission to regularly study the regulatory framework and provisions governing telecommunications carriers and cable operators to develop and update comprehensive policies and recommendations for administrative and statutory changes to further the deployment of broadband services; promote the interests of the State; and provide incentives, expedite procedures, and establish policies to increase investment in and further the deployment of broadband infrastructure within the State; requires two demonstration projects to expedite permitting for broadband infrastructure; requires 1/1/2013 status report to the legislature on the outcomes of the demonstration projects to expedite permitting processes for the construction of broadband infrastructure, and recommended legislation to streamline regulation of telecommunications carriers and cable operators in the State by 1/1/2014. Appropriates funds. (SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

