

Honolulu, Hawaii

APR 27 , 2018

RE: H.B. No. 2651  
H.D. 2  
S.D. 1  
C.D. 1

Honorable Scott K. Saiki  
Speaker, House of Representatives  
Twenty-Ninth State Legislature  
Regular Session of 2018  
State of Hawaii

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Ninth State Legislature  
Regular Session of 2018  
State of Hawaii

Sirs:

Your Committee on Conference on the disagreeing vote of the House of Representatives to the amendments proposed by the Senate in H.B. No. 2651, H.D. 2, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO WIRELESS BROADBAND FACILITIES,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to upgrade and support next-generation wireless broadband infrastructure throughout Hawaii by establishing a permitting, application, review, and approval process for wireless service providers to install broadband or wireless facilities on State- or county-owned utility poles or install associated utility poles in the right of way.

After careful consideration, your Committee on Conference has amended this measure by:

- (1) Using the term "communications service provider" instead of the term "wireless or communication service provider";

HB2651 CD1 HCCR HMS 2018-3929



- (2) Specifying that this measure does not apply to airport buildings or buildings whose use is principally for public safety purposes;
- (3) Amending the definitions of "applicable codes", "collocate", "micro wireless facilities", "wireless facility", and "wireline backhaul";
- (4) Providing that nothing in this measure must adversely impact the State's fiscal funding;
- (5) Allowing the State or any county to charge for the deployment of small wireless facilities or any associated modified or replaced utility poles used for the collocation of small wireless facilities;
- (6) Authorizing the State or a county to condition the approval of an application, rather than an encroachment permit, under certain circumstances;
- (7) Removing provisions regarding the undergrounding of facilities that pre-date the submission of an application;
- (8) Allowing the State or a county to require a communications service provider to return the right of way to the same or better condition before any damage, instead of simply returning the right of way to its functional equivalence;
- (9) Requiring an applicant to provide:
  - (A) A geographical description of the project area, if required by the State or county;
  - (B) A listing and description of the condition of utility poles, light standards, buildings, and wireless support structures included in the project for the installation, mounting, operation, and placement of small wireless facilities, including an assessment of the identifying information, location, and ownership of the listed utility poles, light standards, buildings, and structures, if required by the State or county; and
  - (C) A description of the equipment associated with the facilities to be installed in the project area,



including radio transceivers, antennas, coaxial or fiber-optic cables, power supplies, and related equipment, and the size and weight of the equipment to be installed on each pole, building, or structure, if required by the State or county;

- (10) Explicitly requiring the State and counties to permit the collocation of small wireless facilities on utility poles;
- (11) Prohibiting the State or county from requiring, but allowing the State or county to negotiate, an agreement with a communications service provider to provide in-kind contributions of goods or services in lieu of or in addition to any rates, charges, terms, and conditions governing the installation of small wireless facilities on State- or county-owned property, such as an agreement to reserve fiber, conduit, or pole space for State or county use;
- (12) Removing the prohibition against requiring applicants to provide more information to obtain a permit than is required of communications service providers that are not wireless providers; provided that an applicant may be required to include construction and engineering drawings and information demonstrating compliance with specified criteria;
- (13) Allowing the State or county to limit the number of small wireless facilities placed on a single utility pole;
- (14) Allowing the State or county to rescind a permit if a small wireless facility is not operational within one year or any agreed-to time beyond one year;
- (15) Modifying the deadlines by which:
  - (A) The State or county must notify the applicant in writing whether the application is complete; and
  - (B) An application will be deemed approved if the State or county fails to approve or deny the application after receipt of the application;
- (16) Modifying the criteria by which a State or county may deny a proposed collocation of a small wireless facility or the modification of a modified or replaced utility pole,



including causing the load-carrying capacity of the State- or county-owned utility pole, building, or structure, to exceed 70 percent as determined by the appropriate state or county agency;

- (17) Modifying the deadlines by which:
  - (A) An applicant may address the deficiencies identified by the State or county in its written denial and resubmit a revised application without paying an additional application fee; and
  - (B) The State or county must approve or deny an application after receipt of a revised application;
- (18) Modifying the scope of subsequent reviews of additional revisions to a revised application to the deficiencies cited in the documentation noting the basis for denial of the revised application; provided, however, that the State or a county may address deficiencies in the original or subsequent revised versions of the application that were missed in good faith and that were not documented in a written denial;
- (19) Allowing the State or county to remove a utility pole if it decides to do so;
- (20) Modifying the deadline by which make-ready work, including any pole replacement, must be completed by the State or county or the communications service provider after written acceptance of the good faith estimate by the applicant;
- (21) Granting the State or county discretion to designate whether it or the communications service provider will perform make-ready work;
- (22) Removing the prohibition that fees for make-ready work must not include costs related to pre-existing or prior damage or noncompliance;
- (23) Removing the provisions allowing the State or county to reserve space for up to 12 months on its utility poles under certain circumstances;



- (24) Deleting the provisions pertaining to rates and fees within the right of way;
- (25) Except under certain conditions, prohibiting the State and counties from:
  - (A) Adopting or enforcing any regulations or requirements or charging additional rates or fees on an entity's placement or operation of communications facilities in the right of way where the entity is already authorized by a cable television franchise to operate throughout the right of way; and
  - (B) Regulating or charging fees for the provision of additional communications services over a cable system authorized under such franchise, unless expressly authorized by applicable law;
- (26) No longer authorizing the State or a county to require a communications service provider to consider installing and operating small wireless facilities and utility poles in rural districts, where economically feasible, particularly in Neighbor Island communities with low- or medium-density concentrations of residents;
- (27) Deleting the requirement that the State or county must conduct an evaluation within one year of the effective date of this measure pertaining to the permitting process in the right of way and submit a report to the Legislature;
- (28) Changing its effective date to July 1, 2018; and
- (29) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Your Committee on Conference finds that a robust broadband network throughout the state is integral to Hawaii's global economic competitiveness. Therefore, this measure encourages the uniform deployment of small wireless facilities within the state.

Although this measure encourages the deployment of next-generation broadband service, your Committee on Conference does not approve of the construction of new utility poles. This measure thus prohibits communications service providers from constructing new poles in the public right of way. The only time that a new pole can



be erected is if it is replacing an existing pole that has been found to be deficient.

It is also the intention of your Committee on Conference to work cooperatively with the counties, and this measure allows them to deploy small wireless facilities in an aesthetically pleasing manner by giving state and county agencies the ability to mandate feasible design standards in an effort to combat blight in the public right of way.

Furthermore, this measure allows the State and county to charge for the deployment of small wireless facilities, including determining an application fee and collocation rate. Also, this measure specifies that the cost of any make-ready work to ensure that a pole can safely accommodate the addition of a small wireless facility be borne entirely by a communications service provider and not the State or county.

Moreover, this measure authorizes the State or county to include in-kind contributions from communications service providers for the expansion and connection of rural areas as conditions to the collocation of small wireless facilities. This provision can be used to incentivize communications service providers to expand 3G, 4G, or 5G wireless coverage to rural areas across Hawaii.

Lastly, your Committee on Conference acknowledges the concerns of the Department of Transportation and the Airport Concessionaires Committee that this measure may directly affect ongoing contracts to deploy WiFi at Daniel K. Inouye International Airport. Therefore, because this provision may also affect negotiations at other state airports, all utility poles on state airport grounds have been exempted from this measure.

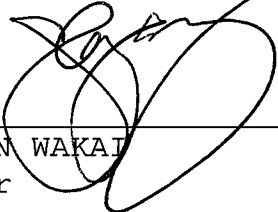
As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of H.B. No. 2651, H.D. 2, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2651, H.D. 2, S.D. 1, C.D. 1.



Respectfully submitted on behalf  
of the managers:

ON THE PART OF THE SENATE

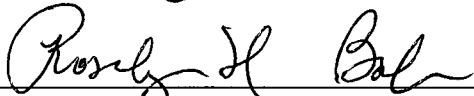
ON THE PART OF THE HOUSE



GLENN WAKAI  
Chair



TAKASHI OHNO  
Co-Chair



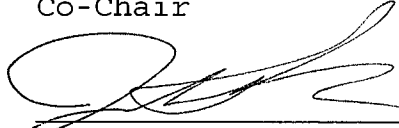
ROSALYN H. BAKER  
Co-Chair



ROY M. TAKUMI  
Co-Chair



MAILE S.L. SHIMABUKURO  
Co-Chair



JARRETT KEOHOKALOOLE  
Co-Chair



Hawaii State Legislature

CCR178-18

Record of Votes of a  
Conference Committee

Bill / Concurrent Resolution No.: <b>HB 2651, HD 2, SD 1</b>	Date/Time: <b>4/27/18 3:10 pm</b>
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The recommendation of the House and Senate managers is to pass with amendments (CD).


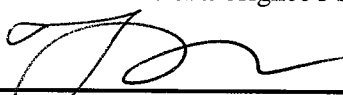
The Committee is reconsidering its previous decision.

<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure	<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.
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Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
WAKAI, Glenn, Chr.	✓				OHNO, Takashi, Co-Chr.	✓			
BAKER, Rosalyn H., Co-Chr.	✓				TAKUMI, Roy M., Co-Chr.	✓			
SHIMABUKURO, Maile S.L., Co-Chr.	✓				KEOHOKALOLE, Jarrett, Co-Chr.	✓			
CHANG, Stanley	✓				AQUINO, Henry J.C.				✓
					WOODSON, Justin H.	✓			
					WARD, Gene				✓
<b>TOTAL</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>TOTAL</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>2</b>

A = Aye      WR = Aye with Reservations      N = Nay      E = Excused

Senate Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted	House Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted
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Senate Lead Chair's or Designee's Signature: 	House Lead Chair's or Designee's Signature: 
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