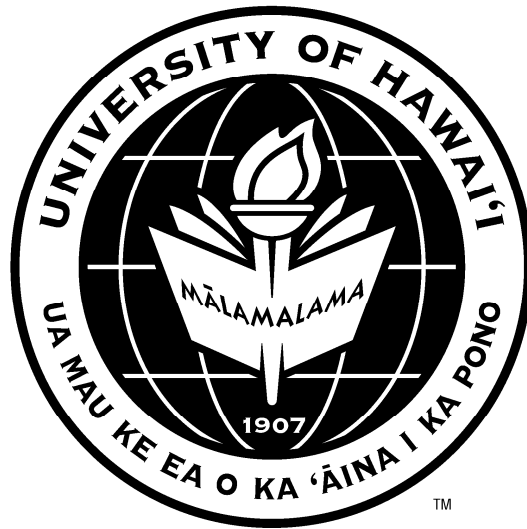


# UNIVERSITY OF HAWAI‘I SYSTEM REPORT



REPORT TO THE 2024 LEGISLATURE

Report on Broadband Infrastructure Development

Act 231, SLH 2022

December 2023

## **REPORT TO THE LEGISLATURE ON BROADBAND INFRASTRUCTURE DEVELOPMENT**

A high-speed Internet connection used to be a nice-to-have, but today, it is a necessity. In 2020, the Coronavirus pandemic highlighted that the Internet is for more than just entertainment; it is *essential* to have continuous access to education, work, healthcare, and other professional services. Since March 2020, the federal government has dedicated over \$65 billion in federal funding to make sure that no one in the country is left behind because of a lack of Internet access. Hawai'i is on track to receive more than \$400 million from this historic investment.

Pursuant to Act 231, Session Law of Hawai'i 2022, the University of Hawai'i and the Hawai'i Broadband and Digital Equity Office shall jointly convene a working group to determine the appropriate governance structure to implement, operate, and maintain broadband infrastructure development in the State. This working group shall:

1. Provide recommendations for an appropriate governing body to oversee and maintain the State's broadband infrastructure assets created or acquired in whole or in part by federal broadband grant funds;
2. For the State's broadband infrastructure assets, consider the technical, operational, maintenance, and financial sustainability of those broadband infrastructure assets to ensure long-term availability of broadband services that are robust, resilient and affordable for all residents;
3. Consult with subject matter experts in finance, telecommunications, regulatory bodies, and any other areas as it deems necessary to maintain best practices in support of robust, resilient and affordable broadband infrastructure; and
4. Identify revenue sources to sustain the operation, maintenance and capital refresh costs of broadband infrastructure assets, that may include landing fees, fiber cross-connects, and indefeasible rights of use (IRUs) for broadband infrastructure components. Revenue received shall be used to support the long-term sustainability of the assets, including consideration for capital refresh investments.

### **Hawai'i Act 231 Broadband Working Group (Working Group)**

The State convened the first Act 231 Broadband Working Group meeting on March 30, 2023. The meeting was fully noticed under the Sunshine Law, and was convened via Zoom, with a handful of participants present in person at the University of Hawai'i (UH), Information Technology Center. The meeting included representatives of UH, Department of Business, Economic Development, and Tourism (DBEDT), Department of Budget and Finance (B&F), Department of Commerce and Consumer Affairs (DCCA), Department of Accounting and General Services (DAGS), Department of Health (DoH), City and County of Honolulu, Hawai'i County, Kaua'i County, Maui County, and the Lt. Governor. A meeting recording is posted at the [UH broadband site](#), along with meeting materials. The Working Group will meet at times to consider the likely nature of assets to be held by the state, to recommend an appropriate structure and governance strategy to hold and manage the state-owned broadband infrastructure assets.

In order to include broad industry input in the process, the Working Group organized an industry advisory group that included representatives from key telecommunications providers and large Hawai'i-based industries. Recommendations for members was solicited from members of the Working Group, and from representatives of the broadband industry in Hawai'i. A list of the advisory group members is attached - Attachment A. The industry advisory group was convened by State broadband staff to collect and assemble inputs and recommendations for consideration by the Working Group. The industry advisory group participants were identified, and an initial meeting was held on July 21, 2023, to brief members on the current status of the broadband investment effort. The industry advisory group included representatives from all major wired internet service providers and wireless carriers, local colocation and Internet exchange operators, and selected large enterprise operators. A second meeting was held on August 11, 2023, and included an update on the Coronavirus Capital Projects Fund (CPF) – Hawai'i Subsea Middle Mile Program RFP, as well as discussion on suggestions for additional industry advisory group members, the types of broadband infrastructure assets which may arise, and recommendations on managing the assets and future staffing. The industry advisory group members agreed that further consultation could occur via e-mail with meetings to be held if there was sufficient interest by any number of members.

Currently, broadband assets that will require management will result from the CPF — Hawai'i Subsea Middle Mile Program. The Hawai'i Subsea Middle Mile Program will help to fund the construction of a new subsea inter-island fiber system. This is the first of a two-part proposed subsea inter-island system, consisting of the northern path defined under the state's inter-island system desktop study. Initial pre-permitting work has already been completed, with candidate beach manhole locations, cable landing station sites, and fiber routes identified. Once the permitting process is complete, system construction can begin. Permitting and construction will take at least three years, including constructing "front haul" facilities (i.e., where submarine fiber meets cable landing station). The system is expected to be ready for service by late-2026.

While there is the potential for broadband infrastructure assets to be created under other federal broadband programs, no additional definite assets have been identified at this point.

To date, the Working Group has discussed the creation of a new Hawai'i Broadband Infrastructure Authority run by an Executive Director chosen by a Board of Directors. This Authority would hold and manage the broadband-related assets and funds. There was also discussion about whether the proposed Authority's duties could fall within an already existing state entity, such as the Hawai'i Technology Development Corporation. Currently, the proposed Authority would be a new entity, administratively attached to the Department of Commerce and Consumer Affairs. The Authority would need to be able to collect revenue, hold assets, and enter into contracts. The Working Group advised keeping the staffing of the Authority small to minimize overhead costs. Possible positions could include an executive director, a broadband infrastructure analyst, and a broadband infrastructure administrative assistant. The Working Group also discussed the need for a special fund to hold the monetary assets needed for the administrative costs of the Authority.

As such, a measure was drafted and routed to the advisory group in early December. The proposed measure includes:

1. Establishing the Hawai'i Broadband Infrastructure Authority to oversee and manage public advanced communications technology infrastructure assets. The Authority's Board of Directors is comprised of fifteen members: three members who possess expertise in advanced communications technology infrastructure or communication service; one member representing rural communities; two members who possess expertise in banking or financial lending; one member who possesses expertise in education system needs; and one member who possesses expertise in telehealth delivery and telehealth system needs. There will be seven ex-officio voting members, or designees: the Director of DCCA; the Director of DBEDT, the President of the UH; the State Director of Finance; the State Chief Information Officer; the Chairperson of DHHL; and the Strategic Broadband Coordinator.
2. Establishing the Hawai'i Broadband Infrastructure Authority Special Fund administered by the Authority to retain all receipts, assets, and revenues. Funds in the Hawai'i Broadband Infrastructure Authority Special Fund will be expended for administrative, operational, and personnel costs related to the Authority; expanding broadband infrastructure including renewing or upgrading the infrastructure system; and additional investments which would support broadband efforts in Hawai'i. This could include digital equity and digital literacy programs.
3. Appropriating general funds in fiscal year 2024 - 2025 to fund three full-time equivalent (3.00 FTE) permanent positions: Hawai'i Broadband Infrastructure Authority Executive Director, Broadband Infrastructure Analyst, and Broadband Infrastructure Administrative Assistant.

As further feedback from the advisory group is received, it will be brought to the Act 231 Broadband Working Group for consideration. The next Act 231 Broadband Working Group meeting will occur after the CPF — Hawai'i Subsea Middle Mile Program contract is finalized, as it will determine what assets the state will hold. Once the recommendations are approved by the Act 231 Broadband Working Group, an updated report and recommended legislation will be submitted to the Legislature.

**Attachment A**

**ADVISORY GROUP  
ACT 231, SLH22  
BROADBAND WORKING GROUP**

<b>Organization</b>	<b>First Name</b>	<b>Last Name</b>
ATT	Elizabeth	Songvilay
Charter	Rebecca	Lieberman
DBEDT	Chung	Chang
DISA PAC	Miyi	Chung
DRFortress	Fred	Rodi
DRFortress	Nathan	Osada
Hawaiian Tel	Steve	Golden
HECO	Christian	Whitney
HECO	Jason	Benn
HMSA	Rick	Hopfer
HMSA	Jennifer	Diesman
HMSA	Robert	Redding
KIUC	Cameron	Kruse
Office of the Lieutenant Governor	Michele	Kurihara-Klein
Lumen	Marjorie	Clemente
Servpac	Richard	Zheng
Servpac	Christine	Dimovska
Servpac	Myoung	Oh
T-Mobile	Alex	Mcintosh
T-Mobile	Susan	Lipper
University of Hawaii System	Garret	Yoshimi
Verizon	Michael	Bagley

# A BILL FOR AN ACT

RELATING TO BROADBAND SERVICE INFRASTRUCTURE.

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

## PART I

SECTION 1. The legislature finds that the provision of equitable and robust access to broadband continues to be among the State's most pressing challenges. Hawaii needs to invest in open access, carrier-neutral cable landing infrastructure to attract transpacific fiber optic cable companies and expand its fiber connectivity to the world and throughout the islands, particularly in rural, underserved, and unserved communities, to achieve the digital equity necessary to build a resilient digital economy. Attracting partners with the necessary technical expertise and resources can develop Hawaii into a strategic communications and knowledge hub in the Pacific. This hub would incorporate a robust global communications network and provide cloud platforms to establish next generation applications, such as artificial intelligence and smart communities, in Hawaii.

The legislature further finds that to build a robust broadband infrastructure, the State must act quickly to take advantage of various federal and private funds available to the State. For example:

- (1) \$149,500,000 from the Broadband Equity, Access and Deployment Program;
- (2) \$115,000,000 from the Coronavirus Capital Project Fund;
- (3) Up to \$90,000,000 from the Tribal Broadband Connectivity Program;
- (4) \$571,000 from the Digital Equity Act Planning and Capacity Program; and
- (5) \$37,400,000 from the competitive Middle Mile Grant Program.

Accordingly, the purpose of this Act is to ensure that the State takes full advantage of available funds to build the broadband infrastructure necessary to sustain interconnectivity throughout islands by:

- (1) Establishing a Hawaii broadband infrastructure authority to oversee broadband infrastructure in the State;
- (2) Ensuring that the Hawaii broadband infrastructure authority captures all the available federal funding to the State and ensures that funding efforts among all state agencies are coordinated; and
- (3) Appropriating funds for the establishment of the authority and for broadband infrastructure across the State.

PART II

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER**

**HAWAII BROADBAND INFRASTRUCTURE AUTHORITY**

§ -1 **Short title.** This chapter may be cited as the Hawaii Broadband Infrastructure Authority Act.

§ -2 **Definitions.** As used in this chapter:

"Advanced communications technology infrastructure" means any communications technology infrastructure or infrastructure improvement that expands the deployment of, or improves the quality of, broadband availability and broadband service coverage.

"Authority" means the Hawaii broadband infrastructure authority.

"Board" means the Hawaii broadband infrastructure authority board.

"Broadband service" shall have the same meaning as "broadband access or broadband service" in section 440J-1.

"Community Anchor Institution" means an entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support



organization that facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals.

"Project" means real property, personal property, equipment, fixtures, materials, wires, cables, labor, and other improvements necessary and proper for the provision of advanced communications technology infrastructure.

§ -3 **State connectivity goals.** The goals of the State related to connectivity are that:

- (1) High-speed connectivity be universally available in the State to all residents, businesses, and community anchor institutions;
- (2) There be secure, affordable, reliable, competitive, and sustainable forward-looking advanced communications technology infrastructure that meets current and future needs;
- (3) All residents, businesses, and institutions in the State are able to take full advantage of the economic, health, educational, and other opportunities available through connectivity services; and
- (4) Existing public and private infrastructure be used effectively and efficiently in the public interest to provide advanced communications technology infrastructure in all areas of the State.

§ -4 Hawaii broadband infrastructure authority;

**establishment; board; membership.** (a) The Hawaii broadband infrastructure authority is established as a body corporate and politic and a public instrumentality of the State, to oversee and manage public advanced communications technology infrastructure. The exercise of the powers conferred by this chapter to the authority is deemed and held to be the performance of essential governmental functions. The authority shall be administratively attached to the department of commerce and consumer affairs.

(b) The authority shall consist of a board composed of the following members:

(1) The following eight members appointed by the governor in accordance with section 26-34, except as provided in -5:

(A) Three members who possess expertise in advanced communications technology infrastructure or communications service, including expertise in network design, network operations, and middle mile infrastructure;

(B) One member representing rural communities in the State;

(C) Two members who possesses expertise in banking or financial lending, including expertise in the

- provision of loans or other capital investments for infrastructure deployment in the State;
- (D) One member who possesses expertise in education system needs; and
  - (E) One member who possesses expertise in telehealth delivery and telehealth system needs; and
- (2) Seven ex officio voting members, or their designees, as follows:
- (A) The director of commerce and consumer affairs;
  - (B) The director of business, economic development, and tourism;
  - (C) The president of the University of Hawaii;
  - (D) The director of finance;
  - (E) The chief information officer;
  - (F) The chairperson of the department of hawaiian home lands; and
  - (G) The strategic broadband coordinator.

§ -5 **Terms; reappointments; vacancies; chair.** (a) The appointed members shall serve three-year staggered terms to be determined by the governor; provided that the initial appointments shall be as follows:

- (1) Two members shall serve a one-year term;
- (2) Three members shall serve a two-year term; and
- (3) Three members shall serve a three-year term.

Members appointed by the governor shall be eligible for reappointment. If a member appointed by the governor fails to serve until the expiration of the member's term, the governor may appoint a replacement member for the remainder of that member's term.

(b) The board shall select one member to serve as chair of the authority.

§ -6 **Executive director.** Upon the recommendation of the board, the governor shall appoint an executive director of the authority as provided in section 26-34. The executive director shall serve a four-year term and be eligible for reappointment. The executive director shall manage the authority's programs, services, and staff and shall perform other duties the authority considers appropriate. The executive director shall report to the board on matters and form and at times as defined in the authority's bylaws and rules.

§ -7 **Officers; quorum.** The authority may elect a secretary and treasurer. Eight members of the board shall constitute a quorum, and the affirmative vote of six members shall be necessary for any action of the authority.

§ -8 **Indemnification.** A member of the board, while acting within the scope of this chapter, shall not be subject to any personal liability resulting from the exercise or carrying out of any of the authority's purposes or

powers. Each member of the board shall be indemnified by the authority against expenses actually and necessarily incurred by the member in connection with the defense of any action or proceeding in which the member is made a party by reason of being or having been a member of the board and against any final judgment rendered against the member in that action or proceeding.

§ -9 **Conflicts.** A member of the authority shall not participate in any decision on any contract entered into by the authority under this chapter if that member has any interest, direct or indirect, in any firm, partnership, corporation, or association that is party to the contract. The interest shall be disclosed to the authority in writing and shall be set forth in the minutes of the authority. Members shall file an annual conflict of interest disclosure report with the executive director and in a form to be determined in its rules.

§ -10 **Powers and duties of the authority.** (a) The authority may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers;

- (4) Adopt bylaws and rules in accordance with chapter 91 for its organization, internal management, and to carry into effect its purposes, powers, and programs;
- (5) Notwithstanding any law to the contrary, establish and collect fees for the use of any project, equipment, or services and for administrative expenses incurred by the authority;
- (6) Acquire real or personal property including rights of way or easements, on either a temporary or long-term basis by gift, purchase, transfer, foreclosure, lease or otherwise; improve, hold, sell with or without public bidding, assign, lease, rent, encumber, mortgage or otherwise dispose of any real or personal property, any interest in real or personal property or mortgage interests owned or in its control, custody or possession; and release or relinquish any right, title claim, lien, interest, easement or demand, however acquired, including upon threat of foreclosure;
- (7) Prepare, plan, improve, equip, maintain, reconstruct, and operate projects, attendant facilities, and infrastructure, including promoting the landing of trans-Pacific submarine cable with the development of a shared access cable station and associated

terrestrial connectivity to reduce barriers to fiber landing in Hawaii;

(8) Incur debts;

(9) Accept federal funds or other assistance and coordinate the use of federal funding available to all agencies;

(10) Contract for or accept revenues, compensation, proceeds, and gifts or grants in any form from any public agency or any other source;

(11) Fix and collect fees;

(12) Enter into agreements with and to accept loans, aid, contributions, grants and the cooperation or assistance of the United States, or any agency of the United States, or of the State or any agency or governmental subdivision in furtherance of the purposes of this chapter, including the development and financing of a project, and to do all things necessary in order to avail the authority of those agreements, loans, aid, contributions, grants, and cooperation;

(13) Coordinate and oversee the development of advanced communications technology infrastructure, including the reduction of barriers to fiber landing in Hawaii;

(14) Manage or operate real or personal property;

- (15) Appear on the authority's own behalf before boards, commissions, departments or agencies of a municipality, the State, or the United States;
- (16) Lease or rent facilities or equipment used to transmit voice, data, or video signals;
- (17) Invest any funds not needed for immediate use, including any funds held in reserve, in property or in securities in which fiduciaries in the State may legally invest funds; and
- (18) Hire staff.

(b) In addition to other powers conferred upon it, the authority may do all things necessary and convenient to carry out the powers expressly provided in this chapter.

**§ -11 Rights of way; projects and facilities.**

(a) The authority may develop, lease or otherwise acquire, own, hold, dispose of and encumber conduit, fiber, rights of way, and other real and personal property, inclusive of assets under indefeasible rights of use agreement, related to broadband advanced communications technology infrastructure that shall be necessary or convenient to the fulfillment of such purposes.

(b) The authority may prepare or cause to be prepared plans, specifications, designs, and estimates of costs for the construction and equipping of a project and attendant facilities



and from time to time modify or cause to be modified those plans, specifications, designs, or estimates.

(c) The authority may contract to construct, acquire, alter, repair, reconstruct, rehabilitate, improve, and equip a project and necessary and usual attendant facilities.

**§ -12 Legislative oversight.** (a) No later than twenty days prior to the convening of the regular session of 2025, and annually thereafter, the authority shall submit a report to the legislature with the following information:

- (1) The budget of the authority;
- (2) Details of funding received by the federal government or other sources, including amounts, deadlines for use, and eligible uses of funds;
- (3) Documentation of the activities of the authority, including a detailed description of the progress toward the state connectivity goals in section -3;
- (4) A listing of any assets or investments of money in the authority, while maintaining confidentiality for organizations working with the authority; and
- (5) An analysis of the availability of communications services and advanced communications technology infrastructure, including an analysis of the competitive market in the State for broadband services and advanced communications technology infrastructure,

and whether the broadband services provided in the State are reasonably comparable to services provided regionally and nationwide.

(b) As part of the report required under subsection (a), the authority shall include findings and recommendations following its review of the effectiveness of the authority in furthering the purposes of this chapter, including:

- (1) An analysis of whether the authority has fulfilled its intended purpose under this chapter;
- (2) An analysis of whether the activities of the authority should continue for a specified period of time and any recommendations, including proposed legislation, for changes to the powers and duties of the authority to better further the purposes of this chapter; and
- (3) An analysis of whether the activities of the authority should be terminated and the laws governing the authority repealed within a specified time frame and any recommendations, including proposed legislation, necessary to facilitate an orderly transition following the termination of activities of the authority, including the appropriate disposition of the assets of the authority.

**§ -13 Hawaii broadband infrastructure special fund.**

(a) There is created the Hawaii broadband infrastructure

authority special fund to be administered by the authority. All receipts and revenues of the authority shall be deposited in the Hawaii broadband infrastructure special fund.

(b) Moneys in the Hawaii broadband infrastructure special fund shall be used for:

- (1) Administrative, operational, and personnel cost related to the Hawaii broadband infrastructure authority
- (2) Expanding broadband infrastructure including renewal or upgrading the infrastructure system.
- (3) Additional investments to support broadband in Hawaii.

(c) Expenditures from the Hawaii broadband infrastructure special fund administered by the authority may be made by the authority without appropriation or allotment of the legislature; provided that no expenditure shall be made from and no obligation shall be incurred against any special fund in excess of the amount standing to the credit of the fund for any purpose for which the fund may not be lawfully expended.

### PART III

SECTION 6. In accordance with section 9 of article VII, of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this part will cause the state general fund expenditure ceiling for fiscal year 2024-2025

to be exceeded by \$ \_\_\_\_\_, or \_\_\_\_\_ per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this part is necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ \_\_\_\_\_ for fiscal year 2024-2025 to fund three full-time equivalent (3.00 FTE) permanent positions (Hawaii broadband infrastructure authority executive director, broadband infrastructure analyst, and broadband infrastructure administrative assistant), exempt from chapter 76, Hawaii Revised Statutes, for the operation and administration of the Hawaii broadband infrastructure authority.

The sum appropriated shall be expended by the Hawaii broadband infrastructure authority for the purposes of this Act.

#### PART IV

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

SECTION 9. This Act shall take effect on July 1, 2024.

**Report Title:**

Hawaii Broadband Infrastructure Authority; UH; Appropriation;  
General Fund Expenditure Ceiling Exceeded

**Description:**

Establishes the Hawaii broadband infrastructure authority.  
Establishes three full-time equivalent (3.0 FTE) positions.  
Appropriates state funds to the Hawaii broadband infrastructure  
authority. Declares that general fund expenditure ceiling will  
be exceeded.

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

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