

JAN 25 2017

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# A BILL FOR AN ACT

RELATING TO TECHNOLOGY.

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

1           SECTION 1. The legislature finds that the efficient  
2 deployment of broadband infrastructure and technology is  
3 important to the future global connectivity and economic  
4 viability of our island state. Among the benefits afforded by  
5 an advanced broadband infrastructure system are increased and  
6 enhanced educational opportunities, telehealth capacity, safety  
7 and civil defense communications, economic competitiveness,  
8 consumer privileges, and tourism services.

9           To ensure that consumers throughout the State may benefit  
10 from these services as soon as possible, and to provide wireless  
11 providers with a fair and predictable process for the deployment  
12 of small wireless facilities, the legislature finds that laws  
13 are needed to specify the extent and way in which the deployment  
14 of small wireless facilities and small wireless facilities  
15 networks is regulated in the State.



1           The purpose of this Act is to facilitate the deployment of  
2 high-speed broadband infrastructure in Hawaii, including small  
3 wireless facilities, by:

4           (1) Establishing limits on the State's and counties'  
5 authority to prohibit, regulate, or charge for the co-  
6 location of small wireless facilities or small  
7 wireless facilities networks;

8           (2) Specifying certain sites where small wireless  
9 facilities or small wireless facilities networks may  
10 be located, including conditions and maximum fees for  
11 location and co-location; and

12           (3) Establishing an application process for co-location.

13           SECTION 2. Chapter 27, Hawaii Revised Statutes, is amended  
14 by adding a new section to part VII to be appropriately  
15 designated and to read as follows:

16           "§27-     Siting of small wireless facilities and small  
17 wireless facilities networks. (a) The State shall not  
18 prohibit, regulate, or charge for the co-location of small  
19 wireless facilities or small wireless facilities networks,  
20 except as provided in this section. Small wireless facilities  
21 and small wireless facilities networks shall be deemed permitted



1 uses, and no special use or conditional use permit shall be  
2 required, for their location on:

- 3       (1) All public rights-of-way and property;
- 4       (2) All land in the rural or agricultural districts  
5           pursuant to chapter 205; and
- 6       (3) All land in the urban district pursuant to chapter  
7           205.

8       (b) Small wireless facilities and small wireless  
9 facilities networks may require special use or conditional use  
10 permits where such facilities are located on land in the  
11 conservation district pursuant to chapter 205.

12       (c) Wireless providers shall have the right to place small  
13 wireless facilities on state utility poles, state structures,  
14 and light standards. The State may require building permits or  
15 other permits for the co-location of small wireless facilities  
16 and small wireless facilities networks; provided that permits  
17 are of general applicability. The State shall receive  
18 applications to process and issue permits and approvals in  
19 accordance with applicable law, including section 27-45 and  
20 chapter 269, and subject to the following requirements:



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- 1        (1) Applicants shall not be required to perform any  
2        services, including restoration work not directly  
3        related to the co-location, to obtain approval for  
4        applications;
- 5        (2) Applications may be denied only if the application  
6        does not meet applicable laws or rules regarding  
7        construction in the public rights-of-way or building  
8        or electrical codes or standards; provided that codes  
9        and standards are of general applicability. The State  
10       shall document the basis for any application denial,  
11       including the specific code provisions or standards on  
12       which the denial was based; and
- 13       (3) An applicant for a small wireless facilities network  
14       involving no greater than twenty-five individual small  
15       wireless facilities of a substantially similar design  
16       shall be permitted, upon request by the applicant, to  
17       file a consolidated application and receive a single  
18       permit for the installation, construction,  
19       maintenance, and repair of a small wireless facilities  
20       network instead of filing separate applications for  
21       each individual small wireless facility.



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1        (d) A wireless provider or a wireless provider's licensed  
2 contractor may co-locate small wireless facilities and small  
3 wireless facilities networks on state structures, state utility  
4 poles, and light standards located within the land identified in  
5 subsection (a) (1), subject to reasonable rates, terms, and  
6 conditions. The reasonable annual recurring rate to co-locate a  
7 small wireless facility on a state utility pole shall not exceed  
8 the rate produced by applying the formula adopted by the Federal  
9 Communications Commission for telecommunication pole attachments  
10 in title 47 Code of Federal Regulations section 1.1409(e) (2).

11        (e) The co-location of small wireless facilities and small  
12 wireless facilities networks on state structures located within  
13 the property identified in subsection (a) (2) and (3) shall be  
14 subject to reasonable rates, terms, and conditions. The State  
15 may not charge more for annual recurring co-location rates than  
16 the lesser of:

17        (1) The amount charged for utility pole co-location as set  
18        forth in subsection (d);

19        (2) The projected cost to the State resulting from the co-  
20        location; or

21        (3) \$500 annually.



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1        (f) The State shall authorize a wireless provider or  
2 wireless provider's licensed contractor to maintain, repair, or  
3 replace the provider's small wireless facilities and small  
4 wireless facilities networks with facilities that are  
5 substantially the same, or smaller, in size, weight, and height  
6 as the existing facilities."

7        SECTION 3. Section 27-41.1, Hawaii Revised Statutes, is  
8 amended by adding six new definitions to be appropriately  
9 inserted and to read as follows:

10        "Light standard" means a street light, light pole, lamp  
11 post, street lamp, lamp standard, or other raised source of  
12 light located inside the right-of-way of a public road or  
13 highway or utility easement.

14        "Small wireless facilities" means wireless facilities that  
15 meet the following qualifications:

16        (1) Each individual antenna, excluding the associated  
17 equipment, is individually no more than three cubic  
18 feet in volume, and all antennas on the structure  
19 total no more than six cubic feet in volume; and



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1        (2) All other wireless equipment associated with the  
2        structure, excluding cable runs for the connection of  
3        power and other services, do not cumulatively exceed:

4        (A) Twenty-eight cubic feet for co-locations on all  
5        non-pole structures, including but not limited to  
6        buildings and water tanks, that can support fewer  
7        than three providers;

8        (B) Twenty-one cubic feet for co-locations on all  
9        pole structures, including but not limited to  
10       light poles, traffic signal poles, and utility  
11       poles, that can support fewer than three  
12       providers;

13       (C) Thirty-five cubic feet for non-pole co-locations  
14       that can support at least three providers; or

15       (D) Twenty-eight cubic feet for pole co-locations  
16       that can support at least three providers.

17       "Small wireless facilities network" means a collection of  
18       interrelated small wireless facilities designed to deliver  
19       wireless communications service.

20       "Utility pole" means a pole or similar structure that is  
21       used in whole or in part for communications service, electric



1 service, lighting, traffic control, signage, or similar  
2 functions.

3 "Wireless provider" means a person or entity that is:

4 (1) A provider of wireless service;

5 (2) A wireless telecommunications service provider, as  
6 defined in section 269-16.93(d); or

7 (3) Authorized in accordance with chapter 269 to provide  
8 facilities based telecommunications services in the  
9 State, and builds, installs, operates, or maintains  
10 facilities and equipment used to provide wireless  
11 service.

12 "Wireless service" means any fixed or mobile services  
13 provided using small wireless facilities."

14 SECTION 4. Section 46-4, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§46-4 County zoning.** (a) This section and any  
17 ordinance, rule, or regulation adopted in accordance with this  
18 section shall apply to lands not contained within the forest  
19 reserve boundaries as established on January 31, 1957, or as  
20 subsequently amended.



1           Zoning in all counties shall be accomplished within the  
2 framework of a long-range, comprehensive general plan prepared  
3 or being prepared to guide the overall future development of the  
4 county. Zoning shall be one of the tools available to the  
5 county to put the general plan into effect in an orderly manner.  
6 Zoning in the counties of Hawaii, Maui, and Kauai means the  
7 establishment of districts of such number, shape, and area, and  
8 the adoption of regulations for each district to carry out the  
9 purposes of this section. In establishing or regulating the  
10 districts, full consideration shall be given to all available  
11 data as to soil classification and physical use capabilities of  
12 the land to allow and encourage the most beneficial use of the  
13 land consonant with good zoning practices. The zoning power  
14 granted herein shall be exercised by ordinance which may relate  
15 to:

- 16           (1) The areas within which agriculture, forestry,  
17                industry, trade, and business may be conducted;
- 18           (2) The areas in which residential uses may be regulated  
19                or prohibited;
- 20           (3) The areas bordering natural watercourses, channels,  
21                and streams, in which trades or industries, filling or



- 1            dumping, erection of structures, and the location of  
2            buildings may be prohibited or restricted;
- 3            (4)    The areas in which particular uses may be subjected to  
4            special restrictions;
- 5            (5)    The location of buildings and structures designed for  
6            specific uses and designation of uses for which  
7            buildings and structures may not be used or altered;
- 8            (6)    The location, height, bulk, number of stories, and  
9            size of buildings and other structures;
- 10           (7)    The location of roads, schools, and recreation areas;
- 11           (8)    Building setback lines and future street lines;
- 12           (9)    The density and distribution of population;
- 13           (10)   The percentage of a lot that may be occupied, size of  
14           yards, courts, and other open spaces;
- 15           (11)   Minimum and maximum lot sizes; and
- 16           (12)   Other regulations the boards or city council find  
17           necessary and proper to permit and encourage the  
18           orderly development of land resources within their  
19           jurisdictions.
- 20           The council of any county shall prescribe rules,  
21           regulations, and administrative procedures and provide personnel



1 it finds necessary to enforce this section and any ordinance  
2 enacted in accordance with this section. The ordinances may be  
3 enforced by appropriate fines and penalties, civil or criminal,  
4 or by court order at the suit of the county or the owner or  
5 owners of real estate directly affected by the ordinances.

6 Any civil fine or penalty provided by ordinance under this  
7 section may be imposed by the district court, or by the zoning  
8 agency after an opportunity for a hearing pursuant to chapter  
9 91. The proceeding shall not be a prerequisite for any  
10 injunctive relief ordered by the circuit court.

11 Nothing in this section shall invalidate any zoning  
12 ordinance or regulation adopted by any county or other agency of  
13 government pursuant to the statutes in effect prior to July 1,  
14 1957.

15 The powers granted herein shall be liberally construed in  
16 favor of the county exercising them, and in such a manner as to  
17 promote the orderly development of each county or city and  
18 county in accordance with a long-range, comprehensive general  
19 plan to ensure the greatest benefit for the State as a whole.  
20 This section shall not be construed to limit or repeal any  
21 powers of any county to achieve these ends through zoning and



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1 building regulations, except insofar as forest and water reserve  
2 zones are concerned and as provided in subsections (c) and (d).

3 Neither this section nor any ordinance enacted pursuant to  
4 this section shall prohibit the continued lawful use of any  
5 building or premises for any trade, industrial, residential,  
6 agricultural, or other purpose for which the building or  
7 premises is used at the time this section or the ordinance takes  
8 effect; provided that a zoning ordinance may provide for  
9 elimination of nonconforming uses as the uses are discontinued,  
10 or for the amortization or phasing out of nonconforming uses or  
11 signs over a reasonable period of time in commercial,  
12 industrial, resort, and apartment zoned areas only. In no event  
13 shall such amortization or phasing out of nonconforming uses  
14 apply to any existing building or premises used for residential  
15 (single-family or duplex) or agricultural uses. Nothing in this  
16 section shall affect or impair the powers and duties of the  
17 director of transportation as set forth in chapter 262.

18 (b) Any final order of a zoning agency established under  
19 this section may be appealed to the circuit court of the circuit  
20 in which the land in question is found. The appeal shall be in  
21 accordance with the Hawaii rules of civil procedure.



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1           (c) Each county may adopt reasonable standards to allow  
2 the construction of two single-family dwelling units on any lot  
3 where a residential dwelling unit is permitted.

4           (d) Neither this section nor any other law, county  
5 ordinance, or rule shall prohibit group living in facilities  
6 with eight or fewer residents for purposes or functions that are  
7 licensed, certified, registered, or monitored by the State;  
8 provided that a resident manager or a resident supervisor and  
9 the resident manager's or resident supervisor's family shall not  
10 be included in this resident count. These group living  
11 facilities shall meet all applicable county requirements not  
12 inconsistent with the intent of this subsection, including but  
13 not limited to building height, setback, maximum lot coverage,  
14 parking, and floor area requirements.

15           (e) Neither this section nor any other law, county  
16 ordinance, or rule shall prohibit the use of land for employee  
17 housing and community buildings in plantation community  
18 subdivisions as defined in section 205-4.5(a)(12); in addition,  
19 no zoning ordinance shall provide for the elimination,  
20 amortization, or phasing out of plantation community  
21 subdivisions as a nonconforming use.



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1 (f) Neither this section nor any other law, county  
2 ordinance, or rule shall prohibit the use of land for medical  
3 marijuana production centers or medical marijuana dispensaries  
4 established and licensed pursuant to chapter 329D; provided that  
5 the land is otherwise zoned for agriculture, manufacturing, or  
6 retail purposes.

7 (g) Neither this section nor any other county law,  
8 ordinance, or rule shall prohibit the installation of small  
9 wireless facilities or small wireless facilities networks, as  
10 defined in section 27-41.1, except as provided in this  
11 subsection:

12 (1) Small wireless facilities and small wireless  
13 facilities networks shall be deemed permitted uses,  
14 and no special use or conditional use permit shall be  
15 required, for their location on:

16 (A) All public rights-of-way and property;

17 (B) All land in the rural or agricultural districts  
18 pursuant to chapter 205; and

19 (C) All land in the urban district pursuant to  
20 chapter 205;



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1       (2) Small wireless facilities and small wireless  
2       facilities networks may require special use or  
3       conditional use permits where such facilities are  
4       located in the conservation district pursuant to  
5       chapter 205;

6       (3) Wireless providers shall have the right to place small  
7       wireless facilities on county-owned utility poles,  
8       structures, and light standards, as defined in section  
9       27-41.1. Any county may require building permits or  
10       other permits for the co-location of small wireless  
11       facilities and small wireless facilities networks;  
12       provided that permits are of general applicability. A  
13       county shall receive applications to process and issue  
14       permits and approvals in accordance with applicable  
15       law, including section 46-89 and chapter 269, and  
16       subject to the following requirements:

17       (A) Applicants shall not be required to perform any  
18       services, including restoration work not directly  
19       related to the co-location, to obtain approval  
20       for applications;



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1           (B) Applications may be denied only if the  
2           application does not meet applicable laws or  
3           rules regarding construction in the public  
4           rights-of-way or building or electrical codes or  
5           standards; provided that codes and standards are  
6           of general applicability. A county shall  
7           document the basis for any application denial,  
8           including the specific code provisions or  
9           standards on which the denial was based; and  
10          (C) An applicant for a small wireless facilities  
11          network involving no greater than twenty-five  
12          individual small wireless facilities of a  
13          substantially similar design shall be permitted,  
14          upon request by the applicant, to file a  
15          consolidated application and receive a single  
16          permit for the installation, construction,  
17          maintenance, and repair of a small wireless  
18          facilities network instead of filing separate  
19          applications for each individual small wireless  
20          facility;



- 1        (4) A wireless provider or a wireless provider's licensed  
2        contractor may co-locate small wireless facilities and  
3        small wireless facilities networks on county  
4        structures, utility poles, and light standards located  
5        within the land identified in paragraph (1) (A),  
6        subject to reasonable rates, terms, and conditions.  
7        County utility pole co-location requests shall be  
8        processed in the same manner as permit applications  
9        under paragraph (3). The reasonable annual recurring  
10       rate to co-locate a small wireless facility on a  
11       county utility pole shall not exceed the rate produced  
12       by applying the formula adopted by the Federal  
13       Communications Commission for telecommunication pole  
14       attachments in title 47 Code of Federal Regulations  
15       section 1.1409(e) (2);
- 16       (5) The co-location of small wireless facilities and small  
17       wireless facilities networks on state structures  
18       located within the property identified in paragraph  
19       (1) (B) and (C) shall be subject to reasonable rates,  
20       terms, and conditions. A county may not charge more



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1 for annual recurring co-location rates than the lesser

2 of:

3 (A) The amount charged for utility pole co-location

4 as set forth in paragraph (4);

5 (B) The projected cost to the county resulting from

6 the co-location; or

7 (C) \$500 annually; and

8 (6) Counties shall authorize a wireless provider or

9 wireless provider's licensed contractor to maintain,

10 repair, or replace the provider's small wireless

11 facilities and small wireless facilities networks with

12 facilities that are substantially the same, or

13 smaller, in size, weight, and height as the existing

14 facilities.

15 For the purposes of this subsection, "wireless provider"

16 shall have the same meaning as in section 27-41.1."

17 SECTION 5. New statutory material is underscored.

18 SECTION 6. This Act shall take effect upon its approval.

19 INTRODUCED BY:

*[Handwritten signature]*  
Sharon McLeod

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B

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Will Ego  
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Ermine L. Inoué  
SENATOR



# S.B. NO. 1201

**Report Title:**

Technology; Broadband; Wireless Facilities Networks; Zoning; Counties; State Functions and Responsibilities

**Description:**

Specifies that the State and counties cannot prohibit, regulate, or charge for the co-location of small wireless facilities or small wireless facilities networks beyond the provisions of this Act. Provides various state and county zoning rules and classifications regarding the co-location of small wireless facilities and small wireless facilities networks. Describes the application process and rates for co-location.

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

