



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 21, 2018

GOV. MSG. NO. 1149

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 21, 2018, the following bill was signed into law:

HB2651 HD2 SD1 CD1

RELATING TO WIRELESS BROADBAND
FACILITIES
ACT 049 (18)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

A BILL FOR AN ACT

RELATING TO WIRELESS BROADBAND FACILITIES.

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

SECTION 1. The legislature finds that encouraging the development of a robust broadband network throughout the State is integral to Hawaii's global economic competitiveness and a matter of statewide concern. This Act is essential to establishing the policy framework to foster the installation of a robust, reliable, and technologically advanced broadband infrastructure throughout the State.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 13 to be appropriately designated and to read as follows:

"CHAPTER

WIRELESS BROADBAND AND COMMUNICATIONS NETWORKS

§ -1 Applicability. (a) Subject to subsection (b), this chapter shall apply only to activities of a communications service provider to deploy small wireless facilities and to modified or replaced state or county utility poles associated with small wireless facilities.



1 Except as to the state or county permitting authority
2 related to utility poles, this chapter shall not be construed to
3 apply to:

4 (1) Utility poles or other utility infrastructure solely
5 owned by investor-owned utility companies;

6 (2) Investor owned utility companies' utility poles in
7 which the State or county has an ownership interest;

8 (3) Airport buildings; or

9 (4) Buildings whose use is principally for public safety
10 purposes.

11 (b) Notwithstanding any other provision to the contrary,
12 small wireless facilities shall not interfere with public
13 safety, law enforcement, or emergency communications. To the
14 extent an interference is identified by the State, county, or a
15 communications service provider, it shall be resolved pursuant
16 to the applicable requirements and procedures of the Federal
17 Communications Commission following written notification of an
18 interference.

19 § -2 Definitions. As used in this chapter:



1 "Antenna" means communications equipment that transmits or
2 receives electromagnetic radio frequency signals used in the
3 provision of services using small wireless facilities.

4 "Applicable codes" means uniform building, fire,
5 electrical, plumbing, or mechanical codes adopted by a
6 recognized national code organization or local amendments to
7 those codes.

8 "Applicant" means any person who submits an application and
9 is a communications service provider.

10 "Application" means a request submitted by an applicant to
11 the State or county for a permit to collocate small wireless
12 facilities or to approve the replacement or modification of a
13 utility pole.

14 "Collocate" means to install, mount, maintain, modify,
15 operate, or replace small wireless facilities on or immediately
16 adjacent to a wireless support structure or utility pole.

17 "Collocation" has a corresponding meaning.

18 "Communications service" means cable service, as defined in
19 section 440G-3 or title 47 United States Code section 522(6), as
20 amended; information service, as defined in title 47 United
21 States Code section 153(24), as amended; telecommunications



1 service, as defined in section 269-1 or title 47 United States
2 Code section 153(53), as amended; mobile service, as defined in
3 title 47 United States Code section 153(33), as amended; or
4 wireless service other than mobile service.

5 "Communications service provider" means a cable operator,
6 as defined in section 440G-3 or title 47 United States Code
7 section 522(5); a provider of information service, as defined in
8 title 47 United States Code section 153(24); a
9 telecommunications carrier, as defined in section 269-1 or title
10 47 United States Code section 153(51); or a wireless provider.

11 "Decorative pole" means a state or county pole that is
12 specially designed and placed for aesthetic purposes and on
13 which no appurtenances or attachments, other than a wireless
14 facility attachment, specially designed informational and
15 directional signage, or temporary holiday or special event
16 attachments, have been placed or are permitted to be placed
17 according to nondiscriminatory state or county rules or codes.

18 "Feasible design and collocation standards" means
19 reasonable, objective, and nondiscriminatory specifications
20 concerning the physical structure, construction, location, and
21 appearance of small wireless facilities; provided that those



1 specifications facilitate the installation of the small wireless
2 facilities and may be waived by the State or county.

3 "Historic district" means a group of buildings, properties,
4 or sites that are either listed in the National Register of
5 Historic Places or as determined by the state historic
6 preservation program in accordance with chapter 6E.

7 "Micro wireless facilities" means a small wireless facility
8 having a dimension no larger than twenty-four inches in height,
9 fifteen inches in width, and twelve inches in depth; provided
10 that the exterior antenna, if any, does not exceed eleven inches
11 in length.

12 "Right of way" means the area on, below, or above a public
13 roadway, highway, street, sidewalk, alley, utility easement, or
14 similar property.

15 "Small wireless facilities" means a wireless facility or
16 other facility providing communications service that meets one
17 or both of the following qualifications:

18 (1) Each communications service provider's antenna can fit
19 within an enclosure of no more than six cubic feet in
20 volume; or



(2) All other equipment associated with the communications service facility, whether ground- or pole-mounted, that is cumulatively no more than twenty-eight cubic feet in volume; provided that the following types of associated ancillary equipment shall not be included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

"State or county pole" means a utility pole, which may be managed or operated by, or on behalf of, the State or a county in the State.

"Technically feasible" means that by virtue of engineering or spectrum usage, the proposed placement for a small wireless facility, or its design or site location can be implemented without a reduction in the functionality of the wireless facility.

"Toll" means to stop or suspend the running of a time period.



1 "Utility pole" means a pole or similar structure that is or
2 may be used in whole or in part by or for wireline
3 communications, electric distribution, lighting, traffic
4 control, signage, or a similar function, or for the collocation
5 of small wireless facilities. "Utility pole" shall not include
6 wireless support structures.

7 "Wireless facility" means equipment at a fixed location
8 that enables wireless communications between user equipment and
9 a communications network, including:

- 10 (1) Equipment associated with wireless communications; and
11 (2) Radio transceivers, antennas, coaxial or fiber-optic
12 cable, regular and backup power supplies, and
13 comparable equipment, regardless of technological
14 configuration.

15 "Wireless facility" includes small wireless facilities but
16 shall not include:

- 17 (1) Wireline backhaul facilities; and
18 (2) Coaxial or fiber-optic cable between utility poles or
19 communications facilities that are otherwise not
20 immediately adjacent to and directly associated with a
21 particular antenna.



1 "Wireless provider" means an individual, corporation,
2 company, association, trust, or other entity or organization
3 who:

4 (1) Provides services, including wireless broadband
5 services, whether at a fixed location or mobile, to
6 the public using wireless facilities; or

7 (2) Builds or installs wireless communication transmission
8 equipment or wireless facilities, including an
9 individual authorized to provide telecommunications
10 service in the State.

11 "Wireless support structure" means a structure, such as a
12 monopole; tower, either guyed or self-supporting building; or
13 other existing or proposed structure designed to support or
14 capable of supporting broadband or small wireless facilities,
15 other than a structure designed solely for the collocation of
16 wireless facilities. "Wireless support structure" shall not
17 include a utility pole.

18 "Wireline backhaul" means the transport of communications
19 data or other electronic information by wire from wireless
20 facilities to a communications network. Wireline backhaul shall



1 not include wire connecting the wireless facility to the
2 backhaul.

3 § -3 General. Except as provided in this chapter, the
4 State or any county shall not prohibit or regulate the
5 deployment of small wireless facilities or any associated
6 modified or replaced utility poles used for the collocation of
7 small wireless facilities. The State or a county may charge for
8 the attachment of small wireless facilities on solely-owned
9 state or county utility poles used for the collation of small
10 wireless facilities. Nothing in this chapter shall adversely
11 impact the State's fiscal funding.

12 § -4 Zoning. Small wireless facilities and associated
13 modified or replaced utility poles subject to the height limits
14 in section -5(c), shall be classified as permitted uses and
15 shall not be subject to zoning review or zoning approval if they
16 are deployed:

- 17 (1) In the right of way in any zone; or
18 (2) Outside the right of way in property not zoned
19 exclusively for conservation.



1 Nothing in this chapter shall be construed to modify
2 existing permitting processes for the placement of wireline
3 backhaul in the right of way.

4 § -5 Use of the right of way for small wireless
5 facilities and utility poles. (a) The State or county shall
6 not enter into an exclusive arrangement with any person for use
7 of the right of way for the construction, operation, marketing,
8 or maintenance of small wireless facilities or for small
9 wireless facilities collocation.

10 (b) Subject to this section, the construction or
11 modification of small wireless facilities in the right of way
12 shall be a permitted use not subject to zoning review or other
13 discretionary approval; provided that such facilities shall be
14 constructed and maintained so as not to obstruct the usual
15 travel, public safety, on such right of way or obstruct the
16 legal use of such right of way by utilities or authorized
17 parties.

18 The State or county shall have the authority to condition
19 the approval of an application upon compliance with pre-
20 established nondiscriminatory feasible design and collocation
21 standards on small wireless facilities to be installed on



1 property solely owned by the State or county. As part of a
2 feasible design and collocation standard, the State or county
3 may require the communications service provider to pay the State
4 or county for the electricity that is used by the small wireless
5 facilities and to place an appropriately sized fuse on the small
6 cell to control the amount of electricity used by the
7 communications service provider. To the extent the State or
8 county establishes feasible design and collocation standards,
9 they shall be made available in published guidelines and apply
10 ninety calendar days after their publication. Nothing in this
11 section requires the State or county to establish feasible
12 design and collocation standards.

13 Modified or replaced utility poles associated with a small
14 wireless facility that meet the requirements of this section are
15 permitted uses subject to the permitting process in section -
16 6.

17 No additional discretionary permit shall be required to
18 maintain, operate, modify, or replace small wireless facilities
19 and associated utility poles along, across, upon, and under the
20 right of way. The grant of a permit for a small wireless
21 facility does not authorize the installation, placement,



1 maintenance, or operation of any communications facility,
2 including a wireline backhaul facility, other than a small
3 wireless facility, in the right of way, and shall not otherwise
4 be a general authorization to occupy and use the right of way.

5 (c) Each modified or replaced utility pole installed in
6 the right of way for the collocation of small wireless
7 facilities shall not exceed the greater of:

8 (1) Ten feet in height above the tallest existing utility
9 pole in place as of July 1, 2018, located within five
10 hundred feet of the modified or replaced pole in the
11 same right of way; or

12 (2) Fifty feet above ground level.

13 New small wireless facilities in the right of way shall not
14 extend more than ten feet above an existing utility pole in
15 place as of July 1, 2018. Subject to this section and
16 section -6, a communications service provider or wireless
17 provider may modify, replace, and maintain a utility pole or
18 small wireless facility that exceeds these height limits along,
19 across, upon, and under the right of way, subject to applicable
20 zoning regulations.



1 (d) A communications service provider may replace a
2 decorative pole, when necessary to collocate a small wireless
3 facility, if the replacement pole reasonably conforms to the
4 design aesthetics of the decorative pole or poles being
5 replaced.

6 (e) Subject to section -6, and except for facilities
7 excluded from evaluation for effects on historic properties
8 under title 47 Code of Federal Regulations section 1.1307(a)(4),
9 a State or county may require reasonable, technically feasible,
10 non-discriminatory, and technologically neutral design or
11 concealment measures in a historic district. Any such design or
12 concealment measures shall not have the effect of prohibiting
13 any provider's technology, nor shall any such measures be
14 considered a part of the small wireless facility for purposes of
15 the size restrictions.

16 (f) The State or county shall:

17 (1) Be competitively neutral in the exercise of its
18 administration and regulation related to the
19 management of the right of way and with regard to
20 other users of the right of way; and



(2) Not impose any conditions that are unreasonable or discriminatory.

(g) The State or county may require a communications service provider to repair all damage to the right of way directly caused by the activities of the communications service provider in the right of way and to return the right of way to the same or better condition before the damage pursuant to the competitively neutral, reasonable requirements and specifications of the State or county within thirty calendar days. If the communications service provider fails to make the repairs required by the State or county within thirty calendar days after written notice, the State or county may complete those repairs and charge the applicable party the reasonable, documented cost of the repairs.

§ -6 Permitting process in the right of way. The State or county may require an applicant to obtain one or more permits to collocate a small wireless facility or install a modified or replaced utility pole associated with a small wireless facility as provided in section -5; provided that the permits are of general applicability and do not apply exclusively to small wireless facilities. The State or county shall receive permit



1 applications and process and issue permits subject to the
2 following requirements:

3 (1) The applicant shall provide a geographical description
4 of the project area, if required by the State or
5 county;

6 (2) The applicant shall provide a listing and description
7 of the condition of utility poles, light standards,
8 buildings, and wireless support structures included in
9 the project for the installation, mounting, operation,
10 and placement of small wireless facilities, including
11 an assessment of the identifying information,
12 location, and ownership of the listed utility poles,
13 light standards, buildings, and structures, if
14 required by the State or county;

15 (3) The applicant shall provide a description of the
16 equipment associated with the facilities to be
17 installed in the project area, including radio
18 transceivers, antennas, coaxial or fiber-optic cables,
19 power supplies, and related equipment, and the size
20 and weight of the equipment to be installed on each



1 pole, building, or structure, if required by the State
2 or county;

3 (4) The State or county shall not require, but may
4 negotiate, an agreement with a communications service
5 provider to provide in-kind contributions of goods or
6 services in lieu of or in addition to any rates,
7 charges, terms, and conditions governing the
8 installation of small wireless facilities on State- or
9 county-owned property, such as an agreement to reserve
10 fiber, conduit, or pole space for State or county use;

11 (5) The State or county shall not require the placement of
12 small wireless facilities on any specific utility pole
13 or category of poles or require multiple antenna
14 systems on a single utility pole;

15 (6) The State or county shall not limit the placement of
16 small wireless facilities by minimum separation
17 distances; provided that the State or county may limit
18 the number of small wireless facilities placed on a
19 single utility pole;

20 (7) The State or county may require an applicant to
21 include an attestation that the small wireless



1 facilities will be operational for use by a
2 communications service provider within one year after
3 the permit issuance date; provided that the State or
4 county and the applicant may agree to extend this
5 period or the period may be tolled if there is a delay
6 caused by lack of commercial power or communications
7 transport facilities to the site; provided further
8 that the State or county may rescind a permit if the
9 small wireless facility is not operational within one
10 year or any agreed-to time beyond one year;

11 (8) Within thirty calendar days of receiving an
12 application, the State or county shall notify the
13 applicant in writing whether the application is
14 complete. If an application is incomplete, the State
15 or county shall specifically identify all missing
16 information in writing. The processing deadline in
17 paragraph (9) shall be tolled from the date the State
18 or county sends the notice of incompleteness until the
19 date the applicant provides the missing information;

20 (9) An application shall be processed on a
21 nondiscriminatory basis and deemed approved if the



1 State or county fails to approve or deny the
2 application within ninety calendar days of receipt of
3 the application. The processing deadline may be
4 tolled in accordance with paragraph (8) or by
5 agreement of the applicant and the State or county;
6 provided that until December 31, 2019, if an applicant
7 submits to the State or to the same county fifty or
8 more applications within any thirty-calendar-day
9 period to collocate small wireless facilities, then
10 the State or county may, upon notice to the applicant,
11 extend the period for reviewing the applications to
12 one hundred and twenty calendar days;

13 (10) The State or county may deny a proposed collocation of
14 a small wireless facility or the modification of a
15 modified or replaced utility pole that meets the
16 requirements in section -5(c) only if the proposed
17 collocation:

18 (A) Interferes with the safe operation of public
19 safety equipment;

20 (B) Interferes with sight lines or clear zones for
21 transportation or pedestrians;



- 1 (C) Interferes with compliance with the Americans
2 with Disabilities Act or similar federal or state
3 standards regarding pedestrian access or
4 movement;
- 5 (D) Fails to comply with reasonable and
6 nondiscriminatory spacing requirements of general
7 application adopted by ordinance that concern the
8 location of ground-mounted equipment. Such
9 spacing requirements shall not prevent a small
10 wireless facility from serving any location;
- 11 (E) Fails to comply with building or other applicable
12 codes;
- 13 (F) Causes the utility pole to be unable to bear the
14 additional weight of the facilities, taking into
15 account any state or county reservation of
16 capacity authorized by this chapter; provided
17 that a denial shall include a condition that the
18 installation will be approved if the
19 communications service provider agrees to
20 replace, at its own cost, the utility pole with
21 one that can bear the additional weight; or



1 (G) Causes the load-carrying capacity of the State-
2 or county-owned utility pole, building, or
3 structure, to exceed seventy per cent as
4 determined by the appropriate state or county
5 agency;

6 (11) The State or county shall document the basis for a
7 denial, including the specific provisions of law on
8 which the denial was based, and send the documentation
9 to the applicant on or before the day the State or
10 county denies an application. The applicant may
11 address the deficiencies identified by the State or
12 county in its written denial and resubmit a revised
13 application within thirty calendar days of the written
14 notice of denial without paying an additional
15 application fee. The State or county shall have
16 ninety calendar days from the date of receipt of the
17 revised application to approve or deny the
18 application. Any subsequent review of additional
19 revisions to a revised application shall be limited to
20 the deficiencies cited in the documentation noting the
21 basis for denial of the revised application; provided,



1 however, that the State or a county may address
2 deficiencies in the original or subsequent revised
3 versions of the application that were missed in good
4 faith and that were not documented in a written
5 denial;

6 (12) An applicant seeking to collocate multiple small
7 wireless facilities within a three-mile radius may, at
8 the applicant's discretion, file a consolidated
9 application and receive a single permit for the
10 collocation of no more than twenty-five small wireless
11 facilities; provided that the denial of the
12 collocation of one or more small wireless facilities
13 in a consolidated application shall not delay
14 processing of any other small wireless facilities in
15 the same batch; provided further that within ten
16 calendar days of receiving a permit for a consolidated
17 application, the applicant shall publish notice of the
18 permit in a newspaper of general circulation in the
19 county where the small wireless facility is to be
20 located; provided further that the notice shall



1 include a phone number for the communications service
2 provider that the public may contact;

3 (13) Installation or collocation for which a permit is
4 granted pursuant to this section shall be completed
5 within one year of the permit issuance date; provided
6 that the State or county and the applicant may agree
7 to extend this period or the period may be tolled if a
8 delay is caused by lack of commercial power or
9 communications transport facilities to the site;
10 provided further that the State or county may rescind
11 a permit if the small wireless facility is not
12 operational within one year or any agreed-to time
13 beyond one year. Approval of an application
14 authorizes the applicant to:

15 (A) Undertake the installation or collocation; and

16 (B) Subject to applicable relocation requirements and
17 the applicant's right to terminate at any time,
18 operate and maintain the small wireless
19 facilities and any associated utility pole
20 covered by the permit for a period of not less
21 than twenty years, which shall be renewed for



1 equivalent durations so long as the facilities
2 and pole comply with the criteria set forth in
3 this subsection; provided that the State or a
4 county may remove a utility pole if it decides to
5 do so;

6 (14) The State or county shall not institute, either
7 expressly or de facto, a moratorium on filing,
8 receiving, or processing applications or issuing
9 permits or other approvals, if any, for the
10 collocation of small wireless facilities or the
11 installation or modification of utility poles to
12 support small wireless facilities; provided that this
13 paragraph shall not be construed to apply to existing
14 moratoria on applications to trench or excavate newly
15 repaved streets;

16 (15) The State or county shall not require an application
17 or permit, or charge any rate, fees, or compensation
18 for:

19 (A) Routine maintenance;

20 (B) Replacement of small wireless facilities with
21 small wireless facilities that are substantially



1 similar or the same size and weight or smaller;
2 provided that the communications service provider
3 shall notify the state or county department by
4 which the small wireless facility was originally
5 approved at least ten calendar days, but no more
6 than sixty calendar days, prior to commencing the
7 replacement; or

8 (C) Installation, placement, maintenance, operation,
9 or replacement of micro wireless facilities that
10 are strung on cables between utility poles, in
11 compliance with the national electrical safety
12 code.

13 § -7 Access to state or county utility poles within the
14 right of way. (a) This section shall apply to activities of
15 the communications service provider within the right of way.
16 The State and counties shall permit the collocation of small
17 wireless facilities on utility poles pursuant to the process set
18 forth in section -6.

19 (b) A person owning, managing, or controlling state or
20 county utility poles in the right of way shall not enter into an



1 exclusive arrangement with any person for the right to attach to
2 such poles.

3 (c) The rates to collocate on state or county poles shall
4 be nondiscriminatory regardless of the communications services
5 provided by the collocating person.

6 (d) The rates, fees, and terms and conditions for the
7 make-ready work to collocate on the state or county pole shall
8 be nondiscriminatory, competitively neutral, and commercially
9 reasonable and shall comply with this chapter.

10 (e) The State or county shall provide a good faith
11 estimate for any make-ready work to be performed by a
12 communications service provider and that is necessary to enable
13 the pole to support the requested collocation by a
14 communications service provider, including pole replacement if
15 necessary, within sixty calendar days after receipt of a
16 complete application. Make-ready work, including any pole
17 replacement, shall be completed by the State or county or the
18 communications service provider within one hundred and twenty
19 calendar days of written acceptance of the good faith estimate
20 by the applicant. The State or county shall have the discretion



1 to designate whether it or the communications service provider
2 will perform the make-ready work.

3 (f) The person owning, managing, or controlling the state
4 or county pole shall not require more make-ready work than
5 required to meet applicable codes or industry standards. Fees
6 for make-ready work, including any pole replacement, shall not
7 exceed actual costs or the amount charged to other
8 communications service providers for similar work and shall not
9 include any consultant fees or expenses.

10 § -8 Local authority. (a) Subject to this chapter and
11 applicable federal law, the State or county may continue to
12 exercise zoning, land use, planning, and permitting authority
13 within its jurisdictional boundaries, including with respect to
14 utility poles; except that neither the State nor a county shall
15 have or exercise any jurisdiction or authority over the design,
16 engineering, construction, installation, or operation of any
17 small wireless facility located in an interior structure or upon
18 the site of any campus, stadium, or athletic facility not owned
19 or controlled by the State or county, other than to comply with
20 applicable codes. Nothing in this chapter authorizes the State



1 or a county to require wireless facility deployment or to
2 regulate broadband or wireless services.

3 (b) Except as provided in this chapter with respect to the
4 wireless facilities subject to the permitting, rate, and fee
5 requirements established herein, the State and each county shall
6 not adopt or enforce any regulations or requirements or charge
7 additional rates or fees on an entity's placement or operation
8 of communications facilities in the right of way where the
9 entity is already authorized by a cable television franchise to
10 operate throughout the right of way. The State and each county
11 shall not regulate or charge fees for the provision of
12 additional communications services over a cable system
13 authorized under such franchise, unless expressly authorized by
14 applicable law.

15 § -9 Implementation. No later than July 1, 2019, the
16 State and each county shall adopt or modify laws, regulations,
17 and agreements for lands within its jurisdiction that make
18 available rates, fees, and other terms that comply with this
19 chapter to communications service providers. In the absence of
20 laws, regulations, and agreements that fully comply with this
21 chapter and until such laws, regulations, or agreements are



1 adopted, communications service providers may install and
2 operate small wireless facilities and utility poles pursuant to
3 this chapter.

4 § -10 Indemnification, insurance, and bonding. (a) The
5 State or county may adopt indemnification, insurance, and
6 bonding requirements related to small wireless facility permits
7 subject to this section.

8 (b) The State or county may require a communications
9 service provider to indemnify and hold the State or county and
10 its officers and employees harmless against any claims,
11 lawsuits, judgments, costs, liens, losses, expenses, or fees
12 resulting from the communications service provider's actions in
13 installing, repairing, operating, or maintaining any small
14 wireless facilities or utility poles.

15 (c) The State or county may require a communications
16 service provider to have in effect insurance coverage consistent
17 with this subsection and requirements for other right of way
18 users, if such requirements are reasonable and
19 nondiscriminatory. If insurance coverage is required, the State
20 or county may require a communications service provider to



1 furnish proof of insurance prior to the effective date of any
2 permit issued for a small wireless facility.

3 (d) The State or county may adopt bonding requirements for
4 small wireless facilities if the State or county imposes similar
5 requirements in connection with permits issued for other right
6 of way users.

7 The purpose of such bonds shall be to:

8 (1) Provide for the removal of abandoned or improperly
9 maintained small wireless facilities, including those
10 for which the State or county determines a need for
11 the small wireless facilities to be removed to protect
12 public health, safety, or welfare;

13 (2) Restoration of the right of way; or

14 (3) Recoupment of past due rates or fees that have not
15 been paid by a communications service provider in over
16 twelve months; provided that the communications
17 service provider has received reasonable notice from
18 the State or county of the non-compliance listed and
19 an opportunity to cure the delinquency of the rates or
20 fees.



1 Bonding requirements shall not exceed \$200 per small wireless
2 facility.

3 SECTION 3. Section 205-2, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) Rural districts shall include activities or uses as
6 characterized by low density residential lots of not more than
7 one dwelling house per one-half acre, except as provided by
8 county ordinance pursuant to section 46-4(c), in areas where
9 "city-like" concentration of people, structures, streets, and
10 urban level of services are absent, and where small farms are
11 intermixed with low density residential lots except that within
12 a subdivision, as defined in section 484-1, the commission for
13 good cause may allow one lot of less than one-half acre, but not
14 less than eighteen thousand five hundred square feet, or an
15 equivalent residential density, within a rural subdivision and
16 permit the construction of one dwelling on such lot; provided
17 that all other dwellings in the subdivision shall have a minimum
18 lot size of one-half acre or 21,780 square feet. Such petition
19 for variance may be processed under the special permit
20 procedure. These districts may include contiguous areas which
21 are not suited to low density residential lots or small farms by



1 reason of topography, soils, and other related characteristics.
2 Rural districts shall also include golf courses, golf driving
3 ranges, and golf-related facilities.

4 In addition to the uses listed in this subsection, rural
5 districts shall include geothermal resources exploration and
6 geothermal resources development, as defined under section
7 182-1, and construction and operation of wireless communication
8 antenna, as defined under section 205-4.5(a)(18), as permissible
9 uses."

10 SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) Within the agricultural district, all lands with soil
13 classified by the land study bureau's detailed land
14 classification as overall (master) productivity rating class A
15 or B and for solar energy facilities, class B or C, shall be
16 restricted to the following permitted uses:

17 (1) Cultivation of crops, including crops for bioenergy,
18 flowers, vegetables, foliage, fruits, forage, and
19 timber;

20 (2) Game and fish propagation;



- 1 (3) Raising of livestock, including poultry, bees, fish,
2 or other animal or aquatic life that are propagated
3 for economic or personal use;
- 4 (4) Farm dwellings, employee housing, farm buildings, or
5 activities or uses related to farming and animal
6 husbandry. "Farm dwelling", as used in this
7 paragraph, means a single-family dwelling located on
8 and used in connection with a farm, including clusters
9 of single-family farm dwellings permitted within
10 agricultural parks developed by the State, or where
11 agricultural activity provides income to the family
12 occupying the dwelling;
- 13 (5) Public institutions and buildings that are necessary
14 for agricultural practices;
- 15 (6) Public and private open area types of recreational
16 uses, including day camps, picnic grounds, parks, and
17 riding stables, but not including dragstrips,
18 airports, drive-in theaters, golf courses, golf
19 driving ranges, country clubs, and overnight camps;
- 20 (7) Public, private, and quasi-public utility lines and
21 roadways, transformer stations, communications



1 equipment buildings, solid waste transfer stations,
2 major water storage tanks, and appurtenant small
3 buildings such as booster pumping stations, but not
4 including offices or yards for equipment, material,
5 vehicle storage, repair or maintenance, treatment
6 plants, corporation yards, or other similar
7 structures;

8 (8) Retention, restoration, rehabilitation, or improvement
9 of buildings or sites of historic or scenic interest;

10 (9) Agricultural-based commercial operations as described
11 in section 205-2(d)(15);

12 (10) Buildings and uses, including mills, storage, and
13 processing facilities, maintenance facilities,
14 photovoltaic, biogas, and other small-scale renewable
15 energy systems producing energy solely for use in the
16 agricultural activities of the fee or leasehold owner
17 of the property, and vehicle and equipment storage
18 areas that are normally considered directly accessory
19 to the above-mentioned uses and are permitted under
20 section 205-2(d);

21 (11) Agricultural parks;



(12) Plantation community subdivisions, which as used in this chapter means an established subdivision or cluster of employee housing, community buildings, and agricultural support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation; provided that the existing structures may be used or rehabilitated for use, and new employee housing and agricultural support buildings may be allowed on land within the subdivision as follows:

- (A) The employee housing is occupied by employees or former employees of the plantation who have a property interest in the land;
- (B) The employee housing units not owned by their occupants shall be rented or leased at affordable rates for agricultural workers; or
- (C) The agricultural support buildings shall be rented or leased to agricultural business operators or agricultural support services;

(13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the



1 enjoyment, education, or involvement of visitors;
2 provided that the agricultural tourism activity is
3 accessory and secondary to the principal agricultural
4 use and does not interfere with surrounding farm
5 operations; and provided further that this paragraph
6 shall apply only to a county that has adopted
7 ordinances regulating agricultural tourism under
8 section 205-5;

9 (14) Agricultural tourism activities, including overnight
10 accommodations of twenty-one days or less, for any one
11 stay within a county; provided that this paragraph
12 shall apply only to a county that includes at least
13 three islands and has adopted ordinances regulating
14 agricultural tourism activities pursuant to section
15 205-5; provided further that the agricultural tourism
16 activities coexist with a bona fide agricultural
17 activity. For the purposes of this paragraph, "bona
18 fide agricultural activity" means a farming operation
19 as defined in section 165-2;

20 (15) Wind energy facilities, including the appurtenances
21 associated with the production and transmission of



1 wind generated energy; provided that the wind energy
2 facilities and appurtenances are compatible with
3 agriculture uses and cause minimal adverse impact on
4 agricultural land;

5 (16) Biofuel processing facilities, including the
6 appurtenances associated with the production and
7 refining of biofuels that is normally considered
8 directly accessory and secondary to the growing of the
9 energy feedstock; provided that biofuel processing
10 facilities and appurtenances do not adversely impact
11 agricultural land and other agricultural uses in the
12 vicinity.

13 For the purposes of this paragraph:

14 "Appurtenances" means operational infrastructure
15 of the appropriate type and scale for economic
16 commercial storage and distribution, and other similar
17 handling of feedstock, fuels, and other products of
18 biofuel processing facilities.

19 "Biofuel processing facility" means a facility
20 that produces liquid or gaseous fuels from organic
21 sources such as biomass crops, agricultural residues,



1 and oil crops, including palm, canola, soybean, and
2 waste cooking oils; grease; food wastes; and animal
3 residues and wastes that can be used to generate
4 energy;

5 (17) Agricultural-energy facilities, including
6 appurtenances necessary for an agricultural-energy
7 enterprise; provided that the primary activity of the
8 agricultural-energy enterprise is agricultural
9 activity. To be considered the primary activity of an
10 agricultural-energy enterprise, the total acreage
11 devoted to agricultural activity shall be not less
12 than ninety per cent of the total acreage of the
13 agricultural-energy enterprise. The agricultural-
14 energy facility shall be limited to lands owned,
15 leased, licensed, or operated by the entity conducting
16 the agricultural activity.

17 As used in this paragraph:

18 "Agricultural activity" means any activity
19 described in paragraphs (1) to (3) of this subsection.

20 "Agricultural-energy enterprise" means an
21 enterprise that integrally incorporates an



1 agricultural activity with an agricultural-energy
2 facility.

3 "Agricultural-energy facility" means a facility
4 that generates, stores, or distributes renewable
5 energy as defined in section 269-91 or renewable fuel
6 including electrical or thermal energy or liquid or
7 gaseous fuels from products of agricultural activities
8 from agricultural lands located in the State.

9 "Appurtenances" means operational infrastructure
10 of the appropriate type and scale for the economic
11 commercial generation, storage, distribution, and
12 other similar handling of energy, including equipment,
13 feedstock, fuels, and other products of agricultural-
14 energy facilities;

15 (18) Construction and operation of wireless communication
16 antennas[+], including small wireless facilities;
17 provided that, for the purposes of this paragraph,
18 "wireless communication antenna" means communications
19 equipment that is either freestanding or placed upon
20 or attached to an already existing structure and that
21 transmits and receives electromagnetic radio signals



1 used in the provision of all types of wireless
2 communications services; provided further that "small
3 wireless facilities" shall have the same meaning as in
4 section -2; provided further that nothing in this
5 paragraph shall be construed to permit the
6 construction of any new structure that is not deemed a
7 permitted use under this subsection;

8 (19) Agricultural education programs conducted on a farming
9 operation as defined in section 165-2, for the
10 education and participation of the general public;
11 provided that the agricultural education programs are
12 accessory and secondary to the principal agricultural
13 use of the parcels or lots on which the agricultural
14 education programs are to occur and do not interfere
15 with surrounding farm operations. For the purposes of
16 this paragraph, "agricultural education programs"
17 means activities or events designed to promote
18 knowledge and understanding of agricultural activities
19 and practices conducted on a farming operation as
20 defined in section 165-2;



1 (20) Solar energy facilities that do not occupy more than
2 ten per cent of the acreage of the parcel, or twenty
3 acres of land, whichever is lesser or for which a
4 special use permit is granted pursuant to section 205-
5 6; provided that this use shall not be permitted on
6 lands with soil classified by the land study bureau's
7 detailed land classification as overall (master)
8 productivity rating class A unless the solar energy
9 facilities are:

10 (A) Located on a paved or unpaved road in existence
11 as of December 31, 2013, and the parcel of land
12 upon which the paved or unpaved road is located
13 has a valid county agriculture tax dedication
14 status or a valid agricultural conservation
15 easement;

16 (B) Placed in a manner that still allows vehicular
17 traffic to use the road; and

18 (C) Granted a special use permit by the commission
19 pursuant to section 205-6;

20 (21) Solar energy facilities on lands with soil classified
21 by the land study bureau's detailed land



1 classification as overall (master) productivity rating
2 B or C for which a special use permit is granted
3 pursuant to section 205-6; provided that:

4 (A) The area occupied by the solar energy facilities
5 is also made available for compatible
6 agricultural activities at a lease rate that is
7 at least fifty per cent below the fair market
8 rent for comparable properties;

9 (B) Proof of financial security to decommission the
10 facility is provided to the satisfaction of the
11 appropriate county planning commission prior to
12 date of commencement of commercial generation;
13 and

14 (C) Solar energy facilities shall be decommissioned
15 at the owner's expense according to the following
16 requirements:

17 (i) Removal of all equipment related to the
18 solar energy facility within twelve months
19 of the conclusion of operation or useful
20 life; and



(ii) Restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the solar energy facility.

For the purposes of this paragraph, "agricultural activities" means the activities described in paragraphs (1) to (3);

(22) Geothermal resources exploration and geothermal resources development, as defined under section 182-1; or

(23) Hydroelectric facilities, including the appurtenances associated with the production and transmission of hydroelectric energy, subject to section 205-2; provided that the hydroelectric facilities and their appurtenances:

(A) Shall consist of a small hydropower facility as defined by the United States Department of Energy, including:

(i) Impoundment facilities using a dam to store water in a reservoir;



(ii) A diversion or run-of-river facility that channels a portion of a river through a canal or channel; and

(iii) Pumped storage facilities that store energy by pumping water uphill to a reservoir at higher elevation from a reservoir at a lower elevation to be released to turn a turbine to generate electricity;

(B) Comply with the state water code, chapter 174C;

(C) Shall, if over five hundred kilowatts in hydroelectric generating capacity, have the approval of the commission on water resource management, including a new instream flow standard established for any new hydroelectric facility; and

(D) Do not impact or impede the use of agricultural land or the availability of surface or ground water for all uses on all parcels that are served by the ground water sources or streams for which hydroelectric facilities are considered."



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on July 1, 2018;
4 provided that:

- 5 (1) The amendment made to section 205-4.5, Hawaii Revised
6 Statutes, by this Act shall not be repealed when
7 section 205-4.5, Hawaii Revised Statutes, is reenacted
8 on June 30, 2019, by section 3 of Act 52, Session Laws
9 of Hawaii 2014; and
10 (2) This Act shall apply to permit applications filed with
11 the State or county after December 31, 2018.

APPROVED this 21 day of JUN , 2018

David Ige

GOVERNOR OF THE STATE OF HAWAII



THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 1, 2018
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2018.



Scott K. Saiki
Speaker
House of Representatives

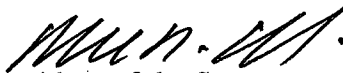



Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI'I

Date: May 1, 2018
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the
Senate of the Twenty-ninth Legislature of the State of Hawai'i, Regular Session of 2018.


President of the Senate


Clerk of the Senate