HOUSE OF REPRESENTATIVES TWENTY-NINTH LEGISLATURE, 2018 STATE OF HAWAII H.B. NO. <sup>2651</sup> H.D. 2 S.D. 1 C.D. 1

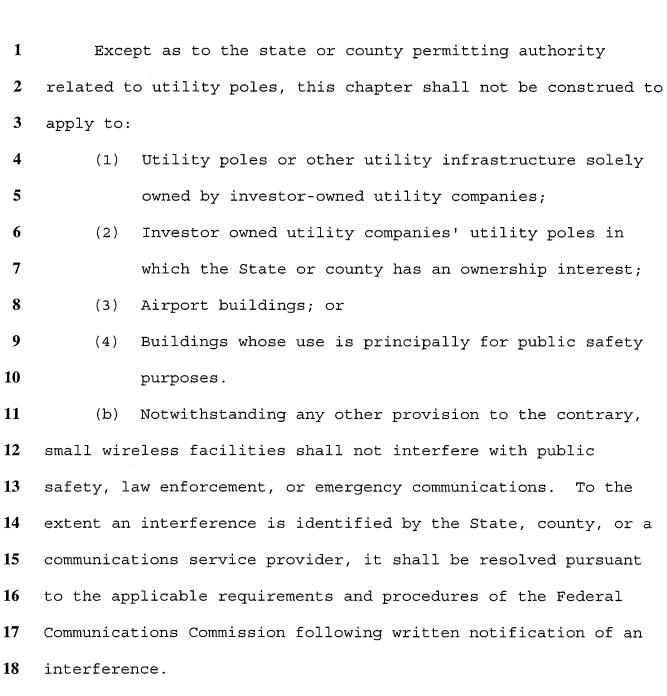
# A BILL FOR AN ACT

RELATING TO WIRELESS BROADBAND FACILITIES.

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

SECTION 1. The legislature finds that encouraging the 1 2 development of a robust broadband network throughout the State 3 is integral to Hawaii's global economic competitiveness and a 4 matter of statewide concern. This Act is essential to 5 establishing the policy framework to foster the installation of 6 a robust, reliable, and technologically advanced broadband 7 infrastructure throughout the State. 8 SECTION 2. The Hawaii Revised Statutes is amended by 9 adding a new chapter to title 13 to be appropriately designated 10 and to read as follows: 11 "CHAPTER 12 WIRELESS BROADBAND AND COMMUNICATIONS NETWORKS 13 S -1 Applicability. (a) Subject to subsection (b), this 14 chapter shall apply only to activities of a communications 15 service provider to deploy small wireless facilities and to 16 modified or replaced state or county utility poles associated 17 with small wireless facilities.





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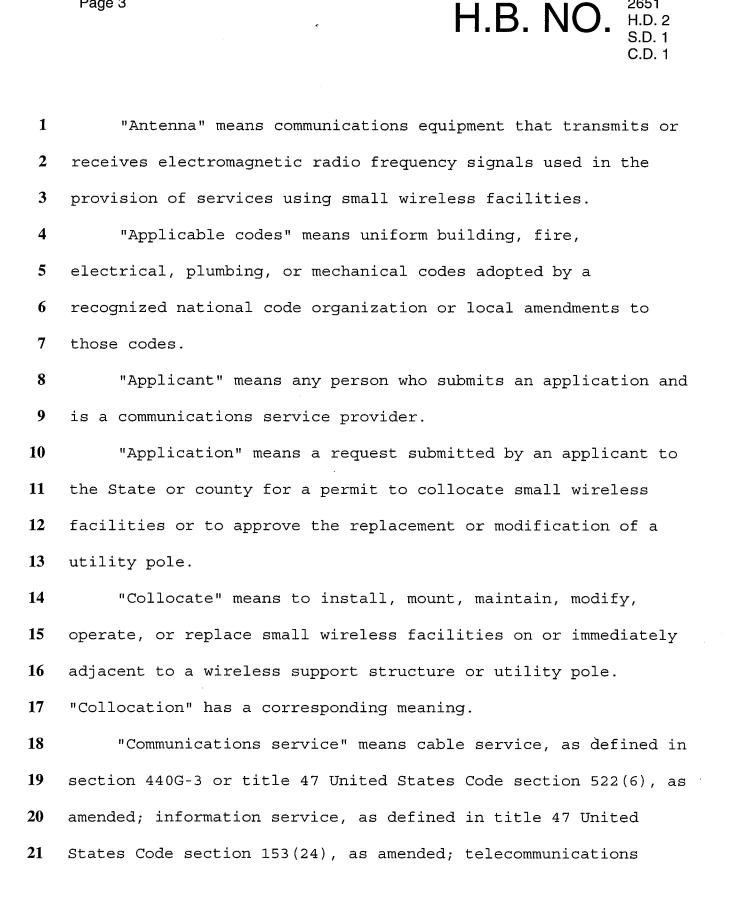
**§ -2 Definitions.** As used in this chapter:

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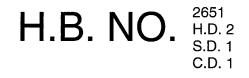


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1 service, as defined in section 269-1 or title 47 United States 2 Code section 153(53), as amended; mobile service, as defined in 3 title 47 United States Code section 153(33), as amended; or 4 wireless service other than mobile service. "Communications service provider" means a cable operator, 5 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 according to nondiscriminatory state or county rules or codes. 17 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

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specifications facilitate the installation of the small wireless 1 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 having a dimension no larger than twenty-four inches in height, 8 fifteen inches in width, and twelve inches in depth; provided 9 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

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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



1 (2)All other equipment associated with the communications 2 service facility, whether ground- or pole-mounted, 3 that is cumulatively no more than twenty-eight cubic 4 feet in volume; provided that the following types of 5 associated ancillary equipment shall not be included 6 in the calculation of equipment volume: electric 7 meter, concealment elements, telecommunications 8 demarcation box, grounding equipment, power transfer 9 switch, cut-off switch, and vertical cable runs for 10 the connection of power and other services.

II "State or county pole" means a utility pole, which may be I2 managed or operated by, or on behalf of, the State or a county I3 in the State.

14 "Technically feasible" means that by virtue of engineering 15 or spectrum usage, the proposed placement for a small wireless 16 facility, or its design or site location can be implemented 17 without a reduction in the functionality of the wireless 18 facility.

19 "Toll" means to stop or suspend the running of a time20 period.

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1	"Uti	lity pole" means a pole or similar structure that is or
2	may be us	ed in whole or in part by or for wireline
3	communica	tions, 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	"Wir	eless facility" means equipment at a fixed location
8	that enab	les wireless communications between user equipment and
9	a communi	cations 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	"Wir	eless 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.

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1	"Wir	eless 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	"Wir	eless support structure" means a structure, such as a
12	monopole;	tower, either guyed or self-supporting building; or
13	other exi	sting or proposed structure designed to support or
14	capable o	f supporting broadband or small wireless facilities,
15	other tha	n a structure designed solely for the collocation of
16	wireless	facilities. "Wireless support structure" shall not
17	include a	utility pole.
18	II W i w	aling backbault means the transport of communications

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

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not include wire connecting the wireless facility to the
 backhaul.

-3 General. Except as provided in this chapter, the 3 S 4 State or any county shall not prohibit or regulate the deployment of small wireless facilities or any associated 5 modified or replaced utility poles used for the collocation of 6 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 wireless facilities. Nothing in this chapter shall adversely 10 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 zoned19 exclusively for conservation.



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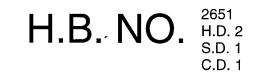
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1 Nothing in this chapter shall be construed to modify 2 existing permitting processes for the placement of wireline 3 backhaul in the right of way. 4 -5 Use of the right of way for small wireless 8 5 facilities and utility poles. (a) The State or county shall 6 not enter into an exclusive arrangement with any person for use of the right of way for the construction, operation, marketing, 7 8 or maintenance of small wireless facilities or for small 9 wireless facilities collocation. 10 Subject to this section, the construction or (b) 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

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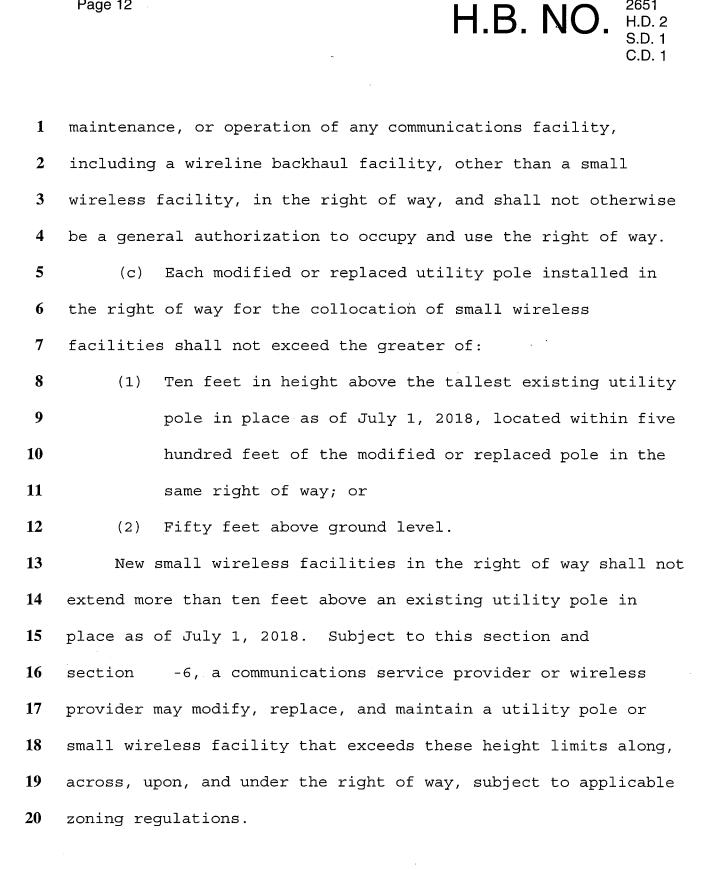


1 property solely owned by the State or county. As part of a feasible design and collocation standard, the State or county 2 3 may require the communications service provider to pay the State 4 or county for the electricity that is used by the small wireless facilities and to place an appropriately sized fuse on the small 5 6 cell to control the amount of electricity used by the 7 communications service provider. To the extent the State or county establishes feasible design and collocation standards, 8 9 they shall be made available in published quidelines 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.

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

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

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



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

3 The State or county may require a communications (q) 4 service provider to repair all damage to the right of way 5 directly caused by the activities of the communications service 6 provider in the right of way and to return the right of way to 7 the same or better condition before the damage pursuant to the 8 competitively neutral, reasonable requirements and 9 specifications of the State or county within thirty calendar 10 If the communications service provider fails to make the davs. 11 repairs required by the State or county within thirty calendar 12 days after written notice, the State or county may complete 13 those repairs and charge the applicable party the reasonable, 14 documented cost of the repairs.

15 S -6 Permitting process in the right of way. The State 16 or county may require an applicant to obtain one or more permits 17 to collocate a small wireless facility or install a modified or 18 replaced utility pole associated with a small wireless facility 19 as provided in section -5; provided that the permits are of 20 general applicability and do not apply exclusively to small 21 wireless facilities. The State or county shall receive permit

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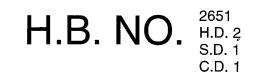
1	applicati	ons and process and issue permits subject to the
2	following	requirements:
3	(1)	The applicant shall provide a geographical description
4		of the project area, if required by the State or
5		county;
6	(2)	The applicant shall provide a listing and description
7		of the condition of utility 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



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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

include an attestation that the small wireless

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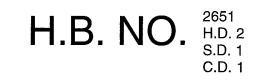
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1 facilities will be operational for use by a 2 communications service provider within one year after 3 the permit issuance date; provided that the State or 4 county and the applicant may agree to extend this 5 period or the period may be tolled if 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 Within thirty calendar days of receiving an (8)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

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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		(P) Interfered with eight lines or alcor going for

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

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1 Interferes with compliance with the Americans (C) 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 Fails to comply with building or other applicable (E) 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



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

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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,



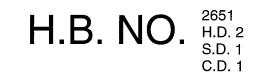
1 however, that the State or a county may address 2 deficiencies in the original or subsequent revised 3 versions of the application that were missed in good 4 faith and that were not documented in a written 5 denial; 6 An applicant seeking to collocate multiple small (12)wireless facilities within a three-mile radius may, at 7 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

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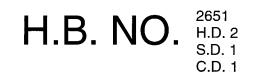
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1		include a phone number for the communications service
2		provider that the public may contact;
3	(13)	Installation or collocation for which a permit is
4		granted pursuant to this section shall be completed
5		within one year of the permit issuance 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

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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

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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 A	ccess to state or county utility poles within the

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 or20 county utility poles in the right of way shall not enter into an





exclusive arrangement with any person for the right to attach to
 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 communications service provider, including pole replacement if 14 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

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

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

-8 Local authority. (a) Subject to this chapter and 10 S 11 applicable federal law, the State or county may continue to 12 exercise zoning, land use, planning, and permitting authority within its jurisdictional boundaries, including with respect to 13 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



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or a county to require wireless facility deployment or to
 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 Implementation. No later than July 1, 2019, the S - 9 16 State and each county shall adopt or modify laws, regulations, and agreements for lands within its jurisdiction that make 17 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



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

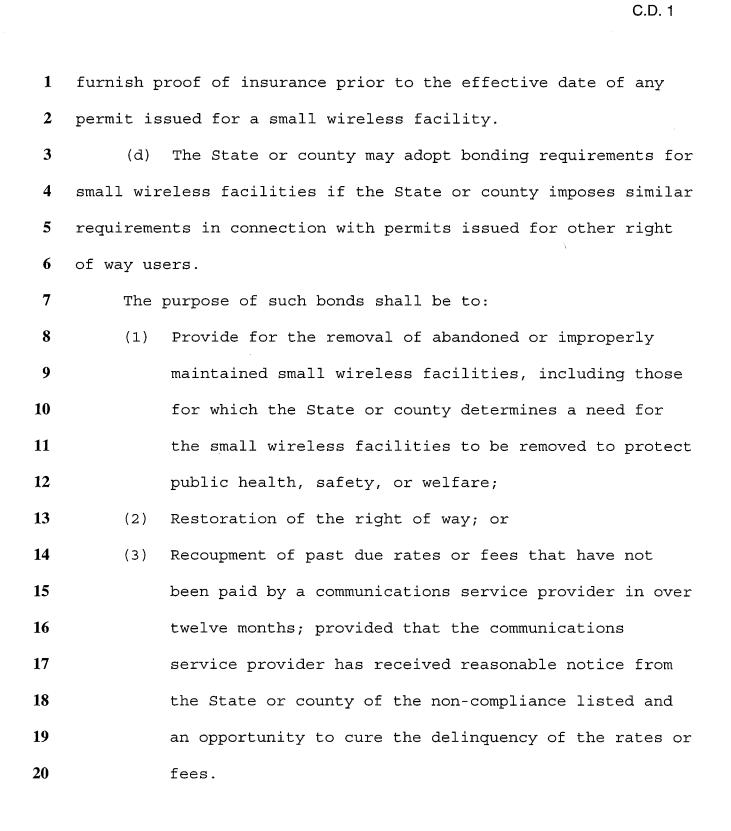
4 § -10 Indemnification, insurance, and bonding. (a) The
5 State or county may adopt indemnification, insurance, and
6 bonding requirements related to small wireless facility permits
7 subject to this section.

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.

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



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Bonding requirements shall not exceed \$200 per small wireless
 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



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1 reason of topography, soils, and other related characteristics. Rural districts shall also include golf courses, golf driving 2 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 Cultivation of crops, including crops for bioenergy, (1)18 flowers, vegetables, foliage, fruits, forage, and 19 timber; 20 (2) Game and fish propagation;

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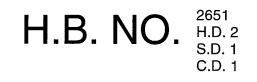
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1	(3)	Raising of livestock, including poultry, bees, fish,
2		or other animal or aquatic life that are propagated
3		for economic or personal use;
4	(4)	Farm dwellings, employee housing, farm buildings, or
5		activities or uses related to farming and 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



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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);
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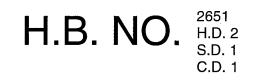
21 (11) Agricultural parks;

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1 (12)Plantation community subdivisions, which as used in 2 this chapter means an established subdivision or 3 cluster of employee housing, community buildings, and 4 agricultural support buildings on land currently or 5 formerly owned, leased, or operated by a sugar or 6 pineapple plantation; provided that the existing 7 structures may be used or rehabilitated for use, and 8 new employee housing and agricultural support 9 buildings may be allowed on land within the subdivision as follows: 10 11 (A) The employee housing is occupied by employees or 12 former employees of the plantation who have a 13 property interest in the land; 14 (B) The employee housing units not owned by their 15 occupants shall be rented or leased at affordable 16 rates for agricultural workers; or 17 (C) The agricultural support buildings shall be 18 rented or leased to agricultural business 19 operators or agricultural support services; 20 (13)Agricultural tourism conducted on a working farm, or a 21 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 agricultural tourism activities pursuant to section 14 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 facilities and appurtenances do not adversely impact 10 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,

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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



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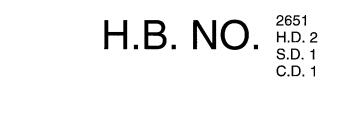
1 agricultural activity with an agricultural-energy 2 facility. "Agricultural-energy facility" means a facility 3 4 that generates, stores, or distributes renewable 5 energy as defined in section 269-91 or renewable fuel 6 including electrical or thermal energy or liquid or 7 gaseous fuels from products 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, "wireless communication antenna" means communications 18 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



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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;

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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 lands with soil classified by the land study bureau's 6 7 detailed land classification as overall (master) 8 productivity rating class A unless the solar energy 9 facilities are: 10 Located on a paved or unpaved road in existence (A) 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; Placed in a manner that still allows vehicular 16 (B) 17 traffic to use the road; and 18 (C) Granted a special use permit by the commission 19 pursuant to section 205-6; 20 Solar energy facilities on lands with soil classified (21)

by the land study bureau's detailed land

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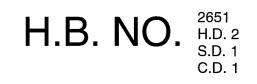
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1	clas	sification as overall (master) productivity rating
2	B or	C for which a special use permit is granted
3	purs	uant to section 205-6; provided that:
4	(A)	The area occupied by the solar energy facilities
5		is also made available for compatible
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

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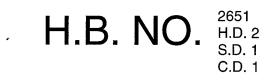
1		(ii) Restoration of the disturbed earth to				
2		substantially the same physical condition as				
3		existed prior to the development of the				
4		solar energy facility.				
5		For the purposes of this paragraph, "agricultural				
6		activities" means the activities described in				
7		paragraphs (1) to (3);				
8	(22)	Geothermal resources exploration and geothermal				
9		resources development, as defined under section 182-1;				
10		or				
11	(23)	Hydroelectric facilities, including the appurtenances				
12		associated with the production and transmission of				
13		hydroelectric energy, subject to section 205-2;				
14		provided that the hydroelectric facilities and their				
15		appurtenances:				
16		(A) Shall consist of a small hydropower facility as				
17		defined by the United States Department of				
18		Energy, including:				
19		(i) Impoundment facilities using a dam to store				
20		water in a reservoir;				

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1	(ii)	A diversion or run-of-river facility that
2		channels a portion of a river through a
3		canal or channel; and
4	(iii)	Pumped storage facilities that store energy
5		by pumping water uphill to a reservoir at
6		higher elevation from a reservoir at a lower
7		elevation to be released to turn a turbine
8		to generate electricity;
<b>9</b> (E	3) Compl	y with the state water code, chapter 174C;
<b>10</b> (c	) Shall	, if over five hundred kilowatts in
11	hydrc	electric generating capacity, have the
12	appro	val of the commission on water resource
13	manag	ement, including a new instream flow
14	stand	ard established for any new hydroelectric
15	facil	ity; and
<b>16</b> (D	) Do no	t impact or impede the use of agricultural
17	land	or the availability of surface or ground
18	water	for all uses on all parcels that are served
19	by th	e ground water sources or streams for which
20	hydro	electric facilities are considered."

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1	SECI	ION 5. Statutory material to be repealed is bracketed
2	and stric	ken. New statutory material is underscored.
3	SECT	ION 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.





#### Report Title:

Wireless Facilities; Economic Development; State or County Solely-owned Utility Poles; Permits

#### Description:

HB2651 CD1 HMS 2018-3929-1

Establishes a process to upgrade and support next-generation wireless broadband infrastructure throughout the State. Establishes a permitting, application, review, and approval process for small wireless providers or communications service providers to install wireless facilities on state or county solely-owned utility poles, or install associated utility poles, in the right of way. Applies to permit applications filed with the State or county after December 31, 2018. (HB2651 CD1)

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