
A BILL FOR AN ACT

RELATING TO WIRELESS BROADBAND FACILITIES.

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

1 SECTION 1. This Act is essential to establishing the
2 policy framework to foster the installation of a robust,
3 reliable, and technologically advanced wireless broadband
4 network throughout the State. This Act is also necessary to
5 update existing laws governing fees for use of the public rights
6 of way by providers of cable television service to reflect
7 competition and new choices for video and other communications
8 services.

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

12 "CHAPTER

13 BROADBAND AND COMMUNICATIONS NETWORKS

14 § -1 **Applicability.** This chapter shall apply only to
15 activities of a communications service provider to deploy small
16 broadband facilities and wireless facilities and to modified or



1 replaced State or county solely-owned utility poles associated
2 with small broadband facilities.

3 **§ -2 Definitions.** For purposes of this chapter:

4 "Antenna" means communications equipment that transmits or
5 receives electromagnetic radio frequency signals used in the
6 provision of services using broadband or wireless facilities.

7 "Applicable codes" means uniform building, fire,
8 electrical, plumbing, or mechanical codes adopted by a
9 recognized national code organization or local amendments to
10 those codes enacted solely to address imminent threats of
11 destruction of property or injury to persons to the extent not
12 inconsistent with this chapter.

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

15 "Application" means a request submitted by an applicant to
16 the State or county for a permit to collocate small broadband or
17 wireless facilities or to approve the installation or
18 modification of a State or county solely-owned utility pole.

19 "Broadband or wireless facility" means a radio transceiver
20 and antenna at a fixed location that physically enables wireless
21 communications service, using licensed or unlicensed spectrum,



1 to be provided between user equipment and a communications
2 network, including small wireless facilities and micro wireless
3 facilities, but not including:

4 (1) The structure or improvements on, under, or within or
5 adjacent to which the equipment is collocated;

6 (2) Wireline backhaul facilities; and

7 (3) Axial or fiber-optic cable between utility poles or
8 communications facilities that are otherwise not
9 immediately adjacent and directly associated with a
10 particular antenna.

11 "Broadband or wireless provider" means an individual,
12 corporation, company, association, trust, or other entity or
13 organization who:

14 (1) Provides services, whether at a fixed location or
15 mobile, to the public using broadband or wireless
16 facilities; or

17 (2) Builds or installs broadband or wireless communication
18 transmission equipment or wireless facilities,
19 including an individual authorized to provide
20 telecommunications service in the State.



1 "Broadband or wireless support structure" means a
2 structure, such as a monopole, tower, either guyed or self-
3 supporting building, or other existing or proposed structure
4 designed to support or capable of supporting broadband or
5 wireless facilities, other than a structure designed solely for
6 the collocation of small broadband or wireless facilities.

7 "Broadband or wireless support structure" shall not include a
8 utility pole.

9 "Collocate" means to install, mount, maintain, modify,
10 operate, or replace broadband or wireless facilities on or
11 adjacent to a broadband or wireless support structure or utility
12 pole. "Collocation" has a corresponding meaning.

13 "Communications service provider" means a cable operator,
14 as defined in title 47 United States Code section 522(5); a
15 provider of information service, as defined in title 47 United
16 States Code section 153(24); a telecommunications carrier, as
17 defined in title 47 United States Code section 153(51); or a
18 broadband or wireless provider.

19 "Decorative pole" means a state or county pole that is
20 specially designed and placed for aesthetic purposes and on
21 which no appurtenances or attachments, other than a small



1 broadband or wireless facility attachment, specially designed
2 informational and directional signage, or temporary holiday or
3 special event attachments, have been placed or are permitted to
4 be placed according to nondiscriminatory state or county rules
5 or codes.

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

10 "Micro broadband or wireless facilities" means a small
11 broadband or wireless facility having dimensions either:

12 (1) No larger than twenty-four inches in height, fifteen
13 inches in width, and twelve inches in depth; or

14 (2) Twenty-four inches in length, fifteen inches in width,
15 and twelve inches in height.

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

19 "Small broadband or wireless facilities" means a wireline
20 or wireless facility that consists only of a radio transceiver



1 and antenna that could both fit within an enclosure of no more
2 than six cubic feet in volume.

3 "State or county pole" means a utility pole solely-owned by
4 the State or a county, which may be managed or operated by, or
5 on behalf of, the State of Hawaii or a county in the State of
6 Hawaii.

7 "Substantial modification" means a proposed modification or
8 replacement to an existing utility pole or wireless support
9 structure that will substantially change the physical dimensions
10 of the utility pole or wireless support structure under the
11 objective standard for substantial change adopted by the Federal
12 Communications Commission pursuant to title 47 Code of Federal
13 Regulations section 1.40001, or a proposed modification of the
14 equipment compound boundaries in excess of the site dimensions
15 specified in section III.B of title 47 Code of Federal
16 Regulations part 1, appendix C.

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



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 broadband or wireless facilities. "Utility pole" shall
6 not include wireless support structures.

7 "Wireline backhaul" means the transport of communications
8 service or any other electronic communications by coaxial,
9 fiber-optic cable, or any other wire.

10 § -3 General. Except as provided in this chapter, the
11 State or any county shall not prohibit, regulate, or charge for
12 the deployment of small broadband or wireless facilities or any
13 associated modified or replaced utility poles used for the
14 collocation of small broadband or wireless facilities.

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

20 (1) In the right of way in any zone; or



(2) Outside the right of way in property not zoned exclusively for conservation.

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

(b) Subject to this section, the construction or modification of small broadband or wireless facilities in the right of way shall be a permitted use not subject to zoning review or other discretionary approval; provided that such structures and facilities shall be constructed and maintained so as not to obstruct the usual travel, public safety, or other factors set forth in section -6(10) on such right of way or obstruct the legal use of such right of way by utilities.

Modified or replaced utility poles associated with a small broadband or wireless facility that meet the requirements of this section are permitted uses subject to the permit process in section -6. No additional permit shall be required to maintain, operate, modify, or replace small broadband or



1 wireless facilities and associated utility poles along, across,
2 upon, and under the right of way.

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

6 (1) Ten feet in height above the tallest existing utility
7 pole in place as of the effective date of this Act
8 located within five hundred feet of the modified pole
9 in the same right of way; or

10 (2) Fifty feet above ground level.

11 New small broadband or wireless facilities in the right of
12 way shall not extend more than ten feet above an existing
13 utility pole in place as of the effective date of this Act.

14 Subject to this section and section -6, a broadband or
15 wireless provider may construct, modify, and maintain a utility
16 pole or small broadband or wireless facility that exceeds these
17 height limits along, across, upon, and under the right of way,
18 subject to applicable zoning regulations.

19 (d) A broadband or wireless provider may replace a
20 decorative pole, when necessary to collocate a small broadband
21 or wireless facility, if the replacement pole reasonably



1 conforms to the design aesthetics of the decorative pole or
2 poles being replaced.

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

13 (f) The State or county shall be competitively neutral in
14 the exercise of its administration and regulation related to the
15 management of the right of way and with regard to other users of
16 the right of way, shall not impose any conditions that are
17 unreasonable or discriminatory.

18 (g) The State or county may require a broadband or
19 wireless provider to repair all damage to the right of way
20 directly caused by the activities of the broadband or wireless
21 provider in the right of way and to return the right of way to



1 its functional equivalence before the damage pursuant to the
2 competitively neutral, reasonable requirements, and
3 specifications of the State or county. If the broadband or
4 wireless provider fails to make the repairs required by the
5 State or county within a reasonable time after written notice,
6 the State or county may complete those repairs and charge the
7 applicable party the reasonable, documented cost of the repairs.

8 **§ -6 Permitting process in the right of way.** The State
9 or county may require an applicant to obtain one or more permits
10 to collocate a small broadband or wireless facility or install a
11 modified or replaced utility pole associated with a small
12 broadband or wireless facility as provided in section -5;
13 provided that the permits are of general applicability and do
14 not apply exclusively to broadband or wireless facilities. The
15 State or county shall receive permit applications and process
16 and issue permits subject to the following requirements:

17 (1) The applicant shall provide a geographical description
18 of the project area;

19 (2) The applicant shall provide a listing and description
20 of the utility poles, light standards, buildings, and
21 structures included in the project for the



1 installation, mounting, operation, and placement of
2 broadband infrastructure, including an assessment of
3 the identifying information, location, and ownership
4 of the listed utility poles, light standards,
5 buildings, and structures;

6 (3) The applicant shall provide a description of the
7 equipment associated with the facilities to be
8 installed in the project area, including radio
9 transceivers, antennas, coaxial or fiber-optic cables,
10 power supplies, and related equipment, and the size
11 and weight of the equipment to be installed on each
12 pole, building, or structure;

13 (4) An applicant shall not be required to provide more
14 information to obtain a permit than is required of
15 communications service providers that are not
16 broadband or wireless providers; provided that an
17 applicant may be required to include construction and
18 engineering drawings and information demonstrating
19 compliance with the criteria in this subsection;

20 (5) The State or county shall not require the placement of
21 small broadband or wireless facilities on any specific



1 utility pole or category of poles or require multiple
2 antenna systems on a single utility pole;

3 (6) The State or county shall not limit the placement of
4 small broadband or wireless facilities by minimum
5 separation distances; provided that the State or
6 county may limit the number of small broadband or
7 wireless facilities placed on a single utility pole;

8 (7) The State or county may require an applicant to
9 include an attestation that the small broadband or
10 wireless facilities will be operational for use by a
11 broadband or wireless provider within one year after
12 the permit issuance date; provided that the State or
13 county and the applicant may agree to extend this
14 period or the period may be tolled if a delay is
15 caused by lack of commercial power or communications
16 transport facilities to the site;

17 (8) Within thirty days of receiving an application, the
18 State or county shall notify the applicant in writing
19 whether the application is complete. If an
20 application is incomplete, the State or county shall
21 specifically identify all missing information in



1 writing. The processing deadline in paragraph (9) is
2 tolled from the time the State or county sends the
3 notice of incompleteness to the time the applicant
4 provides the missing information;

5 (9) An application shall be processed on a
6 nondiscriminatory basis and deemed approved if the
7 State or county fails to approve or deny the
8 application within ninety days of receipt of the
9 application. The processing deadline may be tolled by
10 agreement of the applicant and the State or county;

11 (10) The State or county may deny a proposed collocation of
12 a small broadband or wireless facility or the
13 construction or modification of a modified or replaced
14 utility pole that meets the requirements in section

15 -5(d) only if the proposed application:

16 (A) Materially interferes with the safe operation of
17 public safety equipment;

18 (B) Materially interferes with sight lines or clear
19 zones for transportation or pedestrians;

20 (C) Materially interferes with compliance with the
21 Americans with Disabilities Act or similar



1 federal or state standards regarding pedestrian
2 access or movement;

3 (D) Fails to comply with reasonable and
4 nondiscriminatory spacing requirements of general
5 application adopted by ordinance that concern the
6 location of ground-mounted equipment. Such
7 spacing requirements shall not prevent a small
8 broadband or wireless facility from serving any
9 location;

10 (E) Fails to comply with building or other applicable
11 codes;

12 (F) Could cause the installation of the equipment on
13 the poles, buildings, and structures to be
14 performed in a manner that does not protect
15 public health and safety and safe travel in the
16 public rights of way;

17 (G) Could cause the utility poles and light standards
18 to be unable to bear the additional weight of the
19 equipment and the equipment could pose a hazard
20 or obstruction to the public; and



(H) Could allow the project equipment and broadband infrastructure to interfere with government systems for public safety communication operations or emergency services;

(9) The State or county shall document the basis for a denial, including the specific provisions of law on which the denial was based, and send the documentation to the applicant on or before the day the State or county denies an application. The applicant may address the deficiencies identified by the State or county and resubmit the application within thirty days of the denial without paying an additional application fee. The State or county shall approve or deny the revised application within ninety days. Any subsequent review shall be limited to the deficiencies cited in the original documentation noting the basis for denial;

(10) An applicant seeking to collocate small broadband or wireless facilities within a two-mile radius may, at the applicant's discretion, file a consolidated application and receive a single permit for the



1 collocation of no more than twenty-five small
2 broadband or wireless facilities; provided that the
3 denial of one or more small broadband or wireless
4 facilities in a consolidated application shall not
5 delay processing of any other small broadband or
6 wireless facilities in the same batch;

7 (11) Installation or collocation for which a permit is
8 granted pursuant to this section shall be completed
9 within one year of the permit issuance date; provided
10 that the State or county and the applicant may agree
11 to extend this period or the period may be tolled if a
12 delay is caused by lack of commercial power or
13 communications transport facilities to the site.

14 Approval of an application authorizes the applicant
15 to:

16 (A) Undertake the installation or collocation; and

17 (B) Subject to applicable relocation requirements and
18 the applicant's right to terminate at any time,
19 operate and maintain the small broadband or
20 wireless facilities and any associated utility
21 pole covered by the permit for a period of not



1 less than twenty years, which shall be renewed
2 for equivalent durations so long as they are in
3 compliance with the criteria set forth in this
4 subsection; provided that the State or a county
5 may remove a utility pole if it decides to do so;

6 (12) 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 broadband or wireless facilities
11 or the installation or modification of utility poles
12 to support small broadband or wireless facilities; and

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

16 (A) Routine maintenance;

17 (B) Replacement of small broadband or wireless
18 facilities with small broadband or wireless
19 facilities that are substantially similar or the
20 same size and weight or smaller; or



(C) Installation, placement, maintenance, operation, or replacement of micro broadband or wireless facilities on utility poles or that are strung on cables between existing utility poles, in compliance with the national electrical safety code. The State or county may, however, require a permit to work within the right of way for such activities, if applicable. Any such permits shall be subject to the requirements provided in section -5 and this section; and

(14) State and county poles, related structures, sites, and facilities that support public safety, law enforcement, and emergency communications shall be excluded from these public access provisions.

§ -7 Access to state or county poles within the right of way. (a) A person owning, managing, or controlling state or county poles in the right of way shall not enter into an exclusive arrangement with any person for the right to attach to such poles.

(b) The rates to collocate on state or county poles shall be nondiscriminatory regardless of the communications services



1 provided by the collocating person. The rate to collocate on
2 state or county poles shall be in accordance with section -8.

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

7 (d) The State or county shall provide a good faith
8 estimate for any make-ready work necessary to enable the pole to
9 support the requested collocation by a broadband or wireless
10 provider or communications service provider, including pole
11 replacement if necessary, within one hundred and twenty days
12 after receipt of a complete application. Make-ready work
13 including any pole replacement shall be completed within one
14 hundred and twenty days of written acceptance of the good faith
15 estimate by the applicant.

16 (e) The person owning, managing, or controlling the state
17 or county pole shall not require more make-ready work than
18 required to meet applicable codes or industry standards. Fees
19 for make-ready work shall not include costs related to pre-
20 existing or prior damage or noncompliance. Fees for make-ready
21 work including any pole replacement shall not exceed actual



1 costs or the amount charged to other communications service
2 providers for similar work and shall not include any consultant
3 fees or expenses.

4 (f) The provisions of this section shall apply to
5 activities of the broadband or wireless provider and
6 communications service provider within the right of way.

7 § -8 Rates and fees within the right of way. (a) This
8 section shall govern the State's or county's rates and fees for
9 the placement of a broadband or wireless facility or utility
10 pole in the right of way.

11 (b) The State or county shall not require a communications
12 service provider to pay any rates, fees, or compensation to the
13 State, county, or other person other than what is expressly
14 authorized by this section for collocation of small broadband or
15 wireless facilities on utility poles in the right of way or for
16 the construction, operation, modification, and maintenance of
17 utility poles in the right of way.

18 (c) Application fees shall be subject to the following
19 requirements:

20 (1) The State or county may charge an application fee only
21 if the fee is required for similar types of commercial



development or construction within the State's or
county's jurisdiction;

(2) Where costs to be recovered by an application fee are
already recovered by existing fees, rates, or taxes
paid by a broadband or wireless provider, no
application fee shall be assessed;

(3) An application fee shall not include:

(A) Travel expenses incurred by a third party in its
review of an application; or

(B) Direct payment or reimbursement of third party
rates or fees charged on a contingency basis or a
result-based arrangement;

(4) The application fees for collocation of small
broadband or wireless facilities on an existing or
replacement state or county pole shall not exceed
\$ each; and

(5) The application fees for collocation of multiple small
broadband or wireless facilities on an existing or
replacement state or county pole shall not exceed
\$ each for the first five small broadband or
wireless facilities on the same application and



1 \$ for each additional small broadband or
2 wireless facility on the same application.

3 (d) The rate for collocation of a small broadband or
4 wireless facility on a state or county pole in the right of way
5 shall not exceed the actual, direct, and reasonable costs
6 related to the communications service provider's use of space on
7 the state or county pole not to exceed \$ per pole
8 annually. In any dispute concerning the appropriateness of a
9 cost-based rate for any state or county pole, the State or
10 county shall have the burden of proving that the rate does not
11 exceed the actual, direct, and reasonable costs for the
12 applicant's use of the pole.

13 § -9 Local authority. (a) Subject to this chapter and
14 applicable federal law, the State or county may continue to
15 exercise zoning, land use, planning, and permitting within its
16 jurisdictional boundaries, including with respect to utility
17 poles; except that no state or county shall have or exercise any
18 jurisdiction or authority over the design, engineering,
19 construction, installation, or operation of any small broadband
20 or wireless facility located in an interior structure or upon
21 the site of any campus, stadium, or athletic facility not owned



1 or controlled by the State or county, other than to comply with
2 applicable codes. Nothing in this chapter authorizes the State
3 or county to require broadband or wireless facility deployment
4 or to regulate broadband or wireless services.

5 (b) Except as provided in this chapter with respect to the
6 small broadband or wireless facilities subject to the permit,
7 rate, and fee requirements established herein or specifically
8 required pursuant to chapter 440G or federal law, the State and
9 each county shall not adopt or enforce any regulations or
10 requirements or charge additional rates or fees on the placement
11 or operation of communications facilities in the right of way
12 where the entity is already authorized by a franchise or
13 authorization other than that granted in this chapter to operate
14 throughout the right of way, and the State shall not regulate or
15 charge fees for the provision of communications services, unless
16 expressly authorized by applicable law.

17 § -10 Implementation. No later than January 1, 2019,
18 the State and each county shall adopt or modify laws,
19 regulations, and agreements for lands within its jurisdiction
20 that make available rates, fees, and other terms that comply
21 with this chapter to broadband or wireless providers. In the



1 absence of laws, regulations, and agreements that fully comply
2 with this chapter and until such laws, regulations, or
3 agreements are adopted, broadband or wireless providers may
4 install and operate small broadband or wireless facilities and
5 utility poles pursuant to this chapter.

6 **§ -11 Indemnification, insurance, and bonding.** (a) The
7 State or county may adopt indemnification, insurance, and
8 bonding requirements related to small broadband or wireless
9 facility permits subject to this section.

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

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



1 or county may require a broadband or wireless provider to
2 furnish proof of insurance prior to the effective date of any
3 permit issued for a small broadband or wireless facility.

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

8 The purpose of such bonds shall be to:

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

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

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



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

3 For broadband or wireless providers with multiple small
4 broadband or wireless facilities within the jurisdiction of a
5 single state or county, the total bond amount across all
6 facilities shall not exceed \$10,000, which amount may be
7 combined into one bond instrument."

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

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



1 that all other dwellings in the subdivision shall have a minimum
2 lot size of one-half acre or 21,780 square feet. Such petition
3 for variance may be processed under the special permit
4 procedure. These districts may include contiguous areas which
5 are not suited to low density residential lots or small farms by
6 reason of topography, soils, and other related characteristics.
7 Rural districts shall also include golf courses, golf driving
8 ranges, and golf-related facilities.

9 In addition to the uses listed in this subsection, rural
10 districts shall include geothermal resources exploration and
11 geothermal resources development, as defined under section
12 182-1, and wireless communication antenna, as defined under
13 section 205-4.5(a)(18), as permissible uses."

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

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



- 1 (1) Cultivation of crops, including crops for bioenergy,
2 flowers, vegetables, foliage, fruits, forage, and
3 timber;
- 4 (2) Game and fish propagation;
- 5 (3) Raising of livestock, including poultry, bees, fish,
6 or other animal or aquatic life that are propagated
7 for economic or personal use;
- 8 (4) Farm dwellings, employee housing, farm buildings, or
9 activities or uses related to farming and animal
10 husbandry. "Farm dwelling", as used in this
11 paragraph, means a single-family dwelling located on
12 and used in connection with a farm, including clusters
13 of single-family farm dwellings permitted within
14 agricultural parks developed by the State, or where
15 agricultural activity provides income to the family
16 occupying the dwelling;
- 17 (5) Public institutions and buildings that are necessary
18 for agricultural practices;
- 19 (6) Public and private open area types of recreational
20 uses, including day camps, picnic grounds, parks, and
21 riding stables, but not including dragstrips,



- 1 airports, drive-in theaters, golf courses, golf
2 driving ranges, country clubs, and overnight camps;
- 3 (7) Public, private, and quasi-public utility lines and
4 roadways, transformer stations, communications
5 equipment buildings, solid waste transfer stations,
6 major water storage tanks, and appurtenant small
7 buildings such as booster pumping stations, but not
8 including offices or yards for equipment, material,
9 vehicle storage, repair or maintenance, treatment
10 plants, corporation yards, or other similar
11 structures;
- 12 (8) Retention, restoration, rehabilitation, or improvement
13 of buildings or sites of historic or scenic interest;
- 14 (9) Agricultural-based commercial operations as described
15 in section 205-2(d)(15);
- 16 (10) Buildings and uses, including mills, storage, and
17 processing facilities, maintenance facilities,
18 photovoltaic, biogas, and other small-scale renewable
19 energy systems producing energy solely for use in the
20 agricultural activities of the fee or leasehold owner
21 of the property, and vehicle and equipment storage



1 areas that are normally considered directly accessory
2 to the above-mentioned uses and are permitted under
3 section 205-2(d);

4 (11) Agricultural parks;

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

15 (A) The employee housing is occupied by employees or
16 former employees of the plantation who have a
17 property interest in the land;

18 (B) The employee housing units not owned by their
19 occupants shall be rented or leased at affordable
20 rates for agricultural workers; or



1 (C) The agricultural support buildings shall be
2 rented or leased to agricultural business
3 operators or agricultural support services;

4 (13) Agricultural tourism conducted on a working farm, or a
5 farming operation as defined in section 165-2, for the
6 enjoyment, education, or involvement of visitors;
7 provided that the agricultural tourism activity is
8 accessory and secondary to the principal agricultural
9 use and does not interfere with surrounding farm
10 operations; and provided further that this paragraph
11 shall apply only to a county that has adopted
12 ordinances regulating agricultural tourism under
13 section 205-5;

14 (14) Agricultural tourism activities, including overnight
15 accommodations of twenty-one days or less, for any one
16 stay within a county; provided that this paragraph
17 shall apply only to a county that includes at least
18 three islands and has adopted ordinances regulating
19 agricultural tourism activities pursuant to section
20 205-5; provided further that the agricultural tourism
21 activities coexist with a bona fide agricultural



1 activity. For the purposes of this paragraph, "bona
2 fide agricultural activity" means a farming operation
3 as defined in section 165-2;

4 (15) Wind energy facilities, including the appurtenances
5 associated with the production and transmission of
6 wind generated energy; provided that the wind energy
7 facilities and appurtenances are compatible with
8 agriculture uses and cause minimal adverse impact on
9 agricultural land;

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

18 For the purposes of this paragraph:

19 "Appurtenances" means operational infrastructure
20 of the appropriate type and scale for economic
21 commercial storage and distribution, and other similar



1 handling of feedstock, fuels, and other products of
2 biofuel processing facilities.

3 "Biofuel processing facility" means a facility
4 that produces liquid or gaseous fuels from organic
5 sources such as biomass crops, agricultural residues,
6 and oil crops, including palm, canola, soybean, and
7 waste cooking oils; grease; food wastes; and animal
8 residues and wastes that can be used to generate
9 energy;

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



1 As used in this paragraph:

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

4 "Agricultural-energy enterprise" means an
5 enterprise that integrally incorporates an
6 agricultural activity with an agricultural-energy
7 facility.

8 "Agricultural-energy facility" means a facility
9 that generates, stores, or distributes renewable
10 energy as defined in section 269-91 or renewable fuel
11 including electrical or thermal energy or liquid or
12 gaseous fuels from products of agricultural activities
13 from agricultural lands located in the State.

14 "Appurtenances" means operational infrastructure
15 of the appropriate type and scale for the economic
16 commercial generation, storage, distribution, and
17 other similar handling of energy, including equipment,
18 feedstock, fuels, and other products of agricultural-
19 energy facilities;

20 (18) Construction and operation of wireless communication
21 antennas[+], including broadband or wireless



1 facilities; provided that, for the purposes of this
2 paragraph, "wireless communication antenna" means
3 communications equipment that is either freestanding
4 or placed upon or attached to an already existing
5 structure and that transmits and receives
6 electromagnetic radio signals used in the provision of
7 all types of wireless communications services;
8 provided further that nothing in this paragraph shall
9 be construed to permit the construction of any new
10 structure that is not deemed a permitted use under
11 this subsection; provided further that "broadband or
12 wireless facilities" shall have the same meaning as in
13 section 165-2;

14 (19) Agricultural education programs conducted on a farming
15 operation as defined in section 165-2, for the
16 education and participation of the general public;
17 provided that the agricultural education programs are
18 accessory and secondary to the principal agricultural
19 use of the parcels or lots on which the agricultural
20 education programs are to occur and do not interfere
21 with surrounding farm operations. For the purposes of



1 this paragraph, "agricultural education programs"
2 means activities or events designed to promote
3 knowledge and understanding of agricultural activities
4 and practices conducted on a farming operation as
5 defined in section 165-2;

6 (20) Solar energy facilities that do not occupy more than
7 ten per cent of the acreage of the parcel, or twenty
8 acres of land, whichever is lesser or for which a
9 special use permit is granted pursuant to section 205-
10 6; provided that this use shall not be permitted on
11 lands with soil classified by the land study bureau's
12 detailed land classification as overall (master)
13 productivity rating class A unless the solar energy
14 facilities are:

15 (A) Located on a paved or unpaved road in existence
16 as of December 31, 2013, and the parcel of land
17 upon which the paved or unpaved road is located
18 has a valid county agriculture tax dedication
19 status or a valid agricultural conservation
20 easement;



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

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

5 (21) Solar energy facilities on lands with soil classified
6 by the land study bureau's detailed land
7 classification as overall (master) productivity rating
8 B or C for which a special use permit is granted
9 pursuant to section 205-6; provided that:

10 (A) The area occupied by the solar energy facilities
11 is also made available for compatible
12 agricultural activities at a lease rate that is
13 at least fifty per cent below the fair market
14 rent for comparable properties;

15 (B) Proof of financial security to decommission the
16 facility is provided to the satisfaction of the
17 appropriate county planning commission prior to
18 date of commencement of commercial generation;
19 and



1 (C) Solar energy facilities shall be decommissioned
2 at the owner's expense according to the following
3 requirements:

4 (i) Removal of all equipment related to the
5 solar energy facility within twelve months
6 of the conclusion of operation or useful
7 life; and

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

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

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

18 (23) Hydroelectric facilities, including the appurtenances
19 associated with the production and transmission of
20 hydroelectric energy, subject to section 205-2;



1 provided that the hydroelectric facilities and their
2 appurtenances:

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

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

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

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

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

17 (C) Shall, if over five hundred kilowatts in
18 hydroelectric generating capacity, have the
19 approval of the commission on water resource
20 management, including a new instream flow



1 standard established for any new hydroelectric
2 facility; and

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

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect on July 1, 3000, and
11 shall be repealed on June 30, 2020; provided that the provisions
12 amended by sections 3 and 4 of this Act shall not be repealed
13 and shall be reenacted in the form in which they read on the day
14 prior to the effective date of this Act; provided further that
15 this Act shall apply to permit applications filed with the State
16 or county after December 31, 2018.



Report Title:

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

Description:

Establishes a process to upgrade and support next-generation wireless broadband infrastructure throughout the State. Establishes a permitting, application, review, and approval process for broadband or wireless service providers to install broadband or 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 12/31/2018. (HB2651 HD1)

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

