
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.

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

8 "CHAPTER

9 BROADBAND AND COMMUNICATIONS NETWORKS

10 § -1 Applicability. This chapter shall apply only to
11 activities of a communications service provider to deploy small
12 broadband or wireless facilities and to modified or replaced
13 State or county solely-owned utility poles associated with small
14 broadband or wireless facilities.

15 § -2 Definitions. For purposes of this chapter:



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

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

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

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

16 "Broadband or wireless facility" means a radio transceiver
17 and antenna at a fixed location that physically enables wireless
18 communications service, using licensed or unlicensed spectrum,
19 to be provided between user equipment and a communications
20 network, including small wireless facilities and micro wireless
21 facilities, but not including:



- 1 (1) The structure or improvements on, under, or within or
2 adjacent to which the equipment is collocated;
3 (2) Wireline backhaul facilities; and
4 (3) Axial or fiber-optic cable between utility poles or
5 communications facilities that are otherwise not
6 immediately adjacent and directly associated with a
7 particular antenna.

8 "Broadband or wireless provider" means an individual,
9 corporation, company, association, trust, or other entity or
10 organization who:

- 11 (1) Provides services, whether at a fixed location or
12 mobile, to the public using broadband or wireless
13 facilities; or
14 (2) Builds or installs broadband or wireless communication
15 transmission equipment or broadband or wireless
16 facilities, including an individual authorized to
17 provide telecommunications service in the State.

18 "Broadband or wireless support structure" means a
19 structure, such as a monopole, tower, either guyed or self-
20 supporting building, or other existing or proposed structure
21 designed to support or capable of supporting broadband or



1 wireless facilities, other than a structure designed solely for
2 the collocation of small broadband or wireless facilities.
3 "Broadband or wireless support structure" shall not include a
4 utility pole.

5 "Collocate" means to install, mount, maintain, modify,
6 operate, or replace broadband or wireless facilities on or
7 adjacent to a broadband or wireless support structure or utility
8 pole. "Collocation" has a corresponding meaning.

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

15 "Decorative pole" means a state or county pole that is
16 specially designed and placed for aesthetic purposes and on
17 which no appurtenances or attachments, other than a small
18 broadband or wireless facility attachment, specially designed
19 informational and directional signage, or temporary holiday or
20 special event attachments, have been placed or are permitted to



1 be placed according to nondiscriminatory state or county rules
2 or codes.

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 broadband or wireless facilities" means a small
8 broadband or wireless facility having dimensions either:

- 9 (1) No larger than twenty-four inches in height, fifteen
10 inches in width, and twelve inches in depth; or
11 (2) Twenty-four inches in length, fifteen inches in width,
12 and twelve inches in height.

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

16 "Small broadband or wireless facilities" means a wireline
17 or wireless facility that consists only of a radio transceiver
18 and antenna that could both fit within an enclosure of no more
19 than six cubic feet in volume.

20 "State or county pole" means a utility pole solely-owned by
21 the State or a county, which may be managed or operated by, or



1 on behalf of, the State of Hawaii or a county in the State of
2 Hawaii.

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

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

18 "Utility pole" means a pole or similar structure that is or
19 may be used in whole or in part by or for wireline
20 communications, electric distribution, lighting, traffic
21 control, signage, or a similar function, or for the collocation



1 of small broadband or wireless facilities. "Utility pole" shall
2 not include broadband or wireless support structures.

3 "Wireline backhaul" means the transport of communications
4 service or any other electronic communications by coaxial,
5 fiber-optic cable, or any other wire.

6 § -3 Zoning. Small broadband or wireless facilities and
7 associated modified or replaced utility poles subject to the
8 height limits in section -4(c), shall be classified as
9 permitted uses and not subject to zoning review or zoning
10 approval if they are deployed:

- 11 (1) In the right of way in any zone; or
12 (2) Outside the right of way in property not zoned
13 exclusively for conservation.

14 § -4 Use of the right of way for small broadband or
15 wireless facilities and utility poles. (a) The State or county
16 shall not enter into an exclusive arrangement with any person
17 for use of the right of way for the construction, operation,
18 marketing, or maintenance of small broadband or wireless
19 facilities or utility poles.

20 (b) Subject to this section, the construction or
21 modification of small broadband or wireless facilities in the



1 right of way shall be a permitted use not subject to zoning
2 review or other discretionary approval; provided that such
3 facilities shall be constructed and maintained so as not to
4 obstruct the usual travel, public safety, or other factors set
5 forth in section -5(9) on such right of way or obstruct the
6 legal use of such right of way by utilities. Modified or
7 replaced utility poles associated with a small broadband or
8 wireless facility that meet the requirements of this section are
9 permitted uses subject to the permit process in section -5.
10 No additional permit shall be required to maintain, operate,
11 modify, or replace small broadband or wireless facilities and
12 associated utility poles along, across, upon, and under the
13 right of way. The grant of a permit for a small broadband or
14 wireless facility does not authorize the provision of any
15 communications service or the installation, placement,
16 maintenance, or operation of any communications facility,
17 including a wireline backhaul facility, other than a small
18 broadband or wireless facility, in the right of way, and shall
19 not otherwise be a general authorization to occupy and use the
20 right of way. No broadband or wireless provider, or affiliate
21 thereof, shall furnish video programming services directly to



1 subscribers via, in whole or in part, any communications
2 facility deployed in the right of way without first obtaining a
3 cable franchise subject to the provisions of chapter 440G.

4 As used in this subsection, "video programming services"
5 means the provision of video programming directly to
6 subscribers, without regard to delivery technology, via
7 communications facilities located in, over, above, or across the
8 right of way. The term includes, but is not limited to, video
9 programming delivered directly to subscribers via internet
10 protocol technology or as cable service as defined in 47 United
11 States Code section 522(6). The term does not include over-the-
12 top or online video programming offerings accessible to internet
13 users via the public internet.

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

- 17 (1) Ten feet in height above the tallest existing utility
18 pole in place as of the effective date of Act ,
19 Session Laws of Hawaii 2018, located within five
20 hundred feet of the modified pole in the same right of
21 way; or



1 (2) Fifty feet above ground level.

2 New small broadband or wireless facilities in the right of
3 way shall not extend more than ten feet above an existing
4 utility pole in place as of the effective date of Act ,
5 Session Laws of Hawaii 2018. Subject to this section and
6 section -5, a broadband or wireless provider may construct,
7 modify, and maintain a utility pole or small broadband or
8 wireless facility that exceeds these height limits along,
9 across, upon, and under the right of way, subject to applicable
10 zoning regulations.

11 (d) A broadband or wireless provider may replace a
12 decorative pole, when necessary to collocate a small broadband
13 or wireless facility, if the replacement pole reasonably
14 conforms to the design aesthetics of the decorative pole or
15 poles being replaced.

16 (e) Subject to section -5, and except for facilities
17 excluded from evaluation for effects on historic properties
18 under title 47 Code of Federal Regulations section 1.1307(a)(4),
19 a State or county may require reasonable, technically feasible,
20 non-discriminatory, and technologically neutral design or
21 concealment measures in a historic district. Any such design or



1 concealment measures shall not have the effect of prohibiting
2 any provider's technology, nor shall any such measures be
3 considered a part of the small broadband or wireless facility
4 for purposes of the size restrictions.

5 (f) The State or county shall be competitively neutral in
6 the exercise of its administration and regulation related to the
7 management of the right of way and with regard to other users of
8 the right of way, shall not impose any conditions that are
9 unreasonable or discriminatory.

10 (g) The State or county may require a broadband or
11 wireless provider to repair all damage to the right of way
12 directly caused by the activities of the broadband or wireless
13 provider in the right of way and to return the right of way to
14 its functional equivalence before the damage pursuant to the
15 competitively neutral, reasonable requirements, and
16 specifications of the State or county. If the broadband or
17 wireless provider fails to make the repairs required by the
18 State or county within thirty days after written notice, the
19 State or county may complete those repairs and charge the
20 applicable party the reasonable, documented cost of the repairs.



1 § -5 Permitting process in the right of way. The State
2 or county may require an applicant to obtain one or more permits
3 to collocate a small broadband or wireless facility or install a
4 modified or replaced utility pole associated with a small
5 broadband or wireless facility as provided in section -4;
6 provided that the permits are of general applicability and do
7 not apply exclusively to broadband or wireless facilities. The
8 State or county shall receive permit applications and process
9 and issue permits subject to the following requirements:

10 (1) The applicant shall provide a geographical description
11 of the project area;

12 (2) The applicant shall provide a listing and description
13 of the utility poles, light standards, buildings, and
14 broadband or wireless support structures included in
15 the project for the installation, mounting, operation,
16 and placement of broadband or wireless facilities,
17 including an assessment of the identifying
18 information, location, and ownership of the listed
19 utility poles, light standards, buildings, and
20 structures;



- 1 (3) The applicant shall provide a description of the
2 equipment associated with the facilities to be
3 installed in the project area, including radio
4 transceivers, antennas, coaxial or fiber-optic cables,
5 power supplies, and related equipment, and the size
6 and weight of the equipment to be installed on each
7 pole, building, or structure;
- 8 (4) The State or county shall not require the placement of
9 small broadband or wireless facilities on any specific
10 utility pole or category of poles or require multiple
11 antenna systems on a single utility pole;
- 12 (5) The State or county shall not limit the placement of
13 small broadband or wireless facilities by minimum
14 separation distances; provided that the State or
15 county may limit the number of small broadband or
16 wireless facilities placed on a single utility pole;
- 17 (6) The State or county may require an applicant to
18 include an attestation that the small broadband or
19 wireless facilities will be operational for use by a
20 broadband or wireless provider within one year after
21 the permit issuance date; provided that the State or



1 county and the applicant may agree to extend this
2 period or the period may be tolled if a delay is
3 caused by lack of commercial power or communications
4 transport facilities to the site;

5 (7) Within thirty days of receiving an application, the
6 State or county shall notify the applicant in writing
7 whether the application is complete. If an
8 application is incomplete, the State or county shall
9 specifically identify all missing information in
10 writing. The processing deadline in paragraph (8) is
11 tolled from the time the State or county sends the
12 notice of incompleteness to the time the applicant
13 provides the missing information;

14 (8) An application shall be processed on a
15 nondiscriminatory basis and deemed approved if the
16 State or county fails to approve or deny the
17 application within ninety days of receipt of the
18 application. The processing deadline may be tolled in
19 accordance with paragraph (7) or by agreement of the
20 applicant and the State or county;



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

-4(c) only if the proposed application:

- (A) Materially interferes with the safe operation of public safety equipment;
- (B) Materially interferes with sight lines or clear zones for transportation or pedestrians;
- (C) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
- (D) Fails to comply with reasonable and nondiscriminatory spacing requirements of general application adopted by ordinance that concern the location of ground-mounted equipment. Such spacing requirements shall not prevent a small broadband or wireless facility from serving any location;



1 (E) Fails to comply with building or other applicable
2 codes;

3 (F) Could cause the installation of the facilities on
4 the poles, buildings, and structures to be
5 performed in a manner that does not protect
6 public health and safety and safe travel in the
7 public rights of way;

8 (G) Could cause the utility poles and light standards
9 to be unable to bear the additional weight of the
10 facilities and the facilities could pose a hazard
11 or obstruction to the public;

12 (H) Could allow the project equipment and broadband
13 and wireless facilities to interfere with
14 government systems for public safety
15 communication operations or emergency services;
16 and

17 (I) Causes the load carrying capacity of the State-
18 or county-owned utility pole, building, or
19 structure, to exceed seventy per cent as
20 determined by the appropriate State or county
21 agency.



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

14 (11) An applicant seeking to collocate multiple small
15 broadband or wireless facilities within a two-mile
16 radius may, at the applicant's discretion, file a
17 consolidated application and receive a single permit
18 for the collocation of no more than twenty-five small
19 broadband or wireless facilities; provided that the
20 denial of the collocation of one or more small
21 broadband or wireless facilities in a consolidated



1 application shall not delay processing of any other
2 small broadband or wireless facilities in the same
3 batch;

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

11 Approval of an application authorizes the applicant
12 to:

13 (A) Undertake the installation or collocation; and

14 (B) Subject to applicable relocation requirements and
15 the applicant's right to terminate at any time,
16 operate and maintain the small broadband or
17 wireless facilities and any associated utility
18 pole covered by the permit for a period of not
19 less than twenty years, which shall be renewed
20 for equivalent durations so long as the
21 facilities and pole are in compliance with the



1 criteria set forth in this subsection; provided
2 that the State or a county may remove a utility
3 pole if it decides to do so;

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

7 (A) Routine maintenance;

8 (B) Replacement of small broadband or wireless
9 facilities with small broadband or wireless
10 facilities that are substantially similar or the
11 same size and weight or smaller; or

12 (C) Installation, placement, maintenance, operation,
13 or replacement of micro broadband or wireless
14 facilities on utility poles or that are strung on
15 cables between existing utility poles, in
16 compliance with the national electrical safety
17 code. The State or county may, however, require
18 a permit to work within the right of way for such
19 activities, if applicable. Any such permits
20 shall be subject to the requirements provided in
21 section -4 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.

§ -6 Access to state or county utility poles within the right of way. (a) A person owning, managing, or controlling state or 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.

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

(c) The rates, fees, and terms and conditions for the make-ready work to collocate on the state or county pole shall be nondiscriminatory, competitively neutral, and commercially reasonable.

(d) The State or county shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation by a broadband or wireless provider or communications service provider, including pole replacement if necessary, within one hundred and twenty days



1 after receipt of a complete application. Make-ready work
2 including any pole replacement shall be completed within one
3 hundred and twenty days of written acceptance of the good faith
4 estimate by the applicant.

5 (e) The person owning, managing, or controlling the state
6 or county pole shall not require more make-ready work than
7 required to meet applicable codes or industry standards. Fees
8 for make-ready work shall not include costs related to pre-
9 existing or prior damage or noncompliance. Fees for make-ready
10 work including any pole replacement shall not exceed actual
11 costs or the amount charged to other communications service
12 providers for similar work and shall not include any consultant
13 fees or expenses.

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

17 § -7 Public notice. Prior to collocating a small
18 broadband or wireless facility or installing a modified or
19 replaced utility pole associated with a small broadband or
20 wireless facility, a broadband or wireless provider shall



1 provide notice to the surrounding community of such collocation
2 or installation.

3 § -8 Local authority. (a) Subject to this chapter and
4 applicable federal law, the State or county may continue to
5 exercise zoning, land use, planning, and permitting within its
6 jurisdictional boundaries, including with respect to utility
7 poles; except that neither the State nor a county shall have or
8 exercise any jurisdiction or authority over the design,
9 engineering, construction, installation, or operation of any
10 small broadband or wireless facility located in an interior
11 structure or upon the site of any campus, stadium, or athletic
12 facility not owned or controlled by the State or county, other
13 than to comply with applicable codes. Nothing in this chapter
14 authorizes the State or a county to require broadband or
15 wireless facility deployment or to regulate broadband or
16 wireless services.

17 (b) Except as provided in this chapter with respect to the
18 small broadband or wireless facilities subject to the permit,
19 rate, and fee requirements established herein or specifically
20 required pursuant to chapter 440G or federal law, the State and
21 each county shall not adopt or enforce any regulations or



1 requirements or charge additional rates or fees on the placement
2 or operation of communications facilities in the right of way
3 where the entity is already authorized by a franchise or
4 authorization other than that granted in this chapter to operate
5 throughout the right of way, and the State shall not regulate or
6 charge fees for the provision of communications services, unless
7 expressly authorized by applicable law.

8 § -9 **Implementation.** No later than January 1, 2019, the
9 State and each county shall adopt or modify laws, regulations,
10 and agreements for lands within its jurisdiction that make
11 available rates, fees, and other terms that comply with this
12 chapter to broadband or wireless providers. In the absence of
13 laws, regulations, and agreements that fully comply with this
14 chapter and until such laws, regulations, or agreements are
15 adopted, broadband or wireless providers may install and operate
16 small broadband or wireless facilities and utility poles
17 pursuant to this chapter.

18 § -10 **Indemnification, insurance, and bonding.** (a) The
19 State or county may adopt indemnification, insurance, and
20 bonding requirements related to small broadband or wireless
21 facility permits subject to this section.



1 (b) The State or county may require a broadband or
2 wireless provider to indemnify and hold the State or county and
3 its officers and employees harmless against any claims,
4 lawsuits, judgments, costs, liens, losses, expenses, or fees
5 resulting from the broadband or wireless provider's actions in
6 installing, repairing, or maintaining any broadband or wireless
7 facilities or utility poles.

8 (c) The State or county may require a broadband or
9 wireless provider to have in effect insurance coverage
10 consistent with this subsection and requirements for other right
11 of way users, if such requirements are reasonable and
12 nondiscriminatory. If insurance coverage is required, the State
13 or county may require a broadband or wireless provider to
14 furnish proof of insurance prior to the effective date of any
15 permit issued for a small broadband or wireless facility.

16 (d) The State or county may adopt bonding requirements for
17 small broadband or wireless facilities if the State or county
18 imposes similar requirements in connection with permits issued
19 for other right of way users.

20 The purpose of such bonds shall be to:



- 1 (1) Provide for the removal of abandoned or improperly
2 maintained small broadband or wireless facilities,
3 including those for which the State or county
4 determines a need for the small broadband or wireless
5 facilities to be removed to protect public health,
6 safety, or welfare;
- 7 (2) Restoration of the right of way; or
- 8 (3) Recoupment of past due rates or fees that have not
9 been paid by a broadband or wireless provider in over
10 twelve months; provided that the broadband or wireless
11 provider has received reasonable notice from the State
12 or county of the non-compliance listed and an
13 opportunity to cure the delinquency of the rates or
14 fees.
- 15 Bonding requirements shall not exceed \$200 per small broadband
16 or wireless facility. For broadband or wireless providers with
17 multiple small broadband or wireless facilities within the
18 jurisdiction of a single state or county, the total bond amount
19 across all facilities shall not exceed \$10,000, which amount may
20 be combined into one bond instrument."



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

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



1 Rural districts shall also include golf courses, golf driving
2 ranges, and golf-related facilities.

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

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

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

- 16 (1) Cultivation of crops, including crops for bioenergy,
17 flowers, vegetables, foliage, fruits, forage, and
18 timber;
19 (2) Game and fish propagation;



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



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

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

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

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

21 (11) Agricultural parks;



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

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

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

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

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



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

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

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



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

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

13 For the purposes of this paragraph:

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

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



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

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

17 As used in this paragraph:

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

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



1 agricultural activity with an agricultural-energy
2 facility.

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

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

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



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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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



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

3 SECTION 6. This Act shall take effect on July 1, 3000;
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;

10 (2) This Act shall be repealed on June 30, 2020;

11 (3) On June 30, 2020, section 205-2, Hawaii Revised
12 Statutes, shall be reenacted in the form in which it
13 read on the day before the effective date of this Act;

14 (4) On June 30, 2020, section 205-4.5, Hawaii Revised
15 Statutes, shall be reenacted in the form in which it
16 read on the day before the effective date of Act 52,
17 Session Laws of Hawaii 2014; and

18 (5) This Act shall apply to permit applications filed with
19 the State 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 HD2)

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

