
A BILL FOR AN ACT

RELATING TO WIRELESS BROADBAND FACILITIES.

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

1 SECTION 1. Broadband services, as a significant and
2 growing part of the nation's economy, have a significant
3 positive impact on productivity in nearly every industry, from
4 healthcare to tourism. To support this growth, communications
5 service providers are investing billions on the deployment of
6 broadband and wireless technology to meet current and forecasted
7 customer demand. This investment will dramatically increase
8 connection speeds and the availability and variety of services
9 and drive growth in jobs and gross domestic product, while
10 providing a critical platform for the "internet of things" that
11 will enable the realization of significant economic value from
12 smart communities and other economic activity. The primary
13 impediment to realizing these gains is often the ability to
14 adjust public policy to support the timely and efficient
15 deployment of broadband infrastructure.

16 A key to many of the State's economic development
17 initiatives is the availability of an advanced ubiquitous



1 broadband networks including advanced wireless networks. For
2 example, a competitive tourism industry requires access to
3 mobile on-demand services using the latest generation
4 technology. This infrastructure will also be critical to
5 achieving the State's goal of developing more than eighty
6 thousand technology related jobs paying an annual salary of more
7 than \$80,000 by 2030. As the most isolated population center in
8 the world, Hawaii has a greater need for interconnectivity.
9 Unfortunately, the State currently ranks among the nation's
10 lowest in broadband speeds available to consumers and among the
11 lowest in wireless broadband service availability. Hawaii's
12 wireless broadband network is at a steep competitive
13 disadvantage when compared to other locales throughout the
14 Pacific Rim.

15 Therefore, the legislature finds that encouraging the
16 development of a robust broadband network throughout the State
17 is integral to Hawaii's economic competitiveness and a matter of
18 statewide concern.

19 In addition to these economic development benefits, the
20 rapid deployment of broadband infrastructure will help to
21 immediately improve network capacity to meet the demand for



1 wireless data from Hawaii residents. Consumers are using
2 sophisticated mobile devices to access the Internet like never
3 before for virtually everything, including public safety, school
4 homework, job searches, and high definition video, and as a
5 result, consumers' mobile broadband use is growing
6 exponentially. Indeed, consumer demand for wireless broadband
7 connectivity is greater and growing faster than ever. In 2017,
8 wireless networks carried more than one hundred thousand times
9 the mobile data traffic than was carried in 2008. If not
10 addressed, this skyrocketing consumer demand can cause network
11 congestion, which slows down broadband connections, degrading
12 the consumer's broadband experience even where there is
13 coverage. These challenges are a function of network capacity
14 and occur in every region of the State, wherever there is a
15 cluster of people and devices attempting to connect to the
16 Internet simultaneously. This unprecedented growth in mobile
17 broadband consumption is driving the consumer's urgent need for
18 wireless providers to add capacity to the existing wireless
19 infrastructure in the State while prompting wireline providers
20 to augment or invest in their terrestrial fiber backbones,
21 interisland fiber networks, and transpacific fiber networks to



1 support these wireless capacity increases. This Act seeks to
2 address the difficulties in deploying broadband infrastructure
3 and to increase competitive options for communications services,
4 improve the communications network, and promote public safety,
5 job growth, and education.

6 To realize these objectives and support continued
7 investment in broadband infrastructure investment that will
8 benefit the State's consumers without any public infrastructure
9 investment, communications service providers need a reasonable
10 and reliable process to deploy or support wireless facilities.
11 The process must include: (1) access to public rights of way
12 and the ability to utilize government-owned infrastructure in
13 the rights of way; (2) reasonable and uniform cost-recovery
14 based rates and fees for the permitting and deployment of small
15 wireless facilities in rights of way and on public
16 infrastructure, including State or county owned utility poles;
17 and (3) a reasonable and uniform process for deploying the
18 facilities on public infrastructure.

19 This Act is essential to establishing the policy framework
20 to foster the installation of a robust, reliable, and



1 technologically advanced broadband infrastructure throughout the
2 State.

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

6 "CHAPTER

7 WIRELESS BROADBAND AND COMMUNICATIONS NETWORKS

8 § -1 Applicability. (a) Subject to subsection (b),
9 this chapter shall only apply to activities of a wireless or
10 communications service provider to deploy small wireless
11 facilities and to modify or replace utility poles associated
12 with small wireless facilities. Except as to the State or
13 county permitting authority related to utility poles, this
14 chapter shall not be construed to apply to:

- 15 (1) Utility poles or other utility infrastructure solely
16 owned by investor owned utility companies; or
- 17 (2) Investor owned utility companies' utility poles in
18 which the State or county has an ownership interest.

19 (b) Notwithstanding any other provision to the contrary,
20 small wireless facilities shall not interfere with public
21 safety, law enforcement, or emergency communications. To the



1 extent an interference is identified by the State, county, or a
2 communications service provider, it shall be resolved pursuant
3 to the applicable requirements and procedures of the Federal
4 Communications Commission following written notification of an
5 interference.

6 § -2 **Definitions.** For purposes of this chapter:

7 "Antenna" means communications equipment that transmits or
8 receives electromagnetic radio frequency signals used in the
9 provision of services using wireless facilities.

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

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

18 "Application" means a request submitted by an applicant to
19 the State or county for a permit to collocate small wireless
20 facilities or to approve the installation or modification of a
21 utility pole.



1 "Collocate" means to install, mount, maintain, modify,
2 operate, or replace wireless facilities on or adjacent to a
3 wireless support structure or utility pole. "Collocation" has a
4 corresponding meaning.

5 "Communications service" means cable service, as defined in
6 title 47 United States Code section 522(6), as amended, or
7 section 440G-3; information service, as defined in title 47
8 United States Code section 153(24), as amended;
9 telecommunications service, as defined in title 47 United States
10 Code section 153(53), as amended, or section 269-1; mobile
11 service, as defined in title 47 United States Code section
12 153(33), as amended; or wireless service other than mobile
13 service.

14 "Communications service provider" means a cable operator,
15 as defined in title 47 United States Code section 522(5) or
16 section 440G-3; a provider of information service, as defined in
17 title 47 United States Code section 153(24); a
18 telecommunications carrier, as defined in title 47 United States
19 Code section 153(51) or section 269-1; or a wireless provider.

20 "Decorative pole" means a state or county pole that is
21 specially designed and placed for aesthetic purposes and on



1 which no appurtenances or attachments, other than a small
2 wireless facility attachment, specially designed informational
3 and directional signage, or temporary holiday or special event
4 attachments, have been placed or are permitted to be placed
5 according to nondiscriminatory state or county rules or codes.

6 "Feasible design and collocation standards" means
7 reasonable, objective, and nondiscriminatory specifications
8 concerning the physical structure, construction, location, and
9 appearance of small wireless facilities; provided that those
10 specifications facilitate the installation of the small wireless
11 facilities and may be waived by the State or county.

12 "Historic district" means a group of buildings, properties,
13 or sites that are either listed in the National Register of
14 Historic Places or in the Hawaii register of historic places.

15 "Micro wireless facilities" means a small wireless facility
16 having dimensions either:

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

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



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

4 "Small wireless facilities" means a wireless facility or
5 other facility providing communications service that meets one
6 or both of the following qualifications:

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

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



1 "State or county pole" means a utility pole owned, managed,
2 or operated by, or on behalf of, the State or a county in the
3 State.

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

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

11 "Utility pole" means a pole or similar structure that is or
12 may be used in whole or in part by or for wireline
13 communications, electric distribution, lighting, traffic
14 control, signage, or a similar function, or for the collocation
15 of small wireless facilities. "Utility pole" does not include
16 wireless support structures.

17 "Wireless facility" means equipment at a fixed location
18 that enables wireless communications between user equipment and
19 a communications network, including:

20 (1) Equipment associated with wireless communications; and



1 (2) Radio transceivers, antennas, coaxial or fiber-optic
2 cable, regular and backup power supplies, and
3 comparable equipment, regardless of technological
4 configuration.

5 "Wireless facility" includes small wireless facilities, but does
6 not include wireline backhaul.

7 "Wireless provider" means an individual, corporation,
8 company, association, trust, or other entity or organization
9 who:

10 (1) Provides services, whether at a fixed location or
11 mobile, to the public using wireless facilities; or

12 (2) Builds or installs wireless communication transmission
13 equipment or wireless facilities, including an
14 individual authorized to provide telecommunications
15 service in the State.

16 "Wireless support structure" means a structure, such as a
17 monopole, tower, either guyed or self-supporting building, or
18 other existing or proposed structure designed to support or
19 capable of supporting wireless or broadband facilities that
20 provide communications service, other than a structure designed



1 solely for the collocation of small wireless facilities.

2 "Wireless support structure" shall not include a utility pole.

3 "Wireline backhaul" means the transport of communications
4 data or other electronic information by wire from wireless
5 facilities to a communications network.

6 § -3 **General.** Except as provided in this chapter, the
7 State or any county shall not prohibit, regulate, or charge for
8 the deployment of small wireless facilities or any associated
9 modified or replaced utility poles used for the collocation of
10 small wireless facilities.

11 § -4 **Zoning.** Small wireless facilities and associated
12 modified or replaced utility poles subject to the height limits
13 in section -5(c) shall be classified as permitted uses and
14 not subject to zoning review or zoning approval if they are
15 deployed:

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

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

19 Nothing in this chapter shall be construed to modify
20 existing permitting processes for the placement of wireline
21 backhaul in the right of way.



1 § -5 Use of the right of way for small wireless
2 facilities and utility poles. (a) The State or county shall
3 not enter into an exclusive arrangement with any person for use
4 of the right of way for the construction, operation, marketing,
5 or maintenance of small wireless facilities or for small
6 wireless facilities collocation.

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

15 The State or county shall have the authority to condition
16 the approval of an encroachment permit upon compliance with pre-
17 established nondiscriminatory feasible design and collocation
18 standards on small wireless facilities to be installed on
19 property solely owned by the State or county. As part of a
20 feasible design and collocation standard, the State or county
21 may require the communications service provider to pay the State



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

10 Modified or replaced utility poles associated with a small
11 wireless facility that meet the requirements of this section are
12 permitted uses subject to the permit process in section -6.
13 No additional discretionary permits shall be required to
14 maintain, operate, modify, or replace small wireless facilities
15 and associated utility poles along, across, upon, and under the
16 right of way.

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

20 (1) Ten feet in height above the tallest existing utility
21 pole in place as of the effective date of this Act



1 located within five hundred feet of the modified or
2 replaced pole in the same right of way; or

3 (2) Fifty feet above ground level.

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

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

16 (e) Where the State or county has requirements for the
17 undergrounding of facilities that pre-date the submission of an
18 application, the State or county shall allow reasonable and
19 nondiscriminatory access by communications service providers to
20 maintain, modify, operate, or replace state or county poles and



1 other utility poles for the collocation of small wireless
2 facilities subject to the requirements of this chapter.

3 (f) 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 design or
9 concealment measures shall not have the effect of prohibiting
10 any provider's technology, nor shall the measures be considered
11 a part of the small wireless facility for purposes of the size
12 restrictions.

13 (g) 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
16 of the right of way, shall not impose any conditions that are
17 unreasonable or discriminatory.

18 (h) The State or county may require a communications
19 service provider to repair all damage to the right of way
20 directly caused by the activities of the communications service
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 within thirty calendar
 4 days. If the communications service provider fails to make the
 5 repairs required by the State or county within a thirty calendar
 6 days after receipt of a written notice, the State or county may
 7 complete those repairs and charge the applicable party the
 8 reasonable, documented cost of the repairs.

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

- 17 (1) The State or county shall not require an applicant to
- 18 perform services or provide goods unrelated to the
- 19 permit, such as in-kind contributions to the State or
- 20 county, including reserving fiber, conduit, or pole
- 21 space for the State or county;



- 1 (2) An applicant shall not be required to provide more
2 information to obtain a permit than is required of
3 communications service providers that are not wireless
4 providers; provided that an applicant may be required
5 to include construction and engineering drawings and
6 information demonstrating compliance with the criteria
7 in this section;
- 8 (3) The State or county shall not require the placement of
9 small wireless facilities on any specific utility pole
10 or category of poles or require multiple antenna
11 systems on a single utility pole;
- 12 (4) The State or county shall not limit the placement of
13 small wireless facilities by minimum separation
14 distances;
- 15 (5) The State or county may require an applicant to
16 include an attestation that the small wireless
17 facilities will be operational for use by a
18 communications service provider within one year after
19 the permit issuance date; provided that the State or
20 county and the applicant may agree to extend this
21 period or the period may be tolled if a delay is



1 caused by lack of commercial power or communications
2 transport facilities to the site;

3 (6) Within twenty business days of receiving an
4 application, the State or county shall notify the
5 applicant in writing whether the application is
6 complete. If an application is incomplete, the State
7 or county shall specifically identify all missing
8 information in writing. The processing deadline in
9 paragraph (7) shall be tolled from the date the State
10 or county sends the notice of incompleteness until the
11 date the applicant provides the missing information;

12 (7) An application shall be processed on a
13 nondiscriminatory basis and deemed approved if the
14 State or county fails to approve or deny the
15 application within sixty calendar days of receipt of
16 the initial application. The processing deadline may
17 be tolled by agreement of the applicant and the State
18 or county;

19 (8) The State or county may deny a proposed collocation of
20 a small wireless facility or the construction or
21 modification of a modified or replaced utility pole



1 that meets the requirements in section -5(c) only
2 if the proposed collocation:

3 (A) Fails to comply with applicable requirements of
4 the Federal Communications Commission concerning
5 interference with public safety, communications,
6 or other emergency service systems;

7 (B) Materially interferes with sight lines or clear
8 zones for transportation or pedestrians;

9 (C) Materially interferes with compliance with the
10 Americans with Disabilities Act or similar
11 federal or state standards regarding pedestrian
12 access or movement;

13 (D) Fails to comply with reasonable and
14 nondiscriminatory spacing requirements of general
15 application adopted by rule or ordinance that
16 concern the location of ground-mounted equipment.
17 Spacing requirements shall not prevent a small
18 wireless facility from serving any location;

19 (E) Fails to comply with building or other applicable
20 codes; or



- 1 (F) Causes the utility pole to be unable to bear the
2 additional weight of the facilities, taking into
3 account any state or county reservation of
4 capacity authorized by this chapter; provided
5 that a denial must include a condition that the
6 installation will be approved if the
7 communications service provider agrees to
8 replace, at its own cost, the utility pole with
9 one that can bear the additional weight;
- 10 (9) The State or county shall document the basis for a
11 denial, including the specific provisions of law on
12 which the denial was based, and send the documentation
13 to the applicant on or before the day the State or
14 county denies an application. The applicant may
15 address the deficiencies identified by the State or
16 county in its written denial and resubmit a revised
17 application within ninety calendar days of the written
18 notice of denial without paying an additional
19 application fee. The State or county shall have sixty
20 calendar days from the date of receipt of the revised
21 application to approve or deny the application;



1 provided that any subsequent review of a previously
2 denied application shall be limited to the review of
3 new material or design changes and the deficiencies
4 cited in the original documentation setting forth the
5 basis for the original denial;

6 (10) An applicant seeking to collocate small wireless
7 facilities within the State or the jurisdiction of a
8 single county shall be allowed at the applicant's
9 discretion to file a consolidated application and
10 receive a single permit for the collocation of up to
11 twenty-five small wireless facilities within a three
12 square mile radius; provided that the denial of one or
13 more small wireless facilities in a consolidated
14 application shall not delay processing of any other
15 small wireless facilities in the same batch; provided
16 further that within ten calendar days of receiving a
17 permit for a consolidated application, the applicant
18 shall publish notice of the permit in a newspaper of
19 general circulation in the county where the small
20 wireless facility is to be located; provided further
21 that the notice shall include a phone number for the



1 communications service provider that the public may
2 contact;

3 (11) 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 Approval of an application authorizes the applicant
11 to:

12 (A) Undertake the installation or collocation; and
13 (B) Subject to applicable relocation requirements and
14 the applicant's right to terminate at any time,
15 operate and maintain the small wireless
16 facilities and any associated utility pole
17 covered by the permit for a period of no less
18 than twenty years, which may be renewed for
19 equivalent durations provided that they are in
20 compliance with the criteria set forth in this
21 section at the time of renewal;



1 (12) The State or county shall not institute, either
2 expressly or de facto, a moratorium on filing,
3 receiving, or processing applications or issuing
4 permits or other approvals, if any, for the
5 collocation of small wireless facilities or the
6 installation or modification of utility poles to
7 support small wireless facilities; and

8 (13) The State or county shall not require an application
9 for:

10 (A) Routine maintenance;

11 (B) Replacement of small wireless facilities with
12 small wireless facilities that are substantially
13 similar or the same size and weight or smaller;
14 provided that the communications service provider
15 shall notify the state or county department in
16 which the small wireless facility was originally
17 approved at least ten calendar days, but no more
18 than sixty calendar days, prior to commencing the
19 replacement; or

20 (C) Installation, placement, maintenance, operation,
21 or replacement of micro wireless facilities on



1 utility poles or that are strung on cables
2 between existing utility poles, in compliance
3 with the national electrical safety code. The
4 State or county may require a permit to work
5 within the right of way for those activities, if
6 applicable. Any permits shall be subject to the
7 requirements provided in section -5 and this
8 section.

9 § -7 Access to state or county poles within the right of
10 way. (a) This section shall apply to activities of the
11 wireless or communications service provider within the right of
12 way.

13 (b) A person owning, managing, or controlling state or
14 county poles in the right of way shall not enter into an
15 exclusive arrangement with any person for the right to attach to
16 those poles.

17 (c) The rates to collocate on state or county poles shall
18 be nondiscriminatory regardless of the services provided by the
19 collocating person. The rate to collocate on state or county
20 poles shall be in accordance with section -8.



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

5 (e) The State or county shall provide a good faith
6 estimate for any make-ready work necessary to enable the state
7 or county pole to support the requested collocation by a
8 communications service provider, including pole replacement if
9 necessary, within sixty calendar days after receipt of a
10 complete application. Make-ready work including any pole
11 replacement shall be completed within sixty calendar days of
12 written acceptance of the good faith estimate by the applicant.

13 (f) The person owning, managing, or controlling the state
14 or county pole shall not require more make-ready work than
15 required to meet applicable codes or industry standards. Fees
16 for make-ready work shall not include costs related to pre-
17 existing or prior damage or noncompliance. Fees for make-ready
18 work including any pole replacement shall not exceed actual
19 costs or the amount charged to other communications service
20 providers for similar work and shall not include any consultant
21 fees or expenses.



1 (g) The State or county may reserve space for up to twelve
2 months on its utility poles; provided that:

3 (1) Prior to a request for access having been made, the
4 State or county had a bona fide development plan in
5 place and the specific reservation of attachment
6 capacity is reasonably and specifically needed for its
7 planned use within one year of the request;

8 (2) There is no available technological means of
9 increasing the capacity of the light standard or
10 utility pole for additional attachments; and

11 (3) Negotiations have been attempted at a cooperative
12 solution to the capacity problem in good faith with
13 the party seeking the attachment.

14 § -8 Rates and fees within the right of way. (a) This
15 section shall govern the State's or county's rates and fees for
16 the placement of a wireless facility or utility pole in the
17 right of way.

18 (b) The State or county shall not require a wireless
19 provider to pay any rates, fees, or compensation to the State,
20 county, or other person other than what is expressly authorized
21 by this section for collocation of small wireless facilities on

1 utility poles in the right of way or for the construction,
2 operation, modification, and maintenance of utility poles in the
3 right of way.

4 (c) Application fees shall be subject to the following
5 requirements:

6 (1) The State or county may charge an application fee only
7 if the fee is required for similar types of commercial
8 development or construction within the State's or
9 county's jurisdiction;

10 (2) Where costs to be recovered by an application fee are
11 already recovered by existing fees, rates, or taxes
12 paid by a communications service provider, no
13 application fee shall be assessed;

14 (3) An application fee may recover the reasonable costs of
15 employing temporary contractors or vendors for the
16 purpose of expediting the processing of permits for
17 the collocation of small wireless facilities. Except
18 for these purposes, an application fee shall not
19 include expenses related to agreements with a third
20 party utility pole, right of way, or



1 telecommunications management or consulting company;

2 and

3 (4) The application fees for collocation of small wireless
4 facilities on an existing or replacement state or
5 county pole shall not exceed the reasonable costs for
6 providing the service for which the fee is charged and
7 shall not be levied for general revenue purposes;

8 (d) The rate for collocation of a small wireless facility
9 on a state or county pole in the right of way shall not exceed
10 the actual, direct, and reasonable costs directly related to the
11 communications service provider's use of space on the state or
12 county pole. For purposes of this section, a reasonable cost-
13 recovery based rate shall not exceed \$40 per pole annually. In
14 any dispute concerning the appropriateness of a cost-based rate
15 for any state or county pole, the State or county shall have the
16 burden of proving that the rate does not exceed the reasonable
17 cost-recovery based rate or the actual, direct, and reasonable
18 costs for the applicant's use of the pole.

19 § -9 **Local authority.** Subject to this chapter and
20 applicable federal law, the State or county may continue to
21 exercise zoning, land use, planning, and permitting within its



1 jurisdictional boundaries, including with respect to utility
2 poles; provided that the State or a county shall not have or
3 exercise any jurisdiction or authority over the design,
4 engineering, construction, installation, or operation of any
5 small wireless facility located in an interior structure or upon
6 the site of any campus, stadium, or athletic facility not owned
7 or controlled by the State or county, other than to comply with
8 applicable codes. Nothing in this chapter shall authorize the
9 State or county to require wireless facility deployment or to
10 regulate wireless services.

11 § -10 **Implementation.** No later than January 1, 2019,
12 the State and each county shall adopt or modify laws,
13 regulations, and agreements for lands within its jurisdiction
14 that make available rates, fees, and other terms that comply
15 with this chapter to communications service providers. In the
16 absence of laws, regulations, and agreements that fully comply
17 with this chapter and until those laws, regulations, or
18 agreements are adopted, communications service providers may
19 install and operate small wireless facilities and utility poles
20 pursuant to this chapter. The State or a county may require a
21 communications service provider to consider installing and



1 operating small wireless facilities and utility poles in rural
2 districts, where economically feasible, particularly in neighbor
3 island communities having low- or medium-density concentrations
4 of residents.

5 § -11 Indemnification, insurance, and bonding. (a) The
6 State or county may adopt indemnification, insurance, and
7 bonding requirements related to small wireless facility permits
8 subject to this section.

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

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



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

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

7 The purpose of the bonds shall be to:

- 8 (1) Provide for the removal of abandoned or improperly
9 maintained small wireless facilities, including those
10 that the State or county determines must be removed to
11 protect public health, safety, or welfare;
- 12 (2) Restoration of the right of way; or
- 13 (3) Recoupment of past due rates or fees that have not
14 been paid by a communications service provider in over
15 twelve months; provided that the communications
16 service provider has received reasonable notice from
17 the State or county of the non-compliance listed and
18 an opportunity to cure the rates or fees.

19 Bonding requirements shall not exceed \$200 per small
20 wireless facility."



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 [~~sueh~~] the lot;
15 provided that all other dwellings in the subdivision shall have
16 a minimum lot size of one-half acre or 21,780 square feet.
17 [~~Sueh~~] The petition for variance may be processed under the
18 special permit procedure. These districts may include
19 contiguous areas [~~whieh~~] that are not suited to low density
20 residential lots or small farms by reason of topography, soils,
21 and other related characteristics. Rural districts shall also



1 include golf courses, golf driving ranges, and golf-related
2 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 wireless facilities, as defined in section -2, as
7 permissible uses."

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

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

- 15 (1) Cultivation of crops, including crops for bioenergy,
16 flowers, vegetables, foliage, fruits, forage, and
17 timber;
- 18 (2) Game and fish propagation;
- 19 (3) Raising of livestock, including poultry, bees, fish,
20 or other animal or aquatic life that are propagated
21 for economic or personal use;



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



1 including offices or yards for equipment, material,
2 vehicle storage, repair or maintenance, treatment
3 plants, corporation yards, or other similar
4 structures;

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

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

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

18 (11) Agricultural parks;

19 (12) Plantation community subdivisions, which as used in
20 this chapter means an established subdivision or
21 cluster of employee housing, community buildings, and



1 agricultural support buildings on land currently or
2 formerly owned, leased, or operated by a sugar or
3 pineapple plantation; provided that the existing
4 structures may be used or rehabilitated for use, and
5 new employee housing and agricultural support
6 buildings may be allowed on land within the
7 subdivision as follows:

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

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

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

17 (13) Agricultural tourism conducted on a working farm, or a
18 farming operation as defined in section 165-2, for the
19 enjoyment, education, or involvement of visitors;
20 provided that the agricultural tourism activity is
21 accessory and secondary to the principal agricultural



1 use and does not interfere with surrounding farm
2 operations; and provided further that this paragraph
3 shall apply only to a county that has adopted
4 ordinances regulating agricultural tourism under
5 section 205-5;

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

17 (15) Wind energy facilities, including the appurtenances
18 associated with the production and transmission of
19 wind generated energy; provided that the wind energy
20 facilities and appurtenances are compatible with



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

11 For the purposes of this paragraph:

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

17 "Biofuel processing facility" means a facility
18 that produces liquid or gaseous fuels from organic
19 sources such as biomass crops, agricultural residues,
20 and oil crops, including palm, canola, soybean, and
21 waste cooking oils; grease; food wastes; and animal



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

15 As used in this paragraph:

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

18 "Agricultural-energy enterprise" means an
19 enterprise that integrally incorporates an
20 agricultural activity with an agricultural-energy
21 facility.



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

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

13 (18) Construction and operation of wireless communication
14 antennas[+], including wireless facilities; provided
15 that, for the purposes of this paragraph, "wireless
16 communication antenna" means communications equipment
17 that is either freestanding or placed upon or attached
18 to an already existing structure and that transmits
19 and receives electromagnetic radio signals used in the
20 provision of all types of wireless communications
21 services; provided further that nothing in this



1 paragraph shall be construed to permit the
2 construction of any new structure that is not deemed a
3 permitted use under this subsection; provided further
4 that "wireless facilities" shall have the same meaning
5 as in section -2;

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

19 (20) Solar energy facilities that do not occupy more than
20 ten per cent of the acreage of the parcel, or twenty
21 acres of land, whichever is lesser or for which a



1 special use permit is granted pursuant to section 205-
2 6; provided that this use shall not be permitted on
3 lands with soil classified by the land study bureau's
4 detailed land classification as overall (master)
5 productivity rating class A unless the solar energy
6 facilities are:

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

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

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

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



- 1 (A) The area occupied by the solar energy facilities
- 2 is also made available for compatible
- 3 agricultural activities at a lease rate that is
- 4 at least fifty per cent below the fair market
- 5 rent for comparable properties;
- 6 (B) Proof of financial security to decommission the
- 7 facility is provided to the satisfaction of the
- 8 appropriate county planning commission prior to
- 9 date of commencement of commercial generation;
- 10 and
- 11 (C) Solar energy facilities shall be decommissioned
- 12 at the owner's expense according to the following
- 13 requirements:
- 14 (i) Removal of all equipment related to the
- 15 solar energy facility within twelve months
- 16 of the conclusion of operation or useful
- 17 life; and
- 18 (ii) Restoration of the disturbed earth to
- 19 substantially the same physical condition as
- 20 existed prior to the development of the
- 21 solar energy facility.



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

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

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

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

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

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

20 (iii) Pumped storage facilities that store energy
21 by pumping water uphill to a reservoir at



1 higher elevation from a reservoir at a lower
2 elevation to be released to turn a turbine
3 to generate electricity;

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

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

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

16 SECTION 5. Within one year of the effective date of this
17 Act, the State or county shall conduct an evaluation of section
18 -6(6) and (7), Hawaii Revised Statutes, established by
19 section 2 of this Act, to determine the adequacy of the period
20 of time provided in that section for the State or county to
21 process and approve applications, based on the number of



1 applications submitted and available resources, and submit a
2 report of its findings to the legislature no later than twenty
3 days prior to the convening of the regular session of 2020.

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect on July 1, 2050;
7 provided that:

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



Report Title:

Small Wireless Facilities; Wireless Facilities; Broadband;
Economic Development; State-owned and County-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 wireless service providers to install wireless facilities on state or county owned utility poles, or install associated utility poles, in the right of way. Effective 7/1/2050. Applies to permit applications filed with the State or county after 12/31/2018. (SD1)

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