
A BILL FOR AN ACT

RELATING TO THE INSTALLATION OF INFRASTRUCTURE.

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

1 SECTION 1. Act 151, Session Laws of Hawaii 2011 (Act 151),
2 provides an exemption for the installation, improvement,
3 construction, or development of infrastructure relating to
4 broadband service or broadband technology from state and county
5 permitting requirements, under certain conditions.

6 Since Act 151 was passed into law, broadband technology has
7 advanced substantially. Wireless technology is now essential to
8 the delivery of broadband service. Implementation of wireless
9 technology, such as small wireless facilities, will play a major
10 role in continuing the benefits afforded by broadband
11 infrastructure to the State.

12 The purpose of this Act is to:

- 13 (1) Clarify the exemptions permitted by Act 151 to include
14 small wireless facilities;
- 15 (2) Repeal and codify in chapter 27, Hawaii Revised
16 Statutes, provisions of Act 151 that are permanent and
17 general; and



1 (3) Expand the definition of wireless communications
2 antennas in section 205-4.5(a)(18), Hawaii Revised
3 Statutes, to include small wireless facilities.

4 SECTION 2. Chapter 27, Hawaii Revised Statutes, is amended
5 by adding a new section to part VII to be appropriately
6 designated and to read as follows:

7 "§27-A Broadband-related infrastructure; installation;
8 rates. (a) Actions relating to the installation, improvement,
9 construction, or development of infrastructure relating to
10 broadband service or broadband technology, including the
11 interconnection and installation of telecommunications cables
12 and the installation of small wireless facilities on a utility
13 pole or other supporting structure, shall be exempt from county
14 permitting requirements; state permitting and approval
15 requirements, which includes the requirements of chapters 171,
16 205A, and 343; and public utilities commission rules under
17 Hawaii Administrative Rules, chapter 6-73, that require existing
18 installations to comply with new pole replacement standards at
19 the time of any construction or alteration to the equipment or
20 installation; except to the extent that permitting or approval
21 is required by federal law or is necessary to protect



1 eligibility for federal funding, services, or other assistance;
2 provided that the installation, improvement, construction, or
3 development of infrastructure shall:

4 (1) Be directly related to the improvement of existing
5 telecommunications cables or the installation of new
6 telecommunications cables, including the improvement
7 and installation of small wireless facilities and
8 small wireless facilities networks:

9 (A) On existing, replacement, or new utility poles
10 and conduits; and

11 (B) Using existing or new infrastructure and
12 facilities;

13 (2) Take place within existing rights-of-way or public
14 utility easements, or use existing or new
15 telecommunications infrastructure; and

16 (3) Make no significant changes to the existing public
17 rights-of-way or public utility easements. For
18 purposes of this section, the installation of a small
19 wireless facility shall be deemed to not make a
20 significant change to existing public rights-of-way or
21 public utility easements.



1 A person or entity taking any action under this section,
2 shall comply with all applicable safety and engineering
3 requirements relating to the installation, improvement,
4 construction, or development of infrastructure relating to
5 broadband service.

6 At least thirty calendar days before taking any action
7 under this section, the person or entity taking the action shall
8 provide notice to the director of commerce and consumer affairs
9 by electronic posting in the form and on the site designated by
10 the director for posting on the designated central state of
11 Hawaii internet website; provided that notice need not be given
12 by a public utility or government entity for an action relating
13 to the installation, improvement, construction, or development
14 of infrastructure relating to broadband service or broadband
15 technology where the action taken is to provide access as the
16 owner of the existing rights-of-way, utility easement, or
17 telecommunications infrastructure.

18 (b) Consistent with federal law, no person or entity shall
19 be required to upgrade or replace an existing utility pole when
20 using that utility pole to install new telecommunications cables
21 or small wireless facilities, or to improve existing



1 telecommunications cables or small wireless facilities; provided
2 that:

3 (1) The installation or improvement does not increase the
4 overall weight load and diameter of the attachment
5 prior to the installation or improvement;

6 (2) The overall weight load on the utility pole does not
7 exceed maximum utility pole safe weight capacities
8 established by the Federal Communications Commission
9 and the public utilities commission; and

10 (3) The utility pole is not damaged or made less safe or
11 reliable due to the installation or improvement of
12 telecommunications cables.

13 (c) The public utilities commission may allow a public
14 utility to recover all prudently incurred costs as approved
15 through rates, charges, or clauses approved or established by
16 the public utilities commission pursuant to section 269-16
17 including but not limited to planning, engineering,
18 construction, installation, or replacement of utility poles
19 undertaken to accomplish the objectives of this section.

20 Recovery of all prudently incurred costs shall also apply to a
21 broadband service provider.



1 (d) If access to a utility pole is not granted within
2 forty-five days of a written request for access, the utility
3 must confirm the denial in writing by the forty-fifth day,
4 consistent with the requirements established by the Federal
5 Communications Commission under Title 47, Chapter 1, Code of
6 Federal Regulations. The utility's denial of access shall be
7 specific, shall include all relevant evidence and information
8 supporting its denial, and shall explain how the evidence and
9 information relate to a denial of access for reasons of lack of
10 capacity, safety, reliability, or engineering standards.

11 (e) The state or county may impose a charge on small
12 wireless facilities and small wireless facilities networks
13 collocated on utility poles, structures, and lighting standards
14 located within the public rights-of-way and installed on state
15 or county property. The rates shall be reasonable and
16 nondiscriminatory based on annual services provided by the
17 collocating person. The rate may not exceed the annual
18 recurring rate that would be permitted under rules adopted by
19 the Federal Communications Commission under 47 United States
20 Code section 224(e) or \$20 per year, whichever is less. The
21 rate shall be used to recover the actual, direct, and reasonable



1 costs related to the use of space on the utility pole. In any
2 controversy concerning the appropriateness of a rate for a state
3 or county owned utility pole, the state or county shall have the
4 burden of proving that the rates are reasonable."

5 SECTION 3. Section 27-41.1, Hawaii Revised Statutes, is
6 amended by adding three new definitions to be appropriately
7 inserted and to read as follows:

8 "Small wireless facilities" means wireless facilities that
9 meet the following qualifications:

- 10 (1) Each individual antenna, excluding the associated
11 equipment, is individually no more than three cubic
12 feet in volume, and all antennas on the structure
13 total no more than six cubic feet in volume; and
- 14 (2) All other wireless equipment associated with the
15 structure, excluding cable runs for the connection of
16 power and other services, do not cumulatively exceed:
 - 17 (A) Twenty-eight cubic feet for collocations on all
18 non-pole structures, including buildings and
19 water tanks that can support fewer than three
20 providers;



1 (B) Twenty-one cubic feet for collocations on all
2 pole structures, including light poles, traffic
3 signal poles, and utility poles that can support
4 fewer than three providers;

5 (C) Thirty-five cubic feet for non-pole collocations
6 that can support at least three providers; or

7 (D) Twenty-eight cubic feet for pole collocations
8 that can support at least three providers.

9 The volume of any deployed equipment that is not visible from
10 public spaces at the ground level from two hundred fifty feet or
11 less may be omitted from the calculation of volumetric limits.

12 "Small wireless facilities network" means a collection of
13 interrelated small wireless facilities designed to deliver
14 wireless communications service.

15 "Utility pole" means a public or private pole or similar
16 structure that is used in whole or in part for communications
17 service, electric service, lighting, traffic control, signage,
18 or similar functions."

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



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

6 (1) Cultivation of crops, including crops for bioenergy,
7 flowers, vegetables, foliage, fruits, forage, and
8 timber;

9 (2) Game and fish propagation;

10 (3) Raising of livestock, including poultry, bees, fish,
11 or other animal or aquatic life that are propagated
12 for economic or personal use;

13 (4) Farm dwellings, employee housing, farm buildings, or
14 activities or uses related to farming and animal
15 husbandry. "Farm dwelling", as used in this
16 paragraph, means a single-family dwelling located on
17 and used in connection with a farm, including clusters
18 of single-family farm dwellings permitted within
19 agricultural parks developed by the State, or where
20 agricultural activity provides income to the family
21 occupying the dwelling;



- 1 (5) Public institutions and buildings that are necessary
2 for agricultural practices;
- 3 (6) Public and private open area types of recreational
4 uses, including day camps, picnic grounds, parks, and
5 riding stables, but not including dragstrips,
6 airports, drive-in theaters, golf courses, golf
7 driving ranges, country clubs, and overnight camps;
- 8 (7) Public, private, and quasi-public utility lines and
9 roadways, transformer stations, communications
10 equipment buildings, solid waste transfer stations,
11 major water storage tanks, and appurtenant small
12 buildings such as booster pumping stations, but not
13 including offices or yards for equipment, material,
14 vehicle storage, repair or maintenance, treatment
15 plants, corporation yards, or other similar
16 structures;
- 17 (8) Retention, restoration, rehabilitation, or improvement
18 of buildings or sites of historic or scenic interest;
- 19 (9) Agricultural-based commercial operations as described
20 in section 205-2(d)(15);



- 1 (10) Buildings and uses, including mills, storage, and
2 processing facilities, maintenance facilities,
3 photovoltaic, biogas, and other small-scale renewable
4 energy systems producing energy solely for use in the
5 agricultural activities of the fee or leasehold owner
6 of the property, and vehicle and equipment storage
7 areas that are normally considered directly accessory
8 to the above-mentioned uses and are permitted under
9 section 205-2(d);
- 10 (11) Agricultural parks;
- 11 (12) Plantation community subdivisions, which as used in
12 this chapter means an established subdivision or
13 cluster of employee housing, community buildings, and
14 agricultural support buildings on land currently or
15 formerly owned, leased, or operated by a sugar or
16 pineapple plantation; provided that the existing
17 structures may be used or rehabilitated for use, and
18 new employee housing and agricultural support
19 buildings may be allowed on land within the
20 subdivision as follows:



- 1 (A) The employee housing is occupied by employees or
- 2 former employees of the plantation who have a
- 3 property interest in the land;
- 4 (B) The employee housing units not owned by their
- 5 occupants shall be rented or leased at affordable
- 6 rates for agricultural workers; or
- 7 (C) The agricultural support buildings shall be
- 8 rented or leased to agricultural business
- 9 operators or agricultural support services;
- 10 (13) Agricultural tourism conducted on a working farm, or a
- 11 farming operation as defined in section 165-2, for the
- 12 enjoyment, education, or involvement of visitors;
- 13 provided that the agricultural tourism activity is
- 14 accessory and secondary to the principal agricultural
- 15 use and does not interfere with surrounding farm
- 16 operations; and provided further that this paragraph
- 17 shall apply only to a county that has adopted
- 18 ordinances regulating agricultural tourism under
- 19 section 205-5;
- 20 (14) Agricultural tourism activities, including overnight
- 21 accommodations of twenty-one days or less, for any one



1 stay within a county; provided that this paragraph
2 shall apply only to a county that includes at least
3 three islands and has adopted ordinances regulating
4 agricultural tourism activities pursuant to section
5 205-5; provided further that the agricultural tourism
6 activities coexist with a bona fide agricultural
7 activity. For the purposes of this paragraph, "bona
8 fide agricultural activity" means a farming operation
9 as defined in section 165-2;

10 (15) Wind energy facilities, including the appurtenances
11 associated with the production and transmission of
12 wind generated energy; provided that the wind energy
13 facilities and appurtenances are compatible with
14 agriculture uses and cause minimal adverse impact on
15 agricultural land;

16 (16) Biofuel processing facilities, including the
17 appurtenances associated with the production and
18 refining of biofuels that is normally considered
19 directly accessory and secondary to the growing of the
20 energy feedstock; provided that biofuel processing
21 facilities and appurtenances do not adversely impact



1 agricultural land and other agricultural uses in the
2 vicinity.

3 For the purposes of this paragraph:

4 "Appurtenances" means operational infrastructure
5 of the appropriate type and scale for economic
6 commercial storage and distribution, and other similar
7 handling of feedstock, fuels, and other products of
8 biofuel processing facilities.

9 "Biofuel processing facility" means a facility
10 that produces liquid or gaseous fuels from organic
11 sources such as biomass crops, agricultural residues,
12 and oil crops, including palm, canola, soybean, and
13 waste cooking oils; grease; food wastes; and animal
14 residues and wastes that can be used to generate
15 energy;

16 (17) Agricultural-energy facilities, including
17 appurtenances necessary for an agricultural-energy
18 enterprise; provided that the primary activity of the
19 agricultural-energy enterprise is agricultural
20 activity. To be considered the primary activity of an
21 agricultural-energy enterprise, the total acreage



1 devoted to agricultural activity shall be not less
2 than ninety per cent of the total acreage of the
3 agricultural-energy enterprise. The agricultural-
4 energy facility shall be limited to lands owned,
5 leased, licensed, or operated by the entity conducting
6 the agricultural activity.

7 As used in this paragraph:

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

10 "Agricultural-energy enterprise" means an
11 enterprise that integrally incorporates an
12 agricultural activity with an agricultural-energy
13 facility.

14 "Agricultural-energy facility" means a facility
15 that generates, stores, or distributes renewable
16 energy as defined in section 269-91 or renewable fuel
17 including electrical or thermal energy or liquid or
18 gaseous fuels from products of agricultural activities
19 from agricultural lands located in the State.

20 "Appurtenances" means operational infrastructure
21 of the appropriate type and scale for the economic



1 commercial generation, storage, distribution, and
2 other similar handling of energy, including equipment,
3 feedstock, fuels, and other products of agricultural-
4 energy facilities;

5 (18) Construction and operation of wireless communication
6 antennas[+] including small wireless facilities as
7 defined in section 27-41.1; provided that, for the
8 purposes of this paragraph, "wireless communication
9 antenna" means communications equipment that is either
10 freestanding or placed upon or attached to an already
11 existing structure and that transmits and receives
12 electromagnetic radio signals used in the provision of
13 all types of wireless communications services;
14 provided further that nothing in this paragraph shall
15 be construed to permit the construction of any new
16 structure that is not deemed a permitted use under
17 this subsection;

18 (19) Agricultural education programs conducted on a farming
19 operation as defined in section 165-2, for the
20 education and participation of the general public;
21 provided that the agricultural education programs are



1 accessory and secondary to the principal agricultural
2 use of the parcels or lots on which the agricultural
3 education programs are to occur and do not interfere
4 with surrounding farm operations. For the purposes of
5 this paragraph, "agricultural education programs"
6 means activities or events designed to promote
7 knowledge and understanding of agricultural activities
8 and practices conducted on a farming operation as
9 defined in section 165-2;

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

19 (A) Located on a paved or unpaved road in existence
20 as of December 31, 2013, and the parcel of land
21 upon which the paved or unpaved road is located



1 has a valid county agriculture tax dedication
2 status or a valid agricultural conservation
3 easement;

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

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

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

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

18 (B) Proof of financial security to decommission the
19 facility is provided to the satisfaction of the
20 appropriate county planning commission prior to



1 date of commencement of commercial generation;
2 and
3 (C) Solar energy facilities shall be decommissioned
4 at the owner's expense according to the following
5 requirements:

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

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

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

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

20 (23) Hydroelectric facilities, including the appurtenances
21 associated with the production and transmission of



1 hydroelectric energy, subject to section 205-2;
2 provided that the hydroelectric facilities and their
3 appurtenances:

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

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

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

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

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

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



1 standard established for any new hydroelectric
2 facility; and

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

8 SECTION 5. Act 151, Session Laws of Hawaii 2011, as
9 amended by section 3 of Act 264, Session Laws of Hawaii 2013, as
10 amended by section 1 of Act 193, Session Laws of Hawaii 2016, is
11 amended by repealing section 2.

12 [~~SECTION 2. Beginning January 1, 2012, actions relating~~
13 ~~to the installation, improvement, construction, or development~~
14 ~~of infrastructure relating to broadband service or broadband~~
15 ~~technology, including the interconnection of telecommunications~~
16 ~~cables, shall be exempt from county permitting requirements,~~
17 ~~state permitting and approval requirements, which includes the~~
18 ~~requirements of chapters 171, 205A, and 343, Hawaii Revised~~
19 ~~Statutes, and public utilities commission rules under Hawaii~~
20 ~~Administrative Rules, chapter 6-73, that require existing~~
21 ~~installations to comply with new pole replacement standards at~~



1 ~~the time of any construction or alteration to the equipment or~~
2 ~~installation, except to the extent that such permitting or~~
3 ~~approval is required by federal law or is necessary to protect~~
4 ~~eligibility for federal funding, services, or other assistance,~~
5 ~~provided that the installation, improvement, construction, or~~
6 ~~development of infrastructure shall:~~

7 ~~(1) Be directly related to the improvement of existing~~
8 ~~telecommunications cables or the installation of new~~
9 ~~telecommunications cables:~~

10 ~~(A) On existing or replacement utility poles and~~
11 ~~conduits; and~~

12 ~~(B) Using existing infrastructure and facilities;~~

13 ~~(2) Take place within existing rights of way or public~~
14 ~~utility easements or use existing telecommunications~~
15 ~~infrastructure; and~~

16 ~~(3) Make no significant changes to the existing public~~
17 ~~rights of way, public utility easements, or~~
18 ~~telecommunications infrastructure.~~

19 ~~An applicant shall comply with all applicable safety and~~
20 ~~engineering requirements relating to the installation,~~



1 ~~improvement, construction, or development of infrastructure~~
2 ~~relating to broadband service.~~

3 ~~A person or entity taking any action under this section~~
4 ~~shall, at least thirty calendar days before the action is taken,~~
5 ~~provide notice to the director of commerce and consumer affairs~~
6 ~~by electronic posting in the form and on the site designated by~~
7 ~~the director for such posting on the designated central State of~~
8 ~~Hawaii Internet website; provided that notice need not be given~~
9 ~~by a public utility or government entity for an action relating~~
10 ~~to the installation, improvement, construction, or development~~
11 ~~of infrastructure relating to broadband service or broadband~~
12 ~~technology where the action taken is to provide access as the~~
13 ~~owner of the existing rights of way, utility easements, or~~
14 ~~telecommunications infrastructure."]~~

15 SECTION 6. Act 151, Session Laws of Hawaii 2011, as
16 amended by section 3 of Act 264, Session Laws of Hawaii 2013, is
17 amended by repealing section 3.

18 [~~SECTION 3. Consistent with federal law, no person or~~
19 ~~entity shall be required to upgrade or replace an existing~~
20 ~~utility pole when using that utility pole to install new~~



1 ~~telecommunications cables or to improve existing~~

2 ~~telecommunications cables; provided that:~~

3 (1) ~~The overall weight load and the diameter of the~~
4 ~~attachment on the utility pole following the~~
5 ~~installation or improvement does not exceed the~~
6 ~~overall weight load and diameter of the attachment~~
7 ~~prior to the installation or improvement;~~

8 (2) ~~The overall weight load on the utility pole does not~~
9 ~~exceed maximum utility pole safe weight capacities~~
10 ~~established by the Federal Communications Commission~~
11 ~~and the public utilities commission; and~~

12 (3) ~~The utility pole is not damaged or made less safe or~~
13 ~~reliable due to the installation or improvement of~~
14 ~~telecommunications cables.~~

15 ~~The public utilities commission may allow a public utility~~
16 ~~to recover all prudently incurred costs as approved through~~
17 ~~rates, charges, or clauses approved or established by the public~~
18 ~~utilities commission pursuant to section 269 16, Hawaii Revised~~
19 ~~Statutes, including but not limited to planning, engineering,~~
20 ~~construction, installation, or replacement of utility poles~~
21 ~~undertaken to accomplish the objectives of this Act. Recovery~~



1 ~~of all prudently incurred costs shall also apply to a broadband~~
2 ~~service provider.~~

3 ~~If access to a utility pole is not granted within forty~~
4 ~~five days of a written request for access, the utility must~~
5 ~~confirm the denial in writing by the forty fifth day, consistent~~
6 ~~with the requirements established by the Federal Communications~~
7 ~~Commission under Title 47, Chapter 1, Code of Federal~~
8 ~~Regulations. The utility's denial of access shall be specific,~~
9 ~~shall include all relevant evidence and information supporting~~
10 ~~its denial, and shall explain how such evidence and information~~
11 ~~relate to a denial of access for reasons of lack of capacity,~~
12 ~~safety, reliability, or engineering standards."]~~

13 SECTION 7. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 8. This Act shall take effect on July 1, 2017.

16

INTRODUCED BY:

[Handwritten signatures: Ryan, Takaki Ben, James G. King, Chris W. Gray, and another signature]

H.B. NO. 624

Report Title:

Telecommunication; Wireless Communications; Infrastructure

Description:

Clarifies the telecommunication exemptions to include small wireless facilities. Repeals and codifies in the Hawaii Revised Statutes provisions of Act 151, SLH 2011, that are permanent and general. Expands the definition of wireless communications antennas to include small wireless facilities.

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

