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# A BILL FOR AN ACT

RELATING TO TECHNOLOGY.

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

1           SECTION 1. The legislature finds that the efficient  
2 deployment of broadband infrastructure and technology is  
3 important to the future global connectivity and economic  
4 viability of our island state. Among the benefits afforded by  
5 an advanced broadband infrastructure system are increased and  
6 enhanced educational opportunities, telehealth capacity, safety  
7 and civil defense communications, economic competitiveness,  
8 consumer privileges, and tourism services.

9           To ensure that consumers throughout the State may benefit  
10 from these services as soon as possible, and to provide wireless  
11 providers with a fair and predictable process for the deployment  
12 of small wireless facilities, the legislature finds that laws  
13 are needed to specify the extent and way in which the deployment  
14 of small wireless facilities and small wireless facilities  
15 networks is regulated in the State.

16           The purpose of this Act is to facilitate the deployment of  
17 high-speed broadband infrastructure in Hawaii, including small  
18 wireless facilities, by:



- 1 (1) Establishing limits on the State's and counties'  
2 authority to prohibit, regulate, or charge for the co-  
3 location of small wireless facilities or small  
4 wireless facilities networks;
- 5 (2) Specifying certain sites where small wireless  
6 facilities or small wireless facilities networks may  
7 be located, including conditions and maximum fees for  
8 location and co-location; and
- 9 (3) Establishing an application process for co-location.

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

13 "§27- Siting of small wireless facilities and small  
14 wireless facilities networks. (a) The State shall not  
15 prohibit, regulate, or charge for the co-location of small  
16 wireless facilities or small wireless facilities networks,  
17 except as provided in this section. Small wireless facilities  
18 and small wireless facilities networks shall be deemed permitted  
19 uses, and no special use or conditional use permit shall be  
20 required, for their location on:

- 21 (1) All public rights-of-way and property;



1       (2) All land in the rural or agricultural districts  
2           pursuant to chapter 205; and

3       (3) All land in the urban district pursuant to chapter  
4           205.

5       (b) Small wireless facilities and small wireless  
6       facilities networks may require special use or conditional use  
7       permits where such facilities are located on land in the  
8       conservation district pursuant to chapter 205.

9       (c) Wireless providers shall have the right to place small  
10       wireless facilities on state utility poles, state structures,  
11       and light standards. The State may require building permits or  
12       other permits for the co-location of small wireless facilities  
13       and small wireless facilities networks; provided that permits  
14       are of general applicability. The State shall receive  
15       applications to process and issue permits and approvals in  
16       accordance with applicable law, including section 27-45 and  
17       chapter 269, and subject to the following requirements:

18       (1) Applicants shall not be required to perform any  
19           services, including restoration work not directly  
20           related to the co-location, to obtain approval for  
21           applications;



1       (2) Applications may be denied only if the application  
2       does not meet applicable laws or rules regarding  
3       construction in the public rights-of-way or building  
4       or electrical codes or standards; provided that codes  
5       and standards are of general applicability. The State  
6       shall document the basis for any application denial,  
7       including the specific code provisions or standards on  
8       which the denial was based; and

9       (3) An applicant for a small wireless facilities network  
10       involving no greater than twenty-five individual small  
11       wireless facilities of a substantially similar design  
12       shall be permitted, upon request by the applicant, to  
13       file a consolidated application and receive a single  
14       permit for the installation, construction,  
15       maintenance, and repair of a small wireless facilities  
16       network instead of filing separate applications for  
17       each individual small wireless facility.

18       (d) A wireless provider or a wireless provider's licensed  
19       contractor may co-locate small wireless facilities and small  
20       wireless facilities networks on state structures, state utility  
21       poles, and light standards located within the land identified in



1 subsection (a) (1) to (3), subject to reasonable rates, terms,  
2 and conditions. The annual recurring rate to co-locate a small  
3 wireless facility on state structures, utility poles, and light  
4 standards shall not exceed the rate produced by applying the  
5 formula adopted by the Federal Communications Commission for  
6 telecommunication pole attachments in title 47 Code of Federal  
7 Regulations section 1.1409(e) (2); provided that if the Federal  
8 Communications Commission adopts a rate formula for small  
9 wireless facility attachments, that rate formula shall apply.

10 (e) The State shall authorize a wireless provider or  
11 wireless provider's licensed contractor to maintain, repair, or  
12 replace the provider's small wireless facilities and small  
13 wireless facilities networks with facilities that are  
14 substantially the same, or smaller, in size, weight, and height  
15 as the existing facilities."

16 SECTION 3. Section 27-41.1, Hawaii Revised Statutes, is  
17 amended by adding six new definitions to be appropriately  
18 inserted and to read as follows:

19 "Light standard" means a street light, light pole, lamp  
20 post, street lamp, lamp standard, or other raised source of



1 light located inside the right-of-way of a public road or  
2 highway or utility easement.

3 "Small wireless facilities" means wireless facilities that  
4 meet the following qualifications:

5 (1) Each individual antenna, excluding the associated  
6 equipment, is individually no more than three cubic  
7 feet in volume, and all antennas on the structure  
8 total no more than six cubic feet in volume; and

9 (2) All other wireless equipment associated with the  
10 structure, excluding cable runs for the connection of  
11 power and other services, do not cumulatively exceed:

12 (A) Twenty-eight cubic feet for co-locations on all  
13 non-pole structures, including but not limited to  
14 buildings and water tanks, that can support fewer  
15 than three providers;

16 (B) Twenty-one cubic feet for co-locations on all  
17 pole structures, including but not limited to  
18 light poles, traffic signal poles, and utility  
19 poles, that can support fewer than three  
20 providers;



- 1            (C) Thirty-five cubic feet for non-pole co-locations
- 2            that can support at least three providers; or
- 3            (D) Twenty-eight cubic feet for pole co-locations
- 4            that can support at least three providers.

5            "Small wireless facilities network" means a collection of  
6 interrelated small wireless facilities designed to deliver  
7 wireless communications service.

8            "Utility pole" means a pole or similar structure that is  
9 used in whole or in part for communications service, electric  
10 service, lighting, traffic control, signage, or similar  
11 functions.

12           "Wireless provider" means a person or entity that is:

- 13           (1) A provider of wireless service;
- 14           (2) A wireless telecommunications service provider, as  
15           defined in section 269-16.93(d); or
- 16           (3) Authorized in accordance with chapter 269 to provide  
17           facilities based telecommunications services in the  
18           State, and builds, installs, operates, or maintains  
19           facilities and equipment used to provide wireless  
20           service.



1       "Wireless service" means any fixed or mobile services  
2 provided using small wireless facilities."

3       SECTION 4. Section 46-4, Hawaii Revised Statutes, is  
4 amended to read as follows:

5       "**§46-4 County zoning.** (a) This section and any  
6 ordinance, rule, or regulation adopted in accordance with this  
7 section shall apply to lands not contained within the forest  
8 reserve boundaries as established on January 31, 1957, or as  
9 subsequently amended.

10       Zoning in all counties shall be accomplished within the  
11 framework of a long-range, comprehensive general plan prepared  
12 or being prepared to guide the overall future development of the  
13 county. Zoning shall be one of the tools available to the  
14 county to put the general plan into effect in an orderly manner.  
15 Zoning in the counties of Hawaii, Maui, and Kauai means the  
16 establishment of districts of such number, shape, and area, and  
17 the adoption of regulations for each district to carry out the  
18 purposes of this section. In establishing or regulating the  
19 districts, full consideration shall be given to all available  
20 data as to soil classification and physical use capabilities of  
21 the land to allow and encourage the most beneficial use of the



1 land consonant with good zoning practices. The zoning power  
2 granted herein shall be exercised by ordinance which may relate  
3 to:

- 4 (1) The areas within which agriculture, forestry,  
5 industry, trade, and business may be conducted;
- 6 (2) The areas in which residential uses may be regulated  
7 or prohibited;
- 8 (3) The areas bordering natural watercourses, channels,  
9 and streams, in which trades or industries, filling or  
10 dumping, erection of structures, and the location of  
11 buildings may be prohibited or restricted;
- 12 (4) The areas in which particular uses may be subjected to  
13 special restrictions;
- 14 (5) The location of buildings and structures designed for  
15 specific uses and designation of uses for which  
16 buildings and structures may not be used or altered;
- 17 (6) The location, height, bulk, number of stories, and  
18 size of buildings and other structures;
- 19 (7) The location of roads, schools, and recreation areas;
- 20 (8) Building setback lines and future street lines;
- 21 (9) The density and distribution of population;



- 1       (10) The percentage of a lot that may be occupied, size of
- 2             yards, courts, and other open spaces;
- 3       (11) Minimum and maximum lot sizes; and
- 4       (12) Other regulations the boards or city council find
- 5             necessary and proper to permit and encourage the
- 6             orderly development of land resources within their
- 7             jurisdictions.

8       The council of any county shall prescribe rules,  
9 regulations, and administrative procedures and provide personnel  
10 it finds necessary to enforce this section and any ordinance  
11 enacted in accordance with this section. The ordinances may be  
12 enforced by appropriate fines and penalties, civil or criminal,  
13 or by court order at the suit of the county or the owner or  
14 owners of real estate directly affected by the ordinances.

15       Any civil fine or penalty provided by ordinance under this  
16 section may be imposed by the district court, or by the zoning  
17 agency after an opportunity for a hearing pursuant to chapter  
18 91. The proceeding shall not be a prerequisite for any  
19 injunctive relief ordered by the circuit court.

20       Nothing in this section shall invalidate any zoning  
21 ordinance or regulation adopted by any county or other agency of



1 government pursuant to the statutes in effect prior to July 1,  
2 1957.

3       The powers granted herein shall be liberally construed in  
4 favor of the county exercising them, and in such a manner as to  
5 promote the orderly development of each county or city and  
6 county in accordance with a long-range, comprehensive general  
7 plan to ensure the greatest benefit for the State as a whole.  
8 This section shall not be construed to limit or repeal any  
9 powers of any county to achieve these ends through zoning and  
10 building regulations, except insofar as forest and water reserve  
11 zones are concerned and as provided in subsections (c) and (d).

12       Neither this section nor any ordinance enacted pursuant to  
13 this section shall prohibit the continued lawful use of any  
14 building or premises for any trade, industrial, residential,  
15 agricultural, or other purpose for which the building or  
16 premises is used at the time this section or the ordinance takes  
17 effect; provided that a zoning ordinance may provide for  
18 elimination of nonconforming uses as the uses are discontinued,  
19 or for the amortization or phasing out of nonconforming uses or  
20 signs over a reasonable period of time in commercial,  
21 industrial, resort, and apartment zoned areas only. In no event



1 shall such amortization or phasing out of nonconforming uses  
2 apply to any existing building or premises used for residential  
3 (single-family or duplex) or agricultural uses. Nothing in this  
4 section shall affect or impair the powers and duties of the  
5 director of transportation as set forth in chapter 262.

6 (b) Any final order of a zoning agency established under  
7 this section may be appealed to the circuit court of the circuit  
8 in which the land in question is found. The appeal shall be in  
9 accordance with the Hawaii rules of civil procedure.

10 (c) Each county may adopt reasonable standards to allow  
11 the construction of two single-family dwelling units on any lot  
12 where a residential dwelling unit is permitted.

13 (d) Neither this section nor any other law, county  
14 ordinance, or rule shall prohibit group living in facilities  
15 with eight or fewer residents for purposes or functions that are  
16 licensed, certified, registered, or monitored by the State;  
17 provided that a resident manager or a resident supervisor and  
18 the resident manager's or resident supervisor's family shall not  
19 be included in this resident count. These group living  
20 facilities shall meet all applicable county requirements not  
21 inconsistent with the intent of this subsection, including but



1 not limited to building height, setback, maximum lot coverage,  
2 parking, and floor area requirements.

3 (e) Neither this section nor any other law, county  
4 ordinance, or rule shall prohibit the use of land for employee  
5 housing and community buildings in plantation community  
6 subdivisions as defined in section 205-4.5(a)(12); in addition,  
7 no zoning ordinance shall provide for the elimination,  
8 amortization, or phasing out of plantation community  
9 subdivisions as a nonconforming use.

10 (f) Neither this section nor any other law, county  
11 ordinance, or rule shall prohibit the use of land for medical  
12 marijuana production centers or medical marijuana dispensaries  
13 established and licensed pursuant to chapter 329D; provided that  
14 the land is otherwise zoned for agriculture, manufacturing, or  
15 retail purposes.

16 (g) Neither this section nor any other county law,  
17 ordinance, or rule shall prohibit the installation of small  
18 wireless facilities or small wireless facilities networks, as  
19 defined in section 27-41.1, except as provided in this  
20 subsection:



- 1       (1) Small wireless facilities and small wireless  
2       facilities networks shall be deemed permitted uses,  
3       and no special use or conditional use permit shall be  
4       required, for their location on:
- 5       (A) All public rights-of-way and property;  
6       (B) All land in the rural or agricultural districts  
7       pursuant to chapter 205; and
- 8       (C) All land in the urban district pursuant to  
9       chapter 205;
- 10      (2) Small wireless facilities and small wireless  
11      facilities networks may require special use or  
12      conditional use permits where such facilities are  
13      located in the conservation district pursuant to  
14      chapter 205;
- 15      (3) Wireless providers shall have the right to place small  
16      wireless facilities on county-owned utility poles,  
17      structures, and light standards, as defined in section  
18      27-41.1. Any county may require building permits or  
19      other permits for the co-location of small wireless  
20      facilities and small wireless facilities networks;  
21      provided that permits are of general applicability. A



1 county shall receive applications to process and issue  
2 permits and approvals in accordance with applicable  
3 law, including section 46-89 and chapter 269, and  
4 subject to the following requirements:

5 (A) Applicants shall not be required to perform any  
6 services, including restoration work not directly  
7 related to the co-location, to obtain approval  
8 for applications;

9 (B) Applications may be denied only if the  
10 application does not meet applicable laws or  
11 rules regarding construction in the public  
12 rights-of-way or building or electrical codes or  
13 standards; provided that codes and standards are  
14 of general applicability. A county shall  
15 document the basis for any application denial,  
16 including the specific code provisions or  
17 standards on which the denial was based; and

18 (C) An applicant for a small wireless facilities  
19 network involving no greater than twenty-five  
20 individual small wireless facilities of a  
21 substantially similar design shall be permitted,



1           upon request by the applicant, to file a  
2           consolidated application and receive a single  
3           permit for the installation, construction,  
4           maintenance, and repair of a small wireless  
5           facilities network instead of filing separate  
6           applications for each individual small wireless  
7           facility;

8       (4) A wireless provider or a wireless provider's licensed  
9       contractor may co-locate small wireless facilities and  
10       small wireless facilities networks on county  
11       structures, utility poles, and light standards located  
12       within the land identified in paragraph (1)(A) to (C)  
13       subject to reasonable rates, terms, and conditions.  
14       County utility pole co-location requests shall be  
15       processed in the same manner as permit applications  
16       under paragraph (3). The annual recurring rate to co-  
17       locate a small wireless facility on county structures,  
18       utility poles, and light standards shall not exceed  
19       the rate produced by applying the formula adopted by  
20       the Federal Communications Commission for  
21       telecommunication pole attachments in title 47 Code of



1           Federal Regulations section 1.1409(e)(2); provided  
2           that if the Federal Communications Commission adopts a  
3           rate formula for small wireless facility attachments,  
4           that rate formula shall apply; and  
5        (5) Counties shall authorize a wireless provider or  
6           wireless provider's licensed contractor to maintain,  
7           repair, or replace the provider's small wireless  
8           facilities and small wireless facilities networks with  
9           facilities that are substantially the same, or  
10          smaller, in size, weight, and height as the existing  
11          facilities.

12           For the purposes of this subsection, "wireless provider"  
13        shall have the same meaning as in section 27-41.1."

14           SECTION 5. New statutory material is underscored.

15           SECTION 6. This Act shall take effect upon its approval.

16



**Report Title:**

Technology; Broadband; Wireless Facilities Networks; Zoning;  
Counties; State Functions and Responsibilities

**Description:**

Specifies that the State and counties cannot prohibit, regulate, or charge for the co-location of small wireless facilities or small wireless facilities networks beyond the provisions of this Act. Provides various state and county zoning rules and classifications regarding the co-location of small wireless facilities and small wireless facilities networks. Describes the application process and rates for co-location. (SD1)

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

