

JAN 19 2018

S.B. NO. 2104

A BILL FOR AN ACT

RELATING TO WIRELESS BROADBAND FACILITIES.

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

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

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



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

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

18 In addition to these economic development benefits, the
19 rapid deployment of wireless broadband technology will help to
20 immediately improve network capacity to meet the demand for
21 wireless data from Hawaii residents. Consumers are using



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



1 improve the communications network, and promote public safety,
2 job growth, and education.

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

15 This Act is essential to establishing the policy framework
16 to foster the installation of a robust, reliable, and
17 technologically advanced wireless broadband network throughout
18 the State.

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



1 "CHAPTER

2 WIRELESS BROADBAND AND COMMUNICATIONS NETWORKS

3 § -1 Applicability. This chapter shall only apply to
4 activities of a wireless provider to deploy small wireless
5 facilities and to modified or replaced utility poles associated
6 with small wireless facilities.

7 § -2 Definitions. For purposes of this chapter:

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

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

17 "Applicant" means any person who submits an application and
18 is a wireless provider.

19 "Application" means a request submitted by an applicant to
20 the State or county for a permit to collocate small wireless



1 facilities or to approve the installation or modification of a
2 utility pole.

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

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

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

20 "Historic district" means a group of buildings, properties,
21 or sites that are either listed in the National Register of



1 Historic Places or as determined by the state historic
2 preservation program in accordance with chapter 6E.

3 "Micro wireless facilities" means a small wireless facility
4 having dimensions either:

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

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

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

12 "Small wireless facilities" means a wireless facility that
13 meets the following qualifications:

14 (1) Each wireless provider's antenna could fit within an
15 enclosure of no more than six cubic feet in volume;
16 and

17 (2) All other wireless equipment associated with the
18 wireless facility, whether ground- or pole-mounted, is
19 cumulatively no more than twenty-eight cubic feet in
20 volume. The following types of associated ancillary
21 equipment are not included in the calculation of



1 equipment volume: electric meter, concealment
2 elements, telecommunications demarcation box,
3 grounding equipment, power transfer switch, cut-off
4 switch, and vertical cable runs for the connection of
5 power and other services.

6 "State or county pole" means a utility pole owned, managed,
7 or operated by, or on behalf of, the State of Hawaii or a county
8 in the State of Hawaii.

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

19 "Technically feasible" means that by virtue of engineering
20 or spectrum usage the proposed placement for a small wireless
21 facility, or its design or site location can be implemented



1 without a reduction in the functionality of the small wireless
2 facility.

3 "Utility pole" means a pole or similar structure that is or
4 may be used in whole or in part by or for wireline
5 communications, electric distribution, lighting, traffic
6 control, signage, or a similar function, or for the collocation
7 of small wireless facilities. "Utility pole" shall not include
8 wireless support structures.

9 "Wireless facility" means equipment at a fixed location
10 that enables wireless communications between user equipment and
11 a communications network, including:

- 12 (1) Equipment associated with wireless communications; and
- 13 (2) Radio transceivers, antennas, coaxial or fiber-optic
14 cable, regular and backup power supplies, and
15 comparable equipment, regardless of technological
16 configuration.

17 "Wireless facility" includes small wireless facilities.

18 "Wireless provider" means an individual, corporation,
19 company, association, trust, or other entity or organization
20 who:



- 1 (1) Provides services, whether at a fixed location or
2 mobile, to the public using wireless facilities; or
3 (2) Builds or installs wireless communication transmission
4 equipment or wireless facilities, including an
5 individual authorized to provide telecommunications
6 service in the State.

7 "Wireless support structure" means a structure, such as a
8 monopole, tower, either guyed or self-supporting building, or
9 other existing or proposed structure designed to support or
10 capable of supporting wireless facilities, other than a
11 structure designed solely for the collocation of small wireless
12 facilities. "Wireless support structure" shall not include a
13 utility pole.

14 § -3 **General.** Except as provided in this chapter, the
15 State or any county shall not prohibit, regulate, or charge for
16 the deployment of small wireless facilities or any associated
17 modified or replaced utility poles used for the collocation of
18 small wireless facilities.

19 § -4 **Zoning.** Small wireless facilities and associated
20 modified or replaced utility poles subject to the height limits
21 in section -5(c), shall be classified as permitted uses and



1 not subject to zoning review or zoning approval if they are
2 deployed:

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

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

6 § -5 Use of the right of way for small wireless

7 facilities and utility poles. (a) The State or county shall
8 not enter into an exclusive arrangement with any person for use
9 of the right of way for the construction, operation, marketing,
10 or maintenance of small wireless facilities or utility poles.

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

18 Modified or replaced utility poles associated with a small
19 wireless facility that meet the requirements of this section are
20 permitted uses subject to the permit process in section -6.

21 No additional permit shall be required to maintain, operate,



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

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

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

10 (2) Fifty feet above ground level.

11 New small wireless facilities in the right of way shall not
12 extend more than ten feet above an existing utility pole in
13 place as of the effective date of this Act. Subject to this
14 section and section -6, a wireless provider may construct,
15 modify, and maintain a utility pole or small wireless facility
16 that exceeds these height limits along, across, upon, and under
17 the right of way, subject to applicable zoning regulations.

18 (d) A wireless provider may replace a decorative pole,
19 when necessary to collocate a small wireless facility, if the
20 replacement pole reasonably conforms to the design aesthetics of
21 the decorative pole or poles being replaced.



1 (e) Where the State or county has requirements for the
2 undergrounding of facilities that pre-date the submission of an
3 application, the State or county shall allow reasonable and
4 nondiscriminatory access by wireless providers to place,
5 construct, install, maintain, modify, operate, or replace state
6 or county poles and other utility poles for the collocation of
7 small wireless facilities subject to the requirements of this
8 chapter.

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

19 (g) The State or county shall be competitively neutral in
20 the exercise of its administration and regulation related to the
21 management of the right of way and with regard to other users of



1 the right of way, shall not impose any conditions that are
2 unreasonable or discriminatory.

3 (h) The State or county may require a wireless provider to
4 repair all damage to the right of way directly caused by the
5 activities of the wireless provider in the right of way and to
6 return the right of way to its functional equivalence before the
7 damage pursuant to the competitively neutral, reasonable
8 requirements, and specifications of the State or county. If the
9 wireless provider fails to make the repairs required by the
10 State or county within a reasonable time after written notice,
11 the State or county may complete those repairs and charge the
12 applicable party the reasonable, documented cost of the repairs.

13 (i) The State or county shall modify laws or ordinances
14 regulating the development of real property to ensure that new
15 development of real property or the redevelopment of existing
16 real property, including in residential zones, shall include
17 locations in the right of way capable of accommodating a utility
18 pole or other structure for the placement of a small wireless
19 facility. Any such utility pole or other structure installed at
20 the locations shall be installed and available for collocation
21 consistent with the requirements of this chapter.



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

10 (1) The State or county shall not directly or indirectly
11 require an applicant to perform services or provide
12 goods unrelated to the permit, such as in-kind
13 contributions to the State or county including
14 reserving fiber, conduit, or pole space for the State
15 or county;

16 (2) An applicant shall not be required to provide more
17 information to obtain a permit than is required of
18 communications service providers that are not wireless
19 providers; provided that an applicant may be required
20 to include construction and engineering drawings and



1 information demonstrating compliance with the criteria
2 in this subsection;

3 (3) The State or county shall not require the placement of
4 small wireless facilities on any specific utility pole
5 or category of poles or require multiple antenna
6 systems on a single utility pole;

7 (4) The State or county shall not limit the placement of
8 small wireless facilities by minimum separation
9 distances;

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

19 (6) Within ten days of receiving an application, the State
20 or county shall notify the applicant in writing
21 whether the application is complete. If an



1 application is incomplete, the State or county shall
2 specifically identify all missing information in
3 writing. The processing deadline in paragraph (7) is
4 tolled from the time the State or county sends the
5 notice of incompleteness to the time the applicant
6 provides the missing information;

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

13 (8) The State or county may deny a proposed collocation of
14 a small wireless facility or the construction or
15 modification of a modified or replaced utility pole
16 that meets the requirements in section -5(d) only
17 if the proposed application:

18 (A) Materially interferes with the safe operation of
19 public safety equipment;

20 (B) Materially interferes with sight lines or clear
21 zones for transportation or pedestrians;



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

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

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

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



1 revised application within thirty days. Any
2 subsequent review shall be limited to the deficiencies
3 cited in the original documentation noting the basis
4 for denial;

5 (10) An applicant seeking to collocate small wireless
6 facilities within the jurisdiction of a single county
7 shall be allowed at the applicant's discretion to file
8 a consolidated application and receive a single permit
9 for the collocation of multiple small wireless
10 facilities; provided that the denial of one or more
11 small wireless facilities in a consolidated
12 application shall not delay processing of any other
13 small wireless facilities in the same batch;

14 (11) Installation or collocation for which a permit is
15 granted pursuant to this section shall be completed
16 within one year of the permit issuance date; provided
17 that the State or county and the applicant may agree
18 to extend this period or the period may be tolled if a
19 delay is caused by lack of commercial power or
20 communications transport facilities to the site.



1 Approval of an application authorizes the applicant
2 to:

3 (A) Undertake the installation or collocation; and

4 (B) Subject to applicable relocation requirements and
5 the applicant's right to terminate at any time,
6 operate and maintain the small wireless
7 facilities and any associated utility pole
8 covered by the permit for a period of not less
9 than twenty years, which must be renewed for
10 equivalent durations so long as they are in
11 compliance with the criteria set forth in this
12 subsection;

13 (12) The State or county shall not institute, either
14 expressly or de facto, a moratorium on filing,
15 receiving, or processing applications or issuing
16 permits or other approvals, if any, for the
17 collocation of small wireless facilities or the
18 installation or modification of utility poles to
19 support small wireless facilities; and

20 (13) The State or county shall not require an application
21 for:



- 1 (A) Routine maintenance;
- 2 (B) Replacement of small wireless facilities with
- 3 small wireless facilities that are substantially
- 4 similar or the same size or smaller; or
- 5 (C) Installation, placement, maintenance, operation,
- 6 or replacement of micro wireless facilities on
- 7 utility poles or that are strung on cables
- 8 between existing utility poles, in compliance
- 9 with the national electrical safety code. The
- 10 State or county may, however, require a permit to
- 11 work within the right of way for such activities,
- 12 if applicable. Any such permits shall be subject
- 13 to the requirements provided in section -5 and
- 14 this section.

15 § -7 Access to state or county poles within the right of

16 way. (a) A person owning, managing, or controlling state or

17 county poles in the right of way shall not enter into an

18 exclusive arrangement with any person for the right to attach to

19 such poles.

20 (b) The rates to collocate on state or county poles shall

21 be nondiscriminatory regardless of the services provided by the



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

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

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

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



1 providers for similar work and shall not include any consultant
2 fees or expenses.

3 (f) The provisions of this section shall apply to
4 activities of the wireless provider within the right of way.

5 § -8 Rates and fees within the right of way. (a) This
6 section shall govern the State's or county's rates and fees for
7 the placement of a wireless facility or utility pole in the
8 right of way.

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

16 (c) Application fees shall be subject to the following
17 requirements:

18 (1) The State or county may charge an application fee only
19 if the fee is required for similar types of commercial
20 development or construction within the State's or
21 county's jurisdiction;



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

(3) An application fee shall not include:

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

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

(4) The application fees for collocation of small wireless facilities on an existing or replacement state or county pole shall not exceed \$100 each; and

(5) The application fees for collocation of multiple small wireless facilities on an existing or replacement state or county pole shall not exceed \$100 each for the first five small wireless facilities on the same application and \$50 for each additional small wireless facility on the same application.

(d) The rate for collocation of a small wireless facility on a state or county pole in the right of way shall not exceed



1 the actual, direct, and reasonable costs related to the wireless
2 provider's use of space on the state or county pole not to
3 exceed \$40 per pole annually. In any dispute concerning the
4 appropriateness of a cost-based rate for any state or county
5 pole, the State or county shall have the burden of proving that
6 the rate does not exceed the actual, direct, and reasonable
7 costs for the applicant's use of the pole.

8 § -9 Local authority. Subject to this chapter and
9 applicable federal law, the State or county may continue to
10 exercise zoning, land use, planning, and permitting within its
11 jurisdictional boundaries, including with respect to utility
12 poles; except that no state or county shall have or exercise any
13 jurisdiction or authority over the design, engineering,
14 construction, installation, or operation of any small wireless
15 facility located in an interior structure or upon the site of
16 any campus, stadium, or athletic facility not owned or
17 controlled by the State or county, other than to comply with
18 applicable codes. Nothing in this chapter authorizes the State
19 or county to require wireless facility deployment or to regulate
20 wireless services.



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

10 § -11 **Indemnification, insurance, and bonding.** (a) The
11 State or county may adopt indemnification, insurance, and
12 bonding requirements related to small wireless facility permits
13 subject to this section.

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

20 (c) The State or county may require a wireless provider to
21 have in effect insurance coverage consistent with this



1 subsection and requirements for other right of way users, if
2 such requirements are reasonable and nondiscriminatory. The
3 State or county shall not require a wireless provider to obtain
4 insurance naming the State or county or its officers and
5 employees as an additional insured. If insurance coverage is
6 required, the State or county may require a wireless provider to
7 furnish proof of insurance prior to the effective date of any
8 permit issued for a small wireless facility.

9 (d) The State or county may adopt bonding requirements for
10 small wireless facilities if the State or county imposes similar
11 requirements in connection with permits issued for other right
12 of way users.

13 The purpose of such bonds shall be to:

- 14 (1) Provide for the removal of abandoned or improperly
15 maintained small wireless facilities, including those
16 that the State or county determines a need for the
17 small wireless facilities to be removed to protect
18 public health, safety, or welfare;
- 19 (2) Restoration of the right of way; or
- 20 (3) Recoupment of past due rates or fees that have not
21 been paid by a wireless provider in over twelve



1 months; provided that the wireless provider has
2 received reasonable notice from the State or county of
3 the non-compliance listed and an opportunity to cure
4 the rates or fees.

5 Bonding requirements shall not exceed \$200 per small
6 wireless facility.

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

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

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



1 less than eighteen thousand five hundred square feet, or an
2 equivalent residential density, within a rural subdivision and
3 permit the construction of one dwelling on such lot; provided
4 that all other dwellings in the subdivision shall have a minimum
5 lot size of one-half acre or 21,780 square feet. Such petition
6 for variance may be processed under the special permit
7 procedure. These districts may include contiguous areas which
8 are not suited to low density residential lots or small farms by
9 reason of topography, soils, and other related characteristics.
10 Rural districts shall also include golf courses, golf driving
11 ranges, and golf-related facilities.

12 In addition to the uses listed in this subsection, rural
13 districts shall include geothermal resources exploration and
14 geothermal resources development, as defined under section
15 182-1, and wireless communication antenna, as defined under
16 section 205-4.5(a)(18), as permissible uses."

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

19 "(a) Within the agricultural district, all lands with soil
20 classified by the land study bureau's detailed land
21 classification as overall (master) productivity rating class A



1 or B and for solar energy facilities, class B or C, shall be
2 restricted to the following permitted uses:

3 (1) Cultivation of crops, including crops for bioenergy,
4 flowers, vegetables, foliage, fruits, forage, and
5 timber;

6 (2) Game and fish propagation;

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

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

19 (5) Public institutions and buildings that are necessary
20 for agricultural practices;



(6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;

(7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;

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

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

(10) Buildings and uses, including mills, storage, and processing facilities, maintenance facilities, photovoltaic, biogas, and other small-scale renewable



1 energy systems producing energy solely for use in the
2 agricultural activities of the fee or leasehold owner
3 of the property, and vehicle and equipment storage
4 areas that are normally considered directly accessory
5 to the above-mentioned uses and are permitted under
6 section 205-2(d);

7 (11) Agricultural parks;

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

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



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

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

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

(14) Agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that this paragraph shall apply only to a county that includes at least three islands and has adopted ordinances regulating



1 agricultural tourism activities pursuant to section
2 205-5; provided further that the agricultural tourism
3 activities coexist with a bona fide agricultural
4 activity. For the purposes of this paragraph, "bona
5 fide agricultural activity" means a farming operation
6 as defined in section 165-2;

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

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

21 For the purposes of this paragraph:



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

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

13 (17) Agricultural-energy facilities, including
14 appurtenances necessary for an agricultural-energy
15 enterprise; provided that the primary activity of the
16 agricultural-energy enterprise is agricultural
17 activity. To be considered the primary activity of an
18 agricultural-energy enterprise, the total acreage
19 devoted to agricultural activity shall be not less
20 than ninety per cent of the total acreage of the
21 agricultural-energy enterprise. The agricultural-



1 energy facility shall be limited to lands owned,
2 leased, licensed, or operated by the entity conducting
3 the agricultural activity.

4 As used in this paragraph:

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

7 "Agricultural-energy enterprise" means an
8 enterprise that integrally incorporates an
9 agricultural activity with an agricultural-energy
10 facility.

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

17 "Appurtenances" means operational infrastructure
18 of the appropriate type and scale for the economic
19 commercial generation, storage, distribution, and
20 other similar handling of energy, including equipment,



1 feedstock, fuels, and other products of agricultural-
2 energy facilities;

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

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



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

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

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



1 status or a valid agricultural conservation
2 easement;

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

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

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

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

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



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

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

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

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

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

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



provided that the hydroelectric facilities and their appurtenances:

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

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

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

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

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

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



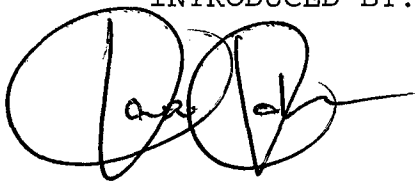
standard established for any new hydroelectric facility; and

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

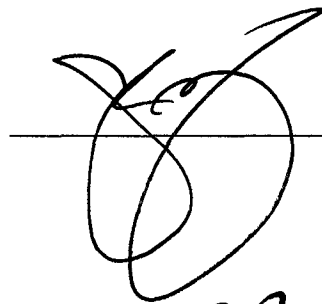
SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval; provided that this Act shall apply to permit applications filed with the State or county after December 31, 2018.

INTRODUCED BY:



Dan Claitor
Breen Harris



Elvira
Anna Mercedes
Rosalyn de Baker
Lorraine R. Brown



S.B. NO. 2704

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. Applies to permit applications filed with the State or county after 12/31/2018.

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

