
A BILL FOR AN ACT

RELATING TO WIRELESS BROADBAND FACILITIES.

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

1 SECTION 1. This Act is essential to establishing the
2 policy framework to foster the installation of a robust,
3 reliable, and technologically advanced wireless broadband
4 network throughout the State.

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

8 "CHAPTER

9 WIRELESS BROADBAND AND COMMUNICATIONS NETWORKS

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

14 § -2 Definitions. As used in this chapter:

15 "Antenna" means communications equipment that transmits or
16 receives electromagnetic radio frequency signals used in the
17 provision of services using wireless facilities.



1 "Applicable codes" means uniform building, fire,
2 electrical, plumbing, or mechanical codes adopted by a
3 recognized national code organization or local amendments to
4 those codes.

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

7 "Application" means a request submitted by an applicant to
8 the State or county for a permit to collocate wireless
9 facilities or to approve the installation or modification of a
10 state or county solely-owned utility pole.

11 "Collocate" means to install, mount, maintain, modify,
12 operate, or replace wireless facilities on or adjacent to a
13 wireless support structure or utility pole. "Collocation" has a
14 corresponding meaning.

15 "Communications service" means cable service, as defined in
16 section 440G-3 or 47 United States Code section 522(6), as
17 amended; information service, as defined in 47 United States
18 Code section 153(24), as amended; telecommunications service, as
19 defined in section 269-1 or 47 United States Code section
20 153(53), as amended; mobile service, as defined in 47 United



1 States Code section 153(33), as amended; or wireless service
2 other than mobile service.

3 "Communications service provider" means a cable operator,
4 as defined in section 440G-3 or 47 United States Code section
5 522(5); a provider of information service, as defined in 47
6 United States Code section 153(24); a telecommunications
7 carrier, as defined in section 269-1 or 47 United States Code
8 section 153(51); or a wireless provider.

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

16 "Historic district" means a group of buildings, properties,
17 or sites that are either listed in the National Register of
18 Historic Places or as determined by the state historic
19 preservation program in accordance with chapter 6E.

20 "Micro wireless facilities" means a wireless facility
21 having dimensions either:



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

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

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

8 "State or county pole" means a utility pole solely-owned by
9 the State or a county, which may be managed or operated by, or
10 on behalf of, the State of Hawaii or a county in the State of
11 Hawaii.

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



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

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

12 "Wireless facility" means equipment at a fixed location
13 that enables high-speed bandwidth data transmission between user
14 equipment and a communications network, including wireless,
15 wireline, and satellite devices and their auxiliary components,
16 regardless of technological configuration, that meets one or
17 both of the following criteria:

18 (1) Each communication service provider's radio
19 transceiver and antenna could fit within an enclosure
20 of no more than six cubic feet in volume; or



(2) All other equipment associated with the wireless facility, whether ground- or pole-mounted, is cumulatively no more than cubic feet in volume.

The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

"Wireless facility" shall not include:

(1) The structure or improvements on, under, or within or adjacent to which the equipment is collocated;

(2) Wireline backhaul facilities; and

(3) Coaxial or fiber-optic cable between utility poles or communications facilities that are otherwise not immediately adjacent to and directly associated with a particular antenna.

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



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

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

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

"Wireline backhaul" means the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire. Wireline backhaul shall not include wire connecting the wireless facility to the backhaul.

§ -3 Zoning. Wireless facilities and associated modified or replaced utility poles subject to the height limits



1 in section -4(c), shall be classified as permitted uses and
2 not subject to zoning review or zoning approval if they are
3 deployed:

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

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

7 Nothing in this chapter shall be construed to modify
8 existing permitting processes for the placement of wireline
9 backhaul in the right of way.

10 **§ -4 Use of the right of way for wireless facilities and**
11 **utility poles.** (a) The State or county shall not enter into an
12 exclusive arrangement with any person for use of the right of
13 way for the construction, operation, marketing, or maintenance
14 of wireless facilities.

15 (b) Subject to this section, the construction or
16 modification of wireless facilities in the right of way shall be
17 a permitted use not subject to zoning review or other
18 discretionary approval; provided that such facilities shall be
19 constructed and maintained so as not to obstruct the usual
20 travel, public safety, or other factors set forth in section
21 -5(9) on such right of way or obstruct the legal use of such



1 right of way by utilities or authorized parties. Modified or
2 replaced utility poles associated with a wireless facility that
3 meet the requirements of this section are permitted uses subject
4 to the permit process in section -5.

5 No additional discretionary permit shall be required to
6 maintain, operate, modify, or replace wireless facilities and
7 associated utility poles along, across, upon, and under the
8 right of way. The grant of a permit for a wireless facility
9 does not authorize the provision of any communications service
10 or the installation, placement, maintenance, or operation of any
11 communications facility, including a wireline backhaul facility,
12 other than a wireless facility, in the right of way, and shall
13 not otherwise be a general authorization to occupy and use the
14 right of way.

15 In its discretion, the department of commerce and consumer
16 affairs may require a wireless provider or communications
17 service provider, or affiliate thereof, to obtain a cable
18 franchise if the wireless provider or communications service
19 provider, or affiliate thereof, furnishes video programming
20 services directly to subscribers via, in whole or in part, any
21 communications facility deployed in the right of way.



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

11 (c) Each modified or replaced utility pole installed in
12 the right of way for the collocation of wireless facilities
13 shall not exceed the greater of:

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

19 (2) Fifty feet above ground level.

20 New wireless facilities in the right of way shall not
21 extend more than ten feet above an existing utility pole in



1 place as of the effective date of Act , Session Laws of
2 Hawaii 2018. Subject to this section and section -5, a
3 communications service provider or wireless provider may modify,
4 replace, and maintain a utility pole or wireless facility that
5 exceeds these height limits along, across, upon, and under the
6 right of way, subject to applicable zoning regulations.

7 (d) A communications service provider or wireless provider
8 may replace a decorative pole, when necessary to collocate a
9 wireless facility, if the replacement pole reasonably conforms
10 to the design aesthetics of the decorative pole or poles being
11 replaced.

12 (e) Subject to section -5, and except for facilities
13 excluded from evaluation for effects on historic properties
14 under title 47 Code of Federal Regulations section 1.1307(a)(4),
15 a State or county may require reasonable, technically feasible,
16 non-discriminatory, and technologically neutral design or
17 concealment measures in a historic district. Any such design or
18 concealment measures shall not have the effect of prohibiting
19 any provider's technology, nor shall any such measures be
20 considered a part of the wireless facility for purposes of the
21 size restrictions.



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

6 (g) The State or county may require a wireless provider to
7 repair all damage to the right of way directly caused by the
8 activities of the wireless provider in the right of way and to
9 return the right of way to the same or better condition before
10 the damage pursuant to the competitively neutral, reasonable
11 requirements, and specifications of the State or county within
12 thirty working days. If the wireless provider fails to make the
13 repairs required by the State or county within thirty working
14 days after written notice, the State or county may complete
15 those repairs and charge the applicable party the reasonable,
16 documented cost of the repairs.

17 § -5 Permitting process in the right of way. The State
18 or county may require an applicant to obtain one or more permits
19 to collocate a wireless facility or install a modified or
20 replaced utility pole associated with a wireless facility as
21 provided in section -4; provided that the permits are of



1 general applicability and do not apply exclusively to wireless
2 facilities. The State or county shall receive permit
3 applications and process and issue permits subject to the
4 following requirements:

5 (1) The applicant shall provide a geographical description
6 of the project area;

7 (2) The applicant shall provide a listing and description
8 of the condition of utility poles, light standards,
9 buildings, and wireless support structures included in
10 the project for the installation, mounting, operation,
11 and placement of wireless facilities, including an
12 assessment of the identifying information, location,
13 and ownership of the listed utility poles, light
14 standards, buildings, and structures;

15 (3) The applicant shall provide a description of the
16 equipment associated with the facilities to be
17 installed in the project area, including radio
18 transceivers, antennas, coaxial or fiber-optic cables,
19 power supplies, and related equipment, and the size
20 and weight of the equipment to be installed on each
21 pole, building, or structure;



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

5 (5) The State or county shall not limit the placement of
6 wireless facilities by minimum separation distances;
7 provided that the State or county may limit the number
8 of wireless facilities placed on a single utility
9 pole;

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

18 (7) Within thirty working days of receiving an
19 application, the State or county shall notify the
20 applicant in writing whether the application is
21 complete. If an application is incomplete, the State



1 or county shall specifically identify all missing
2 information in writing. The processing deadline in
3 paragraph (8) shall be suspended from the date the
4 State or county sends the notice of incompleteness
5 until the date the applicant provides the missing
6 information;

7 (8) 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 ninety working days of receipt of
11 the application. The processing deadline may be
12 tolled in accordance with paragraph (7) or by
13 agreement of the applicant and the State or county;

14 (9) The State or county may deny a proposed collocation of
15 a wireless facility or the modification of a modified
16 or replaced utility pole that meets the requirements
17 in section -4(c) only if the proposed collocation:

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;



- 1 (C) Materially interferes with compliance with the
2 Americans with Disabilities Act or similar
3 federal or state standards regarding pedestrian
4 access or movement;
- 5 (D) Fails to comply with reasonable and
6 nondiscriminatory spacing requirements of general
7 application adopted by ordinance that concern the
8 location of ground-mounted equipment. Such
9 spacing requirements shall not prevent a wireless
10 facility from serving any location;
- 11 (E) Fails to comply with building or other applicable
12 codes;
- 13 (F) Could cause the installation of the facilities on
14 the poles, buildings, and structures to be
15 performed in a manner that does not protect
16 public health and safety and safe travel in the
17 public rights of way;
- 18 (G) Could cause the utility poles and light standards
19 to be unable to bear the additional weight of the
20 facilities and the facilities could pose a hazard
21 or obstruction to the public;



1 (H) Could allow the project equipment and broadband
2 and wireless facilities to interfere with
3 government systems for public safety
4 communication operations, law enforcement, or
5 emergency services;

6 (I) Causes the load carrying capacity of the State-
7 or county-owned utility pole, building, or
8 structure, to exceed seventy per cent as
9 determined by the appropriate State or county
10 agency; or

11 (J) Causes degradation of the utility pole's wind
12 rating.

13 (10) The State or county shall document the basis for a
14 denial, including the specific provisions of law on
15 which the denial was based, and send the documentation
16 to the applicant on or before the day the State or
17 county denies an application. The applicant may
18 address the deficiencies identified by the State or
19 county and resubmit the application within thirty
20 working days of the denial without paying an
21 additional application fee. The State or county shall



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

5 (11) An applicant seeking to collocate multiple wireless
6 facilities within a two-mile radius may, at the
7 applicant's discretion, file a consolidated
8 application and receive a single permit for the
9 collocation of no more than twenty-five wireless
10 facilities; provided that the denial of the
11 collocation of one or more wireless facilities in a
12 consolidated application shall not delay processing of
13 any other wireless facilities in the same batch;

14 (12) 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 wireless facilities and

7 any associated utility pole covered by the permit

8 for a period of not less than twenty years, which

9 shall be renewed for equivalent durations so long

10 as the facilities and pole are in compliance with

11 the criteria set forth in this subsection;

12 provided that the State or a county may remove a

13 utility pole if it decides to do so;

14 (13) The State or county shall not require an application

15 or permit, or charge any rate, fees, or compensation

16 for:

17 (A) Routine maintenance;

18 (B) Replacement of wireless facilities with wireless

19 facilities that are substantially similar or the

20 same size and weight or smaller; or



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

11 (14) State and county poles, related structures, sites, and
12 facilities that support public safety, law
13 enforcement, and emergency communications shall be
14 excluded from these public access provisions.

15 § -6 Access to state or county utility poles within the
16 right of way. (a) A person owning, managing, or controlling
17 state or county utility poles in the right of way shall not
18 enter into an exclusive arrangement with any person for the
19 right to attach to such poles.



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

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

8 (d) The State or county shall provide a good faith
9 estimate for any make-ready work to be performed by a wireless
10 provider or communications service provider and that is
11 necessary to enable the pole to support the requested
12 collocation by a wireless provider or communications service
13 provider, including pole replacement if necessary, within one
14 hundred and twenty working days after receipt of a complete
15 application. Make-ready work, including any pole replacement,
16 shall be completed by the wireless provider or communications
17 service provider within one hundred and twenty working days of
18 written acceptance of the good faith estimate by the applicant.

19 (e) The person owning, managing, or controlling the state
20 or county pole shall not require more make-ready work than
21 required to meet applicable codes or industry standards. Fees



1 for make-ready work shall not include costs related to pre-
2 existing or prior damage or noncompliance. Fees for make-ready
3 work including any pole replacement shall not exceed actual
4 costs or the amount charged to other communications service
5 providers for similar work and shall not include any consultant
6 fees or expenses.

7 (f) The provisions of this section shall apply to
8 activities of the wireless provider and communications service
9 provider within the right of way.

10 § -7 **Public notice.** Prior to collocating a wireless
11 facility or installing a modified or replaced utility pole
12 associated with a wireless facility, a wireless provider shall
13 provide notice to the surrounding community of such collocation
14 or installation.

15 § -8 **Local authority.** (a) Subject to this chapter and
16 applicable federal law, the State or county may continue to
17 exercise zoning, land use, planning, and permitting within its
18 jurisdictional boundaries, including with respect to utility
19 poles; except that neither the State nor a county shall have or
20 exercise any jurisdiction or authority over the design,
21 engineering, construction, installation, or operation of any



1 wireless facility located in an interior structure or upon the
2 site of any campus, stadium, or athletic facility not owned or
3 controlled by the State or county, other than to comply with
4 applicable codes. Nothing in this chapter authorizes the State
5 or a county to require wireless facility deployment or to
6 regulate broadband services.

7 (b) Except as provided in this chapter with respect to the
8 wireless facilities subject to the permit, rate, and fee
9 requirements established herein or specifically required
10 pursuant to chapter 440G or federal law, the State and each
11 county shall not adopt or enforce any regulations or
12 requirements or charge additional rates or fees on the placement
13 or operation of communications facilities in the right of way
14 where the entity is already authorized by a franchise or
15 authorization other than that granted in this chapter to operate
16 throughout the right of way, and the State and each county shall
17 not regulate or charge fees for the provision of communications
18 services, unless expressly authorized by applicable law.

19 § -9 Implementation. No later than July 1, 2019, the
20 State and each county shall adopt or modify laws, regulations,
21 and agreements for lands within its jurisdiction that make



1 available rates, fees, and other terms that comply with this
2 chapter to wireless providers. In the absence of laws,
3 regulations, and agreements that fully comply with this chapter
4 and until such laws, regulations, or agreements are adopted,
5 wireless providers may install and operate wireless facilities
6 and utility poles pursuant to this chapter.

7 § -10 Indemnification, insurance, and bonding. (a) The
8 State or county may adopt indemnification, insurance, and
9 bonding requirements related to wireless facility permits
10 subject to this section.

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

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



1 a wireless provider to furnish proof of insurance prior to the
2 effective date of any permit issued for a wireless facility.

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

7 The purpose of such bonds shall be to:

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

20 Bonding requirements shall not exceed \$200 per wireless
21 facility. For wireless providers with multiple wireless



1 facilities within the jurisdiction of a single state or county,
2 the total bond amount across all facilities shall not exceed
3 \$, which amount may be combined into one bond
4 instrument."

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

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



1 procedure. These districts may include contiguous areas which
2 are not suited to low density residential lots or small farms by
3 reason of topography, soils, and other related characteristics.
4 Rural districts shall also include golf courses, golf driving
5 ranges, and golf-related facilities.

6 In addition to the uses listed in this subsection, rural
7 districts shall include geothermal resources exploration and
8 geothermal resources development, as defined under section
9 182-1, and construction and operation of wireless communication
10 antenna, as defined under section 205-4.5(a)(18), as permissible
11 uses."

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

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

19 (1) Cultivation of crops, including crops for bioenergy,
20 flowers, vegetables, foliage, fruits, forage, and
21 timber;



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



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

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

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

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



1 to the above-mentioned uses and are permitted under
2 section 205-2(d);

3 (11) Agricultural parks;

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

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

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



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

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

14 (14) Agricultural tourism activities, including overnight
15 accommodations of twenty-one days or less, for any one
16 stay within a county; provided that this paragraph
17 shall apply only to a county that includes at least
18 three islands and has adopted ordinances regulating
19 agricultural tourism activities pursuant to section
20 205-5; provided further that the agricultural tourism
21 activities coexist with a bona fide agricultural



1 activity. For the purposes of this paragraph, "bona
2 fide agricultural activity" means a farming operation
3 as defined in section 165-2;

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

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

18 For the purposes of this paragraph:

19 "Appurtenances" means operational infrastructure
20 of the appropriate type and scale for economic
21 commercial storage and distribution, and other similar



1 handling of feedstock, fuels, and other products of
2 biofuel processing facilities.

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

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



1 As used in this paragraph:

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

4 "Agricultural-energy enterprise" means an
5 enterprise that integrally incorporates an
6 agricultural activity with an agricultural-energy
7 facility.

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

14 "Appurtenances" means operational infrastructure
15 of the appropriate type and scale for the economic
16 commercial generation, storage, distribution, and
17 other similar handling of energy, including equipment,
18 feedstock, fuels, and other products of agricultural-
19 energy facilities;

20 (18) Construction and operation of wireless communication
21 antennas[+], including wireless facilities; provided



1 that, for the purposes of this paragraph, "wireless
2 communication antenna" means communications equipment
3 that is either freestanding or placed upon or attached
4 to an already existing structure and that transmits
5 and receives electromagnetic radio signals used in the
6 provision of all types of wireless communications
7 services; provided further that "wireless facilities"
8 shall have the same meaning as in section -2;

9 provided further that nothing in this paragraph shall
10 be construed to permit the construction of any new
11 structure that is not deemed a permitted use under
12 this subsection;

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



1 means activities or events designed to promote
2 knowledge and understanding of agricultural activities
3 and practices conducted on a farming operation as
4 defined in section 165-2;

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

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

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



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

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

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

13 (B) Proof of financial security to decommission the
14 facility is provided to the satisfaction of the
15 appropriate county planning commission prior to
16 date of commencement of commercial generation;
17 and

18 (C) Solar energy facilities shall be decommissioned
19 at the owner's expense according to the following
20 requirements:



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

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

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

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

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



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

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

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

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

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

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



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

6 SECTION 5. Section 2 of Act 151, Session Laws of Hawaii
7 2011, as amended by section 3 of Act 264, Session Laws of Hawaii
8 2013, as amended by Act 193, Session Laws of Hawaii 2016, is
9 repealed.

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



1 ~~approval is required by federal law or is necessary to protect~~
2 ~~eligibility for federal funding, services, or other assistance,~~
3 ~~provided that the installation, improvement, construction, or~~
4 ~~development of infrastructure shall.~~

5 ~~(1) Be directly related to the improvement of existing~~
6 ~~telecommunications cables or the installation of new~~
7 ~~telecommunications cables.~~

8 ~~(A) On existing or replacement utility poles and~~
9 ~~conduits; and~~

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

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

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

17 ~~An applicant shall comply with all applicable safety and~~
18 ~~engineering requirements relating to the installation,~~
19 ~~improvement, construction, or development of infrastructure~~
20 ~~relating to broadband service.~~



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

13 SECTION 6. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 7. This Act shall take effect on July 1, 3000;
16 provided that:

17 (1) The amendment made to section 205-4.5, Hawaii Revised
18 Statutes, by this Act shall not be repealed when
19 section 205-4.5, Hawaii Revised Statutes, is reenacted
20 on June 30, 2019, by section 3 of Act 52, Session Laws
21 of Hawaii 2014;



- 1 (2) This Act shall be repealed on June 30, 2020;
- 2 (3) On June 30, 2020, section 205-2, Hawaii Revised
- 3 Statutes, shall be reenacted in the form in which it
- 4 read on the day before the effective date of this Act;
- 5 (4) On June 30, 2020, section 205-4.5, Hawaii Revised
- 6 Statutes, shall be reenacted in the form in which it
- 7 read on the day before the effective date of Act 52,
- 8 Session Laws of Hawaii 2014; and
- 9 (5) This Act shall apply to permit applications filed with
- 10 the State or county after December 31, 2018.



Report Title:

Wireless Facilities; Economic Development; State or County
Solely-owned Utility Poles; Permits

Description:

Establishes a process to upgrade and support next-generation wireless broadband infrastructure throughout the State.
Establishes a permitting, application, review, and approval process for wireless providers or communications services providers to install wireless facilities on state or county solely-owned utility poles, or install associated utility poles, in the right of way. Applies to permit applications filed with the State or county after December 31, 2018. (SB2704 HD1)

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

