
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, as a significant
2 and growing part of the nation's economy, have a significant
3 positive impact on productivity in nearly every industry, from
4 healthcare to tourism. To support this growth, wireless service
5 providers are investing billions on the deployment of wireless
6 broadband technology to meet current and forecasted 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 locales
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 the 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.** (a) Subject to subsection (b),

4 this chapter shall only apply to activities of a wireless or
5 communications service provider to deploy small wireless
6 facilities and to modify or replace utility poles associated
7 with small wireless facilities. Except as to the State or
8 county permitting authority related to utility poles, this
9 chapter shall not be construed to apply to:

- 10 (1) Utility poles or other utility infrastructure solely
- 11 owned by investor owned utility companies; or
- 12 (2) Investor owned utility companies' utility poles in
- 13 which the State or county has an ownership interest.

14 (b) Notwithstanding any other provision to the contrary,
15 this chapter shall not apply to state and county poles, related
16 structures, sites, or facilities that support public safety, law
17 enforcement, or emergency communications.

18 § -2 **Definitions.** For purposes of this chapter:

19 "Antenna" means communications equipment that transmits or
20 receives electromagnetic radio frequency signals used in the
21 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 enacted solely to address imminent threats of
5 destruction of property or injury to persons to the extent not
6 inconsistent with this chapter.

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

9 "Application" means a request submitted by an applicant to
10 the State or county for a permit to collocate small wireless
11 facilities or to approve the installation or modification of a
12 utility pole.

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

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



1 Code section 153(53), as amended, or section 269-1; mobile
2 service, as defined in title 47 United States Code section
3 153(33), as amended; or wireless service other than mobile
4 service.

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

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

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



1 "Micro wireless facilities" means a small wireless facility
2 having dimensions either:

- 3 (1) No larger than twenty-four inches in height, fifteen
4 inches in width, and twelve inches in depth; or
- 5 (2) Twenty-four inches in length, fifteen inches in width,
6 and twelve inches in height.

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

10 "Small wireless facilities" means a wireless facility or
11 other facility providing communications service that meets one
12 or both of the following qualifications:

- 13 (1) Each communications service provider's antenna can fit
14 within an enclosure of no more than six cubic feet in
15 volume; or
- 16 (2) All other equipment associated with the communications
17 service facility, whether ground- or pole-mounted,
18 that is cumulatively no more than twenty-eight cubic
19 feet in volume; provided that the following types of
20 associated ancillary equipment shall not be included
21 in the calculation of equipment volume: electric



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

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

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

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

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



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

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

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

- 11 (1) Provides services, whether at a fixed location or
- 12 mobile, to the public using wireless facilities; or
- 13 (2) Builds or installs wireless communication transmission
- 14 equipment or wireless facilities, including an
- 15 individual authorized to provide telecommunications
- 16 service in the State.

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



1 solely for the collocation of small wireless facilities.

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

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

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

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

- 16 (1) In the right of way in any zone; or
- 17 (2) Outside the right of way in property not zoned
18 exclusively for conservation.

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



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

6 (b) Subject to this section, the construction or
7 modification of small wireless facilities in the right of way
8 shall be a permitted use not subject to zoning review or other
9 discretionary approval; provided that the structures and
10 facilities shall be constructed and maintained so as not to
11 obstruct the usual travel or public safety on the right of way
12 or obstruct the legal use of the right of way by utilities.
13 Modified or replaced utility poles associated with a small
14 wireless facility that meet the requirements of this section are
15 permitted uses subject to the permit process in section -6.

16 No additional permit shall be required to maintain, operate,
17 modify, or replace small wireless facilities and associated
18 utility poles along, across, upon, and under the right of way.

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



1 (1) Ten feet in height above the tallest existing utility
2 pole in place as of the effective date of this Act
3 located within five hundred feet of the modified or
4 replaced pole in the same right of way; or

5 (2) Fifty feet above ground level.

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

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

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



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

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

14 (g) The State or county shall be competitively neutral in
15 the exercise of its administration and regulation related to the
16 management of the right of way and, with regard to other users
17 of the right of way, shall not impose any conditions that are
18 unreasonable or discriminatory.

19 (h) The State or county may require a wireless provider to
20 repair all damage to the right of way directly caused by the
21 activities of the wireless provider in the right of way and to



1 return the right of way to its functional equivalence before the
2 damage pursuant to the competitively neutral, reasonable
3 requirements, and specifications of the State or county. If the
4 wireless provider fails to make the repairs required by the
5 State or county within a reasonable time after written notice,
6 the State or county may complete those repairs and charge the
7 applicable party the reasonable, documented cost of the repairs.

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

17 **§ -6 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 small wireless facility or install a modified or
20 replaced utility pole associated with a small wireless facility
21 as provided in section -5; 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 State or county shall not directly or indirectly
6 require an applicant to perform services or provide
7 goods unrelated to the permit, such as in-kind
8 contributions to the State or county, including
9 reserving fiber, conduit, or pole space for the State
10 or county;
- 11 (2) An applicant shall not be required to provide more
12 information to obtain a permit than is required of
13 communications service providers that are not wireless
14 providers; provided that an applicant may be required
15 to include construction and engineering drawings and
16 information demonstrating compliance with the criteria
17 in this section;
- 18 (3) The State or county shall not require the placement of
19 small wireless facilities on any specific utility pole
20 or category of poles or require multiple antenna
21 systems on a single utility pole;



1 (4) The State or county shall not limit the placement of
2 small wireless facilities by minimum separation
3 distances;

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

13 (6) Within ten days of receiving an application, the State
14 or county shall notify the applicant in writing
15 whether the application is complete. If an
16 application is incomplete, the State or county shall
17 specifically identify all missing information in
18 writing. The processing deadline in paragraph (7)
19 shall be tolled from the time the State or county
20 sends the notice of incompleteness to the time the
21 applicant provides the missing information;



- 1 (7) An application shall be processed on a
2 nondiscriminatory basis and deemed approved if the
3 State or county fails to approve or deny the
4 application within sixty days of receipt of the
5 application. The processing deadline may be tolled by
6 agreement of the applicant and the State or county;
- 7 (8) The State or county may deny a proposed collocation of
8 a small wireless facility or the construction or
9 modification of a modified or replaced utility pole
10 that meets the requirements in section -5(c) only
11 if the proposed application:
- 12 (A) Materially interferes with the safe operation of
13 public safety equipment;
- 14 (B) Materially interferes with sight lines or clear
15 zones for transportation or pedestrians;
- 16 (C) Materially interferes with compliance with the
17 Americans with Disabilities Act or similar
18 federal or state standards regarding pedestrian
19 access or movement;
- 20 (D) Fails to comply with reasonable and
21 nondiscriminatory spacing requirements of general



1 application adopted by rule or ordinance that
2 concern the location of ground-mounted equipment.
3 Spacing requirements shall not prevent a small
4 wireless facility from serving any location; or
5 (E) Fails to comply with building or other applicable
6 codes;

7 (9) The State or county shall document the basis for a
8 denial, including the specific provisions of law on
9 which the denial was based, and send the documentation
10 to the applicant on or before the day the State or
11 county denies an application. The applicant may
12 address the deficiencies identified by the State or
13 county and resubmit the application within thirty days
14 of the denial without paying an additional application
15 fee. The State or county shall approve or deny the
16 revised application within thirty days. Any
17 subsequent review shall be limited to the deficiencies
18 cited in the original documentation noting the basis
19 for denial;

20 (10) An applicant seeking to collocate small wireless
21 facilities within the State or the jurisdiction of a



1 single county shall be allowed at the applicant's
2 discretion to file a consolidated application and
3 receive a single permit for the collocation of up to
4 twenty-five small broadband wireless facilities within
5 a three square mile radius; provided that the denial
6 of one or more small wireless facilities in a
7 consolidated application shall not delay processing of
8 any other small wireless facilities in the same batch;
9 provided further that within ten days of receiving a
10 permit for a consolidated application, the applicant
11 shall publish notice of the permit in a newspaper of
12 general circulation in the county where the small
13 wireless facility is to be located;

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 no less
9 than twenty years, which may be renewed for
10 equivalent durations provided that they are in
11 compliance with the criteria set forth in this
12 section at the time of renewal;

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 and weight or smaller;
5 provided that the wireless provider shall notify
6 the state or county department in which the small
7 wireless facility was originally approved at
8 least ten days, but no more than sixty days,
9 prior to commencing the replacement; or
- 10 (C) Installation, placement, maintenance, operation,
11 or replacement of micro wireless facilities on
12 utility poles or that are strung on cables
13 between existing utility poles, in compliance
14 with the national electrical safety code. The
15 State or county may, however, require a permit to
16 work within the right of way for those
17 activities, if applicable. Any permits shall be
18 subject to the requirements provided in section
19 -5 and this section.

20 **§ -7 Access to state or county poles within the right of**
21 **way.** (a) This section shall apply to activities of the



1 wireless or communications service provider within the right of
2 way.

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

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

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

15 (e) The State or county shall provide a good faith
16 estimate for any make-ready work necessary to enable the pole to
17 support the requested collocation by a wireless provider,
18 including pole replacement if necessary, within sixty days after
19 receipt of a complete application. Make-ready work including
20 any pole replacement shall be completed within sixty days of
21 written acceptance of the good faith estimate by the applicant.



1 (f) The person owning, managing, or controlling the state
2 or county pole shall not require more make-ready work than
3 required to meet applicable codes or industry standards. Fees
4 for make-ready work shall not include costs related to pre-
5 existing or prior damage or noncompliance. Fees for make-ready
6 work including any pole replacement shall not exceed actual
7 costs or the amount charged to other communications service
8 providers for similar work and shall not include any consultant
9 fees or expenses.

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

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

17 (2) There is no available technological means of
18 increasing the capacity of the light standard or
19 utility pole for additional attachments; and



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

4 § **-8 Rates and fees within the right of way.** (a) This
5 section shall govern the State's or county's rates and fees for
6 the placement of a wireless facility or utility pole in the
7 right of way.

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

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

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



- 1 (2) Where costs to be recovered by an application fee are
2 already recovered by existing fees, rates, or taxes
3 paid by a wireless provider, no application fee shall
4 be assessed;
- 5 (3) An application fee shall not include:
- 6 (A) Travel expenses incurred by a third party in its
7 review of an application; or
- 8 (B) Direct payment or reimbursement of third party
9 rates or fees charged on a contingency basis or a
10 result-based arrangement;
- 11 (4) The application fees for collocation of small wireless
12 facilities on an existing or replacement state or
13 county pole shall not exceed \$100 each; and
- 14 (5) The application fees for collocation of multiple small
15 wireless facilities on an existing or replacement
16 state or county pole shall not exceed \$100 each for
17 the first five small wireless facilities on the same
18 application and \$50 for each additional small wireless
19 facility on the same application.
- 20 (d) The rate for collocation of a small wireless facility
21 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; provided that the State or a county shall not have or
13 exercise any jurisdiction or authority over the design,
14 engineering, construction, installation, or operation of any
15 small wireless facility located in an interior structure or upon
16 the site of any campus, stadium, or athletic facility not owned
17 or controlled by the State or county, other than to comply with
18 applicable codes. Nothing in this chapter shall authorize the
19 State or county to require wireless facility deployment or to
20 regulate 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 those 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 The State or a county may require a wireless provider to
11 consider installing and operating small wireless facilities and
12 utility poles in rural districts, where economically feasible,
13 particularly in neighbor island communities having low- or
14 medium-density concentrations of residents.

15 § **-11 Indemnification, insurance, and bonding.** (a) The
16 State or county may adopt indemnification, insurance, and
17 bonding requirements related to small wireless facility permits
18 subject to this section.

19 (b) The State or county may require a wireless provider to
20 indemnify and hold the State or county and its officers and
21 employees harmless against any claims, lawsuits, judgments,



1 costs, liens, losses, expenses, or fees resulting from the
2 wireless provider's actions in installing, repairing, or
3 maintaining any wireless facilities or utility poles.

4 (c) The State or county may require a wireless provider to
5 have in effect insurance coverage consistent with this section
6 and requirements for other right of way users, if the
7 requirements are reasonable and nondiscriminatory. The State or
8 county shall not require a wireless provider to obtain insurance
9 naming the State or county or its officers and employees as an
10 additional insured. If insurance coverage is required, the
11 State or county may require a wireless provider to furnish proof
12 of insurance prior to the effective date of any permit issued
13 for a small wireless facility.

14 (d) The State or county may adopt bonding requirements for
15 small wireless facilities if the State or county imposes similar
16 requirements in connection with permits issued for other right
17 of way users.

18 The purpose of the bonds shall be to:

19 (1) Provide for the removal of abandoned or improperly
20 maintained small wireless facilities, including those



1 that the State or county determines must be removed to
2 protect public health, safety, or welfare;

3 (2) Restoration of the right of way; or

4 (3) Recoupment of past due rates or fees that have not
5 been paid by a wireless provider in over twelve
6 months; provided that the wireless provider has
7 received reasonable notice from the State or county of
8 the non-compliance listed and an opportunity to cure
9 the rates or fees.

10 Bonding requirements shall not exceed \$200 per small
11 wireless facility. For wireless providers with multiple small
12 wireless facilities within the jurisdiction of the State or a
13 single county, the total bond amount across all facilities shall
14 not exceed \$10,000, which amount may be combined into one bond
15 instrument."

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

18 "(c) Rural districts shall include activities or uses as
19 characterized by low density residential lots of not more than
20 one dwelling house per one-half acre, except as provided by
21 county ordinance pursuant to section 46-4(c), in areas where



1 "city-like" concentration of people, structures, streets, and
2 urban level of services are absent, and where small farms are
3 intermixed with low density residential lots except that within
4 a subdivision, as defined in section 484-1, the commission for
5 good cause may allow one lot of less than one-half acre, but not
6 less than eighteen thousand five hundred square feet, or an
7 equivalent residential density, within a rural subdivision and
8 permit the construction of one dwelling on ~~[such]~~ the lot;
9 provided that all other dwellings in the subdivision shall have
10 a minimum lot size of one-half acre or 21,780 square feet.

11 ~~[Such]~~ The petition for variance may be processed under the
12 special permit procedure. These districts may include
13 contiguous areas ~~[which]~~ that are not suited to low density
14 residential lots or small farms by reason of topography, soils,
15 and other related characteristics. Rural districts shall also
16 include golf courses, golf driving ranges, and golf-related
17 facilities.

18 In addition to the uses listed in this subsection, rural
19 districts shall include geothermal resources exploration and
20 geothermal resources development, as defined under section



1 182-1, and wireless facilities, as defined under section -2,
2 as permissible uses."

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

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

- 10 (1) Cultivation of crops, including crops for bioenergy,
11 flowers, vegetables, foliage, fruits, forage, and
12 timber;
- 13 (2) Game and fish propagation;
- 14 (3) Raising of livestock, including poultry, bees, fish,
15 or other animal or aquatic life that are propagated
16 for economic or personal use;
- 17 (4) Farm dwellings, employee housing, farm buildings, or
18 activities or uses related to farming and animal
19 husbandry. "Farm dwelling", as used in this
20 paragraph, means a single-family dwelling located on
21 and used in connection with a farm, including clusters



- 1 of single-family farm dwellings permitted within
2 agricultural parks developed by the State, or where
3 agricultural activity provides income to the family
4 occupying the dwelling;
- 5 (5) Public institutions and buildings that are necessary
6 for agricultural practices;
- 7 (6) Public and private open area types of recreational
8 uses, including day camps, picnic grounds, parks, and
9 riding stables, but not including dragstrips,
10 airports, drive-in theaters, golf courses, golf
11 driving ranges, country clubs, and overnight camps;
- 12 (7) Public, private, and quasi-public utility lines and
13 roadways, transformer stations, communications
14 equipment buildings, solid waste transfer stations,
15 major water storage tanks, and appurtenant small
16 buildings such as booster pumping stations, but not
17 including offices or yards for equipment, material,
18 vehicle storage, repair or maintenance, treatment
19 plants, corporation yards, or other similar
20 structures;



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



1 new employee housing and agricultural support
2 buildings may be allowed on land within the
3 subdivision as follows:

4 (A) The employee housing is occupied by employees or
5 former employees of the plantation who have a
6 property interest in the land;

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

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

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



- 1 ordinances regulating agricultural tourism under
2 section 205-5;
- 3 (14) Agricultural tourism activities, including overnight
4 accommodations of twenty-one days or less, for any one
5 stay within a county; provided that this paragraph
6 shall apply only to a county that includes at least
7 three islands and has adopted ordinances regulating
8 agricultural tourism activities pursuant to section
9 205-5; provided further that the agricultural tourism
10 activities coexist with a bona fide agricultural
11 activity. For the purposes of this paragraph, "bona
12 fide agricultural activity" means a farming operation
13 as defined in section 165-2;
- 14 (15) Wind energy facilities, including the appurtenances
15 associated with the production and transmission of
16 wind generated energy; provided that the wind energy
17 facilities and appurtenances are compatible with
18 agriculture uses and cause minimal adverse impact on
19 agricultural land;
- 20 (16) Biofuel processing facilities, including the
21 appurtenances associated with the production and



1 refining of biofuels that is normally considered
2 directly accessory and secondary to the growing of the
3 energy feedstock; provided that biofuel processing
4 facilities and appurtenances do not adversely impact
5 agricultural land and other agricultural uses in the
6 vicinity.

7 For the purposes of this paragraph:

8 "Appurtenances" means operational infrastructure
9 of the appropriate type and scale for economic
10 commercial storage and distribution, and other similar
11 handling of feedstock, fuels, and other products of
12 biofuel processing facilities.

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

20 (17) Agricultural-energy facilities, including
21 appurtenances necessary for an agricultural-energy



1 enterprise; provided that the primary activity of the
2 agricultural-energy enterprise is agricultural
3 activity. To be considered the primary activity of an
4 agricultural-energy enterprise, the total acreage
5 devoted to agricultural activity shall be not less
6 than ninety per cent of the total acreage of the
7 agricultural-energy enterprise. The agricultural-
8 energy facility shall be limited to lands owned,
9 leased, licensed, or operated by the entity conducting
10 the agricultural activity.

11 As used in this paragraph:

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

14 "Agricultural-energy enterprise" means an
15 enterprise that integrally incorporates an
16 agricultural activity with an agricultural-energy
17 facility.

18 "Agricultural-energy facility" means a facility
19 that generates, stores, or distributes renewable
20 energy as defined in section 269-91 or renewable fuel
21 including electrical or thermal energy or liquid or



1 gaseous fuels from products of agricultural activities
2 from agricultural lands located in the State.

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

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



1 that "wireless facilities" shall have the same meaning
2 as in section -2;

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

16 (20) Solar energy facilities that do not occupy more than
17 ten per cent of the acreage of the parcel, or twenty
18 acres of land, whichever is lesser or for which a
19 special use permit is granted pursuant to section 205-
20 6; provided that this use shall not be permitted on
21 lands with soil classified by the land study bureau's



1 detailed land classification as overall (master)
2 productivity rating class A unless the solar energy
3 facilities are:

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

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

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

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

19 (A) The area occupied by the solar energy facilities
20 is also made available for compatible
21 agricultural activities at a lease rate that is



1 at least fifty per cent below the fair market
2 rent for comparable properties;

3 (B) Proof of financial security to decommission the
4 facility is provided to the satisfaction of the
5 appropriate county planning commission prior to
6 date of commencement of commercial generation;
7 and

8 (C) Solar energy facilities shall be decommissioned
9 at the owner's expense according to the following
10 requirements:

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

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

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



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

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

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

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

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

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



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

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

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

13 SECTION 5. Within one year of the effective date of this
14 Act, the State or county shall conduct an evaluation of section
15 -6(6) and (7), Hawaii Revised Statutes, established by
16 section 2 of this Act, to determine the adequacy of the period
17 of time provided in that section for the State or county to
18 process and approve applications, based on the number of
19 applications submitted and available resources, and submit a
20 report of its findings to the legislature no later than twenty
21 days prior to the convening of the regular session of 2020.



1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on July 1, 2050;
4 provided that this Act shall apply to permit applications filed
5 with the State or a county after December 31, 2018.



Report Title:

Small Wireless Facilities; Wireless Facilities; Broadband;
Economic Development; State-owned and County-owned Utility
Poles; Permits

Description:

Establishes a process to upgrade and support next generation wireless broadband infrastructure throughout the State. Establishes a permitting, application, review, and approval process for wireless service providers to install wireless facilities on state or county owned utility poles, or install associated utility poles, in the right of way. Effective 7/1/2050. Applies to permit applications filed with the State or county after 12/31/2018. (SD2)

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

