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# A BILL FOR AN ACT

RELATING TO WIRELESS BROADBAND FACILITIES.

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

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

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



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

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

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



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



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

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

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

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



1 "CHAPTER

2 WIRELESS BROADBAND AND COMMUNICATIONS NETWORKS

3 § -1 Applicability. This chapter shall only apply to  
4 activities of a wireless or communications service provider to  
5 deploy small wireless facilities and to modify or replace  
6 utility poles associated with small wireless facilities. Except  
7 as to the State or county permitting authority related to  
8 utility poles, this chapter shall not be construed to apply to:

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

13 § -2 Definitions. For purposes of this chapter:

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

17 "Applicable codes" means uniform building, fire,  
18 electrical, plumbing, or mechanical codes adopted by a  
19 recognized national code organization or local amendments to  
20 those codes enacted solely to address imminent threats of



1 destruction of property or injury to persons to the extent not  
2 inconsistent with this chapter.

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

5 "Application" means a request submitted by an applicant to  
6 the State or county for a permit to collocate small wireless  
7 facilities or to approve the installation or modification of a  
8 utility pole.

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

13 "Communications service" means cable service, as defined in  
14 title 47 United States Code section 522(6), as amended, or  
15 section 440G-3; information service, as defined in title 47  
16 United States Code section 153(24), as amended;  
17 telecommunications service, as defined in title 47 United States  
18 Code section 153(53), as amended, or section 269-1; mobile  
19 service, as defined in title 47 United States Code section  
20 153(33), as amended; or wireless service other than mobile  
21 service.



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

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

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

18 "Micro wireless facilities" means a small wireless facility  
19 having dimensions either:

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



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

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

6           "Small wireless facilities" means a wireless facility or  
7 other facility providing communications service that meets one  
8 or both of the following qualifications:

9           (1) Each communications service provider's antenna can fit  
10                   within an enclosure of no more than six cubic feet in  
11                   volume; or

12           (2) All other equipment associated with the communications  
13                   service facility, whether ground- or pole-mounted,  
14                   that is cumulatively no more than twenty-eight cubic  
15                   feet in volume; provided that the following types of  
16                   associated ancillary equipment shall not be included  
17                   in the calculation of equipment volume: electric  
18                   meter, concealment elements, telecommunications  
19                   demarcation box, grounding equipment, power transfer  
20                   switch, cut-off switch, and vertical cable runs for  
21                   the connection of power and other services.





1 "State or county pole" means a utility pole owned, managed,  
2 or operated by, or on behalf of, the State or a county in the  
3 State.

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

14 "Technically feasible" means that, by virtue of engineering  
15 or spectrum usage, the proposed placement for a small wireless  
16 facility, or its design or site location can be implemented  
17 without a reduction in the functionality of the small wireless  
18 facility.

19 "Utility pole" means a pole or similar structure that is or  
20 may be used in whole or in part by or for wireline  
21 communications, electric distribution, lighting, traffic



1 control, signage, or a similar function, or for the collocation  
2 of small wireless facilities. "Utility pole" shall not include  
3 wireless support structures.

4 "Wireless facility" means equipment at a fixed location  
5 that enables wireless communications between user equipment and  
6 a communications network, including:

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

12 "Wireless facility" includes small wireless facilities, but does  
13 not include wireline backhaul.

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

- 17 (1) Provides services, whether at a fixed location or  
18 mobile, to the public using wireless facilities; or
- 19 (2) Builds or installs wireless communication transmission  
20 equipment or wireless facilities, including an



1 individual authorized to provide telecommunications  
2 service in the State.

3 "Wireless support structure" means a structure, such as a  
4 monopole, tower, either guyed or self-supporting building, or  
5 other existing or proposed structure designed to support or  
6 capable of supporting wireless or broadband facilities that  
7 provide communications service, other than a structure designed  
8 solely for the collocation of small wireless facilities.

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

10 "Wireline backhaul" means the transport of communications  
11 data or other electronic information by wire from wireless  
12 facilities to a communications network.

13 § -3 **General.** Except as provided in this chapter, the  
14 State or any county shall not prohibit, regulate, or charge for  
15 the deployment of small wireless facilities or any associated  
16 modified or replaced utility poles used for the collocation of  
17 small wireless facilities.

18 § -4 **Zoning.** Small wireless facilities and associated  
19 modified or replaced utility poles subject to the height limits  
20 in section -5(c) shall be classified as permitted uses and



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

- 3 (1) In the right of way in any zone; or
- 4 (2) Outside the right of way in property not zoned  
5 exclusively for conservation.

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

9 **§ -5 Use of the right of way for small wireless**  
10 **facilities and utility poles.** (a) The State or county shall  
11 not enter into an exclusive arrangement with any person for use  
12 of the right of way for the construction, operation, marketing,  
13 or maintenance of small wireless facilities or utility poles.

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



1 wireless facility that meet the requirements of this section are  
2 permitted uses subject to the permit process in section -6.  
3 No additional permit shall be required to maintain, operate,  
4 modify, or replace small wireless facilities and associated  
5 utility poles along, across, upon, and under the right of way.  
6 (c) Each modified or replaced utility pole installed in  
7 the right of way for the collocation of small wireless  
8 facilities shall not exceed the greater of:  
9 (1) Ten feet in height above the tallest existing utility  
10 pole in place as of the effective date of this Act  
11 located within five hundred feet of the modified pole  
12 in the same right of way; or  
13 (2) Fifty feet above ground level.  
14 New small wireless facilities in the right of way shall not  
15 extend more than ten feet above an existing utility pole in  
16 place as of the effective date of this Act. Subject to this  
17 section and section -6, a wireless provider may construct,  
18 modify, and maintain a utility pole or small wireless facility  
19 that exceeds these height limits along, across, upon, and under  
20 the right of way, subject to applicable zoning regulations.



1 (d) A wireless provider may replace a decorative pole,  
2 when necessary to collocate a small wireless facility, if the  
3 replacement pole reasonably conforms to the design aesthetics of  
4 the decorative pole being replaced.

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

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



1 considered a part of the small wireless facility for purposes of  
2 the size restrictions.

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

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

18 (i) The State or county shall modify laws or ordinances  
19 regulating the development of real property to ensure that new  
20 development of real property or the redevelopment of existing  
21 real property, including in residential zones, shall include



1 locations in the right of way capable of accommodating a utility  
2 pole or other structure for the placement of a small wireless  
3 facility. Any such utility pole or other structure installed at  
4 the locations shall be installed and available for collocation  
5 consistent with the requirements of this chapter.

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

- 15 (1) The State or county shall not directly or indirectly  
16 require an applicant to perform services or provide  
17 goods unrelated to the permit, such as in-kind  
18 contributions to the State or county, including  
19 reserving fiber, conduit, or pole space for the State  
20 or county;





- 1           (2) An applicant shall not be required to provide more  
2           information to obtain a permit than is required of  
3           communications service providers that are not wireless  
4           providers; provided that an applicant may be required  
5           to include construction and engineering drawings and  
6           information demonstrating compliance with the criteria  
7           in this section;
- 8           (3) The State or county shall not require the placement of  
9           small wireless facilities on any specific utility pole  
10          or category of poles or require multiple antenna  
11          systems on a single utility pole;
- 12          (4) The State or county shall not limit the placement of  
13          small wireless facilities by minimum separation  
14          distances;
- 15          (5) The State or county may require an applicant to  
16          include an attestation that the small wireless  
17          facilities will be operational for use by a wireless  
18          provider within one year after the permit issuance  
19          date; provided that the State or county and the  
20          applicant may agree to extend this period or the  
21          period may be tolled if a delay is caused by lack of



1 commercial power or communications transport  
2 facilities to the site;

3 (6) Within ten days of receiving an application, the State  
4 or county shall notify the applicant in writing  
5 whether the application is complete. If an  
6 application is incomplete, the State or county shall  
7 specifically identify all missing information in  
8 writing. The processing deadline in paragraph (7) is  
9 tolled from the time the State or county sends the  
10 notice of incompleteness to the time the applicant  
11 provides the missing information;

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

18 (8) The State or county may deny a proposed collocation of  
19 a small wireless facility or the construction or  
20 modification of a modified or replaced utility pole



1 that meets the requirements in section -5(d) only  
2 if the proposed application:  
3 (A) Materially interferes with the safe operation of  
4 public safety equipment;  
5 (B) Materially interferes with sight lines or clear  
6 zones for transportation or pedestrians;  
7 (C) Materially interferes with compliance with the  
8 Americans with Disabilities Act or similar  
9 federal or state standards regarding pedestrian  
10 access or movement;  
11 (D) Fails to comply with reasonable and  
12 nondiscriminatory spacing requirements of general  
13 application adopted by ordinance that concern the  
14 location of ground-mounted equipment. Such  
15 spacing requirements shall not prevent a small  
16 wireless facility from serving any location; or  
17 (E) Fails to comply with building or other applicable  
18 codes;  
19 (9) The State or county shall document the basis for a  
20 denial, including the specific provisions of law on  
21 which the denial was based, and send the documentation



1 to the applicant on or before the day the State or  
2 county denies an application. The applicant may  
3 address the deficiencies identified by the State or  
4 county and resubmit the application within thirty days  
5 of the denial without paying an additional application  
6 fee. The State or county shall approve or deny the  
7 revised application within thirty days. Any  
8 subsequent review shall be limited to the deficiencies  
9 cited in the original documentation noting the basis  
10 for denial;

11 (10) An applicant seeking to collocate small wireless  
12 facilities within the State or the jurisdiction of a  
13 single county shall be allowed at the applicant's  
14 discretion to file a consolidated application and  
15 receive a single permit for the collocation of up to  
16 twenty-five small broadband wireless facilities within  
17 a three square mile radius; provided that the denial  
18 of one or more small wireless facilities in a  
19 consolidated application shall not delay processing of  
20 any other small wireless facilities in the same batch;  
21 provided further that within ten days of receiving a



1 permit for a consolidated application, the applicant  
2 shall publish notice of the permit in a newspaper of  
3 general circulation in the county where the small  
4 wireless facility is to be located;

5 (11) Installation or collocation for which a permit is  
6 granted pursuant to this section shall be completed  
7 within one year of the permit issuance date; provided  
8 that the State or county and the applicant may agree  
9 to extend this period or the period may be tolled if a  
10 delay is caused by lack of commercial power or  
11 communications transport facilities to the site.

12 Approval of an application authorizes the applicant  
13 to:

- 14 (A) Undertake the installation or collocation; and
- 15 (B) Subject to applicable relocation requirements and  
16 the applicant's right to terminate at any time,  
17 operate and maintain the small wireless  
18 facilities and any associated utility pole  
19 covered by the permit for a period of no less  
20 than twenty years, which must be renewed for  
21 equivalent durations so long as they are in



1 compliance with the criteria set forth in this  
2 section;

3 (12) The State or county shall not institute, either  
4 expressly or de facto, a moratorium on filing,  
5 receiving, or processing applications or issuing  
6 permits or other approvals, if any, for the  
7 collocation of small wireless facilities or the  
8 installation or modification of utility poles to  
9 support small wireless facilities; and

10 (13) The State or county shall not require an application  
11 for:

12 (A) Routine maintenance;

13 (B) Replacement of small wireless facilities with  
14 small wireless facilities that are substantially  
15 similar or the same size and weight or smaller;  
16 provided that the wireless provider shall notify  
17 the state or county department in which the small  
18 wireless facility was originally approved at  
19 least ten days, but no more than sixty days,  
20 prior to commencing the replacement; 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 -5 and  
10          this section.

11          § -7 Access to state or county poles within the right of  
12 way. (a) This section shall apply to activities of the  
13 wireless or communications service provider within the right of  
14 way.

15          (b) A person owning, managing, or controlling state or  
16 county poles in the right of way shall not enter into an  
17 exclusive arrangement with any person for the right to attach to  
18 such poles.

19          (c) The rates to collocate on state or county poles shall  
20 be nondiscriminatory regardless of the services provided by the



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

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

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

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





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

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

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

10 (2) There is no available technological means of  
11 increasing the capacity of the light standard or  
12 utility pole for additional attachments; and

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

16 § -8 Rates and fees within the right of way. (a) This  
17 section shall govern the State's or county's rates and fees for  
18 the placement of a wireless facility or utility pole in the  
19 right of way.

20 (b) The State or county shall not require a wireless  
21 provider to pay any rates, fees, or compensation to the State,



1 county, or other person other than what is expressly authorized  
2 by this section for collocation of small wireless facilities on  
3 utility poles in the right of way or for the construction,  
4 operation, modification, and maintenance of utility poles in the  
5 right of way.

6 (c) Application fees shall be subject to the following  
7 requirements:

8 (1) The State or county may charge an application fee only  
9 if the fee is required for similar types of commercial  
10 development or construction within the State's or  
11 county's jurisdiction;

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

16 (3) An application fee shall not include:

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

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



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

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

10          (d) The rate for collocation of a small wireless facility  
11          on a state or county pole in the right of way shall not exceed  
12          the actual, direct, and reasonable costs related to the wireless  
13          provider's use of space on the state or county pole not to  
14          exceed \$40 per pole annually. In any dispute concerning the  
15          appropriateness of a cost-based rate for any state or county  
16          pole, the State or county shall have the burden of proving that  
17          the rate does not exceed the actual, direct, and reasonable  
18          costs for the applicant's use of the pole.

19          § -9 Local authority. Subject to this chapter and  
20          applicable federal law, the State or county may continue to  
21          exercise zoning, land use, planning, and permitting within its



1 jurisdictional boundaries, including with respect to utility  
2 poles; except that no state or county shall have or exercise any  
3 jurisdiction or authority over the design, engineering,  
4 construction, installation, or operation of any small wireless  
5 facility located in an interior structure or upon the site of  
6 any campus, stadium, or athletic facility not owned or  
7 controlled by the State or county, other than to comply with  
8 applicable codes. Nothing in this chapter authorizes the State  
9 or county to require wireless facility deployment or to regulate  
10 wireless services.

11 § -10 **Implementation.** No later than January 1, 2019,  
12 the State and each county shall adopt or modify laws,  
13 regulations, and agreements for lands within its jurisdiction  
14 that make available rates, fees, and other terms that comply  
15 with this chapter to wireless providers. In the absence of  
16 laws, regulations, and agreements that fully comply with this  
17 chapter and until such laws, regulations, or agreements are  
18 adopted, wireless providers may install and operate small  
19 wireless facilities and utility poles pursuant to this chapter.

20 § -11 **Indemnification, insurance, and bonding.** (a) The  
21 State or county may adopt indemnification, insurance, and



1 bonding requirements related to small wireless facility permits  
2 subject to this section.

3 (b) The State or county may require a wireless provider to  
4 indemnify and hold the State or county and its officers and  
5 employees harmless against any claims, lawsuits, judgments,  
6 costs, liens, losses, expenses, or fees resulting from the  
7 wireless provider's actions in installing, repairing, or  
8 maintaining any wireless facilities or utility poles.

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

19 (d) The State or county may adopt bonding requirements for  
20 small wireless facilities if the State or county imposes similar



1 requirements in connection with permits issued for other right  
2 of way users.

3 The purpose of such bonds shall be to:

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

15 Bonding requirements shall not exceed \$200 per small  
16 wireless facility. For wireless providers with multiple small  
17 wireless facilities within the jurisdiction of a single state or  
18 county, the total bond amount across all facilities shall not  
19 exceed \$10,000, which amount may be combined into one bond  
20 instrument."



1 SECTION 3. Section 205-2, Hawaii Revised Statutes, is  
2 amended by amending subsection (c) to read as follows:  
3 "(c) Rural districts shall include activities or uses as  
4 characterized by low density residential lots of not more than  
5 one dwelling house per one-half acre, except as provided by  
6 county ordinance pursuant to section 46-4(c), in areas where  
7 "city-like" concentration of people, structures, streets, and  
8 urban level of services are absent, and where small farms are  
9 intermixed with low density residential lots except that within  
10 a subdivision, as defined in section 484-1, the commission for  
11 good cause may allow one lot of less than one-half acre, but not  
12 less than eighteen thousand five hundred square feet, or an  
13 equivalent residential density, within a rural subdivision and  
14 permit the construction of one dwelling on such lot; provided  
15 that all other dwellings in the subdivision shall have a minimum  
16 lot size of one-half acre or 21,780 square feet. Such petition  
17 for variance may be processed under the special permit  
18 procedure. These districts may include contiguous areas which  
19 are not suited to low density residential lots or small farms by  
20 reason of topography, soils, and other related characteristics.



1 Rural districts shall also include golf courses, golf driving  
2 ranges, and golf-related facilities.

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

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

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

- 15 (1) Cultivation of crops, including crops for bioenergy,  
16 flowers, vegetables, foliage, fruits, forage, and  
17 timber;
- 18 (2) Game and fish propagation;
- 19 (3) Raising of livestock, including poultry, bees, fish,  
20 or other animal or aquatic life that are propagated  
21 for economic or personal use;





- 1           (4) Farm dwellings, employee housing, farm buildings, or  
2           activities or uses related to farming and animal  
3           husbandry. "Farm dwelling", as used in this  
4           paragraph, means a single-family dwelling located on  
5           and used in connection with a farm, including clusters  
6           of single-family farm dwellings permitted within  
7           agricultural parks developed by the State, or where  
8           agricultural activity provides income to the family  
9           occupying the dwelling;
- 10          (5) Public institutions and buildings that are necessary  
11          for agricultural practices;
- 12          (6) Public and private open area types of recreational  
13          uses, including day camps, picnic grounds, parks, and  
14          riding stables, but not including dragstrips,  
15          airports, drive-in theaters, golf courses, golf  
16          driving ranges, country clubs, and overnight camps;
- 17          (7) Public, private, and quasi-public utility lines and  
18          roadways, transformer stations, communications  
19          equipment buildings, solid waste transfer stations,  
20          major water storage tanks, and appurtenant small  
21          buildings such as booster pumping stations, but not



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



1 agricultural support buildings on land currently or  
2 formerly owned, leased, or operated by a sugar or  
3 pineapple plantation; provided that the existing  
4 structures may be used or rehabilitated for use, and  
5 new employee housing and agricultural support  
6 buildings may be allowed on land within the  
7 subdivision as follows:

8 (A) The employee housing is occupied by employees or  
9 former employees of the plantation who have a  
10 property interest in the land;

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

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

17 (13) Agricultural tourism conducted on a working farm, or a  
18 farming operation as defined in section 165-2, for the  
19 enjoyment, education, or involvement of visitors;  
20 provided that the agricultural tourism activity is  
21 accessory and secondary to the principal agricultural



1 use and does not interfere with surrounding farm  
2 operations; and provided further that this paragraph  
3 shall apply only to a county that has adopted  
4 ordinances regulating agricultural tourism under  
5 section 205-5;

6 (14) Agricultural tourism activities, including overnight  
7 accommodations of twenty-one days or less, for any one  
8 stay within a county; provided that this paragraph  
9 shall apply only to a county that includes at least  
10 three islands and has adopted ordinances regulating  
11 agricultural tourism activities pursuant to section  
12 205-5; provided further that the agricultural tourism  
13 activities coexist with a bona fide agricultural  
14 activity. For the purposes of this paragraph, "bona  
15 fide agricultural activity" means a farming operation  
16 as defined in section 165-2;

17 (15) Wind energy facilities, including the appurtenances  
18 associated with the production and transmission of  
19 wind generated energy; provided that the wind energy  
20 facilities and appurtenances are compatible with



1 agriculture uses and cause minimal adverse impact on  
2 agricultural land;  
3 (16) Biofuel processing facilities, including the  
4 appurtenances associated with the production and  
5 refining of biofuels that is normally considered  
6 directly accessory and secondary to the growing of the  
7 energy feedstock; provided that biofuel processing  
8 facilities and appurtenances do not adversely impact  
9 agricultural land and other agricultural uses in the  
10 vicinity.

11 For the purposes of this paragraph:

12 "Appurtenances" means operational infrastructure  
13 of the appropriate type and scale for economic  
14 commercial storage and distribution, and other similar  
15 handling of feedstock, fuels, and other products of  
16 biofuel processing facilities.

17 "Biofuel processing facility" means a facility  
18 that produces liquid or gaseous fuels from organic  
19 sources such as biomass crops, agricultural residues,  
20 and oil crops, including palm, canola, soybean, and  
21 waste cooking oils; grease; food wastes; and animal



1 residues and wastes that can be used to generate  
2 energy;  
3 (17) Agricultural-energy facilities, including  
4 appurtenances necessary for an agricultural-energy  
5 enterprise; provided that the primary activity of the  
6 agricultural-energy enterprise is agricultural  
7 activity. To be considered the primary activity of an  
8 agricultural-energy enterprise, the total acreage  
9 devoted to agricultural activity shall be not less  
10 than ninety per cent of the total acreage of the  
11 agricultural-energy enterprise. The agricultural-  
12 energy facility shall be limited to lands owned,  
13 leased, licensed, or operated by the entity conducting  
14 the agricultural activity.

15 As used in this paragraph:

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

18 "Agricultural-energy enterprise" means an  
19 enterprise that integrally incorporates an  
20 agricultural activity with an agricultural-energy  
21 facility.



1 "Agricultural-energy facility" means a facility  
2 that generates, stores, or distributes renewable  
3 energy as defined in section 269-91 or renewable fuel  
4 including electrical or thermal energy or liquid or  
5 gaseous fuels from products of agricultural activities  
6 from agricultural lands located in the State.

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

13 (18) Construction and operation of wireless communication  
14 antennas[?], including wireless facilities; provided  
15 that, for the purposes of this paragraph, "wireless  
16 communication antenna" means communications equipment  
17 that is either freestanding or placed upon or attached  
18 to an already existing structure and that transmits  
19 and receives electromagnetic radio signals used in the  
20 provision of all types of wireless communications  
21 services; provided further that nothing in this



1 paragraph shall be construed to permit the  
2 construction of any new structure that is not deemed a  
3 permitted use under this subsection; provided further  
4 that "wireless facilities" shall have the same meaning  
5 as in section 165-2;

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

19 (20) Solar energy facilities that do not occupy more than  
20 ten per cent of the acreage of the parcel, or twenty  
21 acres of land, whichever is lesser or for which a





1 special use permit is granted pursuant to section 205-  
2 6; provided that this use shall not be permitted on  
3 lands with soil classified by the land study bureau's  
4 detailed land classification as overall (master)  
5 productivity rating class A unless the solar energy  
6 facilities are:

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

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

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

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



- 1           (A) The area occupied by the solar energy facilities
- 2                   is also made available for compatible
- 3                   agricultural activities at a lease rate that is
- 4                   at least fifty per cent below the fair market
- 5                   rent for comparable properties;
- 6           (B) Proof of financial security to decommission the
- 7                   facility is provided to the satisfaction of the
- 8                   appropriate county planning commission prior to
- 9                   date of commencement of commercial generation;
- 10                  and
- 11           (C) Solar energy facilities shall be decommissioned
- 12                   at the owner's expense according to the following
- 13                   requirements:
- 14                   (i) Removal of all equipment related to the
- 15                               solar energy facility within twelve months
- 16                               of the conclusion of operation or useful
- 17                               life; and
- 18                   (ii) Restoration of the disturbed earth to
- 19                               substantially the same physical condition as
- 20                               existed prior to the development of the
- 21                               solar energy facility.



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

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

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

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

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

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

20 (iii) Pumped storage facilities that store energy  
21 by pumping water uphill to a reservoir at



1 higher elevation from a reservoir at a lower  
2 elevation to be released to turn a turbine  
3 to generate electricity;

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

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

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

16 SECTION 5. Within one year of the effective date of this  
17 Act, the State or county shall conduct an evaluation of section  
18 -6(6) and (7), Hawaii Revised Statutes, established by  
19 section 2 of this Act, to determine the adequacy of the period  
20 of time provided in that section for the State or county to  
21 process and approve applications, based on the number of



1 applications submitted and available resources, and submit a  
2 report of its findings to the legislature no later than twenty  
3 days prior to the convening of the regular session of 2020.

4 SECTION 6. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect upon its approval;  
7 provided that this Act shall apply to permit applications filed  
8 with the State or county after December 31, 2018.

9



**Report Title:**

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

**Description:**

Establishes a process to upgrade and support next generation wireless broadband infrastructure throughout the State. Establishes a permitting, application, review, and approval process for wireless service providers to install wireless facilities on state or county owned utility poles, or install associated utility poles, in the right of way. Applies to permit applications filed with the State or county after 12/31/2018. (SD1)

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