

JAN 20 2017

S.B. NO. 760

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# A BILL FOR AN ACT

RELATING TO TELECOMMUNICATIONS.

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

1           SECTION 1. The legislature finds that Act 151, Session  
2 Laws of Hawaii 2011 (Act 151), provides an exemption for the  
3 installation, improvement, construction, or development of  
4 infrastructure relating to broadband service or broadband  
5 technology from state and county permitting requirements, under  
6 certain circumstances.

7           The legislature further finds that, since Act 151 was  
8 enacted, broadband technology has advanced substantially.  
9 Wireless technology is now essential to the delivery of  
10 broadband service. Implementation of wireless technology, such  
11 as small wireless facilities, will play a major role in  
12 continuing the benefits afforded by broadband infrastructure in  
13 Hawaii.

14           The purpose of this Act is to:

15           (1) Codify exemptions to permitting requirements  
16                established by Act 151, Session Laws of Hawaii 2011,  
17                within the Hawaii Revised Statutes and expand those



- 1 exemptions to include broadband over wireless or  
2 mobile platforms, including small wireless facilities;  
3 (2) Establish a definition of wireless communications  
4 antennas that include small wireless facilities; and  
5 (3) Repeal those sections of Act 151, Session Laws of  
6 Hawaii 2011, which have been codified within the  
7 Hawaii Revised Statutes.

8 SECTION 2. Chapter 440J, Hawaii Revised Statutes, is  
9 amended by adding a new part to be appropriately designated and  
10 to read as follows:

11 "PART . EXEMPTION OF BROADBAND INFRASTRUCTURE FROM PERMITTING  
12 REQUIREMENTS

13 §440J-A Definitions. As used in this part, unless the  
14 context otherwise requires:

15 "Small wireless facilities" means wireless facilities that  
16 meet the following qualifications:

- 17 (1) Each individual antenna, excluding the associated  
18 equipment, is individually no more than three cubic  
19 feet in volume, and all antennas on the structure  
20 total no more than six cubic feet in volume; and



1           (2) All other wireless equipment associated with the  
2           structure, excluding cable runs for the connection of  
3           power and other services, do not cumulatively exceed:  
4           (A) Twenty-eight cubic feet for collocations on all  
5           non-pole structures, including but not limited to  
6           buildings and water tanks, that can support fewer  
7           than three providers;  
8           (B) Twenty-one cubic feet for collocations on all  
9           pole structures, including but not limited to  
10          light poles, traffic signal poles, and utility  
11          poles, that can support fewer than three  
12          providers;  
13          (C) Thirty-five cubic feet for non-pole collocations  
14          that can support at least three providers; or  
15          (D) Twenty-eight cubic feet for pole collocations  
16          that can support at least three providers;  
17 provided that the volume of any deployed equipment that is not  
18 visible from public spaces at the ground level from two hundred  
19 fifty feet or less may be omitted from the calculation of  
20 volumetric limits.



1 "Small wireless facilities network" means a collection of  
2 interrelated small wireless facilities designed to deliver  
3 wireless communications service.

4 "Utility pole" means a public or private pole or similar  
5 structure that is used in whole or in part for communications  
6 service, electronic service, lighting, traffic control, signage,  
7 or similar functions.

8 **§440J-B Exemption of broadband infrastructure installation**  
9 **from permitting requirements.** (a) Actions relating to the  
10 installation, improvement, construction, or development of  
11 infrastructure relating to broadband service or broadband  
12 technology, including but not limited to the interconnection of  
13 telecommunications cables and the installation of small wireless  
14 facilities on a utility pole or other supporting structure,  
15 shall be exempt from:

- 16 (1) County permitting requirements;
- 17 (2) State permitting and approval requirements, which  
18 includes the requirements of chapters 171, 205A, and  
19 343; and
- 20 (3) Public utilities commission rules under Hawaii  
21 Administrative Rules, chapter 6-73, that require



1 existing installations to comply with new pole  
2 replacement standards at the time of any construction  
3 or alteration to the equipment or installation;  
4 except to the extent that such permitting or approval is  
5 required by federal law or is necessary to protect eligibility  
6 for federal funding, services, or other assistance; provided  
7 that the installation, improvement, construction, or development  
8 of infrastructure shall:

9 (1) Be directly related to the improvement of existing  
10 telecommunications cables or the installation of new  
11 telecommunications cables, including the installation  
12 of small wireless facilities and small wireless  
13 facilities networks:

14 (A) On existing or replacement utility poles and  
15 conduits; and

16 (B) Using existing infrastructure and facilities;

17 (2) Take place within existing rights-of-way or public  
18 utility easements or use existing telecommunications  
19 infrastructure; and

20 (3) Make no significant changes to the existing public  
21 rights-of-way, public utility easements, or



1 telecommunications infrastructure; provided that the  
2 installation of a small wireless facility within the  
3 dimensions stated in section 440J-A, shall be deemed  
4 to not make a significant change to existing public  
5 rights-of-way, public utility easements, or  
6 telecommunications infrastructure.

7 (b) A person or entity taking any action under this  
8 section shall comply with all applicable safety and engineering  
9 requirements relating to the installation, improvement,  
10 construction, or development of infrastructure relating to  
11 broadband service.

12 (c) A person or entity taking any action under this  
13 section shall, at least thirty calendar days before the action  
14 is taken, provide notice to the director of commerce and  
15 consumer affairs by electronic posting in the form and on the  
16 site designated by the director for such posting on the  
17 designated central State of Hawaii internet website; provided  
18 that notice need not be given by a public utility or government  
19 entity for an action relating to the installation, improvement,  
20 construction, or development of infrastructure relating to  
21 broadband service or broadband technology where the action taken



1 is to provide access as the owner of the existing rights-of-way,  
2 utility easements, or telecommunications infrastructure.

3 §440J-C Upgrade or replacement of utility poles. (a) No  
4 person or entity shall be required to upgrade or replace an  
5 existing utility pole when using that utility pole to install  
6 new telecommunications cables or small wireless facilities, or  
7 to improve existing telecommunications cables or small wireless  
8 facilities; provided that:

- 9 (1) The overall weight load and the diameter of the  
10 attachment on the utility pole following the  
11 installation or improvement does not exceed the  
12 overall weight load and diameter of the attachment  
13 prior to the installation or improvement;
- 14 (2) The overall weight load on the utility pole does not  
15 exceed maximum utility pole safe weight capacities  
16 established by the Federal Communications Commission  
17 and the public utilities commission; and
- 18 (3) The utility pole is not damaged or made less safe or  
19 reliable due to the installation or improvement of  
20 telecommunications cables.



1           (b) The public utilities commission may allow a public  
2 utility to recover all prudently incurred costs as approved  
3 through rates, charges, or clauses approved or established by  
4 the public utilities commission pursuant to section 269-16,  
5 including but not limited to planning, engineering,  
6 construction, installation, or replacement of utility poles.  
7 Recovery of all prudently incurred costs shall also apply to a  
8 broadband service provider.

9           (c) If access to a utility pole is not granted within  
10 forty-five days of a written request for access, the utility  
11 must confirm the denial in writing by the forty-fifth day,  
12 consistent with the requirements established by the Federal  
13 Communications Commission under 47 Code of Federal Regulations  
14 Chapter 1. The utility's denial of access shall be specific,  
15 shall include all relevant evidence and information supporting  
16 its denial, and shall explain how such evidence and information  
17 relate to a denial of access for reasons of lack of capacity,  
18 safety, reliability, or engineering standards.

19           §440J-D Annual recurring rates. (a) The State or county  
20 may establish an annual recurring charge on small wireless  
21 facilities and small wireless facilities networks collocated on





1 utility poles, structures, and lighting standards located within  
2 the public rights-of-way. The rates shall be nondiscriminatory  
3 regardless of the services provided by the collocating person.

4 (b) Charges shall not exceed the lesser of:

5 (1) The annual recurring rate that would be permitted  
6 under rules adopted by the Federal Communications  
7 Commission under title 47 United States Code section  
8 224(e) or (i); or

9 (2) \$20 per year.

10 Charges shall recover the actual, direct, and reasonable costs  
11 related to the use of space on the utility pole. In any  
12 controversy concerning the appropriateness of a charge for a  
13 state or county owned utility pole, the State or county shall  
14 have the burden of proving that the charges are reasonably  
15 related to the actual, direct, and reasonable costs incurred for  
16 use of space on the pole for such period."

17 SECTION 3. Chapter 440J, Hawaii Revised Statutes, is  
18 amended by amending its title to read as follows:

19 " [ ] CHAPTER 440J [ ]

20 TELECOMMUNICATIONS AND CABLE INDUSTRY [ ] INFORMATION REPORTING [ ] "



1 SECTION 4. Chapter 440J is amended by designating sections  
2 440J-1 through 440J-3 as part I, entitled "Information  
3 Reporting".

4 SECTION 5. Section 440J-1, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "[~~§~~440J-1] Definitions. As used in this [~~chapter,~~]  
7 part, unless the context otherwise requires:

8 "Broadband access or broadband service" means an "always-  
9 on" service that includes but is not limited to computer  
10 processing capabilities, information provision, and computing  
11 interactivity with data transport, enabling end users to access  
12 the Internet and use a variety of applications at minimum speeds  
13 established by the Federal Communications Commission.

14 "Broadband infrastructure" means the medium used to provide  
15 broadband access or broadband service, including fiber optic  
16 cable, copper cable, coaxial cable, and wireless media, such as  
17 satellite communications, wi-fi, and worldwide interoperability  
18 for microwave access.

19 "Broadband speed threshold" means the highest speed  
20 threshold defined or established in the most recent broadband



1 progress report issued by the Federal Communications Commission  
2 to Congress.

3 "Department" means the department of commerce and consumer  
4 affairs.

5 "Director" means the director of commerce and consumer  
6 affairs.

7 "Mapping information" means the information required under  
8 the United States Department of Commerce's National  
9 Telecommunications and Information Administration broadband data  
10 and development grant, number 15-50-M09057.

11 "Provider" means any cable operator, telecommunications  
12 carrier, or telecommunications common carrier that provides  
13 broadband service."

14 SECTION 6. Section 2, Act 151, Session Laws of Hawaii  
15 2011, as amended by section 3 of Act 264, Session Laws of Hawaii  
16 2013, as amended by section 1 of Act 193, Session Laws of Hawaii  
17 2016, is repealed.

18 [~~SECTION 2. Beginning January 1, 2012, actions relating~~  
19 ~~to the installation, improvement, construction, or development~~  
20 ~~of infrastructure relating to broadband service or broadband~~  
21 ~~technology, including the interconnection of telecommunications~~



1 ~~cables, shall be exempt from county permitting requirements,~~  
2 ~~state permitting and approval requirements, which includes the~~  
3 ~~requirements of chapters 171, 205A, and 343, Hawaii Revised~~  
4 ~~Statutes, and public utilities commission rules under Hawaii~~  
5 ~~Administrative Rules, chapter 6-73, that require existing~~  
6 ~~installations to comply with new pole replacement standards at~~  
7 ~~the time of any construction or alteration to the equipment or~~  
8 ~~installation, except to the extent that such permitting or~~  
9 ~~approval is required by federal law or is necessary to protect~~  
10 ~~eligibility for federal funding, services, or other assistance,~~  
11 ~~provided that the installation, improvement, construction, or~~  
12 ~~development of infrastructure shall:~~

13 ~~(1) Be directly related to the improvement of existing~~  
14 ~~telecommunications cables or the installation of new~~  
15 ~~telecommunications cables.~~

16 ~~(A) On existing or replacement utility poles and~~  
17 ~~conduits; and~~

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

19 ~~(2) Take place within existing rights of way or public~~  
20 ~~utility easements or use existing telecommunications~~  
21 ~~infrastructure; and~~



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

4       ~~An applicant shall comply with all applicable safety and~~  
5       ~~engineering requirements relating to the installation,~~  
6       ~~improvement, construction, or development of infrastructure~~  
7       ~~relating to broadband service.~~

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



1 SECTION 7. Section 3, Act 151, Session Laws of Hawaii  
2 2011, as amended by section 3 of Act 264, Session Laws of Hawaii  
3 2013, is repealed.

4 [~~SECTION 3. Consistent with federal law, no person or~~  
5 ~~entity shall be required to upgrade or replace an existing~~  
6 ~~utility pole when using that utility pole to install new~~  
7 ~~telecommunications cables or to improve existing~~  
8 ~~telecommunications cables, provided that:~~

9 ~~(1) The overall weight load and the diameter of the~~  
10 ~~attachment on the utility pole following the~~  
11 ~~installation or improvement does not exceed the~~  
12 ~~overall weight load and diameter of the attachment~~  
13 ~~prior to the installation or improvement;~~

14 ~~(2) The overall weight load on the utility pole does not~~  
15 ~~exceed maximum utility pole safe weight capacities~~  
16 ~~established by the Federal Communications Commission~~  
17 ~~and the public utilities commission; and~~

18 ~~(3) The utility pole is not damaged or made less safe or~~  
19 ~~reliable due to the installation or improvement of~~  
20 ~~telecommunications cables.~~



1       ~~The public utilities commission may allow a public utility~~  
2 ~~to recover all prudently incurred costs as approved through~~  
3 ~~rates, charges, or clauses approved or established by the public~~  
4 ~~utilities commission pursuant to section 269-16, Hawaii Revised~~  
5 ~~Statutes, including but not limited to planning, engineering,~~  
6 ~~construction, installation, or replacement of utility poles~~  
7 ~~undertaken to accomplish the objectives of this Act. Recovery~~  
8 ~~of all prudently incurred costs shall also apply to a broadband~~  
9 ~~service provider.~~

10       ~~If access to a utility pole is not granted within forty~~  
11 ~~five days of a written request for access, the utility must~~  
12 ~~confirm the denial in writing by the forty fifth day, consistent~~  
13 ~~with the requirements established by the Federal Communications~~  
14 ~~Commission under Title 47, Chapter 1, Code of Federal~~  
15 ~~Regulations. The utility's denial of access shall be specific,~~  
16 ~~shall include all relevant evidence and information supporting~~  
17 ~~its denial, and shall explain how such evidence and information~~  
18 ~~relate to a denial of access for reasons of lack of capacity,~~  
19 ~~safety, reliability, or engineering standards." ]~~

20       SECTION 8. In codifying the new sections added by section  
21 2 of this Act, the revisor of statutes shall substitute



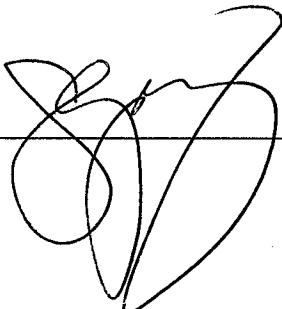
1 appropriate section numbers for the letters used in designating  
2 the new sections in this Act.

3 SECTION 9. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 10. This Act shall take effect upon its approval.

6

INTRODUCED BY: \_\_\_\_\_

  
*Clarence K. Sisk*



# S.B. NO. 160

**Report Title:**

Wireless Facilities; Utility Poles; Permits

**Description:**

Codifies exemptions to permitting requirements established by Act 151, Session Laws of Hawaii 2011, within the Hawaii Revised Statutes and expands those exemptions to include broadband over wireless or mobile platforms, including small wireless facilities. Establishes a definition of wireless communications antennas that include small wireless facilities. Repeals those sections of Act 151, Session Laws of Hawaii 2011, which have been codified within the Hawaii Revised Statutes.

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

