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**CITY AND COUNTY OF HONOLULU  
BEFORE THE COMMITTEES ON  
COMMERCE, CONSUMER PROTECTION, AND HEALTH  
AND WAYS AND MEANS**

**TUESDAY, FEBRUARY 28, 2017; 9:30 AM**

**LATE**

**TO: THE HONORABLE ROSALYN H. BAKER, CHAIR  
THE HONORABLE CLARENCE K. NISHIHARA, VICE CHAIR  
AND MEMBERS OF THE COMMITTEE ON COMMERCE, CONSUMER  
PROTECTION, AND HEALTH**

**THE HONORABLE JILL N. TOKUDA, CHAIR  
THE HONORABLE DONOVAN M. DELA CRUZ, VICE CHAIR  
AND MEMBERS OF THE COMMITTEE ON WAYS AND MEANS**

**FROM: ROY K. AMEMIYA, JR., MANAGING DIRECTOR  
CITY AND COUNTY OF HONOLULU**

**SUBJECT: SB1201, SD1 RELATING TO TECHNOLOGY**

The City and County of Honolulu (City) supports the intent of SB1201, SD1, which provides a framework for allowing the installation of small wireless facilities and small wireless facilities networks on State and county-owned property, including light poles. The City recognizes the need for the installation of such equipment to facilitate the deployment of 4G and 5G technology; however the City has some concerns with the measure as drafted.

The City is primarily concerned about public safety. These concerns include ensuring that (1) the existing City light poles are able to bear the load of the added equipment; (2) the installed equipment does not obstruct or pose hazards to pedestrians, bicyclists, and motorists; and (3) the added equipment does not interfere with the provision of basic City services, including the provision of emergency services.

The City has been actively working with the industry and stakeholders to come up with language that addresses the City's concerns. The attached proposed bill is an attempt to resolve some of the City's concerns. While the City understands that the industry may not agree with all of the additional language, the City looks forward to continuing to collaborate with all interested parties.

Thank you for your consideration of this testimony.

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# A BILL FOR AN ACT

RELATING TO TECHNOLOGY.

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

1           SECTION 1. The legislature finds that the efficient  
2 deployment of broadband infrastructure and technology is  
3 important for Hawaii's future global connectivity and economic  
4 viability. Among the benefits afforded by an advanced broadband  
5 infrastructure system are increased and enhanced educational  
6 opportunities, telehealth capacity, safety and civil defense  
7 communications, economic competitiveness, consumer privileges,  
8 and tourism services.

9           To ensure that consumers throughout the State may benefit  
10 from these services as soon as possible, and to provide wireless  
11 providers with a fair and predictable process for the deployment  
12 of small wireless facilities, the legislature finds that laws  
13 are needed to specify the extent and way in which the deployment  
14 of small wireless facilities and small wireless facilities  
15 networks is regulated in the State. The legislature further  
16 finds that laws are also needed to ensure that the installation  
17 of small wireless facilities and small wireless facilities

1 networks are done in a manner that preserves and protects public  
2 safety and fairness among competing uses of public space.

3 The purpose of this Act is to facilitate the deployment of  
4 high-speed broadband infrastructure in Hawaii, including small  
5 wireless facilities, by:

6 (1) Establishing a framework for the State and counties to  
7 permit and charge for the co-location of small  
8 wireless facilities or small wireless facilities  
9 networks;

10 (2) Specifying certain sites where small wireless  
11 facilities or small wireless facilities networks may  
12 be located, including conditions and fees for co-  
13 location; and

14 (3) Establishing an application and review process for co-  
15 location.

16 SECTION 2. Chapter 27, Hawaii Revised Statutes, is amended  
17 by adding a new section to part VII to be appropriately  
18 designated and to read as follows:

19 "§27- Siting of small wireless facilities and small  
20 wireless networks. (a) The State shall not prohibit, regulate,  
21 or charge for the co-location of small wireless facilities or

1 small wireless facilities networks, except as provided in this  
2 section. Small wireless facilities and small wireless  
3 facilities networks shall be deemed permitted uses, and no  
4 special use or conditional use permit shall be required, for  
5 their location on:

6 (1) All public rights-of-way and property;

7 (2) All land in the rural or agricultural districts  
8 pursuant to chapter 205; and

9 (3) All land in the urban district pursuant to chapter  
10 205.

11 (b) Small wireless facilities and small wireless  
12 facilities networks may require special use or conditional use  
13 permits where such facilities are located on land in the  
14 conservation district pursuant to chapter 205.

15 (c) Wireless providers may place small wireless facilities  
16 on state utility poles, state structures, and light standards.

17 The State may require permits for the co-location of small  
18 wireless facilities and small wireless facilities network;  
19 provided that the state may require within its building code  
20 that if, after proper engineering analysis and supporting field  
21 tests, it is determined that a small wireless facility may cause

1 the inoperability of public safety communications or traffic  
2 signals, the wireless provider shall work with the state to  
3 determine a solution, consistent with Federal Communications  
4 Commission rules, to resolve the inoperability. The State shall  
5 receive applications to process and issue permits and approvals  
6 in accordance with applicable law, including section 27-45 and  
7 chapter 269, and subject to the following requirements:

8 (1) Applicants shall not be required to perform any  
9 services, including restoration work not directly  
10 related to the co-location, to obtain approval for  
11 applications;

12 (2) Applications may be denied if the application does not  
13 meet applicable laws or rules regarding construction  
14 in the public rights-of-way or building or electrical  
15 codes or standards. The State shall document the  
16 basis for any application denial, including the  
17 specific code provisions or standards on which the  
18 denial was based;

19 (3) An applicant for a small wireless facilities network  
20 involving no greater than twenty-five individual small  
21 wireless facilities of a substantially similar design

1           shall be permitted, upon request by the applicant, to  
2           file a consolidated application and receive a single  
3           permit for the installation, construction,  
4           maintenance, and repair of a small wireless facilities  
5           network instead of filing separate applications for  
6           each individual small wireless facility.

7           (d) A wireless provider or a wireless provider's licensed  
8           contractor may co-locate small wireless facilities and small  
9           wireless facilities networks on state structures, state utility  
10           poles, and light standards located within the land identified in  
11           subsection (a) (1) to (3), subject to reasonable rates, terms,  
12           and conditions. The annual recurring rate to co-locate a small  
13           wireless facility on state structures, utility poles, and light  
14           standards shall not exceed the rate produced by applying the  
15           formula adopted by the Federal Communications Commission for  
16           telecommunication pole attachments in title 47 Code of Federal  
17           Regulations section 1.1409(e) (2); provided that when using the  
18           formula in title 47 Code of Federal Regulations section  
19           1.1409(e) (2), the state may use as the net cost of a bare pole  
20           either \$ \_\_\_\_\_ or the actual net cost of the bare pole;  
21           provided further that if the Federal Communications Commission

1 adopts a rate formula for small wireless facility attachments,  
2 that formula shall apply with the condition that the state may  
3 use as the net cost of a bare pole either \$ \_\_\_\_\_ or the  
4 actual net cost of the bare pole.

5 (e) The State shall authorize a wireless provider or  
6 wireless provider's licensed contractor to maintain, repair, or  
7 replace the provider's small wireless facilities and small  
8 wireless facilities networks with facilities that are  
9 substantially the same, or smaller, in size, weight, and height  
10 as the existing facilities."

11 SECTION 3. Section 27-41.1, Hawaii Revised Statutes, is  
12 amended by adding seven new definitions to be appropriately  
13 inserted and to read as follows:

14 "Co-location" means the installation, mounting,  
15 maintenance, modification, operation, or replacement of small  
16 wireless facilities on a tower, utility pole, light standard,  
17 building, or other existing structure for the purpose of  
18 transmitting or receiving radio frequency signals for  
19 communications purposes.

20 "Light standard" means a street light, light pole, lamp  
21 post, street lamp, lamp standard, or other raised source of



1 light located inside the right-of-way of a public road or  
2 highway or utility easement.

3 "Small wireless facilities" means wireless facilities that  
4 meet the following qualifications:

5 (1) Each individual antenna, excluding the associated  
6 equipment, is individually no more than three cubic  
7 feet in volume, and all antennas on the structure  
8 total no more than six cubic feet in volume; and

9 (2) All other wireless equipment associated with the  
10 structure, excluding cable runs for the connection of  
11 power and other services, do not cumulatively exceed:

12 (A) Twenty-eight cubic feet for co-locations on all  
13 non-pole structures, including buildings and  
14 water tanks, that can support fewer than three  
15 providers;

16 (B) Twenty-one cubic feet for co-locations on all  
17 pole structures, including but not limited to  
18 light poles, traffic signal poles, and utility  
19 poles, that can support fewer than three  
20 providers;

1           (C) Thirty-five cubic feet for non-pole colocations  
2           that can support at least three providers; or

3           (D) Twenty-eight cubic feet for pole co-locations  
4           that can support at least three providers.

5           "Small wireless facilities network" means a collection of  
6 interrelated small wireless facilities designed to deliver  
7 wireless communications service.

8           "Utility pole" means a pole or similar structure that is  
9 used in whole or in part for communications service, electric  
10 service, lighting, traffic control, signage, or similar  
11 functions.

12           "Wireless provider" means a person or entity that is:

13           (1) A provider of wireless service;

14           (2) A wireless telecommunications service provider as  
15 defined in section 269-16.93(d); or

16           (3) Authorized in accordance with chapter 269 to provide  
17 facilities-based telecommunications services in the  
18 State, and builds, installs, operates, or maintains  
19 facilities and equipment used to provide wireless  
20 service.

1       "Wireless service" means any fixed or mobile services  
2 provided using small wireless facilities."

3       SECTION 4. Section 46-4, Hawaii Revised Statutes, is  
4 amended to read as follows:

5       "**§46-4 County zoning.** (a) This section and any  
6 ordinance, rule, or regulation adopted in accordance with this  
7 section shall apply to lands not contained within the forest  
8 reserve boundaries as established on January 31, 1957, or as  
9 subsequently amended.

10       Zoning in all counties shall be accomplished within the  
11 framework of a long-range, comprehensive general plan prepared  
12 or being prepared to guide the overall future development of the  
13 county. Zoning shall be one of the tools available to the  
14 county to put the general plan into effect in an orderly manner.  
15 Zoning in the counties of Hawaii, Maui, and Kauai means the  
16 establishment of districts of such number, shape, and area, and  
17 the adoption of regulations for each district to carry out the  
18 purposes of this section. In establishing or regulating the  
19 districts, full consideration shall be given to all available  
20 data as to soil classification and physical use capabilities of  
21 the land to allow and encourage the most beneficial use of the

1 land consonant with good zoning practices. The zoning power  
2 granted herein shall be exercised by ordinance which may relate  
3 to:

- 4 (1) The areas within which agriculture, forestry,  
5 industry, trade, and business may be conducted;
- 6 (2) The areas in which residential uses may be regulated  
7 or prohibited;
- 8 (3) The areas bordering natural watercourses, channels,  
9 and streams, in which trades or industries, filling or  
10 dumping, erection of structures, and the location of  
11 buildings may be prohibited or restricted;
- 12 (4) The areas in which particular uses may be subjected to  
13 special restrictions;
- 14 (5) The location of buildings and structures designed for  
15 specific uses and designation of uses for which  
16 buildings and structures may not be used or altered;
- 17 (6) The location, height, bulk, number of stories, and  
18 size of buildings and other structures;
- 19 (7) The location, height, bulk, number of stories, and  
20 size of buildings and other structures;
- 21 (8) Building setback lines and future street lines;

- 1 (9) The density and distribution of population;
- 2 (10) The percentage of a lot that may be occupied, size of
- 3 yards, courts, and other open spaces;
- 4 (11) Minimum and maximum lot sizes; and
- 5 (12) Other regulations the boards or city council find
- 6 necessary and proper to permit and encourage the
- 7 orderly development of land resources within their
- 8 jurisdictions.

9 The council of any county shall prescribe rules,  
10 regulations, and administrative procedures and provide personnel  
11 if it finds necessary to enforce this section and any ordinance  
12 enacted in accordance with this section. The ordinances may be  
13 enforced by appropriate fines and penalties, civil or criminal,  
14 or by court order at the suit of the county or the owner or  
15 owners of real estate directly affected by the ordinances.

16 Any civil fine or penalty provided by ordinance under this  
17 section may be imposed by the district court, or by the zoning  
18 agency after an opportunity for a hearing pursuant to chapter  
19 91. The proceeding shall not be a prerequisite for any  
20 injunctive relief ordered by the circuit court.

1           Nothing in this section shall invalidate any zoning  
2 ordinance or regulation adopted by any county or other agency of  
3 government pursuant to the statutes in effect prior to July 1,  
4 1957.

5           The powers granted herein shall be liberally construed in  
6 favor of the county exercising them, and in such a manner as to  
7 promote the orderly development of each county or city and  
8 county in accordance with a long-range, comprehensive general  
9 plan to ensure the greatest benefit for the State as a whole.  
10 This section shall not be construed to limit or repeal any  
11 powers of any county to achieve these ends through zoning and  
12 building regulations, except insofar as forest and water reserve  
13 zones are concerned and as provided in subsections (c) and (d).

14           Neither this section nor any ordinance enacted pursuant to  
15 this section shall prohibit the continued lawful use of any  
16 building or premises for any trade, industrial, residential,  
17 agricultural, or other purpose for which the building or  
18 premises is used at the time this section or the ordinance takes  
19 effect; provided that a zoning ordinance may provide for  
20 elimination of nonconforming uses as the uses are discontinued,  
21 or for the amortization or phasing out of nonconforming uses or

1 signs over a reasonable period of time in commercial,  
2 industrial, resort, and apartment zoned areas only. In no event  
3 shall such amortization or phasing out of nonconforming uses  
4 apply to any existing building or premises used for residential  
5 (single-family or duplex) or agricultural uses. Nothing in this  
6 section shall affect or impair the powers and duties of the  
7 director of transportation as set forth in chapter 262.

8 (b) Any final order of a zoning agency established under  
9 this section may be appealed to the circuit court of the circuit  
10 in which the land in question is found. The appeal shall be in  
11 accordance with the Hawaii rules of civil procedure.

12 (c) Each county may adopt reasonable standards to allow  
13 the construction of two single-family dwelling units on any lot  
14 where a residential dwelling unit is permitted.

15 (d) Neither this section nor any other law, county  
16 ordinance, or rule shall prohibit group living in facilities  
17 with eight or fewer residents for purposes or functions that are  
18 licensed, certified, registered, or monitored by the State;  
19 provided that a resident manager or resident supervisor and the  
20 resident manager's or resident supervisor's family shall not be  
21 included in this resident count. These group living facilities

1 shall meet all applicable county requirements not inconsistent  
2 with the intent of this subsection, including but not limited to  
3 building height, setback, maximum lot coverage, parking, and  
4 floor area requirements.

5 (e) Neither this section nor any other law county  
6 ordinance or rule shall prohibit the use of land for employee  
7 housing and community buildings in plantation community  
8 subdivisions as defined in section 205-4.5(a)(12); in addition,  
9 no zoning ordinance shall provide for the elimination,  
10 amortization, or phasing out of plantation community  
11 subdivisions as a nonconforming use.

12 (f) Neither this section nor any other law, county  
13 ordinance, or rule shall prohibit the use of land for medical  
14 marijuana production centers or medical marijuana dispensaries  
15 established and licensed pursuant to chapter 329D; provided that  
16 the land is otherwise zoned for agriculture, manufacturing, or  
17 retail purposes.

18 (g) Neither this section nor any other county law,  
19 ordinance, or rule shall prohibit the installation of small  
20 wireless facilities or small wireless facilities networks, as



1 defined in section 27-41.1, except as provided in this  
2 subsection:

3 (1) Small wireless facilities and small wireless  
4 facilities networks shall be deemed permitted uses,  
5 and no special use or conditional use permit shall be  
6 required for their location on:

7 (A) All public rights-of-way and property;

8 (B) All land in the rural or agricultural districts  
9 pursuant to chapter 205; and

10 (C) All land in the urban district pursuant to  
11 chapter 205;

12 (2) Small wireless facilities and small wireless  
13 facilities networks may require special use or  
14 conditional use permits where such facilities are  
15 located in the conservation district pursuant to  
16 chapter 205;

17 (3) Wireless providers may place small wireless facilities  
18 on county-owned utility poles, structures, and light  
19 standards, as defined in section 27-41.1 subject to  
20 the following conditions:

1           (A) The applicant must comply with applicable  
2           structural loading requirements of the  
3           National Electric Safety Code;  
4           (B) The costs of modifying utility poles or  
5           light standards to create space or  
6           structural capacity for a small wireless  
7           facility, including but not limited to  
8           replacement of a utility pole or light  
9           standard, shall be borne by the applicant  
10          and all existing occupants and owners that  
11          directly benefit from the modification. Each  
12          such occupant or owner shall share the cost  
13          of the modification in proportion to the  
14          amount of new or additional usable space the  
15          occupant or owner occupies on or in the  
16          facility. An occupant or owner with an  
17          existing attachment to the modified facility  
18          shall be deemed to directly benefit from a  
19          modification if, within sixty days after  
20          receiving notification of such modification,  
21          that occupant or owner adds to its existing

1           attachment or otherwise modifies its  
2           attachment. An occupant or owner with an  
3           existing attachment shall not be deemed to  
4           directly benefit from replacement of a pole  
5           if the occupant or owner only transfers its  
6           attachment to the new pole;

7           (C) No wireless provider may exclude other  
8           wireless providers from utilizing the  
9           county-owned utility pole, structure, or  
10           light standard; and

11           (D) A county may require permits for the co-  
12           location of small wireless facilities and  
13           small wireless facilities networks. If the  
14           county determines, after proper engineering  
15           analysis and supporting field tests, that a  
16           small wireless facility causes the  
17           inoperability of public safety  
18           communications or traffic signals, the  
19           wireless provider shall work with the county  
20           to determine a solution, consistent with  
21           Federal Communications Commission rules, to

1                   resolve the inoperability prior to the  
2                   issuance of a permit to install small  
3                   wireless facilities on county-owned  
4                   property;

5       (4) A county shall receive applications to process and  
6           issue permits and approvals in accordance with  
7           applicable law, including section 46-89 and chapter  
8           269, and subject to the following requirements:

9           (A) Applicants shall not be required to perform any  
10           services, including restoration work not directly  
11           related to the co-location, to obtain approval  
12           for the applications; provided that a county may  
13           require applicants to make all reasonable efforts  
14           to minimize adverse visual impacts, including  
15           requiring that the small wireless equipment be  
16           located within the pole or otherwise shrouded;

17           (B) Applications may be denied if the application  
18           does not meet applicable laws or rules. A county  
19           shall document the basis for any application  
20           denial, including the specific code provisions or  
21           standards on which the denial was based; and

1           (C) An applicant for a small wireless facilities  
2           network involving no more than twenty-five  
3           individual small wireless facilities of a  
4           substantially similar design shall be permitted,  
5           upon request by the applicant, to file a  
6           consolidated application and receive a single  
7           permit for the installation, construction,  
8           maintenance, and repair of a small wireless  
9           facilities network, instead of filing separate  
10           applications for each individual small wireless  
11           facility;

12           (4) A wireless provider or a wireless provider's licensed  
13           contractor may co-locate small wireless facilities and  
14           small wireless facilities networks on county  
15           structures, utility poles, and light standards located  
16           within the land identified in paragraph (1)(A) to (C)  
17           subject to reasonable rates, terms, and conditions.  
18           County utility pole co-location requests shall be  
19           processed in the same manner as permit applications  
20           under paragraph (3). The annual recurring rate to co-  
21           locate a small wireless facility on county structures,

1     utility poles, and light standards shall not exceed  
2     the rate produced by applying the formula adopted by  
3     the Federal Communications Commission for  
4     telecommunication pole attachments in title 47 Code of  
5     Federal Regulations section 1.1409(e)(2); provided  
6     that when using the formula in title 47 Code of  
7     Federal Regulations section 1.1409(e)(2), the county  
8     may use as the net cost of a bare pole either  
9     \$ \_\_\_\_\_ or the actual net cost of the bare pole at  
10    the time of co-location; provided further that if the  
11    Federal Communications Commission adopts a rate  
12    formula for small wireless facility attachments, that  
13    formula shall apply with the condition that the county  
14    may use as the net cost of a bare pole either  
15    \$ \_\_\_\_\_ or the actual net cost of the bare pole at  
16    the time of co-location; and  
17    (5) Counties shall authorize a wireless provider or  
18    wireless provider's licensed contractor to maintain,  
19    repair, or replace the provider's small wireless  
20    facilities and small wireless facilities networks with  
21    facilities that are substantially the same, or smaller

1           in size, weight, and height as the existing  
2           facilities.

3           For the purposes of this subsection, "co-location," "light  
4 standard," "small wireless facilities," "small wireless  
5 facilities network," "utility pole," "wireless provider," and  
6 "wireless service" shall have the same meaning as in section 27-  
7 41.1."

8           SECTION 5. New statutory material is underscored.

9           SECTION 6. This Act shall take effect upon its approval.

10





**Report Title:**

Technology; Broadband; Wireless Facilities Networks; Zoning;  
Counties; State Functions and Responsibilities

**Description:**

Specifies the conditions under which the State and counties may prohibit, regulate, or charge for the co-location of small wireless facilities or small wireless facilities networks. Amends various state and county zoning rules and classifications regarding the co-location of small wireless facilities and small wireless facilities networks. Describes the application process and rates for co-location.

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