
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 and wire line technology is now essential to the
10 delivery of broadband service. Implementation of wireless and
11 wire line technology, such as small wireless facilities or wire
12 line facilities, will play a major role in continuing the
13 benefits afforded by broadband infrastructure in 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
18 exemptions to include broadband over wire line and



1 wireless or mobile platforms, including wire line or
2 small wireless facilities;

3 (2) Establish a definition of wireless communications
4 antennas that include small wireless facilities;

5 (3) Establish a definition of wire line; and

6 (4) Repeal those sections of Act 151, Session Laws of
7 Hawaii 2011, that have been codified within the Hawaii
8 Revised Statutes.

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

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

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

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

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



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

(A) Twenty-eight cubic feet for collocations on all non-pole structures, including but not limited to buildings and water tanks, that can support fewer than three providers;

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

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

(D) Twenty-eight cubic feet for pole collocations that can support at least three providers;

provided that the volume of any deployed equipment that is not visible from public spaces at the ground level from two hundred fifty feet or less may be omitted from the calculation of 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 "Wire line" means wire or wires used for transmission
9 between or among points specified by a user, of information of
10 the user's choosing, including voice, data, image, graphics, and
11 video without change in the form or content of the information,
12 as sent and received, by means of electromagnetic transmission,
13 or other similarly capable means of transmission, with or
14 without benefit of any closed transmission medium.

15 **§440J-B Exemption of broadband infrastructure installation**
16 **from permitting requirements.** (a) Actions relating to the
17 installation, improvement, construction, or development of
18 infrastructure relating to broadband service or broadband
19 technology, including but not limited to the interconnection of
20 wire line facilities telecommunications cables and the



1 installation of small wireless facilities on a utility pole or
2 other supporting structure, shall be exempt from:

3 (1) County permitting requirements;

4 (2) State permitting and approval requirements, which
5 includes the requirements of chapters 171, 205A, and
6 343; and

7 (3) Public utilities commission rules under Hawaii
8 Administrative Rules, chapter 6-73, that require
9 existing installations to comply with new pole
10 replacement standards at the time of any construction
11 or alteration to the equipment or installation;

12 except to the extent that such permitting or approval is
13 required by federal law or is necessary to protect eligibility
14 for federal funding, services, or other assistance.

15 (b) The installation, improvement, construction, or
16 development of infrastructure, actions relating to which are
17 exempt pursuant to subsection (a), shall:

18 (1) Be directly related to the improvement of existing
19 wire line facilities telecommunications cables or the
20 installation of new telecommunications cables,



1 including the installation of small wireless
2 facilities and small wireless facilities networks:

3 (A) On existing or replacement utility poles and
4 conduits; and

5 (B) Using existing infrastructure and facilities;

6 (2) Take place within existing rights-of-way or public
7 utility easements or use existing telecommunications
8 infrastructure; and

9 (3) Make no significant changes to the existing public
10 rights-of-way, public utility easements, or
11 telecommunications infrastructure; provided that the
12 installation of wire line facilities and a small
13 wireless facility within the dimensions stated in
14 section 440J-A, shall be deemed to not make a
15 significant change to existing public rights-of-way,
16 public utility easements, or telecommunications
17 infrastructure.

18 (c) A person or entity taking any action under this
19 section shall comply with all applicable safety and engineering
20 requirements relating to the installation, improvement,



1 construction, or development of infrastructure relating to
2 broadband service.

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

15 **§440J-C Upgrade or replacement of utility poles.** (a) No
16 person or entity shall be required to upgrade or replace an
17 existing utility pole when using that utility pole to install
18 new wire line telecommunications cables or small wireless
19 facilities, or to improve existing wire line telecommunications
20 cables or small wireless facilities; provided that:



- 1 (1) The overall weight load and the diameter of the
2 attachment on the utility pole following the
3 installation or improvement does not exceed the
4 overall weight load and diameter of the attachment
5 prior to the installation or improvement;
- 6 (2) The overall weight load on the utility pole does not
7 exceed maximum utility pole safe weight capacities
8 established by the Federal Communications Commission
9 and the public utilities commission; and
- 10 (3) The utility pole is not damaged or made less safe or
11 reliable due to the installation or improvement of
12 wire line facility telecommunications cables or small
13 wireless facilities.

14 (b) The public utilities commission may allow a public
15 utility to recover all prudently incurred costs as approved
16 through rates, charges, or clauses approved or established by
17 the public utilities commission pursuant to section 269-16,
18 including but not limited to planning, engineering,
19 construction, installation, or replacement of utility poles.
20 Recovery of all prudently incurred costs shall also apply to a
21 broadband service provider.



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

§440J-D Annual recurring rates. (a) The State or county may establish an annual recurring charge on wire line facilities or small wireless facilities and wire line facilities networks and small wireless networks or wire line facilities networks collocated on utility poles, structures, and lighting standards located within the public rights-of-way. The rates shall be nondiscriminatory regardless of the services provided by the collocating person.

(b) Charges shall not exceed the lesser of:

(1) The annual recurring rate that would be permitted under rules adopted by the Federal Communications



1 Commission under title 47 United States Code section
2 224(e) or (i); or
3 (2) \$20 per year.

4 Charges shall recover the actual, direct, and reasonable costs
5 related to the use of space on the utility pole. In any
6 controversy concerning the appropriateness of a charge for a
7 state or county owned utility pole, the State or county shall
8 have the burden of proving that the charges are reasonably
9 related to the actual, direct, and reasonable costs incurred for
10 use of space on the pole for such period."

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

13 "[-]CHAPTER 440J[+]

14 TELECOMMUNICATIONS AND CABLE INDUSTRY [~~INFORMATION REPORTING~~]"

15 SECTION 4. Chapter 440J is amended by designating sections
16 440J-1 through 440J-3 as part I, entitled "Information
17 Reporting".

18 SECTION 5. Section 2, Act 151, Session Laws of Hawaii
19 2011, as amended by section 3 of Act 264, Session Laws of Hawaii
20 2013, as amended by section 1 of Act 193, Session Laws of Hawaii
21 2016, is repealed.



1 ~~["SECTION 2. Beginning January 1, 2012, actions relating~~
2 ~~to the installation, improvement, construction, or development~~
3 ~~of infrastructure relating to broadband service or broadband~~
4 ~~technology, including the interconnection of telecommunications~~
5 ~~cables, shall be exempt from county permitting requirements,~~
6 ~~state permitting and approval requirements, which includes the~~
7 ~~requirements of chapters 171, 205A, and 343, Hawaii Revised~~
8 ~~Statutes, and public utilities commission rules under Hawaii~~
9 ~~Administrative Rules, chapter 6-73, that require existing~~
10 ~~installations to comply with new pole replacement standards at~~
11 ~~the time of any construction or alteration to the equipment or~~
12 ~~installation, except to the extent that such permitting or~~
13 ~~approval is required by federal law or is necessary to protect~~
14 ~~eligibility for federal funding, services, or other assistance,~~
15 ~~provided that the installation, improvement, construction, or~~
16 ~~development of infrastructure shall:~~

17 ~~(1) Be directly related to the improvement of existing~~
18 ~~telecommunications cables or the installation of new~~
19 ~~telecommunications cables.~~

20 ~~(A) On existing or replacement utility poles and~~
21 ~~conduits; and~~



- ~~(B) Using existing infrastructure and facilities;~~
- ~~(2) Take place within existing rights of way or public utility easements or use existing telecommunications infrastructure; and~~
- ~~(3) Make no significant changes to the existing public rights of way, public utility easements, or telecommunications infrastructure.~~

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

~~A person or entity taking any action under this section shall, at least thirty calendar days before the action is taken, provide notice to the director of commerce and consumer affairs by electronic posting in the form and on the site designated by the director for such posting on the designated central State of Hawaii Internet website; provided that notice need not be given by a public utility or government entity for an action relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology where the action taken is to provide access as the~~



1 ~~owner of the existing rights of way, utility easements, or~~
2 ~~telecommunications infrastructure."]~~

3 SECTION 6. Section 3, Act 151, Session Laws of Hawaii
4 2011, as amended by section 3 of Act 264, Session Laws of Hawaii
5 2013, is repealed.

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

- 11 ~~(1) The overall weight load and the diameter of the~~
12 ~~attachment on the utility pole following the~~
13 ~~installation or improvement does not exceed the~~
14 ~~overall weight load and diameter of the attachment~~
15 ~~prior to the installation or improvement;~~
- 16 ~~(2) The overall weight load on the utility pole does not~~
17 ~~exceed maximum utility pole safe weight capacities~~
18 ~~established by the Federal Communications Commission~~
19 ~~and the public utilities commission; and~~



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

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

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



1 ~~relate to a denial of access for reasons of lack of capacity,~~
2 ~~safety, reliability, or engineering standards."]~~

3 SECTION 7. In codifying the new sections added by section
4 2 of this Act, the revisor of statutes shall substitute
5 appropriate section numbers for the letters used in designating
6 the new sections in this Act.

7 SECTION 8. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

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

10



Report Title:

Wireless and Wire Line 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 wire line and wireless or mobile platforms, including wire line facilities and small wireless facilities. Establishes a definition of wireless communications antennas that include small wireless facilities. Establishes a definition of wire line. Repeals those sections of Act 151, Session Laws of Hawaii 2011, that have been codified within the Hawaii Revised Statutes. (SD1)

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

