
AMENDED ANALYSIS

SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair

2017 - 2018 Regular

Bill No: SB 649
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Version: 3/28/17
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Hearing Date: 4/26/17
Tax Levy: No
Fiscal: Yes

WIRELESS TELECOMMUNICATIONS FACILITIES

Streamlines permitting and caps local fees for small cell wireless facilities.

Background

Land Use Regulation. The California Constitution allows a city to "make and enforce within its limits, all local, police, sanitary, and other ordinances and regulations not in conflict with general laws, known as the police power of cities." It is from this fundamental power that local governments derive their authority to regulate land through planning, zoning, and building ordinances, thereby protecting public health, safety and welfare.

The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. Cities' and counties' major land use decisions—including development permitting—must be consistent with their general plans. The Planning and Zoning Law also requires public notice to be given at least 10 days in advance of hearings where most permitting decisions will be made. It also allows residents to appeal permitting decisions and other actions to either a board of appeals or the legislative body of the city or county. Cities and counties may adopt ordinances governing the appeals process.

Providers of wireless telecommunications services ("carriers") must apply to cities and counties for permits to build structures or other wireless facilities that support wireless telecommunications equipment, like antennae and related devices. Similarly, wireless carriers must seek local approval to place additional telecommunications equipment on facilities where that equipment already exists, known as "collocations."

New Wireless Technology. Over the past decade, there has been an explosion of wireless devices in the marketplace, from cell phones, tablets, health monitors, and smart appliances. Current wireless communication technology is largely dependent on wireless facilities that have required a network of large macro cell towers that are often over 200 feet tall. However, the next generation of wireless technology utilizes "small cells," which are smaller wireless facilities, usually taking up less than 35 cubic feet of volume. These small cells have much shorter ranges and therefore need to be deployed at greater density in urban areas than traditional macro cell towers. Small cells are needed to support the roll-out of fifth generation mobile technology (5G) that will provide speeds of up 100 times faster than current networks. Some reports estimate the benefits of 5G deployment to exceed \$500 billion in gross domestic product growth.

Federal Requirements for Local Decisions on Wireless Facilities. Carriers and local governments have clashed over the extent of local authority to condition or disapprove of wireless facilities. Accordingly, several state and federal laws prescribe aspects of permitting. Two federal laws, the Telecommunications Act of 1996 and the Spectrum Act, require local governments to act within a “reasonable period of time” on permits for siting wireless facilities. The Federal Communications Commission (FCC) is responsible for administering these laws and implementing this requirement. Accordingly, in 2009 and 2014, the FCC issued two decisions to clarify, among other things, the definition of a period of time that is presumed to be reasonable for various categories of wireless telecommunications facilities. Specifically, the FCC established a so-called “shot clock” by ruling that local governments should generally approve or disapprove applications for projects within:

- 60 days for a project that is an “eligible facilities request” under Section 1455 of Title 47 of the United States Code. An eligible facilities request is defined by the FCC as a collocation on an existing facility that does not substantially change its *physical dimensions*. In practice, these types of applications could include locating additional equipment cabinets on a rooftop that already has wireless facilities.
- 90 days for a project that is a collocation that substantially changes the dimensions of the facility, but do not substantially change its *size*. For example, this could include a project that increases the height of a tower in a public right of way by more than 10%.
- 150 days for projects that are new sites for wireless facilities.

State Law Governing Wireless Facilities and Right-of-Way Access. Responding to a concern that local governments were delaying approval of permit applications for wireless sites, in 2006 the Legislature required collocations to be approved ministerially, and prohibited local governments from limiting the duration of permits for wireless sites to less than 10 years absent good reason (SB 1627, Kehoe). In 2015, citing similar concerns, carriers asked the Legislature to provide greater certainty on timelines for local governments to act on wireless facility permits (AB 57, Quirk). The timelines established by AB 57 are the same as provided under federal law, but AB 57 provides a stronger remedy: the application is deemed approved if the local government fails to act in the required time.

Telecommunications companies have the right to access utility poles in the public right-of-way, governed by a set of state regulations. State law establishes a framework, process, and procedures governing the attachment of telecommunications facilities to investor-owned utility poles and municipal utility poles, providing the California Public Utilities Commission (CPUC) the authority to establish and enforce rates, terms and conditions for pole attachments. Under this framework, telecommunications companies may erect poles and attach to investor-owned and municipal utility poles under specified cost-based rates. Local governments may not block utility pole attachments, but can regulate the time, manner, and place of pole attachments in the right of way under Sections 7901 and 7901.1 of the Public Utilities Code. In addition, IOUs and municipal utilities can only charge cost-based rates for attaching to their poles.

However, these restrictions do not apply to other infrastructure in the right of way, such as light poles and streetlights, or outside of the right of way. In those cases, local governments can continue to impose conditions on many types of wireless facilities and negotiate payments for the use of their infrastructure. Since the number of small cells needed to cover an area is much higher than for traditional wireless facilities, carriers and cities have negotiated agreements for the deployment of small cells that require lease payments to use city infrastructure and

streamlined permit processes. Currently these agreements are negotiated on an ad hoc basis and can result in fees of over \$4,200 per pole per year.

Wireless carriers seeking to expand their existing networks and prepare for next generation technologies want to reduce the time and cost that it takes to deploy small cells.

Proposed Law

Senate Bill 649 establishes a nondiscretionary permitting process for small cell wireless facilities and limits the fees that local governments may charge. SB 649 defines small cell to mean a wireless telecommunication facility that meets all of the following conditions:

- Any individual antenna, excluding the associated equipment, is smaller than three cubic feet.
- All antennas on the structure must be less than six cubic feet.
- Any associated equipment does not exceed volume of: (1) 21 cubic feet for poles that can support one or two providers or 28 cubic feet for poles that can support at least three providers; or (2) 28 cubic feet for collocations on nonpole structures that can support less than three providers or 35 cubic feet for collocations on nonpole structures that can support more than three providers.

SB 649 excludes certain ancillary equipment from the calculation of the volume of the small cell, such as concealment elements, a telecommunications demarcation box, and specified incidental electrical components, as well as communications infrastructure extending beyond the telecommunications demarcation box.

Under SB 649, a small cell is a permitted use not subject to a city or county discretionary permit if it: (1) is located in the public right-of-way in any zone or in any zone that includes a commercial or industrial use; (2) complies with all applicable state and local health and safety regulations; and (3) is not located on a fire department facility.

SB 649 prescribes the types of permits local governments may require for approval of small cells. Specifically, a city or county may only require that the small cell be approved pursuant to a single administrative permit, and that permit must be issued within the time frames required by state and federal law. The administrative permit may require the same administrative permit requirements as imposed on similar construction projects and must be applied in a nondiscriminatory manner. The permit application may also require the submission of additional information showing that the small cell complies the FCC's regulations concerning radio frequency emissions. SB 649 does not allow the permit to require:

- Provision of additional services, including in-kind contributions such as reserving fiber, conduit, or pole space.
- The submission of any additional information other than that required of similar construction projects, except as otherwise provided in the bill.
- Limitations on routine maintenance or the replacement of small cells with small cells that are substantially similar, the same size, or smaller.
- The regulation of any antennas mounted on cable strands.

SB 649 also precludes a city or county from the leasing or licensing of its vertical infrastructure located in public right-of-way or public utility easements. As defined in the bill, vertical infrastructure means all poles or similar facilities owned or controlled by a city or county that are in the public right-of-way or public utility easements and used for communications service, electric service, lighting, traffic control, signage, or similar functions. SB 649 requires a city to make its vertical infrastructure available under fair and reasonable fees, terms, and conditions and on a nondiscriminatory basis for small cells.

SB 649 caps fees for leasing of vertical infrastructure to the lesser of either: (1) the costs of ownership of the percentage of the volume of the capacity of the vertical infrastructure rendered unusable by a small cell; or (2) the rate produced by applying the FCC formula for pole attachments.

For city- or county-owned property outside of the right of way, a city or county cannot unreasonably discriminate in granting leases or licenses, and a city or county must authorize the installation of a small cell to the same extent the city or county permits access to that property for commercial projects or uses. These installations must be subject to reasonable and nondiscriminatory rates, terms, and conditions.

SB 649 requires that a permit for a wireless telecommunications facility be renewed for an equivalent duration as the initial permit, unless the city or county makes a finding that the wireless telecommunications facility does not comply with the codes and permit conditions applicable at the time the permit was initially approved.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, “SB 649 recognizes the public-policy benefit and exploding consumer demand for greater, faster access to next-generation wireless networks – and establishes a reliable and standardized process for siting the physical infrastructure necessary to meet that demand. For California to remain technologically competitive and to ensure the benefits of innovation are reaching every community, we must do all we can – as fast as we can – to make next-generation 5G wireless networks a reality. In fact, recent studies have shown that widespread 5G investment in California will generate billions in economic growth and billions more in savings from wireless-enabled smart community solutions – lowered energy use, reduced traffic and fuel costs and improved public safety applications. But building the wireless network of tomorrow requires the rapid deployment of small cell structures. SB 649 does not affect the ability of local governments to manage its public rights of way or to impose reasonable fees, terms and conditions to access to city or county owned property. This bill is designed to benefit California consumers and businesses, who have overwhelmingly told us that they want California to stay at the forefront of the wireless economy.”

2. Home rule. Local officials’ first duty is to protect the interests of their constituents. They have broad authority to regulate activities to preserve the public welfare, and they have developed processes in accordance with that duty for permitting wireless telecommunications facilities. Some jurisdictions impose more conditions than others due to specific local circumstances, and the FCC has recognized this need. SB 649 goes well beyond federal law to

strip local governments of this authority. By making small cells permitted uses, SB 649 extends by-right development to small cells, and it stops local governments from establishing discretionary permitting processes—even in historic districts if they allow any kind of commercial or industrial uses. If local officials can't exercise discretion, they can't regulate aesthetics or other concerns in response to public comments. The bill also restricts local governments to requiring only one permit, making local governments choose between building permits and encroachment permits, with potential public safety consequences. And SB 649 goes even further than other by-right proposals because it require local governments to offer up their vertical infrastructure for use by other entities and removes their ability to charge fair rent by capping lease fees for vertical infrastructure to an amount that is a small fraction of the rates in current agreements between carriers and local governments. SB 649 sets a concerning precedent that reappropriates taxpayer funded infrastructure for private benefit. The Committee may wish to consider amending SB 649 to increase the cap on fees, provide that existing agreements are not impaired, and make clear that local governments can retain control over their own infrastructure.

3. Where's the beef? While anecdotes about unreasonable local obstruction of new telecommunications facilities exist, the scope of this problem is difficult to quantify. While some obstructionism undoubtedly occurs, other communities are faithfully adhering to applicable state and federal law. In fact, small cell deployment is already occurring in cities throughout California and the country. Carriers argue that high fees and slow permitting processes hinder the deployment of small cells, but local officials and their constituents want better wireless service as well. Under current law, local officials are empowered to balance these competing considerations by charging what the market will bear for the use of their property and by revising their permitting programs to make it easier on carriers, while keeping in mind that they risk losing access to the service. Where it's worth it for both sides, carriers and local governments will agree.

4. What's good for the goose.... Wireless telecommunications carriers are not the only companies that provide wireless services; cable companies are deploying competing technology of their own in local communities throughout the state. The cable industry is concerned that SB 649 gives carriers an unfair advantage by easing rules for their technology while leaving out functionally similar technology used by cable to provide WiFi. Similarly, cable companies pay franchise fees of as much as 5 percent of gross revenues to operate in local jurisdictions, while SB 649 slashes the fees that carriers must pay. At the end of the day, shouldn't companies that provide similar services from the end-user's perspective be treated the same way?

5. Too soon. Small cells form the foundation of next generation 5G networks. But this is a nascent technology, and small cells themselves have only been deployed for a few years. As such, the regulatory framework around small cells is just now being fleshed out: in December 2016, the FCC began soliciting comments in response to a petition for a declaratory ruling on the streamlining of small cell siting, and last month the CPUC began soliciting comments on whether pole attachment rates should be harmonized and whether access to the right-of-way should be expanded. These proceedings could have a major effect on carriers' and local governments' rights when it comes to siting small cells. Local governments are also just beginning to negotiate rates and procedures for small cell deployments and need time to understand the issues they present and how best to permit them. While carriers want to get out ahead of regulations before state, federal, and local governments define them, legislators may want to hold off on weighing in until the outcomes of these processes are known and problems can be identified.

6. Let's be clear. SB 649 allows local governments to require an administrative permit for small cells, but an administrative permit is a concept not used in planning and zoning laws. A permit may be discretionary or ministerial. Since the bill states that small cells cannot be subject to a discretionary permit, the administrative permit must be ministerial. However, the bill's sponsors state that their intention is to provide the ability for local governments to impose some terms and conditions, such as those currently allowed under PUC 7901 and 7901.1. The Committee may wish to consider amending SB 649 to recast the permitting provisions to allow local governments to impose design and other conditions on these installations consistent with existing law.

7. Charter cities. The California Constitution allows cities that adopt charters to control their own "municipal affairs." In all other matters, charter cities must follow the general, statewide laws. Because the Constitution doesn't define "municipal affairs," the courts determine whether a topic is a municipal affair or whether it's an issue of statewide concern. SB 649 includes a legislative finding and declaration that a wireless telecommunications facility has a significant economic impact in California and is a matter of statewide concern. Accordingly, the bill's provisions apply to all cities and counties in California, including charter cities and counties, although the bill does not explicitly state it.

8. Mandate. The California Constitution generally requires the state to reimburse local agencies for their costs when the state imposes new programs or additional duties on them. According to the Legislative Counsel's Office, SB 649 creates a new state-mandated local program. SB 649 disclaims this mandate by saying that no reimbursement is required by this act because local agencies can levy fees to pay for the program.

9. Incoming! The Senate Energy, Utilities, and Communications Committee passed SB 649 by a vote of 11-0 on April 4th, 2017.

10. Related legislation. AB 2788 (Gatto, 2016) included provisions similar to SB 649. The bill was referred to both the Senate Energy, Utilities, and Communications Committee and this committee, but was never heard in either. AB 57 (Quirk, 2015) provided that a collocation or siting application for a wireless telecommunications facility is deemed approved if the city or county fails to approve or disapprove the application within the reasonable time periods specified in applicable decisions of the FCC, all required public notices have been provided regarding application, and the applicant has provided a notice to the city or county that the reasonable time period has lapsed. The Senate Governance and Finance Committee approved AB 57 on a vote of six to one.

Support and Opposition (4/21/17)

Support: *CTIA (Source); 59DaysOfCode; American Indian Chamber of Commerce of CA; Asian Pacific Islander American Public Affairs Association; Asian Resources Inc.; AT&T; Berkeley Chamber of Commerce; Biz Latino; Black Business Association; *California Asian Chamber of Commerce; California Asian Pacific Chamber of Commerce; *California Foundation for Independent Living Centers; California Friday Night Live Partnership; California Hispanic Chamber of Commerce; California Manufacturers & Technology Association; *California Probation, Parole and Correctional Association; *California State Sheriffs' Association; California Urban Partnership; *California Utilities Emergency Association; CALinnovates; Carlsbad Chamber of Commerce; Carmel Valley Chamber of Commerce; Cerritos Regional Chamber of Commerce; Chinese American Association of Solano County; Community

Technology Network; Community Women Vital Voices; Concerned Citizens Community Involvement; Congress of California Seniors; Council of Asian Pacific Islanders Together for Advocacy and Leadership; Council on American-Islamic Relations, California; Disability Rights Education and Defense Fund; Downtown San Diego Partnership; Elderly Foundation; El Dorado County Chamber of Commerce; Eskaton Foundation; Exceptional Parents Unlimited; Fresno Area Hispanic Foundation; Fresno Center for New Americans; Fresno Metro Black Chamber of Commerce; Fundacion Pro Joven Talento Salvadoreno; Gateway Chambers Alliance; Greater Coachella Valley Chamber of Commerce; Greater Los Angeles African American Chamber of Commerce; Greater Sacramento Urban League; Hacker Lab; Hispanic Chamber of e-Commerce; Hispanic Heritage Foundation; *I/O Labs; Imagine H2O; InBiz Latino-North County Hispanic Chamber; Invictus Foundation; Jobs and Housing Coalition; Lake County Sheriff; Latin Business Association; Latino Council; Latino Environmental Advancement & Policy Project; Lifestyle Stroke Foundation; Lighthouse Counseling & Family Resource Center; LIME Foundation; Lincoln Area Chamber of Commerce; Long Beach Area Chamber of Commerce; Long Beach-Inglewood-South Bay Alumni Chapter of Kappa Alpha Psi; Los Angeles Urban League; Meeting of the Minds; Modesto Chamber of Commerce; Monterey County Business Council; National Association of Advancement of Colored People; National Association of Advancement of Colored People – Eureka; National Association for the Advancement of Colored People – Humboldt; National Association of Advancement of Colored People – Inglewood/South Bay; National Association of Advancement of Colored People – North San Diego; National Association of Advancement of Colored People – Riverside; National Association of Advancement of Colored People – San Diego; National City Public Safety Foundation; National Association of Hispanic Real Estate Professionals – Sacramento; National Latina Business Women Association of LA; Oakland Metropolitan Chamber of Commerce; Oceanside Chamber of Commerce; Orange County Business Council; Orange County Hispanic Chamber of Commerce; Organization of Chinese Americans; Pacific Grove Chamber of Commerce Board of Directors; Peace Officers Research Association of California; Rancho Cordova Chamber of Commerce; Sabio Enterprises Inc.; Sacramento Asian Pacific Chamber of Commerce; Sacramento Hispanic Chamber of Commerce; Sacramento Metro Chamber; Sacramento Regional Conservation Corps; San Diego Hispanic Chamber of Commerce; *San Diego Regional Economic Development Corporation; San Diego North Economic Development Council; San Joaquin Pride Center; San Ysidro Chamber of Commerce; Silicon Valley Leadership Group; Slavic American Chamber; Society for the Blind; Solano Community College Educational Foundation; South Bay Association of Chamber of Commerce; Southern California Hispanic Chamber of Commerce; Southern Christian Leadership Conference of Southern California; Sprint; T-Mobile US; TechNet; TELACU; The East Los Angeles Community Union; The Arc California; *The Urban Hive; Torrance Area Chamber of Commerce; United Policyholders; Urban Corps of San Diego County; *Urban League of San Diego County; Verizon; Veteran’s Association of North County; Volunteers of America Southwest; Women’s Intercultural Network.

Opposition:

Association of Environmental Professionals; California Chapter of the American Planning Association; *California Chapters of the American Public Works Association; California Cable & Telecommunications Association; California Municipal Utilities Association; California State Association of Counties; City and County of San Francisco; City of Albany; *City of Arcadia; City of Bakersfield; City of Beverly Hills; City of Buena Park; City of Burbank; *City of Camarillo; City of Chino Hills; City of Citrus Heights; City of Claremont; City of Cloverdale; City of Colton; City of Concord; City of Culver City; City of Diamond Bar; City of Dublin; City

of Eastvale; City of El Centro; *City of Emeryville; City of Fontana; City of Fountain Valley; City of Fremont; *City of Fullerton; *City of Hayward; City of Hermosa Beach; *City of Huntington Beach; City of Indian Wells; *City of La Habra; City of Lafayette; City of Laguna Beach; City of Laguna Hills; City of Lake Elsinore; City of Lake Forest; City of Lakeport; City of Lakewood; City of Lodi; City of Long Beach; City of Los Alamitos; City of Manteca; City of Mission Viejo; City of Moreno Valley; City of Murrieta; City of National City; City of Nevada City; City of Norwalk; *City of Palos Verdes Estates; City of Piedmont; *City of Pismo Beach; City of Placentia; *City of Point Arena; City of Rancho Cordova; City of Rancho Cucamonga; City of Rancho Palos Verdes; City of Riverside; City of Rocklin; City of Roseville; *City of San Leandro; *City of San Marcos; *City of Santa Ana; City of Santa Clara; City of Santa Monica; City of Santee; *City of Sunnyvale; City of Thousand Oaks; City of Torrance; *City of Tulare; City of Union City; *City of Ventura; City of Vista; City of West Hollywood; City of Whittier; County of Kern; County of Santa Cruz; Ecological Options Network; EMF Safety Network; Greater Coachella Valley Chamber of Commerce; League of California Cities; Marin County Council of Mayors and Councilmembers; Northern California Power Agency; Protect our Local Streets Coalition; Rural County Representatives of California; Scientists for Wired Technology; Town of Danville; Town of Hillsborough; TURN; Urban Counties of California; *Ventura Council of Governments; Wireless Radiation Alert Network; Several Individuals.

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