SENATE COMMITTEE ON APPROPRIATIONS
Senator Ricardo Lara, Chair
2017 - 2018 Regular Session

SB 649 (Hueso) - Wireless telecommunications facilities

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Urgency: No
Hearing Date: May 15, 2017
Policy Vote: E,U,&C 11 - 0, GOV&F 7 - 0
Mandate: Yes
Consultant: Mark McKenzie

This bill meets the criteria for referral to the Suspense File.

Bill Summary: SB 649 would establish a streamlined permitting process for small cell wireless facilities, subject only to specified conditions, and limit the fees that local governments may charge for placement of small cells on city or county owned vertical infrastructure, such as streetlight and traffic signal poles.

Fiscal Impact:
- Unknown, potentially reimbursable mandate costs, to the extent that the Commission on State Mandates determines that certain costs incurred by local governments are not recoverable by fees. (see staff comments)

Background: Existing law, the Planning and Zoning Law, requires cities and counties to adopt a general plan and provides for the adoption of zoning ordinance that regulate the use of buildings, structures, and land, among other things. The Permit Streamlining Act, requires public agencies to act fairly and promptly on applications for development permits. Providers of wireless telecommunications services must apply to cities and counties for permits to build structures that support wireless telecommunications equipment, like antennae and related devices. Similarly, wireless carriers must seek local approval to place additional telecommunications equipment on structures and facilities where that equipment already exists, which are referred to as collocations.

Existing law, as enacted by SB 1627 (Kehoe), Chap. 676/2006, requires local governments to approve collocations ministerially, and prohibits local governments from limiting the duration of permits for wireless sites to less than 10 years absent good reason. Existing law, as enacted by AB 57 (Quirk), Chap. 684/2015, specifies that a collocation or siting application for a wireless telecommunications facility is deemed approved if a local government does not act on a permit application within reasonable time periods specified in federal regulations.

Telecommunications companies have the right to access utility poles in the public right-of-way, governed by a set of state and federal regulations. State law establishes a framework, process, and procedures governing the attachment of telecommunications facilities to investor-owned utility (IOU) 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. Telecommunications companies are authorized to 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 existing law authorizes them to regulate the time, manner, and place of pole attachments in the public right-of-way. In addition, IOUs and municipal utilities can only charge cost-based rates for attaching to their poles.

These restrictions do not apply to other publicly-owned 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 and streamlined permit processes for the deployment of small cells that require lease payments to use city infrastructure. Currently these agreements are negotiated on an ad hoc basis and lease rates can vary significantly from hundreds of dollars to as high as $4,200 per pole per year.

Proposed Law: SB 649 would establish a streamlined permitting process for small cell wireless facilities, and limit the permitting fees for the placement of small cells on vertical infrastructure. Specifically, this bill would:

- Define a "small cell" as a wireless telecommunications facility that meets the following qualifications:
    - All antennas on the structure, excluding associated equipment total no more than six cubic feet in volume, whether in a single or separate array.
    - The associated equipment on pole structures does not exceed 21 cubic feet, provided any individual piece does not exceed nine cubic feet. The calculation of equipment volume excludes specified ancillary equipment.
- Specify that a small cell includes a micro wireless facility that is no larger than 24 inches long, 15 inches wide, and 12 inches high, and that has an exterior antenna no longer than 11 inches.
- Specify that a small cell does not include coaxial or fiber optic cables that do not exclusively provide service to the cell, or wireless facilities placed in a specified historic district or coastal zone.
- Require a small cell to be a permitted use, subject only to specified requirements or conditions, if it satisfies the following requirements:
    - The small cell is located in the public right-of-way in any zone or in any zone that includes a commercial or industrial use.
    - The small cell complies with all applicable federal, state, and local health and safety regulations, as specified.
    - The small cell is not located on a fire department facility.
- Authorize a city or county to require that the small cell be approved pursuant to a building permit in connection with placement outside the public right of way, or a specified encroachment permit, and any additional ministerial permits, provided all permits are issued within specified timeframes.
- Prohibit permits from being subject to:
    - Provision of additional services, including in-kind contributions from the applicant 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 micro wireless facilities mounted on a span of wire.
- Prohibit a city or county from precluding the leasing or licensing of its vertical infrastructure located in the public right of way or public utility easements. Vertical

infrastructure is defined as all poles or similar facilities owned or controlled by a city or county that are in the public right of way or utility easements and meant for communications service, electric service, lighting, traffic control, or similar functions.
- Require a city or county to make its vertical infrastructure available for the placement of small cells under fair and reasonable fees, terms, and conditions, which may include feasible design and collocation standards.
- Authorize a city or county to reserve capacity on vertical infrastructure if it adopts a resolution that capacity is needed for projected city or county use.
- Require fees to be tiered or flat and within a range of $100 to $850 per small cell per year, indexed for inflation from this bill's effective date.
- Prohibit a city or county from discriminating against the deployment of a small cell on property owned by the city or county, and require it to make space available on terms that are at least as favorable as those provided for comparable commercial projects or uses.
- Specify that nothing in the bill would alter, modify, or amend any franchise or franchise requirements under state or federal law.
- Specify that existing agreements regarding the leasing or licensing of vertical infrastructure remain in effect, subject to applicable termination provisions.
- Require automatic renewal of permits for telecommunications facilities, unless a city or county makes a finding that the facility does not comply with codes and conditions in place at the time the permit was originally approved.

Staff Comments: Existing law, as enacted by AB 1027 (Buchanan), Chap. 580/2011, requires a publicly owned utility to make appropriate space and capacity on its utility poles and support structures available for use by a communication provider. That measure authorized local entities to charge an annual fee for use of a pole, and limited the fee to the annual cost of ownership of the proportion of the pole dedicated to the telecommunications equipment. Any costs incurred by a public utility that exceeded the amount of fees charged for pole attachments could be passed on to utility customers.

Cities and counties currently negotiate lease rates for small cell attachments on publicly owned vertical infrastructure that is market based, and many local governments may use excess lease revenues to pay for other public services or to subsidize the extension of wireless service in underserved areas. This bill limits the fees that a city or county may charge for the installation of a small cell telecommunications facility on publicly owned vertical infrastructure to a range of $100 to $850 per small cell per year. Since these rates are much lower than what some current agreements provide, many local governments will lose significant discretionary revenues. Staff notes that loss of local revenues does not, on its own, constitute a reimbursable mandate.

To the extent that the Commission on State Mandates determines that this bill imposes a higher level of service on cities and counties, and the fees specified in the bill are insufficient to fully offset a city or county's costs to accommodate the attachment of small cells to vertical infrastructure, this bill may be deemed a reimbursable mandate. This bill would require cities and counties to negotiate lease rates with wireless service providers (currently an optional activity), draft master agreements, and determine actual annual costs associated with leasing space on a particular pole or set of poles.

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