
**SENATE COMMITTEE ON ENERGY, UTILITIES AND
COMMUNICATIONS**
Senator Ben Hueso, Chair
2017 - 2018 Regular

Bill No: SB 649 **Hearing Date:** 4/4/2017
Author: Hueso
Version: 3/28/2017 As Amended
Urgency: No **Fiscal:** Yes
Consultant: Nidia Bautista

SUBJECT: Wireless telecommunications facilities

DIGEST: This bill establishes a statewide framework for streamlining the permitting siting process of small cell wireless facilities that meet specified requirements. Specifically, this bill requires an administrative permit in lieu of a discretionary permit, requires cost-based fees in lieu of market pricing, and ensures access to most host infrastructure in the utility right-of-way and also within a commercial or industrial zone. This bill also requires permits for wireless telecommunications facilities would be automatically renewed for equivalent durations, as specified.

ANALYSIS:

Existing law:

- 1) Establishes specified limitations, preemptions and preservation of local zoning authority in relation to the siting of personal wireless service facilities as part of the many provisions of the Federal Telecommunication Act of 1996.
- 2) Provides that except as noted in the Federal Telecommunication Act of 1996, nothing in the Act shall limit or affect the authority of a state or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.
- 3) Establishes that the regulation of the placement, construction, and modification of personal wireless service facilities by any state or local government or instrumentality thereof – (i) shall not unreasonably discriminate among providers of functionality equivalent services; and (ii) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.
- 4) Establishes that a state or local government shall act on any request for authorization to place, construct, or modify personal wireless service facilities

within a reasonable period of time after the request is duly filed with such government, taking into account the nature and scope of such request.

- 5) Requires that any decision by a state or local government to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.
- 6) Provides that no state or local government may regulate the placement, construction, and modification of personal wireless service facilities on the bases of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communications Commission (FCC) regulations concerning such emissions. Allows any person adversely affected by an act or failure to act by a state or local government that is inconsistent with the FCC compliance requirements related to radio frequency emissions may petition the FCC for relief.
- 7) Provides that any person adversely affected by any final action or failure to act by a state or local government that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis.

(47 United States Code §332)
- 8) Limits the consideration of the environmental effects of radio frequency emissions by the city or county to that authorized by Section 332(c)(7) of Title 47 of the United States Code, as specified. (California Government Code §65850.6)
- 9) Provides that no state or local statute or regulation, or other state or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. (47 United States Code §253)
- 10) Provides that a state or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such a tower or base station. (47 United States Code §1455 (a))
- 11) Establishes a framework, process, and procedures governing the attachment of telecommunications facilities to investor-owned utility poles, providing the California Public Utilities Commission (CPUC) to establish and enforce rates, terms and conditions for pole attachments. (Public Utilities Code §767.5)

- 12) Establishes a framework, process, fees, and procedures governing the attachment of telecommunications facilities to municipal utility poles, providing for safety and reasonable terms and conditions. (Public Utilities Code §9510 et seq.)
- 13) Provides that a wireless telecommunications collocation facility shall be a permitted use not subject to a city or county discretionary permit if it satisfies several requirements, as specified. (California Government Code §65850.6)

This bill:

- 1) Makes findings and declarations regarding ensuring the communities across the state have access to the most advanced wireless communications technologies, reaffirms local governments' historic authority with respect to wireless communications infrastructure siting and many other findings and declarations.
- 2) Defines small cell as a wireless telecommunications facility using licensed or unlicensed spectrum whereby:
 - a) Any individual antenna, excluding the associated equipment, is individually no more than three cubic feet in volume, and all antennas on the structure total no more than six cubic feet in volume, whether in a single array or separate.
 - b) The associated equipment on pole structures does not exceed 21 cubic feet for poles that can support fewer than three providers or 28 cubic feet for pole collocations that can support at least three providers, or the associated equipment on non-pole structures does not exceed 28 cubic feet for collocations that can support fewer than three providers or 35 cubic feet for collocations that can support at least three providers.
 - c) Exempts specified equipment from the calculations of a small cell, including: electric meters, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, vertical cable runs for the connection of power and other services.
 - d) Excludes communications infrastructure extending beyond the telecommunications demarcation box from the definition of small cell.
- 3) Defines vertical infrastructure to mean 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 meant for, or used in whole in or in part for communications service, electric service, lighting, traffic control, signage, or similar functions.

- 4) Establishes that a small cell is a permitted use not subject to a city or county discretionary permit if it satisfies specified requirements
 - a) Located in:
 - i) the public right-of-way in any zone or
 - ii) in any zone that includes a commercial or industrial use.
 - b) Complies with all applicable state and local health and safety regulations.
 - c) Is not located on a fire department facility.
- 5) Authorizes a city or county to require that small cell be approved pursuant to a single administrative permit provide that the permit is issued within the time frames required by state and federal law.
- 6) Requires the administrative permit must be subject to the same requirements as similar construction projects applied in a nondiscretionary manner and submission of additional information showing that the small cell complies with the FCC's regulations concerning radio frequency emissions.
- 7) Prohibits an administrative permit from requirements to:
 - a) Provide additional services, directly or indirectly, including, but not limited to, in-kind contributions such as reserving fiber, conduit, or pole space.
 - b) Submission of any additional information other than required
 - c) Limits on routine maintenance of the replacement of small cells with small cells.
 - d) Regulation of any antennas mounted on cable strands.
- 8) Prohibits a city or county from precluding the leasing or licensing of its vertical infrastructure located in public right-of-way or public utility easements, and requires the fees are cost-based, based on the FCC's formula.
- 9) Prohibits a city or county from unreasonably discriminating in the leasing or licensing of property not located in the public right-of-way.
- 10) Requires that a permit for a wireless telecommunications facility is 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.

- 11) Finds and declares that small cells have a significant economic impact in California and are not a municipal affair but are a matter of statewide concern.

Background

Over the past decade, there has been an explosion of wireless devices in the marketplace, from cell phones, tablets, health monitors, and smart appliances. Satisfying the consumer demand for efficient and reliable wireless communications is largely dependent on infrastructure that has required a network of large macro cell towers (most over 200 feet tall). These large structures have dotted the landscape in various shapes and forms, from a very noticeable large antenna to something disguised as a palm tree.

Next Generation of Technology. Unlike larger macrocell large towers, small cells will need to be deployed at greater volumes in more concentrated areas. These smaller wireless facilities are about 40 feet tall and can augment the capacity of the wireless bandwidth of the macrocell towers. According to the sponsors of this bill, CTIA, the potential for next generation smaller wireless facility technology in the form of 5G network deployments will “likely offer mobile Internet speeds of more than 10 gigabits per second – roughly 100 times faster than current networks. Downloading feature-length movies could take less than five seconds with 5G, compared to as long as eight minutes with 4G LTE. Deployment of 5G technology is a key part of supporting the vast increase in bandwidth-hungry smart objects expected to come online in the decades that follow.” Unlike larger macrocell towers, small cells will need to be deployed at greater volumes in more concentrated areas.

Small Cell. According to the FCC, small cells are “low-powered wireless base stations that function like cells in a mobile wireless network, typically covering targeted indoor or localized outdoor areas ranging in size from homes and offices to stadiums, shopping malls, hospitals, and metropolitan outdoor spaces. Wireless service providers often use small cells to provide connectivity to their subscribers in areas that present capacity and coverage challenges to traditional wide-area macrocell networks, such as coverage gaps created by buildings, tower siting difficulties, and challenging terrain. Because these cells are significantly smaller in coverage area than traditional macrocells, networks that incorporate small-cell technology can reuse scarce wireless frequencies, thus greatly increasing spectral efficiency and data capacity within the network footprint.” A small cell can only work with a corresponding provider.

Federal Statutes. Section 332 (c)(7) of the Federal Telecommunications Act of 1996 largely preserves state and local authority over siting requirements of

personal wireless service facilities with some limitations. These limitations include a requirement that the state and local entity are:

- not unreasonably discriminating among providers of functionally equivalent service;
- not prohibiting provision of service;
- acting within a reasonable time;
- denying requests in writing and supported by substantial evidence in a written record; and
- not regulating based on effects of radiofrequency emissions if the facility complies with FCC rules.

Additionally, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) provides, in part, that “a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.” In both cases, the federal government largely preserved the authority of states and local governments to determine decisions regarding the placement, construction, and modification of personal wireless service facilities, even as it largely preempts state and local regulation of wireless services.

FCC Efforts to Streamline Siting Permitting. In its role in implementing the provisions of the federal statutes, the FCC has taken a strong interest in advancing the deployment of broadband infrastructure, including wireless infrastructure. FCC notable actions in this area include:

2009 Declaratory Ruling adopted in response to a petition by the wireless industry requesting clarification of the wireless communications provisions adopted in the Telecommunications Act of 1996. The ruling addressed what constitutes a reasonable period of time after which an aggrieved applicant for a wireless facility may file suit asserting a failure to act by the local land use agency. In general, but with many exceptions, the presumptively reasonable time period is 90 days for collocations (attached to existing facility) and 150 days for new builds. These timeframes were upheld in a related court case, *City of Arlington v. FCC*.

Infrastructure Report and Order adopted by the FCC in October 2014 which adopted rules to implement and enforce Section 6409(a). In general, the rules addressed the facilities the section would apply to, how substantial changes to a facility would be defined, the review process and timeline, and other matters. These rules were affirmed in a related court case, *Montgomery County v. FCC*.

- Section 6409(a) would apply to facilities for any FCC-authorized wireless communications service, antennas and other equipment associated with and necessary to operation (distributed antenna systems, power supply, and backup power), on any structure built for sole or primary purpose of supporting antennas, or that houses base station equipment, and must have been approved under applicable state or local process.
- Defines substantial change in physical dimensions as any of the following: increases height by more than 10 percent or 10 feet (20 feet for towers outside rights-of-way), protrudes more than 20 feet (most towers) or 6 feet (towers in rights-of-way, base stations), involves more than standard number of equipment cabinets (up to 4), or excavation/deployment is outside current site.
- Establishes a review process and timeline that provides state/local may review to determine applicability of Section 6409(a), may require documents to review, 60-day time limit for review (may toll within first 30 days if incomplete application), after 60 days deemed granted upon applicant's notification, and requires disputes are resolved in court.
- Provides that building codes and non-discretionary structural and safety codes remain applicable and does not apply to municipality in proprietary capacity (city owns the property).

In addition to the above, the FCC has taken steps to streamline siting of wireless communications facilities through the changing the affect of the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) on the siting of these facilities. Specifically, under the 2014 Infrastructure Report and Order, collocations were excluded from NEPA review under FCC rules, except for NHPA review and exposure to radio frequency emissions. Additionally, construction of poles and similar structures in rights-of-way were also excluded under defined conditions. The FCC facilitated the establishment of a Nationwide Collocation Agreement which excluded most collocations from NHPA review. Major exceptions included collocations on structures (other than macro cell wireless towers) that are over 45 years old, on historic properties, or in or near historic districts. The Infrastructure Report and Order adopted limited further exclusions for collocations of small facilities. The FCC committed to develop further exclusions through a program alternative under Advisory Council on Historic Preservation rules.

Additionally, in May 2016, the FCC hosted a day-long workshop on the topic of small cell and distributed antenna system deployment where the former Chair of the FCC under President Obama, Chair Wheeler, opened the workshop and stated that small cell deployment “is a national priority.” The workshop provided a venue to discuss some of the existing challenges and interests in further streamlining deployment and shared a few case studies, including the successes and challenges to deploy small cells in San Francisco in response to the Super Bowl 50. Subsequently to the workshop, the FCC sought public comment on several options for additional streamlining with a goal to develop and complete the process by fall of 2016. In late December 2016, the FCC formally invited public comment on streamlining deployment of small cell infrastructure by improving siting policies. The comment period was extended and is scheduled to close this week, on April 7, 2017.

FCC under President Trump. The current chair of the FCC under President Trump, Chair Pai, has also noted the importance of deploying broadband infrastructure, including wireless infrastructure. Just last week, on March 30, 2017, the FCC issued a new Notice of Proposed Rulemaking and Notice of Inquiry to Accelerate Broadband Deployment “to commence an examination of the regulatory impediments to wireless network infrastructure investment deployment and how we [FCC] may remove or reduce such impediments.” All signs point to an FCC intent on completing this inquiry as expeditiously as possible, possibly as early as summer. At this juncture, it’s unclear how this bill might interact with any actions the FCC adopts.

Public Rights of Way. This bill includes language that acknowledges the need to adhere to existing health and safety requirements associated with attaching communications equipment on utility poles. However, the language in this bill can be strengthened to explicitly mention adherence to existing utility pole attachments requirements in rights of way, including those promulgated by the CPUC for investor-owned utilities (including those in General Orders 95 and 28) and those for municipally-owned utilities, including requirements adopted by AB 1027 (Buchanan, Chapter 580, Statutes of 2011). Both the CPUC for investor-owned utility poles and statute regarding municipally-owned poles, establishes weight limitations and cost-based fees associated with attaching equipment to utility poles. These standards must be maintained to ensure the public safety and ensure utilities are compensated appropriately. *The author and committee may wish to amend this bill to reference the need to adhere to existing requirements of the CPUC for investor-owned and statute regarding utility pole attachments for municipally-owned utilities.*

Cost-based Fees v. Market Price. In anticipation of deploying tens of thousands of small cells, the wireless providers’ propose to cap fees a local jurisdiction can

assess when attaching to host infrastructure (including that owned by the locality) in order to reduce costs to for deployment of the technology. As noted above, utility poles require cost-based fees for any equipment that will be attached to the pole. These tend to be formula determined costs, depending on the size of the attachment, established over time via FCC, CPUC, statute, and municipal utility rules. This bill seeks to provide access to attach to other host infrastructure, not only utility poles, but including city-owned street lights, traffic signals and other city-owned properties. The wireless providers argue that fees can be quite varied by jurisdiction and may often be charged at the price the market can bear. The wireless providers suggest that some of the fees result in paying for services other than the costs associated with the attachment. Representatives for the cities and counties acknowledge the varied fees, but note they are the owners of their property and should be able to determine the fee based on their unique needs and costs.

Technology Neutrality? This bill addresses streamlining the permitting siting processes for deployment of small cells. As noted above, small cells are owned by the individual wireless phone service carriers who would each need to deploy their own small cells to augment their bandwidth capacity. It's of note that the FCC, in many documents, combines both distributed antenna systems, whose ownership is not specific to a given provider, but requires working with a provider to utilize their spectrum radio frequency. Additionally, California Cable and Telecommunications Association (CCTA) has expressed concerns regarding their interests to included language related to their wireless technology, wifi, available as remote "hot spots" for their customers. CCTA has recently provided some amendments. The author and committee need more time to review with all stakeholders, including the CPUC which has recently ruled against CCTA for a wireless-related access, absent a specified certificate of public convenience and necessity. Should this bill move forward, the author has committed to continue engaging with CCTA to attempt to address their concerns.

Environmental Health Effects. A few of the commenters that oppose this bill have raised concerns regarding the health impacts from radio frequency/microwave radiation associated with wireless communications. These commenters present several studies, as well as a California Medical Association resolution supporting efforts to reevaluate microwave safety exposure and efforts to implement new safety exposure limits for wireless devices to a level that do not cause harm. While these comments raise very serious concerns, federal law, specifically the Telecommunications Act of 1996, limits the consideration of the environmental effects of radio frequency emissions by states and local governments in so far as a proposed project is in compliance with FCC requirements. The law requires that any remedies for those projects that are out of compliance must be addressed by

the FCC. This bill includes language requiring compliance with the FCC existing emissions requirements. However, those who oppose this bill out of concern for the health impacts of wireless technologies are not likely to be satisfied with the standards the FCC has established.

Local Land Use Concerns. The main thrust of this bill affects local land use decision-making. In establishing a statewide framework for small cell deployment, this bill establishes limitations on the process, procedures and abilities of local governments to site small cell facilities. As such, this bill is double-referred to the Senate Committee on Governance and Finance which can better address issues related to local land use policy, including: changes to zoning, changes to the discretionary permitting process to a ministerial process, changes to fees associated with attachment on host infrastructure owned by local governments and in the right-of-way, aesthetic considerations and review, and other issues.

Double Referral. Should this bill be approved by this committee, it will be re-referred to the Senate Committee on Governance and Finance for its consideration.

Prior/Related Legislation

AB 2788 (Gatto, 2016) included similar provisions as this bill. The bill was referred to this committee, but was never heard after being pulled from being heard by the author.

AB 57 (Quirk, Chapter 685, Statutes of 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.

AB 162 (Holden, 2013) would have prohibited a local government from denying an eligible facilities request, as defined, for a modification of an existing wireless telecommunications facility or structure that does not substantially change the physical dimensions of the wireless telecommunications facility or structure, and would have required a local government to act on eligible facilities request within 90 days of receipt. The bill was referred to the Assembly Committee on Local Government but was never heard.

AB 1027 (Buchanan, Chapter 580, Statutes of 2011) required local publicly owned electric utilities, including irrigation districts, to make appropriate space and

capacity on and in their utility poles and support structures available for use by communication service providers.

SB 1627 (Kehoe, Chapter 676, Statutes of 2006) required that a city or county to administratively approve, through the issuance of a building permit or nondiscretionary permit issued by the planning department, an application for a collocation facility on or immediately adjacent to a wireless telecommunication facility that complies with specified state and local requirements for such projects. The bill expanded the definition of the term “development project” within the Permit Streamlining Act to include projects involving the issuance of a permit for construction or reconstruction for a wireless telecommunications facility. Additionally, SB 1627 prohibited a development project for a wireless telecommunications facility from being subject to a permit to operate.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT:

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| CTIA (Source) | Lighthouse Counseling & Family Resource Center |
| 59DaysOfCode | Long Beach Area Chamber of Commerce |
| American Indian Chamber of Commerce of CA | Los Angeles Urban League Meeting of the Minds |
| Asian Pacific Islander American Public Affairs Association | Monterey County Business Council |
| Asian Resources Inc. | National Assn of Advancement of Colored People |
| AT&T | National Association of Advancement of Colored People – Inglewood/South Bay |
| Berkeley Chamber of Commerce | National Association of Advancement of Colored People – Riverside |
| California Asian Pacific Chamber of Commerce | National Association of Advancement of Colored People – San Diego |
| California Friday Night Live Partnership | National City Public Safety Foundation |
| California Hispanic Chamber of Commerce | National Association of Hispanic Real Estate Professionals – Sacramento |
| CA Manufacturers & Technology Association | National Latina Business Women Assn. of LA |
| California Urban Partnership | Oakland Metropolitan Chamber of Commerce |
| CALinnovates | Oceanside Chamber of Commerce |
| Carlsbad Chamber of Commerce | Orange County Business Council |
| Carmel Valley Chamber of Commerce | Orange County Hispanic Chamber of Commerce |
| Cerritos Regional Chamber of Commerce | Organization of Chinese Americans |
| Chinese American Association of Solano County | Pacific Grove Chamber of Commerce Board of Directors |
| Community Technology Network | Rancho Cordova Chamber of Commerce |
| Concerned Citizens Community Involvement | Sabio Enterprises Inc. |
| Congress of California Seniors | Sacramento Asian Pacific Chamber of Commerce |
| Council of Asian Pacific Islanders Together for Advocacy and Leadership | Sacramento Hispanic Chamber of Commerce |
| Council on American-Islamic Relations, California | Sacramento Metro Chamber |
| Disability Rights Education and Defense Fund | Sacramento Regional Conservation Corps |
| Downtown San Diego Partnership | San Diego North Economic Development Council |
| Elderly Foundation | San Ysidro Chamber of Commerce |
| El Dorado County Chamber of Commerce | Silicon Valley Leadership Group |
| Eskaton Foundation | |
| Exceptional Parents Unlimited | |
| Fresno Area Hispanic Foundation | |

Fresno Center for New Americans
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 Heritage Foundation
InBiz Latino-North County Hispanic Chamber
Invictus Foundation
Jobs and Housing Coalition
Lake County Sheriff's Office
Latin Business Association
Latino Council
Latino Environmental Advancement & Policy
Project
Lifestyle Stroke Foundation

Society for the Blind
Solano Community College Educational
Foundation
South Bay Association of Chamber of Commerce
Southern CA Hispanic Chamber of Commerce
Southern Christian Leadership Conference of
Southern California
Sprint
The East Los Angeles Community Union
The Arc California
Torrance Area Chamber of Commerce
United Policyholders
Urban Corps of San Diego County
Verizon
Veteran's Association of North County
Volunteers of America Southwest
Women's Intercultural Network

CONCERN:

California Association of Competitive Telecommunications Companies
California Cable & Telecommunications Association
Frontier Communications

OPPOSITION:

American Planning Association
CA Chapter of the American Planning Association
California State Association of Counties
City of Buena Park
City of Chino Hills
City of Citrus Heights
City of Cloverdale
City of Dublin
City of Hayward
City of Indian Wells
City of Lafayette
City of Laguna Beach Mayor
City of Lakeport
City of Lodi
City of Murrieta
City of National City
City of Nevada City
City of Norwalk
City of Point Arena

City of Roseville
City of Santa Clara
City of Santee
City of Thousand Oaks
City of Vista
EMF Safety Network
Ecological Options Network
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
Urban Counties of California
An Individual

ARGUMENTS IN SUPPORT: According to the sponsors of this bill, CTIA, "In many California localities, the rules, regulations, and application fees for wireless infrastructure are decades old, put in place when 200-foot tall cell towers

were the norm. These rules are barriers to meeting today's wireless demand and enabling 5G innovations.”

ARGUMENTS IN OPPOSITION: The majority of the arguments against the bill are reflected in the letter from the League of Cities which opposes the limitations this bill imposes on decision-making of local jurisdictions on permit siting, including concerns regarding the limitations on the assessment of fees on use of city and county property, the limitations on local discretionary review, imposition of zoning changes, concern that more than one antenna would be sited on a host infrastructure (pole) and an overall belief that this bill “strips the local governments of the ability to protect the quality of life of their residents.” As noted above, some opposition stems from the growth of radio frequency which would increase near homes under this bill. The opposition from NCPA requests clarification that municipal utility poles are still subject to existing requirements relative to the involvement of the municipal utility.

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