

AMENDED IN ASSEMBLY JULY 18, 2017

AMENDED IN ASSEMBLY JULY 3, 2017

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AMENDED IN SENATE MAY 2, 2017

AMENDED IN SENATE MARCH 28, 2017

SENATE BILL

No. 649

Introduced by Senator Hueso

(Principal coauthor: Assembly Member Quirk)

(Coauthor: Senator Dodd)

(Coauthor: Assembly Member Dababneh)

February 17, 2017

An act to add Sections 65964.2 and 65964.5 to the Government Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 649, as amended, Hueso. Wireless telecommunications facilities.

Under existing law, a wireless telecommunications collocation facility, as specified, is subject to a city or county discretionary permit and is required to comply with specified criteria, but a collocation facility, which is the placement or installation of wireless facilities, including antennas and related equipment, on or immediately adjacent to that wireless telecommunications collocation facility, is a permitted use not subject to a city or county discretionary permit.

This bill would provide that a small cell is a permitted use, subject only to a specified permitting process adopted by a city or county, if the small cell meets specified requirements. By imposing new duties on local agencies, this bill would impose a state-mandated local program.

The bill would authorize a city or county to require an encroachment permit or a building permit, and any additional ministerial permits, for a small cell, as specified. The bill would authorize a city or county to charge 3 types of fees: an annual charge for each small cell attached to city or county vertical infrastructure, an annual attachment rate, or a one-time reimbursement fee. The bill would require the city or county to comply with notice and hearing requirements before imposing the annual attachment rate. The bill would require an action or proceeding to challenge a fee imposed under the provisions of this bill to be commenced within 120 days of the effective date of the ordinance or resolution. The bill would define the term “small cell” for these purposes.

~~This bill would prohibit a city or county from adopting or enforcing any regulation on the placement or operation of a communications facility in the rights-of-way by a provider that is authorized by state law to operate in the rights-of-way or from regulating that service or imposing any tax, fee, or charge, except as provided in specified provisions of law or as specifically required by law.~~

The Digital Infrastructure and Video Competition Act of 2006 establishes a procedure for the issuance of state franchises for the provision of video service and cable service and designates the Public Utilities Commission as the sole franchising authority for a state franchise under the act. The act requires the holder of a state franchise to pay franchise fees, as specified. The act prescribe the extent of the obligation of a holder of a state franchise to provide public, educational, and governmental access (PEG) channels, but authorizes a local entity, as defined, to establish a fee to support the costs of PEG channel facilities, in the amount of 1% of gross revenues, or more in specified circumstances.

This bill would prohibit a city or county from requiring a provider of video service or cable service to obtain any authorization or permit not described above to provide any communications service that is provided by a holder of a state franchise pursuant to the act. The bill would prohibit a city or county from requiring the holder of a state franchise to pay any tax, fee, assessment, or other charge not authorized by the act, this bill, or other state laws.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that, to ensure
2 that communities across the state have access to the most advanced
3 communications technologies and the transformative solutions
4 that robust wireless and wireline connectivity enables, such as
5 Smart Communities and the Internet of Things, California should
6 work in coordination with federal, state, and local officials to create
7 a statewide framework for the deployment of advanced wireless
8 communications infrastructure in California that does all of the
9 following:

10 (a) Reaffirms local governments' historic role and authority
11 with respect to communications infrastructure siting and
12 construction generally.

13 (b) Reaffirms that deployment of telecommunications facilities
14 in the rights-of-way is a matter of statewide concern, subject to a
15 statewide franchise, and that expeditious deployment of
16 telecommunications networks generally is a matter of both
17 statewide and national concern.

18 (c) Recognizes that the impact on local interests from individual
19 small wireless facilities will be sufficiently minor and that such
20 deployments should be a permitted use statewide and should not
21 be subject to discretionary zoning review.

22 (d) Requires expiring permits for these facilities to be renewed
23 so long as the site maintains compliance with use conditions
24 adopted at the time the site was originally approved.

25 (e) Requires providers to obtain all applicable building or
26 encroachment permits and comply with all related health, safety,
27 and objective aesthetic requirements for small wireless facility
28 deployments on a ministerial basis.

29 (f) Grants providers fair, reasonable, nondiscriminatory, and
30 nonexclusive access to locally owned utility poles, streetlights,
31 and other suitable host infrastructure located within the public
32 rights-of-way and in other local public places such as stadiums,
33 parks, campuses, hospitals, transit stations, and public buildings

1 consistent with all applicable health and safety requirements,
2 including Public Utilities Commission General Order 95.

3 (g) Provides for full recovery by local governments of the costs
4 of attaching ~~small wireless~~ *communications* facilities to utility
5 poles, streetlights, and other suitable host infrastructure in a manner
6 that is consistent with existing federal and state laws governing
7 utility pole attachments generally.

8 (h) Permits local governments to charge ~~wireless~~ permit fees
9 that are fair, reasonable, nondiscriminatory, and cost based.

10 (i) Advances technological and competitive neutrality while not
11 adding new requirements on competing providers that do not exist
12 today.

13 (j) *Limits the creation or erection of any unreasonable*
14 *requirement for access to the public rights-of-way by*
15 *communications providers, including excessive delays in*
16 *negotiations and approvals for communications facilities.*

17 SEC. 2. Section 65964.2 is added to the Government Code, to
18 read:

19 65964.2. (a) A small cell shall be a permitted use subject only
20 to a permitting process adopted by a city or county pursuant to
21 subdivision (b) if it satisfies the following requirements:

22 (1) The small cell is located in the public rights-of-way in any
23 zone or in any zone that includes a commercial or industrial use.

24 (2) The small cell complies with all applicable federal, state,
25 and local health and safety regulations, including the federal
26 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101
27 et seq.).

28 (3) The small cell is not located on a fire department facility.

29 (b) (1) A city or county may require that the small cell be
30 approved pursuant to a building permit or its functional equivalent
31 in connection with placement outside of the public rights-of-way
32 or an encroachment permit or its functional equivalent issued
33 consistent with Sections 7901 and 7901.1 of the Public Utilities
34 Code for the placement in public rights-of-way, and any additional
35 ministerial permits, provided that all permits are issued within the
36 timeframes required by state and federal law.

37 (2) Permits issued pursuant to this subdivision may be subject
38 to the following:

39 (A) The same permit requirements as for similar construction
40 projects and applied in a nondiscriminatory manner.

1 (B) A requirement to submit additional information showing
2 that the small cell complies with the Federal Communications
3 Commission’s regulations concerning radio frequency emissions
4 referenced in Section 332(c)(7)(B)(iv) of Title 47 of the United
5 States Code.

6 (C) A condition that the applicable permit may be rescinded if
7 construction is not substantially commenced within one year.
8 Absent a showing of good cause, an applicant under this section
9 may not renew the permit or resubmit an application to develop a
10 small cell at the same location within six months of rescission.

11 (D) A condition that small cells no longer used to provide
12 service shall be removed at no cost to the city or county.

13 (E) Compliance with building codes, including building code
14 structural requirements.

15 (F) A condition that the applicant pay all electricity costs
16 associated with the operation of the small cell.

17 (G) A condition to comply with feasible design and collocation
18 standards on a small cell to be installed on property not in the
19 rights-of-way.

20 (3) Permits issued pursuant to this subdivision shall not be
21 subject to:

22 (A) Requirements to provide additional services, directly or
23 indirectly, including, but not limited to, in-kind contributions from
24 the applicant such as reserving fiber, conduit, or pole space.

25 (B) The submission of any additional information other than
26 that required of similar construction projects, except as specifically
27 provided in this section.

28 (C) Limitations on routine maintenance or the replacement of
29 small cells with small cells that are substantially similar, the same
30 size or smaller.

31 ~~(D) The regulation of any micro wireless facilities mounted on
32 a span of wire.~~

33 ~~(4) Notwithstanding any other provision of this section, a~~ A city
34 or county shall not impose permitting requirements or fees on the
35 installation, placement, maintenance, or replacement of micro
36 wireless facilities that are suspended, whether embedded or
37 attached, on *communication* cables or lines that are strung between
38 existing utility poles in compliance with state safety codes.

39 (c) A city or county shall not preclude the leasing or licensing
40 of its vertical infrastructure located in public rights-of-way or

1 public utility easements under the terms set forth in this
2 subdivision. Vertical infrastructure shall be made available for the
3 placement of small cells under fair and reasonable fees, subject to
4 the requirements in subdivision (d), terms, and conditions, which
5 may include feasible design and collocation standards. A city or
6 county may reserve capacity on vertical infrastructure if the city
7 or county adopts a resolution finding, based on substantial evidence
8 in the record, that the capacity is needed for projected city or county
9 uses.

10 (d) (1) A city or county may charge the following fees:

11 (A) An annual charge not to exceed two hundred fifty dollars
12 (\$250) for each small cell attached to city or county vertical
13 infrastructure.

14 (B) An annual attachment rate that does not exceed an amount
15 resulting from the following requirements:

16 (i) The city or county shall calculate the rate by multiplying the
17 percentage of the total usable space that would be occupied by the
18 attachment by the annual costs of ownership of the vertical
19 infrastructure and its anchor, if any.

20 (ii) The city or county shall not levy a rate that exceeds the
21 estimated amount required to provide use of the vertical
22 infrastructure for which the annual recurring rate is levied. If the
23 rate creates revenues in excess of actual costs, the city or county
24 shall use those revenues to reduce the rate.

25 (iii) For purposes of this subparagraph:

26 (I) “Annual costs of ownership” means the annual capital costs
27 and annual operating costs of the vertical infrastructure, which
28 shall be the average costs of all similar vertical infrastructure
29 owned or controlled by the city or county. The basis for the
30 computation of annual capital costs shall be historical capital costs
31 less depreciation. The accounting upon which the historical capital
32 costs are determined shall include a credit for all reimbursed capital
33 costs. Depreciation shall be based upon the average service life of
34 the vertical infrastructure. Annual cost of ownership does not
35 include costs for any property not necessary for use by the small
36 cell.

37 (II) “Usable space” means the space above the minimum grade
38 that can be used for the attachment of antennas and associated
39 ancillary equipment.

1 (C) A one-time reimbursement fee for actual costs incurred by
2 the city or county for rearrangements performed at the request of
3 the small cell provider.

4 (2) A city or county shall comply with the following before
5 adopting or increasing the rate described in subparagraph (B) of
6 paragraph (1):

7 (A) At least 14 days before the hearing described in
8 subparagraph (C), the city or county shall provide notice of the
9 time and place of the meeting, including a general explanation of
10 the matter to be considered.

11 (B) At least 10 days before the hearing described in
12 subparagraph (C), the city or county shall make available to the
13 public data indicating the cost, or estimated cost, to make vertical
14 structures available for use under this section if the city or county
15 adopts or increases the proposed rate.

16 (C) The city or county shall, as a part of a regularly scheduled
17 public meeting, hold at least one open and public hearing at which
18 time the city or county shall permit the public to make oral or
19 written presentations relating to the rate. The city or county shall
20 include a description of the rate in the notice and agenda of the
21 public meeting in accordance with the Ralph M. Brown Act
22 (Chapter 9 (commencing with Section 54950.5) of Part 1 of
23 Division 2 of Title 5).

24 (D) The city or county may approve the ordinance or resolution
25 to adopt or increase the rate at a regularly scheduled open meeting
26 that occurs at least 30 days after the initial public meeting described
27 in subparagraph (C).

28 (3) A judicial action or proceeding to attack, review, set aside,
29 void, or annul an ordinance or resolution adopting, or increasing,
30 a fee described in this subdivision, shall be commenced within
31 120 days of the effective date of the ordinance or resolution
32 adopting or increasing the fee. A city or county or interested person
33 shall bring an action described in this paragraph pursuant to
34 Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of
35 the Code of Civil Procedure in a court of competent jurisdiction.

36 (4) This subdivision does not prohibit a wireless service provider
37 and a city or county from mutually agreeing to an annual charge
38 or attachment rate that is different from the fees or rates established
39 above.

1 (e) A city or county shall not discriminate against the
2 deployment of a small cell on property owned by the city or county
3 and shall make space available on property not located in the public
4 rights-of-way under terms and conditions that are no less favorable
5 than the terms and conditions under which the space is made
6 available for comparable commercial projects or uses. These
7 installations shall be subject to reasonable and nondiscriminatory
8 rates, terms, and conditions, which may include feasible design
9 and collocation standards.

10 (f) This section does not alter, modify, or amend any franchise
11 or franchise requirements under state or federal law, including
12 Section 65964.5.

13 (g) For purposes of this section, the following terms have the
14 following meanings:

15 (1) “Micro wireless facility” means a small cell that is no larger
16 than 24 inches long, 15 inches in width, 12 inches in height, and
17 that has an exterior antenna, if any, no longer than 11 inches.

18 (2) (A) “Small cell” means a wireless telecommunications
19 facility, as defined in paragraph (2) of subdivision (d) of Section
20 65850.6, or a wireless facility that uses licensed or unlicensed
21 spectrum and that meets the following qualifications:

22 (i) The small cell antennas on the structure, excluding the
23 associated equipment, total no more than six cubic feet in volume,
24 whether an array or separate.

25 (ii) Any individual piece of associated equipment on pole
26 structures does not exceed nine cubic feet.

27 (iii) The cumulative total of associated equipment on pole
28 structures does not exceed 21 cubic feet.

29 (iv) The cumulative total of any ground-mounted equipment
30 along with the associated equipment on any pole or nonpole
31 structure does not exceed 35 cubic feet.

32 (v) The following types of associated ancillary equipment are
33 not included in the calculation of equipment volume:

34 (I) Electric meters and any required pedestal.

35 (II) Concealment elements.

36 (III) Any telecommunications demarcation box.

37 (IV) Grounding equipment.

38 (V) Power transfer switch.

39 (VI) Cutoff switch.

1 (VII) Vertical cable runs for the connection of power and other
2 services.

3 (VIII) Equipment concealed within an existing building or
4 structure.

5 (B) “Small cell” includes a micro wireless facility.

6 (C) “Small cell” does not include the following:

7 (i) Wireline backhaul facility, which is defined to mean a facility
8 used for the transport of communications data by wire from
9 wireless facilities to a network.

10 (ii) Coaxial or fiber optic cables that are not immediately
11 adjacent to or directly associated with a particular antenna or
12 collocation.

13 (iii) Wireless facilities placed in any historic district listed in
14 the National Park Service Certified State or Local Historic Districts
15 or in any historical district listed on the California Register of
16 Historical Resources or placed in coastal zones subject to the
17 jurisdiction of the California Coastal Commission.

18 (iv) The underlying vertical infrastructure.

19 (3) (A) “Vertical infrastructure” means all poles or similar
20 facilities owned or controlled by a city or county that are in the
21 public rights-of-way or public utility easements and meant for, or
22 used in whole or in part for, communications service, electric
23 service, lighting, traffic control, or similar functions.

24 (B) For purposes of this paragraph, the term “controlled” means
25 having the right to allow subleases or sublicensing. A city or county
26 may impose feasible design or collocation standards for small cells
27 placed on vertical infrastructure, including the placement of
28 associated equipment on the vertical infrastructure or the ground.

29 (h) Existing agreements regarding the leasing or licensing of
30 vertical infrastructure entered into before the operative date of this
31 section remain in effect, subject to applicable termination
32 provisions. The operator of a small cell may accept the rates of
33 this section for small cells that are the subject of an application
34 submitted after the agreement is terminated pursuant to the terms
35 of the agreement.

36 (i) Nothing in this section shall be construed to authorize or
37 impose an obligation to charge a use fee different than that
38 authorized by Part 2 (commencing with Section 9510) of Division
39 4.8 of the Public Utilities Code on a local publicly owned electric
40 utility.

1 (j) This section does not change or remove any obligation by
2 the owner or operator of a small cell to comply with a local publicly
3 owned electric utility's reasonable and feasible safety, reliability,
4 and engineering policies.

5 (k) A city or county shall consult with the utility director of a
6 local publicly owned electric utility when adopting an ordinance
7 or establishing permitting processes consistent with this section
8 that impact the local publicly owned electric utility.

9 (l) Nothing in this section shall be construed to modify the rules
10 and compensation structure that have been adopted for an
11 attachment to a utility pole owned by an electrical corporation or
12 telephone corporation, as those terms are defined in Section 216
13 of the Public Utilities Code pursuant to state and federal law,
14 including, but not limited to, decisions of the Public Utilities
15 Commission adopting rules and a compensation structure for an
16 attachment to a utility pole owned by an electrical corporation or
17 telephone corporation, as those terms are defined in Section 216
18 of the Public Utilities Code.

19 (m) Nothing in this section shall be construed to modify any
20 applicable rules adopted by the Public Utilities Commission,
21 including General Order 95 requirements, regarding the attachment
22 of wireless facilities to a utility pole owned by an electrical
23 corporation or telephone corporation, as those terms are defined
24 in Section 216 of the Public Utilities Code

25 (n) The Legislature finds and declares that small cells, as defined
26 in this section, have a significant economic impact in California
27 and are not a municipal affair as that term is used in Section 5 of
28 Article XI of the California Constitution, but are a matter of
29 statewide concern.

30 SEC. 3. Section 65964.5 is added to the Government Code, to
31 read:

32 65964.5. Except as provided in Sections 65964, 65964.2, and
33 65850.6, or as specifically required by state law, a city or county
34 may not ~~adopt or enforce any regulation on the placement or~~
35 ~~operation of communications facilities in the rights-of-way by a~~
36 ~~provider authorized by state law to operate in the rights-of-way,~~
37 ~~and may not regulate any communications services or impose or~~
38 ~~collect any tax, fee, or charge not specifically authorized under~~
39 ~~state law. require a provider of video service or cable service to~~
40 *obtain any authorization or permit to provide any communications*

1 *service that is provided by a holder of a state franchise pursuant*
2 *to the Digital Infrastructure and Video Competition Act of 2006*
3 *(Division 2.5 (commencing with Section 5800) of the Public*
4 *Utilities Code), nor may a city or county require the holder of a*
5 *state franchise to pay any tax, fee, assessment, or other charge*
6 *not authorized by the Digital Infrastructure and Video Competition*
7 *Act of 2006.*

8 SEC. 4. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 a local agency or school district has the authority to levy service
11 charges, fees, or assessments sufficient to pay for the program or
12 level of service mandated by this act, within the meaning of Section
13 17556 of the Government Code.

O