



AGENDA ITEM NO.

COUNTY OF HUMBOLDT

For the meeting of: April 19, 2016

Date: April 8, 2016
To: Board of Supervisors
From: Supervisor Rex Bohn
Subject: Letter Opposing Senate Bill 649 (Hueso) – Small Cell Siting

RECOMMENDATION(S): That the Board of Supervisors authorize the Chair to sign the letter opposing Senate Bill 649.

SOURCE OF FUNDING: N/A

DISCUSSION: Senate Bill 649 authorized by Senator Ben Huesto will strip public input, limit full discretionary review, and remove the ability for counties to negotiate leases for the installation of “small cell” technology on public property.

Through SB649, counties will be required to allow these not-so-small structures on public property in any city or county zone. Furthermore, it will prohibit cities and counties from charging market rate for lease of public property, and instead, caps the rental rates at an arbitrarily low amount. SB649 does not require installation of 5G technology, nor require the wireless industry to build their networks in these communities and expressly prohibits a county from negotiating increased broadband services as a condition of a “small cell” permit. SH 649 does not create jobs, but instead erodes local input on community aesthetics and devalues taxpayer – invested public property.

FINANCIAL IMPACT: N/A

OTHER AGENCY INVOLVEMENT: N/A

ALTERNATIVES TO STAFF RECOMMENDATIONS: Board discretion.

Prepared by Tracy Damico

Signature 

REVIEW:

Auditor _____ County Counsel _____ Personnel _____ Risk Manager _____ Other _____

TYPE OF ITEM:

Consent
 Departmental
 Public Hearing
 Other

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor _____
Seconded by Supervisor _____

Ayes
Nays
Abstain
Absent

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

1

Dated: _____

By: _____

Kathy Hayes, Clerk of the Board

ATTACHMENTS: SB649 and Letter of Opposition.



BOARD OF SUPERVISORS

COUNTY OF HUMBOLDT

825 5TH STREET, ROOM 111

EUREKA, CALIFORNIA, 95501 PHONE: (707) 445-7266

June 20, 2017

The Honorable Ben Hueso
Member, California State Senate
State Capitol, Room 4035
Sacramento, CA 95814

RE: Senate Bill 649 - OPPOSE

Dear Senator Hueso:

On behalf of Humboldt County, I write to respectfully inform you of our opposition to your Senate Bill 649, which would allow wireless providers unfettered access to public property for placement of "small cell" structures without regard to the aesthetic and environmental impacts of these facilities. Under SB 649, these not-so-small "small cell" structures must be allowed on public property in *any* zone in a city or county.

Specifically, Humboldt County is concerned with the following aspects of SB 649:

- Allows wireless providers to control the aesthetics of local neighborhoods by preempting local decision-making related to the placement of "small cell" structures on any public property, such as light fixtures in residential neighborhoods;
- Requires the Board of Supervisors to adopt a resolution showing "substantial evidence" that the county needs to utilize public property in order to reserve space for county communication needs, or it must be leased to the wireless providers;
- Forces local governments to rent space for "small cells" on public property at a capped rate far below fair market value, incentivizing increased wireless deployment in more urbanized and high property value areas of the State, and further exacerbating the digital divide between those with economic opportunity and the economically disadvantaged;
- Lacks a wireless deployment requirement, and expressly prohibits a county from negotiating increased broadband services as a condition of a "small cell" permit;

- Allows for “feasible design and colocation standards” as a condition of “small cell” installation. This language is ambiguous and will cause complications in implementation;
- Provides that the definition of “small cells” is not inclusive of ALL infrastructure necessary to support 5G technology. In addition to the 21 cubic feet of associated equipment, and the six cubic feet of antennas, there are no limitations on the following: electric meters and any required demarcation box, concealment elements, any telecommunications demarcation box, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs; and,
- Excludes “small cell” facilities placed in historic districts and the coastal zones, thereby allowing those regions to negotiate for facility designs that increase the value of their community, while continuing to allow unsightly wireless facilities in our inland, underprivileged, and rural communities.

Given that many jurisdictions may not have even processed a “small cell” permit yet, or only handled a small number of such permits, Humboldt County is unclear the objective of this bill. If the goal is to provide a more streamlined statewide process, it may be more beneficial to require the Office of Planning and Research to develop a model ordinance or guidance for both jurisdictions and providers to use, rather than passing legislation at this time.

The wireless industry continues to push legislation every year to further remove local government’s discretion over wireless structures. A better approach would be one that encourages coordination and up-front planning to ensure that wireless technology can be deployed as quickly as possible but with consideration for aesthetics, public safety, and the environment. SB 649 does not create jobs, but instead erodes local control of community aesthetics and devalues taxpayer invested public property.

For these reasons and others, Humboldt County has adopted an oppose position to your SB 649.

Sincerely,

Virginia Bass, Chair
Humboldt County Board of Supervisors

cc: Members, Assembly Committee on Local Government
Angela Mapp, Consultant, Local Government Committee
Rural County Representatives of California



SB-649 Wireless telecommunications facilities. (2017-2018)

SHARE THIS:



Date Published: 05/02/2017 09:00 PM

AMENDED IN SENATE MAY 02, 2017

AMENDED IN SENATE MARCH 28, 2017

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL

No. 649

**Introduced by Senator Hueso
(Principal coauthor: Assembly Member Quirk)
(Coauthor: Senator Dodd)**

February 17, 2017

An act to amend Section 65964 of, and to add Section 65964.2 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, ~~not~~ *not* subject *only* to a *specified permitting process adopted by a city or county discretionary permit, 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 ~~administrative permit~~ *encroachment permit or a building permit, and any additional ministerial permits*, for a small cell, as specified. The bill would define the term "small cell" for these purposes.

Under existing law, a city or county, as a condition of approval of an application for a permit for construction or reconstruction of a development project for a wireless telecommunications facility, may not require an escrow deposit for removal of a wireless telecommunications facility or any component thereof, unreasonably limit the duration of any permit for a wireless telecommunications facility, or require that all wireless telecommunications facilities be limited to sites owned by particular parties within the jurisdiction of the city or county, as specified.

This bill would require permits for these facilities to be renewed for equivalent durations, as specified.

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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

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

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

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

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

(f) Grants providers fair, reasonable, nondiscriminatory, and nonexclusive access to locally owned utility poles, ~~street lights,~~ *streetlights*, and other suitable host infrastructure located within the public right-of-way and in other local public places such as stadiums, parks, campuses, hospitals, transit stations, and public buildings consistent with all applicable health and safety requirements, including Public Utilities Commission General Order 95.

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

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

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

SEC. 2. Section 65964 of the Government Code is amended to read:

65964. As a condition of approval of an application for a permit for construction or reconstruction for a development project for a wireless telecommunications facility, as defined in Section 65850.6, a city or county shall not do any of the following:

(a) Require an escrow deposit for removal of a wireless telecommunications facility or any component thereof. However, a performance bond or other surety or another form of security may be required, so long as the amount of the bond security is rationally related to the cost of removal. In establishing the amount of the security, the city or county shall take into consideration information provided by the permit applicant regarding the cost of removal.

(b) Unreasonably limit the duration of any permit for a wireless telecommunications facility. Limits of less than 10 years are presumed to be unreasonable absent public safety reasons or substantial land use reasons.

However, cities and counties may establish a build-out period for a site. A permit shall be renewed for an equivalent duration 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.

(c) Require that all wireless telecommunications facilities be limited to sites owned by particular parties within the jurisdiction of the city or county.

SEC. 3. Section 65964.2 is added to the Government Code, to read:

65964.2. (a) A small cell shall be a permitted use ~~not~~ subject *only* to a *permitting process adopted by a city or county-discretionary-permit pursuant to subdivision (b)* if it satisfies the following requirements:

(1) 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.

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

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

(b) (1) A city or county may require that the small cell be approved pursuant to ~~a single administrative permit a building permit or its functional equivalent in connection with placement outside of the public right-of-way or an encroachment permit or its functional equivalent issued consistent with Sections 7901 and 7901.1 of the Public Utilities Code for the placement in public rights-of-way, and any additional ministerial permits, provided that the permit is all permits are issued within the time-frames~~ *timeframes* required by state and federal law.

(2) ~~An administrative permit-~~ *Permits issued pursuant to this subdivision* may be subject to the following:

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

(B) ~~The submission of-~~ *A requirement to submit* additional information showing that the small cell complies with the Federal Communications Commission's regulations concerning radio frequency emissions referenced in Section 332(c)(7)(B)(iv) of Title 47 of the United States Code.

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

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

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

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

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

(3) ~~The administrative permit-~~ *Permits issued pursuant to this subdivision* shall not be subject to:

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

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

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

(D) The regulation of any ~~antennas micro wireless facilities~~ *mounted on-cable-stands- a span of wire.*

(c) A city or county shall not preclude the leasing or licensing of its vertical infrastructure located in public right-of-way or public utility easements under the terms set forth in this paragraph. Vertical infrastructure shall be made available *for the placement of small cells* under fair and reasonable fees, terms, and ~~conditions and offered~~

~~on a nondiscriminatory basis for small cells. Fees shall be cost-based, and shall not exceed the lesser of either of the following conditions, which may include feasible design and collocation standards. A city or county may reserve capacity on vertical infrastructure if the city or county adopts a resolution finding, based on substantial evidence in the record, that the capacity is needed for projected city or county uses. Fees shall be tiered or flat and within a range of \$100 to \$850 per small cell per year, indexed for inflation from the effective date of this section.~~

~~(1) The costs of ownership of the percentage of the volume of the capacity of the vertical infrastructure rendered unusable by a small cell.~~

~~(2) The rate produced by applying the formula adopted by the Federal Communications Commission for telecommunications pole attachments in Section 1.1409(e)(2) of Part 47 of the Code of Federal Regulations.~~

~~(d) A city or county shall not unreasonably discriminate in the leasing or licensing of *against the deployment of a small cell on property owned by the city or county and shall make space available on property not located in the public right-of-way owned or operated by the city or county for installation of a small cell.* A city or county shall authorize the installation of a small cell on property owned or controlled by the city or county not located within the public right of way to the same extent the city or county permits access to that property for *under terms and conditions that are no less favorable than the terms and conditions under which the space is made available for comparable commercial projects or uses.* These installations shall be subject to reasonable and nondiscriminatory rates, terms, and ~~conditions~~ *conditions, which may include feasible design and collocation standards.*~~

~~(e) Nothing in this section shall be construed to alter, modify, or amend any franchise or franchise requirements under state or federal law.~~

~~(e)~~

~~(f) For purposes of this section, the following terms have the following meanings:~~

~~(1) (A) "Small cell" means a wireless telecommunications facility, as defined in Section 65850.6, using licensed or unlicensed spectrum that meets the following qualifications:~~

~~(i) Any individual antenna, *All antennas on the structure, 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.*~~

~~(ii) (I) 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 nonpole 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.~~ *provided that any individual piece of associated equipment or pole structures do not exceed nine cubic feet.*~~

~~(II) The following types of associated ancillary equipment are not included in the calculation of equipment volume:~~

~~(ia) Electric meters and any required pedestal.~~

~~(ib) Concealment elements.~~

~~(ic) Any telecommunications demarcation box.~~

~~(id) Grounding equipment.~~

~~(ie) Power transfer switch.~~

~~(if) ~~Cut-off~~ Cutoff switch.~~

~~(ig) Vertical cable runs for the connection of power and other services.~~

~~(B) "Small cell" includes a micro wireless facility that is no larger than 24 inches long, 15 inches in width, 12 inches in height, and that has an exterior antenna, if any, no longer than 11 inches.~~

~~(B)~~

(C) "Small cell" does not include ~~communications infrastructure extending beyond the telecommunications demarcation box~~ either of the following:

(i) Coaxial or fiber optic cables that do not exclusively provide service to that small cell.

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

(2) (A) "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 meant for, or used in whole or in part for, communications service, electric service, lighting, traffic control, signage, or similar functions.

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

(g) Existing agreements regarding the leasing or licensing of vertical infrastructure entered into prior to the effective date of this section remain in effect, subject to applicable termination provisions. The operator of a small cell may accept the rates of this section for small cells that are the subject of an application submitted after the agreement is terminated pursuant to the terms of the agreement.

(h) Nothing in this section shall be construed to impose an obligation to charge a use fee different than those authorized by Part 2 (commencing with Section 9510) of Division 4.8 of the Public Utilities Code on a local publicly owned electric utility.

(f)

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

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