



To: RCRC Board of Directors
From: Tracy Rhine, Legislative Advocate
Date: June 19, 2017
Re: Senate Bill 649 (Hueso) – “Small Cell” Wireless Infrastructure Permitting

Summary

This memo provides information on Senate Bill 649, authored by Senator Ben Hueso (D-San Diego), which would require counties to lease public property for placement of wireless “small cell” structures for a fee set by the Legislature.

Background

Fifth generation (5G) technology networks will not be widely available until 2019; however, wireless carriers are preparing for deployment by sponsoring legislation across the country, including SB 649, that will streamline “small cell” facility siting. 5G technology will deliver faster internet speeds with greater capacity than the current 4G LTE technology. However, because standards for 5G technology have yet to be developed, it is unclear exactly what the technology will offer. What is known is that this technology will require more facilities, at closer intervals, to deliver the benefits. “Small cell” facilities, unlike their 200 foot macro tower predecessor, utilize much less space, and can be deployed in urbanized settings by attaching to existing vertical infrastructure, such as utility and light poles. These structures are as large as 28 cubic feet in volume without antennas, which can account for an additional six cubic feet. “Small cell” facilities also include accessory equipment such as power boxes, which are outside the structure.

Because the 5G technology will require more wireless structures, within closer proximity to each other, large telecommunication providers such as AT&T and Verizon will need more space to attach these “small cell” facilities. Current law provides a permitting process for the siting of wireless facilities on property, including utility poles. Wireless providers must apply to the city or county for permits to build structures for wireless facilities and to attach equipment to existing structures where equipment already exists, known as “collocation.” Local governments are required to approve collocation siting “ministerially,” meaning that the review is procedural, and not discretionary. Most collocation occurs on investor-owned utility poles or municipal utility poles, as state and federal law allows telecommunication companies the right to access these structures in the public right-of-way.

Recent legislation (Assembly Bill 57 Chapter 685, Statute of 2015), also sponsored by the wireless industry, imposed a “shot clock” on local jurisdictions when siting wireless facilities. Specifically, AB 57 required local jurisdictions to approve, or disapprove, “small cell” collocation or siting applications within 90 days of submission, or the application is automatically approved. At the time, the wireless industry argued that delays by local government permitting processes posed significant challenges to keeping pace with the demand for wireless services, and AB 57 would give the industry certainty on timelines they needed to build additional wireless facilities.

Issue

SB 649 attempts to apply the framework for collocation on utility poles to publicly-owned infrastructure. Currently, telecommunications companies have the right to place wireless equipment on utility poles in the public right-of-way through a ministerial permitting process, at cost-base rates. SB 649 will go even further and give telecommunications companies the same unfettered rights to publicly-owned infrastructure, inside and outside of the public right-of-way. Specifically, SB 649 does the following:

- Requires the mandatory lease of publicly-owned vertical infrastructure in the public right-of-way and public property in any zone that includes commercial or industrial outside the public right-of-way for placement of “small cell” facilities;
- 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;
- Requires a ministerial permitting process for these “small cell” facilities;
- Requires fees for the leasing of property for “small cell” facilities be capped at \$850 per cell, per year;
- Prohibits agreements with telecommunication companies to include any public benefit (e.g. reserving fiber, increased deployment or services to the public);
- 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, 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.

Although SB 649 has a long list of opposition, primarily from local governments, the bill has only received one “No” vote (Senator Steven Glazer, D-Orinda) in the Senate. As a condition of the bill moving off of the Senate floor, an agreement was made between Senator Hueso and Senator Mike McGuire (D-Healdsburg) to amend the fee cap currently

in the bill. Those amendments are not yet in print, but the language is expected to set up a scheme that will, on average, cap fees at around \$350 per cell site.

Staff Recommendation

RCRC staff recommends that individual Board Members bring this issue forward in their respective counties in order to take an “Oppose” position on SB 649. Additionally, RCRC staff recommends Board Members directly contact their Assembly representative and ask for a “No” vote on this legislation. SB 649 is awaiting hearing in Assembly Local Government Committee.

Attachments

- Copy of SB 649 (Hueso)
- Coalition Opposition Letter
- Individual County Opposition Template Letter