

California

DEPARTMENT OF FINANCE BILL ANALYSIS

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AMENDMENT DATE: 07/18/2017

POSITION: Oppose

BILL NUMBER: SB 649

AUTHOR: Hueso, Ben

BILL SUMMARY: Wireless telecommunications facilities.

This bill replaces local government permitting authority for small cell wireless facilities with statewide permitting requirements and rates.

FISCAL SUMMARY

If this bill is enacted and a test claim is filed with the Commission on State Mandates, the Commission may determine the bill imposes reimbursable, state-mandated costs on local agencies.

The potential state mandate would stem from (1) the bill's \$250 limit on the annual lease charge that cities and counties can impose on each small cell device attached to its vertical infrastructure, and (2) a formula that limits the annual attachment fees that cities and counties may charge for each small cell device attached to its vertical infrastructure. If the Commission determines the lease and fee revenue derived under these caps is insufficient to fund the claimants' actual inspection and maintenance costs, the difference would be state-reimbursable.

While the extent of the potential mandate is unknown, Finance believes it can easily approach \$1 million per year.

COMMENTS

Finance opposes this bill. While statewide uniform rules can help the expansion of new technologies, this bill goes too far by usurping city and county zoning authority for infrastructure development, and it potentially imposes reimbursable, state-mandated costs on cities and counties.

We also note the bill poses equity and access concerns. The bill gives telecommunications providers the power to determine where they deploy small cell technologies, which can be highly localized. Providers may cover high-demand neighborhoods first, while low-income neighborhoods may be left underserved. This arrangement follows in the path of high-speed internet service, which has led to uneven access for rural and lower-income areas. Under current law, cities and counties can require, as part of their permitting process, that small cell providers incorporate rural and lower-income areas into their service networks. By pre-empting local government authority, this bill also limits city and county tools to address those equity issues.

ANALYSIS

1. Programmatic Analysis

Under current law, cities and counties have broad authority to permit the placement of small cell devices within their jurisdictions, and to impose fees and conditions on those placements. Small

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Department Deputy Director			Date
Governor's Office:	By:	Date:	Position Approved _____ Position Disapproved _____
BILL ANALYSIS			Form DF-43 (Rev 03/95 Buff)

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cell devices are devices that transmit mobile and wireless signals.

This bill significantly limits the ability of cities and counties to govern the placement of small cell devices within their jurisdictions. The bill also limits the fees and conditions that cities and counties may impose on small cell device owners for the privilege of installing the devices. Most significantly, the bill does the following:

- States that under most circumstances, small cell devices shall be a permitted use that is no longer subject to city or county approval.
- Authorizes cities and counties to require building permits, or their functional equivalents, for small cell devices placed outside the public rights-of-way, provided the permits are issued within the timeframes required by state and federal law. These permits shall not be subject to any of the following requirements:
 - That the small cell device owner provide additional services.
 - The submission of additional information, other than that required for similar construction projects.
 - Limitations on routine maintenance or on the replacement of the small cell devices with devices that are substantially similar.
- Prohibits cities and counties from imposing permitting requirements or fees on micro wireless facilities that are suspended on communications cables strung between utility poles.
- Prohibits cities and counties from precluding the leasing or licensing of their vertical infrastructure, located in public rights-of-way or utility easements, for small cell device purposes.
- Limits the fees that cities and counties may charge for small cell device placement as follows:
 - An annual charge capped at \$250 for each small cell device attached to their vertical infrastructure.
 - An annual attachment rate calculated pursuant to a statutory formula. The bill also prescribes the process by which cities and counties may increase this fee.
 - A one-time reimbursement fee for the actual costs the city or county incurs for rearrangements performed at the request of the small cell device owner.
- Prohibits cities and counties from discriminating against the placement of small cell devices on city or county-owned property, and requires cities and counties to make space available on property not located on public rights-of-way under terms and conditions no less favorable than those for comparable commercial uses.
- Authorizes existing agreements cities and counties have executed with small cell device owners to remain in place, subject to applicable termination provisions.

Currently, Article XI of the California Constitution vests local governments with discretion to make and enforce ordinances and regulations that do not conflict with general laws. Accordingly, cities and counties have a patchwork of negotiated permits with telecommunications service providers. This bill largely carves out the permitting of small cell wireless facilities from local government jurisdiction. Instead, this bill creates uniform rules for the rates and fees that local governments are allowed to levy

ANALYSIS (continued)

on small cell wireless facilities. This limits local government's power to adapt the fees to their existing costs. This bill also prevents local governments from addressing community concerns about small cells, such as the aesthetic impact small cells may have on a locality.

In addition to usurping local control and creating state-mandated costs, this bill poses equity and access concerns. The bill gives telecommunications providers the power to determine where they deploy small cell technologies, which can be highly localized. Providers may cover high-demand neighborhoods first, while low-income neighborhoods may be left underserved. This arrangement follows in the path of high-speed internet service, which has led to uneven access for rural and lower-income areas. Under current law, cities and counties can require, as part of their permitting process, the small cell providers timely incorporate rural and lower-income areas into their service networks.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)					Fund Code	
	LA	(Dollars in Thousands)						
	CO	PROP						
	RV	98	FC	2017-2018	FC	2018-2019	FC	2019-2020
0001/Major Rev	LA	No	C	--	C	1-1,000	C	1-1,000 0001