Contra Costa County

To: Board of Supervisors

From: David Twa, County Administrator

Date: July 11, 2017

Subject: SCA 12 (Mendoza) and SB 649 (Hueso): Oppose bills

RECOMMENDATION(S):

OPPOSE state bills SCA 12 (Mendoza): Counties: Governing Body: County Executive and SB 649 (Hueso): Wireless Telecommunications Facilities, as recommended by the County Administrator.

FISCAL IMPACT:

SB 649:

- **Cap on Fees.** Establishes a fee structure based on utility pole attachment rates and prohibits a local jurisdiction from receiving additional revenue for the lease of public property (Section 3). Adds an administrative permit fee of $250, capping the funding available to cover the costs of the permitting process of small cells (Section 3).

- **Limits Ability of Local Governments to Negotiate for Public Benefit**. This bill would prohibit a city or county from requiring any in-kind contribution or public benefit. The City of Sacramento was recently able to offer 100 poles for free in exchange for free wifi in 27 local parks. This bill would eliminate other local

☑ APPROVE ☐ OTHER

☑ RECOMMENDATION OF CNTY ADMINISTRATOR ☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **07/11/2017** ☑ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: July 11, 2017

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: L. DeLaney, 925-335-1097

cc:

governments from being able to negotiate similar benefits.

FISCAL IMPACT: (CONT'D)

SCA 12: SCA 12's fiscal impact on counties would be staggering even when setting aside the associated elections costs for each of the 58 counties to include the proposed measure on a statewide ballot.

One-time costs following a census report would be in the millions of dollars to reorganize and renovate office space to accommodate supervisors and staff, equip new offices, and update the board chambers and public meeting space. In addition, the estimated ongoing cost of operations would easily exceed the baseline year. Despite the new cost pressures, SCA 12 states that no new expenditures can be made above the county's 2020-21 expenditure level except for extenuating circumstances in 2020-21 or for adjustments to the Consumer Price Index

BACKGROUND:

Due to issues of Committee meeting timing, these bills are being sent directly to the Board of Supervisors for action. SCA 12 and SB 649 are both opposed by the California State Association of Counties (CSAC), who is requesting additional letters of opposition from counties to these bills.

Summary of SCA 12 (Mendoza)

SCA 12 would require a county with a population of five million or more after the 2020 census to expand the number of supervisorial districts, if approved by a statewide vote. It would also create a directly elected county executive officer position in these counties. Decisions seeking to change local government representation should be made by those most directly impacted by the outcome of such a decision – the voters of that local jurisdiction. Furthermore, the arbitrary spending caps imposed on impacted counties runs counter to the intent of the measure to improve county representation. SCA 12 imposes a top-down approach that is hampered by technical issues and policy that weakens local authority. Making matters worse, the budget approval process as outlined in SCA 12 ignores existing state statute, public opportunities for input on a proposed county budget, and the adopted fiscal year used by all 58 counties.

The bill text can be found at:
http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1250

Summary of SB 649 (Hueso)

This bill would require cities and counties to lease all of our vertical infrastructure (street lights and poles) to the wireless industry, cap our rates for the mandatory leases at approximately $250 per pole, limits design review or the placement of the poles by local government, and deregulates the entire wireless industry (including cable) from any local government regulation, fee or tax.

The text of the bill can be found at:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB649

2017 CA SCA 12: Bill Analysis - 06/21/2017 - Senate Governance and Finance Committee

SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair

2017 - 2018 Regular
Bill No: SCA 12 Hearing Date: 6/21/17 Author: Mendoza Tax Levy: No Version: 4/27/17
Fiscal: No Consultant: Favorini-Csorba
Counties: governing body: county executive

Requires a county with a population greater than 5 million residents after the 2020 U.S. census to have an elected county executive and a larger governing body.

Background

Counties fall into two types: "general law" and "charter." General law counties are organized according to the generally applicable laws for county governance established by the Legislature that set the number, appointment, and election procedures for county officials, including the board of supervisors. General law counties must also adhere to state laws which require county employees to perform most county functions and restrict counties' ability to contract-out for services. In addition, the California Constitution requires all counties to elect a sheriff, district attorney, assessor, and board of supervisors. All counties elect or appoint additional county officials.

Charter counties have greater leeway to determine their own governance structure. If a county adopts its own voter-approved charter, the California Constitution requires the county to have a directly elected board of supervisors with at least five members, but a majority of voters can increase this number by amending the charter. A new charter, or the amendment of an existing charter, may be proposed by the Board of Supervisors, a charter commission, or an initiative petition. The Constitution allows charter counties to elect their supervisors by districts, from districts, or at large.

There are 14 charter counties: Alameda, Butte, El Dorado, Fresno, Los Angeles, Orange, Placer, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, and Tehama. San Francisco, a city and county, elects its 11 supervisors by districts. The other charter counties elect their five-member boards of supervisors by districts. Most large counties are charter counties: eight of the ten largest counties by population have adopted charters.

Five counties have populations of more than 2 million residents: Los Angeles (10.1

million), San Diego (3.2 million), Orange (3.1 million), Riverside (2.3 million), and San Bernardino (2.1 million). In large counties, some observers complain that the size of the supervisorial districts result in unrepresentative democracy. Each Los Angeles County supervisor represents nearly 2 million constituents, which is larger than the countywide population in 53 of California's 58 counties.

Although voters can amend their county's charter to expand the number of supervisors, there are no recent successes:

* On November 6, 1962, Los Angeles County voters rejected Proposition D, which would have expanded the Board of Supervisors from five members to seven members.

* At the November 2, 1976 General Election, Los Angeles County voters rejected Proposition B, which would have expanded the Board of Supervisors from five members to nine members.

* Proposition C on the November 3, 1992 ballot, would have increased the Los Angeles County Board of Supervisors from five to nine members, failed by a margin of about two-to-one.

* On the March 26, 1996 primary ballot, voters in Orange County rejected Measure U, a charter proposal to expand the board of supervisors from five members to nine members.

* On November 7, 2000, more than 64% of Los Angeles County voters rejected Measure A, which would have increased the number of county supervisors from five to nine.

County Governance. The board of supervisors has the legislative power to enact ordinances and resolutions for the county. Unlike the state and federal legislatures, however, the board of supervisors also has executive and judicial powers (except in the City and County of San Francisco, which elects a mayor as the chief executive). In its executive role, the board oversees the operations and budgets of county departments, sets priorities for programs, has sole approval over the county's budget, supervises the conduct of other officials, and controls county property. Finally, the board has quasi-judicial power to resolve claims against the county in certain circumstances and may adjudicate appeals for permits and other land use approvals.

Among other roles, the board of supervisors appoints a county administrative officer (CAO) or similarly titled position that heads the executive branch, directs the operations of county departments and performs administrative tasks. The specific authorities that the board of supervisors grants to a CAO can vary by county. The CAO generally prepares the budget and coordinates the actions of department heads but may also assist with labor negotiations on behalf of the board and act as the chief financial officer (along with other county officers such as the treasurer-tax collector and auditor-controller). Department heads may report directly to the board of supervisors or to the CAO. For example, under Los Angeles County's current system, all 34 appointed department heads report directly to the board,

while in Orange County, most department heads report to the CAO equivalent in that county: the "County Executive Officer."

The Senate Governance and Finance Committee and the Senate Elections and Constitutional Amendments Committee held an informational hearing on October 27, 2016 to explore several issues associated with county governance, including:

* Should the size of county boards of supervisors be increased? If so, by how much, and should the county's population or other demographics be a determining factor?

* Should counties, like some other jurisdictions, have an elected executive? If so, what should their duties and powers entail?

* Assuming changes should be made, what role should the state play in enacting those changes? Is it more appropriate for them to be addressed solely by the counties and their voters?

Some observers suggest that the governance structure in California's most populous counties has not adapted to meet new challenges brought on by recent demographic changes and demands placed on those counties as populations have grown. They want the Legislature to propose an amendment to the California Constitution that, if approved by California voters, would expand the Los Angeles Board of Supervisors to at least seven members and would establish an elected county executive position.

Proposed Law

Senate Constitutional Amendment 12 establishes a larger board and an elected county executive in each county with a population of more than 5 million residents at a decennial United States census, beginning with the 2020 United States census. Specifically, by January 1, 2022 the governing board of such a county must consist of enough members so as to ensure that each member represents a population equivalent to no more than two districts in the United States House of Representatives. SCA 12 requires all members of the board to be elected by district and to reside within the district that the member represents and limits board members to serving no more than 3 terms of 4 years each. Any additional members must be elected at a general election on or after January 1, 2022 and must follow the same terms and laws applicable to the other members, except that the terms of no more than half of the additional members can be shortened to provide for staggered terms.

SCA 12 also requires a county with more than 5 million residents to have an elected executive, who may serve no more than 2 terms of 6 years each and who must be elected at a general election. SCA 12 grants that executive several powers, including to:

* Appoint, supervise, and dismiss any person appointed to the position of department head or its equivalent;

* Appoint--subject to confirmation by the governing body of the county--the members of

any commission of the county, and;

* Develop and submit an annual budget to the county.

SCA 12 requires the elected county executive to submit an annual budget to the board within 45 days of the adoption of the state budget. Within 90 days of receipt, the board must review and approve the budget, with or without amendments, and transmit it to the county executive for approval. The county executive must, within 15 days, either approve the budget as transmitted by the board, or approve the budget with any line-item vetoes, and then return the budget to the board. SCA 12 allows either the county executive or the board to propose an amendment to the budget, which must be approved by a two-thirds vote of the board. SCA 12 allows the board to override any line-item vetoes within 15 days of such vetoes with a two-thirds vote. SCA 12 also allows the board, after providing 30 days' notice, to override the hiring or dismissal of any department head with a two-thirds vote.

In a county with a population of more than 5 million residents, SCA 12 caps expenditures for the governing board and its staff at the amount budgeted for the fiscal year after the census in which the county population exceeds 5 million residents. SCA 12 further requires the budget for the newly-created elected county executive to be based on the budget of the county's existing chief executive officer or equivalent in the year that SCA 12 is approved by the voters. Both the county executive and the board's budget may subsequently be increased to account for inflation and to address contingencies unaccounted for during the year the census was conducted or the year SCA 12 is approved by voters, as applicable. SCA 12 also sets the compensation for the county executive at the salary paid to the presiding judge of the superior court.

SCA 12 provides that its provisions are severable and makes other technical and conforming changes to existing constitutional provisions governing: (1) governing board composition, compensation, and method of election; and (2) compensation, terms, and removal of county officers.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. In 1850, Los Angeles County's five-member board of supervisors governed just 3,530 people. Today, five Los Angeles County Supervisors govern more than 10 million county residents, a population larger than most states' populations. Even though charter counties can boost the size of their boards of supervisors and create numerically more representative governments, no recent ballot measure has succeeded. Massive supervisorial districts create barriers to running for a seat on a county board and make it difficult for supervisors to engage with and respond to their constituents. If county government structures don't adapt to the enormous changes in the size, demographic composition, and service needs of their populations, some county residents may become increasingly frustrated and disengaged. The current governance structure also results in

ineffectual policies and counterproductive direction to executive departments, as noted in a 2016 report by the Los Angeles County Grand Jury. SCA 12 will make county governments more responsive and representative by adding two board members and an elected county executive to California's largest county and future-proofs the California Constitution by establishing a formula that will increase the number of seats as county populations increase. SCA 12 also ensures that taxpayer dollars go to services, not administration, by limiting the budgets of the larger board and elected executive.

2. Home rule. Counties adopt voter-approved charters to gain more local control over their governance and employees. Voters in any county can adopt a charter that calls for more county supervisors or an elected county executive. But over a span of more than four decades, Los Angeles County voters have rejected multiple charter amendments that would have expanded the board of supervisors and defeated two prior proposals to elect an executive for Los Angeles County, in 1992 and 1978. If local voters don't support these changes, why should legislators ask voters throughout California to amend the Constitution to tell Los Angeles County residents how to govern themselves? SCA 12 may not be consistent with the home-rule purpose of county charters.

3. The magic number. The extreme ratio between constituents and supervisors can lead to political alienation and a lack of political responsiveness. As a result, large counties may be abdicating a key role of local governments: to be the government closest to the people. SCA 12 attempts to address this by requiring each supervisor to represent no more than the number of people in two congressional districts. Congressional apportionment for California's representatives following the 2010 census resulted in an average district size of 704,565 people, meaning each supervisor in counties of greater than 5 million people could represent up to 1.4 million people. This formula raises a number of questions, including:

* Will SCA 12's formula produce the desired improvements in responsiveness and representativeness? For example, SCA 12 would result in two new seats on the Los Angeles County Board of Supervisors, but a 2016 report by the Los Angeles County Civil Grand Jury recommended adding 6 new seats to that county's board.

* Would a larger board slow down decision-making? A greater number of supervisors may find it more difficult to reach agreement, slowing down the policy-making process and undermining any hoped-for gains. The formula in SCA 12 could further compound these issues by potentially resulting in an even number of supervisors as counties grow.

* Is 5 million people the correct trigger for expanding the board? SCA 12's formula presumes that one supervisor can adequately represent one million people in matters of local government--a ratio smaller than that for the California Assembly. Previous legislative attempts to increase board size (discussed below) would have affected counties with as few as 1.5 million people.

* Is basing the number of seats off of congressional districts the right metric? The House of Representatives has not increased the number of its members since 1911, at which time the

average district was less than a third the size of the average district today. Over time, any gains in representativeness from SCA 12 may be eroded as populations increase. Alternative formulas based more directly on population would maintain a stable ratio between county residents and supervisors.

4. Let's be clear. For counties of over 5 million people, SCA 12 substitutes a formula for the requirement that boards of supervisors must be composed of five or more members. But under the formula in SCA 12, only counties with over 7 million people would be required to add another seat, and counties with between 5 million and 5.6 million people could reduce their board to four and still be in compliance. While no county currently falls within this range, over time, other large counties in California may grow to reach this threshold--and this range may increase if the number of seats in the House of Representatives continues to remain flat. The Committee may wish to consider amending SCA 12 to provide that counties of over 5 million people must have no less than five supervisors or one supervisor for every two congressional districts, whichever is greater.

5. Nudge. One possible way to balance the desire of state legislators to improve the responsiveness and representativeness with local autonomy over governance structures could be to require large counties to periodically hold an election on increasing the number of county supervisors and adding an elected county executive. A recurring election requirement could ensure that the issue of modifying county governance would regularly be placed on voters' agenda without overriding local voter preferences. SCA 17 (Marks, 1993) proposed such an approach. That measure would have required populous charter counties to hold an election on increasing the number of county supervisors--based on the population in the county--after each census. Under SCA 17, voters would be asked to increase the number of supervisors to seven members in counties with 1.5 million to 3 million people, nine members in counties with 3 million to 5 million people, and 11 members in counties with more than 5 million people. SCA 17 died in the Senate Local Government Committee without being heard.

6. Playing politics. Every county has a CAO or equivalent that is an appointed--rather than elected--position. These staff are professional administrators, not politicians. Some counties are concerned that replacing an appointed position with an elected one may result in political dynamics taking priority over policy or administrative expertise. On the other hand, many levels of government function with elected executive positions. Five of California's largest cities have mayors that serve as the head of the executive branch and are elected by a citywide vote: Los Angeles, San Diego, San Francisco, Fresno, and Oakland. Outside of California, many of the largest counties in the nation have elected county executives, including the counties that encompass the cities of Chicago, Houston, Miami, Dallas, Seattle, and Fort Worth. In addition, nearly all counties in Texas, Arkansas, Tennessee, and Kentucky elect their county executives. Some scholars further argue that a CAO that is responsible to five elected officials who may have the narrow interests of their districts in mind may be deprived of the ability to consider the needs of the entire county. A county executive that is elected county-wide may be better positioned to resist these pressures, provide consistent leadership, and implement policies to achieve long-term goals.

7. Who's got the power? An elected county executive could be endowed with a variety of powers, such as the ability to hire and terminate department heads and other personnel, propose a budget, spend money, enter into agreements with other governments, control county property, or veto legislation. Greater authority could enhance the ability of an elected county executive to elevate countywide concerns or break through impasses. But granting too much authority to a single individual might undermine the very separation of powers that the elected executive is intended to strengthen. SCA 12 grants the elected executive the authority to develop the budget and veto line items, and appoint department heads and members of any commissions of the county. The board of supervisors may override any of these decisions with a two-thirds vote. There are other powers that SCA 12 does not grant to the elected county executive but that are common among elected executives at the state and federal level, such as veto authority over legislation. Does this measure strike the right balance of powers for the elected executive?

8. Lean and mean. Some voters may be concerned that increasing the number of supervisors and adding an elected county executive will simply drive up administrative costs without improving service. Accordingly, SCA 12 caps the expenditures of the board and elected executive at the amounts budgeted in the year of the census that triggers SCA 12's provisions, adjusted for inflation and taking account of any contingencies during the fiscal year in which the census was conducted. However, a larger board may incur necessary and prudent administrative costs that increase faster than the rate of inflation. Moreover, an elected county executive that is responsible for exercising the significant powers granted by the bill may reasonably require more staff and other resources than the administrative office that it replaces. These caps may therefore potentially impair county governance and reduce the service provided to county residents. The Committee may wish to consider amending SCA 12 to allow for adjustments due to unforeseen circumstances in future years as well as in the year that the additional seats and county executive are added.

9. Follow the money. The County Budget Act spells out the procedures that county officials must follow when adopting an annual budget. The Act requires counties to use a two-step process in which a board of supervisors must annually approve a recommended budget on or before June 30. The recommended budget provides interim authority for county government spending during the period of time after the fiscal year begins on July 1 and before the board of supervisors adopts a final budget, which must happen on or before October 2. The adopted final budget may be modified due to unforeseen revenues or expenditure needs with approval of four-fifths of the board of supervisors. SCA 12 establishes an alternative schedule for county budget approval in counties with over 5 million residents. This schedule differs substantially from the timeline established by the County Budget Act and could result in a final county budget not being approved until near the end of November, almost five months into the fiscal year. In order to ensure the timely adoption of a county budget, the Committee may wish to consider amending SCA 12 to align more closely with the timelines in the County Budget Act.

10. Prior legislation. In 2015, the Senate Governance and Finance Committee approved

SCA 8 (Mendoza, 2015), which would have expanded the Board of Supervisors in several large counties, although it did not advance from the Senate floor. If it had been passed by the Legislature and approved by voters at a statewide election, the final version of SCA 8 would have required counties with more than three million residents to be governed by a body of seven or more members, beginning with the 2020 decennial United States Census. SCA 8 lacked the elected county executive as proposed in SCA 12, but would have also capped expenditures for the governing body and its staff in those counties at the amount that was allocated for those purposes in the fiscal year after the release of the census finding a population of more than three million people, adjusted for inflation.

SCA 12 is also similar to SCA 7 (Polanco, 1999), which would have expanded the board of supervisors in any charter county with more than 5 million residents from five members to seven members. SCA 7 was passed by the Senate, but died in an Assembly policy committee.

11. Double-referral. The Senate Rules Committee has ordered a double-referral of SCA 12--first to the Senate Governance & Finance Committee which has policy jurisdiction over county governments, and then to the Senate Elections & Constitutional Amendments Committee, which has jurisdiction over all proposed constitutional amendments.

Support and Opposition

(6/15/17)

Support: Unknown.

Opposition: AFSCME; California State Association of Counties; Coalition of County Unions, Los Angeles; County Administrative Officers Association of California; County Behavioral Health Directors Association; County of Los Angeles; County of Orange; County of Riverside; County of San Diego; Los Angeles Area Chamber of Commerce; Los Angeles County Federation of Labor; Los Angeles County Probation Officers Union; Los Angeles Supervisor Sheila Kuehl; NAACP--California; Urban Counties of California; Valley Industry and Commerce Association.

2017 CA S 649: Bill Analysis - 06/28/2017 - Assembly Local Government Committee, Hearing Date 06/28/2017

Date of Hearing: June 28, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 649

(Hueso) - As Amended June 20, 2017

SENATE VOTE: 32-1

SUBJECT: Wireless telecommunications facilities.

SUMMARY: Establishes permitting and leasing requirements for small cell wireless facilities that cities and counties must follow, requires cities and counties to automatically renew permits for wireless facilities generally, and makes a number of other changes to law governing small cell wireless facilities. Specifically, this bill:

1) Requires a small cell to be a permitted use subject only to a permitting process adopted by a city or county pursuant to 2), below, if it satisfies the following requirements:

a) The small cell is located in the public rights-of-way in any zone or in any zone that includes a commercial or industrial use;

b) The small cell complies with all applicable federal, state, and local health and safety regulations, including the federal Americans with Disabilities Act (ADA); and,

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

2) Allows a city or a county to require that the small cell be approved pursuant to a building permit or its functional equivalent in connection with placement outside of the public rights-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 all permits are issued within the timeframes required by state and federal law.

3) Allows permits issued pursuant to 2), above, to be subject to the following:

a) The same permit requirements as for similar construction projects and applied in a nondiscriminatory manner;

b) A requirement to submit additional information showing that the small cell complies with the Federal Communications Commission's (FCC) regulations concerning radio frequency emissions, as specified;

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 rescission;

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; and,

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

4) Prohibits permits issued pursuant to 2), above, from being 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 bill;

c) Limitations on routine maintenance or the replacement of small cells with small cells that are substantially similar, the same size or smaller; and,

d) The regulation of any micro wireless facilities mounted on a span of wire.

5) Prohibits a city or county from imposing permitting requirements or fees on the installation, placement, maintenance, or replacement of micro wireless facilities that are suspended, whether embedded or attached, on cables or lines that are strung between existing utility poles in compliance with state safety codes.

6) Prohibits a city or county from precluding the leasing or licensing of its vertical infrastructure located in public rights-of-way or public utility easements under these terms:

a) Vertical infrastructure shall be made available for the placement of small cells under fair and reasonable fees [subject to the requirements in 7), below], terms, and conditions, which may include feasible design and collocation standards; and,

b) 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.

7) Provides that a city or county may charge the following fees:

a) An annual administrative permit fee not to exceed $250 for each small cell attached to city or county vertical infrastructure; and,

b) An annual attachment rate that does not exceed an amount resulting from the following requirements:

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

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

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

8) Provides the following definitions for purposes of the annual attachment rate described in 7) b), above:

a) "Annual costs of ownership" means the annual capital costs and annual operating costs of the vertical infrastructure, which shall be the average costs of all similar vertical infrastructure owned or controlled by the city or county. The basis for the computation of annual capital costs shall be historical capital costs less depreciation. The accounting upon which the historical capital costs are determined shall include a credit for all reimbursed capital costs. Depreciation shall be based upon the average service life of the vertical infrastructure. Annual cost of ownership does not include costs for any property not necessary for use by the small cell; and,

b) "Usable space" means the space above the minimum grade that can be used for the attachment of antennas and associated ancillary equipment.

9) Requires a city or a county to comply with the following before adopting or increasing the rate described in 7) b), above:

a) At least 14 days before the hearing described in c), below, the city or county shall provide notice of the time and place of the meeting, including a general explanation of the matter to be considered;

b) At least 10 days before the hearing described in c), below, the city or county shall make available to the public data indicating the cost, or estimated cost, to make vertical structures available for use under this bill if the city or county adopts or increases the proposed rate;

c) The city or county shall, as a part of a regularly scheduled public meeting, hold at least one open and public hearing at which time the city or county shall permit the public to make oral or written presentations relating to the rate. The city or county shall include a description of the rate in the notice and agenda of the public meeting in accordance with the

Ralph M. Brown Act (Brown Act); and,

d) The city or county may approve the ordinance or resolution to adopt or increase the rate at a regularly scheduled open meeting that occurs at least 30 days after the initial public meeting described in c), above.

10) Requires a judicial action or proceeding to attack, review, set aside, void, or annul an ordinance or resolution adopting, or increasing, a fee described in 7), above, to be commenced within 120 days of the effective date of the ordinance or resolution adopting or increasing the fee, as specified.

11) Specifies that this bill does not prohibit a wireless service provider and a city or county from mutually agreeing to an annual administrative permit fee or attachment rate that is less than the fees or rates established in this bill.

12) Prohibits a city or county from discriminating against the deployment of a small cell on property owned by the city or county and requires a city or a county to make space available on property not located in the public rights-of-way 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, which may include feasible design and collocation standards.

13) Provides that this bill does not alter, modify, or amend any franchise or franchise requirements under state or federal law, as specified.

14) Provides that existing agreements between a wireless service provider, or its agents and assigns, and a city, a county, or a city or county's agents and assigns, regarding the leasing or licensing of vertical infrastructure entered into before the operative date of this section remain in effect, subject to applicable termination or other provisions in the existing agreement, or unless otherwise modified by mutual agreement of the parties. A wireless service provider may require the rates of this section for new small cells sites that are deployed after the operative date of this section in accordance with applicable change of law provisions in the existing agreements.

15) Provides that nothing in this bill shall be construed to authorize or impose an obligation to charge a use fee different than that authorized by existing law on a local publicly owned electric utility.

16) Provides that this bill does not change or remove any obligation by the owner or operator of a small cell to comply with a local publicly owned electric utility's reasonable and feasible safety, reliability, and engineering policies.

17) Requires a city or a county to consult with the utility director of a local publicly owned electric utility when adopting an ordinance or establishing permitting processes consistent

with this bill that impact the local publicly owned electric utility.

18) States that, except as provided in 1) through 5), above, nothing in this bill shall be construed to modify the rules and compensation structure that have been adopted for an attachment to a utility pole owned by an electrical corporation or telephone corporation, as specified, including, but not limited to, decisions of the PUC adopting rules and a compensation structure for an attachment to a utility pole owned by an electrical corporation or telephone corporation, as specified.

19) Provides that nothing in this bill shall be construed to modify any applicable rules adopted by the Public Utilities Commission, including General Order 95 requirements, regarding the attachment of wireless facilities to a utility pole owned by an electrical corporation or telephone corporation, as specified.

20) Prohibits a city or county from adopting or enforcing any regulation on the placement or operation of communications facilities in the rights-of-way by a provider authorized by state law to operate in the rights-of-way, and from regulating any communications services or imposing or collecting any tax, fee, or charge not specifically authorized under state law, with specified exceptions.

21) Amends existing law that governs permits for wireless telecommunications facilities (not just small cells), which allows cities and counties to limit permits to 10 years, by requiring permits to be renewed for equivalent durations, 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.

22) Provides the following definitions:

a) "Micro wireless facility" means a small cell 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) "Small cell" means a wireless telecommunications facility (as defined in existing law to mean equipment and network components such as towers, utility poles, transmitters, base stations, and emergency power systems that are integral to providing wireless telecommunications services), or a wireless facility that uses licensed or unlicensed spectrum and that meets the following qualifications:

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

b.ii) Any individual piece of associated equipment on pole structures does not exceed nine cubic feet;

b.iii) The cumulative total of associated equipment on pole structures does not exceed 21

cubic feet;

b.iv) The cumulative total of any ground-mounted equipment along with the associated equipment on any pole or nonpole structure does not exceed 35 cubic feet; and,

b.v) The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters and any required pedestal; concealment elements; any telecommunications demarcation box; grounding equipment; power transfer switch; cutoff switch; vertical cable runs for the connection of power and other services; and, equipment concealed within an existing building or structure;

c) "Small cell" includes a micro wireless facility;

d) "Small cell" does not include the following:

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

d.ii) Coaxial or fiber optic cables that are not immediately adjacent to or directly associated with a particular antenna or collocation;

d.iii) 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; or,

d.iv) The underlying vertical infrastructure.

e) "Vertical infrastructure" means all poles or similar facilities owned or controlled by a city or county that are in the public rights-of-way or public utility easements and meant for, or used in whole or in part for, communications service, electric service, lighting, traffic control, or similar functions. 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.

23) Finds and declares that, to ensure that communities across the state have access to the most advanced communications technologies and the transformative solutions that robust wireless and wireline 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 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, streetlights, and other suitable host infrastructure located within the public rights-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, 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; and,

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

24) Finds and declares that small cells, as defined in this bill, 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.

25) Provides that no reimbursement is required by this bill 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, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement. According to the author, "SB 649 recognizes the public-policy benefit and exploding consumer demand for greater, faster access to next-generation wireless networks - and establishes a reliable and standardized process for siting the physical infrastructure necessary to meet that demand. For California to remain technologically competitive and to ensure the benefits of innovation are reaching every community, we must do all we can - as fast as we can - to make next-generation 5G wireless networks a reality.

"In fact, recent studies have shown that widespread 5G investment in California will generate billions in economic growth and billions more in savings from wireless-enabled smart community solutions - lowered energy use, reduced traffic and fuel costs and improved public safety applications. But building the wireless network of tomorrow requires the rapid deployment of small cell structures. SB 649 does not affect the ability of local governments to manage its public rights of way or to impose reasonable fees, terms and conditions to access to city or county owned property. This bill is designed to benefit California consumers and businesses, who have overwhelmingly told us that they want California to stay at the forefront of the wireless economy."

This bill is sponsored by CTIA.

2) Small Cells. According to an FCC report and order released in 2014, "The increasing demand for advanced wireless services and greater wireless bandwidth is driving an urgent and growing need for additional infrastructure deployment and new infrastructure technologies. To meet localized needs for coverage and increased capacity in outdoor and indoor environments, many wireless providers have turned in part to distributed antenna system (DAS) networks and small-cell technologies.

"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. For example, deploying ten small cells in a coverage area that can be served by a single macrocell could result in a tenfold increase in capacity while using the same quantity of spectrum...

"(W)hereas small cells are usually operator-managed and support only a single wireless service provider, DAS networks can often accommodate multiple providers using different frequencies and/or wireless air interfaces. Small wireless technologies like DAS and small cells have a number of advantages over traditional macrocells. Because the facilities

deployed at each node are physically much smaller than macrocell antennas and associated equipment and do not require the same elevation, they can be placed on light stanchions, utility poles, building walls and rooftops, and other small structures either privately owned or in the public rights-of-way. Thus, providers can deploy the technologies in geographic areas, such as densely populated urban areas, where traditional towers are not feasible or in areas, such as stadiums, where localized wireless traffic demands would require an unrealistic number of macrocells. In addition, because these technologies utilize small equipment and transmit at signal power levels much lower than macrocells, they can be deployed in indoor environments to improve interior wireless services...

"...DAS and small-cell deployments are a comparatively cost-effective way of addressing increased demand for wireless broadband services, particularly in urban areas. As a result, providers are rapidly increasing their use of these technologies, and the growth is projected to increase exponentially in the coming years. According to one estimate, more than 37 million small cells will be deployed by 2017...(and) one study projects that aggregate small-cell capacity will overtake macrocell capacity by 2016-2017. As they are increasingly relied upon, DAS and small-cell technologies are also posing new logistical deployment challenges. In particular, because individual DAS nodes and small cells cover small areas, providers must often deploy a substantial number of nodes to achieve the seamless coverage of a single macrocell."

3) Federal Law Governing Wireless Siting by Local Governments. Two federal laws - the Telecommunications Act of 1996 and a portion of the Middle Class Tax Relief and Job Creation Act of 2012 known as the "Spectrum Act" - require local governments to act within a "reasonable period of time" on permits for siting wireless facilities. The FCC is responsible for administering these laws. In 2009 and 2014, the FCC issued two decisions to clarify the definition of a period of time that is presumed to be reasonable for various categories of wireless telecommunications facilities. Specifically, the FCC established a shot clock by ruling that local governments should generally approve or disapprove applications for projects within the following time frames:

a) 60 days for a project that is an "eligible facilities request," which is defined by the FCC as a collocation on an existing facility that does not substantially change its physical dimensions;

b) 90 days for a project that is a collocation that substantially changes the dimensions of the facility, but does not substantially change its size; and,

c) 150 days for projects that are new sites for wireless facilities.

In May of this year, the FCC issued a Notice of Proposed Rulemaking and Notice of Inquiry to examine the regulatory impediments to wireless network infrastructure investment and deployment, looking specifically at how state and local processes affect the speed and cost of infrastructure deployment and asking for comment on improving state and local infrastructure reviews, such as zoning requests. Comments were due June 9th.

4) State Law Governing Wireless Siting by Local Governments. Providers of wireless telecommunications services must apply to cities and counties for permits to build structures or other wireless facilities that support wireless telecommunications equipment, like antennae and related devices. Wireless carriers must also obtain local approval to place additional telecommunications equipment on facilities where that equipment already exists, known as "collocations."

Telecommunications companies have the right to access utility poles in the public right-of-way, governed by a set of state regulations. State law establishes a framework, process, and procedures governing the attachment of telecommunications facilities to investor-owned utility poles and municipal utility poles, providing the PUC the authority to establish and enforce rates, terms and conditions for pole attachments. Under this framework, telecommunications companies may erect poles and attach to investor-owned and municipal utility poles under specified cost-based rates. Local governments may not block utility pole attachments, but can regulate the time, manner, and place of pole attachments in the right of way under Sections 7901 and 7901.1 of the Public Utilities Code. In addition, investor-owned utilities and municipal utilities can only charge cost-based rates for attaching to their poles.

However, these restrictions do not apply to other infrastructure in the right of way, such as light poles and streetlights, or outside of the right of way. In those cases, local governments can impose conditions on many types of wireless facilities and negotiate payments for the use of their infrastructure. These agreements are negotiated on an ad hoc basis and contain provisions that vary from locality to locality.

In addition to the federal shot clock described above, AB 57 (Quirk), Chapter 685, Statutes of 2015, provided that a collocation or siting application for a wireless telecommunications facility is deemed approved if a city or county fails to approve or disapprove the application within reasonable time periods specified in applicable decisions of the FCC.

5) Stated Need for This Bill. The proponents of this measure estimate a need to deploy 30,000-50,000 small cells statewide over the next five to seven years to meet their customer demand. They argue that this volume of small cell deployments will require the use of already-existing buildings and other infrastructure, specifically infrastructure in the public rights-of-way that local governments own. Despite the requirements of the federal shot clock and AB 57, wireless carriers also argue that existing permit processes will not allow this roll-out quickly enough. Finally, proponents argue that lease costs - including in-kind items such as free Wi-Fi or other contributions - that cities and counties demand in agreements with wireless service providers are barriers to their ability to meet this customer demand. They are seeking this bill as a solution to these stated needs and problems.

6) Bill Summary. This bill establishes a process that cities and counties must follow that is unique to the permitting of small cells, limits the compensation that cities and counties can negotiate when a wireless carrier wishes to use a local government's vertical infrastructure

for small cells, prohibits cities and counties from precluding the placement of small cells on their infrastructure in the public rights-of-way, and makes a number of additional changes to law governing the siting of small cells, and to permits for wireless facilities generally.

Among its many provisions, this bill requires a small cell to be a permitted use, subject only to a permitting process adopted by a city or county as specified below, if it satisfies the following requirements:

a) The small cell is located in the public rights-of-way in any zone or in any zone that includes a commercial or industrial use (which would include a mixed-use zone);

b) The small cell complies with all applicable federal, state, and local health and safety regulations, including the federal ADA; and,

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

Approval of a small cell is limited to a building permit or its functional equivalent for placements outside of the right-of-way, or an encroachment permit or its functional equivalent issued as specified, and any additional ministerial permits, provided all permits are issued within timeframes required by state and federal law. Permits may be subject to specified conditions including, among others: a requirement to submit information showing compliance with FCC regulations concerning radio frequency emissions; a condition that small cells not being used to provide service be removed; and, a condition to comply with feasible design and collocation standards on a small cell to be installed on property not in the rights-of way.

Permits may not be subject to any of the following: requirements to provide additional services, including in-kind contributions from the applicant such as reserving fiber, conduit, or pole space; the submission of any additional information other than that required of similar construction projects, except as otherwise provided in the bill; limitations on routine maintenance or the replacement of small cells with small cells that are substantially similar, the same size, or smaller; and, the regulation of any micro wireless facilities mounted on a span of wire.

A city or a county is not allowed to preclude the leasing or licensing of its vertical infrastructure located in public rights-of-way or public utility easements, and it must make its vertical infrastructure available for the placement of small cells under fair and reasonable fees (as defined below), terms, and conditions that may include feasible design and collocation standards. Vertical infrastructure is defined as all poles or similar facilities owned or controlled by a city or county that are in the public right-of-way or utility easements and meant for, or used in whole or part for, communications service, electric service, lighting, traffic control, or similar functions. A city or a county may reserve capacity on its own vertical infrastructure only if it adopts a resolution finding, based on substantial evidence in the record, that the capacity is needed for projected city or county uses.

For the use of its vertical infrastructure, a city or a county may charge an annual administrative permit fee of up to $250 for each small cell, an annual attachment rate that is based on recovery of costs, and a one-time reimbursement fee for costs incurred by the city or county for rearrangements requested by the small cell provider. Before it can adopt or increase the rate, a city or county must hold one open and public hearing, with required notices and information beforehand. The bill allows, but does not require, a city or county to approve the ordinance or resolution at a regularly scheduled open meeting at least 30 days after the initial hearing. Any judicial action against the ordinance or resolution must begin within 120 days of the effective date of the ordinance or resolution.

A city or county cannot discriminate against the deployment of a small cell on its own property and must make space available on property not located in the rights-of-way on terms that are no less favorable than those provided for comparable commercial projects or uses. These installations shall be subject to reasonable and nondiscriminatory rates, terms and conditions, which may include feasible design and collocation standards.

This bill specifies that existing agreements between a wireless service provider, or its agents and assigns, and a city, a county, or a city or county's agents and assigns, regarding the leasing or licensing of vertical infrastructure entered into before the operative date of this section remain in effect, subject to applicable termination or other provisions in the existing agreement, or unless otherwise modified by mutual agreement of the parties. A wireless service provider may require the rates of this section for new small cells sites that are deployed after the operative date of this section in accordance with applicable change of law provisions in the existing agreements.

This bill states that its provisions do not alter any franchise or franchise requirements under state or federal law, as specified.

This bill states that nothing in it shall be construed to authorize or impose an obligation to charge a use fee different than that authorized by existing law on a local publicly owned electric utility, and that it does not change or remove any obligation by the owner or operator of a small cell to comply with a local publicly owned electric utility's reasonable and feasible safety, reliability, and engineering policies. A city or a county must consult with the utility director of a local publicly owned electric utility when adopting an ordinance or establishing permitting processes that impact the local publicly owned electric utility.

This bill also contains language stating that nothing in the bill shall be construed to modify the rules and compensation structure that have been adopted for an attachment to a utility pole owned by an electrical corporation or telephone corporation, including, but not limited to, decisions of the PUC adopting rules and a compensation structure for an attachment to a utility pole owned by an electrical corporation or telephone corporation, as specified.

Nothing in this bill shall be construed to modify any applicable rules adopted by the PUC,

including General Order 95 requirements, regarding the attachment of wireless facilities to a utility pole owned by an electrical corporation or telephone corporation, as specified.

This bill prohibits a city or county from adopting or enforcing any regulation on the placement or operation of communications facilities in the rights-of-way by a provider authorized by state law to operate in the rights-of-way, and from regulating any communications services or imposing or collecting any tax, fee, or charge not specifically authorized under state law, with specified exceptions, or as specifically required by state law.

This bill also amends existing law governing permits for wireless telecommunications facilities (not just small cells). Existing law allows cities and counties to limit permits to 10 years. This bill would require permits to be renewed for equivalent durations, 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.

Because of its findings and declarations that small cells are not a municipal affair, but are a matter of statewide concern, this bill would apply to charter cities.

7) Opposition Concerns. In addition to objections articulated by the opposition, below (see comment #12), the Committee should be aware of the following issues raised by opponents of this bill:

a) Technological Neutrality. Some opponents are concerned that this bill is not technology-neutral. Frontier Communications notes, "Frontier is concerned that SB 649, while expediting permitting and capping fees for small cell deployment, may cause delay and increased costs for wireline providers that need permits from the same local agencies. This could jeopardize critical federal broadband funds for California if Frontier or other providers participating in the (FCC's Connect America Fund) program cannot meet strict construction deadlines."

b) Health Concerns. A number of organizations and individuals who are concerned about the health effects of radio frequency radiation oppose this bill, due to the rapid proliferation of small cells they fear will result if this bill becomes law.

8) Additional Policy Concerns. Also in addition to objections expressed by the opposition, the Committee may wish to consider the following:

a) Environmental Review. The California Environmental Quality Act (CEQA) requires CEQA Guidelines prepared by the Office of Planning and Research to include a list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from CEQA. These are referred to as "categorical exemptions." Categorical exemptions are subject to exceptions to assure eligible projects do not have a significant effect on the environment, including when cumulative impacts of successive projects of the same type in the same place may result in significant effect or

there is a reasonable possibility that the project will have a significant effect due to unusual circumstances. This bill bypasses that process, preventing review of a project's environmental impacts under CEQA.

b) FCC Proceeding. As noted above, the FCC issued a NPRM just last month to examine the regulatory barriers to wireless network infrastructure investment and deployment. The results of this process are as yet unknown and could inform California in its decisions regarding this issue, or could conflict with the provisions of this bill.

9) Committee Amendments. The Committee may wish to adopt the following amendments to address some of the concerns with this bill:

a) Automatic Renewal of Permits. This bill amends existing law governing permits for wireless telecommunications facilities (not just small cells). Existing law allows cities and counties to limit permits to 10 years. Section two of this bill would require permits to be renewed for equivalent durations, 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. The sponsor has indicated that this amendment is being sought because of instances in which localities are requiring wireless providers to needlessly tear down old towers and replace them with new ones. This provision appears to extend well beyond the stated intent of the sponsor to address barriers to small cell siting. The Committee may wish to remove this provision by striking Section two of the bill.

b) The $250 Question. The bill provides that cities and counties may charge "an annual administrative permit fee not to exceed $250 for each small cell attached to city or county vertical infrastructure." This language has led to confusion regarding whether this caps fees that cities and counties may charge for permits. The Committee may wish to amend this language to clarify that the $250 per attachment amount is part of the rate cities and counties may charge for the use of their infrastructure, and that permit fees would be separate and in addition to this $250 charge.

c) Less is More? This bill states that it does not prohibit a wireless service provider and a city or county from mutually agreeing to an annual administrative permit fee or attachment rate that is less than the fees or rates established in this bill. This has led to concerns that the bill precludes agreements in which a wireless service provider is willing to pay more than this amount. The Committee may wish to amend this language to clarify that agreements can include an attachment rate that is different from the fees or rates in this bill.

d) Grandfathering. This bill contains the following language: "Existing agreements between a wireless service provider, or its agents and assigns, and a city, a county, or a city or county's agents and assigns, regarding the leasing or licensing of vertical infrastructure entered into before the operative date of this section remain in effect, subject to applicable termination or other provisions in the existing agreement, or unless otherwise modified by mutual agreement of the parties. A wireless service provider may require the rates of this

section for new small cells sites that are deployed after the operative date of this section in accordance with applicable change of law provisions in the existing agreements." This language has raised concerns on the part of opponents and the Senate Governance and Finance Committee, which drafted similar, but not identical, language. The Committee may wish to amend this language to resolve these concerns.

e) Contradictory. On page 11, beginning in line 17, this bill states: "Except as provided in subdivisions (a) and (b), nothing in this section shall be construed to modify the rules and compensation structure that have been adopted for an attachment to a utility pole owned by an electrical corporation or telephone corporation, as those terms are defined in Section 216 of the Public Utilities Code pursuant to state and federal law, including, but not limited to, decisions of the Public Utility Commission adopting rules and a compensation structure for an attachment to a utility pole owned by an electrical corporation or telephone corporation, as those terms are defined in Section 216 of the Public Utilities Code." This exception appears to contradict the intent of the remainder of this language. The Committee may wish to remove this exception.

10) Previous Legislation. AB 2788 (Gatto) of 2016 was similar to this bill. AB 2788 was not heard in this committee, as it left the Assembly addressing a different subject. AB 2788 was referred to the Senate Energy, Utilities and Communications Committee, but was never heard.

AB 57 (Quirk), Chapter 685, Statutes of 2015, provided that a collocation or siting application for a wireless telecommunications facility is deemed approved if: a 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 the application; and, the applicant has provided a notice to the city or county that the reasonable time period has lapsed.

AB 162 (Holden) of 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 an eligible facilities request within 90 days of receipt. The bill was referred to this Committee, 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 cable television corporations, video service providers, and telephone corporations.

SB 1627 (Kehoe), Chapter 676, Statutes of 2006, required local governments to administratively approve applications to place wireless communications equipment on structures where such equipment is already located if specified conditions have been met, and prohibited local governments from conditioning approval of applications for permits for

wireless facilities in specified ways.

11) Arguments in Support. CTIA, sponsor of this measure, in a coalition letter with the CalAsian Chamber of Commerce, AT&T, Crown Castle, the California Peace Officers Association, the California State Sheriffs' Association, Verizon, Sprint, T-Mobile, the California Manufacturers and Technology Association, QualComm, the California Hispanic Chambers of Commerce, the Congress of California Seniors, Tracfone, the California Probation, Parole and Correctional Association, CompTIA, the Wireless Infrastructure Association, and the Silicon Valley Leadership Group, in support, state, "Wireless technology has revolutionized our lives and the way that we communicate. It has transformed how our businesses and schools operate and improved how our cities function.

"Today, smartphones, laptops and tablets are basic tools in our everyday lives. In fact, there are more wireless devices in California than there are people. Further, mobile data usage has grown by more than 2,300% since 2010. To accommodate skyrocketing demand and prepare wireless networks for the next generation, those networks must be updated today. SB 649 will help make that happen.

"Small cell wireless facilities are being deployed today to meet this increased demand for data, enhancing capacity on today's 4G LTE wireless networks and establishing the backbone for the next generation of wireless networks, called 5G. 5G will offer the bandwidth to accommodate billions of devices at the speed required for our connected society.

"SB 649 is an essential measure to keep California at the leading edge of this new technology. Other states across the country and around the globe are already encouraging deployment of gigabit wireless internet by streamlining deployment of small cell wireless infrastructure. SB 649 will provide a clear path for California communities to deploy the needed infrastructure by asking for no public subsidies or use of taxpayer dollars. Instead, SB 649 simply asks for clear guidance for wireless providers to invest millions of dollars of their own money.

"By laying out a clear set of rules for all to follow, SB 649 will help communities:

* Open the path to California 'smart cities' with solutions delivering significant energy and transportation benefits and creating a more 'connected world';

* Provide up to 100 times faster speeds - gigabit internet in your pocket - enabling download of a full HD movie in seconds;

* Improve public safety services and help save lives with advanced communications and logistics and faster response times; and

* Create thousands of new jobs via infrastructure development and increased economic competitiveness.

"SB 649 creates a reliable set of guidelines for communities in making decisions on the deployment of small cell wireless technology with a process that reflects their much smaller size and footprint than traditional cell phone towers. It also ensures local governments retain oversight for health and safety conditions building and encroachment permits, local code compliance, and feasible design and collocation standards.

"Given the way Californians live today, citizens, businesses, public safety agencies and government demand the latest technology and the highest speeds in wireless communications. A clear process is needed so network developers can plan appropriately and avoid unnecessary delays in delivering required cutting-edge services.

"Nearly a dozen states across the country have already moved to streamline the deployment of small cell wireless infrastructure to accommodate consumers' insatiable data demands and ready themselves for 5G wireless technology. It is imperative that California retain its position as a global leader in technology and innovation. SB 649 is a smart, cooperative approach that tells the rest of the country and the world that California is ready for investment and will retain its position as leader in innovation."

12) Arguments in Opposition. The California Chapter of the American Planning Association, the League of California Cities, the Urban Counties of California, the Rural County Representatives of California and Protect our Local Streets Coalition, in opposition, write, "SB 649 eliminates public input, full local environmental and design review, mandates the leasing of publicly owned infrastructure and eliminates the ability for local governments to negotiate leases or any public benefit for the installation of 'small cell' equipment on taxpayer funded property. These not-so-small 'small cell' structures would be required to be allowed on public property in any zone in a city or county and would be subject to a confusing permitting process carved out for the sole benefit of the wireless industry...

"(Section 4 of the bill) vastly expands the scope of SB 649 beyond 'small cells,' and would broadly preempt regulation of virtually any communications facilities within local rights-of-way. This would not merely limit, but would implicitly repeal the longstanding provisions of California law allowing local governments to reasonably regulate privately-owned facilities placed within the streets and roads for which they are responsible. Local regulations protect public health and safety by ensuring that equipment placed within the right-of-way does not cause traffic hazards, or interfere with sight distances necessary to avoid accidents at busy intersections - and protect neighborhood character and quality of life through reasonable concealment and similar aesthetic conditions. It is difficult to overstate the hazards to the public welfare of all Californians threatened by SB 649's wholesale elimination of such local authority...

"While the wireless industry promises local governments will retain their discretion, the bill eliminates the full discretion locals currently have to require that such equipment blends into the communities they are entering and that providers maintain their equipment. The bill

eliminates the ability of a city or county to negotiate any public benefit such as providing network access for the local library. Additionally, this bill places the entire burden on local governments to adopt a complicated set of ordinances, again increasing costs to the local jurisdiction, at the same time the bill caps the flexible revenue cities and counties can generate for public services such as infrastructure, police, fire, libraries, human services or looming pension obligations.

"SB 649 forces local government to rent space for small cells on public property at rates far below fair market value and requires that every jurisdiction, in order to use its own public property, provide 'substantial evidence' that the space is needed by that community. Rents from the use of public property, which every other for-profit business pays, help defray the cost of essential public services that are otherwise provided at taxpayer expense. SB 649 sets a dangerous precedent for other private industries to seek similar treatment, further eroding the ability to fund local services.

"SB 649 proposes to calculate the maximum rate for these non-consensual leases using a formula designed only for electricity and telephone poles - a limited category of installations, with fairly uniform features and costs. Application of this formula to the vast variety of 'vertical infrastructure' covered by SB 649 is both unfair and uncertain. The capital and operational cost components for these facilities vary widely in both complexity and amount, and (this formula is) virtually certain to result in continual disputes and confusion statewide.

"While the supporters continue to state that the purpose of the bill is to deploy in rural or underserved areas of the state, there is still no requirement for such deployment. This bill does not provide anything to our constituents in exchange for giving up our public property. The bill explicitly allows for a discretionary review in areas within the coastal zone or in historical districts. Cities and counties that are not included in this exemption are essentially left with little ability to clearly apply design standards. With these amendments, it's clear that supporters of the bill concede discretionary review is important... but only for certain areas of the state.

"Small cells are just in the beginning stages of being deployed. Given that many jurisdictions haven't even processed a small cell permit yet, or only handled a small number, it is unclear why there is such an urgent need for this bill. This bill is being passed with the assumption that there will be issues, which supporters have yet to demonstrate. What other types of structures or industries will be next in line to demand free or low cost access to public property to boost corporate profit margins? While (we) support the deployment of wireless facilities to ensure that Californians have access to telecommunications services, this goal is not inherently in conflict with appropriate local planning and appropriate fee negotiations on publically owned infrastructure."

13) Double-Referral. This bill is double-referred to the Communications and Conveyance Committee.

REGISTERED SUPPORT / OPPOSITION: (Includes support and opposition letters received by the Committee's deadline which may address a prior version of the bill)

Support

CTIA [SPONSOR]

59DaysOfCode

100 Black Men of Long Beach

American Indian Chamber of Commerce of California

Asian Pacific Islander American Public Affairs Association

Asian Resources Inc.

AT&T

Berkeley Chamber of Commerce

Black Business Association

California Asian Chamber of Commerce

California Asian Pacific Chamber of Commerce

California Foundation for Independent Living Centers

California Friday Night Live Partnership

California Hispanic Chamber of Commerce

California Manufacturers & Technology Association

California Probation, Parole and Correctional Association

California State Conference of the National Association for the Advancement of Colored People

California State Sheriffs' Association

California Urban Partnership

Support (continued)

California Utilities Emergency Association

CALinnovates

CalTech San Diego

Carlsbad Chamber of Commerce

Carmel Valley Chamber of Commerce

Cerritos Regional Chamber of Commerce

Chinese American Association of Solano County

Cleanteach San Diego

Coalition of Concerned California Communities

Community Technology Network

Community Women Vital Voices

CompTIA

Concerned Black Men of Los Angeles

Concerned Citizens Community Involvement

Congress of California Seniors

Council of Asian Pacific Islanders Together for Advocacy and Leadership

Council on American-Islamic Relations, California

Crown Castle

Disability Rights Education and Defense Fund

Downtown San Diego Partnership

East Bay Leadership Council

Elderly Foundation

El Dorado County Chamber of Commerce

Entrepreneurs of Tomorrow Foundation

Eskaton Foundation

Exceptional Parents Unlimited

Fresno Area Hispanic Foundation

Fresno Center for New Americans

Fresno Chamber of Commerce

Fresno County Economic Development Corporation

Fresno Metro Black Chamber of Commerce

Fundacion Pro Joven Talento Salvadoreno

Gateway Chambers Alliance

Greater Coachella Valley Chamber of Commerce

Greater Los Angeles African American Chamber of Commerce

Greater Riverside Chamber of Commerce

Greater Sacramento Urban League

Hacker Lab

Hispanic Chamber of e-Commerce

Hispanic Heritage Foundation

I/O Labs

Imagine H2O

InBiz Latino-North County Hispanic Chamber of Commerce

Invictus Foundation

Jobs and Housing Coalition

Support (continued)

Krimson and Kreme, Inc.

Lake County Sheriff

Latin Business Association

Latino Council

Latino Environmental Advancement & Policy Project

Lifestyle Stroke Foundation

Lighthouse Counseling & Family Resource Center

LIME Foundation

Lincoln Area Chamber of Commerce

Long Beach Area Chamber of Commerce

Los Angeles Urban League

Marjaree Mason Center

Meeting of the Minds

Modesto Chamber of Commerce

Monterey County Business Council

Museum of the African Diaspora

National Association for the Advancement of Colored People, Eureka

National Association for the Advancement of Colored People, Inglewood/South Bay

National Association for the Advancement of Colored People, Los Angeles

National Association for the Advancement of Colored People, North San Diego

National Association for the Advancement of Colored People, Riverside

National Association of Hispanic Real Estate Professionals, Sacramento

National Association of Women Business Owners

National City Public Safety Foundation

National Latina Business Women Association of Los Angeles

Oakland Metropolitan Chamber of Commerce

Oceanside Chamber of Commerce

Orange County Business Council

Orange County Hispanic Chamber of Commerce

Organization of Chinese Americans

Pacific Grove Chamber of Commerce

Peace Officers Research Association of California

Puertas Abiertas Community Resource Center

PulsePoint

Qualcomm

Rancho Cordova Chamber of Commerce

Russian American Media

Sabio Enterprises Inc.

Sacramento Asian Pacific Chamber of Commerce

Sacramento Black Chamber of Commerce

Sacramento Hispanic Chamber of Commerce

Sacramento Metropolitan Chamber of Commerce

Sacramento Regional Conservation Corps

Salvadoran American Leadership and Educational Fund

San Diego County Hispanic Chamber of Commerce

San Diego North Economic Development Council

Support (continued)

San Diego Regional Economic Development Corporation

San Francisco Chamber of Commerce

San Joaquin Pride Center

San Ysidro Chamber of Commerce

Santa Ana Chamber of Commerce

Silicon Valley Leadership Group

Slavic American Chamber of Commerce

Society for the Blind

Solano Community College Educational Foundation

South Bay Association of Chambers of Commerce

Southeast Community Development Corporation

Southern California Hispanic Chamber of Commerce

Southern Christian Leadership Conference of Southern California

Sprint

T-Mobile US

TechNet

The East Los Angeles Community Union

The Arc California

The National Association of Hispanic Real Estate Professionals

The Observer Media Group

The Urban Hive

Torrance Area Chamber of Commerce

Tracfone

Tulare Kings Hispanic Chamber of Commerce

United Policyholders

Urban Corps of San Diego County

Urban League of San Diego County

Verizon

Veteran's Association of North County

Voluntary Organizations Active in a Disaster

Volunteers of America Southwest

WEAVE, Inc.

Wireless Infrastructure Association

Women's Intercultural Network

Individual letters (9)

Opposition

American Planning Association, California Chapter

American Public Works Association

Association of Environmental Professionals

Bay Area Educators for Safe Tech

Brentwood Community Council

California Brain Tumor Association

California Chapters of the American Public Works Association

California Municipal Utilities Association

Opposition (continued)

California REALTORS

California Park & Recreation Society

California State Association of Counties

City and County of San Francisco

Cities of: Albany, Alameda, Aliso Viejo, Arcadia, Azusa, Bakersfield, Bellflower, Benicia, Berkeley, Beverly Hills, Big Bear Lake, Brawley, Brea, Buena Park, Burbank, Camarillo, Capitola, Carpinteria, Chino, Chino Hills, Chula Vista, Citrus Heights, Claremont, Clayton, Cloverdale, Colfax, Colma, Concord, Corona, Coronado, Costa Mesa, Culver City, Cupertino, Davis, Diamond Bar, Duarte, Dublin, Eastvale, El Centro, Elk Grove, Emeryville, Encinitas, Escalon, Fairfax, Farmersville, Fontana, Fountain Valley, Fremont, Fullerton, Garden Grove, Goleta, Hanford, Hayward, Hemet, Hermosa Beach, Hesperia, Highland, Hillsborough, Huntington Beach, Indio, Indian Wells, Inglewood, La Canada Flintridge, La Habra, La Mirada, La Quinta, La Verne, Lafayette, Laguna Beach, Laguna Hills, Lake Elsinore, Lake Forest, Lakeport, Lakewood, Lathrop, Livermore, Lodi, Lomita, Long Beach, Los Alamitos, Lomita, Mammoth Lakes, Manteca, Martinez, Menifee, Merced, Mission Viejo, Modesto, Monrovia, Montclair, Monterey, Monterey Park, Moorpark, Moreno Valley, Morgan Hill, Mountain View, Murrieta, National City, Nevada City, Newport Beach, Norco, Norwalk, Oakland, Oakley, Oceanside, Ontario, Pacific Grove, Palmdale, Palm Desert, Palo Alto, Palos Verdes Estates, Paramount, Pasadena, Paso Robles, Piedmont, Pismo Beach, Placentia, Pleasanton, Point Arena, Pomona, Porterville, Rancho Cordova, Rancho Cucamonga, Rancho Palos Verdes, Redondo Beach, Richmond, Riverbank, Riverside, Rocklin, Rohnert Park, Rosemead, Roseville, Salinas, San Anselmo, San Buenaventura, San Carlos, San Gabriel, San Jose, San Leandro, San Marcos, San Marino, San Mateo, San Pablo, San Rafael, Santa Ana, Santa Barbara, Santa Clara, Santa Clarita, Santa Cruz, Santa Fe Springs, Santa Monica, Santa Rosa, Santee, Scotts Valley, Sebastopol, Signal Hill, Stanton, Sunnyvale, Thousand Oaks, Torrance, Turlock, Tulare, Tustin, Ukiah, Union City, Upland, Vacaville, Vallejo, Ventura, Victorville, Vista, Walnut, Walnut Creek, West Covina, West Hollywood, Whittier, and Yuba

City-County Streetlight Association

City Manager Brian Loventhal, City of Campbell

Coalition of Concerned California Communities

Councilmember Mike Bonin, City of Los Angeles

Councilmember Bill DeHart, City of Turlock

Counties of: Del Norte, Fresno, Imperial, Inyo, Kern, Los Angeles, Mariposa, Monterey, Orange, Placer, Riverside, Sacramento, San Bernardino, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Siskiyou, Stanislaus, Sonoma, Tehama, Tuolumne, and Ventura

Ecological Options Network

EMF Safety Network

EMR Protection Forum

Green Sangha

Health & Habitat Inc.

Law Offices of Harry V. Lehmann PC

League of California Cities

League of California Cities, Los Angeles County Division

League of California Cities, Redwood Empire Division

Opposition (continued)

League of California Cities, Riverside County Division

League of California Cities, San Diego County Division

Lodi District Chamber of Commerce

Marin Chapter of the Weston A. Price Foundation

Marin County Council of Mayors and Councilmembers

Mayors & Councilmembers Association of Sonoma

Mayor Donald P. Wagner, City of Irvine

Mayor Clyde Roberson, City of Monterey

Mayor Sue Higgins, City of Oakley

Mayor Len Augustine, City of Vacaville

Mayor Gary Soiseth, City of Turlock

Mono County Community Development Department

MuniServices

Northern California Power Agency

Pacific Palisades Community Council

Physicians for Safe Technology

Protect our Local Streets Coalition

Radiation Research Trust

Rural County Representatives of California

SafeWater Marin Alliance

Sage Associates

San Francisco Water Power Sewer

Scientists for Wired Technology

Southern California Public Power Authority

The Utility Reform Network

Town of Apple Valley

Town of Corte Madera

Town of Danville

Town of Hillsborough

Town of Mammoth Lakes

Town of Moraga

Town of Portola Valley

Tuolumne County Chamber of Commerce

Union Sanitary District

Urban Counties of California

Ventura Council of Governments

Veterans for Radiation Safety

Westwood South of Santa Monica Blvd. Homeowner Association

Windheim EMF Solutions

Wireless Radiation Alert Network

Your Own Health and Fitness

Individual letters (15)

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