
**SENATE COMMITTEE ON ENERGY, UTILITIES AND
COMMUNICATIONS**
Senator Ben Hueso, Chair
2021 - 2022 Regular

Bill No: SB 556 **Hearing Date:** 4/19/2021
Author: Dodd
Version: 4/12/2021 Amended
Urgency: No **Fiscal:** Yes
Consultant: Sarah Smith

SUBJECT: Street light poles, traffic signal poles: small wireless facilities attachments

DIGEST: This bill establishes permitting requirements for the placement of small wireless facilities on street light and traffic signal poles owned by local governments, including specified timelines for approving and attaching infrastructure, limitations on fees for attachments, and restrictions on local governments' ability to prohibit small wireless facility attachments.

ANALYSIS:

Existing law:

Existing federal law:

- 1) Provides the Federal Communications Commission (FCC) with broad regulatory authority over telecommunications services, including wireless facilities and service. (Title 47 U.S.C. §151 et. Seq.)
- 2) Establishes requirements to remove barriers for ensuring competitive telecommunications markets, including prohibiting state and local governments from adopting legal requirements that have the effect of prohibiting an entity from providing interstate and intrastate telecommunications services. Existing law protects state and local government authority to set certain legal and regulatory requirements for telecommunications services and facilities as long as those requirements are competitively neutral and nondiscriminatory. In the event that a state or local government establishes legal requirements that violate this framework, the FCC is required to preempt those local and state requirements. (Title 47 U.S.C. §253)
- 3) Establishes general local government authority regarding zoning law and placement of wireless service facilities. Existing law specifies that, with certain limitations, nothing in federal law regarding wireless facility deployment shall

limit the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities. (Title 47 U.S.C. §332(c)(7))

- 4) Specifies limitations on state and local government regulatory authority over wireless facilities, including prohibiting state and local governments from adopting requirements that unreasonably discriminate among providers of functionally equivalent services or prohibit or have the effect of prohibiting the provision of personal wireless services. Limitations also prohibit state and local governments from regulating the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that wireless facilities comply with the FCC's regulations concerning such emissions. (Title 47 U.S.C. §332(c)(7))

Existing state law:

- 5) Establishes a framework for the California Public Utilities Commission (CPUC) to adjudicate pole and line attachment disputes between cable television corporations and investor-owned utilities (IOUs). This framework defines the "annual cost of ownership" for IOU poles as the annual capital costs and annual operating costs and includes a method for calculating annual capital costs, accounting for depreciation of the of the capital costs based on the average service life of the pole. (Public Utilities Code §767.5)
- 6) Allows telegraph or telephone corporations to construct lines of telegraph or telephone lines along and upon any public rights of way and permits these corporations to erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, as long as they do so in a manner that does not restrict the public use of the roads and waters. (Public Utilities Code §7901)
- 7) Requires local publicly owned electric utilities (POUs) to make appropriate space and capacity on and in a utility pole and support structure owned or controlled by the POU available for use by a communications service provider pursuant to reasonable terms and conditions. Existing law establishes specified timelines for responding to pole attachment requests and completing pole attachments and provides additional time for projects that include attachments to more than 300 poles. (Public Utilities Code §§9510 and 9511)
- 8) Establishes requirements for fees charged by POUs for attachments by communications service providers, including specifying that the annual fee charged by the POU may not exceed the POU's annual costs of ownership,

which is defined as the sum of the annual capital costs and annual operation costs. (Public Utilities Code §9512)

- 9) Establishes a public process by which a POU may adopt or adjust fees or terms of access for pole attachments and procedures for disputing a POU's rates, terms, and conditions for pole attachments. (Public Utilities Code §9516 et. Seq.)
- 10) Prohibits a local government from charging a fee for the placement, installation, repair, or upgrading of authorized telecommunications facilities when that fee exceeds the reasonable costs of providing the service for which the fee is charged. Local governments may not levy these fees for general revenue purposes. (Government Code §50030)

This bill:

- 1) Defines “annual cost of ownership” as the annual capital costs and annual operating costs of a street light pole or traffic signal pole. This bill specifies that annual cost of ownership does not include costs for any property not necessary for use by the small wireless facility. The definition includes a method for calculating annual capital costs, accounting for depreciation of the capital costs based on the average service life of the street light or traffic signal pole.
- 2) Specifies that this bill's definition of “small wireless facility” is the same definition established by federal regulations.
- 3) Defines “usable space” as the space above the minimum grade that can be used for the attachment of antennas and associated ancillary equipment.
- 4) Requires street light and traffic signal poles to be made available for the placement of small wireless facilities under fair, reasonable, and nondiscriminatory fees.
- 5) Prohibits a local government or POU from unreasonably denying a street light or traffic signal pole lease or license to a communications service provide for the purpose of placing small wireless facilities.
- 6) Specifies that access to street light or traffic signal poles may be subject to other terms and conditions, including reasonable aesthetic and safety standards, consistent with the FCC's 2018 Small Cell Order.

- 7) Requires local governments and POU's to provide reasons for denying a pole attachment and identify remedies for the denial.
- 8) Establishes specified timelines for local governments and POU's to respond to small wireless facility attachment requests for street light and traffic signal poles, complete cost estimates for work to complete attachments, and to complete the attachments' installation. These timelines provide an additional 30 days for completion of projects that require attachments to more than 300 poles. This bill specifies that these timelines may be extended based on mutual agreement between the communications service provider and the local government or POU that owns the poles.
- 9) Allows a local government or POU to deny an application for a pole attachment due to insufficient capacity or safety, reliability, engineering concerns, and impacts to core traffic or street light service unless the communication service provider agrees to replace the street light or traffic signal pole.
- 10) Establishes limitations on the fees that local governments and POU's may charge for small wireless facility attachments to street light and traffic signal poles. This bill allows local governments and POU's to establish annual fees for use of a street light or traffic signal pole that is a reasonable approximation of the direct and actual costs and does not exceed an amount resulting from the usable space occupied by the small wireless attachment on the pole. This bill also allows certain one-time fees for rearranging existing attachments on the pole and processing a pole attachment request, subject to certain conditions.
- 11) Establishes a rebuttable presumption that a local government or POU's annual attachment fees are reasonable if those fees are equal to or less than the annual \$270 fee for each small wireless attachment included in the FCC's 2018 Small Cell Order. This bill requires local governments and POU's to offer this \$270 annual fee until the local government or POU adopts an annual small wireless facility attachment fee that complies with this bill's specifications on fees for street light and traffic signal pole attachments.
- 12) Specifies that any agreement on rates, terms, and conditions for small wireless facility attachments to street light and traffic signal poles that occurred prior to the January 14, 2019, enactment of the FCC's 2018 Small Cell Order are only valid for attachments installed by January 1, 2022, and they are only valid until the contract expires.
- 13) Requires a POU to use its existing utility pole attachment fee authority to set street light and traffic signal fees specified by this bill unless the POU adopts

the \$270 annual fee that is presumed reasonable pursuant to the FCC's 2018 Small Cell Order.

Background

A brief history of the FCC's authority over wireless facility siting. The 1996 Telecommunications Act made a number of changes to the regulatory framework of telecommunications services. The stated aim of the Act was to encourage the rapid deployment of new telecommunications technology by lowering market and regulatory barriers. While local and state governments have long held permitting authority and zoning control over their respective rights of way (ROW), the Telecommunications Act of 1996 (specifically, Title 47 U.S.C. §253) gave the FCC the ability to pre-empt certain local permitting and zoning requirements if those requirements have the effect of prohibiting an entity from providing telecommunications service. Since the enactment of the Telecommunications Act of 1996, the FCC has adopted several orders aimed at lowering market barriers and encouraging the deployment of cable and wireless facilities.

Small wireless facilities and their relationship to 5G. Small wireless facilities are generally referred to as "small cells." Small cell is an umbrella term for several different types of smaller wireless transmitter and receiver systems capable of transmitting data over short distances. Like all wireless facilities, small cells cannot provide broadband without the presence of additional broadband infrastructure; however, small cell facilities can improve data capacity and speed in wireless networks. In recent years, small cell nodes have gained recognition for their ability to facilitate 5G communications. The term "5G" is an abbreviation for fifth generation wireless networks, which are the next stage of wireless network technologies. These newer networks are characterized by software and hardware advances that enable greater broadband data speed, lower network latency, and greater ability to interconnect more broadband-enabled devices. While 5G includes several different bandwidths, the debate over siting small cells frequently focuses on high-band 5G. High-band 5G is a higher frequency, short distance wireless spectrum that has the capability of delivering very fast data speeds. However, the short distance of the high-band 5G means that consistent access to the speed and data capabilities of this network depend on the deployment of many small base station transmitters rather than relying on fewer, larger cellular towers, which transmit data at slower speeds for longer distances. Small cells are generally placed on other utility infrastructure, including electric utility poles, street lights, and traffic signal poles.

The FCC's 2018 Orders. In 2018, the FCC adopted the Small Cell Order, the Moratoria Order, and the One Touch Make-Ready Order. Collectively, these

orders were intended to more clearly limit local governments' ability to regulate certain telecommunications facilities and prevent utility pole owners from delaying or prohibiting certain telecommunications attachments, including small wireless facilities. Specifically, the Small Cell Order and Moratoria Order limit the fees that local governments can charge for the use of space on utility poles and the time frame for reviewing a communication provider's request to attach a small wireless facility to a utility pole. As part of these orders, the FCC asserted that the Telecommunications Act of 1996 gave the FCC the authority to preempt local rules that restrict the attachment of small wireless facilities when those local rules are discriminatory or have the effect of prohibiting a provider from providing a telecommunications service.

City of Portland v. United States. Following the FCC's adoption of its 2018 Small Cell Order, the City of Portland joined a number of local governments in a legal challenge to the FCC's Order. In the lawsuit, the local governments made many arguments against the orders, including that the FCC had overstepped its statutory authority by interpreting local requirements as prohibitions and violated constitutional prohibitions against physical and regulatory takings. In August 2020, the Ninth Circuit Federal Court of Appeals issued a decision that largely upheld the FCC's 2018 Small Cell Order; however, the court's decision reversed the FCC's limitation on local authority to establish aesthetic requirements for small cell attachments. In its decision, the court stated: "We conclude that, given the deference owed to the agency in interpreting and enforcing this important legislation, the Small Cell and Moratoria Orders are, with the exception of one provision, in accord with the congressional directive in the Act, and not otherwise arbitrary, capricious, or contrary to law." The City of Portland and other plaintiffs have petitioned the United States Supreme Court for a review of the federal circuit court's decision and response from the Supreme Court is due on April 26, 2021.

This bill seeks to establish a statewide streamlined permitting framework for certain pole attachments consistent with the 2018 FCC orders. The FCC's 2018 Small Cell Order established three main limitations on local governments' regulation of small facility attachments in their ROWs: restrictions on fees for attachments, timelines for application review (also known as "shotclocks"), and limitations on aesthetic requirements for attachments. This bill seeks to establish similar restrictions in state law by prohibiting local governments from charging fees that are inconsistent with the FCC's 2018 orders, creating specified timelines for application review and attachment completion, and requiring aesthetic requirements to be consistent with the FCC's 2018 Small Cell Order.

This bill applies to rules for street light and traffic signal pole attachments. Existing state law establishes a framework for resolving pole and line attachment

disputes for electric IOU poles through the CPUC, and it also establishes requirements for attachments to POU's electric poles. The requirements in this bill apply to rules governing attachments to street light poles and traffic signal poles that are owned and operated by local governments and POU's. In some municipalities, certain street lights are maintained by the electric utilities providing service to the area and other lights are maintained by various local government bodies. For example, in Sacramento County most street lights are owned and maintained by a public agency, including cities, counties, and park districts. However, some street lights are owned and maintained by the Sacramento Municipal Utility District (SMUD) at the discretion of local agencies. This bill's timelines for permit review, project approval, and make-ready work completion are consistent with existing law regarding telecommunications attachments to POU's electric poles.

Some of this bill's limitations on local governments may be more restrictive than the FCC's rules. In the process of establishing a statutory framework that mirrors the FCC's requirements, this bill may create rules that more strictly limit local governments' authority than those rules established by the FCC. Specifically, this bill sets certain requirements on local governments' adoption of recurring fees and aesthetic requirements that may not provide flexibility authorized by the FCC's orders and recent court decisions.

This bill establishes a rebuttable presumption that a local government's annual fees for small wireless facility attachments to street light and traffic signal poles are reasonable if those fees are equal to or less than \$270 per wireless facility per year for all recurring fees. This bill also requires local governments and POU's to offer this \$270 annual fee until the local government or POU adopts an annual small wireless facility attachment fee that complies with this bill's specifications. However, the \$270 figure for recurring fees in the FCC's order is simply the threshold at which the burden is on a communications provider to demonstrate that a fee is unreasonable or discriminatory. The FCC did not prohibit local governments from charging a fee above this threshold and not all recurring fees above \$270 would be inconsistent with the FCC's Small Cell Order. Above the \$270 threshold, the burden would be on the local government to demonstrate that the fee is reasonable. While the FCC established the \$270 safe harbor threshold, the FCC also said, "We recognize that different uses of the ROW may warrant charging different fees, and we only find fees to be discriminatory and not competitively neutral when different amounts are charged for similar uses of the ROW...Any party may still charge fees above the levels we identify by demonstrating that the fee is a reasonable approximation of cost that itself is objectively reasonable."

This bill also specifies that a local government may only require attachments to meet reasonable aesthetic standards that are consistent with the FCC's 2018 Small Cell Order. While plaintiffs in the *City of Portland v. United States* case are still seeking review from the Supreme Court, the Ninth Circuit vacated the FCC's preemption of local aesthetic requirements. In its decision, the federal court stated: "The requirement that local aesthetic regulations be 'objective' is neither adequately defined nor its purpose adequately explained. On its face, it preempts too broadly. We therefore hold those provisions of Paragraph 86 of the Small Cell Order must be vacated."

Health and safety considerations regarding small wireless facility attachments. This bill authorizes local governments and POU's to deny a small cell attachment based on concerns about insufficient capacity, engineering, and safety, unless a communication service provider agrees to replace the pole. However, not all safety concerns may be mitigated through pole replacement. Additional safety mitigation needs and costs may occur based on the pole's location, number of other attachments, and placement of attachments on the poles.

In addition to concerns regarding physical safety and maintenance of the attachments, a number of individuals and entities have historically opposed the deployment of small cell facilities due to fears about potential safety and public health impacts of the radio frequency emitted from small wireless facilities. Generally, multiple federal agencies, including the Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), the National Institute for Occupational Safety and Health (NIOSH) and the Occupational Safety and Health Administration (OSHA) retain authority for establishing consumer safety requirements for radio frequency exposure and investigating health hazard assessments. In addition to radio frequency monitoring conducted by other federal agencies, the FCC has also adopted National Council on Radiation Protection and Measurements standards for safe human exposure to radio frequency fields. While existing federal and state law limits the degree to which state and local governments can establish their own restrictions on wireless facilities based on environmental concerns, recent court decisions have vacated attempts by the FCC to exempt small cell facilities from environmental reviews.

Need for Amendments. As currently drafted, this bill could potentially require local governments and POU's to conform aesthetic rules for small cell attachments to requirements in the FCC 2018 Small Cell Order. While litigation regarding the order is ongoing, the Ninth Circuit has vacated the portion of the FCC's order establishing preemptive limitations on local aesthetic rules. This bill could also require a local government or POU to offer \$270 as the recurring fee for new small cell attachments to street light and traffic signal poles until the local government or

POU adopts a rate that complies with this bill. However, the FCC's order only established \$270 as a safe harbor threshold. This bill also implies that local governments and POUs cannot deny an application for a small cell attachment to a street light or traffic signal pole for safety reasons if the communications provider is willing to pay to replace the pole. However, not all safety considerations can be addressed through a single pole replacement. *As a result, the author and the committee may wish to amend this bill to do the following:*

- *Delete this bill's reference to the aesthetic requirements in the FCC's 2018 Small Cell Order.*
- *Remove the requirement that a local government or POU must offer \$270 as its recurring attachment fee until it adopts a fee schedule that complies with this bill.*
- *Specify that a local government may deny an application for an attachment based on safety, engineering, and insufficient capacity concerns if (1) the communications provider is unwilling to replace the pole or (2) replacement of the pole would not mitigate the safety, engineering and capacity concerns and (3) the local government or POU identifies the concern and provides the applicant with an opportunity to provide remedies mitigating the concerns.*

Prior/Related Legislation

SB 649 (Hueso, 2017) would have established requirements for local government permitting of small cell facilities in the public rights of way, including some provisions substantially similar to those contained in this bill. The bill was vetoed.

AB 2788 (Gatto, 2016) would have established requirements for local government permitting of small cell facilities, including fee limitations, exemptions to certain local permitting requirements, and timelines for approving small cell placement permits. The bill died in the Senate.

AB 57 (Quirk, Chapter 685, Statutes of 2015) specified that a wireless telecommunications collocation or siting application is deemed approved if the city or county fails to approve or deny the application within the time periods specified in applicable FCC decisions, all required public notices have been provided regarding application, and the applicant has provided a notice to the city or county that the time period has lapsed.

AB 162 (Holden, 2013) would have prohibited a local government from denying certain requests for modifying an existing wireless telecommunications facility or structure that does not substantially change the physical dimensions of the wireless facility or structure. The bill also would have required a local government to act on a request within 90 days of receipt. The bill died in the Assembly.

SB 1027 (Buchanan, Chapter 580, Statutes of 2011) required electric POU's 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. The bill established requirements for fees for accessing POU's infrastructure, terms and conditions of access, and established a mechanism for challenging fees and access terms.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT:

Bay Area Council
Contra Costa County Office of Education
Crown Castle
CTIA
East Bay Leadership Council
Greater Sacramento Economic Council
Lake County Office of Education
Long Beach Area Chamber of Commerce
Los Angeles County Business Federation (BizFed)
OCA - Asian Pacific American Advocates
Orange County Business Council
Napa County Office of Education
Plumas County Office of Education
Sacramento Hispanic Chamber of Commerce
sf.citi
Silicon Valley Leadership Group
Sonoma County Office of Education
The Wall Las Memorias
Verizon
Thousands of individual supporters

OPPOSITION:

5G Free California
5G Free Marin
Alliance of Nurses for Healthy Environments
Californians for Safe Technology
Cities of Agoura Hills, Arcata, Bellflower, Brea, Calabasas, Carlsbad, Chino Hills, Clearlake, Clovis, Colton, Culver City, Del Mar, Downey, El Centro, El Segundo, Elk Grove, Encinitas, Fortuna, Foster City, Fountain Valley, Hesperia,

La Palma, Laguna Beach, Lakewood, Lathrop, Los Angeles, Los Alamitos, Los Altos, Madera, Maywood, Monterey, Norwalk, Novato, Oakdale, Oceanside, Pacifica, Palmdale, Petaluma, Placentia, Rancho Cordova, Rancho Cucamonga, Redding, Ripon, Riverbank, San Buenaventura, San Diego, San Fernando, Sebastopol, Signal Hill, Solano Beach, South Lake Tahoe, Stockton, Sunnyvale, Tehachapi, Thousand Oaks, Torrance, Tracy, Tulare, Ukiah, Union City, Ventura, Vista, Wasco, West Hollywood, Whittier

Community Union, Inc.
Community Planet Foundation
East Bay Neighborhoods for Responsible Technology
Ecological Option Network
EMF Safety Network
Environmental Health Trust
FACTS: Families Advocating for Chemical and Toxins Safety
Fusion Message of Santa Barbara
Keep Cell Antennas Away
Keep Cell Antennas Away From Our Elk Grove Homes
Law Offices of Harry V. Lehmann
League of California Cities
Moms Across America
Monterey Vista Neighborhood Association
Napa County Progressive Alliance
Napa Neighborhood Association for Safe Technology
Sacramento County Board of Supervisors
Safe Tech for Santa Rosa
Santa Barbara Body Therapy Institute
Santa Barbara Green Sisters
Save North Petaluma and Wetlands
South Bay Cities Council of Government
Sustainable TamAlmonte
The Balanced Runner
Towards an Internet of Living Beings
Towns of Fairfax, Mammoth Lake, Ross, Truckee
Two Heads Tutoring
Wire California
Wireless Radiation Alert Network
Wireless Radiation Education and Defense
A Couple Hundred Individuals

ARGUMENTS IN SUPPORT: According to the author:

California can take immediate steps to close the digital divide by passing this proposal. For too long, telecommunication projects have been delayed by confusing regulations, entrenched in excessive bureaucracy. These processes have had a severe impact on bringing high-speed internet to many communities across California. As employers and schools across our state have shifted to virtual participation, highlighting disparities of access faced by low-income families and people of color, it is now time to ensure a better access to internet for all.

ARGUMENTS IN OPPOSITION: Opponents raise a variety of concerns associated with this bill. Opponents claim that this bill could have negative consequences for public health, safety, and cybersecurity due to the technologies deployed. Opponents also argue that this bill conflicts with the FCC's regulations, creates ambiguities about local fees for utility attachments, and limits local governments' ability to regulate access to public rights of way without enabling local governments to effectively enforce consumer protections. In opposition, the League of California Cities states:

SB 556 directly conflicts with the Federal Communications Commission's (FCC) adopted regulations on wireless services deployment, which cities and counties across the nation are actively implementing. This measure requires local governments to make space available to telecommunications providers without recognizing local authority to manage the public right of way preserved in federal law. FCC regulations explicitly enable local governments to ensure that such installations meet appearance and design standards, maintain traffic safety, protect historical resources' integrity, and safeguard citizens' quality of life. To protect the public's investment, the control of the public rights of way must remain local.

-- END --