



June 20, 2016

The Honorable Mike Gatto
California State Assembly, District 43
State Capitol Building, Room 5136
Sacramento, CA 95814
Fax: (916) 319-2143

RE: AB 2788 (Gatto) Wireless Telecommunications Facilities
Oppose (As amended 6/13/2016)

Dear Assembly Member Gatto:

The City of Santa Rosa respectfully opposes your AB 2788, which was recently gutted and amended to deal with the permitting of wireless facilities. This bill unnecessarily and unconstitutionally strips local authority over public property and shuts out public input and local discretion by eliminating consideration of the aesthetic and environmental impacts of "small cells."

AB 2788 prohibits local discretionary review of "small cell" wireless antennas, including equipment collocated on existing structures or located on new "poles, structures, or non-pole structures," including those within the public right-of-way and buildings. The bill preempts adopted local land use plans by mandating that "small cells" be allowed in all zones as a use by-right.

As such, the bill provides a de facto exemption to the California Environmental Quality Act (CEQA) for the installation of such facilities and precludes consideration by the public of the aesthetic, nuisance, and environmental impacts of these facilities.

This bill's definition of a "small cell" may actually result in large facilities that exceed the bill's specified limitations. Furthermore, the limits do not apply to other "small cell" equipment such as electric meters, concealments, telecom demarcation boxes, ground-based enclosures, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cables, or conduits. The bill allows for an unlimited number of antennas of less than six cubic feet, while placing no height restrictions on the pole. The bill may even allow the wireless industry to install its own poles.

The bill also unconstitutionally preempts local authority by requiring local governments to make available sites they own for the installation of a "small cell."

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While the city may place “fair and reasonable terms and conditions” on the use of city property, the bill does not provide the city with any discretion to deny a “small cell” to be located on city property except for fire department sites. In effect, this measure unconstitutionally gives control of city property to private telecommunications companies.

Finally, a city or county must issue the applicable building permit or administrative permit within an arbitrary timeline of 60 days after the submission of an application for a small cell facility, or else the permit is ***deemed issued***. Even more concerning, this bill seemingly allows a telecommunications company to submit an application for an unlimited number of facilities and equipment simultaneously, which would force a public agency to potentially review dozens or unlimited amounts of applications within the 60 day window, potentially approving these facilities regardless if they are built to basic building, health, and safety codes.

Local governments typically welcome new technology into their boundaries because of its potential to dramatically improve the quality of life for their residents. **However, AB 2788 goes too far by requiring local governments to approve “small cells” in all land use zones through a ministerial permit, thereby shutting the public out of decisions that could affect the aesthetics of their community and the quality of their environment.**

For these reasons, the City of Santa Rosa **opposes** your AB 2788.

Sincerely,



JOHN SAWYER
Mayor

JS/sks

c: Senator Mike McGuire, mike.mcguire@sen.ca.gov, Fax: (916) 651-4902
Assembly Member Jim Wood, Fax: (916) 319-2002 or (707) 576-2297
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AMENDED IN SENATE JUNE 13, 2016

AMENDED IN ASSEMBLY MAY 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2788

Introduced by Assembly Member Gatto

February 19, 2016

~~An act relating to oil and gas, and declaring the urgency thereof, to take effect immediately. An act to amend Sections 65850.6 and 65964 of the Government Code, relating to telecommunications.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2788, as amended, Gatto. ~~Natural gas storage: emergency regulations. Wireless telecommunications facilities.~~

Under existing law, a wireless telecommunications collocation facility, as specified, is subject to a city or county discretionary permit and is required to comply with specified criteria, but a collocation facility, which is the placement or installation of wireless facilities, including antennas and related equipment, on or immediately adjacent to a wireless telecommunications collocation facility, is a permitted use not subject to a city or county discretionary permit.

This bill would permit the use of a small cell, as defined, without a city or county discretionary permit or aesthetic review in all zoning districts, subject only to a building permit or administrative permit, as applicable. The bill would require a city or county to issue those permits, as applicable, within 60 days, except as specified.

Under existing law, a city or county, as a condition of approval of an application for a permit for construction or reconstruction of a development project for a wireless telecommunications facility, may

not require an escrow deposit for removal of a wireless telecommunications facility or any component thereof, unreasonably limit the duration of any permit for a wireless telecommunications facility, or require that all wireless telecommunications facilities be limited to sites owned by particular parties within the jurisdiction of the city or county, as specified.

This bill would require the city or county to renew a permit with a duration of less than 10 years for an equivalent duration unless the city or county finds that wireless telecommunications facility does not comply with the codes and permit conditions applicable at the time the permit was initially approved. The bill would also prohibit a city or county from precluding the leasing or licensing of a site owned by the city or county for the installation of a small cell, except as specified. The bill would authorize a city or county to impose a fee associated with a permit application for construction or reconstruction of a development project for a wireless telecommunications facility only if similar fees are charged within the city or county for similar types of commercial development. By imposing new duties on local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Existing law provides that, if a state agency makes a finding that the adoption of a regulation or order of repeal is necessary for the immediate preservation of the public peace, health and safety, or general welfare, the regulation or order of repeal may be adopted as an emergency regulation or order of repeal. Under existing law, a regulation, amendment, or order of repeal adopted as an emergency regulation remains in effect no more than 180 days unless the adopting agency and the Office of Administrative Law comply with certain requirements.~~

~~This bill would instead require that certain emergency regulations adopted by the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation effective February 5, 2016, remain in effect until the adoption, amendment, or repeal of the regulations is promulgated by the division pursuant to the act. The bill would repeal this provision on January 1, 2019.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.~~

The people of the State of California do enact as follows:

1 SECTION 1. Section 65850.6 of the Government Code is
2 amended to read:

3 65850.6. (a) A collocation facility shall be a permitted use not
4 subject to a city or county discretionary permit if it satisfies the
5 following requirements:

6 (1) The collocation facility is consistent with requirements for
7 the wireless telecommunications collocation facility pursuant to
8 subdivision (b) on which the collocation facility is proposed.

9 (2) The wireless telecommunications collocation facility on
10 which the collocation facility is proposed was subject to a
11 discretionary permit by the city or county and an environmental
12 impact report was certified, or a negative declaration or mitigated
13 negative declaration was adopted for the wireless
14 telecommunications collocation facility in compliance with the
15 California Environmental Quality Act (Division 13 (commencing
16 with Section 21000) of the Public Resources Code), the
17 requirements of Section 21166 do not apply, and the collocation
18 facility incorporates required mitigation measures specified in that
19 environmental impact report, negative declaration, or mitigated
20 negative declaration.

21 (b) A wireless telecommunications collocation facility, where
22 a subsequent collocation facility is a permitted use not subject to
23 a city or county discretionary permit pursuant to subdivision (a),
24 shall be subject to a city or county discretionary permit issued on
25 or after January 1, 2007, and shall comply with all of the following:

26 (1) City or county requirements for a wireless
27 telecommunications collocation facility that specifies types of

1 wireless telecommunications facilities that are allowed to include
2 a collocation facility, or types of wireless telecommunications
3 facilities that are allowed to include certain types of collocation
4 facilities; height, location, bulk, and size of the wireless
5 telecommunications collocation facility; percentage of the wireless
6 telecommunications collocation facility that may be occupied by
7 collocation facilities; and aesthetic or design requirements for the
8 wireless telecommunications collocation facility.

9 (2) City or county requirements for a proposed collocation
10 facility, including any types of collocation facilities that may be
11 allowed on a wireless telecommunications collocation facility;
12 height, location, bulk, and size of allowed collocation facilities;
13 and aesthetic or design requirements for a collocation facility.

14 (3) State and local requirements, including the general plan, any
15 applicable community plan or specific plan, and zoning ordinance.

16 (4) The California Environmental Quality Act (Division 13
17 (commencing with Section 21000) of the Public Resources Code)
18 through certification of an environmental impact report, or adoption
19 of a negative declaration or mitigated negative declaration.

20 (c) The city or county shall hold at least one public hearing on
21 the discretionary permit required pursuant to subdivision (b) and
22 notice shall be given pursuant to Section 65091, unless otherwise
23 required by this division.

24 (d) For purposes of this section, the following definitions apply:

25 (1) “Collocation facility” means the placement or installation
26 of wireless facilities, including antennas, and related equipment,
27 on, or immediately adjacent to, a wireless telecommunications
28 collocation facility.

29 (2) “*Small cell*” means a wireless telecommunications facility
30 with antennas of no more than six cubic feet in volume each and
31 associated equipment with a cumulative volume no larger than 21
32 cubic feet on all poles and structures and 28 cubic feet on all
33 nonpole structures. An associated electric meter, concealment,
34 telecom demarcation box, ground-based enclosure, battery backup
35 power system, grounding equipment, power transfer switch, cutoff
36 switch, cable, or conduit may be located outside the primary
37 equipment enclosure and is not included in the calculation of the
38 equipment volume. Volume is a measure of the exterior
39 displacement, not the interior volume, of the enclosure. Any
40 equipment that is concealed from public view in or behind an

1 *otherwise approved structure or concealment is not included in*
2 *the volume calculations.*

3 ~~(2)~~

4 (3) “Wireless telecommunications facility” means equipment
5 and network components such as towers, utility poles, transmitters,
6 base stations, and emergency power systems that are integral to
7 providing wireless telecommunications services.

8 ~~(3)~~

9 (4) “Wireless telecommunications collocation facility” means
10 a wireless telecommunications facility that includes collocation
11 facilities.

12 (e) The Legislature finds and declares that a *small cell and a*
13 *collocation facility, as defined in this section, has have a significant*
14 *economic impact in California and is are not a municipal affair as*
15 *that term is used in Section 5 of Article XI of the California*
16 *Constitution, but is are a matter of statewide concern.*

17 (f) With respect to the consideration of the environmental effects
18 of radio frequency emissions, the review by the city or county shall
19 be limited to that authorized by Section 332(c)(7) of Title 47 of
20 the United States Code, or as that section may be hereafter
21 amended.

22 (g) *Notwithstanding any other law, a small cell is a permitted*
23 *use not subject to a city or county discretionary permit or aesthetic*
24 *review in all zoning districts, subject only to issuance of a building*
25 *permit if required to confirm compliance with Title 24 of the*
26 *California Code of Regulations, as applicable, or an administrative*
27 *encroachment permit. The city or county shall issue the applicable*
28 *building permit or administrative permit no later than 60 days*
29 *after the submission of an application for a small cell facility. The*
30 *time period for issuance may be tolled within the first 30 days after*
31 *the submission of an application for a small cell facility if the city*
32 *or county notifies the applicant that the application is incomplete,*
33 *identifies all missing information, and specifies the code provision,*
34 *ordinance, application instruction, or otherwise publicly stated*
35 *procedure that requires the information to be submitted. If the city*
36 *or county does not toll the time period for issuance or issue the*
37 *associated permit or permits within 60 days after the submission*
38 *of an application for a small cell facility, the associated permit or*
39 *permits shall be deemed issued.*

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

3 65964. (a) As a condition of approval of an application for a
4 permit for construction or reconstruction for a development project
5 for a wireless telecommunications facility, as defined in Section
6 65850.6, a city or county shall not do any of the following:

7 (a)

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

16 (b)

17 (2) Unreasonably limit the duration of any permit for a wireless
18 telecommunications facility. Limits of less than 10 years are
19 presumed to be unreasonable absent public safety reasons or
20 substantial land use reasons. *A permit with a duration of less than*
21 *10 years shall be renewed for an equivalent duration unless the*
22 *city or county makes a finding that the wireless telecommunications*
23 *facility does not comply with the codes and permit conditions*
24 *applicable at the time the permit was initially approved.* However,
25 cities and counties may establish a build-out period for a site.

26 (c)

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

30 (4) *Preclude the leasing or licensing of a site owned by the city*
31 *or county for installation of a small cell, as defined in paragraph*
32 *(2) of subdivision (d) of Section 65850.6. Sites shall be made*
33 *available under fair and reasonable terms and conditions and*
34 *offered on a nondiscriminatory basis to all lessees or licensees of*
35 *similar sites, towers, utility poles, transmitters, base stations, and*
36 *emergency power systems. Due to the unique duties and*
37 *infrastructure requirements for the swift and effective deployment*
38 *of firefighters, this subdivision does not apply to a collocation or*
39 *siting application for a wireless telecommunications facility where*
40 *the project is proposed for placement on fire department facilities.*

1 (b) A city or county may charge a reasonable permit,
2 application, consulting, or other fee associated with the submission,
3 review, processing, or approval of an application for a permit for
4 construction or reconstruction for a development project for a
5 wireless telecommunications facility, but only if a similar fee is
6 required for similar types of commercial development within the
7 city or county.

8 SEC. 3. If the Commission on State Mandates determines that
9 this act contains costs mandated by the state, reimbursement to
10 local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.

13 ~~SECTION 1. Notwithstanding Chapter 3.5 (commencing with~~
14 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the Government~~
15 ~~Code, including subdivisions (e) and (h) of Section 11346.1 of the~~
16 ~~Government Code, the emergency regulations amending Section~~
17 ~~1724.9 of Title 14 of the California Code of Regulations adopted~~
18 ~~by the Division of Oil, Gas, and Geothermal Resources in the~~
19 ~~Department of Conservation effective February 5, 2016, shall~~
20 ~~remain in effect until the adoption, amendment, or repeal of the~~
21 ~~regulations is promulgated by the division pursuant to Chapter 3.5~~
22 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~
23 ~~2 of the Government Code.~~

24 ~~SEC. 2. Section 1 of this act shall remain in effect only until~~
25 ~~January 1, 2019, and as of that date is repealed, unless a later~~
26 ~~enacted statute, that is enacted before January 1, 2019, deletes or~~
27 ~~extends that date.~~

28 ~~SEC. 3. This act is an urgency statute necessary for the~~
29 ~~immediate preservation of the public peace, health, or safety within~~
30 ~~the meaning of Article IV of the Constitution and shall go into~~
31 ~~immediate effect. The facts constituting the necessity are:~~

32 ~~In order to ensure that emergency regulations implementing~~
33 ~~protective standards for all underground gas storage projects in~~
34 ~~the state remain in effect, it is necessary that this act take effect~~
35 ~~immediately.~~