


Agenda Report Reviewed by:
City Manager: 

**CITY OF SEBASTOPOL
CITY COUNCIL
AGENDA ITEM**

Meeting Date: April 6, 2021
To: Honorable City Councilmembers
From: Agenda Review Committee
Subject: Letter of Opposition to SB 556 (Dodd) Removal of Local Authority of Public Rights-of-Way
-Wireless Broadband Infrastructure Deployment
Recommendation: Approve Letter of Opposition
Funding: Currently Budgeted: Yes No N/A
Net General Fund Cost: None

Account Code/Costs authorized in City Approved Budget AK (verified by Administrative Services Department)

INTRODUCTION/PURPOSE:

The item tonight is for City Council Authorize the Mayor to send a Letter of Opposition.

BACKGROUND:

The City tracks pending legislation or receives from time to time to take a position of support or opposition on a particular piece of legislation. Often, there is limited time to influence the legislative process. In this case, there is sufficient time for the City Council to provide a letter of opposition. SB 556 will be heard in the Senate Energy, Utilities, and Communications Committee on April 19. The deadline to send letters the Senate Energy, Utilities, and Communications Committee is April 14 by noon.

DISCUSSION:

In 2018, the Federal Communications Commission (FCC) voted to limit the authority and standards that states and local governments can require for the installation and/or deployment of small cell wireless facilities. However, the FCC regulations explicitly protect the ability of 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. Additionally, local governments can continue to charge fees that are a reasonable approximation of the local government's actual and direct costs, including costs to maintain a structure within the right-of-way, process an application or permit, and review a siting application.

On March 31, 2021, the City received information from the League of CA Cities of an upcoming hearing set for April 19th, 2021 on SB 556 which would revise the definition of a "utility pole" for purposes of existing law requiring a local publicly owned electric utility 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 556 (Dodd) is in direct conflict with the FCC's regulations. SB 556 is an attempt by the telecommunications industry to undermine local authority while making no meaningful progress towards closing the digital divide in California's unserved and underserved communities. Federal law allows local governments to "manage" the public right-of-way; and the mandate of the draft bill does not allow us to manage the public right-of-way.

What Does SB 556 Specifically Do to Conflict with Federal Law?

- Requires local governments to make space available on street light poles, traffic signal poles, utility poles, and other public infrastructure to telecommunications providers without recognizing local authority to manage the public right-of-way preserved in federal law; and
- Creates ambiguity in the fees local governments can charge for access to their infrastructure. SB 556 chooses not to incorporate federal conditions for valid fees, further restricting fees to "actual cost" and "reasonable actual cost" which conflicts with federal law.

Tonight's action is to propose submission of a letter of opposition to SB 556 and commit to continue to encourage our State Representatives to work in collaboration and cooperation with local governments rather than against such as this bill will do by not allowing us to manage our public right-of-way.

PUBLIC COMMENT:

As of the writing of this staff report, the City has received no public comment. If staff receives public comment from interested parties following the publication and distribution of this staff report, such comments will be provided to the City Council as supplemental materials before or at the meeting. In addition, public comments may be offered during the public comment portion of this item.

PUBLIC NOTICE:

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to schedule meeting date.

FISCAL IMPACT:

There is no fiscal impact associated with discussion of this item.

RECOMMENDATION:

That the City Council Authorize the Mayor to send a Letter of Opposition.

ATTACHMENTS:

DRAFT Letter
Information from League of CA Cities
SB 556

City Council

Mayor Una Glass
Vice Mayor Sarah Glade Gurney
Diana Gardner Rich
Neysa Hinton
Patrick Slayter



Agenda Item Number 7

City Manager

Larry McLaughlin

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City of Sebastopol

April 7, 2021

The Honorable Ben Hueso
Chair, Senate Energy, Utilities, and Communications Committee
State Capitol Building, Room 4035
Sacramento, CA 95814

RE: SB 556 (Dodd) Street Light Poles, Traffic Signal Poles, Utility Poles, and Support Structures: Attachments.
Notice of OPPOSITION (As Amended 03/16/21)

Dear Senator Hueso:

The City of Sebastopol must respectfully oppose SB 556 (Dodd), related to wireless broadband infrastructure deployment.

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.

Additionally, SB 556 creates ambiguity in the fees local governments can charge for access to their infrastructure. Federal law explicitly outlines conditions for valid fees, limiting fees to a "reasonable approximation of the local government's actual and direct costs," including costs to maintain a structure within the right-of-way, process an application or permit, and review a siting application. SB 556, on the other hand, chooses not to incorporate these federal standards, further restricting fees to "actual cost" and "reasonable actual cost." If the goal of SB 556 is to implement the existing FCC orders into state law, there should be no added ambiguity created by changes from what was already decided at the federal level.

SB 556 is an attempt by the telecommunications industry to undermine local authority while making no meaningful progress towards closing the digital divide in California's unserved and underserved communities. As previously mentioned, cities and counties across the nation are implementing the FCC's orders. If California is to close the digital divide, legislative efforts should focus on encouraging and incentivizing telecommunications companies to service areas that for too long have not had access to reliable and affordable internet.

While the City of Sebastopol stands ready to work with the Legislature to further the state's broadband goals, these efforts do not inherently conflict with the appropriate local authority to manage the right-of-way and comply with existing FCC decisions. For these reasons, the City of Sebastopol opposes SB 556 (Dodd).

Sincerely,

Una Glass
Mayor
City of Sebastopol

cc: The Honorable Bill Dodd
Nancy Hall Bennett, nbennett@cacities.org
League of California Cities, cityletters@cacities.org
Representative Jared Huffman
Senator Mike McGuire

March 30, 2021

The Honorable Ben Hueso
Chair, Senate Energy, Utilities, and Communications Committee
State Capitol Building, Room 4035
Sacramento, CA 95814

RE: SB 556 (Dodd) Street Light Poles, Traffic Signal Poles, Utility Poles, and Support Structures: Attachments.
Notice of OPPOSITION (As Amended 03/16/21)

Dear Senator Hueso,

The League of California Cities (Cal Cities) must respectfully oppose SB 556 (Dodd), related to wireless broadband infrastructure deployment. While we oppose SB 556, Cal Cities, as detailed in our 2021 strategic priorities, is committed to closing the digital divide while continuing to protect and modernize the critical infrastructure in our communities.

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.

Additionally, SB 556 creates ambiguity in the fees local governments can charge for access to their infrastructure. Federal law explicitly outlines conditions for valid fees, limiting fees to a "reasonable approximation of the local government's actual and direct costs," including costs to maintain a structure within the right-of-way, process an application or permit, and review a siting application. SB 556, on the other hand, chooses not to incorporate these federal standards, further restricting fees to "actual cost" and "reasonable actual cost." If the goal of SB 556 is to implement the existing FCC orders into state law, there should be no added ambiguity created by changes from what was already decided at the federal level.

SB 556 is an attempt by the telecommunications industry to undermine local authority while making no meaningful progress towards closing the digital divide in California's unserved and underserved communities. As previously mentioned, cities and counties across the nation are implementing the FCC's orders. If California is to close the digital divide, legislative efforts should focus on encouraging and incentivizing telecommunications companies to service areas that for too long have not had access to reliable and affordable internet.

While Cal Cities stands ready to work with the Legislature to further the state's broadband goals, these efforts do not inherently conflict with the appropriate local authority to manage the right-of-way and comply with existing FCC decisions. For these reasons, Cal Cities opposes SB 556 (Dodd). If you have any questions, do not hesitate to contact me at (916) 658-8218.

Sincerely,

AMENDED IN SENATE MARCH 16, 2021

SENATE BILL

No. 556

Introduced by Senator Dodd

February 18, 2021

An act to amend ~~Section 9510.5~~ of Sections 9510, 9510.5, 9511, 9511.5, 9512, 9513, 9514, and 9515 of, to amend the heading of Part 2 (commencing with Section 9510) of Division 4.8 of, and to add Section 9514.5 to, the Public Utilities Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 556, as amended, Dodd. ~~Utility poles~~ *Street light poles, traffic signal poles, utility poles*, and support structures: attachments.

Existing law requires a local publicly owned electric utility to make appropriate space and capacity on and in their utility poles, as defined, and support structures available for use by cable television corporations, video service providers, and telephone corporations. Under existing law, "utility poles" include electrical poles, except those electrical poles used solely for the transmission of electricity at 50 kilovolts or higher.

This bill would revise the definition of a utility pole to include an electrical transmission tower, while continuing to exclude an electrical pole, but not an electrical transmission tower, used solely for the transmission of electricity at 50 kilovolts or higher. *The bill would require a local publicly owned electric utility to make available appropriate space and capacity for use by cable television corporations, video service providers, and telephone corporations on and in their street light poles, traffic signal poles, and supporting structures. The bill would require local governments to make appropriate space and capacity on and in their street light poles, traffic signal poles, and supporting structures in a similar manner as is required for a local*

publicly owned electric utility. By placing additional requirements upon local publicly owned electric utilities, utilities and local governments, the 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 no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. (a) The Legislature finds and declares all of the
 2 following:

3 (1) Communities across California face a multitude of barriers
 4 to the deployment of resilient and accessible networks. Broadband
 5 internet access service in urban communities varies by
 6 neighborhood, with great discrepancies in infrastructure
 7 technology. Communities in rural areas often lack sufficient
 8 broadband internet access service, as well as the backhaul
 9 infrastructure, to provide broadband services.

10 (2) The COVID-19 pandemic has highlighted the extent to which
 11 broadband access is essential for education, telehealth, remote
 12 working, public safety, public health and welfare, and economic
 13 resilience. The pandemic adds greater urgency to develop new
 14 strategies and expand on existing successful measures to deploy
 15 reliable networks. Connection to the internet at reliable speeds is
 16 also crucial to California’s economic recovery from the impact of
 17 COVID-19. Millions of children are attending classes remotely,
 18 telehealth visits have skyrocketed, and many more Californians
 19 are telecommuting from their places of residence. Additionally,
 20 with unprecedented growth in unemployment caused by COVID-19
 21 and the need to participate in society from home, the demand for
 22 reliable broadband internet access service has significantly
 23 increased as millions of additional Californians need access to
 24 successfully weather the pandemic and to recover.

25 (3) Mobile broadband internet access is critical to distance
 26 learning. Just as important, mobile broadband internet access is
 27 needed to address the digital divide. In 2017, for example, 73

1 percent of households accessed the internet using a cellular phone.
2 The Federal Communications Commission reports that nearly 70
3 percent of teachers assign homework that requires broadband
4 access. Although California has made progress closing the digital
5 divide at schools, internet access at home is still a challenge.
6 Almost 16 percent of schoolage children, about 945,000, had no
7 internet connection at home in 2017 and 27 percent, about 1.7
8 million, did not have broadband connections. Access varies
9 significantly by family income, parental education, race or
10 ethnicity, and geography. For example, 22 percent of low-income
11 households with schoolage children did not have any internet
12 connection at home and 48 percent reported no broadband
13 subscription at home.

14 (4) Over 2,000,000 Californians lack access to high-speed
15 broadband at benchmark speeds of 100 megabits per second
16 download, including 50 percent of rural housing units. More than
17 14,000,000 Californians, over one-third of the population, do not
18 subscribe to broadband at the minimum benchmark speed to
19 support distance learning and technologies that depend on upload
20 speed. Only 34 percent of adults over 60 years of age use the
21 internet, excluding older adults from access to telemedicine, social
22 services, and other support.

23 (5) The Centers for Medicare and Medicaid Services define
24 telehealth as “a two-way, real-time interactive communication
25 between a patient and a physician or practitioner at a distant site
26 through telecommunications equipment that includes, at a
27 minimum, audio and visual equipment.” Telemedicine encompasses
28 a growing number of applications and technologies, including
29 two-way live or streaming video, videoconferencing,
30 store-and-forward imaging along with the internet, email, smart
31 phones, wireless tools, and other forms of telecommunication.
32 These technologies facilitate and leverage the latest innovations
33 in computer, network, and peripheral equipment to promote the
34 health of patients around the world. Critical to its success is
35 reliable broadband internet access.

36 (6) Telehealth technology permits health care services to be
37 delivered without in-person contact, reducing the risk of disease
38 transmission to both patients and health care workers, and frees
39 up in-person resources for COVID-19 patients. Telehealth allows
40 patients to receive health services away from settings where the

1 potential for contracting COVID-19 is high, such as hospitals,
2 health clinic waiting rooms, private practices, and other medical
3 facilities. Telehealth can also expand the reach of resources to
4 communities that have limited access to needed services.

5 (7) Due to widespread restrictions, and with fewer elective
6 procedures occurring in California and around the country to
7 reserve beds for COVID-19 patients, the telehealth share of total
8 medical claim lines, which is the individual service or procedure
9 listed on an insurance claim, increased 8,336 percent nationally
10 from April 2019, to April 2020. Similar percentage increases have
11 occurred in California.

12 (8) Millions of Californians are working from home while
13 sheltering in place. Even employers that had not previously
14 permitted remote-work arrangements have changed their policies
15 during the pandemic. The Department of General Services reports
16 that 83.9 percent of state workers are working from home. Survey
17 data indicates that nearly two-thirds of those who still had jobs
18 during the pandemic were almost exclusively working from home.
19 That compares with just 13 percent of workers who said they did
20 so even a few times a week prior to the COVID-19 pandemic.
21 Telework is expected to continue at rates much higher than before
22 COVID-19 even after the pandemic is over. Among those workers
23 surveyed who had previously not regularly worked from home, 62
24 percent said they were enjoying the change, and 75 percent expect
25 their employers to continue to provide flexibility in where they
26 work after the pandemic has passed. Indeed, the State of California,
27 one of California's largest employers, has stated the desire for 75
28 percent of the state's workforce to remain home, at least part time,
29 for the foreseeable future. The Metropolitan Transportation
30 Commission in the San Francisco Bay Area voted to adopt a
31 strategy to have large, office-based companies require people to
32 work from home three days a week as a way to slash emissions of
33 greenhouse gases from car commutes. Critical to the success of
34 telework is reliable broadband internet access.

35 (9) The enormous increases in distance learning, telehealth,
36 and telework require a significant boost in broadband
37 infrastructure, especially near the homes where these activities
38 take place. To promote wireless broadband internet access near
39 homes, it is in the interest of the state to ensure the deployment of
40 wireless facilities on utility poles, street light poles, and traffic

1 *signal poles. It is in the interest of the state to ensure that local*
 2 *publicly owned electric utilities and local governments that own*
 3 *or control utility poles, traffic signal poles, or street light poles*
 4 *make available appropriate space and capacity on and in those*
 5 *structures to communications service providers, under reasonable*
 6 *rates, terms, and conditions.*

7 *(10) The state has a compelling interest in ensuring that local*
 8 *governments provide access to utility poles, traffic signal poles,*
 9 *or street light poles, with nondiscriminatory fees that recover*
 10 *reasonable actual costs. Therefore, it is the intent of the Legislature*
 11 *that this part supersedes all conflicting local laws and this part*
 12 *shall apply in charter cities.*

13 *(11) Time is of the essence to approve small wireless facility*
 14 *siting applications given the immediate need for broadband internet*
 15 *access, as amplified by the COVID-19 pandemic.*

16 *(b) It is the intent of the Legislature to facilitate the deployment*
 17 *of wireless broadband internet access and to bridge the digital*
 18 *divide by connecting students, families, and communities with*
 19 *reliable internet connectivity that will remain a necessity after the*
 20 *COVID-19 pandemic has abated.*

21 *SEC. 2. The heading of Part 2 (commencing with Section 9510)*
 22 *of Division 4.8 of the Public Utilities Code is amended to read:*

23
 24 **PART 2. STREET LIGHT POLES, TRAFFIC SIGNAL POLES,**
 25 **UTILITY POLES POLES, AND SUPPORT STRUCTURES**

26
 27 *SEC. 3. Section 9510 of the Public Utilities Code is amended*
 28 *to read:*

29 9510. (a) The Legislature finds and declares ~~that in order that~~,
 30 to promote wireline and wireless broadband access and adoption,
 31 it is in the interest of the state to ensure that *local governments*
 32 *and local publicly owned electric utilities, including irrigation*
 33 *districts, that own or control street light poles, traffic signal poles,*
 34 *utility poles poles, and support structures, including ducts and*
 35 *conduits, as applicable, make available appropriate space and*
 36 *capacity on and in those structures to cable television corporations,*
 37 *video service providers, and telephone corporations under*
 38 *reasonable rates, terms, and conditions.*

39 (b) The Legislature further finds and declares that the oversight
 40 of fees and other requirements imposed by local publicly owned

1 electric utilities *or local governments* as a condition of providing
 2 the space or capacity described in subdivision (a) is a matter of
 3 statewide interest and concern. Therefore, it is the intent of the
 4 Legislature that this part supersedes all conflicting local laws and
 5 this part shall apply in charter cities.

6 (c) The Legislature further finds and declares that local publicly
 7 owned electric utilities *and local governments* should provide
 8 access to *street light poles, traffic signal poles, utility poles poles,*
 9 *and support—structures structures, as applicable, with—a*
 10 *nondiscriminatory fees that allow for the recovery of reasonable*
 11 *actual costs without subsidizing for-profit cable television*
 12 *corporations, video service providers, and telephone corporations.*

13 ~~SECTION 4.~~

14 *SEC. 4.* Section 9510.5 of the Public Utilities Code is amended
 15 to read:

16 9510.5. As used in this part, the following terms have the
 17 following meanings:

18 (a) “Communications service provider” means a cable television
 19 corporation, video service provider, or telephone corporation.

20 (b) “Governing body” means the governing body of a *local*
 21 *government or local publicly owned electric utility, including,*
 22 *where applicable, a board appointed by a city council.*

23 (c) “*Local government*” means a city, including a charter city,
 24 county, or city and county.

25 ~~(e)~~

26 (d) “Street light pole” means a pole, arm, or fixture used
 27 primarily for street, pedestrian, or security lighting.

28 (e) “*Traffic signal pole*” means a pole, arm, or fixture used
 29 primarily for signaling traffic flow.

30 ~~(f)~~

31 (f) “Utility pole” means an electrical pole, electrical transmission
 32 tower, or telephone pole, but does not include a street light pole
 33 or an electrical pole used solely for the transmission of electricity
 34 at 50 kilovolts or higher and not intended for distribution of
 35 communications signals or electricity at lower voltages.

36 *SEC. 5.* Section 9511 of the Public Utilities Code is amended
 37 to read:

38 9511. (a) (1) (A) A local publicly owned electric utility shall
 39 make appropriate space and capacity on and in a *street light pole,*
 40 *traffic signal pole, utility pole pole, and support structure owned*

1 or controlled by the local publicly owned electric utility available
 2 for use by a communications service provider pursuant to
 3 reasonable terms and conditions. ~~Rates,~~

4 (B) Rates, terms, and conditions that are specified in a contract
 5 executed *with a local publicly owned electric utility* before January
 6 1, 2012, shall remain valid until the contract, rate, term, or
 7 condition expires or is terminated according to its terms by one of
 8 the parties. If an annual fee is included in a contract executed
 9 before January 1, 2012, but the amount of the fee is left
 10 unspecified, the requirements of Section 9512 apply.

11 (2) (A) *A local government shall make appropriate space and*
 12 *capacity on and in a street light pole, traffic signal pole, and*
 13 *support structure owned or controlled by the local government*
 14 *available for use by a communications service provider pursuant*
 15 *to reasonable terms and conditions.*

16 (B) *Unless the communications service provider and local*
 17 *government otherwise agree, if the contractual rates exceed two*
 18 *hundred seventy dollars (\$270) per year per pole, the rates, terms,*
 19 *and conditions that are specified in a contract executed before*
 20 *January 14, 2019, shall remain valid only for wireless equipment*
 21 *that has already been attached to a pole by a communications*
 22 *service provider before January 1, 2022, and only until the*
 23 *contract, rate, term, or condition expires or is terminated according*
 24 *to its terms by one of the parties.*

25 (b) (1) *A local publicly owned electric utility or a local*
 26 *government shall respond to a request for use by a communications*
 27 *service provider of a street light pole, traffic signal pole, utility*
 28 *pole pole, or support-structure structure, as applicable, owned or*
 29 *controlled by the local publicly owned electric utility or local*
 30 *government within 45 days of the date of receipt of the request, or*
 31 *60 days if the request is to attach to over 300 poles. If the request*
 32 *is denied, the local publicly owned electric utility or local*
 33 *government shall provide in the response the reason for the denial*
 34 *and the remedy to gain access to the street light pole, traffic signal*
 35 *pole, utility pole pole, or support structure. If a request to attach*
 36 *is accepted, the local publicly owned electric utility, utility or local*
 37 *government, within 14 days after acceptance of the request, shall*
 38 *provide a nondiscriminatory cost estimate, based on reasonable*
 39 *actual cost, as described in the Federal Communications*
 40 *Commission's Declaratory Ruling on Wireless Broadband*

1 *Deployment (FCC 18-133, 33 FCC Rcd 9088 (2018))*, for any
2 necessary make-ready work required to accommodate the
3 attachment. The requesting party shall accept or reject the
4 make-ready cost estimate within 14 days. Within 60 days of
5 acceptance of the cost estimate, the local publicly owned electric
6 utility *or local government* shall notify any existing third-party
7 attachers that make-ready work for a new attacher needs to be
8 performed. The requesting party shall have the responsibility to
9 coordinate with third-party existing attachers for make-ready work
10 to be completed. All parties shall complete all make-ready work
11 within 60 days of the notice, or within 105 days in the case of a
12 request to attach to over 300 poles. The local publicly owned
13 electric utility *or local government* may complete make-ready
14 work without the consent of the existing attachers, if the existing
15 attachers fail to move their attachments by the end of the
16 make-ready timeline requirements specified in this paragraph.

17 (2) The timelines described in paragraph (1) may be extended
18 under special circumstances upon agreement of the local publicly
19 owned electric utility *or local government* and the communications
20 service provider.

21 (c) ~~A~~ *Unless the communication service provider agrees to*
22 *replace the street light pole, traffic signal pole, utility pole, or*
23 *support structure, a local publicly owned electric utility or local*
24 *government may deny an application for use of a street light pole,*
25 *traffic signal pole, utility pole pole, or support structure structure,*
26 *as applicable, because of insufficient capacity or safety, reliability,*
27 *or engineering concerns. In denying an application, a local publicly*
28 *owned electric utility or local government may also take into*
29 *account the manner in which a request from a communications*
30 *service provider under this part could impact an approved project*
31 *for future use by the local publicly owned electric utility or the*
32 *local government of its street light poles, traffic signal poles, utility*
33 *poles poles or support structures for delivery of its core utility or*
34 *municipal service.*

35 (d) This part does not limit the authority of a local publicly
36 owned electric utility *or local government* to ensure compliance
37 with all applicable provisions of law in determining whether to
38 approve or disapprove use of a *street light pole, traffic signal pole,*
39 *utility pole pole, or support structure. structure, as applicable.*

1 SEC. 6. Section 9511.5 of the Public Utilities Code is amended
2 to read:

3 9511.5. (a) ~~If a~~ A local publicly owned electric utility or local
4 government that has the authority pursuant to other law to impose
5 a fee to provide the use described in Section 9511, ~~that 9511 shall~~
6 ~~adopt and levy only the fee shall be adopted and levied~~ described
7 in Section 9511, consistent with the requirements of this part.

8 (b) The governing body of the local publicly owned electric
9 utility or a local government shall determine the fee pursuant to
10 Section 9512.

11 (c) This part does not grant additional authority to a local
12 publicly owned electric utility or local government to impose a
13 fee that is not otherwise authorized by law.

14 SEC. 7. Section 9512 of the Public Utilities Code is amended
15 to read:

16 9512. (a) (1) An annual fee charged by a local publicly owned
17 electric utility or a local government for the use of a street light
18 pole, traffic signal pole, or utility pole, as applicable, by a
19 communications service provider for an attachment shall be
20 imposed pursuant to reasonable terms and conditions, and shall
21 not exceed an amount determined by multiplying the percentage
22 of the total usable space that would be occupied by the attachment
23 by the annual costs of ownership of the pole and its supporting
24 anchor. As used in this paragraph and paragraph (2), “usable space”
25 means the space above the minimum grade level that can be used
26 for the attachment of wires, cables, and associated equipment. It
27 shall be presumed, subject to factual rebuttal, that a single
28 attachment occupies one foot of usable space and that an average
29 street light pole, traffic signal pole, or utility pole contains 13.5
30 feet of usable space.

31 (2) An annual fee charged by a local publicly owned electric
32 utility or local government for use of a support structure by a
33 communications service provider shall not exceed the local publicly
34 owned electric utility’s or local government’s annual costs of
35 ownership of the percentage of the volume of the capacity of the
36 structure rendered unusable by the equipment of the
37 communications service provider.

38 (3) As used in this subdivision, the “annual costs of ownership”
39 is the sum of the annual capital costs and annual operation costs
40 of the pole street light pole, traffic signal pole, utility pole, or

1 support structure, which shall be the average costs of all similar
 2 *street light poles, traffic signal poles, utility-poles poles, or*
 3 *structures owned or controlled by the local publicly owned electric*
 4 ~~*utility.*~~ *utility or local government.* The basis for the computation
 5 of annual capital costs shall be historical capital costs less
 6 depreciation. The accounting upon which the historical capital
 7 costs are determined shall include a credit for all reimbursed capital
 8 costs. Depreciation shall be based upon the average service life of
 9 the *street light pole, traffic signal pole, utility-pole pole, or support*
 10 *structure.* “Annual cost of ownership” does not include costs for
 11 any property not necessary for use by the communications service
 12 provider.

13 (b) (1) A local publicly owned electric utility *or local*
 14 *government* shall not levy a fee that exceeds the estimated amount
 15 required to provide use of the *street light pole, traffic signal pole,*
 16 ~~*utility-pole pole, or support-structure structure,*~~ *as applicable,* for
 17 which the annual recurring fee is levied. If the fee creates revenues
 18 in excess of actual costs, those revenues shall be used to reduce
 19 the fee.

20 (2) *A local publicly owned electric utility or local government*
 21 *establishes a rebuttable presumption that its fees are based on*
 22 *reasonable actual costs if they conform to the presumptively*
 23 *reasonable fees set forth in the Federal Communications*
 24 *Commission’s Declaratory Ruling on Wireless Broadband*
 25 *Deployment (FCC 18-133, 33 FCC Rcd 9088 (2018)).*

26 (c) A jointly owned pole is not included within the requirements
 27 of this section, if a joint owner other than the local publicly owned
 28 electric utility *or local government* has control of access to the
 29 space that would be used by the communications service provider.

30 SEC. 8. *Section 9513 of the Public Utilities Code is amended*
 31 *to read:*

32 9513. (a) A local publicly owned electric utility *or local*
 33 *government* may require an additional one-time charge equal to
 34 three years of the annual fee described in Section 9512, for
 35 attachments reasonably shown to have been made without
 36 authorization that are discovered on or after January 1, 2012.

37 (b) A local publicly owned electric utility *or local government*
 38 may remove an attachment made without authorization, if all of
 39 the following conditions are met:

1 (1) The owner of the attachment fails to pay the charge described
2 in subdivision (a), if that charge is applicable.

3 (2) The owner of the attachment does not seek approval to attach
4 pursuant to this part within a reasonable period of time.

5 (3) The owner of the attachment does not contest that the
6 attachment was made without authorization.

7 (c) An attachment of a service drop wire is not made without
8 authorization for the purposes of this section, if the owner of the
9 attachment seeks approval to attach pursuant to this part within 45
10 days of the attachment.

11 *SEC. 9. Section 9514 of the Public Utilities Code is amended*
12 *to read:*

13 9514. ~~Nothing in this~~ This part shall *not* be construed to prohibit
14 a local publicly owned electric utility *or local government* from
15 requiring a one-time fee to process a request for attachment, if the
16 one-time fee does not exceed the actual cost of processing the
17 request.

18 *SEC. 10. Section 9514.5 is added to the Public Utilities Code,*
19 *to read:*

20 9514.5. *This part does not prohibit a wireless service provider*
21 *and a local government from mutually agreeing to a rate, charge,*
22 *term, or condition that is different from that provided in this part.*
23 *Either party may withdraw from a negotiation for an agreement*
24 *upon written notice to the other party.*

25 *SEC. 11. Section 9515 of the Public Utilities Code is amended*
26 *to read:*

27 9515. (a) In the event that it becomes necessary for the local
28 publicly owned electric utility *or local government* to use space
29 or capacity on or in a support structure occupied by the
30 communications service provider's equipment, the communications
31 service provider shall either pay all costs for rearrangements
32 necessary to maintain the pole attachment or remove its equipment
33 at its own expense.

34 (b) (1) If the communications service provider requests a
35 rearrangement of ~~the~~ *a street light pole, traffic signal pole, utility*
36 ~~pole~~ *pole, or support structure of a local publicly owned electric*
37 *utility, and the local publicly owned electric utility has the authority*
38 *to levy fees as described in Section 9511.5, the local publicly*
39 *owned electric utility may charge a one-time reimbursement fee*
40 *for the actual costs incurred for the rearrangement.*

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1 (2) *If the communication service provider requests a*
2 *rearrangement of a street light pole, traffic signal pole, or*
3 *supporting structure of a local government, the local government*
4 *may charge a one-time reimbursement fee for the actual costs*
5 *incurred for the rearrangement.*

6 ~~SEC. 2.~~

7 *SEC. 12.* No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 a local agency or school district has the authority to levy service
10 charges, fees, or assessments sufficient to pay for the program or
11 level of service mandated by this act, within the meaning of Section
12 17556 of the Government Code.

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Jason Rhine
Assistant Legislative Director

- cc. The Honorable Bill Dodd
Members, Senate Energy, Utilities, and Communications Committee
Sarah Smith, Consultant, Senate Energy, Utilities, and Communications Committee
Kerry Yoshida, Consultant, Senate Republican Caucus