

CHAPTER 143

GOVERNMENT - LOCAL

HOUSE BILL 17-1193

BY REPRESENTATIVE(S) Kraft-Tharp and Becker J., Arndt, Becker K., Danielson, Ginal, Hansen, Hooton, Kennedy, McKean, Melton, Pabon, Van Winkle, Gray, Lontine, Wilson, Duran;
 also SENATOR(S) Tate and Kerr, Crowder, Donovan, Fields, Garcia, Guzman, Hill, Holbert, Jahn, Kefalas, Lundberg, Marble, Martinez Humenik, Merrifield, Neville T., Priola, Scott, Todd, Williams A., Zenzinger, Grantham.

AN ACT

CONCERNING THE INSTALLATION OF SMALL WIRELESS SERVICE INFRASTRUCTURE WITHIN A LOCAL GOVERNMENT'S JURISDICTION, AND, IN CONNECTION THEREWITH, CLARIFYING THAT AN EXPEDITED PERMITTING PROCESS APPLIES TO SMALL CELL FACILITIES AND SMALL CELL NETWORKS AND THAT THE RIGHTS-OF-WAY ACCESS AFFORDED TELECOMMUNICATIONS PROVIDERS EXTENDS TO BROADBAND PROVIDERS AND TO SMALL CELL FACILITIES AND SMALL CELL NETWORKS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 29-27-401, **add** (2) as follows:

29-27-401. Legislative declaration. (2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

(a) SMALL CELL FACILITIES OFTEN MAY BE DEPLOYED MOST EFFECTIVELY IN THE PUBLIC RIGHTS-OF-WAY; AND

(b) ACCESS TO LOCAL GOVERNMENT STRUCTURES IS ESSENTIAL TO THE CONSTRUCTION AND MAINTENANCE OF WIRELESS SERVICE FACILITIES OR BROADBAND FACILITIES.

SECTION 2. In Colorado Revised Statutes, 29-27-402, **amend** (1), (4), and (7); and **add** (1.5), (3.5), and (6.5) as follows:

29-27-402. Definitions. As used in this part 4, unless the context otherwise requires:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~(1) "Broadband facility" means any infrastructure used to deliver broadband service or for the provision of broadband service. "ANTENNA" MEANS COMMUNICATIONS EQUIPMENT THAT TRANSMITS OR RECEIVES ELECTROMAGNETIC RADIO FREQUENCY SIGNALS USED TO PROVIDE WIRELESS SERVICE.~~

(1.5) "BROADBAND FACILITY" MEANS ANY INFRASTRUCTURE USED TO DELIVER BROADBAND SERVICE OR FOR THE PROVISION OF BROADBAND SERVICE.

(3.5) "MICRO WIRELESS FACILITY" MEANS A SMALL WIRELESS FACILITY THAT IS NO LARGER IN DIMENSIONS THAN TWENTY-FOUR INCHES IN LENGTH, FIFTEEN INCHES IN WIDTH, AND TWELVE INCHES IN HEIGHT AND THAT HAS AN EXTERIOR ANTENNA, IF ANY, THAT IS NO MORE THAN ELEVEN INCHES IN LENGTH.

(4) (a) "Small cell facility" means either:

~~(a)~~ (I) A personal wireless service facility as defined by the federal "Telecommunications Act of 1996", as amended as of August 6, 2014; or

~~(b)~~ (II) A wireless service facility that meets both of the following qualifications:

~~(A)~~ (A) Each antenna is located inside an enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and

~~(B)~~ (B) Primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: Electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

(b) "SMALL CELL FACILITY" INCLUDES A MICRO WIRELESS FACILITY.

(6.5) "TOWER" MEANS ANY STRUCTURE BUILT FOR THE SOLE OR PRIMARY PURPOSE OF SUPPORTING ANTENNAS LICENSED OR AUTHORIZED BY THE FEDERAL COMMUNICATIONS COMMISSION AND THE ANTENNAS' ASSOCIATED FACILITIES, INCLUDING STRUCTURES THAT ARE CONSTRUCTED FOR WIRELESS COMMUNICATIONS SERVICES INCLUDING PRIVATE, BROADCAST, AND PUBLIC SAFETY SERVICES; UNLICENSED WIRELESS SERVICES; FIXED WIRELESS SERVICES SUCH AS BACKHAUL; AND THE ASSOCIATED SITE.

(7) "Wireless service facility" means a facility for the provision of wireless services; EXCEPT THAT "WIRELESS SERVICE FACILITY" DOES NOT INCLUDE COAXIAL OR FIBER-OPTIC CABLE THAT IS NOT IMMEDIATELY ADJACENT TO, OR DIRECTLY ASSOCIATED WITH, A PARTICULAR ANTENNA.

SECTION 3. In Colorado Revised Statutes, 29-27-403, **amend** (1) and (3) as follows:

29-27-403. Permit - approval - deadline - exception. (1) A local government

may take up to:

(a) NINETY DAYS TO PROCESS A COMPLETE APPLICATION FOR:

(I) LOCATION OR COLLOCATION OF A SMALL CELL FACILITY OR A SMALL CELL NETWORK; OR

(II) REPLACEMENT OR MODIFICATION OF A SMALL CELL FACILITY OR FACILITIES OR SMALL CELL NETWORK.

~~(a)~~ (b) Ninety days to process a complete application that involves a collocation of a tower, building, structure, or replacement structure OTHER THAN A SMALL CELL FACILITY OR SMALL CELL NETWORK; or

~~(b)~~ (c) One hundred fifty days to process a complete application that involves a new structure or a new wireless service facility, OTHER THAN A SMALL CELL FACILITY OR SMALL CELL NETWORK AND other than a collocation.

(3) An applicant and a local government ENTITY may mutually agree that an application may be processed in a longer period than set forth in subsection (1) of this section.

SECTION 4. In Colorado Revised Statutes, 29-27-404, **amend** (1) and (2) introductory portion; and **add** (3) as follows:

29-27-404. Permit process. (1) (a) For small cell networks involving multiple individual small cell facilities within the jurisdiction of a single local government ENTITY, the local government ENTITY shall allow the applicant, at the applicant's discretion, to file a consolidated application and receive a single permit for the small cell network instead of filing separate applications for each individual small cell facility.

(b) FOR A CONSOLIDATED APPLICATION FILED PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, EACH SMALL CELL FACILITY WITHIN THE CONSOLIDATED APPLICATION REMAINS SUBJECT TO REVIEW FOR COMPLIANCE WITH OBJECTIVE REQUIREMENTS AND APPROVAL AS PROVIDED IN THIS ARTICLE 27. THE LOCAL GOVERNMENT'S DENIAL OF ANY INDIVIDUAL SMALL CELL FACILITY IS NOT A BASIS TO DENY THE CONSOLIDATED APPLICATION AS A WHOLE OR ANY OTHER SMALL CELL FACILITY INCORPORATED WITHIN THE CONSOLIDATED APPLICATION.

(2) If a wireless service provider applies to LOCATE OR collocate several wireless service facilities within the jurisdiction of a single local government ENTITY, the local government ENTITY shall:

(3) THE SITING, MOUNTING, PLACEMENT, CONSTRUCTION, AND OPERATION OF A SMALL CELL FACILITY OR A SMALL CELL NETWORK IS A PERMITTED USE BY RIGHT IN ANY ZONE.

SECTION 5. In Colorado Revised Statutes, **amend** 38-5.5-102 as follows:

38-5.5-102. Definitions. As used in this ~~article~~ ARTICLE 5.5, unless the context

otherwise requires:

(1) "Broadband" or "broadband service" has the same meaning as set forth in 7 U.S.C. sec. 950bb (b)(1) as of August 6, 2014, and includes "cable service", as defined in 47 U.S.C. sec. 522 (6) as of August 6, 2014.

~~(1.2)~~(2) "Broadband facility" means any infrastructure used to deliver broadband service or for the provision of broadband service.

~~(1.3)~~(3) "Broadband provider" means a person that provides broadband service, and includes a "cable operator", as defined in 47 U.S.C. sec. 522 (5) as of August 6, 2014.

(4) "COLLOCATION" HAS THE SAME MEANING AS SET FORTH IN SECTION 29-27-402 (3).

~~(1.7)~~(5) "Political subdivision" OR "LOCAL GOVERNMENT ENTITY" means a county; city and county; city; town; service authority; school district; local improvement district; law enforcement authority; water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district; or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

~~(2)~~(6) "Public highway" or "highway" for purposes of this ~~article~~ ARTICLE 5.5 includes all roads, streets, and alleys and all other dedicated rights-of-way and utility easements of the state or any of its political subdivisions, whether located within the boundaries of a political subdivision or otherwise.

(7) "SMALL CELL FACILITY" HAS THE SAME MEANING AS SET FORTH IN SECTION 29-27-402 (4).

(8) "SMALL CELL NETWORK" HAS THE SAME MEANING AS SET FORTH IN SECTION 29-27-402 (5).

~~(3)~~(9) "Telecommunications provider" ~~or "provider"~~ means a person that provides telecommunications service, as defined in section 40-15-102 (29), C.R.S., with the exception of cable services as defined by section 602 (5) of the federal "Cable Communications Policy Act of 1984", 47 U.S.C. sec. 522 (6), pursuant to authority granted by the public utilities commission of this state or by the federal communications commission. "Telecommunications provider" ~~or "provider"~~ does not mean a person or business using antennas, support towers, equipment, and buildings used to transmit high power over-the-air broadcast of AM and FM radio, VHF and UHF television, and advanced television services, including high definition television. The term "telecommunications provider" is synonymous with "telecommunication provider".

SECTION 6. In Colorado Revised Statutes, **amend** 38-5.5-103 as follows:

38-5.5-103. Use of public highways - discrimination prohibited - content regulation prohibited. (1) (a) Any domestic or foreign telecommunications provider or broadband provider authorized to do business under the laws of this state ~~shall have~~ HAS the right to construct, maintain, and operate conduit, cable,

switches, and related appurtenances and facilities, AND COMMUNICATIONS AND BROADBAND FACILITIES, INCLUDING SMALL CELL FACILITIES AND SMALL CELL NETWORKS, along, across, upon, ABOVE, and under any public highway in this state, subject to the provisions of this article ARTICLE 5.5 and of article 1.5 of title 9. C.R.S.; and

(b) The construction, maintenance, operation, and regulation of ~~such~~ THE facilities DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION, including the right to occupy and utilize the public rights-of-way, by telecommunications providers and broadband providers are hereby declared to be matters of statewide concern. ~~Such~~ THE facilities shall be so constructed and maintained so as not to obstruct or hinder the usual travel on ~~such~~ A highway.

(2) ~~No~~ A political subdivision shall NOT discriminate among or grant a preference to competing telecommunications providers OR BROADBAND PROVIDERS in the issuance of permits or the passage of any ordinance for the use of its rights-of-way, nor create or erect any unreasonable requirements for entry to the rights-of-way for ~~such~~ THE providers.

(3) ~~No~~ A political subdivision shall NOT regulate A telecommunications providers PROVIDER OR A BROADBAND PROVIDER based upon the content or type of signals that are carried or capable of being carried over the provider's facilities; except that nothing in this subsection (3) shall be construed to prevent ~~such~~ PREVENTS regulation by a political subdivision when the authority to so regulate has been granted to the political subdivision under federal law.

SECTION 7. In Colorado Revised Statutes, **amend** 38-5.5-104 as follows:

38-5.5-104. Right-of-way across state land. Any domestic or foreign telecommunications provider OR BROADBAND PROVIDER authorized to do business under the laws of this state shall have HAS the right to construct, maintain, and operate lines of communication, switches, and related facilities, AND COMMUNICATIONS AND BROADBAND FACILITIES, INCLUDING SMALL CELL FACILITIES AND SMALL CELL NETWORKS, and obtain A permanent right-of-way therefor FOR THE FACILITIES over, upon, under, and across all public lands owned by or under the control of the state, upon the payment of ~~such~~ just compensation and upon compliance with ~~such~~ reasonable conditions as may be required by the state board of land commissioners MAY REQUIRE.

SECTION 8. In Colorado Revised Statutes, **add** 38-5.5-104.5 as follows:

38-5.5-104.5. Use of local government entity structures. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION AND SUBJECT TO THE REQUIREMENTS AND LIMITATIONS OF THIS ARTICLE 5.5, SECTIONS 29-27-403 AND 29-27-404, AND A LOCAL GOVERNMENT ENTITY'S POLICE POWERS, A TELECOMMUNICATIONS PROVIDER OR A BROADBAND PROVIDER HAS THE RIGHT TO LOCATE OR COLLOCATE SMALL CELL FACILITIES OR SMALL CELL NETWORKS ON THE LIGHT POLES, LIGHT STANDARDS, TRAFFIC SIGNALS, OR UTILITY POLES IN THE RIGHTS-OF-WAY OWNED BY THE LOCAL GOVERNMENT ENTITY; EXCEPT THAT, A SMALL CELL FACILITY OR A SMALL CELL NETWORK SHALL NOT BE LOCATED OR MOUNTED ON ANY APPARATUS, POLE, OR SIGNAL WITH TOLLING COLLECTION OR ENFORCEMENT EQUIPMENT ATTACHED.

(2) IF, AT ANY TIME, THE CONSTRUCTION, INSTALLATION, OPERATION, OR MAINTENANCE OF A SMALL CELL FACILITY ON A LOCAL GOVERNMENT ENTITY'S LIGHT POLE, LIGHT STANDARD, TRAFFIC SIGNAL, OR UTILITY POLE FAILS TO COMPLY WITH APPLICABLE LAW, THE LOCAL GOVERNMENT ENTITY, BY PROVIDING THE TELECOMMUNICATIONS PROVIDER OR THE BROADBAND PROVIDER NOTICE AND A REASONABLE OPPORTUNITY TO CURE THE NONCOMPLIANCE, MAY:

(a) CAUSE THE ATTACHMENT ON THE AFFECTED STRUCTURE TO BE REMOVED; AND

(b) PROHIBIT FUTURE, NONCOMPLIANT USE OF THE LIGHT POLE, LIGHT STANDARD, TRAFFIC SIGNAL, OR UTILITY POLE.

(3)(a) EXCEPT AS PROVIDED IN SUBSECTIONS (3)(b) AND (3)(c) OF THIS SECTION, A LOCAL GOVERNMENT ENTITY SHALL NOT IMPOSE ANY FEE OR REQUIRE ANY APPLICATION OR PERMIT FOR THE INSTALLATION, PLACEMENT, OPERATION, MAINTENANCE, OR REPLACEMENT OF MICRO WIRELESS FACILITIES THAT ARE SUSPENDED ON CABLE OPERATOR-OWNED CABLES OR LINES THAT ARE STRUNG BETWEEN EXISTING UTILITY POLES IN COMPLIANCE WITH NATIONAL SAFETY CODES.

(b) A LOCAL GOVERNMENT ENTITY WITH A MUNICIPAL OR COUNTY CODE THAT REQUIRES AN APPLICATION OR PERMIT FOR THE INSTALLATION OF MICRO WIRELESS FACILITIES MAY, BUT IS NOT REQUIRED TO, CONTINUE THE APPLICATION OR PERMIT REQUIREMENT SUBSEQUENT TO THE EFFECTIVE DATE OF THIS SECTION.

(c) A LOCAL GOVERNMENT ENTITY MAY REQUIRE A SINGLE-USE RIGHT-OF-WAY PERMIT IF THE INSTALLATION, PLACEMENT, OPERATION, MAINTENANCE, OR REPLACEMENT OF MICRO WIRELESS FACILITIES:

(I) INVOLVES WORKING WITHIN A HIGHWAY TRAVEL LANE OR REQUIRES THE CLOSURE OF A HIGHWAY TRAVEL LANE;

(II) DISTURBS THE PAVEMENT OR A SHOULDER, ROADWAY, OR DITCH LINE;

(III) INCLUDES PLACEMENT ON LIMITED ACCESS RIGHTS-OF-WAY; OR

(IV) REQUIRES ANY SPECIFIC PRECAUTIONS TO ENSURE THE SAFETY OF THE TRAVELING PUBLIC; THE PROTECTION OF PUBLIC INFRASTRUCTURE; OR THE OPERATION OF PUBLIC INFRASTRUCTURE; AND SUCH ACTIVITIES EITHER WERE NOT AUTHORIZED IN, OR WILL BE CONDUCTED IN A TIME, PLACE, OR MANNER THAT IS INCONSISTENT WITH, THE APPROVAL TERMS OF THE EXISTING PERMIT FOR THE FACILITY OR STRUCTURE UPON WHICH THE MICRO WIRELESS FACILITY IS ATTACHED.

SECTION 9. In Colorado Revised Statutes, **amend** 38-5.5-105 as follows:

38-5.5-105. Power of companies to contract. Any domestic or foreign telecommunications provider ~~shall have~~ OR BROADBAND PROVIDER HAS THE power to contract with any ~~person or~~ INDIVIDUAL; corporation; OR the owner of any lands, ~~or any~~ franchise, easement, or interest therein over or under which the provider's conduits; cable; switches; ~~and~~ COMMUNICATIONS OR BROADBAND FACILITIES, INCLUDING SMALL CELL FACILITIES AND SMALL CELL NETWORKS; OR related appurtenances and facilities are proposed to be laid or created for the right-of-way

for the construction, maintenance, and operation of ~~such~~ THE facilities ~~and~~ OR for the erection, maintenance, occupation, and operation of offices at suitable distances for the public accommodation.

SECTION 10. In Colorado Revised Statutes, **amend** 38-5.5-106 as follows:

38-5.5-106. Consent necessary for use of streets. (1) (a) ~~Nothing in This article shall be construed to~~ ARTICLE 5.5 DOES NOT authorize any telecommunications provider OR BROADBAND PROVIDER to erect, WITHIN A POLITICAL SUBDIVISION, any poles or construct any COMMUNICATIONS OR BROADBAND FACILITIES, INCLUDING SMALL CELL FACILITIES AND SMALL CELL NETWORKS; conduit; cable; switch; or related appurtenances and facilities along, through, in, upon, under, or over any public highway ~~within a political subdivision~~ without first obtaining the consent of the authorities having power to give the consent of ~~such~~ THE political subdivision.

(b) A telecommunications provider OR BROADBAND PROVIDER that, on or before ~~April 12, 1996~~ JULY 1, 2017, either has obtained consent of the political subdivision having power to give ~~such~~ consent or is lawfully occupying a public highway in a political subdivision ~~shall~~ NEED not be required to apply for additional or continued consent of ~~such~~ THE political subdivision under this section.

(c) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A POLITICAL SUBDIVISION'S CONSENT GIVEN TO A TELECOMMUNICATIONS PROVIDER OR A BROADBAND PROVIDER TO ERECT OR CONSTRUCT ANY POLES, OR TO LOCATE OR COLLOCATE COMMUNICATIONS AND BROADBAND FACILITIES ON VERTICAL STRUCTURES IN A RIGHT-OF-WAY, DOES NOT EXTEND TO THE LOCATION OF NEW FACILITIES OR TO THE ERECTION OR CONSTRUCTION OF NEW POLES IN A RIGHT-OF-WAY NOT SPECIFICALLY REFERENCED IN THE GRANT OF CONSENT.

(2) (a) THE consent of A POLITICAL SUBDIVISION for the use of a public highway ~~within a political subdivision~~ ITS JURISDICTION shall be based upon a lawful exercise of the ITS police power of ~~such political subdivision~~ and shall not be unreasonably withheld. ~~nor~~

(b) A POLITICAL SUBDIVISION shall NOT CREATE any preference or disadvantage ~~be created~~ through the granting or withholding of ~~such~~ ITS consent. A POLITICAL SUBDIVISION'S DECISION THAT A VERTICAL STRUCTURE IN THE RIGHT-OF-WAY, INCLUDING A VERTICAL STRUCTURE OWNED BY A MUNICIPALITY, LACKS SPACE OR LOAD CAPACITY FOR COMMUNICATIONS OR BROADBAND FACILITIES, OR THAT THE NUMBER OF ADDITIONAL VERTICAL STRUCTURES IN THE RIGHTS-OF-WAY SHOULD BE REASONABLY LIMITED, CONSISTENT WITH PROTECTION OF PUBLIC HEALTH, SAFETY, AND WELFARE, DOES NOT CREATE A PREFERENCE FOR OR DISADVANTAGE ANY TELECOMMUNICATIONS PROVIDER OR BROADBAND PROVIDER, PROVIDED THAT SUCH DECISION DOES NOT HAVE THE EFFECT OF PROHIBITING A PROVIDER'S ABILITY TO PROVIDE SERVICE WITHIN THE SERVICE AREA OF THE PROPOSED FACILITY.

SECTION 11. In Colorado Revised Statutes, 38-5.5-107, **amend** (7) as follows:

38-5.5-107. Permissible taxes, fees, and charges. (7) As used in this section, "public highway" or "highway" as otherwise defined in section 38-5.5-102 ~~(2)~~ (6) does not include excess and remainder rights-of-way under the department of

transportation's jurisdiction.

SECTION 12. In Colorado Revised Statutes, **amend** 38-5.5-108 as follows:

38-5.5-108. Pole attachment agreements - limitations on required payments.

(1) ~~No~~ NEITHER A LOCAL GOVERNMENT ENTITY NOR A municipally owned utility shall request or receive from a telecommunications provider, BROADBAND PROVIDER, or a cable television provider, as defined in section 602 (5) of the federal "Cable Communications Policy Act of 1984", in exchange for permission to attach SMALL CELL FACILITIES, BROADBAND DEVICES, OR telecommunications devices to poles OR STRUCTURES IN A RIGHT-OF-WAY, any payment in excess of the amount that would be authorized if the LOCAL GOVERNMENT ENTITY OR municipally owned utility were regulated pursuant to 47 U.S.C. sec. 224, as amended.

(2) ~~No~~ A municipality shall NOT request or receive from a telecommunications provider OR A BROADBAND PROVIDER, in exchange for or as a condition upon a grant of permission to attach telecommunications OR BROADBAND devices to poles, any in-kind payment.

SECTION 13. Effective date - applicability. This act takes effect July 1, 2017, and applies to permit applications received on or after said date.

SECTION 14. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 18, 2017