HOUSE BILL 17-1193

HOUSE SPONSORSHIP
Kraft-Tharp and Becker J.,

SENATE SPONSORSHIP
Tate and Kerr,

House Committees
Business Affairs and Labor

Senate Committees

A BILL FOR 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.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at

Shading denotes HOUSE amendment Double underlining denotes SENATE amendment
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.)
Sections 1 through 4 of the bill clarify that the expedited permitting process established for broadband facilities applies to small cell facilities and small cell networks. Section 1 adds language concerning small cell facilities and small cell networks to a legislative declaration. Section 2 adds statutory definitions of "antenna" and "tower". Section 3 requires a local government to process an application for a small cell facility or a small cell network within 90 days after receiving the completed application. Section 4 declares the siting and operation of small cell facilities and small cell networks are a permitted use in any zone and clarifies the approval process for a consolidated application for multiple small cell facilities or small cell networks.

Sections 6 and 7 clarify that the rights-of-way access afforded to telecommunications providers for the construction, maintenance, and operation of telecommunications and broadband facilities extends to broadband providers as well as small cell facilities and small cell networks and, in conjunction, section 5 defines "collocation", "small cell facility", and "small cell network".

Section 8 states that if a telecommunications provider or broadband provider complies with applicable law, it has the right to locate or collocate small cell facilities and small cell networks on a local government entity's light poles, light standards, traffic signals, or utility poles.

Section 9 adds small cell facilities and small cell networks to the types of facilities for which a telecommunications provider or broadband provider may contract with a private property owner to obtain a right-of-way for the construction, maintenance, and operation of the facility.

Section 10 concerns the consent a telecommunications provider or broadband provider must obtain from a political subdivision to erect communications or broadband facilities along, through, in, upon, under, or over a public highway, and adds small cell facilities and small cell networks to the facilities for which the consent is required. Section 10 further provides that a political subdivision shall not create a preference or disadvantage to any telecommunications provider or broadband provider in granting or withholding its consent, and that a decision by a political subdivision denying or limiting the placement of communications or broadband facilities based on the protection of public health, safety, and welfare does not create a preference for or disadvantage a telecommunications provider or broadband provider if the decision does not have the effect of prohibiting the provider from providing service within the service area.

Section 11 makes a conforming amendment.

Section 12 specifies the amount and type of payment a local
government or municipally owned utility may receive from a telecommunications provider, broadband provider, or cable television provider in exchange for granting permission to attach small cell facilities, broadband devices, or telecommunications devices to poles or structures that are in a right-of-way and are owned by the local government or municipally owned utility.

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); and add (1.5) and (6.5) as follows:

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

(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.
(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.

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.

(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

(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. 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, unless the context otherwise requires:

(1) "Broadband" or "broadband service" has the same meaning as

(2) (1.2) "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 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).

(9) (3) "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 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 and of title 9, C.R.S., and

(b) The construction, maintenance, operation, and regulation of such 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 facilities shall be so constructed and maintained so as not to obstruct or hinder the usual
travel on such a highway.

(2) No 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 political subdivision shall NOT regulate A telecommunications 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 just compensation and upon compliance with 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 owned by the local government entity.

(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.

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 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 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 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 shall be based upon a lawful exercise of the police power of such political subdivision and shall not be unreasonably withheld.

(b) A political subdivision shall not create any preference or disadvantage through the granting or withholding of such 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 small cell 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) 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, or two hundred dollars per pole or structure, whichever amount is less.

(2) Neither 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.