Agenda Item Number: 4

Agenda Report Reviewed by:
City Manager:

CITY OF SEBASTOPOL
CITY COUNCIL
STAFF REPORT

| | |
|---|---|
| **Meeting Date:** | September 4, 2018 |
| **To:** | Honorable Mayor and City Councilmembers |
| **From:** | Agenda Review Committee |
| **Subject:** | Approval of Letter of Opposition to Senate Bill 3157 – Streamline Act |
| **Recommendation :** | This item is to request that the City Council Approve and Authorize the Mayor to Sign the Letter of Opposition |
| **Funding:** | Currently Budgeted: _____ Yes _____ No __XX__ N/A<br>Net General Fund Cost:<br>Amount: $ |

INTRODUCTION: This item is to request that the City Council Approve and Authorize the Mayor to Sign the Letter of Opposition to Senate Bill 3157 – Streamline Act.

BACKGROUND:
S. 3157 (Thune and Schatz) is strikingly similar to last year's SB 649 (Hueso), which Gov. Jerry Brown vetoed after more than 325 cities and the League put a bright spotlight on the fact that the bill was a give-away to the telecommunications industry at the expense of the people. The City of Sebastopol authorized the Mayor to sign a letter of opposition at their June 6, 2017 City Council meeting to SB 649.

On June 29, Senators John Thune (R-SD) and Brian Schatz (D-HI) introduced the Streamlining The Rapid Evolution And Modernization of Leading-edge Infrastructure Necessary to Enhance (STREAMLINE) Small Cell Deployment Act (S. 3157). Despite urging from local government advocates during the bill's drafting phase, many preemptive provisions remain in the bill, including limiting the actions local governments can take on small cell wireless facility siting in an effort to make deployments cheaper, faster, and more consistent across jurisdictions.

Essentially, the Streamline Act would shift authority away from residents, local businesses and communities to a private industry beholden to its shareholders. Profits would be put above consideration and public benefits to the people and businesses in local communities. S. 3157 would force cities to lease out publically owned infrastructure, would eliminate reasonable local environmental design review and would prevent cities from negotiating fair leases or public benefits for the installation of small cell wireless equipment on public property.

S. 3157 sets dangerous precedent for local authority because it:

- Imposes sharply reduced "shot clock" time limits for local governments to process potentially unlimited wireless facility applications for all sizes;
- Deems granted on applications for facilities when local governments are unable to meet the stringent time limits;
- Could result in approved applications regardless of their safety, health or environmental impacts;
- Interferes with local governments' management of their own property and their ability to receive appropriate compensation for its use;

- Eliminates market-based rents for small cell facility installations and even limit "fees" for applications as well as recurring rent fees for use of city property; and
- Fails to grandfather any existing agreements between cities and providers or tower companies, and it would preclude agreements such as those recently struck by the City of San Jose with AT&T and Verizon.

DISCUSSION:

Cities are very familiar with the wireless industry's approach to eliminate local discretion over wireless equipment installation on public facilities and the fact that this legislation, like SB 649, does not ensure that all residents have access to affordable, reliable high-speed broadband.

This bill can have lasting damaging impacts on the character of each individual city, while simultaneously creating an undue burden on taxpayers to subsidize the irresponsible deployment of wireless infrastructure for private corporations. The goal is to ensure efficient, safe, and appropriate deployment of new broadband technology. However, this bill is not the best way to achieve that shared goal.

STATUS OF BILL:

As of the writing of this staff report, this bill has been read twice and referred to the Committee on Commerce, Science, and Transportation.

RECOMMENDATION:

City Staff is requesting that the City Council Approve and Authorize the Mayor to Sign the Letter of Opposition to Senate Bill 3157 – Streamline Act.

Attachment

Letter

**City Council**
Mayor Patrick Slayter
Vice Mayor Neysa Hinton
Michael Carnacchi
Una Glass
Sarah Glade Gurney

**City of Sebastopol**

**City Manager**
Larry McLaughlin
lmclaughlin@cityofsebastopol.org
**Assistant City Manager/City Clerk, MMC**
Mary Gourley
mgourley@cityofsebastopol.org

September 5, 2018

Senator Dianne Feinstein
United States Senate
331 Hart Office Building
Washington, D.C. 20510

Senator Kamala Harris
United States Senate
112 Hart Office Building
Washington, D.C. 20510

Dear Sen. Feinstein and Sen. Harris,

**RE: Opposition to S. 3157 (Thune & Schatz) STREAMLINE Act**

On behalf of the City of Sebastopol, we urge your opposition S. 3157, the STREAMLINE Act, which would force local governments to lease out publicly owned infrastructure, eliminate reasonable local environmental and design review, and eliminate the ability for local governments to negotiate fair leases or public benefits for the installation of "small cell" wireless equipment on taxpayer-funded property.

Just this year, the wireless industry pursued similar failed legislation here in California that sought to achieve many of the elements present in this draft bill. The City of Sebastopol was especially concerned about shifting authority away from our residents, businesses, and communities over to a for-profit industry whose shareholder returns potentially outweigh their considerations for the health, safety, aesthetic, and public benefits of our community.

To be clear, the City of Sebastopol shares in the goal of ensuring all our residents have access to affordable, reliable high-speed broadband and eagerly welcome installation of wireless infrastructure in collaboration with local governments. However, the plain language in S. 3157 will not help in achieving these goals.

Instead, this bill would impose sharply reduced "shot clock" time limits for local governments to process potentially unlimited wireless facility applications for all sizes, "deem granted" applications for facilities when local governments are unable to meet the stringent time limits regardless of its safety impacts or delays caused by incomplete applications.

The draft bill also interferes with the ability for our City to manage our own property and our ability to receive appropriate compensation for its use. The City of Sebastopol actively manages the rights of way to protect our residents' safety, preserve the character of their communities, and maintain the availability of the rights of way for current and future uses. By stringently limiting those factors that we may consider in our own land use decisions, and restricting compensation only to the "actual costs" we incur to process applications, this would limit our ability to adequately serve and protect our residents.

On behalf of the City of Sebastopol, thank you for your consideration of our opposition. As Congress considers efforts to improve the rollout of wireless and broadband deployment, we urge you to carefully consider efforts that are more balanced and to reject attempts aimed to undermine input from your constituent residents, businesses, and local governments for this critical infrastructure.

For these reasons, we strongly urge your **OPPOSITION** to S. 3157.

Sincerely,

Patrick Slayter
Mayor
City of Sebastopol

cc: Congressional Representative
League Regional Public Affairs Manager (via email)
Meg Desmond, League of California Cities, mdesmond@cacities.org

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO



115TH CONGRESS
2D SESSION

# S. 3157

To streamline siting processes for small cell deployment.

---

IN THE SENATE OF THE UNITED STATES

JUNE 28, 2018

Mr. THUNE (for himself and Mr. SCHATZ) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

# A BILL

To streamline siting processes for small cell deployment.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Streamlining The Rapid Evolution And Modernization of Leading-edge Infrastructure Necessary to Enhance Small Cell Deployment Act" or the "STREAMLINE Small Cell Deployment Act".

**SEC. 2. PRESERVATION OF LOCAL ZONING AUTHORITY.**

Section 332(c) of the Communications Act of 1934 (47 U.S.C. 332(c)) is amended by striking paragraph (7) and inserting the following:

"(7) PRESERVATION OF LOCAL ZONING AUTHORITY.—

"(A) GENERAL AUTHORITY.—Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

"(B) LIMITATIONS.—

"(i) IN GENERAL.—Except as provided in subparagraph (C), the regulation of the placement, construction, or modification of a personal wireless service facility by any State or local government or instrumentality thereof—

"(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

"(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless service.

"(ii) TIMEFRAME.—A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify a personal wireless service facility within a reasonable period of time after the request is duly filed with the government or instrumentality, taking into account the nature and scope of the request.

"(iii) WRITTEN DECISION AND RECORD.—Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify a personal wireless service facility shall be—

"(I) in writing; and

"(II) supported by substantial evidence contained in a written record.

"(iv) ENVIRONMENTAL EFFECTS OF RADIO FREQUENCY EMISSIONS.—No State or local government or instrumentality thereof may regulate the placement, construction, or modification of personal wireless service facilities on the basis of the en-

vironmental effects of radio frequency emissions to the extent that the facilities comply with the Commission's regulations concerning such emissions.

"(v) JUDICIAL AND ADMINISTRATIVE REVIEW.—

"(I) JUDICIAL REVIEW.—Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after the action or failure to act, commence an action in any court of competent jurisdiction, which shall hear and decide the action on an expedited basis.

"(II) ADMINISTRATIVE REVIEW.—Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

"(C) PLACEMENT, CONSTRUCTION, AND MODIFICATION OF SMALL PERSONAL WIRELESS SERVICE FACILITIES.—

"(i) IN GENERAL.—In addition to, and not in derogation of any of, the limitations under subparagraph (B), the regulation of the placement, construction, or modification of small personal wireless service facilities by any State or local government or instrumentality thereof—

"(I) shall not unreasonably discriminate among providers of the same service using comparable equipment, including by providing exclusive or preferential use of facilities to a particular provider or class of providers of personal wireless service; and

"(II) shall only permit a State or local government to approve or deny a permit or other permission to deploy a small personal wireless service facility, including access to a right-of-way or a facility in a right-of-way owned or managed by the State or local govern-

ment, based on publicly available criteria that are—

"(aa) reasonable;

"(bb) objective; and

"(cc) non-discriminatory.

"(ii) ENGINEERING STANDARDS; AESTHETIC REQUIREMENTS.—A State or local government or instrumentality thereof may regulate the placement, construction, and modification of small personal wireless service facilities for reasons of objective and reasonable—

"(I) structural engineering standards based on generally applicable codes;

"(II) safety requirements; or

"(III) aesthetic or concealment requirements.

"(iii) TIMEFRAMES.—

"(I) IN GENERAL.—A State or local government or instrumentality thereof shall act on a complete request for authorization to place, construct, or modify a small personal

wireless service facility not later than—

"(aa)(AA) for collocation of a small personal wireless service facility, 60 days after the date on which the complete request is filed, except as provided in item (bb); or

"(BB) for any other action relating to a small personal wireless service facility, 90 days after the date on which the complete request is filed, except as provided in item (cc);

"(bb) for collocation of a small personal wireless service facility, if the State or the area under the jurisdiction of the local government has a population of fewer than 50,000 people—

"(AA) 90 days after the date on which the complete request is filed, if during the 30-day period ending on that date of filing, the appli-

cable wireless service provider filed fewer than 50 requests for collocation of a small personal wireless service facility with the State or local government or instrumentality thereof; or

"(BB) 120 days after the date on which the complete request is filed, if during the 30-day period ending on that date of filing, the applicable wireless service provider filed not fewer than 50 requests for collocation of a small personal wireless service facility with the State or local government or instrumentality thereof; or

"(cc) for any other action relating to a small personal wireless service facility, if the State or the area under the jurisdiction of the local government has a

population of fewer than 50,000 people—

"(AA) 120 days after the date on which the complete request is filed, if during the 30-day period ending on that date of filing, the applicable wireless service provider filed fewer than 50 requests for any other action relating to a small personal wireless service facility with the State or local government or instrumentality thereof; or

"(BB) 150 days after the date on which the complete request is filed, if during the 30-day period ending on that date of filing, the applicable wireless service provider filed not fewer than 50 requests for any other action relating to a small personal wireless service fa-

cility with the State or local government or instrumentality thereof.

"(II) APPLICABILITY.—The applicable timeframe under subclause (I) shall apply collectively to all proceedings required by a State or local government or instrumentality thereof for the approval of the request.

"(III) NO TOLLING.—A timeframe under subclause (I) may not be tolled by any moratorium, whether express or de facto, imposed by a State or local government on the consideration of any request for authorization to place, construct, or modify a small personal wireless service facility.

"(IV) TEMPORARY WAIVER.—The Commission may temporarily waive the applicability of subclause (I) for not longer than a single 30-day period for any complete request upon a demonstration by a State or local government that the waiver would be

consistent with the public interest, convenience, and necessity.

"(iv) DEEMED GRANTED.—If a State or local government or instrumentality thereof has neither granted nor denied a request within the applicable timeframe under subclause (I) of clause (iii), including any temporary waiver granted under subclause (IV) of that clause, the request shall be deemed granted on the date that is 31 days after the date on which the government instrumentality receives a written notice of the failure from the applicant.

"(v) FEES.—Notwithstanding any other provision of law, a State or local government may charge a fee to consider an application for the placement, construction, or modification of a small personal wireless facility, or to use a right-of-way or a facility in a right-of-way owned or managed by the State or local government for the placement, construction, or modification of a small personal wireless facility, if the fee is—

"(I) competitively neutral, technology neutral, and nondiscriminatory;

"(II) publicly disclosed; and

"(III)(aa) except as provided in item (bb), based on actual and direct costs, such as costs for—

"(AA) review and processing of applications;

"(BB) maintenance;

"(CC) emergency responses;

"(DD) repairs and replacement of components and materials resulting from and affected by the installation of small personal wireless facilities, improvements, and equipment that facilitates the deployment and installation of such facilities; or

"(EE) inspections; or

"(bb) calculated in accordance with section 224, in the case of a fee charged for the placement, construction, or modification of a small personal wireless facility on a pole, in a

right-of-way, or on any other facility that may be established under that section.

"(vi) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to prevent any State or local government from imposing any additional limitation or requirement relating to consideration by the State or local government of an application for the placement, construction, or modification of a small personal wireless service facility.

"(D) DEFINITIONS.—For purposes of this paragraph—

"(i) the term 'antenna' means an apparatus designed for the purpose of emitting radiofrequency radiation, to be operated or operating from a fixed location for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds;

"(ii) the term 'communications network' means a network used to provide a communications service;

"(iii) the term 'communications service' means—

"(I) cable service, as defined in section 602;

"(II) information service;

"(III) telecommunications service; or

"(IV) personal wireless service;

"(iv) the term 'complete request' means a request for which the applicant has not received written notice from the State or local government within 10 business days of submission—

"(I) stating in writing that the request is incomplete; and

"(II) identifying the information causing the request to be incomplete;

"(v) the term 'generally applicable code' includes a uniform building, fire, electrical, plumbing, or mechanical code adopted by a national code organization, or a local amendment to such a code, to the extent not inconsistent with this Act;

"(vi) the term 'network interface device' means a telecommunications demarcation device and cross-connect point that—

"(I) is adjacent or proximate to—

"(aa) a small personal wireless service facility; or

"(bb) a structure supporting a small personal wireless service facility; and

"(II) demarcates the boundary with any wireline backhaul facility;

"(vii) the term 'personal wireless service' means—

"(I) commercial mobile service;

"(II) commercial mobile data service (as that term is defined in section 6001 of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1401));

"(III) unlicensed wireless service; and

"(IV) common carrier wireless exchange access service;

"(viii) the term 'personal wireless service facility' means a facility for the provision of personal wireless service;

"(ix) the term 'small personal wireless service facility'—

"(I) means a personal wireless service facility in which each antenna is not more than 3 cubic feet in volume; and

"(II) does not include a wireline backhaul facility;

"(x) the term 'unlicensed wireless service'—

"(I) means the offering of telecommunications service using a duly authorized device that does not require an individual license; and

"(II) does not include the provision of direct-to-home satellite service, as defined in section 303(v); and

"(xi) the term 'wireline backhaul facility' means an above-ground or underground wireline facility used to transport communications service or other electronic communications from a small personal

wireless service facility or its adjacent network interface device to a communications network.".

**SEC. 3. GAO STUDY OF BROADBAND DEPLOYMENT ON TRIBAL LAND AND ON OR NEAR TRUST LAND.**

Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall—

(1) in consultation with the Secretary of Agriculture, the Director of the Bureau of Indian Affairs, and the Federal Communications Commission, study the process for obtaining a grant of a right-of-way to deploy broadband infrastructure on tribal land or on or near trust land, as defined in section 3765 of title 38, United States Code;

(2) in conducting the study under paragraph (1), consider the unique challenges involved in broadband deployment on tribal land and on or near trust land; and

(3) submit to Congress a report on the study conducted under paragraph (1).

○