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CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

SENATE BILL**NO. 556****Introduced by Senator Dodd
(Coauthor: Senator Hertzberg)****February 18, 2021**

An act to add Section 710 to, and to add Division 2.6 (commencing with Section 5980) to, the Public Utilities Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 556, Dodd. Street light poles, traffic signal poles: small wireless facilities attachments.

Existing law requires a local publicly owned electric utility to make appropriate space and capacity on and in its utility poles, as defined, and support structures available for use by cable television corporations, video service providers, and telephone corporations. Existing law requires fees adopted to cover the costs to provide this use, and terms and conditions of access, to meet specified requirements, and specifies the manner in which these fees and terms and conditions of access could be challenged.

This bill would prohibit a local government or local publicly owned electric utility from unreasonably denying the leasing or licensing of its street light poles or traffic signal poles to communications service providers for the purpose of placing small wireless facilities on those poles. The bill would require that street light poles and traffic signal poles be made available for the placement of small wireless facilities under fair, reasonable, and nondiscriminatory fees, as provided. The bill would authorize a local government or local publicly owned electric utility to condition access to its street light poles or traffic signal poles on reasonable terms and conditions, including reasonable aesthetic and safety standards. The bill would specify time periods for

various actions relative to requests for placement of a small wireless facility by a communications service provider on a street light pole or traffic signal pole. The bill would authorize a local publicly owned electric utility or local government to deny an application for use of a street light pole or traffic signal pole, as applicable, because of insufficient capacity or safety, reliability, or engineering concerns subject to certain conditions. By placing additional requirements upon local publicly owned electric utilities and local governments, the bill would impose a state-mandated local program.

Existing law, the Digital Infrastructure and Video Competition Act of 2006, establishes a procedure for the issuance of state franchises for the provision of video service, defined to include cable service and open-video systems, administered by the Public Utilities Commission. The act requires the holder of a state franchise to annually report to the commission, on a census tract basis, specified information relative to availability and usage of broadband and video service. Existing law requires the commission to annually report to the Legislature, by December 31, on an aggregated basis, the information submitted by holders of a state franchise.

This bill would require mobile telephony service providers, on or before December 31, 2022, 2023, 2024, and 2025, to measure and report to the Legislature their progress towards meeting the goal of universal broadband access for each census tract in the state in which the mobile telephony service provider provides wireless broadband service, by reporting the percentage of each census tract it provides wireless broadband service. The bill would authorize mobile telephony service providers to aggregate and submit that information through a third party.

Under existing law, a violation of the Public Utilities Act is a crime.

Because the above-described reporting requirement would be part of the Public Utilities Act and a failure to comply with those requirements would be a crime, this bill would impose a state-mandated local program by creating a new crime.

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 specified reasons.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) This act shall be known, and may be cited, as the California Connectivity Act.

(b) The Legislature finds and declares all of the following:

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

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

(3) Wireless broadband internet access is critical to distance learning. Just as important, wireless broadband internet access is needed to address the digital divide. In 2017, for example, 73 percent of households accessed the internet using a cellular telephone. The Federal Communications Commission reports that nearly 70 percent of teachers assign homework that requires broadband access. Although California has made progress closing the digital divide at schools, internet access at home is still a challenge. Almost 16 percent of schoolage children, about 945,000, had no internet connection at home in 2017 and 27 percent, about 1.7 million, did not have broadband connections. Access varies significantly by family income, parental education, race or ethnicity, and geography. For example, 22 percent of low-income households with schoolage children did not have any internet connection at home and 48 percent reported no broadband subscription at home.

(4) Over 2,000,000 Californians lack access to high-speed broadband at benchmark speeds of 100 megabits per second download, including 50 percent of rural housing units. More than 14,000,000 Californians, over one-third of the population, do not subscribe to broadband at the minimum benchmark speed to support distance learning and technologies that depend on upload

speed. Only 34 percent of adults over 60 years of age use the internet, excluding older adults from access to telemedicine, social services, and other support.

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

(6) Telehealth technology permits health care services to be delivered without in-person contact, reducing the risk of disease transmission to both patients and health care workers, and frees up in-person resources for COVID-19 patients. Telehealth allows patients to receive health services away from settings where the potential for contracting COVID-19 is high, such as hospitals, health clinic waiting rooms, private practices, and other medical facilities. Telehealth can also expand the reach of resources to communities that have limited access to needed services.

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

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

(9) The enormous increases in distance learning, telehealth, and telework require a significant boost in broadband infrastructure, especially near the homes where these activities take place. To promote wireless broadband internet access near homes, it is in the interest of the state to ensure the deployment of wireless facilities on street light poles and traffic signal poles. It is in the interest of the state to ensure that local publicly owned electric utilities and local governments that own or control traffic signal poles or street light poles make them available to communications service providers for the placement of small wireless facilities, under reasonable rates, terms, and conditions.

(10) The state has a compelling interest in ensuring that local publicly owned electric utilities and local governments provide access to traffic signal poles and street light poles, with nondiscriminatory fees that recover reasonable actual costs, consistent with applicable federal regulations barring localities from denying reasonable, nondiscriminatory access to their pole infrastructure for small wireless facility attachments at reasonable and cost-based rates. Therefore, it is the intent of the Legislature that this act supersedes all conflicting local laws and this act shall apply in charter cities.

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

(12) Approximately 90 percent of the state's households currently have access to broadband. This means that roughly 10 percent of the state's households are unserved today. Many of these households are in areas that are among the costliest to serve due to topography and remoteness.

(13) Several interrelated factors contribute to the “digital divide,” including lack of broadband access, the inability of some people to afford broadband, and other barriers to adoption. Access is the central pillar and impacts all other factors. Expanding reliable, high-speed wireless broadband coverage and capacity throughout the state will empower consumers with more options and choices, driving competition and resulting in better price and quality options for consumers.

(14) The state should take all reasonable steps to reduce unnecessary barriers to building reliable, high-speed broadband networks throughout California. Consistent with that policy, the state hereby sets a goal to obtain universal broadband access.

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

SEC. 2. Section 710 is added to the Public Utilities Code, to read:

710. (a) To ensure the Legislature remains vigilant and able to respond to the evolving needs of California residents, on or before December 31, 2022, 2023, 2024, and 2025, mobile telephony service providers shall measure and report to the Legislature their progress towards meeting the goal of universal broadband access for each census tract in the state in which the mobile telephony service provider provides wireless broadband service, by reporting the percentage of each census tract it provides wireless broadband service.

(b) In order to protect competitively sensitive information, the mobile telephony service provider may aggregate and submit that information through a third party.

SEC. 3. Division 2.6 (commencing with Section 5980) is added to the Public Utilities Code, to read:

DIVISION 2.6. CALIFORNIA CONNECTIVITY ACT

5980. For purposes of this division, the following terms have the following meanings:

(a) "Annual costs of ownership" means the annual capital costs and annual operating costs of a street light pole or traffic signal pole, which shall be the average costs of all similar street light poles and traffic signal poles owned or controlled by the local government or local publicly owned electric utility. The basis for the computation of annual capital costs shall be historical capital costs less depreciation. The accounting upon which the historical capital costs are determined shall include a credit for all reimbursed capital costs. Depreciation shall be based upon the average service life of the street light pole or traffic signal pole. Annual cost of ownership does not include costs for any property not necessary for use by the small wireless facility.

(b) "Communications service provider" means a cable television corporation, video service provider, or telephone corporation.

(c) "Governing body" means the governing body of a local government or local publicly owned electric utility, including, where applicable, a board appointed by a city council.

(d) "Local government" means a city, including a charter city, county, or city and county.

(e) "Small wireless facility" has the same definition as defined in subsection (l) of Section 1.6002 of Title 47 of the Code of Federal Regulations.

(f) "Street light pole" means a pole, arm, or fixture used primarily for street, pedestrian, or security lighting.

(g) "Traffic signal pole" means a pole, arm, or fixture used primarily for signaling traffic flow. "Traffic signal pole" excludes a signaling pole in a dedicated pathway used exclusively to signal trains to stop or proceed.

(h) "Usable space" means the space above the minimum grade that can be used for the attachment of antennas and associated ancillary equipment.

5981. (a) A local government or local publicly owned electric utility shall not unreasonably deny the leasing or licensing of its street light poles or traffic signal poles to communications service providers for the purpose of placing small wireless facilities. Street light poles and traffic signal poles shall be made available for the placement of small wireless facilities under fair, reasonable, and nondiscriminatory fees, subject to the requirements in Section 5982. Access to street light poles or traffic signal poles may also be subject to other reasonable terms and conditions that may include, but are not limited to, reasonable aesthetic and safety standards.

(b) (1) A local publicly owned electric utility or local government shall respond to a request for placement of a small wireless facility by a communications service provider on a street light pole or traffic signal pole, or multiple poles, owned or controlled by the local publicly owned electric utility or local government within 45 days of the date of receipt of the request, or within 60 days if the request is to attach to over 300 poles. If the request is denied, the local publicly owned electric utility or local government shall provide in the response the reason for the denial and the remedy to gain access to the street light poles or traffic signal poles. If a request to attach is accepted, the local publicly owned electric utility or local government, within 14 days after acceptance of the request, shall provide a cost estimate, based on actual cost, for any necessary make-ready work required to accommodate the small wireless facility. The requesting party shall accept or reject the make-ready cost estimate within 14 days. Within 60 days of acceptance of the cost estimate, the local publicly owned electric utility or local government shall notify any existing third-party attachers that make-ready work for a new attacher needs to be performed. The requesting party shall have the responsibility to

coordinate with third-party existing attachers for make-ready work to be completed. All parties shall complete all make-ready work within 60 days of the notice, or within 105 days in the case of a request to attach to over 300 poles. The local publicly owned electric utility or local government may complete make-ready work without the consent of the existing attachers, if the existing attachers fail to move their attachments by the end of the make-ready timeline requirements specified in this paragraph.

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

(3) Nothing in this subdivision shall be construed to change the timelines specified in Section 65964.1 of the Government Code.

(c) (1) A local publicly owned electric utility or local government may deny an application for use of a street light pole or traffic signal pole, as applicable, because of insufficient capacity or safety, reliability, or engineering concerns, subject to both of the following conditions:

(A) The capacity, safety, and reliability concerns can be addressed through the replacement of the street light pole or traffic signal pole but the communication service provider is unable or unwilling to replace the pole or a replacement of the pole would not sufficiently mitigate the safety, engineering, or capacity concerns.

(B) The local publicly owned electric utility or local government identifies the concerns, provides the communication service provider with an opportunity to remedy the concerns, and the communication service provider declines to adopt the remedies.

(2) In denying an application, a local publicly owned electric utility or local government may take into account the manner in which a request from a communications service provider under this division could impact an approved project for future use by the local publicly owned electric utility or the local government of its street light poles or traffic signal poles for delivery of the core service related to a street light pole or traffic signal pole, as applicable. That denial may only relate to insufficient capacity or safety, reliability, or engineering concerns, which the communication service provider may address pursuant to paragraph (1).

(d) This division does not limit the authority of a local publicly owned electric utility or local government to ensure compliance with all applicable law in determining whether to approve or disapprove use of a street light pole or traffic signal pole, as applicable.

5982. (a) A local government or local publicly owned electric utility is entitled to fair and reasonable compensation that recovers a reasonable approximation of the direct and actual costs related to the communication service provider's placement of small wireless facilities on street light poles or traffic signal poles, consistent with the Federal Communications Commission's Declaratory Ruling and Third Report and Order (September 26, 2018) FCC 18-133, In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79 and WC Docket No. 17-84. The compensation may include both of the following:

(1) The local government or local publicly owned electric utility may assess an annual attachment rate perpole that is a reasonable approximation of the direct and actual costs and does not exceed an amount resulting from both of the following requirements:

(A) The local government or local publicly owned electric utility shall calculate the rate by multiplying the percentage of the total usable space that would be occupied by the small wireless facility attachment by the annual costs of ownership of the street light pole or traffic signal pole.

(B) The local government or local publicly owned electric utility shall not levy a rate that exceeds the estimated amount required to provide use of the street light pole or traffic signal pole for which the annual recurring rate is levied. If the rate creates revenues in excess of actual costs, the local government or local publicly owned electric utility shall use those revenues to reduce the rate. Any fee assessed for the placement, installation, or upgrading of small wireless facilities by a communications service provider shall not be levied for general revenue or any purposes other than cost recovery.

(2) The local government or local publicly owned electric utility may assess a one-time reimbursement fee for actual costs incurred by the local government or publicly owned electric utility for rearrangements performed at the request of the communications service provider.

(b) A local publicly owned electric utility or local government establishes a rebuttable presumption that its attachment fees comply with subdivision (a) if the attachment fees are equal to or less than the presumptively reasonable attachment fee set forth in paragraph 79(b) of the Federal Communications Commission's Declaratory Ruling and Third Report and Order (September 26, 2018) FCC 18-133, In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79 and WC Docket No. 17-84.

(c) (1) If a local publicly owned electric utility or local government has not determined the appropriate annual attachment fee under paragraph (1) of subdivision (a), the local publicly owned electric utility or local government shall charge an annual reasonable attachment fee not to exceed the presumptively reasonable attachment fee set forth in paragraph 79(b) of the Federal

Communications Commission's Declaratory Ruling and Third Report and Order (September 26, 2018) FCC 18-133, In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79 and WC Docket No. 17-84, pending its determination of the appropriate annual attachment fee pursuant to paragraph (1) of subdivision (a).

(2) If a local publicly owned electric utility or local government adopts an annual attachment fee pursuant to paragraph (1) of subdivision (a) that is effective and is greater than the amount charged pursuant to paragraph (1) of this subdivision, the local publicly owned electric utility or local government may collect from a communications service provider that has paid the annual attachment fee assessed pursuant to paragraph (1) of this subdivision the difference between the adopted annual attachment fee and the amount paid by the communication service provider during the pendency of the determination of the annual attachment fee pursuant to paragraph (1) of subdivision (a).

(d) Unless the communications service provider and local government otherwise agree, if existing contractual attachment rates exceed the presumptively reasonable attachment fee set forth in paragraph 79(b) of the Federal Communications Commission's Declaratory Ruling and Third Report and Order (September 26, 2018) FCC 18-133, In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79 and WC Docket No. 17-84, the rates, terms, and conditions that are specified in a contract executed before January 14, 2019, shall remain valid only for small wireless facilities already attached to a street light pole or traffic signal pole by a communications service provider before January 1, 2022, and only until the contract, rate, term, or condition expires or is terminated according to its terms by one of the parties.

5983. This division does not prohibit a local publicly owned electric utility or local government from requiring a one-time fee to process a request for attachment, if the one-time fee does not exceed the actual cost of processing the request.

5984. This division does not prohibit a communications service provider and a local government from mutually agreeing to a rate, charge, term, or condition that is different from that provided in this division. Either party may withdraw from a negotiation for an agreement upon written notice to the other party.

5985. If the communication service provider requests a rearrangement of a street light pole or traffic signal pole, owned and controlled by a local government or local publicly owned electric utility, the local government or local publicly owned electric utility may charge a one-time reimbursement fee for the actual costs incurred for the rearrangement.

5986. A local publicly owned electric utility shall use the procedures established in Section 9516 for the adoption of the attachment fee described in subdivision (a) of Section 5982, except that the local publicly owned electric utility may avoid the procedure of Section 9516 by applying the provision of subdivision (b) of Section 5982. Any person or entity may follow the procedures of Section 9517 to protest the adoption of a fee adopted by a local publicly owned electric utility pursuant to Section 5982 and not adopted pursuant to subdivision (b) of that section. The procedures for judicial action or proceeding to attack, review, set aside, void, or annul a fee pursuant to Section 9518 and requests for audits of fees in Section 9519 apply to attachment fees adopted by a local publicly owned electric utility pursuant to Section 5982 and not adopted pursuant to subdivision (b) of that section.

5987. This division does not prohibit a communications service provider and a local government from mutually agreeing to advance the public benefit by contracting for a rate, charge, term, or condition that is different from that provided in this division, if that agreement does not include a provision purporting to condition acceptance upon a waiver of compliance with applicable state or federal law. Either party may withdraw from a negotiation for an agreement upon written notice to the other party.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.