
DIGEST

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HB 866 Original

2016 Regular Session

Havard

Abstract: Enacts the "Louisiana Wireless Communications Infrastructure Deployment Act" and limits regulations imposed on wireless communications infrastructure.

Proposed law enacts the Louisiana Wireless Communications Infrastructure Deployment Act.

Proposed law enumerates a list of the declared purposes of proposed law.

Proposed law enumerates definitions for the purposes of proposed law in order to provide for clarification. For the purposes of proposed law, the term "authority" means each state, parish, and each governing body, board, agency, office, or commission of a municipality authorized by law to make legislative, quasi judicial, or administrative decisions relative to the construction, installation, modification, or siting of wireless facilities and mounts. The term shall not include state courts having jurisdiction over land use, planning, or zoning decisions.

Proposed law prohibits an authority from charging an application fee, consulting fee, or other fee associated with the submission, review, processing, and approval of an application that is not required for similar types of commercial development within the authority's jurisdiction. Proposed law provides that an authority shall charge only for the costs directly incurred by the authority relating to the granting or processing of an application and requires those charges to be reasonably related in time to the occurrence of such costs. Proposed law prohibits market based or value based fees for the processing of an application.

Proposed law prohibits charges from including any of the following:

- (1) Travel expenses incurred by a third party in its review of an application.
- (2) Direct payment or reimbursement of third party fees charged on a contingency basis or a result-based arrangement.

Proposed law imposes the burden of proof, in any controversy concerning the appropriateness of a charge, on the authority to prove that the charge is reasonably related to the direct costs incurred by the authority. Proposed law limits the total amount of charges allowed pursuant to proposed law to the lesser of the amount charged by the authority for a building permit for any other type of commercial development or land use development, or \$500 for a collocation application regarding a small cell facility or distributed antenna system, or \$1,000 for a new wireless support structure or for a substantial modification of a wireless support structure.

Proposed law an authority from charging any rental, license, or other fee to locate a wireless facility or wireless support structure on an authority's property, including the rights of way controlled by the authority if the authority does not charge other commercial carriers and utilities for the rental or use of similarly situated property and rights of way.

Proposed law specifies that, if an authority does charge a wireless service provider or wireless infrastructure provider for use of its property or rights of way, then it may charge only the lesser of either of the following:

- (1) The amount it charges other commercial carriers and utilities for the same amount of space.
- (2) The cost to the authority of any maintenance or other activities required to be performed by the authority as a result of the location or modification of the facility or rights of way.

Proposed law clarifies that nothing included in proposed law requires an authority to charge for the placement of wireless facilities on an authority's property or rights of way.

In consideration of every application for a permit pursuant to proposed law, an authority shall not do the following:

- (1) Require an applicant to submit information about, or evaluate an applicant's business decisions with respect to its designed service, customer demand for service, or quality of its service to or from a particular area or site.
- (2) Require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. An authority may not require proprietary, confidential, or other business information to justify the need for the new wireless support structure, including propagation maps and telecommunications traffic studies.
- (3) Evaluate an application based on the availability of other potential locations for the placement of wireless support structures or wireless facilities, including, without limitation, the option to collocate instead of construct a new wireless support structure or for substantial modifications of a support structure.
- (4) Dictate the type of wireless facilities, infrastructure, or technology to be used by the applicant including but not limited to requiring an applicant to construct a distributed antenna system or small cell facility in lieu of constructing a new wireless support structure.
- (5) Require the removal of existing wireless support structures or wireless facilities, wherever located, as a condition for approval of an application.
- (6) Impose surety requirements, including bonds, escrow deposits, letters of credit, or any other type of financial surety, to ensure that abandoned or unused facilities can be removed unless the authority imposes similar requirements on other permits for other types of

commercial development or land uses and any such instrument cannot exceed a reasonable estimate of the direct cost of the removal of the facility.

(7) Discriminate or create a preference on the basis of the ownership, including ownership by the authority, of any property, structure, or tower when promulgating rules or procedures for siting wireless facilities or for evaluating applications.

(8) Impose any requirements or obligations regarding the presentation or appearance of facilities including but not limited to those relating to any kinds of materials used and those relating to arranging, screening, or landscaping of facilities if such regulations or obligations are unreasonable.

(9) Impose any requirements that an applicant purchase, subscribe to, use, or employ facilities, networks, or services owned, provided, or operated by an authority, in whole or in part, or by any entity in which an authority has a competitive, economic, financial, governance, or other interest.

(10) Condition or require the approval of an application based on the applicant's agreement to permit any wireless facilities provided or operated, in whole or in part, by an authority or by any other entity to be placed at or collocated with the applicant's wireless support structure.

(11) Prohibit, or have the effect of prohibiting, the provision of personal wireless services or personal wireless service facilities or the ability of any entity to provide any service in support of personal wireless service facilities.

(12) Limit the duration of any permit that is granted.

Proposed law, relative to small cell networks involving multiple individual small cell facilities within the jurisdiction of a single authority, provides that the authority 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.

Proposed law declares that if a wireless service provider applies to locate several wireless facilities within the jurisdiction of a single authority, the authority shall do the following:

(1) Allow the applicant, at the applicant's discretion, to file a single set of documents that will apply to all the wireless service facilities to be sited.

(2) Render a decision regarding all the wireless service facilities that satisfy the authority's requirements in a single administrative proceeding unless local requirements call for an elected or appointed body to render such decision.

Proposed law declares that any collocation or siting application for a wireless telecommunications facility shall be deemed approved when all of the following occur:

(1) The authority fails to approve or disapprove the application within a reasonable period of time in accordance with the time periods and procedures established by applicable FCC decisions. The reasonable period of time may be tolled to accommodate timely requests for information required to complete the application or may be extended by mutual agreement between the applicant and the authority when consistent with applicable FCC decisions.

(2) The applicant has provided all public notices regarding the application that the applicant is required to provide pursuant to applicable laws consistent with the public notice requirements for the application.

(3) The applicant has provided notice to the authority that the reasonable time period has lapsed and that the application is deemed approved pursuant to proposed law.

Proposed law provides that any authority may seek judicial review of the operation proposed law relative to any application within 30 days of the applicant's notice that the reasonable time period provided for in proposed law has lapsed.

Proposed law imposes certain requirements when an authority denies an application submitted to the authority. Proposed law imposes form requirements on any decision to deny a request to place, construct, or modify personal wireless service facilities. Proposed law imposes a reasonableness standard for the denial. Proposed law prohibits an authority from denying an application if such denial is discriminatory against the wireless applicant with respect to the placement of the facilities of other utilities or wireless carriers.

Proposed law provides for the opportunity of relief for any party aggrieved by the final action of an authority, either by its affirmatively denying an application or by its inaction.

Proposed law provides that any domestic or foreign telecommunications provider or broadband provider authorized to do business pursuant to the laws of this state shall have the right to construct, maintain, and operate conduit, poles, cable, switches, and related appurtenances and facilities along, across, upon, and under any public highway or rights-of-way in this state. Proposed law provides that the construction, maintenance, operation, and regulation of such facilities 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. Proposed law requires that facilities shall be constructed and maintained in a manner that does not obstruct or hinder the usual travel on or by such highway or rights of way.

Proposed law states that an authority shall not do any of the following:

(1) Impose environmental testing, sampling, or monitoring requirements that exceed federal law or requirements.

(2) Impose compliance measures for radio frequency emissions on wireless facilities that are categorically excluded pursuant to FCC rules for radio frequency emissions pursuant to present law (47 CFR 1.1307) or other applicable federal law.

(3) Establish or enforce regulations or procedures for radio frequency signal strength or the adequacy of service quality.

(4) Reject a collocation application or modification application, when it is consistent with present law (47 U.S.C. 332), either in whole or in part based on perceived or alleged environmental effects of radio frequency emissions.

(5) Impose any restrictions with respect to objects in navigable airspace that are greater than or in conflict with the restrictions imposed by the Federal Aviation Administration ("FAA").

(6) Prohibit the placement of emergency power systems that comply with federal and state environmental requirements.

Proposed law prohibits moratoriums.

Proposed law authorizes an authority to continue to exercise zoning, land use, planning, and permitting authority within their territorial boundaries with regard to the siting of new or modified of wireless support structures, wireless facilities, small cell facilities, or utility poles.

(Adds R.S. 45:1601-1610)