The 2017 Arizona law that grants blanket permission to install small cellular base stations

This law allows wireless service providers to install small transmitters on virtually any utility pole, and to erect small towers (up to 50 ft) along every street in Arizona. All without asking for permission. The law is written to prevent public input and any zoning restrictions. It is a lobbyist's dream law.

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Introduction

The use of wireless services continues to grow exponentially. The network operators, such as Verizon and Cellular One, have to keep installing new transmitters to keep up.

To make it as easy as possible for the network operators to install new transmitters, the Arizona legislature passed House Bill 2365, which was signed into law by the governor on March 31, 2017. It is the first of its kind in the United States. Similar laws are sure to follow in other states.

The law passed without any public debate. The Arizona EHS community was not even aware of HB 2365 until after it was signed into law. The lawmakers and lobbyists were surely aware that there would have been opposition if the public knew of the bill, since a similar bill had already been stalled for a year in California and wireless smart meters had been opposed for five years in Arizona.

The wording of HB 2365 is clearly written to prevent residents from opposing the siting of these transmitters, especially due to any health effects.

The full text of the law is available on http://apps.azleg.gov.

"Small Wireless Facility"

The explosive growth in wireless traffic for video downloads and the myriad of new wireless gadgets and household appliances continues. The present setup with relatively few base station towers, serving several square miles each, will not be able to continue handling the load.

The 5G system is a revolution, as it will be using many distributed transmitters instead; transmitters that will be mounted on lamp posts and electrical poles instead of on a few tall towers. These transmitters will also use much higher frequencies that do not cover long distances so well, but can carry more traffic.

These new transmitters are much smaller in size, so several can fit on one utility pole where they can share an electrical transformer. The Arizona HB 2365 law strongly encourages the unhindered installation of these transmitters, which it refers to as "small wireless facility." Other names are "microcell" or DAS.

The law in a nutshell

The law grants any wireless service provider in Arizona the right to install their equipment on virtually any utility pole they wish, as long as the pole is on a public right-of-way (i.e. along a public street) and the equipment is rather small (max six cubic feet, including the antenna).

The utility owning the pole cannot refuse the wireless transmitter for anything but well-documented technical reasons. The law specifically prohibits a wide range of shenanigans a utility may try to discourage the installation.

Areas with underground utility lines and no lamp posts are also affected, since the law gives blanket approval of "small" cellular towers. These can be erected anywhere in Arizona without zoning approval, as long as they are no taller than 40 ft (13 meters), and the antenna and electronics are no larger than six cubic feet. In some cases the towers can be 50 ft (16 meters) tall.

These towers will be especially easy to install along public roads, as they will not require the permission of any landowner or zoning board.

The big mobile phone towers are not covered by these exemptions, but a substantial tower is still possible.

Local authority severely limited

The law severely limits the rights of the local authorities. It forbids zoning review of new small towers on public or private land, as long as they are no taller than 40 ft (13 meters). In some cases a 50 ft (16 meter) pole is also exempt from zoning review (9-592(I), 11-1805(B) and (C)).

Adding transmitters to existing poles is also exempt, unless it makes the pole markedly taller (9-592(J) and 9-593(F)).

Even when a local authority has zoning jurisdiction, it is limited to specific technical and cosmetic requirements (9-592(K)).

The local authority has 150 days to consider any tower or modification that does require zoning approval (such as taller or bigger towers). The application is automatically approved when the 150 days run out, if it has not been decided beforehand (9-594(C)(3)).

Poles that cannot be used

There are a few cases where utility poles cannot be used for the transmitters without permission from the resident.

A pole placed in someone's yard to bring power into a large lot cannot be used, if the area is zoned residential for single-family homes (this appears to include rural areas zoned RU-10 and RU-20). There is no such protection for areas zoned as "A" (agricultural) or for apartment buildings (11-1805(A-C)).

Privately owned poles and structures cannot be used without the consent of the owner (9-593(K), 9-591(15)). At least HB 2365 does not grant permission to use smart meters to provide commercial wireless services (such as is done in San Jose, California), since the meters are usually placed on privately owned structures.

Blocking the opposition

The law has provisions to prevent opposition to the siting of specific transmitters:

It is not legal for someone to buy the right to hang a transmitter on a specific utility pole to prevent everybody else from using it. The law specifically prohibits exclusive arrangements (9-592(B), 9-595(A), 11-1802(A)).

It is not legal to restrict or ban the siting of the transmitters by zoning (9-593(C), 11-1805(C)).

It is not legal to ask for data about the radiation, other than a blanket statement that it will comply with the inadequate FCC regulations (9-593(G)(2)).

It is also not legal to demand a setback or fall zone that is more than required for other poles of similar height (9-594(D)(2)).

A sympathetic local authority is not even allowed to request a transmitter be sited on another nearby pole (9-592(F)(4), 11-1802(E)(3)(d)).

A local authority cannot enact a moratorium on processing permits for modifications, upgrades or new towers (11-1806(C)(3)) or question the business case or technology (9-594(D) and (F)).

The Federal Telecommunications Act of 1996 (section 704) forbids local authorities to use health concerns when siting communication towers.

What to do for relief

As shown in the previous section, HB 2365 bans several methods that could be used to protect sensitive people from the radiation.

The law has some broad clauses about public safety (9-592(K)(2)(a), 9-593(F)(3), 9-598), but they are unlikely to hold up in court, since nobody (as of 2017) has been able to win in court on such an issue in the United States. The principle that a property owner has the right to "quietly enjoy" their property unhindered by cell tower radiation has not been tested in court. In any case, such a lawsuit would take a well-funded legal team to succeed. It should not be tried without a good chance to win, as a lost case sets a precedent that makes future cases harder to win.

It may be possible to use private easements to restrict the installation of towers along a local street. HB 2365 specifically says it does not affect any private easements (9-599(3)). If it is possible to remove an existing right-of-way in some cases, so it may also be possible to convert it to a private easement that grants the public access to the road, and the utilities access as well, but expressly forbids wireless transmitters. The landowners on both sides of the street will have to approve of such a change.

In rural areas there can be several rights-of-way that are not used for anything yet, and may be blocked by fences. These may need to be converted, too.

Contact a real estate lawyer to further explore this idea.

Since these new small transmitters are much less powerful than the big towers, shorter distances will be needed for safety. How little is unknown. A hundred yards may be helpful, but that is just a guess. Large lots are helpful for creating a buffer zone where these transmitters cannot be erected against your will.

In most cases, the only possible remedy is to shield the house or bedroom against this microwave radiation (see www.eiwellspring.org/shielding.html), but that does not help when accessing the yard.

Financial giveaway

The law prohibits utilities and counties from profiting from hosting transmitters on their poles. They are allowed to only pass on any specific costs they incur (9-592(C) and (D), and 9-593(B)). The law also restricts any application fees to trivial amounts (9-592(D) and 9-593(I)).

Commentary

This law is a lobbyist's dream. It has so many provisions to prevent any form of opposition from utilities or citizens that it must have been written by lobbyists. The lawmakers of Arizona did not make any effort to make a balanced law by seeking input from citizens or citizens' groups, such as the local community of electrically sensitive.

This law is a clear power grab of state authority over local authority.

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