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MUNICIPAL LAW GROUP

BIG CHANGES TO SMALL CELL ANTENNA INSTALLATIONS MAY BE COMING

SB 1451 (the “Bill”) was drafted by the telecommunications industry with the goal of allowing the industry to roll out a 5G telecommunications network in the next several years with minimal input by local governments in where the small cell installations needed to create the network are placed. In order to create an effective 5G network, the industry requires placements of small cell antennas in populated areas approximately every 200 feet, typically on utility or other poles in the right of way.

In the Spring Legislative Session last year, the Bill fell several votes short of approval in the Illinois House after passing the Senate. In October, 2017, a coalition of opponents to the Bill, including the City of Aurora, the Northwest Municipal Conference, DuPage Mayors and Managers Conference, DuPage, Cook and Lake Counties, and the Illinois Chiefs of Police, were invited by the telecommunications industry representatives and Bill sponsors to negotiate changes to the Bill. Klein, Thorpe and Jenkins Partner Michael Marrs, on behalf of the City of Aurora and the other coalition members, participated in over 25 hours of negotiations with telecommunications industry representatives with the goal of obtaining changes to the Bill that would benefit local governments. The coalition was successful in getting a number of positive changes made to the Bill from the perspective of local governments. The result of the negotiations was House Amendment No. 2 to SB 1451, which replaced the existing text of the Bill in its entirety. While some members of the coalition moved to neutral following the negotiations, others remained opposed based on on-going concerns about the overall effect of the Bill in creating new limitations on local governmental authority.

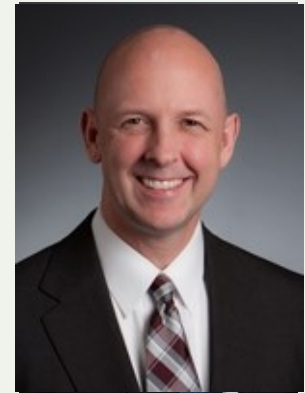
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House Amendment No. 2 was passed by the House during the Fall Veto Session, and the Senate concurred. The Bill has not yet been sent to the Governor for signature, and is currently being held by the Senate for procedural reasons. It is anticipated, however, that the Bill will be forwarded on to the Governor sometime in the near future.

While the Bill, with House Amendment No. 2, is an improvement over the version considered in the Spring, it remains very troubling for local governments overall, as it will allow small cell installations to be placed on municipal utility poles (light poles, traffic signals, etc.) of the industry's choosing so long as certain basic standards regarding safety and aesthetics are complied with, regardless of whether the municipality agrees to such placement. Such placements are exempted under the Bill from any zoning review and are deemed to be permitted uses both in all right of ways (regardless of zoning district) and outside of right-of-ways in areas zoned exclusively for commercial or industrial use. The Bill also gives telecommunication providers the ability, subject to reasonable regulations, to put up new poles for small cell installations in municipal right of ways at locations of their choosing absent the municipality being able to identify a suitable alternative location on an existing pole within 100 feet (up from 50 feet in earlier versions of the Bill). The Bill exempts the City of Chicago, preempts home rule, includes a 3 year sunset date, and has an effective date of June 1, 2018.

Based on the thorough knowledge of the Bill gained through the participation of Klein, Thorpe and Jenkins' attorneys in the negotiations on House Amendment No. 2, we are well positioned to help municipalities in making Code amendments and other changes to preserve as much local government authority as possible over small cell placements within the parameters of the Bill.

We will continue to monitor the status of the Bill and will provide notification of recommended next steps should the Bill become Law.

A link to House Amendment 2 can be found here:

[Illinois General Assembly - SB1451 – House Amendment No. 2](#)