

Date of Hearing: April 14, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 537 (Quirk) – As Amended March 30, 2021

SUBJECT: Communications: wireless telecommunications and broadband facilities.

SUMMARY: Makes several changes to existing law that requires an application for a wireless telecommunications facility to be deemed approved. Specifically, **this bill:**

- 1) Amends existing law that requires a collocation or siting application for a wireless telecommunications facility to be deemed approved under specified conditions by also requiring all necessary permits to be deemed issued, and allowing the applicant to begin construction.
- 2) Removes references to “applicable FCC decisions” and, instead, refers to “applicable FCC rules.”
- 3) Eliminates an exemption to these requirements for eligible facilities requests.
- 4) Requires, where a traffic control plan or other submission related to safety is required by construction in the public right-of-way, the applicant to comply with the requirement, and allows the city or county to condition approval of the application on compliance with this requirement. The city or county shall issue approval for any submission without delay.
- 5) Requires a city, county, or city and county, to notify the applicant of the incompleteness of an application within the time periods established by applicable FCC rules.
- 6) Provides that a city or county shall not prohibit or unreasonably discriminate in favor of, or against, any particular technology.
- 7) Requires the time period for a city or county to approve or disapprove a collocation or siting application to commence when the applicant takes the first procedural step that the city or county requires as part of its applicable regulatory review process.
- 8) Defines “applicable FCC rules” to mean those regulations contained in Subpart U (commencing with Section 1.6001) of Part 1 of Subchapter A of Chapter I of Title 47 of the Code of Federal Regulations.
- 9) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.

EXISTING LAW:

- 1) Requires a collocation or siting application for a wireless telecommunications facility to be deemed approved if all of the following occur:
 - a) The city or county 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 local government, consistent with applicable FCC decisions;
- b) The applicant has provided all public notices regarding the application that the applicant is required to provide under applicable laws consistent with the public notice requirements for the application; and,
 - c) The applicant has provided notice to the city or county that the reasonable time period has lapsed and that the application is deemed approved pursuant to this section. Allows, within 30 days of this notice, the city or county to seek judicial review of the operation of these provisions on the application.
- 2) Exempts eligible facilities requests from these requirements.
- 3) Provides the following definitions:
- a) “Applicable FCC decisions” means In re Petition for Declaratory Ruling, 24 FCC Rcd. 13994 (2009) and In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Report and Order, 29 FCC Rcd. 12865 (2014);
 - b) “Eligible facilities request” has the same meaning as in Section 1455 of Title 47 of the United States Code; and,
 - c) “Wireless telecommunications facility” to mean equipment and network components such as towers, utility poles, transmitters, base stations, and emergency power systems that are integral to providing wireless telecommunications services.
- 4) Provides that nothing, except these provisions, limits or affects the authority of a city or county over decisions regarding the placement, construction, and modification of a wireless telecommunications facility.
- 5) Provides that, due to the unique duties and infrastructure requirements for the swift and effective deployment of firefighters, these provisions do not apply to a collocation or siting application for a wireless telecommunications facility where the project is proposed for placement on fire department facilities.

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Author’s Statement.** According to the author, “California’s need for reliable high-speed internet is critical, now more than ever. COVID-19 increased the need for internet in homes for distance learning, remote work, and telehealth access. Unfortunately, many throughout our state do not have access to the internet or need improved services. Some polls indicate that nearly 42% of California families have reported that unreliable internet access has been a challenge for them during distance learning. We need to address the inequities that have been highlighted by this pandemic. Telecommunications projects in the state have been delayed by

bureaucratic regulations and permitting review processes, which have severely impacted the arrival of high-speed internet to low income and rural communities. AB 537 will align California law with federal law to ensure that local jurisdictions approve of these projects within reasonable periods of time and utilize permitting best practices.”

- 2) **Background.** Two federal laws – the Telecommunications Act of 1996 and a portion of the Middle Class Tax Relief and Job Creation Act of 2012 known as the "Spectrum Act" – require local governments to act within a "reasonable period of time" on permits for siting wireless facilities. The Federal Communications Commission (FCC) is responsible for administering these laws.

In 2009 and 2014, the FCC issued two decisions to clarify the definition of a period of time that is presumed to be reasonable for various categories of wireless telecommunications facilities. The FCC established a shot clock by ruling that local governments should generally approve or disapprove applications for projects within the following time frames:

- a) 60 days for a project that is an "eligible facilities request," which is defined by the FCC as a collocation on an existing facility that does not substantially change its physical dimensions;
- b) 90 days for a project that is a collocation that substantially changes the dimensions of the facility, but does not substantially change its size; and,
- c) 150 days for projects that are new sites for wireless facilities.

The FCC also identified remedies in cases where local governments do not act within those periods. For collocations that do not substantially change the physical dimensions of the existing facility (eligible facilities request), the application is “deemed approved” – meaning, the permit is automatically granted if a local government has not acted on the application.

However, for all other types of applications, the FCC specifically declined to adopt a deemed-approved remedy because the circumstances of wireless facility applications can vary greatly. If a local government does not act within the reasonable time period for collocations that substantially change the physical dimensions of an existing facility, or for new sites, the FCC ruled that an applicant may bring an action in federal court within 30 days of the reasonable time period elapsing. The court then determines whether the delay was unreasonable under all circumstances of the case and, if necessary, identifies an appropriate remedy.

- 3) **AB 57.** Responding to concerns that wireless providers were facing significant challenges and delays while navigating local governments’ permitting processes, AB 57 (Quirk), Chapter 685, Statutes of 2015, required an application for a collocation or siting of a wireless telecommunications facility to be deemed approved if specified requirements are met. Under AB 57, an application is deemed approved if:
 - a) The city or county fails to approve or disapprove the application within the time periods established by applicable FCC decisions (the 2009 and 2014 FCC decisions referenced above);

- b) The applicant has provided all required public notices regarding the application; and,
- c) The applicant has provided notice to the city or county that the reasonable time period has lapsed and that the application is deemed approved.

AB 57 allowed the reasonable time to be tolled to accommodate timely requests for information required to complete the application or by mutual agreement between the applicant and the local government. The bill also allowed a city or county to seek judicial review of the operation of the applicant's notice to the city or county that the reasonable time period has lapsed and the application is deemed approved.

- 4) **FCC 2018 Update.** In 2018, the FCC underwent a regulatory update and adopted new rules regarding small wireless shot clocks. The order broadened the application of the shot clocks to include all telecommunications permits, not just zoning permits, and it shortened the shot clocks. State and local governments now have 60 days to decide applications for installations on existing infrastructure, and 90 days for all other applications. The order did not add enforcement mechanisms. If a state or local government misses a permitting deadline, the applicant still must seek relief via federal court.

In particular, the FCC again declined to adopt a deemed approved remedy for non-compliance with the new shot clock timelines. Instead, it adopted a new remedy whereby inaction within the shot clock timeframes constitutes a "presumptive prohibition" on the provision of wireless services pursuant to federal law. The FCC considered this remedy sufficient, as an applicant would "have a straightforward case for obtaining expedited relief in court."

The FCC noted that this approach "effectively balances the interest of wireless service providers to have siting applications granted in a timely and streamlined manner and the interest of localities to protect public safety and welfare and preserve their authority over the permitting process. The Commission's specialized deployment categories, in conjunction with the acknowledgement that in rare instances, it may legitimately take longer to act, recognize that the siting process is complex and handled in many different ways under various states' and localities' long-established codes.

"Further, the Commission's approach tempers localities' concerns about the inflexibility of a deemed granted proposal because the new remedy the Commission adopts here accounts for the breadth of potentially unforeseen circumstances that individual localities may face and the possibility that additional review time may be needed in truly exceptional circumstances. The Commission further finds that its interpretive framework will not be unduly burdensome on localities because a number of states have already adopted even more stringent deemed granted remedies."

- 5) **Court Challenge.** Multiple parties challenged the FCC's 2018 order and the 9th Circuit Court of Appeals in *City of Portland v. FCC* issued its opinion on August 12, 2020. Regarding challenges to the FCC's decision on deemed approved remedies, the Court noted, "For their part, Wireless Service Provider Petitioners contend that the FCC did not go far enough in modifying the shot clock requirements. Petitioners contend that the FCC should have adopted a deemed granted remedy for shot clock violations, and argue that the Small Cell Order's factual findings compel the adoption of such a remedy.

“This argument relies on a mischaracterization of the FCC’s factual findings. It is true that the FCC found that delays under the old shot clock regime were so serious they would ‘virtually bar providers from deploying wireless facilities.’ But the FCC concluded that under its new shot clock rules, which shorten the time frames and expand the applicability of the rules, there will be no similar bar to wireless deployment. Because the FCC reasonably explained it has taken measures to reduce delays that would otherwise have occurred under its old regime, the factual findings here do not compel the adoption of a deemed granted remedy.”

Because the updated shot clock rules do not carry a deemed approved remedy in the FCC’s 2018 order (now upheld by the 9th Circuit) and are not reflected in the provisions of law enacted by AB 57, applicants for facilities again lack a deemed approved remedy in California. The remedy for non-compliance with the new shot clock rules is, once again, an appeal to federal court.

- 6) **Bill Summary.** This bill contains a number of changes to the provisions of AB 57, including the following:
- a) Deletes references to “applicable FCC decisions” and replaces them with “applicable FCC rules.” This effectively updates the shot clocks for the provisions of AB 57’s deemed approved rules to conform with the FCC’s updated shot clocks;
 - b) Provides, in addition to an application being deemed approved under current law, that all necessary permits shall be deemed issued, and the applicant may begin construction;
 - c) Requires, where a traffic control plan or other permit related to safety is required by the construction, the applicant to obtain the permit, which the city or county shall issue without delay;
 - d) Requires the city, county, or city and county, to notify the applicant of the incompleteness of an application within the time periods established by applicable FCC rules;
 - e) Prohibits a city or county from prohibiting or unreasonably discriminating in favor of, or against, any particular technology; and,
 - f) Requires, for the purposes of AB 57’s deemed approved rules, that the time period for a city or county to approve or disapprove a collocation or siting application to commence when the applicant takes the first procedural step that the city or county requires as part of its applicable regulatory review process.

This bill is sponsored by Crown Castle.

- 7) **State Mandate.** This bill is keyed a state mandate, which means the state could be required to reimburse local agencies and school districts for implementing the bill’s provisions if the Commission on State Mandates determines that the bill contains costs mandated by the state.

- 8) **Arguments in Support.** Crown Castle, sponsor of this measure, writes, “Currently, most local jurisdictions in California have non-standard permitting requirements and timelines that do not align with federal requirements. Certain local jurisdictions are using best practices to approve and deploy broadband projects within a couple of months, but other jurisdictions take several years to approve similar types of projects...”

“Since AB 57 was enacted, the FCC Shot Clock rules have been updated to include new communications technology and include different reasonable periods of time for different types of applications. The updated Shot Clock rules are not correctly reflected in the California law due to drafting issues – the Shot Clocks have been moved and are now contained and codified in the Code of Federal Regulations – and not in the specific Orders referenced in AB 57. Applicants for facilities, as clarified by the FCC, do not have a deemed approved remedy and are now faced with the pre-2015 situation of having to litigate non-action by localities in federal court...”

“AB 537 would simply align California’s process with current Federal Law and restore the statewide remedy as AB 57 intended. In addition, although AB 57 provided a ‘deemed approved’ remedy for shot clock violations, it did not provide clarity for what ‘deemed approved’ means for an applicant. This lack of clarity thwarts the rapid deployment of broadband infrastructure. This bill provides additional clarity which will allow applicants to deploy communications technology as AB 57 originally intended.”

- 9) **Arguments in Opposition.** The Alliance of Nurses for Healthy Environments, in opposition, writes, “We oppose AB 537 because it takes away the authority of local governments to plan their communities, to protect the safety of local residents and to protect the aesthetics of the community. Our surroundings, our parks and open spaces, our streetscapes affect our health. The FCC has already imposed restrictions and time limits for local government approval of antenna permits. This bill makes it even easier for telecom carrier permits to be approved without proper planning and public input.

“Telecom carriers must be required submit complete and accurate applications based on local zoning rules. This bill will diminish both State and local ability to regulate this industry and protect the public...We do not need more antennas; we need better WIRED internet to and into every building. Local governments throughout the country are implementing MUNICIPAL wired internet as a PUBLIC UTILITY...”

“Wireless antennas require much more energy because they need to be closer together and there are often many antennas per pole each with its own electricity source. It is a mistake to facilitate the proliferation of this ‘energy guzzling’ technology when WIRED internet: Fiberoptic To and Through FTTP the premises will save energy, help reduce climate change and can be a municipal resource. Please oppose AB 537. We can Build Back Better for our students, our communities and our planet.”

- 10) **Double-Referral.** This bill is double-referred to the Communications and Conveyance Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Crown Castle [SPONSOR]
Bay Area Council
California Apartment Association
California Builders Alliance
California Building Industry Association
California Business Properties Association
California Retailers Association
California Wireless Association
CTIA
Greater Sacramento Economic Council
Orange County Business Council
Sacramento Regional Builders Exchange
San Francisco Chamber of Commerce
Silicon Valley Leadership Group
Verizon

Opposition

5g Free California
5g Free Marin
Alliance of Nurses for Healthy Environments
Californians for Safe Technology
East Bay Neighborhoods for Responsible Technology
Ecological Options Network
EMF Safety Network
Environmental Health Trust
Facts: Families Advocating for Chemical & Toxins Safety
Mayor Clyde Roberson, City of Monterey (unless amended)
Monterey Vista Neighborhood Association
Petalumans Against Wireless Telecom Radiation
Safe Technology for Santa Rosa
Safetech4santarosa.org
Salmon Protection and Watershed Network
Sustainable Tamalonte
Wireless Radiation Alert Network
Wireless Radiation Education & Defense

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