AMENDED IN ASSEMBLY APRIL 6, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL No. 57

Introduced by Assembly Member Quirk

December 2, 2014

~~An act to amend Section 8886 of the Government Code, relating to communications.~~ *An act to add Section 65964.1 to the Government Code, relating to telecommunications.*

LEGISLATIVE COUNSEL'S DIGEST

AB 57, as amended, Quirk. ~~Broadband communications infrastructure.~~ *Telecommunications: wireless telecommunication facilities.*

Existing law requires a city, including a charter city, or county to administratively approve an application for a collocation facility on or immediately adjacent to a wireless telecommunications collocation facility, as defined, through the issuance of a building permit or a nondiscretionary permit, as specified. Existing law prohibits a city or county from taking certain actions as a condition of approval of an application for a permit for construction or reconstruction for a development project for a wireless telecommunications facility.

Under existing federal law, the Federal Communications Commission issued a ruling establishing reasonable time periods within which a local government is required to act on a colocation or siting application for a wireless telecommunications facility.

This bill would provide that a colocation or siting application for a wireless telecommunications facility is deemed approved, if the city or county fails to approve or disapprove the application within the time

periods established by the commission and all required public notices have been provided regarding the application.

~~The existing federal Telecommunications Act of 1996 preempts any state or local statute or regulation that may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. However, this provision does not prohibit a state from imposing, on a competitively neutral basis, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers, nor does it prevent a state or local government from managing the public rights-of-way or requiring fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis.~~

~~Under existing law, telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within the state, and may erect related poles, posts, piers, abutments, and other necessary fixtures of their lines, but may not incommode the public use of the road or highway or interrupt the navigation of the waters. Existing law declares the intent of the Legislature that, consistent with this authorization, municipalities have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed, but that for the control to be reasonable it must, at a minimum, be applied to all entities in an equivalent manner.~~

~~Existing law establishes the California Broadband Council in state government for the purpose of promoting broadband deployment in unserved and underserved areas of the state and broadband adoption throughout the state, imposes specified duties on the council relating to that purpose, and specifies the membership of the council.~~

~~This bill would state the intent of the Legislature to enact legislation to promote the deployment of communications infrastructure by removing barriers to investment. The bill would add the President of the Board of Directors of the League of California Cities and the President of the Executive Committee of the California State Association of Counties, or their respective designees, to the membership of the council.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 65964.1 is added to the Government Code, to read:

65964.1. (a) A colocation or siting application for a wireless telecommunications facility, as defined in Section 65850.6, shall be deemed approved if both of the following occur:

(1) The city or county fails to approve or disapprove the application within the time periods established by the Federal Communications Commission in In re Petition for Declaratory Ruling, 24 FCC Rcd. 13994 (2009).

(2) All public notices regarding the application have been provided consistent with the public notice requirements for the application.

(b) The Legislature finds and declares that a wireless telecommunications facility has a significant economic impact in California and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution, but is a matter of statewide concern.

~~SECTION 1. The Legislature finds and declares all of the following:~~

~~(a) California consumers and businesses have adopted new, Internet-based technologies and mobile connections at an unprecedented rate. Internet-based products and devices, including smartphones and tablets, are providing consumers everywhere with new choices to connect, to communicate, and to access information and entertainment.~~

~~(b) The deployment of faster, more robust, and advanced wireless and wireline broadband infrastructure is essential to ensuring there is sufficient capacity and coverage to support the increasing reliance of California residents on broadband services.~~

~~(c) State and local review of broadband infrastructure deployment serves important interests, but at the same time, California must take steps to ensure that requirements do not hinder investment. State and local permitting processes should be designed to eliminate unnecessary barriers and spur deployment of infrastructure. This includes streamlining permitting requirements to reduce delay and cost, and the creation of uniform processes.~~

~~(d) New and upgraded infrastructure delivers a vast array of consumer and community benefits, including important~~

~~improvements to public safety, education, and healthcare. The power of mobile communications is a critical tool for first responders in emergency situations. According to the Federal Communications Commission, nearly 70 percent of 911 calls are made from mobile telephones, and that percentage is growing.~~

~~(e) As we continue the transition to a knowledge-based, technology-driven economy, California must invest in students and provide them with the proper tools and technologies to bolster academic achievement, starting with expanding access to high-speed broadband Internet and next-generation Internet Protocol-based networks.~~

~~(f) Facilitating broadband deployment additionally plays a key role in advancing telemedicine and mobile health applications, which can help Californians remotely monitor their health while reducing medical costs.~~

~~(g) Wireless broadband is also key to economic development and a driver for new business and jobs. Businesses increasingly depend on strong wireless broadband service to carry their employees through the work day. An estimated 94 percent of small businesses surveyed use smartphones to conduct business and mobile technologies are saving the country's small businesses more than sixty-five billion dollars ($65,000,000,000) a year.~~

~~(h) Broadband infrastructure deployment creates jobs. A 2013 study conducted by the research firm Information Age Economics projects that wireless infrastructure investment will generate as much as one trillion two-hundred billion dollars ($1,200,000,000,000) in economic growth while creating over 1.2 million new jobs, nationally, over the next five years.~~

~~(i) It is the intent of the Legislature to enact legislation to promote the deployment of communications infrastructure by removing barriers to investment. Removing investment barriers is critical to meeting the surging demand by California residents for advanced wireless and wireline broadband technologies and services, supporting and enhancing critical public safety needs, and bridging the digital divide by increasing access for more Californians to improved education, health care, and economic development opportunities.~~

~~SEC. 2. Section 8886 of the Government Code is amended to read:~~

~~8886. (a) The membership of the California Broadband Council shall include all of the following:~~

~~(1) The Director of Technology, or his or her designee.~~

~~(2) The President of the Public Utilities Commission, or his or her designee.~~

~~(3) The Director of Emergency Services, or his or her designee.~~

~~(4) The Superintendent of Public Instruction, or his or her designee.~~

~~(5) The Director of General Services, or his or her designee.~~

~~(6) The Secretary of Transportation, or his or her designee.~~

~~(7) The President of the California Emerging Technology Fund, or his or her designee.~~

~~(8) A member of the Senate, appointed by the Senate Committee on Rules.~~

~~(9) A member of the Assembly, appointed by the Speaker of the Assembly.~~

~~(10) The President of the Board of Directors of the League of California Cities, or his or her designee.~~

~~(11) The President of the Executive Committee of the California State Association of Counties, or his or her designee.~~

~~(b) Members of the Legislature appointed to the council shall participate in the activities of the council to the extent that their participation is not incompatible with their positions as Members of the Legislature.~~

O

ASSEMBLY THIRD READING
AB 57 (Quirk)
As Amended April 6, 2015
Majority vote

Committee	Votes	Ayes
Local Government	7-0	Maienschein, Gonzalez, Alejo, Cooley, Holden, Linder, Waldron

SUMMARY: Requires a colocation or siting application for a wireless telecommunications facility to be deemed approved, if specified conditions are met, and applies these provisions to all counties and cities, including charter cities. Specifically, **this bill**:

1) Requires a colocation or siting application for a wireless telecommunications facility to be deemed approved, if both of the following occur:

   a) The city or county fails to approve or disapprove the application within the time periods established by the Federal Communications Commission in In re Petition for Declaratory Ruling, 24 FCC Rcd. 13994 (2009); and,

   b) All public notices regarding the application have been provided consistent with the public notice requirements for the application.

2) States that the Legislature finds and declares that a wireless telecommunications facility has a significant economic impact in California and is not a municipal affair as that term is used in California Constitution Article XI, Section 5, but is a matter of statewide concern.

EXISTING LAW:

1) Defines the following terms:

   a) "Collocation facility" to mean the placement or installation of wireless facilities, including antennas, and related equipment, on, or immediately adjacent to, a wireless telecommunications collocation facility.

   b) "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.

   c) "Wireless telecommunications collocation facility" to mean a wireless telecommunications facility that includes collocation facilities.

2) Provides that a collocation facility shall be a permitted use not subject to a city or county discretionary permit, if it satisfies the following requirements:

   a) The collocation of facility is consistent with requirements for the wireless telecommunications collocation facility pursuant to 3) below, on which the collocation facility is proposed;

b) The wireless telecommunications collocation facility on which the collocation facility is proposed was subject to a discretionary permit by the city or county and an environmental impact report (EIR) was certified, or a negative declaration or mitigated negative declaration was adopted for the wireless telecommunications collocation facility in compliance with the California Environmental Quality Act (CEQA), the requirements of Section 21166 do not apply, and the collocation facility incorporates required mitigation measures specified in that EIR, negative declaration, or mitigated negative declaration.

3) Provides that a wireless telecommunications collocation facility, where a subsequent collocation facility is a permitted use not subject to a city or county discretionary permit pursuant to 2) above, shall be subject to a city or county discretionary permit issued on or after January 1, 2007, and shall comply with all of the following:

a) City or county requirements for a wireless telecommunications collocation facility that specifies types of wireless telecommunications facilities that are allowed to include a collocation facility, or types of wireless telecommunications facilities that are allowed to include certain types of collocation facilities; height, location, bulk, and size of the wireless telecommunications collocation facility; percentage of the wireless telecommunications collocation facility that may be occupied by collocation facilities; and, aesthetic or design requirements for the wireless telecommunications collocation facility;

b) City or county requirements for a proposed collocation facility, including any types of collocation facilities that may be allowed on a wireless telecommunications collocation facility; height, location, bulk, and size of allowed collocation facilities; and, aesthetic or design requirements for a collocation facility;

c) State and local requirements, including the general plan, any applicable community plan or specific plan, and zoning ordinance; and,

d) CEQA through certification of an EIR, or adoption of a negative declaration or mitigated negative declaration.

4) Requires the city or county to hold at least one public hearing on the discretionary permit required pursuant to 3) above, and requires notice to be given as specified, unless otherwise required.

5) States that the Legislature finds and declares that a collocation facility has a significant economic impact in California and is not a municipal affair, but is a matter of statewide concern.

6) Limits the consideration of the environmental effects of radio frequency emissions by the city or county to that authorized by 47 United States Code Section 332(c)(7), as specified.

FISCAL EFFECT: None

COMMENTS:

1) **Bill Summary**. This bill requires a colocation or siting application for a wireless telecommunications facility to be deemed approve, if both of the following occur: 1) the city or county fails to approve or disapprove the application within the time periods established by the FCC 2009 Declaratory Ruling; and, 2) all public notices regarding the application have been provided consistent with the public notice requirements for the application. This bill declares that a wireless

telecommunications facility has a significant economic impact in California and is not a municipal affair, but is a matter of statewide concern, thus applying the requirements of this bill to all cities, including charter cities.

This bill is sponsored by the author.

2) **Author's Statement**. According to the author, "In order to encourage the expansion of wireless networks, Congress passed the Telecommunications Act of 1996, which requires a local jurisdiction to act on a wireless facility colocation or siting application within a 'reasonable period of time.' As the entity charged with implementing the Act, the Federal Communications Commission (FCC), issued a declaratory ruling that a 'reasonable period of time' is presumptively 90 days to process collocation applications and 150 days to process all other applications.

"While the FCC's regulations were promulgated pursuant to the agency's rulemaking and adjudicatory authority, thus carrying the force of law, local jurisdictions charged with acting on these wireless facility applications often ignore the FCC's timeline. If the FCC deadlines are not met, the only remedy currently available to the provider seeking the permit is to sue the local jurisdiction in court.

"Instead of requiring the provider to seek a judicial remedy to enforce the FCC's timeline, AB 57 would provide that a wireless facility colocation or siting application that is not acted on by the local jurisdiction within the timeline shall be 'deemed approved.' Consistent with the FCC's finding that 'wireless service providers have faced lengthy and unreasonable delays in the consideration of their facility siting applications, and that the persistence of such delays is impeding the deployment of advanced and emergency services,' this bill would close a loophole that allows a local jurisdiction to effectively extend the timeline beyond that established by the FCC.

"Nothing in AB 57 limits or affects the authority of a local jurisdiction over siting decisions, as they still retain all existing rights to deny applications that do not meet the jurisdiction's lawful siting requirements. AB 57 simply provides a workable remedy for a local jurisdiction's failure to abide by existing federal deadlines."

3) **Background on Siting of Wireless Facilities**. In the Telecommunications Act of 1996, Congress imposed specific limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of [towers and antennas], and incorporated those limitations into the federal Communications Act of 1934. Federal Communications Act, Section 201(b) empowers the FCC to "prescribe such rules and regulations as may be necessary in the public interest to carry out [its] provisions." The Act imposed five substantive limitations codified in 47 United States Code Section 332(c)(7)(B). One of those limitations, Section 332 (c)(7)(B)(ii), required state or local governments to act on wireless siting applications "within a reasonable period of time after the request is duly filed."

On November 18, 2009, the FCC released a Declaratory Ruling (In re Petition for Declaratory Ruling, 24 FCC Rcd. 13994 (2009)) in response to a July 11, 2008, petition filed by CTIA – The Wireless Association, asking the FCC to clarify provisions in Communications Act of 1934 Section 253 and Section 332 (c)(7), as amended, regarding state and local review of wireless facility siting applications. That Declaratory Ruling found that a "reasonable period of time" for a state or local government to act on a personal wireless service facility siting application is presumptively 90 days for collocation applications and presumptively 150 days for siting applications other than collocations, and that the lack of a decision within this timeframes constitutes a "failure to act" based

on which a service provider may commence an action in court under Section 332(c)(7)(B)(v). The 2009 Declaratory Ruling noted that "by clarifying the statute in this manner, we recognize Congress' dual interests in promoting the rapid and ubiquitous deployment of advanced, innovative, and competitive services, and in preserving the substantial area of authority that Congress reserved to State and local governments to ensure that personal wireless service facility siting occurs in a manner consistent with each community's values."

The Cities of Arlington and San Antonio, Texas, sought review of the 2009 Declaratory Ruling in the Fifth Circuit. They argued that the FCC lacked authority to interpret Section 332(c)(7)(B)'s limitations. Relying on Circuit precedent, the Court upheld the presumptive 90- and 150- deadlines and entitled to *Chevron* deference. The Supreme Court of the United States granted certiorari to look at whether a court should apply *Chevron* to an agency's determination of its own jurisdiction. On May 20, 2013, the judgment of the Court of Appeals was affirmed by the Supreme Court, thus confirming that Congress has vested the FCC with general authority to administer the Communications Act through rulemaking and adjudication.

The Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) was signed into law by President Barack Obama on February 22, 2012, and included provisions regarding wireless facilities deployment. Section 6409(a) of the Spectrum Act states that "a state or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such a tower or base station."

In a report released by the FCC on October 21, 2014, the FCC interpreted and implemented the "collocation" provisions of Middle Class Tax Relief and Job Creation Act of 2012, Section 6409(a). The report noted that Section 6409(a) included a number of undefined terms, and the FCC adopted rules to clarify many of the terms and enforce their requirements. Among other measures, the FCC:

a) Clarified that Section 6409(a) applies to support structures and to transmission equipment used in connection with any Commission-licensed or authorized wireless transmission;

b) Clarified that a modification "substantially changes" the physical dimensions of a tower or base station, as measured from the dimensions of the tower or base station inclusive of any modifications approved prior to the passage of the Spectrum Act, if it meets specified criteria;

c) Provided that states and localities may continue to enforce and condition approval on compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonable related to health and safety;

d) Provided that a state or local government may only require applicants to provide documentation that is reasonably related to determining whether the eligible facilities request meets the requirements of 6409 (a);

e) Required, within 60 days from the date of filing, accounting for tolling, a state or local government to approve an application covered by Section 6409 (a);

f) Provided that an application filed under Section 6409 (a) is deemed granted, if a state or local government fails to act on it within the requisite time period.

The 2014 FCC report also clarified Communications Act Section 3329(c)(7) and the FCC's 2009 Declaratory Ruling, as follows:

g) Clarified, with regard to the FCC's determination in the 2009 Declaratory Ruling that a state or municipality may toll the running of the shot clock, if it notifies the applicant within 30 days of submission that its application is incomplete, that:

   i) The timeframe begins to run when an application is first submitted, not when it is deemed complete by the reviewing government;

   ii) A determination of incompleteness tolls the shot clock only, if the state or local government provides notice to the applicant in writing within 30 days of the application's submission, specifically delineating all mission information, and specifying the code provision, ordinance, application instruction, or otherwise publically-stated procedures that require the information to be submitted;

   iii) Following an applicant's submission in response to a determination of incompleteness, the state or local government may reach a subsequent determination of incompleteness based solely on the applicant's failure to supply the specific information that was requested within the first 30 days;

   iv) The shot clock begins running again when the applicant makes its supplemental submission; however, the shot clock may again be tolled if the state or local government notifies the applicant within 10 days that the supplemental submission did not provide the specific information identified in the original notice delineating missing information.

h) Clarified that the presumptively reasonable timeframes run regardless of any applicable moratoria;

i) FCC declined to adopt an additional remedy for state or local government failures to act within the presumptively reasonable time limits.

On March 6, 2015, Montgomery County, Maryland filed a lawsuit in the United States Court of Appeals for the Fourth Circuit, petitioning for review of the 2014 FCC Report that made federal rules implementing Middle Class Tax Relief and Job Creation Act of 2012, Section 6409(a), stating that the Report is inconsistent with the United States Constitution; an unlawful interpretation of Section 6409(a) and other statutory provisions; arbitrary and capricious and an abuse of discretion; and otherwise contrary to law.

4) **Previous Legislation**. AB 162 (Holden) of 2013, would have prohibited a local government from denying an eligible facilities request, as defined, for a modification of an existing wireless telecommunications facility or structure that does not substantially change the physical dimensions of the wireless telecommunications facility or structure, and would have required a local government to act on eligible facilities request within 90 days of receipt. The measure was referred to the Assembly Local Government Committee but was never heard.

5) **Policy Considerations**. The Legislature may wish to consider the following:

   a) **Specific Examples**. The author notes that local jurisdictions charged with acting on these wireless facility applications often ignore the FCC's timeline. The Legislature may wish to ask

the author for specific examples in which this has happened in California, and to determine whether this is a widespread practice that warrants a legislative fix.

b) "**Deemed Approved**." According to the American Planning Association, California Chapter (APA), the California State Association of Counties (CSAC), and the Urban Counties Caucus (UCC), in opposition, "In 2014, the FCC determined that under a new federal law (47 U. S. C. 1455 (a)), applications for modifications to wireless facilities would be "deemed approved" in 60 days provided those modifications not substantially "change the physical dimensions" of the existing wireless facility. The FCC's 'deemed approved' requirement doesn't apply to new wireless siting applications, which require more time for important environmental and esthetical review and permit processing, nor does it apply to colocations that involve substantial increases in the size of the permitted facility. In AB 57, however, the state would apply this remedy to both new applications and all colocation applications."

The Legislature may wish to ask the author why it is necessary to go beyond the requirements and regulations promulgated by the FCC.

c) **Incentivizing Denial**? APA, CSAC, and UCC note that "adding a 'deemed approved' rule to state law where none presently exists, as proposed under AB 57, could incentivize local jurisdictions to deny new siting or colocation applications in order to avoid allowing the shot-clock to run out before the local agency has been able to effectively negotiate on environmental and aesthetic matters that are at the heart of community concerns. In this way, AB 57 could promote litigation rather than successful deployment of new or improved wireless infrastructure."

6) **Arguments in Support**. Supporters argue that the current remedy in which the wireless provider may sue the locality for unreasonable delay in any 'court of competent jurisdiction,' is not a meaningful remedy and that California's courts are already overburdened. Supporters note that the inherent delay in bringing a lawsuit over a single application, when a wireless provider may have hundreds of applications, make the FCC rule all but meaningless in this state, and that as a result, local governments can, and often do, get away with violating federal law.

7) **Arguments in Opposition**. Opposition argues that this bill goes beyond the requirements of federal law and regulations, and that this bill effectively eliminates the ability of local agencies to meet the needs and best interests of local communities and determining the siting and collocation of wireless facilities. Opposition notes that federal law and regulations are sufficient on the matter and moreover that the state should not enact statute that expands the rights of wireless carriers beyond what is provided by federal law.

Analysis Prepared by: Debbie Michel / L. GOV. / (916) 319-3958 FN: 0000417

AB 57 ANALYSIS
LOS ANGELES COUNTY DEPT. OF REGIONAL PLANNING

The Department of Regional Planning (DRP) reports that AB 57 would have significant impacts on its ability to: properly review an application for a wireless telecommunications facility (WTF) for safety and community compatibility concerns; allow for public participation; and, process other cases in a timely manner.

A “deemed approved” rule interferes with the County’s duty and discretion to evaluate the impacts of a proposed new or modified WTF. The truncated time frame does not provide sufficient time to complete necessary environmental review, if any is needed, determine the impacts to the surrounding community, or take into account public safety considerations. Site visits to understand the setting of the project and develop conditions of operation would likely not be possible. DRP consults where necessary with both the Department of Public Works and the Fire Department on WTFs; such consultation with these public safety agencies would probably not be possible under the truncated processing time frames prescribed by AB 57.

The public is often keenly interested in development within their communities, and DRP complies with State law with respect to proper noticing and providing avenues for public participation. AB 57 does not allow sufficient time for the public to fully participate in the evaluation process because it abruptly truncates the processing time frame. For many members of the public, AB 57 will preclude them from investigating the proposed development and fully participating in the process before the project is deemed approved; even if all required public notices are provided, no public hearing takes place if a project is simply deemed approved, and therefore no public comments would be considered.

AB 57 also seems to state that a WTF application would be deemed approved if a public hearing on the application were continued beyond the truncated time frame, since no decision would have been made at the hearing. If this is the case, such an action precludes public participation since continuances are often ordered to address community concerns. In the case of a public hearing being continued to address public safety concerns raised at the hearing, those concerns would never be addressed since the application would be deemed approved. Both of these situations interfere with the County’s ability to serve the public health, safety, and welfare, and are clearly unacceptable.

AB 57 would accelerate the timeframe under which a WTF must be taken to public hearing. DRP would need to dedicate staff and probably a Hearing Officer specifically for WTF cases, and may need to increase the frequency of meetings held to consider public hearing items; WTF cases can make up 40 to 50 percent of the cases on a DRP Hearing Officer agenda. Increased frequency of meetings would increase costs to DRP, as substantial costs are associated with conducting public hearings. In addition, making WTF cases a priority (to meet the truncated processing time frame) would mean non-WTF cases move down in the processing queue, resulting in delays for other applicants.