
**SENATE COMMITTEE ON ENERGY, UTILITIES AND
COMMUNICATIONS**

Senator Ben Hueso, Chair

2021 - 2022 Regular

Bill No:	AB 537	Hearing Date:	6/21/2021
Author:	Quirk		
Version:	5/27/2021 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Sarah Smith		

SUBJECT: Communications: wireless telecommunications and broadband facilities

DIGEST: This bill updates existing law establishing a timeline and process through which wireless telecommunication siting facility permits will be deemed approved.

ANALYSIS:

Existing federal law:

- 1) Provides the Federal Communications Commission (FCC) with broad regulatory authority over telecommunications services, including wireless facilities and service. (Title 47 U.S.C. §151 et. Seq.)
- 2) Establishes requirements to remove barriers for ensuring competitive telecommunications markets, including prohibiting state and local governments from adopting legal requirements that have the effect of prohibiting an entity from providing interstate and intrastate telecommunications services. Existing law protects state and local government authority to set certain legal and regulatory requirements for telecommunications services and facilities as long as those requirements are competitively neutral and nondiscriminatory. In the event that a state or local government establishes legal requirements that violate this framework, the FCC is required to preempt those local and state requirements. (Title 47 U.S.C. §253)

Existing state law:

- 1) Specifies that an application for the collocation or siting of a wireless telecommunications facility shall be deemed approved if all the following conditions are met:

- a) The city or county fails to approve or disapprove the application within a reasonable time-frame in accordance with the time periods and procedures established by 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. Within 30 days of the notice, the city or county may seek judicial review of the operation of this section on the application.
 - 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. (Government Code §65964.1(a))
- 2) Defines “applicable FCC decisions” for the purposes of wireless facility collocation and siting applications as *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). (Government Code §65964.1(d))
 - 3) Exempts applications for collocation and siting of wireless facilities on fire department facilities from specified streamlined wireless facility permitting requirements. (Government Code §65964.1(f))

This bill:

- 1) Replaces references to the 2009 and 2014 "applicable FCC decisions" with the 2018 "applicable FCC rules."
- 2) Expands the “deemed approved” standard in existing law to specify that in addition to an application being deemed approved under current law, all necessary permits shall also be deemed issued, and the applicant may begin construction if the following conditions are met:
 - a) The city or county fails to approve or disapprove the application within the reasonable time periods in specified FCC decisions,
 - b) All required public notices have been provided regarding application, and
 - c) The applicant has provided a notice to the city or county that the reasonable time period has lapsed.
- 3) Specifies that where a city or county requires a traffic control plan or permit related to safety or obstruction in the public right-of way, the applicant shall not begin construction before complying with this requirement.

- 4) Requires the city, county, or city and county, to notify the applicant of the incompleteness of an application within the time-periods established by FCC rules.
- 5) Prohibits a city or county from prohibiting or unreasonably discriminating in favor of, or against, any particular technology.
- 6) Clarifies that the shot clock for a city or county to approve or disapprove a collocation or siting application starts when the applicant makes the first required submission for the permit or, if the city or county requires a pre-application step before submission, the shot clock starts when the applicant takes that first pre-application step.

Background

The FCC's 2018 Wireless Deployment Order. In 2009 and 2014, the FCC adopted orders to lower barriers to wireless facility deployment and reduce permitting delays at the local level. As part of the 2009 and 2014 orders, the FCC established "shot clocks" that set specified time limits on a local government's review of a wireless facility permit application. The 2009 and 2014 orders set the following shot clocks:

- 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;
- 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,
- 150 days for projects that are new sites for wireless facilities.

Following the FCC's 2014 order, the Legislature passed AB 57 (Quirk, Chapter 685, Statutes of 2015). Amongst other permit streamlining changes, AB 57 codified the shot clocks from the 2009 and 2014 FCC orders.

In 2018, the FCC updated its wireless deployment orders related to local government permitting. As part of this update, the FCC expanded the types of wireless facilities covered by the FCC's permit streamlining rules and also shortened the shot clocks for local government permit application reviews. The 2018 order adopted the following shot clocks:

- 60 days for applications for installations on existing infrastructure
- 90 days for all other applications

This bill updates state statute to reflect the more recent FCC rules regarding wireless permit timelines by replacing references to the 2009 and 2014 orders with a reference to the 2018 FCC rules.

What permitting powers can and cannot be deemed away? While the FCC did not establish a “deemed approved” standard in its 2009 and 2014 decisions, existing state law establishes that an application for a wireless facility may be deemed approved if certain conditions are met. Under existing law, local governments are provided with a right to obtain judicial review for disputes regarding the issuance of permits pursuant to the FCC rule. In its 2018 Order, the FCC once again declined to adopt a “deemed approved” standard and the order stated:

...while we do not adopt a “deemed granted” remedy for violations of our new shot clocks, we clarify that failing to issue a decision up or down during this time period is not simply a “failure to act” within the meaning of applicable law. Rather, missing the deadline also constitutes a presumptive prohibition. We would thus expect any locality that misses the deadline to issue any necessary permits or authorizations without further delay. We also anticipate that a provider would have a strong case for quickly obtaining an injunction from a court that compels the issuance of all permits in these types of cases.

While the FCC expected local governments to litigate the issuance of permits under the 2018 rules, this bill would extend the existing “deemed approved” standard in state law to specify that permits for the project are deemed issued and construction can begin on a wireless facility except in circumstances where the city has certain other safety requirements. It is unclear if “deeming” a permit issuance is sufficient to ensure that a project is effectively and safely permitted before construction. In the event that a project does not obtain a valid permit issued by either a local government or compelled by a court, it is not clear that construction can start even with “deemed issued” permits.

Need for Amendments. This bill’s expansion of the “deemed approved” standard appears to authorize construction of a wireless facility without an approved permit and may conflict with existing law that provides local governments with the right to seek judicial review over disputes regarding wireless facility permitting prior to the issuance of a permit. *As a result, the author and the committee may wish to amend this bill to remove language deeming a permit issued and authorizing construction of a facility without a permit.*

Prior/Related Legislation

SB 378 (Gonzalez, 2021) requires local governments to allow microtrenching for the installation of underground fiber optic equipment. The bill is currently pending in the Assembly.

SB 556 (Dodd, 2021) establishes permitting requirements for the placement of small wireless facilities on street light and traffic signal poles owned by local governments. The bill is currently pending in the Assembly.

SB 649 (Hueso, 2017) would have established requirements for local government permitting of small cell facilities in the public rights of way, including some provisions substantially similar to those contained in this bill. The bill was vetoed.

AB 2788 (Gatto, 2016) would have established requirements for local government permitting of small cell facilities, including fee limitations, exemptions to certain local permitting requirements, and timelines for approving small cell placement permits. The bill died in the Senate.

AB 57 (Quirk, Chapter 685, Statutes of 2015) specified that an application for a wireless telecommunications facility collocation or siting is deemed approved if certain conditions are met, including the following : (1) the city or county fails to approve or disapprove the application within the reasonable time periods in specified FCC decisions, (2) all required public notices have been provided regarding application, and (3) the applicant has provided a notice to the city or county that the reasonable time period has lapsed.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

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
Chula Vista Chamber of Commerce
CTIA
First 5 California

Greater Sacramento Economic Council
Little Hoover Commission
Los Angeles County Business Federation (BIZFED)
Orange County Business Council
Sacramento Regional Builders Exchange
San Francisco Chamber of Commerce
Silicon Valley Leadership Group
TechNet
Verizon
Wireless Infrastructure Association
An Individual

OPPOSITION:

5G Free California
Alliance of Nurses for Healthy Environments
Americans for Responsible Technology
California Brain Tumor Association
Californians for Safe Technology
Communications Workers of America, District 9
East Bay Neighborhoods for Responsible Technology
Ecological Options Network
EMF Safety Network
Families Advocating for Chemical & Toxics Safety
Keep Cell Antennas Away
Nevada City Telecommunications Ordinance Public Working Group
Nevada County Telecommunications Public Working Group
Safetech4santarosa.org
Salmon Protection and Watershed Network
Santa Barbara Green Sisters
Sustainable TamAlmonte
Towards an Internet of Living Beings
Two Heads Tutoring
Wireless Radiation Alert Network
Wireless Radiation Education & Defense
25 individuals

ARGUMENTS IN SUPPORT: 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.

ARGUMENTS IN OPPOSITION: Opponents argue that this bill would limit local governments' ability to use the permitting process to ensure that wireless facilities meet safety requirements and expand broadband access to unserved communities. Several opponents oppose permitting wireless infrastructure due to concerns regarding potential health and safety impacts of radiofrequencies from wireless facilities. Opponents also claim that the "deemed approved" provisions of the bill provides telecommunications providers with unreasonable access to public rights of way without sufficient local government oversight. In opposition, District 9 of the Communication Workers of America states:

AB 537 also makes it difficult for local governments to protect safety in the right-of-way. "Deemed approved" remedies effectively give industry free reign to build on public property: when a local government misses a deadline, the application is presumptively granted, whatever the safety consequences might be. This type of provision has obvious problems for workers and the public.

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