

Date of Hearing: April 28, 2021

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Miguel Santiago, Chair

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

**SUBJECT:** Communications: wireless telecommunications and broadband facilities

**SUMMARY:** Modifies city and county permitting deadlines for wireless telecommunications facilities. Specifically, **this bill:**

- 1) Clarifies the actions that may occur when a permit has been “deemed approved” as “all necessary permits shall be deemed issued, and the applicant may begin construction.”
- 2) Permits a city or county to condition permit approval on compliance the filing of a traffic control plan or other submission related to safety required by construction in the public right-of-way. The city or county shall issue approval for any submission required by this subdivision without delay.
- 3) Requires a city or county to notify a permit applicant of the incompleteness of an application within the time periods established by applicable Federal Communications Commission (FCC) rules.
- 4) Updates references to FCC requirements by striking references to FCC decisions, and instead referencing FCC rules defined as 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.
- 5) Prohibits a city or county from discriminating against or prohibiting a particular technology.
- 6) Triggers the time limit on the processing of a permit to when the applicant takes the first procedural step.

**EXISTING LAW:**

- 1) Requires a collocation or siting application for a wireless telecommunications facility to be deemed approved if a city or county fails to approve or disapprove the permit within specified timeframes and under applicable FCC decisions.
- 2) Defines wireless telecommunications facility as equipment and network components such as towers, utility poles, transmitters, base stations, and emergency power systems that are integral to providing wireless telecommunications services (Government Code § 65850.6)
- 3) Establishes limitations on state or local government decisions regarding the placement, construction, and modification of personal wireless service facilities. (42 U.S.C. § 332)
- 4) Restricts state or local legal requirements that may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service, but permits a state or locality to impose, on a competitively neutral basis, requirements necessary to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. (47 U.S.C. § 253)

**FISCAL EFFECT:** Unknown. This bill has been keyed fiscal by the Legislative Counsel.

*5G Upgrades* – The transition to the next generation of wireless services, known as 5G, can unleash a new wave of entrepreneurship, innovation, and economic opportunity for communities across the country. At the same time the deployment of the infrastructure to support 5G and other next-generation wireless services has created regulatory challenges across the country. The FCC found that “regulatory obstacles have threatened the widespread deployment of these new services and, in turn, U.S. leadership in 5G.” They have adopted rules:

...to streamline the wireless infrastructure siting review process to facilitate the deployment of next-generation wireless facilities. Specifically...the Commission identifie[d] specific fee levels for the deployment of Small Wireless Facilities, and it addresse[d] state and local consideration of aesthetic concerns that effect the deployment of Small Wireless Facilities. In the Order, the Commission addresse[d] the “shot clocks” governing the review of wireless infrastructure deployments and establishe[d] two new shot clocks for Small Wireless Facilities.<sup>1</sup>

*The Shot Clock* – For local governments, the issue is who controls the right-of-way in their streets – the municipality or the wireless provider? The FCC stepped in and addressed permitting challenges at the local level in an attempt to reduce limits on permitting and expedite approvals. A fundamental element of those rules is “shot clocks” – presumptive approvals of permit applications if the municipality fails to act within a designated timeframe.

For wireless infrastructure the FCC addressed what constitutes a “reasonable period of time” after which an aggrieved applicant for a tower may file suit asserting a failure to act by the local land use agency. Petitioners to the FCC had compiled more than 3,300 pending personal wireless service facility siting applications before local jurisdictions and argued that the local jurisdictions were hindering the pace of wireless communications growth. The ruling concluded there was a need to establish separate timeframes for facilities on pre-existing structures (collocation) and those on new sites. Those are now reflected 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.

#### **COMMENTS:**

- 1) Author’s Statement. 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

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<sup>1</sup> FCC 18-133, released September, 2018; see also *Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, 47 CFR Part 1, October 15, 2018.

jurisdictions approve of these projects within reasonable periods of time and utilize permitting best practices.

- 2) Shot Clock Violation Remedy. California responded to the FCC action by adopting AB 57 (Quirk) in 2015 to align state law with the federal shot clock but went further and provided a remedy for failure to finalize permitting by the express timeframe. The FCC remedy is litigation. AB 57 provided that if the locality did not meet the shot clock timelines, the application would be “deemed approved.”

This bill updates state law to conform with FCC regulatory actions refining the shot clock but also expands on the remedy afforded in state law by specifying the actions that may occur after a permit is “deemed approved” to be that “all necessary permits shall be deemed issued, and the applicant may begin construction.” The sponsor says “it would restore the statewide remedy as AB 57 intended providing clarity for what ‘deemed approved’ means for an applicant.” They state that this lack of clarity “thwarts the rapid deployment of broadband infrastructure.”

County government representatives and the California Chapter of the American Planning Association are opposed to this provision unless amended stating that it is:

...ambiguous and problematic. The intended effects of this language, and what it adds to the fact of deemed approval, are uncertain. This language could be interpreted to make it more difficult for local agencies to address construction methods that do not comply with electrical, building, and fire codes, by requiring cumbersome suspension or revocation processes for these "permits" before potentially dangerous work is halted. If that is this bill's intent, that is clearly objectionable, and if not, this ambiguity is harmful.

- 3) Other Actions. The bill also address other actions that can disrupt the permit process:

- a. Traffic Safety – This measure also addresses situations where a city or county may require a traffic safety plan for installation work. The provision reads as if *any* plan submitted by the applicant *must* be accepted by the city or county whether sufficient or not; and
- b. Technology Discrimination – The bill also states that a “city or county shall not prohibit or unreasonably discriminate in favor of, or against, any particular technology.” The provision is not consistent with federal law and the phrasing seems ambiguous. It may invite further litigation rather than resolve issues at the local level.

“Technology discrimination” under federal law is addressed in two ways. First 42 U.S.C. 332 intends that local governments not discriminate among “providers of functionally equivalent services” or “have the effect of prohibiting the provision of personal services.” The FCC also comments on discrimination in the context of fees and that “governments should not discriminate on the fees charged to different providers.”

The author responds that they have been working with planners and local government representatives to resolve the differences of opinions on the issues but have not yet reached agreement.

- 4) Community-based Concerns. Several groups have also written in opposition to the bill. Their opposition is not based on the permitting process but they are generally against the growth of wireless facilities. The California the Alliance of Nurses for Healthy Environments opines that “[w]ireless connections are not secure. Telemedicine requires wired internet. We do not need more antennas; we need better WIRED internet to and into every building.” Other opponents argue that the growth of wireless technology results in a dangerous growth in the emissions of radiofrequency radiation.
- 5) Double Referral. This bill was heard by the Local Government Committee on 14<sup>th</sup> and approved unanimously.

## **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 Retailers Association  
 California Wireless Association  
 Chula Vista Chamber of Commerce  
 Crown Castle and Its Affiliates  
 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  
 Sacramento Regional Builders Exchange (SRBX)  
 San Francisco Chamber of Commerce  
 Silicon Valley Leadership Group  
 Verizon Communications, INC. And its Affiliates  
 Wireless Infrastructure Association  
 One individual

**Opposition**

13 Moon Calendar Change Peace Movement  
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  
Monterey Vista Neighborhood Association  
Petalumans Against Wireless Telecom Radiation  
Safe Technology for Santa Rosa  
Safetech4santarosa.org  
Salmon Protection and Watershed Network  
San Jose; City of  
Santa Barbara Green Sisters  
Stop 5g Encinitas  
Stop Smart Meters!  
Sustainable Tamalmonite  
Topanga Peace Alliance  
Wireless Radiation Alert Network  
Numerous individuals

**Oppose Unless Amended**

American Planning Association, California Chapter  
California State Association of Counties  
Mayor Clyde Roberson, City of Monterey  
Rural County Representatives of California  
Urban Counties of California

**Analysis Prepared by:** Kellie Smith / C. & C. / (916) 319-2637