

AMENDED IN SENATE JULY 8, 2015
AMENDED IN SENATE JULY 2, 2015
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 add Section 65964.1 to the Government Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 57, as amended, Quirk. 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 collocation or siting application for a wireless telecommunications facility.

This bill would provide that ~~a city or county is presumed to have failed to act within a reasonable time upon a collocation or siting application for a wireless telecommunications facility~~ *is deemed approved* if the city or county fails to approve or disapprove the application within 90 days for a collocation application, or 150 days for a siting application other than a collocation application, and the reasonable time periods specified in applicable decisions of the Federal Communications Commission, all required public notices have been provided regarding the application. The bill would authorize these periods to be extended by mutual consent of the applicant and the city or county. The bill would provide that if a city or county fails to approve or disapprove an application for collocation or siting application for a wireless telecommunications facility within a reasonable period of time, the application is deemed approved. The bill would provide that, in any action in a court of competent jurisdiction pursuant to a specified federal law, a city or county bears the burden of proof to disprove the presumption that it failed to act within a reasonable time to approve a collocation or siting application for a wireless telecommunications facility: *application, and the applicant has provided a notice to the city or county that the reasonable time period has lapsed.*

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

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

1 SECTION 1. Section 65964.1 is added to the Government
 2 Code, to read:
 3 65964.1. (a) ~~(1) A city or county is presumed to have failed~~
 4 ~~to act within a reasonable time upon a~~ *A collocation or siting*
 5 ~~application for a previously permitted wireless telecommunications~~
 6 ~~facility, as defined in Section 65850.6, shall be deemed approved~~
 7 ~~if both~~ *all* of the following occur:
 8 (A)
 9 *(1) The city or county fails to approve or disapprove the*
 10 ~~completed application within 90 days. When an application is~~
 11 ~~incomplete as filed, the 90-day limitation does not run during that~~
 12 ~~period of time that it takes the applicant to respond to the city or~~
 13 ~~county's request for additional information.~~ *a reasonable period*
 14 *of time in accordance with the time periods and procedures*
 15 *established by applicable FCC decisions. The reasonable period*

1 *of time may be tolled to accommodate timely requests for*
2 *information required to complete the application or may be*
3 *extended by mutual agreement between the applicant and the local*
4 *government, consistent with applicable FCC decisions.*

5 ~~(B) All~~

6 ~~(2) The applicant has provided all public notices regarding the~~
7 ~~application have been provided that the applicant is required to~~
8 ~~provide under applicable laws consistent with the public notice~~
9 ~~requirements for the application.~~

10 ~~(2) A city or county is presumed to have failed to act within a~~
11 ~~reasonable time upon a siting application for a wireless~~
12 ~~telecommunications facility, other than a collocation application,~~
13 ~~if both of the following occur:~~

14 ~~(A) The city or county fails to approve or disapprove the~~
15 ~~completed application within 150 days. When an application is~~
16 ~~incomplete as filed, the 150-day limitation does not run during~~
17 ~~that period of time that it takes the applicant to respond to the city~~
18 ~~or county's request for additional information.~~

19 ~~(B) All public notices regarding the application have been~~
20 ~~provided consistent with the public notice requirements for the~~
21 ~~application.~~

22 ~~(3) The 90-day and 150-day periods of paragraphs (1) and (2)~~
23 ~~may be extended by mutual consent of the applicant and the city~~
24 ~~or county.~~

25 ~~(4) If a city or county fails to approve or disapprove an~~
26 ~~application for a collocation or siting application for a wireless~~
27 ~~telecommunications facility within a reasonable period of time,~~
28 ~~the application is deemed approved.~~

29 ~~(5) In any action in a court of competent jurisdiction pursuant~~
30 ~~to Section 332 (e)(7)(B)(v) of Title 47 of the United States Code,~~
31 ~~a city or county bears the burden of proof to disprove the~~
32 ~~presumption that it did not act within a reasonable time to approve~~
33 ~~or disapprove an application pursuant to paragraph (1) or (2). The~~
34 ~~grounds that the city or county may show to overcome the~~
35 ~~presumption of a failure to act within a reasonable time include,~~
36 ~~but are not limited to, the following:~~

37 ~~(A) Novel or unusual circumstances prevented completion of~~
38 ~~review of the application within the 90-day or 150-day period.~~

39 ~~(B) A complete review of the application within the prescribed~~
40 ~~90-day or 150-day period would require the city or county to give~~

1 preferential treatment to the applicant over other types of land use
2 applications.

3 (3) (A) *The applicant has provided notice to the city or county*
4 *that the reasonable time period has lapsed and that the application*
5 *is deemed approved pursuant to this section.*

6 (B) *Within 30 days of the notice provided pursuant to*
7 *subparagraph (A), the city or county may seek judicial review of*
8 *the operation of this section on the application.*

9 (b) *This section does not apply to eligible facilities requests.*

10 ~~(b)~~

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

16 (d) *As used in this section, the following terms have the following*
17 *meanings:*

18 (1) *“Applicable FCC decisions” means In re Petition for*
19 *Declaratory Ruling, 24 FCC Rcd. 13994 (2009) and In the Matter*
20 *of Acceleration of Broadband Deployment by Improving Wireless*
21 *Facilities Siting Policies, Report and Order, 29 FCC Rcd. 12865*
22 *(2014), as they may be modified or superseded by subsequent*
23 *decisions of the Federal Communications Commission.*

24 (2) *“Eligible facilities request” has the same meaning as in*
25 *Section 1455 of Title 47 of the United States Code.*