

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: June 12, 2015

TO: Honorable Members of the Rules, Elections and the Intergovernmental Relations Committee

FROM: Sharon M. Tse 
Chief Legislative Analyst

Council File No. 15-0002-S62
Assignment No. 15-06-0477

SUBJECT: Resolution (Koretz-Bonin-O'Farrell) to OPPOSE AB 57 (Quirk), relative to the Regulation of Wireless Telecommunications Facilities.

CLA RECOMMENDATION: Adopt Resolution (Koretz-Bonin-O'Farrell) to include in the City's 2015-16 State Legislative Program OPPOSITION to AB 57 (Quirk), which would unnecessarily and detrimentally impact the City's authority to regulate the placement of wireless telecommunications facilities.

SUMMARY

On June 9, 2015, a Resolution (Koretz-Bonin-O'Farrell) was introduced to oppose AB 57 (Quirk), which would provide that a collocation or siting application for a new wireless telecommunications facility is 'deemed approved' if a city, including a charter city, or county fails to approve or disapprove the application within 90 days for collocation applications, and 150 days for *new* wireless telecommunications facilities, inasmuch as the Federal Telecommunication Commission (FCC) specifically declined to adopt the 'deemed approved' provision, and for the following additional reasons:

- AB 57 does not distinguish between a wireless telecommunications facility in the public right of way or on private property.
- AB 57 indicates in the text of the legislation that wireless telecommunications facilities is 'not a municipal affair' and rather a 'matter of statewide concern', and thereby undermines local land use control, and ultimately the principle of 'home rule.' inasmuch as AB 57 would apply to charter cities.
- AB 57 is opposed by the League of California Cities, the California State Association of Counties, and the California Chapter of the American Planning Association.

BACKGROUND

Land Use concerns:

Enactment into law of AB 57 (Quirk) would undermine the City's land use controls, inasmuch as the City processes thousand of land use entitlement requests, and the 90 day limitation is not appropriate/realistic given the caseload and processing times necessary to meet other statutory requirements (i.e. public hearings, environmental clearance, public notification).

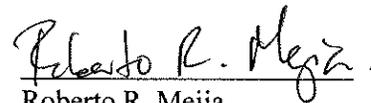
The proposed legislation would also undermine the City's land use controls inasmuch it applies to charter cities, and the City would have no jurisdiction if it cannot meet the 90 and 150 days deadline, and in essence all the collocation and new applications would be approved, and thereby also undermine any community input in the process. In essence, the intent of AB 57 is to enact into law at the State level what the FCC specifically declined to do so in *In re Petition for Declaratory Ruling, 24 FCC Rcd. 13994 (2009)*.

DEPARTMENTS NOTIFIED:

City Planning
City Attorney
Information Technology Agency (ITA)
Department of Public Works, Bureau of Engineering

BILL STATUS:

12/2/14 Introduced.
3/26/15 Referred to Assembly Committee on Utilities & Commerce.
5/22/15 Passed Committee on Local Government referred to Senate.
6/4/15 Referred to Senate Committee on Energy, Utilities, & Communications and
 Government & Finance Committee



Roberto R. Mejia

Analyst

- Attachments:
1. Resolution (Koretz-Bonin-O'Farrell)
 2. AB 57 (Quirk)
 3. May 11, 2015 League of California Cities opposition letter

RESOLUTION PUBLIC ELECTIONS & INTERGOVERNMENTAL RELATIONS

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state, or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, on December 2, 2014, AB 57 (Quirk), was introduced, and was subsequently amended on March 26, 2015 and April 6, 2015, which would provide that a collocation or siting application for a new 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 Federal Communications Commission (FCC) and all required public notices have been provided regarding the application; and

WHEREAS, AB 57 notes that in 2009 the FCC adopted rules that require local governments to review and act on applications for the establishment of wireless communications facilities in *In re Petition for Declaratory Ruling, 24 FCC Rcd. 13994 (2009)*, and under the ruling cities have 90 days to review collocation applications and 150 days for other siting applications for new wireless telecommunication facilities, however, the FCC in its rules specifically declined to make these applications 'deemed approved' if a city fails to meet the 90 or 150 day deadlines; and

WHEREAS, AB 57 does not distinguish between a wireless telecommunications facility in the public right of way or on private property, and community members have long advocated for the local adoption of regulations to govern the placement of cellular installations on the public right of way; and

WHEREAS, AB 57 notes that wireless communication facilities is 'not a municipal affair' and rather a 'matter of statewide concern,' and thereby, undermining local control inasmuch as the legislation includes 'charter cities;' and

WHEREAS, enactment into law of AB 57 would undermine local land use control, inasmuch as the city processes thousand of land use entitlement requests, and the 90 day limitation is not appropriate/realistic given the caseload and processing times necessary to meet other statutory requirements (e.g. public hearings, environmental clearance, public notification); and

WHEREAS, AB 57 is opposed by the League of California Cities, the California State Association of Counties, and the California Chapter of the American Planning Association;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2015-16 State Legislative Program OPPOSITION to AB 57 (Quirk), which would unnecessarily and detrimentally impact the city's authority to regulate the placement of wireless telecommunications facilities, inasmuch as it would 'deemed approved' wireless facilities not approved by the city within 90 days for collocation, and 150 days for new wireless facilities, and thereby undermine the principle of home rule, and ultimately land use control.


COUNCILMEMBER MIKE BONIN

PRESENTED BY: 
PAUL KORETZ
Councilmember, 5th District

SECONDED BY: 



MAR - 9 2015

Office of the City Clerk, City of Los Angeles

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Council File Number

15-0002-S62

Title

AB 57 (Quirk) / Impact to City's Authority Regulating Placement of Wireless Telecommunications Facilities

Last Change Date

06/09/2015

Expiration Date

06/09/2017

Pending in committee

Rules, Elections and Intergovernmental Relations Committee

Mover

MIKE BONIN
PAUL KORETZ

Second

MITCH O'FARRELL

Action History for Council File 15-0002-S62

Date Activity

06/09/2015 Resolution document(s) referred to Rules, Elections and Intergovernmental Relations Committee.

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 collocation or siting application for a wireless telecommunications facility.

This bill would provide that 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 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:

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

3 65964.1. (a) A colocation or siting application for a wireless
4 telecommunications facility, as defined in Section 65850.6, shall
5 be deemed approved if both of the following occur:

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

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

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

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

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

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

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

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

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

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

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

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

23 (h) Broadband infrastructure deployment creates jobs. A 2013
24 study conducted by the research firm Information Age Economics
25 projects that wireless infrastructure investment will generate as
26 much as one trillion two hundred billion dollars
27 (\$1,200,000,000,000) in economic growth while creating over 1.2
28 million new jobs, nationally, over the next five years.

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

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

- 1 ~~8886. (a) The membership of the California Broadband Council~~
2 ~~shall include all of the following:~~
- 3 ~~(1) The Director of Technology, or his or her designee.~~
 - 4 ~~(2) The President of the Public Utilities Commission, or his or~~
5 ~~her designee.~~
 - 6 ~~(3) The Director of Emergency Services, or his or her designee.~~
 - 7 ~~(4) The Superintendent of Public Instruction, or his or her~~
8 ~~designee.~~
 - 9 ~~(5) The Director of General Services, or his or her designee.~~
 - 10 ~~(6) The Secretary of Transportation, or his or her designee.~~
 - 11 ~~(7) The President of the California Emerging Technology Fund,~~
12 ~~or his or her designee.~~
 - 13 ~~(8) A member of the Senate, appointed by the Senate Committee~~
14 ~~on Rules.~~
 - 15 ~~(9) A member of the Assembly, appointed by the Speaker of~~
16 ~~the Assembly.~~
 - 17 ~~(10) The President of the Board of Directors of the League of~~
18 ~~California Cities, or his or her designee.~~
 - 19 ~~(11) The President of the Executive Committee of the California~~
20 ~~State Association of Counties, or his or her designee.~~
- 21 ~~(b) Members of the Legislature appointed to the council shall~~
22 ~~participate in the activities of the council to the extent that their~~
23 ~~participation is not incompatible with their positions as Members~~
24 ~~of the Legislature.~~

COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 57
AUTHOR : Quirk
TOPIC : Telecommunications: wireless telecommunication facilities.

TYPE OF BILL :

Active
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Non-Fiscal
Non-Tax Levy

BILL HISTORY

2015

June 4 Referred to Coms. on E., U., & C. and GOV. & F.
May 22 In Senate. Read first time. To Com. on RLS. for assignment.
May 22 Read third time. Passed. Ordered to the Senate. (Ayes 66. Noes 4.)
May 18 Read second time. Ordered to third reading.
May 14 From committee: Do pass. (Ayes 7. Noes 0.) (May 13).
Apr. 13 From committee: Be re-referred to Com. on L. GOV. Re-referred.
(Ayes 11. Noes 0.) (April 13). Re-referred to Com. on L. GOV.
Apr. 9 Re-referred to Com. on RLS. pursuant to Assembly Rule 96.
Apr. 7 Re-referred to Com. on U. & C.
Apr. 6 Re-referred to Com. on U. & C. From committee chair, with author's
amendments: Amend, and re-refer to Com. on U. & C. Read second
time and amended.
Mar. 26 Referred to Com. on U. & C. From committee chair, with author's
amendments: Amend, and re-refer to Com. on U. & C. Read second
time and amended.
Jan. 5 Read first time.

2014

Dec. 3 From printer. May be heard in committee January 2.
Dec. 2 Introduced. To print.

CURRENT BILL STATUS

MEASURE : A.B. No. 57
AUTHOR(S) : Quirk.
TOPIC : Telecommunications: wireless telecommunication
facilities.
HOUSE LOCATION : SEN
+LAST AMENDED DATE : 04/06/2015

TYPE OF BILL :
Active
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Non-Fiscal
Non-Tax Levy

LAST HIST. ACT. DATE: 06/04/2015
LAST HIST. ACTION : Referred to Coms. on E., U., & C. and GOV. & F.
COMM. LOCATION : SEN ENERGY, UTILITIES AND COMMUNICATIONS
HEARING DATE : 06/16/2015

TITLE : An act to add Section 65964.1 to the Government Code,
relating to telecommunications.



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May 11, 2015

The Honorable Brian Maienschein
Chair, Assembly Local Government Committee
1020 N Street, Room 157
Sacramento, CA 95814

**RE: AB 57 (Quirk), Wireless Telecommunications Facilities. (as amended April 6, 2015)
Notice of OPPOSITION**

Dear Assembly Member Maienschein:

The League of California Cities opposes AB 57 (Quirk), which would unnecessarily and significantly impact a cities' authority to regulate the placement of certain wireless telecommunications facilities. AB 57 goes beyond the requirements of federal law and regulations by deeming approved any application for collocation or siting of new wireless facilities if a jurisdiction does not approve or disapprove the application within the timelines required by the Federal Communications Commission.

In 2009, the Federal Communications Commission (FCC) adopted rules that require local governments to review and act on applications for the establishment of wireless communications structures. Under that ruling, cities have 90 days to review collocation applications, and 150 days for other siting applications. If cities do not act in this timeframe, an applicant can bring action in court. During the rulemaking, wireless carriers requested that the FCC adopt the deemed approved requirements included in AB 57. However, the FCC rightly refused.

The issue was raised again in 2014 when the FCC reviewed requirements under a new federal rule, known as the 6409 rule, regarding what is considered a "substantial modification". Again, the FCC refused to issue a deemed approved rule. The League is unaware of any evidence that special circumstances exist in California that would require a special deemed approved rule.

In addition to the policy concerns above, the League notes that the federal law continues to have court challenges. Regardless of their outcome, we encourage the legislature to refrain from locking California into a law based on regulations that could soon be changed by the courts.

The League recognizes the author's willingness to discuss this issue, and commends him on his desire to better wireless telecommunications services. However, AB 57 is not the answer. If you have any questions regarding the League's position on this bill, please do not hesitate to contact me at (916) 658-8249.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Whiting".

Jennifer Whiting
Legislative Representative

cc: Assembly Member Bill Quirk
Members, Assembly Local Government Committee
Debbie Michel, Assembly Local Government Committee
William Weber, Assembly Republican Caucus