

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

The bill amends provisions of s. 365.172, F.S., relating to siting of wireless communications facilities.

DEFINITIONS

The bill creates the following definitions in s. 365.172(3), F.S., and accordingly alphabetizes the section:

- Administrative review – means the nondiscretionary review for compliance with applicable local government regulations through a staff level review only and shall not include any public hearing or review of public input review.
- Building-permit review - means only review for compliance with applicable local government building construction standards adopted pursuant to the provisions of chapter 553 and does not include review for compliance with land development regulations.
- Collocation - means use of an existing structure to place antennas by more than one provider of wireless communications. The term “collocation” includes the ground, platform, or roof installation of equipment enclosures, cabinets or buildings, cables, brackets, and other equipment associated with the placement and operation of the antennas.
- Existing structure - means any structure on which antennas can be placed that exists at the time of a request to a local government to place antennas. The term “existing structure” includes, but is not limited to, towers, buildings, utility structures, light poles, water towers, clock towers, bell towers, steeples, and the like, which allow for the attachment of antennas.
- Land-development regulation - means any ordinance enacted by a local governing body for the regulation of any aspect of development, including any zoning, subdivision, building construction, landscaping, tree protection, or sign regulation or any other regulation concerning any aspect of the development of land. The term “land development regulation” shall not include any building construction standard adopted pursuant to and in compliance with the provisions of chapter 553.
- Tower - means any structure designed primarily to support wireless antennas.
- Wireless communications facility or “facilities” - means any equipment or facility used to provide service and includes, but is not limited to, antennas, towers, equipment enclosures, cabling, antenna brackets, and other such equipment.

- Wireless communications site - means the area of the rooftop, structure, or ground that is designed, intended to be used, or used for the placement of wireless communications facilities, all related facilities and areas, and any fencing or landscaping provided in association with the wireless communications facility or facilities.

FACILITATING E911 SERVICE

The bill provides legislative findings in s. 365.172 (11), F.S.:

It is in the best interest of the public to have efficient and reliable E911 systems, of which wireless communications systems are an essential part. Because the Federal Government and the State of Florida have chosen to establish the wireless E911 systems through commercial wireless communications systems rather than through a public wireless system, the provision of an efficient and reliable wireless E911 service is dependent upon an efficient and reliable wireless non-E911 system. Consequently, it is in the best interest of the public for the state to have efficient and reliable commercial wireless services. It is also, however, in the best interest of the public to coordinate the implementation of local government zoning and land use rights and the development of a viable commercial wireless system to protect the public health, safety, and general welfare.

Section 365.172(11), F.S., is further amended to include that for achievement of a balance between the public need for reliable wireless systems (both E911 and non-E911) and local government zoning and land use rights, notwithstanding any other law or local ordinance to the contrary, the minimum standards shall apply to local government regulation of the placement, construction, or modification of wireless communications facilities:

Siting Standards

1. The bill deletes the requirement that the existing structure be above-ground; it exempts collocation from all land development regulation; and also exempts placement, construction, operation, and maintenance of related equipment to serve the antenna from all land-development regulations. The bill also deletes the requirement that construction of the antenna and related equipment be subject to any existing permits or agreements. It limits the application of aesthetic requirements to those that were previously approved and imposed by administrative order, resolution, or ordinance for development of the specific wireless communications site and that are not inconsistent with this subsection of the statute.
2. The bill provides that if placement of an antenna and its related supporting equipment on an existing structure, other than a single-family dwelling, is not covered by these provisions of subparagraph 1., such placement is subject to no more than an administrative review and a building-permit review.
3. Under the bill, an existing tower, including a nonconforming tower, may be reasonably increased in height to allow collocation either by extension or replacement. Either method of height increase shall be subject only to an administrative review and building-permit review as defined in subsection (3) of the bill.
4. Further, local government shall use its land use and zoning regulatory powers over the placement, construction, or modification of a wireless communications facility, but only to mitigate an identified adverse effect caused by the placement of a proposed wireless communications facility, and the adverse effect must directly impact the public health, safety, or welfare and must be balanced against the public benefit of a reliable E911 system (which is now dependant upon "an equally efficient and reliable wireless non-E911 system").

5. The bill prohibits a local government from reviewing or considering a wireless provider's business need for a specific site or the necessity for the wireless service to be provided from a particular site. It also prohibits local government from evaluating the wireless provider's service quality or the network design. Local government may consider only issues relating to land use and zoning in evaluating an application for placement of a wireless communications facility.
6. The bill provides that requirements for setback or distance separation can apply only to towers. Presumably this means that local government requirements cannot apply to antennas, equipment related to or serving the tower, or to any other portion of the wireless communications site, such as fencing or landscaping. The setback or separation required of a tower may not exceed the minimum distance necessary to satisfy specific health, safety, or welfare concerns, and the requirements may not be any greater than those imposed on similar structures such as electrical transmission and distribution structures, utility poles, or light poles.
7. The bill proposes that height limitations on wireless facilities shall have a rational nexus between the number of sites necessary to serve the jurisdiction's projected population and consumer usage. No local government shall restrict the height of structures that will unreasonably increase the number of antenna sites required to serve the area. Single-provider towers are discouraged by the bill.
8. If aesthetic protections are used as justification for regulation of the placement, construction, or modification of wireless communications facilities, the bill provides that such justification regulation be directly related to the particular aesthetic or visual impact protection and shall be the minimum necessary to provide such protection.
9. Under the bill, a local government must provide a reasonable opportunity for placement, construction, and modification of wireless communications facilities in all parts of a local government's jurisdiction, unless it can be specifically demonstrated that a prohibition of all types of wireless communications facilities in a specific location or area is the only manner in which to protect the public health, safety, and welfare of that area.
10. The bill provides that a local government may not impose a fee, fine, surety, or insurance requirement on a wireless provider that is not routinely imposed on applicants subject to zoning, land use, or building permit reviews. The local government may not recover its costs from wireless providers incurred in preparing or adopting zoning or land-development regulations or ordinances regulating a wireless communications facility. Fees for review of zoning or land use applications by consultants or experts who are routinely engaged to review such matters on behalf of the jurisdiction may be recovered, but only if such recovery is routinely sought from all applicants seeking zoning or land use approvals and any fees charged shall be reasonable. Review of applications for wireless communications facilities by local government shall be restricted only to what is necessary for land use review of the application.
11. Local governments may request evidence of proper FCC licensure or other evidence of FCC authorized spectrum use from a provider.

Application Process

Current law requires a local government to grant or deny a properly completed application for a permit for the collocation of a wireless communications facility on property, buildings, or structures within the local government's jurisdiction within 45 business days after the date the properly completed application is initially submitted in accordance with the applicable local government application procedures, provided that such permit complies with applicable federal regulations and applicable local zoning or land development regulations, including any aesthetic requirements. Local building regulations are to apply.

Current law has the same requirements for granting or denying an application for the siting of a new wireless tower or antenna on property, buildings, or structures within 90 days after the date the properly completed application is initially submitted.

The bill amends current law to apply the 45 day approval provisions to a properly completed application for a wireless communications facility review only through administrative review or building permit review as defined in the subsection (3). The bill applies the 90 day approval provisions if approval of a siting or modification application requires more than administrative or building permit review.

The bill creates a new provision that an application is deemed submitted or resubmitted on the date the application is filed with local government. The bill provides that if an application is not initially properly completed and the applicant resubmits information to cure stated deficiencies, the local government is to notify the applicant within 10 business days as to whether the application is now properly completed or if there are any remaining deficiencies. Any deficiencies not specified in the initial notice are waived.

Whenever a moratorium or any action or inaction by a local government has the effect of a moratorium on the placement, construction, or modification of wireless communications facilities or the review of related applications, the bill requires that such action be shown necessary because of an identified emergency or a sudden significant change in circumstances. Any such moratorium must be adopted in the same manner as a zoning ordinance and last no longer than six months.

Restrictions on Facilities

Pursuant to 365.172(11)(d), F.S.:

- (d) Any additional wireless communications facilities, such as communication cables, adjacent accessory structures, or adjacent accessory equipment used in the provision of cellular, enhanced specialized mobile radio, or personal communications services, required within the existing secured equipment compound within the existing site shall be deemed a permitted use or activity. Local building and land development regulations, including any aesthetic requirements, shall apply.

The bill changes this section to any "accessory" wireless communications facilities, such as communication cables, accessory structures, accessory equipment, "and the wireless communications site in which the accessory wireless communications facility is to be located which are not covered by subparagraph (a)1. shall be deemed an activity requiring no more than administrative review and building-permit review. A land-development regulation, existing permit condition, or agreement may not subject an accessory wireless communications facility to greater restrictions or requirements or greater procedural or review processes than other accessory structures in the same zoning district." The bill deletes the requirements that structures and equipment be adjacent; that the facilities be used for the specified purposes; that they be within the existing secured equipment compound on the existing site; and that local building and land development regulations, including any aesthetic requirements, apply.

The bill prohibits a local government from imposing square footage or height limitations on an accessory wireless communications facility inconsistent with those required for other structures in the same zoning district. This paragraph supersedes any existing limitation imposed on a wireless communications facility by agreement, ordinance, resolution, or land development regulation.

The bill provides that a local government may only regulate modification of an existing wireless communications facility if:

- The regulation mitigates an identified adverse effect caused by the modification; and

- The regulation affects only a materially significant change that noticeably alters the design or appearance of the wireless communications facility.

The replacement of visible equipment or facilities with equipment or facilities of the same size, type, and appearance and the replacement of equipment that is not visible from outside the wireless communications site are not modifications and are subject only to building-permit review.

The bill prohibits a local government from requiring a wireless provider to remove a conforming or nonconforming wireless communications facility within a stated period of time unless a specific adverse impact to the public health, safety, or welfare of the locality is caused by the wireless communications facility. Before a local government may order the removal of the wireless communications facility, the wireless provider or owner of the facility has the right to mitigate the condition that causes the adverse impact and the local government must give the provider or owner a reasonable time in which to mitigate the condition.

The bill provides that if a local government regulation or procedure does not conform to the requirements of this section, the regulation or procedure must be amended to conform to the requirements of the section.

Remedies for Delays in Siting Wireless Communications Facilities

The bill creates a cause of action for any person adversely affected by any action or failure to act by a local government which is inconsistent with subsection (11) on facilitating E911 service implementation (siting of wireless communications facilities). The adversely affected person may bring an action in a court of competent jurisdiction within 30 days after the action or the failure to act. The court is to consider the matter on an expedited basis.

Section 365.172(11)(f), F.S., provides that:

(f) Any wireless telephone service provider may report to the board no later than September 1, 2003, the specific locations or general areas within a county or municipality where the provider has experienced unreasonable delay to locate wireless telecommunications facilities necessary to provide the needed coverage for compliance with federal Phase II E911 requirements using its own network. The provider shall also provide this information to the specifically identified county or municipality no later than September 1, 2003. Unless the board receives no report that unreasonable delays have occurred, the board shall, no later than September 30, 2003, establish a subcommittee responsible for developing a balanced approach between the ability of providers to locate wireless facilities necessary to comply with federal Phase II E911 requirements using the carrier's own network and the desire of counties and municipalities to zone and regulate land uses to achieve public welfare goals. If a subcommittee is established, it shall include representatives from the Florida Telecommunications Industry Association, the Florida Association of Counties, and the Florida League of Cities. The subcommittee shall be charged with developing recommendations for the board and any specifically identified municipality or county to consider regarding actions to be taken for compliance for federal Phase II E911 requirements. In the annual report due to the Governor and the Legislature by February 28, 2004, the board shall include any recommendations developed by the subcommittee to address compliance with federal Phase II E911 requirements.

The bill deletes this paragraph.

Section 2. of the bill provides that any regulation or procedure of any county or municipality that does not conform to the requirements of s. 365.172, F.S., on the effective date of this act must be changed or amended to conform to its requirements within 6 months after the effective date.

The bill takes effect upon becoming law.

C. SECTION DIRECTORY:

See Effect of Proposed Changes section.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

New paragraph 365.172(11)(g), F.S., provides that its prohibition against a local government imposing square footage or height limitations on an accessory wireless communications facility in excess of those required for principal buildings in the same zoning district supersedes any existing limitation imposed on a wireless communications facility by agreement, ordinance, resolution, or land development code. This may be subject to challenge on impairment of contract under s. 10, Art. I, State Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES