

Bill No. CS for CS for SB 2774

Amendment No. ____ Barcode 483926

CHAMBER ACTION

Senate

House

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Senator Bennett moved the following amendment:

Senate Amendment (with title amendment)

On page 16, line 5 through page 26, line 17, delete those lines

and insert: ~~or~~ land development regulation, including any aesthetic requirements, or law.

2. An existing tower, including a nonconforming tower, may be modified without increasing the height in order to permit collocation. The modification shall be subject only to administrative review and to building-permit review.

(b)1. A local government is limited when evaluating a wireless provider's application for placement of a wireless communications facility to issues concerning land development and zoning. A local government may not request information on or review, consider, or evaluate a wireless provider's business need for a specific location for a wireless communications site or the need for wireless service to be provided from a particular site unless the wireless provider voluntarily offers this information to the local government. A

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1 local government may not request information on or review,
2 consider, or evaluate the wireless provider's service quality
3 or the network design of the wireless service unless the
4 wireless provider voluntarily offers the information to the
5 local government or unless the information or materials are
6 directly related to an identified land development or zoning
7 issue.

8 2. The setback or distance separation required of a
9 tower may not exceed the minimum distance necessary to satisfy
10 the structural safety or aesthetic concerns that are protected
11 by the setback or distance separation.

12 3. A local government must provide a reasonable
13 opportunity for placing some form or type of antenna when a
14 wireless provider has demonstrated that it is necessary to
15 comply with the requirements to provide E911 service.

16 4. A local government may impose a fee, surety, or
17 insurance requirement on a wireless provider when applying to
18 place, construct, or modify a wireless communications facility
19 only if a similar fee, surety, or insurance requirement is
20 also imposed on applicants seeking similar types of zoning,
21 land use, or building-permit review. Fees for review of
22 applications for wireless communications facilities by
23 consultants or experts who are engaged to review general
24 zoning and land use matters on behalf of the local government
25 may be recovered, but only if the recovery is routinely sought
26 from applicants seeking a similar level of review for zoning
27 or land-development approvals, and any fees must be
28 reasonable.

29 (c)(b) Local governments may ~~shall~~ not require
30 wireless providers to provide evidence of a wireless
31 communications facility's compliance with federal regulations,

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1 except evidence of compliance with applicable Federal Aviation
 2 Administration requirements under 14 C.F.R. s. 77, as amended.
 3 However, local governments may request ~~shall receive~~ evidence
 4 of proper Federal Communications Commission licensure or other
 5 evidence of Federal Communications Commission authorized
 6 spectrum use from a wireless provider and may request the
 7 Federal Communications Commission to provide information as to
 8 a wireless provider's compliance with federal regulations, as
 9 authorized by federal law.

10 (d)(c)1. A local government shall grant or deny each ~~a~~
 11 properly completed application for a collocation under
 12 subparagraph (11)(a)1. of this section reviewed through
 13 administrative review or an application reviewed though
 14 building-permit review ~~a permit, including permits under~~
 15 ~~paragraph(a), for the collocation of a wireless communications~~
 16 ~~facility on property, buildings, or structures within the~~
 17 ~~local government's jurisdiction within 45 business days after~~
 18 the date the ~~properly completed~~ application is determined to
 19 be properly completed initially submitted in accordance with
 20 this paragraph ~~the applicable local government application~~
 21 ~~procedures, provided that such permit complies with applicable~~
 22 ~~federal regulations and applicable local zoning or land~~
 23 ~~development regulations, including any aesthetic requirements.~~
 24 Local building regulations shall apply. If administrative
 25 reviews are required from multiple departments of the local
 26 government, such reviews shall be concurrent and all within
 27 the 45-business-day timeframe.

28 2. A local government shall grant or deny each ~~a~~
 29 properly completed application for a wireless communications
 30 facility not reviewed through subparagraph (11)(d)1. of this
 31 section ~~a permit for the siting of a new wireless tower or~~

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1 ~~antenna on property, buildings, or structures within the local~~
2 ~~government's jurisdiction~~ within 90 business days after the
3 date the ~~properly completed~~ application is determined to be
4 properly completed initially submitted in accordance with this
5 paragraph the applicable local government application
6 ~~procedures~~, provided that such permit complies with applicable
7 federal regulations and applicable local zoning or land
8 development regulations, including any aesthetic requirements.
9 Local building regulations shall apply. If the local
10 government review of the wireless communications facility also
11 includes applications for administrative review, each shall be
12 within the applicable timeframe indicated in this section.

13 3.a. An application is deemed submitted or resubmitted
14 on the date the application is received by the local
15 government. The local government shall notify the ~~permit~~
16 applicant within 20 business days after the date the
17 application is initially submitted as to whether the
18 application is, for administrative purposes only, properly
19 completed and has been properly submitted. However, ~~the~~ such
20 determination shall not be deemed as an approval of the
21 application. If the application is not completed in compliance
22 with the local government's regulations, the ~~Such~~ notification
23 must ~~shall~~ indicate with specificity any deficiencies in the
24 required documents or deficiencies in the content of the
25 required documents which, if cured, ~~shall~~ make the application
26 properly completed. Upon resubmission of information to cure
27 the stated deficiencies, the local government shall notify the
28 applicant within 20 business days after the additional
29 information is submitted whether the application is properly
30 completed or if there are any remaining deficiencies that must
31 be cured. Any deficiencies in document type or content not

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1 specified by the local government shall not render an
2 application incomplete. Notwithstanding this sub-subparagraph,
3 if a specified deficiency is not properly cured when the
4 applicant resubmits its application to comply with the notice
5 of deficiencies, the local government may continue to request
6 the information until such time as the specified deficiency is
7 cured.

8 b. If the local government fails to grant or deny a
9 properly completed application for a wireless communications
10 facility permit which has been properly submitted within the
11 timeframes set forth in this paragraph, the application
12 paragraph, the permit shall be deemed automatically approved
13 and the applicant provider may proceed with placement of such
14 facilities without interference or penalty. The timeframes
15 specified in subparagraph ~~subparagraphs 1. and 2.~~ shall be
16 extended only to the extent that the application permit has
17 not been granted or denied because the local government's
18 procedures generally applicable to all applications permits,
19 require action by the governing body and such action has not
20 taken place within the timeframes specified in subparagraph
21 ~~subparagraphs 1. and 2.~~ Under such circumstances, the local
22 government must act to either grant or deny the application
23 permit at its next regularly scheduled meeting or, otherwise,
24 the application permit shall be deemed to be automatically
25 approved.

26 c. To be effective, a waiver of the timeframes set
27 forth in this paragraph herein must be voluntarily agreed to
28 by the applicant and the local government. A local government
29 may request, but not require, a waiver of the timeframes by
30 the applicant ~~an entity seeking a permit~~, except that, with
31 respect to a specific permit, a one-time waiver may be

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1 required in the case of a declared local, state, or federal
2 emergency that directly affects the administration of all
3 permitting activities of the local government.

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

13 (e) The replacement of or modification to a wireless
14 communications facility, except a tower, that results in a
15 wireless communications facility of similar size, type, and
16 appearance and the replacement or modification of equipment
17 that is not visible from outside the wireless communications
18 site are subject only to building-permit review or
19 administrative review.

20 (f)1.(e) The use of state government-owned property
21 for wireless communications facilities is encouraged. Any
22 other provision of law to the contrary notwithstanding, except
23 as provided in s. 253.0342, the Department of Management
24 Services shall negotiate, in the name of the state, leases for
25 wireless communications facilities that provide access to
26 state government-owned property not acquired for
27 transportation purposes, and the Department of Transportation
28 shall negotiate, in the name of the state, leases for wireless
29 communications facilities that provide access to property
30 acquired for state rights-of-way.

31 2. On property acquired for transportation purposes,

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1 leases shall be granted in accordance with s. 337.251. On
2 other state government-owned property, leases shall be granted
3 on a space available, ~~first come, first served~~ basis as
4 determined by the Department of Management Services in
5 accordance with s. 253.0342. Payments required by state
6 government under a lease must be reasonable and must reflect
7 the market rate. ~~for the use of the state government-owned~~
8 ~~property~~. Lease payments shall be deposited in the General
9 Revenue Fund. Leases in existence on or before January 1, 2004
10 on lands titled in the name of the Board of Trustees of the
11 Internal Improvement Trust Fund or lands titled in the name of
12 other state agencies or water management districts shall be
13 excluded from the lease payment provisions of this section.
14 The Department of Management Services and the Department of
15 Transportation are authorized to adopt rules for the terms and
16 conditions and granting of any such leases.

17 3. Local government zoning and land use regulations,
18 unless otherwise expressly exempted by general law, shall
19 apply to any private communication towers located on lands
20 titled in the name of the Board of Trustees of the Internal
21 Improvement Trust Fund or lands titled in the name of other
22 state agencies or water management districts. Any other
23 communication facility located on lands titled in the name of
24 the Board of Trustees of the Internal Improvement Trust Fund
25 or lands titled in the name of other state agencies or water
26 management districts shall be subject to applicable zoning and
27 land use requirements. Local government shall review the
28 placement, construction or modification of a wireless
29 communications facility on lands titled in the name of the
30 Board of Trustees of the Internal Improvement Trust Fund or
31 lands titled in the name of other state agencies or water

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1 management districts unless otherwise expressly exempted by
2 general law. If a wireless provider applies to enter into a
3 lease to use state government-owned property for a wireless
4 communications facility, the Department of Management Services
5 or the Department of Transportation, as applicable, shall not
6 review or consider any zoning or land use issues.

7 4. The Department of Management Services or the
8 Department of Transportation, as applicable, shall grant or
9 deny each properly completed application for a wireless
10 communications facility on state government-owned property
11 within 90 business days after the date the application is
12 determined to be properly completed. The Department of
13 Management Services or the Department of Transportation, as
14 applicable, shall notify the applicant within 40 business days
15 after the date the application is initially submitted as to
16 whether the application is properly completed and has been
17 properly submitted. If the application is not complete in
18 accordance within the applicable application review
19 procedures, the notification shall indicate with specificity
20 any deficiencies which, if cured, shall make the application
21 properly completed. Upon resubmission of information to cure
22 the stated deficiencies, the Department of Management Services
23 or the Department of Transportation, as applicable, shall
24 notify the applicant within 20 business days after the
25 additional information was submitted whether the application
26 is properly completed or if there are any remaining
27 deficiencies which must be cured. To be effective, a waiver of
28 any timeframe set forth herein must be voluntarily agreed to
29 by the applicant and the Department of Management Services or
30 the Department of Transportation, as applicable. If the
31 Department of Management Services or the Department of

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1 Transportation, as applicable, fails to grant or deny a
2 properly completed application within the timeframes set forth
3 in this subsection and the timeframe has not been voluntarily
4 waived, the application shall be deemed automatically approved
5 and the applicant may proceed with placement of such
6 facilities without interference or penalty.

7 (g) Any person adversely affected by any action or
8 failure to act by a local government which is inconsistent
9 with this subsection may bring an action in a court of
10 competent jurisdiction within 30 days after the action or the
11 failure to act. The court shall consider the matter on an
12 expedited basis.

13 ~~(f) Any wireless telephone service provider may report~~
14 ~~to the board no later than September 1, 2003, the specific~~
15 ~~locations or general areas within a county or municipality~~
16 ~~where the provider has experienced unreasonable delay to~~
17 ~~locate wireless telecommunications facilities necessary to~~
18 ~~provide the needed coverage for compliance with federal Phase~~
19 ~~II E911 requirements using its own network. The provider shall~~
20 ~~also provide this information to the specifically identified~~
21 ~~county or municipality no later than September 1, 2003. Unless~~
22 ~~the board receives no report that unreasonable delays have~~
23 ~~occurred, the board shall, no later than September 30, 2003,~~
24 ~~establish a subcommittee responsible for developing a balanced~~
25 ~~approach between the ability of providers to locate wireless~~
26 ~~facilities necessary to comply with federal Phase II E911~~
27 ~~requirements using the carrier's own network and the desire of~~
28 ~~counties and municipalities to zone and regulate land uses to~~
29 ~~achieve public welfare goals. If a subcommittee is~~
30 ~~established, it shall include representatives from the Florida~~
31 ~~Telecommunications Industry Association, the Florida~~

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1 ~~Association of Counties, and the Florida League of Cities. The~~
 2 ~~subcommittee shall be charged with developing recommendations~~
 3 ~~for the board and any specifically identified municipality or~~
 4 ~~county to consider regarding actions to be taken for~~
 5 ~~compliance for federal Phase II E911 requirements. In the~~
 6 ~~annual report due to the Governor and the Legislature by~~
 7 ~~February 28, 2004, the board shall include any recommendations~~
 8 ~~developed by the subcommittee to address compliance with~~
 9 ~~federal Phase II E911 requirements.~~

10 (13) PRIOR APPROVAL REQUIREMENT.--It is the intent of
 11 this act to assure the safety of employees, passengers, and
 12 freight at airports, as defined in s. 330.27(2) and not to
 13 require the placement at any airport of any wireless
 14 communication facility unless approved by the airport.
 15 Therefore, this section does not require the governing
 16 authority of any airport to make available any site, space, or
 17 facility owned or controlled by such airport to a service
 18 provider for the location or collocation of any tower or
 19 wireless communication facility, except on such terms and with
 20 such limitation as the governing authority of such airport may
 21 deem safe and appropriate. This section also does not affect
 22 an airport governing authority's power or authority to manage,
 23 control, or provide communications services, which include,
 24 but are not limited to, wired, cellular, wireless, and
 25 Internet services, information services, and data-related
 26 services for any facility owned or controlled by the airport.
 27 This section does not affect an airport governing authority's
 28 power or authority to recover costs or generate revenue from
 29 communications services provided on the airport.

30 Section 3. Section 253.0342, Florida Statutes, is
 31 created to read:

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1 253.0342 Use of state or water management district
2 lands for wireless communications facilities--

3 (1) Upon a request by the Department of Management
4 Services for the siting of proposed wireless communications
5 facilities as defined in s. 367.172(3), in a specific
6 geographic region, the Division of State Lands shall provide a
7 list of lands titled in the name of the Board of Trustees of
8 the Internal Improvement Trust Fund and lands titled in the
9 name of other state agencies or water management districts for
10 placement of these wireless communications facilities in that
11 region.

12 (2) Upon receipt of the list referred to in s.
13 253.0342(1), the Department of Management Services shall
14 contact the lead managing agency for lands titled in the name
15 of the Board of Trustees of the Internal Improvement Trust
16 Fund or the site owner for lands titled in the name of other
17 state agencies or water management districts, to obtain a
18 determination of whether the requested site is suitable for
19 placement of these wireless facilities.

20 (3) Consideration of suitability by the lead managing
21 agency or the site owner shall include, but not be limited to,
22 whether the proposed use will interfere with existing or
23 designated uses (including conservation uses), leases, or the
24 public health and safety. Consideration shall first be given
25 to collocating any proposed facility with existing linear
26 facilities, buildings or other structures. A determination
27 regarding suitability of a site shall be made in writing.

28 (4) Upon a determination that a site is both available
29 and suitable for lease, the Department of Management Services
30 is authorized to negotiate a proposed lease agreement with the
31 wireless provider for the use of state-owned lands titled in

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1 the name of the Board of Trustees of the Internal Improvement
2 Trust Fund and for lands titled in the name of other state
3 agencies or water management districts for the placement of
4 wireless communications facilities. A copy of any proposed
5 lease agreement shall be provided to the lead managing agency
6 or site owner.

7 (5)(a) Lease agreements proposed by the Department of
8 Management Services for lands titled to the Board of Trustees
9 of the Internal Improvement Trust Fund shall be submitted to
10 the Division of State Lands as the designated representative
11 of the Board of Trustees of the Internal Improvement Trust
12 Fund for action by the board. The board may delegate the
13 approval or denial of proposed leases on categories or classes
14 of property to the Secretary of the Department of
15 Environmental Protection subject to terms and conditions
16 established by the board. Any proposed lease agreement must be
17 placed on the board's agenda or must be approved or denied by
18 the Secretary within 60 days of receipt from the Department of
19 Management Services. Such action shall constitute a final
20 order.

21 (b) Lease agreements proposed by the Department of
22 Management Services for land titled to a water management
23 district must be submitted to the governing board of the
24 appropriate water management district for its approval or
25 denial. The governing board must agenda any proposed lease
26 agreement within 60 days of receipt from the Department of
27 Management Services. Such action by the governing board shall
28 constitute an order of the agency.

29 (c) Lease agreements proposed by the Department of
30 Management Services for lands titled in the name of a state
31 agency shall be approved or denied by the secretary or

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1 executive director of the agency within 60 days. Such action
2 by the secretary or executive director shall constitute an
3 order of the agency.

4 (6) All leases entered into under this section shall
5 restrict use of sites by wireless providers to those uses
6 directly related to provisions of wireless communications
7 service, including provisions for removal of any towers,
8 antennae or appurtenances of the wireless provider and any
9 needed site restoration. Use of the site by the wireless
10 provider shall be carried out and maintained in a manner
11 consistent with existing and designated uses (including
12 conservation uses), land management plans, leases, applicable
13 rules, and the public health and safety.

14 (7) Upon the approval by the lead managing agency or
15 site owner for the use of the property or facility for the
16 wireless communications facilities and upon approval of the
17 proposed lease agreement, the Department of Management
18 Services shall enter into the lease agreement with the
19 wireless provider. A copy of the executed lease agreement
20 shall be provided to the lead managing agency and site owner.

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22

23 ===== T I T L E A M E N D M E N T =====

24 And the title is amended as follows:

25 On page 2, line 4 through page 2, line 31, delete

26

27 and insert:

28 facilities; revising provisions for lease of

29 state-owned property by a wireless provider;

30 providing that a person who is adversely

31 affected by a decision of a local government

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1 relating to a wireless communications facility
2 may bring an action within a specified period;
3 providing for the computation of the time
4 period; providing that the governing authority
5 of an airport is not required to make available
6 any site, space, or facility owned or
7 controlled by the airport to a wireless service
8 provider for the location or collocation of any
9 tower or wireless communication facility;
10 creating s. 253.0342, F.S.; providing process
11 for lease of non-transportation state-owned
12 lands by a wireless provider; amending s.

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