

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2774

SPONSOR: Communication and Public Utilities Committee and Senator Bennett

SUBJECT: Wireless Emergency Telephone System

DATE: March 23, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CP</u>	_____
3.	_____	_____	<u>HP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill:

- creates new definitions,
- creates new legislative findings,
- creates new standards for siting wireless communications facilities,
- revises the siting permit application process,
- revises restrictions on facilities, and
- 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 the statute on siting of wireless communications facilities.

The bill substantially amends section 365.172 of the Florida Statutes.

II. Present Situation:

See Effect of Proposed Changes.

III. Effect of Proposed Changes:

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

Definitions

The bill defines “administrative review” to mean “the nondiscretionary review conducted by local governmental staff for compliance with local government ordinances, but does not include a public hearing or review of public input.”

Creates a definition of “building-permit review” that limits review to building code requirements of chapter 553 and excludes a review for compliance with land development regulations.

Creates a definition of “collocation” that includes not only a second or subsequent wireless provider using an existing structure to locate antennas but also states that “the term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the antennas.” What “term” is referred to is uncertain. “Collocation” doesn’t seem to fit. “Existing structure” seems more appropriate, but the bill also creates a definition for this term.

Existing structure is defined to mean “a structure that exists at the time an application for permission to place antennas on a structure is filed with a local government. The term includes any structure that can support the attachment of antennas, including, but not limited to, towers, buildings, signs, utility structures, light poles, water towers, clock towers, bell towers, and steeples.”

The bill defines “land-development regulation” to mean “any ordinance enacted by a local governing body for the regulation of any aspect of development, including an ordinance governing zoning, subdivisions, landscaping, tree protection, or signs, or any other ordinance concerning any aspect of the development of land. The term does not include any building-construction standard adopted under and in compliance with chapter 553.”

The bill defines “tower” to mean “any structure designed primarily to support a wireless antenna.”

“Wireless communications facility” is defined to mean “any equipment or facility used to provide service, and includes, but is not limited to, antennas, towers, equipment enclosures, cabling, antenna brackets, and other equipment.”

“Wireless communications site” is defined to mean “the area on the roof, structure, or ground which is designed, intended to be used, or is used for the location of a wireless communications facility and any fencing and landscaping provided in association with the wireless communications facility.” As the phone company may use an existing structure that it does not own, this arguably makes the fencing and landscaping of a church, a state office building, a school, or a shopping center a part of the wireless communications site.

Wireless 911 Board

The bill requires the Wireless 911 Board to hire an independent executive director with experience in telecommunications and emergency issues. It also requires the Board to secure the services of an independent, private attorney.

Legislative findings

The bill creates legislative findings that “it is in the best interest of the residents of this state to have efficient and reliable wireless emergency telephone (E911) systems operating in this state”

and that “because the Federal Government and this state have chosen to operate the wireless E911 systems through the private commercial wireless communications systems . . . the operation of a high-quality wireless E911 service is dependent upon equally efficient and reliable wireless non-E911 systems.”

This appears to allow wireless service providers to use the same statutory siting process for all of their transmission equipment, not just the minimum amount needed for E911.

New siting standards

In order to balance the public need for reliable wireless systems (both E911 and non-E911) with the governmental zoning and land-development regulations, the bill creates minimum standards applicable to a local government’s regulation of the placement, construction, or modification of a wireless communications facility.

The statute currently provides that any antennae and related equipment to service the antennae that is being collocated on an existing above-ground structure is not subject to land development regulation adopted pursuant a comprehensive plan, provided the height of the existing structure is not increased. However, construction of the antennae and related equipment is subject to local building regulations and any existing permits or agreements for such property, buildings, or structures. Also, nothing in the statute relieves the permitholder for or owner of the existing structure of compliance with any applicable condition or requirement of a permit, agreement, or land development regulation, including any aesthetic requirements, or law.

The bill changes this by deleting the requirement that the existing structure be above-ground; by exempting collocation from all land development regulation; and by also exempting 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 also limits 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 statute.

The bill provides that if a placement of an antenna is not covered by these provisions, an application to place an antenna and its related supporting equipment on an existing structure, other than a single-family dwelling, is subject to no more than an administrative review and a building-permit review.

Under the bill, an administrative review is conducted by local government staff only and does not include a public hearing or review of public input. A building-permit review does not include a review for compliance with land development regulations.

Under the bill, an existing tower, including a nonconforming tower, may be replaced without increasing the height in order to permit collocation. The replacement is subject to only administrative review and building-permit review.

Under the bill, a local government may 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”).

The bill prohibits a local government from reviewing or considering 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. 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.

The bill provides that requirements for setback or distance separation can apply only to towers. Presumably this means that these local government requirements cannot apply to antennas, to any equipment related to or serving the tower, or to any other portion of the wireless communications site, such as fencing or landscaping. The setback of separation required of a tower may not exceed the minimum distance necessary to satisfy the specific health, safety, or welfare concern directly protected by the requirement, and may not be any greater than that imposed on similar structures such as electrical transmission and distribution structures, utility poles, or light poles.

Under the bill, a local government must provide a reasonable opportunity for placing, constructing, and modifying 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.

The bill provides that a local government may not impose a fee, surety, or insurance requirement on a wireless provider when applying to place, construct, or modify a wireless communications facility if the fee, surety, or insurance requirement is not also imposed on applicants seeking similar types of zoning, land use, or building-permit review. 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 applications for wireless communications facilities by consultants or experts who are routinely engaged to review general zoning and land use matters on behalf of the local government may be recovered, but only if the recovery is routinely sought from all applicants seeking zoning or land-development approvals, and any fees must 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.

Revisions to 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 applies the 45 day approval provisions to a properly completed application for a wireless communications facility reviewed only through administrative review of building permit review. If multiple departments must conduct administrative reviews, they must be done concurrently within this time. The bill applies the 90 day approval provisions if approval of the application is through some other type of review. If the review requires both administrative review and non-administrative review, all reviews must be done within “the applicable time frame indicated in this section.” Presumably this means that the administrative review still must be done within the 45 day period, not both reviews done within the 90 day period.

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.

Current law allows extension of the timeframes and deadlines for review of both applications for collocation and a new wireless tower, under specified conditions. The bill changes this to apply only to applications for siting a new wireless tower.

Revisions to restrictions on facilities

Current law provides that if 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, are required within the existing secured equipment compound within the existing site, they are to be deemed a permitted use or activity. Local building and land development regulations, including any aesthetic requirements, apply.

The bill changes this 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 structures with equipment or structures 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 do so by January 1, 2005.

State government-owned property

The bill provides that use of state government-owned property for wireless communications facilities is encouraged.

It also provides that non-transportation state government-owned property is presumed available for leasing to wireless providers, and specifies how this presumption may be rebutted. If a wireless provider leases state government-owned property and that property is exempt from local zoning or land use regulations, the wireless communications facility is also exempt from these regulations and is subject only to the requirement of obtaining any applicable building permit.

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.

Current law provides that 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.

Effective date

The bill takes effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

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.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It should be much easier for wireless communications providers to site facilities and with fewer restrictions where they may site these facilities.

C. Government Sector Impact:

Indeterminable.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
