

By the Committee on Communication and Public Utilities; and
Senator Bennett

21-2301-04

1 A bill to be entitled
2 An act relating to the wireless emergency
3 telephone system; amending s. 365.172, F.S.;
4 adding definitions relating to wireless
5 telephone communications; providing legislative
6 intent regarding the emergency wireless
7 telephone system; providing standards for local
8 governments to follow when regulating the
9 placement, construction, or modification of a
10 wireless communications facility; directing
11 local governments to approve properly completed
12 applications within specified time periods;
13 providing procedures for a provider of wireless
14 communications services to submit an
15 application for local approval; directing local
16 governments to notify a provider of the
17 deficiencies in an application; directing local
18 governments to notify a provider whether the
19 resubmission of information properly completes
20 the application; providing for a limited review
21 by a local government of an accessory wireless
22 communications facility; prohibiting local
23 governments from imposing certain restrictions
24 on wireless communications facilities;
25 providing that a local government may not
26 require a wireless communications provider to
27 remove a wireless communications facility
28 unless the facility causes a specific adverse
29 impact on the public health, safety, or welfare
30 of the locality; requiring a local government
31 to amend its ordinance in order to comply with

1 this act by a specified date; providing that a
2 person who is adversely affected by a decision
3 of local government relating to a wireless
4 communications facility may bring an action
5 within a specified period; providing for the
6 computation of the time period; providing that
7 a person who is adversely affected by a
8 decision of a local government relating to a
9 wireless communications facility may bring an
10 action at any time if the person is seeking
11 only equitable relief to compel a local
12 government to comply with the procedures of the
13 act; providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Subsections (3), (6), and (11) of section
18 365.172, Florida Statutes, are amended to read:

19 365.172 Wireless emergency telephone number "E911."--

20 (3) DEFINITIONS.--As used in this section and ss.
21 365.173 and 365.174, the term:

22 (a) "Active prepaid wireless telephone" means a
23 prepaid wireless telephone that has been used by the customer
24 during the month to complete a telephone call for which the
25 customer's card or balance was decremented.

26 **(b) "Administrative review" means the nondiscretionary**
27 **review conducted by local governmental staff for compliance**
28 **with local government ordinances, but does not include a**
29 **public hearing or review of public input.**

30 **(c)**~~(b)~~ "Answering point" means the public safety
31 agency that receives incoming 911 calls and dispatches

1 appropriate public safety agencies to respond to the ~~such~~
2 calls.

3 (d)~~(c)~~ "Automatic location identification" means the
4 capability of the E911 service which enables the automatic
5 display of information that defines the approximate geographic
6 location of the wireless telephone used to place a 911 call.

7 (e)~~(d)~~ "Automatic number identification" means the
8 capability of the E911 service which enables the automatic
9 display of the 10-digit service number used to place a 911
10 call.

11 (f)~~(e)~~ "Board" means the board of directors of the
12 Wireless 911 Board.

13 (g) "Building-permit review" means a review for
14 compliance with building construction standards adopted by the
15 local government under chapter 553 and does not include a
16 review for compliance with land development regulations.

17 (h) "Collocation" means the situation when a second or
18 subsequent wireless provider uses an existing structure to
19 locate antennas. The term includes the ground, platform, or
20 roof installation of equipment enclosures, cabinets, or
21 buildings, and cables, brackets, and other equipment
22 associated with the location and operation of the antennas.

23 (i)~~(f)~~ "Office" means the State Technology Office.

24 (j)~~(g)~~ "E911" is the designation for a wireless
25 enhanced 911 system or wireless enhanced 911 service that is
26 an emergency telephone system or service that provides a
27 subscriber with wireless 911 service and, in addition, directs
28 911 calls to appropriate public safety answering points by
29 selective routing based on the geographical location from
30 which the call originated, or as otherwise provided in the
31 state plan under s. 365.171, and that provides for automatic

1 number identification and automatic location-identification
2 features in accordance with the requirements of the order.

3 (k) "Existing structure" means a structure that exists
4 at the time an application for permission to place antennas on
5 a structure is filed with a local government. The term
6 includes any structure that can support the attachment of
7 antennas, including, but not limited to, towers, buildings,
8 signs, utility structures, light poles, water towers, clock
9 towers, bell towers, and steeples.

10 (l)(h) "Fee" means the E911 fee imposed under
11 subsection (8).

12 (m)(i) "Fund" means the Wireless Emergency Telephone
13 System Fund established in s. 365.173 and maintained under
14 this section for the purpose of recovering the costs
15 associated with providing 911 service or E911 service,
16 including the costs of implementing the order.

17 (n) "Land-development regulation" means any ordinance
18 enacted by a local governing body for the regulation of any
19 aspect of development, including an ordinance governing
20 zoning, subdivisions, landscaping, tree protection, or signs,
21 or any other ordinance concerning any aspect of the
22 development of land. The term does not include any
23 building-construction standard adopted under and in compliance
24 with chapter 553.

25 (o)(j) "Local exchange carrier" means a "competitive
26 local exchange telecommunications company" or a "local
27 exchange telecommunications company" as defined in s. 364.02.

28 (p)(k) "Local government" means any municipality,
29 county, or political subdivision or agency of a municipality,
30 county, or political subdivision.

31

1 ~~(q)(1)~~ "Mobile telephone number" or "MTN" means the
2 telephone number assigned to a wireless telephone at the time
3 of initial activation.

4 ~~(r)(m)~~ "Order" means:

5 1. The following orders and rules of the Federal
6 Communications Commission issued in FCC Docket No. 94-102:

7 a. Order adopted on June 12, 1996, with an effective
8 date of October 1, 1996, the amendments to s. 20.03 and the
9 creation of s. 20.18 of Title 47 of the Code of Federal
10 Regulations adopted by the Federal Communications Commission
11 pursuant to the ~~such~~ order.

12 b. Memorandum and Order No. FCC 97-402 adopted on
13 December 23, 1997.

14 c. Order No. FCC DA 98-2323 adopted on November 13,
15 1998.

16 d. Order No. FCC 98-345 adopted December 31, 1998.

17 2. Orders and rules subsequently adopted by the
18 Federal Communications Commission relating to the provision of
19 wireless 911 services.

20 ~~(s)(n)~~ "Provider" or "wireless provider" means a
21 person or entity who provides service and either:

22 1. Is subject to the requirements of the order; or

23 2. Elects to provide wireless 911 service or E911
24 service in this state.

25 ~~(t)(o)~~ "Prepaid wireless telephone service" means
26 wireless telephone service that is activated in advance by
27 payment for a finite dollar amount of service or for a finite
28 set of minutes that terminate either upon use by a customer
29 and delivery by the wireless provider of an agreed-upon amount
30 of service corresponding to the total dollar amount paid in
31 advance or within a certain period of time following the

1 initial purchase or activation, unless additional payments are
2 made.

3 (u)~~(p)~~ "Public agency" means the state and any
4 municipality, county, municipal corporation, or other
5 governmental entity, public district, or public authority
6 located in whole or in part within this state which provides,
7 or has authority to provide, firefighting, law enforcement,
8 ambulance, medical, or other emergency services.

9 (v)~~(q)~~ "Public safety agency" means a functional
10 division of a public agency which provides firefighting, law
11 enforcement, medical, or other emergency services.

12 (w)~~(r)~~ "Rural county" means any county that has a
13 population of fewer than 75,000.

14 (x)~~(s)~~ "Service" means "commercial mobile radio
15 service" as provided under ss. 3(27) and 332(d) of the Federal
16 Telecommunications Act of 1996, 47 U.S.C., ss. 151 et seq.,
17 and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No.
18 103-66, August 10, 1993, 107 Stat. 312. The term "service"
19 includes the term "wireless" and service provided by any
20 wireless real-time two-way wire communication device,
21 including radio-telephone communications used in cellular
22 telephone service; personal communications service; or the
23 functional or competitive equivalent of a radio-telephone
24 communications line used in cellular telephone service, a
25 personal communications service, or a network radio access
26 line. The term does not include wireless providers that offer
27 mainly dispatch service in a more localized, noncellular
28 configuration; providers offering only data, one-way, or
29 stored-voice services on an interconnected basis; providers of
30 air-to-ground services; or public coast stations.

31

1 ~~(y)(t)~~ "Service number" means the unique 10-digit
2 wireless telephone number assigned to a service subscriber.

3 ~~(z)(u)~~ "Sufficient positive balance" means a dollar
4 amount greater than or equal to the monthly wireless surcharge
5 amount.

6 ~~(aa)~~ "Tower" means any structure designed primarily to
7 support a wireless antenna.

8 ~~(bb)~~ "Wireless communications facility" means any
9 equipment or facility used to provide service, and includes,
10 but is not limited to, antennas, towers, equipment enclosures,
11 cabling, antenna brackets, and other equipment.

12 ~~(cc)~~ "Wireless communications site" means the area on
13 the roof, structure, or ground which is designed, intended to
14 be used, or is used for the location of a wireless
15 communications facility, and any fencing and landscaping
16 provided in association with the wireless communications
17 facility.

18 ~~(dd)(v)~~ "Wireless 911 system" or "wireless 911
19 service" means an emergency telephone system or service that
20 provides a subscriber with the ability to reach an answering
21 point by dialing the digits "911." A wireless 911 system is
22 complementary to a wired 911 system as provided for in s.
23 365.171.

24 (6) AUTHORITY OF THE BOARD; ANNUAL REPORT.--

25 (a) The board shall:

26 1. Administer the E911 fee.

27 2. Implement, maintain, and oversee the fund.

28 3. Review and oversee the disbursement of the revenues
29 deposited into the fund as provided in s. 365.173. The board
30 may establish a schedule for implementing wireless E911
31 service by service area, and prioritize disbursements of

1 revenues from the fund to providers and rural counties as
2 provided in s. 365.173(2)(b) and (c) pursuant to the schedule,
3 in order to implement E911 services in the most efficient and
4 cost-effective manner.

5 4. Review documentation submitted by providers which
6 reflects current and projected funds derived from the E911
7 fee, and the expenses incurred and expected to be incurred, in
8 order to comply with the E911 service requirements contained
9 in the order for the purposes of:

10 a. Ensuring that providers receive fair and equitable
11 distributions of funds from the fund.

12 b. Ensuring that providers are not provided
13 disbursements from the fund which exceed the costs of
14 providing E911 service, including the costs of complying with
15 the order.

16 c. Ascertaining the projected costs of compliance with
17 the requirements of the order and projected collections of the
18 E911 fee.

19 d. Implementing changes to the allocation percentages
20 or reducing the E911 fee under paragraph (8)(c).

21 5. Review and approve or reject, in whole or in part,
22 applications submitted by providers for recovery of moneys
23 deposited into the fund.

24 6. Hire and retain employees, including an independent
25 executive director who shall possess experience in the area of
26 telecommunications and emergency 911 issues, for the purposes
27 of performing the technical and administrative functions for
28 the board.

29 7. Make and enter into contracts, pursuant to chapter
30 287, and execute other instruments necessary or convenient for
31 the exercise of the powers and functions of the board.

1 8. Take all necessary and reasonable steps by July 1,
2 2000, to secure appropriate information and reports from
3 providers and otherwise perform all of the functions that
4 would be performed by an independent accounting firm prior to
5 completing the request-for-proposals process under subsection
6 (7).

7 9. Sue and be sued, and appear and defend in all
8 actions and proceedings, in its corporate name to the same
9 extent as a natural person.

10 10. Adopt, use, and alter a common corporate seal.

11 11. Elect or appoint the officers and agents that are
12 required by the affairs of the board.

13 12. The board may adopt rules under ss. 120.536(1) and
14 120.54 to implement this section and ss. 365.173 and 365.174.

15 13. Provide coordination, support, and technical
16 assistance to counties to promote the deployment of advanced
17 911 and E911 systems in the state.

18 14. Provide coordination and support for educational
19 opportunities related to 911 issues for the 911 community in
20 this state.

21 15. Act as an advocate for issues related to 911
22 system functions, features, and operations to improve the
23 delivery of 911 services to the residents of and visitors to
24 this state.

25 16. Coordinate input from this state at national
26 forums and associations, to ensure that policies related to
27 911 systems and services are consistent with the policies of
28 the 911 community in this state.

29 17. Work cooperatively with the system director
30 established in s. 365.171(5) to enhance the state of 911
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1 services in this state and to provide unified leadership for
2 all 911 issues through planning and coordination.

3 18. Do all acts and things necessary or convenient to
4 carry out the powers granted in this section, including but
5 not limited to, consideration of emerging technology and
6 related cost savings.

7 19. By July 1, 2004, the board shall secure the
8 services of an independent, private attorney via invitation to
9 bid, request for proposals, invitation to negotiate, or
10 professional contracts for legal services already established
11 at the Division of Purchasing of the Department of Management
12 Services.

13 (b) Board members shall serve without compensation;
14 however, members are entitled to per diem and travel expenses
15 as provided in s. 112.061.

16 (c) By February 28 of each year, the board shall
17 prepare a report for submission by the office to the Governor,
18 the President of the Senate, and the Speaker of the House of
19 Representatives which reflects, for the immediately preceding
20 calendar year, the quarterly and annual receipts and
21 disbursements of moneys in the fund, the purposes for which
22 disbursements of moneys from the fund have been made, and the
23 availability and status of implementation of E911 service in
24 this state.

25 (d) By February 28, 2001, the board shall undertake
26 and complete a study for submission by the office to the
27 Governor, the President of the Senate, and the Speaker of the
28 House of Representatives which addresses:

29 1. The total amount of E911 fee revenues collected by
30 each provider, the total amount of expenses incurred by each
31

1 provider to comply with the order, and the amount of moneys on
2 deposit in the fund, all as of December 1, 2000.

3 2. Whether the amount of the E911 fee and the
4 allocation percentages set forth in s. 365.173 should be
5 adjusted to comply with the requirements of the order, and, if
6 so, a recommended adjustment to the E911 fee.

7 3. Any other issues related to providing wireless E911
8 services.

9 (11) FACILITATING E911 SERVICE IMPLEMENTATION.--The
10 Legislature finds that it is in the best interest of the
11 residents of this state to have efficient and reliable
12 wireless emergency telephone (E911) systems operating in this
13 state. Because the Federal Government and this state have
14 chosen to operate the wireless E911 systems through the
15 private commercial wireless communications systems, the
16 operation of a high-quality wireless E911 service is dependent
17 upon equally efficient and reliable wireless non-E911 systems.
18 It is also in the best interest of this state to coordinate
19 the wireless systems with local government's zoning and land
20 use regulations in order to protect the public health, safety,
21 and welfare. Therefore, in order to balance the public need
22 for reliable wireless systems with the governmental zoning and
23 land-development regulations and notwithstanding any other law
24 or local ordinance to the contrary, the following minimum
25 standards shall apply to a local government's regulation of
26 the placement, construction, or modification of a wireless
27 communications facility:

28 (a)1. To reduce the proliferation of new towers,
29 collocation ~~Colocation among wireless telephone service~~
30 ~~providers~~ is encouraged by the state. An application to place
31 an antenna ~~To further facilitate agreements among providers~~

1 ~~for colocation of their facilities, any antennae and related~~
2 ~~equipment to service the antennae that is being~~ collocated
3 ~~collocated on an existing above-ground structure~~ that does not
4 increase the height of the existing structure or any existing
5 antenna, whichever is higher, and any placement, construction,
6 operation, and maintenance of the related equipment to serve
7 the antenna is not subject to land development regulation and
8 shall only require building-permit review pursuant to s.
9 ~~163.3202, provided the height of the existing structure is not~~
10 ~~increased. However, construction of the antennae and related~~
11 ~~equipment is subject to local building regulations and any~~
12 ~~existing permits or agreements for such property, buildings,~~
13 ~~or structures. This section does not~~ Nothing herein shall
14 relieve the applicant or the permit holder for or owner of the
15 existing structure from of compliance with any applicable
16 previously approved and existing condition or requirement of a
17 permit or agreement, or land development regulation,
18 including any previously approved aesthetic requirements
19 imposed by administrative order, resolution, or ordinance for
20 development of the specific wireless communications site which
21 is not inconsistent with this subsection, or law.

22 2. To further reduce the proliferation of new towers,
23 the state encourages wireless providers to place antennas on
24 existing structures. In cases when placement of an antenna is
25 not covered by subparagraph 1., an application to place
26 antenna on any existing structure, other than a single-family
27 dwelling, and its related support equipment shall be subject
28 to no more than an administrative review and building-permit
29 review.

30 3. An existing tower, including a nonconforming tower,
31 may be replaced without increasing the height in order to

1 permit collocation. The replacement shall be subject only to
2 an administrative review and to a building-permit review.

3 (b) A local government may use its land use and zoning
4 regulatory powers over the placement, construction, and
5 modification of a wireless communications facility, but only
6 to mitigate an identified adverse effect caused by the
7 placement of a proposed wireless communications facility. The
8 adverse effect must directly impact the public health, safety,
9 or welfare and be balanced against the public benefit of a
10 reliable E911 system.

11 1. A local government may not review or consider a
12 wireless provider's business need for a specific location for
13 a wireless communications site or the need for wireless
14 service to be provided from a particular site. A local
15 government may not evaluate the wireless provider's service
16 quality or the network design of the wireless service. Local
17 government is limited when evaluating a wireless provider's
18 application for placement of a wireless communications
19 facility to issues concerning land use and zoning.

20 2. Requirements for setback or distance separation
21 shall apply only to towers. The setback or separation required
22 of a tower may not exceed the minimum distance necessary to
23 satisfy the specific health, safety, or welfare concern that
24 is directly protected by the setback or distance separation. A
25 setback or distance separation imposed upon wireless
26 communications towers may not be greater than that imposed
27 upon similar structures such as electrical distribution and
28 transmission structures, utility poles, or light poles.

29 3. A local government must provide a reasonable
30 opportunity for placing, constructing, and modifying wireless
31 communications facilities in all parts of a local government's

1 jurisdiction, unless it can be specifically demonstrated that
2 a prohibition of all types of wireless communications
3 facilities in a specific location or area is the only manner
4 in which to protect the public health, safety, and welfare of
5 that area.

6 4. A local government may not impose a fee, surety, or
7 insurance requirement on a wireless provider when applying to
8 place, construct, or modify a wireless communications facility
9 if the fee, surety, or insurance requirement is not also
10 imposed on applicants seeking similar types of zoning, land
11 use, or building-permit review. The local government may not
12 recover its costs from wireless providers incurred in
13 preparing or adopting zoning or land-development regulations
14 or ordinances regulating a wireless communications facility.
15 Fees for review of applications for wireless communications
16 facilities by consultants or experts who are routinely engaged
17 to review general zoning and land use matters on behalf of the
18 local government may be recovered, but only if the recovery is
19 routinely sought from all applicants seeking zoning or
20 land-development approvals, and any fees must be reasonable.
21 Review of applications for wireless communications facilities
22 by local government shall be restricted only to what is
23 necessary for land use review of the application.

24 (c)(b) Local governments may ~~shall~~ not require
25 wireless providers to provide evidence of a wireless
26 communications facility's compliance with federal regulations.
27 However, local governments may request ~~shall receive~~ evidence
28 of proper Federal Communications Commission licensure or other
29 evidence of FCC authorized spectrum use from a wireless
30 provider and may request the Federal Communications Commission
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1 to provide information as to a wireless provider's compliance
2 with federal regulations, as authorized by federal law.

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

20 2. A local government shall grant or deny each a
21 properly completed application for a wireless communications
22 facility reviewed through other than administrative review or
23 building permit review a permit for the siting of a new
24 wireless tower or antenna on property, buildings, or
25 structures within the local government's jurisdiction within
26 90 business days after the date the ~~properly completed~~
27 application is determined to be properly completed initially
28 submitted in accordance with this section the applicable local
29 government application procedures, provided that such permit
30 complies with applicable federal regulations and applicable
31 local zoning or land development regulations, including any

1 ~~aesthetic requirements. Local building regulations shall~~
2 apply. If the local government review of the wireless
3 communications facility includes applications for
4 nonadministrative review, each shall be within the applicable
5 timeframe indicated in this section.

6 3.a. An application is deemed submitted or resubmitted
7 on the date the application is filed with the local
8 government.The local government shall notify the permit
9 applicant within 20 business days after the date the
10 application is initially submitted as to whether the
11 application is, for administrative purposes only, properly
12 completed and has been properly submitted. However, ~~the~~ such
13 determination shall not be deemed as an approval of the
14 application. If the application is not completed in compliance
15 with the local government's regulations, the ~~Such~~ notification
16 must ~~shall~~ indicate with specificity any deficiencies that
17 which, if cured, ~~shall~~ make the application properly
18 completed. Upon resubmission of information to cure the stated
19 deficiencies, the local government shall notify the applicant
20 within 10 business days after the additional information is
21 submitted whether the application is properly completed or if
22 there are any remaining deficiencies that must be cured. Any
23 deficiencies not specified by the local government in the
24 initial notice are waived.

25 b. If the local government fails to grant or deny a
26 properly completed application for a permit ~~which has been~~
27 ~~properly submitted~~ within the timeframes set forth in this
28 subsection, the local government application paragraph, the
29 permit shall be deemed automatically approved and the
30 applicant provider may proceed with placement of such
31 facilities without interference or penalty. The timeframes

1 specified in subparagraph 2.~~subparagraphs 1. and 2.~~ shall be
2 extended only to the extent that the permit has not been
3 granted or denied because the local government's procedures
4 generally applicable to all permits, require action by the
5 governing body and such action has not taken place within the
6 timeframes specified in subparagraph 2.~~subparagraphs 1. and~~
7 ~~2.~~ Under such circumstances, the local government must act to
8 either grant or deny the permit at its next regularly
9 scheduled meeting or, otherwise, the permit shall be deemed to
10 be automatically approved.

11 c. To be effective, a waiver of the timeframes set
12 forth in this paragraph herein must be voluntarily agreed to
13 by the applicant and the local government. A local government
14 may request, but not require, a waiver of the timeframes by an
15 entity seeking a permit, except that, with respect to a
16 specific permit, a one-time waiver may be required in the case
17 of a declared local, state, or federal emergency that directly
18 affects the administration of all permitting activities of the
19 local government.

20 (e)~~(d)~~ Any accessory ~~additional~~ wireless
21 communications facilities, such as communication cables,
22 ~~adjacent~~ accessory structures, ~~or adjacent~~ accessory
23 equipment, and the wireless communications site in which the
24 accessory wireless communications facility is to be located
25 which are not covered by subparagraph (a)1. used in the
26 provision of cellular, enhanced specialized mobile radio, or
27 personal communications services, required within the existing
28 secured equipment compound within the existing site shall be
29 deemed an a permitted use or activity requiring no more than
30 administrative review and building-permit review. A
31 land-development regulation, existing permit condition, or

1 agreement may not subject an accessory wireless communications
2 facility to greater restrictions or requirements or greater
3 procedural or review processes than other accessory structures
4 in the same zoning district ~~Local building and land~~
5 ~~development regulations, including any aesthetic requirements,~~
6 ~~shall apply.~~

7 (f) A local government may not impose square footage
8 or height limitations on an accessory wireless communications
9 facility inconsistent with those required for other structures
10 in the same zoning district. This paragraph supersedes any
11 existing limitation imposed on a wireless communications
12 facility by agreement, ordinance, resolution, or land
13 development regulation.

14 (g) A local government may only regulate modification
15 of an existing wireless communications facility if:

16 1. The regulation mitigates an identified adverse
17 effect caused by the modification; and

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

21
22 The replacement of visible equipment or structures with
23 equipment or structures of the same size, type, and appearance
24 and the replacement of equipment that is not visible from
25 outside the wireless communications site are not modifications
26 and are subject only to building-permit review.

27 (h) A local government may not require a wireless
28 provider to remove a conforming or nonconforming wireless
29 communications facility within a stated period of time unless
30 a specific adverse impact to the public health, safety, or
31 welfare of the locality is caused by the wireless

1 communications facility. Before a local government may order
2 the removal of the wireless communications facility, the
3 wireless provider or owner of the facility shall have the
4 right to mitigate the condition that causes the adverse impact
5 and the local government must give the provider or owner a
6 reasonable time in which to mitigate the condition.

7 (i) If a local government regulation or procedure does
8 not conform to the requirements of this section, the
9 regulation or procedure must be amended to do so by January 1,
10 2005.

11 (j)1.~~(e)~~ The use of state government-owned property
12 for wireless communications facilities is encouraged.Any
13 other ~~provision~~ of law to the contrary notwithstanding, the
14 Department of Management Services shall negotiate, in the name
15 of the state, leases for wireless communications facilities
16 that provide access to state government-owned property not
17 acquired for transportation purposes, and the Department of
18 Transportation shall negotiate, in the name of the state,
19 leases for wireless communications facilities that provide
20 access to property acquired for state rights-of-way.

21 2. On property acquired for transportation purposes,
22 leases shall be granted in accordance with s. 337.251. On
23 other state government-owned property, the Department of
24 Management Services shall be the agency that negotiates the
25 leases and makes the final determination of availability of
26 any specific property for leasing to wireless providers. Such
27 state government-owned property shall be presumed available
28 for leasing to wireless providers, which presumption may be
29 rebutted by an affirmative showing by the applicable state
30 agency that holds title to the property, the government agency
31 responsible for managing the property, or the government

1 agency leasing the property that leasing the property for use
2 by a wireless communications facility will materially
3 interfere with the use by the applicable agency; will
4 materially interfere with the lease terms of the government
5 agency leasing the property; or access to the property is not
6 available for security purposes or is otherwise not allowed
7 for public health, safety, and welfare reasons. The leasing
8 process and any divisions of lease payments between the
9 applicable government agencies shall be as established by
10 rule. Leases for nontransportation state government-owned
11 property shall be granted on a space available, first-come,
12 first-served basis. Payments required by state government
13 under a lease must be reasonable and must reflect the market
14 rate for the use of the state government-owned property. The
15 Department of Management Services and the Department of
16 Transportation are authorized to adopt rules for the terms and
17 conditions and granting of any such leases.

18 3. If a wireless provider enters into a lease to use
19 state government-owned property for a wireless communications
20 facility and such state government-owned property is exempt
21 from local zoning or land use regulations, the wireless
22 communications facility shall also be exempt and shall be
23 subject only to the requirement that it obtain any applicable
24 building permit.

25 (k) Any person adversely affected by any action or
26 failure to act by a local government which is inconsistent
27 with this subsection may bring an action in a court of
28 competent jurisdiction within 30 days after the action or the
29 failure to act. The court shall consider the matter on an
30 expedited basis.

31

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

29 Section 2. This act shall take effect July 1, 2004.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 2774

4 The committee substitute for Senate Bill 2774:

5 Revises the definition of "collocation," "existing structure,"
6 "land-development regulation," "provider," "wireless
communications facility," and "wireless communications site."

7 Requires the Wireless 911 Board to hire an independent
8 executive director with experience in the area of
telecommunications and emergency 911 issues, and to secure the
9 services of an independent, private attorney by July 1, 2004.

10 Deletes the new language on increasing the height of an
existing tower and instead says that an existing tower may be
11 replaced without increasing the height.

12 Deletes the new restriction on local government height
limitations.

13 Deletes the new restriction on application of local government
14 aesthetic protections.

15 Deletes the provisions on the procedural requirements for
local government action on an application for placement of
16 collocation of antennas, an application for modification of an
existing tower, and an application siting a new tower or
17 antenna, and replaces them with new provisions for local
government action on applications for "a wireless
18 communications facility." If the application is reviewed only
through administrative review of building permit review, local
19 government must act within 45 business days. If multiple
departments must conduct administrative reviews, they must be
20 done concurrently within this time. If the application is
through some other type of review, local government must act
21 within 90 business days. If the review requires both
administrative review and non-administrative review, all
22 reviews must be done within the applicable time frame
indicated in this section.

23 Reverts to the existing 20 business days for local government
24 to notify an applicant as to whether the application is
complete, and adds "business days" to the deadline for
25 notification upon resubmission of an application.

26 Deletes the new restrictions on moratoriums on wireless
communications facilities.

27 Adds a provision that use of state government-owned property
28 for wireless communications facilities is encouraged.

29 Provides that non-transportation state government-owned
property is presumed available for leasing to wireless
30 providers, and specifies how this presumption may be rebutted.

31 Provides that if a wireless provider leases state
government-owned property and that property is exempt from
local zoning or land use regulations, the wireless

1 communications facility is also exempt from these regulations
2 and is subject only to the requirement of obtaining any
3 applicable building permit.
4 Deletes the provision that local government decisions relating
5 to a wireless communications facility are deemed final agency
6 action and constitute an exhaustion of administrative
7 remedies.
8 Deletes the provision establishing the date of local
9 government action or failure to act for purposes of the new
10 cause of action against local government by a person adversely
11 affected by such action or inaction.
12 Deletes the provision for a cause of action to compel local
13 government to comply with the procedures set forth in this
14 statute and the provision on filing for a writ of certiorari.
15 Makes technical changes.
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