

By Senator Bennett

21-468A-05

1 A bill to be entitled
2 An act relating to the wireless emergency
3 telephone system; amending s. 11.45, F.S.;
4 removing the annual audit of the Wireless
5 Emergency Telephone System Fund from the duties
6 of the Auditor General; amending s. 364.02,
7 F.S.; revising fee schedules for providers of
8 interexchange telecommunications services;
9 amending s. 365.172, F.S.; adding definitions
10 relating to wireless telephone communications;
11 revising duties of the Wireless 911 Board;
12 requiring the hiring of an executive director
13 and an independent, private attorney; providing
14 legislative intent regarding the emergency
15 wireless telephone system; providing standards
16 for local governments to follow when regulating
17 the placement, construction, or modification of
18 a wireless communications facility; directing
19 local governments to grant or deny properly
20 completed applications within specified time
21 periods; providing procedures for a provider of
22 wireless communications services to submit an
23 application for local approval; directing local
24 governments to notify a provider in writing of
25 the deficiencies in an application; directing
26 local governments to notify a provider in
27 writing whether the resubmission of information
28 properly completes the application; permitting
29 local governments to continue requesting
30 information until the application deficiencies
31 are cured; providing for a limited review by a

1 local government of an accessory wireless
2 communications facility; prohibiting local
3 governments from imposing certain restrictions
4 on wireless communications facilities;
5 providing that a person who is adversely
6 affected by a decision of a local government
7 relating to a wireless communications facility
8 may bring an action within a specified period;
9 providing for the computation of the time
10 period; amending s. 365.173, F.S.; directing
11 how a county may use funds derived from the
12 E911 fee; requiring the board of county
13 commissioners to appropriate the funds to the
14 proper uses; removing the requirement that the
15 Auditor General annually audit the E911 fund;
16 amending s. 337.401, F.S.; requiring
17 municipalities and counties to treat
18 communications services providers in a manner
19 that is competitively neutral and
20 nondiscriminatory when using public roads and
21 rights-of-ways; prohibiting municipalities and
22 counties from requiring communications services
23 providers to obtain a license or franchise from
24 the municipality or county; providing an
25 effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Subsection (2) of section 11.45, Florida
30 Statutes, is amended to read:

31

1 11.45 Definitions; duties; authorities; reports;
2 rules.--

3 (2) DUTIES.--The Auditor General shall:

4 (a) Conduct audits of records and perform related
5 duties as prescribed by law, concurrent resolution of the
6 Legislature, or as directed by the Legislative Auditing
7 Committee.

8 (b) Annually conduct a financial audit of state
9 government.

10 (c) Annually conduct financial audits of all
11 universities and district boards of trustees of community
12 colleges.

13 (d) Annually conduct financial audits of the accounts
14 and records of all district school boards in counties with
15 populations of fewer than 150,000, according to the most
16 recent federal decennial statewide census.

17 ~~(e) Annually conduct an audit of the Wireless~~
18 ~~Emergency Telephone System Fund as described in s. 365.173.~~

19 (e)(f) Annually conduct audits of the accounts and
20 records of the Florida School for the Deaf and the Blind.

21 (f)(g) At least every 2 years, conduct operational
22 audits of the accounts and records of state agencies and
23 universities. In connection with these audits, the Auditor
24 General shall give appropriate consideration to reports issued
25 by state agencies' inspectors general or universities'
26 inspectors general and the resolution of findings therein.

27 (g)(h) At least every 2 years, conduct a performance
28 audit of the local government financial reporting system,
29 which, for the purpose of this chapter, means any statutory
30 provisions related to local government financial reporting.
31 The purpose of such an audit is to determine the accuracy,

1 efficiency, and effectiveness of the reporting system in
2 achieving its goals and to make recommendations to the local
3 governments, the Governor, and the Legislature as to how the
4 reporting system can be improved and how program costs can be
5 reduced. The Auditor General shall determine the scope of such
6 audits. The local government financial reporting system should
7 provide for the timely, accurate, uniform, and cost-effective
8 accumulation of financial and other information that can be
9 used by the members of the Legislature and other appropriate
10 officials to accomplish the following goals:

11 1. Enhance citizen participation in local government;

12 2. Improve the financial condition of local
13 governments;

14 3. Provide essential government services in an
15 efficient and effective manner; and

16 4. Improve decisionmaking on the part of the
17 Legislature, state agencies, and local government officials on
18 matters relating to local government.

19 ~~(h)(i)~~ Once every 3 years, conduct performance audits
20 of the Department of Revenue's administration of the ad
21 valorem tax laws as described in s. 195.096.

22 ~~(i)(j)~~ Once every 3 years, conduct financial audits of
23 the accounts and records of all district school boards in
24 counties with populations of 125,000 or more, according to the
25 most recent federal decennial statewide census.

26 ~~(j)(k)~~ Once every 3 years, review a sample of each
27 state agency's internal audit reports to determine compliance
28 with current Standards for the Professional Practice of
29 Internal Auditing or, if appropriate, government auditing
30 standards.

31

1 (k)~~(l)~~ Conduct audits of local governmental entities
2 when determined to be necessary by the Auditor General, when
3 directed by the Legislative Auditing Committee, or when
4 otherwise required by law. No later than 18 months after the
5 release of the audit report, the Auditor General shall perform
6 such appropriate followup procedures as he or she deems
7 necessary to determine the audited entity's progress in
8 addressing the findings and recommendations contained within
9 the Auditor General's previous report. The Auditor General
10 shall provide a copy of his or her determination to each
11 member of the audited entity's governing body and to the
12 Legislative Auditing Committee.

13

14 The Auditor General shall perform his or her duties
15 independently but under the general policies established by
16 the Legislative Auditing Committee. This subsection does not
17 limit the Auditor General's discretionary authority to conduct
18 other audits or engagements of governmental entities as
19 authorized in subsection (3).

20 Section 2. Subsection (13) of section 364.02, Florida
21 Statutes, is amended to read:

22 364.02 Definitions.--As used in this chapter:

23 (13) "Telecommunications company" includes every
24 corporation, partnership, and person and their lessees,
25 trustees, or receivers appointed by any court whatsoever, and
26 every political subdivision in the state, offering two-way
27 telecommunications service to the public for hire within this
28 state by the use of a telecommunications facility. The term
29 "telecommunications company" does not include:

30

31

1 (a) An entity which provides a telecommunications
2 facility exclusively to a certificated telecommunications
3 company;

4 (b) An entity which provides a telecommunications
5 facility exclusively to a company which is excluded from the
6 definition of a telecommunications company under this
7 subsection;

8 (c) A commercial mobile radio service provider;

9 (d) A facsimile transmission service;

10 (e) A private computer data network company not
11 offering service to the public for hire;

12 (f) A cable television company providing cable service
13 as defined in 47 U.S.C. s. 522; or

14 (g) An intrastate interexchange telecommunications
15 company.

16
17 However, each commercial mobile radio service provider and
18 each intrastate interexchange telecommunications company shall
19 continue to be liable for any taxes imposed under ~~pursuant to~~
20 chapters 202, 203 and 212 and any fees assessed under s.
21 364.025 ~~pursuant to ss. 364.025 and 364.336~~. Each intrastate
22 interexchange telecommunications company shall continue to be
23 subject to ss. 364.04, 364.10(3)(a) and (d), 364.163, 364.285,
24 364.336, 364.501, 364.603, and 364.604, shall provide the
25 commission with the ~~such~~ current information as the commission
26 deems necessary to contact and communicate with the company,
27 shall continue to pay intrastate switched network access rates
28 or other intercarrier compensation to the local exchange
29 telecommunications company or the competitive local exchange
30 telecommunications company for the origination and termination
31 of interexchange telecommunications service, and shall reduce

1 | its intrastate long distance toll rates in accordance with s.
2 | 364.163(2).

3 | Section 3. Subsections (3), (6), and (11) and
4 | paragraph (a) of subsection (8) of section 365.172, Florida
5 | Statutes, are amended to read:

6 | 365.172 Wireless emergency telephone number "E911."--

7 | (3) DEFINITIONS.--As used in this section and ss.
8 | 365.173 and 365.174, the term:

9 | (a) "Active prepaid wireless telephone" means a
10 | prepaid wireless telephone that has been used by the customer
11 | during the month to complete a telephone call for which the
12 | customer's card or balance was decremented.

13 | **(b) "Administrative review" means the nondiscretionary**
14 | **review conducted by local governmental staff for compliance**
15 | **with local government ordinances, but does not include a**
16 | **public hearing or review of public input.**

17 | ~~(c)(b)~~ "Answering point" means the public safety
18 | agency that receives incoming 911 calls and dispatches
19 | appropriate public safety agencies to respond to ~~the such~~
20 | calls.

21 | ~~(d)(e)~~ "Automatic location identification" means the
22 | capability of the E911 service which enables the automatic
23 | display of information that defines the approximate geographic
24 | location of the wireless telephone used to place a 911 call.

25 | ~~(e)(d)~~ "Automatic number identification" means the
26 | capability of the E911 service which enables the automatic
27 | display of the 10-digit service number used to place a 911
28 | call.

29 | ~~(f)(e)~~ "Board" means the board of directors of the
30 | Wireless 911 Board.

31 | ~~(g)(f)~~ "Office" means the State Technology Office.

1 (h) "Building-permit review" means a review for
2 compliance with building construction standards adopted by the
3 local government under chapter 553 and does not include a
4 review for compliance with land development regulations.

5 (i) "Collocation" means the situation when a second or
6 subsequent wireless provider uses an existing structure to
7 locate a second or subsequent antenna. The term includes the
8 ground, platform, or roof installation of equipment
9 enclosures, cabinets, or buildings, and cables, brackets, and
10 other equipment associated with the location and operation of
11 the antennas. A collocation shall not be considered a
12 modification to an existing structure which subjects the
13 structure to greater than building-permit review or which
14 constitutes an impermissible modification of a nonconforming
15 structure.

16 (j)(g) "E911" is the designation for a wireless
17 enhanced 911 system or wireless enhanced 911 service that is
18 an emergency telephone system or service that provides a
19 subscriber with wireless 911 service and, in addition, directs
20 911 calls to appropriate public safety answering points by
21 selective routing based on the geographical location from
22 which the call originated, or as otherwise provided in the
23 state plan under s. 365.171, and that provides for automatic
24 number identification and automatic location-identification
25 features in accordance with the requirements of the order.

26 (k) "Existing structure" means a structure that exists
27 at the time an application for permission to place antennas on
28 a structure is filed with a local government. The term
29 includes any structure that can support the attachment of
30 antennas, including, but not limited to, towers, buildings,
31

1 utility structures, light poles, water towers, clock towers,
2 bell towers, and steeples.

3 ~~(l)(h)~~ "Fee" means the E911 fee imposed under
4 subsection (8).

5 ~~(m)(i)~~ "Fund" means the Wireless Emergency Telephone
6 System Fund established in s. 365.173 and maintained under
7 this section for the purpose of recovering the costs
8 associated with providing 911 service or E911 service,
9 including the costs of implementing the order.

10 (n) "Land-development regulation" means any ordinance
11 enacted by a local governing body for the regulation of any
12 aspect of development, including an ordinance governing
13 zoning, subdivisions, landscaping, tree protection, or signs,
14 or any other ordinance concerning any aspect of the
15 development of land. The term does not include any
16 building-construction standard adopted under and in compliance
17 with chapter 553.

18 ~~(o)(j)~~ "Local exchange carrier" means a "competitive
19 local exchange telecommunications company" or a "local
20 exchange telecommunications company" as defined in s. 364.02.

21 ~~(p)(k)~~ "Local government" means any municipality,
22 county, or political subdivision or agency of a municipality,
23 county, or political subdivision.

24 ~~(q)(l)~~ "Mobile telephone number" or "MTN" means the
25 telephone number assigned to a wireless telephone at the time
26 of initial activation.

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

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

30 a. Order adopted on June 12, 1996, with an effective
31 date of October 1, 1996, the amendments to s. 20.03 and the

1 creation of s. 20.18 of Title 47 of the Code of Federal
2 Regulations adopted by the Federal Communications Commission
3 pursuant to the ~~such~~ order.

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

6 c. Order No. FCC DA 98-2323 adopted on November 13,
7 1998.

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

9 2. Orders and rules subsequently adopted by the
10 Federal Communications Commission relating to the provision of
11 wireless 911 services.

12 ~~(s)(o)~~ "Prepaid wireless telephone service" means
13 wireless telephone service that is activated in advance by
14 payment for a finite dollar amount of service or for a finite
15 set of minutes that terminate either upon use by a customer
16 and delivery by the wireless provider of an agreed-upon amount
17 of service corresponding to the total dollar amount paid in
18 advance or within a certain period of time following the
19 initial purchase or activation, unless additional payments are
20 made.

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

- 23 1. Is subject to the requirements of the order; or
24 2. Elects to provide wireless 911 service or E911
25 service in this state.

26 ~~(u)(p)~~ "Public agency" means the state and any
27 municipality, county, municipal corporation, or other
28 governmental entity, public district, or public authority
29 located in whole or in part within this state which provides,
30 or has authority to provide, firefighting, law enforcement,
31 ambulance, medical, or other emergency services.

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

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

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

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

25 ~~(z)(u)~~ "Sufficient positive balance" means a dollar
26 amount greater than or equal to the monthly wireless surcharge
27 amount.

28 ~~(aa)~~ "Tower" means any structure designed primarily to
29 support a wireless provider's antenna.

30 ~~(bb)~~ "Wireless communications facility" means any
31 equipment or facility used to provide service, and may

1 include, but is not limited to, antennas, towers, equipment
2 enclosures, cabling, antenna brackets, and other such
3 equipment. Placing a wireless communications facility on an
4 existing structure does not cause the existing structure to
5 become a wireless communications facility.

6 (cc) "Wireless communications site" means only the
7 area on the roof, structure, or ground which is designed,
8 intended to be used, or is used for the location of a wireless
9 communications facility, and any fencing and landscaping
10 provided in association with the wireless communications
11 facility.

12 (dd)(v) "Wireless 911 system" or "wireless 911
13 service" means an emergency telephone system or service that
14 provides a subscriber with the ability to reach an answering
15 point by dialing the digits "911." A wireless 911 system is
16 complementary to a wired 911 system as provided for in s.
17 365.171.

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

19 (a) The board shall:

- 20 1. Administer the E911 fee.
- 21 2. Implement, maintain, and oversee the fund.
- 22 3. Review and oversee the disbursement of the revenues
23 deposited into the fund as provided in s. 365.173. The board
24 may establish a schedule for implementing wireless E911
25 service by service area, and prioritize disbursements of
26 revenues from the fund to providers and rural counties as
27 provided in s. 365.173(2)(b) and (c) pursuant to the schedule,
28 in order to implement E911 services in the most efficient and
29 cost-effective manner.
- 30 4. Review documentation submitted by providers which
31 reflects current and projected funds derived from the E911

1 fee, and the expenses incurred and expected to be incurred, in
2 order to comply with the E911 service requirements contained
3 in the order for the purposes of:

4 a. Ensuring that providers receive fair and equitable
5 distributions of funds from the fund.

6 b. Ensuring that providers are not provided
7 disbursements from the fund which exceed the costs of
8 providing E911 service, including the costs of complying with
9 the order.

10 c. Ascertaining the projected costs of compliance with
11 the requirements of the order and projected collections of the
12 E911 fee.

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

15 5. Review and approve or reject, in whole or in part,
16 applications submitted by providers for recovery of moneys
17 deposited into the fund.

18 6. Hire and retain employees, which may include an
19 independent executive director who shall possess experience in
20 the area of telecommunications and emergency 911 issues, for
21 the purposes of performing the technical and administrative
22 functions for the board.

23 7. Make and enter into contracts, pursuant to chapter
24 287, and execute other instruments necessary or convenient for
25 the exercise of the powers and functions of the board.

26 8. Take all necessary and reasonable steps by July 1,
27 2000, to secure appropriate information and reports from
28 providers and otherwise perform all of the functions that
29 would be performed by an independent accounting firm prior to
30 completing the request-for-proposals process under subsection
31 (7).

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

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

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

7 12. The board may adopt rules under ss. 120.536(1) and
8 120.54 to implement this section and ss. 365.173 and 365.174.

9 13. Provide coordination, support, and technical
10 assistance to counties to promote the deployment of advanced
11 911 and E911 systems in the state.

12 14. Provide coordination and support for educational
13 opportunities related to 911 issues for the 911 community in
14 this state.

15 15. Act as an advocate for issues related to 911
16 system functions, features, and operations to improve the
17 delivery of 911 services to the residents of and visitors to
18 this state.

19 16. Coordinate input from this state at national
20 forums and associations, to ensure that policies related to
21 911 systems and services are consistent with the policies of
22 the 911 community in this state.

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

27 18. Do all acts and things necessary or convenient to
28 carry out the powers granted in this section, including but
29 not limited to, consideration of emerging technology and
30 related cost savings.

31

1 19. Have the authority to secure the services of an
2 independent, private attorney via invitation to bid, request
3 for proposals, invitation to negotiate, or professional
4 contracts for legal services already established at the
5 Division of Purchasing of the Department of Management
6 Services.

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

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

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

23 1. The total amount of E911 fee revenues collected by
24 each provider, the total amount of expenses incurred by each
25 provider to comply with the order, and the amount of moneys on
26 deposit in the fund, all as of December 1, 2000.

27 2. Whether the amount of the E911 fee and the
28 allocation percentages set forth in s. 365.173 should be
29 adjusted to comply with the requirements of the order, and, if
30 so, a recommended adjustment to the E911 fee.
31

1 3. Any other issues related to providing wireless E911
2 services.

3 (8) WIRELESS E911 FEE.--

4 (a) Each home service provider shall collect a monthly
5 fee imposed on each customer whose place of primary use is
6 within this state. For purposes of this section, the state and
7 local governments are not customers. The rate of the fee shall
8 be 50 cents per month per each service number, beginning
9 August 1, 1999. The fee shall apply uniformly and be imposed
10 throughout the state.

11 (11) FACILITATING E911 SERVICE IMPLEMENTATION.--In
12 order to balance the public need for reliable E911 services
13 through reliable wireless systems with the public interest
14 served by governmental zoning and land development regulations
15 and notwithstanding any other law or local ordinance to the
16 contrary, the following standards shall apply to a local
17 government's regulation of the placement, construction, or
18 modification of a wireless communications facility:

19 (a) 1. Collocation ~~Colocation~~ among wireless telephone
20 ~~service~~ providers is encouraged by the state. Collocations
21 that do not increase the height of the structure to which the
22 antennas are to be attached, measured to the highest point of
23 any part of the structure or any appurtenance attached to the
24 structure, and consist of antennas, equipment enclosures, and
25 ancillary facilities that are of a design and configuration
26 consistent with all applicable restrictions or conditions
27 applied to the first antenna placement on the structure and,
28 if applicable, applied to the structure supporting the
29 antennas, are ~~To further facilitate agreements among providers~~
30 ~~for collocation of their facilities, any antennae and related~~
31 ~~equipment to service the antennae that is being colocated on~~

1 ~~an existing above ground structure is not subject to land~~
2 ~~development regulation and are subject to building-permit~~
3 ~~review only pursuant to s. 163.3202, provided the height of~~
4 ~~the existing structure is not increased. However, construction~~
5 ~~of the antennae and related equipment is subject to local~~
6 ~~building regulations and to any applicable existing permits or~~
7 ~~agreements for the such property, buildings, or structures.~~
8 However, restrictions, conditions, permits, or agreements
9 imposed by a local government, acting in its regulatory
10 capacity, which are inconsistent with this section do not
11 apply to the collocations. If some portion of the collocation
12 does not meet the requirements of this paragraph, that portion
13 only may be reviewed under the local government's regulation
14 for a first placement of that portion of the facility. Nothing
15 ~~herein shall relieve the permitholder for or owner of the~~
16 ~~existing structure of compliance with any applicable condition~~
17 ~~or requirement of a permit, agreement, or land development~~
18 ~~regulation, including any aesthetic requirements, or law.~~

19 2. An existing tower, including a nonconforming tower,
20 may be structurally modified in order to permit collocation or
21 may be replaced through no more than administrative review and
22 building-permit review if the overall height of the tower is
23 not increased and, if a replacement, the replacement tower is
24 a monopole tower or, if the existing tower is a camouflaged
25 tower, the replacement tower is a like-camouflaged tower.

26 (b)1. A local government is limited when evaluating a
27 wireless provider's application for placement of a wireless
28 communications facility to issues concerning land development
29 and zoning. A local government may not request information on
30 or review, consider, or evaluate a wireless provider's
31 business need for a specific location for a wireless

1 communications site or the need for wireless service to be
2 provided from a particular site unless the wireless provider
3 voluntarily offers this information to the local government. A
4 local government may not request information on or review,
5 consider, or evaluate the wireless provider's service quality
6 or the network design of the wireless service unless the
7 information or materials are directly related to an identified
8 land development or zoning issue or unless the wireless
9 provider voluntarily offers the information.

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

14 3. A local government may exclude the placement of
15 wireless communications facilities in a residential area or
16 residential zoning district only if the provider can
17 reasonably provide its designed service to the residential
18 area or zone from outside the residential area or zone in a
19 manner consistent with the provider's network design.
20 Exclusion from the residential area may not prohibit or have
21 the effect of prohibiting the provider's service through a
22 technological, structural, economic, practical, or other
23 prohibition or unreasonably discriminate among providers of
24 functionally equivalent services. If the exclusion cannot
25 exist in a residential area or residential zone, the local
26 government and provider must work cooperatively to approve the
27 appropriate structure design in the residential area or
28 residential zone, consistent with the community and the
29 provision of the provider's service. If the communications
30 facilities are excluded from the residential area or zone, the
31 local government and provider must cooperatively work to

1 approve the appropriate location and structural design in a
2 way that is consistent with the community and the provision of
3 the provider's service.

4 4. A local government may impose a fee, surety, or
5 insurance requirement on a wireless provider when applying to
6 place, construct, or modify a wireless communications facility
7 only if a similar fee, surety, or insurance requirement is
8 also imposed on applicants seeking similar types of zoning,
9 land use, or building-permit review. Fees for review of
10 applications for wireless communications facilities by
11 consultants or experts who are engaged to review general
12 zoning and land use matters on behalf of the local government
13 may be recovered, but only if the recovery is routinely sought
14 from applicants seeking a similar level of review for zoning
15 or land-development approvals, and any fees must be
16 reasonable.

17 5. A local government may not impose structural or
18 construction standards on the placement, construction, or
19 modification of wireless communications facilities beyond
20 those adopted by the local government under chapter 553 which
21 apply to all similar types of construction or require
22 information on compliance with the extraordinary standards.
23 However, local governments may request, but not require, that
24 wireless communication facilities be placed, constructed, and
25 modified in accordance with accepted trade construction
26 standards, such as EIA/TIA standards.

27 (c)(b) Local governments may ~~shall~~ not require
28 wireless providers to provide evidence of a wireless
29 communications facility's compliance with federal regulations,
30 except evidence of compliance with applicable Federal Aviation
31 Administration requirements under 14 C.F.R. s. 77, as amended.

1 However, local governments may request ~~shall receive~~ evidence
2 of proper Federal Communications Commission licensure or other
3 evidence of Federal Communications Commission authorized
4 spectrum use from a wireless provider and may request the
5 Federal Communications Commission to provide information as to
6 a wireless provider's compliance with federal regulations, as
7 authorized by federal law.

8 ~~(d)(e)~~1. A local government shall grant or deny each a
9 properly completed application for a collocation under
10 subparagraph (11)(a)1. of this section within the normal
11 timeframe for a similar building permit review but in no case
12 later than a permit, including permits under paragraph(a), for
13 the collocation of a wireless communications facility on
14 property, buildings, or structures within the local
15 government's jurisdiction within 45 business days after the
16 date the properly completed application is determined to be
17 properly completed initially submitted in accordance with this
18 paragraph the applicable local government application
19 procedures, provided that such permit complies with applicable
20 federal regulations and applicable local zoning or land
21 development regulations, including any aesthetic requirements.
22 Local building regulations shall apply.

23 2. A local government shall grant or deny each a
24 properly completed application for any other wireless
25 communications facility within the normal timeframe for a
26 similar building permit review but in no case later than a
27 permit for the siting of a new wireless tower or antenna on
28 property, buildings, or structures within the local
29 government's jurisdiction within 90 business days after the
30 date the properly completed application is determined to be
31 properly completed initially submitted in accordance with this

1 ~~paragraph the applicable local government application~~
2 ~~procedures, provided that such permit complies with applicable~~
3 ~~federal regulations and applicable local zoning or land~~
4 ~~development regulations, including any aesthetic requirements.~~
5 The building-permit review portion of the local government
6 review must be completed within the normal timeframe for a
7 similar building permit review but in no case later than 45
8 business days after the application is completed. Local
9 building regulations shall apply.

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

1 cured when the applicant resubmits its application to comply
2 with the notice of deficiencies, the local government may
3 continue to request the information until such time as the
4 specified deficiency is cured.

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

23 c. To be effective, a waiver of the timeframes set
24 forth in this paragraph herein must be voluntarily agreed to
25 by the applicant and the local government. A local government
26 may request, but not require, a waiver of the timeframes by
27 the applicant ~~an entity seeking a permit~~, except that, with
28 respect to a specific permit, a one-time waiver may be
29 required in the case of a declared local, state, or federal
30 emergency that directly affects the administration of all
31 permitting activities of the local government.

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

10 (e) A local government may not impose square footage
11 or height limitations on equipment enclosures, cabinets, or
12 buildings inconsistent with those required for other
13 structures in the same zoning district. This paragraph
14 supersedes any existing limitation imposed on equipment
15 enclosures, cabinets, or buildings by ordinance, resolution,
16 or land development regulation.

17 (f) The replacement of or modification to a wireless
18 communications facility, except a tower, that results in a
19 wireless communications facility of similar size, type, and
20 appearance and the replacement or modification of equipment
21 that is not visible from outside the wireless communications
22 site are subject no more than applicable to building-permit
23 review.

24 (g)(e) Any other ~~provision of~~ law to the contrary
25 notwithstanding, the Department of Management Services shall
26 negotiate, in the name of the state, leases for wireless
27 communications facilities that provide access to state
28 government-owned property not acquired for transportation
29 purposes, and the Department of Transportation shall
30 negotiate, in the name of the state, leases for wireless
31 communications facilities that provide access to property

1 | acquired for state rights-of-way. On property acquired for
2 | transportation purposes, leases shall be granted in accordance
3 | with s. 337.251. On other state government-owned property,
4 | leases shall be granted on a space available, first-come,
5 | first-served basis. Payments required by state government
6 | under a lease must be reasonable and must reflect the market
7 | rate for the use of the state government-owned property. The
8 | Department of Management Services and the Department of
9 | Transportation are authorized to adopt rules for the terms and
10 | conditions and granting of any such leases.

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

17 | ~~(f) Any wireless telephone service provider may report~~
18 | ~~to the board no later than September 1, 2003, the specific~~
19 | ~~locations or general areas within a county or municipality~~
20 | ~~where the provider has experienced unreasonable delay to~~
21 | ~~locate wireless telecommunications facilities necessary to~~
22 | ~~provide the needed coverage for compliance with federal Phase~~
23 | ~~II E911 requirements using its own network. The provider shall~~
24 | ~~also provide this information to the specifically identified~~
25 | ~~county or municipality no later than September 1, 2003. Unless~~
26 | ~~the board receives no report that unreasonable delays have~~
27 | ~~occurred, the board shall, no later than September 30, 2003,~~
28 | ~~establish a subcommittee responsible for developing a balanced~~
29 | ~~approach between the ability of providers to locate wireless~~
30 | ~~facilities necessary to comply with federal Phase II E911~~
31 | ~~requirements using the carrier's own network and the desire of~~

1 ~~counties and municipalities to zone and regulate land uses to~~
2 ~~achieve public welfare goals. If a subcommittee is~~
3 ~~established, it shall include representatives from the Florida~~
4 ~~Telecommunications Industry Association, the Florida~~
5 ~~Association of Counties, and the Florida League of Cities. The~~
6 ~~subcommittee shall be charged with developing recommendations~~
7 ~~for the board and any specifically identified municipality or~~
8 ~~county to consider regarding actions to be taken for~~
9 ~~compliance for federal Phase II E911 requirements. In the~~
10 ~~annual report due to the Governor and the Legislature by~~
11 ~~February 28, 2004, the board shall include any recommendations~~
12 ~~developed by the subcommittee to address compliance with~~
13 ~~federal Phase II E911 requirements.~~

14 Section 4. Paragraph (a) of subsection (2) and
15 subsection (3) of section 365.173, Florida Statutes, are
16 amended to read:

17 365.173 Wireless Emergency Telephone System Fund.--

18 (2) Subject to any modifications approved by the board
19 pursuant to s. 365.172(8)(c), the moneys in the fund shall be
20 distributed and used only as follows:

21 (a) Forty-four percent of the moneys shall be
22 distributed each month to counties, based on the total number
23 of wireless subscriber billing addresses in each county, for
24 payment of:

25 1. Recurring costs of providing 911 or E911 service,
26 as provided by s. 365.171(13)(a)6.

27 2. Costs to comply with the requirements for E911
28 service contained in the order and any future rules related to
29 the order.

30
31

1 Any county that receives funds under this paragraph shall
2 establish a fund to be used exclusively for the receipt and
3 expenditure of the revenues collected under this paragraph.
4 All fees placed in the fund, and any interest accrued, shall
5 be used solely for costs described in subparagraphs 1 and 2.
6 The money collected and interest earned in this fund shall be
7 appropriated for these purposes by the county commissioners
8 and incorporated into the annual county budget. The fund shall
9 be included within the financial audit performed in accordance
10 with s. 218.39. A county may carry forward ~~the, for up to 3~~
11 ~~successive calendar years, up to 30 percent of the total funds~~
12 ~~disbursed to the county by the board during a calendar year~~
13 ~~for expenditures for capital outlay, capital improvements, or~~
14 ~~equipment replacement, if the ~~such~~ expenditures are made for~~
15 ~~the purposes specified in this paragraph.~~

16 ~~(3) The Auditor General shall annually audit the fund~~
17 ~~to ensure that moneys in the fund are being managed in~~
18 ~~accordance with this section and s. 365.172. The Auditor~~
19 ~~General shall provide a report of the annual audit to the~~
20 ~~board.~~

21 Section 5. Paragraph (a) of subsection (3) of section
22 337.401, Florida Statutes, is amended to read:

23 337.401 Use of right-of-way for utilities subject to
24 regulation; permit; fees.--

25 (3)(a)1. Because of the unique circumstances
26 applicable to providers of communications services, including,
27 but not limited to, the circumstances described in paragraph
28 (e) and the fact that federal and state law require the
29 nondiscriminatory treatment of providers of telecommunications
30 services, and because of the desire to promote competition
31 among providers of communications services, it is the intent

1 | of the Legislature that municipalities and counties treat
2 | providers of communications services in a nondiscriminatory
3 | and competitively neutral manner when imposing rules or
4 | regulations governing the placement or maintenance of
5 | communications facilities in the public roads or
6 | rights-of-way. Rules or regulations imposed by a municipality
7 | or county relating to providers of communications services
8 | placing or maintaining communications facilities in its roads
9 | or rights-of-way must be generally applicable to all providers
10 | of communications services and, notwithstanding any other law,
11 | may not require a provider of communications services, except
12 | as otherwise provided in subparagraph 2., to apply for or
13 | enter into an individual license, franchise, or other
14 | agreement with the municipality or county as a condition of
15 | placing or maintaining communications facilities in its roads
16 | or rights-of-way. In addition to other reasonable rules or
17 | regulations that a municipality or county may adopt relating
18 | to the placement or maintenance of communications facilities
19 | in its roads or rights-of-way under this subsection, a
20 | municipality or county may require a provider of
21 | communications services that places or seeks to place
22 | facilities in its roads or rights-of-way to register with the
23 | municipality or county and to provide the name of the
24 | registrant; the name, address, and telephone number of a
25 | contact person for the registrant; the number of the
26 | registrant's current certificate of authorization issued by
27 | the Florida Public Service Commission or the Federal
28 | Communications Commission; and proof of insurance or
29 | self-insuring status adequate to defend and cover claims.
30 | Nothing in this subparagraph is intended to limit or expand
31 | any existing zoning or land use authority of a municipality or

1 | county; however, a municipality or county shall exercise ~~no~~
2 | such zoning or land use authority so as to treat
3 | communications services providers in a manner that is
4 | competitively neutral and nondiscriminatory in the use of the
5 | public road and rights-of-way and may not require an
6 | individual license, franchise, or other agreement as
7 | prohibited by this subparagraph.

8 | 2. Notwithstanding the provisions of subparagraph 1.,
9 | a municipality or county may, as provided by 47 U.S.C. s. 541,
10 | award one or more franchises within its jurisdiction for the
11 | provision of cable service, and a provider of cable service
12 | shall not provide cable service without such franchise. Each
13 | municipality and county retains authority to negotiate all
14 | terms and conditions of a cable service franchise allowed by
15 | federal law and s. 166.046, except those terms and conditions
16 | related to franchise fees and the definition of gross revenues
17 | or other definitions or methodologies related to the payment
18 | or assessment of franchise fees and permit fees as provided in
19 | paragraph (c) on providers of cable services. A municipality
20 | or county may exercise its right to require from providers of
21 | cable service in-kind requirements, including, but not limited
22 | to, institutional networks, and contributions for, or in
23 | support of, the use or construction of public, educational, or
24 | governmental access facilities to the extent permitted by
25 | federal law. A provider of cable service may exercise its
26 | right to recover any such expenses associated with such
27 | in-kind requirements, to the extent permitted by federal law.

28 | Section 6. This act shall take effect July 1, 2005.
29 |
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31 |

SENATE SUMMARY

1
2
3 Removes the annual audit of the Wireless Emergency
4 Telephone System Fund from the duties of the Auditor
5 General. Revises fee schedules for interexchange
6 telecommunications providers. Adds definitions relating
7 to wireless telephone communications. Revises duties of
8 the Wireless 911 Board. Provides legislative intent
9 regarding the emergency wireless telephone system.
10 Provides standards for local governments to follow when
11 regulating the placement, construction, or modification
12 of a wireless communications facility. Directs local
13 governments to grant or deny properly completed
14 applications within specified time periods. Establishes
15 procedures by which a provider of wireless communications
16 services may submit an application for local approval.
17 Directs local governments to notify a provider in writing
18 of the deficiencies in an application and whether the
19 resubmission of information properly completes the
20 application. Permits local governments to continue
21 requesting information until the application deficiencies
22 are cured. Provides for a limited review by a local
23 government of an accessory wireless communications
24 facility. Prohibits local governments from imposing
25 certain restrictions on wireless communications
26 facilities. Permits a person who is adversely affected by
27 a decision of a local government relating to a wireless
28 communications facility to bring an action within a
29 specified period. Directs how a county may use funds
30 derived from the E911 fee. Requires the board of county
31 commissioners to appropriate the funds to the proper
uses. Removes the requirement that the Auditor General
annually audit the E911 fund. Requires municipalities and
counties to treat communications services providers in a
manner that is competitively neutral and
nondiscriminatory when using public roads and
rights-of-ways. Prohibits municipalities and counties
from requiring communications services providers to
obtain a license or franchise from the municipality or
county.