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PROPOSED AMENDMENTS TO SB 426
ASSEMBLY COMMERCE COMMITTEE

REQUIRES TWO-THIRDS MAJORITY VOTE (§ 9)

(Reprinted with amendments adopted on April 22, 2003)

REPRINT

SECOND
S.B. 426

SENATE BILL NO. 426—COMMITTEE ON COMMERCE AND
LABOR

MARCH 24, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Establishes statewide procedures for approval of applications for construction of facilities for personal wireless communications. (BDR 58-1286)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~{omitted material}~~ is material to be omitted.

Green numbers along left margin indicate location on the printed bill (e.g., 5-15 indicates page 5, line 15).

AN ACT relating to wireless telecommunications; establishing a statewide procedure for approval by a state or local land use authority of an application for the construction of a facility for personal wireless service under certain circumstances; authorizing a land use authority to assess an applicant for the actual costs incurred by the authority to process an application; requiring that a denial or conditional approval of an application be in writing, set forth each ground for

ASSEMBLY COMMERCE & LABOR

DATE: 5/2/03 ROOM: 4100 EXHIBIT E

SUBMITTED BY: HELEN FOLGY

denial or conditional approval, and be supported by substantial evidence contained in a written record; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1-1 **Section 1.** The Legislature finds and declares that:
1-2 1. Congress enacted the Wireless Communications and Public
1-3 Safety Act of 1999, Public Law 106-81, 113 Stat. 1286, to
1-4 encourage states to make efforts to facilitate the development of
1-5 seamless, ubiquitous and reliable personal wireless services
1-6 networks as a means of promoting public safety by providing
1-7 immediate and critical communications links among members of
the
1-8 public, emergency medical service providers and emergency
1-9 dispatch providers. The widespread use of personal wireless
services

2-1 in the rescue, relief and recovery efforts following the
2-2 September 11, 2001, terrorist attacks, in which landline
2-3 communication networks were unavailable or unsuited to
meeting
2-4 exigent public safety communications needs, demonstrated the
2-5 versatility and robustness of personal wireless services networks
and
2-6 their resulting importance to public safety and homeland
security. It
2-7 is the intent of the Legislature in enacting the provisions of
sections
2-8 3 to 10, inclusive, of this act to reaffirm the federal policy of
2-9 facilitating the development of seamless, ubiquitous and reliable
2-10 personal wireless services networks as reflecting the public
policy of
2-11 the State of Nevada, and to set forth uniform standards and
2-12 procedures that will give effect to this policy.

2-13 2. A large percentage of the residents of this state subscribe
to

2-14 personal wireless services, and there is a substantial public
interest

2-15 in permitting the residents of this state to enjoy the increase in
2-16 personal productivity, flexibility and convenience attributable to
the

2-17 availability of seamless, ubiquitous and reliable personal
wireless

2-18 services. Seamless, ubiquitous and reliable personal wireless
2-19 services also facilitate telecommuting, flexible hours and other
2-20 alternate work arrangements that are integral to the service
economy

2-21 of this state and strategies for reducing road congestion.

2-22 3. Local governments in this state retain an important role in
2-23 decisions concerning the construction of facilities for personal
2-24 wireless services in order to ensure that such decisions give
2-25 consideration to legitimate local concerns. Nevertheless, because

2-26 personal wireless services networks must be seamless,
ubiquitous

2-27 and reliable to be effective, there is a preeminent state interest in
2-28 ensuring the availability of such services throughout the State.

2-29 Furthermore, in the Telecommunications Act of 1996, Public
Law

2-30 104-104, 110 Stat. 56, Congress required that applications for

2-31 facilities for personal wireless services be acted upon in an

2-32 expeditious manner and without unreasonable delay. It is the
intent

2-33 of the Legislature in enacting the provisions of sections 3 to 10,

2-34 inclusive, of this act to balance local, state and national interests
by

2-35 specifying uniform statewide procedures for the review by the
State

2-36 and by any local governments of applications to construct
facilities

2-37 for personal wireless service and to encourage the State and any

2-38 local governments to allow the construction of facilities for
personal

2-39 wireless service on government property.

2-40 **Sec. 2.** Chapter 707 of NRS is hereby amended by adding

2-41 thereto the provisions set forth as sections 3 to 10, inclusive, of
this

2-42 act.

2-43 **Sec. 3.** *As used in sections 3 to 10, inclusive, of this act,*

2-44 *unless the context otherwise requires, the words and terms
defined*

3-1 *in sections 4 to 7, inclusive, of this act have the meanings*
ascribed

3-2 *to them in those sections.*

3-3 **Sec. 4. "Facility for personal wireless service" includes any**
3-4 **building, structure, antenna and other equipment used to**
provide

3-5 **personal wireless service. The term includes a**
telecommunications

3-6 **tower.**

3-7 **Sec. 5. "Land use authority" means an agency, bureau,**
3-8 **board, commission, department, division, officer or employee of**
3-9 **the State or of a local government authorized by law to take**
action

3-10 **on an application to construct a facility for personal wire**
service.

3-11 **Sec. 6. "Personal wireless service" has the meaning**
ascribed

3-12 **to it in 47 U.S.C. § 332(c)(7)(C), as that provision existed on**
3-13 **July 1, 2003.**

3-14 **Sec. 7. "Telecommunications tower" means any**
freestanding

3-15 **tower, monopole or similar structure used to provide personal**
3-16 **wireless services.**

3-17 **Sec. 8. 1. Notwithstanding any specific statute or ordinance**
3-18 **to the contrary, a land use authority with jurisdiction over an**
3-19 **application to construct a facility for personal wireless service**
3-20 **shall approve by administrative staff review the application if:**

3-21 **(a) The applicant is a provider of wireless**
telecommunications

3-22 **that is licensed by the Federal Communications Commission to**
3-23 **provide wireless telecommunications services over a designated**
3-24 **radio frequency and authorized to do business in this state;**
and

3-25 **(b) The facility for personal wireless service is to be:**

3-26 (1) Architecturally integrated with its surroundings so
that

3-27 it appears to be an architectural feature of a building or other
3-28 structure and its nature as a facility for personal wireless
service is

3-29 not readily apparent;

3-30 (2) Collocated with a facility for personal wireless service
3-31 approved, or capable of being approved, by the land use
authority;

3-32 (3) Constructed on an existing building or structure
owned

3-33 by a public utility or on property owned by the State or by a
local

3-34 government; or

3-35 (4) if constructed on an existing building or structure not
3-36 owned by a public utility, architecturally compatible with the
3-37 building or structure and not more than 10 feet taller than the
3-38 building or structure.

3-39 Subsections 1(b)(2) and (4) do not apply to residentially
zoned property.

3-39 2. The land use authority shall not:

3-40 (a) Consider the environmental effects of radio frequency
3-41 emissions from a facility for personal wireless service if the
facility

3-42 complies with the regulations of the Federal Communications
3-43 Commission concerning such emissions.

3-44 (b) Deny or condition the approval of the application to
3-45 construct a facility for personal wireless service on the basis of
its

4-1 *design if the applicant demonstrates that the design of the*
4-2 *facility*

4-2 *is consistent with community aesthetics.*

4-3 *(c) If the application to construct a facility for personal*
4-4 *wireless services requests the use of a public right-of-way, deny*
4-5 *the application if the proposed use:*

4-6 *(1) [Meets all applicable requirements for use of a public*
4-7 *right-of-way:] Is in compliance with all applicable local*
government ordinances and regulations for use of public
rights-of-way; and

4-8 *(2) Does not endanger the public health or safety.*

4-9 *3. A land use authority of a local government may provide for*
4-10 *the administrative appeal of a decision made pursuant to this*
4-11 *section.*

4-12 *Sec. 9. A land use authority, in connection with an*
4-13 *application to construct a facility for personal wireless service,*
4-14 *may assess the applicant for the actual costs incurred by the*
land
4-15 *use authority to process the application.*

4-16 *Sec. 10. 1. A land use authority that denies or conditions*
4-17 *the approval of an application to construct a facility for*
personal
4-18 *wireless service shall issue a written decision. The decision*
must:

4-19 *(a) Set forth with specificity each ground on which the*
4-20 *authority denied or conditioned the approval of the*
application;

4-21 *and*

4-22 *(b) Be supported by substantial evidence contained in a*
written
4-23 *record.*

4-24 *2. A person who brings an action against a land use*
authority

4-25 *pursuant to NRS 278.0233 shall file a copy of the decision and*

4-26 *record with the court.*

4-27 **Sec. 11.** This act becomes effective on July 1, 2003.

4-28 H