

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.

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

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



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

13 2. A large percentage of the residents of this state subscribe to
14 personal wireless services, and there is a substantial public interest
15 in permitting the residents of this state to enjoy the increase in
16 personal productivity, flexibility and convenience attributable to the
17 availability of seamless, ubiquitous and reliable personal wireless
18 services. Seamless, ubiquitous and reliable personal wireless
19 services also facilitate telecommuting, flexible hours and other
20 alternate work arrangements that are integral to the service economy
21 of this state and strategies for reducing road congestion.

22 3. Local governments in this state retain an important role in
23 decisions concerning the construction of facilities for personal
24 wireless services in order to ensure that such decisions give
25 consideration to legitimate local concerns. Nevertheless, because
26 personal wireless services networks must be seamless, ubiquitous
27 and reliable to be effective, there is a preeminent state interest in
28 ensuring the availability of such services throughout the State.
29 Furthermore, in the Telecommunications Act of 1996, Public Law
30 104-104, 110 Stat. 56, Congress required that applications for
31 facilities for personal wireless services be acted upon in an
32 expeditious manner and without unreasonable delay. It is the intent
33 of the Legislature in enacting the provisions of sections 3 to 10,
34 inclusive, of this act to balance local, state and national interests by
35 specifying uniform statewide procedures for the review by the State
36 and by any local governments of applications to construct facilities
37 for personal wireless service and to encourage the State and any
38 local governments to allow the construction of facilities for personal
39 wireless service on government property.

40 **Sec. 2.** Chapter 707 of NRS is hereby amended by adding
41 thereto the provisions set forth as sections 3 to 10, inclusive, of this
42 act.

43 **Sec. 3.** *As used in sections 3 to 10, inclusive, of this act,*
44 *unless the context otherwise requires, the words and terms defined*



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1 in sections 4 to 7, inclusive, of this act have the meanings ascribed
2 to them in those sections.

3 Sec. 4. "Facility for personal wireless service" includes any
4 building, structure, antenna and other equipment used to provide
5 personal wireless service. The term includes a telecommunications
6 tower.

7 Sec. 5. "Land use authority" means an agency, bureau,
8 board, commission, department, division, officer or employee of
9 the State or of a local government authorized by law to take action
10 on an application to construct a facility for personal wire service.

11 Sec. 6. "Personal wireless service" has the meaning ascribed
12 to it in 47 U.S.C. § 332(c)(7)(C), as that provision existed on
13 July 1, 2003.

14 Sec. 7. "Telecommunications tower" means any freestanding
15 tower, monopole or similar structure used to provide personal
16 wireless services.

17 Sec. 8. 1. Notwithstanding any specific statute or ordinance
18 to the contrary, a land use authority with jurisdiction over an
19 application to construct a facility for personal wireless service
20 shall, after notice and an opportunity for a hearing, approve the
21 application if:

22 (a) The applicant is a provider of wireless telecommunications
23 that is licensed by the Federal Communications Commission to
24 provide wireless telecommunications services over a designated
25 radio frequency and authorized to do business in this state; and

26 (b) The facility for personal wireless service is to be:

27 (1) Architecturally integrated with its surroundings so that
28 it appears to be an architectural feature of a building or other
29 structure and its nature as a facility for personal wireless service is
30 not readily apparent;

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

33 (3) Constructed on an existing building or structure owned
34 by a public utility or on property owned by the State or by a local
35 government; or

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

40 2. The land use authority shall not:

41 (a) Consider the environmental effects of radio frequency
42 emissions from a facility for personal wireless service if the facility
43 complies with the regulations of the Federal Communications
44 Commission concerning such emissions.



- 1 ***(b) Deny or condition the approval of the application to***
2 ***construct a facility for personal wireless service on the basis of its***
3 ***design if the applicant demonstrates that the design of the facility***
4 ***is consistent with community aesthetics.***
5 ***(c) If the application to construct a facility for personal***
6 ***wireless services requests the use of a public right-of-way, deny***
7 ***the application if the proposed use:***
8 ***(1) Meets all applicable requirements for use of a public***
9 ***right-of-way; and***
10 ***(2) Does not endanger the public health or safety.***
11 ***3. A land use authority of a local government may provide for***
12 ***the administrative appeal of a decision made pursuant to this***
13 ***section.***
14 ***Sec. 9. A land use authority, in connection with an***
15 ***application to construct a facility for personal wireless service,***
16 ***may assess the applicant for the actual costs incurred by the land***
17 ***use authority to process the application.***
18 ***Sec. 10. 1. A land use authority that denies or conditions***
19 ***the approval of an application to construct a facility for personal***
20 ***wireless service shall issue a written decision. The decision must:***
21 ***(a) Set forth with specificity each ground on which the***
22 ***authority denied or conditioned the approval of the application;***
23 ***and***
24 ***(b) Be supported by substantial evidence contained in a written***
25 ***record.***
26 ***2. A person who brings an action against a land use authority***
27 ***pursuant to NRS 278.0233 shall file a copy of the decision and***
28 ***record with the court.***
29 ***Sec. 11. This act becomes effective on July 1, 2003.***

