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Revised

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 placement, construction or modification 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.

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 zoning authority of an application for the placement, construction or modification of a facility for personal wireless service under certain circumstances; authorizing a zoning authority to impose a fee to process an application; requiring that a denial of an application be in writing and supported by substantial evidence contained in a written record; providing for the appeal in the district court of a denial of an application on an expedited basis; requiring an award of attorney's fees under certain circumstances; 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

2-1 dispatch providers. The widespread use of personal wireless services
2-2 in the rescue, relief and recovery efforts following the
2-3 September 11, 2001, terrorist attacks, in which landline
2-4 communication networks were unavailable or unsuited to meeting
2-5 exigent public safety communications needs, demonstrated the
2-6 versatility and robustness of personal wireless services networks and
2-7 their resulting importance to public safety and homeland security. It
2-8 is the intent of the Legislature in enacting the provisions of sections
2-9 3 to 14, inclusive, of this act to reaffirm the federal policy of
2-10 facilitating the development of seamless, ubiquitous and reliable
2-11 personal wireless services networks as reflecting the public policy of
2-12 the State of Nevada, and to set forth uniform standards and
2-13 procedures that will give effect to this policy.

2-14 2. A large percentage of the residents of this state subscribe to
2-15 personal wireless services, and there is a substantial public interest
2-16 in permitting the residents of this state to enjoy the increase in
2-17 personal productivity, flexibility and convenience attributable to the
2-18 availability of seamless, ubiquitous and reliable personal wireless
2-19 services. Seamless, ubiquitous and reliable personal wireless
2-20 services also facilitate telecommuting, flexible hours and other
2-21 alternate work arrangements that are integral to the service economy
2-22 of this state and strategies for reducing road congestion.

2-23 3. State and local governments in this state retain an important role in
2-24 decisions concerning the placement, construction and modification
2-25 of facilities for personal wireless services in order to ensure that
2-26 such decisions give consideration to legitimate local concerns of Nevada citizens.
2-27 Nevertheless, because personal wireless services networks must be
2-28 seamless, ubiquitous and reliable to be effective, there is a
2-29 preeminent state interest in ensuring the availability of such services
2-30 throughout the State. Furthermore, in the Telecommunications Act
2-31 of 1996, Public Law 104-104, 110 Stat. 56, Congress required that
2-32 applications for facilities for personal wireless services be acted
2-33 upon in an expeditious manner and without unreasonable delay. It is
2-34 the intent of the Legislature in enacting the provisions of sections 3
2-35 to 14, inclusive, of this act to balance local, state and national
2-36 interests by specifying uniform statewide procedures for the review
2-37 by state and local governments of applications for the placement, construction
2-38 and modification of facilities for personal wireless services. Further, it is the intent
of the legislature to encourage all state and local government authorities to allow
the construction and placement of wireless facilities on government owned properties.

2-39 **Sec. 2.** Chapter 707 of NRS is hereby amended by adding
2-40 thereto the provisions set forth as sections 3 to 14, inclusive, of this
2-41 act.

2-42 **Sec. 3.** *As used in sections 3 to 14, inclusive, of this act,*
2-43 *unless the context otherwise requires, the words and terms defined*
2-44 *in sections 4 to 11, inclusive, of this act have the meanings*
2-45 *ascribed to them in those sections.*

3-1 Sec. 4. "Application" includes an application, petition or
3-2 other request to a zoning authority for the right to construct facilities for personal
wireless services, any approval, conditional
3-3 use permit, exemption, permit, special use permit, special
3-4 exception or variance.

3-5 Sec. 5. "Facility for personal wireless service" includes any
3-6 building, structure, antenna and other equipment used to provide
3-7 personal wireless service. The term includes a telecommunications
3-8 tower.

3-9 Sec. 6. "Local zoning or State Government Authority" Hearing examiner" means the
government agency authorized to consider applications for the right to construct facilities for
personal wireless services. a hearing examiner
3-10 appointed pursuant to NRS 278.262.

3-11 Sec. 7. "Governing body" has the meaning ascribed to it in
3-12 NRS 278.015.

3-13 Sec. 8. "Personal wireless service" has the meaning ascribed
3-14 to it in 47 U.S.C. § 332(c)(7)(C), as that provision existed on
3-15 July 1, 2003.

3-16 Sec. 9. "Planning commission" has the meaning ascribed to
3-17 it NRS 278.013.

3-18 Sec. 10. "Telecommunications tower" means any
3-19 freestanding tower, monopole or similar structure used to provide
3-20 personal wireless services.

3-21 Sec. 11. "Zoning authority" includes a governing body,
3-22 planning commission or hearing examiner. The term does not
3-23 include a zoning board of adjustment created by a governing body
3-24 pursuant to NRS 278.270 to 278.310, inclusive.

3-25 Sec. 12. 1. Notwithstanding any specific statute or
3-26 ordinance to the contrary, a local zoning or state government authority zoning authority
with jurisdiction
3-27 over an application to place, construct, or modify a facility for
3-28 personal wireless service shall approve by administrative review the application:

3-29 (a) If the applicant:

3-30 (1) Is a provider of wireless telecommunications that is
3-31 licensed by the Federal Communications Commission to provide
3-32 wireless telecommunications services over a designated radio
3-33 frequency and authorized to do business in this state; and

3-34 (2) Complies with the procedural requirements of the local zoning or state
government authority
3-35 zoning authority;

3-36 (b) If the application, supporting materials and testimonial or
3-37 documentary evidence produced at a public hearing on the
3-38 application demonstrate that the facility for personal wireless
3-39 service complies with applicable statutes and zoning regulations or ordinances
3-40 governing:

3-41 (1) Placement of the facility within a zoning district;

3-42 (2) Setback;

3-43 (3) Collocation of the facility on an existing building or

~~3-44 other structure approved by the state or local government authority zoning authority as a facility for~~
~~3-45 personal wireless services;~~

4-1 ~~(4) Structural and, except as otherwise provided in~~
4-2 ~~subsection 2, design standards; and~~
4-3 ~~(5) If the facility is a telecommunications tower, limitations~~
4-4 ~~on the height of the tower;~~
4-5 ~~(c) If the application is for the placement of a facility, upon a~~
4-6 ~~determination that there is no alternative location for the~~
4-7 ~~placement of the facility that is:~~
4-8 ~~(1) Readily available to the applicant;~~
4-9 ~~(2) Commercially viable; and~~
4-10 ~~(3) Technically equivalent to the proposed facility; and~~
4-11 ~~(d) If the local zoning or government zoning authority imposes a fee or assesses a~~
4-12 ~~charge~~
4-13 ~~for costs pursuant to section 13 of this act, upon payment of the~~
4-14 ~~fee or assessment.~~

(2) if the facility is proposed to be located on an existing building or structure, designed to be architecturally compatible with the structure and the height does not exceed 20 feet above the height of the structure, or

(3) the facility is a stealth design; or

(4) the antenna is located on a collocatable structure; or

(5) the antenna is to be located on a public utility structure or government owned property.

4-14 2. The ~~A~~ local zoning or state government authority zoning authority evaluating the
4-15 application shall not consider:

4-16 (a) The environmental effects of radio frequency emissions
4-17 from a facility for personal wireless service if the facility complies
4-18 with the regulations of the Federal Communications Commission
4-19 concerning such emissions.

4-20 (b) Design requirements that are purely aesthetic in nature,
4-21 including, without limitation, color, finish or harmony with
4-22 existing structures.

4-23 Sec. 13. The state or local government ~~A~~ zoning authority, in connection with an
4-24 application for the placement ~~or~~ construction ~~or~~ modification of a
4-25 facility for personal wireless service, may:

4-26 1. Impose a fee for the application. The fee must be
4-27 comparable to fees charged for comparable applications.

4-28 2. Assess the applicant for the actual costs incurred by the
4-29 zoning authority to process the application. These costs may
4-30 include, without limitation:

4-31 (a) Legal fees; and

4-32 (b) Fees paid to experts retained by the zoning authority to
4-33 assist in evaluating alternative locations for placement of a facility
4-34 pursuant to section 12 of this act.

4-35 Sec. 14. 1. A local zoning or state government zoning authority that denies an
4-36 application to

4-37 place, construct or modify a facility for personal wireless service
4-38 shall issue a written decision. The decision must be supported by

4-37 *substantial evidence contained in a written record, regarding the applicant's compliance*
4-38 *with the standards set forth in Section 12. .*

4-38 *2. Notwithstanding any specific statute or ordinance to the*
4-39 *contrary, the denial of an application to place, or construct or modify*
4-40 *a facility for personal wireless service may be appealed directly to*
4-41 *the district court in the judicial district of the location, or proposed*
4-42 *location, of the facility.*

4-43 *3. If the appeal is filed not later than 30 days after the denial*
4-44 *of the application, the district court shall hear and decide the*
4-45 *appeal within 10 days after the filing of the appeal.*

5-1 4. *If the court determines that the local zoning or state government zoning authority |
violated*

5-2 *any of the provisions of section 12 of this act, the court shall, in*

5-3 *addition to any other relief, award reasonable attorney's fees to*

5-4 *the prevailing party.*

5-5 **Sec. 15.** This act becomes effective on July 1, 2003.

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