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WORK SESSION INFORMATION

SENATE COMMITTEE ON COMMERCE AND LABOR

Thursday, April 10, 2003

BILLS UNDER CONSIDERATION

The following measures will be considered for action during the work session of April 10, 2003, as time allows, or continued to the committee's next regular meeting. In some cases, possible amendments are noted; these were either suggested during testimony or submitted in writing and do not necessarily have the approval of the committee, but are merely compiled here to assist the committee in its deliberations.

Information on the following bills is contained herein:

Senate Bill 351

Senate Bill 373

Senate Bill 426

SENATE BILL 351 (BDR 54-123; Senate Committee on Human Resources and Facilities; heard 4/1; work sessions 4/4, 4/9; NACT)

AN ACT relating to professions; declaring the practice of counseling compulsive gamblers to be a learned profession; requiring persons who counsel compulsive gamblers to be licensed or certified by the Board of Examiners for Alcohol and Drug Abuse Counselors; requiring the Board to adopt certain regulations; providing a penalty; and providing other matters properly relating thereto.

Since the hearing on April 1, 2003, parties have agreed to several substantial amendments to the bill. Additionally, acceptable language was taken from S.B. 349 and placed into S.B. 351. A multi-colored mock-up of the bill with proposed amendments is located behind **TAB A**.

SENATE BILL 373 (BDR 32-858; Senator Schneider; heard 4/3; NACT)

AN ACT relating to intoxicating liquor; revising certain provisions governing the importation of liquor; and providing other matters properly relating thereto.

Some of the interested parties have indicated they will present an amendment during the hearing.

SENATE BILL 426 (BDR 58-1286; Senate Commerce and Labor; heard 4/3; NACT)

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.

Helen Foley and James Jackson presented an amendment that is included behind **TAB A**.

Dan Musgrove also presented an amendment that is included behind **TAB B**.

There was discussion as to whether the amendment presented by Ms. Foley and Mr. Jackson addressed the concerns in Mr. Musgrove's amendment. The Chair suggested the parties review both documents in this regard and return at a work session.

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.

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 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. 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.

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*
³⁻³ *facilities for personal wireless services [any approval, conditional*
³⁻⁴ *use permit, exemption, permit, special use permit, special*
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.** *[“Hearing examiner” means a hearing examiner*
³⁻¹⁰ *appointed pursuant to NRS 278.262.] “Local zoning or State*
Government Authority” means the government agency authorized
³⁻¹¹ *to consider applications for the right to construct facilities for*
³⁻¹² *personal wireless services.*

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 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 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**
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 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 zoning authority as a facility
for*

3-45 *personal wireless service;*

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 zoning authority imposes a fee or assesses a charge
4-12 for costs pursuant to section 13 of this act, upon payment of
the*

4-13 *fee or assessment.]*

4-13.1 *(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 10 feet above the height of the structure; or*

4-13.2 *(3) The facility is a stealth design; or*

4-13.3 *(4) The antennae is located on a co-locatable structure; or*

4-13.4 *(5) The antennae is to be located on a public utility
structure or government-owned property.*

4-13.5 *A local government may provide a process to appeal an
administrative decision made pursuant to this section.*

4-14 *2. [A]The local [zoning] or state government authority shall
not:*

4-15 *[consider:]*

4-15 *(a) Consider [T]the environmental effects of radio frequency
emissions*

4-16 *from a facility for personal wireless service if the facility
complies*

4-17 with the regulations of the Federal Communications
Commission

4-18 concerning such emissions.

4-19 4-19 (b) [Design requirements that are purely aesthetic in
nature,

4-20 including, without limitation, color, finish or harmony with
4-21 existing structures.] Deny or condition an application based
upon design requirements if the applicant has demonstrated
that the facility is consistent with community aesthetics; or

4-21.1 (c) Deny the use of rights-of-way for wireless facilities

4-21.1.1.1 (1) as long as public health and safety will not be
endangered by the placement of such a facility, and

4-21.1.1.2 (2) that meet a local or state government's requirements
for use of public rights-of-way.

4-22 Sec. 13. [A zoning] The state or local government authority,
in connection with an

4-23 application for the [placement,] construction [or modification]
of a

4-24 facility for personal wireless service, may:

4-25 [1. Impose a fee for the application. The fee must be
4-26 comparable to fees charged for comparable applications.]

4-27 [2.] 1. Assess the applicant for the actual costs incurred by
the

4-28 zoning authority to process the application. [These costs may

4-29 include, without limitation:

4-30 (a) Legal fees; and

4-31 (b) Fees paid to experts retained by the zoning authority to
4-32 assist in evaluating alternative locations for placement of a
facility

4-33 pursuant to section 12 of this act.]

4-34 Sec. 14. 1. A local zoning or state government [zoning]
authority that denies or conditions an application to

4-35 [place,] construct [or modify] a facility for personal wireless
service

4-36 shall make specific findings based upon the evidence before it
4-37 as to why the application was conditioned or denied. The
4-38 required findings must be included as part of a record on any
4-39 action brought pursuant to NRS 278.0233 regarding the
4-40 applicant's compliance 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, construct or
4-40 modify

4-40 a facility for personal wireless service may be appealed directly
4-41 to

4-41 the district court in the judicial district of the location, or
4-42 proposed

4-42 location, of the facility.

4-43 3. If the appeal is filed not later than 30 days after the
4-44 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 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.

Senate Bill 426
(As Introduced)
SUGGESTED AMENDMENT
Proposed by CLARK COUNTY NEVADA
Contact person: Dan Musgrove (702) 860-9900

Explanation of Amendment

Clark County notes that many requirements of this bill mirror the requirements of the federal Telecommunications Act of 1996. That act grants state and local governments the right to impose some aesthetic restrictions on telecommunications facilities providing the restrictions do not have the effect of preventing the carrier from establishing its service. The ability of local governments to impose design criteria on telecommunications facilities is critical to ensuring that required facilities have a minimal negative impact on surrounding development, especially residential development. Clark County in particular has developed a regulatory system for these uses that make the location and approval of telecommunications towers and antennas that meet certain design and/or location criteria easy to obtain. In many situations, these approvals do not need a formal land use application approval, only a building permit. In other instances, an administrative application that is relatively simple and quickly processed can approve the facilities. Over the past five years that this system has been in place, there have been building permits for 239 communications facilities approved, only 65 of which required a public hearing process. The system has encouraged collocation, the location of antennas on existing buildings, and integrating antennas on common structures such as flagpoles and light poles. The overall effect has been to minimize land use conflicts while at the same time allowing the carriers to quickly and efficiently establish their service. The success of this system is contingent on Clark County's ability to regulate design. If the bill is adopted with the prohibition of the consideration of aesthetic design criteria, Clark County believes the foundation for its successful regulatory scheme will be eliminated and carriers will be able to require the approval of intrusive towers in residential areas without regard to the visual impact they will have on the residents of the area.

The amendment also deletes the expedited appeal process if an application is denied.

Amend section 12, page 4, by deleting lines 1 and 2 and inserting:

"(4) Structural and design standards; and"

Amend section 12, page 4, by deleting lines 14 and 15 and inserting:

"2. A zoning authority shall not consider the environmental effects of radio frequency emissions"

Amend section 12, page 4, by deleting lines 19 through 21.

Amend section 12, page 4, by deleting lines 43 through 45.

Amend section 12, page 5, line 1, by deleting "4." and inserting "3."