
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.

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 **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



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

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

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

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

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



- 1 **Sec. 4.** *“Application” includes an application, petition or*
2 *other request to a zoning authority for any approval, conditional*
3 *use permit, exemption, permit, special use permit, special*
4 *exception or variance.*
- 5 **Sec. 5.** *“Facility for personal wireless service” includes any*
6 *building, structure, antenna and other equipment used to provide*
7 *personal wireless service. The term includes a telecommunications*
8 *tower.*
- 9 **Sec. 6.** *“Hearing examiner” means a hearing examiner*
10 *appointed pursuant to NRS 278.262.*
- 11 **Sec. 7.** *“Governing body” has the meaning ascribed to it in*
12 *NRS 278.015.*
- 13 **Sec. 8.** *“Personal wireless service” has the meaning ascribed*
14 *to it in 47 U.S.C. § 332(c)(7)(C), as that provision existed on*
15 *July 1, 2003.*
- 16 **Sec. 9.** *“Planning commission” has the meaning ascribed to*
17 *it NRS 278.013.*
- 18 **Sec. 10.** *“Telecommunications tower” means any*
19 *freestanding tower, monopole or similar structure used to provide*
20 *personal wireless services.*
- 21 **Sec. 11.** *“Zoning authority” includes a governing body,*
22 *planning commission or hearing examiner. The term does not*
23 *include a zoning board of adjustment created by a governing body*
24 *pursuant to NRS 278.270 to 278.310, inclusive.*
- 25 **Sec. 12.** *I. Notwithstanding any specific statute or*
26 *ordinance to the contrary, a zoning authority with jurisdiction*
27 *over an application to place, construct, or modify a facility for*
28 *personal wireless service shall approve the application:*
 - 29 **(a)** *If the applicant:*
 - 30 **(1)** *Is a provider of wireless telecommunications that is*
31 *licensed by the Federal Communications Commission to provide*
32 *wireless telecommunications services over a designated radio*
33 *frequency and authorized to do business in this state; and*
 - 34 **(2)** *Complies with the procedural requirements of the*
35 *zoning authority;*
 - 36 **(b)** *If the application, supporting materials and testimonial or*
37 *documentary evidence produced at a public hearing on the*
38 *application demonstrate that the facility for personal wireless*
39 *service complies with applicable zoning regulations or ordinances*
40 *governing:*
 - 41 **(1)** *Placement of the facility within a zoning district;*
 - 42 **(2)** *Setback;*
 - 43 **(3)** *Collocation of the facility on an existing building or*
44 *other structure approved by the zoning authority as a facility for*
45 *personal wireless service;*



- 1 (4) *Structural and, except as otherwise provided in*
- 2 *subsection 2, design standards; and*
- 3 (5) *If the facility is a telecommunications tower, limitations*
- 4 *on the height of the tower;*
- 5 (c) *If the application is for the placement of a facility, upon a*
- 6 *determination that there is no alternative location for the*
- 7 *placement of the facility that is:*
- 8 (1) *Readily available to the applicant;*
- 9 (2) *Commercially viable; and*
- 10 (3) *Technically equivalent to the proposed facility; and*
- 11 (d) *If the zoning authority imposes a fee or assesses a charge*
- 12 *for costs pursuant to section 13 of this act, upon payment of the*
- 13 *fee or assessment.*
- 14 2. *A zoning authority shall not consider:*
- 15 (a) *The environmental effects of radio frequency emissions*
- 16 *from a facility for personal wireless service if the facility complies*
- 17 *with the regulations of the Federal Communications Commission*
- 18 *concerning such emissions.*
- 19 (b) *Design requirements that are purely aesthetic in nature,*
- 20 *including, without limitation, color, finish or harmony with*
- 21 *existing structures.*
- 22 **Sec. 13.** *A zoning authority, in connection with an*
- 23 *application for the placement, construction or modification of a*
- 24 *facility for personal wireless service, may:*
- 25 1. *Impose a fee for the application. The fee must be*
- 26 *comparable to fees charged for comparable applications.*
- 27 2. *Assess the applicant for the actual costs incurred by the*
- 28 *zoning authority to process the application. These costs may*
- 29 *include, without limitation:*
- 30 (a) *Legal fees; and*
- 31 (b) *Fees paid to experts retained by the zoning authority to*
- 32 *assist in evaluating alternative locations for placement of a facility*
- 33 *pursuant to section 12 of this act.*
- 34 **Sec. 14.** 1. *A zoning authority that denies an application to*
- 35 *place, construct or modify a facility for personal wireless service*
- 36 *shall issue a written decision. The decision must be supported by*
- 37 *substantial evidence contained in a written record.*
- 38 2. *Notwithstanding any specific statute or ordinance to the*
- 39 *contrary, the denial of an application to place, construct or modify*
- 40 *a facility for personal wireless service may be appealed directly to*
- 41 *the district court in the judicial district of the location, or proposed*
- 42 *location, of the facility.*
- 43 3. *If the appeal is filed not later than 30 days after the denial*
- 44 *of the application, the district court shall hear and decide the*
- 45 *appeal within 10 days after the filing of the appeal.*



1 ***4. If the court determines that the zoning authority violated***
2 ***any of the provisions of section 12 of this act, the court shall, in***
3 ***addition to any other relief, award reasonable attorney's fees to***
4 ***the prevailing party.***

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

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