

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1495 w/CS Relating to Wireless Emergency Telephone Service

**SPONSOR(S):** Murzin

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 2774

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Subcommittee on Telecommunications</u>	<u>8 Y, 0 N w/am</u>	<u>Holt</u>	<u>Liepshutz</u>
2) <u>Business Regulation</u>	<u>34 Y, 1 N w/CS</u>	<u>Holt</u>	<u>Liepshutz</u>
3) <u>Local Government &amp; Veterans' Affairs</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

The bill substantially amends section 365.172, Florida Statutes. The bill creates new definitions and new legislative findings. The bill encourages the placement of antennas that are collocated on existing structures, if they meet the applicable requirements review, and regulations. It creates new standards for siting wireless communications facilities and revises the siting applications process. Modifications are made on the restrictions for wireless communications facilities. The bill further creates a cause of action for any person adversely affected by any action or failure to act by a local government which is inconsistent with the statute on siting of wireless communications facilities.

There appears to be negligible fiscal impacts on state and local governments.

The bill takes effect July 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1495b.br.doc

**DATE:** April 12, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

The bill amends provisions of s. 365.172, F.S., relating to siting of wireless communications facilities.

#### DEFINITIONS

The bill creates the following definitions in s. 365.172(3), F.S., and accordingly alphabetizes the section:

- Administrative review – means the nondiscretionary review conducted by staff for compliance with local government ordinances, but does not include a public hearing or review of public input.
- Building-permit review - means a review for compliance with building construction standards adopted by the local government under chapter 553 and does not include review for compliance with land development regulations.
- Collocation - means the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent antenna. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets or buildings, and cables, brackets, and other equipment associated with the location and operation of antennas.
- Existing structure - means a structure that exists at the time an application for permission to place antennas on a structure is filed with a local government. The term includes any structure that can support the attachment of antennas, including, but not limited to, towers, buildings, utility structures, light poles, water towers, clock towers, bell towers, and steeples.
- Historic building, structure, or district – means any building, structure, or district that has been officially designated as a historic building, historic structure, or historic district through a federal, state, or local designation program.
- Land-development regulation - means any ordinance enacted by a local governing body for the regulation of any aspect of development, including an ordinance governing zoning, subdivisions, landscaping, tree protection, or signs, or any other ordinance concerning any aspect of the development of land. The term does not include any building-construction standard adopted under and in compliance with chapter 553.
- Provider or wireless provider – means a person or entity who provides service and either:

1. Is subject to the requirements of the order; or
  2. Elects to provide wireless 911 service or E911 service in this state.
- Tower - means any structure designed primarily to support wireless provider's antennas.
  - Wireless communications facility - means any equipment or facility used to provide service, and includes, but is not limited to, antennas, towers, equipment enclosures, cabling, antenna brackets, and other such equipment.
  - Wireless communications site - means the area on the roof, structure, or ground which is designed, intended to be used, or is used for the location of a wireless communications facility, and any fencing and landscaping provided in association with the wireless communications facility.

### WIRELESS 911 BOARD

The bill requires the Wireless 911 Board (Board) to hire an independent executive director with experience in telecommunications and emergency 911 issues. It also requires the Board to secure the services of an independent, private attorney by July 1, 2004. Further the Board is to, no later than August 1, 2004, establish a subcommittee to analyze the cost and effectiveness of a non-emergency 311 system. The subcommittee shall report its findings to the Board by December 31, 2004.

### LEGISLATIVE FINDINGS

In order to balance the public need for reliable E911 services through reliable wireless systems with the public interest served by governmental zoning and land development regulations and notwithstanding any other law or local ordinance to the contrary, the following standards shall apply to a local government's regulation on the placement, construction, or modification of a wireless communications facility:

### NEW SITING STANDARDS

Section 365.172(11)(a), F.S., currently provides that any antenna, and related equipment to service the antenna that is being collocated, on an existing above-ground structure are not subject to land development regulation adopted pursuant to s. 163.3202, F.S., land development regulations, provided the height of the existing structure is not increased. However, construction of the antenna and related equipment are subject to local building regulations and any existing permits or agreements for such property, buildings, or structures. Also, nothing in the statute relieves the permit holder for or owner of the existing structure of compliance with any applicable condition or requirement of a permit, agreement, or land development regulation, including any aesthetic requirements, or law.

The bill changes s. 365.172(11)(a), F.S., by deleting the requirement that the existing structure be above-ground; by exempting collocation from all land development regulation; and by also exempting placement, construction, modification, or operation, and maintenance of related equipment to serve the antenna from all land-development regulations. The bill also deletes the requirement that construction of the antenna and related equipment be subject to any existing permits or agreements. It also limits application of aesthetic requirements to those that were previously approved and imposed by administrative order, resolution, or ordinance for development of the specific wireless communications site and those that are not inconsistent with this subsection of statute. However, existing conditions or requirements of an existing permit or agreement for an antenna on a historic building, historic structure, or historic district shall apply regardless of whether such conditions or requirements are inconsistent with the bill.

Under the bill, an existing tower, including a nonconforming tower, may be modified or replaced without increasing the height in order to permit collocation. The replacement or modification is subject only to

administrative review and to building-permit review. The bill prohibits a local government from reviewing or considering a wireless provider's business need for a specific location for a wireless communications site or the need for wireless service to be provided from a particular site. It also prohibits local government from evaluating the wireless provider's service quality or the network design. Local government may consider only issues relating to land use and zoning in evaluating an application for placement of a wireless communications facility.

The bill provides requirements for setback or distance separation of towers. It is unclear whether the setback or distance separation requirements apply to antenna, to any equipment related to or serving the tower, or to any other portion of the wireless communications site, such as fencing or landscaping. The setback or separation required of a tower may not exceed the minimum distance necessary to satisfy the specific health, safety, or welfare concern directly protected by the requirement.

Under the bill, a local government must provide a reasonable opportunity for placing some form or type of wireless communication facility in all areas of a local government's jurisdiction, unless it can demonstrate that a prohibition of all types of wireless communications facilities in a specific location or area is the only manner in which to protect the public health, safety, and welfare of that area.

The bill provides that a local government may impose a fee, surety, or insurance requirement on a wireless provider when applying to place, construct, or modify a wireless communications facility only if a similar fee, surety, or insurance requirement is also imposed on applicants seeking similar types of zoning, land use, or building-permit review. Fees for review of applications for wireless communications facilities by consultants or experts who are routinely engaged to review general zoning and land use matters on behalf of the local government may be recovered from wireless providers, but only if the recovery is routinely sought from all applicants seeking a similar level of review for zoning or land-development approvals, and any fees must be reasonable.

A local government may request evidence of proper Federal Communications Commission (FCC) licensure or other evidence of FCC authorized spectrum use from a provider.

#### REVISIONS TO APPLICATION PROCESS

Current law requires a local government to grant or deny a properly completed application for a permit for the collocation of a wireless communications facility on property, buildings, or structures within the local government's jurisdiction within 45 business days after the date the properly completed application is initially submitted in accordance with the applicable local government application procedures, provided that such permit complies with applicable federal regulations and applicable local zoning or land development regulations, including any aesthetic requirements. Local building regulations are also to apply.

Current law further has the same requirements for granting or denying application for a siting permit of a new wireless tower or antenna on property, buildings, or structures within 90 days after the date the application is initially submitted.

The bill applies the 45 business day approval provisions to a properly completed application for a wireless communications facility reviewed only through administrative review or building permit review. If multiple departments must conduct administrative reviews, they must be done concurrently within the 45-business day timeframe. The bill applies the 90 day approval provisions if approval of the application is through some other type of review. If the review requires an administrative review and a non-administrative review, all reviews must be done within the applicable timeframe. Presumably this means that the administrative review still must be done within the 45 day period not both reviews done within the 90 day period.

The bill creates a new provision that an application is deemed submitted or resubmitted on the date the application is filed with local government. The bill provides that if an initial application is not properly

completed and the applicant must resubmit information to cure stated deficiencies, the local government is to notify the applicant within 20 business days after the additional information is submitted as to whether the application is then properly completed or if there are any remaining deficiencies. Any deficiencies not specified in the initial notice are waived.

Current law allows extension of the timeframes and deadlines for review of both applications for collocation and a new wireless tower, under specified conditions. The bill changes this to apply to properly completed applications for a wireless communications facility. A waiver of the timeframes must be voluntarily agreed to by the applicant and the local government. Additionally, a local government may request, but not require, a waiver of the timeframes by the applicant.

#### REVISIONS TO RESTRICTIONS ON FACILITIES

The bill deletes s. 365.172(11)(d), F.S., that currently provides that if any additional wireless communications facilities, such as communication cables, adjacent accessory structures, or adjacent accessory equipment used in the provision of cellular, enhanced specialized mobile radio, or personal communications services, required within the existing secured equipment compound within the existing site, they are to be deemed a permitted use or activity. Local building and land development regulations, including any aesthetic requirements, apply.

The bill prohibits a local government from imposing square footage or height limitations on equipment enclosures, cabinets, or buildings inconsistent with those required for other structures in the same zoning district. This provision supercedes any existing limitation imposed on equipment enclosures, cabinets, or buildings by agreement, ordinance, resolution, or land development regulation.

The replacement of visible equipment or structures with equipment or structures of the same size, type, and appearance and the replacement of equipment that is not visible from outside the wireless communications site are not modifications and are subject only to building-permit review.

The bill provides that if a local government regulation or procedure does not conform to the requirements of this section, the regulation or procedure must be amended to do so by January 1, 2005.

#### STATE GOVERNMENT-OWNED PROPERTY

The bill provides that use of state government-owned property for wireless communications facilities is encouraged. The bill extends not only to the Department of Management Services (DMS), the authority to negotiate in the name of the State, leases for wireless communications facilities, but also a DMS designated representative.

The bill also provides that non-transportation state government-owned property is presumed available for leasing to wireless providers, and it specifies how this presumption may be rebutted. The Board of Trustees of the Internal Improvement Trust Fund or the Division of State Lands, acting as the Board of Trustee designee, shall make the final determination of property availability. Either of these two entities shall also by September 1, 2004, compile an inventory of available and non-available state owned properties for submission to the DMS. Leases for non-transportation government-owned property shall be procured through negotiation by DMS, or its designee, or other competitive procurement method. DMS is granted authority to adopt rules relating to the leasing process. A percentage, as indicated in s. 365.173(2)(a), F.S., of the lease payment goes into the Wireless Emergency Telephone System for distribution to counties for E911 for 911 service costs, and another percentage of the lease payment goes into the Supervision Trust Fund for distribution to DMS for costs associated with implementing the lease program. If a wireless provider leases state government-owned property and that property is exempt from local zoning or land use regulations, the wireless communications facility is also exempt from these regulations and is subject only to the requirement of obtaining any applicable building permit.

## REMEDIES FOR DELAYS IN SITING WIRELESS COMMUNICATIONS FACILITIES

The bill states that the DMS or Department of Transportation (DOT) must grant or deny properly completed applications within 45 business days. If any deficiencies exist in the applications, applicants shall be notified with specificity of these deficiencies, and if cured, shall make the application properly completed.

Within 20 days notification is sent to the applicant of a properly completed application, or the specific deficiencies, which if cured, that would properly complete the application.

If deficiencies exist, and resubmission of additional information is made, within 10 days the applicant is to be notified of the completeness or continued incompleteness of the application. Waiver of the timeframes must be voluntarily agreed to by the applicant, DMS, and DOT.

The bill creates a cause of action for any person adversely affected by any action or failure to act by a local government which is inconsistent with subsection (11) of s. 365.172, F.S., on facilitating E911 service implementation (siting of wireless communications facilities). The adversely affected person may bring an action in a court of competent jurisdiction within 30 days after the action or the failure to act. The court is to consider the matter on an expedited basis.

The bill deletes s. 365,172(11)(f), F.S., that currently provides that any wireless telephone service provider may report to the board no later than September 1, 2003, the specific locations or general areas within a county or municipality where the provider has experienced unreasonable delay to locate wireless telecommunications facilities necessary to provide the needed coverage for compliance with federal Phase II E911 requirements using its own network. The provider shall also provide this information to the specifically identified county or municipality no later than September 1, 2003. Unless the board receives no report that unreasonable delays have occurred, the board shall, no later than September 30, 2003, establish a subcommittee responsible for developing a balanced approach between the ability of providers to locate wireless facilities necessary to comply with federal Phase II E911 requirements using the carrier's own network and the desire of counties and municipalities to zone and regulate land uses to achieve public welfare goals. If a subcommittee is established, it shall include representatives from the Florida Telecommunications Industry Association, the Florida Association of Counties, and the Florida League of Cities. The subcommittee shall be charged with developing recommendations for the board and any specifically identified municipality or county to consider regarding actions to be taken for compliance for federal Phase II E911 requirements. In the annual report due to the Governor and the Legislature by February 28, 2004, the board shall include any recommendations developed by the subcommittee to address compliance with federal Phase II E911 requirements.

### C. SECTION DIRECTORY:

See Effect of Proposed Changes section.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Indeterminate. The amount of revenue generated is dependent upon the payments made from negotiated leases.

2. Expenditures:

None. The cost associated with implementing the lease program is to be recovered from the lease payments deposited into the Supervision Trust Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. The local governments will be distributed a percentage of the lease payments deposited in the Wireless Emergency Telephone System Fund for payment of E911 and 911 service.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Wireless communications providers should be able to site 911 and E911 facilities easier and with fewer restrictions as to facility sites.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

New paragraph 365.172(11)(e), F.S., provides a prohibition against a local government imposing square footage or height limitations on equipment enclosures, cabinets or buildings inconsistent with those required for other structures in the same zoning district. This prohibition supersedes any existing limitation imposed on equipment enclosures, cabinets or buildings by agreement, ordinance, resolution, or land development regulation. This provision may be subject to challenge as an impairment of contract under s. 10, Art. I, State Constitution.

B. RULE-MAKING AUTHORITY:

Rulemaking authority is granted to the DMS for the leasing process.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES