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LEGISLATIVE ACTION

Senate

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House

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Floor: 1/AD/2R

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04/27/2017 11:21 AM

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Senator Hutson moved the following:

**Senate Amendment (with title amendment)**

Delete lines 145 - 538

and insert:

(IV) Has, before July 1, 2017, received referendum approval to issue debt to finance municipality-wide underground utilities for electric transmission or distribution.

7. "Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the



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12 installation of a new utility pole or wireless support structure  
13 in the public rights-of-way.

14 8. "FCC" means the Federal Communications Commission.

15 9. "Micro wireless facility" means a small wireless  
16 facility having dimensions no larger than 24 inches in length,  
17 15 inches in width, and 12 inches in height and an exterior  
18 antenna, if any, no longer than 11 inches.

19 10. "Small wireless facility" means a wireless facility  
20 that meets the following qualifications:

21 a. Each antenna associated with the facility is located  
22 inside an enclosure of no more than 6 cubic feet in volume or,  
23 in the case of antennas that have exposed elements, each antenna  
24 and all of its exposed elements could fit within an enclosure of  
25 no more than 6 cubic feet in volume; and

26 b. All other wireless equipment associated with the  
27 facility is cumulatively no more than 28 cubic feet in volume.  
28 The following types of associated ancillary equipment are not  
29 included in the calculation of equipment volume: electric  
30 meters, concealment elements, telecommunications demarcation  
31 boxes, ground-based enclosures, grounding equipment, power  
32 transfer switches, cutoff switches, vertical cable runs for the  
33 connection of power and other services, and utility poles or  
34 other support structures.

35 11. "Utility pole" means a pole or similar structure used  
36 in whole or in part to provide communications services or for  
37 electric distribution, lighting, traffic control, signage, or a  
38 similar function. The term includes the vertical support  
39 structure for traffic lights, but does not include any  
40 horizontal structures upon which are attached signal lights or



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41 other traffic control devices and does not include any pole or  
42 similar structure 15 feet in height or less unless an authority  
43 grants a waiver for the pole.

44 12. "Wireless facility" means equipment at a fixed location  
45 which enables wireless communications between user equipment and  
46 a communications network, including radio transceivers,  
47 antennas, wires, coaxial or fiber-optic cable or other cables,  
48 regular and backup power supplies, and comparable equipment,  
49 regardless of technological configuration, and equipment  
50 associated with wireless communications. The term includes small  
51 wireless facilities. The term does not include:

52 a. The structure or improvements on, under, within, or  
53 adjacent to the structure on which the equipment is collocated;

54 b. Wireline backhaul facilities; or

55 c. Coaxial or fiber-optic cable that is between wireless  
56 structures or utility poles or that is otherwise not immediately  
57 adjacent to or directly associated with a particular antenna.

58 13. "Wireless infrastructure provider" means a person who  
59 has been certificated to provide telecommunications service in  
60 the state and who builds or installs wireless communication  
61 transmission equipment, wireless facilities, or wireless support  
62 structures, but is not a wireless services provider.

63 14. "Wireless provider" means a wireless infrastructure  
64 provider or a wireless services provider.

65 15. "Wireless services" means any services provided using  
66 licensed or unlicensed spectrum, whether at a fixed location or  
67 mobile, using wireless facilities.

68 16. "Wireless services provider" means a person who  
69 provides wireless services.



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70           17. "Wireless support structure" means a freestanding  
71 structure, such as a monopole, a guyed or self-supporting tower,  
72 or another existing or proposed structure designed to support or  
73 capable of supporting wireless facilities. The term does not  
74 include a utility pole.

75           (c) Except as provided in this subsection, an authority may  
76 not prohibit, regulate, or charge for the collocation of small  
77 wireless facilities in the public rights-of-way.

78           (d) An authority may require a registration process and  
79 permit fees in accordance with subsection (3). An authority  
80 shall accept applications for permits and shall process and  
81 issue permits subject to the following requirements:

82           1. An authority may not directly or indirectly require an  
83 applicant to perform services unrelated to the collocation for  
84 which approval is sought, such as in-kind contributions to the  
85 authority, including reserving fiber, conduit, or pole space for  
86 the authority.

87           2. An applicant may not be required to provide more  
88 information to obtain a permit than is necessary to demonstrate  
89 the applicant's compliance with applicable codes for the  
90 placement of small wireless facilities in the locations  
91 identified in the application.

92           3. An authority may not require the placement of small  
93 wireless facilities on any specific utility pole or category of  
94 poles or require multiple antenna systems on a single utility  
95 pole.

96           4. An authority may not limit the placement of small  
97 wireless facilities by minimum separation distances; however,  
98 within 14 days after the date of filing the application, an



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99 authority may request that the proposed location of a small  
100 wireless facility be moved to another location in the right-of-  
101 way and placed upon an alternative authority utility pole or  
102 support structure or placed upon a new utility pole. The  
103 authority and applicant may negotiate the alternative location,  
104 including any objective design standards, for 30 days after the  
105 date of the request. At the conclusion of the negotiation  
106 period, if the applicant accepts the alternative location, the  
107 applicant must notify the authority, and the application shall  
108 be deemed granted for any new location for which there is  
109 agreement and all other locations in the application. If no  
110 agreement is reached, the applicant must notify the authority,  
111 and the authority must grant or deny the original application  
112 within 90 days after the date the application is filed. A  
113 request for an alternative location, an acceptance of an  
114 alternative location, or any rejection of an alternative  
115 location must be in writing and provided by electronic mail.

116 5. An authority shall limit the height of a small wireless  
117 facility to no more than 10 feet above the utility pole or  
118 structure upon which the small wireless facility is to be  
119 collocated. Unless waived by an authority, the height for a new  
120 utility pole is limited to the tallest existing utility pole as  
121 of July 1, 2017, located in the same right-of-way, other than a  
122 utility pole for which a waiver has previously been granted,  
123 measured from grade in place within 500 feet of the proposed  
124 location of the small wireless facility. If there is no utility  
125 pole within 500 feet, the authority shall limit the height of  
126 the utility pole to 50 feet.

127 6. Except as provided in subparagraphs 4. and 5., the



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128 installation of a utility pole in the public rights-of-way  
129 designed to support a small wireless facility is subject to  
130 authority rules or regulations governing the placement of  
131 utility poles in the public rights-of-way and is subject to the  
132 application review timeframes in this subsection.

133 7. Within 14 days after receiving an application, an  
134 authority must determine and notify the applicant by electronic  
135 mail as to whether the application is complete. If an  
136 application is deemed incomplete, the authority must  
137 specifically identify the missing information. An application is  
138 deemed complete if the authority fails to provide notification  
139 to the applicant within 14 days.

140 8. An application must be processed on a nondiscriminatory  
141 basis. A complete application is deemed approved if an authority  
142 fails to approve or deny the application within 60 days after  
143 receipt of the application. If an authority does not use the 30-  
144 day negotiation period provided in subparagraph 4., the parties  
145 may mutually agree to extend the 60-day application review  
146 period. The authority must grant or deny the application at the  
147 end of the extended period. A permit issued pursuant to an  
148 approved application remains effective for 1 year unless  
149 extended by the authority.

150 9. An authority must notify the applicant of approval or  
151 denial by electronic mail. An authority must approve a complete  
152 application unless it does not meet the authority's applicable  
153 codes. If the application is denied, the authority must specify  
154 in writing the basis for denial, including the specific code  
155 provisions on which the denial was based, and send the  
156 documentation to the applicant by electronic mail on the day the



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157 authority denies the application. The applicant may cure the  
158 deficiencies identified by the authority and resubmit the  
159 application within 30 days after notice of the denial is sent to  
160 the applicant. The authority must approve or deny the revised  
161 application within 30 days after receipt or the application is  
162 deemed approved. Any subsequent review shall be limited to the  
163 deficiencies cited in the denial.

164 10. An applicant seeking to collocate small wireless  
165 facilities within the jurisdiction of a single authority may, at  
166 the applicant's discretion, file a consolidated application and  
167 receive a single permit for the collocation of no more than 30  
168 small wireless facilities. If the application includes multiple  
169 small wireless facilities, an authority may remove small  
170 wireless facility collocations from the application and treat  
171 separately small wireless facility collocations for which  
172 incomplete information has been received or which are denied.

173 11. An authority may deny a proposed collocation of a small  
174 wireless facility in the public rights-of-way if the proposed  
175 collocation:

176 a. Materially interferes with the safe operation of traffic  
177 control equipment.

178 b. Materially interferes with sight lines or clear zones  
179 for transportation, pedestrians, or public safety purposes.

180 c. Materially interferes with compliance with the Americans  
181 with Disabilities Act or similar federal or state standards  
182 regarding pedestrian access or movement.

183 d. Materially fails to comply with the 2010 edition of the  
184 Florida Department of Transportation Utility Accommodation  
185 Manual.



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186 e. Fails to comply with applicable codes.  
187 12. An authority may adopt by ordinance provisions for  
188 registration, permitting, insurance coverage, indemnification,  
189 performance bonds, security funds, force majeure, abandonment,  
190 authority liability, or authority warranties. Such provisions  
191 must be reasonable and nondiscriminatory.  
192 13. Collocation of a small wireless facility on an  
193 authority utility pole may not provide the basis for the  
194 imposition of an ad valorem tax on the authority utility pole.  
195 14. An authority may reserve space on authority utility  
196 poles for future public safety uses. However, a reservation of  
197 space may not preclude collocation of a small wireless facility.  
198 If replacement of the authority utility pole is necessary to  
199 accommodate the collocation of the small wireless facility and  
200 the future public safety use, the pole replacement is subject to  
201 make-ready provisions, and the replaced pole shall accommodate  
202 the future public safety use.  
203 15. Any structure granted a permit and installed pursuant  
204 to this subsection must comply with chapter 333 and federal  
205 regulations pertaining to airport airspace protections.  
206 (e) An authority may not require approval of or impose fees  
207 or other charges for:  
208 1. Routine maintenance;  
209 2. Replacement of existing wireless facilities with  
210 wireless facilities that are substantially similar or of the  
211 same or smaller size; or  
212 3. Installation, placement, maintenance, or replacement of  
213 micro wireless facilities suspended on cables strung between  
214 existing utility poles in compliance with applicable codes by a





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215 communications service provider authorized to occupy the rights-  
216 of-way and who is remitting taxes under chapter 202.

217  
218 However, notwithstanding this paragraph, an authority may  
219 require a right-of-way permit for work that involves excavation,  
220 closing a sidewalk, or closing a vehicular lane.

221 (f) Collocation of small wireless facilities on authority  
222 utility poles is subject to the following requirements:

223 1. An authority may not enter into an exclusive arrangement  
224 with any person for the right to attach equipment to authority  
225 utility poles.

226 2. The rates and fees for collocations on authority utility  
227 poles must be nondiscriminatory, regardless of the services  
228 provided by the collocating person.

229 3. The rate to collocate small wireless facilities on  
230 authority utility poles may not exceed \$150 per pole annually.

231 4. Agreements between authorities and wireless providers  
232 which are in effect on July 1, 2017, and which relate to the  
233 collocation of small wireless facilities in the right-of-way,  
234 including the collocation of small wireless facilities on  
235 authority utility poles, remain in effect, subject to applicable  
236 termination provisions. The wireless provider may accept the  
237 rates, fees, and terms established under this subsection for  
238 small wireless facilities and utility poles that are the subject  
239 of an application submitted after the rates, fees, and terms  
240 become effective.

241 5. A person owning or controlling an authority utility pole  
242 shall offer rates, fees, and other terms that comply with this  
243 subsection. By the later of January 1, 2018, or 3 months after



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244 receiving a request to collocate its first small wireless  
245 facility on a utility pole owned or controlled by an authority,  
246 the person owning or controlling the authority utility pole  
247 shall make available, through ordinance or otherwise, rates,  
248 fees, and terms for the collocation of small wireless facilities  
249 on the authority utility pole which comply with this subsection.

250 a. The rates, fees, and terms must be nondiscriminatory,  
251 competitively neutral, and must comply with this subsection.

252 b. For an authority utility pole that supports an aerial  
253 facility used to provide communications services or electric  
254 service, the parties shall comply with the process for make-  
255 ready work under 47 U.S.C. s. 224 and implementing regulations.  
256 The good faith estimate of the person owning or controlling the  
257 pole for any make-ready work necessary to enable the pole to  
258 support the requested collocation must include pole replacement  
259 if necessary.

260 c. For an authority utility pole that does not support an  
261 aerial facility used to provide communications services or  
262 electric service, the authority shall provide a good faith  
263 estimate for any make-ready work necessary to enable the pole to  
264 support the requested collocation, including necessary pole  
265 replacement, within 60 days after receipt of a complete  
266 application. Make-ready work, including any pole replacement,  
267 must be completed within 60 days after written acceptance of the  
268 good faith estimate by the applicant. Alternatively, an  
269 authority may require the applicant seeking to collocate a small  
270 wireless facility to provide a make-ready estimate at the  
271 applicant's expense for the work necessary to support the small  
272 wireless facility, including pole replacement, and to perform



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273 the make-ready work. If pole replacement is required, the scope  
274 of the make-ready estimate is limited to the design,  
275 fabrication, and installation of a utility pole that is  
276 substantially similar in color and composition. The authority  
277 may not impose conditions on or restrict the manner in which the  
278 applicant obtains, develops, or provides the estimate or  
279 conducts the make-ready work subject to usual construction  
280 restoration standards for work in the right-of-way. The replaced  
281 or altered utility pole shall remain the property of the  
282 authority.

283 d. An authority may not require more make-ready work than  
284 is required to meet applicable codes or industry standards. Fees  
285 for make-ready work may not include costs related to preexisting  
286 damage or prior noncompliance. Fees for make-ready work,  
287 including any pole replacement, may not exceed actual costs or  
288 the amount charged to communications service providers other  
289 than wireless services providers for similar work and may not  
290 include any consultant fee or expense.

291 (g) For any applications filed before the effective dates  
292 of ordinances implementing this subsection, an authority may  
293 apply current ordinances regulating the placement of  
294 communications facilities in the right-of-way, including  
295 registration, permitting, insurance coverage, indemnification,  
296 performance bonds, security funds, force majeure, abandonment,  
297 authority liability, or authority warranties. Permit application  
298 requirements and small wireless facility placement requirements,  
299 including utility pole height limits, which conflict with this  
300 subsection shall be waived by the authority.

301 (h) Except as provided in this section or specifically



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302 required by state law, an authority may not adopt or enforce any  
303 regulation on the placement or operation of communications  
304 facilities in the rights-of-way by a provider authorized by  
305 state law to operate in the rights-of-way and may not regulate  
306 any communications services or impose or collect any tax, fee,  
307 or charge not specifically authorized under state law. This  
308 paragraph is not intended to change state law regarding an  
309 authority's ability to regulate the relocation of facilities.

310 (i) A wireless provider shall, in relation to a small  
311 wireless facility, utility pole, or wireless support structure  
312 in the public rights-of-way, comply with nondiscriminatory  
313 undergrounding requirements of the authority which prohibit  
314 above-ground structures in public rights-of-way. Any such  
315 requirements may be waived by the relevant authority.

316 (j) A wireless infrastructure provider may apply to an  
317 authority to place utility poles in the public rights-of-way to  
318 support the collocation of small wireless facilities. The  
319 application must include an attestation that small wireless  
320 facilities will be collocated on the utility pole or structure  
321 and small wireless facilities will be used by a wireless  
322 services provider to provide service within 9 months from the  
323 date the application is granted. An authority shall accept and  
324 process the application in accordance with subparagraph (d)6.  
325 and any applicable codes and other local codes governing the  
326 placement of utility poles in the public rights-of-way.

327 (k) This subsection does not limit a local government's  
328 authority to enforce historic preservation zoning regulations  
329 consistent with the preservation of local zoning authority under  
330 47 U.S.C s. 332(c) (7), the requirements for facility



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331 modifications under 47 U.S.C. s. 1455(a), or the National  
332 Historic Preservation Act of 1966, as amended, and the  
333 regulations adopted to implement these laws. An authority may  
334 enforce local codes, administrative rules, or regulations  
335 adopted by ordinance in effect on April 1, 2017, which are  
336 applicable to a historic area designated by the state or  
337 authority. An authority may enforce pending local ordinances,  
338 administrative rules, or regulations that are applicable to a  
339 historic area designated by the state if the intent to adopt  
340 such changes has been publicly declared on or before April 1,  
341 2017. An authority may waive any ordinances or other  
342 requirements that are subject to this paragraph.

343 (l) This subsection does not authorize a person to  
344 collocate or attach wireless facilities, including any antenna,  
345 micro wireless facility, or small wireless facility, on a  
346 privately owned utility pole, a utility pole owned by an  
347 electric cooperative or a municipal electric utility, a  
348 privately owned wireless support structure, or other private  
349 property without the consent of the property owner.

350 (m) The approval of the installation, placement,  
351 maintenance, or operation of a small wireless facility pursuant  
352 to this subsection may not be construed to authorize the  
353 provision of any voice, data, or video communications services  
354 or the installation, placement, maintenance, or operation of any  
355 communications facilities other than small wireless facilities  
356 in the right-of-way.

357 (n) This subsection does not affect the provisions of  
358 subsection (6) relating to pass-through providers.

359 (o) This subsection does not authorize a person to



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360 collocate or attach small wireless facilities or micro wireless  
361 facilities on a utility pole unless otherwise permitted by  
362 federal law, or to erect a wireless support structure in the  
363 right-of-way located within a retirement community that:

364 1. Is deed-restricted as housing for older persons as  
365 defined in s. 760.29(4) (b);

366 2. Has more than 5,000 residents; and

367 3. Has underground utilities for electric transmission or  
368 distribution.

369

370 Nothing in this paragraph applies to the installation,  
371 placement, maintenance, or replacement of micro wireless  
372 facilities on any existing and duly authorized aerial  
373 communications facilities, provided that once aerial facilities  
374 are converted to underground, any such collocation or  
375 construction shall be only as provided by the municipality's  
376 underground utilities ordinance.

377 (p) This subsection does not authorize a person to  
378 collocate or attach small wireless facilities or micro wireless  
379 facilities on a utility pole unless otherwise permitted by  
380 federal law, or to erect a wireless support structure in the  
381 right-of-way located within a municipality that:

382 1. Is located on a coastal barrier island as defined in s.  
383 161.053(1) (b) 3.;

384 2. Has a land area of less than 5 square miles;

385 3. Has fewer than 10,000 residents; and

386 4. Which has, before July 1, 2017, received referendum  
387 approval to issue debt to finance municipality-wide

388 undergrounding of its utilities for electric transmission or



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389 distribution.

390

391 Nothing in this paragraph applies to the installation,  
392 placement, maintenance, or replacement of micro wireless  
393 facilities on any existing and duly authorized aerial  
394 communications facilities, provided that once aerial facilities  
395 are converted to underground, any such collocation or  
396 construction shall be only as provided by the municipality's  
397 underground utilities ordinance.

398 (q) This subsection does not authorize a person to  
399 collocate small wireless facilities or micro wireless facilities  
400 on an authority utility pole or erect a wireless support  
401 structure in a location subject to covenants, conditions, and  
402 restrictions; articles of incorporation; and bylaws of a home  
403 owners association. Nothing in this paragraph applies to the  
404 installation, placement, maintenance, or replacement of micro  
405 wireless facilities on any existing and duly authorized aerial  
406 communications facilities.

407

408 ===== T I T L E A M E N D M E N T =====

409 And the title is amended as follows:

410 Delete lines 56 - 63

411 and insert:

412 construction; authorizing an authority to enforce  
413 local codes, administrative rules, or regulations  
414 adopted by ordinance in effect on a specified date  
415 which are applicable to a historic area designated by  
416 the state or authority; authorizing an authority to  
417 enforce pending local ordinances, administrative



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418 rules, or regulations that are applicable to a  
419 historic area designated by the state if the intent to  
420 adopt such changes has been publicly declared on or  
421 before a specified date; providing retroactive  
422 applicability; authorizing an authority to waive  
423 certain ordinances or other requirements; providing an  
424 effective