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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
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The Committee on Governmental Oversight and Accountability
(Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (1) of section
337.401, Florida Statutes, is amended, and subsection (7) is
added to that section, to read:

337.401 Use of right-of-way for utilities subject to
regulation; permit; fees.—

(1) (a) The department and local governmental entities,



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11 referred to in this section and in ss. 337.402, 337.403, and
12 337.404 as the "authority," that have jurisdiction and control
13 of public roads or publicly owned rail corridors are authorized
14 to prescribe and enforce reasonable rules or regulations with
15 reference to the placing and maintaining across, on, or within
16 the right-of-way limits of any road or publicly owned rail
17 corridors under their respective jurisdictions any electric
18 transmission, voice telephone, telegraph, data, or other
19 communications services lines or wireless facilities; pole
20 lines; poles; railways; ditches; sewers; water, heat, or gas
21 mains; pipelines; fences; gasoline tanks and pumps; or other
22 structures referred to in this section and in ss. 337.402,
23 337.403, and 337.404 as the "utility." The department may enter
24 into a permit-delegation agreement with a governmental entity if
25 issuance of a permit is based on requirements that the
26 department finds will ensure the safety and integrity of
27 facilities of the Department of Transportation; however, the
28 permit-delegation agreement does not apply to facilities of
29 electric utilities as defined in s. 366.02(2).

30 (7) (a) This subsection may be cited as the "Advanced
31 Wireless Infrastructure Deployment Act."

32 (b) As used in this subsection, the term:

33 1. "Antenna" means communications equipment that transmits
34 or receives electromagnetic radio frequency signals used in
35 providing wireless services.

36 2. "Applicable codes" means uniform building, fire,
37 electrical, plumbing, or mechanical codes adopted by a
38 recognized national code organization, or local amendments to
39 those codes, enacted solely to address threats of destruction of



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40 property or injury to persons. The term includes local
41 government historic preservation zoning regulations consistent
42 with the preservation of local zoning authority under 47 U.S.C
43 s. 332(c)(7), the requirements for facility modifications under
44 47 U.S.C. s. 1455(a), or the National Historic Preservation Act
45 of 1966, as amended; and the regulations adopted to implement
46 these laws.

47 3. "Applicant" means a person who submits an application
48 and is a wireless provider.

49 4. "Application" means a request submitted by an applicant
50 to an authority for a permit to collocate small wireless
51 facilities.

52 5. "Authority" means a county or municipality having
53 jurisdiction and control of the rights-of-way of any public
54 road. The term does not include the Department of
55 Transportation. The Department of Transportation rights-of-way
56 are excluded from this subsection.

57 6. "Authority utility pole" means a utility pole owned by
58 an authority in the right-of-way. The term does not include a
59 utility pole owned by a municipal electric utility or any
60 utility pole used to support municipally owned or operated
61 electric distribution facilities.

62 7. "Collocate" or "collocation" means to install, mount,
63 maintain, modify, operate, or replace one or more wireless
64 facilities on, under, within, or adjacent to a wireless support
65 structure or utility pole.

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

67 9. "Micro wireless facility" means a small wireless
68 facility having dimensions no larger than 24 inches in length,



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69 15 inches in width, and 12 inches in height and an exterior
70 antenna, if any, no longer than 11 inches.

71 10. "Small wireless facility" means a wireless facility
72 that meets the following qualifications:

73 a. Each antenna associated with the facility is located
74 inside an enclosure of no more than 6 cubic feet in volume or,
75 in the case of antennas that have exposed elements, each antenna
76 and all of its exposed elements could fit within an enclosure of
77 no more than 6 cubic feet in volume; and

78 b. All other wireless equipment associated with the
79 facility is cumulatively no more than 28 cubic feet in volume.
80 The following types of associated ancillary equipment are not
81 included in the calculation of equipment volume: electric
82 meters, concealment elements, telecommunications demarcation
83 boxes, ground-based enclosures, grounding equipment, power
84 transfer switches, cutoff switches, vertical cable runs for the
85 connection of power and other services, and utility poles or
86 other support structures.

87 11. "Utility pole" means a pole or similar structure that
88 is used in whole or in part to provide communications services
89 or for electric distribution, lighting, traffic control,
90 signage, or a similar function.

91 12. "Wireless facility" means equipment at a fixed location
92 which enables wireless communications between user equipment and
93 a communications network, including radio transceivers,
94 antennas, wires, coaxial or fiber-optic cable or other cables,
95 regular and backup power supplies, and comparable equipment,
96 regardless of technological configuration, and equipment
97 associated with wireless communications. The term includes small



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98 wireless facilities. The term does not include:

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

101 b. Wireline backhaul facilities; or

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

105 13. "Wireless infrastructure provider" means a person who
106 is certificated to provide telecommunications service in the
107 state and who builds or installs wireless communication
108 transmission equipment, wireless facilities, or wireless support
109 structures, but is not a wireless services provider.

110 14. "Wireless provider" means a wireless infrastructure
111 provider or a wireless services provider.

112 15. "Wireless services" means any services provided using
113 licensed or unlicensed spectrum, whether at a fixed location or
114 mobile, using wireless facilities.

115 16. "Wireless services provider" means a person who
116 provides wireless services.

117 17. "Wireless support structure" means a freestanding
118 structure, such as a monopole, a guyed or self-supporting tower,
119 a billboard, or another existing or proposed structure designed
120 to support or capable of supporting wireless facilities. The
121 term does not include a utility pole.

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

125 (d) An authority may require permit fees only in accordance
126 with subsection (3). An authority shall accept applications for



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127 permits and shall process and issue permits subject to the
128 following requirements:

129 1. An authority may not directly or indirectly require an
130 applicant to perform services unrelated to the collocation for
131 which approval is sought, such as in-kind contributions to the
132 authority, including reserving fiber, conduit, or pole space for
133 the authority.

134 2. An applicant may not be required to provide more
135 information to obtain a permit than is required of electric
136 service providers and other communications service providers
137 that are not wireless services providers.

138 3. An authority may not require the placement of small
139 wireless facilities on any specific utility pole or category of
140 poles or require multiple antenna systems on a single utility
141 pole.

142 4. An authority may not limit the placement of small
143 wireless facilities by minimum separation distances.

144 5. An authority may limit the height of a small wireless
145 facility to be no more than 10 feet above the tallest existing
146 utility pole within 500 feet, measured from grade in place, of
147 the proposed location of the small wireless facility. If there
148 is no utility pole within 500 feet, the authority may limit the
149 height of the small wireless facility to be no more than 60
150 feet. The height limitations do not apply to the placement of
151 any small wireless facility on a utility pole or wireless
152 support structure constructed on or before June 30, 2017, if the
153 small wireless facility does not extend more than 10 feet above
154 the structure.

155 6. A wireless infrastructure provider may apply to an



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156 authority to place utility poles or wireless support structures
157 in the public rights-of-way to support the collocation of small
158 wireless facilities. The application must include an attestation
159 that small wireless facilities will be collocated on the utility
160 pole or structure and small wireless facilities will be used by
161 a wireless services provider to provide service within 9 months
162 after the date the application is granted. An authority shall
163 accept and process the application in accordance with this
164 paragraph and any applicable local codes governing the placement
165 of utility poles in the public rights-of-way.

166 7. Within 10 days after receiving an application, an
167 authority must determine and notify the applicant by electronic
168 mail as to whether the application is complete. If an
169 application is deemed incomplete, the authority must
170 specifically identify the missing information. An application is
171 deemed complete if the authority fails to provide notification
172 to the applicant within 10 days or when all documents,
173 information, and fees specifically enumerated in the authority's
174 permit application form are submitted by the applicant to the
175 authority.

176 8. An application must be processed on a nondiscriminatory
177 basis. A complete application is deemed approved if an authority
178 fails to approve or deny the application within 60 days after
179 receipt of the application.

180 9. An authority must notify the applicant of approval or
181 denial by electronic mail. An authority shall approve a complete
182 application unless it does not meet the authority's applicable
183 codes. If the application is denied, the authority must specify
184 in writing the basis for denial, including the specific code



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185 provisions on which the denial was based, and send the
186 documentation to the applicant by electronic mail on the day the
187 authority denies the application. The applicant may cure the
188 deficiencies identified by the authority and resubmit the
189 application within 30 days after notice of the denial is sent to
190 the applicant. The authority shall approve or deny the revised
191 application within 30 days after receipt or the application is
192 deemed approved. Any subsequent review shall be limited to the
193 deficiencies cited in the denial.

194 10. An applicant seeking to collocate small wireless
195 facilities within the jurisdiction of a single authority may, at
196 the applicant's discretion, file a consolidated application and
197 receive a single permit for the collocation of multiple small
198 wireless facilities.

199 (e) An authority may not require approval, fees, or other
200 charges for:

201 1. Routine maintenance;

202 2. Replacement of existing wireless facilities with
203 wireless facilities that are substantially similar or of the
204 same or smaller size; or

205 3. Installation, placement, maintenance, or replacement of
206 micro wireless facilities that are suspended on cables strung
207 between existing utility poles in compliance with applicable
208 codes by a communications service provider that is authorized to
209 occupy the rights-of-way and that is remitting taxes under
210 chapter 202.

211 (f) An authority shall approve the collocation of small
212 wireless facilities on authority utility poles, subject to the
213 following requirements:



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214 1. An authority may not enter into an exclusive arrangement
215 with any person for the right to attach equipment to authority
216 utility poles.

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

220 3. The rate to collocate equipment on authority utility
221 poles may not exceed the lesser of the annual recurring rate
222 that would be permitted under rules adopted by the FCC under 47
223 U.S.C. s. 224(d) if the collocation rate were regulated by the
224 FCC or \$15 per year per authority utility pole.

225 4. If an authority has an existing pole attachment rate,
226 fee, or other term that does not comply with this subsection,
227 the authority shall, no later than January 1, 2018, revise such
228 rate, fee, or term to be in compliance with this subsection.

229 5. A person owning or controlling an authority utility pole
230 shall offer rates, fees, and other terms that comply with this
231 subsection. By the later of January 1, 2018, or 3 months after
232 receiving a request to collocate its first small wireless
233 facility on a utility pole owned or controlled by an authority,
234 the person owning or controlling the authority utility pole
235 shall make available, through ordinance or otherwise, rates,
236 fees, and terms for the collocation of small wireless facilities
237 on the authority utility pole which comply with this subsection.

238 a. The rates, fees, and terms must be nondiscriminatory,
239 competitively neutral, and commercially reasonable and must
240 comply with this subsection.

241 b. For an authority utility pole that supports an aerial
242 facility used to provide communications services or electric



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243 service, the parties shall comply with the process for make-
244 ready work under 47 U.S.C. s. 224 and implementing regulations.
245 The good faith estimate of the person owning or controlling the
246 pole for any make-ready work necessary to enable the pole to
247 support the requested collocation must include pole replacement
248 if necessary.

249 c. For an authority utility pole that does not support an
250 aerial facility used to provide communications services or
251 electric service, the authority shall provide a good faith
252 estimate for any make-ready work necessary to enable the pole to
253 support the requested collocation, including necessary pole
254 replacement, within 60 days after receipt of a complete
255 application. Make-ready work, including any pole replacement,
256 must be completed within 60 days after written acceptance of the
257 good faith estimate by the applicant.

258 d. An authority may not require more make-ready work than
259 is required to meet applicable codes or industry standards. Fees
260 for make-ready work may not include costs related to preexisting
261 damage or prior noncompliance. Fees for make-ready work,
262 including any pole replacement, may not exceed actual costs or
263 the amount charged to communications service providers other
264 than wireless services providers for similar work and may not
265 include any consultant fee or expense.

266 (g) Except as provided in this chapter or specifically
267 required by state law, an authority may not adopt or enforce any
268 regulation on the placement or operation of communications
269 facilities in the rights-of-way by a provider authorized by
270 state law to operate in the rights-of-way and may not regulate
271 any communications services or impose or collect any tax, fee,



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272 or charge not specifically authorized under state law.

273 (h) This subsection does not authorize a person to
274 collocate small wireless facilities on a privately owned utility
275 pole, a utility pole owned by an electric cooperative or by a
276 municipal electric utility, a privately owned wireless support
277 structure, or other private property without the consent of the
278 property owner.

279 (i) This subsection may not be construed to limit a local
280 government's authority to enforce historic preservation zoning
281 regulations consistent with the preservation of local zoning
282 authority under 47 U.S.C s. 332(c)(7), the requirements for
283 facility modifications under 47 U.S.C. s. 1455(a), or the
284 National Historic Preservation Act of 1966, as amended; and the
285 regulations adopted to implement these laws.

286 Section 2. This act shall take effect July 1, 2017.

287
288 ===== T I T L E A M E N D M E N T =====

289 And the title is amended as follows:

290 Delete everything before the enacting clause
291 and insert:

292 A bill to be entitled
293 An act relating to utilities; amending s. 337.401,
294 F.S.; authorizing the Department of Transportation and
295 certain local governmental entities to prescribe and
296 enforce reasonable rules or regulations with reference
297 to the placing and maintaining across, on, or within
298 the right-of-way limits of any road or publicly owned
299 rail corridors under their respective jurisdictions
300 any voice or data communications services lines or



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301 wireless facilities; providing a short title; defining
302 terms; prohibiting a county or municipality having
303 jurisdiction and control of the rights-of-way of any
304 public road, referred to as the "authority," from
305 prohibiting, regulating, or charging for the
306 collocation of small wireless facilities in public
307 rights-of-way under certain circumstances; authorizing
308 an authority to require permit fees only under certain
309 circumstances; requiring an authority to receive and
310 process applications for permits and to issue such
311 permits, subject to specified requirements; providing
312 that height limitations do not apply to the placement
313 of small wireless facilities on or before a specified
314 date under certain circumstances; prohibiting an
315 authority from requiring approval, fees, or other
316 charges for routine maintenance, the replacement of
317 certain wireless facilities, or the installation,
318 placement, maintenance, or replacement of certain
319 micro wireless facilities; requiring an authority to
320 approve the collocation of small wireless facilities
321 on authority utility poles, subject to certain
322 requirements; providing requirements for rates, fees,
323 and other terms related to authority utility poles;
324 prohibiting an authority from adopting or enforcing
325 any regulation on the placement or operation of
326 certain communications facilities, from regulating any
327 communications services, or from imposing or
328 collecting any tax, fee, or charge not specifically
329 authorized under state law; providing construction;



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providing an effective date.