



904906

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2017	.	
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The Committee on Communications, Energy, and Public Utilities (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (7) is added to section 337.401, Florida Statutes, to read:

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

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



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- 11 (b) As used in this subsection, the term:
- 12 1. "Antenna" means communications equipment that transmits
- 13 or receives electromagnetic radio frequency signals used in
- 14 providing wireless services.
- 15 2. "Applicable codes" means uniform building, fire,
- 16 electrical, plumbing, or mechanical codes adopted by a
- 17 recognized national code organization, or local amendments to
- 18 those codes, enacted solely to address threats of destruction of
- 19 property or injury to persons. The term includes local
- 20 government historic preservation zoning regulations consistent
- 21 with the preservation of local zoning authority under 47 U.S.C
- 22 s. 332(c)(7), the requirements for facility modifications under
- 23 47 U.S.C. s. 1455(a), or the National Historic Preservation Act
- 24 of 1966, as amended, and the regulations adopted to implement
- 25 these laws.
- 26 3. "Applicant" means a person who submits an application
- 27 and is a wireless provider.
- 28 4. "Application" means a request submitted by an applicant
- 29 to an authority for a permit to collocate small wireless
- 30 facilities.
- 31 5. "Authority utility pole" means a utility pole owned by
- 32 an authority in the right-of-way. The term does not include a
- 33 utility pole owned by a municipal electric company.
- 34 6. "Collocate" or "collocation" means to install, mount,
- 35 maintain, modify, operate, or replace one or more wireless
- 36 facilities on, under, within, or adjacent to a wireless support
- 37 structure or utility pole.
- 38 7. "FCC" means the Federal Communications Commission.
- 39 8. "Micro wireless facility" means a small wireless



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40 facility having dimensions no larger than 24 inches in length,
41 15 inches in width, and 12 inches in height and an exterior
42 antenna, if any, no longer than 11 inches.

43 9. "Small wireless facility" means a wireless facility that
44 meets the following qualifications:

45 a. Each antenna associated with the facility is located
46 inside an enclosure of no more than 6 cubic feet in volume or,
47 in the case of antennas that have exposed elements, each antenna
48 and all of its exposed elements could fit within an enclosure of
49 no more than 6 cubic feet in volume; and

50 b. All other wireless equipment associated with the
51 facility is cumulatively no more than 28 cubic feet in volume.
52 The following types of associated ancillary equipment are not
53 included in the calculation of equipment volume: electric
54 meters, concealment elements, telecommunications demarcation
55 boxes, ground-based enclosures, grounding equipment, power
56 transfer switches, cutoff switches, vertical cable runs for the
57 connection of power and other services, and utility poles or
58 other support structures.

59 10. "Utility pole" means a pole or similar structure that
60 is used in whole or in part to provide communications services
61 or for electric distribution, lighting, traffic control,
62 signage, or a similar function.

63 11. "Wireless facility" means equipment at a fixed location
64 which enables wireless communications between user equipment and
65 a communications network, including radio transceivers,
66 antennas, wires, coaxial or fiber-optic cable or other cables,
67 regular and backup power supplies, and comparable equipment,
68 regardless of technological configuration, and equipment



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69 associated with wireless communications. The term includes small
70 wireless facilities. The term does not include:

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

73 b. Wireline backhaul facilities; or

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

77 12. "Wireless infrastructure provider" means a person who
78 is certificated to provide telecommunications service in the
79 state and who builds or installs wireless communication
80 transmission equipment, wireless facilities, or wireless support
81 structures, but is not a wireless services provider.

82 13. "Wireless provider" means a wireless infrastructure
83 provider or a wireless services provider.

84 14. "Wireless services" means any services provided using
85 licensed or unlicensed spectrum, whether at a fixed location or
86 mobile, using wireless facilities.

87 15. "Wireless services provider" means a person who
88 provides wireless services.

89 16. "Wireless support structure" means a freestanding
90 structure, such as a monopole, a guyed or self-supporting tower,
91 a billboard, or another existing or proposed structure designed
92 to support or capable of supporting wireless facilities. The
93 term does not include a utility pole.

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

97 (d) An authority may require permit fees only in accordance



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98 with subsection (3). An authority shall accept applications for
99 permits and shall process and issue permits subject to the
100 following requirements:

101 1. An authority may not directly or indirectly require an
102 applicant to perform services unrelated to the collocation for
103 which approval is sought, such as in-kind contributions to the
104 authority, including reserving fiber, conduit, or pole space for
105 the authority.

106 2. An applicant may not be required to provide more
107 information to obtain a permit than is required of electric
108 service providers and other communications service providers
109 that are not wireless services providers.

110 3. An authority may not require the placement of small
111 wireless facilities on any specific utility pole or category of
112 poles or require multiple antenna systems on a single utility
113 pole.

114 4. An authority may not limit the placement of small
115 wireless facilities by minimum separation distances or a maximum
116 height limitation; however, an authority may limit the height of
117 a small wireless facility to no more than 10 feet above the
118 tallest existing utility pole, measured from grade in place
119 within 500 feet of the proposed location of the small wireless
120 facility. If there is no utility pole within 500 feet, the
121 authority may limit the height of the small wireless facility to
122 no more than 60 feet. The height limitations do not apply to the
123 placement of any small wireless facility on a utility pole or
124 wireless support structure constructed on or before June 30,
125 2017, if the small wireless facility does not extend more than
126 10 feet above the structure.



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127 5. Within 10 days after receiving an application, an
128 authority must determine and notify the applicant by electronic
129 mail as to whether the application is complete. If an
130 application is deemed incomplete, the authority must
131 specifically identify the missing information. An application is
132 deemed complete if the authority fails to provide notification
133 to the applicant within 10 days or when all documents,
134 information, and fees specifically enumerated in the authority's
135 permit application form are submitted by the applicant to the
136 authority.

137 6. An application must be processed on a nondiscriminatory
138 basis. A complete application is deemed approved if an authority
139 fails to approve or deny the application within 60 days after
140 receipt of the application.

141 7. An authority must notify the applicant of approval or
142 denial by electronic mail. An authority shall approve a complete
143 application unless it does not meet the authority's applicable
144 codes. If the application is denied, the authority must specify
145 in writing the basis for denial, including the specific code
146 provisions on which the denial was based, and send the
147 documentation to the applicant by electronic mail on the day the
148 authority denies the application. The applicant may cure the
149 deficiencies identified by the authority and resubmit the
150 application within 30 days after notice of the denial is sent to
151 the applicant. The authority shall approve or deny the revised
152 application within 30 days after receipt or the application is
153 deemed approved. Any subsequent review shall be limited to the
154 deficiencies cited in the denial.

155 8. An applicant seeking to collocate small wireless



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156 facilities within the jurisdiction of a single authority may, at
157 the applicant's discretion, file a consolidated application and
158 receive a single permit for the collocation of multiple small
159 wireless facilities.

160 (e) An authority may not require approval or require fees
161 or other charges for:

162 1. Routine maintenance;

163 2. Replacement of existing wireless facilities with
164 wireless facilities that are substantially similar or of the
165 same or smaller size; or

166 3. Installation, placement, maintenance, or replacement of
167 micro wireless facilities that are suspended on cables strung
168 between existing utility poles in compliance with applicable
169 codes by a communications service provider authorized to occupy
170 the rights-of-way and who is remitting taxes under chapter 202.

171 (f) An authority shall approve the collocation of small
172 wireless facilities on authority utility poles, subject to the
173 following requirements:

174 1. An authority may not enter into an exclusive arrangement
175 with any person for the right to attach equipment to authority
176 utility poles.

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

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



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

189 5. A person owning or controlling an authority utility pole
190 shall offer rates, fees, and other terms that comply with this
191 subsection. By the later of January 1, 2018, or 3 months after
192 receiving a request to collocate its first small wireless
193 facility on a utility pole owned or controlled by an authority,
194 the person owning or controlling the authority utility pole
195 shall make available, through ordinance or otherwise, rates,
196 fees, and terms for the collocation of small wireless facilities
197 on the authority utility pole which comply with this subsection.

198 a. The rates, fees, and terms must be nondiscriminatory,
199 competitively neutral, and commercially reasonable and must
200 comply with this subsection.

201 b. For an authority utility pole that supports an aerial
202 facility used to provide communications services or electric
203 service, the parties shall comply with the process for make-
204 ready work under 47 U.S.C. s. 224 and implementing regulations.
205 The good faith estimate of the person owning or controlling the
206 pole for any make-ready work necessary to enable the pole to
207 support the requested collocation must include pole replacement
208 if necessary.

209 c. For an authority utility pole that does not support an
210 aerial facility used to provide communications services or
211 electric service, the authority shall provide a good faith
212 estimate for any make-ready work necessary to enable the pole to
213 support the requested collocation, including necessary pole



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214 replacement, within 60 days after receipt of a complete
215 application. Make-ready work, including any pole replacement,
216 must be completed within 60 days after written acceptance of the
217 good faith estimate by the applicant.

218 d. An authority may not require more make-ready work than
219 is required to meet applicable codes or industry standards. Fees
220 for make-ready work may not include costs related to preexisting
221 damage or prior noncompliance. Fees for make-ready work,
222 including any pole replacement, may not exceed actual costs or
223 the amount charged to communications service providers other
224 than wireless services providers for similar work and may not
225 include any consultant fee or expense.

226 (g) Except as provided in this chapter or specifically
227 required by state law, an authority may not adopt or enforce any
228 regulation on the placement or operation of communications
229 facilities in the rights-of-way by a provider authorized by
230 state law to operate in the rights-of-way and may not regulate
231 any communications services or impose or collect any tax, fee,
232 or charge not specifically authorized under state law.

233 (h) This subsection does not authorize a person to
234 collocate small wireless facilities on a privately owned utility
235 pole, a privately owned wireless support structure, or other
236 private property without the consent of the property owner.

237 (i) This subsection may not be construed to limit local
238 governments' authority to enforce historic preservation zoning
239 regulations consistent with the preservation of local zoning
240 authority under 47 U.S.C s. 332(c)(7), the requirements for
241 facility modifications under 47 U.S.C. s.1455(a), or the
242 National Historic Preservation Act of 1966, as amended, and the



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243 regulations adopted to implement these laws.

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

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

246 And the title is amended as follows:

247 Delete everything before the enacting clause

248 and insert:

249 A bill to be entitled

250 An act relating to utilities; amending s. 337.401,

251 F.S.; providing a short title; defining terms;

252 prohibiting the Department of Transportation and

253 certain local governmental entities, collectively

254 referred to as the "authority," from prohibiting,

255 regulating, or charging for the collocation of small

256 wireless facilities in public rights-of-way under

257 certain circumstances; authorizing an authority to

258 require permit fees only under certain circumstances;

259 requiring an authority to receive and process

260 applications for permits, and to issue such permits,

261 subject to specified requirements; providing that

262 height limitations do not apply to the placement of

263 small wireless facilities on or before a specified

264 date under certain circumstances; prohibiting an

265 authority from requiring approval or charges for

266 routine maintenance, the replacement of certain

267 wireless facilities, or the installation, placement,

268 maintenance, or replacement of certain micro wireless

269 facilities; requiring an authority to approve the

270 collocation of small wireless facilities on authority

271 utility poles, subject to certain requirements;



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272 providing requirements for rates, fees, and other
273 terms related to authority utility poles; prohibiting
274 an authority from adopting or enforcing any regulation
275 on the placement or operation of certain
276 communications facilities and from regulating any
277 communications services or imposing or collecting any
278 tax, fee, or charge not specifically authorized under
279 state law; providing construction; providing an
280 effective date.