

By the Committee on Communications, Energy, and Public Utilities; and Senators Hutson and Young

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1 A bill to be entitled
2 An act relating to utilities; amending s. 337.401,
3 F.S.; providing a short title; defining terms;
4 prohibiting the Department of Transportation and
5 certain local governmental entities, collectively
6 referred to as the "authority," from prohibiting,
7 regulating, or charging for the collocation of small
8 wireless facilities in public rights-of-way under
9 certain circumstances; authorizing an authority to
10 require permit fees only under certain circumstances;
11 requiring an authority to receive and process
12 applications for permits, and to issue such permits,
13 subject to specified requirements; providing that
14 height limitations do not apply to the placement of
15 small wireless facilities on or before a specified
16 date under certain circumstances; prohibiting an
17 authority from requiring approval or charges for
18 routine maintenance, the replacement of certain
19 wireless facilities, or the installation, placement,
20 maintenance, or replacement of certain micro wireless
21 facilities; requiring an authority to approve the
22 collocation of small wireless facilities on authority
23 utility poles, subject to certain requirements;
24 providing requirements for rates, fees, and other
25 terms related to authority utility poles; prohibiting
26 an authority from adopting or enforcing any regulation
27 on the placement or operation of certain
28 communications facilities and from regulating any
29 communications services or imposing or collecting any

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30 tax, fee, or charge not specifically authorized under
31 state law; providing construction; providing an
32 effective date.

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34 Be It Enacted by the Legislature of the State of Florida:

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

38 337.401 Use of right-of-way for utilities subject to
39 regulation; permit; fees.—

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

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

43 1. "Antenna" means communications equipment that transmits
44 or receives electromagnetic radio frequency signals used in
45 providing wireless services.

46 2. "Applicable codes" means uniform building, fire,
47 electrical, plumbing, or mechanical codes adopted by a
48 recognized national code organization, or local amendments to
49 those codes, enacted solely to address threats of destruction of
50 property or injury to persons. The term includes local
51 government historic preservation zoning regulations consistent
52 with the preservation of local zoning authority under 47 U.S.C
53 s. 332(c) (7), the requirements for facility modifications under
54 47 U.S.C. s. 1455(a), or the National Historic Preservation Act
55 of 1966, as amended, and the regulations adopted to implement
56 these laws.

57 3. "Applicant" means a person who submits an application
58 and is a wireless provider.

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59 4. "Application" means a request submitted by an applicant
60 to an authority for a permit to collocate small wireless
61 facilities.

62 5. "Authority utility pole" means a utility pole owned by
63 an authority in the right-of-way. The term does not include a
64 utility pole owned by a municipal electric company.

65 6. "Collocate" or "collocation" means to install, mount,
66 maintain, modify, operate, or replace one or more wireless
67 facilities on, under, within, or adjacent to a wireless support
68 structure or utility pole.

69 7. "FCC" means the Federal Communications Commission.

70 8. "Micro wireless facility" means a small wireless
71 facility having dimensions no larger than 24 inches in length,
72 15 inches in width, and 12 inches in height and an exterior
73 antenna, if any, no longer than 11 inches.

74 9. "Small wireless facility" means a wireless facility that
75 meets the following qualifications:

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

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

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88 connection of power and other services, and utility poles or
89 other support structures.

90 10. "Utility pole" means a pole or similar structure that
91 is used in whole or in part to provide communications services
92 or for electric distribution, lighting, traffic control,
93 signage, or a similar function.

94 11. "Wireless facility" means equipment at a fixed location
95 which enables wireless communications between user equipment and
96 a communications network, including radio transceivers,
97 antennas, wires, coaxial or fiber-optic cable or other cables,
98 regular and backup power supplies, and comparable equipment,
99 regardless of technological configuration, and equipment
100 associated with wireless communications. The term includes small
101 wireless facilities. The term does not include:

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

104 b. Wireline backhaul facilities; or

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

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

113 13. "Wireless provider" means a wireless infrastructure
114 provider or a wireless services provider.

115 14. "Wireless services" means any services provided using
116 licensed or unlicensed spectrum, whether at a fixed location or

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117 mobile, using wireless facilities.

118 15. "Wireless services provider" means a person who
119 provides wireless services.

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

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

128 (d) An authority may require permit fees only in accordance
129 with subsection (3). An authority shall accept applications for
130 permits and shall process and issue permits subject to the
131 following requirements:

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

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

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

145 4. An authority may not limit the placement of small

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146 wireless facilities by minimum separation distances or a maximum
147 height limitation; however, an authority may limit the height of
148 a small wireless facility to no more than 10 feet above the
149 tallest existing utility pole, measured from grade in place
150 within 500 feet of the proposed location of the small wireless
151 facility. If there is no utility pole within 500 feet, the
152 authority may limit the height of the small wireless facility to
153 no more than 60 feet. The height limitations do not apply to the
154 placement of any small wireless facility on a utility pole or
155 wireless support structure constructed on or before June 30,
156 2017, if the small wireless facility does not extend more than
157 10 feet above the structure.

158 5. Within 10 days after receiving an application, an
159 authority must determine and notify the applicant by electronic
160 mail as to whether the application is complete. If an
161 application is deemed incomplete, the authority must
162 specifically identify the missing information. An application is
163 deemed complete if the authority fails to provide notification
164 to the applicant within 10 days or when all documents,
165 information, and fees specifically enumerated in the authority's
166 permit application form are submitted by the applicant to the
167 authority.

168 6. An application must be processed on a nondiscriminatory
169 basis. A complete application is deemed approved if an authority
170 fails to approve or deny the application within 60 days after
171 receipt of the application.

172 7. An authority must notify the applicant of approval or
173 denial by electronic mail. An authority shall approve a complete
174 application unless it does not meet the authority's applicable

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175 codes. If the application is denied, the authority must specify
176 in writing the basis for denial, including the specific code
177 provisions on which the denial was based, and send the
178 documentation to the applicant by electronic mail on the day the
179 authority denies the application. The applicant may cure the
180 deficiencies identified by the authority and resubmit the
181 application within 30 days after notice of the denial is sent to
182 the applicant. The authority shall approve or deny the revised
183 application within 30 days after receipt or the application is
184 deemed approved. Any subsequent review shall be limited to the
185 deficiencies cited in the denial.

186 8. An applicant seeking to collocate small wireless
187 facilities within the jurisdiction of a single authority may, at
188 the applicant's discretion, file a consolidated application and
189 receive a single permit for the collocation of multiple small
190 wireless facilities.

191 (e) An authority may not require approval or require fees
192 or other charges for:

193 1. Routine maintenance;

194 2. Replacement of existing wireless facilities with
195 wireless facilities that are substantially similar or of the
196 same or smaller size; or

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

202 (f) An authority shall approve the collocation of small
203 wireless facilities on authority utility poles, subject to the

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204 following requirements:

205 1. An authority may not enter into an exclusive arrangement
206 with any person for the right to attach equipment to authority
207 utility poles.

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

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

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

220 5. A person owning or controlling an authority utility pole
221 shall offer rates, fees, and other terms that comply with this
222 subsection. By the later of January 1, 2018, or 3 months after
223 receiving a request to collocate its first small wireless
224 facility on a utility pole owned or controlled by an authority,
225 the person owning or controlling the authority utility pole
226 shall make available, through ordinance or otherwise, rates,
227 fees, and terms for the collocation of small wireless facilities
228 on the authority utility pole which comply with this subsection.

229 a. The rates, fees, and terms must be nondiscriminatory,
230 competitively neutral, and commercially reasonable and must
231 comply with this subsection.

232 b. For an authority utility pole that supports an aerial

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233 facility used to provide communications services or electric
234 service, the parties shall comply with the process for make-
235 ready work under 47 U.S.C. s. 224 and implementing regulations.
236 The good faith estimate of the person owning or controlling the
237 pole for any make-ready work necessary to enable the pole to
238 support the requested collocation must include pole replacement
239 if necessary.

240 c. For an authority utility pole that does not support an
241 aerial facility used to provide communications services or
242 electric service, the authority shall provide a good faith
243 estimate for any make-ready work necessary to enable the pole to
244 support the requested collocation, including necessary pole
245 replacement, within 60 days after receipt of a complete
246 application. Make-ready work, including any pole replacement,
247 must be completed within 60 days after written acceptance of the
248 good faith estimate by the applicant.

249 d. An authority may not require more make-ready work than
250 is required to meet applicable codes or industry standards. Fees
251 for make-ready work may not include costs related to preexisting
252 damage or prior noncompliance. Fees for make-ready work,
253 including any pole replacement, may not exceed actual costs or
254 the amount charged to communications service providers other
255 than wireless services providers for similar work and may not
256 include any consultant fee or expense.

257 (g) Except as provided in this chapter or specifically
258 required by state law, an authority may not adopt or enforce any
259 regulation on the placement or operation of communications
260 facilities in the rights-of-way by a provider authorized by
261 state law to operate in the rights-of-way and may not regulate

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262 any communications services or impose or collect any tax, fee,
263 or charge not specifically authorized under state law.

264 (h) This subsection does not authorize a person to
265 collocate small wireless facilities on a privately owned utility
266 pole, a utility pole owned by an electric cooperative, a
267 privately owned wireless support structure, or other private
268 property without the consent of the property owner.

269 (i) This subsection may not be construed to limit local
270 governments' authority to enforce historic preservation zoning
271 regulations consistent with the preservation of local zoning
272 authority under 47 U.S.C s. 332(c)(7), the requirements for
273 facility modifications under 47 U.S.C. s. 1455(a), or the
274 National Historic Preservation Act of 1966, as amended, and the
275 regulations adopted to implement these laws.

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