

By the Committees on Rules; Governmental Oversight and Accountability; and Communications, Energy, and Public Utilities; and Senators Hutson, Young, and Broxson

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1 A bill to be entitled
2 An act relating to utilities; amending s. 337.401,
3 F.S.; authorizing the Department of Transportation and
4 certain local governmental entities to prescribe and
5 enforce reasonable rules or regulations with reference
6 to the placing and maintaining across, on, or within
7 the right-of-way limits of any road or publicly owned
8 rail corridors under their respective jurisdictions
9 any voice or data communications services lines or
10 wireless facilities; providing a short title; defining
11 terms; prohibiting a county or municipality having
12 jurisdiction and control of the rights-of-way of any
13 public road, referred to as the "authority," from
14 prohibiting, regulating, or charging for the
15 collocation of small wireless facilities in public
16 rights-of-way under certain circumstances; authorizing
17 an authority to require a registration process and
18 permit fees only under certain circumstances;
19 requiring an authority to receive and process
20 applications for permits and to issue such permits,
21 subject to specified requirements; prohibiting an
22 authority from requiring approval of or imposing fees
23 or other charges for routine maintenance, the
24 replacement of certain wireless facilities, or the
25 installation, placement, maintenance, or replacement
26 of certain micro wireless facilities; providing an
27 exception; providing requirements for the collocation
28 of small wireless facilities on authority utility
29 poles; providing requirements for rates, fees, and

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30 other terms related to authority utility poles;
31 authorizing an authority to apply current ordinances
32 regulating placement of communications facilities in
33 the right-of-way, including registration, permitting,
34 insurance coverage, indemnification, performance
35 bonds, security funds, force majeure, abandonment,
36 authority liability, or authority warranties for
37 certain applications; providing that certain permit
38 application requirements and small wireless facility
39 placement requirements shall be waived by the
40 authority; prohibiting an authority from adopting or
41 enforcing any regulation on the placement or operation
42 of certain communications facilities, from regulating
43 any communications services, or from imposing or
44 collecting any tax, fee, or charge not specifically
45 authorized under state law; providing construction;
46 requiring a wireless provider to comply with certain
47 nondiscriminatory undergrounding requirements of the
48 authority; authorizing the authority to waive any such
49 requirements; authorizing a wireless infrastructure
50 provider to apply to an authority to place utility
51 poles in the public rights-of-way to support the
52 collocation of small wireless facilities; providing
53 requirements for such application; requiring the
54 authority to accept and process the application,
55 subject to certain requirements; providing
56 construction; authorizing an authority to enforce
57 local pending ordinances or administrative rules or
58 regulations that are applicable to a historic area

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59 designated by the state or authority and subject to
60 waiver by the authority if the intent to adopt
61 regulation or zoning changes has been publicly
62 declared on or before a specified date; providing
63 retroactive applicability; providing an effective
64 date.

65
66 Be It Enacted by the Legislature of the State of Florida:

67
68 Section 1. Paragraph (a) of subsection (1) of section
69 337.401, Florida Statutes, is amended, and subsection (7) is
70 added to that section, to read:

71 337.401 Use of right-of-way for utilities subject to
72 regulation; permit; fees.—

73 (1) (a) The department and local governmental entities,
74 referred to in this section and in ss. 337.402, 337.403, and
75 337.404 as the "authority," that have jurisdiction and control
76 of public roads or publicly owned rail corridors are authorized
77 to prescribe and enforce reasonable rules or regulations with
78 reference to the placing and maintaining across, on, or within
79 the right-of-way limits of any road or publicly owned rail
80 corridors under their respective jurisdictions any electric
81 transmission, voice telephone, telegraph, data, or other
82 communications services lines or wireless facilities; pole
83 lines; poles; railways; ditches; sewers; water, heat, or gas
84 mains; pipelines; fences; gasoline tanks and pumps; or other
85 structures referred to in this section and in ss. 337.402,
86 337.403, and 337.404 as the "utility." The department may enter
87 into a permit-delegation agreement with a governmental entity if

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88 issuance of a permit is based on requirements that the
89 department finds will ensure the safety and integrity of
90 facilities of the Department of Transportation; however, the
91 permit-delegation agreement does not apply to facilities of
92 electric utilities as defined in s. 366.02(2).

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

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

96 1. "Antenna" means communications equipment that transmits
97 or receives electromagnetic radio frequency signals used in
98 providing wireless services.

99 2. "Applicable codes" means uniform building, fire,
100 electrical, plumbing, or mechanical codes adopted by a
101 recognized national code organization or local amendments to
102 those codes enacted solely to address threats of destruction of
103 property or injury to persons, or local codes or ordinances
104 adopted to implement this subsection. The term includes
105 objective design standards adopted by ordinance which may
106 require that a new utility pole replacing an existing utility
107 pole be of substantially similar design, material, and color, or
108 that ground-mounted equipment meet reasonable spacing
109 requirements. The term includes objective design standards
110 adopted by ordinance which may require a small wireless facility
111 to meet reasonable location context, color, stealth, and
112 concealment requirements; however, the authority may waive the
113 design standards upon a showing that the design standards are
114 not reasonably compatible for the particular location of a small
115 wireless facility or that the design standards impose an
116 excessive expense. The waiver must be granted or denied within

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117 45 days after the date of the waiver request.

118 3. "Applicant" means a person who submits an application
119 and is a wireless provider.

120 4. "Application" means a request submitted by an applicant
121 to an authority for a permit to collocate small wireless
122 facilities.

123 5. "Authority" means a county or municipality having
124 jurisdiction and control of the rights-of-way of any public
125 roads. The term does not include the Florida Department of
126 Transportation. The Florida Department of Transportation rights-
127 of-way are excluded from this subsection.

128 6. "Authority utility pole" means a utility pole owned by
129 an authority in the right-of-way. The term does not include a
130 utility pole owned by a municipal electric utility or any
131 utility pole used to support municipally owned or operated
132 electric distribution facilities, or a utility pole located in
133 the right-of-way within:

134 a. A retirement community that:

135 (I) Is deed-restricted as housing for older persons as
136 defined in s. 760.29(4)(b);

137 (II) Has more than 5,000 residents; and

138 (III) Has underground utilities for electric transmission
139 or distribution; or

140 b. A municipality that:

141 (I) Is located on a coastal barrier island as defined in s.
142 161.053(1)(b)3.;

143 (II) Has a land area of less than 5 square miles;

144 (III) Has fewer than 10,000 residents; and

145 (IV) Has, before the adoption of this act, received

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146 referendum approval to issue debt to finance municipality-wide
147 underground utilities for electric transmission or distribution.

148 7. "Collocate" or "collocation" means to install, mount,
149 maintain, modify, operate, or replace one or more wireless
150 facilities on, under, within, or adjacent to a wireless support
151 structure or utility pole. The term does not include the
152 installation of a utility pole or wireless support structure in
153 the public rights-of-way.

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

155 9. "Micro wireless facility" means a small wireless
156 facility having dimensions no larger than 24 inches in length,
157 15 inches in width, and 12 inches in height and an exterior
158 antenna, if any, no longer than 11 inches.

159 10. "Small wireless facility" means a wireless facility
160 that meets the following qualifications:

161 a. Each antenna associated with the facility is located
162 inside an enclosure of no more than 6 cubic feet in volume or,
163 in the case of antennas that have exposed elements, each antenna
164 and all of its exposed elements could fit within an enclosure of
165 no more than 6 cubic feet in volume; and

166 b. All other wireless equipment associated with the
167 facility is cumulatively no more than 28 cubic feet in volume.
168 The following types of associated ancillary equipment are not
169 included in the calculation of equipment volume: electric
170 meters, concealment elements, telecommunications demarcation
171 boxes, ground-based enclosures, grounding equipment, power
172 transfer switches, cutoff switches, vertical cable runs for the
173 connection of power and other services, and utility poles or
174 other support structures.

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175 11. "Utility pole" means a pole or similar structure used
176 in whole or in part to provide communications services or for
177 electric distribution, lighting, traffic control, signage, or a
178 similar function. The term includes the vertical support
179 structure for traffic lights, but does not include any
180 horizontal structures upon which are attached signal lights or
181 other traffic control devices and does not include any pole or
182 similar structure 15 feet in height or less unless an authority
183 grants a waiver for the pole.

184 12. "Wireless facility" means equipment at a fixed location
185 which enables wireless communications between user equipment and
186 a communications network, including radio transceivers,
187 antennas, wires, coaxial or fiber-optic cable or other cables,
188 regular and backup power supplies, and comparable equipment,
189 regardless of technological configuration, and equipment
190 associated with wireless communications. The term includes small
191 wireless facilities. The term does not include:

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

194 b. Wireline backhaul facilities; or

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

198 13. "Wireless infrastructure provider" means a person who
199 is certificated to provide telecommunications service in the
200 state and who builds or installs wireless communication
201 transmission equipment, wireless facilities, or wireless support
202 structures, but is not a wireless services provider.

203 14. "Wireless provider" means a wireless infrastructure

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204 provider or a wireless services provider.

205 15. "Wireless services" means any services provided using
206 licensed or unlicensed spectrum, whether at a fixed location or
207 mobile, using wireless facilities.

208 16. "Wireless services provider" means a person who
209 provides wireless services.

210 17. "Wireless support structure" means a freestanding
211 structure, such as a monopole, a guyed or self-supporting tower,
212 or another existing or proposed structure designed to support or
213 capable of supporting wireless facilities. The term does not
214 include a utility pole.

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

218 (d) An authority may require a registration process and
219 permit fees in accordance with subsection (3). An authority
220 shall accept applications for permits and shall process and
221 issue permits subject to the following requirements:

222 1. An authority may not directly or indirectly require an
223 applicant to perform services unrelated to the collocation for
224 which approval is sought, such as in-kind contributions to the
225 authority, including reserving fiber, conduit, or pole space for
226 the authority.

227 2. An applicant may not be required to provide more
228 information to obtain a permit than is necessary to demonstrate
229 the applicant's compliance with applicable codes for the
230 placement of small wireless facilities in the locations
231 identified in the application.

232 3. An authority may not require the placement of small

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233 wireless facilities on any specific utility pole or category of
234 poles or require multiple antenna systems on a single utility
235 pole.

236 4. An authority may not limit the placement of small
237 wireless facilities by minimum separation distances; however,
238 within 14 days after the date of filing the application, an
239 authority may request that the proposed location of a small
240 wireless facility be moved to another location in the right-of-
241 way and placed upon an alternative authority utility pole or
242 support structure or placed upon a new utility pole. The
243 authority and applicant may negotiate the alternative location,
244 including any objective design standards, for 30 days after the
245 date of the request. At the conclusion of the negotiation
246 period, if the applicant accepts the alternative location, the
247 applicant must notify the authority, and the application shall
248 be deemed granted for any new location for which there is
249 agreement and all other locations in the application. If no
250 agreement is reached, the applicant must notify the authority,
251 and the authority must grant or deny the original application
252 within 90 days after the date the application is filed. A
253 request for an alternative location, an acceptance of an
254 alternative location, or any rejection of an alternative
255 location must be in writing and provided by electronic mail.

256 5. An authority shall limit the height of a small wireless
257 facility to no more than 10 feet above the utility pole or
258 structure upon which the small wireless facility is to be
259 collocated. Unless waived by an authority, the height for a new
260 utility pole is limited to the tallest existing utility pole
261 located in the right-of-way, other than a utility pole for which

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262 a waiver has previously been granted, measured from grade in
263 place within 500 feet of the proposed location of the small
264 wireless facility. If there is no utility pole within 500 feet,
265 the authority shall limit the height of the utility pole to 50
266 feet.

267 6. Except as provided in subparagraphs 4. and 5., the
268 installation of a utility pole in the public rights-of-way
269 designed to support a small wireless facility is subject to
270 authority rules or regulations governing the placement of
271 utility poles in the public rights-of-way and is subject to the
272 application review timeframes in this subsection.

273 7. Within 14 days after receiving an application, an
274 authority must determine and notify the applicant by electronic
275 mail as to whether the application is complete. If an
276 application is deemed incomplete, the authority must
277 specifically identify the missing information. An application is
278 deemed complete if the authority fails to provide notification
279 to the applicant within 14 days.

280 8. An application must be processed on a nondiscriminatory
281 basis. A complete application is deemed approved if an authority
282 fails to approve or deny the application within 60 days after
283 receipt of the application. If an authority does not use the 30-
284 day negotiation period provided in subparagraph 4., the parties
285 may mutually agree to extend the 60-day application review
286 period. The authority must grant or deny the application at the
287 end of the extended period. A permit issued pursuant to an
288 approved application remains effective for 1 year unless
289 extended by the authority.

290 9. An authority must notify the applicant of approval or

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291 denial by electronic mail. An authority must approve a complete
292 application unless it does not meet the authority's applicable
293 codes. If the application is denied, the authority must specify
294 in writing the basis for denial, including the specific code
295 provisions on which the denial was based, and send the
296 documentation to the applicant by electronic mail on the day the
297 authority denies the application. The applicant may cure the
298 deficiencies identified by the authority and resubmit the
299 application within 30 days after notice of the denial is sent to
300 the applicant. The authority must approve or deny the revised
301 application within 30 days after receipt or the application is
302 deemed approved. Any subsequent review shall be limited to the
303 deficiencies cited in the denial.

304 10. An applicant seeking to collocate small wireless
305 facilities within the jurisdiction of a single authority may, at
306 the applicant's discretion, file a consolidated application and
307 receive a single permit for the collocation of no more than 30
308 small wireless facilities. If the application includes multiple
309 small wireless facilities, an authority may remove small
310 wireless facility collocations from the application and treat
311 separately small wireless facility collocations for which
312 incomplete information has been received or which are denied.

313 11. An authority may deny a proposed collocation of a small
314 wireless facility in the public rights-of-way if the proposed
315 collocation:

316 a. Materially interferes with the safe operation of traffic
317 control equipment.

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

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320 c. Materially interferes with compliance with the Americans
321 with Disabilities Act or similar federal or state standards
322 regarding pedestrian access or movement.

323 d. Materially fails to comply with the 2010 edition of the
324 Florida Department of Transportation Utility Accommodation
325 Manual.

326 e. Fails to comply with applicable codes.

327 12. An authority may adopt by ordinance provisions for
328 registration, permitting, insurance coverage, indemnification,
329 performance bonds, security funds, force majeure, abandonment,
330 authority liability, or authority warranties. Such provisions
331 must be reasonable and nondiscriminatory.

332 13. Collocation of a small wireless facility on an
333 authority utility pole may not provide the basis for the
334 imposition of an ad valorem tax on the authority utility pole.

335 14. An authority may reserve space on authority utility
336 poles for future public safety uses. However, a reservation of
337 space may not preclude collocation of a small wireless facility.
338 If replacement of the authority utility pole is necessary to
339 accommodate the collocation of the small wireless facility and
340 the future public safety use, the pole replacement is subject to
341 make-ready provisions, and the replaced pole shall accommodate
342 the future public safety use.

343 15. Any structure granted a permit and installed pursuant
344 to this subsection must comply with chapter 333 and federal
345 regulations pertaining to airport airspace protections.

346 (e) An authority may not require approval of or impose fees
347 or other charges for:

348 1. Routine maintenance;

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349 2. Replacement of existing wireless facilities with
350 wireless facilities that are substantially similar or of the
351 same or smaller size; or

352 3. Installation, placement, maintenance, or replacement of
353 micro wireless facilities suspended on cables strung between
354 existing utility poles in compliance with applicable codes by a
355 communications service provider authorized to occupy the rights-
356 of-way and who is remitting taxes under chapter 202.

357
358 However, notwithstanding this paragraph, an authority may
359 require a right-of-way permit for work that involves excavation,
360 closing a sidewalk, or closing a vehicular lane.

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

363 1. An authority may not enter into an exclusive arrangement
364 with any person for the right to attach equipment to authority
365 utility poles.

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

369 3. The rate to collocate small wireless facilities on
370 authority utility poles may not exceed \$100 per year.

371 4. Agreements between authorities and wireless providers
372 which are in effect on July 1, 2017, and which relate to the
373 collocation of small wireless facilities in the right-of-way,
374 including the collocation of small wireless facilities on
375 authority utility poles, remain in effect, subject to applicable
376 termination provisions. The wireless provider may accept the
377 rates, fees, and terms established under this subsection for

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378 small wireless facilities and utility poles that are the subject
379 of an application submitted after the rates, fees, and terms
380 become effective.

381 5. A person owning or controlling an authority utility pole
382 shall offer rates, fees, and other terms that comply with this
383 subsection. By the later of January 1, 2018, or 3 months after
384 receiving a request to collocate its first small wireless
385 facility on a utility pole owned or controlled by an authority,
386 the person owning or controlling the authority utility pole
387 shall make available, through ordinance or otherwise, rates,
388 fees, and terms for the collocation of small wireless facilities
389 on the authority utility pole which comply with this subsection.

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

392 b. For an authority utility pole that supports an aerial
393 facility used to provide communications services or electric
394 service, the parties shall comply with the process for make-
395 ready work under 47 U.S.C. s. 224 and implementing regulations.
396 The good faith estimate of the person owning or controlling the
397 pole for any make-ready work necessary to enable the pole to
398 support the requested collocation must include pole replacement
399 if necessary.

400 c. For an authority utility pole that does not support an
401 aerial facility used to provide communications services or
402 electric service, the authority shall provide a good faith
403 estimate for any make-ready work necessary to enable the pole to
404 support the requested collocation, including necessary pole
405 replacement, within 60 days after receipt of a complete
406 application. Make-ready work, including any pole replacement,

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407 must be completed within 60 days after written acceptance of the
408 good faith estimate by the applicant. Alternatively, an
409 authority may require the applicant seeking to collocate a small
410 wireless facility to provide a make-ready estimate at the
411 applicant's expense for the work necessary to support the small
412 wireless facility, including pole replacement, and to perform
413 the make-ready work. If pole replacement is required, the scope
414 of the make-ready estimate is limited to the design,
415 fabrication, and installation of a utility pole that is
416 substantially similar in color and composition. The authority
417 may not impose conditions on or restrict the manner in which the
418 applicant obtains, develops, or provides the estimate or
419 conducts the make-ready work subject to usual construction
420 restoration standards for work in the right-of-way. The replaced
421 or altered utility pole shall remain the property of the
422 authority.

423 d. An authority may not require more make-ready work than
424 is required to meet applicable codes or industry standards. Fees
425 for make-ready work may not include costs related to preexisting
426 damage or prior noncompliance. Fees for make-ready work,
427 including any pole replacement, may not exceed actual costs or
428 the amount charged to communications service providers other
429 than wireless services providers for similar work and may not
430 include any consultant fee or expense.

431 (g) For any applications filed before the effective dates
432 of ordinances implementing this subsection, an authority may
433 apply current ordinances regulating the placement of
434 communications facilities in the right-of-way, including
435 registration, permitting, insurance coverage, indemnification,

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436 performance bonds, security funds, force majeure, abandonment,
437 authority liability, or authority warranties. Permit application
438 requirements and small wireless facility placement requirements,
439 including utility pole height limits, which conflict with this
440 subsection shall be waived by the authority.

441 (h) Except as provided in this section or specifically
442 required by state law, an authority may not adopt or enforce any
443 regulation on the placement or operation of communications
444 facilities in the rights-of-way by a provider authorized by
445 state law to operate in the rights-of-way and may not regulate
446 any communications services or impose or collect any tax, fee,
447 or charge not specifically authorized under state law. This
448 paragraph is not intended to change state law regarding an
449 authority's ability to regulate the relocation of facilities.

450 (i) A wireless provider shall, in relation to a small
451 wireless facility, utility pole, or wireless support structure
452 in the public rights-of-way, comply with nondiscriminatory
453 undergrounding requirements of the authority which prohibit
454 above-ground structures in public rights-of-way. Any such
455 requirements may be waived by the relevant authority.

456 (j) A wireless infrastructure provider may apply to an
457 authority to place utility poles in the public rights-of-way to
458 support the collocation of small wireless facilities. The
459 application must include an attestation that small wireless
460 facilities will be collocated on the utility pole or structure
461 and small wireless facilities will be used by a wireless
462 services provider to provide service within 9 months from the
463 date the application is granted. An authority shall accept and
464 process the application in accordance with subparagraph (d)6.

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465 and any applicable codes and other local codes governing the
466 placement of utility poles in the public rights-of-way.

467 (k) This subsection does not limit a local government's
468 authority to enforce historic preservation zoning regulations
469 consistent with the preservation of local zoning authority under
470 47 U.S.C s. 332(c) (7), the requirements for facility
471 modifications under 47 U.S.C. s. 1455(a), or the National
472 Historic Preservation Act of 1966, as amended, and the
473 regulations adopted to implement these laws. An authority may
474 enforce local pending ordinances or administrative rules or
475 regulations that are applicable to a historic area designated by
476 the state or authority and subject to waiver by the authority if
477 the intent to adopt regulation or zoning changes has been
478 publicly declared on or before April 1, 2017.

479 (l) This subsection does not authorize a person to
480 collocate or attach wireless facilities, including any antenna,
481 micro wireless facility, or small wireless facility, on a
482 privately owned utility pole, a utility pole owned by an
483 electric cooperative or a municipal electric utility, a
484 privately owned wireless support structure, or other private
485 property without the consent of the property owner.

486 (m) The approval of the installation, placement,
487 maintenance, or operation of a small wireless facility pursuant
488 to this subsection may not be construed to authorize the
489 provision of any voice, data, or video communications services
490 or the installation, placement, maintenance, or operation of any
491 communications facilities other than small wireless facilities
492 in the right-of-way.

493 (n) This subsection does not affect the provisions of

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494 subsection (6) relating to pass-through providers.

495 (o) This subsection does not authorize a person to
496 collocate or attach small wireless facilities or micro wireless
497 facilities on a utility pole unless otherwise permitted by
498 federal law, or to erect a wireless support structure in the
499 right-of-way located within a retirement community that:

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

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

503 3. Has underground utilities for electric transmission or
504 distribution.

505
506 Nothing in this paragraph applies to the installation of micro
507 wireless facilities on any existing and duly authorized aerial
508 communications facilities, provided that once aerial facilities
509 are converted to underground, any such collocation or
510 construction shall be only as provided by the municipality's
511 underground utilities ordinance.

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

517 1. Is located on a coastal barrier island as defined in s.
518 161.053(1) (b)3.;

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

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

521 4. Which has, before the adoption of this act, received
522 referendum approval to issue debt to finance municipality-wide

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523 undergrounding of its utilities for electric transmission or
524 distribution.

525
526 Nothing in this paragraph applies to the installation of micro
527 wireless facilities on any existing and duly authorized aerial
528 communications facilities, provided that once aerial facilities
529 are converted to underground, any such collocation or
530 construction shall be only as provided by the municipality's
531 underground utilities ordinance.

532 (q) This subsection does not authorize a person to
533 collocate or attach small wireless facilities or micro wireless
534 facilities on a utility pole unless otherwise permitted by
535 federal law, or to erect a wireless support structure in the
536 right-of-way, which do not comply with the covenants,
537 conditions, and restrictions; articles of incorporation; and by
538 laws applicable to the proposed location.

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