

1 A bill to be entitled
2 An act relating to utilities; amending s. 337.401,
3 F.S.; providing a short title; providing definitions;
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; prohibiting an
14 authority from requiring approval or charges for
15 routine maintenance, the replacement of certain
16 wireless facilities, or the installation, placement,
17 maintenance, or replacement of certain micro wireless
18 facilities; requiring an authority to approve the
19 collocation of small wireless facilities on authority
20 utility poles, subject to certain requirements;
21 providing requirements for rates, fees, and other
22 terms related to authority utility poles; prohibiting
23 an authority from adopting or enforcing any regulation
24 on the placement or operation of certain
25 communications facilities and from regulating any

26 | communications services or imposing or collecting any
 27 | tax, fee, or charge not specifically authorized under
 28 | state law; providing construction; providing an
 29 | effective date.

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31 | Be It Enacted by the Legislature of the State of Florida:

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

35 | 337.401 Use of right-of-way for utilities subject to
 36 | regulation; permit; fees.—

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

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

40 | 1. "Antenna" means communications equipment that transmits
 41 | or receives electromagnetic radio frequency signals used in
 42 | providing wireless services.

43 | 2. "Applicable codes" means uniform building, fire,
 44 | electrical, plumbing, or mechanical codes adopted by a
 45 | recognized national code organization, or local amendments to
 46 | those codes, enacted solely to address threats of destruction of
 47 | property or injury to persons. The term includes local
 48 | government historic preservation zoning regulations consistent
 49 | with the preservation of local zoning authority under 47 U.S.C.
 50 | s. 332(c) (7), the requirements for facility modifications under

51 47 U.S.C. s. 1455(a), or the National Historic Preservation Act
52 of 1966, as amended, and the regulations adopted to implement
53 such laws.

54 3. "Applicant" means a person who submits an application
55 and is a wireless provider.

56 4. "Application" means a request submitted by an applicant
57 to an authority for a permit to collocate small wireless
58 facilities.

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

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

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

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

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

75 a. Each antenna associated with the facility is located

76 | inside an enclosure of no more than 6 cubic feet in volume or,
77 | in the case of antennas that have exposed elements, each antenna
78 | and all of its exposed elements could fit within an enclosure of
79 | no more than 6 cubic feet in volume; and

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

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

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

101 a. The structure or improvements on, under, within, or
 102 adjacent to the structure on which the equipment is collocated;
 103 b. Wireline backhaul facilities; or
 104 c. Coaxial or fiber-optic cable that is between wireless
 105 structures or utility poles or that is otherwise not immediately
 106 adjacent to or directly associated with a particular antenna.

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

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

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

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

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

124 (c) Except as provided in this subsection, an authority
 125 may not prohibit, regulate, or charge for the collocation of

126 small wireless facilities in the public rights-of-way.

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

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

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

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

144 4. An authority may not limit the placement of small
145 wireless facilities by minimum separation distances or a maximum
146 height limitation; however, an authority may limit the height of
147 a small wireless facility to no more than 10 feet above the
148 tallest existing utility pole, measured from grade in place
149 within 500 feet of the proposed location of the small wireless
150 facility. If there is no utility pole within 500 feet, the

151 authority may limit the height of the small wireless facility to
152 no more than 60 feet. The height limitations do not apply to the
153 placement of any small wireless facility on a utility pole or
154 wireless support structure constructed on or before June 30,
155 2017, if the small wireless facility does not extend more than
156 10 feet above the structure.

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

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

171 7. An authority must notify the applicant of approval or
172 denial by electronic mail. An authority shall approve a complete
173 application unless it does not meet the authority's applicable
174 codes. If the application is denied, the authority must specify
175 in writing the basis for denial, including the specific code

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

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

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

192 1. Routine maintenance;

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

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

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

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

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

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

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

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

226 fees, and terms for the collocation of small wireless facilities
227 on the authority utility pole which comply with this subsection.

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

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

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

248 d. An authority may not require more make-ready work than
249 is required to meet applicable codes or industry standards. Fees
250 for make-ready work may not include costs related to preexisting

251 damage or prior noncompliance. Fees for make-ready work,
252 including any pole replacement, may not exceed actual costs or
253 the amount charged to communications services providers other
254 than wireless services providers for similar work and may not
255 include any consultant fees or expenses.

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

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

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

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