

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Yarkosky offered the following:

2
3 **Amendment to Amendment (073989) (with title amendment)**

4 Between lines 643 and 644, insert:

5 **Section 16. Paragraphs (a) and (i) of subsection (3) and**
6 **paragraphs (b), (d), and (r) of subsection (7) of section**
7 **337.401, Florida Statutes, are amended to read:**

8 337.401 Use of right-of-way for utilities subject to
9 regulation; permit; fees.—

10 (3) (a) Because of the unique circumstances applicable to
11 providers of communications services, including, but not limited
12 to, the circumstances described in paragraph (e) and the fact
13 that federal and state law require the nondiscriminatory

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14 treatment of providers of telecommunications services, and
15 because of the desire to promote competition among providers of
16 communications services, it is the intent of the Legislature
17 that municipalities and counties treat providers of
18 communications services in a nondiscriminatory and competitively
19 neutral manner when imposing rules or regulations governing the
20 placement or maintenance of communications facilities in the
21 public roads or rights-of-way. Rules or regulations imposed by a
22 municipality or county relating to providers of communications
23 services placing or maintaining communications facilities in its
24 roads or rights-of-way must be generally applicable to all
25 providers of communications services, taking into account the
26 distinct engineering, construction, operation, maintenance,
27 public works, and safety requirements of the provider's
28 facilities, and, notwithstanding any other law, may not require
29 a provider of communications services to apply for or enter into
30 an individual license, franchise, or other agreement with the
31 municipality or county as a condition of placing or maintaining
32 communications facilities in its roads or rights-of-way. In
33 addition to other reasonable rules or regulations that a
34 municipality or county may adopt relating to the placement or
35 maintenance of communications facilities in its roads or rights-
36 of-way under this subsection or subsection (7), a municipality
37 or county may require a provider of communications services that
38 places or seeks to place facilities in its roads or rights-of-

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39 way to register with the municipality or county. To register, a
40 provider of communications services may be required only to
41 provide its name; the name, address, and telephone number of a
42 contact person for the registrant; the number of the
43 registrant's current certificate of authorization issued by the
44 Florida Public Service Commission, the Federal Communications
45 Commission, or the Department of State; a statement of whether
46 the registrant is a pass-through provider as defined in
47 subparagraph (6)(a)1.; the registrant's federal employer
48 identification number; and any required proof of insurance or
49 self-insuring status adequate to defend and cover claims. A
50 municipality or county may not require a registrant to renew a
51 registration more frequently than every 5 years but may require
52 during this period that a registrant update the registration
53 information provided under this subsection within 90 days after
54 a change in such information. A municipality or county may not
55 require the registrant to provide an inventory of communications
56 facilities, maps, locations of such facilities, or other
57 information by a registrant as a condition of registration,
58 renewal, or for any other purpose; provided, however, that a
59 municipality or county may require as part of a permit
60 application that the applicant identify at-grade communications
61 facilities within 50 feet of the proposed installation location
62 for the placement of at-grade communications facilities. A
63 municipality or county may not require that a provider locate or

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64 perform a survey of any facilities except its own or any right-
65 of-way boundary when requesting a permit consistent with chapter
66 556. If the owner of a facility fails to locate their facilities
67 as required under chapter 556, a provider may proceed with the
68 work but must use reasonable care and detection equipment or
69 other acceptable means to avoid damaging existing underground
70 facilities. A municipality or county may not require a provider
71 to pay any fee, cost, or other charge for registration or
72 renewal thereof. A municipality or county may not limit the
73 number of permits in any way, including by project size or by
74 limiting the number of open permits or applications, provided
75 that the permit is closed out within 45 days after the
76 provider's completion of work. A municipality or county may
77 require the submission or maintenance of a bond or other
78 financial instrument as set out in this section but may not
79 require a cash deposit or other escrow, payment, or exaction as
80 a condition of issuing a permit. It is the intent of the
81 Legislature that the placement, operation, maintenance,
82 upgrading, and extension of communications facilities not be
83 unreasonably interrupted or delayed through the permitting or
84 other local regulatory process. Except as provided in this
85 chapter or otherwise expressly authorized by chapter 202,
86 chapter 364, or chapter 610, a municipality or county may not
87 adopt or enforce any ordinance, regulation, or requirement as to
88 the placement or operation of communications facilities in a

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89 right-of-way by a communications services provider authorized by
90 state or local law to operate in a right-of-way; regulate any
91 communications services; or impose or collect any tax, fee,
92 cost, charge, or exaction for the placement of communications
93 facilities or the provision of communications services over the
94 communications services provider's communications facilities in
95 a right-of-way.

96 (i) Except as expressly provided in this section, this
97 section does not modify the authority of municipalities and
98 counties to levy the tax authorized in chapter 202 or the duties
99 of providers of communications services under ss. 337.402-
100 337.404. This section does not apply to ~~building permits,~~ pole
101 attachments, ~~or~~ private roads, private easements, ~~and~~ private
102 rights-of-way, or building permits unrelated to the placement of
103 communications facilities.

104 (7)

105 (b) As used in subsections (3)-(9) ~~this subsection,~~ the
106 term:

107 1. "Antenna" means communications equipment that transmits
108 or receives electromagnetic radio frequency signals used in
109 providing wireless services.

110 2. "Applicable codes" means uniform building, fire,
111 electrical, plumbing, or mechanical codes adopted by a
112 recognized national code organization or local amendments to
113 those codes enacted solely to address threats of destruction of

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114 property or injury to persons, and includes the National
115 Electric Safety Code and the 2017 edition of the Florida
116 Department of Transportation Utility Accommodation Manual.

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

119 4. "Application" means a request submitted by an applicant
120 to an authority for a permit to collocate small wireless
121 facilities, ~~or to~~ place a new utility pole used to support a
122 small wireless facility, or place other communications
123 facilities. An authority's permit application form or process
124 must include all required permissions, however designated,
125 required by the authority to grant a permit to place
126 communications facilities, including, but not limited to, right-
127 of-way occupancy, building permits, electrical permits, or
128 historic review.

129 5. "Authority" means a county or municipality having
130 jurisdiction and control of the rights-of-way of any public
131 road. The term does not include the Department of
132 Transportation. Rights-of-way under the jurisdiction and control
133 of the department are excluded from this subsection.

134 6. "Authority utility pole" means a utility pole owned by
135 an authority in the right-of-way. The term does not include a
136 utility pole owned by a municipal electric utility, a utility
137 pole used to support municipally owned or operated electric

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138 distribution facilities, or a utility pole located in the right-
139 of-way within:

140 a. A retirement community that:

141 (I) Is deed restricted as housing for older persons as
142 defined in s. 760.29(4)(b);

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

144 (III) Has underground utilities for electric transmission
145 or distribution.

146 b. A municipality that:

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

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

150 (III) Has less than 10,000 residents; and

151 (IV) Has, before July 1, 2017, received referendum
152 approval to issue debt to finance municipal-wide undergrounding
153 of its utilities for electric transmission or distribution.

154 7. "Collocate" or "collocation" means to install, mount,
155 maintain, modify, operate, or replace one or more wireless
156 facilities on, under, within, or adjacent to a wireless support
157 structure or utility pole. The term does not include the
158 installation of a new utility pole or wireless support structure
159 in the public rights-of-way.

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

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

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163 15 inches in width, and 12 inches in height and an exterior
164 antenna, if any, no longer than 11 inches.

165 10. "Small wireless facility" means a wireless facility
166 that meets the following qualifications:

167 a. Each antenna associated with the facility is located
168 inside an enclosure of no more than 6 cubic feet in volume or,
169 in the case of antennas that have exposed elements, each antenna
170 and all of its exposed elements could fit within an enclosure of
171 no more than 6 cubic feet in volume; and

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

181 11. "Utility pole" means a pole or similar structure that
182 is used in whole or in part to provide communications services
183 or for electric distribution, lighting, traffic control,
184 signage, or a similar function. The term includes the vertical
185 support structure for traffic lights but does not include a
186 horizontal structure to which signal lights or other traffic
187 control devices are attached and does not include a pole or

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188 similar structure 15 feet in height or less unless an authority
189 grants a waiver for such pole.

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

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

200 b. Wireline backhaul facilities; or

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

204 13. "Wireless infrastructure provider" means a person who
205 has been certificated under chapter 364 to provide
206 telecommunications service or under chapter 610 to provide cable
207 or video services in this state, or that person's affiliate, and
208 who builds or installs wireless communication transmission
209 equipment, wireless facilities, or wireless support structures
210 but is not a wireless services provider.

211 14. "Wireless provider" means a wireless infrastructure
212 provider or a wireless services provider.

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213 15. "Wireless services" means any services provided using
214 licensed or unlicensed spectrum, whether at a fixed location or
215 mobile, using wireless facilities.

216 16. "Wireless services provider" means a person who
217 provides wireless services.

218 17. "Wireless support structure" means a freestanding
219 structure, such as a monopole, a guyed or self-supporting tower,
220 or another existing or proposed structure designed to support or
221 capable of supporting wireless facilities. The term does not
222 include a utility pole, pedestal, or other support structure for
223 ground-based equipment not mounted on a utility pole and less
224 than 5 feet in height.

225 (d) An authority may require a registration process and
226 permit fees in accordance with subsection (3). An authority
227 shall accept applications for permits and shall process and
228 issue permits subject to the following requirements:

229 1. An authority may not directly or indirectly require an
230 applicant to perform services unrelated to the collocation for
231 which approval is sought, such as in-kind contributions to the
232 authority, including reserving fiber, conduit, or pole space for
233 the authority.

234 2. An applicant may not be required to provide more
235 information to obtain a permit than is necessary to demonstrate
236 the applicant's compliance with applicable codes for the
237 placement of small wireless facilities in the locations

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238 identified in the application. An applicant may not be required
239 to provide inventories, maps, or locations of communications
240 facilities in the right-of-way other than as necessary to avoid
241 interference with other at-grade or aerial facilities located at
242 the specific location proposed for a small wireless facility or
243 within 50 feet of such location.

244 3. An authority may not:

245 a. Require the placement of small wireless facilities on
246 any specific utility pole or category of poles;

247 b. Require the placement of multiple antenna systems on a
248 single utility pole;

249 c. Require a demonstration that collocation of a small
250 wireless facility on an existing structure is not legally or
251 technically possible as a condition for granting a permit for
252 the collocation of a small wireless facility on a new utility
253 pole except as provided in paragraph (i);

254 d. Require compliance with an authority's provisions
255 regarding placement of communications facilities, including
256 small wireless facilities or a new utility poles ~~pole~~ used to
257 support a small wireless facilities, facility in rights-of-way
258 under the control of the department unless the authority has
259 received a delegation from the department for the location of
260 the small wireless facility or utility pole; ~~or~~ or require such
261 compliance as a condition to receive a permit that is ancillary

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262 to the permit for collocation of a small wireless facility,
263 including an electrical permit;

264 e. Require a meeting before filing an application;

265 f. Require direct or indirect public notification or a
266 public meeting for the placement of communication facilities in
267 the right-of-way;

268 g. Limit the size or configuration of a small wireless
269 facility or any of its components, if the small wireless
270 facility complies with the size limits in this subsection;

271 h. Prohibit the installation of a new utility pole used to
272 support the collocation of a small wireless facility if the
273 installation otherwise meets the requirements of this
274 subsection; ~~or~~

275 i. Require that any component of a small wireless facility
276 be placed underground except as provided in paragraph (i); or

277 j. Require compliance with provisions regarding the
278 placement of communications facilities, including small wireless
279 facilities or new utility poles used to support small wireless
280 facilities, in rights-of-way not owned and controlled by the
281 authority and public utility easements that are within areas not
282 owned and controlled by the authority unless a permit delegation
283 agreement exists between the authority and the owner of the
284 right-of-way or area that contains the public utility easement.

285 4. Subject to paragraph (r), an authority may not limit
286 the placement, by minimum separation distances, of small

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287 wireless facilities, utility poles on which small wireless
288 facilities are or will be collocated, or other at-grade
289 communications facilities. However, within 14 days after the
290 date of filing the application, an authority may request that
291 the proposed location of a small wireless facility be moved to
292 another location in the right-of-way and placed on an
293 alternative authority utility pole or support structure or
294 placed on a new utility pole. The authority and the applicant
295 may negotiate the alternative location, including any objective
296 design standards and reasonable spacing requirements for ground-
297 based equipment, for 30 days after the date of the request. At
298 the conclusion of the negotiation period, if the alternative
299 location is accepted by the applicant, the applicant must notify
300 the authority of such acceptance and the application shall be
301 deemed granted for any new location for which there is agreement
302 and all other locations in the application. If an agreement is
303 not reached, the applicant must notify the authority of such
304 nonagreement and the authority must grant or deny the original
305 application within 90 days after the date the application was
306 filed. A request for an alternative location, an acceptance of
307 an alternative location, or a rejection of an alternative
308 location must be in writing and provided by electronic mail.

309 5. An authority shall limit the height of a small wireless
310 facility to 10 feet above the utility pole or structure upon
311 which the small wireless facility is to be collocated. Unless

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312 waived by an authority, the height for a new utility pole is
313 limited to the tallest existing utility pole as of July 1, 2017,
314 located in the same right-of-way, other than a utility pole for
315 which a waiver has previously been granted, measured from grade
316 in place within 500 feet of the proposed location of the small
317 wireless facility. If there is no utility pole within 500 feet,
318 the authority shall limit the height of the utility pole to 50
319 feet.

320 6. The installation by a communications services provider
321 of a utility pole in the public rights-of-way, other than a
322 utility pole used to support a small wireless facility, is
323 subject to authority rules or regulations governing the
324 placement of utility poles in the public rights-of-way.

325 7. Within 14 days after receiving an application, an
326 authority must determine and notify the applicant by electronic
327 mail as to whether the application is complete. If an
328 application is deemed incomplete, the authority must
329 specifically identify the missing information. An application is
330 deemed complete if the authority fails to provide notification
331 to the applicant within 14 days.

332 8. An application must be processed on a nondiscriminatory
333 basis. A complete application is deemed approved if an authority
334 fails to approve or deny the application within 60 days after
335 receipt of the application. If an authority does not use the 30-
336 day negotiation period provided in subparagraph 4., the parties

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337 may mutually agree to extend the 60-day application review
338 period. The authority shall grant or deny the application at the
339 end of the extended period. A permit issued pursuant to an
340 approved application shall remain effective for 1 year unless
341 extended by the authority.

342 9. An authority must notify the applicant of approval or
343 denial by electronic mail. An authority shall approve a complete
344 application unless it does not meet the authority's applicable
345 codes. If the application is denied, the authority must specify
346 in writing the basis for denial, including the specific code
347 provisions on which the denial was based, and send the
348 documentation to the applicant by electronic mail on the day the
349 authority denies the application. The applicant may cure the
350 deficiencies identified by the authority and resubmit the
351 application within 30 days after notice of the denial is sent to
352 the applicant. The authority shall approve or deny the revised
353 application within 30 days after receipt or the application is
354 deemed approved. The review of a revised application is limited
355 to the deficiencies cited in the denial. If an authority
356 provides for administrative review of the denial of an
357 application, the review must be complete and a written decision
358 issued within 45 days after a written request for review is
359 made. A denial must identify the specific code provisions on
360 which the denial is based. If the administrative review is not
361 complete within 45 days, the authority waives any claim

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362 regarding failure to exhaust administrative remedies in any
363 judicial review of the denial of an application.

364 10. An applicant seeking to collocate small wireless
365 facilities within the jurisdiction of a single authority may, at
366 the applicant's discretion, file a consolidated application and
367 receive a single permit for the collocation of up to 30 small
368 wireless facilities. If the application includes multiple small
369 wireless facilities, an authority may separately address small
370 wireless facility collocations for which incomplete information
371 has been received or which are denied.

372 11. An authority may deny an application to collocate a
373 small wireless facility or place a utility pole used to support
374 a small wireless facility in the public rights-of-way if the
375 proposed small wireless facility or utility pole used to support
376 a small wireless facility:

377 a. Materially interferes with the safe operation of
378 traffic control equipment.

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

381 c. Materially interferes with compliance with the
382 Americans with Disabilities Act or similar federal or state
383 standards regarding pedestrian access or movement.

384 d. Materially fails to comply with the 2017 edition of the
385 Florida Department of Transportation Utility Accommodation
386 Manual.

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387 e. Fails to comply with applicable codes.

388 f. Fails to comply with objective design standards
389 authorized under paragraph (r).

390 12. An authority may adopt by ordinance provisions for
391 insurance coverage, indemnification, force majeure, abandonment,
392 authority liability, or authority warranties. Such provisions
393 must be reasonable and nondiscriminatory and apply to all
394 providers of communications services, including, if applicable,
395 any local government or nonprofit providers. An authority may
396 require a construction bond to secure restoration of the
397 postconstruction rights-of-way to the preconstruction condition.
398 However, such bond must be time-limited to not more than 18
399 months after the construction to which the bond applies is
400 completed, and such bond must be reasonably related to the cost
401 to secure restoration of the rights-of-way. An authority may not
402 limit the number of permits allowed under the same bond. For any
403 financial obligation required by an authority allowed under this
404 section, the authority may not limit the number of permits in
405 any way, including by project size or by limiting the number of
406 applications or open permits, provided that the permit is closed
407 out within 45 days after the provider's completion of work; may
408 not impose additional requirements based on the scope or linear
409 feet of the project; and shall accept, at the option of the
410 applicant, a bond or a letter of credit or similar financial
411 instrument issued by any financial institution that is

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412 authorized to do business within the United States ~~and, provided~~
413 that a claim against the financial instrument may be made by
414 electronic means, ~~including by facsimile~~. An authority may not
415 require a deposit or escrow of cash as a condition of issuing a
416 permit or compel the applicant to agree to any additional terms
417 or agreements not specifically authorized by this act or
418 directly related to the work set out in the application. A
419 provider of communications services may add an authority to any
420 existing bond, insurance policy, or other relevant financial
421 instrument, and the authority must accept such proof of coverage
422 without any conditions other than consent to venue for purposes
423 of any litigation to which the authority is a party. An
424 authority may not require a communications services provider to
425 indemnify it for liabilities not caused by the provider, its
426 agents, or its employees, including liabilities arising from the
427 authority's negligence, gross negligence, or willful conduct by
428 an unaffiliated third party.

429 13. Collocation of a small wireless facility on an
430 authority utility pole does not provide the basis for the
431 imposition of an ad valorem tax on the authority utility pole.

432 14. An authority may reserve space on authority utility
433 poles for future public safety uses. However, a reservation of
434 space may not preclude collocation of a small wireless facility.
435 If replacement of the authority utility pole is necessary to
436 accommodate the collocation of the small wireless facility and

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437 the future public safety use, the pole replacement is subject to
438 make-ready provisions and the replaced pole shall accommodate
439 the future public safety use.

440 15. A structure granted a permit and installed pursuant to
441 this subsection shall comply with chapter 333 and federal
442 regulations pertaining to airport airspace protections.

443 (r) An authority may require wireless providers to comply
444 with objective design standards adopted by ordinance. The
445 ordinance may only require:

446 1. A new utility pole that replaces an existing utility
447 pole to be of substantially similar design, material, and color;

448 2. Reasonable spacing requirements concerning the location
449 of a ground-mounted component of a small wireless facility which
450 does not exceed 15 feet from the associated support structure;
451 or

452 3. A small wireless facility to meet reasonable location
453 context, color, camouflage, and concealment requirements,
454 subject to the limitations in this subsection; and

455 4. A new utility pole used to support a small wireless
456 facility to meet reasonable location context, color, and
457 material of the predominant utility pole type at the proposed
458 location of the new utility pole.

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460 Such design standards under this paragraph may be waived by the
461 authority upon a showing that the design standards are not

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462 reasonably compatible for the particular location of a small
 463 wireless facility or utility pole or are technically infeasible
 464 or that the design standards impose an excessive expense. The
 465 waiver must be granted or denied within 45 days after the date
 466 of the request. An authority may not require landscaping,
 467 landscaping maintenance, or vegetation management other than
 468 that necessary for right-of-way restoration.

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

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Remove line 1169 and insert:

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provided by e-mail notification; amending s. 337.401,

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F.S.; prohibiting municipalities and counties from

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requiring that providers locate or perform surveys of

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certain facilities; requiring a provider to use

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certain means to avoid damaging certain facilities

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under specified circumstances; prohibiting

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municipalities and counties from taking certain

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actions relating to certain facility permits;

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authorizing municipalities and counties to require a

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bond or other financial instrument; prohibiting

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municipalities and counties from imposing or

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collecting a tax, fee, cost, charge, or exaction for

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the placement of certain communications facilities;

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487 | revising applicability; revising the definition of the
488 | term "application"; prohibiting an authority from
489 | requiring compliance with an authority's provisions
490 | regarding placement of communications facilities in
491 | certain locations; providing exceptions; requiring
492 | that certain authority ordinances apply to all
493 | providers of communications services; providing bond
494 | requirements; providing requirements for certain
495 | financial obligations required by an authority;
496 | prohibiting an authority from requiring a deposit or
497 | escrow of cash or agreement with certain terms;
498 | prohibiting an authority from requiring a
499 | communications service provider to indemnify it for
500 | certain liabilities; prohibiting an authority from
501 | imposing certain landscaping and vegetation management
502 | requirements; amending ss. 120.80,

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