

By Senator Hutson

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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; specifying that an authority  
10          may require permit fees only under certain  
11          circumstances; requiring an authority to receive and  
12          process applications for and to issue permits subject  
13          to specified requirements; providing that approval of,  
14          and charges by, an authority are not required 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; providing  
23          that specified provisions do not authorize  
24          collocations of small wireless facilities on certain  
25          property; prohibiting an authority from adopting or  
26          enforcing any regulations on the placement or  
27          operation of certain communications facilities and  
28          from regulating any communications services or  
29          imposing or collecting any taxes, fees, or charges not  
30          specifically authorized under state law; providing an  
31          effective date.  
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33 Be It Enacted by the Legislature of the State of Florida:

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

37 337.401 Use of right-of-way for utilities subject to  
38 regulation; permit; fees.—

39 (7) (a) This subsection shall be known as the "Advanced  
40 Wireless Infrastructure Deployment Act."

41 (b) As used in this subsection, the following definitions  
42 apply:

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.

51 3. "Applicant" means a person who submits an application  
52 and is a wireless provider.

53 4. "Application" means a request submitted by an applicant  
54 to an authority for a permit to collocate small wireless  
55 facilities.

56 5. "Authority utility pole" means a utility pole owned or  
57 operated by an authority in the right-of-way.

58 6. "Collocate" or "collocation" means to install, mount,  
59 maintain, modify, operate, or replace one or more wireless  
60 facilities on, under, within, or adjacent to a wireless support  
61 structure or utility pole.

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

63 8. "Micro wireless facility" means a small wireless  
64 facility having dimensions not larger than 24 inches in length,  
65 15 inches in width, and 12 inches in height and that has an  
66 exterior antenna, if any, no longer than 11 inches.

67 9. "Small wireless facility" means a wireless facility that  
68 meets both the following qualifications:

69 a. Each antenna associated with the facility is located  
70 inside an enclosure of no more than 6 cubic feet in volume or,  
71 in the case of antennas that have exposed elements, each antenna  
72 and all of its exposed elements could fit within an enclosure of  
73 no more than 6 cubic feet in volume; and

74 b. All other wireless equipment associated with the  
75 facility is cumulatively no more than 28 cubic feet in volume.  
76 The following types of associated ancillary equipment are not  
77 included in the calculation of equipment volume: electric  
78 meters, concealment elements, telecommunications demarcation  
79 boxes, ground-based enclosures, grounding equipment, power  
80 transfer switches, cut-off switches, vertical cable runs for the  
81 connection of power and other services, and utility poles or  
82 other support structures.

83 10. "Utility pole" means a pole or similar structure that  
84 is used in whole or in part to provide communications services  
85 or for electric distribution, lighting, traffic control,  
86 signage, or a similar function.

87 11. "Wireless facility" means equipment at a fixed location  
88 which enables wireless communications between user equipment and  
89 a communications network, including:

90 a. Equipment associated with wireless communications; and

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91 b. Radio transceivers, antennas, wires, coaxial or fiber  
92 optic cable or other cables, regular and backup power supplies,  
93 and comparable equipment, regardless of technological  
94 configuration. The term includes small wireless facilities. The  
95 term does not include the structure or improvements on, under,  
96 within, or adjacent to the structure on which the equipment is  
97 collocated.

98 12. "Wireless infrastructure provider" means a person  
99 certificated to provide telecommunications service in the state  
100 and who builds or installs wireless communication transmission  
101 equipment, wireless facilities, or wireless support structures,  
102 but is not a wireless services provider.

103 13. "Wireless provider" means a wireless infrastructure  
104 provider or a wireless services provider.

105 14. "Wireless services" means any services provided using  
106 licensed or unlicensed spectrum, whether at a fixed location or  
107 mobile, using wireless facilities.

108 15. "Wireless services provider" means a person who  
109 provides wireless services.

110 16. "Wireless support structure" means a freestanding  
111 structure, such as a monopole, a guyed or self-supporting tower,  
112 a billboard, or another existing or proposed structure designed  
113 to support or capable of supporting wireless facilities. The  
114 term does not include a utility pole.

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

118 (d) An authority may require permit fees only in accordance  
119 with subsection (3). An authority shall accept applications for,

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120 process, and issue permits subject to the following  
121 requirements:

122 1. An authority may not directly or indirectly require an  
123 applicant to perform services unrelated to the collocation for  
124 which approval is sought, such as in-kind contributions to the  
125 authority, including reserving fiber, conduit, or pole space for  
126 the authority.

127 2. An applicant may not be required to provide more  
128 information to obtain a permit than is required of electric  
129 service providers and other communications service providers  
130 that are not wireless service providers.

131 3. An authority may not require the placement of small  
132 wireless facilities on any specific utility pole or category of  
133 poles or require multiple antenna systems on a single utility  
134 pole.

135 4. An authority may not limit the placement of small  
136 wireless facilities by minimum separation distances or a maximum  
137 height limitation; however, an authority may limit the height of  
138 a small wireless facility to no more than 10 feet above the  
139 tallest existing utility pole, measured from grade in place  
140 within 500 feet of the proposed location of the small wireless  
141 facility. If there is no utility pole within 500 feet, the  
142 authority may limit the height of the small wireless facility to  
143 no more than 60 feet. The height limitations do not apply to the  
144 placement of any small wireless facility on a utility pole or  
145 wireless support structure constructed on or before June 30,  
146 2017, if the small wireless facility does not extend more than  
147 10 feet above the structure.

148 5. Within 10 days after receiving an application, an

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149 authority must determine and notify the applicant by electronic  
150 mail as to whether the application is complete. If an  
151 application is deemed incomplete, the authority must  
152 specifically identify the missing information. An application  
153 shall be deemed complete if the authority fails to provide  
154 notification to the applicant within 10 days or when all  
155 documents, information, and fees specifically enumerated in the  
156 authority's permit application form are submitted by the  
157 applicant to the authority.

158 6. An application must be processed on a nondiscriminatory  
159 basis. A complete application is deemed approved if the  
160 authority fails to approve or deny the application within 60  
161 days after receipt of the application.

162 7. The authority must notify the applicant of approval or  
163 denial by electronic mail. An authority shall approve a complete  
164 application unless it does not meet the authority's applicable  
165 codes. If the application is denied, the authority must specify  
166 in writing the basis for denial, including the specific code  
167 provisions on which the denial was based, and send the  
168 documentation to the applicant by electronic mail on the day the  
169 authority denies the application. The applicant may cure the  
170 deficiencies identified by the authority and resubmit the  
171 application within 30 days after notice of the denial is sent to  
172 the applicant. The authority shall approve or deny the revised  
173 application within 30 days after receipt or the application will  
174 be deemed approved. Any subsequent review shall be limited to  
175 the deficiencies cited in the denial.

176 8. An applicant seeking to collocate small wireless  
177 facilities within the jurisdiction of a single authority may, at

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178 the applicant's discretion, file a consolidated application and  
179 receive a single permit for the collocation of multiple small  
180 wireless facilities.

181 (e) An authority may not require approval or require fees  
182 or other charges for:

183 1. Routine maintenance;

184 2. Replacement of existing wireless facilities with  
185 wireless facilities that are substantially similar or the same  
186 size or smaller; or

187 3. Installation, placement, maintenance, or replacement of  
188 micro wireless facilities that are suspended on messenger cables  
189 strung between existing utility poles in compliance with  
190 applicable codes by a communications service provider authorized  
191 to occupy the rights-of-way and who is remitting taxes under  
192 chapter 202.

193 (f) An authority shall approve the collocation of small  
194 wireless facilities on authority utility poles, subject to the  
195 following requirements:

196 1. An authority may not enter into an exclusive arrangement  
197 with any person for the right to attach equipment to authority  
198 utility poles.

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

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

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

211       5. Persons owning or controlling authority utility poles  
212 shall offer rates, fees, and other terms that comply with this  
213 subsection. By the later of January 1, 2018, or 3 months after  
214 receiving a request to collocate its first small wireless  
215 facility on a utility pole owned or controlled by an authority,  
216 the person owning or controlling the authority utility pole  
217 shall make available, through ordinance or otherwise, rates,  
218 fees, and terms for the collocation of small wireless facilities  
219 on the authority utility pole which comply with this subsection.

220       a. The rates, fees, and terms must be nondiscriminatory,  
221 competitively neutral, and commercially reasonable and must  
222 comply with this subsection.

223       b. For authority utility poles that support aerial  
224 facilities used to provide communications services or electric  
225 service, the parties shall comply with the process for make-  
226 ready work under 47 U.S.C. s. 224 and implementing regulations.  
227 The good faith estimate of the person owning or controlling the  
228 pole for any make-ready work necessary to enable the pole to  
229 support the requested collocation must include pole replacement  
230 if necessary.

231       c. For authority utility poles that do not support aerial  
232 facilities used to provide communications services or electric  
233 service, the authority shall provide a good faith estimate for  
234 any make-ready work necessary to enable the pole to support the  
235 requested collocation, including necessary pole replacement,

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236 within 60 days after receipt of a complete application. Make-  
237 ready work, including any pole replacement, must be completed  
238 within 60 days after written acceptance of the good faith  
239 estimate by the applicant.

240 d. The authority may not require more make-ready work than  
241 is required to meet applicable codes or industry standards. Fees  
242 for make-ready work may not include costs related to preexisting  
243 damage or prior noncompliance. Fees for make-ready work,  
244 including any pole replacement, may not exceed actual costs or  
245 the amount charged to communications service providers other  
246 than wireless service providers for similar work and may not  
247 include any consultant fees or expenses.

248 (g) This subsection does not authorize a person to  
249 collocate small wireless facilities on a privately owned utility  
250 pole, a privately owned wireless support structure, or other  
251 private property without the consent of the property owner.

252 (h) Except as provided in this chapter or specifically  
253 required by state law, an authority may not adopt or enforce any  
254 regulations on the placement or operation of communications  
255 facilities in the rights-of-way by any provider authorized by  
256 state law to operate in the rights-of-way and shall not regulate  
257 any communications services or impose or collect any taxes,  
258 fees, or charges not specifically authorized under state law.

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