

By the Committees on 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 permit fees only under certain
18 circumstances; requiring an authority to receive and
19 process applications for permits and to issue such
20 permits, subject to specified requirements; providing
21 that height limitations do not apply to the placement
22 of small wireless facilities on or before a specified
23 date under certain circumstances; prohibiting an
24 authority from requiring approval, fees, or other
25 charges for routine maintenance, the replacement of
26 certain wireless facilities, or the installation,
27 placement, maintenance, or replacement of certain
28 micro wireless facilities; requiring an authority to
29 approve the collocation of small wireless facilities

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30 on authority utility poles, subject to certain
31 requirements; providing requirements for rates, fees,
32 and other terms related to authority utility poles;
33 prohibiting an authority from adopting or enforcing
34 any regulation on the placement or operation of
35 certain communications facilities, from regulating any
36 communications services, or from imposing or
37 collecting any tax, fee, or charge not specifically
38 authorized under state law; providing construction;
39 providing an effective date.

40
41 Be It Enacted by the Legislature of the State of Florida:

42
43 Section 1. Paragraph (a) of subsection (1) of section
44 337.401, Florida Statutes, is amended, and subsection (7) is
45 added to that section, to read:

46 337.401 Use of right-of-way for utilities subject to
47 regulation; permit; fees.—

48 (1) (a) The department and local governmental entities,
49 referred to in this section and in ss. 337.402, 337.403, and
50 337.404 as the "authority," that have jurisdiction and control
51 of public roads or publicly owned rail corridors are authorized
52 to prescribe and enforce reasonable rules or regulations with
53 reference to the placing and maintaining across, on, or within
54 the right-of-way limits of any road or publicly owned rail
55 corridors under their respective jurisdictions any electric
56 transmission, voice telephone, telegraph, data, or other
57 communications services lines or wireless facilities; pole
58 lines; poles; railways; ditches; sewers; water, heat, or gas

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59 mains; pipelines; fences; gasoline tanks and pumps; or other
60 structures referred to in this section and in ss. 337.402,
61 337.403, and 337.404 as the "utility." The department may enter
62 into a permit-delegation agreement with a governmental entity if
63 issuance of a permit is based on requirements that the
64 department finds will ensure the safety and integrity of
65 facilities of the Department of Transportation; however, the
66 permit-delegation agreement does not apply to facilities of
67 electric utilities as defined in s. 366.02(2).

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

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

71 1. "Antenna" means communications equipment that transmits
72 or receives electromagnetic radio frequency signals used in
73 providing wireless services.

74 2. "Applicable codes" means uniform building, fire,
75 electrical, plumbing, or mechanical codes adopted by a
76 recognized national code organization, or local amendments to
77 those codes, enacted solely to address threats of destruction of
78 property or injury to persons. The term includes local
79 government historic preservation zoning regulations consistent
80 with the preservation of local zoning authority under 47 U.S.C
81 s. 332(c)(7), the requirements for facility modifications under
82 47 U.S.C. s. 1455(a), or the National Historic Preservation Act
83 of 1966, as amended; and the regulations adopted to implement
84 these laws.

85 3. "Applicant" means a person who submits an application
86 and is a wireless provider.

87 4. "Application" means a request submitted by an applicant

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88 to an authority for a permit to collocate small wireless
89 facilities.

90 5. "Authority" means a county or municipality having
91 jurisdiction and control of the rights-of-way of any public
92 road. The term does not include the Department of
93 Transportation. The Department of Transportation rights-of-way
94 are excluded from this subsection.

95 6. "Authority utility pole" means a utility pole owned by
96 an authority in the right-of-way. The term does not include a
97 utility pole owned by a municipal electric utility, any utility
98 pole used to support municipally owned or operated electric
99 distribution facilities, or a utility pole located in the right-
100 of-way within a retirement community that:

101 a. Is deed-restricted as housing for older persons as
102 defined in s. 760.29(4) (b);
103 b. Has more than 5,000 residents; and
104 c. Has underground utilities for electric transmission or
105 distribution.

106 7. "Collocate" or "collocation" means to install, mount,
107 maintain, modify, operate, or replace one or more wireless
108 facilities on, under, within, or adjacent to a wireless support
109 structure or utility pole.

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

111 9. "Micro wireless facility" means a small wireless
112 facility having dimensions no larger than 24 inches in length,
113 15 inches in width, and 12 inches in height and an exterior
114 antenna, if any, no longer than 11 inches.

115 10. "Small wireless facility" means a wireless facility
116 that meets the following qualifications:

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117 a. Each antenna associated with the facility is located
118 inside an enclosure of no more than 6 cubic feet in volume or,
119 in the case of antennas that have exposed elements, each antenna
120 and all of its exposed elements could fit within an enclosure of
121 no more than 6 cubic feet in volume; and

122 b. All other wireless equipment associated with the
123 facility is cumulatively no more than 28 cubic feet in volume.
124 The following types of associated ancillary equipment are not
125 included in the calculation of equipment volume: electric
126 meters, concealment elements, telecommunications demarcation
127 boxes, ground-based enclosures, grounding equipment, power
128 transfer switches, cutoff switches, vertical cable runs for the
129 connection of power and other services, and utility poles or
130 other support structures.

131 11. "Utility pole" means a pole or similar structure that
132 is used in whole or in part to provide communications services
133 or for electric distribution, lighting, traffic control,
134 signage, or a similar function.

135 12. "Wireless facility" means equipment at a fixed location
136 which enables wireless communications between user equipment and
137 a communications network, including radio transceivers,
138 antennas, wires, coaxial or fiber-optic cable or other cables,
139 regular and backup power supplies, and comparable equipment,
140 regardless of technological configuration, and equipment
141 associated with wireless communications. The term includes small
142 wireless facilities. The term does not include:

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

145 b. Wireline backhaul facilities; or

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

149 13. "Wireless infrastructure provider" means a person who
150 is certificated to provide telecommunications service in the
151 state and who builds or installs wireless communication
152 transmission equipment, wireless facilities, or wireless support
153 structures, but is not a wireless services provider.

154 14. "Wireless provider" means a wireless infrastructure
155 provider or a wireless services provider.

156 15. "Wireless services" means any services provided using
157 licensed or unlicensed spectrum, whether at a fixed location or
158 mobile, using wireless facilities.

159 16. "Wireless services provider" means a person who
160 provides wireless services.

161 17. "Wireless support structure" means a freestanding
162 structure, such as a monopole, a guyed or self-supporting tower,
163 a billboard, or another existing or proposed structure designed
164 to support or capable of supporting wireless facilities. The
165 term does not include a utility pole.

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

169 (d) An authority may require permit fees only in accordance
170 with subsection (3). An authority shall accept applications for
171 permits and shall process and issue permits subject to the
172 following requirements:

173 1. An authority may not directly or indirectly require an
174 applicant to perform services unrelated to the collocation for

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175 which approval is sought, such as in-kind contributions to the
176 authority, including reserving fiber, conduit, or pole space for
177 the authority.

178 2. An applicant may not be required to provide more
179 information to obtain a permit than is required of electric
180 service providers and other communications service providers
181 that are not wireless services providers.

182 3. An authority may not require the placement of small
183 wireless facilities on any specific utility pole or category of
184 poles or require multiple antenna systems on a single utility
185 pole.

186 4. An authority may not limit the placement of small
187 wireless facilities by minimum separation distances.

188 5. An authority may limit the height of a small wireless
189 facility to be no more than 10 feet above the tallest existing
190 utility pole within 500 feet, measured from grade in place, of
191 the proposed location of the small wireless facility. If there
192 is no utility pole within 500 feet, the authority may limit the
193 height of the small wireless facility to be no more than 60
194 feet. The height limitations do not apply to the placement of
195 any small wireless facility on a utility pole or wireless
196 support structure constructed on or before June 30, 2017, if the
197 small wireless facility does not extend more than 10 feet above
198 the structure.

199 6. A wireless infrastructure provider may apply to an
200 authority to place utility poles or wireless support structures
201 in the public rights-of-way to support the collocation of small
202 wireless facilities. The application must include an attestation
203 that small wireless facilities will be collocated on the utility

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204 pole or structure and small wireless facilities will be used by
205 a wireless services provider to provide service within 9 months
206 after the date the application is granted. An authority shall
207 accept and process the application in accordance with this
208 paragraph and any applicable local codes governing the placement
209 of utility poles in the public rights-of-way.

210 7. Within 10 days after receiving an application, an
211 authority must determine and notify the applicant by electronic
212 mail as to whether the application is complete. If an
213 application is deemed incomplete, the authority must
214 specifically identify the missing information. An application is
215 deemed complete if the authority fails to provide notification
216 to the applicant within 10 days or when all documents,
217 information, and fees specifically enumerated in the authority's
218 permit application form are submitted by the applicant to the
219 authority.

220 8. An application must be processed on a nondiscriminatory
221 basis. A complete application is deemed approved if an authority
222 fails to approve or deny the application within 60 days after
223 receipt of the application.

224 9. An authority must notify the applicant of approval or
225 denial by electronic mail. An authority shall approve a complete
226 application unless it does not meet the authority's applicable
227 codes. If the application is denied, the authority must specify
228 in writing the basis for denial, including the specific code
229 provisions on which the denial was based, and send the
230 documentation to the applicant by electronic mail on the day the
231 authority denies the application. The applicant may cure the
232 deficiencies identified by the authority and resubmit the

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233 application within 30 days after notice of the denial is sent to
234 the applicant. The authority shall approve or deny the revised
235 application within 30 days after receipt or the application is
236 deemed approved. Any subsequent review shall be limited to the
237 deficiencies cited in the denial.

238 10. An applicant seeking to collocate small wireless
239 facilities within the jurisdiction of a single authority may, at
240 the applicant's discretion, file a consolidated application and
241 receive a single permit for the collocation of multiple small
242 wireless facilities.

243 (e) An authority may not require approval, fees, or other
244 charges for:

245 1. Routine maintenance;

246 2. Replacement of existing wireless facilities with
247 wireless facilities that are substantially similar or of the
248 same or smaller size; or

249 3. Installation, placement, maintenance, or replacement of
250 micro wireless facilities that are suspended on cables strung
251 between existing utility poles in compliance with applicable
252 codes by a communications service provider that is authorized to
253 occupy the rights-of-way and that is remitting taxes under
254 chapter 202.

255 (f) An authority shall approve the collocation of small
256 wireless facilities on authority utility poles, subject to the
257 following requirements:

258 1. An authority may not enter into an exclusive arrangement
259 with any person for the right to attach equipment to authority
260 utility poles.

261 2. The rates and fees for collocations on authority utility

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262 poles must be nondiscriminatory, regardless of the services
263 provided by the collocating person.

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

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

273 5. A person owning or controlling an authority utility pole
274 shall offer rates, fees, and other terms that comply with this
275 subsection. By the later of January 1, 2018, or 3 months after
276 receiving a request to collocate its first small wireless
277 facility on a utility pole owned or controlled by an authority,
278 the person owning or controlling the authority utility pole
279 shall make available, through ordinance or otherwise, rates,
280 fees, and terms for the collocation of small wireless facilities
281 on the authority utility pole which comply with this subsection.

282 a. The rates, fees, and terms must be nondiscriminatory,
283 competitively neutral, and commercially reasonable and must
284 comply with this subsection.

285 b. For an authority utility pole that supports an aerial
286 facility used to provide communications services or electric
287 service, the parties shall comply with the process for make-
288 ready work under 47 U.S.C. s. 224 and implementing regulations.
289 The good faith estimate of the person owning or controlling the
290 pole for any make-ready work necessary to enable the pole to

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291 support the requested collocation must include pole replacement
292 if necessary.

293 c. For an authority utility pole that does not support an
294 aerial facility used to provide communications services or
295 electric service, the authority shall provide a good faith
296 estimate for any make-ready work necessary to enable the pole to
297 support the requested collocation, including necessary pole
298 replacement, within 60 days after receipt of a complete
299 application. Make-ready work, including any pole replacement,
300 must be completed within 60 days after written acceptance of the
301 good faith estimate by the applicant.

302 d. An authority may not require more make-ready work than
303 is required to meet applicable codes or industry standards. Fees
304 for make-ready work may not include costs related to preexisting
305 damage or prior noncompliance. Fees for make-ready work,
306 including any pole replacement, may not exceed actual costs or
307 the amount charged to communications service providers other
308 than wireless services providers for similar work and may not
309 include any consultant fee or expense.

310 (g) Except as provided in this chapter or specifically
311 required by state law, an authority may not adopt or enforce any
312 regulation on the placement or operation of communications
313 facilities in the rights-of-way by a provider authorized by
314 state law to operate in the rights-of-way and may not regulate
315 any communications services or impose or collect any tax, fee,
316 or charge not specifically authorized under state law.

317 (h) This subsection does not authorize a person to
318 collocate small wireless facilities on a privately owned utility
319 pole, a utility pole owned by an electric cooperative or by a

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320 municipal electric utility, a privately owned wireless support
321 structure, or other private property without the consent of the
322 property owner.

323 (i) This subsection does not authorize a person to
324 collocate or attach small wireless facilities or micro wireless
325 facilities on a utility pole or erect a wireless support
326 structure in the right-of-way located within a retirement
327 community that:

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

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

331 3. Has underground utilities for electric transmission or
332 distribution.

333 (j) This subsection may not be construed to limit a local
334 government's authority to enforce historic preservation zoning
335 regulations consistent with the preservation of local zoning
336 authority under 47 U.S.C s. 332(c) (7), the requirements for
337 facility modifications under 47 U.S.C. s. 1455(a), or the
338 National Historic Preservation Act of 1966, as amended; and the
339 regulations adopted to implement these laws.

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