Committee/Subcommittee hearing bill: Commerce Committee
Representative La Rosa offered the following:

Amendment (with title amendment)
Remove everything after the enacting clause and insert:
Section 1. Paragraph (a) of subsection (1) of section 337.401, Florida Statutes, is amended, and subsection (7) is added to that section, to read:
337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—
(1)(a) The department and local governmental entities, referred to in this section and in ss. 337.402, 337.403, and 337.404 as the “authority,” that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining across, on, or within
the right-of-way limits of any road or publicly owned rail
corridors under their respective jurisdictions any electric
transmission, voice telephone, telegraph, data or other
communications services lines or wireless facilities; pole
lines; poles; railways; ditches; sewers; water, heat, or gas
mains; pipelines; fences; gasoline tanks and pumps; or other
structures referred to in this section and in ss. 337.402,
337.403, and 337.404 as the “utility.” The department may enter
into a permit-delegation agreement with a governmental entity if
issuance of a permit is based on requirements that the
department finds will ensure the safety and integrity of
facilities of the Department of Transportation; however, the
permit-delegation agreement does not apply to facilities of
electric utilities as defined in s. 366.02(2).

(7)(a) This subsection may be cited as the “Advanced
Wireless Infrastructure Deployment Act.”

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

1. “Antenna” means communications equipment that transmits
or receives electromagnetic radio frequency signals used in
providing wireless services.

2. “Applicable codes” means uniform building, fire,
electrical, plumbing, or mechanical codes adopted by a
recognized national code organization or local amendments to
those codes enacted solely to address threats of destruction of
property or injury to persons, or local codes or ordinances
adopted to implement the provisions of this subsection. The term includes objective design standards adopted by ordinance that may require that a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color or reasonable spacing requirements concerning the location of ground mounted equipment. The term includes objective design standards adopted by ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements; however, such design standards may be waived by the authority upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense. The waiver shall be granted or denied within 45 days from the date of the request.

3. “Applicant” means a person who submits an application and is a wireless provider.

4. “Application” means a request submitted by an applicant to an authority for a permit to collocate small wireless facilities.

5. “Authority” means a county or municipality having jurisdiction and control of the rights-of-way of any public roads. The term does not include the Florida Department of Transportation. The Florida Department of Transportation rights-of-way are excluded from this subsection.
6. "Authority utility pole" means a utility pole owned by an authority in the right-of-way. The term does not include a utility pole owned by a municipal electric utility or any utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way within:

a. A retirement community that:
   (I) Is deed-restricted as housing for older persons as defined in s. 760.29(4)(b);
   (II) Has more than 5,000 residents; and
   (III) Has underground utilities for electric transmission or distribution.

b. A municipality that:
   (I) Is located on a coastal barrier island as defined in s. 161.053(b)(3);
   (II) Has a land area of less than five square miles;
   (III) Has less than ten thousand residents; and
   (IV) Which has, prior to the adoption of this act, received referendum approval to issue debt to finance municipal-wide undergrounding of its utilities for electric transmission or distribution.

7. "Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the
Amendment No. 1


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

10. “Small wireless facility” means a wireless facility that meets the following qualifications:
   a. Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and
   b. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume.

The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

11. “Utility pole” means a pole or similar structure that is used in whole or in part to provide communications services
or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include any horizontal structures upon which is attached signal lights or other traffic control devices and does not include any pole or similar structure 15 feet in height or less unless an authority grants a waiver for the pole.

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

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

b. Wireline backhaul facilities; or

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

13. “Wireless infrastructure provider” means a person who has been certificated to provide telecommunications service in the state and who builds or installs wireless communication
transmission equipment, wireless facilities, or wireless support structures, but is not a wireless services provider.

14. “Wireless provider” means a wireless infrastructure provider or a wireless services provider.

15. “Wireless services” means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

16. “Wireless services provider” means a person who provides wireless services.

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

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

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

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

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

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

4. An authority may not limit the placement of small
wireless facilities by minimum separation distances; however,
within 14 days from the date of filing the application, an
authority may request that the proposed location of a small
wireless facility be moved to another location in the right-or-
way and placed upon an alternative authority utility pole or
support structure or place a new utility pole. The authority and
applicant may negotiate the alternate location, including any
objective design standards and reasonable spacing requirements
for ground-based equipment, for 30 days from the date of the
request. At the conclusion of the negotiation period, if the
alternative location is accepted by the applicant, the applicant
must notify the authority and the application shall be deemed
granted for any new location for which there is agreement and
all other locations in the application. If no agreement is reached, the applicant must notify the authority and the authority must grant or deny the original application within 90 days from the date the application was filed. A request for an alternative location, an acceptance of an alternate location or any rejection of an alternative location must be in writing and provided by electronic mail.

5. An authority shall limit the height of a small wireless facility to no more than 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. Unless waived by an authority, the height for a new utility pole is limited to the tallest existing utility pole as of the effective date of this subsection located in the same right-of-way, other than a utility pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the authority shall limit the height of the utility pole to 50 feet.

6. Except as provided in paragraphs 4. and 5., the installation of a utility pole in the public rights-of-way designed to support a small wireless facility shall be subject to authority rules or regulations governing the placement of utility poles in the public rights-of-way and shall be subject to the application review timeframes in this subsection.
7. Within 14 days after receiving an application, an authority must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the authority must specifically identify the missing information. An application is deemed complete if the authority fails to provide notification to the applicant within 14 days.

8. An application must be processed on a nondiscriminatory basis. A complete application is deemed approved if an authority fails to approve or deny the application within 60 days after receipt of the application. If an authority does not utilize the 30-day negotiation period provided in paragraph (d)4., the parties may mutually agree to extend the 60-day application review period. The authority shall grant or deny the application at the end of the extended period. A permit issued pursuant to an approved application shall remain effective for one year unless extended by the authority.

9. An authority must notify the applicant of approval or denial by electronic mail. An authority shall approve a complete application unless it does not meet the authority’s applicable codes. If the application is denied, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application. The applicant may cure the
deficiencies identified by the authority and resubmit the application within 30 days after notice of the denial is sent to the applicant. The authority shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

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

11. An authority may deny a proposed collocation of a small wireless facility in the public rights-of-way if the proposed collocation:
   a. Materially interferes with the safe operation of traffic control equipment.
   b. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
   c. Materially interferes with compliance with the Americans with Disability Act or similar federal or state standards regarding pedestrian access or movement.
d. Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.

e. Fails to comply with applicable codes.

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

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

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

15. Any structure granted a permit and installed pursuant to this subsection shall comply with ch. 333 and federal regulations pertaining to airport airspace protections.

(e) An authority may not require approval or require fees or other charges for:
1. Routine maintenance;  
2. Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or  
3. Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communications service provider authorized to occupy the rights-of-way and who is remitting taxes under chapter 202.

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

(f) Collocation of small wireless facilities on authority utility poles is subject to the following requirements:
1. An authority may not enter into an exclusive arrangement with any person for the right to attach equipment to authority utility poles.  
2. The rates and fees for collocations on authority utility poles must be nondiscriminatory, regardless of the services provided by the collocating person.  
3. The rate to collocate small wireless facilities on authority utility poles may not exceed $150 annually.
4. Agreements between authorities and wireless providers that are in effect on the effective date of this subsection and that relate to the collocation of small wireless facilities in the right of way, including the collocation of small wireless facilities on authority utility poles, remain in effect, subject to applicable termination provisions. The wireless provider may accept the rates, fees, and terms established under this subsection for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.

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

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

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

c. For an authority utility pole that does not support an aerial facility used to provide communications services or electric service, the authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, an authority may require the applicant seeking to collocate a small wireless facility to provide a make-ready estimate at the applicant’s expense for the work necessary to support the small wireless facility, including pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. The authority may not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-
of-way. The replaced or altered utility pole shall remain the property of the authority.

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

(g) For any applications filed prior to the effective date of ordinances implementing the provisions of this subsection, an authority may apply current ordinances relating to placement of communications facilities in the right-of-way related to registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties. Permit application requirements and small wireless facility placement requirements including utility pole height limits that conflict with the provisions of this subsection shall be waived by the authority.

(h) Except as provided in this section or specifically required by state law, an authority may not adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way by a provider authorized by state law to operate in the rights-of-way and may not regulate...
any communications services or impose or collect any tax, fee, or charge not specifically authorized under state law. Nothing in this paragraph is intended to change Florida law regarding an authority’s ability to regulate the relocation of facilities.

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

(j) A wireless infrastructure provider may apply to an authority to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility pole or structure and small wireless facilities will be utilized by a wireless services provider to provide service within nine months from the date the application is granted. An authority shall accept and process the application in accordance with subparagraph (d)6. and any applicable codes and other local codes governing the placement of utility poles in the public rights-of-way.

(k) This subsection does not limit a local government’s authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility
modifications under 47 U.S.C. s.1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement these laws. An authority may enforce local codes, administrative rules, or regulations adopted by ordinance in effect on April 1, 2017, which are applicable to a historic area designated by the state or authority. An authority may enforce pending local ordinances, administrative rules, or regulations applicable to a historic area designated by the state if the intent to adopt such changes has been publicly declared on or before April 1, 2017. An authority may waive any ordinances or other requirements that are subject to this paragraph.

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

(m) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this subsection shall not be construed to confer authorization for the provision of any voice, data, or video communications services nor for the installation, placement,
maintenance, or operation of any communications facilities other than small wireless facilities in the right-of-way.

(n) The provisions of this subsection do not affect the provision of subsection (6) relating to pass-through providers.

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

1. Is deed-restricted as housing for older persons as defined in s. 760.29(4)(b);
2. Has more than 5,000 residents; and
3. Has underground utilities for electric transmission or distribution.

Nothing in this paragraph applies to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground, any such collocation or construction shall be only as provided by the municipality’s underground utilities ordinance.

(p) This subsection does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole, unless otherwise permitted by
Committee/Subcommittee Amendment

Amendment No. 1

Bill No. CS/HB 687 (2017)

461 federal law, or erect a wireless support structure in the right-of-way located within a municipality that:

462 1. Is located on a coastal barrier island as defined in s. 161.053(1)(b)(3);
463 2. Has a land area of less than 5 square miles;
464 3. Has fewer than 10,000 residents; and
465 4. Which has, prior to the adoption of this act, received referendum approval to issue debt to finance municipal-wide undergrounding of its utilities for electric transmission or distribution.

Nothing in this paragraph applies to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground, any such collocation or construction shall be only as provided by the municipality’s underground utilities ordinance.

(q) This subsection does not authorize a person to collocate small wireless facilities or micro wireless facilities on an authority utility pole or erect a wireless support structure in a location subject to covenants, conditions, and restrictions; articles of incorporation; and bylaws of a home owners association. Nothing herein applies to the installation, placement, maintenance, or replacement of micro wireless
facilities on any existing and duly authorized aerial communications facilities.

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

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

Remove everything before the enacting clause and insert:
An act relating to utilities; amending s. 337.401, F.S.; authorizing the Department of Transportation and certain local governmental entities to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining across, on, or within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions any voice or data communications services lines or wireless facilities; providing a short title; defining terms; prohibiting a county or municipality having jurisdiction and control of the rights-of-way of any public road, referred to as the "authority," from prohibiting, regulating, or charging for the collocation of small wireless facilities in public rights-of-way under certain circumstances; authorizing an authority to require a registration process and permit fees only under certain circumstances; requiring an authority to receive and process applications for permits and to issue such permits, subject to specified requirements; prohibiting an authority from requiring approval of or imposing fees or other charges for
COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 687 (2017)

Amendment No. 1

routine maintenance, the replacement of certain wireless facilities, or the installation, placement, maintenance, or replacement of certain micro wireless facilities; providing an exception; providing requirements for the collocation of small wireless facilities on authority utility poles; providing requirements for rates, fees, and other terms related to authority utility poles; authorizing an authority to apply current ordinances regulating placement of communications facilities in the right-of-way, including registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties for certain applications; providing that certain permit application requirements and small wireless facility placement requirements shall be waived by the authority; prohibiting an authority from adopting or enforcing any regulation on the placement or operation of certain communications facilities, from regulating any communications services, or from imposing or collecting any tax, fee, or charge not specifically authorized under state law; providing construction; requiring a wireless provider to comply with certain nondiscriminatory undergrounding requirements of the authority; authorizing the authority to waive any such requirements; authorizing a wireless infrastructure provider to apply to an authority to place utility poles in the public rights-of-way to support the collocation of small wireless
facilities; providing requirements for such application; requiring the authority to accept and process the application, subject to certain requirements; providing construction; authorizing an authority to enforce local codes, administrative rules, or regulations that are applicable to a historic area designated by the state or authority, subject to waiver by the authority; authorizing an authority to enforce pending local ordinances, administrative rules, or regulations that are applicable to a historic area designated by the state if intent to adopt such changes has been publicly declared by a specified date, subject to waiver by the authority; providing an effective date.