Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED

ADOPTED AS AMENDED

ADOPTED W/O OBJECTION

FAILED TO ADOPT

WITHDRAWN

OTHER

Committee/Subcommittee hearing bill: Energy & Utilities Subcommittee
Representative La Rosa offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

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

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

   (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. The term includes local government 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.

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 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.

6. “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.

8. “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.

9. “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.

10. “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.
11. “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.

12. “Wireless infrastructure provider” means a person who is 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.

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

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

16. “Wireless support structure” means a freestanding structure, such as a monopole, a guyed or self-supporting tower, a billboard, 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 permit fees only 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 required of electric service providers and other communications service providers that are not wireless services providers.

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 or a maximum height limitation; however, an authority may limit the height of a small wireless facility to no more than 10 feet above the tallest existing utility pole, 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 may limit the height of the small wireless facility to no more than 60 feet. The height limitations do not apply to the placement of any small wireless facility on a utility pole or wireless support structure constructed on or before June 30, 2017, if the small wireless facility does not extend more than 10 feet above the structure.

5. Within 10 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 10 days or when all documents, information, and fees specifically enumerated in the authority’s permit application form are submitted by the applicant to the authority.
6. 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.

7. 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.

8. 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 multiple small wireless facilities.

(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 a communications service provider authorized to occupy the rights-of-way and who is remitting taxes under chapter 202.

(f) An authority shall approve the collocation of small wireless facilities on authority utility poles, 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 equipment on authority utility poles may not exceed the lesser of the annual recurring rate that would be permitted under rules adopted by the FCC under 47 U.S.C. s. 224(d) if the collocation rate were regulated by the FCC or $15 per year per authority utility pole.

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

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 commercially reasonable 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.

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) Except as provided in this chapter 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.

(h) This subsection does not authorize a person to collocate small wireless facilities 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.

(i) This subsection may not be construed to limit local governments’ 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.

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

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**TITLE AMENDMENT**

Remove everything before the enacting clause and insert:

An act relating to utilities; amending s. 337.401, F.S.; providing a short title; defining terms; prohibiting the Department of Transportation and certain local governmental entities, collectively 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 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; providing that height limitations do not
apply to the placement of small wireless facilities on or before a specified date under certain circumstances; prohibiting an authority from requiring approval or charges for routine maintenance, the replacement of certain wireless facilities, or the installation, placement, maintenance, or replacement of certain micro wireless facilities; requiring an authority to approve the collocation of small wireless facilities on authority utility poles, subject to certain requirements; providing requirements for rates, fees, and other terms related to authority utility poles; prohibiting an authority from adopting or enforcing any regulation on the placement or operation of certain communications facilities and from regulating any communications services or imposing or collecting any tax, fee, or charge not specifically authorized under state law; providing construction; providing an effective date.