

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:

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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.