

RESOLUTION NO. 2017- 247

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM OF THE ACCEPTANCE OF PERMIT APPLICATIONS FOR THE PLACEMENT, CONSTRUCTION, OR INSTALLATION OF NEW SMALL WIRELESS COMMUNICATION SUPPORT STRUCTURES OR FACILITIES IN COUNTY RIGHTS-OF-WAY PENDING REVISION OF COUNTY ORDINANCES TO ADDRESS THE PLACEMENT, CONSTRUCTION, AND INSTALLATION OF THESE SUPPORT STRUCTURES OR FACILITIES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, St. Johns County owns, controls, manages, or has general supervision of lands designated as rights-of-way; and

WHEREAS, governmental rights-of-way have traditionally been utilized for, among other uses, the placement of public and private utility systems and structures so as to facilitate the delivery of utility services and maintenance of utility systems; and

WHEREAS, new technologies in the provision of wireless communications services are emerging, such as Distributed Antenna Systems (DAS) and "small cell" systems, which may entail requests to place smaller and more numerous communication structure and/or facilities in public rights-of-way in order to improve wireless connectivity and coverage; and

WHEREAS, the Ordinances of St. Johns County do not contemplate nor address these new technologies that have developed in the rapidly changing telecommunications industry, as traditionally these types of structures and facilities have not been install in the County's rights-of-way; and

WHEREAS, Section 704(a) of the Telecommunications Act of 1996, codified at 47 U.S.C. sec. 332(c)7, preserves state and local authority over decisions concerning the placement, construction, and modification of personal wireless service facilities, provided the regulations do not unreasonably discriminate among providers of functionally equivalent services, and do not prohibit, or have the effect of prohibiting, the provision of personal wireless services; and

WHEREAS, House Bill 687 (CS/CS/HB 687) has amended section 337.401, Florida Statutes, establishes a process by which wireless providers may place small wireless facilities, collocate on existing utility poles, within public rights of way; and

WHEREAS, Section 337.401 provides that an authority may adopt by ordinance reasonable and nondiscriminatory provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties; and

WHEREAS, Section 337.401 includes provisions for objective design standards adopted by ordinance that requires a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment; and

WHEREAS, Section 337.401 includes provisions for objective design standards adopted by ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements; and

WHEREAS, Section 337.401 requires the wireless provider to comply with any nondiscriminatory undergrounding requirements of the authority which prohibit above-ground structures in the right-of-way; and

WHEREAS, the Board of County Commission of St. Johns County deems it to be in the best interests of the health safety and welfare of the citizens and residents of the County to temporarily cease the acceptance of applications for permits to place, construct or install new small wireless communication support structures or facilities in the County's rights-of-way; and

WHEREAS, a temporary cessation of the acceptance of applications for permits to place, construct, or install new small wireless communication support structure or facilities in the County's rights-of-way will enable the County's staff to properly study the regulatory requirements for such structures or facilities;

WHEREAS, nothing herein shall be construed as to prevent the maintenance of existing small wireless facilities if necessary for the public health, safety, and welfare;

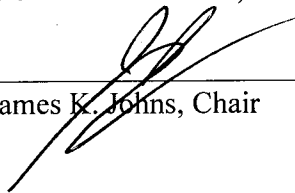
NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, that:

1. The County shall cease the acceptance of applications for permits to place, construct, or install small wireless communication support structures or facilities in the County's rights-of-way and the County shall not issue any permit or development order for wireless communication structures or facilities in the County's right-of-way until one of the following occurs:
 - a. The Board of County Commissioners enacts an ordinance to provide sufficient regulations and standards for the nondiscriminatory regulations and standards for the placement, construction, or installation of new small wireless communication structure or facilities as provided for in House Bill 687, amending Section 337.401, Florida Statutes.
 - b. January 1, 2018.
 - c. This Board rescinds this Resolution.
2. The County Administrator, or designee, and the County Attorney, or designee, are hereby directed to develop such an ordinance as may be required to ensure that the law of St. Johns County provides sufficient non-discriminatory regulations and standards for processing applications to place, construct, or install small wireless communications support structure or facilities in the County's rights-of-way, so as to facilitate the provision of effective wireless communications services to the County's citizens and business while also ensuring the safety, aesthetic, financial and infrastructure planning needs of the County.
3. This Resolution shall not restrict or prohibit communication antennas and communication antenna support structures or communication antenna towers from being constructed on lands not within the County's rights-of-way.
4. This Resolution shall not restrict the maintenance or replacement of existing small wireless communications structures or facilities, including existing utility poles, if necessary for the public health, safety, and welfare.
5. This Resolution shall not restrict or prohibit any other development order or right-of-way permit from being approved within the County's rights-of-way.

6. If any provision or portion of this Resolution is held invalid, same shall be severable, and the remainder of the Resolution shall not be affected by such invalidity, such that any remainder of the Resolution shall withstand any severed provision.
7. To the extent that there are typographical or administrative errors, or both, that do not change the tone, tenor, or concept of this Resolution, then this resolution may be revised without subsequent approval by the Board of County Commissioners.
8. This Resolution shall have effect upon adoption.

PASSED AND ADOPTED by the Board of County Commissioners this 18th day of July, 2017.

**BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA**

By: 
James K. Johns, Chair

ATTEST: Hunter S. Conrad, Clerk

By: 
Deputy Clerk

RENDITION DATE 7/20/17



BACK UP MATERIAL

Staff Analysis on House Bill 687

House Bill 687

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 687	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	Utilities	110	Y's 3	N's
SPONSOR(S):	Commerce Committee; Energy & Utilities Subcommittee; La Rosa and others	GOVERNOR'S ACTION:		Pending
COMPANION BILLS:	CS/CS/CS/SB 596			

SUMMARY ANALYSIS

CS/CS/HB 687 passed the House on April 28, 2017, and subsequently passed the Senate on the same day. The bill creates the Advanced Wireless Infrastructure Deployment Act, which establishes a process by which wireless providers may place certain "small wireless facilities" on, under, within, or adjacent to certain utility poles or wireless support structures within public rights-of-way that are under the jurisdiction and control of an "authority" (i.e., a county or municipality). The bill provides that an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way, except as specified in the bill. The bill caps the rate for collocation on an authority utility pole at \$150 annually.

Small wireless facilities are defined in the bill as wireless facilities that meet the following size limitations:

- Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, if the antenna has exposed elements, the antenna and all of its exposed elements would fit within an enclosure of the same volume.
- All associated wireless equipment is cumulatively no more than 28 cubic feet in volume.

The bill provides specific terms and conditions under which an authority must process and issue permits for collocation, including the grounds on which an authority may deny an application. The bill authorizes an authority to apply certain codes that address the safety of property and persons and certain objective design standards and to request an alternate location in the right-of-way for a proposed small wireless facility. The bill exempts routine maintenance, replacement of existing wireless facilities with similarly sized wireless facilities, and placement of certain "micro wireless facilities" from approval and fees. The bill establishes specific rates and terms for the collocation of small wireless facilities on authority utility poles, including terms related to "make-ready" work to prepare or modify a utility pole to accommodate additional facilities. The bill authorizes a wireless infrastructure provider to apply for a permit to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The bill does not apply to collocation on privately owned utility poles and wireless support structures or utility poles owned by an electric cooperative or municipal electric utility. The bill also does not apply to collocation of small wireless facilities or the erection of wireless support structures in retirement communities or municipalities with specific characteristics or in locations governed by covenants and restrictions of a home owners association.

The bill does not impact state government revenues or expenditures. The bill may have an indeterminate impact on local government expenditures. The bill will have a negative impact on local government revenues if the collocation rate set forth in the bill is lower than the rates that could otherwise be established by ordinance or negotiated under local governments' existing authority.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2017.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0687z.EUS

DATE: May 1, 2017

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Use of Right-of-Way by Communications Services Providers

The Department of Transportation (DOT) and each local governmental entity that has jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with regard to the placement and maintenance of utility¹ facilities across, on, or within the right-of-way limits of any road or publicly owned rail corridors under its jurisdiction. These entities are referred to individually as the "authority".² The authority may authorize any person who is a resident of this state, or any corporation which is organized under the laws of this state or licensed to do business within this state, to use a right-of-way for a utility in accordance with the authority's rules or regulations.³ A utility may not be installed, located, or relocated within a right-of-way unless authorized by a written permit.⁴ The permit must require the permit holder to be responsible for any damage resulting from the permitted use of the right-of-way.⁵

Municipalities and counties must treat providers of communications services in a "nondiscriminatory and competitively neutral manner" when imposing such rules or regulations. The rules and regulations must be "generally applicable" to all such providers and may not require such providers to apply for or enter into an individual license, franchise, or other agreement as a condition of using the right-of-way.⁶

A municipality or charter county may require and collect permit fees from any providers of communications services that use or occupy municipal or county roads or rights-of-way.⁷ To ensure nondiscriminatory and competitively neutral permit fees for communications services providers, municipalities and charter counties must elect to collect permit fees for use of the right-of-way in one of two ways. First, the local government can elect to require the payment of fees from any such providers, provided that the fees are "reasonable and commensurate with the direct and actual cost of the regulatory activity," "demonstrable," and "equitable among users of the roads or rights-of-way."⁸ If the local government makes this election, the rate of its local communications service tax⁹ is automatically reduced by a rate of 0.12 percent. Second, the local government can elect not to require payment of fees from any such provider and may increase its local communications service tax by a rate of up to 0.12 percent. A noncharter county may make the same election. If it chooses not to impose permit fees, it may increase its local communications service tax by a rate of up to 0.24 percent to replace the revenues it would have received for such permit fees.¹⁰

¹ Section 337.401(1)(a), F.S., refers to "any electric transmission, telephone, telegraph, or other communications services lines; 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'."

² s. 337.401(1)(a), F.S.

³ s. 337.401(2), F.S.

⁴ *Id.*

⁵ *Id.*

⁶ s. 337.401(3)(a), F.S.

⁷ s. 337.401(3)(c)1.a.(I), F.S.

⁸ s. 337.401(3)(c)1.a.(I), F.S. Such costs include the costs of issuing and processing permits, plan reviews, physical inspection, and direct administrative costs.

⁹ Local communications services taxes are authorized and governed by ch. 202, F.S.

¹⁰ s. 337.401(3)(c)2., F.S.

Local Government Pole Attachment Fees

With certain exceptions, the authority of a public body¹¹ to require taxes, fees, charges, or other impositions¹² from dealers of communications services for occupying its roads and rights-of-way is specifically preempted by the state.¹³ Among the taxes, fees, and charges *not* preempted¹⁴ are the following:

- Pole attachment fees charged by a local government for attachments to its utility poles.
- Amounts charged for the rental or other use of property owned by a public body which is not in the public rights-of-way to a dealer of communications services for any purpose, including, but not limited to, the placement or attachment of equipment used in the provision of communications services.
- Permit fees related to placing or maintaining facilities in or on public roads or rights-of-way pursuant to s. 337.401, F.S.

Accordingly, local governments may establish pole attachment fees for communications services facilities by ordinance or agreement.

Collocation of Wireless Communications Facilities in DOT Rights-of-Way

With respect to property acquired for state rights-of-way, the DOT is responsible for negotiating leases that provide access for wireless communications facilities.¹⁵ Payments required under such leases must be reasonable and reflect the market rate for the use of the state government-owned property. DOT is authorized to adopt rules for granting such leases, including terms and conditions.¹⁶

The DOT has entered into three competitively bid leases that allow the lessee to place wireless facilities on the DOT's rights-of-way or to sublease those rights to a third-party for the same purpose.¹⁷ The DOT indicates that it derives an income stream from each of these agreements.¹⁸ According to the DOT, the Turnpike System including the Western Beltway, Suncoast Parkway, Veterans Expressway, I-4 connector, Polk Parkway, Sawgrass Expressway, Turnpike Mainline, Beachline Expressway, Seminole Expressway are not subject to rights-of-way leases for wireless facilities.¹⁹

Federal Law on Wireless Facilities Siting

The FCC interprets and implements certain provisions of federal law which are designed, among other purposes, to "remove barriers to deployment of wireless network facilities by hastening the review and

¹¹ A "public body" includes counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state. s. 1.01(8), F.S.

¹² Section 202.24(2)(b), F.S., provides that a tax, charge, fee, or other imposition includes any amount or in-kind payment of property or services which is required by ordinance or agreement to be paid or furnished to a public body by or through a dealer of communications services in its capacity as a dealer of communications services.

¹³ s. 202.24(1), F.S.

¹⁴ See s. 202.24(2)(c), F.S.

¹⁵ s. 365.172(13)(f), F.S.

¹⁶ *Id.*

¹⁷ Florida Department of Transportation, Agency Analysis of 2017 House Bill 687, p. 3 (Jan. 30, 2017) (*DOT Analysis*). The analysis identifies the following leases: American Tower/Lodestar, entered into on March 25, 1999, with a thirty-year term; Rowstar #1, entered into on December 4, 2014, with a ten-year term, extendable for up to four additional ten year terms at the discretion of Rowstar; and Rowstar #2, entered into on December 29, 2016, with a ten-year term, extendable for up to four additional ten year terms at the discretion of Rowstar.

¹⁸ *Id.*

¹⁹ *Id.*

approval of siting applications by local land-use authorities.”²⁰ These statutory provisions preserve state and local governments’ authority to control the “placement, construction, and modification of personal wireless service facilities” and to manage “use of public rights-of-way,” but they prohibit state and local governments from using certain unreasonable criteria in making such decisions.²¹ Under the authority granted by these provisions, the FCC has issued orders to clarify the “maximum presumptively reasonable time frames for review of siting applications and the criteria local governments may apply in deciding whether to approve them.”²²

Federal law establishes that state and local governments may not establish laws, regulations, or other requirements that prohibit or have the effect of prohibiting the ability of any entity to provide personal wireless services²³ or other telecommunications services.²⁴ The FCC has interpreted these provisions as precluding state or local government actions that materially inhibit the ability of an entity to compete in a fair and balanced legal and regulatory environment. Federal circuit courts have varied on the particular standards to apply in this area.²⁵

Further, federal law provides that state and local governments may manage the public rights-of-way and may require fair and reasonable compensation from telecommunications providers for use of those rights-of-way on a nondiscriminatory basis.²⁶ The FCC has not interpreted this provision, and federal circuit courts have varied on the issue of what constitutes “fair and reasonable” compensation.²⁷

In December 2016, in response to a petition for declaratory ruling, the FCC issued a public notice seeking comment on streamlining the deployment of small cell infrastructure by improving wireless facilities siting policies.²⁸ In its notice, the FCC summarized the issues:

To satisfy consumers’ rapidly growing demand for wireless broadband and other services, wireless companies are actively expanding the network capacity needed to maintain and improve the quality of existing services and to support the introduction of new technologies and services. In particular, many wireless providers are deploying small cells and distributed antenna systems (DAS) to meet localized needs for coverage and increased capacity in outdoor and indoor environments. Although the facilities used in these networks are smaller and less obtrusive than traditional cell towers and antennas, they must be deployed more densely – i.e., in many more locations – to function effectively. As a result, local land-use authorities in many areas are facing substantial increases in the volume of siting applications for deployment of these facilities. This trend in infrastructure deployment is expected to continue, and even accelerate, as wireless providers begin rolling out 5G services.

This creates a dilemma. We recognize, as did Congress in enacting Sections 253 and 332 of the Communications Act, that localities play an important role in preserving local interests such as aesthetics and safety. At the same time, the Commission has a statutory mandate to facilitate the deployment of network facilities needed to deliver more robust wireless services to consumers throughout the United States. It is our responsibility to ensure that this deployment of network facilities does not become

²⁰ See FEDERAL COMMUNICATIONS COMMISSION, *Comments Sought on Mobilitee, LLC Petition for Declaratory Ruling and Possible Ways to Streamline Deployment Of Small Cell Infrastructure (FCC 2016 Notice)*, WT Docket No. 16-421, DA 16-1427, December 22, 2016, at p. 2; 47 U.S.C. §§253, 332(c)(7), and 1455(a).

²¹ *Id.* at p. 5, citing 47 U.S.C. §§253(c) and 332(c)(7)(A).

²² *Id.* at p. 2.

²³ Under 47 U.S.C. 332(c)(7), “personal wireless services” are defined as “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.”

²⁴ *FCC 2016 Notice* at p. 10, citing 47 U.S.C. §§253(a) and 332(c)(7).

²⁵ *Id.*

²⁶ *Id.* at p. 12, citing 47 U.S.C. §253(c).

²⁷ *Id.* at p. 13.

²⁸ *Id.*

subject to delay caused by unnecessarily time-consuming and costly siting review processes that may be in conflict with the Communications Act.

The stated purpose of the FCC's request for comments is to develop a factual record to assess whether and to what extent the process of local land-use authorities' review of siting applications is hindering, or is likely to hinder, the deployment of wireless infrastructure. Among the matters on which the FCC is seeking comment and guidance are questions specifically related to access to state and local government rights-of-way and the fees imposed for such access.²⁹ The FCC indicated that this "data-driven evaluation will make it possible to reach well-supported decisions on which further Commission actions, if any, would most effectively address any problem, while preserving local authorities' ability to protect interests within their purview."³⁰

Deployment of Small Wireless Facilities in Florida

Wireless service providers and wireless infrastructure providers have begun the deployment of small cell wireless infrastructure in various jurisdictions within Florida. In some instances, the providers have sited these facilities pursuant to local ordinances or have negotiated with local governments to establish rates, terms, and conditions for siting these facilities. In other instances, the providers indicate that their efforts have been hampered to varying degrees by some local governments that have imposed conditions or moratoria on the siting of small cell facilities.³¹ In general, these moratoria indicate that they are temporary measures designed to allow the local government to review their standards, regulations, and requirements related to siting of wireless communications facilities to address small cell facilities.³² In one instance, the municipality has renewed its moratoria on multiple occasions, extending its effect from the original six months to over 30 months.³³

Effect of Proposed Changes

The bill establishes a process by which wireless providers – including persons who provide wireless services³⁴ and persons who build or install wireless communication transmission equipment, facilities, and support structures – may place certain wireless facilities³⁵ on, under, within, or adjacent to certain utility poles or wireless support structures within public rights-of-way that are under the jurisdiction and control of a county or municipality (an "authority"). The bill excludes DOT and rights-of-way under its jurisdiction and control.

Under the bill, a utility pole includes any 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, but does not include any horizontal support structures to which signal lights or other traffic control devices are attached or any pole or similar structure 15 feet in height or less. The bill excludes utility poles that are:

- Owned by a municipal electric utility or used to support electric distribution facilities owned or operated by a municipality;

²⁹ *Id.* at pp. 8-14.

³⁰ *Id.* at p. 2.

³¹ These providers state that the following 11 municipalities have adopted moratoria: Boynton Beach, Coral Springs, Fort Meade, Fort Lauderdale, Gainesville, North Lauderdale, Port Orange, Safety Harbor, Southwest Ranches Stuart, Sunrise, and Tallahassee. The providers also state that the following 6 counties have adopted moratoria: Highlands, Martin, Pasco, Pinellas, Sarasota, and St. Lucie.

³² *See, e.g.*, City of Tallahassee, Resolution No. 16-R-42, December 2016.

³³ City of Fort Lauderdale, Resolution No. 17-30, February 21, 2017.

³⁴ As defined in the bill, "wireless services" means "any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile using wireless facilities."

³⁵ As defined in the bill, "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" and includes small wireless facilities.

- Located in the right-of-way within a retirement community that is deed-restricted as housing for older persons as defined in s. 760.29(4)(b), F.S., has more than 5,000 residents, and has underground utilities for electric transmission or distribution; or
- Located in the right-of-way within a municipality that is located on a coastal barrier island as defined in s. 161.053(b)(3), F.S., has a land area of less than five square miles, has less than 10,000 residents, and, prior to July 1, 2017, has received referendum approval to issue debt to finance municipal-wide undergrounding of its utilities for electric transmission or distribution.

The bill provides that an authority may not prohibit, regulate, or charge for the collocation³⁶ of small wireless facilities in the public rights-of-way, except as specified in the bill. Small wireless facilities are defined in the bill as wireless facilities that meet the following size limitations:

- Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, if the antenna has exposed elements, the antenna and all of its exposed elements would fit within an enclosure of the same volume.
- All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume.

Certain associated ancillary equipment is not included in the calculation of these equipment volume limitations. Such equipment includes electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs to connect power and other services.

A small wireless facility is defined by the bill as a “micro wireless facility” if its dimensions are not larger than 24 inches in length, 15 inches in width, and 12 inches in height, with an exterior antenna, if any, no longer than 11 inches. The bill provides that the installation, placement, maintenance, or replacement of such facilities by a provider that is authorized to occupy the rights-of-way and that remits communications service taxes under ch. 202, F.S., is not subject to approval or fees imposed by an authority. The bill also exempts routine maintenance and the replacement of existing wireless facilities with wireless facilities that are substantially similar or the same size or smaller. Notwithstanding these exemptions, the bill authorizes an authority to require a right-of-way permit for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane.

The bill provides that an authority may require a registration process and permit fees for collocation of small wireless facilities in accordance with s. 337.401(3), F.S. The bill provides specific terms and conditions under which the authority must process and issue permits.

Authority Review Process

The bill requires an authority to approve or deny an application for a permit to collocate small wireless facilities within 60 days of receipt of the application and to inform the applicant of the outcome through electronic mail. If the application is not processed within that time, the application is deemed approved. The applicant and the authority may mutually agree to extend this review period, unless the authority initiates a 30-day negotiation period (described in greater detail below) to request an alternative location for the proposed collocation. If the review period is extended by mutual agreement, the authority must grant or deny the application at the end of the extended period.

Within 14 days of receipt of an application, an authority must determine and notify the applicant by electronic mail as to whether the application is complete. If it determines that the application is not complete, the authority must specifically identify any missing information. An application is deemed complete if the authority fails to notify the applicant within 14 days.

³⁶ As defined in the bill, “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.”

An applicant may, at its discretion, file a consolidated application and receive a single permit to collocate up to 30 small wireless facilities. If the application includes collocation of multiple small wireless facilities, the authority may separately address small wireless facility collocations for which incomplete information has been received or which are denied.

The bill provides that an authority may deny an application if the proposed collocation:

- Materially interferes with the safe operation of traffic control equipment;
- Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
- Materially interferes with compliance with the Americans with Disabilities Act or similar law;
- Materially fails to comply with the 2010 edition of the DOT Utility Accommodation Manual; or
- Fails to comply with “applicable codes” as defined in the bill.

The bill defines “applicable codes” to include the following:

- 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;
- Local codes or ordinances adopted to implement the provisions of the bill;³⁷
- 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 that may require reasonable spacing requirements concerning the location of ground-mounted equipment; and
- Objective design standards adopted by ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements, provided that the authority may waive such design standards 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.³⁸

An authority may not apply any other local land development or zoning codes in its review. The bill provides that an application must be processed on a nondiscriminatory basis.

If an application is denied, the authority must specify in writing the basis for the denial, including specific code provisions, and must send this information by electronic mail to the applicant on the day the application is denied. The applicant may cure the noted deficiencies by resubmitting the application within 30 days after notice of denial. The authority must then approve or deny the revised application within 30 days or the application will be deemed approved. The authority's review of the revised application is limited to the deficiencies cited in the notice of denial.

Limitations on Permit Conditions

The bill establishes certain limitations on the power of an authority to impose conditions on a permit to collocate small wireless facilities in the public rights-of-way. A permit issued pursuant to an approved application is effective for one year unless extended by the authority.

The bill prohibits an authority from directly or indirectly requiring an applicant to perform services unrelated to the collocation. The bill identifies such prohibited services to include in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority. The bill also prohibits an authority from requiring an applicant to provide more information than is necessary to demonstrate

³⁷ The bill provides that an authority may adopt by ordinance reasonable and nondiscriminatory provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties.

³⁸ The bill provides that the authority must grant or deny such a request for waiver within 45 days from the date of the request.

compliance with applicable codes. Further, the bill prohibits an authority from requiring the placement of small wireless facilities on any specific pole or category of poles or requiring the placement of multiple antenna systems on a single pole.

The bill prohibits an authority from limiting the placement of small wireless facilities by minimum separation distance, but provides a process by which an authority, within 14 days from the filing date of a collocation application, may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed upon an alternative authority utility pole or support structure or may place a new utility pole. Under this process, the authority and applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days from the date of the request. After the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the authority and the application is deemed granted for any such location 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.

The bill provides that an authority must limit the height of a small wireless facility to no more than 10 feet above the utility pole or structure upon which it is to be collocated. For a new utility pole, the height is limited to the tallest existing utility pole as of July 1, 2017, that is located in the same right-of-way as measured from "grade in place" within 500 feet of the proposed location. The authority may waive this limit. If there is no utility pole within 500 feet of the proposed location, the authority must limit the height of the new pole to 50 feet. Further, the bill provides that any structure permitted for collocation must comply with state airport zoning laws under ch. 333, F.S., and federal regulations related to airport airspace protections.

The bill provides that an authority may reserve space on its utility poles for future public safety uses, provided that such reservation does not preclude collocation of a small wireless facility. If replacement of the pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to the make-ready provisions of the bill (described in greater detail below) and the replaced pole must accommodate the future public safety use.

Further, the bill requires a wireless provider to comply with any nondiscriminatory undergrounding requirements of the authority which prohibit above-ground structures in the public right-of-way, unless waived by the authority.

The bill provides that collocation of a small wireless facility on an authority utility pole does not provide a basis for the imposition of an ad valorem tax on the authority utility pole.

For any application filed before an authority's implementing ordinances become effective, the authority may apply its current ordinances relating to placement of communications facilities in the right-of-way with regard to registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties. However, permit application requirements or utility pole height limits that conflict with the provisions of this subsection must be waived by the authority.

Collocation on Utility Poles

Under the bill, the collocation of small wireless facilities on authority utility poles is subject to the following requirements:

- An authority may not enter into an exclusive agreement with any person for the right to attach equipment to authority utility poles.
- Rates and fees for collocations on authority utility poles must be nondiscriminatory, regardless of the services provided by the collocating person.

- The rate to collocate small wireless facilities on an authority utility pole may not exceed \$150 annually per pole.
- An agreement between an authority and a wireless provider that is in effect on July 1, 2017, and that relates to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on authority utility poles, will remain in effect, subject to applicable termination provisions.
- A wireless provider may accept the rates, fees, and terms established under the bill for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.
- By the later of January 1, 2018, or 3 months after receiving its first request to collocate a small wireless facility on an authority utility pole, the person owning or controlling the authority utility pole must, by ordinance or otherwise, provide rates, fees, and terms that comply with the bill and that are nondiscriminatory and competitively neutral.

The bill establishes provisions related to “make-ready” work that may be required. “Make-ready” work generally refers to the modification of poles or lines or the installation of guys and anchors to accommodate additional facilities.

For an authority utility pole that supports aerial facilities used to provide communications or electric service, the bill requires that parties comply with the process for make-ready work under 47 U.S.C. §224 and the FCC’s implementing regulations³⁹ and provides that make-ready work must include pole replacement, if necessary.

For an authority utility pole that *does not* support aerial facilities used to provide communications or electric service, the bill requires the authority to provide a good faith estimate for any necessary make-ready work within 60 days after receipt of a complete application and requires that the make-ready work be completed within 60 days of the applicant’s acceptance of the estimate. As an alternative, the bill provides that an authority may require the applicant 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 to 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. If the authority chooses this alternative, it 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. A replaced or altered utility pole remains the property of the authority.

The bill provides that the authority may not require more make-ready work than is necessary to meet the applicable codes specified in the bill or industry standards. Further, the bill provides that fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Though it is not clear, it appears that this provision of the bill intends to refer to noncompliance with the codes specified in the bill or industry standards. The bill also provides that fees for make-ready work may not exceed actual costs or the amount charged to other non-wireless communications services providers for similar work. The bill provides that fees for make-ready work may not include any consultant fees or expenses.

³⁹ The FCC’s regulations for make-ready work under 47 U.S.C. §224 were most recently addressed in its *Report and Order on Reconsideration, Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, FCC 11-50, WC Docket No. 07-245, GN Docket No. 09-51, (2011) (*2011 Pole Attachment Order*) and in its *Order on Reconsideration, Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, FCC 15-151, WC Docket No. 07-245, GN Docket No. 09-51 (2015). The FCC regulations do not apply to attachments to government-owned utility poles.

Applications to Place Utility Poles in the Public Rights-of-Way

The bill authorizes a wireless infrastructure provider⁴⁰ to 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 9 months from the date the application is granted. The bill provides that the authority shall accept and process the application in accordance with the application review timeframes specified in the bill for collocation applications and any applicable codes and other local codes, rules, or regulations governing the placement of utility poles in the public rights-of-way.

Other Matters

The bill specifies that it does not limit the authority of local governments 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. The bill provides that 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. The bill further provides that 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 had been publicly declared on or before April 1, 2017. The bill authorizes an authority to waive any such ordinances or related requirements.

Further the bill specifies that it does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on privately owned utility pole, a utility pole owned by a municipal electric utility or electric cooperative, privately owned wireless support structures, or other private property without consent of the property owner.

The bill also specifies that it does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole, unless permitted by federal law, or erect a wireless support structure in the right-of-way within:

- A retirement community that is deed-restricted as housing for older persons as defined in s. 760.29(4)(b), F.S., has more than 5,000 residents, and has underground utilities for electric transmission or distribution; or
- A municipality that is located on a coastal barrier island as defined in s. 161.053(b)(3), F.S., has a land area of less than five square miles, has less than ten thousand residents, and, prior to the adoption of the bill, received referendum approval to issue debt to finance municipal-wide undergrounding of its utilities for electric transmission or distribution.

The bill further specifies that it does not authorize a person to collocate or attach 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.

The bill provides that the approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to the bill is not to 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. Further, the bill provides that it does not affect s. 337.401(6), F.S., relating to pass-through providers.

⁴⁰ As defined in the bill, "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."

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill will have a negative fiscal impact on local government revenues if the collocation rate set forth in the bill is lower than the rates that could otherwise be established by ordinance or negotiated under local governments' existing authority. Based on information provided to staff concerning previously established or agreed rates, this appears likely.

2. Expenditures:

The bill may have an indeterminate fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill establishes more favorable collocation rates and terms for wireless providers who wish to deploy small wireless facilities in the public rights-of-way. To the extent that the rates and terms specified in the bill are more favorable to wireless providers than the rates and terms applicable to use of the public rights-of-way in other states, Florida may see a swifter influx of capital investment in small wireless facilities. It is unclear if Florida's wireless service customers will see lower collocation costs reflected in retail service rates, as wireless service is generally offered at nationwide rates.

D. FISCAL COMMENTS:

None.

ENROLLED
 CS/CS/HB 687

2017 Legislature

1
 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 rules or regulations regarding the placing and
 6 maintaining of certain voice or data communications
 7 services lines or wireless facilities on certain
 8 rights-of-way; providing a short title; providing
 9 definitions; prohibiting an authority from
 10 prohibiting, regulating, or charging for the
 11 collocation of small wireless facilities in public
 12 rights-of-way under certain circumstances; authorizing
 13 an authority to require a registration process and
 14 permit fees under certain circumstances; requiring an
 15 authority to accept, process, and issue applications
 16 for permits subject to specified requirements;
 17 prohibiting an authority from requiring approval or
 18 requiring fees or other charges for routine
 19 maintenance, the replacement of certain wireless
 20 facilities, or the installation, placement,
 21 maintenance, or replacement of certain micro wireless
 22 facilities; providing an exception; providing
 23 requirements for the collocation of small wireless
 24 facilities on authority utility poles; providing
 25 requirements for rates, fees, and other terms related

ENROLLED

CS/CS/HB 687

2017 Legislature

26 to authority utility poles; authorizing an authority
 27 to apply current ordinances regulating placement of
 28 communications facilities in the right-of-way for
 29 certain applications; requiring an authority to waive
 30 certain permit application requirements and small
 31 wireless facility placement requirements; prohibiting
 32 an authority from adopting or enforcing any regulation
 33 on the placement or operation of certain
 34 communications facilities and from regulating any
 35 communications services or imposing or collecting any
 36 tax, fee, or charge not specifically authorized under
 37 state law; providing construction; requiring a
 38 wireless provider to comply with certain
 39 nondiscriminatory undergrounding requirements of an
 40 authority; authorizing the authority to waive any such
 41 requirements; authorizing a wireless infrastructure
 42 provider to apply to an authority to place utility
 43 poles in the public rights-of-way to support the
 44 collocation of small wireless facilities; providing
 45 application requirements; requiring the authority to
 46 accept and process the application subject to certain
 47 requirements; providing construction; authorizing an
 48 authority to enforce certain local codes,
 49 administrative rules, or regulations; authorizing an
 50 authority to enforce certain pending local ordinances,

ENROLLED

CS/CS/HB 687

2017 Legislature

51 administrative rules, or regulations under certain
 52 circumstances, subject to waiver by the authority;
 53 providing construction; providing an effective date.

54

55 Be It Enacted by the Legislature of the State of Florida:

56

57 Section 1. Paragraph (a) of subsection (1) of section
 58 337.401, Florida Statutes, is amended, and subsection (7) is
 59 added to that section, to read:

60 337.401 Use of right-of-way for utilities subject to
 61 regulation; permit; fees.—

62 (1)(a) The department and local governmental entities,
 63 referred to in this section and in ss. 337.402, 337.403, and
 64 337.404 as the "authority," that have jurisdiction and control
 65 of public roads or publicly owned rail corridors are authorized
 66 to prescribe and enforce reasonable rules or regulations with
 67 reference to the placing and maintaining across, on, or within
 68 the right-of-way limits of any road or publicly owned rail
 69 corridors under their respective jurisdictions any electric
 70 transmission, voice telephone, telegraph, data, or other
 71 communications services lines or wireless facilities; pole
 72 lines; poles; railways; ditches; sewers; water, heat, or gas
 73 mains; pipelines; fences; gasoline tanks and pumps; or other
 74 structures referred to in this section and in ss. 337.402,
 75 337.403, and 337.404 as the "utility." The department may enter

ENROLLED

CS/CS/HB 687

2017 Legislature

76 into a permit-delegation agreement with a governmental entity if
 77 issuance of a permit is based on requirements that the
 78 department finds will ensure the safety and integrity of
 79 facilities of the Department of Transportation; however, the
 80 permit-delegation agreement does not apply to facilities of
 81 electric utilities as defined in s. 366.02(2).

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

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

85 1. "Antenna" means communications equipment that transmits
 86 or receives electromagnetic radio frequency signals used in
 87 providing wireless services.

88 2. "Applicable codes" means uniform building, fire,
 89 electrical, plumbing, or mechanical codes adopted by a
 90 recognized national code organization or local amendments to
 91 those codes enacted solely to address threats of destruction of
 92 property or injury to persons, or local codes or ordinances
 93 adopted to implement this subsection. The term includes
 94 objective design standards adopted by ordinance that may require
 95 a new utility pole that replaces an existing utility pole to be
 96 of substantially similar design, material, and color or that may
 97 require reasonable spacing requirements concerning the location
 98 of ground-mounted equipment. The term includes objective design
 99 standards adopted by ordinance that may require a small wireless
 100 facility to meet reasonable location context, color, stealth,

ENROLLED
 CS/CS/HB 687

2017 Legislature

101 and concealment requirements; however, such design standards may
 102 be waived by the authority upon a showing that the design
 103 standards are not reasonably compatible for the particular
 104 location of a small wireless facility or that the design
 105 standards impose an excessive expense. The waiver shall be
 106 granted or denied within 45 days after the date of the request.

107 3. "Applicant" means a person who submits an application
 108 and is a wireless provider.

109 4. "Application" means a request submitted by an applicant
 110 to an authority for a permit to collocate small wireless
 111 facilities.

112 5. "Authority" means a county or municipality having
 113 jurisdiction and control of the rights-of-way of any public
 114 road. The term does not include the Department of
 115 Transportation. Rights-of-way under the jurisdiction and control
 116 of the department are excluded from this subsection.

117 6. "Authority utility pole" means a utility pole owned by
 118 an authority in the right-of-way. The term does not include a
 119 utility pole owned by a municipal electric utility, a utility
 120 pole used to support municipally owned or operated electric
 121 distribution facilities, or a utility pole located in the right-
 122 of-way within:

123 a. A retirement community that:

124 (I) Is deed restricted as housing for older persons as
 125 defined in s. 760.29(4)(b);

ENROLLED

CS/CS/HB 687

2017 Legislature

126 (II) Has more than 5,000 residents; and
 127 (III) Has underground utilities for electric transmission
 128 or distribution.

129 b. A municipality that:

130 (I) Is located on a coastal barrier island as defined in
 131 s. 161.053(1)(b)3.;

132 (II) Has a land area of less than 5 square miles;

133 (III) Has less than 10,000 residents; and

134 (IV) Has, before July 1, 2017, received referendum
 135 approval to issue debt to finance municipal-wide undergrounding
 136 of its utilities for electric transmission or distribution.

137 7. "Collocate" or "collocation" means to install, mount,
 138 maintain, modify, operate, or replace one or more wireless
 139 facilities on, under, within, or adjacent to a wireless support
 140 structure or utility pole. The term does not include the
 141 installation of a new utility pole or wireless support structure
 142 in the public rights-of-way.

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

144 9. "Micro wireless facility" means a small wireless
 145 facility having dimensions no larger than 24 inches in length,
 146 15 inches in width, and 12 inches in height and an exterior
 147 antenna, if any, no longer than 11 inches.

148 10. "Small wireless facility" means a wireless facility
 149 that meets the following qualifications:

150 a. Each antenna associated with the facility is located

ENROLLED

CS/CS/HB 687

2017 Legislature

151 inside an enclosure of no more than 6 cubic feet in volume or,
 152 in the case of antennas that have exposed elements, each antenna
 153 and all of its exposed elements could fit within an enclosure of
 154 no more than 6 cubic feet in volume; and

155 b. All other wireless equipment associated with the
 156 facility is cumulatively no more than 28 cubic feet in volume.
 157 The following types of associated ancillary equipment are not
 158 included in the calculation of equipment volume: electric
 159 meters, concealment elements, telecommunications demarcation
 160 boxes, ground-based enclosures, grounding equipment, power
 161 transfer switches, cutoff switches, vertical cable runs for the
 162 connection of power and other services, and utility poles or
 163 other support structures.

164 11. "Utility pole" means a pole or similar structure that
 165 is used in whole or in part to provide communications services
 166 or for electric distribution, lighting, traffic control,
 167 signage, or a similar function. The term includes the vertical
 168 support structure for traffic lights but does not include a
 169 horizontal structure to which signal lights or other traffic
 170 control devices are attached and does not include a pole or
 171 similar structure 15 feet in height or less unless an authority
 172 grants a waiver for such pole.

173 12. "Wireless facility" means equipment at a fixed
 174 location which enables wireless communications between user
 175 equipment and a communications network, including radio

ENROLLED

CS/CS/HB 687

2017 Legislature

176 transceivers, antennas, wires, coaxial or fiber-optic cable or
 177 other cables, regular and backup power supplies, and comparable
 178 equipment, regardless of technological configuration, and
 179 equipment associated with wireless communications. The term
 180 includes small wireless facilities. The term does not include:
 181 a. The structure or improvements on, under, within, or
 182 adjacent to the structure on which the equipment is collocated;
 183 b. Wireline backhaul facilities; or
 184 c. Coaxial or fiber-optic cable that is between wireless
 185 structures or utility poles or that is otherwise not immediately
 186 adjacent to or directly associated with a particular antenna.
 187 13. "Wireless infrastructure provider" means a person who
 188 has been certificated to provide telecommunications service in
 189 the state and who builds or installs wireless communication
 190 transmission equipment, wireless facilities, or wireless support
 191 structures but is not a wireless services provider.
 192 14. "Wireless provider" means a wireless infrastructure
 193 provider or a wireless services provider.
 194 15. "Wireless services" means any services provided using
 195 licensed or unlicensed spectrum, whether at a fixed location or
 196 mobile, using wireless facilities.
 197 16. "Wireless services provider" means a person who
 198 provides wireless services.
 199 17. "Wireless support structure" means a freestanding
 200 structure, such as a monopole, a guyed or self-supporting tower,

ENROLLED
CS/CS/HB 687

2017 Legislature

201 or another existing or proposed structure designed to support or
202 capable of supporting wireless facilities. The term does not
203 include a utility pole.

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

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

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

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

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

225 4. An authority may not limit the placement of small

ENROLLED
 CS/CS/HB 687

2017 Legislature

226 wireless facilities by minimum separation distances. However,
 227 within 14 days after the date of filing the application, an
 228 authority may request that the proposed location of a small
 229 wireless facility be moved to another location in the right-of-
 230 way and placed on an alternative authority utility pole or
 231 support structure or may place a new utility pole. The authority
 232 and the applicant may negotiate the alternative location,
 233 including any objective design standards and reasonable spacing
 234 requirements for ground-based equipment, for 30 days after the
 235 date of the request. At the conclusion of the negotiation
 236 period, if the alternative location is accepted by the
 237 applicant, the applicant must notify the authority of such
 238 acceptance and the application shall be deemed granted for any
 239 new location for which there is agreement and all other
 240 locations in the application. If an agreement is not reached,
 241 the applicant must notify the authority of such nonagreement and
 242 the authority must grant or deny the original application within
 243 90 days after the date the application was filed. A request for
 244 an alternative location, an acceptance of an alternative
 245 location, or a rejection of an alternative location must be in
 246 writing and provided by electronic mail.

247 5. An authority shall limit the height of a small wireless
 248 facility to 10 feet above the utility pole or structure upon
 249 which the small wireless facility is to be collocated. Unless
 250 waived by an authority, the height for a new utility pole is

ENROLLED
 CS/CS/HB 687

2017 Legislature

251 limited to the tallest existing utility pole as of July 1, 2017,
 252 located in the same right-of-way, other than a utility pole for
 253 which a waiver has previously been granted, measured from grade
 254 in place within 500 feet of the proposed location of the small
 255 wireless facility. If there is no utility pole within 500 feet,
 256 the authority shall limit the height of the utility pole to 50
 257 feet.

258 6. Except as provided in subparagraphs 4. and 5., the
 259 installation of a utility pole in the public rights-of-way
 260 designed to support a small wireless facility shall be subject
 261 to authority rules or regulations governing the placement of
 262 utility poles in the public rights-of-way and shall be subject
 263 to the application review timeframes in this subsection.

264 7. Within 14 days after receiving an application, an
 265 authority must determine and notify the applicant by electronic
 266 mail as to whether the application is complete. If an
 267 application is deemed incomplete, the authority must
 268 specifically identify the missing information. An application is
 269 deemed complete if the authority fails to provide notification
 270 to the applicant within 14 days.

271 8. An application must be processed on a nondiscriminatory
 272 basis. A complete application is deemed approved if an authority
 273 fails to approve or deny the application within 60 days after
 274 receipt of the application. If an authority does not use the 30-
 275 day negotiation period provided in subparagraph 4., the parties

ENROLLED
CS/CS/HB 687

2017 Legislature

276 may mutually agree to extend the 60-day application review
 277 period. The authority shall grant or deny the application at the
 278 end of the extended period. A permit issued pursuant to an
 279 approved application shall remain effective for 1 year unless
 280 extended by the authority.

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

295 10. An applicant seeking to collocate small wireless
 296 facilities within the jurisdiction of a single authority may, at
 297 the applicant's discretion, file a consolidated application and
 298 receive a single permit for the collocation of up to 30 small
 299 wireless facilities. If the application includes multiple small
 300 wireless facilities, an authority may separately address small

ENROLLED
 CS/CS/HB 687

2017 Legislature

301 wireless facility collocations for which incomplete information
 302 has been received or which are denied.

303 11. An authority may deny a proposed collocation of a
 304 small wireless facility in the public rights-of-way if the
 305 proposed collocation:

306 a. Materially interferes with the safe operation of
 307 traffic control equipment.

308 b. Materially interferes with sight lines or clear zones
 309 for transportation, pedestrians, or public safety purposes.

310 c. Materially interferes with compliance with the
 311 Americans with Disabilities Act or similar federal or state
 312 standards regarding pedestrian access or movement.

313 d. Materially fails to comply with the 2010 edition of the
 314 Florida Department of Transportation Utility Accommodation
 315 Manual.

316 e. Fails to comply with applicable codes.

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

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

325 14. An authority may reserve space on authority utility

ENROLLED
CS/CS/HB 687

2017 Legislature

326 poles for future public safety uses. However, a reservation of
 327 space may not preclude collocation of a small wireless facility.
 328 If replacement of the authority utility pole is necessary to
 329 accommodate the collocation of the small wireless facility and
 330 the future public safety use, the pole replacement is subject to
 331 make-ready provisions and the replaced pole shall accommodate
 332 the future public safety use.

333 15. A structure granted a permit and installed pursuant to
 334 this subsection shall comply with chapter 333 and federal
 335 regulations pertaining to airport airspace protections.

336 (e) An authority may not require approval or require fees
 337 or other charges for:

338 1. Routine maintenance;

339 2. Replacement of existing wireless facilities with
 340 wireless facilities that are substantially similar or of the
 341 same or smaller size; or

342 3. Installation, placement, maintenance, or replacement of
 343 micro wireless facilities that are suspended on cables strung
 344 between existing utility poles in compliance with applicable
 345 codes by or for a communications services provider authorized to
 346 occupy the rights-of-way and who is remitting taxes under
 347 chapter 202.

348
 349 Notwithstanding this paragraph, an authority may require a
 350 right-of-way permit for work that involves excavation, closure

ENROLLED
CS/CS/HB 687

2017 Legislature

351 of a sidewalk, or closure of a vehicular lane.

352 (f) Collocation of small wireless facilities on authority
353 utility poles is subject to the following requirements:

354 1. An authority may not enter into an exclusive
355 arrangement with any person for the right to attach equipment to
356 authority utility poles.

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

360 3. The rate to collocate small wireless facilities on an
361 authority utility pole may not exceed \$150 per pole annually.

362 4. Agreements between authorities and wireless providers
363 that are in effect on July 1, 2017, and that relate to the
364 collocation of small wireless facilities in the right-of-way,
365 including the collocation of small wireless facilities on
366 authority utility poles, remain in effect, subject to applicable
367 termination provisions. The wireless provider may accept the
368 rates, fees, and terms established under this subsection for
369 small wireless facilities and utility poles that are the subject
370 of an application submitted after the rates, fees, and terms
371 become effective.

372 5. A person owning or controlling an authority utility
373 pole shall offer rates, fees, and other terms that comply with
374 this subsection. By the later of January 1, 2018, or 3 months
375 after receiving a request to collocate its first small wireless

ENROLLED

CS/CS/HB 687

2017 Legislature

376 facility on a utility pole owned or controlled by an authority,
 377 the person owning or controlling the authority utility pole
 378 shall make available, through ordinance or otherwise, rates,
 379 fees, and terms for the collocation of small wireless facilities
 380 on the authority utility pole which comply with this subsection.

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

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

391 c. For an authority utility pole that does not support an
 392 aerial facility used to provide communications services or
 393 electric service, the authority shall provide a good faith
 394 estimate for any make-ready work necessary to enable the pole to
 395 support the requested collocation, including necessary pole
 396 replacement, within 60 days after receipt of a complete
 397 application. Make-ready work, including any pole replacement,
 398 must be completed within 60 days after written acceptance of the
 399 good faith estimate by the applicant. Alternatively, an
 400 authority may require the applicant seeking to collocate a small

ENROLLED

CS/CS/HB 687

2017 Legislature

401 wireless facility to provide a make-ready estimate at the
 402 applicant's expense for the work necessary to support the small
 403 wireless facility, including pole replacement, and perform the
 404 make-ready work. If pole replacement is required, the scope of
 405 the make-ready estimate is limited to the design, fabrication,
 406 and installation of a utility pole that is substantially similar
 407 in color and composition. The authority may not condition or
 408 restrict the manner in which the applicant obtains, develops, or
 409 provides the estimate or conducts the make-ready work subject to
 410 usual construction restoration standards for work in the right-
 411 of-way. The replaced or altered utility pole shall remain the
 412 property of the authority.

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

421 (g) For any applications filed before the effective date
 422 of ordinances implementing this subsection, an authority may
 423 apply current ordinances relating to placement of communications
 424 facilities in the right-of-way related to registration,
 425 permitting, insurance coverage, indemnification, performance

ENROLLED

CS/CS/HB 687

2017 Legislature

426 bonds, security funds, force majeure, abandonment, authority
 427 liability, or authority warranties. Permit application
 428 requirements and small wireless facility placement requirements,
 429 including utility pole height limits, that conflict with this
 430 subsection shall be waived by the authority.

431 (h) Except as provided in this section or specifically
 432 required by state law, an authority may not adopt or enforce any
 433 regulation on the placement or operation of communications
 434 facilities in the rights-of-way by a provider authorized by
 435 state law to operate in the rights-of-way and may not regulate
 436 any communications services or impose or collect any tax, fee,
 437 or charge not specifically authorized under state law. This
 438 paragraph does not alter any law regarding an authority's
 439 ability to regulate the relocation of facilities.

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

446 (j) A wireless infrastructure provider may apply to an
 447 authority to place utility poles in the public rights-of-way to
 448 support the collocation of small wireless facilities. The
 449 application must include an attestation that small wireless
 450 facilities will be collocated on the utility pole or structure

ENROLLED
CS/CS/HB 687

2017 Legislature

451 and will be used by a wireless services provider to provide
 452 service within 9 months after the date the application is
 453 approved. The authority shall accept and process the application
 454 in accordance with subparagraph (d)6. and any applicable codes
 455 and other local codes governing the placement of utility poles
 456 in the public rights-of-way.

457 (k) This subsection does not limit a local government's
 458 authority to enforce historic preservation zoning regulations
 459 consistent with the preservation of local zoning authority under
 460 47 U.S.C. s. 332(c)(7), the requirements for facility
 461 modifications under 47 U.S.C. s. 1455(a), or the National
 462 Historic Preservation Act of 1966, as amended, and the
 463 regulations adopted to implement such laws. An authority may
 464 enforce local codes, administrative rules, or regulations
 465 adopted by ordinance in effect on April 1, 2017, which are
 466 applicable to a historic area designated by the state or
 467 authority. An authority may enforce pending local ordinances,
 468 administrative rules, or regulations applicable to a historic
 469 area designated by the state if the intent to adopt such changes
 470 has been publicly declared on or before April 1, 2017. An
 471 authority may waive any ordinances or other requirements that
 472 are subject to this paragraph.

473 (l) This subsection does not authorize a person to
 474 collocate or attach wireless facilities, including any antenna,
 475 micro wireless facility, or small wireless facility, on a

ENROLLED

CS/CS/HB 687

2017 Legislature

476 privately owned utility pole, a utility pole owned by an
 477 electric cooperative or a municipal electric utility, a
 478 privately owned wireless support structure, or other private
 479 property without the consent of the property owner.

480 (m) The approval of the installation, placement,
 481 maintenance, or operation of a small wireless facility pursuant
 482 to this subsection does not authorize the provision of any
 483 voice, data, or video communications services or the
 484 installation, placement, maintenance, or operation of any
 485 communications facilities other than small wireless facilities
 486 in the right-of-way.

487 (n) This subsection does not affect provisions relating to
 488 pass-through providers in subsection (6).

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

494 1. Is deed restricted as housing for older persons as
 495 defined in s. 760.29(4)(b);

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

497 3. Has underground utilities for electric transmission or
 498 distribution.

499

500 This paragraph does not apply to the installation, placement,

ENROLLED
CS/CS/HB 687

2017 Legislature

501 maintenance, or replacement of micro wireless facilities on any
 502 existing and duly authorized aerial communications facilities,
 503 provided that once aerial facilities are converted to
 504 underground facilities, any such collocation or construction
 505 shall be only as provided by the municipality's underground
 506 utilities ordinance.

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

- 512 1. Is located on a coastal barrier island as defined in s.
 513 161.053(1)(b)3.;
- 514 2. Has a land area of less than 5 square miles;
- 515 3. Has fewer than 10,000 residents; and
- 516 4. Has, before July 1, 2017, received referendum approval
 517 to issue debt to finance municipal-wide undergrounding of its
 518 utilities for electric transmission or distribution.

519
 520 This paragraph does not apply to the installation, placement,
 521 maintenance, or replacement of micro wireless facilities on any
 522 existing and duly authorized aerial communications facilities,
 523 provided that once aerial facilities are converted to
 524 underground facilities, any such collocation or construction
 525 shall be only as provided by the municipality's underground

ENROLLED

CS/CS/HB 687

2017 Legislature

526 utilities ordinance.

527 (q) This subsection does not authorize a person to
528 collocate small wireless facilities or micro wireless facilities
529 on an authority utility pole or erect a wireless support
530 structure in a location subject to covenants, conditions,
531 restrictions, articles of incorporation, and bylaws of a
532 homeowners' association. This paragraph does not apply to the
533 installation, placement, maintenance, or replacement of micro
534 wireless facilities on any existing and duly authorized aerial
535 communications facilities.

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