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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

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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,

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

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

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

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

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

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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,

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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);

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

b. A municipality that:

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

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

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

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

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

8. "FCC" means the Federal Communications Commission.

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

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

a. Each antenna associated with the facility is located

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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

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transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and

equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

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

b. Wireline backhaul facilities; or

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

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

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

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

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

17. "Wireless support structure" means a freestanding structure, such as a monopole, a guyed or self-supporting tower,

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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

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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

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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

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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

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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

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

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

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

1. Routine maintenance;

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

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

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

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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

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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

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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

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

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

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

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

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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

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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,

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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

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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.