

20191000er

1
2 An act relating to communications services; amending
3 s. 202.20, F.S.; conforming a cross-reference;
4 amending s. 337.401, F.S.; revising legislative
5 intent; specifying limitations and prohibitions on
6 municipalities and counties relating to registrations
7 and renewals of communications service providers;
8 authorizing municipalities and counties to require
9 certain information as part of a registration;
10 prohibiting municipalities and counties from requiring
11 a payment of fees, costs, or charges for provider
12 registration or renewal; prohibiting municipalities
13 and counties from adopting or enforcing certain
14 ordinances, regulations, or requirements; specifying
15 limitations on municipal and county authority to
16 regulate and manage municipal and county roads or
17 rights-of-way; prohibiting certain municipalities and
18 counties from electing to impose permit fees;
19 providing retroactive applicability; authorizing
20 certain municipalities and counties to continue to
21 require and collect such fees; deleting obsolete
22 provisions; specifying activities for which permit
23 fees may not be imposed; deleting certain provisions
24 relating to municipality, charter county, and
25 noncharter county elections to impose, or not to
26 impose, permit fees; requiring that enforcement of
27 certain ordinances must be suspended until certain
28 conditions are met; revising legislative intent
29 relating to the imposition of certain fees, costs, and

20191000er

exactions on providers; specifying a condition for
certain in-kind compensation; revising items over
which municipalities and counties may not exercise
regulatory control; authorizing municipalities and
counties to require a right-of-way permit for certain
purposes; providing requirements for processing
certain permit applications; prohibiting
municipalities and counties from certain actions
relating to certain aerial or underground
communications facilities; specifying limitations and
requirements for certain municipal and county rules
and regulations; revising definitions for the Advanced
Wireless Infrastructure Deployment Act; prohibiting
certain actions by an authority relating to certain
utility poles; prohibiting authorities from requiring
permit applicants to provide certain information,
except under certain circumstances; adding prohibited
acts by authorities relating to small wireless
facilities, application requirements, public
notification and public meetings, and the placement of
certain facilities; revising applicability of
authority rules and regulations governing the
placement of utility poles in the public rights-of-
way; providing construction relating to judicial
review of certain application denials; specifying
grounds for an authority's denial of a proposed
collocation of a small wireless facility or placement
of a utility pole in the public rights-of-way;
deleting an authority's authorization to adopt

20191000er

ordinances for performance bonds and security funds;
authorizing an authority to require a construction
bond, subject to certain conditions; requiring
authorities to accept certain financial instruments
for certain financial obligations; authorizing
providers to add authorities to certain financial
instruments; prohibiting an authority from requiring a
provider to indemnify an authority for certain
liabilities; prohibiting an authority from requiring a
permit, approval, fees, charges, costs, or exactions
for certain activities; authorizing and limiting
filings an authority may require relating to micro
wireless facility equipment; providing an exception to
a certain right-of-way permit for certain service
restoration work; providing conditions under which a
wireless provider must comply with certain
requirements of an authority which prohibit new
utility poles used to support small wireless
facilities in certain areas; providing that an
authority may require wireless providers to comply
with certain objective design standards adopted by
ordinance; authorizing an authority to waive such
design standards under certain circumstances;
providing a requirement for the waiver; revising an
authority's authorization to apply certain ordinances
to applications filed before a certain timeframe;
authorizing a civil action for violations; providing
actions a court may take; requiring that work in
certain authority rights-of-way must comply with a

20191000er

specified document; providing for statutory
construction; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section
202.20, Florida Statutes, is amended to read:

202.20 Local communications services tax conversion rates.—
(2)

(b) Except as otherwise provided in this subsection,
“replaced revenue sources,” as used in this section, means the
following taxes, charges, fees, or other impositions to the
extent that the respective local taxing jurisdictions were
authorized to impose them prior to July 1, 2000.

1. With respect to municipalities and charter counties and
the taxes authorized by s. 202.19(1):

a. The public service tax on telecommunications authorized
by former s. 166.231(9).

b. Franchise fees on cable service providers as authorized
by 47 U.S.C. s. 542.

c. The public service tax on prepaid calling arrangements.

d. Franchise fees on dealers of communications services
which use the public roads or rights-of-way, up to the limit set
forth in s. 337.401. For purposes of calculating rates under
this section, it is the legislative intent that charter counties
be treated as having had the same authority as municipalities to
impose franchise fees on recurring local telecommunication
service revenues prior to July 1, 2000. However, the Legislature
recognizes that the authority of charter counties to impose such

20191000er

fees is in dispute, and the treatment provided in this section is not an expression of legislative intent that charter counties actually do or do not possess such authority.

e. Actual permit fees relating to placing or maintaining facilities in or on public roads or rights-of-way, collected from providers of long-distance, cable, and mobile communications services for the fiscal year ending September 30, 1999; however, if a municipality or charter county elects the option to charge permit fees pursuant to s. 337.401(3)(c) ~~337.401(3)(c)1.a.~~, such fees shall not be included as a replaced revenue source.

2. With respect to all other counties and the taxes authorized in s. 202.19(1), franchise fees on cable service providers as authorized by 47 U.S.C. s. 542.

Section 2. Subsection (3), paragraphs (d), (e), and (f) of subsection (6), and paragraphs (b), (c), (d), (e), (f), (g), and (i) of subsection (7) of section 337.401, Florida Statutes, are amended, paragraph (r) is added to subsection (7), and subsections (8) and (9) are added to that section, to read:

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

(3)(a) Because of the unique circumstances applicable to providers of communications services, including, but not limited to, the circumstances described in paragraph (e) and the fact that federal and state law require the nondiscriminatory treatment of providers of telecommunications services, and because of the desire to promote competition among providers of communications services, it is the intent of the Legislature that municipalities and counties treat providers of

20191000er

communications services in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or rights-of-way. Rules or regulations imposed by a municipality or county relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way must be generally applicable to all providers of communications services, taking into account the distinct engineering, construction, operation, maintenance, public works, and safety requirements of the provider's facilities, and, notwithstanding any other law, may not require a provider of communications services to apply for or enter into an individual license, franchise, or other agreement with the municipality or county as a condition of placing or maintaining communications facilities in its roads or rights-of-way. In addition to other reasonable rules or regulations that a municipality or county may adopt relating to the placement or maintenance of communications facilities in its roads or rights-of-way under this subsection or subsection (7), a municipality or county may require a provider of communications services that places or seeks to place facilities in its roads or rights-of-way to register with the municipality or county. To register, a provider of communications services may be required only to provide its name ~~and to provide the name of the registrant;~~ the name, address, and telephone number of a contact person for the registrant; the number of the registrant's current certificate of authorization issued by the Florida Public Service Commission, the Federal Communications Commission, or the Department of State; a statement of whether the registrant is a

20191000er

pass-through provider as defined in s. 337.401(6)(a)1.; the
registrant's federal employer identification number; and any
required proof of insurance or self-insuring status adequate to
defend and cover claims. A municipality or county may not
require a registrant to renew a registration more frequently
than every 5 years but may require during this period that a
registrant update the registration information provided under
this subsection within 90 days after a change in such
information. A municipality or county may not require the
registrant to provide an inventory of communications facilities,
maps, locations of such facilities, or other information by a
registrant as a condition of registration, renewal, or for any
other purpose; provided, however, that a municipality or county
may require as part of a permit application that the applicant
identify at-grade communications facilities within 50 feet of
the proposed installation location for the placement of at-grade
communications facilities. A municipality or county may not
require a provider to pay any fee, cost, or other charge for
registration or renewal thereof. It is the intent of the
Legislature that the placement, operation, maintenance,
upgrading, and extension of communications facilities not be
unreasonably interrupted or delayed through the permitting or
other local regulatory process. Except as provided in this
chapter or otherwise expressly authorized by chapter 202,
chapter 364, or chapter 610, a municipality or county may not
adopt or enforce any ordinance, regulation, or requirement as to
the placement or operation of communications facilities in a
right-of-way by a communications services provider authorized by
state or local law to operate in a right-of-way; regulate any

20191000er

communications services; or impose or collect any tax, fee,
cost, charge, or exaction for the provision of communications
services over the communications services provider's
communications facilities in a right-of-way.

(b) Registration described in paragraph (a) does not
establish a right to place or maintain, or priority for the
placement or maintenance of, a communications facility in roads
or rights-of-way of a municipality or county. Each municipality
and county retains the authority to regulate and manage
municipal and county roads or rights-of-way in exercising its
police power, subject to the limitations imposed in this section
and chapters 202 and 610. Any rules or regulations adopted by a
municipality or county which govern the occupation of its roads
or rights-of-way by providers of communications services must be
related to the placement or maintenance of facilities in such
roads or rights-of-way, must be reasonable and
nondiscriminatory, and may include only those matters necessary
to manage the roads or rights-of-way of the municipality or
county.

(c) Any municipality or county that, as of January 1, 2019,
elected to require permit fees from any provider of
communications services that uses or occupies municipal or
county roads or rights-of-way pursuant to former paragraph (c)
or paragraph (j), Florida Statutes 2018, may continue to require
and collect such fees. A municipality or county that elected as
of January 1, 2019, to require permit fees may elect to forego
such fees as provided herein. A municipality or county that
elected as of January 1, 2019, not to require permit fees may
not elect to impose permit fees.

20191000er

233 ~~1. It is the intention of the state to treat all providers~~
234 ~~of communications services that use or occupy municipal or~~
235 ~~charter county roads or rights-of-way for the provision of~~
236 ~~communications services in a nondiscriminatory and competitively~~
237 ~~neutral manner with respect to the payment of permit fees.~~
238 ~~Certain providers of communications services have been granted~~
239 ~~by general law the authority to offset permit fees against~~
240 ~~franchise or other fees while other providers of communications~~
241 ~~services have not been granted this authority. In order to treat~~
242 ~~all providers of communications services in a nondiscriminatory~~
243 ~~and competitively neutral manner with respect to the payment of~~
244 ~~permit fees, each municipality and charter county shall make an~~
245 ~~election under either sub-subparagraph a. or sub-subparagraph b.~~
246 ~~and must inform the Department of Revenue of the election by~~
247 ~~certified mail by July 16, 2001. Such election shall take effect~~
248 ~~October 1, 2001.~~

249 ~~a.(I) The municipality or charter county may require and~~
250 ~~collect permit fees from any providers of communications~~
251 ~~services that use or occupy municipal or county roads or rights-~~
252 ~~of-way. All fees authorized ~~permitted~~ under this paragraph ~~sub-~~~~
253 ~~subparagraph must be reasonable and commensurate with the direct~~
254 ~~and actual cost of the regulatory activity, including issuing~~
255 ~~and processing permits, plan reviews, physical inspection, and~~
256 ~~direct administrative costs; must be demonstrable; and must be~~
257 ~~equitable among users of the roads or rights-of-way. A fee~~
258 ~~authorized ~~permitted~~ under this paragraph ~~sub-subparagraph~~ may~~
259 ~~not~~ be offset against the tax imposed under chapter 202;
260 include the costs of roads or rights-of-way acquisition or roads
261 or rights-of-way rental; include any general administrative,

20191000er

management, or maintenance costs of the roads or rights-of-way;
or be based on a percentage of the value or costs associated
with the work to be performed on the roads or rights-of-way. In
an action to recover amounts due for a fee not authorized
~~permitted~~ under this paragraph ~~sub-subparagraph~~, the prevailing
party may recover court costs and attorney ~~attorney's~~ fees at
trial and on appeal. In addition to the limitations set forth in
this section, a fee levied by a municipality or charter county
under this paragraph ~~sub-subparagraph~~ may not exceed \$100.
However, permit fees may not be imposed with respect to permits
that may be required for service drop lines not required to be
noticed under s. 556.108(5) ~~s. 556.108(5)(a)2.~~ or for any
activity that does not require the physical disturbance of the
roads or rights-of-way or does not impair access to or full use
of the roads or rights-of-way, including, but not limited to,
the performance of service restoration work on existing
facilities, extensions of such facilities for providing
communications services to customers, and the placement of micro
wireless facilities in accordance with subparagraph (7)(e)3.

~~(II) To ensure competitive neutrality among providers of
communications services, for any municipality or charter county
that elects to exercise its authority to require and collect
permit fees under this sub-subparagraph, the rate of the local
communications services tax imposed by such jurisdiction, as
computed under s. 202.20, shall automatically be reduced by a
rate of 0.12 percent.~~

~~b. Alternatively, the municipality or charter county may
elect not to require and collect permit fees from any provider
of communications services that uses or occupies municipal or~~

20191000er

~~charter county roads or rights-of-way for the provision of
communications services; however, each municipality or charter
county that elects to operate under this sub-subparagraph
retains all authority to establish rules and regulations for
providers of communications services to use or occupy roads or
rights-of-way as provided in this section.~~

~~1. If a municipality or charter county elects to not
require permit fees operate under this sub-subparagraph, the
total rate for the local communications services tax as computed
under s. 202.20 for that municipality or charter county may be
increased by ordinance or resolution by an amount not to exceed
a rate of 0.12 percent. If a municipality or charter county
elects to increase its rate effective October 1, 2001, the
municipality or charter county shall inform the department of
such increased rate by certified mail postmarked on or before
July 16, 2001.~~

~~e. A municipality or charter county that does not make an
election as provided for in this subparagraph shall be presumed
to have elected to operate under the provisions of sub-
subparagraph b.~~

~~2. Each noncharter county shall make an election under
either sub-subparagraph a. or sub-subparagraph b. and shall
inform the Department of Revenue of the election by certified
mail by July 16, 2001. Such election shall take effect October
1, 2001.~~

~~a. The noncharter county may elect to require and collect
permit fees from any providers of communications services that
use or occupy noncharter county roads or rights-of-way. All fees
permitted under this sub-subparagraph must be reasonable and~~

20191000er

~~commensurate with the direct and actual cost of the regulatory activity, including issuing and processing permits, plan reviews, physical inspection, and direct administrative costs; must be demonstrable; and must be equitable among users of the roads or rights-of-way. A fee permitted under this sub-subparagraph may not: be offset against the tax imposed under chapter 202; include the costs of roads or rights-of-way acquisition or roads or rights-of-way rental; include any general administrative, management, or maintenance costs of the roads or rights-of-way; or be based on a percentage of the value or costs associated with the work to be performed on the roads or rights-of-way. In an action to recover amounts due for a fee not permitted under this sub-subparagraph, the prevailing party may recover court costs and attorney's fees at trial and on appeal. In addition to the limitations set forth in this section, a fee levied by a noncharter county under this sub-subparagraph may not exceed \$100. However, permit fees may not be imposed with respect to permits that may be required for service drop lines not required to be noticed under s.~~

~~556.108(5)(a)2. or for any activity that does not require the physical disturbance of the roads or rights-of-way or does not impair access to or full use of the roads or rights-of-way.~~

~~b. Alternatively, the noncharter county may elect not to require and collect permit fees from any provider of communications services that uses or occupies noncharter county roads or rights-of-way for the provision of communications services; however, each noncharter county that elects to operate under this sub-subparagraph shall retain all authority to establish rules and regulations for providers of communications~~

20191000er

~~services to use or occupy roads or rights-of-way as provided in this section.~~

2. If a noncharter county elects to not require permit fees ~~operate under this sub-subparagraph~~, the total rate for the local communications services tax as computed under s. 202.20 for that noncharter county may be increased by ordinance or resolution by an amount not to exceed a rate of 0.24 percent, to replace the revenue the noncharter county would otherwise have received from permit fees for providers of communications services. ~~If a noncharter county elects to increase its rate effective October 1, 2001, the noncharter county shall inform the department of such increased rate by certified mail postmarked on or before July 16, 2001.~~

~~e. A noncharter county that does not make an election as provided for in this subparagraph shall be presumed to have elected to operate under the provisions of sub-subparagraph b.~~

~~3. Except as provided in this paragraph, municipalities and counties retain all existing authority to require and collect permit fees from users or occupants of municipal or county roads or rights-of-way and to set appropriate permit fee amounts.~~

~~(d) After January 1, 2001,~~ In addition to any other notice requirements, a municipality must provide to the Secretary of State, at least 10 days prior to consideration on first reading, notice of a proposed ordinance governing a telecommunications company placing or maintaining telecommunications facilities in its roads or rights-of-way. ~~After January 1, 2001,~~ In addition to any other notice requirements, a county must provide to the Secretary of State, at least 15 days prior to consideration at a public hearing, notice of a proposed ordinance governing a

20191000er

telecommunications company placing or maintaining
telecommunications facilities in its roads or rights-of-way. The
notice required by this paragraph must be published by the
Secretary of State on a designated Internet website. The failure
of a municipality or county to provide such notice does not
render the ordinance invalid, provided that enforcement of such
ordinance must be suspended until 30 days after the municipality
or county provides the required notice.

(e) The authority of municipalities and counties to require
franchise fees from providers of communications services, with
respect to the provision of communications services, is
specifically preempted by the state because of unique
circumstances applicable to providers of communications services
when compared to other utilities occupying municipal or county
roads or rights-of-way. Providers of communications services may
provide similar services in a manner that requires the placement
of facilities in municipal or county roads or rights-of-way or
in a manner that does not require the placement of facilities in
such roads or rights-of-way. Although similar communications
services may be provided by different means, the state desires
to treat providers of communications services in a
nondiscriminatory manner and to have the taxes, franchise fees,
and other fees, costs, and financial or regulatory exactions
paid by or imposed on providers of communications services be
competitively neutral. Municipalities and counties retain all
existing authority, if any, to collect franchise fees from users
or occupants of municipal or county roads or rights-of-way other
than providers of communications services, and the provisions of
this subsection shall have no effect upon this authority. The

20191000er

provisions of this subsection do not restrict the authority, if any, of municipalities or counties or other governmental entities to receive reasonable rental fees based on fair market value for the use of public lands and buildings on property outside the public roads or rights-of-way for the placement of communications antennas and towers.

(f) Except as expressly allowed or authorized by general law and except for the rights-of-way permit fees subject to paragraph (c), a municipality or county may not levy on a provider of communications services a tax, fee, or other charge or imposition for operating as a provider of communications services within the jurisdiction of the municipality or county which is in any way related to using its roads or rights-of-way. A municipality or county may not require or solicit in-kind compensation, except as otherwise provided in s. 202.24(2)(c)8., provided that the in-kind compensation is not a franchise fee under federal law. Nothing in this paragraph impairs the authority of a municipality or county to request public, educational, or governmental access channels pursuant to ~~or~~ s. 610.109. Nothing in this paragraph shall impair any ordinance or agreement in effect on May 22, 1998, or any voluntary agreement entered into subsequent to that date, which provides for or allows in-kind compensation by a telecommunications company.

(g) A municipality or county may not use its authority over the placement of facilities in its roads and rights-of-way as a basis for asserting or exercising regulatory control over a provider of communications services regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or the Federal Communications Commission, including, but not

20191000er

limited to, the operations, systems, equipment, technology,
qualifications, services, service quality, service territory,
and prices of a provider of communications services. A
municipality or county may not require any permit for the
maintenance, repair, replacement, extension, or upgrade of
existing aerial wireline communications facilities on utility
poles or for aerial wireline facilities between existing
wireline communications facility attachments on utility poles by
a communications services provider. However, a municipality or
county may require a right-of-way permit for work that involves
excavation, closure of a sidewalk, or closure of a vehicular
lane or parking lane, unless the provider is performing service
restoration to existing facilities. A permit application
required by an authority under this section for the placement of
communications facilities must be processed and acted upon
consistent with the timeframes provided in subparagraphs
(7) (d) 7., 8., and 9. In addition, a municipality or county may
not require any permit or other approval, fee, charge, or cost,
or other exaction for the maintenance, repair, replacement,
extension, or upgrade of existing aerial lines or underground
communications facilities located on private property outside of
the public rights-of-way. As used in this section, the term
"extension of existing facilities" includes those extensions
from the rights of way into a customer's private property for
purposes of placing a service drop or those extensions from the
rights of way into a utility easement to provide service to a
discrete identifiable customer or group of customers.

(h) A provider of communications services that has obtained
permission to occupy the roads or rights-of-way of an

20191000er

incorporated municipality pursuant to s. 362.01 or that is otherwise lawfully occupying the roads or rights-of-way of a municipality or county shall not be required to obtain consent to continue such lawful occupation of those roads or rights-of-way; however, nothing in this paragraph shall be interpreted to limit the power of a municipality or county to adopt or enforce reasonable rules or regulations as provided in this section and consistent with chapters 202, 364, and 610. Any such rules or regulations must be in writing, and registered providers of communications services in the municipality or county must be given at least 60 days advance written notice of any changes to the rules and regulations.

(i) Except as expressly provided in this section, this section does not modify the authority of municipalities and counties to levy the tax authorized in chapter 202 or the duties of providers of communications services under ss. 337.402-337.404. This section does not apply to building permits, pole attachments, or private roads, private easements, and private rights-of-way.

~~(j) Pursuant to this paragraph, any county or municipality may by ordinance change either its election made on or before July 16, 2001, under paragraph (c) or an election made under this paragraph.~~

~~1.a. If a municipality or charter county changes its election under this paragraph in order to exercise its authority to require and collect permit fees in accordance with this subsection, the rate of the local communications services tax imposed by such jurisdiction pursuant to ss. 202.19 and 202.20 shall automatically be reduced by the sum of 0.12 percent plus~~

20191000er

the percentage, if any, by which such rate was increased
pursuant to sub-subparagraph (c)1.b.

b. If a municipality or charter county changes its election
under this paragraph in order to discontinue requiring and
collecting permit fees, the rate of the local communications
services tax imposed by such jurisdiction pursuant to ss. 202.19
and 202.20 may be increased by ordinance or resolution by an
amount not to exceed 0.24 percent.

2.a. If a noncharter county changes its election under this
paragraph in order to exercise its authority to require and
collect permit fees in accordance with this subsection, the rate
of the local communications services tax imposed by such
jurisdiction pursuant to ss. 202.19 and 202.20 shall
automatically be reduced by the percentage, if any, by which
such rate was increased pursuant to sub-subparagraph (c)2.b.

b. If a noncharter county changes its election under this
paragraph in order to discontinue requiring and collecting
permit fees, the rate of the local communications services tax
imposed by such jurisdiction pursuant to ss. 202.19 and 202.20
may be increased by ordinance or resolution by an amount not to
exceed 0.24 percent.

3.a. Any change of election pursuant to this paragraph and
any tax rate change resulting from such change of election shall
be subject to the notice requirements of s. 202.21; however, no
such change of election shall become effective prior to January
1, 2003.

b. Any county or municipality changing its election under
this paragraph in order to exercise its authority to require and
collect permit fees shall, in addition to complying with the

20191000er

~~notice requirements under s. 202.21, provide to all dealers providing communications services in such jurisdiction written notice of such change of election by September 1 immediately preceding the January 1 on which such change of election becomes effective. For purposes of this sub-subparagraph, dealers providing communications services in such jurisdiction shall include every dealer reporting tax to such jurisdiction pursuant to s. 202.37 on the return required under s. 202.27 to be filed on or before the 20th day of May immediately preceding the January 1 on which such change of election becomes effective.~~

~~(k)~~ Notwithstanding the provisions of s. 202.19, when a local communications services tax rate is changed as a result of an election made or changed under this subsection, such rate may ~~shall~~ not be rounded to tenths.

(6)

(d) The amounts charged pursuant to this subsection shall be based on the linear miles of roads or rights-of-way where a communications facility is placed, not based on a summation of the lengths of individual cables, conduits, strands, or fibers. The amounts referenced in this subsection may be charged only once annually and only to one person annually for any communications facility. A municipality or county shall discontinue charging such amounts to a person that has ceased to be a pass-through provider. Any annual amounts charged shall be reduced for a prorated portion of any 12-month period during which the person remits taxes imposed by the municipality or county pursuant to chapter 202. Any excess amounts paid to a municipality or county shall be refunded to the person upon written notice of the excess to the municipality or county. A

20191000er

municipality or county may require a pass-through provider to provide an annual notarized statement identifying the total number of linear miles of pass-through facilities in the municipality's or county's rights-of-way. Upon request from a municipality or county, a pass-through provider must provide reasonable access to maps of pass-through facilities located in the rights-of-way of the municipality or county making the request. The scope of the request must be limited to only those maps of pass-through facilities from which the calculation of the linear miles of pass-through facilities in the rights-of-way can be determined. The request must be accompanied by an affidavit that the person making the request is authorized by the municipality or county to review tax information related to the revenue and mileage calculations for pass-through providers. A request may not be made more than once annually to a pass-through provider.

(e) This subsection does not alter any provision of this section or s. 202.24 relating to taxes, fees, or other charges or impositions by a municipality or county on a dealer of communications services or authorize that any charges be assessed on a dealer of communications services, except as specifically set forth herein. A municipality or county may not charge a pass-through provider any amounts other than the charges under this subsection as a condition to the placement or maintenance of a communications facility in the roads or rights-of-way of a municipality or county by a pass-through provider, except that a municipality or county may impose permit fees on a pass-through provider consistent with paragraph (3)(c) ~~if the municipality or county elects to exercise its authority to~~

20191000er

~~collect permit fees under paragraph (3)(c).~~

(f) The charges under this subsection do not apply to communications facilities placed in a municipality's or county's rights-of-way prior to the effective date of this subsection with permission from the municipality or county, if any was required, except to the extent the facilities of a pass-through provider were subject to per linear foot or mile charges in effect as of October 1, 2001, in which case the municipality or county may only impose on a pass-through provider charges consistent with paragraph (b) or paragraph (c) for such facilities. Notwithstanding the foregoing, this subsection does not impair any written agreement between a pass-through provider and a municipality or county imposing per linear foot or mile charges for communications facilities placed in municipal or county roads or rights-of-way that is in effect prior to the effective date of this subsection. Upon the termination or expiration of any such written agreement, any charges imposed must ~~shall~~ be consistent with this section ~~paragraph (b) or paragraph (c). Notwithstanding the foregoing, until October 1, 2005, this subsection shall not affect a municipality or county continuing to impose charges in excess of the charges authorized in this subsection on facilities of a pass-through provider that is not a dealer of communications services in the state under chapter 202, but only to the extent such charges were imposed by municipal or county ordinance or resolution adopted prior to February 1, 2002. Effective October 1, 2005, any charges imposed shall be consistent with paragraph (b) or paragraph (c).~~

(7)

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

20191000er

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

2. "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, and includes the National Electric Safety Code and the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual ~~or local codes or ordinances adopted to implement this subsection. The term includes objective design standards adopted by ordinance that may require 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. The term includes objective design standards adopted by ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements; however, such design standards may be waived by the authority upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense. The waiver shall be granted or denied within 45 days after the date of the request.~~

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

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

20191000er

639 facilities or to place a new utility pole used to support a
640 small wireless facility.

641 5. "Authority" means a county or municipality having
642 jurisdiction and control of the rights-of-way of any public
643 road. The term does not include the Department of
644 Transportation. Rights-of-way under the jurisdiction and control
645 of the department are excluded from this subsection.

646 6. "Authority utility pole" means a utility pole owned by
647 an authority in the right-of-way. The term does not include a
648 utility pole owned by a municipal electric utility, a utility
649 pole used to support municipally owned or operated electric
650 distribution facilities, or a utility pole located in the right-
651 of-way within:

652 a. A retirement community that:

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

655 (II) Has more than 5,000 residents; and

656 (III) Has underground utilities for electric transmission
657 or distribution.

658 b. A municipality that:

659 (I) Is located on a coastal barrier island as defined in s.
660 161.053(1) (b) 3.;

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

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

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

666 7. "Collocate" or "collocation" means to install, mount,
667 maintain, modify, operate, or replace one or more wireless

20191000er

668 facilities on, under, within, or adjacent to a wireless support
669 structure or utility pole. The term does not include the
670 installation of a new utility pole or wireless support structure
671 in the public rights-of-way.

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

673 9. "Micro wireless facility" means a small wireless
674 facility having dimensions no larger than 24 inches in length,
675 15 inches in width, and 12 inches in height and an exterior
676 antenna, if any, no longer than 11 inches.

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

679 a. Each antenna associated with the facility is located
680 inside an enclosure of no more than 6 cubic feet in volume or,
681 in the case of antennas that have exposed elements, each antenna
682 and all of its exposed elements could fit within an enclosure of
683 no more than 6 cubic feet in volume; and

684 b. All other wireless equipment associated with the
685 facility is cumulatively no more than 28 cubic feet in volume.
686 The following types of associated ancillary equipment are not
687 included in the calculation of equipment volume: electric
688 meters, concealment elements, telecommunications demarcation
689 boxes, ground-based enclosures, grounding equipment, power
690 transfer switches, cutoff switches, vertical cable runs for the
691 connection of power and other services, and utility poles or
692 other support structures.

693 11. "Utility pole" means a pole or similar structure that
694 is used in whole or in part to provide communications services
695 or for electric distribution, lighting, traffic control,
696 signage, or a similar function. The term includes the vertical

20191000er

support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less unless an authority grants a waiver for such pole.

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

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

b. Wireline backhaul facilities; or

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

13. "Wireless infrastructure provider" means a person who has been certificated under chapter 364 to provide telecommunications service ~~in the state~~ or under chapter 610 to provide cable or video services in this state, or that person's affiliate, 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

20191000er

licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

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

17. "Wireless support structure" means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole, pedestal, or other support structure for ground-based equipment not mounted on a utility pole and less than 5 feet in height.

(c) Except as provided in this subsection, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way or for the installation, maintenance, modification, operation, or replacement of utility poles used for the collocation of small wireless facilities in the public rights-of-way.

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

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

2. An applicant may not be required to provide more information to obtain a permit than is necessary to demonstrate the applicant's compliance with applicable codes for the

20191000er

placement of small wireless facilities in the locations identified in the application. An applicant may not be required to provide inventories, maps, or locations of communications facilities in the right-of-way other than as necessary to avoid interference with other at-grade or aerial facilities located at the specific location proposed for a small wireless facility or within 50 feet of such location.

3. An authority may not:

a. Require the placement of small wireless facilities on any specific utility pole or category of poles; ~~or~~

b. Require the placement of multiple antenna systems on a single utility pole;

c. Require a demonstration that collocation of a small wireless facility on an existing structure is not legally or technically possible as a condition for granting a permit for the collocation of a small wireless facility on a new utility pole except as provided in paragraph (i);

d. Require compliance with an authority's provisions regarding placement of small wireless facilities or a new utility pole used to support a small wireless facility in rights-of-way under the control of the department unless the authority has received a delegation from the department for the location of the small wireless facility or utility pole, or require such compliance as a condition to receive a permit that is ancillary to the permit for collocation of a small wireless facility, including an electrical permit;

e. Require a meeting before filing an application;

f. Require direct or indirect public notification or a public meeting for the placement of communication facilities in

20191000er

the right-of-way;

g. Limit the size or configuration of a small wireless facility or any of its components, if the small wireless facility complies with the size limits in this subsection;

h. Prohibit the installation of a new utility pole used to support the collocation of a small wireless facility if the installation otherwise meets the requirements of this subsection; or

i. Require that any component of a small wireless facility be placed underground except as provided in paragraph (i).

4. Subject to paragraph (r), an authority may not limit the placement, by minimum separation distances, of small wireless facilities, utility poles on which small wireless facilities are or will be collocated, or other at-grade communications

facilities ~~by minimum separation distances~~. However, within 14 days after the date of filing the application, an authority may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed on an alternative authority utility pole or support structure or placed on ~~may place~~ a new utility pole. The authority and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the authority of such acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application. If an agreement is not reached, the applicant must notify the

20191000er

authority of such nonagreement and the authority must grant or deny the original application within 90 days after the date the application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

5. An authority shall limit the height of a small wireless facility to 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. Unless waived by an authority, the height for a new utility pole is limited to the tallest existing utility pole as of July 1, 2017, located in the same right-of-way, other than a utility pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the authority shall limit the height of the utility pole to 50 feet.

6. ~~Except as provided in subparagraphs 4. and 5.,~~ The installation by a communications services provider of a utility pole in the public rights-of-way, other than a utility pole used designed to support a small wireless facility, ~~is shall be~~ subject to authority rules or regulations governing the placement of utility poles in the public rights-of-way ~~and shall be subject to the application review timeframes in this subsection.~~

7. Within 14 days after receiving an application, an authority must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the authority must

20191000er

specifically identify the missing information. An application is deemed complete if the authority fails to provide notification to the applicant within 14 days.

8. An application must be processed on a nondiscriminatory basis. A complete application is deemed approved if an authority fails to approve or deny the application within 60 days after receipt of the application. If an authority does not use the 30-day negotiation period provided in subparagraph 4., the parties may mutually agree to extend the 60-day application review period. The authority shall grant or deny the application at the end of the extended period. A permit issued pursuant to an approved application shall remain effective for 1 year unless extended by the authority.

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

20191000er

a written decision issued within 45 days after a written request for review is made. A denial must identify the specific code provisions on which the denial is based. If the administrative review is not complete within 45 days, the authority waives any claim regarding failure to exhaust administrative remedies in any judicial review of the denial of an application.

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

11. An authority may deny an application to collocate a ~~proposed collocation of~~ a small wireless facility or place a utility pole used to support a small wireless facility in the public rights-of-way if the proposed small wireless facility or utility pole used to support a small wireless facility ~~collocation:~~

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

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

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

d. Materially fails to comply with the 2017 ~~2010~~ edition of the Florida Department of Transportation Utility Accommodation

20191000er

Manual.

e. Fails to comply with applicable codes.

f. Fails to comply with objective design standards
authorized under paragraph (r).

12. An authority may adopt by ordinance provisions for insurance coverage, indemnification, ~~performance bonds, security funds,~~ force majeure, abandonment, authority liability, or authority warranties. Such provisions must be reasonable and nondiscriminatory. An authority may require a construction bond to secure restoration of the postconstruction rights-of-way to the preconstruction condition. However, such bond must be time-limited to not more than 18 months after the construction to which the bond applies is completed. For any financial obligation required by an authority allowed under this section, the authority shall accept a letter of credit or similar financial instrument issued by any financial institution that is authorized to do business within the United States, provided that a claim against the financial instrument may be made by electronic means, including by facsimile. A provider of communications services may add an authority to any existing bond, insurance policy, or other relevant financial instrument, and the authority must accept such proof of coverage without any conditions other than consent to venue for purposes of any litigation to which the authority is a party. An authority may not require a communications services provider to indemnify it for liabilities not caused by the provider, including liabilities arising from the authority's negligence, gross negligence, or willful conduct.

13. Collocation of a small wireless facility on an

20191000er

authority utility pole does not provide the basis for the
imposition of an ad valorem tax on the authority utility pole.

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

15. 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 any permit or other
approval or require fees, or other charges, costs, or other
exactions for:

1. Routine maintenance, the performance of service
restoration work on existing facilities, or repair work,
including, but not limited to, emergency repairs of existing
facilities or extensions of such facilities for providing
communications services to customers;

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

20191000er

chapter 202. An authority may require an initial letter from or
on behalf of such provider, which is effective upon filing,
attesting that the micro wireless facility dimensions comply
with the limits of this subsection. The authority may not
require any additional filing or other information as long as
the provider is deploying the same, a substantially similar, or
a smaller size micro wireless facility equipment.

Notwithstanding this paragraph, an authority may require a
right-of-way permit for work that involves excavation, closure
of a sidewalk, or closure of a vehicular lane or parking lane,
unless the provider is performing service restoration on an
existing facility and the work is done in compliance with the
2017 edition of the Florida Department of Transportation Utility
Accommodation Manual. An authority may require notice of such
work within 30 days after restoration and may require an after-
the-fact permit for work which would otherwise have required a
permit.

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

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

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

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

4. Agreements between authorities and wireless providers

20191000er

that are in effect on July 1, 2017, and that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on authority utility poles, remain in effect, subject to applicable termination provisions. The wireless provider may accept the rates, fees, and terms established under this subsection for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.

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

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

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

c. For an authority utility pole that does not support an

20191000er

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

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

20191000er

(g) For any applications filed before the effective date of ordinances implementing this subsection, an authority may apply current ordinances relating to placement of communications facilities in the right-of-way related to registration, permitting, insurance coverage, indemnification, ~~performance bonds, security funds,~~ force majeure, abandonment, authority liability, or authority warranties. Permit application requirements and small wireless facility placement requirements, including utility pole height limits, that conflict with this subsection ~~must shall~~ be waived by the authority. An authority may not institute, either expressly or de facto, a moratorium, zoning-in-progress, or other mechanism that would prohibit or delay the filing, receiving, or processing of registrations, applications, or issuing of permits or other approvals for the collocation of small wireless facilities or the installation, modification, or replacement of utility poles used to support the collocation of small wireless facilities.

(i) 1. In an area where an authority has required all public utility lines in the rights-of-way to be placed underground, a wireless provider must comply with written, objective, reasonable, and nondiscriminatory requirements that prohibit new utility poles used to support small wireless facilities if:

a. The authority, at least 90 days prior to the submission of an application, has required all public utility lines to be placed underground;

b. Structures that the authority allows to remain above ground are reasonably available to wireless providers for the collocation of small wireless facilities and may be replaced by a wireless provider to accommodate the collocation of small

20191000er

wireless facilities; and

c. A wireless provider may install a new utility pole in the designated area in the right-of-way that otherwise complies with this subsection and it is not reasonably able to provide wireless service by collocating on a remaining utility pole or other structure in the right-of-way.

2. For small wireless facilities installed before an authority adopts requirements that public utility lines be placed underground, an authority adopting such requirements must:

a. Allow a wireless provider to maintain the small wireless facilities in place subject to any applicable pole attachment agreement with the pole owner; or

b. Allow the wireless provider to replace the associated pole within 50 feet of the prior location in accordance with paragraph (r). ~~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.~~

(r) An authority may require wireless providers to comply with objective design standards adopted by ordinance. The ordinance may only require:

1. A new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color;

2. Reasonable spacing requirements concerning the location of a ground-mounted component of a small wireless facility which does not exceed 15 feet from the associated support structure;

20191000er

or

3. A small wireless facility to meet reasonable location context, color, camouflage, and concealment requirements, subject to the limitations in this subsection; and

4. A new utility pole used to support a small wireless facility to meet reasonable location context, color, and material of the predominant utility pole type at the proposed location of the new utility pole.

Such design standards under this paragraph may be waived by the authority upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or utility pole or are technically infeasible or that the design standards impose an excessive expense. The waiver must be granted or denied within 45 days after the date of the request.

(8) (a) Any person aggrieved by a violation of this section may bring a civil action in a United States District Court or in any other court of competent jurisdiction.

(b) The court may:

1. Grant temporary or permanent injunctions on terms as it may deem reasonable to prevent or restrain violations of this section; and

2. Direct the recovery of full costs, including awarding reasonable attorney fees, to the party who prevails.

(9) All work in the authority's rights-of-way under this section must comply with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual.

Section 3. Nothing in this act shall be construed to delay

20191000er

1132 the issuance of permits for other utility work, including, but
1133 not limited to, permits related to electricity or gas work in
1134 the rights-of-way.

1135 Section 4. This act shall take effect July 1, 2019.