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

54
55 Be It Enacted by the Legislature of the State of Florida:

56
57 Section 1. Paragraph (a) of subsection (1) of section
58 337.401, Florida Statutes, is amended, and subsection (7) is
59 added to that section, to read:

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

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

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

129 b. A municipality that:

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

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

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

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

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

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

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

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

150 a. Each antenna associated with the facility is located

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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.