

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 687 Utilities

SPONSOR(S): Commerce Committee; Energy & Utilities Subcommittee; La Rosa and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 596

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 2 N, As CS	Keating	Keating
2) Commerce Committee	25 Y, 2 N, As CS	Keating	Hamon

SUMMARY ANALYSIS

The bill creates the Advanced Wireless Infrastructure Deployment Act, which establishes a process by which wireless providers – including persons who provide wireless services and persons who build or install wireless communication transmission equipment, facilities, and support structures – may place certain “small wireless facilities” on, under, within, or adjacent to certain utility poles or wireless support structures within public rights-of-way that are under the jurisdiction and control of an “authority” (i.e., a county or municipality). The bill provides that an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way, except as specified in the bill.

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

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

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

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

The bill provides an effective date of July 1, 2017.

This bill may be a Mandate requiring a two-thirds vote of the membership. See Mandates section of the analysis.

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

STORAGE NAME: h0687c.COM

DATE: 4/24/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Use of Right-of-Way by Communications Services Providers

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

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

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

¹ Section 337.401(1)(a), F.S., refers to “any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 as the ‘utility’.”

² s. 337.401(1)(a), F.S.

³ s. 337.401(2), F.S.

⁴ *Id.*

⁵ *Id.*

⁶ s. 337.401(3)(a), F.S.

⁷ s. 337.401(3)(c)1.a.(I), F.S.

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

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

¹⁰ s. 337.401(3)(c)2., F.S.

Local Government Pole Attachment Fees

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

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

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

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

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

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

Federal Law on Wireless Facilities Siting

The FCC interprets and implements certain provisions of federal law which are designed, among other purposes, to "remove barriers to deployment of wireless network facilities by hastening the review and approval of siting applications by local land-use authorities."²⁰ These statutory provisions preserve

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

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

¹³ s. 202.24(1), F.S.

¹⁴ See s. 202.24(2)(c), F.S.

¹⁵ s. 365.172(13)(f), F.S.

¹⁶ *Id.*

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

¹⁸ *Id.*

¹⁹ *Id.*

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

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

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

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

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

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

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

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

²² *Id.* at p. 2

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

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

²⁵ *Id.*

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

²⁷ *Id.* at p. 13.

²⁸ *Id.*

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

Deployment of Small Wireless Facilities in Florida

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

Effect of Proposed Changes

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

Under the bill, a utility pole includes any pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function, but does not include any horizontal support structures to which signal lights or other traffic control devices are attached or any pole or similar structure 15 feet in height or less. The bill excludes utility poles that are:

- Owned by a municipal electric utility or used to support electric distribution facilities owned or operated by a municipality;
- Located in the right-of-way within a retirement community that is deed-restricted as housing for older persons as defined in s. 760.29(4)(b), F.S., has more than 5,000 residents, and has underground utilities for electric transmission or distribution; or

²⁹ *Id.* at pp. 8-14.

³⁰ *Id.* at p. 2.

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

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

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

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

³⁵ As defined in the bill, “wireless facility” means “equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications” and includes small wireless facilities.

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

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

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

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

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

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

Authority Review Process

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

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

An applicant may, at its discretion, file a consolidated application and receive a single permit to collocate up to 30 small wireless facilities. If the application includes collocation of multiple small

³⁶ As defined in the bill, “collocate” or “collocation” means “to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole.”

wireless facilities, the authority may separately address small wireless facility collocations for which incomplete information has been received or which are denied.

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

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

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

- Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons;
- Local codes or ordinances adopted to implement the provisions of the bill;³⁷
- Objective design standards adopted by ordinance that may require that a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment; and
- Objective design standards adopted by ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements, provided that the authority may waive such design standards upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense.³⁸

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

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

Limitations on Permit Conditions

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

The bill prohibits an authority from directly or indirectly requiring an applicant to perform services unrelated to the collocation. The bill identifies such prohibited services to include in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority. The bill also prohibits an authority from requiring an applicant to provide more information than is necessary to demonstrate compliance with applicable codes. Further, the bill prohibits an authority from requiring the placement of small wireless facilities on any specific pole or category of poles or requiring the placement of multiple antenna systems on a single pole.

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

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

The bill prohibits an authority from limiting the placement of small wireless facilities by minimum separation distance, but provides a process by which an authority, within 14 days from the filing date of a collocation application, may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed upon an alternative authority utility pole or support structure or may place a new utility pole. Under this process, the authority and applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days from the date of the request. After the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the authority and the application is deemed granted for any such location and all other locations in the application. If no agreement is reached, the applicant must notify the authority and the authority must grant or deny the original application within 90 days from the date the application was filed.

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

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

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

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

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

Collocation on Utility Poles

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

- An authority may not enter into an exclusive agreement with any person for the right to attach equipment to authority utility poles.
- Rates and fees for collocations on authority utility poles must be nondiscriminatory, regardless of the services provided by the collocating person.
- The rate to collocate small wireless facilities on an authority utility pole may not exceed \$150 annually per pole.
- An agreement between an authority and a wireless provider that is in effect on July 1, 2017, and that relates to the collocation of small wireless facilities in the right-of-way, including the

collocation of small wireless facilities on authority utility poles, will remain in effect, subject to applicable termination provisions.

- A wireless provider may accept the rates, fees, and terms established under the bill for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.
- By the later of January 1, 2018, or 3 months after receiving its first request to collocate a small wireless facility on an authority utility pole, the person owning or controlling the authority utility pole must, by ordinance or otherwise, provide rates, fees, and terms that comply with the bill and that are nondiscriminatory and competitively neutral.

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

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

For an authority utility pole that *does not* support aerial facilities used to provide communications or electric service, the bill requires the authority to provide a good faith estimate for any necessary make-ready work within 60 days after receipt of a complete application and requires that the make-ready work be completed within 60 days of the applicant’s acceptance of the estimate. As an alternative, the bill provides that an authority may require the applicant to provide a make-ready estimate, at the applicant’s expense, for the work necessary to support the small wireless facility, including pole replacement, and to perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. If the authority chooses this alternative, it may not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. A replaced or altered utility pole remains the property of the authority.

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

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

The bill authorizes a wireless infrastructure provider⁴⁰ to apply to an authority to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility pole or structure and small

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

⁴⁰ As defined in the bill, “wireless infrastructure provider” means “a person who has been certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures, but is not a wireless services provider.”

wireless facilities will be utilized by a wireless services provider to provide service within 9 months from the date the application is granted. The bill provides that the authority shall accept and process the application in accordance with the application review timeframes specified in the bill for collocation applications and any applicable codes and other local codes, rules, or regulations governing the placement of utility poles in the public rights-of-way.

Other Matters

The bill specifies that it does not limit the authority of local governments to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement these laws. The bill provides that an authority may enforce local codes, administrative rules, or regulations adopted by ordinance in effect on April 1, 2017 which are applicable to a historic area designated by the state or authority. The bill further provides that an authority may enforce pending local ordinances, administrative rules, or regulations applicable to a historic area designated by the state if the intent to adopt such changes had been publicly declared on or before April 1, 2017. The bill authorizes an authority to waive any such ordinances or related requirements.

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

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

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

The bill further specifies that it does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on an authority utility pole or erect a wireless support structure in a location subject to covenants, conditions, and restrictions; articles of incorporation; and bylaws of a home owners association.

The bill provides that the approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to the bill is not to be construed to confer authorization for the provision of any voice, data, or video communications services nor for the installation, placement, maintenance, or operation of any communications facilities other than small wireless facilities in the right-of-way. Further, the bill provides that it does not affect s. 337.401(6), F.S., relating to pass-through providers.

B. SECTION DIRECTORY:

Section 1. Amends s. 337.401, F.S., relating to use of right-of-way for utilities subject to regulation.

Section 2. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill reduces the authority that counties and municipalities have to raise revenues in the aggregate. The bill establishes a cap on the rates that counties and municipalities may impose for collocation of small wireless facilities within the public rights-of-way under their authority.

The bill does not appear to qualify for an exemption or exception. Therefore, the bill may require a 2/3 vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS / COMMITTEE SUBSTITUTE CHANGES

On March 15, 2017, the Energy & Utilities Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a committee substitute. The committee substitute changes the bill as follows:

- Preserves local government authority to enforce historic preservation zoning regulations and provides that the applicable codes under which an authority will review a collocation application include historic preservation zoning regulations that are consistent with:
 - The preservation of local zoning authority under 47 U.S.C s. 332(c)(7);
 - The requirements for facility modifications under 47 U.S.C. s. 1455(a); or
 - The National Historic Preservation Act of 1966, as amended.
 - The regulations adopted to implement these laws.
- Excludes utility poles that are owned by a municipal electric utility or used to support electric distribution facilities owned or operated by a municipality.
- Provides that the act does not authorize a person to collocate small wireless facilities on utility poles owned by an electric cooperative or municipal electric utility.
- Modifies the definition of “wireless facility” to exclude:
 - Wireline backhaul facilities.
 - Coaxial or fiber-optic cable between wireless structures or utility poles or otherwise not immediately adjacent to or directly associated with a particular antenna.

On April 24, 2017, the Commerce Committee adopted a strike-all amendment to the bill and reported the bill favorably as a committee substitute. The committee substitute changes the bill as follows:

- Expands the definition of “applicable codes” to include local codes or ordinances adopted to implement the bill, including objective design standards related to replacement utility poles, ground mounted equipment, and small wireless facilities.
- Defines the term “authority” to include a county or municipality with jurisdiction and control of the rights-of-way of any public roads and to expressly exclude the Department of Transportation.
- Limits the definition of “authority utility pole” to exclude a pole located in the ROW within a retirement community or a municipality with certain characteristics.
- Limits the definition of “utility pole” to exclude any horizontal structure to which signal lights or traffic control devices are attached and to exclude any pole or similar structure 15 feet tall or less.
- Clarifies that an authority may not require an applicant for collocation to provide more information than is necessary to demonstrate compliance with applicable codes.
- Authorizes an authority, within 14 days from the filing of a collocation application, to request an alternative location within the right-of-way for placement of a small wireless facility, and creates a process to negotiate and resolve any such request.
- Reduces the maximum height of certain new utility to 50 feet (from 60 feet) and applies the bill’s height limitations to all wireless support structures regardless of construction date.
- Expands the time for an authority to determine the completeness of an application to 14 days (from 10 days).
- Provides that a permit issued pursuant to an approved application is effective for 1 year unless extended by the authority.
- Limits the number of small wireless facilities that may be included in a single consolidated application to 30.
- Expands the criteria upon which an authority may deny an application for collocation.

- Authorizes an authority to adopt reasonable and nondiscriminatory ordinances providing for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties.
- Authorizes an authority to reserve space on its utility poles for future public safety uses, provided that such reservation does not preclude collocation of a small wireless facility.
- Requires any structure permitted for collocation to comply with state airport zoning laws and federal regulations related to airport airspace protections.
- Clarifies that an authority may require a permit for work that involves excavation, closing a sidewalk, or closing a vehicular lane.
- Establishes a maximum annual rate of \$150 for collocation of a small wireless facility on an authority utility pole.
- Provides that agreements between authorities and wireless providers related to collocation of small wireless facilities in the right-of-way and in effect on July 1, 2017, will remain in effect subject to applicable termination provisions.
- Provides that an authority may require an applicant to provide an estimate, at the applicant's expense, for the make-ready work necessary to support the small wireless facility and to perform the make-ready work.
- Provides that if make-ready work requires pole replacement, the scope of the estimate is limited to the design, fabrication, and installation of a pole substantially similar in color and composition.
- Provides that a replaced or altered utility pole remains the property of the authority.
- Provides that, until such time as an authority's implementing ordinances become effective, the authority may process an application for collocation of a small wireless facility under its current ordinances regulating the placement of communications facilities in the right-of-way.
- Requires a wireless provider to comply with any nondiscriminatory undergrounding requirements of the authority which prohibit above-ground structures in the public right-of-way.
- Authorizes a wireless infrastructure provider to apply to place utility poles in the public right-of-way to support small wireless facilities, if the facilities will be used to provide service within 9 months of the application being granted, subject to the review timeframes in the bill and any applicable codes or other governing codes.
- Authorizes an authority to enforce local codes, administrative rules, or regulations, and certain pending local codes, administrative rules, or regulations, applicable to designated historic areas.
- Provides that the bill does not authorize a person to collocate small wireless facilities or micro wireless facilities in a retirement community or municipality with certain characteristics, unless otherwise permitted by federal law, and provides that these exemptions do not apply to micro wireless facilities on existing aerial communications facilities, subject to any municipal ordinance that requires the conversion of such aerial facilities to underground facilities.
- Provides that the bill does not authorize a person to collocate small wireless facilities or micro wireless facilities on an authority utility pole or erect a wireless support structure, in a location subject to covenants, conditions, and restrictions; articles of incorporation; and bylaws of a home owners association.

This analysis addresses the committee substitute adopted by the Commerce Committee.