

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/CS/SB 1000

INTRODUCER: Appropriations Committee; Community Affairs Committee; Innovation, Industry, and Technology Committee; and Senator Hutson

SUBJECT: Communications Services

DATE: April 22, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Imhof</u>	<u>IT</u>	<u>Fav/CS</u>
2.	<u>Ryon</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Gross</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<u>Favorable</u>
4.	<u>Gross</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 1000 makes extensive changes to section 337.401, Florida Statutes, which governs the use of public rights-of-way by providers of communications services. These changes include:

- Creating a civil cause of action for any person aggrieved by a violation of the right-of-way statute.
- Prohibiting a local government from instituting, “either expressly or de facto, a moratorium or other mechanism that would prohibit or delay” permits for collocation of small wireless facilities or related poles.
- Deleting the authority for a local government to require performance bonds and security funds. Instead, the bill allows them to require a construction bond limited to no more than 18 months after the construction is completed.
- Requiring a local government to accept a letter of credit or similar instrument issued by any financial institution authorized to do business within the U.S.
- Allowing a provider of communications services to add a local government to any existing bond, insurance policy, or other financial instrument, and requiring the local government to accept such coverage.
- Providing that a wireless provider shall comply with objective and reasonable requirements if the local government has required all public utility lines in the right-of-way to be placed underground, with certain exceptions.

- Prohibiting a local government from requiring a permit applicant to provide inventories, maps, or locations of communication facilities in the rights-of-way, unless it is necessary to avoid interference with existing facilities.
- Allowing a local government to require, annually, a notarized statement from a pass-through provider identifying information on the provider's pass-through facilities.
- Providing additional requirements pertaining to a local government's permit registration and application process for communications services providers' use of public rights-of-way.

The bill also prohibits a municipality and county from imposing permit fees for the use of public rights-of-way by communications services providers if it had not levied permit fees as of January 1, 2019. In contrast, municipalities and counties that were imposing permit fees as of that date may continue to do so or may elect to no longer impose permit fees.

The bill takes effect July 1, 2019.

## II. Present Situation:

### Local Communications Services Tax

Local governments may levy a local discretionary communication services tax (CST), which varies by jurisdiction.<sup>1</sup> The maximum rate a municipality or charter county may levy is 5.1 percent if the local government does not levy permit fees (or 4.98 percent if the municipality or charter county levies permit fees, which are discussed below).<sup>2</sup> The maximum rate for a non-charter county is 1.6 percent.<sup>3</sup> Maximum rates do not include add-ons of up to 0.12 percent for municipalities and charter counties or up to 0.24 percent for non-charter counties, which is discussed below.<sup>4</sup> Further, temporary emergency rates may exceed the statutory maximum rates.<sup>5</sup> The local CST does not apply to direct-to-home satellite services.<sup>6</sup>

### Local Government Election to Impose Permit Fees for Use of Public Rights-of-Way by Communications Services Providers

Section 337.401(3)(c), F.S., allows local governments to require and collect permit fees from any provider of communications services that uses or occupies municipal or county roads or rights-of-way. All fees must be 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. Fees may not: be offset against the communications services tax; 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; be based on a percentage of the value or costs associated with the work to be performed on the roads or rights-of-way; or exceed \$100.

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<sup>1</sup> Section 202.19(1), F.S.

<sup>2</sup> Section 202.19(2)(a), F.S.

<sup>3</sup> Section 202.19(2)(b), F.S.

<sup>4</sup> Section 202.19(2)(c), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 202.19(6), F.S.

Before July 16, 2001, each local government was required to make an election on whether to charge permit fees. Local CST rates were different for municipalities and charter counties compared to non-charter counties.

The options for a municipality or charter county were: (1) to require and collect permit fees, but have its local CST rate automatically reduce by 0.12 percent; or (2), elect not to charge permit fees and increase, by ordinance or resolution, the local CST rate by an amount not to exceed 0.12 percent. A municipality or charter county that did not make the required election was statutorily presumed to have elected not to require and collect permit fees.

In contrast, a non-charter county that elected to require and collect permit fees had no reduction in its local CST rate, and a non-charter county that elected not to charge permit fees could increase its local CST rate, by ordinance or resolution, by an amount not to exceed 0.24 percent. A non-charter county that did not make the required election was statutorily presumed to have elected not to require and collect permit fees.

Section 337.401(3)(j), F.S., allows a local government to change its election. If a municipality or charter county changes its election in order to require and collect permit fees, its local CST rate would automatically be reduced by 0.12 percent plus the percentage, if any, by which the rate was previously increased due to the previous election. If a municipality or charter county changes its election in order to no longer require and collect permit fees, its local CST rate could be increased by an amount not to exceed 0.24 percent.

If a non-charter county changes its election in order to require and collect permit fees, its local CST rate would automatically be reduced by the percentage, if any, by which such rate was increased due to the previous election. If a non-charter county changes its election in order to no longer require and collect permit fees, its local CST rate could be increased by an amount not to exceed 0.24 percent.

### **Permitting for Use of Public Rights-of-Way by Communications Service Providers**

Pursuant to s. 337.401, F.S., each local government that has jurisdiction and control of public roads or publicly owned rail corridors is authorized to adopt and enforce reasonable rules or regulations with regard to the placement and maintenance of utility facilities across, on, or within the right-of-way limits of any road or publicly owned rail corridors under its jurisdiction. Each local government may authorize any person who is a resident of this state, or any corporation that 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<sup>7</sup> in accordance with the local government's rules or regulations. A utility may not be installed, located, or relocated within a right-of-way unless authorized by a written permit.

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<sup>7</sup> 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 a "utility."

### Permitting for Small Wireless Facilities in the Public Rights-of-Way

In 2017, the Legislature passed the Advanced Wireless Infrastructure Deployment Act (Act), which established a process by which wireless providers may place certain “small wireless facilities”<sup>8</sup> on, under, within, or adjacent to certain utility poles or wireless support structures within public rights-of-way under the jurisdiction and control of a local government.<sup>9</sup> The Act prescribes the specific terms and conditions under which an authority<sup>10</sup> must process and issue permits for collocation<sup>11</sup> of small wireless facilities in the public rights-of-way. The impetus for the passage of the Act was to streamline local permitting regulations in order to facilitate the deployment of fifth generation, or 5G, wireless technology. As of June 2018, 20 states had enacted “small cell” legislation that streamlines regulations to facilitate the deployment of 5G small cells.<sup>12</sup>

### III. Effect of Proposed Changes:

The bill prohibits a municipality or county from imposing permit fees for the use of public rights-of-way by communications services providers if it had not levied the permit fees as of January 1, 2019. In contrast, municipalities and counties that were imposing permit fees as of that date may continue to do so or may elect to no longer impose permit fees. As of January 2019, three local governments – one municipality, one charter county, and one non-charter county – impose permit fees.<sup>13</sup>

The bill also makes extensive changes to s. 337.401(3) and (7), F.S., relating to the use of public rights-of-way and small and micro wireless infrastructure.<sup>14</sup> For ease of the reader, the current law is described immediately prior to the discussion of each change proposed in the bill.

<sup>8</sup> “Small wireless facility” is defined in s. 337.401(7)(b)10., F.S., to mean a wireless facility that meets the following qualifications:

- a. Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and
- b. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

<sup>9</sup> Chapter 2017-136, Laws of Fla.

<sup>10</sup> Section 337.401(7)(b)5., F.S. “Authority” means a county or municipality having jurisdiction and control of the rights-of-way of any public road. The term does not include the Department of Transportation.

<sup>11</sup> Section 337.401(7)(b)7., F.S. “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.

<sup>12</sup> National Conference of State Legislatures. Legis Brief Vol. 26, No.22: *5G: The Future of Wireless Technology* (June 2018), available at: [http://www.ncsl.org/documents/legisbriefs/2018/june/LBJune2018\\_SmallCell\\_goID32451.pdf](http://www.ncsl.org/documents/legisbriefs/2018/june/LBJune2018_SmallCell_goID32451.pdf). (last visited April 4, 2019).

<sup>13</sup> See Florida Department of Revenue, *Florida Communications Services Tax – Historical, Current and Upcoming Local Tax Rates*, available at: [http://floridarevenue.com/taxes/Documents/cst\\_rate\\_table.xlsx](http://floridarevenue.com/taxes/Documents/cst_rate_table.xlsx) (last visited April 4, 2019).

<sup>14</sup> “Wireless facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term includes radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment. The term includes small wireless facilities.

“Small wireless facility” means a wireless facility for which each associated antenna associated is located inside, or could fit within, an enclosure of no more than 6 cubic feet in volume, and all other associated wireless equipment is cumulatively no more than 28 cubic feet in volume.

Current Law: Current law contains a statement of legislative intent that local governments treat providers of communications services in a nondiscriminatory and competitively neutral manner.

Proposed Change: The bill requires local governments to take into account the distinct engineering, construction, operation, maintenance, public works and safety requirements of the provider's facilities when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or rights-of-way.

Current Law: Current law allows a municipality or county to 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, and limits the types of information that may be required in registration to identification and location information and any required proof of insurance or self-insuring status adequate to defend and cover claims.

Proposed Change: In addition to providing the limited information above, the bill adds to the registration requirements: (1) a statement as to whether the registrant is a pass-through provider and (2), the registrant's federal employer identification number. The bill also provides that a municipality or county may not require registration or renewal more frequently than every five years, but may require that a provider submit any update within 90 days after a change in such information. The bill also prohibits a local government from requiring the provision of an inventory of communications facilities, maps, locations of such facilities or other information as a condition of registration, renewal, or for any other purpose. It does allow a local government to require as part of a permit application that the applicant identify at-grade (ground level) communications facilities within 50 feet of the proposed installation location for the placement of at grade communications facilities. The bill also prohibits: requiring a provider to pay any fee, cost, or other charge for registration or renewal; adoption or enforcement of any ordinances, regulations, or requirements as to the placement or operation of communications facilities in a right of way by a communications services provider; or imposition or collection of any tax or charge for the provision of communications services over the communications services provider's communications facilities in a right of way.

Current Law: Current law prohibits the imposition of permit fees 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.

Proposed Change: The bill adds that this prohibition includes the performance of service restoration of existing facilities; extensions of existing facilities for providing communications services to customers; and the placement of micro wireless facilities suspended on cables between existing poles.

Current Law: Current law requires a local government to provide to the Secretary of State notice of a proposed ordinance governing a telecommunications company placing or maintaining

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"Micro wireless facility" means a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches. s. 337.401(7)(b)12., 10., and 9., F.S., respectively.

facilities in its roads or rights-of-way within specified times. Failure to provide the notice does not render the ordinance invalid.

Proposed Change: The bill requires that, if notice was not provided, the ordinance must be suspended until 30 days after the municipality or county provides the required notice.

Current Law: Current law prohibits a local government from using 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.

Proposed Change: The bill prohibits the local government from exercising control over equipment or technology used by a provider. The bill also prohibits a local government from requiring any permit for the maintenance, repair, replacement, extension, or upgrade of existing aerial wireline communications facilities on utility poles or attachments on utility poles by a communications service provider. A local government may, however, require a right-of-way permit for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane, unless the provider is performing service restoration work to existing facilities.

Additionally, the bill prohibits a local government from requiring a permit or any charge for the maintenance, repair, replacement, extension, or upgrade of existing aerial or underground communications facilities on private property outside the public rights-of-way. An extension of existing facilities includes an extension from the rights-of-way into a customer's private property for the purpose of placing a service drop or an extension from the rights-of-way into a utility easement to provide service to a discrete identifiable customer or group of customers.

Current Law: Current law does not specify a timeframe within which local governments must process a permit application for the placement of communications facilities in the public right-of-way by a communications services provider, except with respect to the permitting of small wireless facilities.<sup>15</sup>

Proposed Change: The bill provides that all permit applications required by a local government for the placement of communications facilities must be processed consistent with the timeframes established for small wireless facilities.

Current Law: Current law states that a local government may adopt or enforce reasonable rules or regulations concerning use of its rights-of-way.

Proposed Change: The bill requires that any such rules or regulations be in writing. It also requires that a local government give providers at least 60 days advance written notice before making any changes to the rules or regulations.

Current Law: A county or municipality that levies a local CST may charge a pass-through provider that places or maintains a communications facility in the roads or rights-of-way an

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<sup>15</sup> See s. 337.401(7)(d)7.-9., F.S., for the timeframes applicable to small wireless facilities.

annual amount not to exceed \$500 per linear mile or portion thereof. The \$500 charge is 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 local government may impose the charge only once annually and only to one person for any communications facility. Any charge shall be reduced for a prorated portion of any 12-month period during which the person remits local CST imposed by the county or municipality. Any excess amounts paid to a county or municipality shall be refunded to the person upon written notice of the excess to the county or municipality.

Proposed Change: A county or municipality 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 county or municipality, a pass-through provider must provide reasonable access to maps of pass-through facilities located in the rights-of-way of the county or municipality 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 county or municipality 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.

Current Law: For purposes of the Advanced Wireless Infrastructure Deployment Act, the definition of "applicable codes" includes provisions on "objective design standards," or aesthetics. The significance of this is that an authority must approve a complete application unless it does not meet the authority's applicable codes. If these aesthetic requirements are part of applicable codes, the aesthetic requirements must be met for approval of an application.

Proposed Change: The bill adds to the definition of "applicable codes" the National Electric Safety Code and the 2017 edition of the Department of Transportation Utility Manual. The bill also transfers the aesthetic requirements from the definition to new paragraph 337.401(7)(r).

Current Law: The current definition of "application" means a request submitted by an applicant to an authority for a permit "to collocate small wireless facilities."

Proposed Change: The bill adds a request for a permit "to place a new utility pole used to support a small wireless facility," thus requiring local governments to permit new poles.

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

Proposed Change: The bill amends the definition of “wireless infrastructure provider” to mean a person who is certificated under Florida’s telecommunications statute or cable and video services statute.<sup>16</sup>

Current Law: “Wireless Support Structure” means a freestanding structure, or another existing or proposed structure designed to support wireless facilities.

Proposed Change: The bill changes the definition of “wireless support structure” to include a “pedestal or other support structure for ground based equipment not mounted on a utility pole and less than 5 feet in height,” thus requiring a local government to permit these support structures.

Current Law: Current law prohibits an authority from prohibiting, regulating, or charging for the collocation of small wireless facilities in public rights-of-way.

Proposed Change: The bill adds to this prohibition “the installation, maintenance, modification, operation, or replacement of utility poles used for the collocation of small wireless facilities,” allowing installation of a utility pole without regulation or charge.

Current Law: Current law provides that an applicant for a permit to place small wireless facilities is not required to provide more information than is necessary to demonstrate the applicant’s compliance with applicable codes.

Proposed Change: The bill adds a prohibition against requiring an applicant 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.

Current Law: Current law prohibits a local government from requiring the placement of small wireless facilities on any specific utility pole or category of poles.<sup>17</sup>

Proposed Change: The bill adds additional prohibitions. Under the bill, a local government may not:

- 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 an area where an authority has required all public utility lines be placed underground.<sup>18</sup>
- 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 of Transportation.
- Require a meeting before filing an application.
- Require direct or indirect public notification or a public meeting for the placement of communication facilities in the right-of-way.

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<sup>16</sup> Chapter 364, F.S., Telecommunications Companies and Chapter 610, F.S., Cable and Video Services.

<sup>17</sup> Section 337.401(7)(d)3., F.S.

<sup>18</sup> New s. 337.401(7)(i), F.S., discussed below.



- Limit the size or configuration of a small wireless facility or any of its components, if the small wireless facility complies with the stated size limits.
- 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 the subsection.
- Require that any component of a small wireless facility be placed underground except as provided in an area where an authority has required all public utility lines be placed underground.<sup>19</sup>

Current Law: Current law provides for review, approval, and denial of an application for a permit to use rights-of-way.

Proposed Change: If an authority provides for an administrative review of a denial, the review and decision must be issued within 45 days after a written request is received by the authority, with information on the specific code provisions on which the denial was based. If the review is not complete within 45 days, the authority waives any claim regarding the failure to exhaust administrative remedies in any judicial review of the denial of an application.

Current Law: An authority may deny a proposed collocation of a small wireless facility in the public rights-of-way for interferences with such things as the safe operations of traffic control equipment, sight lines or clear zones for transportation, and noncompliance with the Americans with Disabilities Act.

Proposed Change: An authority may deny an application based on the interferences with such things as stated above to place a utility pole used to support a small wireless facility in the public rights-of-way.

Current Law: Current law allows a local government to require insurance, indemnification, performance bonds, or security funds.

Proposed Change: The bill removes the authority a local government has to require a performance bond and security fund as part of the registration process. Instead, a local government may require a construction bond limited to no more than 18 months after the construction is completed. The bill also requires the local government to accept a letter of credit or similar financial instrument issued by any financial institution that is authorized to do business within the United States. The bill states that 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.” Finally, 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.

Current Law: Current law contains size limitations for micro wireless facilities. Additionally, current law restricts an authority from requiring approval or fees for: routine maintenance; replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or installation, placement, maintenance, or replacements of micro

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<sup>19</sup> *Id.*

wireless facilities that are suspended on cables strung between existing utility poles. However, an authority may require a right-of-way permit for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane unless the provider is making emergency restoration or repair work to existing facilities.

Proposed Change: The bill provides that an authority may require an initial letter from or on behalf of a provider attesting that the micro wireless facility dimensions comply with the limits but after that filing, the authority may not require any additional filing or other information as long as the provider is deploying the same or a substantially similar or smaller size micro wireless facility equipment. The bill also allows an authority to require a right-of-way permit for work in the right-of-way, unless the provider is performing service restoration on an existing facility and the work is done in compliance with the 2017 edition of the 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 that would otherwise have required a permit.

Proposed Change: The bill prohibits a local government permitting authority from “instituting, 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.”

Current Law: Under current law, a local government may not require communications services facilities to be placed under ground.

Proposed Change: The bill creates s. 337.401(7)(i), F.S., to require that a provider comply with an authority’s written, objective, reasonable, and nondiscriminatory requirements that prohibit new utility poles used to support small wireless facilities, if:

- The authority, at least 90 days before the submission of the application, has required all public utility lines to be underground.
- 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 wireless facilities.
- A provider may install a new utility pole in designated areas in a right-of-way if the provider is not reasonably able to provide wireless service by collocating.

For small wireless facilities installed before an authority adopts a requirement that public utility lines be placed underground, an authority adopting such requirement shall:

- Permit wireless provider to maintain the small wireless facilities in place, subject to any applicable pole attachment agreement with the pole owner.
- Permit the wireless provider to replace the associated pole within 50 feet of the prior location.

Proposed Change: The bill creates a cause of action for any person aggrieved by a violation of the right-of-way statute. Any such person may bring a civil action in a U.S. District Court or any other court of competent jurisdiction and the court may grant temporary or permanent

injunctions to prevent or restrain violations and direct the recovery of full costs, including awarding reasonable attorney fees, to the party who prevails.

Proposed Change: The bill states that all work done in the authority's rights-of-way by regulated utilities who are subject to s. 337.401, F.S., must comply with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual.

Proposed Change: The bills provides that nothing in this act shall be construed to delay the issuance of permits for other utility work, including, but not limited to, permits related to electricity or gas work in the rights-of-way.

The bill also amends s. 202.20, F.S., to conform a cross-reference.

The bill takes effect on July 1, 2019.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Subsection (b) of Art. VII, s. 18 of the Florida Constitution provides that, except upon approval of each house of the legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989.

In part, the amendments made to s. 337.401, F.S., in the bill limit the authority a local government has to levy a permit fee on communication services providers' use of the rights-of-way. However, the reduced authority is replaced with the authority to increase the total tax rate a local government may impose on communication services.

The bill also preempts counties and municipalities from imposing regulatory fees for activities related to permitting for use of public rights-of-way by communications services providers and for small wireless facilities.

However, an exemption may apply if these provisions have an insignificant fiscal impact, which for Fiscal Year 2019-2020 is \$2.1 million.<sup>20, 21, 22</sup>

##### **B. Public Records/Open Meetings Issues:**

None.

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<sup>20</sup> FLA. CONST. art. VII, s. 18(d).

<sup>21</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited April 4, 2019).

<sup>22</sup> Based on the Demographic Estimating Conference's population adopted on Feb. 6, 2019. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited April 4, 2019).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Lines 1119 through 1127 of the bill state, “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.” It is not clear that a state legislature can grant jurisdiction to a United States District Court.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The Revenue Estimating Conference determined this bill either will have no fiscal impact to local government revenues or will decrease local government revenues in an indeterminate amount.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill removes the ability for a local government to elect to charge permit fees for communications services providers’ use of public rights-of-way. The bill also preempts counties and municipalities from imposing regulatory fees for activities related to permitting for use of public rights-of-way by communications services providers and for small wireless facilities.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 202.20 and 337.401.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS/CS by Appropriations on April 18, 2019:**

The committee substitute:

- Allows a municipality or county to require during the registration process a statement as to whether the registrant is a pass-through provider.
- Requires a registrant to provide an update to a county or municipality within 90 days of a change in the registrant's registration information.
- Expands from 25 feet to 50 feet the identification of other wireless facilities located in the rights-of-way.
- Clarifies that a local government's request to a provider for public, education, or government access channels is not considered an in-kind contributions.
- Restricts a county or municipality from requiring a communications services provider to obtain a permit or pay a fee to extend existing communications facilities.
- Adds "closing a parking lane" to the list of items for which a permit will be required.
- Adds additional codes and manuals to the definition of "applicable codes."
- Provides an administrative review of the denial of an application.
- Allows a local government to deny an application to place a utility pole.
- Exempts a provider from having to obtain a rights-of-way permit for certain service restoration on existing facilities.
- Provides that a wireless provider must comply with certain requirements if the local government has required all public utility lines in the rights-of-way to be placed underground, with certain exceptions.
- Requires all utility work under ch. 337, F.S., to comply with the 2017 edition of the Department of Transportation Utility Manual.
- Clarifies that this act must not be construed to delay the issuance of permits for other utility work in the rights-of-way.
- Extends the time limitation of a construction bond required by a local government to do work in the rights-of-way from 1 year to 18 months.
- Allows a local government to require, annually, a notarized statement from a pass-through provider identifying information on the provider's pass-through facilities.
- Lowers the height limit for ground based equipment capable of supporting wireless facilities from 10 feet to 5 feet.

**CS/CS by Community Affairs on March 26, 2019:**

The committee substitute makes the following changes to the bill:

- Removes the decrease in the state communications services tax rate.
- Allows a city or county to request updates from a communications services provider during the five year registration period if any registration information changes.
- Provides that if a city or county fails to notify the Department of State of a proposed ordinance governing a telecommunications providers' use of public roads or rights-of-ways, the ordinance must be suspended until 30 days after the city or county provides the required notice.

- Clarifies that a city or county may not require a permit for the maintenance, repair, replacement, or upgrade of existing aerial wireline communications facilities on utility poles or related attachments.
- Clarifies provisions prohibiting a city or county from requiring a permit or fee for the maintenance, repair, replacement, or upgrade of existing aerial or underground communications facilities on private property.
- Allows the prevailing party in a civil suit for a violation of the right-of-way statute to recover full costs, including reasonable attorney fees. The bill allowed this for the *aggrieved* prevailing party only.

**CS by Innovation, Industry, and Technology on March 12, 2019:**

The committee substitute revises the bill's provisions on to the election on permit fees and communications services taxes rates. Municipalities and counties that, as of January 1, 2019, were not imposing permit fees cannot reverse this election and cannot impose permit fees. In contrast, municipalities and counties that were imposing permit fees as of that date may continue to do so or may elect to no longer impose permit fees. The bill retains existing provisions on fees and changes to elections applicable only to this latter group.

The committee substitute adds to the bill extensive provisions on use of rights-of-way, including provisions on small and micro wireless infrastructure, including:

- Creating a civil cause of action for any person aggrieved by a violation of the right-of-way statute in a U.S. District Court or any other court of competent jurisdiction for a temporary or permanent injunction and recovery of full costs and reasonable attorney fees to a prevailing aggrieved party;
- Prohibiting a local government permitting authority from instituting, either expressly or de facto, a moratorium or other mechanism that would prohibit or delay permits for collocation of small wireless facilities or related poles;
- Deleting authority for a local government to require performance bonds and security funds and allowing them to require a construction bond limited to no more than one year after the construction is completed;
- Requiring a local government to accept a letter of credit or similar instrument issued by any financial institution authorized to do business within the U.S.;
- Allowing a provider of communications services to add a permitting authority to any existing bond, insurance policy, or other financial instrument, and requiring the authority to accept such coverage.

Finally, under the committee substitute, a local government may not:

- Prohibit, regulate, or charge for the installation, maintenance, modification, operation or replacement of utility poles used for the collocation of small wireless facilities;
- 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 collocation on a new utility pole;
- Require compliance with an authority's law regarding placement of small wireless facilities or a new utility pole used to support a small wireless facility in rights-of-way not controlled by the authority;

- Require a meeting before filing an application;
- Require direct or indirect public notification or a public meeting for the placement of communication facilities in the right-of-way;
- Limit the size or configuration of a small wireless facility or any of its components, if the small wireless facility complies with existing size limits;
- Require that any component of a small wireless facility be placed underground; or
- Require that any existing communication facility be placed underground.

B. Amendments:

None.