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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 7018 (857014)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); and Infrastructure and Security Committee
SUBJECT:	Essential State Infrastructure
DATE:	February 26, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Price	Miller		**IS Submitted as Committee Bill**
1.	Sanders/Blizzard	Betta	AEG	**Recommend: Fav/CS**
2.	Sanders/Blizzard	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 7018 provides that a permit application to use the right-of-way for a utility must be processed and acted upon within the expedited time frames of the "Advanced Wireless Infrastructure Deployment Act," section 337.401(7)(d)7.,8., and 9., Florida Statutes.

The bill requires the Public Service Commission (PSC), in coordination with the Department of Transportation and the Department of Agriculture and Consumer Services, to develop and recommend a plan for the development of electric vehicle (EV) charging station infrastructure along the State Highway System (SHS). The bill sets out a number of legislative findings, as well as the nonexclusive goals and objectives of the recommended plan.

The bill requires the recommended plan to be developed and submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2021. The plan must include recommendations for legislation and may include other recommendations as determined by the PSC. The bill also requires the PSC, by December 1, 2020, to file a status report containing any preliminary recommendations, including recommendations for legislation.

The bill clarifies that sections 570.71 and 704.06, Florida Statutes, not be interpreted to prohibit lands traditionally used for agriculture that are subject to a conservation easement from being

utilized for the construction of any public or private linear facility and right of access, if such rights are voluntarily negotiated.

The bill appears to have an indeterminate fiscal impact on local and state governmental entities. See Section V.

The bill takes effect July 1, 2020.

II. Present Situation:

Use of Right-of-Way by Utilities

Section 337.401, F.S., addresses the use of public right-of-way for utility purposes and sets out regulations governing such use. That section authorizes the Florida Department of Transportation (FDOT) and local governmental entities (referred to as "authorities") to adopt and enforce reasonable rules or regulations relating to the placement and maintenance of facilities or equipment, across, on, or within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdiction. This includes any electric transmission, voice, telegraph, data, or other communications services lines or wireless facilities; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to as "utilities" in ss. 337.401-337.404, F.S.

Authorities 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.[1] A utility may not be installed, located, or relocated within a right-of-way unless authorized by a written permit.[2] Entities interested in performing utility work in a right-of-way may file an application to use a right-of-way for placing and maintaining utilities with the appropriate jurisdictional permitting authority.

FDOT Utility Permitting

Pursuant to the grant of authority in s. 337.401, F.S., the FDOT generally issues permits for the construction, alteration, operation, relocation, removal, and maintenance of utilities in the FDOT's right-of-way in conformance with its Utility Accommodation Manual (UAM).[3] The UAM requires the FDOT to process all permit applications in accordance with s. 120.60, F.S., related to licensing.

Section 120.60, F.S., requires the FDOT to: examine a utility permit application; notify the applicant of any apparent errors or omissions within 30 days of its receipt; and request any additional information the FDOT is permitted by law to require. That section of law also authorizes the FDOT to establish by rule the time period for submitting any requested additional information. However, the UAM sets out no such time period.

[1] s. 337.401(2), F.S.
[2] *Id*.
[3] Rule Chapter 14-46, F.A.C.

Under s. 120.60, F.S., an application is complete upon the FDOT's receipt of all requested information and correction of any error or omission for which the applicant was timely notified. The FDOT must approve or deny a utility permit application within 90 days after receipt of the completed application.

Municipal and County Utility Permitting

Based on research, no set time period govern local governmental entity processing of general utility permit applications. However, under current law, a shorter period of time for processing utility permit applications is provided in the Advanced Wireless Infrastructure Deployment Act (the Act). The Act applies only to a county or municipality as the "authority" and expressly provides that the term "authority" does not include the FDOT. Rights-of-way under the jurisdiction and control of the FDOT are expressly excluded from subsection (7) of s. 337.401, F.S.

Under the Act:

- Within 14 days after receiving an application, a county or municipality with jurisdiction and control of the rights-of-way of any public road must determine whether the application is complete and notify the applicant by electronic mail. If this requirement is not met within the 14 day timeframe, the application is deemed complete.[4]
- A complete application must be approved or denied within 60 days after receipt or it is deemed approved.[5]
- If the application is denied, the county or municipality must specify in writing the basis for denial and send the documentation to the applicant by electronic mail on the day the authority denies the application. The applicant may cure the deficiencies identified by the authority and resubmit the application within 30 days after notice of the denial is sent to the applicant. The authority must approve or deny the revised application within 30 days after receipt or the application is deemed approved. If an authority provides for administrative review of the denial of an application, the review must be complete and a written decision issued within 45 days after a written request for review is made. If the administrative review is not complete within 45 days, the authority waives any claim regarding failure to exhaust administrative remedies in any judicial review of the denial of an application.[6]

Electric Vehicle Charging Station Infrastructure

Burning fossil fuels, such as gasoline and diesel, releases carbon dioxide into the atmosphere. Increased levels of carbon dioxide, along with other greenhouse gas levels, warm the earth's atmosphere, resulting in documented effects such as sea-level rise, storm surge intensity, and increased rainfall and intensity.[7] According to information released in February 2019 by the United States Energy Information Administration, of the 230.1 million metric tons (MMTs) of

[4] Section 337.401(7)(d)7., F.S.
[5] Section 337.401(7)(d)8., F.S.
[6] Section 337.401(7)(d)9., F.S.
[7] Florida Division of Emergency Management, *Enhanced State Hazard Mitigation Plan, State of Florida*, 106, 141 (2018) available *at* https://www.floridadisaster.org/globalassets/dem/mitigation/mitigate-fl--shmp/shmp-2018-full_final_approved.6.11.2018.pdf (last visited February 6, 2020).

carbon dioxide produced in Florida in 2016, the transportation sector accounted for 103.6 MMTs.[8]

Electric vehicles (EVs) offer a cleaner fuel source, and interest in EV use has been driven in part by their potential for reduction in greenhouse gas emissions. However, their relative high cost compared to conventional fuel-powered vehicles and their relative limited range have restricted the commercial viability of EVs.[9] Yet, while advancements in EV-related technology are continuing, EV manufacturing is rising, and EV prices have been dropping, representatives in both the government and the private sector suggest that successful adoption of EV use is heavily dependent on the accessibility of charging stations.[10]

Types of EVs

The U.S. Department of Energy's Alternative Fuels Data Center (AFDC) uses the term, "electric-drive vehicles," to collectively refer to hybrid electric vehicles (HEVs), plug-in hybrid electric vehicles (PHEVs), and all-electric vehicles (AEVs). According to the AFDC:

- HEVs are primarily powered by an internal combustion engine that runs on conventional or alternative fuel and an electric motor that uses energy stored in a battery. The battery is charged through regenerative braking and by the internal combustion engine and is not plugged in to charge.
- PHEVs are powered by an internal combustion engine that can run on conventional or alternative fuel and an electric motor that uses energy stored in a battery. The vehicle can be plugged in to an electric power source to charge the battery. Some can travel nearly 100 miles on electricity alone, and all can operate solely on gasoline (similar to a conventional hybrid).
- AEVs use a battery to store the electric energy that powers the motor. AEV batteries are charged by plugging the vehicle in to an electric power source.[11]

EV Charging Equipment

EV charging equipment is generally classified based on the rate at which the equipment charges the EV batteries. Charging times vary, depending on the depletion level of the battery, how much energy the battery holds, the type of battery, and the type of supply equipment. According to the AFDC, charging times can range from less than 20 minutes to 20 hours or more, depending on the identified factors. Potential driving distance ranges from:

- Two to five miles of range per one hour of charging for AC Level 1 supply equipment;
- Ten to twenty miles per one hour of charging for AC Level 2 supply equipment; and

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[8] U.S. Energy Information Administration, *Energy-Related Carbon Dioxide Emissions by State, 2005-2016* (February 2019), Table 4, available at https://www.eia.gov/environment/emissions/state/analysis/pdf/stateanalysis.pdf (last visited February 6, 2020).

[9] *See* the Federal Highway Administration's *FHWA NHTS Brief, Electric Vehicle Feasibility*, July 2016, pp. 1-2, available at https://nhts.ornl.gov/briefs/EVFeasibility20160701.pdf (last visited February 6, 2020).

[10] *Id.* at p. 2. *See also* CBS Chicago, *Electric Vehicle Sales on the Rise, But More Charging Stations Needed To Keep the Trend Going*, September 19, 2019, available at https://chicago.cbslocal.com/2019/09/19/electric-vehicles-super-fast-charging-stations/ (last visited February 6, 2020).

[11] U.S. Department of Energy, Alternative Fuels Data Center, *Hybrid and Plug-In Electric Vehicles*, available at https://www.afdc.energy.gov/vehicles/electric.html (Last visited February 6, 2020).

- Sixty to eighty miles per twenty minutes of charging for DC fast charging supply equipment.[12]

According to the AFDC, for most drivers, charging currently occurs at home or at fleet facilities.[13]

More specifically, Level 1 (home) charging cords come as standard equipment on new EVs, only require a standard 120-volt outlet, and can add about 50 miles of range in an overnight charge. Level 1 charging is sufficient for low- and medium-range PHEVs and all AEVs for drivers with relatively low daily driving.[14]

Level 2 (home and public) charging commonly requires a charging unit on a 240-volt circuit, such as one used to run a household clothes dryer, with the charging rate dependent on the rate at which a vehicle can accept a charge and the maximum current available. An eight-hour charge will add about 180 miles of range with a typical 30-amp circuit. This method may require the purchase of a home charging unit and modifications to a home electric system but charges from two to eight times faster than a Level 1, depending on the amperage and the vehicle. These chargers are said to be the most common at public charging places like offices, grocery stores, and parking garages.[15]

DC Fast Chargers (public charging) can typically add 50 to 90 miles in 30 minutes, depending on the charging station's power capacity and the make of the EV. These chargers are best used for longer travel distances; vehicles used the major portion of a day, such as taxis; and for vehicles whose drivers have limited access to home charging.[16]

Tesla recently opened a "next-generation" EV charging station in Las Vegas supporting a peak rate of up to 250 kilowatts capable of charging up to 1,500 vehicles per day. However only one Tesla vehicle can charge at the peak rate, resulting in up to 180 miles of range in 15 minutes on a Tesla Model 3 Long Range. [17]

Additional charging options are under development, such as an industry standard for higher rates of charging using power levels common at commercial and industrial locations in the United States. The standard's target is power levels far exceeding currently typical voltages.[18]

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[12] *Id.*
[13] U.S. Department of Energy, Alternative Fuels Data Center, *Developing Infrastructure to Charge Electric Plug-In Vehicles*, available at https://afdc.energy.gov/fuels/electricity_infrastructure.html (last visited February 6 ,2020).
[14] Union of Concerned Scientists, *Electric Vehicle Charging, Types, Time, Cost and Savings*, (March 2018) available at https://www.ucsusa.org/resources/electric-vehicle-charging-types-time-cost-and-savings (last visited February 6, 2020).
[15] *Id.*
[16] *Id.*
[17] *See* TechCrunch, *Tesla's new V3 Supercharger can charge up to 1,500 electric vehicles a day*, Korosec, K., (July 18, 2019), available at https://techcrunch.com/2019/07/18/teslas-new-v3-supercharger-can-charge-up-to-1500-electric-vehicles-a-day/ (last visited February 6, 2020).
[18] *See supra* note 7.

Current Availability of EV Charging Stations in Florida

Section 377.815, F.S., authorizes, but does not require, the Florida Department of Agriculture and Consumer Services (DACS) to post information on its website relating to alternative fueling stations (including electric vehicle charging stations) that are available for public use in this state. The DACS's website contains addresses by city and county on EV charging station locations in Florida reflecting 889 charging station locations by specific address.[19] The AFDC currently indicate that the total number of public EV charging stations in Florida is 1,345, consisting of 3,884 charging outlets.[20]

Whether the currently available charging stations are sufficient (in number, location, and charging capability) to encourage expansion of EV use in Florida, by individuals and by commercial fleets, as a tool against the effects of climate change, is an open question.

Conservation Easements

A conservation easement is a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, agricultural or wooded condition. Conservation easements are meant to retain areas as suitable habitat for fish, plants or wildlife or to retain the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological or cultural significance. The purpose of a conservation easement is accomplished by restricting the amount of development allowed on a piece of property, limiting other land uses, and maintaining existing areas of conservation interest on a piece of property in their natural condition.

A conservation easement must prohibit or limit any or all of the following:

- Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;
- Removal or destruction of trees, shrubs, or other vegetation;
- Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;
- Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;
- Activities detrimental to drainage, flood control, water conservation erosion control, soil conservation, or fish and wildlife habitat preservation;
- Acts or uses detrimental to such retention of land or water areas; and
- Acts or uses detrimental to the preservation of the structural integrity or physical appearances of sites or properties of historical, architectural, archaeological, or cultural significance.[21]

[19] *See* the Florida Department of Agriculture and Consumer Services website, select *Electricity*, available at https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Transportation (last visited February 6, 2020).
[20] U.S. Department of Energy, Alternative Fuels Data Center, *Alternative Fueling Station Counts by State*, available at https://afdc.energy.gov/stations/states (last visited February 6, 2020).
[21] Section 704.06, F.S.

Section 704.06(11), F.S., dictates that no provision of law may prohibit or limit the owner of land or the owner of a conservation easement from voluntarily negotiating the sale or use of such land or easement for the construction and operation of linear facilities, to include; electric transmission and distribution facilities, telecommunications transmission and distribution facilities, pipeline transmission and distribution facilities, public transportation corridors, and related appurtenances.

III. Effect of Proposed Changes:

Section 1 amends s. 337.401(2), F.S., to apply the expedited timeframes for processing utility permit applications for communications facilities in county or municipal rights-of-way to all utility permit applications under s. 337.401, F.S. Any utility permit application submitted to the FDOT or local governmental entities would be subject to the described, expedited timeframes under s. 337.401(7), F.S.

Section 2 creates s. 366.945, F.S., to require development of a recommended plan for the development of EV charging station infrastructure along the SHS.[22]

The bill recites the following legislative findings:

- Climate change may have significant impacts to the State of Florida which will require the development of avoidance, adaptation, and mitigation strategies to address these potential impacts on future state projects, plans, and programs;
- A significant portion of the carbon dioxide emissions in Florida are produced by the transportation sector;
- EVs can help reduce these emissions, thereby helping to reduce the impact of climate change on the state;
- Use of EVs for non-local driving requires adequate reliable charging stations to help with electric vehicle battery range limitations;
- Having adequate reliable charging stations along the SHS will also help with evacuations during hurricanes or other disasters;
- Ensuring the prompt installation of adequate reliable charging stations is in the public interest; and
- A recommended plan for electric vehicle charging station infrastructure should be established to address changes in the emerging electric vehicle market and necessary charging infrastructure.

The PSC,[23] in coordination with the Department of Transportation and the Department of Agriculture and Consumer Services, is directed to develop and recommend a plan for current and

[22] Section 334.03(24), F.S., defines the State Highway System as "the interstate system and all other roads within the state which were under the jurisdiction of the state on June 10, 1995, and roads constructed by an agency of the state for the State Highway System, plus roads transferred to the state's jurisdiction after that date by mutual consent with another governmental entity, but not including roads so transferred from the state's jurisdiction. These facilities shall be facilities to which access is regulated."

[23] Sections 350.011, 366.04, and 366.05, F.S., set out the jurisdiction, powers, and duties of the PSC. With respect to the PSC's current regulation of electric industries, the PSC regulates investor-owned electric companies and matters such as rates and charges, meter and billing accuracy, electric lines up to a meter, reliability of electric service, new construction safety code compliance for transmission and distribution; territorial agreements and disputes, and the need for certain power plants

future plans for the development of EV charging station infrastructure along the SHS. The PSC is authorized to consult with other agencies as it deems appropriate.

The bill requires the recommended plan to be developed and submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2021. The plan must include recommendations for legislation and may include any other recommendations as determined by the PSC.

The bill sets out the following goals and objectives of the plan, including, but not limited to:

- Projecting the increase in use of EVs in the state over the next 20 years and determining how to ensure an adequate supply of reliable EV charging stations to support and encourage this growth in a manner supporting a competitive market with ample consumer choice;
- Evaluating and comparing the types of EV charging stations available at present and in the future, including the technology and infrastructure incorporated in such stations, along with the circumstances within which each type of station and infrastructure is typically used, including fleet charging, for the purpose of identifying any advantages to developing particular types or uses of these stations;
- Considering strategies to develop this supply of charging stations, including but not limited to, methods of building partnerships with local governments, other state and federal entities, electric utilities, the business community, and the public in support of EV charging stations;
- Identifying the types or characteristics of locations along the SHS to support a supply of electric vehicle charging stations that will:
  - Accomplish the goals and objectives of this section;
  - Support both short-range and long-range electric vehicle travel;
  - Encourage the expansion of EV use in this state; and
  - Adequately serve evacuation routes in this state;
- Identifying any barriers to the use of EVs and EV charging station infrastructure both for short- and long-range EV travel along the SHS;
- Identifying an implementation strategy for expanding electric vehicle and charging station infrastructure use in this state;
- Identifying the type of regulatory structure for the delivery of electricity to EVs and charging station infrastructure, including competitive neutral policies and the participation of public utilities in the marketplace; and
- Reviewing emerging technologies in the electric and alternative vehicle market, including alternative fuel sources.

The bill requires the PSC, by December 1, 2020, to file a status report with the Governor, the President of the Senate, and the Speaker of the House of Representatives containing any preliminary recommendations, including recommendations for legislation.

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and transmission lines. The PSC does not regulate rates and adequacy of services provided by municipally-owned and rural cooperative electric utilities, except for safety oversight; electrical wiring inside a customer's building; taxes on the electric bill; physical placement of transmission and distribution lines; damages claims; right of way matters, or physical placement or relocation of utility poles. *See* PSC, *When to Call the Florida Public Service Commission*, available at http://www.psc.state.fl.us/Files/PDF/Publications/Consumer/Brochure/When_to_Call_the_PSC.pdf (last visited February 6, 2020).

Section 3 clarifies that ss. 570.71 and 704.06, F.S., not be interpreted to prohibit lands traditionally used for agriculture and subject to a conservation easement from being utilized for the construction of any public or private linear facility and right of access, if such rights are voluntarily negotiated. Reasonable compensation for use of the conservation easement must be based on the resulting diminution in value of the easement. The bill provides that a linear facility remains subject to state environmental permitting regulations.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that development of the required plan increases the number of EV charging stations in the state, residents, businesses, and tourists are expected to benefit from increased availability of EV charging stations, facilitating mobility and commerce and reducing costs related to EV travel.

The ability to construct linear facilities through a conservation easement instead of bypassing the easement, may provide a cost savings to private companies.

Landowners will be required to compensate governmental entities based on the reduction in value of conservation easements, however, this cost may be offset by the amount

received from private entities for the construction of linear facilities through the easements.

C. Government Sector Impact:

The PSC estimates a fiscal impact of $43,871.[24] This will be necessary to support activities related to developing and submitting the required status report, recommended plan, and recommended legislation; however, based upon information received, this could be handled within existing resources. The Department of Transportation has indicated the bill has an indeterminate but negative impact due to the loss of fuel tax revenue and the costs associated with implementing coordination of the recommended plan.[25] In addition, the fiscal impact related to potential increased workload to accommodate the expedited time periods for all utility permit applications to both state and local governmental entities is unknown and indeterminate. The Department of Agriculture and Consumer Services will have indeterminate expenses related to the required coordination in developing the recommended plan, but these costs can be absorbed within existing resources.[26]

There may be an indeterminate positive impact to governmental entities relating to the construction of linear facilities across land subject to a conservation easement owned by a governmental entity. The bill requires landowners to compensate the entities for the reduced value of the conservation easement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 337.401 and 704.06.

This bill creates section 366.945 of the Florida Statutes.

[24] Public Service Commission, *Senate Bill 7018 Agency Bill Analysis* (December 18, 2019) (on file with Appropriations Subcommittee on Agriculture, Environment and General Government).
[25] Conversation with John Kotyk, Legislative Affairs Director, Florida Department of Transportation (February 13, 2020).
[26] Florida Department of Agriculture and Consumer Services, *Senate Bill 7018 Agency Bill Analysis* (January 1, 2020) (on file with Appropriations Subcommittee on Agriculture, Environment and General Government).

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on February 13, 2020:
The committee substitute:

- Provides that the permit application to use the right-of-way for a utility must be processed and acted upon within time frames of the "Advanced Wireless Infrastructure Deployment Act," s. 337.401(7)(d)7.,8., and 9., F.S., which provides for expedited timeframes.
- Requires the Public Service Commission (PSC), in coordination with the Department of Transportation and the Department of Agriculture and Consumer Services, to develop and recommend a plan for the development of electric vehicle (EV) charging station infrastructure along the State Highway System.
- Clarifies that sections 570.71 and 704.06, F.S., shall not be interpreted to prohibit lands traditionally used for agriculture that are subject to a conservation easement, from being utilized for the construction of any public or private linear facility and right of access, if such rights are voluntarily negotiated.

B. Amendments:

None.