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 Rules

BILL:	CS/CS/CS/SB 596
INTRODUCER:	Rules Committee; Governmental Oversight and Accountability Committee; Communications, Energy, and Public Utilities Committee; and Senator Hutson and others
SUBJECT:	Utilities
DATE:	April 20, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	**Fav/CS**
2.	Peacock	Ferrin	GO	**Fav/CS**
3.	Wiehle	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 596 creates the Advanced Wireless Infrastructure Deployment Act. Put very simply, it creates a process for gaining access to and use of public rights-of-way in connection with the installation of small wireless communications infrastructure.

The bill creates a process and time limits for review and approval of applications by an authority. An authority is defined as a county or municipality having jurisdiction and control of the rights-of-way of any public road. An authority may deny a proposed collocation of a small wireless facility in the public rights-of-way 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 federal or state standards regarding pedestrian access or movement.
- Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.
- Fails to comply with applicable codes. Applicable codes includes objective design standards adopted by ordinance which may address: the design, material, and color of a new utility pole replacing an existing utility pole; reasonable spacing requirements for ground-mounted

equipment; and reasonable location context, color, stealth, and concealment requirements for a small wireless facility. These design standards may be waived or a compromise negotiated.

Collocation fees cannot exceed $100 per year.

The bill takes effect July 1, 2017.

II. Present Situation:

Use of Right-of-Way by Communications Services Providers

Section 337.401, F.S., authorizes the Department of Transportation (DOT or the department) and local governmental entities that have jurisdiction and control of public roads (jointly referred to as the or an authority) to prescribe and enforce reasonable rules or regulations for placing and maintaining of structures across, on, or within the right-of-way limits of a road. An authority may authorize any person who is a resident of this state or any corporation either organized under the laws of this state or licensed to do business within this state to use a right-of-way for the utility[1] in accordance with the authority's adopted rules or regulations.[2] The statute prohibits a utility from installing, locating, or relocating within a right-of-way unless authorized by a written permit.[3] The permit must require the permit holder to be responsible for any damage resulting from the use of the right-of-way.[4]

Municipal and county rights-of-way access rules and regulations relating to communications services providers must be reasonable and nondiscriminatory and must be generally applicable to all providers of communications services.[5] 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

[1] Existing paragraph 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'." This indirectly defines the term "utility" not by type of entity or by type of service provided but by the type of structure some type of entity might use in providing some type of service.
[2] Section 337.401(2), F.S.
[3] *Id*.
[4] *Id*.
[5] Section 337.401(3)(a), F.S.
[6] *Id*.
[7] Section 337.401(3)(c)1.a.(I), F.S.

the roads or rights-of-way."[8] If the local government makes this election, the rate of its local communications service tax[9] 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]

Local Government Pole Attachment Fees

With certain exceptions, the authority of a public body[11] to require taxes, fees, charges, or other impositions[12] 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* preempted[14] 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

[8] Section 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] Section 337.401(3)(c)2., F.S.
[11] Section 1.01(8), F.S., provides that 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.
[12] Section 202.24(2)(b), F.S., provides, in part, 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] Section 202.24(1), F.S.
[14] *See* s. 202.24(2)(c), F.S.
[15] Section 365.172(13)(f), F.S.
[16] *Id.*

purpose.[17] The DOT indicates that it derives an income stream from each of these agreements.[18] The DOT Turnpike System, which includes the Western Beltway, Suncoast Parkway, Veterans Expressway, I-4 connector, Polk Parkway, Sawgrass Expressway, Turnpike Mainline, Beachline Expressway, and Seminole Expressway, is 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 that 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 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 services[23] 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

[17] Florida Department of Transportation, *2017 Legislative Bill Analysis SB 596* (Jan. 30, 2017) (Copy on file with the Governmental Oversight and Accountability Committee*)*. 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 Mobilitie, 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. ss.253, 332(c)(7), and 1455(a).
[21] *Id.* at p. 5, citing 47 U.S.C. ss.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. ss.253(a) and 332(c)(7).
[25] *Id.*
[26] *Id.* at p. 12, citing 47 U.S.C. s.253(c).

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.
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> 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.

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]

[27] *Id.* at p. 13.
[28] *Id.*
[29] *Id.* at pp. 8-14.
[30] *Id.* at p. 2.

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. These 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]

III. Effect of Proposed Changes:

The bill creates the Advanced Wireless Infrastructure Deployment Act (Act), a new subsection s. 337.401(7), F.S.

Definitions

The bill creates definitions, including the following related to wireless entities:

- An "applicant" is a person who submits an application and is a wireless provider.
- An "application" is a request submitted by an applicant to an authority for a permit to collocate small wireless facilities.
- A "wireless provider" is a wireless services provider or a wireless infrastructure provider.
- A "wireless services provider" is a person who provides wireless services.
- "Wireless services" are any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.
- A "wireless infrastructure provider" is a person 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.

The bill defines four types of wireless infrastructure:

- A "wireless facility" is equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:
  - The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
  - Wireline backhaul facilities; or
  - Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

[31] Several municipalities and counties have adopted moratoria, including the City of Fort Lauderdale, the City of Tallahassee, and Pinellas County.
[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.

- A "small wireless facility" is a wireless facility that meets both the following qualifications:
  - Each antenna associated with the facility is located inside an enclosure of no more than six 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 six cubic feet in volume; and
  - 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, cut-off switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.
- A "micro wireless facility" is a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.
- An "antenna" is communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

The bill defines three types of structures on which an applicant may seek to locate infrastructure:

- An "authority utility pole" is a utility pole owned by an authority in the right-of-way. The term does not include a utility pole owned by a municipal electric utility, any utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way within a retirement community or within a municipality on a coastal barrier island that meet specified criteria.
- A "utility pole" is a 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. The term includes the vertical support structure for traffic lights, but does not include any horizontal structures upon which signal lights or other traffic control devices are attached. It does not include any pole or similar structure 15 feet in height or less unless an authority grants a waiver for the pole.
- A "wireless support structure" is a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

The bill also creates the following definitions:

- "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons, and local codes or ordinances adopted to implement the Act. It also includes: objective design standards adopted by ordinance which may require that a new utility pole replacing an existing utility pole be of substantially similar design, material, and color, or that ground-mounted equipment meet reasonable spacing requirements; and objective design standards adopted by ordinance which may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements. An applicant may request a waiver of these 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, and the waiver must be granted or denied within 45 days after the date of the waiver request.

- "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 Florida DOT, and its rights-of-way are excluded from 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. The term does not include installation of a utility pole or wireless support structure in the public rights-of-way.
- "FCC" means the Federal Communications Commission.

Except as provided in the Act, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way.

An authority may require a registration process and permit fees. An authority must accept applications for permits, and must process and issue permits subject to the following requirements:

- An authority may not directly or indirectly requiring an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority.
- An authority may not require an applicant to provide more information to obtain a permit than is necessary to demonstrate the applicant's compliance with applicable codes for the placement of small wireless facilities in the locations identified in the application.
- An authority may not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole.
- An authority may not limit the placement of small wireless facilities by minimum separation distances. However, within 14 days from the date of filing the application, an authority may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed upon an alternative authority utility pole or support structure or placed upon a new utility pole. The authority and applicant may negotiate the alternate location, including any objective design standards, for 30 days from the date of the request. At the conclusion of the negotiation period, if the applicant accepts the alternative location, the applicant must notify the authority and the application shall be deemed granted for any new location for which there is agreement 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. A request for an alternative location, an acceptance of an alternate location, or any rejection of an alternative location must be in writing and provided by electronic mail.
- 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 the small wireless facility is to be collocated. Unless waived by an authority, the height for a new utility pole is limited to the tallest existing utility pole located in the right-of-way, other than a utility pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the authority shall limit the height of the utility pole to 50 feet.

- Except as provided in the above provisions on limitations on facilities placement and height, the installation of a utility pole in the public rights-of-way designed to support a small wireless facility is subject to authority rules or regulations governing the placement of utility poles in the public rights-of-way and is subject to the application review timeframes in the Act.
- The authority must determine whether the application is complete and notify the applicant by electronic mail within 14 days after receiving an application. If an authority deems an application incomplete, the authority must specifically identify the missing information. The application is deemed complete if the authority fails to provide notification to the applicant within the 14 days.
- The authority must process applications on a nondiscriminatory basis. It the authority fails to approve or deny a complete application within 60 days after receipt of the application, the application is deemed approved. If an authority does not use the 30-day negotiation period for facilities location or design standards, discussed above, the parties may mutually agree to extend the 60-day application review period. The authority must grant or deny the application at the end of the extended period. A permit issued pursuant to an approved application remains effective for 1 year unless extended by the authority.
- The authority must notify the applicant of approval or denial by electronic mail. The authority must approve a complete application unless it does not meet the authority's applicable codes. If the authority denies the application, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application. The applicant then has 30 days after notice of the denial is sent to the applicant to cure the identified deficiencies and resubmit the application. The authority then must approve or deny the revised application within 30 days after receipt or the application will be deemed approved. Any subsequent review is limited to the deficiencies cited in the denial.
- An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of no more than 30 small wireless facilities. Presumably, the above time limit requirements apply to such a consolidated application. If the application includes multiple small wireless facilities, an authority may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been received or which are denied.

An authority may deny a proposed collocation of a small wireless facility in the public rights-of-way 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 federal or state standards regarding pedestrian access or movement.
- Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.
- Fails to comply with applicable codes.

An authority may adopt by ordinance provisions for registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties. Such provisions must be reasonable and nondiscriminatory.

Collocation of a small wireless facility on an authority utility pole may not provide the basis for the imposition of an ad valorem tax on the authority utility pole.

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

Any structure granted a permit and installed pursuant to this subsection must comply with ch. 333, F.S., and federal regulations pertaining to airport airspace protections.

An authority may not require approval of or impose fees or other charges for:
- Routine maintenance;
- Replacement of existing wireless facilities with wireless facilities that are substantially similar or the same size or smaller; or
- Installation, placement, maintenance, or replacement of micro wireless facilities suspended on cables strung between existing utility poles in compliance with applicable codes by a communications service provider authorized to occupy the rights-of-way and who is remitting taxes under ch. 202, F.S.

However, an authority may require a right-of-way permit for work that involves excavation, closing a sidewalk, or closing a vehicular lane.

Collocation of small wireless facilities on authority utility poles is subject to the following requirements:
- An authority may not enter into an exclusive arrangement with any person for the right to attach equipment to authority utility poles.
- The 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 authority utility poles may not exceed $100 per year.
- Agreements between authorities and wireless providers which are in effect on July 1, 2017, and which relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on authority utility poles, remain in effect, subject to applicable termination provisions. The wireless provider may accept the rates, fees, and terms established under this subsection for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.
- A person owning or controlling an authority utility pole shall offer rates, fees, and other terms that comply with this subsection. By the later of January 1, 2018, or 3 months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by an authority, the person owning or controlling the authority utility pole shall

make available, through ordinance or otherwise, rates, fees, and terms for the collocation of small wireless facilities on the authority utility pole which comply with this subsection:

- The rates, fees, and terms must be nondiscriminatory, competitively neutral, and must comply with this subsection.
- For an authority utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. s. 224[34] and implementing regulations. [35] The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.
- For an authority utility pole that does not support an aerial facility used to provide communications services or electric service, the authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, an authority may require the applicant seeking to collocate a

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[34] Under this law, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way. https://www.law.cornell.edu/uscode/text/47/224 (Last accessed March 2, 2017).

[35] A utility that has received a complete application for pole attachment from a cable operator or telecommunications carrier must respond within 45 days of receipt of the application (or within 60 days, in the case of larger orders, defined as orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state). This response may be a notification that the utility has completed a survey of poles for which access has been requested. A complete application is an application that provides the utility with the information necessary under its procedures to begin to survey the poles. If the request for attachment is not denied, the utility must present an estimate of charges to perform all necessary make-ready work within 14 days of providing the response. A utility may withdraw an outstanding estimate of charges to perform make-ready work within 14 days after the estimate is presented. A cable operator or telecommunications carrier may accept a valid estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.

Upon receipt of payment of the estimate, the utility must immediately provide written notice to all known entities with existing attachments that may be affected by the make-ready:

- For attachments in the communications space, the utility must complete all make-ready work no later than 60 days after notification is sent (or 105 days in the case of larger orders). If the utility has not completed the make-ready work by within this time, the cable operator or telecommunications carrier requesting access may complete the specified make-ready.
- For wireless attachments above the communications space, the utility must complete all make-ready work no later than 90 days after notification is sent (or 135 days in the case of larger orders). The utility must complete the make-ready work by this date.

A utility may deviate from the time limits specified in this section:

- Before offering an estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment.
- During performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete the make-ready work within the prescribed time frame. A utility that so deviates shall immediately notify, in writing, the cable operator or telecommunications carrier requesting attachment and other affected entities with existing attachments, and shall include the reason for and date and duration of the deviation. The utility shall deviate from the time limits specified in this section for a period no longer than necessary and shall resume make-ready performance without discrimination when it returns to routine operations.

47 CFR s. 1.1420 - Timeline for access to utility poles. https://www.law.cornell.edu/cfr/text/47/1.1420 (Last accessed March 2, 2017).

small wireless facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement, and 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. The authority may not impose conditions on or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. The replaced or altered utility pole shall remain the property of the authority.

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

For any applications filed before the effective dates of ordinances implementing the Act, an authority may apply current ordinances regulating the placement of communications facilities in the right-of-way, including registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties. Permit application requirements and small wireless facility placement requirements, including utility pole height limits, which conflict with this subsection shall be waived by the authority.

Except as provided in this section or specifically required by state law, an authority may not adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way by a provider authorized by state law to operate in the rights-of-way and may not regulate any communications services or impose or collect any tax, fee, or charge not specifically authorized under state law. This paragraph is not intended to change state law regarding an authority's ability to regulate the relocation of facilities.

A wireless provider must, in relation to a small wireless facility, utility pole, or wireless support structure in the public rights-of-way, comply with nondiscriminatory undergrounding requirements of the authority which prohibit above-ground structures in public rights-of-way. Any such requirements may be waived by the relevant authority.

A wireless infrastructure provider may apply to an authority to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility pole or structure and small wireless facilities will be used by a wireless services provider to provide service within 9 months from the date the application is granted. An authority shall accept and process the application in accordance with the Act and any applicable codes and other local codes governing the placement of utility poles in the public rights-of-way.

The Act does not limit a local government's authority 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. An authority may enforce local pending ordinances or administrative rules or regulations that are applicable to a historic area designated by the state or authority and subject to waiver by the authority if the intent to adopt regulation or zoning changes has been publicly declared on or before April 1, 2017.

The Act does not authorize a person to collocate or attach wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a privately owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to the Act may not be construed to authorize the provision of any voice, data, or video communications services or the installation, placement, maintenance, or operation of any communications facilities other than small wireless facilities in the right-of-way.

The Act does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole unless otherwise permitted by federal law, or to erect a wireless support structure in the right-of-way located 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.

Nothing in these provisions applies to the installation of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground, any such collocation or construction shall be only as provided by the municipality's underground utilities ordinance.

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

- Is located on a coastal barrier island as defined in s. 161.053(1)(b)3, F.S.;
- Has a land area of less than five square miles;
- Has fewer than 10,000 residents; and
- Has, before the adoption of this act, received referendum approval to issue debt to finance municipality-wide undergrounding of its utilities for electric transmission or distribution.

Nothing in these provisions applies to the installation of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground, any such collocation or construction shall be only as provided by the municipality's underground utilities ordinance.

The Act does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole unless otherwise permitted by federal law, or to erect a wireless support structure in the right-of-way, which do not comply with the covenants,

conditions, and restrictions; articles of incorporation; and by laws applicable to the proposed location.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of section 18, Article VII of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a 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. However, the mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was $2 million or less.[36,37,38]

The county/municipality mandates provision of section 18, Article VII of the Florida Constitution, may apply because this bill prohibits governmental entities with authority over public roads and rights-of-way from recovering any consultant fees or expenses relating to preparing a pole for use by a wireless provider. Given the novelty of the infrastructure, pole attachments, and potential risks of liability, local government authorities may need to make frequent use of consultants to ensure public safety, and the bill prohibits recovery of these consultant costs. The Revenue Estimating Conference has not examined the fiscal impact of this bill, however, the bill's impact may exceed the $2 million threshold.

The bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[36] FLA. CONST. art. VII, s. 18(d).

[37] 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*, (Sept. 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Feb. 13, 2017).

[38] Based on the Demographic Estimating Conference's population adopted on November 1, 2016. The conference packet is *available at* http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited Feb. 13, 2017).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

According to information provided by opponents of the bill, currently the amount of the pole attachment fee is subject only to market forces, and some authorities are charging considerable more than the bill's maximum of $100 dollars per year; the Jacksonville Electric Authority's Small Cell Site Rental Schedule, for example, shows a charge of $1,236.00 per year for each small cell site.

B. Private Sector Impact:

Wireless providers should be able to provide better service to customers.

C. Government Sector Impact:

Authorities may have difficulty and expenses in early implementation as the technology and installations involved are new uses of rights-of-way and the process includes engineering determinations of wind load, structural integrity, and safety.

VI. Technical Deficiencies:

The bill authorizes an authority to "require a registration process and permit fees (subsection (d)". The remainder of the bill uses the terms applicant, application, and permit, and contains provisions that imply that an applicant files an application with an authority for a collocation permit. Given the context, the term presumably has the same meaning as "application" although if this is so, it is unclear why a different term is used here.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 337.401 of the Florida Statutes.

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 Rules on April 19, 2017:

- Includes in the definition of "applicable codes" local codes or ordinances adopted to implement the "Advanced Wireless Infrastructure Act" and objective design standards adopted by ordinance which may address: the design, material, and color of a new utility pole replacing an existing utility pole; reasonable spacing requirements for ground-mounted equipment; and reasonable location context, color, stealth, and concealment requirements for a small wireless facility;

- Provides that the term "utility pole" includes the vertical support structure for traffic lights, but does not include any horizontal structures upon which signal lights or other traffic control devices are attached, and does not include any pole or similar structure 15 feet in height or less;
- Authorizes an authority to 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 placed upon a new utility pole, and provides that the authority and applicant have 30 days to negotiate the alternative location and design standards;
- Expands the timeframe for determining whether an application is complete and so notifying the applicant from the previous 10 days to 14 days after receiving an application;
- Limits a consolidated application to no more than 30 proposed small wireless facilities collocations;
- Expands the criteria upon which an authority may deny an application;
- Authorizes an authority to adopt a reasonable and nondiscriminatory ordinance providing for registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties;
- Increases (pole attachment) fees to up to $100 per year;
- Provides that the Act does not authorize collocation or attachment of a small wireless facility or micro wireless facility or the erection of a wireless support structure within a municipality located on a coastal barrier island meeting specified criteria; and
- Provides that the Act does not authorize a person to collocate or attach wireless facilities to a utility pole or to erect a wireless support structure within an area subject to covenants, conditions, and restrictions; articles of incorporation; or by laws if the wireless facilities or the support structure do not comply with those restrictions

CS/CS by Governmental Oversight and Accountability on March 27, 2017:

- Defines "authority" as a county or municipality having jurisdiction and control of the rights-of-way of any public road. This term does not include the DOT and that agency's rights-of-way are excluded from the bill;
- Amends the definition of "authority utility pole" to provide that this term does not include a utility pole owned by a municipal electric utility, any utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way of a retirement community that:
  - Is deed-restricted as housing for older persons as defined by s. 760.29(4)(b). F.S.;
  - Has more than 5,000 residents; and
  - Has underground utilities for electric distribution or transmission;
- Requires wireless infrastructure providers include an attestation in their application to an authority regarding the time-frame of collocating small wireless facilities on utility poles or structures and provision of services;
- Provides that an authority must accept and process the application for collocating small wireless facilities on utility poles or structures in accordance with the bill and any applicable local codes governing the placement of utility poles in the public right-of-way;

- Provides that a person is not authorized to collocate small wireless facilities on a utility pole owned by a municipal electric utility;
- Provides that a person is not authorized to collocate or attach small wireless facilities or micro wireless facilities on a utility pole or erect a wireless support structure in the right-of-way located within a retirement community that:
  - Is deed-restricted as housing for older persons as defined by s. 760.29(4)(b). F.S.;
  - Has more than 5,000 residents; and
  - Has underground utilities for electric distribution or transmission.

CS by Communications, Energy, and Public Utilities on March 7, 2017:

- Amends the definition of "applicable codes" to include qualifying local government historic preservation zoning regulations;
- Amends the definition of "authority utility pole" to exclude a utility pole owned by a municipal electric company;
- Excludes from the definition of "wireless facility" wireline backhaul facilities and coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna;
- Makes the prohibition against an authority requiring approval or fees relating to micro wireless facilities that are suspended applicable to facilities suspended from any type of cable, not just "messenger" cables;
- Provides that the new subsection does not authorize collocation of small wireless facilities on a utility pole owned by an electric cooperative; and
- Provides that the new subsection may not be construed to limit local government's authority to qualifying enforce historic preservation zoning regulations.

B. Amendments:

None.