

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 693 Communications Services  
**SPONSOR(S):** Ways & Means Committee, Energy & Utilities Subcommittee; Fischer  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 1000

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	13 Y, 0 N, As CS	Keating	Keating
2) Ways & Means Committee	14 Y, 1 N, As CS	Aldridge	Langston
3) Commerce Committee			

### SUMMARY ANALYSIS

The bill makes extensive changes to s. 337.401, F.S., which governs use of public rights-of-way (ROW) by providers of communications services (providers). In particular, the bill:

- Removes the ability of local governments to elect to charge limited permit fees for use of the ROW but grandfathers local governments who currently require such fees;
- Establishes limits on registration requirements imposed by local governments;
- Prohibits local governments from imposing requirements and charges for the placement or operation of communications facilities in the ROW by authorized providers, except as expressly provided by law;
- Gives providers a point of entry to suggest amendments to ROW ordinances not properly noticed;
- Exempts certain work on existing aerial wireline communications facilities and attachments from permitting, unless such work involves excavation or closure of a sidewalk or vehicular lane;
- Specifies a timeline for permitting of all communications facilities;
- Requires that written, 60-day notice of all ROW rules and regulations be given to affected providers;
- Creates a cause of action for violations of s. 337.401, F.S., and provides for recovery of legal costs;
- Modifies definitions related to the permitting of small wireless facilities (SWFs);
- Prohibits local governments from prohibiting, regulating, or charging for installation, operation, and other work done on utility poles used to collocate SWFs in the ROW.
- Prohibits local governments from establishing certain requirements as a condition of permitting collocation of SWFs;
- Exempts utility poles used to support SWFs from authority rules and regulations governing the placement of utility poles in the ROW;
- Allows for judicial review of a permitting application denial prior to reconsideration;
- Specifies the types of financial instruments that local governments may require to secure SWF projects;
- Prohibits an authority from requiring a provider to indemnify it for liabilities not caused by the provider;
- Allows a provider who is installing micro wireless facilities to provide a one-time letter attesting that such facilities comply with the statutory limitations on the dimensions of such facilities;
- Prohibits an authority from instituting any type of moratorium that would delay the issuance of permits for collocation of SWFs or the installation of utility poles used to support collocation; and
- Repeals a requirement on wireless providers to comply with certain undergrounding requirements.

The Revenue Estimating Conference estimated that the removal of the ability of local governments to elect to charge limited permit fees for use of the ROW in the bill would either have no effect or an indeterminate negative effect on local government revenues.

The bill provides an effective date of July 1, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

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

##### Present Situation

Chapter 202, F.S., imposes a tax on the sale of communication services, including wireline and mobile telecommunications service, cable and video service, and direct-to-home satellite service.

The state tax rate for communications services (state CST) is 4.92 percent and is applied to the retail sales price of communications service that originates and terminates in this state, or originates or terminates in this state and is charged to a service address in this state.<sup>1</sup> The tax is calculated and collected on each retail sale of communications services<sup>2</sup> except direct-to-home satellite services, which are taxed at a rate of 9.07 percent.<sup>3</sup>

Local governments may also levy a communications service tax (local CST), which varies by jurisdiction.<sup>4</sup> The maximum rate for municipalities or charter counties is 5.1 percent (or 4.98 percent if the municipality or charter county levies certain permit fees, which are discussed below).<sup>5</sup> The maximum rate for non-charter counties is 1.6 percent.<sup>6</sup> These maximum rates do not include add-ons of up to .12 percent for municipalities and charter counties or up to .24 percent for non-charter counties, which are discussed below.<sup>7</sup> Further, temporary emergency rates may exceed the statutory maximum rates.<sup>8</sup> The local CST does not apply to direct-to-home satellite services.<sup>9</sup>

The state CST is distributed by the same formula as the sales and use tax, as prescribed in s. 212.20(6), F.S., with most of the proceeds deposited into the General Revenue Fund and a portion distributed to local governments.<sup>10</sup>

Local governments may require and collect permit fees from any provider of communications services (provider) that use or occupy municipal or county roads or rights-of-way (public ROW), provided that the fees are “reasonable and commensurate with the direct and actual cost of the regulatory activity,” “demonstrable,” and “equitable among users of the roads or rights-of-way.”<sup>11</sup>

Before July 16, 2001, each local government was required to elect whether to charge permit fees. This election impacted the local government’s CST rate as follows:

- For a municipality or charter county that elected to charge permit fees, its local CST was automatically reduced by a rate of 0.12 percent. Conversely, a municipality or charter county that elected not to charge permit fees was authorized to increase its local CST by a rate of up to 0.12 percent.

---

<sup>1</sup> S. 202.12(1)(a), F.S.

<sup>2</sup> In addition, a gross receipts tax of 2.52 percent is calculated and collected on the same taxable transactions and remitted with the communications services tax. S. 203.01(1)(b), F.S.

<sup>3</sup> S. 202.12(1)(b), F.S.

<sup>4</sup> S. 202.19(1), F.S.

<sup>5</sup> S. 202.19(2)(a), F.S.

<sup>6</sup> S. 202.19(2)(b), F.S.

<sup>7</sup> S. 202.19(2)(c), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> S. 202.19(6), F.S.

<sup>10</sup> S. 202.18(1), F.S. In addition, the gross receipts tax collected on communications services pursuant to s. 203.01(1)(b), F.S., goes to the Public Education Capital Outlay and Debt Service Trust Fund (PECO).

<sup>11</sup> S. 337.401(3)(c), F.S.

- A non-charter county that elected to charge permit fees was not subject to a reduction in its CST rate. A non-charter county that elected not to charge permit fees was authorized to increase its local CST by a rate of up to 0.24 percent to replace the revenue it would have otherwise received from such permit fees.<sup>12</sup>

Each local government is authorized to change its election without limitation on the number of times it may do so, with the following consequences:

- A municipality or charter county that changes its election in order to charge permit fees will have its local CST rate automatically reduced by 0.12 percent plus the percentage, if any, by which the rate was increased due to its previous election. A municipality or charter county that changes its election in order to discontinue charging permit fees is authorized to increase its local CST rate by an amount not to exceed 0.24 percent.
- A non-charter county that changes its election in order to charge permit fees will have its local CST rate automatically reduced by the percentage, if any, by which the rate was increased due to its previous election. A non-charter county that changes its election in order to discontinue charging permit fees is authorized to increase its local CST rate by an amount not to exceed 0.24 percent.<sup>13</sup>

As of January 2019, three local governments – one municipality, one charter county, and one non-charter county – were imposing permit fees.<sup>14</sup>

### Effect of Proposed Changes

The bill provides that local governments that were not imposing permit fees as of January 1, 2019, may not reverse this election and may not elect to impose permit fees. In contrast, the bill provides that local governments that were imposing permit fees as of January 1, 2019, may continue to do so or may elect to no longer impose permit fees. For the latter group, the bill retains the provisions of current law that specify the impacts of an election to no longer impose fees.

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

Pursuant to section 337.401, F.S., each local government that has jurisdiction and control of public roads or publicly owned rail corridors is authorized to prescribe 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 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<sup>15</sup> in accordance with the authority’s rules or regulations. A utility may not be installed, located, or relocated within a right-of-way unless authorized by a written permit. The bill makes several changes to the provisions of section 337.401, F.S., as described below.

<i>Present Situation</i>	<i>Effect of Proposed Changes</i>
Current law authorizes local governments to impose reasonable, nondiscriminatory, and competitively neutral rules, and regulations	The bill prohibits adoption or enforcement of any ordinances, regulations, or requirements as to the placement or operation of communications

<sup>12</sup> *Id.*

<sup>13</sup> S. 337.401(3)(j), F.S.

<sup>14</sup> See Florida Department of Revenue, *Florida Communications Services Tax – Historical, Current and Upcoming Local Tax Rates*, [http://floridarevenue.com/taxes/Documents/cst\\_rate\\_table.xlsx](http://floridarevenue.com/taxes/Documents/cst_rate_table.xlsx) (last visited March 15, 2019).

<sup>15</sup> S. 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.”

<i>Present Situation</i>	<i>Effect of Proposed Changes</i>
governing the placement or maintenance of communications facilities in the public ROW. <sup>16</sup>	<p>facilities in the public ROW by a provider, including the imposition of any tax, fee, cost, charge, or other exaction for the provision of communications services over the provider's facilities in the public ROW, except as provided in chapter 337, F.S., or as expressly authorized by chapters 202, 364, or 610, F.S.<sup>17</sup></p> <p>The bill requires that any such rules or regulations be in writing and that a local government give providers at least 60 days advance written notice before making any changes to the rules or regulations.</p>
Current law provides a statement of legislative intent that local governments treat providers of communications services in a nondiscriminatory and competitively neutral manner when imposing rules and regulations for use of the public ROW and requires that such rules and regulations be generally applicable to all providers. <sup>18</sup>	<p>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.</p> <p>The bill provides an additional statement of legislative intent that the placement, operation, maintenance, upgrade, or extension of communications facilities not be unreasonable interrupted or delayed through permitting or other local regulatory processes.</p>
Current law allows a local government 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 local government and specifies that the following types of information may be required at registration: the registrant's name, address, telephone number, state certificate of authorization, and any required proof of insurance or self-insuring status adequate to defend and cover claims. <sup>19</sup>	<p>The bill limits registration requirements to only the information required in current law and prohibits local governments from requiring the registrant to provide an inventory of communications facilities, maps, locations of such facilities, or other information for any purpose, provided that a local government may require as part of a permit application that the applicant identify at-grade (ground level) communications facilities within 25 feet of the proposed installation location for the placement of at grade communications facilities.</p> <p>The bill prohibits the imposition of any charge for registration or renewal or any requirement for registration renewal more frequently than every 5 years.</p>

<sup>16</sup> S. 337.401(3)(a), F.S.

<sup>17</sup> Chapter 202, F.S., is the Communications Services Tax Simplification Law; chapter 364, F.S., addresses telecommunications services; and chapter 610, F.S., addresses cable and video services.

<sup>18</sup> *Id.*

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

<i>Present Situation</i>	<i>Effect of Proposed Changes</i>
Current law prohibits imposition of permit fees for any activity that does not require physical disturbance of the roads or public ROW or does not impair access to or full use of the roads or public ROW. <sup>20</sup>	The bill extends this prohibition by specifying that permit fees may not be imposed for emergency repairs of existing facilities, extensions of existing facilities for providing communications services to customers, or the placement of micro wireless facilities suspended on cables between existing utility poles.
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 facilities in its roads or public ROW within specified times, though failure to provide such notice does not render the ordinance invalid. <sup>21</sup>	The bill requires that, if notice was not provided, the ordinance must be suspended until the local government provides the required notice and duly considers amendments from affected persons.
Current law prohibits a local government from using its authority over the placement of facilities in the public ROW 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. <sup>22</sup>	<p>The bill specifically prohibits a local government from exercising control over equipment or technology used by a provider.</p> <p>The bill further prohibits a local government from requiring a permit for the maintenance, repair, replacement, extension, or upgrade of existing aerial wireline communications facilities on or between existing utility poles by a provider. A local government may, however, require a 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.</p> <p>The bill further 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 located on private property or outside the public ROW.</p>
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 ROW by a provider, except with respect to the permitting of small wireless facilities. <sup>23</sup>	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 does not provide an express cause of action for a violation of the provisions of s. 337.401, F.S.	The bill creates a cause of action for any person aggrieved by a violation of s. 337.401, F.S. Any such person may bring a civil action in a U.S.

<sup>20</sup> S. 337.401(3)(c)1.a.(I), F.S.

<sup>21</sup> S. 337.401(3)(d), F.S.

<sup>22</sup> S. 337.401(3)(g), F.S.

<sup>23</sup> See s. 337.401(7)(d)7.-9., F.S., for the timeframes applicable to small wireless facilities.

<i>Present Situation</i>	<i>Effect of Proposed Changes</i>
	District Court or any other court of competent jurisdiction, and the court may grant temporary or permanent injunctions to prevent or restrain violations and may direct the recovery of full costs to a prevailing party, including reasonable attorney fees.

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

In 2017, the Legislature passed the Advanced Wireless Infrastructure Deployment Act, which established a process by which wireless providers may place certain “small wireless facilities” (SWFs)<sup>24</sup> on, under, within, or adjacent to certain utility poles or wireless support structures within public ROW under the jurisdiction and control of a local government.<sup>25</sup> The bill makes several changes to the provisions of this law, as described below.

<i>Present Situation</i>	<i>Effect of Proposed Changes</i>
<p>Current law defines an “application” as a request for a permit to collocate SWFs.<sup>26</sup> “Collocate” 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” but excludes the installation of a new utility pole or wireless support structure in the public ROW.<sup>27</sup></p> <p>Current law authorizes a local government to deny an application to collocate SWFs in the public ROW if the application does not comply with the local government’s “applicable codes.” A local government’s “applicable codes” include “objective design standards” adopted by ordinance. These standards may include certain aesthetic requirements, such as: requiring that a new utility pole used to replace an existing pole be of substantially similar design, material, and color; requiring reasonable spacing requirements for ground-mounted equipment; and including</p>	<p>The bill modifies the definition of “application” to mean, in addition to a request for a permit to collocate SWFs, a request to place a new utility pole used to support a SWF.</p> <p>The bill removes “objective design standards” from the definition of applicable codes. The bill creates a new sub-paragraph under paragraph (7)(f) of section 377.401, F.S., providing that local governments may require wireless providers to comply with objective design standards established by ordinance. The bill provides that these standards may include requirements similar to those allowed in current law, with two changes: spacing requirements for ground mounted equipment may relate only to ground-mounted components of SWFs and may not exceed 15 feet from an associated support structure; and any location context, color, stealth, or concealment requirements are subject to any limitations in s. 337.401(7), F.S.</p>

<sup>24</sup> “Small wireless facility” is defined in s. 337.401(7)(b)10. to mean a wireless facility that meets the following qualifications:  
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  
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>25</sup> Ch. 2017-136, Laws of Fla.

<sup>26</sup> S. 337.401(7)(b), F.S.

<sup>27</sup> *Id.*

<i>Present Situation</i>	<i>Effect of Proposed Changes</i>
reasonable location context, color, stealth, and concealment requirements. <sup>28</sup>	The bill provides that a local government may deny a proposed collocation for failure to comply with these objective design standards, but – because the definition of collocation excludes new poles and because a permit application may include a request to place a new pole – the bill does not appear to allow a local government to deny a permit for placement of a new utility pole for failure to comply with such standards.
Current law defines a “wireless infrastructure provider” as a person certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, facilities, or support structures, but is not a wireless services provider. <sup>29</sup>	The bill modifies the definition of “wireless infrastructure provider” to specifically include persons certificated under chapter 364, F.S., or an affiliate, and persons certificated under chapter 610, F.S., or an affiliate.
Current law defines a “wireless support structure” as an existing or proposed freestanding structure designed to support or capable of supporting wireless facilities, excluding a utility pole. <sup>30</sup>	The bill modifies the definition of “wireless support structure” to expand the exclusion to “a utility pole, pedestal, or other support structure for ground-based equipment not mounted on a utility pole and less than 10 feet in height.”
Current law prohibits a local government from prohibiting, regulating, or charging for the collocation of SWFs in the public ROW, except as provided in s. 337.401(7), F.S. <sup>31</sup>	<p>The bill expands this prohibition to include “the installation, maintenance, modification, operation or replacement of utility poles used for the collocation of small wireless facilities.” This appears to preclude a local government from regulating or charging for placement of a new utility pole, as the term “collocation” specifically excludes new poles.</p> <p>The bill prohibits a local government 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 SWFs or the installation, modification, or replacement of utility poles used to support the collocation of SWFs.</p>
Current law prohibits a local government from requiring the placement of SWFs on any specific utility pole or category of poles. <sup>32</sup>	<p>The bill adds new prohibitions. Under the bill, a local government may not:</p> <ul style="list-style-type: none"> <li>• Require a demonstration that collocation of an</li> </ul>

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> S. 337.401(7)(c), F.S.

<sup>32</sup> S. 337.401(7)(d)3., F.S.

<i>Present Situation</i>	<i>Effect of Proposed Changes</i>
	<p>SWF on an existing structure is not legally or technically possible as a condition for granting a permit for the collocation of the SWF on a new utility pole;</p> <ul style="list-style-type: none"> <li>• Require, for an SWF or new utility pole supporting an SWF located in ROW controlled by the Department of Transportation (DOT), compliance with local government rules and regulations absent a delegation from DOT, or require such compliance as a condition to receive a permit that is ancillary to the permit for collocation of a small wireless facility, including an electrical permit;</li> <li>• Require a meeting before filing an application;</li> <li>• Require direct or indirect public notification or a public meeting for the placement of communication facilities in the public ROW;</li> <li>• Limit the size or configuration of an SWF or any of its components, if the SWF complies with the stated size limits;</li> <li>• 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 s. 337.401(7), F.S.;</li> <li>• Require that any component of an SWF be placed underground; or</li> <li>• Require that any existing communication facility be placed underground.</li> </ul>
<p>Current law prohibits a local government from limiting the placement of SWFs by minimum separation distances.<sup>33</sup></p>	<p>The bill extends this prohibition to the placement of utility poles on which SWFs are, or will be, collocated and to other at-grade communications facilities, subject to the local government's objective design standards for certain ground-mounted components.</p>
<p>Current law provides that installation of a utility pole in the public ROW to support an SWF is subject to the local government's rules and regulations governing the placement of utility poles in the public ROW.<sup>34</sup></p>	<p>The bill negates this provision of current law by providing that utility poles installed by a provider to support an SWF are excluded from the rules and regulations governing placement of utility poles in the public ROW.</p>
<p>Current law provides for review and approval or denial of a permit application.</p>	<p>The bill adds that a provider whose permit application is denied may request judicial review even if it has not exhausted all subsequent review opportunities made available by the local government.</p>
<p>Current law allows a local government, by</p>	<p>The bill eliminates the authority for local</p>

<sup>33</sup> S. 337.401(7)(d)4., F.S.

<sup>34</sup> S. 337.401(7)(d)6., F.S.



<i>Present Situation</i>	<i>Effect of Proposed Changes</i>
<p>ordinance, to require providers to provide reasonable and non-discriminatory insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties.<sup>35</sup></p>	<p>governments to require performance bonds or security funds from providers. The bill allows local governments to require a construction bond limited to no more than one year after the construction is completed.</p> <p>The bill 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 may add an authority to any existing bond, insurance policy, or other relevant financial instrument, and the authority is required to accept such proof of coverage without any conditions.</p> <p>The bill prohibits a local government from requiring a provider to indemnify it for liabilities not caused by the provider, including liabilities arising from the local government’s negligence, gross negligence, or willful conduct.</p>
<p>Current law specifies size limitations for micro wireless facilities and exempts the installation, placement, maintenance, or replacement of such facilities from permitting if the facilities are suspended from cables strung between existing utility poles by a provider.<sup>36</sup></p>	<p>The bill provides that a local government may require an initial letter from or on behalf of a provider attesting that its micro wireless facility dimensions comply with the limits but, after receipt of such a letter, 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.</p>
<p>Current law requires a wireless provider, with respect to an SWF, utility pole, or wireless support structure in the public ROW, to comply with a local government’s nondiscriminatory undergrounding requirements that prohibit above-ground structures in the public ROW.<sup>37</sup></p>	<p>The bill repeals this requirement. This appears to allow providers to place SWFs, utility poles, and other wireless support structures above-ground in the public ROW where other utilities are required to be underground.</p>

The bill provides an effective date of July 1, 2019.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 202.20, F.S., relating to local communications service tax conversion rates and permit fees.

**Section 2.** Amends s. 337.401, F.S., relating to use of right-of-way for utilities subject to regulation, permit, and fees.

**Section 3.** Provides an effective date of July 1, 2019.

<sup>35</sup> S. 337.401(7)(d)12., F.S.

<sup>36</sup> S. 337.401(7)(b), F.S.

<sup>37</sup> S. 337.401(7)(i), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimated that the removal of the ability of local governments to elect to charge limited permit fees for use of the ROW in the bill would either have no effect or an indeterminate negative effect on local government revenues. See FISCAL COMMENTS for further discussion.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

### D. FISCAL COMMENTS:

As discussed on page 3 above, counties and cities may charge permit fees on any provider of communications services that uses or occupies municipal or county roads or rights-of-way (public ROW). Counties and cities that have elected not to charge such permit fees receive an increased local communications services tax rate. The bill would allow counties and cities currently charging such permit fees to continue to do so, however counties and cities not currently charging such permit fees would be prohibited from doing so in the future. There are over 480 city and county governments<sup>38</sup> that impose a local communications services tax and only three currently have elected to charge permit fees in lieu of the enhanced local communications services tax rate. The Revenue Estimating Conference found that this provision of the bill would have either no impact or an indeterminate negative impact on local government revenues. The possible negative impact would come from any city or county that might have elected, in the future, to discontinue its increased local communications services tax rate to instead charge permit fees. Presumably a city or county would only choose to do so if such an election would result in increased revenues. The fact that 479 of the 482 local governments with a local communications services tax have elected the increased local communications services tax rate over charging permit fees suggests that this is the preferable option for the vast majority of these local governments.

The bill also contains a variety of provisions that preempt counties and cities from imposing certain regulatory fees for certain activities related to permitting for use of public rights-of-way by communications services providers and for small wireless facilities. The potential negative revenue impact from these preemptions is unknown.

---

<sup>38</sup> See the Department of Revenue Communications Services Tax Table found here:  
<https://pointmatch.floridarevenue.com/General/CommunicationsServicesTaxRates.aspx>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill limits the authority of counties and cities to enact certain permit fees in the future. The bill also preempts counties and cities from imposing certain regulatory fees for certain 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.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2019, the Energy & Utilities Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Removes the ability of local governments to elect to charge limited permit fees for use of the ROW but grandfathers local governments who currently require such fees;
- Establishes limits on registration requirements imposed by local governments;
- Prohibits local governments from imposing requirements and charges for the placement or operation of communications facilities in the ROW by authorized providers, except as expressly provided by law;
- Gives providers a point of entry to suggest amendments to ROW ordinances not properly noticed;
- Exempts certain work on existing aerial wireline communications facilities and attachments from permitting, unless such work involves excavation or closure of a sidewalk or vehicular lane;
- Specifies a timeline for permitting of all communications facilities;
- Requires that written, 60-day notice of all ROW rules and regulations be given to affected providers;
- Creates a cause of action for violations of s. 337.401, F.S., and provides for recovery of legal costs;
- Modifies definitions related to the permitting of small wireless facilities (SWFs);
- Prohibits local governments from prohibiting, regulating, or charging for installation, operation, and other work done on utility poles used to collocate SWFs in the ROW.
- Prohibits local governments from establishing certain requirements as a condition of permitting collocation of SWFs;
- Exempts utility poles used to support SWFs from authority rules and regulations governing the placement of utility poles in the ROW;
- Allows for judicial review of a permitting application denial prior to reconsideration;
- Specifies the types of financial instruments that local governments may require to secure SWF projects;
- Prohibits an authority from requiring a provider to indemnify it for liabilities not caused by the provider;
- Allows a provider who is installing micro wireless facilities to provide a one-time letter attesting that such facilities comply with the statutory limitations on the dimensions of such facilities;

- Prohibits an authority from instituting any type of moratorium that would delay the issuance of permits for collocation of SWFs or the installation of utility poles used to support collocation; and
- Repeals a requirement on wireless providers to comply with certain undergrounding requirements.

On April 2, 2019, the Ways & Means Committee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment removed the provision in the bill that reduced the communications services tax rate.

This analysis is drafted to the bill as amended.