

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 693 Communications Services

SPONSOR(S): Commerce Committee; Ways & Means Committee; Energy & Utilities Subcommittee; Fischer

TIED BILLS: IDEN./SIM. **BILLS:** CS/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	21 Y, 1 N, As CS	Keating	Hamon

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;
- Provides for suspended enforcement of 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 or parking 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;
- Establishes a process for local governments to verify linear miles of pass-through facilities in the ROW;
- 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, except as provided by law;
- Prohibits local governments from establishing certain requirements as a condition of permitting collocation of SWFs and placement of utility poles to support collocation of SWFs;
- Exempts utility poles used to support SWFs from authority rules and regulations governing the placement of other utility poles in the ROW;
- Provides local governments 45 days to complete reconsideration of a permitting application denial;
- 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 installs 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
- Specifies conditions under which a local government may prohibit the placement of new utility poles used to support SWFs where all public utility lines within the ROW must be placed underground.
- Provides that it shall not be construed to delay issuance of permits for other utility work in the ROW.

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.

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

STORAGE NAME: h0693e.COM

DATE: 4/19/2019

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.¹ This tax is calculated and collected on each retail sale of communications services² except direct-to-home satellite services, which are taxed at a rate of 9.07 percent.³

Local governments may also levy a communications service tax (local CST), which varies by jurisdiction.⁴ 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).⁵ The maximum rate for non-charter counties is 1.6 percent.⁶ 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.⁷ Further, temporary emergency rates may exceed the statutory maximum rates.⁸ The local CST does not apply to direct-to-home satellite services.⁹

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.”¹⁰

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.
- 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.¹¹

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

¹ S. 202.12(1)(a), F.S.

² 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.

³ S. 202.12(1)(b), F.S.

⁴ S. 202.19(1), F.S.

⁵ S. 202.19(2)(a), F.S.

⁶ S. 202.19(2)(b), F.S.

⁷ S. 202.19(2)(c), F.S.

⁸ *Id.*

⁹ S. 202.19(6), F.S.

¹⁰ S. 337.401(3)(c), F.S.

¹¹ *Id.*

- 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.¹²

As of January 2019, three local governments – one municipality, one charter county, and one non-charter county – were imposing permit fees.¹³

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 utility¹⁴ in accordance with the local government’s rules or regulations. A utility may not be installed, located, or relocated within a right-of-way unless authorized by a written permit. 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 governing the placement or maintenance of communications facilities in the public ROW. ¹⁵	The bill prohibits adoption or enforcement of any ordinances, regulations, or requirements as to the placement or operation of communications 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. ¹⁶

¹² S. 337.401(3)(j), F.S.

¹³ 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 (last visited Apr. 8, 2019).

¹⁴ 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.”

¹⁵ S. 337.401(3)(a), F.S.

¹⁶ 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.

<i>Present Situation</i>	<i>Effect of Proposed Changes</i>
	<p>The bill requires that these 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> <p>The bill requires all work performed under s. 337.401, F.S., to comply with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual (FDOT-UAM).</p>
<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.¹⁷</p>	<p>The bill requires local governments to take into account the distinct engineering, construction, operation, maintenance, public works, and safety requirements of each provider's facilities when imposing rules or regulations governing the placement or maintenance of communications facilities in the public ROW.</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>
<p>Current law allows a local government to require a provider of communications services that places or seeks to place facilities in the public ROW 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.¹⁸</p>	<p>The bill limits registration requirements to only the information authorized by law and adds that a registrant may also be required to provide a statement of whether it is a pass-through provider, its federal employer identification number, and updated registration information within 90 days of a change in such information.</p> <p>The bill 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 50 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>

¹⁷ *Id.*

¹⁸ *Id.*

<i>Present Situation</i>	<i>Effect of Proposed Changes</i>
<p>Current law prohibits imposition of permit fees for any activity that does not require physical disturbance of the public ROW or does not impair access to or full use of the public ROW.¹⁹</p>	<p>The bill provides that this prohibition applies to service restoration work on existing facilities, extensions of existing facilities for providing communications services to customers, and the placement of micro wireless facilities suspended on cables between existing utility poles.</p>
<p>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 the public ROW within specified times, though failure to provide such notice does not render the ordinance invalid.²⁰</p>	<p>The bill requires that, if notice was not properly provided, enforcement of the ordinance must be suspended until 30 days after the local government provides the required notice.</p>
<p>Current law prohibits a local government from requiring or soliciting in-kind compensation from a provider for use of the public ROW, except in relation to public, educational, and governmental (PEG) access channels allowed by sections 202.24 and 610.109, F.S.²¹</p>	<p>The bill provides that the exception allowing a local government to request or solicit in-kind compensation for PEG channels applies if the in-kind compensation is not a franchise fee under federal law. The bill clarifies that this provision does not impair the ability of a local government to request PEG channels under s. 610.109, F.S.</p>
<p>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.²²</p>	<p>The bill specifically prohibits a local government from exercising control over equipment or technology used by a provider.</p> <p>The bill 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 or parking lane, unless the provider is restoring service.</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> <p>The bill defines “extension of existing facilities” to include extensions from the public ROW into a customer’s private property to provide a service drop or extensions from the public ROW into a</p>

¹⁹ S. 337.401(3)(c)1.a.(I), F.S.

²⁰ S. 337.401(3)(d), F.S.

²¹ S. 337.401(3)(f), F.S.

²² S. 337.401(3)(g), F.S.

<i>Present Situation</i>	<i>Effect of Proposed Changes</i>
	utility easement to serve a discrete customer or group of customers.
<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 (SWFs).</p> <p>For SWFs, a completed permit application is deemed approved if the local government fails to approve or deny the application within 60 days of receipt, though this review period may be extended by mutual agreement. If an application is denied, the applicant may cure the deficiencies and submit a revised application within 30 days after denial. The revised application is deemed approved if the local government does not approve or deny it within 30 days of receipt.²³</p>	<p>The bill provides that all permit applications required by a local government for the placement of communications facilities must be processed within the timeframes established for SWFs.</p>
<p>Current law provides that local governments may charge a “pass-through provider” for use of the public ROW based on the linear miles of public ROW where the provider has placed a communications facility. A pass-through provider is any person who places or maintains a communications facility in the public ROW but is not subject to the communications services tax.²⁴</p>	<p>The bill establishes a process for local governments to verify the linear miles of pass-through facilities subject to charges for use of the ROW.</p>
<p>Current law does not provide an express cause of action for a violation of the provisions of s. 337.401, F.S.</p>	<p>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. 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.</p>

²³ S. 337.401(7)(d)7.-9., F.S.

²⁴ S. 337.401(6), F.S.

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)²⁵ 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.²⁶ 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.²⁷ “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.²⁸</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 reasonable location context, color, stealth, and concealment requirements.²⁹</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 modifies the definition of “applicable codes” to remove “objective design standards.” The bill creates a new paragraph under subsection (7) 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 three 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; any location context, color, stealth, or concealment requirements are subject to any limitations in s. 337.401(7), F.S.; and a new utility pole used to support an SWF may be required to meet reasonable location context, color, and material of the predominant pole type at the proposed location.</p> <p>The bill also modifies the definition of “applicable codes” to include the National Electrical Safety Code and the 2017 edition of the FDOT-UAM.</p>
<p>Current law defines a “wireless infrastructure provider” as a person certificated to provide</p>	<p>The bill modifies the definition of “wireless infrastructure provider” to specifically include</p>

²⁵ “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.

²⁶ Ch. 2017-136, Laws of Fla.

²⁷ S. 337.401(7)(b), F.S.

²⁸ *Id.*

²⁹ *Id.*

<i>Present Situation</i>	<i>Effect of Proposed Changes</i>
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. ³⁰	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. ³¹	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 5 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. ³²	<p>The bill expands this prohibition to include installation, maintenance, modification, operation or replacement of utility poles used for the collocation of SWFs in the public ROW.</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. ³³	<p>The bill adds new prohibitions. Under the bill, a local government may not:</p> <ul style="list-style-type: none"> • Require a demonstration that collocation of an 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; • 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; • Require a meeting before filing an application; • Require direct or indirect public notification or a public meeting for the placement of communication facilities in the public ROW; • Limit the size or configuration of an SWF or any

³⁰ *Id.*

³¹ *Id.*

³² S. 337.401(7)(c), F.S.

³³ S. 337.401(7)(d)3., F.S.

<i>Present Situation</i>	<i>Effect of Proposed Changes</i>
	<p>of its components, if the SWF complies with the stated size limits;</p> <ul style="list-style-type: none"> • 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.; or • Require that any component of an SWF be placed underground, except as provided by the bill.
<p>Current law prohibits a local government from limiting the placement of SWFs by minimum separation distances.³⁴</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.</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 general rules and regulations governing the placement of utility poles in the public ROW.³⁵</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 general 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 clarifies that a local government may deny an application to collocate a small wireless facility or to place a new utility pole in the ROW on specified grounds.</p> <p>The bill provides that if a local government offers a process for administrative review of the denial of a permit application, that review must be completed and a written decision issued within 45 days of a written request for review. If the review is not completed within 45 days, the provider then may seek judicial review of the denial, and the local government will have waived any claim regarding a provider's failure to exhaust all administrative remedies.</p>
<p>Current law allows a local government, by 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.³⁶</p>	<p>The bill eliminates the authority for local 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 18 months 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</p>

³⁴ S. 337.401(7)(d)4., F.S.

³⁵ S. 337.401(7)(d)6., F.S.

³⁶ S. 337.401(7)(d)12., F.S.

<i>Present Situation</i>	<i>Effect of Proposed Changes</i>
	<p>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 other than consent to venue in the event of litigation.</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 provides that a local government may not require approval or charges for, among other things, routine maintenance on facilities in the public ROW. However, a local government may require a permit for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane.</p>	<p>In addition to routine maintenance, the bill provides that a local government may not require a permit, approval, or charges for service restoration work on existing facilities, or repair work, including emergency repairs of existing facilities or extensions of existing facilities to provide communications services to customers.</p> <p>The bill provides that, while a local government may require a permit for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane or parking lane, a provider may commence with such work if it involves service restoration on an existing facility and is performed in compliance with the 2017 edition of the FDOT-UAM. A local government may require notice within 30 days after the restoration and may require an after-the-fact permit if the work otherwise would have required a permit.</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.³⁷</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.³⁸</p>	<p>The bill specifies conditions under which a local government may prohibit the placement of new utility poles used to support SWFs in areas where the local government has required all public utility lines within the ROW to be placed underground. A local government may prohibit placement of new utility poles in this circumstance if: the local government’s undergrounding requirements were</p>

³⁷ S. 337.401(7)(b), F.S.

³⁸ S. 337.401(7)(i), F.S.

<i>Present Situation</i>	<i>Effect of Proposed Changes</i>
	<p>in place at least 90 days prior to the permit application; structures that are allowed to remain above ground are reasonably available to providers for the collocation of SWFs; and the provider is allowed to install a new utility pole in a designated area of the public ROW that complies with these requirements, provided that it is not reasonably able to provide service by collocating on any remaining utility pole or other structure in the public ROW.</p> <p>If SWFs were installed prior to a local government's adoption of undergrounding requirements, the local government must: allow the provider to maintain the SWFs in place subject to any applicable pole attachment agreement with the pole owner; or allow the provider to replace the associated pole within 50 feet of the prior location.</p>

The bill provides that it shall not be construed to delay the issuance of permits for other utility work, including, but not limited to, permits related to electricity or gas work in the public ROW.

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 for construction of the bill.

Section 4. Provides an effective date of July 1, 2019.

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 public 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 governments³⁹ 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 prohibit counties and cities from imposing certain regulatory fees related to permitting for use of the public ROW, though these fees are prohibited primarily where the underlying regulatory activities are also prohibited. The potential negative revenue impact from these preemptions is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of article 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.

³⁹ See Florida Department of Revenue, *Communications Services Tax Rate Table*, <https://pointmatch.floridarevenue.com/General/CommunicationsServicesTaxRates.aspx> (last visited Apr. 8.2019).

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 a strike-all amendment to the bill and reported the bill favorably as a committee substitute. The following changes were made to the bill:

- Removed 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;
- Established limits on registration requirements imposed by local governments;
- Prohibited 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;
- Gave providers a point of entry to suggest amendments to ROW ordinances not properly noticed;
- Exempted 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;
- Specified a timeline for permitting of all communications facilities;
- Required that written, 60-day notice of all ROW rules and regulations be given to affected providers;
- Created a cause of action for violations of s. 337.401, F.S., and provides for recovery of legal costs;
- Modified definitions related to the permitting of small wireless facilities (SWFs);
- Prohibited local governments from prohibiting, regulating, or charging for installation, operation, and other work done on utility poles used to collocate SWFs in the ROW.
- Prohibited local governments from establishing certain requirements as a condition of permitting collocation of SWFs;
- Exempted utility poles used to support SWFs from authority rules and regulations governing the placement of utility poles in the ROW;
- Allowed for judicial review of a permitting application denial prior to reconsideration;
- Specified the types of financial instruments that local governments may require to secure SWF projects;
- Prohibited an authority from requiring a provider to indemnify it for liabilities not caused by the provider;
- Allowed 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;
- Prohibited 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
- Repealed 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.

On April 18, 2019, the Commerce Committee adopted a strike-all amendment to the bill and reported the bill favorably as a committee substitute. The following changes were made to the bill:

- Authorized local governments to require a registrant to state whether it is a pass-through provider, provide its federal employer identification number, and update registration information within 90 days of a change in such information;

- Authorized local governments to require, as part of a provider's permit application to use the ROW, the identification of at-grade communications facilities located within 50 feet of the proposed installation location for placement of at-grade communications facilities.
- Clarified that limitations on in-kind compensation requirements do not impair a local government's authority to request public, educational, or governmental access channels under s. 610.109, F.S.;
- Authorized local governments to require a ROW permit for work by a provider that involves closure of, among other things, a parking lane;
- Defined an "extension of existing facilities" for purposes of establishing whether a local government may require a permit for such work in certain situations;
- Established a process for local governments to verify the linear miles of pass-through facilities subject to charges for use of the ROW;
- Modified the definition of "applicable codes" to include the National Electrical Safety Code and the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual (FDOT-UAM);
- Modified the definition of "wireless support structure" to exclude certain structures less than 5 feet in height;
- Specified conditions under which a local government may prohibit the placement of new utility poles used to support SWFs in areas where the local government requires all public utility lines within the ROW to be placed underground;
- Authorized providers to seek judicial review of a permit application denial if the local government does not act upon a request for reconsideration within 45 days;
- Extended the maximum term of any required construction bond to 18 months;
- Clarified that a local government may deny an application to collocate a small wireless facility or to place a new utility pole in the ROW on specified grounds;
- Authorized a local government to condition its acceptance of a provider's proof of insurance coverage on the provider's consent to venue for purpose of any potential litigation;
- Authorized local governments to require notice of certain service restoration work in the ROW within 30 days and to require an after-the-fact permit for work that would otherwise have required a permit;
- Authorized local governments to adopt objective design standards for new utility poles used to support SWFs;
- Required all work under s. 337.401, F.S., to comply with the FDOT-UAM; and
- Provided that the bill shall not be construed to delay the issuance of permits for other utility work in the ROW.

The staff analysis has been updated to reflect the committee substitute adopted by the Commerce Committee.