

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7099 PCB SAC 20-06 Essential State Infrastructure

SPONSOR(S): State Affairs Committee; Ingoglia

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee	18 Y, 2 N	Johnson	Williamson
1) Commerce Committee	17 Y, 5 N	Keating	Hamon

SUMMARY ANALYSIS

The bill addresses planning for and locating various types of infrastructure within the state.

Permitting for Use of Public Rights-of-Way by Utilities

Each local government with jurisdiction and control of a public road or publicly owned rail corridor is authorized to prescribe and enforce reasonable rules or regulations related to placing and maintaining utility facilities across, on, or within the right-of-way (ROW) limits of a road or publicly owned rail corridor under its jurisdiction.

The bill provides that all permit applications required by a county or municipality for use of the public ROW for any type of utility must be processed within specified timeframes. Under this process, a completed permit application is deemed approved if the authority fails to approve or deny the application within 60 days of receipt, unless the review period is extended by mutual agreement.

Electric Vehicle Charging Station Infrastructure

Due to their efficiency, low operating costs, and low emissions profiles, interest in electric vehicles (EVs) is increasing. However, the commercial success of EVs has been restricted in part due to their relatively high up-front cost and limited range as compared to conventional gasoline-powered vehicles. Successful adoption of EVs is dependent on the accessibility of charging stations.

The bill requires DOT, in coordination with other entities, to develop and adopt a master plan for EV charging stations on the state highway system by July 1, 2021. The bill provides goals and objectives for the master plan and requires DOT to update its master plan annually.

Conservation Easements

Current law defines a conservation easement as a right or interest in real property which is appropriate for retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses.

The bill specifies that, for any land used for agriculture and subject to a conservation easement, the owner of the land is not prohibited from voluntarily negotiating the use of the land for any public or private linear facility, right of access, and related appurtenances.

The bill includes a finding that it fulfills an important state interest.

The bill has a fiscal impact on state government and may have a fiscal impact on local governments. See Fiscal Analysis.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Permitting for Use of Public Rights-of-Way by Utilities

Present Situation

Pursuant to s. 337.401, F.S., the Department of Transportation (DOT) and 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 related to placing and maintaining utility facilities across, on, or within the right-of-way (ROW) limits of any road or publicly owned rail corridors under its jurisdiction. Each of these types of entities is individually referred to as an “authority” when acting in this capacity. Each authority 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 public ROW for a utility¹ in accordance with the authority’s rules or regulations. A utility may not be installed, located, or relocated within a public ROW unless authorized by a written permit.

In 2017, the Legislature established an expedited permitting process for small wireless facilities² (SWF) that a wireless provider³ seeks to place in the public ROW.⁴ Under this process, a completed permit application for a SWF is deemed approved if the authority fails to approve or deny the application within 60 days of receipt. 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 authority does not approve or deny it within 30 days of receipt. If the authority provides for administrative review of its denial of an application, the authority must complete its review and issue a written decision within 45 days of a written request for review.

In 2019, the Legislature expanded the application of this expedited permitting process to include all communications facilities that a provider of communications services⁵ seeks to place in the public

¹ 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.”

² “Small wireless facility,” s. 337.401(7)(b)10., F.S., means 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. S. 337.401(7)(b)10., F.S.

³ “Wireless provider” means wireless infrastructure provider or a wireless services provider. S. 337.401(7)(b)14., F.S.

⁴ Ch. 2017-136, L.O.F., codified in pertinent part at s. 337.401(7)(d)7.-9., F.S.

⁵ “Communications services” means “the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added.” The term does not include: information services; installation or maintenance of wiring or equipment on a customer’s premises; the sale or rental of tangible personal property; the sale of advertising, including, but not limited to, directory advertising; bad check charges; late payment charges; billing and collection services; or Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services. Ss. 337.401(5) and 202.11(1), F.S.

ROW.⁶ No timeframes are specified in current law for processing permit applications to use the public ROW for any other type of utility.

Effect of Proposed Changes

The bill provides that all permit applications required by a county or municipality for use of the public ROW for any type of utility⁷ must be processed within the expedited timeframe that currently applies only to permit applications submitted for communications facilities. Thus, the bill expands application of the expedited permitting process to include public ROW permits for, among other things, electric, natural gas, water, and sewer facilities.

Electric Vehicle Charging Station Infrastructure

Present Situation

Due to their efficiency, low operating costs, and low emissions profiles,⁸ interest in electric vehicles (EVs) is increasing. However, the commercial success of EVs has been restricted in part due to their relatively high up-front cost and limited range as compared to conventional gasoline-powered vehicles.⁹ While advancements in EV-related technology are continuing, EV manufacturing is rising, and EV prices are dropping, representatives in both the government and the private sectors acknowledge that successful adoption of EVs is dependent on the accessibility of charging stations.¹⁰

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

- Two to five miles of range per one hour of charging for AC Level 1 supply equipment;
- Ten to 20 miles per one hour of charging for AC Level 2 supply equipment; and
- Sixty to 80 miles per 20 minutes of charging for DC fast charging supply equipment.¹¹

According to AFDC, EV charging for most drivers occurs at home or at fleet facilities.¹²

Level 1 (home) charging cords come as standard equipment on new EVs, require only a standard 120-volt outlet, and can add about 50 miles of range in an overnight charge. Level 1 charging is sufficient for low- and medium-range EV drivers with relatively low daily driving.¹³

Level 2 (home and public) charging commonly requires a 240-volt circuit, with the charging rate dependent on the rate at which a vehicle can accept a charge and the maximum current available. An eight-hour charge adds about 180 miles of range with a typical 30-amp circuit. This method may require the purchase of a home charging unit and modifications to a home electric system, but charges from two to eight times faster than a Level 1, depending on the amperage and the vehicle. These

⁶ Ch. 2019-131, L.O.F.

⁷ *Supra* note 96.

⁸ See U.S. Department of Energy, Office of Energy Efficiency & Renewable Energy, *Electric Vehicle Benefits*, <https://www.energy.gov/eere/electricvehicles/electric-vehicle-benefits> (last visited Feb. 24, 2020).

⁹ See the Federal Highway Administration's *FHWA NHTS Brief, Electric Vehicle Feasibility*, July 2016, pp. 1-2, available at <https://nhts.ornl.gov/briefs/EVFeasibility20160701.pdf> (last visited Feb. 24, 2020).

¹⁰ *Id.* at p. 2. See also CBS Chicago, *Electric Vehicle Sales on the Rise, But More Charging Stations Needed To Keep the Trend Going*, September 19, 2019, available at <https://chicago.cbslocal.com/2019/09/19/electric-vehicles-super-fast-charging-stations/> (last visited Feb. 24, 2020).

¹¹ See Alternative Fuels Data Center (AFDC), *Developing Infrastructure to Charge Plug-In Electric Vehicles*, https://afdc.energy.gov/fuels/electricity_infrastructure.html (last visited Feb. 24, 2020).

¹² *Id.*

¹³ Union of Concerned Scientists, *Electric Vehicle Charging* (March 2018) available at <https://www.ucsusa.org/resources/electric-vehicle-charging-types-time-cost-and-savings> (last visited Feb. 24, 2020).

chargers are most commonly found at public charging places like offices, grocery stores, and parking garages.¹⁴

DC Fast Chargers (public charging) can typically add 50 to 90 miles of range in 30 minutes, depending on the charging station's power capacity and the make of the EV. These chargers are best used for longer travel distances; vehicles used the major portion of a day, such as taxis; and for vehicles whose drivers have limited access to home charging.¹⁵

Under Florida law, the provision of EV charging to the public by a nonutility is not considered the retail sale of electricity.¹⁶ Thus, EV charging providers are not subject to regulation by the Public Service Commission (PSC) as public utilities. To provide consistency for consumers and industry, the Department of Agriculture and Consumer Services (DACS) is required to adopt rules establishing definitions, methods of sale, labeling requirements, and price-posting requirements for EV charging stations.¹⁷

Through the state Office of Energy, DACS maintains a database of public EV charging station locations in Florida, listed by county on its website. The website identifies 930 charging station locations by specific address.¹⁸ In addition, the Office of Energy is currently working on an EV Roadmap with the goals of:

- Identifying EV charging infrastructure impacts on the electric grid;
- Identifying solutions for any negative impacts;
- Locating areas that lack EV charging infrastructure;
- Identifying best practices for siting EV charging stations; and
- Identifying technical or regulatory barriers to expansion of EV charging infrastructure.¹⁹

Established in 1993 as part of the U.S. Department of Energy's Vehicle Technologies Office, Clean Cities coalitions have funded hundreds of transportation projects nationwide in furtherance of their mission to foster the nation's economic, environmental, and energy security by working locally to advance affordable, domestic transportation fuels, energy efficient mobility systems, and other fuel-saving technologies and practices.²⁰ Clean Cities coalitions are comprised of businesses, fuel providers, vehicle fleets, state and local government agencies, and community organizations. Each coalition is led by a coordinator who tailors projects and activities to capitalize on the unique opportunities within their communities. The U.S. Department of Energy has designated four Clean Cities coalitions in Florida: North Florida, Central Florida, Tampa, and Southeast Florida.²¹

Effect of Proposed Changes

The bill requires DOT, in coordination with the state Office of Energy and the designated Clean Cities coalitions in Florida, or other appropriate public or private entities, to develop and adopt a master plan for EV charging stations on the state highway system (SHS) by July 1, 2021, and to update it annually by July 1.

The master plan's goals and objectives include, but are not limited to:

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ S. 366.94(1), F.S.

¹⁷ S. 366.94(2), F.S. DACS has incorporated into its rules, by reference, various sections of the National Institute of Standards and Technology (NIST), Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality, 2017 Edition, regarding the sale of various fuels. See Rule 5J-22.003, F.A.C.

¹⁸ Florida Department of Agriculture and Consumer Services, Office of Energy, *Transportation*, <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Transportation> (last visited Feb. 24, 2020); s. 377.815, F.S., authorizes DACS to post information on its website relating to alternative fueling stations, including EV charging stations, available for public use.

¹⁹ DACS, Agency Analysis of 2020 Senate Bill 452, p.2. (Oct. 9, 2019).

²⁰ U.S. Department of Energy, Office of Energy Efficiency & Renewable Energy, *Clean Cities Coalition Network*, <https://cleancities.energy.gov/> (last visited Feb. 24, 2020).

²¹ *Id.*

- Identifying optimal locations on the SHS for the development of EV charging stations to facilitate EV short-range and long-range travel and adequately serving evacuation routes;
- Identifying locations that would serve existing EVs or encourage the expansion of EV use;
- Evaluating and comparing the types of EV charging stations available at present and in the future, including the technology and infrastructure incorporated in such stations, for the purpose of identifying any advantages to developing a particular type of station;
- Evaluating the economic potential for EV charging stations and considering strategies to develop that potential, including methods for building partnerships with local governments, other state and federal entities, electric utilities, the business community, and the public in support of EV charging stations; and
- Identifying specific projects that will accomplish these goals and objectives.

Conservation Easements

Present Situation

Current law defines a conservation easement as a right or interest in real property, which is appropriate for:

- Retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition;
- Retaining such areas as suitable habitat for fish, plants, or wildlife;
- Retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or
- Maintaining existing land uses.²²

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

- Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;
- Removal or destruction of trees, shrubs, or other vegetation;
- Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;
- Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;
- Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;
- Acts or uses detrimental to such retention of land or water areas; or
- Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.²³

Notwithstanding the restrictions imposed by conservation easements, the owner of the land, or the owner of the conservation easement over the land, may voluntarily negotiate the sale or utilization of such lands or easement for the construction and operation of linear facilities (e.g., public transportation corridors and electric, telecommunication, or pipeline transmission lines and distribution facilities).²⁴

Conservation easements are acquired in the same manner as other property interests, with the exception of condemnation or eminent domain proceedings.²⁵ Conservation easements may be acquired by any governmental body or agency or by a charitable corporation or trust whose purposes include protecting natural, scenic, or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources; maintaining or

²² S. 704.06(1), F.S.

²³ *Id.*

²⁴ S. 704.06(11), F.S.

²⁵ S. 704.06(2), F.S.

enhancing air or water quality; or preserving sites or properties of historical, architectural, archaeological, or cultural significance.²⁶

Conservation easements are perpetual, undivided interests in property that are created or stated in a restriction, easement, covenant, or condition in any deed, will, or other instrument executed by or on behalf of the property owner, or in any order of taking.²⁷ They must be recorded and indexed in the same manner as any other instrument affecting the title to real property.²⁸

DACS, on behalf of the Board of Trustees of the Internal Improvement Trust Fund, may allocate money to enter into agreements in order to promote and improve wildlife habitat; protect and enhance water bodies, aquifer recharge areas, wetlands, and watersheds; perpetuate open space on lands with significant natural areas; and protect agricultural²⁹ lands threatened by conversion to other uses.³⁰ To achieve these purposes, DACS may accept applications for project proposals that purchase conservation easements.³¹

Effect of Proposed Changes

The bill specifies that, for any land that has traditionally been used for agriculture and is subject to a conservation easement, the conservation easement laws do not limit the owner of the land from voluntarily negotiating the use of the land for any public or private linear facility, right of access, and related appurtenances.

The bill specifies that the only remedy to the owner of the conservation easement for the construction and operation of any public or private linear facilities and related access and appurtenances is reasonable compensation based on diminution of value of its interest in the conservation easement.

The bill specifies that it does not preclude the applicability of any environmental permitting requirements applicable to a linear facility under state law or agency rules.

B. SECTION DIRECTORY:

Section 1. Amends s. 337.401, F.S., relating to the use of right-of-way for utilities.

Section 2. Creates s. 339.287, F.S., relating to EV charging station master plan requirements.

Section 3. Amends s. 704.06, F.S., relating to conservation easements.

Section 4. Provides a statement of important state interest.

Section 5. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state revenues.

2. Expenditures:

²⁶ S. 704.06(3), F.S.

²⁷ S. 704.06(2), F.S.

²⁸ S. 704.06(5), F.S.

²⁹ S. 570.02(1), F.S., defines the term “agriculture” as the production of plants and animals useful to humans, including aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production.

³⁰ S. 570.71(1), F.S.

³¹ S. 570.71(2)(a), F.S.

The bill has an indeterminate negative fiscal impact to DOT associated with the development of the master plan. DACS may incur a negative fiscal impact associated with assisting DOT in preparing the master plan. The departments should be able to absorb the impacts within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

Counties and municipalities may incur expenditures associated with complying with the specified timeframes to approve permits for utilities within their rights-of-way. However, the expenditures may be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Requiring specified timeframes for local governments to process utility ROW permits may reduce permit processing times in some cases for companies wishing to place utilities in the public ROW. The bill allows an owner of land that has traditionally been used for agriculture and is subject to a conservation easement to voluntarily negotiate the use of the land for any public or private linear facility, right of access, and related appurtenances. This provision may result in a positive fiscal impact to the private sector for those individuals who negotiate for the additional use of such easements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because the bill requires counties and municipalities to act on applications for permits relating to the use of rights-of-way for utilities within a specified timeframe. However, an exemption may apply if the provisions are found to have an insignificant fiscal impact. In addition, an exception may apply if the bill is approved by a two-thirds vote of the membership of each house because the bill includes a finding that it fulfills an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.