

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SAC 20-06 Essential State Infrastructure

SPONSOR(S): State Affairs Committee

TIED BILLS: **IDEN./SIM. BILLS:** SB 7018

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Johnson	Williamson

SUMMARY ANALYSIS

Utility Right-of-Way Permits

Authorities, defined as the Department of Transportation (DOT) and local governmental entities, may prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining of utilities across, on, or within their right-of-way limits. An authority may grant the use of its right-of-way for the utility in accordance with its adopted rules or regulations.

The bill requires counties and municipalities to issue or deny permits for utilities in rights-of-way in accordance with specified periods, including issuing a notification of completeness within 14 days and approving or denying a permit within 60 days of receiving the application.

Electric Vehicle Charging Station Master Plan

Electric vehicles (EVs) offer a cleaner fuel source and interest in EV use has been driven in part by their potential for reduction in greenhouse gas emissions. However, their relative high cost compared to conventional fuel-powered vehicles and their relative limited range have restricted the commercial viability of EVs. EV 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. The Department of Agriculture and Consumer Services website contains addresses by city and county for EV charging station locations in Florida.

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, 2020. 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 limited from voluntarily negotiating the use of the land for any public or private linear facility, right of access, and related appurtenances.

Fiscal Impact

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Utility Right-of-Way Permits

Present Situation

Section 337.401, F.S., provides that the use of the right-of-way for utilities is subject to regulation. Authorities, defined as the Department of Transportation (DOT) and local governmental entities,¹ may prescribe and enforce reasonable rules or regulations regarding the placing and maintaining of utilities within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions.^{2,3}

An authority may grant to any person who is a Florida resident, or to any corporation organized under Florida law or licensed to do business within Florida, the use of a right-of-way for the utility in accordance with the authority's adopted rules or regulations. However, a utility may not be installed, located, or relocated unless authorized by a written permit issued by the authority. For roads or rail corridors under DOT's jurisdiction, a utility relocation schedule and relocation agreement may be executed in lieu of a written permit.⁴

The Advance Wireless Infrastructure Deployment Act

The Advanced Wireless Infrastructure Deployment Act (act)⁵ authorizes the deployment of certain wireless facilities in the public right-of-way. The act permits a local government⁶ to require a registration process and permit fees and provides requirements for processing and issuing such permits.⁷

Under the act, an authority must, within 14 days after receiving an application, determine and notify the applicant, by electronic mail, as to whether the application is complete. If it determines the application is incomplete, the authority must specifically identify the missing information. An application is deemed complete if the authority fails to notify the applicant within 14 days.⁸

A complete application is deemed approved if an authority fails to approve or deny the application within 60 days after receipt of the application. If an authority does not use a 30-day negotiation period,⁹ the parties may mutually agree to extend the 60-day application review period. The authority must grant or deny the application at the end of the extended review period.¹⁰

¹ Section 334.03(13), F.S., defines the term "local governmental entity" as a unit of government with less than statewide jurisdiction, or any officially designated public agency or authority of such a unit of government, that has the responsibility for planning, construction, operation, or maintenance of, or jurisdiction over, a transportation facility; the term includes, but is not limited to, a county, an incorporated municipality, a metropolitan planning organization, an expressway or transportation authority, a road and bridge district, a special road and bridge district, and a regional governmental unit.

² Section 337.401(1)(a), F.S., defines the term "utility" as electric transmission, voice, telegraph, data, or other communications services lines or wireless facilities; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures.

³ Section 337.401(1)(a), F.S.

⁴ Section 337.401(2), F.S.

⁵ Section 337.401(7), F.S.

⁶ For purposes of this provision, s. 337.401(7)(b)5., F.S., provides that the term "authority" means a county or municipality having jurisdiction and control of the rights-of-way of any public road. The term does not include DOT. Rights-of-way under the jurisdiction and control of DOT are excluded from subsection (7).

⁷ Section 337.401(7)(d), F.S.

⁸ Section 337.401(7)(d)7., F.S.

⁹ The 30-day negotiation period is provided for in s. 337.401(7)(d)4., F.S.

¹⁰ Section 337.401(7)(d)8., F.S. This subparagraph also requires applications to be processed on a nondiscriminatory basis.

The authority must notify the applicant of approval or denial by electronic mail.¹¹ An authority must approve a complete application unless it does not meet the authority's applicable codes.¹² If the application is denied, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application.¹³ The applicant may cure the identified deficiencies and resubmit the application within 30 days after notice of the denial is sent to the applicant. The authority must approve or deny the revised application within 30 days after receipt or the application is deemed approved.¹⁴

The review of a revised application is limited to the deficiencies cited in the denial. If an authority provides for administrative review of the denial of an application, the review must be complete and a written decision issued within 45 days after a written request for review is made. A denial must identify the specific code provisions on which the denial is based. If the administrative review is not complete within 45 days, the authority waives any claim regarding failure to exhaust administrative remedies in any judicial review of the denial of an application.¹⁵

Effect of the Bill

The bill provides that a permit application relating to the use of the right-of-way for utilities required by a county or municipality under s. 337.401, F.S., must be acted on within the timeframes provided in the act. Specifically, the bill requires the authority to determine whether an application is complete within 14 days after receiving the application and requires an application to be approved or denied within 60 days of receipt of the application. The bill also requires requests for reviews of denials of applications to be completed within 45 days of the request being made.

Electric Vehicle Charging Station Master Plan

Present Situation

Electric vehicles (EVs) offer a cleaner fuel source and interest in EV use has been driven in part by their potential for reduction in greenhouse gas emissions. However, their relative high cost compared to conventional fuel-powered vehicles and their relative limited range have restricted the commercial viability of EVs.¹⁶ While advancements in EV-related technology are continuing, EV manufacturing is rising, and EV prices have been dropping, representatives in both the government and the private sectors acknowledge that successful adoption of EV use is heavily dependent on the accessibility of charging stations.¹⁷

Electric Vehicle Charging Equipment

EV charging equipment is generally classified based on the rate at which the equipment charges the EV batteries. Charging times vary depending on the depletion level of the battery, how much energy the battery holds, the type of battery, and the type of supply equipment. According to the 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

¹¹ Section 337.401(7)(d)9., F.S.

¹² Section 337.401(7)(b)2., F.S., defines the term "applicable codes" as uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, and includes the National Electric Safety Code and the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual.

¹³ Section 337.401(7)(d)9., F.S.

¹⁴ *Id.*

¹⁵ Section 337.401(7)(d)9., F.S.

¹⁶ 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 Jan. 6, 2020).

¹⁷ *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 Jan. 6, 2020).

- Sixty to 80 miles per 20 minutes of charging for DC fast charging supply equipment.¹⁸

According to AFDC, EV charging occurs at home or at fleet facilities for most drivers.¹⁹

Level 1 (home) charging cords come as standard equipment on new EVs, only require a standard 120-volt outlet, and can add about 50 miles of range in an overnight charge. Level 1 charging is sufficient for low- and medium-range EV drivers with relatively low daily driving.²⁰

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 chargers are most commonly found at public charging places like offices, grocery stores, and parking garages.²¹

DC Fast Chargers (public charging) can typically add 50 to 90 miles in 30 minutes, depending on the charging station's power capacity and the make of the EV. These chargers are best used for longer travel distances; vehicles used the major portion of a day, such as taxis; and for vehicles whose drivers have limited access to home charging.²²

Electric Vehicle Charging in Florida

Under Florida law, the provision of EV charging to the public by a nonutility is not considered the retail sale of electricity and is not subject to regulation as a public utility.²³ Additionally, the Department of Agriculture and Consumer Services (DACS) must adopt rules to provide definitions, methods of sale, labeling requirements, and price-posting requirements for electric vehicle charging stations to allow for consistency for consumers and the industry.²⁴

DACS' website contains addresses by city and county for EV charging station locations in Florida. The website identifies 930 charging station locations by specific address.²⁵

Clean Cities Coalitions

Established in 1993 as part of the United States Department of Energy's Vehicle Technologies Office, the 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.²⁶ There are four Florida Clean Cities Coalitions: North Florida, Central Florida, Tampa, and Southeast Florida.²⁷

Office of Energy, Department of Agriculture and Consumer Services

The Office of Energy is established within DACS and is responsible for administering and enforcing parts II and III of ch. 377, F.S., which relate to energy resources planning and development, renewable energy, and green government programs.

¹⁸ See the AFDC's website available at <https://www.afdc.energy.gov/vehicles/electric.html>. (Last visited Jan. 6, 2020).

¹⁹ AFDC, *Developing Infrastructure to Charge Electric Plug-In Vehicles*, available at https://afdc.energy.gov/fuels/electricity_infrastructure.html (last visited Jan. 6, 2020).

²⁰ UCSUSA, *Electric Vehicle Charging, Types, Time, Cost and Savings*, (March 2018) available at <https://www.ucsusa.org/resources/electric-vehicle-charging-types-time-cost-and-savings> (last visited Jan. 6, 2020).

²¹ *Id.*

²² *Id.*

²³ Section 366.94(1), F.S.

²⁴ Section 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.

²⁵ See DACS website, select *Electricity*, available at <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Transportation> (last visited Jan. 6, 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.

²⁶ Clean Cities Coalition, available at <https://cleancities.energy.gov/>, (last visited Jan. 10, 2020).

²⁷ DACS, Agency Analysis of 2020 Senate Bill 452, p.2. (Oct. 9, 2019).

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.²⁸

Effect of the Bill

The bill requires DOT, in coordination with the Office of Energy and the Florida Clean Cities Coalitions, 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:

- Identifying optimal locations on the SHS for the development of EV charging stations as a means of facilitating 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 the above 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.²⁹

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

²⁸ *Id.*

²⁹ Section 704.06(1), F.S.

- 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.³⁰

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).³¹

Conservation easements are acquired in the same manner as other property interests, with the exception of condemnation or eminent domain proceedings.³² 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 enhancing air or water quality; or preserving sites or properties of historical, architectural, archaeological, or cultural significance.³³

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.³⁴ They must be recorded and indexed in the same manner as any other instrument affecting the title to real property.³⁵

Land Used for Agriculture

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 agricultural³⁶ lands threatened by conversion to other uses.³⁷ To achieve these purposes, DACS may accept applications for project proposals that purchase conservation easements.³⁸

Effect of the Bill

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., providing that the use of right-of-way for utilities is subject to regulation.

³⁰ *Id.*

³¹ Section 704.06(11), F.S.

³² Section 704.06(2), F.S.

³³ Section 704.06(3), F.S.

³⁴ Section 704.06(2), F.S.

³⁵ Section 704.06(5), F.S.

³⁶ Section 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.

³⁷ Section 570.71(1), F.S.

³⁸ Section 570.71(2)(a), F.S.

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 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:

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 approving permits for utilities on rights-of-way may reduce costs for companies wishing to place utilities in such rights-of-way. The bill allows the 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 it includes a finding that the bill 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

Not applicable.