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NETWORK

Florida Cities File Constitutional Challenge Over 5G Rules

Cities contend state law violates the state Constitution in a variety of ways, including infringing on home-rule powers. Along with fee limits, the cities take issue with tight schedules for review and approval.

BY JIM SAUNDERS, THE NEWS-JOURNAL / AUGUST 14, 2019



SHUTTERSTOCK/KRIANGPHROM

(TNS) — The Florida League of Cities and three communities this week filed a renewed constitutional challenge to a state law that is expected to help telecommunications companies install wireless technology on city-owned utility poles and in public rights of way.

The league and the cities of Fort Walton Beach, Naples and Port Orange filed the lawsuit Monday in Leon County circuit court, about three months after filing a similar challenge to a 2017 state law. The new case incorporates changes the Legislature made this year to the law, which involves the installation of antennas and other equipment that telecommunications companies need for new 5G technology.

The revised case, in part, targets a change that lawmakers made this year that could open cities to lawsuits in state or federal courts — including being required to pay costs and attorney fees — if they violate the wireless-technology law. Attorneys for the cities contend that the change violates the constitutional separation of powers.

"The proper separation of powers required by the Florida Constitution cannot be maintained where a statute passed by the Florida Legislature allows the judicial branch to subject municipalities to financial penalties for discretionary decisions necessary to the core legislative functions of local officials and the municipalities they represent," the 51-page lawsuit said.

Other parts of the new case are similar to the [earlier lawsuit](#), including challenging the constitutionality of a limit on how much cities can charge for telecommunications companies to install equipment on publicly owned poles. The lawsuit contends that the limit, \$150 per pole per year, is an unconstitutional taking of property because it is below the market rate for use of the poles.

The Legislature passed the 2017 law and the additional changes this year as telecommunications companies move forward with 5G, or fifth generation, wireless technology. The new technology, in part, is expected to provide faster speeds for users of wireless devices, but it also requires more antennas and other equipment to be installed in places such as rights of way and on utility poles.

The changes (SB 1000) approved by the Legislature this year drew relatively little opposition from lawmakers, passing the Senate in a 34-3 vote and the House in a 96-16 vote. The measure was signed June 25 by Gov. Ron DeSantis.

But cities contend that the 2017 law and this year's changes violate the state Constitution in a variety of ways, including infringing on home-rule powers. Along with the fee limit, for example, the cities take issue with requirements that set tight time frames for reviewing and approving plans for installing the technology.

With the filing of the renewed lawsuit this week, the cities also dismissed the case filed in May.

Attorneys for the state argued in briefs filed in June that the initial case should be tossed out, in part because of a "lack of judicable controversy" as telecommunications companies had not started offering 5G services.

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