

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 23, 1998 Revised: _____

Subject: Telecommunications Companies' Use of Roads and Rights-of-way

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Schmith</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>RI</u>	_____
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute (CS) for Senate Bill 1704 revises provisions of the Florida Statutes relating to franchise fees which may be assessed by local governments upon telecommunications companies for use of the public roads and rights-of-way. The CS clarifies that the one percent cap on gross receipts applies to all telecommunications companies, as defined by current law, and includes any "in-kind" contributions by the telecommunications provider. The CS prohibits future requirements for or solicitations of in-kind contributions by municipalities, but "grandfathers" existing ordinances providing for those contributions. The CS further clarifies local government authority over public roads and rights-of-way.

This CS amends section 337.401, Florida Statutes.

II. Present Situation:

The issues associated with Florida rights-of-way are part of a much larger national debate concerning the respective rights and responsibilities of telecommunications providers and local, state, and federal governments. Passage of the 1995 Florida Telecommunications Act and the 1996 Federal Telecommunications Act opened local communications markets to competition. In an open telecommunications market, the terms and conditions required for the use of rights-of-way (or franchise agreements) may affect how competition develops. The possibility of numerous telecommunications providers entering the local market, coupled with the inclusion of state and federal statutory language prohibiting discrimination between carriers by local government, has resulted in an increased number of disputes associated with the use of rights-of-way.

In entering into franchise agreements, cities must be careful not to discriminate between providers. At the same time, cities must minimize disruptions that might be caused when

numerous providers, with different levels of experience, place facilities in public rights-of-way. Negotiations regarding franchise fees are sensitive because cities may be dependent on the revenues from such fees. As competition develops, control of rights-of-way and other city property has become an autonomy issue for local governments nationally.

The 1996 Federal Telecommunications Act

The 1996 Federal Telecommunications Act requires the removal of barriers to entry into the telecommunications market. To this end, 47 U.S.C. 253 provides the following:

- State and local requirements that have the effect of prohibiting the ability of any entity to provide telecommunications services are prohibited. 47 U.S.C. 253(a);
- Communications Commission as an impermissible “third tier” of telecommunications regulation; that is, a local layer of regulation in addition to state and federal regulation.

In addition to s. 337.401, F.S., which authorizes local government to prescribe reasonable regulations regarding occupancy of rights-of-way, and establishes upper limits on fees charged for occupancy of rights-of-way by telecommunications providers, several other statutory provisions directly govern rights-of-way agreements.

Section 362.01, F.S., authorizes telephone companies to occupy roads provided they do not interfere with the use of such roads; permission is required to occupy the streets of a city or town. Section 364.0361, F.S., prohibits a local government from discriminating between providers when exercising its franchise authority, or otherwise establishing conditions and compensation for use of rights-of-way or other public property by a telecommunications company.

Section 364.02, F.S., defines “telecommunications company” to include all entities offering two-way telecommunications service to the public for hire within this state by the use of telecommunications facility. Specifically excluded from this definition are cable television companies, facsimile transmission services, and commercial mobile radio service providers.

Section 364.0361, F.S., requires that “[a] local government shall treat each telecommunications company in a nondiscriminatory manner when exercising its authority to grant franchises to a telecommunications company or to otherwise establish conditions or compensation for the use of rights-of-way or other public property by a telecommunications company.”

Section 337.401, F.S., provides the following:

- Subsection (1) authorizes local governmental entities to prescribe and enforce reasonable rules or regulations with reference to placing and maintaining telephone lines along, across, or on any public road.

- Subsection (2) authorizes local governmental entities to adopt rules and regulations for granting permission to use rights-of-way. This subsection prohibits the installation of facilities unless authorized by the written permission of the local authority.
- Subsection (3) caps fees at 1 percent of gross receipts---on recurring local service revenues for services provided within the corporate limits of the municipality by the telecommunications provider---as a condition for granting permission to occupy municipal streets and rights-of-way.
- Subsection (4) provides that a minimum of \$500 per linear mile of facilities may be charged for long distance providers to make physical use of the municipal right-of-way. However, fees charged to long distance providers in excess of \$500 per linear mile must be nondiscriminatory and shall not exceed the sum of statutorily specified costs.

The terms and conditions of some older franchise agreements are “grandfathered” by s. 337.401, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 337.401, F.S., as follows:

Subsection (3) is amended to replace the term “telephone companies” with the term “telecommunications companies,” clarifying that the one percent cap on gross receipts applies to all telecommunications companies. Also, the term “municipal authority” is replaced with “municipality.” Further, this section is amended to clarify that any “in-kind” contributions accepted must be included within the one percent fee cap.

Subsection (5) is created to clarify that a municipality may only impose charges or fees upon telecommunications companies as authorized by the legislature. Municipalities are prohibited from *requiring* or *soliciting* in-kind compensation in lieu of fees. However, existing ordinances and agreements providing for in-kind compensation are specifically “grand fathered.”

Subsection (6) is created to clarify that local government authority over rights-of-way cannot be used as a basis for asserting *regulatory* control over telecommunications companies regarding matters within the exclusive jurisdiction of the Public Service Commission or the Federal Communications Commission.

Subsection (7) is created to provide that telecommunications companies that are lawfully occupying roads of a municipality on the effective date of the act are not required to obtain additional consent therefrom. However, this section should not be interpreted to limit municipal authority to impose fees and adopt reasonable rules and regulations.

Subsection (8) is created to clarify that the CS does not modify authority granted by statutes governing the municipal utilities tax, or the duties of a telecommunications provider pursuant to ss. 337.402-404, F.S. The CS does not apply to private property, building permits or pole attachments. Finally, the CS does not limit or expand any powers counties may have relating to roads and rights-of-way.

Subsection (9) is created to provide that for purposes of this section “telecommunications company” has the meaning defined in s. 364.02, F.S., which specifically excludes cable television companies.

Section 2 provides an effective date upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
