
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: April 2, 1998 Revised: _____

Subject: Telecommunications 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>Masterton</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>WM</u>	<u>Withdrawn</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill amends provisions relating to the fees that local governments may assess telecommunications companies for the use of public roads and rights-of-way. The bill clarifies that the fee cap of one percent of gross receipts applies to all telecommunications companies providing local service and includes any "in-kind" contributions by a telecommunications provider. The bill prospectively prohibits municipalities from requiring or soliciting in-kind contributions from telecommunications companies, but "grandfathers" existing ordinances providing for these contributions. In addition, the bill further clarifies local government authority over public roads and rights-of-way.

This bill substantially amends the following section of the Florida Statutes: 337.401.

II. Present Situation:

The issues associated with the use of rights-of-way by telecommunications companies in Florida relate to 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 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 governments, has resulted in an increased number of disputes concerning the use of rights-of-way. Negotiations regarding franchise fees are sensitive because cities may be dependent on the revenues from such fees.

The 1996 Federal Telecommunications Act requires the removal of barriers to entry into the local telecommunications market (47 U.S.C. 253). The federal act prohibits state and local requirements that discriminate among telecommunications providers, thereby deterring competitive entry. The Federal Communications Commission is authorized to preempt state and local requirements that are inconsistent with the federal act. However, the act does not affect a state or local government's ability to manage the public rights-of way or to require fair and reasonable compensation from telecommunications providers on a competitively neutral and nondiscriminatory basis, if the compensation is publicly disclosed.

Section 337.401, F.S., establishes the parameters for rights-of-way agreements, including limitations on fees charged by local governments. The section authorizes local governments to prescribe and enforce reasonable rules or regulations for placing and maintaining utilities (including telephone lines) along, across, or on any public road. Installation of facilities is prohibited unless authorized in writing by the local authority.

Subsection 337.401 (3), F.S., caps fees for the use of municipal rights-of-way at one per cent of gross receipts on recurring local revenues for telecommunications services provided within the corporate limits of the municipality. (The terms and conditions of some older franchise agreements are "grandfathered.") Subsection 337.401(4), F.S., authorizes a municipality to charge no less than \$500 per linear mile of cable or other pathway that makes physical use of the right-of-way for long distance telecommunications services. Any fees in excess of \$500 per mile may not exceed the direct costs of using the right-of-way and the reasonable costs of municipal regulation. Sections 337.402 - .404, F.S., set forth the duties of utilities using the public rights-of-way, including to pay for repairs to property damaged by the installation of facilities and to pay for relocation of facilities.

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 streets of a city or town.

Section 364.02, F.S., defines a "telecommunications company" to include all entities offering two-way telecommunications service to the public for hire within this state by the use of telecommunications facilities. Specifically excluded from the definition are cable television companies, facsimile transmission services, and commercial mobile radio (wireless) service providers. Section 364.0361, F.S., requires local governments to treat telecommunications companies in a nondiscriminatory manner when exercising their franchise authority or their authority to otherwise establish conditions or compensation for the use of rights-of-way or other public property.

III. Effect of Proposed Changes:

The bill amends s. 337.401, F.S., to replace the term "telephone companies" with the term "telecommunications companies," making it clear that the one percent cap on gross receipts applies to all telecommunications companies with recurring local service revenues. The section is further amended to clarify that any "in-kind" contributions accepted by a local government must

be included within the one per cent fee cap. Also, the term “municipal authority” is replaced with “municipality.”

The bill also amends s. 337.401, F.S., to clarify that a municipality may impose charges or fees upon telecommunications companies only 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 grandfathered.

Section 337.401, F.S. is amended 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.

The bill provides that telecommunications companies that are lawfully occupying a municipality’s roads on the effective date of the act are not required to obtain additional consent to continue occupying these rights-of-way. However, municipalities may impose fees and adopt reasonable rules and regulations for these existing uses of the rights-of-way.

The bill specifically 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. It does not apply to private property, building permits, or pole attachments. In addition, the bill does not limit or expand any powers counties may have relating to roads and rights-of-way. It also does not limit or expand a local government’s authority to impose fees for cable services or open video systems services pursuant to federal law.

For the purposes of s. 337.401, F.S., “telecommunications company” has the meaning defined in s. 364.02, F.S. This definition encompasses all entities offering two-way telecommunications services for hire in the state by the use of a telecommunications facility, including local service providers, long distance service providers, alternative access vendors, pay phone service providers, and shared tenant services providers. Entities offering solely wireless telecommunications and cable television services are excluded. (Franchise agreements for cable television companies are addressed in s. 166.046, F.S.)

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to expend funds or reduce their authority to raise revenues.

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:

Telecommunications companies will benefit to the extent that the bill clarifies the limits on fees local governments may charge them for the use of public rights-of-way.

C. Government Sector Impact:

Local governments (and their citizens) will benefit to the extent that the bill clarifies their authority over the use of public rights-of-way.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.