

By Senators Bronson, Silver, Holzendorf, Meadows, Turner and Gutman

18-579A-98

1                                   A bill to be entitled  
2           An act relating to telecommunications  
3           companies' use of roads and rights-of-way;  
4           creating s. 337.4011, F.S.; providing for the  
5           regulation of the use of roads and  
6           rights-of-way; providing for limitations on  
7           fees; defining the term "administrative cost";  
8           limiting the amounts of fees that a  
9           municipality may impose as a condition for  
10          issuing certain permits; prohibiting in-kind  
11          compensation in lieu of prescribed fees;  
12          prohibiting local governments from using their  
13          authority over the placement of  
14          telecommunications facilities as a basis for  
15          regulating matters that are within the  
16          jurisdiction of the Florida Public Service  
17          Commission or the Federal Communications  
18          Commission; providing that a telecommunications  
19          company that has permission to occupy or is  
20          occupying municipal roads or rights-of-way on a  
21          specified date need not obtain additional  
22          consent to continue such occupation; providing  
23          applicability; repealing s. 337.401(3), (4),  
24          F.S., relating to municipalities' regulation of  
25          the use of municipal streets by telephone  
26          companies and municipalities' entering into  
27          agreements with entities providing  
28          telecommunications services to allow those  
29          entities to use municipal streets, alleys, or  
30          other public ways; providing an effective date.  
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1           WHEREAS, the Legislature finds that the public roads  
2 and rights-of-way in this state are owned by the people of  
3 this state and held in trust on a nonproprietary basis by  
4 local governmental entities for public uses including the  
5 provision of telecommunications services, and

6           WHEREAS, since the passage of chapter 95-403, Laws of  
7 Florida, and the enactment of the federal Telecommunications  
8 Act of 1996, municipalities have been considering and adopting  
9 ordinances that impose upon telecommunications companies  
10 regulations and fees that exceed the limits set by law, and

11           WHEREAS, the Legislature finds that the fees imposed on  
12 telecommunications companies by local governmental entities  
13 relating to roads and rights-of-way should not exceed the cost  
14 to the municipality of administering the occupancy of roads  
15 and rights-of-way by telecommunications companies, and

16           WHEREAS, the Legislature finds it necessary to clarify  
17 the authority of local governmental entities over the  
18 operations of telecommunications companies and their occupancy  
19 of roads and rights-of-way, NOW, THEREFORE,

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21 Be It Enacted by the Legislature of the State of Florida:

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23           Section 1. Section 337.4011, Florida Statutes, is  
24 created to read:

25           337.4011 Use of roads and rights-of-way by  
26 telecommunications companies subject to regulation; limitation  
27 on fees.--

28           (1) Definitions.--As used in this section, the term  
29 "administrative cost" means the actual costs a municipality  
30 incurs which are directly attributable to the activities of  
31 issuing and processing rights-of-way permits, inspecting job

1 sites and restoration projects, determining the adequacy of  
2 rights-of-way restoration, and restoring inadequately  
3 performed work after providing notice and the opportunity to  
4 correct the work.

5 (2) A municipality may require a telecommunications  
6 company as defined in s. 364.02 to pay a fee as a condition to  
7 issuing a permit to install, locate, or relocate  
8 telecommunications facilities in the roads and rights-of-way  
9 of the municipality. Any fee imposed for such a permit must  
10 not exceed the administrative cost. Alternatively:

11 (a) If a municipality requires a telecommunications  
12 company that is providing telecommunications services defined  
13 in s. 203.012(3) to pay a fee as a condition for granting  
14 permission to use municipal roads and rights-of-way as the  
15 sites for poles, wires, and other fixtures, the fee may not  
16 exceed 1 percent of the gross receipts on recurring local  
17 service revenues for services that the telecommunications  
18 company provides within the corporate limits of the  
19 municipality; or

20 (b) If a municipality requires any telecommunications  
21 company that is providing telecommunication services defined  
22 in s. 203.012(7) to pay a fee as a condition for granting  
23 permission to use municipal roads and rights-of-way as the  
24 sites for poles, wires, and other fixtures, the fee may not  
25 exceed \$500 per linear mile of any cable, fiber-optic, or  
26 other pathway that makes physical use of the municipal  
27 right-of-way. A telecommunications company may not be required  
28 to pay more than one such fee or other consideration annually  
29 for the construction, maintenance, repair, rebuilding, or  
30 replacement of a parallel telecommunications route owned by  
31 it, or by a subsidiary under its direct control, which makes

1 use of the roads or rights-of-way of any municipality that  
2 enacts an ordinance pursuant to this paragraph. The fee  
3 imposed under this paragraph is inapplicable to a  
4 telecommunications company that provides telecommunication  
5 services as defined in s. 203.012(3).

6 (3) Included in the fees provided for in subsection  
7 (2) are all taxes, licenses, fees, and other sums imposed by a  
8 municipality, except ad valorem taxes and assessments for  
9 special benefits, such as sidewalks, street pavings, and  
10 similar improvements, and any applicable occupational license  
11 taxes levied or imposed by a municipality upon the  
12 telecommunications company. Except as expressly authorized or  
13 allowed by general law, a municipality may not levy on a  
14 telecommunications company a tax, fee, or other charge for  
15 operating as a telecommunications company within the  
16 jurisdiction of the municipality or that is in any way related  
17 to using roads or rights-of-way. A municipality may not allow  
18 a telecommunications company to pay a fee or provide  
19 compensation in excess of the limits prescribed in this  
20 section. A municipality may not require or accept in-kind  
21 compensation in lieu of any fees imposed pursuant to this  
22 section.

23 (4) A local governmental entity may not use its  
24 authority over the placement of facilities in its roads and  
25 rights-of-way as a basis for asserting or exercising  
26 regulatory control over a telecommunications company regarding  
27 matters within the jurisdiction of the Florida Public Service  
28 Commission or the Federal Communications Commission,  
29 including, but not limited to, the operations, systems,  
30 qualifications, services, service quality, service territory,  
31 and prices of a telecommunications company. This section does

1 not limit or expand the authority of a local governmental  
2 entity over any person providing cable service as defined in  
3 47 U.S.C. s. 522.

4 (5) A telecommunications company that has obtained  
5 permission to occupy the roads and rights-of-way of an  
6 incorporated city or town or that is otherwise lawfully  
7 occupying the roads or rights-of-way of a municipality on  
8 January 1, 1998, shall not be required to obtain additional  
9 consent to continue such lawful occupation of those roads or  
10 rights-of-way.

11 (6) Except as expressly provided in this section, this  
12 section does not modify the authority of local governmental  
13 entities under s. 337.401 or s. 166.231, nor does this section  
14 modify the duties of telecommunications companies under ss.  
15 337.401-337.404. This section does not apply to private roads,  
16 easements, and rights-of-way, to building permits, or to pole  
17 attachments. Except as expressly provided in this section,  
18 this section does not limit or expand whatever powers counties  
19 may have relating to roads and rights-of-way.

20 Section 2. Subsections (3) and (4) of section 337.401,  
21 Florida Statutes, are repealed.

22 Section 3. This act shall take effect upon becoming a  
23 law.

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SENATE SUMMARY

Provides for the regulation of the use of roads and rights-of-way by telecommunications companies. Provides for limitations on fees for such usage. Defines the term "administrative cost." Limits the amounts of fees that a municipality may impose as a condition for issuing certain permits. Prohibits exacting in-kind compensation in lieu of prescribed fees. Prohibits local governments from using their authority over the placement of telecommunications facilities as a basis for regulating matters that are within the jurisdiction of the Florida Public Service Commission or the Federal Communications Commission. Provides that a telecommunications company that has permission to occupy or is occupying municipal roads or rights-of-way on January 1, 1998, need not obtain additional consent to continue such occupation. Provides applicability. Repeals s. 337.401(3),(4), F.S., relating to municipalities' regulation of the use of municipal streets by telephone companies and municipalities' entering into agreements with entities that provide telecommunications services to allow those entities to use municipal streets, alleys, or other public ways.