

By the Committee on Community Affairs and Senators Bronson, Silver, Holzendorf, Meadows, Turner, Gutman, Harris and Myers

316-1849-98

1 A bill to be entitled

2 An act relating to use of rights-of-way by

3 telecommunications companies; amending s.

4 337.401, F.S.; limiting taxes, fees, or charges

5 imposed by municipalities for use of

6 rights-of-way; limiting local government

7 authority to regulate certain matters within

8 the jurisdiction of the Florida Public Service

9 Commission or the Federal Communications

10 Commission; prohibiting requiring

11 telecommunications companies from obtaining

12 additional consent to use certain rights-of-way

13 under certain circumstances; providing

14 construction; providing application; providing

15 a definition; providing an effective date.

16

17 WHEREAS, the Legislature finds it necessary to clarify

18 the authority of local governmental entities over the

19 operations of telecommunications companies and their occupancy

20 of roads and rights-of-way, NOW, THEREFORE,

21

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

23

24 Section 1. Section 337.401, Florida Statutes, is

25 amended to read:

26 337.401 Use of right-of-way for utilities subject to

27 regulation; permit; fees.--

28 (1) The department and local governmental entities,

29 referred to in ss. 337.401-337.404 as the "authority," that

30 have jurisdiction and control of public roads or publicly

31 owned rail corridors are authorized to prescribe and enforce

1 reasonable rules or regulations with reference to the placing
2 and maintaining along, across, or on any road or publicly
3 owned rail corridors under their respective jurisdictions any
4 electric transmission, telephone, or telegraph lines; pole
5 lines; poles; railways; ditches; sewers; water, heat, or gas
6 mains; pipelines; fences; gasoline tanks and pumps; or other
7 structures hereinafter referred to as the "utility."

8 (2) The authority may grant to any person who is a
9 resident of this state, or to any corporation which is
10 organized under the laws of this state or licensed to do
11 business within this state, the use of a right-of-way for the
12 utility in accordance with such rules or regulations as the
13 authority may adopt. No utility shall be installed, located,
14 or relocated unless authorized by a written permit issued by
15 the authority. The permit shall require the permitholder to
16 be responsible for any damage resulting from the issuance of
17 such permit. The authority may initiate injunctive
18 proceedings as provided in s. 120.69 to enforce provisions of
19 this subsection or any rule or order issued or entered into
20 pursuant thereto.

21 (3) If any municipality ~~municipal authority~~ requires
22 any telecommunications ~~telephone~~ company to pay a fee or other
23 consideration as a condition for granting permission to occupy
24 municipal streets and rights-of-way for poles, wires, and
25 other fixtures, such fee or consideration may not exceed 1
26 percent of the gross receipts on recurring local service
27 revenues for services provided within the corporate limits of
28 the municipality by such telecommunications ~~telephone~~ company.
29 Included within such 1-percent maximum fee or consideration
30 are all taxes, licenses, fees, in-kind contributions accepted
31 pursuant to subsection (5), and other impositions except ad

1 valorem taxes and amounts for assessments for special
2 benefits, such as sidewalks, street pavings, and similar
3 improvements, and occupational license taxes levied or imposed
4 by a municipality upon the telecommunications ~~telephone~~
5 company. This subsection shall not impair any franchise in
6 existence on July 1, 1985.

7 (4) A municipality may by ordinance enter into an
8 agreement with any person providing telecommunication services
9 defined in s. 203.012(7) as a condition for granting
10 permission to occupy or use any city street, alley, viaduct,
11 elevated roadway, bridge, or other public way. The agreement
12 shall permit the telecommunication service provider to
13 construct, operate, maintain, repair, rebuild, or replace a
14 telecommunications route within a municipal right-of-way. The
15 agreement shall provide for a fee or other consideration
16 payable annually based on actual linear feet of any cable,
17 fiber optic, or other pathway that makes physical use of the
18 municipal right-of-way. In no event shall the fee or other
19 consideration imposed pursuant to this subsection be less than
20 \$500 per linear mile of any cable, fiber optic, or other
21 pathway that makes physical use of the municipal right-of-way.
22 Any fee or other consideration imposed by this subsection in
23 excess of \$500 shall be applied in a nondiscriminatory manner
24 and shall not exceed the sum of:

25 (a) Costs directly related to the inconvenience or
26 impairment solely caused by the disturbance of the municipal
27 right-of-way; and

28 (b) The reasonable cost of the regulatory activity of
29 the municipality.

30 (c) The proportionate share of cost of land for such
31 street, alley, or other public way attributable to utilization

1 of the right-of-way by a telecommunication service provider.
2 Furthermore, no telecommunication service provider shall be
3 required to pay more than one such fee or other consideration
4 annually for the construction, maintenance, operation, repair,
5 rebuilding, or replacement of a parallel telecommunications
6 route owned by it, or by a subsidiary under its direct
7 control, which makes use of the right-of-way of any
8 municipality enacting an ordinance pursuant to this
9 subsection. The fee or other consideration imposed pursuant
10 to this subsection shall not apply in any manner to any
11 telecommunication service provider who provides
12 telecommunication services as defined in s. 203.012(3) for any
13 services provided by such service provider. Any agreement
14 entered into pursuant to the authority of this subsection
15 prior to June 3, 1988, and the fees or fee schedule in effect
16 on that date shall remain in full force and effect until such
17 agreement expires. Any ordinance enacted pursuant to this
18 subsection prior to June 3, 1988, and the fees or fee schedule
19 in effect on that date shall remain in full force and effect
20 unless the ordinance is repealed by the municipality.
21 Notwithstanding the language contained herein a municipality
22 may reenact any ordinance which has an automatic expiration
23 date provided the ordinance does not increase the fees in
24 effect in said ordinance in violation of this section.

25 (5) Except as expressly allowed or authorized by
26 general law, and except for the rights-of-way permit fees
27 subject to subsection (3), a municipality may not levy on a
28 telecommunications company a tax, fee, or other charge for
29 operating as a telecommunications company within the
30 jurisdiction of the municipality or that is in any way related
31 to using roads or rights-of-way. A municipality may not allow

1 a telecommunications company to pay a fee or provide
2 compensation in excess of the limits prescribed in this
3 section. A municipality may not require or solicit in-kind
4 compensation in lieu of any fees imposed pursuant to this
5 section. Nothing in this subsection shall impair any
6 ordinance or agreement in effect on the effective date of this
7 act that provides for or allows in kind compensation by a
8 telecommunications company.

9 (6) A local governmental entity may not use its
10 authority over the placement of facilities in its roads and
11 rights-of-way as a basis for asserting or exercising
12 regulatory control over a telecommunications company regarding
13 matters within the exclusive jurisdiction of the Florida
14 Public Service Commission or the Federal Communications
15 Commission, including, but not limited to, the operations,
16 systems, qualifications, services, service quality, service
17 territory, and prices of a telecommunications company.

18 (7) A telecommunications company, that has obtained
19 permission to occupy the roads and rights-of-way of an
20 incorporated city or town or that is otherwise lawfully
21 occupying the roads or rights-of-way of a municipality on the
22 effective date of this act, shall not be required to obtain
23 additional consent to continue such lawful occupation of those
24 roads or rights-of-way, however, nothing in this subsection
25 shall be interpreted to limit the power of a municipality to
26 impose a fee or adopt or enforce reasonable rules or
27 regulations as provided in this section.

28 (8) Except as expressly provided in this section, this
29 section does not modify the authority of local governmental
30 entities to levy the tax authorized in s. 166.231 or the
31 duties of telecommunications companies under ss.

1 337.402-337.404. This section does not apply to building
2 permits, pole attachments, or private roads, private
3 easements, and private rights-of-way. Except as expressly
4 provided in this section, this section does not limit or
5 expand whatever powers counties may have relating to roads and
6 rights-of-way.

7 (9) As used in this section, "telecommunications
8 company" has the same meaning as defined in s. 364.02.

9 Section 2. This act shall take effect upon becoming a
10 law.

11
12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 Senate Bill 1704

15 Revises legislative findings.

16 Amends existing s. 337.401, F.S., rather than creating a new
17 section of the Florida Statutes.

18 References the existing definition of "telecommunications,"
19 which excludes cable providers, and clarifies that the one
percent limitation applies to all telecommunications providers
and must include all in-kind contributions.