

STORAGE NAME: h3291s1a.uco

DATE: March 13, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
UTILITIES AND COMMUNICATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: Committee Substitute for House Bill 3291

RELATING TO: Telecommunications Rights-of-Way

SPONSOR(S): Committee on Utilities and Communications, Rep. Valdes and others

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) UTILITIES AND COMMUNICATIONS YEAS 13 NAYS 0
- (2) COMMUNITY AFFAIRS
- (3) FINANCE AND TAXATION
- (4)
- (5)

I. SUMMARY

Section 337.401, Florida Statutes is amended as follows:

Subsection (3) is amended to provide that the term "telecommunications companies" replaces "telephone companies" and the term "municipality" replaces "municipal authority." The bill clarifies that "in-kind" contributions are included within the one percent fee cap.

Subsection (5) is created to clarify that charges and fees imposed by a municipality on telecommunications companies are limited to those authorized by the legislature. Municipalities are prohibited from requiring or soliciting in-kind compensation in lieu of fees. Existing ordinances and agreements providing for in-kind compensation are "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.

Subsection (7) is created to provide that telecommunications companies that are lawfully occupying roads of an incorporated city or town on the effective date of the act are not required to obtain additional consent from the city or town. However, the city and town can impose fees and adopt reasonable rules and regulations.

Subsection (8) is created to clarify that the bill does not modify tax authority pursuant to section 166.231, Florida Statutes, or the duties of a telecommunications provider pursuant to sections 337.402-404, Florida Statutes. The bill does not apply to private property, building permits or pole attachments. Except as expressly provided, the bill 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 section 364.02, Florida Statutes.

The bill takes effect upon becoming a law.

Fiscal impact is indeterminate.

II. SUBSTANTIVE RESEARCH:

A. 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 government. 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 dependant 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.

Section 337.401, Florida Statutes, establishes the parameters for rights-of-way agreements, including limitations on fees charged by local governments. According to the telecommunications industry, some local governments are attempting to charge fees for use of rights-of-way that are in excess of the authorized statutory limits. Conversely, according to the League of Cities, some providers which occupy rights-of-way fail to comply with section 337.401, Florida Statutes.

The industry also has reported that some local governments are attempting to impose unreasonable requirements and local regulation on telecommunications providers as a condition for the use of public rights-of-way. Such requirements have been characterized by the Federal 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 section 337.401, Florida Statutes, 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, Florida Statutes, 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, Florida Statutes, 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. Finally, section 47 U.S.C. 253, of the 1996 Federal Telecommunications Act, 1) prohibits local government requirements that have the effect of prohibiting an entity from providing telecommunications services, 2) requires that compensation for use of rights-of-way be

nondiscriminatory, and 3) provides authority for the Federal Communications Commission to preempt state and local requirements that prohibit entry or discriminate.

The applicable statutory requirements are provided in more detail below.

Florida Statutes

Section 362.01, Florida Statutes, authorizes telephone companies to build facilities on, or beside, any public road or highway provided the facilities do not interfere with the use of the road or highway. Section 362.01, Florida Statutes, also provides that "permission to occupy the streets of an incorporated city or town must first be obtained from the city or town council."

Section 364.0361, Florida Statutes, 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, Florida Statutes, provides the following:

- Local governmental entities have authority to prescribe and enforce reasonable rules or regulations with reference to placing and maintaining telephone lines along, across, or on any public road. Section 337.401(1), Florida Statutes.
- Local governmental entities may grant the use of a right-of-way in accordance with rules and regulations the local entity adopts. Section 337.401(2), Florida Statutes.
- The installation of facilities is prohibited unless authorized by written permit issued by the local authority. *Id.*
- A fee cap is set 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. Section 337.401(3), Florida Statutes.
- Long distance providers are to pay not less than \$500 per linear mile for facilities that make physical use of the municipal right-of-way. Section 337.401(4), Florida Statutes.
- 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. *Id.*

The terms and conditions of some older franchise agreements are "grand fathered" by section 337.401, Florida Statutes.

Federal 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);
- States may impose, on a competitively neutral basis, requirements that are necessary to protect the public safety and welfare. 47 U.S.C. 253(b);
- The Federal Communications Commission is authorized to preempt State and local requirements that are inconsistent with the foregoing. 47 U.S.C. 253(d).

47 U.S.C. 253 does not affect

. . . the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government. 47 U.S.C. 253(c).

B. EFFECT OF PROPOSED CHANGES:

A "WHEREAS" clause expresses the need to clarify authority of local governmental entities in relation to telecommunications providers.

Section 337.401, Florida Statutes is amended as follows:

Subsection (3) is amended (updated) to apply to "telecommunications companies" instead of the old description which is "telephone companies." The term "municipal authority" is changed to read simply "municipality." The bill also clarifies that "in-kind" contributions are included within the one percent cap.

Subsection (5) is created to clarify that charges and fees imposed by a municipality on telecommunications companies are limited to those authorized by the legislature. Subsection (5) also prohibits a municipality from requiring or soliciting in-kind compensation in lieu of fees imposed pursuant to this section. -----Existing ordinances and agreements providing for in-kind compensation are "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. Such regulatory jurisdiction is with the Florida Public Service Commission and the Federal Communications Commission.

Subsection (7) is created to provide that telecommunications companies that are lawfully occupying roads of an incorporated city or town on the effective date of the act are not required to obtain additional consent from the city or town. However, the city and town can impose fees and adopt reasonable rules and regulations as provided in the bill.

Subsection (8) is created to clarify that the bill does not modify tax authority pursuant to section 166.231, Florida Statutes or the duties of a telecommunications provider pursuant to sections 337.402-404, Florida Statutes. The bill does not apply to private property, building permits or pole attachments. Except as expressly provided, the bill 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 section 364.02, Florida Statutes. Such companies provide services that are regulated by the Florida Public Service Commission. Entities offering solely wireless telecommunications and cable television services are excluded.

The bill takes effect upon becoming a law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

N/A.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

(2) what is the cost of such responsibility at the new level/agency?

N/A.

(3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. Telecommunications companies pay fees to occupy rights-of-ways.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A.

- (2) Who makes the decisions?

N/A.

- (3) Are private alternatives permitted?

N/A.

- (4) Are families required to participate in a program?

N/A.

- (5) Are families penalized for not participating in a program?

N/A.

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. STATUTE(S) AFFECTED:

Section 337.401, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

N/A.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Indeterminate.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

STORAGE NAME: h3291s1a.uco

DATE: March 13, 1998

PAGE 10

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

After extensive negotiations the industry and local governments have agreed to the language in the bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Legislative Research Director:

Charles Murphy

Patrick L "Booter" Imhof