

By Representatives Valdes, Garcia, Morse and Barreiro

1 A bill to be entitled
2 An act relating to public rights-of-way;
3 creating s. 337.4011, F.S., creating the
4 "Telecommunications Rights-of-Way Act";
5 creating s. 337.4012, F.S., providing
6 legislative findings and intent; creating s.
7 337.4013, F.S., providing definitions; creating
8 s. 337.4014, F.S., providing requirements with
9 respect to consent necessary for the use of
10 streets and public rights-of-way; creating s.
11 337.4015, F.S., providing for permissible
12 taxes, fees, and charges; providing an
13 effective date.

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

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17 Section 1. Section 337.4011, Florida Statutes, is
18 created to read:

19 337.4011 Short title.--Sections 337.4011-337.4015 may
20 be cited as the "Telecommunications Rights-of-Way Act."

21 Section 2. Section 337.4012, Florida Statutes, is
22 created to read:

23 337.4012 Legislative findings and intent.--

24 (1) The Legislature finds that because the public
25 rights-of-way are dedicated to and held on a nonproprietary
26 basis in trust for use of the public, their use by
27 telecommunications companies is consistent with the policies
28 of the state expressed in chapter 364 and is appropriate for
29 the public good.

30 (2) It is the intent of the Legislature that nothing
31 in this act shall be construed to alter or diminish the

1 authority of local government to lawfully exercise their
2 police powers within their boundaries, and, subject to such
3 reservation of authority, that:

4 (a) The construction, maintenance, operation,
5 oversight, and regulation of telecommunications providers and
6 their facilities is a matter of statewide concern and
7 interest;

8 (b) Telecommunications providers operating under the
9 authority of the Federal Communications Commission or the
10 Florida Public Service Commission pursuant to chapter 364,
11 require no additional authorization from any local government
12 of the state to conduct business within a given geographic
13 area and that no such local government has jurisdiction to
14 regulate telecommunications providers based upon the content,
15 nature, or type of telecommunications service or signal they
16 provide except to the extent expressly granted by federal or
17 state legislation; and

18 (c) As provided for in s. 362.01, telecommunications
19 providers have a right to occupy and utilize the public
20 rights-of-way for the efficient conduct of their business.

21 (3) It is further the intent of the Legislature that,
22 in administering the public rights-of-way, no local government
23 shall require a telecommunications provider to pay for the use
24 of the rights-of-way. However, a local government having the
25 authority to do so may recover its costs of managing the
26 public rights-of-way as provided herein.

27 Section 3. Section 337.4013, Florida Statutes, is
28 created to read:

29 337.4013 Definitions.--

30 (1) "Local government" means an authority that has
31 control of public roads, streets, and rights-of-way.

1 (2) "Management costs" means the actual costs a local
2 government incurs in managing its public rights-of-way and
3 includes the costs of issuing and processing rights-of-way
4 construction permits, inspecting job sites and restoration
5 projects, determining the adequacy of rights-of-way
6 restoration, restoring work inadequately performed after
7 providing notice and the opportunity to correct the work, and
8 revoking rights-of-way permits. Management costs do not
9 include payment for use of the public rights-of-way, attorney
10 and consultant fees and costs associated with ordinance, fee,
11 or cost development, or the costs and fees of litigation
12 relating to rights-of-way.

13 (3) "Public streets and rights-of-way" or
14 "rights-of-way" includes all roads, streets, and alleys and
15 all other dedicated rights-of-way and utility easements of the
16 state or any of its local governments, whether located within
17 the boundaries of a local government or otherwise.

18 (4) "Telecommunications provider" or "provider" has
19 the same meaning as "telecommunications company" as defined in
20 s. 364.02(12).

21 Section 4. Section 337.4014, Florida Statutes, is
22 created to read:

23 337.4014 Consent necessary to use of streets.--

24 (1) A telecommunications provider that, on or before
25 the effective date of this section, either has obtained
26 permission of the incorporated city or town having express
27 authority to require such permission or is lawfully occupying
28 public streets and rights-of-way shall not be required to
29 obtain additional or continued consent to continue such lawful
30 occupation of the public streets and rights-of-way.

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1 (2) Where expressly required by statute, permission to
2 occupy public streets and rights-of-way within an incorporated
3 city or town is a function of and may only be based upon a
4 lawful exercise of the police power.

5 (3) Telecommunications providers require no additional
6 authorization from any local government of the state to
7 conduct business.

8 Section 5. Section 337.4015, Florida Statutes, is
9 created to read:

10 337.4015 Permissible taxes, fees, and charges.--

11 (1) No local government shall levy a tax, fee, or
12 charge for any right or privilege of engaging in a
13 telecommunications business other than an occupational license
14 tax pursuant to chapter 205.

15 (2)(a) A local government may recover its
16 rights-of-way management costs by imposing a fee for each
17 rights-of-way permit. A local government may not recover from
18 a telecommunications provider costs caused by another entity's
19 activity in the rights-of-way.

20 (b) Fees imposed by a local government on
21 telecommunications providers must be:

22 1. Limited to the local government's management costs;

23 2. Based on an allocation among all users of the
24 public rights-of-way, including the local government itself,
25 which shall reflect the proportionate costs imposed on the
26 local government by each of the various types of uses of the
27 public rights-of-way;

28 3. Imposed on a competitively neutral basis;

29 4. Imposed in a manner so that aboveground uses of
30 public rights-of-way do not bear costs incurred by the local
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1 government to regulate underground uses of public
2 rights-of-way; and
3 5. Within the limits of s. 337.401.
4 (c) In any controversy concerning the appropriateness
5 of a fee or charge, the local government shall have the burden
6 of proving that the fee or charge is reasonably related to the
7 direct costs incurred by such local government.
8 (d) The rights, duties, and obligations regarding the
9 use of the public rights-of-way imposed under this section
10 must be applied to all users of the public rights-of-way,
11 including local government.
12 (3) In managing the public rights-of-way and in
13 imposing fees under this section, no local government may
14 require a telecommunications provider to pay for the use of
15 the public streets or rights-of-way.
16 (4) Taxes, fees, and charges imposed shall not be
17 collected through the provision of in-kind services or
18 facilities as a condition of permission to occupy streets or
19 rights-of-way.
20 (5) Nothing in ss. 337.4011-337.4015 shall be
21 construed to grant a local government authority to impose any
22 fee not authorized by law in effect on December 1, 1997.

23 Section 6. This act shall take effect upon becoming a
24 law.

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27 HOUSE SUMMARY

28 Creates the "Telecommunications Rights-of-Way Act" to
29 provide for the regulation of access to public streets
30 and public rights-of-way in incorporated cities and towns
31 by telecommunications companies. See bill for details.