

# 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.)

BILL: CS/SB 1846

SPONSOR: Regulated Industries Committee and Senator Horne

SUBJECT: Public Records/Telecommunications

DATE: March 17, 2000 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wimsett</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The bill provides an exemption from the public records requirements for certain telecommunications company records. It also provides for future review and repeal of the exemption.

The bill creates an as yet unnumbered section of Florida law.

## II. Present Situation:

Many local governments have ordinances regulating telecommunications companies' use of the public rights-of-way. Public rights-of-way include public streets, and public easements including the area on or under the surface. These ordinances require telecommunications companies to become licensed and pay licensing fees. *See e.g.*, Ordinance No. 99-167 (amending Chapter 8AA of the Code of Miami-Dade County).

A license authorizes a telecommunications company to install conduits, cables, fiber optic lines, poles, wires, supports and other structures necessary for the operation of telecommunications system. The license application procedure requires an applicant to furnish information as to the nature and size of the proposed telecommunication system's plant and equipment. Some ordinances require the telecommunications company to provide a map or diagram that describes and shows the locations of all telecommunications facilities. *See e.g.*, Ordinance No. 99-O-0045AA (creating Article VI, Chapter 20, City of Tallahassee Code) (requiring the information be provided in "digital format compatible with the city's GIS system"). In addition to this initial disclosure requirement, audit and reporting provisions typically require a telecommunications company to make its books, records, and accounts available on an annual basis for inspection.

Article 1, Section 24 of the Florida Constitution mandates access to public records and meetings. Subsection (a) of s. 24 provides that "[e]very person has the right to inspect or copy any public

record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records *exempted pursuant to this section* or specifically made confidential by this Constitution.” (emphasis added) This section expressly includes counties, municipalities, districts.

Subsection (c) of s. 24 contains the exemption provision alluded to in subsection (a). Certain records may be exempted if the Legislature enacts such a law if the law states with specificity the public necessity justifying the exemption. The exemption must also be narrowly tailored to meet the stated purpose of the law. See Article 1, s. 24, Fla. Const.

Subsection (1) of s. 119.07, Florida Statutes, provides for the inspection, examination, and duplication of records. It requires those who have custody of public records to permit the inspection and examination of public records by any person desiring to do so, at any reasonable time, under reasonable conditions. The law also requires the custodian to furnish a copy of the public record upon payment of the fee prescribed by law.

Telecommunications companies maintain that public disclosure requirements compromise their business interests by allowing competitors access to their business records. Such access may compromise the competitive environment of the telecommunications industry and the security of the telecommunications network.

### **III. Effect of Proposed Changes:**

The bill states that it is a public necessity that proprietary confidential business information be kept confidential when held by a local government entity. The bill exempts proprietary confidential business information obtained from a telecommunications company by a local government entity for the purposes of regulating the public rights-of-way from the provisions of section 119.07(1), Florida Statutes, and Section 24(a), Article 1 of the Florida Constitution.

The bill provides that the information may only be used for the purpose of regulating the public rights-of-way, and may not be used for other purposes. The exemption is subject to the Open Government Sunset Review Act of 1995 and will be repealed on October 1, 2005, unless reviewed and saved from repeal through reenactment by the Legislature.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

The exemption of “any proprietary confidential business information, including maps, records, or other information relating to the provision of telecommunications services” may be overly broad and contrary to state policy regarding public records. An alternative model for balancing the state’s constitutional and statutory requirements regarding public records and the need to protect sensitive business information is used by the Florida Public Service

Commission. The Commission defines such information as information that would cause harm to the ratepayers or the person's or company's business operations. Enumerated examples of proprietary confidential information include:

- trade secrets;
- internal auditing controls and reports of internal auditors;
- security measures, systems, or procedures;
- information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company or its affiliates to contract for goods or services on favorable terms;
- information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information; and
- employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

*See* s. 364.183, F.S. This section provides that, upon request of the company, such information shall be kept confidential and exempt from s. 119.07(1) and s. 24(a), Art. 1, Fla. Const.

The Commission has adopted rules to implement this section. Rule 25-22.006, Florida Administrative Code. The rule provides that any person may file a petition to inspect and examine any material which has been claimed confidential pursuant to s. 364.183(1), F.S. A copy of the petition must be served on the affected telecommunications company or person which shall have 10 days to file a response as to why the material should remain exempt. The petitioner shall have 7 days to file a reply to the filed response. The Commission may set the matter for hearing or issue a ruling on the pleadings. 25-22.006 (5)(c)(2), F.A.C.

This model may not be applicable to the handling of proprietary confidential information by local governments. If no administrative review mechanism is established, however, s. 119.07, F.S., provides that a citizen may file a civil action for disclosure. Subsection (1) of s. 119.11, F.S., further provides that “[w]henver an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.” Subsection (1) of s. 119.12, requires an agency that unlawfully refuses to permit a public record to be inspected to pay costs and attorney's fees.

#### C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill protects certain telecommunications company records from review by competitors. This exemption from the public records requirements may foster fair competition in the telecommunications industry.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.