

STORAGE NAME: h2417z.uco
DATE: June 28, 2000

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2000-322, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMITTEE ON UTILITIES & COMMUNICATIONS
FINAL ANALYSIS**

BILL #: HB 2417 (PCB UCO 00-10)

RELATING TO: Public Records

SPONSOR(S): Committee on Utilities and Communications and Representative Rojas

TIED BILL(S): HB 2415 (PCB UCO 00-06)

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

- (1) COMMITTEE ON UTILITIES & COMMUNICATIONS YEAS 10 NAYS 0
 - (2) GENERAL GOVERNMENT APPROPRIATIONS (W/D)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Local governments have the ability to enact ordinances to regulate the use of the public rights-of-way. Ordinances have been adopted by local governments specifying the requirements for use of the public right-of-way by telecommunications companies and franchised cable companies. These companies must, pursuant to ordinance, make application for a license and pay licensing fees.

The bill provides a public records exemption for information supplied by a telecommunications carrier or franchised cable company to a local government relating to occupying the public rights of way or the communications services tax. The bill also provides that certain information relating to the exact location and capacity of communications services held by local governments are also exempt from the public records law. It provides for future review and repeal of the exemption. The bill also provides for legislative finding that it is a public necessity to keep the information confidential.

The bill does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Local governments have the ability to enact ordinances to regulate the use of the public rights-of-way. Public rights-of-way are defined in section 177.031, F.S., relating to land boundaries as:

land dedicated, deeded, used, or to be used for a street, alley, walkway, boulevard, drainage facility, access for ingress and egress, or other purpose by the public, certain designated individuals, or governing bodies.

Ordinances have been adopted by local governments specifying the requirements for use of the public right-of-way by telecommunications companies and franchised cable companies. These companies must, pursuant to ordinance, make application for a license and pay licensing fees. In Broward County, for example, telecommunications companies are also required to provide access to their books and records related to "construction, operation, maintenance or repair of the telecommunications facility" for the purpose of complying with the county's ordinance. The City of Tallahassee requires a map or diagram that describes and shows the locations of the telecommunications facilities

including, without limitation, overhead and underground lines, poles, vaults, manholes, and other physical structures, at-grade shelters or enclosures for other Telecommunication Facilities, and all lines or cables connected to such Telecommunications Facilities that are located within the public Rights-of-Way.

According to the telecommunications industry, while this information is necessary for local governments to manage the rights-of-way, the information has become increasingly sensitive and public disclosure may compromise their business interests in a competitive marketplace.

Article I, section 24, Florida Constitution, expresses Florida's public policy regarding access to government records in providing that:

- (a) Every person has the right to inspect or copy any public records 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. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, section 24, Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of section 24. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

C. EFFECT OF PROPOSED CHANGES:

The bill provides that any proprietary confidential business information obtained from a telecommunications company or cable company by a local government relating to fees for occupying the public rights-of-way, the local communications services tax established in section 202.19, F.S., or otherwise relating to the public rights-of-way is confidential and exempt from disclosure. This information is exempt from the provisions of section 119.07(1), F.S. and section 24(a), art. I of the State Constitution. The bill further provides

that the information may only be used for the purpose of imposing the fees and taxes regulating the rights-of-way and may not be used for any other purpose.

“Proprietary confidential business information” is defined as any confidential information or documentation, including “maps, plans, billing and payment records, trade secrets, or other information” that relates to providing communications services or relates to facilities providing communication services. This information must have been treated by the company as confidential and is not otherwise publicly available in the same extent and format as that requested by the local government. Proprietary confidential business information does not include schematics of the location for a specific site provided in the normal course of the permitting process.

The bill also states that nothing in the exemption expands the information or documentation that a local government may properly request in the regulation of its rights-of-way.

Any information held by local governments that consists of maps, plans, schematics, diagrams, or other engineering data that relates to the exact location and capacity of communications services facilities is also exempt from section 119.07(1), F.S., and section 24(a), art. I of the State Constitution.

This section is subject to review under section 119.15, F.S., the Open Government Sunset Review Act of 1995.

Finally, the bill also provides legislative findings that keeping this information confidential is a public necessity and that disclosure would adversely affect the business interests of telecommunication and cable companies by harming them in the marketplace and compromising the security of the communications network. It also would create a competitive disadvantage to local governments and give any competitors an unfair advantage.

D. SECTION-BY-SECTION ANALYSIS:

Please see “Effect of Proposed Changes” section.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to increase or decrease state revenues.

2. Expenditures:

The bill does not appear to increase or decrease state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local revenues.

2. Expenditures:

The bill does not appear to require local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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.

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:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

This bill was approved by the Governor on June 19, 2000.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON UTILITIES & COMMUNICATIONS:

Prepared by:

Staff Director:

Patrick L. "Booter" Imhof

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON COMMITTEE ON UTILITIES & COMMUNICATIONS:

Prepared by:

Staff Director:

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