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 1758

SPONSOR: Committee on Regulated Industries and Senator Lee

SUBJECT: Public Rights-of-Way and Pay Telephones

DATE: April 15, 1999 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Martin	Guthrie	RI	Favorable/CS
2.			FP	
3.				
4.				
5.				

I. Summary:

This bill amends the Florida Transportation Code to exempt pay telephone service from state control of public roads and rights-of-way. It allows local governments to control the placement of pay phones situated on public rights-of-way, and agreements with telecommunications companies allowing the placement of pay phones are no longer be subject to the maximum fee limits prescribed in the current law. In addition, counties and cities are no longer restricted from levying other taxes, licenses, and fees, or from soliciting in-kind contributions in consideration for permitting pay phones on public rights-of-way within their jurisdictions. The bill specifically states that the act does not apply to contracts entered into before the effective date.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 337.401.

II. Present Situation:

Currently, the Florida Public Service Commission exercises exclusive state regulation over pay phones. *See*, s. 364.3375, F.S. Upon granting a telecommunications company a certificate of public convenience and necessity to provide pay telephone service statewide, the PSC has no authority over placement of pay phones, but may regulate the types of calls that can be handled.

Last year, the Legislature enacted Chapter 98-147, Laws of Florida, and clarified that the fees that counties and municipalities could charge telecommunications companies as a condition of occupying streets and rights-of-way could not exceed 1% of the gross receipts from local service revenues for services provided within the local jurisdiction's boundaries. By amending the statute to apply to "telecommunication companies" instead of "telephone companies," the law applied the maximum fee restrictions to all pay phones contained within a local rights-of-way, as well as poles, wires, and related fixtures. The maximum fee includes all taxes, special improvement assessments, and occupational license taxes. The law further clarified that local governments cannot use their authority over the placement of facilities in their roads and rights-of-way as a basis for asserting regulatory control over telecommunication companies regarding matters that are the exclusive jurisdiction of the PSC or the Federal Communications Commission, such as operations, systems, services, service quality, service territory, and prices. *See*, s. 337.401(6), F.S.

Section 276(b)(2) of the federal Telecommunications Act of 1996 states that the FCC, in adopting rules on pay phone service pursuant to the Act,

> . . . shall determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained . . .

Paragraph 19 of FCC Order No. 96-388 states that public interest payphones should be maintained. FCC Rule No. 64.1330 requires that each state remove any of its regulations that impose market entry or exit requirements.

III. Effect of Proposed Changes:

Section 1 amends s. 337.401, F.S., to remove pay telephone service on public roads or rights-of-way, or municipal property, from its provisions. Counties and cities would no longer be subject to the maximum fee provisions set forth in existing law, nor would they be limited from imposing other taxes, licenses, fees or soliciting in-kind contributions in consideration for permitting pay phones on public rights-of-way in their jurisdictions.

Section 2, consistent with Art. I, § 10 of the Florida Constitution, provides that the act does not apply to contracts entered into before the effective date.

Section 3 Provides that the act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Because the bill would free counties and municipalities to regulate pay phones on public roads and rights-of-way in their jurisdictions without being limited to the maximum fee provisions in existing law, it does not result in a reduction of their authority to raise revenues. The bill would not be subject to the special approval requirements of Art. VII, § 18(b), Fla. Const.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Consistent with Art I, § 10 of the Florida Constitution, the bill provides that it will not apply to contracts entered into before the effective date.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The telecommunication companies that provide pay phone services in Florida may be impacted by the return of local control over the placement of pay phones and the lifting of the maximum fee cap.

C. Government Sector Impact:

None. If the bill impacts the PSC at all, it should reduce the current effort to regulate pay phones through the increase in local regulation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.