

STORAGE NAME: h2237.ca
DATE: April 27, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 2237

RELATING TO: Use of Right-of-Way for Utilities

SPONSOR(S): Representative Eggelletion and others

COMPANION BILL(S): HB 2265 (s); CS/SB 1758 (s); and CS/1st ENG/SB 1008 (c)

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

- (1) UTILITIES & COMMUNICATIONS (W/D)
 - (2) COMMUNITY AFFAIRS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill excludes pay telephone service providers from a definition of telecommunications company. The bill exempts from certain requirements the provision of pay telephone service on certain property.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

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 “grandfathered” by section 337.401, Florida Statutes.

- Subject to certain express exceptions, general law, or certain right-of-way permit fees, a municipality may not levy on a telecommunications company a tax, fee, or other charge for operating as a telecommunications company within the municipality or for any way related to using roads or rights-of-way. Section 337.401(5), Florida Statutes.
- A municipality may not allow a telecommunications company to pay a fee or provide compensation in excess of the certain limits. *Id.*
- A municipality may not require or solicit in-kind compensation in lieu of any fees. *Id.*
- The terms and conditions of some older ordinances or agreements are “grandfathered” in. *Id.*
- Prohibits local governments from using their authority over placement of facilities in their roads and right-of-ways as a basis for asserting or exercising regulatory control over a telecommunications company regarding certain matters exclusively within the jurisdiction of the Florida Public Service Commission or the Federal Communications Commission. Section 307.401(6), Florida Statutes.
- Provides that a telecommunications company that has obtained permission to occupy the roads and rights-of-way of an incorporated city or town or that is otherwise lawfully occupying the roads or rights-of-way of a municipality on the effective date of this act and that nothing in this subsection shall be interpreted to limit the power of a municipality to impose a fee or adopt or enforce reasonable rules or regulations authorized by this section. Section 307.401(7), Florida Statutes.
- Provides that, except as expressly provided, this section does not modify the authority of local government entities to levy certain taxes authorized by general law or the duties of telecommunications companies as defined under general law. Section 307.401(8), Florida Statutes.
- Provides that this section does not apply to building permits, pole attachments, or private roads, private easements, and private rights-of-way. *Id.*

- Provides that, except as provided, this section does not limit or expand whatever powers counties may have relating to roads and rights-of-way. *Id.*
- Provides that nothing in this section limits or expands whatever authority a local government may have to impose any fee pursuant to 47 U.S.C. ss. 542 and 573. *Id.*
- Provides that “telecommunications company” has the same meaning as defined in s. 364.02, Florida Statutes. Section 307.401(9), Florida Statutes.

B. EFFECT OF PROPOSED CHANGES:

The bill excludes pay telephone service providers from a definition of telecommunications company. The bill exempts from certain requirements the provision of pay telephone service on certain property.

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:

(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?

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

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 ANALYSIS:

Section 1: Amends subsection 337.401(9), Florida Statutes, excluding pay telephone service providers from a definition of telecommunications company.

Creates subsection 337.401(10), Florida Statutes, exempting from certain requirements the provision of pay telephone service on public roads or rights-of-way or on municipal property.

Section 2: Provides that the act takes effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

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:

Indeterminate.

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.

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

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

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Representative Gay will offer the following amendment:

Amending Section 1 of the bill: Specifying that specified provisions do not apply to the provisions of pay telephone service on public or municipal roads or rights-of-way.

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Adding a new Section 2 to the bill: Providing that a contract in effect on the effective date of this act shall not be impaired.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

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