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Florida Senate & House of Representatives

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Hetrick</u>	<u>Buck</u>	1. <u>ECCA</u>	<u>FAV/CS</u>
2. <u>Wiehle <i>rw</i></u>	<u>Lester <i>BL</i></u>	2. <u>JCI</u>	<u>Favorable</u>
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Cable TV Services/Easements,
State Road Rights-of way,
Electric Utility
Preferential Treatment

BILL NO. AND SPONSOR:

CS/SB 942, 945, & 946 by the
Senate Economic, Community and
Consumer Affairs Committee,
Senator Kiser and others

I. SUMMARY:

A. Present Situation:

The federal Cable Communications Policy Act (CCPA) of 1984 generally preempts state regulation of franchise cable television services as to rates, quality of transmission, quantity and content of programming, and amount of franchise fees that can be charged (5 percent of gross cable revenue). State or local governments, however, may enact and enforce any consumer protection law not inconsistent with the CCPA. In addition, franchise authorities may enforce customer service requirements and line construction schedules, s.632 of the CCPA. Currently, Florida does not have a general legislative scheme regulating cable TV companies, even to the limited extent possible under the federal law.

Section 613(b)(1) of the CCPA specifically prohibits telephone companies from owning or controlling a franchise cable TV company within their service area. This is commonly referred to as a "cross ownership" prohibition. However, neither federal nor state law prohibit electric utility company cross ownership of a cable television provider.

In relation to section 1 of the bill, chapter 177, F.S., establishes minimum requirements for and provides local governments with the power to regulate the platting of lands. The law currently requires developers who subdivide land for improvement to submit the subdivision plat to the city or county government for approval prior to recordation of the plat. Subdivision plats are required to include a dedication of some property for public use, such as for roads and utility easements. Currently s.177.091, F.S., requires plats made for recording to conform to various criteria. These generally pertain to the lot and land boundaries, but also include the above mentioned approval and dedication. Provision for cable TV lines is not included within these requirements. Currently cable TV companies must negotiate with a developer to be included within a utility easement.

In relation to sections 2 and 3 of the bill, section 337.406, F.S., generally prohibits the commercial use of state maintained road rights-of-way including but not limited to advertising or offering merchandise for sale; servicing or repairing motor vehicles; and commercial or charitable solicitations for the sale of goods or services. Section 337.401, F.S., authorizes the appropriate governing body to grant the right to use the road right-of-way to a utility as described in the section. This description does not include cable TV services.

In relation to section 4 of the bill, a cable company must currently negotiate for the right to place its cable on the utility poles owned by a public utility. A cable TV company that is affiliated with an electric utility which owns or controls the utility poles within the service area could obtain a competitive advantage over a nonaffiliated cable TV company if it were to receive a more favorable pole attachment agreement. In addition, the electric utility is in a position to grant its affiliated cable TV company easy access to utility customers through its monthly bill advertising stuffers. Currently, electric utility companies are relatively new to the franchise cable TV business.

B. Effect of Proposed Changes:

Section 1. amends s.177.091, F.S., relating to plats made for recording by adding a new subsection (28). This new subsection would require platted utility easements to include provision for the installation and prohibits cable TV line installation or maintenance cannot interfere with the electric, telephone, gas, or other utility services and the cable TV company liable for any damages caused by installation or maintenance is required to comply with the National Electrical Safety Code.

Section 2. amends chapter 337, F.S., relating to the acquisition, disposition or use of property by the state by creating section 337.4061, F.S. The proposed new section would make it unlawful for a nonfranchise cable TV company to use a state-maintained road right-of-way in an area being served by a franchised cable TV system. Such unlawful use would constitute a violation of s.337.406, F.S., which carries a second degree misdemeanor penalty.

Section 3. reprints s.337.406, F.S., referred to in section 2. of the committee substitute.

Section 4. creates s.366.031, F.S., relating to electric utilities:

Subsection 1. provides definitions of terms including "affiliate", "cable service", "cable system", and "video programming". These definitions track the definitions contained in the Cable Communications Policy Act of 1984.

Subsections 2. and 3. are intended to provide a "level playing field" for cable TV companies whether or not affiliated with an electric utility. Subsection 2. would prohibit any electric utility from giving a preference or advantage to any person as an inducement to take cable services from a cable system if that cable system is owned, controlled by, or under common ownership (i.e., "affiliated") with the electric utility and it is providing video programming within that electric utility's service area.

Subsection 3. would prohibit an electric utility from treating an affiliated cable system more favorable than a non-affiliated cable system, when the two cable systems are operating within any part of the utility's service area.

Subsection 4. provides the court with authority to award damages and to enjoin practices found in violation of the statute. In addition, costs and attorney's fees shall be awarded to the prevailing party.

Section 5. provides for severability.

Section 6. provides an effective date.

II. ECONOMIC IMPACT AND FISCAL NOTE:**A. Public:**

The requirement that utility easements in subdivision plats include cable TV services could have an impact on those developers who plan to charge cable TV companies for the use of utility easements, however the potential cost to developers is unknown.

Violators of s.337.4061, F.S., would face the costs associated with a misdemeanor of the second degree, punishable as provided in s.775.082 or s.775.083, F.S.

It is unknown at this time what the economic impact of the anti-preferential treatment provision of the committee substitute would be on electric utilities as currently there are no allegations that any actual preferential treatment resulting in unfair competition has occurred. As previously mentioned, electric utility companies are relatively new to the franchise cable business.

B. Government:

None.

III. COMMENTS:

The requirement in the bill that utility easements on recorded subdivision plats include cable TV services, could raise certain constitutional issues involving the taking of property without just compensation and denial of due process in violation of the 5th and 14th amendments to the U.S. Constitution. This is because it would require developers to give up a property right without receiving any compensation that they formerly could retain or sell. In a recent 1986 case, Storer Cable T.V. of Fla., Inc. v. Summerwinds Apt. Assoc., Ltd., 493 So.2d 417, the Florida Supreme Court ruled that a related statute (s. 83.66, F.S.) was an unconstitutional "taking" of property and a denial of due process of law. Section 83.66, F.S., had allowed a franchised cable TV company to attach its cable to an apartment building without having to pay (fair market value) compensation to the landlord when any tenant requested cable TV services. Whether the Court would consider required inclusion of cable TV services within a platted subdivision utility easement dedication to be the same as the uncompensated attachment of cable lines to an apartment building is debatable.

See also CS/HB 972 which is identical to CS/SB 942, 945, and 946, but for the severability clause contained in the senate bill.

IV. AMENDMENTS:

None.

Date: June 21, 1987

HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
FINAL STAFF ANALYSIS

ENACTED BILL #: CS/HB 972

RELATING TO: Electric Utilities/Cable TV service

SPONSOR(S): Commerce and Representatives Dunbar, Dantzler

EFFECTIVE DATE: October 1, 1987

BECAME LAW: _____

CHAPTER 87- , LAWS OF FLORIDA

COMPANION BILL(S): CS/SB 942

OTHER BILLS CONTAINED: Compare HB 974, HB 975

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2) _____

I. SUMMARY:

Committee Substitute (Committee Substitute) for House Bill 972 requires all platted utility easements to include provision for cable TV services. In addition, it prohibits the use of a state-maintained road right-of-way by a nonfranchised cable television company. Finally, the Committee Substitute prohibits an electric utility from both offering a preference to prospective customers of its affiliated cable TV company and from treating its affiliate more favorably than a nonaffiliate cable TV company.

A. Current Law & Present Situation:

The federal Cable Communications Policy Act (CCPA) of 1984 generally preempts state regulation of franchise cable television services as to rates, quality of transmission, quantity and content of programming, and amount of franchise fees that can be charged (5% of gross cable revenue). State or local governments however, may enact and enforce any consumer protection law not inconsistent with the CCPA. In addition, franchise authorities may enforce customer service requirements and line construction schedules, s. 632 of the CCPA. Florida does not currently have a general legislative scheme regulating cable TV companies, even to the limited extent possible under the federal law.

Section 613(b)(1) of the CCPA specifically prohibits telephone companies from owning or controlling a franchise cable TV company within their service area. This is what is known as a "cross ownership" prohibition. However, neither federal nor state law prohibit electric utility company cross ownership of a cable television provider.

Chapter 177, Florida Statutes, establishes minimum requirements for and provides local governments with the power to regulate the platting of lands. The law currently requires developers who subdivide land for improvement to submit the subdivision plat to the city or county government for approval prior to recordation of the plat. Subdivision plats are required to include a dedication of some property for public use, such as for roads and utility easements. Currently s. 177.091, Florida Statutes, requires plats made for recording to conform to various criteria. These generally pertain to the lot and land boundaries, but also include the above mentioned approval and dedication. Provision for cable TV lines is not included within these requirements. Currently cable TV companies must negotiate with a developer to be included within a utility easement.

Section 337.406, Florida Statutes, generally prohibits the commercial use of state maintained road rights-of-way including but not limited to advertising or offering merchandise for sale; servicing or repairing motor vehicles; and commercial or charitable solicitations for the sale of goods or services. Section 337.401, Florida Statutes, authorizes the appropriate governing body to grant the right to use the road right-of-way to a utility as described in the section. This description does not include cable TV services.

Currently a cable company must negotiate for the right to place its cable on the utility poles owned by a public utility. A cable TV company that is affiliated with an electric utility which owns or controls the utility poles within the service area could obtain a competitive advantage over a nonaffiliated cable TV company if it were to receive a more favorable pole attachment agreement. In addition, the electric utility is in a position to grant its affiliated cable TV company easy access to utility customers through its monthly bill advertising stuffers. Currently, electric utility companies are relatively new to the franchise cable TV business.

B. Effect of Proposed Changes:

Section 1. of the Committee Substitute amends s. 177.091, Florida Statutes, relating to plats made for recording by adding a new subsection (28). This new subsection would require platted utility easements to include provision for the installation and maintenance of cable TV lines. However, the Committee Substitute prohibits cable TV line installation or maintenance from interfering with the electric, telephone, gas, or other utility

services, and holds the cable TV company liable for any damages caused by installation or maintenance of the cable TV system. In addition, cable TV installation and maintenance is required to comply with the National Electrical Safety Code.

Section 2. amends Chapter 337, Florida Statutes, relating to the acquisition, disposition or use of property by the state by creating section 337.4061, F.S. The proposed new section would make it unlawful for a nonfranchised cable TV company to use a state-maintained road right-of-way in an area being served by a franchised cable TV system. Such unlawful use would constitute a violation of s. 337.406, F.S., which carries a second degree misdemeanor penalty.

Section 3. reprints s. 337.406, Florida Statutes, referred to in section 2. of the Committee Substitute.

Section 4. creates s. 366.031, Florida Statutes, relating to electric utilities.

Subsection 1. provides definitions of terms including "Affiliate", "Cable service", "Cable system", and "Video programming". These definitions track the definitions contained in the Cable Communications Policy Act of 1984.

Subsection 2. prohibits any electric utility from giving a preference or advantage to any person as an inducement to take cable services from a cable system if that cable system is owned, controlled by, or under common ownership (i.e., "affiliated") with the electric utility and it is providing video programming within that electric utility's service area.

Subsection 3. prohibits an electric utility from treating an affiliated cable system more favorably than a non-affiliated cable system, when the two cable systems are operating within any part of the utility's service area. Subsections 2. and 3. are intended to provide a "level playing field" for cable TV companies whether or not affiliated with an electric utility.

Subsection 4. provides the court with authority to award damages and to enjoin practices found in violation of the statute. In addition, the Committee Substitute provides that costs and attorney's fees shall be awarded to the prevailing party.

Section 5. adds a severability clause.

Section 6. of the bill provides an effective date of October 1, 1987.

II. ECONOMIC IMPACT:

A. Public:

The provision in the Committee Substitute requiring that utility easements in subdivision plats include cable TV services could have an impact on those developers who plan to charge cable TV companies for the use of utility easements. It is unknown what this would cost developers.

It is unknown at this time what the economic impact of the anti-preferential treatment provision of the Committee Substitute would be on electric utilities as currently there are no allegations that any actual preferential treatment resulting in unfair competition has occurred. As previously mentioned, electric utility companies are relatively new to the franchise cable business.

B. Government:

None

III. STATE COMPREHENSIVE PLAN IMPACT:

This Committee Substitute attempts to eliminate the potential for an unfair competitive practice by electric utilities which enter the cable TV business. This is consistent with the State Comprehensive Plan's general goal as stated in s. 187.201(21)(a), Florida Statutes, in that it seeks to "promote an economic climate which provides economic stability..." within the cable TV industry.

IV. COMMENTS:

A. STATEMENT OF SUBSTANTIAL CHANGES:

The Committee Substitute incorporates three House bills: House Bill 975, and versions of House Bills 972, and 974. Section 1. of the Committee Substitute includes some additional provisions to the original House Bill 974 (re: utility easements). These provisions prohibit a cable TV company from interfering with other utilities when installing or repairing cable TV lines in the easement; hold it liable for any damages caused; and, require compliance with national electrical codes.

Sections 2 and 3 of the Committee Substitute incorporate House Bill 975 (re: prohibited use of state maintained road right-of-way) in its entirety. For explanation see Sections 2 & 3 of B. (Effect of Proposed Changes).

Section 4. of the Committee Substitute contains a version of House Bill 972. In subsection (2) of the original bill (House Bill 972), an electric utility affiliated cable TV company (as well as the electric utility itself) was prohibited from giving any advantage to a prospective customer as an inducement to take cable TV services. This provision was deleted in the Committee Substitute because it might unnecessarily hamper the common business practice of a cable TV company to promote subscription through the use of advertising promotions.

In addition to other remedies available in the original subsection (4) of House Bill 972, a court could order an affiliated cable TV company found in violation of the law to cease providing cable TV services within the utility service area. In the Committee Substitute the court is authorized to enjoin the prohibited behavior rather than order the cable company to cease doing business.

A section 5. was added to the Committee Substitute which provides a severability clause.

B. General Comments:

Section 1. of the Committee Substitute, which requires utility easements on recorded subdivision plats to include cable TV services, could raise certain constitutional issues involving the taking of property without just compensation and denial of due process in violation of the 5th and 14th amendments to the U.S. Constitution. This is because it would require developers to give up a property right that they formerly could retain or sell without receiving any compensation. In a recent case, Storer Cable T.V. of Fla., Inc. v. Summerwinds Apt. Assoc., Ltd., 11 FLW 100, March 14, 1986, the Florida Supreme Court ruled that a related statute (s. 83.66, F.S.) was an unconstitutional "taking" of property and a denial of due process of law. Section 83.66, F.S., had allowed a franchised cable TV company to attach its cable to an apartment building without having to pay (fair market value) compensation to the landlord when any tenant requested cable TV services. Whether the Court would consider required inclusion of cable TV services within a platted subdivision utility easement dedication to be the same as the uncompensated attachment of cable lines to an apartment building is debatable.

V. LEGISLATIVE HISTORY:

A. Enacted Bill:

Representatives Dunbar and Dantzler filed House Bill (HB) 972 on April 4, 1987 and it was referred to the Committees on Commerce and Appropriations. The bill was subreferred to the Commerce Committee's Subcommittee on General Commerce, but was

placed on the agenda for the full committee's April 30 meeting. The bill was reported favorably as a Committee Substitute. The committee adopted a lengthy amendment that incorporated three bills: HB 975 and versions of HBs 972 and 974. The CS requires all future platted subdivision utility easements to include provision for the installation of cable TV services (HB 975). It also makes it unlawful for a nonfranchised cable TV company to use a state-maintained road right-of-way in an area being served by a franchised cable TV system (HB 974). Finally, the CS prohibits an electric utility from both offering a preference to prospective customers of its affiliated cable TV company and from treating its affiliate more favorably than a nonaffiliate cable TV company (HB 972).

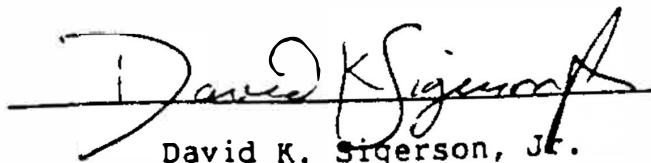
On May 15, the CS was withdrawn from the Appropriations Committee and placed on the House Calendar (HJ 00453). The CS was placed on the Special Order Calendar on May 19, but was not taken up until May 26. At that time it was read a second time and amended by adding a severability clause to the bill. The Rules were then waved and CS/HB 972 was read a third time and passed as amended by a vote of 116 to 0 (HJ 00580).

The Senate received CS/HB 972 on May 27, and referred it to the Committees on Judiciary-Civil and Economic, Community, and Consumer Affairs (SJ 00427). On May 29, the bill was withdrawn from those committees, substituted for its Senate companion, CS/SB 942, and passed by a vote of 38 to 0 (SJ 00511). Committee Substitute for House Bill 972 was signed by the Legislative Officers on June 16, 1987, and presented to the Governor.

B. Disposition of Companion:

Senate Bill (SB) 942 was filed by Senators Kiser, Dudley, and others on April 4, 1987. It was referred to the Committees on Economic, Community and Consumer Affairs, and Judiciary-Civil. At its meeting of May 18, Senate Bill 942 was considered by ECCA, combined with Senate Bills 945 & 946, and reported as a Committee Substitute (CS/SB 942). On May 26, the CS received a favorable report from the Judiciary-Civil Committee and was placed on the Senate Calendar (SJ 00417). Then on May 29, CS/SB 942 was placed on the Consent Calendar (SJ 00499) and laid upon the table under the Rules, as its House companion, CS/HB 972, was substituted and passed (SJ 00511).

VI. PREPARED BY:


David K. Sigerson, Jr.

VII. STAFF DIRECTOR:


H. Fred Varn