

1 SJR83
2 176319-1
3 By Senator Scofield
4 RFD:
5 First Read: 07-APR-16

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8 TO CLARIFY ALABAMA LAW RELATING TO CERTAIN PUBLIC
9 RIGHTS.

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11 WHEREAS, broadband deployment benefits the public
12 interest by bringing greater choice and value for voice, data,
13 and Internet access at faster speeds for a myriad of
14 applications to homes, hospitals, schools, businesses, and
15 government agencies; and

16 WHEREAS, the Alabama Legislature recognizes that the
17 encouragement of broadband deployment will bring the benefits
18 of newer technologies to residents and businesses across the
19 state; and

20 WHEREAS, telecommunications providers must access
21 the public rights-of-way (ROW) to deploy new broadband
22 telecommunications network facilities; and

23 WHEREAS, the federal Telecommunications Act of 1996,
24 specifically, 47 U.S.C. §253(a), limits the regulatory
25 authority of local franchising authorities over
26 telecommunications providers and preempts state and local
27 regulations that "prohibit or have the effect of prohibiting"

1 any company's ability to provide telecommunications services;
2 and

3 WHEREAS, the statutory language in Section 253
4 plainly requires a nexus between any municipal fees for use of
5 public ROW and the cost to the municipality of providing such
6 usage, thus requiring the fees charged by a city for use of
7 the ROW to be directly related to the expenses incurred by the
8 city in allowing the use; and

9 WHEREAS, a majority of federal courts that have
10 considered the ROW compensation issue have adopted an
11 interpretation of Section 253 to mean that any franchise fees
12 that local governments impose on telecommunications companies
13 must be directly related to the companies' use of the local
14 ROW, otherwise the fees constitute an unlawful economic
15 barrier to entry under Section 253(a); and

16 WHEREAS, Section 11-43-61, Code of Alabama 1975,
17 only contains a requirement the costs be reasonable so
18 municipalities in Alabama must look to the federal law to
19 ensure that their ROW ordinances and franchises are lawful,
20 specifically with regard to the ROW fees they can recover; and

21 WHEREAS, a clarification of Alabama law to define
22 fair and reasonable compensation to access the public ROW for
23 telecommunications providers who are investing in and
24 deploying new broadband telecommunications network facilities
25 in the state would encourage accelerated investment in
26 broadband infrastructure by private businesses; now therefore,

1 BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH
2 HOUSES THEREOF CONCURRING, That the intention of the
3 Legislature in amending Section 11-50B-3 of the Code of
4 Alabama 1975, by Senate Bill _____ of the 2016 Regular Session
5 (Acts 2016-____) is to ensure that while nothing contained in
6 Chapter 50B of Title 11 affects the authority of state or
7 local governmental agencies to manage the public rights-of-way
8 or to require fair and reasonable compensation from
9 telecommunications providers, on a competitively neutral and
10 nondiscriminatory basis, for use of public rights-of-way, that
11 fair and reasonable compensation from telecommunications
12 providers does not include in-kind fiber or network build-out
13 requirements and that any ROW fees, whether based on a
14 permitting fee, a fee per linear foot, or a percentage of
15 gross revenues originating and terminating in the city limits
16 less wholesale revenues, shall be cost-based.