

Bill No. CS for SB 1610

Amendment No. 1 Barcode 204730

| <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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The Committee on Comprehensive Planning, Local and Military Affairs recommended the following amendment:

**Senate Amendment (with title amendment)**

On page 8, line 30, through  
page 10, line 23, delete those lines

and insert:

Section 7. Paragraph (j) of subsection (3) and subsection (6) of 337.401, Florida Statutes, are amended to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.--

(3)

(j) Pursuant to this paragraph, any county or municipality may by ordinance change either its election made on or before July 16, 2001, under paragraph (c) or an election made under this paragraph.

1.a. If a municipality or charter county changes its election under this paragraph in order to exercise its authority to require and collect permit fees in accordance

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1 with this subsection, the rate of the local communications  
2 services tax imposed by such jurisdiction pursuant to ss.  
3 202.19 and 202.20 shall automatically be reduced by the sum of  
4 0.12 percent plus the percentage, if any, by which such rate  
5 was increased pursuant to sub-subparagraph (c)1.b.

6 b. If a municipality or charter county changes its  
7 election under this paragraph in order to discontinue  
8 requiring and collecting permit fees, the rate of the local  
9 communications services tax imposed by such jurisdiction  
10 pursuant to ss. 202.19 and 202.20 may be increased by  
11 ordinance or resolution by an amount not to exceed 0.24  
12 percent.

13 2.a. If a noncharter county changes its election under  
14 this paragraph in order to exercise its authority to require  
15 and collect permit fees in accordance with this subsection,  
16 the rate of the local communications services tax imposed by  
17 such jurisdiction pursuant to ss. 202.19 and 202.20 shall  
18 automatically be reduced by the percentage, if any, by which  
19 such rate was increased pursuant to sub-subparagraph (c)2.b.

20 b. If a noncharter county changes its election under  
21 this paragraph in order to discontinue requiring and  
22 collecting permit fees, the rate of the local communications  
23 services tax imposed by such jurisdiction pursuant to ss.  
24 202.19 and 202.20 may be increased by ordinance or resolution  
25 by an amount not to exceed 0.24 percent.

26 3.a. Any change of election pursuant to this paragraph  
27 and any tax rate change resulting from such change of election  
28 shall be subject to the notice requirements of s. 202.21;  
29 however, no such change of election shall become effective  
30 prior to January 1, 2003.

31 b. Any county or municipality changing its election

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1 under this paragraph in order to exercise its authority to  
2 require and collect permit fees shall, in addition to  
3 complying with the notice requirements under s. 202.21,  
4 provide to all dealers providing communications services in  
5 such jurisdiction written notice of such change of election by  
6 September ~~July~~ 1 immediately preceding the January 1 on which  
7 such change of election becomes effective. For purposes of  
8 this sub-subparagraph, dealers providing communications  
9 services in such jurisdiction shall include every dealer  
10 reporting tax to such jurisdiction pursuant to s. 202.37 on  
11 the return required under s. 202.27 to be filed on or before  
12 the 20th day of May immediately preceding the January 1 on  
13 which such change of election becomes effective.

14 (6)

15 (a) As used in this subsection, the term:

16 1. "Pass-through provider" means any person who places  
17 or maintains a communications facility in the roads or  
18 rights-of-way of a municipality or county that levies a tax  
19 pursuant to chapter 202 and who does not remit taxes imposed  
20 by that municipality or county pursuant to chapter 202.

21 2. "Communications facility" means a facility that may  
22 be used to provide communications services. Multiple cables,  
23 conduits, strands, or fibers located within the same conduit  
24 shall be considered one communications facility for purposes  
25 of this subsection.

26 (b) A municipality that levies a tax pursuant to  
27 chapter 202 may charge a pass-through provider that places or  
28 maintains a communications facility in the municipality's  
29 roads or rights-of-way an annual amount not to exceed \$500 per  
30 linear mile or portion thereof. A municipality's roads or  
31 rights-of-way do not include roads or rights-of-way that

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1 extend in or through the municipality but are state, county,  
2 or another authority's roads or rights-of-way.

3 (c) A county that levies a tax pursuant to chapter 202  
4 may charge a pass-through provider that places or maintains a  
5 communications facility in the county's roads or  
6 rights-of-way, including county roads or rights-of-way within  
7 a municipality in the county, an annual amount not to exceed  
8 \$500 per linear mile or portion thereof. However, a county  
9 shall not impose a charge for any linear miles, or portions  
10 thereof, of county roads or rights-of-way where a  
11 communications facility is placed that extend through any  
12 municipality within the county to which the pass-through  
13 provider remits a tax imposed pursuant to chapter 202. A  
14 county's roads or rights-of-way do not include roads or  
15 rights-of-way that extend in or through the county but are  
16 state, municipal, or another authority's roads or  
17 rights-of-way.

18 (d) The amounts charged pursuant to this subsection  
19 shall be based on the linear miles of roads or rights-of-way  
20 where a communications facility is placed, not based on a  
21 summation of the lengths of individual cables, conduits,  
22 strands, or fibers. The amounts referred to in this subsection  
23 may be charged only once annually and only to one person  
24 annually for any communications facility. A municipality or  
25 county shall discontinue charging such amounts to a person  
26 that has ceased to be a pass-through provider. Any annual  
27 amounts charged shall be reduced for a prorated portion of any  
28 12-month period during which the person remits taxes imposed  
29 by the municipality or county pursuant to chapter 202. Any  
30 excess amounts paid to a municipality or county shall be  
31 refunded to the person upon written notice of the excess to

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1 the municipality or county.

2 (e) This subsection does not alter any provision of  
3 this section or s. 202.24 relating to taxes, fees, or other  
4 charges or impositions by a municipality or county on a dealer  
5 of communications services or authorize that any charges be  
6 assessed on a dealer of communications services, except as  
7 specifically set forth in this subsection. A municipality or  
8 county may not charge a pass-through provider any amounts  
9 other than the charges under this subsection as a condition to  
10 the placement or maintenance of a communications facility in  
11 the roads or rights-of-way of a municipality or county by a  
12 pass-through provider, except that a municipality or county  
13 may impose permit fees on a pass-through provider consistent  
14 with paragraph (3)(c) if the municipality or county elects to  
15 exercise its authority to collect permit fees under paragraph  
16 (3)(c).

17 (f) The charges under this subsection do not apply to  
18 communications facilities placed in a municipality's or  
19 county's rights-of-way before the effective date of this  
20 subsection with permission from the municipality or county, if  
21 any was required, except to the extent the facilities of a  
22 pass-through provider were subject to per linear foot or mile  
23 charges in effect as of October 1, 2001, in which case the  
24 municipality or county may only impose on a pass-through  
25 provider charges consistent with paragraph (b) or paragraph  
26 (c) for such facilities. Notwithstanding the foregoing, this  
27 subsection does not impair any written agreement between a  
28 pass-through provider and a municipality or county imposing  
29 per-linear-foot or per-mile charges for communications  
30 facilities placed in municipal or county roads or  
31 rights-of-way which was in effect before the effective date of

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1 this subsection. Upon the termination or expiration of any  
2 such written agreement, any charges imposed must be consistent  
3 with paragraph (b) or paragraph (c). Notwithstanding the  
4 foregoing, until October 1, 2005, this subsection shall not  
5 affect a municipality or county continuing to impose charges  
6 in excess of the charges authorized in this subsection on  
7 facilities of a pass-through provider that is not a dealer of  
8 communications services in the state under chapter 202, but  
9 only to the extent such charges were imposed by municipal or  
10 county ordinance or resolution adopted before February 1,  
11 2002. Effective October 1, 2005, any charges imposed must be  
12 consistent with paragraph (b) or paragraph (c).

13 (g) The charges authorized in this subsection shall  
14 not be applied with respect to any communications facility  
15 that is used exclusively for the internal communications of an  
16 electric utility or other person in the business of  
17 transmitting or distributing electric energy.~~If a~~  
18 ~~municipality or county imposes any amount on a person or~~  
19 ~~entity other than a provider of communications services in~~  
20 ~~connection with the placement or maintenance by such person or~~  
21 ~~entity of a communication facility in municipal or county~~  
22 ~~roads or rights-of-way, such amounts, if any, shall not exceed~~  
23 ~~the highest amount, if any, the municipality or county is~~  
24 ~~imposing in such context as of the date this act becomes a~~  
25 ~~law. If a municipality or county is not imposing any amount~~  
26 ~~in such context as of the date this act becomes a law, any~~  
27 ~~amount, if any, imposed thereafter, shall not be less than~~  
28 ~~\$500 per linear mile, payable annually, of any cable, fiber~~  
29 ~~optic, or other pathway that makes physical use of the~~  
30 ~~municipal or county right-of-way. Any excess of \$500 shall be~~  
31 ~~applied in a nondiscriminatory manner and shall not exceed the~~

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1 ~~sum of:~~  
2       ~~(a) Costs directly related to the inconvenience or~~  
3 ~~impairment solely caused by the disturbance to the municipal~~  
4 ~~or county right-of-way;~~  
5       ~~(b) The reasonable cost of the regulatory activity of~~  
6 ~~the municipality or county; and~~  
7       ~~(c) The proportionate share of cost of land for such~~  
8 ~~street, alley, or other public way attributable to utilization~~  
9 ~~of the right-of-way by a person or entity other than a~~  
10 ~~provider of communications services.~~

11  
12 ~~For purposes of this subsection, the term communications~~  
13 ~~facility shall not include communications facilities owned,~~  
14 ~~operated, or used by electric utilities or regional~~  
15 ~~transmission organizations exclusively for internal~~  
16 ~~communications purposes. Except as specifically provided~~  
17 ~~herein, municipalities and counties retain all existing~~  
18 ~~authority, if any, to collect fees relating to public roads~~  
19 ~~and rights-of-way from electric utilities or regional~~  
20 ~~transmission organizations, and nothing in this subsection~~  
21 ~~shall alter this authority.~~

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24 ===== T I T L E    A M E N D M E N T =====

25 And the title is amended as follows:

26       On page 1, line 27, following the semicolon

27  
28 insert:

29       revising provisions relating to charges for use  
30       of rights-of-way;

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