

Bill No. CS for CS for CS for SB 1394

Barcode 332026

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Miller moved the following amendment:

Senate Amendment (with title amendment)

On page 3, before line 1,

insert:

Section 1. Paragraph (c) of subsection (3) of section 337.401, Florida Statutes, is amended to read:

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

(3)

(c)1. It is the intention of the state to treat all providers of communications services that use or occupy municipal or charter county roads or rights-of-way for the provision of communications services in a nondiscriminatory and competitively neutral manner with respect to the payment of permit fees. Certain providers of communications services have been granted by general law the authority to offset permit fees against franchise or other fees while other providers of communications services have not been granted this authority. In order to treat all providers of

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1 communications services in a nondiscriminatory and
 2 competitively neutral manner with respect to the payment of
 3 permit fees, each municipality and charter county shall make
 4 an election under either sub-subparagraph a. or
 5 sub-subparagraph b. and must inform the Department of Revenue
 6 of the election by certified mail by July 16, 2001. Such
 7 election shall take effect October 1, 2001.

8 a.(I) The municipality or charter county may require
 9 and collect permit fees from any providers of communications
 10 services that use or occupy municipal or county roads or
 11 rights-of-way. All fees permitted under this sub-subparagraph
 12 must be reasonable and commensurate with the direct and actual
 13 cost of the regulatory activity, including issuing and
 14 processing permits, plan reviews, physical inspection, and
 15 direct administrative costs; must be demonstrable; and must be
 16 equitable among users of the roads or rights-of-way. A fee
 17 permitted under this sub-subparagraph may not: be offset
 18 against the tax imposed under chapter 202; include the costs
 19 of roads or rights-of-way acquisition or roads or
 20 rights-of-way rental; include any general administrative,
 21 management, or maintenance costs of the roads or
 22 rights-of-way; or be based on a percentage of the value or
 23 costs associated with the work to be performed on the roads or
 24 rights-of-way. In an action to recover amounts due for a fee
 25 not permitted under this sub-subparagraph, the prevailing
 26 party may recover court costs and attorney's fees at trial and
 27 on appeal. In addition to the limitations set forth in this
 28 section, a fee levied by a municipality or charter county
 29 under this sub-subparagraph may not exceed \$100. However,
 30 permit fees may not be imposed with respect to permits that
 31 may be required for service drop lines not required to be

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1 noticed under s. 556.108(5)(a)2.~~(b)~~ or for any activity that
2 does not require the physical disturbance of the roads or
3 rights-of-way or does not impair access to or full use of the
4 roads or rights-of-way.

5 (II) To ensure competitive neutrality among providers
6 of communications services, for any municipality or charter
7 county that elects to exercise its authority to require and
8 collect permit fees under this sub-subparagraph, the rate of
9 the local communications services tax imposed by such
10 jurisdiction, as computed under s. 202.20, shall automatically
11 be reduced by a rate of 0.12 percent.

12 b. Alternatively, the municipality or charter county
13 may elect not to require and collect permit fees from any
14 provider of communications services that uses or occupies
15 municipal or charter county roads or rights-of-way for the
16 provision of communications services; however, each
17 municipality or charter county that elects to operate under
18 this sub-subparagraph retains all authority to establish rules
19 and regulations for providers of communications services to
20 use or occupy roads or rights-of-way as provided in this
21 section. If a municipality or charter county elects to operate
22 under this sub-subparagraph, the total rate for the local
23 communications services tax as computed under s. 202.20 for
24 that municipality or charter county may be increased by
25 ordinance or resolution by an amount not to exceed a rate of
26 0.12 percent. If a municipality or charter county elects to
27 increase its rate effective October 1, 2001, the municipality
28 or charter county shall inform the department of such
29 increased rate by certified mail postmarked on or before July
30 16, 2001.

31 c. A municipality or charter county that does not make

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1 an election as provided for in this subparagraph shall be
2 presumed to have elected to operate under the provisions of
3 sub-subparagraph b.

4 2. Each noncharter county shall make an election under
5 either sub-subparagraph a. or sub-subparagraph b. and shall
6 inform the Department of Revenue of the election by certified
7 mail by July 16, 2001. Such election shall take effect October
8 1, 2001.

9 a. The noncharter county may elect to require and
10 collect permit fees from any providers of communications
11 services that use or occupy noncharter county roads or
12 rights-of-way. All fees permitted under this sub-subparagraph
13 must be reasonable and commensurate with the direct and actual
14 cost of the regulatory activity, including issuing and
15 processing permits, plan reviews, physical inspection, and
16 direct administrative costs; must be demonstrable; and must be
17 equitable among users of the roads or rights-of-way. A fee
18 permitted under this sub-subparagraph may not: be offset
19 against the tax imposed under chapter 202; include the costs
20 of roads or rights-of-way acquisition or roads or
21 rights-of-way rental; include any general administrative,
22 management, or maintenance costs of the roads or
23 rights-of-way; or be based on a percentage of the value or
24 costs associated with the work to be performed on the roads or
25 rights-of-way. In an action to recover amounts due for a fee
26 not permitted under this sub-subparagraph, the prevailing
27 party may recover court costs and attorney's fees at trial and
28 on appeal. In addition to the limitations set forth in this
29 section, a fee levied by a noncharter county under this
30 sub-subparagraph may not exceed \$100. However, permit fees may
31 not be imposed with respect to permits that may be required

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1 for service drop lines not required to be noticed under s.
 2 556.108(5)(a)2.~~(b)~~ or for any activity that does not require
 3 the physical disturbance of the roads or rights-of-way or does
 4 not impair access to or full use of the roads or
 5 rights-of-way.

6 b. Alternatively, the noncharter county may elect not
 7 to require and collect permit fees from any provider of
 8 communications services that uses or occupies noncharter
 9 county roads or rights-of-way for the provision of
 10 communications services; however, each noncharter county that
 11 elects to operate under this sub-subparagraph shall retain all
 12 authority to establish rules and regulations for providers of
 13 communications services to use or occupy roads or
 14 rights-of-way as provided in this section. If a noncharter
 15 county elects to operate under this sub-subparagraph, the
 16 total rate for the local communications services tax as
 17 computed under s. 202.20 for that noncharter county may be
 18 increased by ordinance or resolution by an amount not to
 19 exceed a rate of 0.24 percent, to replace the revenue the
 20 noncharter county would otherwise have received from permit
 21 fees for providers of communications services. If a noncharter
 22 county elects to increase its rate effective October 1, 2001,
 23 the noncharter county shall inform the department of such
 24 increased rate by certified mail postmarked on or before July
 25 16, 2001.

26 c. A noncharter county that does not make an election
 27 as provided for in this subparagraph shall be presumed to have
 28 elected to operate under the provisions of sub-subparagraph b.

29 3. Except as provided in this paragraph,
 30 municipalities and counties retain all existing authority to
 31 require and collect permit fees from users or occupants of

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1 municipal or county roads or rights-of-way and to set
2 appropriate permit fee amounts.

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4 (Redesignate subsequent sections.)

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

8 And the title is amended as follows:

9 On page 1, line 3, after the semicolon,

10
11 insert:

12 amending s. 337.401, F.S.; correcting a
13 cross-reference;

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