

House Bill No. 789

An act relating to damage prevention and safety for underground facilities; amending s. 556.101, F.S.; providing legislative intent that Sunshine State One-Call of Florida, Inc., is not required or permitted to locate or mark underground facilities; revising purposes of the Underground Facility Damage Prevention and Safety Act; amending s. 556.102, F.S.; correcting a reference; redefining the term "member operator" to remove an exception for a small municipality that elects not to participate in the notification system; amending ss. 556.103 and 556.104, F.S.; deleting provisions exempting a small city from membership in the Sunshine State One-Call of Florida, Inc.; amending s. 556.105, F.S.; requiring that specified information be placed in the excavation notification system; providing an exception for underwater excavations; providing that the information is valid for 30 calendar days; providing for a study of the feasibility of zones where no notification is required; requiring a report to the Legislature; requiring a notification number assigned to an excavator to be provided to a law enforcement officer, government code inspector, or code enforcement officer upon request; requiring that a member operator respond to the system within a specified time indicating the status of its facility protection operations; requiring the corporation to establish a communication system between member operators and excavators; requiring an excavator to verify the system's positive responses before beginning excavation; requiring operators to use a specified color-code manual; amending s. 556.106, F.S.; providing that the notification system has no duty to and may not mark or locate underground facilities; providing that a person has no right of recovery against the notification system for failing to mark or locate underground facilities; providing that the system is not liable for the failure of a member operator to comply with the requirements of the act; amending s. 556.107, F.S.; correcting cross-references; providing for the distribution of civil penalties; revising procedures for disposition of citations; authorizing the corporation to retain legal counsel to represent the corporation in certain legal proceedings; amending s. 556.108, F.S.; revising provisions that exempt excavation or demolition by the owner of residential property from specified notification requirements to exclude certain property that is subdivided or to be subdivided; providing that certain excavations are exempt from mandatory location notification if mechanized equipment is not used; exempting pest control services under certain circumstances; amending s. 556.111, F.S.; providing that specified applicability provisions do not exempt a local governmental member operator from specified provisions that apply to the member operator; amending s. 337.401, F.S.; correcting a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 556.101, Florida Statutes, is amended to read:

556.101 Short title; legislative intent.—

(1) This ~~chapter act~~ may be cited as the “Underground Facility Damage Prevention and Safety Act.”

(2) It is the intent of the Legislature to provide access for excavating contractors and the public to provide notification to the system of their intent to engage in excavation or demolition. This notification system shall provide the member operators an opportunity to identify and locate their underground facilities. Under this notification system, Sunshine State One-Call of Florida, Inc., is not required or permitted to locate or mark underground facilities.

(3) It is the purpose of this ~~chapter act~~ to:

(a) Aid the public by preventing injury to persons or property and the interruption of services resulting from damage to an underground facility caused by excavation or demolition operations.

(b) Create a not-for-profit corporation comprised of operators of underground facilities in this state to administer ~~the provisions of this chapter act.~~

(c) Fund the cost of administration through contributions from the member operators for services provided to the member operators and from charges made to others for services requested and provided, such as record searches, education or training, and damage prevention activities.

(d) Reserve to the state the power to regulate any subject matter specifically addressed in this ~~chapter act.~~

(e) Permit any local law enforcement officer, local government code inspector, or code enforcement officer ~~or permitting agency inspector~~ to enforce this ~~chapter act~~ without the need to incorporate the provisions of this ~~chapter act~~ into any local code or ordinance.

(f) Foster the awareness of federal laws and regulations that promote safety with respect to underground facilities, including, but not limited to, the Federal Pipeline Safety Act of 1968, as amended, the Pipeline Safety Improvement Act of 2002, OSHA Standard 1926.651, and the National Electric Safety Code, ANSI C-2, by requiring and facilitating the advance notice of activities by those who engage in excavation or demolition operations.

(4) It is not the purpose of this ~~chapter act~~ to amend or void any permit issued by a state agency for placement or maintenance of facilities in its right-of-way.

Section 2. Subsection (8) of section 556.102, Florida Statutes, is amended to read:

556.102 Definitions.—As used in this act:

(8) “Member operator” means any person who furnishes or transports materials or services by means of an underground facility ~~except a small~~

municipality that has elected not to participate in the one-call notification system in the manner set forth in s. 556.103(1).

Section 3. Subsection (1) of section 556.103, Florida Statutes, is amended to read:

556.103 Creation of the corporation; establishment of the board of directors; authority of the board; annual report.—

(1) The “Sunshine State One-Call of Florida, Inc.” is hereby created as a not-for-profit corporation. Each operator of an underground facility in this state shall be a member of the corporation and shall use and participate in the system, ~~except that a small city as defined in s. 120.52 may elect by January 1, 1998, not to participate in the system until January 1, 2003, through a written notification identifying any reasons for declining membership. The corporation shall be formed by June 1, 1993.~~ The corporation shall administer the provisions of this chapter act. The corporation shall exercise its powers through a board of directors established pursuant to this section.

Section 4. Section 556.104, Florida Statutes, is amended to read:

556.104 Free-access notification system.—The corporation shall maintain a free-access notification system. Any person who furnishes or transports materials or services by means of an underground facility in this state shall participate as a member operator of the system ~~except that a small city as defined in s. 120.52 may elect not to participate in the system in the manner set forth in s. 556.103(1).~~ The purpose of the system is to receive notification of planned excavation or demolition activities and to notify member operators of the such planned excavation or demolition activities. The system shall provide a single toll-free telephone number within this state which excavators can use to notify member operators of planned excavation or demolition activities, and the system may also provide additional modes of access at no cost to the user.

Section 5. Section 556.105, Florida Statutes, is amended to read:

556.105 Procedures.—

(1)(a) Not less than 2 ~~nor more than 5~~ full business days before beginning any excavation or demolition, except an excavation beneath the waters of the state, an excavator shall provide the following information through the system:

1. The name of the individual who provided notification and the name, address, including the street address, city, state, zip code, and telephone number of her or his employer.

2. The name and telephone number of the representative for the excavator, and a valid electronic address to facilitate a positive response by the system should be provided, if available.

3. The county, the city or closest city, and the street address or the closest street, road, or intersection to the location where the excavation or demoli-

tion is to be performed, and the construction limits of the excavation or demolition.

4. The commencement date and anticipated duration of the excavation or demolition.
5. Whether machinery will be used for the excavation or demolition.
6. The person or entity for whom the work is to be done.
7. The type of work to be done.
8. The approximate depth of the excavation.

(b) The excavator shall provide ~~the~~ such information by notifying the system through its free-access notification system during business hours, as determined by the corporation, or by such other method as authorized by the corporation. Any notification received by the system at any time other than during business hours shall be considered to be received at the beginning of the next business day.

(c) Information provided by an excavator ~~is shall be considered~~ valid for ~~30 a period of 20~~ calendar days after ~~the~~ each date such information is provided to the system. In computing the period for which information furnished is ~~considered~~ valid, the date the notice is provided ~~is shall~~ not be counted, but the last day of ~~the~~ such period shall be counted unless it is a Saturday, Sunday, or a legal holiday, in which event, the period ~~runs shall run~~ until the end of the next day ~~that which~~ is not a Saturday, Sunday, or a legal holiday.

(d)1. The system shall study the feasibility of the establishment or recognition of zones for the purpose of allowing excavation within such zones to be undertaken without notice to the system as now required by this chapter when such zones are:

- a. In areas within which no underground facilities are located.
- b. Where permanent markings, permit and mapping systems, and structural protection for underwater crossings are required or in place.
- c. For previously marked utilities on construction of one or two family dwellings where the contractor remains in custody and control of the building site for the duration of the building permit.

2. The system shall report the results of the study to the Legislature on or before February 1, 2007, along with recommendations for further legislative action.

(2) Each notification by means of the system shall be recorded to document compliance with this ~~chapter~~ act. Such record may be made by means of electronic, mechanical, or any other method of all incoming and outgoing wire and oral communications concerning location requests in compliance with chapter 934. ~~The~~ Such records shall be kept for ~~a period of 5 years and,~~

upon written request, shall be available to the excavator making the request, the member operator intended to receive the request, and their agents. However, custody of the records may ~~shall~~ not be transferred from the system except under subpoena.

(3) The system shall provide the person who provided notification with the names of the member operators who shall ~~will~~ be advised of the notification and a notification number that ~~which~~ specifies the date and time of the notification.

(4) The notification number provided to the excavator under this section shall be provided to any law enforcement officer, government code inspector, or code enforcement officer upon request.

(5)(4) All member operators within the defined area of a proposed excavation or demolition shall be promptly notified through the system, except that member operators with state-owned underground facilities located within the right-of-way of a state highway need not be notified of excavation or demolition activities and are under no obligation to mark or locate the ~~such~~ facilities.

(a) When an excavation site cannot be described in information provided under subparagraph (1)(a)3. with sufficient particularity to enable the member operator to ascertain the excavation site, and if the excavator and member operator have not mutually agreed otherwise, the excavator shall pre-mark the proposed area of the excavation before a member operator is required to identify the horizontal route of its underground facilities in the proximity of any excavation. However, premarking is not required for any excavation that is over 500 feet in length and is not required where the premarking could reasonably interfere with traffic or pedestrian control.

(b) If a member operator determines that a proposed excavation or demolition is in proximity to or in conflict with an underground facility of the member operator, except a facility beneath the waters of the state, which is governed by paragraph (c), the member operator shall identify the horizontal route by marking to within 24 inches from the outer edge of either side of the underground facility by the use of stakes, paint, flags, or other suitable means within 2 full business days after the time the notification is received under subsection (1). If the member operator is unable to respond within such time, the member operator shall communicate with the person making the request and negotiate a new schedule and time that is agreeable to, and should not unreasonably delay, the excavator.

(c) If a member operator determines that a proposed excavation is in proximity to or in conflict with an underground facility of the member operator beneath the waters of the state, the member operator shall identify the estimated horizontal route of the underground facility, within 10 business days, using marking buoys or other suitable devices, unless directed otherwise by an agency having jurisdiction over the waters of the state under which the member operator's underground facility is located.

(d) When excavation is to take place within a tolerance zone, an excavator shall use increased caution to protect underground facilities. The protec-

tion requires hand digging, pot holing, soft digging, vacuum excavation methods, or other similar procedures to identify underground facilities. Any use of mechanized equipment within the tolerance zone must be supervised by the excavator.

~~(6)(a)(5)(a)~~ An excavator shall avoid excavation in the area described in the notice given under ~~pursuant to~~ subsection (1) until each member operator underground facility has been marked and located or until the excavator has been notified that no member operator has underground facilities in the area described in the notice, or for the time allowed for markings set forth in paragraphs ~~(5)(b) (4)(b)~~ and (c), whichever occurs first. If a member operator has not located and marked its underground facilities within the time allowed for marking set forth in paragraphs ~~(5)(b) (4)(b)~~ and (c), the excavator may proceed with the excavation, if provided the excavator does so with reasonable care, and ~~if provided, further, that~~ detection equipment or other acceptable means to locate underground facilities are used.

(b) An excavator ~~may~~ shall not demolish in the area described in the notice given under ~~pursuant to~~ subsection (1) until all member operator underground facilities have been marked and located, or removed.

~~(7)(a)(6)(a)~~ A member operator that states that it does not have accurate information concerning the exact location of its underground facilities is exempt from the requirements of paragraphs ~~(5)(b) (4)(b)~~ and (c), but shall provide the best available information to the excavator in order to comply with the requirements of this section. An excavator is not liable for any damage to an underground facility under the exemption in this subsection if the excavation or demolition is performed with reasonable care and detection equipment or other acceptable means to locate underground facilities are used.

(b) A member operator may not exercise the exemption provided by this subsection if the member operator has underground facilities that have not been taken out of service and that are locatable using available designating technologies to locate underground facilities.

~~(8)(a)(7)(a)~~ If extraordinary circumstances exist, a member operator shall notify the system of the member operator's inability to comply with this section. For the purposes of this section, the term "extraordinary circumstances" means circumstances other than normal operating conditions that ~~which~~ exist and make it impractical for a member operator to comply with ~~the provisions of this chapter act~~. After the system has received notification of a member operator's inability to comply, the system shall make that information known to excavators who subsequently notify the system of an intent to excavate. The member operator is relieved of responsibility for compliance under the law during the period that the extraordinary circumstances exist and shall promptly notify the system when the extraordinary circumstances cease to exist.

(b) During the period when extraordinary circumstances exist, the system shall remain available during business hours to provide information to governmental agencies, member operators affected by the extraordinary circumstances, and member operators who can provide relief to the affected

parties, unless the system itself has been adversely affected by extraordinary circumstances.

(9)(a) After receiving notification from the system, a member operator shall provide a positive response to the system within 2 full business days, or 10 such days for an underwater excavation, indicating the status of operations to protect the facility.

~~(8)(a) If a member operator determines that the excavation or demolition is not near an existing underground facility of the member operator, the member operator shall notify the excavator within 2 full business days after the time of the notification to the system that no conflict exists and that the excavation or demolition area is clear. An excavator who has knowledge of the existence of an underground facility of a member operator in the area is responsible for contacting the member operator if a facility is not marked.~~

(b) The system shall establish and maintain a process to facilitate a positive-response communication between member operators and excavators. The system is exempt from any requirement to initiate a positive response to an excavator when an excavator does not provide a valid electronic address to facilitate a positive response by the system.

(c) An excavator shall verify the system's positive responses before beginning excavation. If an excavator knows that an existing underground facility of a member operator is in the area, the excavator must contact the member operator if the facility is not marked and a positive response has not been received by the system. The system shall implement procedures for positive response by January 1, 2004.

~~(10)(9) A member operator shall use the "Uniform Color Code for Utilities" recommended guidelines for uniform temporary marking of underground facilities as approved by the Utility Location and Coordinating Council of the American Public Works Association when marking the horizontal route of any underground facility of the operator.~~

~~(11)(10) Before Prior to or during excavation or demolition, if the marking of the horizontal route of any facility is removed or is no longer visible, the excavator shall stop excavation or demolition activities in the vicinity of the facility and shall notify the system to have the route remarked.~~

~~(12)(11) If any contact with or damage to any pipe, cable, or its protective covering, or any other underground facility occurs, the excavator causing the contact or damage shall immediately notify the member operator. Upon receiving notice, the member operator shall send personnel to the location as soon as possible to effect temporary or permanent repair of the contact or damage. Until such time as the contact or damage has been repaired, the excavator shall cease excavation or demolition activities that may cause further damage to such underground facility.~~

Section 6. Subsection (2) of section 556.106, Florida Statutes, is amended, present subsection (6) is redesignated as subsection (7) and amended, and a new subsection (6) is added to that section, to read:

556.106 Liability of the member operator, excavator, and system.—

(2)(a) ~~If a~~ ~~In the event~~ any person violates s. 556.105(1) or (6) (5), and subsequently, whether by himself or herself or through the person's employees, contractors, subcontractors, or agents, performs an excavation or demolition ~~that which~~ damages an underground facility of a member operator, it ~~is shall~~ be rebuttably presumed that ~~the~~ such person was negligent. ~~The~~ Such person, if found liable, ~~is shall~~ be liable for the total sum of the losses to all member operators involved as those costs are normally computed. Any damage for loss of revenue and loss of use ~~may shall~~ not exceed \$500,000 per affected underground facility, except that revenues lost by a governmental member operator ~~whose, which~~ revenues are used to support payments on principal and interest on bonds ~~may, shall~~ not be limited. Any liability of the state and its agencies and its subdivisions which arises out of this chapter ~~is shall~~ be subject to the provisions of s. 768.28.

(b) If any excavator fails to discharge a duty imposed by the provisions of this ~~chapter~~ aet, ~~the~~ such excavator, if found liable, ~~is shall~~ be liable for the total sum of the losses to all parties involved as those costs are normally computed. Any damage for loss of revenue and loss of use may shall not exceed \$500,000 per affected underground facility, except that revenues lost by a governmental member operator ~~whose, which~~ revenues are used to support payments on principal and interest on bonds ~~may, shall~~ not be limited.

(c) Any liability of the state, its agencies, or its subdivisions which arises out of this ~~chapter~~ is aet ~~shall~~ be subject to the provisions of s. 768.28.

(d) Obtaining information as to the location of an underground facility from the member operator as required by this ~~chapter~~ aet does not excuse any excavator from performing an excavation or demolition in a careful and prudent manner, based on accepted engineering and construction practices, ~~and it nor~~ does not excuse ~~the~~ such excavator from liability for any damage or injury resulting from any excavation or demolition.

~~(e) When an excavator knows or should know of the presence of an underground facility of a nonmember small city as defined in s. 120.52, he or she shall make reasonable efforts to contact the small city that owns or operates that facility prior to commencing an excavation or demolition.~~

(6) The system does not have a duty to mark or locate underground facilities and may not do so, and a right of recovery does not exist against the system for failing to mark or locate underground facilities. The system is not liable for the failure of a member operator to comply with the requirements of this chapter.

~~(7)(6)~~ An excavator who performs any excavation with hand tools under ~~pursuant to~~ s. 556.108(4)(c) or (5) is liable for any damage to any operator's underground facilities damaged during such excavation.

Section 7. Section 556.107, Florida Statutes, is amended to read:

556.107 Violations.—

(1) NONCRIMINAL INFRACTIONS.—

(a) Violations of the following provisions are noncriminal infractions:

1. Section 556.105(1), relating to providing required information.
2. Section 556.105(6) ~~556.105(5)~~, relating to the avoidance of excavation.
3. Section 556.105(11) ~~556.105(10)~~, relating to the need to stop excavation or demolition.
4. Section 556.105(12) ~~556.105(11)~~, relating to the need to cease excavation or demolition activities.
5. Section 556.105(5)(b) ~~556.105(4)(b)~~ and (c) relating to identification of underground facilities, if a member operator does not mark an underground facility, but not if a member operator marks an underground facility incorrectly.

(b) Any excavator or member operator who commits a noncriminal infraction under paragraph (a) may be issued a citation by any local or state law enforcement officer, government code inspector, or code enforcement officer ~~permitting agency inspector~~, and the issuer of a citation may require an ~~any~~ excavator to cease work on any excavation or not start a proposed excavation until there has been compliance with the provisions of this chapter act. Citations shall ~~may~~ be hand-delivered issued to any employee of the excavator or member operator who is directly involved in the noncriminal infraction. The citation shall be issued in the name of the excavator or member operator, whichever is applicable.

(c) Any excavator or member operator who commits a noncriminal infraction under paragraph (a) may be required to appear before the county court. The civil penalty for any such infraction is \$250 plus court costs, except as otherwise provided in this section. If a citation is issued by a local law enforcement officer, a local government code inspector, or a code enforcement officer, 80 percent of the civil penalty collected by the clerk of the court shall be distributed to the local governmental entity whose employee issued the citation and 20 percent of the penalty shall be retained by the clerk to cover administrative costs, in addition to other court costs. If a citation is issued by a state law enforcement officer, the civil penalty collected by the clerk shall be retained by the clerk for deposit into the fine and forfeiture fund established pursuant to s. 142.01. Any person who fails to appear or otherwise properly respond to a citation issued pursuant to paragraph (d) shall, in addition to the citation, be charged with the offense of failing to respond to such citation and, upon conviction, commits ~~be guilty~~ of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time any citation is issued pursuant to paragraph (b).

(d) Any person cited for an infraction under paragraph (a), unless required to appear before the county court, may:

1. Post a bond, which shall be equal in amount to the applicable civil penalty plus court costs; or

2. Sign and accept a citation indicating a promise to appear before the county court.

The person issuing the citation ~~officer~~ may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(e) Any person charged with a noncriminal infraction under paragraph (a), unless required to appear before the county court, may:

1. Pay the civil penalty plus court costs, in lieu of appearance, either by mail or in person, within 30 ~~10~~ days after the date of receiving the citation; or

2. Forfeit bond, if a bond has been posted, by not appearing at the designated time and location.

If the person cited follows either of the above procedures, she or he ~~is~~ shall be deemed to have admitted to committing the infraction and to have waived the right to a hearing on the issue of commission of the infraction. The ~~Such~~ admission may be used as evidence in any other proceeding under this chapter ~~aet.~~

(f) Any person electing to appear before the county court or who is required to appear shall be deemed to have waived the limitations on the civil penalty specified in paragraph (c). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the court may impose a civil penalty not to exceed \$5,000 plus court costs. In determining the amount of the civil penalty, the court may consider previous noncriminal infractions committed.

(g) At a hearing under this chapter, the commission of a charged infraction must be proven by a preponderance of the evidence.

(h) If a person is found by the hearing official to have committed an infraction, the ~~such~~ person may appeal that finding to the circuit court.

(i) Sunshine State One-Call of Florida, Inc., may, at its own cost, retain an attorney to assist in the presentation of relevant facts and law in the county court proceeding pertaining to the citation issued under this section. The corporation may also appear in any case appealed to the circuit court if a county court finds that an infraction of the chapter was committed. An appellant in the circuit court proceeding shall timely notify the corporation of any appeal under this section.

(2) MISDEMEANORS.—Any person who knowingly and willfully removes or otherwise destroys the valid stakes or other valid physical markings described in s. 556.105(5)(b) ~~s. 556.105(4)(b)~~ and (c) used to mark the horizontal route of an underground facility commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this subsection, stakes or other nonpermanent physical markings

are considered valid for 30 ~~20~~ calendar days after information is provided to the system under s. 556.105(1)(c).

Section 8. Subsections (1), (4), and (5) of section 556.108, Florida Statutes, are amended to read:

556.108 Exemptions.—The notification requirements provided in s. 556.105(1) do not apply to:

(1) Any excavation or demolition performed by the owner of a single-family residential property, not including property that is subdivided or is to be subdivided into more than one single-family residential property; or for such owner by a member operator or an agent of a member operator when such excavation or demolition is made entirely on such land, and only up to a depth of 10 inches; provided due care is used and there is no encroachment on any member operator's right-of-way, easement, or permitted use.

(4) Any excavation of 18 inches or less for:

(a) Surveying public or private property by surveyors or mappers as defined in chapter 472 and services performed by a pest control licensee under chapter 482, excluding marked rights-of-way, marked easements, or permitted uses where marked, if provided mechanized equipment is not used in the process of such surveying or pest control services and the surveying or pest control services are performed in accordance with the practice rules established under s. 472.027 or s. 482.051, respectively; ~~or~~

(b) Maintenance activities performed by a state agency and its employees when such activities are within the right-of-way of a public road; however, provided, if a member operator has permanently marked facilities on such right-of-way, ~~no~~ mechanized equipment may not be used without first providing notification; or

(c) Locating, repairing, connecting, adjusting, or routine maintenance of a private or public underground utility facility by an excavator, if the excavator is performing such work for the current owner or future owner of the underground facility and if mechanized equipment is not used.

(5)~~(a)~~ Any excavation with hand tools by a member operator or an agent of a member operator for:

1.~~(a)~~ Locating, repairing, connecting, or protecting, or routine maintenance of, the member operator's underground facilities; or

2.~~(b)~~ The extension of a member operator's underground facilities onto the property of a person to be served by such facilities.

(b)~~(c)~~ The exemption provided in this subsection paragraphs (a) and (b) is limited to excavations to a depth of 30 inches if the right-of-way has permanently marked facilities of a company other than the member operator or its agents performing the excavation.

Section 9. Subsection (3) of section 556.111, Florida Statutes, is amended to read:

556.111 Applicability to existing law.—Nothing in this act shall be construed to:

(3) Preempt a governmental member operator from reasonable regulation of its right-of-way. This subsection does not exempt a municipality, county, district, or other local governmental member operator from the provisions of this chapter that apply to the member operator.

Section 10. 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 communications services in a nondiscriminatory and competitively neutral manner with respect to the payment of permit fees, each municipality and charter county shall make an election under either sub-subparagraph a. or sub-subparagraph b. and must inform the Department of Revenue of the election by certified mail by July 16, 2001. Such election shall take effect October 1, 2001.

a.(I) The municipality or charter county may require and collect permit fees from any providers of communications services that use or occupy municipal or county roads or rights-of-way. All fees permitted under this sub-subparagraph must be reasonable and commensurate with the direct and actual cost of the regulatory activity, including issuing and processing permits, plan reviews, physical inspection, and direct administrative costs; must be demonstrable; and must be equitable among users of the roads or rights-of-way. A fee permitted under this sub-subparagraph may not: be offset against the tax imposed under chapter 202; include the costs of roads or rights-of-way acquisition or roads or rights-of-way rental; include any general administrative, management, or maintenance costs of the roads or rights-of-way; or be based on a percentage of the value or costs associated with the work to be performed on the roads or rights-of-way. In an action to recover amounts due for a fee not permitted under this sub-subparagraph, the prevailing party may recover court costs and attorney's fees at trial and on appeal. In addition to the limitations set forth in this section, a fee levied by a municipality or charter county under this sub-subparagraph may not exceed \$100. However, permit fees may not be imposed with respect to permits that may be required for service drop lines not required to be noticed under s. 556.108(5)(a)2.(b) or for any activity that does not require the physical disturbance of the roads or rights-of-way or does not impair access to or full use of the roads or rights-of-way.

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

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

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

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

a. The noncharter county may elect to require and collect permit fees from any providers of communications services that use or occupy non-charter county roads or rights-of-way. All fees permitted under this sub-subparagraph must be reasonable and commensurate with the direct and actual cost of the regulatory activity, including issuing and processing permits, plan reviews, physical inspection, and direct administrative costs; must be demonstrable; and must be equitable among users of the roads or rights-of-way. A fee permitted under this sub-subparagraph may not: be offset against the tax imposed under chapter 202; include the costs of roads or rights-of-way acquisition or roads or rights-of-way rental; include any general administrative, management, or maintenance costs of the roads or rights-of-way; or be based on a percentage of the value or costs associated with the work to be performed on the roads or rights-of-way. In an action to recover amounts due for a fee not permitted under this sub-subparagraph, the prevailing party may recover court costs and attorney's fees at trial and on appeal. In addition to the limitations set forth in this section, a fee levied by a noncharter county under this sub-subparagraph may not exceed \$100. However, permit fees may not be imposed with respect to permits that may be required for service drop lines not required to be noticed under s. 556.108(5)~~(a)2.(b)~~ or for any activity that does not require the physical dis-

turbance of the roads or rights-of-way or does not impair access to or full use of the roads or rights-of-way.

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

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

3. Except as provided in this paragraph, municipalities and counties retain all existing authority to require and collect permit fees from users or occupants of municipal or county roads or rights-of-way and to set appropriate permit fee amounts.

Section 11. This act shall take effect October 1, 2006.

Approved by the Governor June 9, 2006.

Filed in Office Secretary of State June 9, 2006.