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DATE: March 21, 1997

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE & TAXATION
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/CS/HB 313

RELATING TO: Telecommunications

SPONSOR(S): Committees on Finance & Taxation, Utilities & Communications and Representative Maygarden and others

STATUTE(S) AFFECTED: creating ss. 125.421, 166.047, F.S.; amending ss. 196.012(6), 199.183(1), 212.08(6), F.S.

COMPANION BILL(S): SB 214

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) UTILITIES & COMMUNICATIONS YEAS 14 NAYS 1
(2) FINANCE & TAXATION YEAS 14 NAYS 0
(3)
(4)
(5)

I. SUMMARY:

Currently, a municipality, county or other entity of local government may operate as a telecommunications service provider. This provider is exempt from certain taxes that a private telecommunications provider must pay.

CS/CS/HB 313 would require that a municipality, county or other entity of local government which provides telecommunications services to the public account for these services separately. These services would also be subject, “without exemption,” to all local requirements applicable to telecommunications companies. Exempt from these provisions would be a municipality, county, or other entity of local government that provides telecommunications services internally.

This bill would also remove the exemption that municipalities, counties, or other entities of local government have for ad valorem taxes on property used for the purpose of providing telecommunications services to the public, intangible taxes on telecommunications service-related property and sales taxes on purchases. Airports and public hospital authorities would be exempt from these tax provisions.

The bill would also exempt any property that is being used to provide telecommunications services before or on October 1, 1997, will be exempt from ad valorem taxes until October 1, 2004.

The fiscal impact of this bill is indeterminate due to the complexity of determining what municipalities and local government entities would engage in such telecommunications services at this time.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Florida Telecommunications Act of 1995, which substantially amended Chapter 364, Florida Statutes, opened local telecommunications service to competition. Prior to the passage of this legislation there were four large incumbent local exchange companies -- BellSouth, GTE, United, and Sprint, and 9 small incumbent local exchange companies -- ALLTELL, Florala, Frontier, Gulf, Indiantown, Northeast, Quincy, St. Joseph and Vista-United. Currently, any company that chooses to provide telecommunications services or act as a telecommunications company must be certified by the Public Service Commission (PSC), under s. 364.33, F.S. A telecommunications company is defined in s. 364.02(12), F.S., as "every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility."

Two municipalities, Lakeland and Gainesville, have obtained certification through the PSC. According to the PSC, the City of Leesburg has filed for certification as an alternative access vendor (AAV). An alternative access vendor is defined in s. 364.337(6)(a), F.S., to mean "the provision of private line service between an entity and facilities at another location, whether owned by the entity or an unaffiliated entity or access service between an end-user and an interexchange carrier by other than a local exchange telecommunications company."

Taxes and Fees

Gross Receipts Tax

Section 203.01, Florida Statutes, imposes a gross receipts tax of 2.5 percent on utility services, including telecommunications services. Telecommunications services are defined in s. 203.12(5), F.S., to include local telephone service, telegram or telegraph service, teletypewriter or computer exchange service, or private communication service. Also included in this definition are cellular telephone service, specialized mobile radio service, and pagers and paging service.

All revenue generated by the gross receipts tax is required by the Constitution to be deposited in the Public Education Capital Outlay and Debt Service Trust Fund (PECO) to pay for the construction of public school and higher education facilities. *See* Art. XII, s. 9(a)(2), Fla. Const. In 1995, the taxation of telecommunications services accounted for 44 percent of the total gross receipts tax collections. The gross receipts tax is levied on the company providing the service, but it is typically passed on to the consumer.

Sales Tax

Unless specifically exempted, the state of Florida levies a sales and use tax that applies to receipts from the sale, storage and use of tangible personal property and services under chapter 212, Florida Statutes. Pursuant to s. 212.05(1)(e)1., F.S., telecommunications services are taxed at a rate of 7 percent. Telecommunications services for residential households are exempt from the sales tax under s. 212.08(7)(j), F.S. Telecommunications services for sales tax purposes are defined by reference to the definition for telecommunications services as provided in chapter 203, Florida Statutes, relating to gross receipts tax.

Municipal Utilities Tax (MUT)

Section 166.231, F.S., allows local governments to levy a public service tax on utilities services, including residential and commercial telecommunications services. This tax is collected by the seller of the utility service and remitted to the municipality. Section 166.231(9), F.S., allows local governments two different taxing options. Option 1 allows local governments to levy a maximum of 10 percent on the local monthly service charges on local telephone service. This option exempts public telephone charges collected on-site and customer access charges. Option 2 allows for the maximum tax of 7 percent on telecommunications services, including local service, toll service, private communication service, teletypewriter service, computer exchange service, and monthly recurring services such as cellular, beeper and pager, and any mobile one-way or two-way radio service.

Franchise Fees

Under s. 337.401, F.S., local governments also have the authority to assess a franchise fee on the providers of telecommunications services. This fee may not exceed 1 percent of the company's gross receipts.

Ad valorem Tax

Pursuant to Article VII, section 3, Florida Constitution, property owned by municipalities and used exclusively by them for municipal or public purposes is exempt from paying ad valorem taxes. However, a municipality owning property outside that municipality may be required by general law to pay the taxing unit in which the property is located.

Public Service Commission Fee

Section 350.113(1), Florida Statutes, creates the "Florida Public Service Regulatory Trust Fund," which shall be used to operate the Public Service Commission (PSC). Under s. 350.113(3)(b), F.S., each telephone company licensed under chapter 364 must pay one-eighth of 1 percent of its gross operating revenues derived from intrastate business.

Florida Corporate Income Tax

Under section 220.11, Florida Statutes, a tax equal to 5.5 percent of a taxpayer's net income is levied by the state. A taxpayer is defined as any corporation subject to tax under ch. 220, F.S. The net income of a corporation is defined as that corporation's adjusted federal income.

Federal Corporate Income Tax

Although the state of Florida has no jurisdiction over the tax code over federal corporate income tax, if a municipality or local government were to form a corporation that corporation may be subject to the federal corporate income tax.

Federal Excise Taxes

According to section 4251(a) of the Internal Revenue Code, these taxes are “paid by the person paying for such services.” This tax is collected from the consumer by the telecommunications provider.

Federal Regulatory Fees

Pursuant to 47 USC 159, the Federal Communications Commission (FCC) assesses and collects regulatory fees to recover costs to carry out the functions of the FCC. These fees are $60 per 1,000 pre-subscribed access lines for interexchange carriers, $60 per 1,00 access lines for local exchange carriers, and $60 per 1,000 subscribers for competitive access providers. Exempt from these charges are both governmental and nonprofit entities.

B. EFFECT OF PROPOSED CHANGES:

CS/CS/HB 313 would require that a municipality, county or other entity of local government which provides telecommunications services to the public for hire account for these services separately. These services would also be subject, “without exemption”, to all local requirements applicable to telecommunications companies. Exempt from these provisions would be a municipality, county, or other entity of local government that provides telecommunications services internally.

The bill would also exempt any property that is being used to provide telecommunications services before or on October 1, 1997, from ad valorem taxes until October 1, 2004.

Additionally, CS/CS/HB 313 would require that a municipality or other entity of local government which provides telecommunications services to the public would be liable for ad valorem taxes on property used to provide such services to the public. The measure would also provide that any telecommunications service-related property used to provide telecommunications services to the public by the state, a municipality, or other political subdivision of the state shall not be exempt from intangible taxes. A county, municipality, or other political subdivision of the state would also be liable for sales taxes on purchases as those taxes apply to the providing of telecommunications services to the public. Exempt from the taxing provisions of this bill would be airports and public hospital authorities.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

Yes. This bill would remove some of the exemptions held by the cities and counties for ad valorem taxes, intangible taxes, and taxes on sales.

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. <u>Personal Responsibility:</u>

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. <u>Individual Freedom:</u>

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. <u>Family Empowerment:</u>

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

<u>Section 1.</u> Creates s. 125.421, F.S., which allows that a county or other entity of local government may provide telecommunications services. If these services are provided to the public for hire, they must be accounted for separately and are subject to all local requirements, including ad valorem taxes. In addition, a county or other entity of local government which provides telecommunications services for “internal operational needs” is exempt from this provision.

Section 2. Creates s. 166.047, F.S., which allows that a municipality or other entity of local government may provide telecommunications services. If these services are provided to the public for hire, they must be accounted for separately and are subject to all local requirements including ad valorem taxes. In addition, a municipality or other entity of local government which provides telecommunications services for “internal operational needs” is exempt from this provision.

Section 3. Amends subsection (6) of s.196.012, F.S., which would allow that providing a telecommunications service to the public would not be exempt under s. 196.199, F.S. This exemption would require local governments to be liable for ad valorem taxes on the real property used to provide telecommunications services to the public for hire. An exemption for ad valorem taxes is granted to any property that is being used to provide telecommunications services before or on October 1, 1997, until October 1, 2004.

Section 4. Amends subsection (1) of s.199.183, F.S. This section provides that any telecommunications service-related property used to provide such service to the public for hire by the state, a county a municipality or other political subdivision of the state shall not be exempt from intangible taxes.

Section 5. Amends subsection (6) of s. 212.08, F.S., removing the exemption for telecommunications services provided to the public from any county, municipality, or other political subdivision of the state from the tax on sales.

Section 6. Exempts airports and public hospital authorities from the provisions of sections 3, 4, and 5 of this bill.

Section 7. Provides an effective date of October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The state would collect intangible taxes and sales taxes from municipalities, counties or other entities of local government offering telecommunications services to the public. However, the amount cannot be estimated at this time because it is unknown how many local governments will seek certification as a provider of telecommunications services.

3. Long Run Effects Other Than Normal Growth:

   None.

4. Total Revenues and Expenditures:

   See Recurring Effects above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   None

2. Recurring Effects:

   Local governments may now be responsible for taxes from which they were previously exempt.

3. Long Run Effects Other Than Normal Growth:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   None.

2. Direct Private Sector Benefits:

   None.

3. Effects on Competition, Private Enterprise and Employment Markets:

   According to the proponents of this bill, would eliminate some tax advantages that local governments may have over private enterprise, thus creating a "level playing field."

   Opponents of the bill believe that local telephone companies currently have existing advantages that prevent competition in the local exchange market.

D. FISCAL COMMENTS:

No additional comments

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

CS/CS/HB 313 requires cities and counties to pay ad valorem taxes, intangible taxes and sales taxes on property and purchases that are used to provide telecommunications service to the public.

It is unclear whether this bill would have an insignificant fiscal impact and as such, would be exempt from the provisions of art. VII, s. 18(d) of the Florida Constitution.

However, even if the bill has a significant fiscal impact, it could come under the exceptions to the mandates provision. Chapter 95-403, Laws of Florida authorized local governments to provide telecommunications services and as such, provides the local governments a source of funds to pay the taxes required by this bill. The expenditures required apply to all persons similarly situated, i.e. cities and counties.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

According to Public Service Commission staff, the term “to the public for hire” is a legal term of art. In an electric jurisdiction case, the Supreme Court in PW Ventures, Inc. v. Nichols, 533 So.2d 281 (Fla. 1988), held that the phrase “to the public for compensation” meant to any member of the public, not just the public generally and that it included a business supplying electricity to a single industrial customer on whose property the electric generating facility was located.

The Public Service Commission has issued a declaratory statement in In re: Petition by Tampa Bay W.A.T.S. Cooperative, Inc. for Declaratory Statement as to Jurisdiction of FPSC, Order no. 19710 (July 25, 1988), concerning supplying telephonic services to the public for hire. In that declaratory statement the commission decided that a cooperative association providing unlimited flat-rate long distance calls only to members of the cooperative for a initiation fee, equipment installation charge, and a monthly membership fee, was “operating a telephone line plant or system is providing telephonic communications to the public for hire.”

The bill raises several issues which the courts of the state have not resolved. Firstly, whether the bill imposes ad valorem taxes on counties and other local governments of the state which have been determined by the Florida Supreme Court to be immune from tax.

Immunity has been addressed in numerous cases and is an issue in Canaveral Port Authority, v. Department of Revenue, So.2d , 21 Fla. Law Weekly S529 (Fla. Dec 5, 1996), which is pending rehearing. If certain of the local governments are immune from taxation then the additional questions of whether and how the legislature can waive that immunity are raised. Cases have suggested that waiver requires clear language and may require a constitutional provision. Dickinson v. City of Tallahassee, 325 So. 2d 1 (Fla. 1975). Additionally, it is unclear the extent to which the legislature can define municipal or public purpose.

It should also be noted that the current language could possibly be deemed insufficient in relation to the imposition and collection of gross receipts, municipal utility taxes, corporate income taxes, and sales taxes.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute deleted the provisions of HB 313 as introduced and substituted the provisions noted above. It eliminated the requirement that the municipalities and counties that provide telecommunications services form a separate corporation and pay all applicable taxes and fees.

The committee substitute for the committee substitute clarified that the ad valorem taxes were not exempt on property used in telecommunications services that were offered by the municipalities, and provided a grace period from ad valorem taxes for all property that is being used to provide telecommunications services before or on October 1, 1997. This exemption expires on October 1, 2004.

VII. SIGNATURES:

COMMITTEE ON UTILITIES & COMMUNICATIONS:

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