STORAGE NAME: hb0313.uc
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HOUSE OF REPRESENTATIVES
COMMITTEE ON
UTILITIES AND COMMUNICATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 313

RELATING TO: Telecommunications

SPONSOR(S): Representative Maygarden and Others

STATUTE(S) AFFECTED:

COMPANION BILL(S): SB 214 (I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) UTILITIES AND COMMUNICATIONS
(2)
(3)
(4)
(5)

I. SUMMARY:

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

HB 313 would require that a municipality, county or other form of local government may not “own operate or control a telecommunications company or provide or resell any telecommunications service” except through a separate corporation. This corporation would be subject to all federal, state and local fees and taxes that other telecommunications companies are.

The fiscal impact of this bill is indeterminate 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 are exempt from paying ad valorem taxes. However, a municipality owning property outside the 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 presubscribed 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 governmental entities and nonprofit entities.

B. EFFECT OF PROPOSED CHANGES:

HB 313 would require that a political subdivision of the state of Florida form a separate business corporation in order to provide telecommunications services or act as a telecommunications company. These corporations would be liable for the same taxes and fees as other telecommunications companies.

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?

Yes. A local government or municipality must form a business corporation to offer telecommunications services or operate a telecommunication company.

(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. <u>Lower Taxes:</u>

a. Does the bill increase anyone's taxes?

Yes. A local government would be required to form a business corporation that would be liable for the same taxes and fees as any other business.

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

Yes. A local government would be required to form a business corporation that would be liable for the same taxes and fees as any other business.

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. Personal Responsibility:

   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. Individual Freedom:

   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?

      Yes. A local government or municipality would have to form a business corporation to provide telecommunications service or act as a telecommunications company.

5. Family Empowerment:

   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:

Please see Effect of Proposed Changes section above.

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 sales tax from the corporations formed under the provisions of this bill. 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:

   Local governments would incur the costs of forming a corporation.

2. Recurring Effects:

   Local governments may now be responsible for taxes and fees 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 any tax advantages that local governments may have over private enterprise, thus creating a “level playing field.”

D. FISCAL COMMENTS:

   None

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The law requires cities or counties to spend funds or to take action requiring expenditure of funds. The bill requires cities and counties to pay the cost of establishing separate corporate entities to provide telecommunications services and to pay the appropriate taxes and fees associated with the provision of those services.

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 and fees 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:

NA

V. COMMENTS:

Proponents of this bill feel that the passage of such would create a level playing field, making local governments liable for the same taxes and fees to which private enterprise is subject.

Representatives of the interests of the local governments have voiced a concern that Article VII, section 10, Florida Constitution, may be implicated by this bill. This section provides in part:

> Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person...

In addition, the question has arisen whether this bill is in violation of Section 253 of the 1996 Federal Telecommunications Act (47 USC 253), which provides for the removal of barriers to entry. This section states that no state may pass a law that may prohibit the ability of any entity to provide telecommunications service.

It is unclear if these provisions are applicable.

Other States

The state legislature of Arkansas recently passed SB 54, which is subtitled "Telecommunications Regulatory Reform Act of 1997." This measure states that, "a government entity may not provide, directly or indirectly, basic local exchange service."

The State of Iowa also enacted a prohibitive statute which was struck down by the Iowa District Court as a violation of 47 USC 253. Similarly, state of Texas passed a prohibitive statute which the FCC found in violation of the same section.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:	Legislative Research Director:
Meredith Woodrum Snowden	Patrick L "Booter" Imhof