

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1217 Relating to Taxation of Governmental Authority Utility Services
SPONSOR(S): Attkisson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2780

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Subcommittee on Energy	7 Y, 0 N w/am	Holt	Liepshutz
2) Business Regulation		Holt	Liepshutz
3) State Administration			
4) Finance & Tax			
5) Appropriations			

SUMMARY ANALYSIS

The act creates Section 213.121, Florida Statutes, relating to taxation of governmental authority utility services. The bill is short titled the "Utility Revenue Stabilization Act of 2004." The purpose of the bill, expressed as a legislative finding, is to prevent a loss of state revenue by assuring that neither private utilities nor governmental utilities enjoy an unfair competitive advantage in the marketplace as a result of an uneven application of various taxes and fees. Consequently, the bill waives certain tax exemptions that may provide an advantage to governmental utilities over private sector utilities in the utility marketplace. However, the bill does not waive the current tax exemptions for governmental utilities already providing utility service; instead, it waives the exemptions prospectively, making them unavailable in the future, to governmental authorities that begin to provide service by replacing or duplicating services already being provided by a private utility or that expand utility service into an area where service has not previously been provided. Utility services are defined to include electric, natural gas, water, waste water, or telecommunications services.

There appears to be an indeterminate fiscal impact on local and state government.

The act takes effect January 1, 2005.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1217a.br.doc
DATE: March 31, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The tax exemptions that are currently available to governmental authorities that provide utility service is waived prospectively and would be unavailable in the future to a governmental authority that begins providing service in an area already served by a private utility or replaces service provided by a private utility. The exemption would also be unavailable in the future to a governmental authority that expands service into an area not previously served by any utility.

B. EFFECT OF PROPOSED CHANGES:

The act creates Section 213.121, Florida Statutes, relating to taxation of governmental authority utility services. The bill is short titled the "Utility Revenue Stabilization Act of 2004." The purpose of the bill, expressed as a legislative finding, is to prevent a loss of state revenue by assuring that neither private utilities nor governmental utilities enjoy an unfair competitive advantage in the marketplace as a result of an uneven application of various taxes and fees. Consequently, the bill waives certain tax exemptions that may provide an advantage to governmental utilities over private sector utilities in the utility marketplace. However, the bill does not waive the current tax exemptions for governmental utilities already providing utility service; instead, it waives the exemptions prospectively, making them unavailable in the future, to governmental authorities that begin to provide service by replacing or duplicating services already being provided by a private utility or that expand utility service into an area where service has not previously been provided. Utility services are defined to include electric, natural gas, water, waste water, or telecommunications services.

Definitions are provided as used in the section as follows:

- (a) "Department" means the Department of Revenue or its successor agency.
- (b) "Electric service" means the provision of electricity to retail customers and expressly excludes provision of wholesale electric services between utilities.
- (c) "Governmental authority" means a county, a municipality, a political subdivision of the state as defined by s. 1.01(8), a regional utility authority, or a corporation formed for the purpose of acting on behalf of a county, a municipality, or a political subdivision for the purpose of providing utility services.
- (d) "Natural gas service" means the provision of natural gas to retail customers.
- (e) "Person" means any person as defined in s. 212.02.
- (f) "Telecommunication service" means communications services as defined in s. 202.11(3).
- (g) "Utility company" means any person that provides utility service.
- (h) "Utility service" means electric service, natural gas service, water service, wastewater service, or telecommunication service.
- (i) "Wastewater service" means the collection and pumping of domestic wastes from retail customers to an ultimate point of treatment and disposal in accordance with the federal Clean Water Act, as amended.
- (j) "Water service" means the treatment and distribution of water for human consumption for retail customers by public water systems as defined in s. 403.852 and as otherwise defined in the federal Safe Drinking Water Act, as amended.

Further provisions provide that the privilege of exemption from taxation enjoyed by any governmental authority with respect to the taxes imposed by the chapters set forth in subsection (5) is waived.

Subsection (5) reads: Any governmental authority that:

(a) Begins to provide a utility service that replaces or duplicates services already being provided by a utility company that is not owned by a governmental authority; or

(b) Expands a utility service into areas or territories in which those services were not previously provided by a governmental authority

is subject to the provisions of chapters 199, 201, 202, 206, and 212, with respect to the such utility service; however, the exemptions provided in ss. 199.183(1), 201.24, 202.125(3), 202.12(1)(b), 206.874(3)(b), and 212.08(6), and the refunds available in s. 206.41(4)(d), shall not apply.

The Department of Revenue (DOR) is authorized to adopt rules necessary to implement the section, and the executive director of DOR is authorized to adopt emergency rules ss. 120.536(1) and 120.54(4), F.S. Any emergency rules adopted shall be effective for 6 months after adoption and renewable during the pendency of the procedures to adopt rules

Severability language is provided in the event any sections of the act are found invalid

January 1, 2005, is the effective date of the act.

C. SECTION DIRECTORY:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. A Revenue Estimating Conference has yet to be scheduled.

2. Expenditures:

Indeterminate. A Revenue Estimating Conference has yet to be scheduled.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. A Revenue Estimating Conference has yet to be scheduled.

2. Expenditures:

Indeterminate. A Revenue Estimating Conference has yet to be scheduled.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. A Revenue Estimating Conference has yet to be scheduled.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None

B. RULE-MAKING AUTHORITY:

Rule-making authority is granted to DOR for implementation of the section and for emergency rules as necessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES