

HB 1217

2004

A bill to be entitled

An act relating to taxation of governmental authority utility services; creating s. 213.121, F.S.; providing legislative findings; providing a popular name; providing definitions; waiving certain governmental entity tax exemption privileges under certain circumstances; subjecting certain governmental authorities providing certain utility services to certain tax provisions of law; specifying nonapplication of certain exemption and refund provisions; authorizing the Department of Revenue to adopt certain rules; authorizing the department to adopt certain emergency rules; providing for severability; providing an effective date.

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

Section 1. Section 213.121, Florida Statutes, is created to read:

213.121 Taxation of governmental authority utility services.--

(1) The Legislature recognizes that utility services are provided by both governmental authorities and nongovernmental utilities. The Legislature also recognizes that existing service agreements and territories have been established, and this legislation is not intended to alter or abrogate those agreements. However, because of the uneven application of various taxes and fees, it is frequently the case that governmental authorities can provide certain utility services without the imposition of taxes and fees, which in effect

HB 1217

2004

30 creates an unlevel marketplace by advantaging governmental  
 31 services at the expense of private sector investments. In  
 32 addition, taxes and fees normally collected by the state and  
 33 local governments are not collected if utility services are  
 34 provided by nontaxable governmental authorities. Therefore, the  
 35 Legislature finds that it is in the public interest to ensure  
 36 that neither nongovernmental utilities nor governmental  
 37 authorities have an unfair advantage in providing utility  
 38 services, while simultaneously providing that the state not  
 39 suffer a loss in public taxes and fees.

40 (2) This section may be known by the popular name the  
 41 "Utility Revenue Stabilization Act of 2004."

42 (3) As used in this section:

43 (a) "Department" means the Department of Revenue or its  
 44 successor agency.

45 (b) "Electric service" means the provision of electricity  
 46 to retail customers and expressly excludes provision of  
 47 wholesale electric services between utilities.

48 (c) "Governmental authority" means a county, a  
 49 municipality, a political subdivision of the state as defined by  
 50 s. 1.01(8), a regional utility authority, or a corporation  
 51 formed for the purpose of acting on behalf of a county, a  
 52 municipality, or a political subdivision for the purpose of  
 53 providing utility services.

54 (d) "Natural gas service" means the provision of natural  
 55 gas to retail customers.

56 (e) "Person" means any person as defined in s. 212.02.

57 (f) "Telecommunication service" means communications  
 58 services as defined in s. 202.11(3).

HB 1217

2004

59 (g) "Utility company" means any person that provides  
 60 utility service.

61 (h) "Utility service" means electric service, natural gas  
 62 service, water service, wastewater service, or telecommunication  
 63 service.

64 (i) "Wastewater service" means the collection and pumping  
 65 of domestic wastes from retail customers to an ultimate point of  
 66 treatment and disposal in accordance with the federal Clean  
 67 Water Act, as amended.

68 (j) "Water service" means the treatment and distribution  
 69 of water for human consumption for retail customers by public  
 70 water systems as defined in s. 403.852 and as otherwise defined  
 71 in the federal Safe Drinking Water Act, as amended.

72 (4) The privilege of exemption from taxation enjoyed by  
 73 any governmental authority with respect to the taxes imposed by  
 74 the chapters set forth in subsection (5) is waived.

75 (5) Any governmental authority that:

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

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

82  
 83 is subject to the provisions of chapters 199, 201, 202, 206, and  
 84 212, with respect to the such utility service; however, the  
 85 exemptions provided in ss. 199.183(1), 201.24, 202.125(3),  
 86 202.12(1)(b), 206.874(3)(b), and 212.08(6), and the refunds  
 87 available in s. 206.41(4)(d), shall not apply.

HB 1217

2004

88       (6) The department is authorized to adopt rules as  
89       necessary or appropriate to implement this section, including  
90       rules to prescribe the methods by which a governmental authority  
91       shall allocate revenues and expenses between taxable utility  
92       service activities and nontaxable utility service or other  
93       nontaxable activities when the governmental authority does not  
94       separately account for such activities.

95       (7) The executive director of the department is  
96       authorized, and all conditions are deemed met, to adopt  
97       emergency rules under ss. 120.536(1) and 120.54(4) to implement  
98       this section. Notwithstanding any other provision of law, such  
99       emergency rules shall remain effective for 6 months after the  
100       date of adoption and may be renewed during the pendency of  
101       procedures to adopt rules addressing the subject of the  
102       emergency rules.

103       (8) If any provision of this section is held to be invalid  
104       or inoperative for any reason, it is the legislative intent that  
105       the invalidity shall not affect other provisions or applications  
106       of said subsections or section which can be given effect without  
107       the invalid provision or application, and to this end the  
108       provisions of said subsections and section are declared to be  
109       severable.

110       Section 2. This act shall take effect January 1, 2005.