

By Senator Bennett

21-1584-04

1 A bill to be entitled
2 An act relating to utility services provided by
3 a local government; creating s. 213.121, F.S.;
4 providing definitions relating to local
5 government utility activities; providing that a
6 governmental authority is subject to certain
7 specified taxes if the governmental authority
8 provides certain utility services that replace
9 or duplicate a service already being provided
10 by a private utility company or expands a
11 utility service into an area or territory where
12 the utility service is not provided by a
13 governmental authority; requiring the
14 Department of Revenue to adopt rules; providing
15 that the state, for itself and its agencies and
16 subdivisions, waives sovereign immunity enjoyed
17 by any governmental authority for the express
18 and limited purpose relating to the taxes
19 imposed by the act; providing definitions
20 relating to telecommunications and cable
21 services; imposing a moratorium on a political
22 subdivision by prohibiting the political
23 subdivision from expanding into new service
24 areas, or serving new subscribers in current
25 service areas, during a specified period;
26 providing an exception; providing for
27 severability; providing an effective date.
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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Section 213.121, Florida Statutes, is
2 created to read:

3 213.121 Taxation of utility services provided by a
4 local government.--

5 (1) As used in this section, the term:

6 (a) "Department" means the Department of Revenue.

7 (b) "Electric service" means the provision of
8 electricity to retail customers and expressly excludes
9 provision of wholesale electric services between utilities.

10 (c) "Governmental authority" means a political
11 subdivision, a regional utility authority, or a corporation
12 formed for the purpose of acting on behalf of a political
13 subdivision or regional utility authority for the purpose of
14 providing utility services.

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

17 (e) "Person" has the same meaning as in s. 212.02.

18 (f) "Telecommunication service" has the same meaning
19 as in s. 202.11.

20 (g) "Utility company" means a person that provides
21 utility service.

22 (h) "Utility service" means electric service, natural
23 gas service, water service, wastewater service, or
24 telecommunication service.

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

29 (j) "Water service" means the treatment and
30 distribution of water for human consumption for retail
31 customers by a public water system as defined in s. 404.852

1 and as otherwise defined in the federal Safe Drinking Water
2 Act, as amended.

3 (2) A governmental authority that, commencing on or
4 after July 1, 2004:

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

8 (b) Expands a utility service into an area or
9 territory where the utility service is not provided by a
10 governmental authority,

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12 shall be subject to chapters 199, 201, 202, 206, and 212, with
13 respect to the new utility service. However, the exemptions
14 provided in ss. 199.183(1), 201.24, 202.125(3), 202.12(1)(b),
15 206.874(3)(b), and 212.08(6), and the refunds available in
16 206.41(4)(d), are not applicable.

17 (3) The department shall adopt rules to administer
18 this section. The rules must include, but need not be limited
19 to, rules prescribing the methods by which a governmental
20 authority may allocate revenues and expenses between a taxable
21 utility service and a nontaxable utility service or other
22 nontaxable services if the governmental authority does not
23 separately account for these services.

24 (4) The executive director of the department may adopt
25 emergency rules under s. 120.54(4) to administer this section.
26 Notwithstanding any other law, the emergency rules shall
27 remain in effect for 6 months after the date of adoption and
28 may be renewed during the pendency of procedures to adopt
29 rules addressing the subject of the emergency rules.

30 (5) The state, for itself and for its agencies and
31 subdivisions, waives sovereign immunity enjoyed by any

1 governmental authority for the express and limited purpose
2 relating to the taxes imposed by subsection (4).

3 Section 2. (1) As used in this section, the term:

4 (a) "Advanced service" means high-speed Internet
5 access service capability in excess of 144 kilobits per second
6 in the upstream or the downstream direction, including any
7 service application provided over the high-speed access
8 service or any information service as defined in 47 U.S.C. s.
9 153(20).

10 (b) "Cable service" has the same meaning as in 47
11 U.S.C. s. 522(6).

12 (c) "Providing," with respect to a named service,
13 means offering or supplying a service for a fee to a person,
14 including any portion of the public or a local government or
15 private provider.

16 (d) "Subscriber" means a person who receives a named
17 service.

18 (e) "Telecommunications services" means the
19 transmission of signs, signals, writing, images, sounds,
20 messages, data, or other information of the user's choosing,
21 by wire, radio, light waves, or other electromagnetic means,
22 without change in the form or content of the information as
23 sent and received by the user and regardless of the facilities
24 used.

25 (2) Beginning July 1, 2004, and ending July 1, 2005, a
26 political subdivision may not offer or provide
27 telecommunication services, advanced service, or cable
28 service, and may not purchase, lease, construct, maintain, or
29 operate any facility for the purpose of providing
30 telecommunication services, advanced service, or cable
31 service:

1 (a) In a geographical area not served by the political
2 subdivision on June 30, 2004; or

3 (b) To a new subscriber in a geographical area served
4 by the political subdivision on June 30, 2004.

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6 For purposes of this subsection, a political subdivision
7 provides telecommunication services, advanced service, or
8 cable service if the local government provides the service,
9 directly or indirectly, by itself or through another person,
10 or by contract, resale, or otherwise.

11 (3) This section does not apply to:

12 (a) Additional telecommunication services, advanced
13 service, or cable service provided to subscribers receiving
14 telecommunication services, advanced service, or cable service
15 on June 30, 2004; or

16 (b) Telecommunication services, advanced service, or
17 cable service provided to the political subdivision for the
18 internal operational needs of the political subdivision.

19 Section 3. If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 invalidity does not affect other provisions or applications of
22 this act which can be given effect without the invalid
23 provision or application, and to this end the provisions of
24 this act are severable.

25 Section 4. This act shall take effect July 1, 2004.

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SENATE SUMMARY

Provides that a governmental authority is subject to specified taxes if it provides certain utility services that replace or duplicate a service being provided by a private utility company or expands a utility service into an area or territory where the utility service is not provided by a governmental authority. Requires the Department of Revenue to adopt rules. Provides that the state waives sovereign immunity for the express and limited purpose relating to the taxes imposed by this act. Imposes a moratorium on a political subdivision by prohibiting the political subdivision from expanding telecommunication and cable services into new service areas during a specified period. (See bill for details.)