

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative(s) Attkisson offered the following:

2  
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Communications services offered by governmental  
6 entities.--

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

8 (a) "Advanced service" means high-speed-Internet-access-  
9 service capability in excess of 200 kilobits per second in the  
10 upstream or the downstream direction, including any service  
11 application provided over the high-speed-access service or any  
12 information service as defined in 47 U.S.C. s. 153(20).

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

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15        (c) "Communications services" includes any "advanced  
16 service," "cable service," or "telecommunications service" and  
17 shall be construed in the broadest sense.

18        (d) "Enterprise fund" means a separate fund to account for  
19 the operation of communications services by a local government,  
20 established and maintained in accordance with generally accepted  
21 accounting principles as prescribed by the Governmental  
22 Accounting Standards Board.

23        (e) "Governmental entity" means any political subdivision  
24 as defined in section 1.01, Florida Statutes, including any  
25 county, municipality, special district, school district, or  
26 utility authority or other authority or any instrumentality,  
27 agency, unit, or department thereof. The term does not include  
28 an independent special district created before 1970 which has  
29 been granted express legislative authority to provide a  
30 communications service and which does not sell a communications  
31 service outside its district boundaries.

32        (f) "Provide," "providing," "provision," or "provisioning"  
33 means offering or supplying a communications service for a fee  
34 or other consideration to a person, including any portion of the  
35 public or a private provider, but does not include service by a  
36 governmental entity to itself or to any other governmental law  
37 enforcement or governmental emergency services entity.

38        (g) "Subscriber" means a person who receives a  
39 communications service.

40        (h) "Telecommunications services" means the transmission  
41 of signs, signals, writing, images, sounds, messages, data, or

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42 other information of the user's choosing, by wire, radio, light  
43 waves, or other electromagnetic means, without change in the  
44 form or content of the information as sent and received by the  
45 user and regardless of the facilities used, including, without  
46 limitation, wireless facilities.

47 (2)(a) Prior to a proposal to provide any provision of  
48 communications services, a governmental entity shall hold no  
49 less than two public hearing not less than 30 days apart. At  
50 least 30 days before the first of the two public hearings, the  
51 governmental entity shall give notice of the hearing in the  
52 predominant newspaper of general circulation in the area  
53 considered for service. At least 40 days before the first public  
54 hearing, the governmental entity shall electronically provide  
55 notice to the Department of Revenue and the Public Service  
56 Commission, which shall post the notice on the department's and  
57 the commission's website. The Department of Revenue shall also  
58 send the notice by United States Postal Service to the known  
59 addresses for all dealers of communications services registered  
60 with the department under chapter 202, Florida Statutes, or  
61 provide an electronic notification, if the means are available,  
62 within 10 days after receiving the notice. The notice shall  
63 include the time and place of the hearings and shall state that  
64 the purpose of the hearings is to consider whether the  
65 governmental entity will provide communications services. The  
66 notice shall include, at a minimum, the geographic areas  
67 proposed to be served by the governmental entity and the  
68 services, if any, which the governmental entity believes are not

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69 currently being adequately provided. The notice shall also state  
70 that any dealer who wishes to do so may appear and be heard at  
71 the public hearings.

72 (b) At a public hearing required by this subsection, a  
73 governmental entity shall, at a minimum, consider:

74 1. Whether the service that is proposed to be provided is  
75 currently being offered in the community and, if so, whether the  
76 service is generally available throughout the community.

77 2. Whether a similar service is currently being offered in  
78 the community and, if so, whether the service is generally  
79 available throughout the community.

80 3. If the same or a similar service is not currently  
81 offered, whether any other service provider proposes to offer  
82 the same or a similar service and, if so, what assurances that  
83 service provider is willing or able to offer regarding the same  
84 or similar service.

85 4. The capital investment required by the governmental  
86 entity to provide the communications service, the estimated  
87 realistic cost of operation and maintenance, and, using a full  
88 cost-accounting method, the estimated realistic revenues and  
89 expenses of providing the service and the proposed method of  
90 financing.

91 5. The private and public costs and benefits of providing  
92 the service by a private entity or a governmental entity,  
93 including the effect on existing and future jobs, actual  
94 economic development prospects, tax-base growth, education, and  
95 public health.

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96 (c) At one or more of the public hearings under this  
97 subsection, the governmental entity shall make available to the  
98 public a written business plan for the proposed communications  
99 service venture containing, at a minimum:

100 1. The projected number of customers to be served by the  
101 venture.

102 2. The geographic area to be served by the venture.

103 3. The types of communications services to be provided.

104 4. A plan to ensure that revenues exceed operating  
105 expenses and payment of principal and interest on debt within 4  
106 years.

107 5. Estimated capital and operational costs and revenues  
108 for the first 4 years.

109 6. Projected network modernization and technological  
110 upgrade plans, including estimated costs.

111 (d) After making specific findings regarding the factors  
112 in paragraphs (2)(b) and (2)(c), the governmental entity may  
113 authorize providing a communications service by a majority  
114 recorded vote, by resolution, ordinance, or other formal means  
115 of adoption.

116 (e) The governing body of a governmental entity may issue  
117 one or more bonds to finance the capital costs for facilities to  
118 provide a communications service. However:

119 1. A governmental entity may only pledge revenues in  
120 support of the issuance of any bond to finance provision of a  
121 communications service:

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122 a. Within the county in which the governmental entity is  
123 located;

124 b. Within an area in which the governmental entity  
125 provides electric service outside its home county under an  
126 electric service territorial agreement approved by the Public  
127 Service Commission before the effective date of this act; or

128 c. If the governmental entity is a municipality or special  
129 district, within its corporate limits or in an area in which the  
130 municipality or special district provides water, wastewater, or  
131 electric or natural gas service, or within an urban service area  
132 designated in a comprehensive plan, whichever is larger, unless  
133 the municipality or special district obtains the consent, by a  
134 majority recorded vote by resolution, ordinance, or other formal  
135 means of adoption, of the governmental entity within the  
136 boundaries of which the municipality or special district  
137 proposes to provide service.

138  
139 Any governmental entity from which consent is sought pursuant to  
140 sub-subparagraph c. shall be located within the county in which  
141 the governmental entity is located for consent to be effective.

142 2. Revenue bonds issued in order to finance provision of a  
143 communications service are not subject to the approval of the  
144 electors if the revenue bonds mature within 15 years. Revenue  
145 bonds issued to finance provision of a communications service  
146 that does not mature within 15 years shall be approved by the  
147 electors. The election shall be conducted as specified in  
148 chapter 100, Florida Statutes.

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149       (f) A governmental entity providing a communications  
150 service may not price any service below the cost of providing  
151 the service by subsidizing the communications service with  
152 moneys from rates paid by customers of a noncommunications  
153 services utility or from any other revenues. The cost standard  
154 for determining cross-subsidization is whether the total revenue  
155 from the service is less than the total long-run incremental  
156 cost, including direct costs and indirect costs, as allocated  
157 pursuant to the cost-allocation plan described in paragraph (g),  
158 of the service. "Total long-run incremental cost" means service-  
159 specific volume and nonvolume-sensitive costs.

160       (g) A governmental entity providing a communications  
161 service shall keep separate and accurate books and records,  
162 maintained in accordance with generally accepted accounting  
163 principles, of a governmental entity's communication service,  
164 which books and records shall be made available for any audits  
165 of the books and records conducted under applicable law. To  
166 facilitate equitable distribution of indirect costs, a local  
167 governmental entity shall develop and follow a cost-allocation  
168 plan in accordance with OMB Circular A-87, Cost Principles for  
169 State, Local, and Indian Tribal Government, published by the  
170 United States Office of Management and Budget.

171       (h) The governmental entity shall establish an enterprise  
172 fund to account for its operation of communications services.

173       (i) The governmental entity shall adopt separate operating  
174 and capital budgets for its communications services.

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175 (j) A governmental entity may not use its powers of  
176 eminent domain under chapter 73, Florida Statutes, solely or  
177 primarily for the purpose of providing a communications service.

178 (k) If, after 4 years following the initiation of the  
179 provision of communications services by a governmental entity or  
180 4 years after the effective date of this act, whichever is  
181 later, revenues do not exceed operating expenses and payment of  
182 principal and interest on the debt for a governmental entity's  
183 provision of communications services, no later than 60 days  
184 following the end of the 4-year period a governmental entity  
185 shall hold a public hearing at which the governmental entity  
186 shall do at least one of the following:

187 1. Approve a plan to cease providing communications  
188 services;

189 2. Approve a plan to dispose of the system the  
190 governmental entity is using to provide communications services  
191 and, accordingly, to cease providing communications services;

192 3. Approve a plan to create a partnership with a private  
193 entity in order to achieve operations in which revenues exceed  
194 operating expenses and payment of principal and interest on  
195 debt; or

196 4. Approve the continuing provision of communications  
197 services.

198 (l) If the governmental entity chooses to continue  
199 providing communications services, or approves a plan provided  
200 in paragraph (k), but thereafter does not implement the plan,  
201 the governmental entity shall either develop a new business plan

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202 provided under paragraph (c) or provide notice of the decision  
203 to not pursue the provisions under paragraph (k). The new plan  
204 shall be submitted to the governing body for approval within 60  
205 days after the public hearing and shall be implemented upon  
206 approval. If the governing body does not approve the new plan,  
207 the governmental entity shall cease providing communications  
208 services within 12 months thereafter.

209 (m) The governmental entity shall conduct an annual review  
210 at a formal public meeting to consider the progress the  
211 governmental entity is making toward reaching its business plan  
212 goals and objectives for providing communication services. At  
213 the public meeting, the governmental entity shall review the  
214 related revenues, operating expenses, and payment of interest on  
215 debt.

216 (n)1. Within 12 months after the end of each fiscal year,  
217 a governmental entity that is providing communications services  
218 shall prepare a modified statement of revenues, expenses, and  
219 changes in net assets for the enterprise fund used to account  
220 for the communications services. Such statement shall present a  
221 full and complete accounting of the operations of the covered  
222 services for the fiscal year in accordance with generally  
223 accepted accounting principles and utilizing full cost  
224 accounting. The principal financial officer of the governmental  
225 entity responsible for the preparation of this statement shall  
226 assert in writing the following affidavit regarding this  
227 statement:

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229 I am responsible for the preparation and presentation of  
230 the attached modified statement of revenue, expenses, and  
231 changes in net assets. I hereby assert that the above  
232 statement presents the full and complete accounting of the  
233 revenues and expenses of the (insert name of covered  
234 services) for the year (period) ended (insert fiscal year  
235 end), in accordance with Section xx, Florida Statutes.  
236

237 2. Within 12 months after the end of each fiscal year, a  
238 governmental entity that is providing communications services  
239 shall retain a licensed certified public accountant to perform  
240 and complete an examination of the modified statement of  
241 revenue, expenses, and changes in net assets and shall deliver a  
242 copy of the accountant's report and the affidavit referenced in  
243 subparagraph 1. to the Director of Economic Regulation at the  
244 Florida Public Service Commission or the director's designee,  
245 the Department of Revenue, and the Joint Legislative Auditing  
246 Committee. The accountant's report on such examination shall  
247 express an opinion that the modified statement of revenue,  
248 expenses, and changes in net assets are fairly presented in  
249 accordance with requirements of this section. Failure of the  
250 governmental entity to provide an unqualified examination report  
251 within a 12-month period shall constitute noncompliance with  
252 this section.

253 3. The governmental entity shall, as specified in  
254 subparagraph 2., provide the copy of the accountant's report and  
255 affidavit referenced in subparagraph 1. to the Department of

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256 Revenue, in addition to the governmental entity's regular annual  
257 financial report and audit, required by s. 218.32, Florida  
258 Statutes. The Department of Revenue or other required recipients  
259 of the report and affidavit may proceed in accordance with the  
260 procedures set forth in s. 218.32(1)(f), Florida Statutes, if  
261 the report and affidavit are not received within the specified  
262 time period. If such procedures are pursued, the Legislative  
263 Auditing Committee may take the state action set forth in s.  
264 11.40(5), Florida Statutes.

265 (o) Before a person that has an interest affected by a  
266 governmental entity's violation of this section may file an  
267 action in circuit court for violation of this section, that  
268 person shall file a written complaint with the governmental  
269 entity. A private provider providing communications services to  
270 subscribers in the governmental entity shall be deemed to have  
271 such an interest. Within 30 days after receipt of such  
272 complaint, the governmental entity shall respond in writing  
273 explaining the corrective action taken or to be taken, if any.  
274 If the governmental entity denies that it has violated this  
275 section, its response shall include an explanation and  
276 documentation demonstrating why the conduct complained of does  
277 not constitute a violation. The person may file an action in  
278 circuit court, shall be deemed to have standing and a special  
279 injury for purposes of an action in court for violation of this  
280 section, and shall be entitled to injunctive relief. The court  
281 shall award to the prevailing party or parties reasonable  
282 attorney's fees.

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283       (3)(a) A governmental entity that provides a cable service  
284 shall comply with the Cable Communications Policy Act of 1984,  
285 47 U.S.C. 521, et seq., the regulations issued by the Federal  
286 Communications Commission under the Cable Communications Policy  
287 Act of 1984, 47 U.S.C. 521, et seq., and all applicable state  
288 and federal rules and regulations, including, but not limited  
289 to, s. 166.046, Florida Statutes, and those provisions of  
290 chapters 202, 212, and 337, Florida Statutes, which apply to a  
291 provider of the services.

292       (b) A governmental entity that provides a  
293 telecommunications service or advanced service shall comply, if  
294 applicable, with chapter 364, Florida Statutes, and rules  
295 adopted by the Public Service Commission; chapter 166, Florida  
296 Statutes, and all applicable state and federal rules and  
297 regulations, including, but not limited to, those provisions of  
298 chapters 202, 212, and 337, Florida Statutes, which apply to a  
299 provider of the services.

300       (c) A governmental entity may not exercise its power or  
301 authority in any area, including zoning or land use regulation,  
302 to require any person, including residents of a particular  
303 development, to use or subscribe to any communications service  
304 of a governmental entity.

305       (d) A governmental entity shall apply its ordinances,  
306 rules, and policies, and exercise any authority under state or  
307 federal laws, including, but not limited to, those relating to  
308 the following subjects and without discrimination as to itself

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309 when providing a communications service or to any private  
310 provider of communications services:

311 1. Access to public rights-of-way; and

312 2. Permitting, access to, use of, and payment for use of  
313 governmental-entity-owned poles. The governmental entity is  
314 subject to the same terms, conditions, and fees, if any, for  
315 access to governmental-entity-owned poles which the governmental  
316 entity applies to a private provider for access.

317 (4)(a) If a governmental entity was providing, as of April  
318 1, 2005, advanced services, cable services, or  
319 telecommunications services, it is not required to comply with  
320 paragraphs (2)(a)-(f), in order to continue to provide advanced  
321 services, cable services, or telecommunications services, but it  
322 shall comply with and be subject to all other provisions of this  
323 section.

324 (b) If a governmental entity, as of April 1, 2005, had  
325 issued debt pledging revenues from an advanced service, cable  
326 service, or telecommunications service, it is not required to  
327 comply with paragraph (2)(a), (b), (c), (d), (e)1.c., or (f) in  
328 order to provide advanced services, cable services, or  
329 telecommunications services, respectively, but it shall comply  
330 with and be subject to all other provisions of this section.

331 (c) A governmental entity that has purchased equipment  
332 specifically for the provisioning of advanced service, cable  
333 service, or telecommunications service by April 1, 2005, and has  
334 received authorization by a recorded majority vote by  
335 resolution, ordinance, or other formal means of adoption, for

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336 the provision of an advanced service, cable service, or  
337 telecommunications service, is not required to comply with  
338 paragraph (2)(a), (b), (c), (d), (2)(e)1.c., or (f) in order to  
339 provide such services, but shall comply with and be subject to  
340 all other provisions of this section.

341 (5) Notwithstanding s. 542.235, Florida Statutes, or any  
342 other law, a governmental entity that provides a communications  
343 service is subject to the same prohibitions applicable to  
344 private providers under ss. 542.18 and 542.19, Florida Statutes,  
345 as it relates to providing a communications service. In  
346 addition, this section does not confer state action immunity, or  
347 any other antitrust immunity or exemption, on any governmental  
348 entity providing communications services.

349 (6) To ensure the safe and secure transportation of  
350 passengers and freight through an airport facility, as defined  
351 in s. 159.27(17), Florida Statutes, exemption from this section  
352 is granted to any airport authority or other governmental entity  
353 that provides or is proposing to provide:

354 (a) Communications services only within the boundaries of  
355 its airport layout plan, as defined in s. 333.01(6), Florida  
356 Statutes, to subscribers which are integral and essential to the  
357 safe and secure transportation of passengers and freight through  
358 the airport facility.

359 (b) Shared-tenant service under s. 364.339, Florida  
360 Statutes, not including dial tone, enabling subscribers to  
361 complete calls outside the airport layout plan, to one or more  
362 subscribers within its airport layout plan which are not

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363 integral and essential to the safe and secure transportation of  
364 passengers and freight through the airport facility.

365  
366 An airport authority or other governmental entity that provides  
367 or is proposing to provide communications services to one or  
368 more customers within its airport layout plan which are not  
369 integral and essential to the safe and secure transportation of  
370 passengers and freight through the airport facility, or to one  
371 or more customers outside its airport layout plan, is not exempt  
372 from this section. By way of example and not limitation, the  
373 integral, essential subscribers may include airlines and  
374 emergency service entities, and the nonintegral, nonessential  
375 subscribers may include retail shops, restaurants, hotels, or  
376 rental car companies.

377 (7) This section does not alter or affect any provisions  
378 in the charter, code, or other governing authorities of a  
379 governmental entity that impose additional or different  
380 requirements on provision of communications service by a  
381 governmental entity. Any such provisions shall apply in addition  
382 to the applicable provisions in this section.

383 Section 2. If any provision of this act or its application  
384 to any person or circumstance is held invalid, the invalidity  
385 does not affect other provisions or applications of the act  
386 which can be given effect without the invalid provision or  
387 application, and to this end the provisions of this act are  
388 severable.

389 Section 3. This act shall take effect upon becoming a law.

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===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

A bill to be entitled

An act relating to local governments; providing definitions; providing for notice of public hearings to consider whether the local government will provide a communications service; requiring a governmental entity to consider certain factors before a communications service is provided; providing certain restrictions on revenue bonds to finance provisioning of communications services; requiring a local government to make available a written business plan; providing criteria for the business plan; setting pricing standards; providing for accounting and books and records; requiring the governmental entity to establish an enterprise fund; requiring the governmental entity to maintain separate operating and capital budgets; limiting the use of eminent-domain powers; requiring a governmental entity to hold a public hearing to consider certain factors if the business plan goals are not met; requiring compliance with certain federal and state laws; requiring a local government to treat itself the same as it treats other providers of similar communications services; exempting certain governmental entities from specified provisions of the act; requiring a local governmental provider of communications services to follow the same prohibitions as other providers of the same

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417 services; providing an exemption for airports under  
418 certain conditions; recognizing preemption of a charter,  
419 code, or other governmental authority; providing for  
420 severability; providing an effective date.

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