

Bill No. HB 1325, 2nd Eng.

Barcode 585208

CHAMBER ACTION

Senate

House

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Senator Constantine moved the following amendment:

Senate Amendment (with title amendment)

On page 2, line 12, delete everything after the enacting clause

and insert:

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

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

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

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

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

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1 (d) "Enterprise fund" means a separate fund to account
 2 for the operation of communications services by a local
 3 government, established and maintained in accordance with
 4 generally accepted accounting principles as prescribed by the
 5 Governmental Accounting Standards Board.

6 (e) "Governmental entity" means any political
 7 subdivision as defined in section 1.01, Florida Statutes,
 8 including any county, municipality, special district, school
 9 district, utility authority or other authority or any
 10 instrumentality, agency, unit or department thereof. The term
 11 does not include an independent special district created
 12 before 1970 which has been granted express legislative
 13 authority to provide a communications service and which does
 14 not sell a communications service outside its district
 15 boundaries.

16 (f) "Provide," "providing," "provision," or
 17 "provisioning" means offering or supplying a communications
 18 service for a fee or other consideration to a person,
 19 including any portion of the public or private provider, but
 20 does not include service by an entity to itself or to any
 21 other governmental entity.

22 (g) "Subscriber" means a person who receives a
 23 communications service.

24 (h) "Telecommunications services" means the
 25 transmission of signs, signals, writing, images, sounds,
 26 messages, data, or other information of the user's choosing,
 27 by wire, radio, light waves, or other electromagnetic means,
 28 without change in the form or content of the information as
 29 sent and received by the user and regardless of the facilities
 30 used, including, without limitation, wireless facilities.

31 (2)(a) A governmental entity that proposes to provide

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1 a communications service shall hold no less than two public
2 hearings, which shall be held not less than 30 days apart. At
3 least 30 days before the first of the two public hearings, the
4 governmental entity must give notice of the hearing in the
5 predominant newspaper of general circulation in the area
6 considered for service. At least 40 days before the first
7 public hearing, the governmental entity must electronically
8 provide notice to the Department of Revenue and the Public
9 Service Commission, which shall post the notice on the
10 department's and the commission's website to be available to
11 the public. The Department of Revenue shall also send the
12 notice by United States Postal Service to the known addresses
13 for all dealers of communications services registered with the
14 department under chapter 202, Florida Statutes, or provide an
15 electronic notification, if the means are available, within 10
16 days after receiving the notice. The notice must include the
17 time and place of the hearings and must state that the purpose
18 of the hearings is to consider whether the governmental entity
19 will provide communications services. The notice must include,
20 at a minimum, the geographic areas proposed to be served by
21 the governmental entity and the services, if any, which the
22 governmental entity believes are not currently being
23 adequately provided. The notice must also state that any
24 dealer who wishes to do so may appear and be heard at the
25 public hearings.

26 (b) At a public hearing required by this subsection, a
27 governmental entity must, at a minimum, consider:

28 1. Whether the service that is proposed to be provided
29 is currently being offered in the community and, if so,
30 whether the service is generally available throughout the
31 community.

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

4 3. If the same or similar service is not currently
5 offered, whether any other service provider proposes to offer
6 the same or a similar service and, if so, what assurances that
7 service provider is willing or able to offer regarding the
8 same or similar service.

9 4. The capital investment required by the government
10 entity to provide the communications service, the estimated
11 realistic cost of operation and maintenance and, using a full
12 cost-accounting method, the estimated realistic revenues and
13 expenses of providing the service and the proposed method of
14 financing.

15 5. The private and public costs and benefits of
16 providing the service by a private entity or a governmental
17 entity, including the affect on existing and future jobs,
18 actual economic development prospects, tax-base growth,
19 education, and public health.

20 (c) At one or more of the public hearings under this
21 subsection, the governmental entity must make available to the
22 public a written business plan for the proposed communications
23 service venture containing, at a minimum:

24 1. The projected number of subscribers to be served by
25 the venture.

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

27 3. The types of communications services to be
28 provided.

29 4. A plan to ensure that revenues exceed operating
30 expenses and payment of principal and interest on debt within
31 4 years.

1 5. Estimated capital and operational costs and
2 revenues for the first 4 years.

3 6. Projected network modernization and technological
4 upgrade plans, including estimated costs.

5 (d) After making specific findings regarding the
6 factors in paragraphs (b) and (c), the governmental entity may
7 authorize providing a communications service by a majority
8 recorded vote and by resolution, ordinance, or other formal
9 means of adoption.

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

13 1. A governmental entity may only pledge revenues in
14 support of the issuance of any bond to finance providing a
15 communications service:

16 a. Within the county in which the governmental entity
17 is located;

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

22 c. If the governmental entity is a municipality or
23 special district, within its corporate limits or in an area in
24 which the municipality or special district provides water,
25 wastewater, electric, or natural gas service, or within an
26 urban service area designated in a comprehensive plan,
27 whichever is larger, unless the municipality or special
28 district obtains the consent of the governmental entity within
29 the boundaries of which the municipality or special district
30 proposes to provide service.

31 2. Revenue bonds issued in order to finance providing

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1 a communications service are not subject to the approval of
 2 the electors if the revenue bonds mature within 15 years.
 3 Revenue bonds issued to finance providing a communications
 4 service that does not mature within 15 years must be approved
 5 by the electors. The election must be conducted as specified
 6 in chapter 100, Florida Statutes.

7 (f) A governmental entity providing a communications
 8 service may not price any service below the cost of providing
 9 the service by subsidizing the communications service with
 10 moneys from rates paid by subscribers of a noncommunications
 11 services utility or from any other revenues. The cost standard
 12 for determining cross-subsidization is whether the total
 13 revenue from the service is less than the total long-run
 14 incremental cost of the service. Total long-run incremental
 15 cost means service-specific volume and nonvolume-sensitive
 16 costs.

17 (g) A governmental entity providing a communications
 18 service must comply with the requirements of section 218.32,
 19 Florida Statutes, and shall keep separate and accurate books
 20 and records, maintained in accordance with generally accepted
 21 accounting principles, of a governmental entity's
 22 communication service, and they shall be made available for
 23 any audits of the books and records conducted under applicable
 24 law. To facilitate equitable distribution of indirect costs, a
 25 local government shall develop and follow a cost-allocation
 26 plan, which is a procedure for allocating direct and indirect
 27 costs and which is generally developed in accordance with OMB
 28 Circular A-87, Cost Principles for State, Local, and Indian
 29 Tribal Government, published by the United States Office of
 30 Management and Budget.

31 (h) The governmental entity shall establish an

1 enterprise fund to account for its operation of communications
2 services.

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

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

9 (k) The governmental entity shall conduct an annual
10 review at a formal public meeting to consider the progress the
11 governmental entity is making toward reaching its business
12 plan goals and objectives for providing communication
13 services. At the public meeting the governmental entity shall
14 review the related revenues, operating expenses, and payment
15 of interest on debt.

16 (l) If, after 4 years following the initiation of the
17 provision of communications services by a governmental entity
18 or 4 years after the effective date of this act, whichever is
19 later, revenues do not exceed operating expenses and payment
20 of principal and interest on the debt for a governmental
21 entity's provision of communications services, no later than
22 60 days following the end of the 4-year period a governmental
23 entity shall hold a public hearing at which the governmental
24 entity shall do at least one of the following:

25 1. Approve a plan to cease providing communications
26 services;

27 2. Approve a plan to dispose of the system the
28 governmental entity is using to provide communications
29 services and, accordingly, to cease providing communications
30 services;

31 3. Approve a plan to create a partnership with a

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1 private entity in order to achieve operations in which
2 revenues exceed operating expenses and payment of principal
3 and interest on debt; or

4 4. Approve the continuing provision of communications
5 services.

6 (3)(a) A governmental entity that provides a cable
7 service shall comply with the Cable Communications Policy Act
8 of 1984, 47 U.S.C. 521, et seq., the regulations issued by the
9 Federal Communications Commission under the Cable
10 Communications Policy Act of 1984, 47 U.S.C. 521, et seq., and
11 all applicable state and federal rules and regulations,
12 including, but not limited to, section 166.046, Florida
13 Statutes, and those provisions of chapters 202, 212, and 337,
14 Florida Statutes, which apply to a provider of the services.

15 (b) A governmental entity that provides a
16 telecommunications service or advanced service must comply, if
17 applicable, with chapter 364, Florida Statutes, and rules
18 adopted by the Public Service Commission; chapter 166, Florida
19 Statutes; and all applicable state and federal rules and
20 regulations, including, but not limited to, those provisions
21 of chapters 202, 212, and 337, Florida Statutes, which apply
22 to a provider of the services.

23 (c) A governmental entity may not exercise its power
24 or authority in any area, including zoning or land use
25 regulation, to require any person, including residents of a
26 particular development, to use or subscribe to any
27 communication service of a governmental entity.

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

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1 when providing a communications service or to any private
2 provider of communications services:

- 3 1. Access to public rights-of-way; and
- 4 2. Permitting, access to, use of, and payment for use
5 of governmental entity-owned poles. The governmental entity is
6 subject to the same terms, conditions, and fees, if any, for
7 access to government-owned poles which the governmental entity
8 applies to a private provider for access.

9 (4)(a) If a governmental entity was providing, as of
10 April 1, 2005, advanced services, cable services, or
11 telecommunications services, then it is not required to comply
12 with paragraph (2)(a), paragraph (2)(b), paragraph (2)(c),
13 paragraph (2)(d), sub-subparagraph (2)(e)1.c., paragraph
14 (2)(f), paragraph (2)(k), or paragraph (2)(l), in order to
15 continue to provide advanced services, cable services, or
16 telecommunications services, respectively, but it must comply
17 with and be subject to all other provisions of this section.

18 (b) If a governmental entity, as of April 1, 2005, had
19 issued debt pledging revenues from an advanced service, cable
20 service, or telecommunications service, then it is not
21 required to comply with paragraph (2)(a), paragraph (2)(b),
22 paragraph (2)(c), paragraph (2)(d), sub-subparagraph
23 (2)(e)1.c., paragraph (2)(f), paragraph (2)(k), or paragraph
24 (2)(l), in order to provide advanced services, cable services,
25 or telecommunications services, respectively, but it must
26 comply with and be subject to all other provisions of this
27 section.

28 (c) If a governmental entity, as of April 1, 2005, has
29 purchased equipment specifically for the provisioning of
30 advanced service, cable service, or telecommunication service,
31 and, as of May 6, 2005, has authorized the providing of an

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1 advanced service, cable service, or telecommunication service,
 2 then it is not required to comply with paragraph (2)(a),
 3 paragraph (2)(b), paragraph (2)(c), paragraph (2)(d),
 4 sub-subparagraph (2)(e)1.c., paragraph (2)(f), paragraph
 5 (2)(k), or paragraph (2)(l) in order to provide advanced
 6 service, cable service, or telecommunication service,
 7 respectively, but it must comply with and be subject to all
 8 other provisions of this section.

9
 10 This subsection does not relieve a governmental entity from
 11 complying with subsection (5).

12 (5) Notwithstanding section 542.235, Florida Statutes,
 13 or any other law, a governmental entity that provides a
 14 communications service is subject to the same prohibitions
 15 applicable to private providers under sections 542.18 and
 16 542.19, Florida Statutes, as it relates to providing a
 17 communications service. In addition, the exemption from
 18 complying with paragraph (2)(f), does not confer state action
 19 immunity, or any other antitrust immunity or exemption, on any
 20 governmental entity providing communications services.

21 (6) To ensure the safe and secure transportation of
 22 passengers and freight through an airport facility, as defined
 23 in section 159.27(17), Florida Statutes, an airport authority
 24 or other governmental entity that provides or is proposing to
 25 provide communications services only within the boundaries of
 26 its airport layout plan, as defined in section 333.01(6),
 27 Florida Statutes, to subscribers which are integral and
 28 essential to the safe and secure transportation of passengers
 29 and freight through the airport facility, is exempt from this
 30 section. An airport authority or other governmental entity
 31 that provides or is proposing to provide shared-tenant service

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1 under section 364.339, Florida Statutes, but not dial tone
2 enabling subscribers to complete calls outside the airport
3 layout plan, to one or more subscribers within its airport
4 layout plan which are not integral and essential to the safe
5 and secure transportation of passengers and freight through
6 the airport facility is exempt from this section. An airport
7 authority or other governmental entity that provides or is
8 proposing to provide communications services to one or more
9 subscribers within its airport layout plan which are not
10 integral and essential to the safe and secure transportation
11 of passengers and freight through the airport facility, or to
12 one or more subscribers outside its airport layout plan, is
13 not exempt from this section. By way of example and not
14 limitation, the integral, essential subscribers may include
15 airlines and emergency service entities, and the nonintegral,
16 nonessential subscribers may include retail shops,
17 restaurants, hotels, or rental car companies.

18 (7) This section does not alter or affect any
19 provision in the charter, code, or other governing authority
20 of a governmental entity that impose additional or different
21 requirements on provision of communications service by a
22 governmental entity. Any such provisions shall apply in
23 addition to the applicable provisions in this section.

24 Section 2. If any provision of section 1 of this act
25 or its application to any person or circumstance is held
26 invalid, the invalidity does not affect other provisions or
27 applications of the act which can be given effect without the
28 invalid provision or application, and to this end the
29 provisions of this act are severable.

30 Section 3. Subsection (7) of section 288.1162, Florida
31 Statutes, is amended to read:

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1 288.1162 Professional sports franchises; spring
2 training franchises; duties.--

3 (7)(a) The Office of Tourism, Trade, and Economic
4 Development shall notify the Department of Revenue of any
5 facility certified as a facility for a new professional sports
6 franchise or a facility for a retained professional sports
7 franchise or as a facility for a retained spring training
8 franchise. The Office of Tourism, Trade, and Economic
9 Development shall certify no more than eight facilities as
10 facilities for a new professional sports franchise or as
11 facilities for a retained professional sports franchise and
12 shall certify at least five as facilities for retained spring
13 training franchises, including in such total any facilities
14 certified by the Department of Commerce before July 1, 1996.
15 The office may make no more than one certification for any
16 facility. The office may not certify funding for less than the
17 requested amount to any applicant certified as a facility for
18 a retained spring training franchise.

19 (b) Certification of an applicant under this section
20 for the eighth certification for a facility for a new
21 professional sports franchise or for a facility for a retained
22 professional sports franchise shall be for an applicant for
23 which the franchise that serves as the basis of the
24 certification is a member of the National Basketball
25 Association, has been located within the state since 1987, and
26 has not been previously certified. This paragraph shall be
27 repealed on July 1, 2010.

28 Section 4. This act shall take effect upon becoming a
29 law.

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

2 And the title is amended as follows:

3 On page 1, line 1, delete everything before the
4 enacting clause

5
6 and insert:

7 A bill to be entitled
8 An act relating to local governments; providing
9 definitions; providing for notice of public
10 hearings to consider whether the local
11 government will provide a communications
12 service; requiring a governmental entity to
13 take certain action before a communications
14 service is provided; providing certain
15 restrictions on revenue bonds to finance
16 provisioning of communications services;
17 requiring a local government to make available
18 a written business plan; providing criteria for
19 the business plan; setting pricing standards;
20 providing for accounting and books and records;
21 requiring the governmental entity to establish
22 an enterprise fund; requiring the governmental
23 entity to maintain separate operating and
24 capital budgets; limiting the use of
25 eminent-domain powers; requiring a governmental
26 entity to hold a public hearing to consider
27 certain factors if the business plan goals are
28 not met; requiring compliance with certain
29 federal and state laws; requiring local
30 government to treat itself the same as it
31 treats other providers of similar

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1 communications services; exempting certain
2 governmental entities from specified provisions
3 of the act; requiring a local government
4 provider of communications services to follow
5 the same prohibitions as other providers of the
6 same services; providing an exemption for
7 airports under certain conditions; recognizing
8 preemption of a charter, code, or other
9 governmental authority; providing for
10 severability; amending s. 288.1162, F.S.;
11 specifying criteria certification for remaining
12 available certification slot; providing for
13 repeal; providing an effective date.

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