

Bill No. HB 1325, 2nd Eng.

Barcode 834670

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. Any governmental entity from
31 which consent is sought shall be the county or shall be

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1 located within the county in which the governmental entity is
2 located for consent to be effective.

3 2. Revenue bonds issued in order to finance providing
4 a communications service are not subject to the approval of
5 the electors if the revenue bonds mature within 15 years.

6 Revenue bonds issued to finance providing a communications
7 service that does not mature within 15 years must be approved
8 by the electors. The election must be conducted as specified
9 in chapter 100, Florida Statutes.

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

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

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1 Tribal Government, published by the United States Office of
2 Management and Budget.

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

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

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

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

19 (l) If, after 4 years following the initiation of the
20 provision of communications services by a governmental entity
21 or 4 years after the effective date of this act, whichever is
22 later, revenues do not exceed operating expenses and payment
23 of principal and interest on the debt for a governmental
24 entity's provision of communications services, no later than
25 60 days following the end of the 4-year period a governmental
26 entity shall hold a public hearing at which the governmental
27 entity shall do at least one of the following:

28 1. Approve a plan to cease providing communications
29 services;

30 2. Approve a plan to dispose of the system the
31 governmental entity is using to provide communications

1 services and, accordingly, to cease providing communications
2 services;

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

7 4. Approve the continuing provision of communications
8 services.

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

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

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

31 (d) A governmental entity shall apply its ordinances,

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1 rules, and policies, and exercise any authority under state or
 2 federal laws, including, but not limited to, those relating to
 3 the following subjects and without discrimination as to itself
 4 when providing a communications service or to any private
 5 provider of communications services:

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

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

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

31 (c) If a governmental entity, as of April 1, 2005, has

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1 purchased equipment specifically for the provisioning of
 2 advanced service, cable service, or telecommunication service,
 3 and, as of May 6, 2005, has authorized the providing of an
 4 advanced service, cable service, or telecommunication service,
 5 then it is not required to comply with paragraph (2)(a),
 6 paragraph (2)(b), paragraph (2)(c), paragraph (2)(d),
 7 sub-subparagraph (2)(e)1.c., paragraph (2)(f), paragraph
 8 (2)(k), or paragraph (2)(l) in order to provide advanced
 9 service, cable service, or telecommunication service,
 10 respectively, but it must comply with and be subject to all
 11 other provisions of this section.

12
 13 This subsection does not relieve a governmental entity from
 14 complying with subsection (5).

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

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

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

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

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

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1 provisions of this act are severable.

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

5 And the title is amended as follows:

6 On page 1, line 1, delete everything before the
7 enacting clause

8

9 and insert:

10

 A bill to be entitled

11

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

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1 federal and state laws; requiring local
2 government to treat itself the same as it
3 treats other providers of similar
4 communications services; exempting certain
5 governmental entities from specified provisions
6 of the act; requiring a local government
7 provider of communications services to follow
8 the same prohibitions as other providers of the
9 same services; providing an exemption for
10 airports under certain conditions; recognizing
11 preemption of a charter, code, or other
12 governmental authority; providing for
13 severability; providing for repeal; providing
14 an effective date.

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