

CHAMBER ACTION

1 The Finance & Tax Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to governmental authority in communication
7 services; creating the Governmental Authority Provision
8 for Communication Services Act of 2005; providing
9 definitions; authorizing governmental authorities to
10 provide communication services in certain circumstances;
11 providing requirements for the provision of communication
12 services; requiring a referendum for the provision of such
13 services; requiring regulatory compliance by governmental
14 authorities and service providers; providing for the use
15 of certain structures and facilities; authorizing
16 governmental authorities to secure funding for certain
17 costs; authorizing governmental authorities providing
18 specific services prior to a date certain to continue to
19 offer those specific services; providing for the payment
20 of taxes on certain acquired entities; providing
21 severability; providing an effective date.

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

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Section 1. Governmental authority provision of communication services.--

(1) This section may be cited as the "Governmental Authority Provision of Communication Services Act of 2005."

(2) As used in this section:

(a) "Advanced service" means high-speed Internet access service capability in excess of 144 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), using any technology or medium.

(b) "Covered service" means an advanced service, cable service, or telecommunications service and should be construed in the broadest sense.

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

(d) "Governmental authority" means any political subdivision as defined in s. 1.01, Florida Statutes, and any utility authority, other authority, board, branch, department, or unit thereof. The term includes any person owned, operated, or controlled by a governmental authority or in which a governmental authority otherwise has an interest, whether direct or indirect.

(e) "Omitted service" means a covered service that a governmental authority determines is desired by the authority's residents but is not being provided to the residents by any private provider of covered services.

52 (f) "Person" has the same meaning as defined in s. 1.01,
 53 Florida Statutes.

54 (g) "Private provider" means a provider of covered
 55 services that is not a governmental authority.

56 (h) "Providing," "provide," or "provision," with respect
 57 to a covered service, means offering or supplying a service for
 58 a fee or other consideration to a person, including any portion
 59 of the public or a governmental authority or private provider. A
 60 provider is a person that provides a covered service.

61 (i) "Subscriber" means a person who receives a covered
 62 service.

63 (j) "Supplying," with respect to a covered service, means
 64 actually supplying a service for a fee or other consideration to
 65 a person, including any portion of the public or a governmental
 66 authority or private provider.

67 (k) "Telecommunications services" means the transmission
 68 of signs, signals, writing, images, sounds, messages, data, or
 69 other information of the user's choosing, by wire, radio, light
 70 waves, or other electromagnetic means, without change in the
 71 form or content of the information as sent and received by the
 72 user and regardless of the facilities used, and including fixed
 73 and mobile terrestrial wireless technologies or applications.

74 (3) Except as specified in subsection (4), no governmental
 75 authority shall provide a covered service or a facility used to
 76 provide a covered service. The foregoing prohibition shall not
 77 apply to, and shall not prohibit a governmental authority from
 78 supplying, a covered service, or a facility used to provide a
 79 covered service, for internal operational needs,

80 intergovernmental communications, and public service
 81 communications.

82 (4)(a) Any governmental authority that is supplying a
 83 covered service on May 1, 2005, shall be permitted to continue
 84 supplying such service; however, the governmental authority may
 85 not extend or expand its services or service areas for existing
 86 or new subscribers.

87 (b) If a governmental authority determines that there are
 88 omitted services, the governmental authority may commence
 89 providing the omitted services only upon the following
 90 conditions in the following order:

91 1. The governmental authority provides written notice to
 92 all dealers of communications services registered under chapter
 93 202, Florida Statutes, with the Department of Revenue describing
 94 the omitted services.

95 2. No provider commences to provide the noticed omitted
 96 services or other substantially similar services within 120 days
 97 after the date of the written notice.

98 3. The governmental authority retains a feasibility
 99 consultant to assess, in a written report, the feasibility of
 100 the governmental authority's provision of the omitted services,
 101 including consideration of the capital investment in facilities
 102 to be used to provide the omitted services; the expenditure of
 103 funds for labor, financing, and administering the proposed
 104 omitted services; using full-cost accounting, the projected
 105 annual operating expenses and revenues; and the governmental
 106 authority's proposed method of financing.

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107 4. If the feasibility study indicates that the
108 governmental authority's provision of the omitted services is
109 feasible, the governing body schedules a public hearing to be
110 held to consider the feasibility study, to afford the public an
111 opportunity to offer comments on whether the governmental
112 authority should provide one or more of the noticed omitted
113 services, and to then vote on whether to proceed.

114 5. If the governing body votes in favor of proceeding, it
115 calls an election on whether the governmental authority may
116 provide the omitted services that were the subject of the
117 governing body's vote. The notice of the election shall include,
118 with any other information required by law, a summary of the
119 omitted services and a statement that the feasibility study is
120 available for inspection and copying at a designated location.
121 The ballot at the election shall pose the question substantially
122 as follows: "Shall [insert name of the governmental authority]
123 operate a business providing [telecovered or advanced services,
124 or cable services, as applicable (meaning those services
125 identified in the governing body's vote)] to the inhabitants of
126 the [governmental authority] at a total cost of approximately
127 [insert amount from feasibility study] per year?"

128 (c) The ballot proposition may not take effect until
129 submitted to the electors and approved by a majority of those
130 voting on the ballot.

131 (d) If a majority of the electors vote to approve the
132 ballot question, the governmental authority may thereafter
133 provide the omitted services that were referenced in the ballot
134 question.

135 (e) Any governmental authority that issued public debt
 136 guaranteed by the revenue of any covered service prior to the
 137 effective date of this law may continue to offer the specific
 138 services offered as of March 1, 2005, to existing customers or
 139 any other residents within the geographic boundaries of the
 140 governmental authority.

141 (5)(a) A governmental authority that provides a cable
 142 service shall comply with the Cable Communications Policy Act of
 143 1984, 47 U.S.C. ss. 521 et seq.; the regulations issued by the
 144 Federal Communications Commission under the Cable Communications
 145 Policy Act of 1984, 47 U.S.C. ss. 521 et seq.; and all
 146 applicable state and federal rules and regulations, including,
 147 but not limited, to s. 166.046, Florida Statutes, and those
 148 provisions of chapters 202, 212, and 337, Florida Statutes,
 149 applicable to a provider of such services.

150 (b) A governmental authority that provides a
 151 telecommunications service or advanced service shall comply, if
 152 applicable, with chapter 364, Florida Statutes, and rules
 153 adopted by the Florida Public Service Commission; chapter 166,
 154 Florida Statutes; and all applicable state and federal rules and
 155 regulations, including, but not limited to, those provisions of
 156 chapters 202, 212, and 337, Florida Statutes, applicable to a
 157 provider of such services.

158 (c) Exercise of a governmental authority's power or
 159 authority in any area, including zoning or land use, to require
 160 use by any person, including residents of a particular
 161 development, of any of the governmental authority's covered
 162 services is prohibited.

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163 (d) A governmental authority shall apply the governmental
164 authority's ordinances, rules, and policies and exercise any
165 authority under state or federal laws, including those relating
166 to the following subjects, without discrimination as to itself
167 and any private provider of covered services:

168 1. Allowing access to and use of public rights-of-way.

169 2. Allowing access to, use of, and payment for use of
170 governmental authority-owned or controlled poles, conduits,
171 easements, and similar facilities, such that the governmental
172 authority shall be subject to the same terms, conditions, and
173 fees, if any, for access to such poles, conduits, easements, or
174 similar facilities that the governmental authority applies to a
175 private provider for such access.

176 (e) A governmental authority may not pledge any revenues
177 in support of the issuance of any bonds to finance the provision
178 of covered services outside the governmental authority's
179 geographical boundaries. The governing body of a governmental
180 authority may, upon approval by a vote of the electors, issue
181 one or more bonds to finance the capital costs for facilities to
182 provide covered services. The election shall be conducted as
183 specified in chapter 100, Florida Statutes. Any bonds issued to
184 finance the governmental authority's provision of covered
185 services shall be secured and paid solely from the revenues
186 generated by the governmental authority from its provision of
187 covered services. A governmental authority may not pay any such
188 bonds, or any origination, financing, or other costs associated
189 with such bonds, from the general funds or other enterprises of
190 the governmental authority or from the proceeds of bonds secured

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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191 and to be paid by the general taxing powers of the governmental
 192 authority. This paragraph shall not apply to bonds issued by a
 193 governmental authority prior to the effective date of this
 194 section.

195 (f) Notwithstanding s. 542.235, Florida Statutes, or any
 196 other provision of law, a governmental authority that provides
 197 covered services is subject to the same prohibitions applicable
 198 to private providers under ss. 542.18 and 542.19, Florida
 199 Statutes.

200 (6) If a governmental authority acquires any tax-paying
 201 entity that is providing water or wastewater services, the
 202 governmental authority must continue to pay the applicable taxes
 203 levied upon the entity.

204 (7) In all decisions concerning governmental authority
 205 relating to the acquisition of, or contracting with, covered
 206 services, water services, or wastewater services, when all
 207 factors are comparable, the Florida Public Service Commission
 208 shall rule in favor of tax-paying entities.

209 (8) If any provisions of this section or the application
 210 of any provision of this section is found invalid, the remainder
 211 of this section shall be given effect without the invalid
 212 provision or application.

213 Section 2. This act shall take effect upon becoming a law.