

CHAMBER ACTION

1 The Commerce Council 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.

22  
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. The term does not include an airport authority or other airport governmental entity which provides communication services to itself and its tenant within the boundaries of its airport layout plan as defined in s. 333.01(6), Florida Statutes.

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

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

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

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

65        (i) "Subscriber" means a person who receives a covered  
 66 service.

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

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

78        (3) Except as specified in subsection (4), no governmental  
 79 authority shall provide a covered service or a facility used to

80 provide a covered service. The foregoing prohibition shall not  
 81 apply to, and shall not prohibit a governmental authority from  
 82 supplying, a covered service, or a facility used to provide a  
 83 covered service, for internal operational needs,  
 84 intergovernmental communications, and public service  
 85 communications.

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

91 (b) If a governmental authority determines that there are  
 92 omitted services, the governmental authority may commence  
 93 providing the omitted services only upon the following  
 94 conditions in the following order:

95 1. The governmental authority provides written notice to  
 96 all dealers of communications services registered under chapter  
 97 202, Florida Statutes, with the Department of Revenue describing  
 98 the omitted services.

99 2. No provider commences to provide the noticed omitted  
 100 services or other substantially similar services within 120 days  
 101 after the date of the written notice.

102 3. The governmental authority retains a feasibility  
 103 consultant to assess, in a written report, the feasibility of  
 104 the governmental authority's provision of the omitted services,  
 105 including consideration of the capital investment in facilities  
 106 to be used to provide the omitted services; the expenditure of  
 107 funds for labor, financing, and administering the proposed

108 omitted services; using full-cost accounting, the projected  
 109 annual operating expenses and revenues; and the governmental  
 110 authority's proposed method of financing.

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

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

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

135        (d) If a majority of the electors vote to approve the  
 136 ballot question, the governmental authority may thereafter  
 137 provide the omitted services that were referenced in the ballot  
 138 question.

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

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

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

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

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

- 172           1. Allowing access to and use of public rights-of-way.  
 173           2. Allowing access to, use of, and payment for use of  
 174 governmental authority-owned or controlled poles, conduits,  
 175 easements, and similar facilities, such that the governmental  
 176 authority shall be subject to the same terms, conditions, and  
 177 fees, if any, for access to such poles, conduits, easements, or  
 178 similar facilities that the governmental authority applies to a  
 179 private provider for such access.

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

190 generated by the governmental authority from its provision of  
 191 covered services. A governmental authority may not pay any such  
 192 bonds, or any origination, financing, or other costs associated  
 193 with such bonds, from the general funds or other enterprises of  
 194 the governmental authority or from the proceeds of bonds secured  
 195 and to be paid by the general taxing powers of the governmental  
 196 authority. This paragraph shall not apply to bonds issued by a  
 197 governmental authority prior to the effective date of this  
 198 section.

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

204 (6) If a governmental authority acquires any tax-paying  
 205 entity that is providing water or wastewater services, the  
 206 governmental authority must continue to pay the applicable taxes  
 207 levied upon the entity.

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

213 (8) If any provisions of this section or the application  
 214 of any provision of this section is found invalid, the remainder  
 215 of this section shall be given effect without the invalid  
 216 provision or application.

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