

1 A bill to be entitled
2 An act relating to local governments; providing
3 definitions; providing for notice of public hearings to
4 consider whether the local government will provide a
5 communications service; requiring a governmental entity to
6 consider certain factors before a communications service
7 is provided; providing certain restrictions on revenue
8 bonds to finance provisioning of communications services;
9 requiring a local government to make available a written
10 business plan; providing criteria for the business plan;
11 setting pricing standards; providing for accounting and
12 books and records; requiring the governmental entity to
13 establish an enterprise fund; requiring the governmental
14 entity to maintain separate operating and capital budgets;
15 limiting the use of eminent-domain powers; requiring a
16 governmental entity to hold a public hearing to consider
17 certain factors if the business plan goals are not met;
18 requiring compliance with certain federal and state laws;
19 requiring a local government to treat itself the same as
20 it treats other providers of similar communications
21 services; exempting certain governmental entities from
22 specified provisions of the act; requiring a local
23 governmental provider of communications services to follow
24 the same prohibitions as other providers of the same
25 services; providing an exemption for airports under
26 certain conditions; recognizing preemption of a charter,
27 code, or other governmental authority; providing for
28 severability; providing an effective date.

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

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.

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

(e) "Governmental entity" means any political subdivision as defined in section 1.01, Florida Statutes, including any county, municipality, special district, school district, or utility authority or other authority or any instrumentality, agency, unit, or department thereof. The term does not include an independent special district created before 1970 which has been granted express legislative authority to provide a

57 communications service and which does not sell a communications
58 service outside its district boundaries.

59 (f) "Provide," "providing," "provision," or "provisioning"
60 means offering or supplying a communications service for a fee
61 or other consideration to a person, including any portion of the
62 public or a private provider, but does not include service by a
63 governmental entity to itself or to any other governmental law
64 enforcement or governmental emergency services entity.

65 (g) "Subscriber" means a person who receives a
66 communications service.

67 (h) "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, including, without
73 limitation, wireless facilities.

74 (2) (a) Prior to a proposal to provide any provision of
75 communications services, a governmental entity shall hold no
76 less than two public hearing not less than 30 days apart. At
77 least 30 days before the first of the two public hearings, the
78 governmental entity shall give notice of the hearing in the
79 predominant newspaper of general circulation in the area
80 considered for service. At least 40 days before the first public
81 hearing, the governmental entity shall electronically provide
82 notice to the Department of Revenue and the Public Service
83 Commission, which shall post the notice on the department's and
84 the commission's website. The Department of Revenue shall also

85 send the notice by United States Postal Service to the known
86 addresses for all dealers of communications services registered
87 with the department under chapter 202, Florida Statutes, or
88 provide an electronic notification, if the means are available,
89 within 10 days after receiving the notice. The notice shall
90 include the time and place of the hearings and shall state that
91 the purpose of the hearings is to consider whether the
92 governmental entity will provide communications services. The
93 notice shall include, at a minimum, the geographic areas
94 proposed to be served by the governmental entity and the
95 services, if any, which the governmental entity believes are not
96 currently being adequately provided. The notice shall also state
97 that any dealer who wishes to do so may appear and be heard at
98 the public hearings.

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

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

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

107 3. If the same or a similar service is not currently
108 offered, whether any other service provider proposes to offer
109 the same or a similar service and, if so, what assurances that
110 service provider is willing or able to offer regarding the same
111 or similar service.

112 4. The capital investment required by the governmental
113 entity to provide the communications service, the estimated
114 realistic cost of operation and maintenance, and, using a full
115 cost-accounting method, the estimated realistic revenues and
116 expenses of providing the service and the proposed method of
117 financing.

118 5. The private and public costs and benefits of providing
119 the service by a private entity or a governmental entity,
120 including the effect on existing and future jobs, actual
121 economic development prospects, tax-base growth, education, and
122 public health.

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

127 1. The projected number of customers to be served by the
128 venture.

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

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

131 4. A plan to ensure that revenues exceed operating
132 expenses and payment of principal and interest on debt within 4
133 years.

134 5. Estimated capital and operational costs and revenues
135 for the first 4 years.

136 6. Projected network modernization and technological
137 upgrade plans, including estimated costs.

138 (d) After making specific findings regarding the factors
139 in paragraphs (2) (b) and (2) (c), the governmental entity may

140 authorize providing a communications service by a majority
141 recorded vote, by resolution, ordinance, or other formal means
142 of adoption.

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

146 1. A governmental entity may only pledge revenues in
147 support of the issuance of any bond to finance provision of a
148 communications service:

149 a. Within the county in which the governmental entity is
150 located;

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

155 c. If the governmental entity is a municipality or special
156 district, within its corporate limits or in an area in which the
157 municipality or special district provides water, wastewater, or
158 electric or natural gas service, or within an urban service area
159 designated in a comprehensive plan, whichever is larger, unless
160 the municipality or special district obtains the consent, by a
161 majority recorded vote by resolution, ordinance, or other formal
162 means of adoption, of the governmental entity within the
163 boundaries of which the municipality or special district
164 proposes to provide service.

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166 Any governmental entity from which consent is sought pursuant to
167 sub-subparagraph c. shall be located within the county in which
168 the governmental entity is located for consent to be effective.

169 2. Revenue bonds issued in order to finance provision of a
170 communications service are not subject to the approval of the
171 electors if the revenue bonds mature within 15 years. Revenue
172 bonds issued to finance provision of a communications service
173 that does not mature within 15 years shall be approved by the
174 electors. The election shall be conducted as specified in
175 chapter 100, Florida Statutes.

176 (f) A governmental entity providing a communications
177 service may not price any service below the cost of providing
178 the service by subsidizing the communications service with
179 moneys from rates paid by customers of a noncommunications
180 services utility or from any other revenues. The cost standard
181 for determining cross-subsidization is whether the total revenue
182 from the service is less than the total long-run incremental
183 cost, including direct costs and indirect costs, as allocated
184 pursuant to the cost-allocation plan described in paragraph (g),
185 of the service. "Total long-run incremental cost" means service-
186 specific volume and nonvolume-sensitive costs.

187 (g) A governmental entity providing a communications
188 service shall keep separate and accurate books and records,
189 maintained in accordance with generally accepted accounting
190 principles, of a governmental entity's communication service,
191 which books and records shall be made available for any audits
192 of the books and records conducted under applicable law. To
193 facilitate equitable distribution of indirect costs, a local

194 governmental entity shall develop and follow a cost-allocation
 195 plan in accordance with OMB Circular A-87, Cost Principles for
 196 State, Local, and Indian Tribal Government, published by the
 197 United States Office of Management and Budget.

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

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

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

205 (k) If, after 4 years following the initiation of the
 206 provision of communications services by a governmental entity or
 207 4 years after the effective date of this act, whichever is
 208 later, revenues do not exceed operating expenses and payment of
 209 principal and interest on the debt for a governmental entity's
 210 provision of communications services, no later than 60 days
 211 following the end of the 4-year period a governmental entity
 212 shall hold a public hearing at which the governmental entity
 213 shall do at least one of the following:

214 1. Approve a plan to cease providing communications
 215 services;

216 2. Approve a plan to dispose of the system the
 217 governmental entity is using to provide communications services
 218 and, accordingly, to cease providing communications services;

219 3. Approve a plan to create a partnership with a private
 220 entity in order to achieve operations in which revenues exceed

221 operating expenses and payment of principal and interest on
222 debt; or

223 4. Approve the continuing provision of communications
224 services.

225 (l) If the governmental entity chooses to continue
226 providing communications services, or approves a plan provided
227 in paragraph (k), but thereafter does not implement the plan,
228 the governmental entity shall either develop a new business plan
229 provided under paragraph (c) or provide notice of the decision
230 to not pursue the provisions under paragraph (k). The new plan
231 shall be submitted to the governing body for approval within 60
232 days after the public hearing and shall be implemented upon
233 approval. If the governing body does not approve the new plan,
234 the governmental entity shall cease providing communications
235 services within 12 months thereafter.

236 (m) The governmental entity shall conduct an annual
237 review at a formal public meeting to consider the progress the
238 governmental entity is making toward reaching its business plan
239 goals and objectives for providing communication services. At
240 the public meeting, the governmental entity shall review the
241 related revenues, operating expenses, and payment of interest on
242 debt.

243 (n)1. Within 12 months after the end of each fiscal year,
244 a governmental entity that is providing communications services
245 shall prepare a modified statement of revenues, expenses, and
246 changes in net assets for the enterprise fund used to account
247 for the communications services. Such statement shall present a
248 full and complete accounting of the operations of the covered

249 services for the fiscal year in accordance with generally
 250 accepted accounting principles and utilizing full cost
 251 accounting. The principal financial officer of the governmental
 252 entity responsible for the preparation of this statement shall
 253 assert in writing the following affidavit regarding this
 254 statement:

255
 256 I am responsible for the preparation and presentation of
 257 the attached modified statement of revenue, expenses, and
 258 changes in net assets. I hereby assert that the above
 259 statement presents the full and complete accounting of the
 260 revenues and expenses of the (insert name of covered
 261 services) for the year (period) ended (insert fiscal year
 262 end), in accordance with Section xx, Florida Statutes.

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 264 2. Within 12 months after the end of each fiscal year, a
 265 governmental entity that is providing communications services
 266 shall retain a licensed certified public accountant to perform
 267 and complete an examination of the modified statement of
 268 revenue, expenses, and changes in net assets and shall deliver a
 269 copy of the accountant's report and the affidavit referenced in
 270 subparagraph 1. to the Director of Economic Regulation at the
 271 Florida Public Service Commission or the director's designee,
 272 the Department of Revenue, and the Joint Legislative Auditing
 273 Committee. The accountant's report on such examination shall
 274 express an opinion that the modified statement of revenue,
 275 expenses, and changes in net assets are fairly presented in
 276 accordance with requirements of this section. Failure of the

277 governmental entity to provide an unqualified examination report
278 within a 12-month period shall constitute noncompliance with
279 this section.

280 3. The governmental entity shall, as specified in
281 subparagraph 2., provide the copy of the accountant's report and
282 affidavit referenced in subparagraph 1. to the Department of
283 Revenue, in addition to the governmental entity's regular annual
284 financial report and audit, required by s. 218.32, Florida
285 Statutes. The Department of Revenue or other required recipients
286 of the report and affidavit may proceed in accordance with the
287 procedures set forth in s. 218.32(1)(f), Florida Statutes, if
288 the report and affidavit are not received within the specified
289 time period. If such procedures are pursued, the Legislative
290 Auditing Committee may take the state action set forth in s.
291 11.40(5), Florida Statutes.

292 (o) Before a person that has an interest affected by a
293 governmental entity's violation of this section may file an
294 action in circuit court for violation of this section, that
295 person shall file a written complaint with the governmental
296 entity. A private provider providing communications services to
297 subscribers in the governmental entity shall be deemed to have
298 such an interest. Within 30 days after receipt of such
299 complaint, the governmental entity shall respond in writing
300 explaining the corrective action taken or to be taken, if any.
301 If the governmental entity denies that it has violated this
302 section, its response shall include an explanation and
303 documentation demonstrating why the conduct complained of does
304 not constitute a violation. The person may file an action in

305 circuit court, shall be deemed to have standing and a special
 306 injury for purposes of an action in court for violation of this
 307 section, and shall be entitled to injunctive relief. The court
 308 shall award to the prevailing party or parties reasonable
 309 attorney's fees.

310 (3) (a) A governmental entity that provides a cable service
 311 shall comply with the Cable Communications Policy Act of 1984,
 312 47 U.S.C. 521, et seq., the regulations issued by the Federal
 313 Communications Commission under the Cable Communications Policy
 314 Act of 1984, 47 U.S.C. 521, et seq., and all applicable state
 315 and federal rules and regulations, including, but not limited
 316 to, s. 166.046, Florida Statutes, and those provisions of
 317 chapters 202, 212, and 337, Florida Statutes, which apply to a
 318 provider of the services.

319 (b) A governmental entity that provides a
 320 telecommunications service or advanced service shall comply, if
 321 applicable, with chapter 364, Florida Statutes, and rules
 322 adopted by the Public Service Commission; chapter 166, Florida
 323 Statutes, and all applicable state and federal rules and
 324 regulations, including, but not limited to, those provisions of
 325 chapters 202, 212, and 337, Florida Statutes, which apply to a
 326 provider of the services.

327 (c) A governmental entity may not exercise its power or
 328 authority in any area, including zoning or land use regulation,
 329 to require any person, including residents of a particular
 330 development, to use or subscribe to any communications service
 331 of a governmental entity.

332 (d) A governmental entity shall apply its ordinances,
333 rules, and policies, and exercise any authority under state or
334 federal laws, including, but not limited to, those relating to
335 the following subjects and without discrimination as to itself
336 when providing a communications service or to any private
337 provider of communications services:

338 1. Access to public rights-of-way; and
339 2. Permitting, access to, use of, and payment for use of
340 governmental-entity-owned poles. The governmental entity is
341 subject to the same terms, conditions, and fees, if any, for
342 access to governmental-entity-owned poles which the governmental
343 entity applies to a private provider for access.

344 (4)(a) If a governmental entity was providing, as of April
345 1, 2005, advanced services, cable services, or
346 telecommunications services, it is not required to comply with
347 paragraphs (2)(a)-(f), in order to continue to provide advanced
348 services, cable services, or telecommunications services,
349 respectively, but it shall comply with and be subject to all
350 other provisions of this section.

351 (b) If a governmental entity, as of April 1, 2005, had
352 issued debt pledging revenues from an advanced service, cable
353 service, or telecommunications service, it is not required to
354 comply with paragraph (2)(a), (b), (c), (d), (e)1.c., or (f) in
355 order to provide advanced services, cable services, or
356 telecommunications services, respectively, but it shall comply
357 with and be subject to all other provisions of this section.

358 (c) A governmental entity that has purchased equipment
359 specifically for the provisioning of advanced service, cable

360 service, or telecommunications service by April 1, 2005, and has
361 received authorization by a recorded majority vote by
362 resolution, ordinance, or other formal means of adoption, for
363 the provision of an advanced service, cable service, or
364 telecommunications service, is not required to comply with
365 paragraph (2)(a), (b), (c), (d), (2)(e)1.c., or (f) in order to
366 provide advanced services, cable services, or telecommunications
367 services, respectively, but shall comply with and be subject to
368 all other provisions of this section.

369 (5) Notwithstanding s. 542.235, Florida Statutes, or any
370 other law, a governmental entity that provides a communications
371 service is subject to the same prohibitions applicable to
372 private providers under ss. 542.18 and 542.19, Florida Statutes,
373 as it relates to providing a communications service. In
374 addition, this section does not confer state action immunity, or
375 any other antitrust immunity or exemption, on any governmental
376 entity providing communications services.

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

382 (a) Communications services only within the boundaries of
383 its airport layout plan, as defined in s. 333.01(6), Florida
384 Statutes, to subscribers which are integral and essential to the
385 safe and secure transportation of passengers and freight through
386 the airport facility.

387 (b) Shared-tenant service under s. 364.339, Florida
388 Statutes, not including dial tone, enabling subscribers to
389 complete calls outside the airport layout plan, to one or more
390 subscribers within its airport layout plan which are not
391 integral and essential to the safe and secure transportation of
392 passengers and freight through the airport facility.

393
394 An airport authority or other governmental entity that provides
395 or is proposing to provide communications services to one or
396 more customers within its airport layout plan which are not
397 integral and essential to the safe and secure transportation of
398 passengers and freight through the airport facility, or to one
399 or more customers outside its airport layout plan, is not exempt
400 from this section. By way of example and not limitation, the
401 integral, essential subscribers may include airlines and
402 emergency service entities, and the nonintegral, nonessential
403 subscribers may include retail shops, restaurants, hotels, or
404 rental car companies.

405 (7) This section does not alter or affect any provisions
406 in the charter, code, or other governing authorities of a
407 governmental entity that impose additional or different
408 requirements on provision of communications service by a
409 governmental entity. Any such provisions shall apply in addition
410 to the applicable provisions in this section.

411 Section 2. If any provision of this act or its application
412 to any person or circumstance is held invalid, the invalidity
413 does not affect other provisions or applications of the act
414 which can be given effect without the invalid provision or

415 | application, and to this end the provisions of this act are
416 | severable.

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