

1 A bill to be entitled

2 An act relating to local government economic development;
3 amending s. 288.1162, F.S.; specifying criteria for
4 certification for remaining available certification slot
5 for professional sports franchises; providing definitions;
6 providing for notice of public hearings to consider
7 whether the local government will provide a communications
8 service; requiring a governmental entity to consider
9 certain factors before a communications service is
10 provided; providing certain restrictions on revenue bonds
11 to finance provisioning of communications services;
12 requiring a local government to make available a written
13 business plan; providing criteria for the business plan;
14 setting pricing standards; providing for accounting and
15 books and records; requiring the governmental entity to
16 establish an enterprise fund; requiring the governmental
17 entity to maintain separate operating and capital budgets;
18 limiting the use of eminent-domain powers; requiring a
19 governmental entity to hold a public hearing to consider
20 certain factors if the business plan goals are not met;
21 requiring compliance with certain federal and state laws;
22 requiring a local government to treat itself the same as
23 it treats other providers of similar communications
24 services; exempting certain governmental entities from
25 specified provisions of the act; requiring a local
26 governmental provider of communications services to follow
27 the same prohibitions as other providers of the same
28 services; providing an exemption for airports under

29 | certain conditions; recognizing preemption of a charter,
30 | code, or other governmental authority; providing for
31 | severability; providing an effective date.
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33 | Be It Enacted by the Legislature of the State of Florida:
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35 | Section 1. Subsection (7) of section 288.1162, Florida
36 | Statutes, is amended to read:

37 | 288.1162 Professional sports franchises; spring training
38 | franchises; duties.--

39 | (7) (a) The Office of Tourism, Trade, and Economic
40 | Development shall notify the Department of Revenue of any
41 | facility certified as a facility for a new professional sports
42 | franchise or a facility for a retained professional sports
43 | franchise or as a facility for a retained spring training
44 | franchise. The Office of Tourism, Trade, and Economic
45 | Development shall certify no more than eight facilities as
46 | facilities for a new professional sports franchise or as
47 | facilities for a retained professional sports franchise and
48 | shall certify at least five as facilities for retained spring
49 | training franchises, including in such total any facilities
50 | certified by the Department of Commerce before July 1, 1996. The
51 | office may make no more than one certification for any facility.
52 | The office may not certify funding for less than the requested
53 | amount to any applicant certified as a facility for a retained
54 | spring training franchise.

55 | (b) Certification of an applicant under this section for
56 | the eighth certification for a facility for a new professional

57 sports franchise or for a facility for a retained professional
 58 sports franchise shall be for an applicant for which the
 59 franchise that serves as the basis of the certification is a
 60 member of the National Basketball Association, has been located
 61 within the state since 1987, and has not been previously
 62 certified. This paragraph shall be repealed on July 1, 2010.

63 Section 2. Communications services offered by governmental
 64 entities.--

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

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

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

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

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

81 (e) "Governmental entity" means any political subdivision
 82 as defined in section 1.01, Florida Statutes, including any
 83 county, municipality, special district, school district, or
 84 utility authority or other authority or any instrumentality,

85 agency, unit, or department thereof. The term does not include
86 an independent special district created before 1970 which has
87 been granted express legislative authority to provide a
88 communications service and which does not sell a communications
89 service outside its district boundaries.

90 (f) "Provide," "providing," "provision," or "provisioning"
91 means offering or supplying a communications service for a fee
92 or other consideration to a person, including any portion of the
93 public or a private provider, but does not include service by a
94 governmental entity to itself or to any other governmental law
95 enforcement or governmental emergency services entity.

96 (g) "Subscriber" means a person who receives a
97 communications service.

98 (h) "Telecommunications services" means the transmission
99 of signs, signals, writing, images, sounds, messages, data, or
100 other information of the user's choosing, by wire, radio, light
101 waves, or other electromagnetic means, without change in the
102 form or content of the information as sent and received by the
103 user and regardless of the facilities used, including, without
104 limitation, wireless facilities.

105 (2) (a) Prior to a proposal to provide any provision of
106 communications services, a governmental entity shall hold no
107 less than two public hearing not less than 30 days apart. At
108 least 30 days before the first of the two public hearings, the
109 governmental entity shall give notice of the hearing in the
110 predominant newspaper of general circulation in the area
111 considered for service. At least 40 days before the first public
112 hearing, the governmental entity shall electronically provide

113 notice to the Department of Revenue and the Public Service
114 Commission, which shall post the notice on the department's and
115 the commission's website to be available to the public. The
116 Department of Revenue shall also send the notice by United
117 States Postal Service to the known addresses for all dealers of
118 communications services registered with the department under
119 chapter 202, Florida Statutes, or provide an electronic
120 notification, if the means are available, within 10 days after
121 receiving the notice. The notice shall include the time and
122 place of the hearings and shall state that the purpose of the
123 hearings is to consider whether the governmental entity will
124 provide communications services. The notice shall include, at a
125 minimum, the geographic areas proposed to be served by the
126 governmental entity and the services, if any, which the
127 governmental entity believes are not currently being adequately
128 provided. The notice shall also state that any dealer who wishes
129 to do so may appear and be heard at the public hearings.

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

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

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

138 3. If the same or a similar service is not currently
139 offered, whether any other service provider proposes to offer
140 the same or a similar service and, if so, what assurances that

141 service provider is willing or able to offer regarding the same
142 or similar service.

143 4. The capital investment required by the governmental
144 entity to provide the communications service, the estimated
145 realistic cost of operation and maintenance, and, using a full
146 cost-accounting method, the estimated realistic revenues and
147 expenses of providing the service and the proposed method of
148 financing.

149 5. The private and public costs and benefits of providing
150 the service by a private entity or a governmental entity,
151 including the effect on existing and future jobs, actual
152 economic development prospects, tax-base growth, education, and
153 public health.

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

158 1. The projected number of customers to be served by the
159 venture.

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

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

162 4. A plan to ensure that revenues exceed operating
163 expenses and payment of principal and interest on debt within 4
164 years.

165 5. Estimated capital and operational costs and revenues
166 for the first 4 years.

167 6. Projected network modernization and technological
168 upgrade plans, including estimated costs.

169 (d) After making specific findings regarding the factors
170 in paragraphs (2)(b) and (2)(c), the governmental entity may
171 authorize providing a communications service by a majority
172 recorded vote, by resolution, ordinance, or other formal means
173 of adoption.

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

177 1. A governmental entity may only pledge revenues in
178 support of the issuance of any bond to finance provision of a
179 communications service:

180 a. Within the county in which the governmental entity is
181 located;

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

186 c. If the governmental entity is a municipality or special
187 district, within its corporate limits or in an area in which the
188 municipality or special district provides water, wastewater, or
189 electric or natural gas service, or within an urban service area
190 designated in a comprehensive plan, whichever is larger, unless
191 the municipality or special district obtains the consent, by a
192 majority recorded vote by resolution, ordinance, or other formal
193 means of adoption, of the governmental entity within the
194 boundaries of which the municipality or special district
195 proposes to provide service.

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

200 2. Revenue bonds issued in order to finance provision of a
 201 communications service are not subject to the approval of the
 202 electors if the revenue bonds mature within 15 years. Revenue
 203 bonds issued to finance provision of a communications service
 204 that does not mature within 15 years shall be approved by the
 205 electors. The election shall be conducted as specified in
 206 chapter 100, Florida Statutes.

207 (f) A governmental entity providing a communications
 208 service may not price any service below the cost of providing
 209 the service by subsidizing the communications service with
 210 moneys from rates paid by customers of a noncommunications
 211 services utility or from any other revenues. The cost standard
 212 for determining cross-subsidization is whether the total revenue
 213 from the service is less than the total long-run incremental
 214 cost, including direct costs and indirect costs, as allocated
 215 pursuant to the cost-allocation plan described in paragraph (g),
 216 of the service. "Total long-run incremental cost" means service-
 217 specific volume and nonvolume-sensitive costs.

218 (g) A governmental entity providing a communications
 219 service shall keep separate and accurate books and records,
 220 maintained in accordance with generally accepted accounting
 221 principles, of a governmental entity's communication service,
 222 which books and records shall be made available for any audits
 223 of the books and records conducted under applicable law. To
 224 facilitate equitable distribution of indirect costs, a local

225 governmental entity shall develop and follow a cost-allocation
 226 plan, which is a procedure for allocating direct and indirect
 227 costs and which is generally developed in accordance with OMB
 228 Circular A-87, Cost Principles for State, Local, and Indian
 229 Tribal Government, published by the United States Office of
 230 Management and Budget.

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

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

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

238 (k) If, after 4 years following the initiation of the
 239 provision of communications services by a governmental entity or
 240 4 years after the effective date of this act, whichever is
 241 later, revenues do not exceed operating expenses and payment of
 242 principal and interest on the debt for a governmental entity's
 243 provision of communications services, no later than 60 days
 244 following the end of the 4-year period a governmental entity
 245 shall hold a public hearing at which the governmental entity
 246 shall do at least one of the following:

247 1. Approve a plan to cease providing communications
 248 services;

249 2. Approve a plan to dispose of the system the
 250 governmental entity is using to provide communications services
 251 and, accordingly, to cease providing communications services;

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

256 4. Approve the continuing provision of communications
257 services.

258 (l) If the governmental entity chooses to continue
259 providing communications services, or approves a plan provided
260 in paragraph (k), but thereafter does not implement the plan,
261 the governmental entity shall either develop a new business plan
262 provided under paragraph (c) or provide notice of the decision
263 to not pursue the provisions under paragraph (k). The new plan
264 shall be submitted to the governing body for approval within 60
265 days after the public hearing and shall be implemented upon
266 approval. If the governing body does not approve the new plan,
267 the governmental entity shall cease providing communications
268 services within 12 months thereafter.

269 (m) The governmental entity shall conduct an annual
270 review at a formal public meeting to consider the progress the
271 governmental entity is making toward reaching its business plan
272 goals and objectives for providing communication services. At
273 the public meeting, the governmental entity shall review the
274 related revenues, operating expenses, and payment of interest on
275 debt.

276 (n)1. Within 12 months after the end of each fiscal year,
277 a governmental entity that is providing communications services
278 shall prepare a modified statement of revenues, expenses, and
279 changes in net assets for the enterprise fund used to account

280 for the communications services. Such statement shall present a
281 full and complete accounting of the operations of the covered
282 services for the fiscal year in accordance with generally
283 accepted accounting principles and utilizing full cost
284 accounting. The governmental entity shall provide a copy of the
285 accountant's report and affidavit to the Department of Revenue,
286 in addition to the governmental entity's regular annual
287 financial report and audit, required by s. 218.32, Florida
288 Statutes.

289 (3) (a) A governmental entity that provides a cable service
290 shall comply with the Cable Communications Policy Act of 1984,
291 47 U.S.C. 521, et seq., the regulations issued by the Federal
292 Communications Commission under the Cable Communications Policy
293 Act of 1984, 47 U.S.C. 521, et seq., and all applicable state
294 and federal rules and regulations, including, but not limited
295 to, s. 166.046, Florida Statutes, and those provisions of
296 chapters 202, 212, and 337, Florida Statutes, which apply to a
297 provider of the services.

298 (b) A governmental entity that provides a
299 telecommunications service or advanced service shall comply, if
300 applicable, with chapter 364, Florida Statutes, and rules
301 adopted by the Public Service Commission; chapter 166, Florida
302 Statutes, and all applicable state and federal rules and
303 regulations, including, but not limited to, those provisions of
304 chapters 202, 212, and 337, Florida Statutes, which apply to a
305 provider of the services.

306 (c) A governmental entity may not exercise its power or
307 authority in any area, including zoning or land use regulation,

308 to require any person, including residents of a particular
309 development, to use or subscribe to any communications service
310 of a governmental entity.

311 (d) A governmental entity shall apply its ordinances,
312 rules, and policies, and exercise any authority under state or
313 federal laws, including, but not limited to, those relating to
314 the following subjects and without discrimination as to itself
315 when providing a communications service or to any private
316 provider of communications services:

317 1. Access to public rights-of-way; and
318 2. Permitting, access to, use of, and payment for use of
319 governmental-entity-owned poles. The governmental entity is
320 subject to the same terms, conditions, and fees, if any, for
321 access to governmental-entity-owned poles which the governmental
322 entity applies to a private provider for access.

323 (4)(a) If a governmental entity was providing, as of April
324 1, 2005, advanced services, cable services, or
325 telecommunications services, it is not required to comply with
326 paragraph (2)(a), paragraph (2)(b), paragraph (2)(c), paragraph
327 (2)(d), sub-subparagraph (2)(e)1.c., or paragraph (2)(f), in
328 order to continue to provide advanced services, cable services,
329 or telecommunications services, respectively, but it shall
330 comply with and be subject to all other provisions of this
331 section.

332 (b) If a governmental entity, as of April 1, 2005, had
333 issued debt pledging revenues from an advanced service, cable
334 service, or telecommunications service, it is not required to
335 comply with paragraph (2)(a), (b), (c), (d), (e)1.c., or (f) in

336 order to provide advanced services, cable services, or
337 telecommunications services, respectively, but it shall comply
338 with and be subject to all other provisions of this section.

339 (c) A governmental entity that has purchased equipment
340 specifically for the provisioning of advanced service, cable
341 service, or telecommunications service by April 1, 2005, and has
342 received authorization by a recorded majority vote by
343 resolution, ordinance, or other formal means of adoption, for
344 the provision of an advanced service, cable service, or
345 telecommunications service, is not required to comply with
346 paragraph (2)(a), (b), (c), (d), (2)(e)1.c., or (f) in order to
347 provide advanced services, cable services, or telecommunications
348 services, respectively, but shall comply with and be subject to
349 all other provisions of this section.

350 (5) Notwithstanding s. 542.235, Florida Statutes, or any
351 other law, a governmental entity that provides a communications
352 service is subject to the same prohibitions applicable to
353 private providers under ss. 542.18 and 542.19, Florida Statutes,
354 as it relates to providing a communications service. In
355 addition, this section does not confer state action immunity, or
356 any other antitrust immunity or exemption, on any governmental
357 entity providing communications services.

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

363 (a) Communications services only within the boundaries of
364 its airport layout plan, as defined in s. 333.01(6), Florida
365 Statutes, to subscribers which are integral and essential to the
366 safe and secure transportation of passengers and freight through
367 the airport facility.

368 (b) Shared-tenant service under s. 364.339, Florida
369 Statutes, not including dial tone, enabling subscribers to
370 complete calls outside the airport layout plan, to one or more
371 subscribers within its airport layout plan which are not
372 integral and essential to the safe and secure transportation of
373 passengers and freight through the airport facility.

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375 An airport authority or other governmental entity that provides
376 or is proposing to provide communications services to one or
377 more customers within its airport layout plan which are not
378 integral and essential to the safe and secure transportation of
379 passengers and freight through the airport facility, or to one
380 or more customers outside its airport layout plan, is not exempt
381 from this section. By way of example and not limitation, the
382 integral, essential subscribers may include airlines and
383 emergency service entities, and the nonintegral, nonessential
384 subscribers may include retail shops, restaurants, hotels, or
385 rental car companies.

386 (7) This section does not alter or affect any provisions
387 in the charter, code, or other governing authorities of a
388 governmental entity that impose additional or different
389 requirements on provision of communications service by a

390 governmental entity. Any such provisions shall apply in addition
391 to the applicable provisions in this section.

392 Section 3. If any provision of this act or its application
393 to any person or circumstance is held invalid, the invalidity
394 does not affect other provisions or applications of the act
395 which can be given effect without the invalid provision or
396 application, and to this end the provisions of this act are
397 severable.

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