

By Senator Bennett

21-1571-05

1 A bill to be entitled
2 An act relating to communication services
3 supplied by governmental authorities; defining
4 terms related to communication services;
5 prohibiting a governmental authority from
6 providing a covered communication service;
7 providing certain exceptions; authorizing a
8 governmental authority that is supplying a
9 covered service on a specified date to continue
10 to supply the covered service to a subscriber;
11 prohibiting a governmental authority from
12 expanding its service area, adding new
13 subscribers, or increasing covered services
14 after a certain date; requiring a governmental
15 authority to follow specific procedures if the
16 governmental authority determines that there is
17 an omitted service desired by its residents,
18 that the service is not provided by a private
19 provider, and that the governmental authority
20 intends to provide the omitted service;
21 requiring a governmental authority that
22 provides a covered service to comply with
23 certain applicable federal and state laws and
24 regulations; prohibiting a governmental
25 authority from requiring a person to use or
26 subscribe to any covered service offered by the
27 governmental authority; requiring a
28 governmental authority to apply specified laws,
29 ordinances, rules, and policies without
30 discrimination; requiring a governmental
31 authority to use revenues generated from a

1 covered service in a specified manner;
2 providing for severability; providing an
3 effective date.
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5 Be It Enacted by the Legislature of the State of Florida:
6

7 Section 1. Communication services provided by
8 governmental authorities.--

9 (1) This act may be cited as the "Governmental
10 Authority Provision of Communications Services Act."

11 (2) As used in this section, the term:

12 (a) "Advanced service" means high-speed Internet
13 access service capability in excess of 144 kilobits per second
14 in the upstream or downstream direction, including any service
15 application provided over the high-speed access service or any
16 information service as defined in 47 U.S.C. section 153(20),
17 using any technology or medium.

18 (b) "Covered service" means an advanced service, cable
19 service, or telecommunications service and shall be construed
20 broadly to accomplish the stated purposes and objectives of
21 this act.

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

24 (d) "Governmental authority" means any political
25 subdivision as defined in section 1.01, Florida Statutes, and
26 any utility authority, board, branch, department, or unit
27 thereof. The term includes any entity owned, operated, or
28 controlled by a governmental authority or in which a
29 governmental authority otherwise has an interest, whether
30 direct or indirect.
31

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

5 (f) "Person" has the same meaning as in section 1.01,
6 Florida Statutes.

7 (g) "Private provider" means a provider of covered
8 services which is not a governmental authority.

9 (h) "Providing," "provide," or "provision," with
10 respect to a covered service, means offering or supplying a
11 service for a fee or other consideration to a person,
12 including any portion of the public or a governmental
13 authority or private provider. A provider is a person that
14 provides a covered service.

15 (i) "Subscriber" means a person who receives a covered
16 service.

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

21 (k) "Telecommunications services" means the
22 transmission of signs, signals, writing, images, sounds,
23 messages, data, or other information of the user's choosing,
24 by wire, radio, light waves, or other electromagnetic means,
25 without change in the form or content of the information as
26 sent and received by the user and regardless of the facilities
27 used, and includes fixed and mobile terrestrial wireless
28 technologies or applications.

29 (3)(a) Except as specified in subsection (4), a
30 governmental authority may not provide a covered service or a
31 facility used to provide a covered service.

1 (b) This subsection does not prohibit a governmental
2 authority from supplying a covered service, or a facility used
3 to provide a covered service, to itself for its internal
4 operational needs.

5 (4)(a) A governmental authority that is supplying a
6 covered service on May 1, 2005, may continue to supply the
7 covered service to any person who is a subscriber of the
8 covered service on that date.

9 (b) A governmental authority may not extend or expand
10 its service area, add new subscribers, or increase the covered
11 services offered to subscribers after May 1, 2005.

12 (c) If a governmental authority determines that there
13 is an omitted service desired by its residents, the
14 governmental authority may provide the omitted service only if
15 the following requirements are completed in the following
16 descending order:

17 1. The governmental authority must give written notice
18 to all dealers of communications services registered under
19 chapter 202, Florida Statutes, with the Department of Revenue
20 of its intent to provide a specific omitted service.

21 2. The governmental authority must wait to see if a
22 private provider begins to supply the omitted service
23 described in the notice, or a service substantially similar to
24 that of the omitted service, within 240 days following the
25 receipt of the written notice.

26 3. The governmental authority must retain a
27 feasibility consultant to assess the feasibility of the
28 governmental authority providing the omitted service listed in
29 its notice. The consultant shall prepare a written report that
30 must include considerations of the capital investment needed
31 for facilities that will be used to provide the omitted

1 service and, using full-cost accounting, the estimated
2 expenditure of funds for labor, financing, and administering
3 the proposed omitted service, the projected annual operating
4 expenses and revenues, and the governmental authority's
5 proposed method of financing.

6 4. If the feasibility study indicates that providing
7 the omitted service is feasible for the governmental
8 authority, the governing body of the governmental authority
9 shall schedule a public hearing. The public hearing must be
10 held to consider the contents of the feasibility study and to
11 give the residents the opportunity to publicly offer comments
12 on whether the governmental authority should provide the
13 omitted service listed in the notice. Thereafter, the
14 governing board shall vote on whether to proceed with its
15 intent to provide the specific omitted service.

16 5. If the governing body votes to proceed with its
17 intent to provide the specific omitted service, it shall call
18 an election for the electors to vote on whether the
19 governmental authority should provide the omitted service. The
20 notice of the election must include, along with any other
21 information required by law, a summary of the omitted service
22 and a statement that the feasibility study is available for
23 inspection and copying and designating the location. The
24 ballot at the election must pose the question substantially as
25 follows:

26
27 Shall (name of the governmental authority)
28 operate a business providing (name of the
29 covered service that was the subject of the
30 vote of the governing body) to the inhabitants
31 of the (name of the governmental authority) at

1 a total cost of approximately \$ _____ per
2 year (insert estimated amount from feasibility
3 study)?
4

5 The ballot proposition may not take effect until submitted to
6 the electors and approved by the majority of those voting on
7 the ballot.(d) If a majority of the electors vote to approve
8 the ballot question, the governmental authority may thereafter
9 provide the omitted service that was referenced in the ballot
10 question.

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

21 (b) A governmental authority that provides a
22 telecommunications service or advanced service shall comply,
23 if applicable, with chapter 364, Florida Statutes, rules
24 adopted by the Public Service Commission, chapter 166, Florida
25 Statutes, and all applicable state and federal rules and
26 regulations, including, but not limited to, those provisions
27 of chapters 202, 212, and 337, Florida Statutes, which are
28 applicable to a provider of such services.

29 (c) A governmental authority may not exercise its
30 power or authority, including the power of zoning or land use,
31 to require any person, including residents of a particular

1 development, to use or subscribe to any covered service
2 offered by the governmental authority.

3 (d) A governmental authority shall apply the
4 ordinances, rules, and policies of the governmental authority
5 and exercise any authority under state or federal law,
6 including those relating to the following subjects, without
7 discrimination as to itself and any private provider of
8 covered services:

9 1. Permitting, access to, and use of public
10 rights-of-way; and

11 2. Permitting, access to, use of, and payment for use
12 of governmental authority-owned or controlled poles, conduits,
13 easements, and similar facilities, such that the governmental
14 authority shall be subject to the same terms, conditions, and
15 fees, if any, for access to such poles, conduits, easements,
16 or similar facilities that the governmental authority applies
17 to a private provider for such access.

18 (e) A governmental authority may not pledge any
19 revenues in support of the issuance of any bonds to finance
20 the provision of covered services outside the governmental
21 authority's geographical boundaries. The governing body of a
22 governmental authority may, upon approval by a vote of the
23 electors, issue one or more bonds to finance the capital costs
24 for facilities to provide covered services. The election be
25 conducted as specified in chapter 100, Florida Statutes. Any
26 bonds issued to finance the governmental authority's supply of
27 covered services must be secured and paid solely from the
28 revenues generated by the governmental authority from its
29 provision of covered services. A governmental authority may
30 not pay any bonds, or any origination, financing, or other
31 costs associated with these bonds, from the general funds or

1 other enterprises of the governmental authority or from the
2 proceeds of bonds secured and to be paid by the general taxing
3 powers of the governmental authority. This paragraph does not
4 apply to bonds issued by a governmental authority before the
5 effective date of this act.

6 (f) Notwithstanding section 542.235, Florida Statutes,
7 or any other law, a governmental authority that provides
8 covered services is subject to the same prohibitions
9 applicable to private providers under sections 542.18 and
10 542.19, Florida Statutes.

11 Section 2. If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 invalidity does not affect other provisions or applications of
14 the act which can be given effect without the invalid
15 provision or application, and to this end the provisions of
16 this act are severable.

17 Section 3. This act shall take effect upon becoming a
18 law.

SENATE SUMMARY

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3 Prohibits a governmental authority from providing a
4 covered communication service. Provides certain
5 exceptions. Authorizes a governmental authority that is
6 supplying a covered service on a specified date to
7 continue to supply the covered service to a subscriber.
8 Prohibits a governmental authority from expanding its
9 service area, adding new subscribers, or increasing
10 covered services after a certain date. Requires a
11 governmental authority to follow specific procedures if
12 the governmental authority determines there is an omitted
13 service that is desired by its residents, that the
14 service is not provided by a private provider, and that
15 the governmental authority intends to provide the omitted
16 service. Requires a governmental authority that provides
17 a covered service to comply with certain applicable
18 federal and state laws and regulations. Prohibits a
19 governmental authority from requiring a person to use or
20 subscribe to any covered service offered by the
21 governmental authority. Requires a governmental authority
22 to apply specified laws, ordinances, rules, and policies
23 without discrimination. Requires a governmental authority
24 to use revenues generated from a covered service in a
25 specified manner. (See bill for details.)
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