

Bill No. CS for SB's 2072 & 1714

Barcode 400850

CHAMBER ACTION

Senate

House

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The Committee on General Government Appropriations (Baker)
recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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.

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

6 (e) "Governmental entity" means any political
7 subdivision as defined in section 1.01, Florida Statutes,
8 including any county, municipality, special district, school
9 district, utility authority or other authority or any
10 instrumentality, agency, unit or department thereof. The term
11 does not include an independent special district created
12 before 1970 which has been granted express legislative
13 authority to provide a communications service and which does
14 not sell a communications service outside its district
15 boundaries.

16 (f) "Provide," "providing," "provision," or
17 "provisioning" means offering or supplying a communications
18 service for a fee or other consideration to a person,
19 including any portion of the public or private provider, but
20 does not include service by an entity to itself or to any
21 other governmental entity.

22 (g) "Subscriber" means a person who receives a
23 communications service.

24 (h) "Telecommunications services" means the
25 transmission of signs, signals, writing, images, sounds,
26 messages, data, or other information of the user's choosing,
27 by wire, radio, light waves, or other electromagnetic means,
28 without change in the form or content of the information as
29 sent and received by the user and regardless of the facilities
30 used.

31 (2)(a) A governmental entity that proposes to provide

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1 a communications service shall hold no less than two public
2 hearings, which shall be held not less than 30 days apart. At
3 least 30 days before the first of the two public hearings, the
4 governmental entity must give notice of the hearing in the
5 predominant newspaper of general circulation in the area
6 considered for service. At least 40 days before the first
7 public hearing, the governmental entity must electronically
8 provide notice to the Department of Revenue and the Public
9 Service Commission, which shall post the notice on the
10 department's and the commission's website to be available to
11 the public. The Department of Revenue shall also send the
12 notice by United States Postal Service to the known addresses
13 for all dealers of communications services registered with the
14 department under chapter 202, Florida Statutes, or provide an
15 electronic notification, if the means are available, within 10
16 days after receiving the notice. The notice must include the
17 time and place of the hearings and must state that the purpose
18 of the hearings is to consider whether the governmental entity
19 will provide communications services. The notice must include,
20 at a minimum, the geographic areas proposed to be served by
21 the governmental entity and the services, if any, which the
22 governmental entity believes are not currently being
23 adequately provided. The notice must also state that any
24 dealer who wishes to do so may appear and be heard at the
25 public hearings.

26 (b) At a public hearing required by this subsection, a
27 governmental entity must, at a minimum, consider:

28 1. Whether the service that is proposed to be provided
29 is currently being offered in the community and, if so,
30 whether the service is generally available throughout the
31 community.

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

4 3. If the same or similar service is not currently
5 offered, whether any other service provider proposes to offer
6 the same or a similar service and, if so, what assurances that
7 service provider is willing or able to offer regarding the
8 same or similar service.

9 4. The capital investment required by the government
10 entity to provide the communications service, the estimated
11 realistic cost of operation and maintenance and, using a full
12 cost-accounting method, the estimated realistic revenues and
13 expenses of providing the service and the proposed method of
14 financing.

15 5. The private and public costs and benefits of
16 providing the service by a private entity or a governmental
17 entity, including the affect on existing and future jobs,
18 actual economic development prospects, tax-base growth,
19 education, and public health.

20 (c) At one or more of the public hearings under this
21 subsection, the governmental entity must make available to the
22 public a written business plan for the proposed communications
23 service venture containing, at a minimum:

24 1. The projected number of customers to be served by
25 the venture.

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

27 3. The types of communications services to be
28 provided.

29 4. A plan to ensure that revenues exceed operating
30 expenses and payment of principal and interest on debt within
31 4 years.

1 5. Estimated capital and operational costs and
2 revenues for the first 4 years.

3 6. Projected network modernization and technological
4 upgrade plans, including estimated costs.

5 (d) After making specific findings regarding the
6 factors in paragraphs (2)(b) and (2)(c), the governmental
7 entity may authorize providing a communications service by a
8 majority recorded vote, and by resolution, ordinance, or other
9 formal means of adoption.

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

13 1. A governmental entity may only pledge revenues in
14 support of the issuance of any bond to finance providing a
15 communications service:

16 a. Within the county in which the governmental entity
17 is located;

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

22 c. If the governmental entity is a municipality or
23 special district, within its corporate limits or in an area in
24 which the municipality or special district provides water,
25 wastewater, electric, or natural gas service, or within an
26 urban service area designated in a comprehensive plan,
27 whichever is larger, unless the municipality or special
28 district obtains the consent of the governmental entity within
29 the boundaries of which the municipality or special district
30 proposes to provide service.

31 2. Revenue bonds issued in order to finance providing

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1 a communications service are not subject to the approval of
 2 the electors if the revenue bonds mature within 15 years.
 3 Revenue bonds issued to finance providing a communications
 4 service that does not mature within 15 years must be approved
 5 by the electors. The election must be conducted as specified
 6 in chapter 100, Florida Statutes.

7 (f) A governmental entity providing a communications
 8 service may not price any service below the cost of providing
 9 the service by subsidizing the communications service with
 10 moneys from rates paid by customers of a noncommunications
 11 services utility or from any other revenues. The cost standard
 12 for determining cross-subsidization is whether the total
 13 revenue from the service is less than the total long-run
 14 incremental cost of the service. Total long-run incremental
 15 cost means service-specific volume and nonvolume-sensitive
 16 costs.

17 (g) A governmental entity providing a communications
 18 service must comply with the requirements of section 218.32,
 19 Florida Statutes, and shall keep separate and accurate books
 20 and records, maintained in accordance with generally accepted
 21 accounting principles, of a governmental entity's
 22 communication service, and they shall be made available for
 23 any audits of the books and records conducted under applicable
 24 law. To facilitate equitable distribution of indirect costs, a
 25 local government shall develop and follow a cost-allocation
 26 plan, which is a procedure for allocating direct and indirect
 27 costs and which is generally developed in accordance with OMB
 28 Circular A-87, Cost Principles for State, Local, and Indian
 29 Tribal Government, published by the United States Office of
 30 Management and Budget.

31 (h) The governmental entity shall establish an

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1 enterprise fund to account for its operation of communications
2 services.

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

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

9 (k) If, after 4 years after the initiation of
10 communications services, revenues do not exceed operating
11 expenses and payment of principal and interest on the debt, a
12 governmental entity shall hold a public hearing at which the
13 governmental entity must consider the disposition of the
14 system, a plan to limit or cease operations, a partnership
15 with a private entity, or any other means appropriate to
16 ensure that the goals of the business plan required under
17 paragraph (c) are met, including ways of reducing operating
18 expenses or increasing revenues.

19 (3)(a) A governmental entity that provides a cable
20 service shall comply with the Cable Communications Policy Act
21 of 1984, 47 U.S.C. 521, et seq., the regulations issued by the
22 Federal Communications Commission under the Cable
23 Communications Policy Act of 1984, 47 U.S.C. 521, et seq., and
24 all applicable state and federal rules and regulations,
25 including, but not limited to, section 166.046, Florida
26 Statutes, and those provisions of chapters 202, 212, and 337,
27 Florida Statutes, which apply to a provider of the services.

28 (b) A governmental entity that provides a
29 telecommunications service or advanced service must comply, if
30 applicable, with chapter 364, Florida Statutes, and rules
31 adopted by the Public Service Commission; chapter 166, Florida

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1 Statutes; and all applicable state and federal rules and
2 regulations, including, but not limited to, those provisions
3 of chapters 202, 212, and 337, Florida Statutes, which apply
4 to a provider of the services.

5 (c) A governmental entity may not exercise its power
6 or authority in any area, including zoning or land use
7 regulation, to require any person, including residents of a
8 particular development, to use or subscribe to any
9 communication service of a governmental entity.

10 (d) A governmental entity shall apply its ordinances,
11 rules, and policies, and exercise any authority under state or
12 federal laws, including, but not limited to, those relating to
13 the following subjects and without discrimination as to itself
14 when providing a communications service or to any private
15 provider of communications services:

- 16 1. Access to public rights-of-way; and
- 17 2. Permitting, access to, use of, and payment for use
18 of governmental entity-owned poles. The governmental entity is
19 subject to the same terms, conditions, and fees, if any, for
20 access to government-owned poles which the governmental entity
21 applies to a private provider for access.

22 (4)(a) If a governmental entity was providing, as of
23 April 1, 2005, advanced services, cable services, or
24 telecommunications services, then it is not required to comply
25 with paragraph (2)(a), paragraph (2)(b), paragraph (2)(c),
26 paragraph (2)(d), sub-subparagraph (2)(e)1.c., paragraph
27 (2)(f), or paragraph (2)(k), in order to continue to provide
28 advanced services, cable services, or telecommunications
29 services, respectively, but it must comply with and be subject
30 to all other provisions of this section.

31 (b) If a governmental entity, as of April 1, 2005, had

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1 issued debt pledging revenues from an advanced service, cable
2 service, or telecommunications service, then it is not
3 required to comply with paragraph (2)(a), paragraph (2)(b),
4 paragraph (2)(c), paragraph (2)(d), sub-subparagraph
5 (2)(e)1.c., paragraph (2)(f), or paragraph (2)(k), in order to
6 provide advanced services, cable services, or
7 telecommunications services, respectively, but it must comply
8 with and be subject to all other provisions of this section.

9 (c) If a governmental entity, as of April 1, 2005, has
10 purchased equipment specifically for the provisioning of
11 advanced service, cable service, or telecommunication service,
12 and, as of May 6, 2005, has authorized the providing of an
13 advanced service, cable service, or telecommunication service,
14 then it is not required to comply with paragraph (2)(a),
15 paragraph (2)(b), paragraph (2)(c), paragraph (2)(d),
16 sub-subparagraph (2)(e)1.c., paragraph (2)(f), or paragraph
17 (2)(k) in order to provide advanced service, cable service, or
18 telecommunication service, respectively, but it must comply
19 with and be subject to all other provisions of this section.

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21 This subsection does not relieve a governmental entity from
22 complying with subsection (5).

23 (5) Notwithstanding section 542.235, Florida Statutes,
24 or any other law, a governmental entity that provides a
25 communications service is subject to the same prohibitions
26 applicable to private providers under sections 542.18 and
27 542.19, Florida Statutes, as it relates to providing a
28 communications service. In addition, the exemption from
29 complying with paragraph (2)(f), does not confer state action
30 immunity, or any other antitrust immunity or exemption, on any
31 governmental entity providing communications services.

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1 (6) To ensure the safe and secure transportation of
2 passengers and freight through an airport facility, as defined
3 in section 159.27(17), Florida Statutes, an airport authority
4 or other governmental entity that provides or is proposing to
5 provide communications services only within the boundaries of
6 its airport layout plan, as defined in section 333.01(6),
7 Florida Statutes, to subscribers which are integral and
8 essential to the safe and secure transportation of passengers
9 and freight through the airport facility, is exempt from this
10 section. An airport authority or other governmental entity
11 that provides or is proposing to provide shared-tenant service
12 under section 364.339, Florida Statutes, but not dial tone
13 enabling subscribers to complete calls outside the airport
14 layout plan, to one or more subscribers within its airport
15 layout plan which are not integral and essential to the safe
16 and secure transportation of passengers and freight through
17 the airport facility is exempt from this section. An airport
18 authority or other governmental entity that provides or is
19 proposing to provide communications services to one or more
20 customers within its airport layout plan which are not
21 integral and essential to the safe and secure transportation
22 of passengers and freight through the airport facility, or to
23 one or more customers outside its airport layout plan, is not
24 exempt from this section. By way of example and not
25 limitation, the integral, essential subscribers may include
26 airlines and emergency service entities, and the nonintegral,
27 nonessential subscribers may include retail shops,
28 restaurants, hotels, or rental car companies.

29 (7) This section does not alter or affect any
30 provision in the charter, code, or other governing authority
31 of a governmental entity.

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1 Section 2. If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 invalidity does not affect other provisions or applications of
4 the act which can be given effect without the invalid
5 provision or application, and to this end the provisions of
6 this act are severable.

7 Section 3. This act shall take effect upon becoming a
8 law.

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11 ===== T I T L E A M E N D M E N T =====

12 And the title is amended as follows:

13 Delete everything before the enacting clause

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15 and insert:

16 A bill to be entitled
17 An act relating to local governments; providing
18 definitions; providing for notice of public
19 hearings to consider whether the local
20 government will provide a communications
21 service; requiring a governmental entity to
22 consider certain factors before a
23 communications service is provided; providing
24 certain restrictions on revenue bonds to
25 finance provisioning of communications
26 services; requiring a local government to make
27 available a written business plan; providing
28 criteria for the business plan; setting pricing
29 standards; providing for accounting and books
30 and records; requiring the governmental entity
31 to establish an enterprise fund; requiring the

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1 governmental entity to maintain separate
2 operating and capital budgets; limiting the use
3 of eminent-domain powers; requiring a
4 governmental entity to hold a public hearing to
5 consider certain factors if the business plan
6 goals are not met; requiring compliance with
7 certain federal and state laws; requiring local
8 government to treat itself the same as it
9 treats other providers of similar
10 communications services; exempting certain
11 governmental entities from specified provisions
12 of the act; requiring a local government
13 provider of communications services to follow
14 the same prohibitions as other providers of the
15 same services; providing an exemption for
16 airports under certain conditions; recognizing
17 preemption of a charter, code, or other
18 governmental authority; providing for
19 severability; providing an effective date.

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