

Bill No. SB 2072

Barcode 931008

CHAMBER ACTION

Senate

House

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The Committee on Communications and Public Utilities
(Constantine) 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 airports of governmental entities.

12 (f) "Provide" or "providing" means offering or
 13 supplying a communications service for a fee or other
 14 consideration to a person, including any portion of the public
 15 or private provider, but does not include service by an entity
 16 to itself or to any other governmental entity.

17 (g) "Subscriber" means a person who receives a
 18 communications service.

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

26 (2)(a) A governmental entity that proposes to provide
 27 a communications service shall hold no less than two public
 28 hearings, which shall be held not less than 30 days apart. At
 29 least 30 days before the first of the two public hearings, the
 30 governmental entity must give notice of the hearing in the
 31 predominant newspaper of general circulation in the area

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1 considered for service. At least 40 days before the first
2 public hearing, the governmental entity must provide notice to
3 the Department of Revenue, which shall electronically forward
4 the notice to all dealers of communications services
5 registered with the Department of Revenue under chapter 202,
6 Florida Statutes. The notice must include the time and place
7 of the hearings and must state that the purpose of the
8 hearings is to consider whether the governmental entity will
9 provide communications services. The notice must include, at a
10 minimum, the geographic areas proposed to be served by the
11 governmental entity and the services, if any, which the
12 governmental entity believes are not currently being
13 adequately provided. The notice must also state that any
14 dealer who wishes to do so may appear and be heard at the
15 public hearings.

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

18 1. Whether the service that is proposed to be provided
19 is currently being offered in the community and, if so,
20 whether the service is generally available throughout the
21 community.

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

25 3. If the same or similar service is not currently
26 offered, whether any other service provider proposes to offer
27 the same or a similar service and, if so, what assurances that
28 service provider is willing or able to offer regarding the
29 same or similar service.

30 4. The capital investment required by the government
31 entity to provide the communications service, the estimated

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1 realistic cost of operation and maintenance and, using a full
2 cost-accounting method, the estimated realistic revenues and
3 expenses of providing the service and the proposed method of
4 financing.

5 5. The private and public costs and benefits of
6 providing the service by a private entity or a governmental
7 entity, including the affect on existing and future jobs,
8 actual economic development prospects, tax-base growth,
9 education, and public health.

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

14 1. The projected number of customers to be served by
15 the venture.

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

17 3. The types of communications services to be
18 provided.

19 4. A plan to ensure that revenues exceed operating
20 expenses and payment of principal and interest on debt within
21 4 years.

22 5. Estimated capital and operational costs and
23 revenues for the first 4 years.

24 6. Projected network modernization and technological
25 upgrade plans, including estimated costs.

26 (d) After making specific findings regarding
27 paragraphs (2)(b) and (2)(c), the governmental entity may
28 authorize providing a communications service by a majority
29 recorded vote, by resolution, or other formal means of
30 adoption.

31 (e) The governing body of a governmental entity may

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1 issue one or more bonds to finance the capital costs for
2 facilities to provide a communications service. However:
3 1. A governmental entity may pledge only revenues in
4 support of the issuance of any bond to finance providing a
5 communications service within the county in which the
6 governmental entity is located or within an area in which the
7 governmental entity provides electric service outside its home
8 county under an electric service territorial agreement
9 approved by the Public Service Commission before the effective
10 date of this act.

11 2. Revenue bonds issued in order to finance providing
12 a communications service are not subject to the approval of
13 the electors if the revenue bonds mature within 15 years.
14 Revenue bonds issued to finance providing a communications
15 service that does not mature within 15 years must be approved
16 by the electors. The election must be conducted as specified
17 in chapter 100, Florida Statutes.

18 (f) A governmental entity providing a communications
19 service may not price any service below the cost of providing
20 the service by subsidizing the communications service with
21 moneys from rates paid by customers of a noncommunications
22 services utility or from any other revenues. The cost standard
23 for determining cross-subsidization is whether the total
24 revenue from the service is less than the total long-run
25 incremental cost of the service. Total long-run incremental
26 cost means service-specific volume and nonvolume-sensitive
27 costs.

28 (g) A governmental entity providing a communications
29 service must comply with the requirements of section 218.32,
30 Florida Statutes, and shall keep separate and accurate books
31 and records, maintained in accordance with generally accepted

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1 accounting principles, of a governmental entity's
2 communication service, and they shall be made available for
3 any audits of the books and records conducted under applicable
4 law. To facilitate equitable distribution of indirect costs, a
5 local government shall develop and follow a cost-allocation
6 plan, which is a procedure for allocating direct and indirect
7 costs and which is generally developed in accordance with OMB
8 Circular A-87, cost principles for state, local, and Indian
9 tribal government, published by the United States Office of
10 Management and Budget.

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

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

16 (j) A governmental entity may not use its powers of
17 eminent domain under chapter 73, Florida Statutes, solely for
18 the purpose of providing a communications service.

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, to
7 require any person, including residents of a particular
8 development, to any communication service of a governmental
9 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 governmental entity that is providing advanced
23 service, cable service, or telecommunications service before
24 April 1, 2005, or that has issued debt pledging revenues from
25 advanced services, cable services, or telecommunications
26 service, respectively, before April 1, 2005, or in which the
27 governing body has authorized the providing of advanced
28 services, cable services, or telecommunications services and
29 the governmental entity has purchased equipment specifically
30 for providing the service before April 1, 2005, is not
31 required to comply with paragraph (2)(a), paragraph (2)(b),

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1 paragraph (2)(c), paragraph (2)(d), paragraph (2)(e), or
 2 paragraph (2)(f) in order to continue to provide advanced
 3 services, cable services, or telecommunications services,
 4 respectively. This subsection does not relieve a governmental
 5 entity from complying with subsection (5).

6 (5) Notwithstanding section 542.235, Florida Statutes,
 7 or any other law, a governmental entity that provides a
 8 communications service is subject to the same prohibitions
 9 applicable to private providers under sections 542.18 and
 10 542.19, Florida Statutes, as it relates to providing a
 11 communications service.

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

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

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

23 And the title is amended as follows:

24 Delete everything before the enacting clause

25
 26 and insert:

27 A bill to be entitled
 28 An act relating to local governments; providing
 29 definitions; providing for notice of public
 30 hearings to consider whether the local
 31 government will provide a communications

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1 service; requiring a governmental entity to
2 consider certain factors before a
3 communications service is provided; requiring a
4 local government to make available a written
5 business plan; providing criteria for the
6 business plan; setting pricing standards;
7 providing for accounting and books and records;
8 requiring the governmental entity to establish
9 an enterprise fund; requiring the governmental
10 entity to maintain separate operating and
11 capital budgets; limiting the use of
12 eminent-domain powers; requiring compliance
13 with certain federal and state laws; requiring
14 local government to treat itself the same as it
15 treats other providers of similar
16 communications services; requiring a local
17 government provider of communications services
18 to follow the same prohibitions as other
19 providers of the same services; providing for
20 severability; providing an effective date.

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