

1 airports under certain conditions; recognizing
2 preemption of a charter, code, or other
3 governmental authority; providing for
4 severability; providing an effective date.
5

6 Be It Enacted by the Legislature of the State of Florida:
7

8 Section 1. Communications services offered by
9 governmental entities.--

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

11 (a) "Advanced service" means
12 high-speed-Internet-access-service capability in excess of 200
13 kilobits per second in the upstream or the downstream
14 direction, including any service application provided over the
15 high-speed-access service or any information service as
16 defined in 47 U.S.C. s. 153(20).

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

19 (c) "Communications services" includes any "advanced
20 service," "cable service," or "telecommunications service" and
21 shall be construed in the broadest sense.

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

27 (e) "Governmental entity" means any political
28 subdivision as defined in section 1.01, Florida Statutes,
29 including any county, municipality, special district, school
30 district, utility authority or other authority or any
31 instrumentality, agency, unit or department thereof. The term

1 does not include an independent special district created
2 before 1970 which has been granted express legislative
3 authority to provide a communications service and which does
4 not sell a communications service outside its district
5 boundaries.

6 (f) "Provide," "providing," "provision," or
7 "provisioning" means offering or supplying a communications
8 service for a fee or other consideration to a person,
9 including any portion of the public or private provider, but
10 does not include service by an entity to itself or to any
11 other governmental entity.

12 (g) "Subscriber" means a person who receives a
13 communications service.

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

21 (2)(a) A governmental entity that proposes to provide
22 a communications service shall hold no less than two public
23 hearings, which shall be held not less than 30 days apart. At
24 least 30 days before the first of the two public hearings, the
25 governmental entity must give notice of the hearing in the
26 predominant newspaper of general circulation in the area
27 considered for service. At least 40 days before the first
28 public hearing, the governmental entity must electronically
29 provide notice to the Department of Revenue and the Public
30 Service Commission, which shall post the notice on the
31 department's and the commission's website to be available to

1 the public. The Department of Revenue shall also send the
2 notice by United States Postal Service to the known addresses
3 for all dealers of communications services registered with the
4 department under chapter 202, Florida Statutes, or provide an
5 electronic notification, if the means are available, within 10
6 days after receiving the notice. The notice must include the
7 time and place of the hearings and must state that the purpose
8 of the hearings is to consider whether the governmental entity
9 will provide communications services. The notice must include,
10 at a minimum, the geographic areas proposed to be served by
11 the 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

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 subscribers 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 the
27 factors in paragraphs (b) and (c), the governmental entity may
28 authorize providing a communications service by a majority
29 recorded vote and by resolution, ordinance, or other formal
30 means of adoption.

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

4 1. A governmental entity may only pledge revenues in
5 support of the issuance of any bond to finance providing a
6 communications service:

7 a. Within the county in which the governmental entity
8 is located;

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

13 c. If the governmental entity is a municipality or
14 special district, within its corporate limits or in an area in
15 which the municipality or special district provides water,
16 wastewater, electric, or natural gas service, or within an
17 urban service area designated in a comprehensive plan,
18 whichever is larger, unless the municipality or special
19 district obtains the consent of the governmental entity within
20 the boundaries of which the municipality or special district
21 proposes to provide service.

22 2. Revenue bonds issued in order to finance providing
23 a communications service are not subject to the approval of
24 the electors if the revenue bonds mature within 15 years.
25 Revenue bonds issued to finance providing a communications
26 service that does not mature within 15 years must be approved
27 by the electors. The election must be conducted as specified
28 in chapter 100, Florida Statutes.

29 (f) A governmental entity providing a communications
30 service may not price any service below the cost of providing
31 the service by subsidizing the communications service with

1 moneys from rates paid by subscribers of a noncommunications
2 services utility or from any other revenues. The cost standard
3 for determining cross-subsidization is whether the total
4 revenue from the service is less than the total long-run
5 incremental cost of the service. Total long-run incremental
6 cost means service-specific volume and nonvolume-sensitive
7 costs.

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

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

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

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

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1 (k) The governmental entity shall conduct an annual
2 review at a formal public meeting to consider the progress the
3 governmental entity is making toward reaching its business
4 plan goals and objectives for providing communication
5 services. At the public meeting the governmental entity shall
6 review the related revenues, operating expenses, and payment
7 of interest on debt.

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

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

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

1 regulations, including, but not limited to, those provisions
2 of chapters 202, 212, and 337, Florida Statutes, which apply
3 to a provider of the services.

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

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

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

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

30 (b) If a governmental entity, as of April 1, 2005, had
31 issued debt pledging revenues from an advanced service, cable

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

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

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

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1 immunity, or any other antitrust immunity or exemption, on any
2 governmental entity providing communications services.

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

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

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

10 Section 3. This act shall take effect upon becoming a
11 law.

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13 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
14 COMMITTEE SUBSTITUTE FOR
15 CS/SBs 2072 & 1714

16 The committee substitute for committee substitute for SB's
17 2072 and 1714 clarifies certain definitions. It also requires
18 the Public Service Commission and Department of Revenue to
19 post certain notices on its website and allows the Department
20 of Revenue to mail notice or electronically notify
21 communications dealers. The committee substitute provides
22 additional limitations on the governing body when issuing
23 bonds for the provision of communications services. The
24 committee substitute requires the governmental entity annually
25 review their business plan and, if at the end of four years
26 the business plan goals and objectives are not met, hold a
27 public hearing to consider certain remedies. The committee
28 substitute specifies conditions that must be met before April
29 1, 2005 or May 6, 2005, to be exempt from complying with the
30 bill. Finally, the committee substitute provides a limited
31 exemption for airport authorities or other governmental
entities' airports.