HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1199 CS Statewide Cable Television Franchises
SPONSOR(S): Traviesa and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	11 Y, 4 N, w/CS	Cater	Holt
2) Finance & Tax Committee	7 Y, 2 N, w/CS	Noriega	Diez-Arguelles
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

This bill establishes the authority to issue statewide cable franchises within the Department of State (DOS), and designates DOS as the state franchising authority. The bill preempts local government authority to negotiate cable service franchises.

The bill creates ss. 610.102 through 610.116, F.S., to create the new franchising authority. Generally, the bill:

- Provides definitions;
- Provides procedures for application of a state-issued certificate of franchise authority (certificate), including provisions for a cable operator with an existing franchise in a municipality or county to obtain a certificate for its current franchise area;
- Prohibits franchise fees imposed by the state or by local governments, although franchise fees are collected through the Communications Services Tax (CST);
- Prohibits buildout requirements;
- Provides that an incumbent cable provider must abide by customer service standards reasonably comparable to those in the Federal Communications Commission (FCC or Commission) rules until there are two or more cable service providers in the relevant area;
- Provides guidelines for the number of public, educational, and government (PEG) channels to be provided in a certain area, including guidelines to demonstrate when a channel is considered substantially used;
- Provides that for a period of two years, new certificateholders must pay the municipality or county one percent of the certificateholders' monthly revenues from the retail sale of cable services. After the two-year period, the certificateholder must pay the municipality or county up to one percent of revenues, but only if the municipality or county affirmatively approves such continued payment. These payments are to be used to construct and operate PEG channels;
- Prohibits municipalities or counties from discriminating against certificateholders for items such as access to rights-of-ways, buildings or property, terms of utility pole attachments, filing certain documents with the municipality or county;
- Prohibits discrimination against subscribers based on income;
- Provides that following a transition period, complaints regarding cable service are to be accepted by the Department of Agriculture and Consumer Services (DACS);
- Requires the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to submit a report to the Legislature on the status of cable competition; and
- Requires rulemaking by DOS and DACS.

The bill also amends statutes related to the CST and the use of rights-of-way to conform to this act.

The Revenue Estimating Conference has estimated that, over time, this bill will have a statewide indeterminate fiscal impact in local governments of at least $30.0 million, with the potential to be significantly higher.

The bill may be a mandate requiring a two-thirds vote of the membership of each house, and provides for an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill establishes the authority to issue statewide cable franchises within the Department of State (DOS), and designates DOS as the state franchising authority. The bill preempts local government authority to negotiate cable service franchises. Further, the Department of Agriculture and Consumer Services (DACS) is authorized to handle cable service complaints.

B. EFFECT OF PROPOSED CHANGES:

Background

Federal Law

In 1965, the FCC established rules for cable systems that used microwave antennas to receive signals. The following year, the FCC established rules for all cable systems. In 1968, The United States Supreme Court affirmed the FCC's jurisdiction over cable. In 1972, FCC rules went into effect that required cable television operators to obtain a certificate of compliance from the FCC prior to operating a cable television system or adding a television broadcast signal. Two other issues addressed in these rules were franchise standards and technical standards. Soon afterwards many of these rules were either modified or eliminated.

In 1984, Congress passed the Cable Communications Policy Act of 1984 (1984 Cable Act). This law established policies in such areas as franchise provisions and renewals, subscriber rates and policy, as well as pole attachments. This law also defined jurisdictional boundaries among federal, state, and local governments regulating cable television systems, and prohibited cable operators from providing service without obtaining a franchise from the local franchise authority (LFA). Also, this law required the LFA's to assure that cable service is not denied to residential customers based on their income, and allows a reasonable period of time for a cable company to provide service to all households in the franchise area. Additionally, the law provided that the LFA may require assurances from the cable company that it will provide adequate capacity, facilities, or financial support for PEG access channels.

In 1992, Congress passed the 1992 Cable Act, which provides that a franchising authority may award one or more franchises within its jurisdiction, but it may not award an exclusive franchise or unreasonably refuse to award an additional competitive franchise.

Current Cable Act

The purposes of the Federal Cable Act (Cable Act), as found in 47 U.S.C. s. 521 are to:

> **(1)** Establish a national policy concerning cable communications;
> **(2)** Establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community;
> **(3)** Establish guidelines for the exercise of Federal, state, and local authority with respect to the regulation of cable systems;
> **(4)** Assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public;
> **(5)** Establish an orderly process for franchise renewal which protects cable operators against unfair denials of renewal where the operator's past performance and proposal for future performance meet the standards established by this subchapter; and

(6) Promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.

Federal Franchise Requirements

The Federal Cable Act, 47 U.S.C. s. 541 et. seq., allows a franchising authority to award one or more franchises within its jurisdiction, except that it may not issue an exclusive franchise or unreasonably refuse to award an additional competitive franchise.

The franchise is to be construed to authorize the construction of a cable system over public rights-of-way and through easements; except that in using the easements the cable operator shall ensure:

- The safety, functioning, and appearance of the property and the convenience and safety of others not adversely affected by the installation or construction of cable facilities;
- The cost of installation, construction, operation, or removal of such facilities by the cable operator or subscribers, or both; and
- The owner of the property is justly compensated by the cable operator for any damages caused by the installation, construction, and operation of facilities.

In awarding the franchise, the LFA:

- Shall allow the applicant's cable system reasonable time to be able to provide cable service to all households;
- May require adequate assurance that the cable operator will provide adequate PEG access channel capacity, facilities, or financial support; and
- May require adequate assurances that the cable operator has the financial, technical, and legal qualifications to provide cable service.

In awarding franchises, the LFA shall assure that access to cable service is not denied to a group of potential subscribers because of their economic status.

Also, federal law does not require persons who lawfully provided cable service without a franchise on July 1, 1984, to obtain a franchise, unless the LFA requires them to do so.

Pending Federal Legislation

There are several proposals concerning cable regulation that are currently pending in Congress. The following are summaries of some of those proposals:

Broadband Investment and Consumer Choice Act- S. 1504, by Ensign (R-NV)
This bill provides that any provider of video services, including existing cable operators, may provide service without obtaining a state or local video franchise. State or local governments may require a reasonable fee to compensate the local government for the costs of managing the public rights-of-way used by the provider, which may not exceed five percent of gross revenues received from subscribers for the provision of video service.

Video Choice Act of 2005- S. 1349, by Rockefeller (D-WV), by Smith (R-OR)
This bill provides that any entity with existing rights-of-way authority (*e.g.*, the Bells and other utilities) may provide video programming without obtaining a cable franchise. Existing cable operators would not be entitled to any relief. A "competitive video services provider" "may" be subject to the payment of local franchise fees.

Digital Age Communications Act- S. 2113, by DeMint (R-TN)
This bill provides that existing cable franchise agreements remain in effect until the earlier of the agreement's expiration or four years after enactment. States and their political subdivisions may not renew, extend or otherwise enforce the terms of existing cable franchise agreement beyond these

limits. Until an existing agreement is terminated, a state or political subdivision may require competing video service providers to contribute an equitable portion of costs associated with any fees directly attributable to the agreement and the provision of any public access channels required by such agreement.

Reps. Barton (R-TX), Rush (D-IL), Upton (R-MI), Pickering (R-MS) (no bill number assigned yet) This bill provides that a "new cable operator" that begins providing cable service in a franchise area after date of enactment may elect to obtain a national franchise in lieu of a local franchise. An existing cable operator can obtain national franchise for franchise areas where a new entrant "is providing" service under a national franchise. The franchise fee is the same as current law (up to 5 percent of gross revenues, with the exact level determined by LFA), plus any additional fee imposed by locality for rights-of-way "management."

Principles of Sens. Burns (R-MT) and Inouye (D-HI)

- Recognize and Reaffirm the Role of States and Localities in the Video Franchising Process;
- Promote Competition by Facilitating Speedy Entry on Fair Terms; and
- Promote Competitive Neutrality and a Level Playing Field.

Federal Rulemaking

On November 18, 2005, the FCC released a *Notice of Proposed Rulemaking (NOPR)* to initiate a proceeding to further the interrelated goals of enhanced cable competition and accelerated broadband deployment. The FCC tentatively concluded that the mandate of Section 621(a)(1) of the Cable Act (47 U.S.C. s. 547(a)(1)) should be interpreted to prohibit not just the ultimate refusal to award a franchise, but also a broader range of behaviors, and the *NOPR* seeks comment on that conclusion.

The relevant section of the federal Cable Act states:

> (a) Authority to award franchises; public rights-of-way and easements; equal access to service; time for provision of services; assurances
>
> (1) A franchising authority may award, in accordance with the provisions of this subchapter, 1 or more franchises within its jurisdiction; except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of section 555 of this title [judicial proceedings] for failure to comply with this subsection.

The NOPR addresses a broad range of questions, including:

- If local franchising authorities are unreasonably refusing to grant competitive franchises. The *Notice* also asks what problems cable incumbents have encountered with LFAs, including how best the Commission can ensure that the local franchising process is not inhibiting the ability of incumbent cable operators to invest in broadband services;

- Whether the Commission has authority to implement the pro-competitive mandate of Section 621(a)(1). The *NOPR* tentatively concludes that the Commission is empowered by provisions of both Title I and Title VI of the Communications Act to take steps appropriate to ensure that the local franchising process does not serve as an unreasonable barrier to entry for competitive cable operators. The *NOPR* also tentatively concludes that the Commission may deem to be preempted and superseded any law or regulation of a State or LFA that causes an unreasonable refusal to award a competitive franchise in contravention of Section 621(a);

- The *NOPR* tentatively concludes that it is not unreasonable for an LFA, in awarding a franchise, to "assure that access to cable service is not denied to any group of potential

residential cable subscribers because of the income of the residents of the local area in which such group resides"; "allow [a] cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area"; and "require adequate assurance that the cable operator will provide adequate public, educational and governmental access channel capacity, facilities, or financial support";

- Assuming there is both the need and the authority for Commission intervention, the *NOPR* asks how the Commission should interpret the mandate of Section 621(a)(1). The item tentatively concludes that the Commission should interpret the relevant language of Section 621(a)(1) broadly in order to prohibit not only unreasonable refusals to award competitive franchises, but also the establishment of procedures and other requirements that unreasonably interfere with the ability of would-be new entrants to introduce their competitive offerings quickly;

- What specific steps the Commission should take to implement Section 621(a)(1);

- The *NOPR* additionally seeks comment on whether the Commission has the authority to establish a minimum amount of time for potential competitors with existing facilities to build out their networks beyond their current service territories. It also seeks comment on what would constitute a reasonable minimum timeframe; and

- The *NOPR* asks whether the Commission should address actions at the state level, to the extent we find such actions create unreasonable barriers to entry for potential competitors.

Comments were filed on February 13, 2006. Reply comments were filed March 28, 2006. It is unknown when the FCC will make its decision.

State Law

In 1987, the Legislature enacted s. 166.046, F.S., providing minimum standards for cable television franchises. Section 166.046(2), F.S., provides that:

> 2) No municipality or county shall grant a franchise for cable service to a cable system within its jurisdiction without first, at a duly noticed public hearing, having considered:
> (a) The economic impact upon private property within the franchise area;
> (b) The public need for such franchise, if any;
> (c) The capacity of public rights-of-way to accommodate the cable system;
> (d) The present and future use of the public rights-of-way to be used by the cable system;
> (e) The potential disruption to existing users of the public rights-of-way to be used by the cable system and the resultant inconvenience which may occur to the public;
> (f) The financial ability of the franchise applicant to perform;
> (g) Other societal interests as are generally considered in cable television franchising; and
> (h) Such other additional matters, both procedural and substantive, as the municipality or county may, in its sole discretion, determine to be relevant.

Moreover, s. 166.046(3), F.S., provides that a municipality or county cannot grant any overlapping cable franchises on terms or conditions that are more favorable or less burdensome than existing franchises.

Cable service is taxed pursuant to the Communications Services Tax (CST) contained in ch. 202, F.S. Cable companies are subject to regulation for the use of rights-of-way under s. 337.401, F.S.

Franchise Agreements

In order to provide cable service in Florida, a cable company is required to obtain a franchise agreement from the LFA, which is either the municipality or the county. The local franchise agreements address issues such as rates, customer service standards, buildout, the number of PEG channels, support for PEG channels, use of rights-of-way, and service to government buildings.

Proposed Changes

The bill creates the "Consumer Choice Act of 2006."

Statewide Cable Franchises

The bill creates ss. 610.102 through 610.116, F.S., to provide for statewide franchising authority.

Section 610.102, F.S., establishes authority within DOS to issue statewide cable franchises, and designates DOS as the state franchising authority, pursuant to 47 U.S.C. s. 522(10). The bill preempts local government authority to negotiate cable service franchises. Additionally, municipalities and or counties are prohibited from granting new franchises for provisioning cable service within their respective jurisdictions.

Definitions

Section 610.103, F.S., provides the following definitions as used in ss. 610.102-610.114, F.S.:

Cable service-(a) The one-way transmission to subscribers of video programming or any other programming service; (b) Subscriber interaction, if any, that is required for the selection of such video programming or other programming service.

Cable system-a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community, but such term does not include: (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves only subscribers in one or more multiple-unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way; (c) a facility that serves subscribers without using any public right-of-way (i.e. satellite service); (d) a facility of a common carrier that is subject, in whole or in part, to the provisions of 47 U.S.C. s. 201 et. seq. (federal common carrier regulation), except the specific bandwidths or wavelengths over such facility shall be considered a cable system only to the extent such bandwidths or wavelengths are used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services (i.e. video programming from internet websites), in which case it is not a cable system; or (e) any facilities of any electric utility used solely for operating its electric utility systems.

With the definition of "cable system" exempting interactive on-demand service, concern has been raised that the definition also creates an exemption from the requirement to obtain a franchise for providers of internet-protocol television (IPTV). However, some providers have argued that IPTV does not trigger local cable franchise requirements. The IPTV technology is an interactive delivery service as opposed to a traditional cable service that provides one-way transmission.[1]

Cable service provider-a person that provides cable service over a cable system.

Certificateholder-a cable service provider that has been issued and holds a certificate of franchise authority from the department.

[1] AT&T and BellSouth Comments to the FCC in MB Docket No. 05-311. February 13, 2006.

Department-the Department of State.

Franchise-an initial authorization or renewal of an authorization, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, to construct and operate a cable system in the public right-of-way.

Franchise authority-any governmental entity empowered by federal, state, or local law to grant a franchise.

Incumbent cable service provider-the cable service provider serving the largest number of cable subscribers in a particular municipal or county franchise area on July 1, 2006.

Public right-of-way-the area on, below, or above a public roadway, highway, street, sidewalk, alley, or waterway, including, without limitation, a municipal, county, state, district, or other public roadway, highway, street, sidewalk, alley, or waterway.

Video programming-programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

State Authorization to Provide Cable Service

Section 610.104, F.S., outlines the procedures and requirements associated with applying to DOS for a state-issued certificate, including applicant criteria and information to be included in the application. The bill provides that after July 1, 2006, an entity or person who seeks to provide cable service, over a cable system, shall file an application with DOS for a state-issued certificate of franchise authority. An incumbent cable provider operating under an unexpired franchise agreement is not subject to this subsection with respect to that municipality or county until the franchise agreement or ordinance expires, except as provided in subsection (2) and s. 610.105(4), F.S. Additionally, as of July 1, 2006, an incumbent may seek a state-issued certificate to provide service in an area where it does not have an existing franchise agreement. Concern has been raised that this provision creates an unfair advantage for incumbent providers who are restricted to the terms and conditions of the unexpired franchise agreement.

A cable service provider who is not an incumbent may within 90 days after July 1, 2006,[2] elect to terminate an existing local franchise and seek a state-issued certificate by providing written notice to DOS, and the affected municipality, or county no later than 180 days after July 1, 2006. This non-incumbent provider also is required to provide cable service to less than 40 percent of the total cable service subscribers in a particular franchise area. The franchise is terminated on the date DOS issues the certificate of franchise authority. It is unclear how 40 percent was established as the criteria. Also, no methodology is included for determining the service area percentage or the entity that performs the calculation.

DOS is required to notify the applicant within 10 business days as to whether the application is complete. If DOS denies the application, it must specify the particular reason that it is denying the application and allow the applicant to amend the application to cure the deficiency. The applicant shall be permitted to amend the application to cure any deficiency and DOS shall act upon the amended application within five business days.

By the 30th business day after receiving a completed affidavit signed by an officer of general partner of the applicant, DOS shall issue a certificate of franchise authority. The affidavit shall affirm:

- That the applicant has filed or will timely file with the FCC, all forms required by the agency in advance of offering cable service;

[2] The actual time frame would be between September 29 and December 28, 2006.

- That the applicant agrees to comply with all applicable federal and state laws and regulation, to the extent that such state laws and rules are not in conflict with or superseded by provisions of this chapter or other applicable state law;
- That the applicant agrees to comply with all lawful state laws and regulations regarding the placement and maintenance of communications facilities in public right-of-way that are generally applicable to providers of communications services;
- A description of the service area for which the applicant seeks certificate of franchise authority, which need not be coextensive with municipal, county, or other political boundaries; and
- The location of the applicant's principal place of business and the names of the applicant's principal executive office.

If DOS does not act on an application within 30 business days of receipt, the application shall be denied. Prior to the expiration of the 30-day period, the applicant may request an automatic 30-day extension or challenge the denial through a petition of mandamus[3] in a court of competent jurisdiction. Concern has been raised that no financial viability needs to be demonstrated in order for an entity to obtain a state-issued certificate. However, proponents feel the market will determine company success in a franchise area.

The certificate of franchise authority issued by DOS shall contain:

- A grant of authority to provide cable service over a cable system as requested in the application;
- A grant of authority to construct, maintain, and operate facilities through, upon, over, and under any public right-of-way or waters; and
- A statement that the grant of authority is subject to the lawful operation of the cable system to provide cable service to the applicant or successor in interest.

If a certificateholder seeks to include additional service areas in its current certificate, it shall file notice with DOS to reflect the new service area or areas.

Federal law allows franchises to require the franchise authority to approve the sale or transfer of a cable system, and gives the franchise authority 120 days to act upon the request for approval or the approval is deemed granted. (47 U.S.C. s. 537). The bill provides that the certificate issued by DOS is fully transferable to any successor in interest to the applicant to which the certificate was initially granted. The notice of transfer shall be filed with DOS and the relevant municipality or county within 14 business days following the completion of the transfer.

The certificate of franchise authority issued by DOS may be terminated by the cable service provider by written notice. Concern was raised that DOS has no grounds to cancel a certificate of franchise authority.

DOS is granted rulemaking authority pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of this section. DOS may also establish a standard application form, in which case the application must be on such form and accompanied by a fee established by DOS, not to exceed $10,000. In addition to the application fee, each certificateholder shall pay an annual fee established by DOS based on the number of the certificateholder's subscribers, not to exceed $10,000. The fees shall be based on the costs incurred by DOS in performing its duties under the provisions of this act.

Eligibility for State-Issued Franchises

Section 610.105, F.S., establishes, in more detail, eligibility for a state-issued franchise. The bill provides in s. 610.105(1), F.S., except as otherwise provided, that an incumbent cable service provider with an existing, unexpired cable franchise, as of July 1, 2006, is not eligible to seek a state-issued certificate until the franchise expires.

[3] Mandamus is ordering a public agency or government body to perform an act required by law when it has neglected to do so. mandamus. (n.d.) *The People's Law Dictionary*. (2005). Retrieved March 27, 2006 from http://legal-dictionary.thefreedictionary.com/mandamus.

For purposes of this section, a cable service provider is deemed to have or have had a franchise to provide cable service in a specific municipality or county, if any affiliate or successor entity of the cable service provider has or had a franchise agreement granted, by that specific municipality or county. Also, for purposes of this section, "affiliate or successor entity" refers to an entity receiving, obtaining, or operating under a franchise that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with the cable service provider.

Section 610.105(4), F.S., provides that an incumbent cable service provider may elect to terminate an existing local franchise agreement and seek a state-issued certificate of franchise authority when another provider has been granted a state-issued certificate for an area located in whole or in part within the service area covered by the incumbent's existing franchise.

Termination of the existing franchise under this subsection is achieved by submitting written notice to DOS, and to the affected municipality or county within 180 days following the issuance of the state certificate to the non-incumbent.

The existing franchise may be terminated by providing written notice to DOS and the municipality or county within 180 days of the issuance of the state-issued certificate to the nonincumbent cable service provider. The franchise issued by the municipality or county is terminated as of the date the state-issued certificate to the non-incumbent provider. Concern has been raised regarding this provision being an unconstitutional impairment of contracts.

Franchise Fees

The Federal Cable Act allows LFAs to assess a franchise fee. The fee is not to exceed five percent of the cable operator's gross revenues derived from the operation of the cable system to provide cable service.

Section 610.106, F.S., prohibits DOS, as well as municipalities and counties from imposing any taxes, fees, charges, or other impositions, or extractions on certificateholders in connection with use of public right-of-way as a condition of doing business in a municipality or county, except those permitted by the CST (ch. 202, F.S.) and the use of the right-of-way (s. 337.401(6), F.S.).

Buildout

Federal law provides that in awarding a franchise, the LFA is required to allow the applicant cable system a reasonable amount of time to become capable of providing cable service to all households in the franchise area.

Buildout is a requirement in a franchise that requires the cable service provider to provide a service to customers in the local franchise area within a reasonable period of time. According to information provided by local governments, buildout requirements prevent the cable operators from "cherry picking" markets and individual customers within a franchise area. Local governments also argue that the buildout requirements let local governments discourage disparage levels of service in their franchise area.

Section 610.107, F.S., prohibits any franchising authority, state agency, or political subdivision from imposing any buildout requirements on a state-issued certificateholder. However, each certificateholder, if requested pursuant to a bona fide order for cable service, shall make cable service available at each building used for municipal or county purposes, including, but not limited to, emergency operations centers, fire stations, and public schools, within the area described in its application under s. 610.104(4)(d), F.S., within 5 years after the date of the issuance of its certificate by DOS using the technology of its choice.

Customer Service Standards

Federal rules in 47 C.F.R. s. 76.309(c), provide the following minimum cable service standards, which the LFA may enforce with 90 days written notice to the cable provider:

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability--

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week;

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours;

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day;

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis;

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicates a clear failure to comply;

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time; and

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system;

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem;

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer);

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment; and

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers--

(i) Refunds--Refund checks will be issued promptly, but no later than either--

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits--Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

Currently, many cable franchise agreements and cable television ordinances include customer service provisions. In addition to the above requirements, there may be provisions concerning notice prior to construction, and requiring employees in the field to carry photo identification.

Section 610.608, F.S., requires an incumbent cable service provider to comply with customer service standards reasonably comparable to the federal standards, until there are two or more providers in the relevant service area, excluding direct-to-home satellite service.

On or before January 1, 2009, cable service providers in municipalities or counties that have an office or department dedicated to cable service quality complaints as of January 1, 2006, are to redirect any complaints to DACS. However, until this function is transferred to DACS, these complaints are to be handled by the municipality or county, but this shall not be construed to allow them to impose customer service standards that conflict with s. 610.608, F.S. The bill is silent as to whether or not DACS, prior to January 1, 2009, would handle cable service quality complaints from municipalities and counties that do not have a department or office to handle complaints.

The bill requires DACS to address cable service quality complaints in an expeditious manner by helping resolve the complaint between the complainant and the certificateholder. DACS is granted rulemaking authority to implement this section.

The term "reasonably comparable" is not defined in the bill. Concerns have been raised regarding: 1) DACS' lack of enforcement provisions; and 2) that there is no enforcement mechanism concerning these standards once two or more providers are providing service in a given area whether the standards are abandoned once an area has multiple providers.

Local governments have collected fines from cable operators as a result of violating the customer service provisions of a franchise.

Public, Educational, and Government (PEG) Access Channels

Since the 1984 Cable Act, LFAs may require cable operators to set aside channels for PEG use. In addition, LFAs may require cable operators to provide services, facilities, and equipment for the use of these channels. In general, cable operators are not permitted to control the content of programming PEG channels, but they may impose non-content-based requirements, such as minimum production standards, and they may mandate equipment user training.

PEG channel capacity which is not used for its designated purpose may, with the LFA's permission, be used by the cable operator to provide other services. Under certain conditions, a franchising authority may authorize the use of unused PEG channels to carry low power commercial television stations and local non-commercial educational television stations.

In s. 610.109, F.S., the bill provides detailed requirements for a certificateholder to provide PEG channels or equivalent capacity to municipalities and counties. This section also requires active use of these channels by the municipality or county using a variety of programming or the PEG channels will revert to the certificateholder. Additionally, this section requires interconnection, where technically feasible, between the certificateholder and the incumbent's cable systems for the purpose of providing PEG programming, so long as the programming does not bear the logo or name of the other cable service provider.

Additionally, if a certificateholder is providing cable service within a municipality's or county's jurisdiction, the certificateholder must designate a sufficient amount of capacity for non-commercial programming, as set forth in the bill, within 180 days.

Section 610.109(2), F.S., provides that if PEG channels were provided by the incumbent cable provider, the certificateholder must provide the same number of PEG channels supplied by the incumbent, until the expiration of the incumbent's existing franchise agreement or ordinance. For

purposes of this section, a PEG channel is deemed activated if the channel is being used for PEG programming within the municipality for at least 10 hours a day. The certificateholder's obligations to provide adequate capacity continue regardless of whether the incumbent cable service provider becomes a certificateholder pursuant to this act after July 1, 2006, except as provided in ss. 610.109(3) and 610.109(5), F.S.

Section 610.109(3), F.S., provides that in a municipality or county receiving any PEG channels, the certificateholder must provide: i) up to three PEG channels for a municipality or county with a population of at least 50,000, or ii) up to two PEG channels for a municipality county with a population of less than 50,000.

Section 610.109(5), F.S., provides that if a municipality or county has not used the number of access channels or capacity equivalent to the number described above, access to additional channels or capacity shall be provided upon 180 days written notice, if the municipality or county meets the following standard:

- If the municipality or county has one active PEG channel and wished to activate one additional PEG channel, the initial channel is considered substantially used when it is programmed for 12 hours each calendar day. At least 40 percent of the twelve hours of programming for each business day on average must be nonrepeat programming, which is the first three videocastings of a program; and
- If the municipality or county is entitled to three PEG channels and has in service two active PEG channels, each of the two active channels shall be considered substantially used when 12 hours are programmed on each channel each calendar day and at least 50 percent of the 12 hours for each business day for each calendar quarter is nonrepeat programming for three consecutive quarters.

Section 610.109(6), F.S., provides that the operation of any PEG channel or capacity equivalent is the responsibility of the municipality or county receiving the benefit of such channel or capacity equivalent, and a certificateholder is only responsible for the transmission of the channel's content. The certificateholder is responsible for providing the connectivity to each PEG access channel distribution point up to the first 200 feet.

Section 610.109(7), F.S., provides that municipalities and counties are responsible for ensuring that all transmissions, content, or programming transmitted over a channel or facility by a certificateholder are provided or submitted to the cable service provider in a way that is capable of being accepted and transmitted by a provider without any requirement for additional alteration or change in content by the provider, over the particular network or the provider, which is compatible to the protocol utilized by the cable service provider to deliver services. The provision of PEG content to the provider authorizes the provider to carry such content, including, at the provider's option, the authority to carry contents beyond the jurisdictional boundaries of the municipality or county.

Section 610.109(8), F.S., provides that where technically feasible, the certificateholder and incumbent cable service provider are to use reasonable efforts to interconnect their cable systems to provide PEG programming. This interconnection may be accomplished through any reasonable means of interconnecting. The certificateholders and incumbent cable service providers are to negotiate in good faith and incumbent cable service providers may not withhold PEG channels.

Section 610.109(9), F.S., provides that a certificateholder is not required to interconnect, or otherwise transmit, PEG content that is branded with the identifying mark of another cable service provider, and the municipality or county may require a cable service provider to remove identifying marks from PEG content made available to another provider.

Section 610.109(10), F.S., provides that a court of competent jurisdiction has the exclusive jurisdiction to enforce any requirement under this section.

Section 610.109(11), F.S., provides that in support of the capital costs incurred by the municipality or county in connection with the construction or operation of PEG access facilities and content provided by a municipality or county pursuant to s. 610.109, F.S., the certificateholder shall pay to the municipality or county one percent of the certificateholder's monthly revenues from the retail sale of cable services provided to customers located within the respective municipal or county boundaries, based upon the certificateholder's books and records, for a period of two years after the date DOS issues a certificate to the certificateholder.

After the expiration of the two-year period, the certificateholder shall pay and the municipality or county shall continue to receive up to one percent of such revenues in support of the capital costs incurred by the municipality in connection with the construction or operation of PEG content provided by the municipality or county only if the governing body of the municipality or county affirmatively approves such continued payment. Upon such affirmative vote of approval, the certificateholder may recover from the customer its costs of the payment through a separately stated charge on the customer's bill. All payments made pursuant to s. 610.109(11), F.S., shall be made in the same manner as, and treated as part of, the certificateholder's payment of CST pursuant to s. 202.27, F.S., and all definitions, exemptions, and administrative provisions of ch. 202, F.S., shall apply to such payments.

Nondiscrimination by Municipality or County

The bill creates s. 610.110, F.S., which requires a municipality or county to allow a certificateholder, to install, construct, and maintain a network within a public right-of-way and provide the certificateholder with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way in accordance with the state law regulating the use of the right-of-way by utilities.[4] The use of a right-of-way by a certificateholder is nonexclusive.

The municipality or county also may not discriminate against a certificateholder regarding the authorization or placement of a network in a public right-of-way, access to buildings or other property, or the terms of utility pole attachments.

Except as expressly provided in s. 610.110, F.S., nothing in ch. 610, F.S., shall be construed to limit or abrogate a municipality's or county's authority over the use of public rights-of-way under its jurisdiction, as provided in s. 337.401(3)(a), F.S.

Limitations on Local Authority

Section 610.112, F.S., prohibits a municipality or county from imposing additional requirements, except those expressly permitted by this chapter, on certificateholders, including financial, operational, and administrative requirements. A municipality or county may not impose on a certificateholder requirements for:

- Having business offices located in the municipality or county;
- Filing reports and documents with the municipality or county that are not required by state or federal law and are not related to the use of the public right-of-way;
- The inspection of a certificateholder's business records; and
- The approval of a transfer of ownership or control, but the municipality or county may require a notice of transfer within a reasonable time.

The municipality or county may require a permit for a certificateholder to place and maintain facilities in or on a public right-of-way. The permit may require the permitholder, at its own expense, to be responsible for any damage resulting from the issuance of a permit, and for restoring the public right-of-way to a substantially similar condition to that before such facilities were installed. The terms of the permit shall be consistent with construction permits issued to other providers of communications services placing or maintaining facilities in a public right-of-way.

[4] S. 337.401, F.S.

Discrimination Prohibited

Section 610.113, F.S., prohibits a certificateholder from denying access to service ("redlining") to potential residential subscriber because of the income of the residents in the local area where such group resides, which conforms to federal law. Enforcement may be sought by initiating a proceeding with DACS, pursuant to its powers of processing complaints in s. 570.544, F.S. Section 570.544(3), F.S., reads in part:

> [T]he Division of Consumer Services shall serve as a clearinghouse for matters relating to consumer protection, consumer information, and consumer services generally. It shall receive complaints and grievances from consumers and promptly transmit them to that agency most directly concerned in order that the complaint or grievance may be expeditiously handled in the best interests of the complaining consumer. If no agency exists, the Division of Consumer Services shall seek a settlement of the complaint using formal or informal methods of mediation and conciliation and may seek any other resolution of the matter in accordance with its jurisdiction.

In determining whether a certificateholder has violated the above provision, cost, distance, and technological or commercial limitations shall be taken into account, and the certificateholder shall have a reasonable time to deploy service pursuant to federal law. It may not be considered a violation to use an alternative technology that provides comparable content, service, and functionality. The inability to access a building is also not considered a violation. The section is not to be construed to authorize any buildout requirements. DACS is required to adopt the procedural rules necessary to implement this section.

While the bill prohibits discrimination based on income (redlining), concern was raised that the bill does not prohibit a certificateholder from refusing to serve a certain area due to other factors such as it being uneconomical to serve a specific area (cherry picking).

Compliance

Section 610.114, F.S., provides that if a court finds a certificateholder to be in noncompliance with any requirements of ch. 610, F.S., the certificateholder shall have a reasonable amount of time, as specified by the court, to cure such noncompliance.

Reports to the Legislature

Section 610.115, F.S., provides that by December 1, 2009, the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) is to submit a report to the President of the Senate, Speaker of the House of Representatives, and the majority and minority leaders of the Senate and the House of Representatives on the status of competition in the cable service industry. This report shall include, by municipality and county, the number of cable service providers, the number of cable subscribers served, and the number of areas served by fewer than two cable service providers. The report is to also include the trend in cable prices, and the identification of any patterns of service as they impact demographic and income groups.

Severability

Section 610.116, F.S., provides that if any provision of ch. 610, F.S., or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of ch. 610, F.S., that can be given effect without the invalid provision or application, and the provisions of ch. 610, F.S., are severable.

<u>Communications Services Tax</u>

The bill amends the CST provisions in ss. 202.24 (a) and (c), F.S., to conform to the provisions of the bill. Municipalities and counties are prohibited from negotiating the terms and conditions related to franchise fees, the definition of gross revenues, or other definitions or methodologies related to the payment of franchise fees on providers of cable services.

Additionally, the provision relating to in-kind contributions only applies to cable ordinances or franchise agreements that are in effect prior to July 1, 2006.

Use of Right-of-Way

The bill amends s. 337.401(3), F.S., relating to the use of the right-of-way to conform to the provisions of the bill. Section 337.401(3)(a)2., F.S., is repealed. This section related to the awarding of cable franchises by municipalities and counties.

Section 337.4061, F.S., is amended to make conforming changes, including definitions.

Repeal of s. 166.046, F.S.

The bill repeals s. 166.046, F.S., which is the current cable service franchise law that provided minimum standards for cable television franchises imposed upon municipalities and counties.

Conforming Statutes

Sections 358.81(3)(a) and 364.0361, F.S., are amended to conform to other statutory changes.

Effective Date

This act shall take effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Provides a short title.

Section 2. Amends ss. 202.24(a) and (c), F.S., relating to limitations of local taxes and fees imposed on dealers of communications services.

Section 3. Amends ss. 337.401(3)(a), (e), and (f), F.S., relating to use of right-of-way for utilities subject to regulation; permit; fees.

Section 4. Amends s. 337.4061, F.S., relating to definitions; unlawful use of state-maintained road right-of-way by nonfranchised cable services.

Section 5. Creates ss. 610.102, 610.103, 610.104, 610.105, 610.106, 610.107, 610.108, 610.109, 610.110, 610.112, 610.113, 610.114, 610.115, and 610.116, F.S., establishing a statewide cable franchise authority.

Section 6. Repeals s. 166.046, F.S., relating to cable television franchises.

Section 7. Amends s. 350.81(3)(a), F.S., relating to communications services offered by governmental entities.

Section 8. Amends s. 364.0361, F.S., relating to local government authority; nondiscriminatory exercise.

Section 9. Provides that this act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill allows DOS to impose an application fee of up to $10,000 for each application for a state-issued cable franchise, and an annual fee based on subscribership of up to $10,000. However, it is unknown how many franchise applications will be filed.

2. Expenditures:

According to DOS, its estimated first-year operating cost would be $850,116, with $83,888 of that being non-recurring costs. This estimate is based on establishing a new filing section within the Division of Corporations with 16 full-time equivalent positions. These figures apply if DOS' function is ministerial in nature. DOS may incur additional expenditures if it is required to litigate the denial of any certificate or establish rules to implement this law.

According to DACS, its section that attempts to informally resolve complaints against unregulated entities currently has five full-time equivalent positions and receives approximately 25,000 annual complaints. DACS estimates it will need one full-time equivalent position for approximately every 5,000 additional complaints received.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that, over time, this bill will have a statewide indeterminate fiscal impact in local governments of at least $30.0 million, with the potential to be significantly higher.

2. Expenditures:

According to local governments, they could potentially lose tens of millions of dollars in capital grants, facilities, and services that cable operators currently provide under franchise agreements. Federal law allows local governments to negotiate numerous benefits from cable operators, including PEG channels provided at no charge, free installation and service to government buildings, free or advantageously priced institutional networks and capital grants. While these benefits are permitted by federal law, the bill would eliminate them. While the bill would eliminate a local government's right to negotiate for these services, it does not eliminate the need for these services, and the local government will need to find the funds to pay for these services.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Instead of obtaining a cable franchise from each municipality or county where it wishes to provide service, an entity wishing to provide cable service will only need to obtain a state-issued certificate of franchise authority. This one-stop franchise process could potentially save applicants thousands of dollars.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill reduces the authority that cities and counties have to raise revenues in the aggregate by preempting the authority of cities and counties to negotiate franchise agreements. The Revenue Estimating Conference has estimated that the provisions of this bill will reduce, over time, the amount of revenues received by cities and counties by an amount in excess of $30.0 million annually. No exemptions apply. Therefore, the bill may be a mandate requiring a two-thirds vote of the membership of each house.

2. Other:

Impairment of Contracts

The bill allows cable operators to unilaterally terminate their franchise agreements with municipalities and counties if certain conditions are met. These provisions may be an unconstitutional impairment of contracts under the United States and Florida Constitutions. Staff was provided much of the following legal information by the proponents and the opponents of the bill.

Local Government Authority to Establish Franchises

Among the things to consider in determining whether or not provisions in the bill constitute an unconstitutional impairment of contracts is where municipalities and counties receive their authority from to issue cable franchises.

An argument was raised that since the state gave the local governments the authority to grant cable franchises, the state can take this authority away. The statutory definition of "franchising authority" is "any governmental entity empowered by federal, state, or local law to grant a franchise" (see ss. 166.046 and 337.4061, F.S.). While s. 166.046(2), F.S., requires a public hearing and certain things to be considered prior to municipalities and counties granting a cable television franchise, there is nothing in the statute that declares the municipalities and counties as the LFAs.

Moreover, another argument was made that municipalities and counties receive their franchising authority from federal law. Federal law generally prohibits cable operators from providing cable service without a franchise, 47 U.S.C. s. 541(b)(1).[5] However, nothing in federal or state law specifically declares that municipalities and counties are the franchising authority for the provision of cable service. Since neither the federal nor state governments have assumed the role of issuing cable franchises, it has fallen on the municipalities and counties to become the LFAs.

Local Government Standing to Challenge State Statute

Another question raised is whether or not the municipalities and counties would have standing to challenge the constitutionality of a state statute.

The argument was raised that case law well establishes that subordinates of a state do not have standing to challenge a state's action under the federal contacts clauses contained in Article I, Section 10 of the United States Constitution. See *Williams v. Mayor of Baltimore*, 289 U.S. 36, 40 (1933), and *American Association of People with Disabilities v. Shelley*, 324 F. Supp. 2d 1120, 1131 (C.D. Cal. 2004). Additional information was provided and it appears a federal appeals court was "unable to find a single federal case *holding* that a city cannot sue its parent state for impairing

[5] There is an exception for persons lawfully providing cable service without a franchise prior to July 1, 1984, unless required to do so by the franchising authority.

a contract between the city and a third party." See *City of Charleston v. Public Service Commission of West Virginia*, 57 F.3d 385, 389-390 (4th Cir. 1995) (emphasis in original).

It appears that the Florida Supreme Court has never addressed the issue of whether or not a city or county can challenge the constitutionality of a state statute.[6] Lower state courts have ruled that "[s]tate officers and agencies must presume legislation affecting their duties to be valid and *do not have standing to initiate litigation for the purpose of determining otherwise*. *Florida Department of Agriculture and Consumer Services v. Miami-Dade County,* 790 So.2d 555, 558 (Fla. 3d DCA 2001), quoting *Department of Education v. Lewis*, 416 So.2d 455, 458 (Fla. 1982). However, a state agency or officer may defensively raise the constitutionality of a statute if litigation is brought against it. *Department of Education v. Lewis*, 416 So.2d 455, 458 (Fla. 1982). There also appears to be an exception if the law being challenged involves the disbursement of public funds. *Fuchs v. Robbins*, 818 So.2d 460, 464 (Fla. 2002).

Contract Impairment

Concern was raised that instead of challenging the constitutionality of the bill, a municipality or county is more likely to sue a franchisee who terminates its franchise under the provisions of this statute for breach of contract. While the franchisee would argue that this new statute allows it to terminate its franchise agreement with the municipality or county, the municipality or county would argue that the statute is an unconstitutional impairment of contracts.

Concerning the impairment of contracts, the Florida Supreme Court has determined that "[a]ny conduct on the part of the legislature that detracts in any way from the value of a contract is inhibited by the Constitution." See *Dewberry v. Auto-Owners Insurance Company*, 363 So.2d 1077, 1080 (Fla. 1978). Florida courts have also established that "[v]irtually no degree of contract impairment has been tolerated in this state." *Yamaha Parts Distributors, Inc. v. Ehrman*, 316 So. 2d. 557, 559 (Fla. 1975). In determining how much impairment it is willing to tolerate, the Florida Supreme Court has stated:

> [W]e must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy. Obviously, this becomes a balancing process to determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state's objective, or whether it unreasonably intrudes into the parties' bargain to a degree that is necessary to achieve that objective. *Pomponio v. Claridge of Pompano Condominium, Inc.* 378 So.2d 774, 780 (Fla. 1979).

While the cases above, were based on contracts between private parties, there is some case law concerning the Legislature's authority to impair the state's own contracts. The Florida Supreme Court has ruled that the Legislature once accepted and funded a collective bargaining agreement, "the state and all its organs are bound by that agreement under the principles of contract law." *Chiles v. United Faculty of Florida*, 615 So.2d 671, 673 (Fla. 1993). In this case, after ratifying the collective bargaining agreement in response to a fiscal emergency, the Legislature postponed, then terminated a scheduled pay-raise. The Supreme Court determined that while the Legislature has the authority to reduce an appropriation related to a collective bargaining agreement, it can only do so when it demonstrates a compelling state interest. However, before exercising this authority:

> [T]he legislature must demonstrate that no other reasonable alternative means of preserving its contract with public workers, either in whole or in part. The mere fact that it is politically more expedient to eliminate all or part of the contracted

[6] When the question of whether or not a county would have standing to challenge the constitutionality of a state statute was certified to the Florida Supreme Court in 1995, the case was resolved on another issue and the court did not address the certified question. *Santa Rosa County v. Administration Commission, Division of Administrative Hearings*, 661 So.2d 1190 (Fla. 1995).

funds is not in itself a compelling reason. Rather, the legislature must demonstrate that funds are from no other possible reasonable source. *Chiles at 673.*

In the *Chiles* case, the state interest of the Legislature trying to remedy a $700 million budget shortfall, the Supreme Court determined that the budget shortfall was not sufficient reason for the state to impair the collective bargaining agreement.

If the courts have ruled that both a compelling state interest and no other remedy are required elements before the Legislature can impair the state's contracts, it could be argued that both elements are required before the Legislature and could impair the contract of a municipality or county.

Home Rule

Article VIII of the Florida Constitution gives municipalities and counties broad "home rule" power, which gives them the authority to enact an ordinance for any public purpose; however, state law prevails when there is a conflict between state law and local law.

Under home rule powers, municipalities and counties have established cable ordinances. These ordinances address the specific needs of the community including demographics, buildout, specific needs for PEG channels, safety and customer services issues.

With the proposed legislation, the bill would remove a municipality or county's authority over cable service, including ordinances and cable franchise provisions that address the specific needs of the community.

B. RULE-MAKING AUTHORITY:

Rulemaking authority is granted to DOS to implement the provisions of issuing state-issued certificates of franchise authority. Rulemaking authority is also granted to DACS to adopt procedural rules relating to the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments

It is unclear whether DOS will need enforcement authority, such as the ability to revoke certificates.

DOS has also raised the concern about whether it will be able to implement to provisions of this bill by July 1, 2006, especially if it is required to apply the federal cable regulations (47 U.S.C. s. 541 et, seq.).

Concern was raised about perpetual noncompliance. Section 610.114, F.S., provides that once a court determines that a certificateholder is not in compliance with the chapter's requirements, the certificateholder has a reasonable period of time to cure the noncompliance. However, there is no additional enforcement mechanism if the certificateholder continues to be in noncompliance.

The bill does not provide an appropriation to DOS for the administration of the act; however it does allow DOS to charge an application fee. There is also no appropriation to DACS for additional staffing to handle complaints concerning cable television.

While the bill allows municipalities and counties who currently have offices or departments dedicated to cable service quality complaints to continue handling those complaints until July 1, 2009, the bill is

silent as to whether DACS is to handle complaints from municipalities and counties who do not have offices or departments dedicated to that function.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2006, the Utilities & Telecommunications Committee adopted six amendments. The amendments did the following:

- Revised the threshold for when an incumbent cable service provider can obtain a state-issued franchise. The original bill required cable service provider, other than the incumbent, to obtain a state-issued cable franchise for a service area that covers at least 50 percent of the households in the franchise area. The amendment required another cable service provider, other than the incumbent, to obtain a state-issued cable franchise in area located in whole or in part of the franchise area of the incumbent cable service provider;
- Provided for a transition period from July 1, 2006 to July 1, 2009, for municipalities and counties that have offices which handle cable service complaints to transfer this function to DACS;
- Required OPPAGA to submit a report to the Legislature on the status of competition in the cable industry by December 31, 2009;
- Allowed DOS to adopt procedural rules necessary to implement the act. DOS may also establish a standard application form, and impose an application fee not to exceed $150;
- Required DACS to expeditiously address customer service complaints, and required DACS to adopt procedural rules to implement this requirement; and
- Required DACS to adopt procedural rules to implement the section related to discrimination.

The bill was then reported favorably with a committee substitute.

On April 11, 2006, the Finance and Tax Committee adopted eight amendments to the bill. The amendments made the following revisions to the bill:

- Required certificateholders to make cable service available at certain public buildings under certain circumstances;
- Clarified the certificateholder's obligations;
- Provides that for a period of two years, new certificateholders must pay the municipality or county one percent of the certificateholders' monthly revenues from the retail sale of cable services. After the two-year period, the certificateholder must pay the municipality or county up to one percent of revenues, but only if the municipality or county affirmatively approves such continued payment. These payments are to be used to construct and operate PEG channels;
- Affirmed a municipality's or county's authority over the use of public rights-of-way under its jurisdiction;
- Removed language about applicability to other laws, specifically as it relates to the right of a provider of video programming that is not a cable service provider;
- Increased the number of days DOS has to process applications from 15 to 30 days. Also, provided that prior to the 30 days, an applicant may request an automatic 30-day extension or proceed to challenge the denial; and
- Provided an increase in the maximum fee to be established by DOS from $150 to $10,000. Also, provided that in addition to the application fee, each certificateholder shall pay an annual fee established by DOS based on the number of the certificateholder's subscribers, not to exceed $10,000. The fees shall be based on the costs incurred by the department in performing its duties under the provisions of this act.

The bill was then reported favorably with a committee substitute, and this analysis reflects the changes contained in the amendments adopted by the Finance and Tax Committee.