

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Community Affairs Committee

BILL: CS/SB 900

INTRODUCER: Communications and Public Utilities Committee & Senator Constantine

SUBJECT: Communications

DATE: April 20, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	Fav/CS
2.	Herrin	Yeatman	CA	Favorable
3.			GE	
4.				
5.				
6.				

I. Summary:

The committee substitute (CS) provides for definitions and requires, by January 1, 2011, that each county and municipality conduct a public hearing and adopt by ordinance standards for a general video/cable franchise that will apply to any video or cable service provider within its boundaries.

It provides minimum provisions for which standards must be adopted such as the number of public education and government access channels, in-kind requirements, a consumer complaint process, a description of service areas and buildout criteria, and the placement and maintenance of right-of-way. The CS provides for treatment of existing franchise agreements and changes to the ordinances on an ongoing basis.

The CS creates an unnumbered section of the Florida Statutes and repeals section 166.046 of the Florida Statutes.

II. Present Situation:

Section 166.046(2), F.S., provides minimum standards for cable television franchises. Subsection (1) provides for definitions.

Subsection (2) provides that 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;
- (h) such other additional matters, both procedural and substantive, as the municipality or county may, in its sole discretion, determine to be relevant.

Subsection (3) provides that no municipality or county shall grant any overlapping franchises for cable service within its jurisdiction on terms or conditions more favorable or less burdensome than those in any existing franchise within such municipality or county. Subsection (4) provides that subsection (3) does not apply when the area in which the overlapping franchise is being sought is not actually being served by any existing cable service provider holding a franchise for such area. This subsection further provides that subsection (2) applies to subsections (4) and (5).

Subsection (5) provides that nothing in the section shall be construed to prevent any municipality or county from imposing additional terms and conditions upon the granting of such franchise as such municipality or county shall in its sole discretion deem necessary or appropriate.

Subsection (6) provides all cable service franchises in existence as of October 1, 1987, shall remain in full force and effect according to their terms.

III. Effect of Proposed Changes:

Section 1 of the CS provides for standards for cable services and video programming. It provides definitions for the terms “cable service,” “cable system,” “franchise,” “franchise authority,” “provider of cable services,” and “video programming.”

By January 1, 2011, each county and municipal franchise authority shall conduct at least one noticed public hearing to develop standards for providers of cable services and systems and video programming and adopt an ordinance embracing those standards. Municipalities are allowed to cooperate with counties to develop a countywide standard.

The CS requires municipalities and counties to adopt standards for the following provisions:

- the number of public, education, and government access channels,
- in-kind requirements, including but not limited to, institutional networks and contributions for, or in support of, the use or construction of public, educational, or governmental access facilities to the extent permitted by federal law,
- a process for promptly handling customer complaints,
- nondiscriminatory charges for pole attachments,
- descriptions of service areas and criteria for build out, if any,
- technology upgrades and schedules for the upgrades,
- placement and maintenance of facilities in the public right-of-way which are generally applicable to providers of communications services,
- quality of video and cable service, and
- duration of the franchise agreements.

Existing franchise agreements that expire before January 1, 2011, may not be renewed before adoption of the ordinance and franchise agreements that expire after January 1, 2011, may be terminated upon the adoption of the ordinance. Changes to the ordinance may be made only after a noticed public hearing.

Section 2 repeals section 166.046, F.S., relating to minimum standards for cable television franchises imposed upon counties and municipalities.

Section 3 provides the act takes effect July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 1 of this CS requires each county and municipal franchise authority, by January 1, 2011, to conduct at least one noticed public hearing to develop standards for providers of cable services and systems and video programming and to adopt an ordinance embracing those standards. This may be a Type A mandate because the provision requires counties and municipalities to expend funds and is subject to analysis under Article VII, Section 18 of the Florida Constitution. There are several exemptions and exceptions in Article VII, Section 18.

One of the exemptions under Article VII, Section 18 covers a bill that has an insignificant fiscal impact.¹ Although the fiscal impact has not been determined, this CS may require an expenditure of funds that exceeds \$1.9 million. This CS does not appear to meet any other exemption or one of the exceptions. Therefore, the Legislature must find an important state interest and the CS must pass by a two-thirds vote of each house to effectively bind the counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

¹ The term "insignificant fiscal impact" means an amount no greater than the average statewide population for the applicable fiscal year times ten cents. The applicable threshold for this bill is \$1.9 million.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Immediate repeal of section 166.046, F.S., may cause a void in the local government authority over cable companies until the ordinance required under subsection (2) is adopted. There may also be litigation costs associated with the termination of franchise agreements that expire after January 1, 2011, and which may be terminated in advance of the expiration date upon the adoption of the ordinance required under this CS.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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