

STORAGE NAME: h2401z.uco
DATE: May 15, 2000

****FAILED TO PASS THE LEGISLATURE****
HOUSE OF REPRESENTATIVES

**COMMITTEE ON
COMMITTEE ON UTILITIES & COMMUNICATIONS
FINAL ANALYSIS**

BILL #: HB 2401
RELATING TO: Information Technology
SPONSOR(S): Committee on Utilities & Communications and Representative Rojas
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) UTILITIES & COMMUNICATIONS YEAS 10, NAYS 0
 - (2) FINANCE & TAXATION
 - (3) GENERAL APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

The legislatively created Information Service Technology Development Task Force has developed various policy recommendations related to advanced communication and information technology (IT), and has undertaken certain tasks. Among these recommendations and undertakings are:

- the privatization of itflorida.com;
- the creation of an information technology marketing and Image Campaign for Florida;
- the creation of job seeker websites to aid IT employers and their potential workforce;
- exploring the possibility of using state pension funds to enhance private venture capital funds operating in Florida;
- the development of a global Network Access Point in Florida;
- the creation of various private-sector incentives to improve the IT business climate in Florida; and
- the development of a compilation of “best practices” and models for IT business incubators.

This bill addresses these recommendations by:

- requiring Enterprise Florida, Inc., to create a marketing campaign to help attract, retain, and grow IT businesses in Florida;
- requiring the Department of Labor and Employment Security to take steps to ensure the development and maintenance of an informational website about Florida’s IT industry;
- requiring Enterprise Florida, Inc., to establish a study group to explore the feasibility of using state employee pension funds to support IT venture capital funds domiciled or regularly investing in Florida;
- Expressing the state’s support and encouragement of the development of a public-private carrier exchange point in Florida, and of private partnerships to develop a Network Access Point in Florida;
- providing for a 5-year sales tax exemption for equipment purchased by a telecommunications service provider that is needed for the deployment of broadband technology in connection with participation in a Florida NAP; and
- requiring Enterprise Florida, Inc., to engage in a needs assessment and draft a report to the Governor and Legislature regarding IT business incubators in Florida.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Information Service Technology Development Task Force

Chapter 99-354, L.O.F., created the Information Service Technology Development Task Force (Task Force) for the purpose of developing policies that will benefit residents of Florida by fostering the free market development and beneficial use of advanced communications networks and information technologies within this state. The Task Force, which dissolves July 1, 2001, must:

- Develop overarching principles to guide state policy decisions with respect to the free market development and beneficial use of advanced communications networks and information technologies, identify factors that will affect whether these technologies will flourish in Florida, and develop policy recommendations for each factor.
- By February 14 of the calendar years 2000 and 2001, submit a report to the Governor, the President of the Senate and the Speaker of the House of Representatives outlining principles, policy recommendations, and any suggested legislation.

Privatization of itflorida.com

The Task Force, in its *2000 Legislative Report*, at p. 9, proposes the establishment of a private-public partnership to further advance the efforts of the Task Force. This partnership would have the task of representing, recruiting, and enhancing the expanding information technology (IT) business sector in Florida.

Currently, members of the Task Force's eBusiness Development, Retention, and Recruitment Subcommittee are examining models of privately driven, industry-sector advocate organizations within the state and across the country to identify an appropriate organizational framework for the privatization of the itflorida.com initiative. The Subcommittee will begin developing a business plan and corporate structure recommendation for privatization in the near future.

Creation of an IT marketing and Image Campaign for Florida

The eBusiness Development, Retention, and Recruitment Subcommittee, in the Task Force's *2000 Legislative Report*, at p. 11, recommends that Enterprise Florida, Inc., be given the task of creating and implementing a marketing and image campaign to build a positive recognition of Florida as a leader in information technology. The subcommittee further recommends that this campaign be funded with public funds that are leveraged with private sector funds.

Job seeker Websites

The Task Force has developed a website (www.itflorida.com) to promote its work, as well as to promote the IT industry in Florida. This website provides profiles on Florida IT companies, IT venture capitalists, public Internet sites, and IT events. The itflorida.com website also provides a link (www.floridahightechjobs.com) to a website that provides information on high-tech jobs in Florida. This website is an initiative by the Task Force, and is maintained and supported by the Florida Department of Labor and Employment Security. The website allows job seekers to locate Florida's high-tech jobs, post an online resume, and find Florida high-tech employers by searching an online directory, and allows employers to list available jobs and receive potential job seekers online, search online resumes, and list their companies in a high-tech directory.

Other websites, maintained by the private sector, exist which provide information about employment opportunities in the information technology industry. Some of these include: Monster Jobs (www.monster.com); Hot Jobs (www.hotjobs.com); and Jobs4IT (www.jobs4it.com).

Pension Fund Dollars and Venture Capital in Florida

In their *2000 Legislative Report*, at pp. 21 and 33, the Task Force reports that a lack of capital availability in Florida is a major discussion among IT companies participating on the Task Force and its subcommittees. To help address this situation, the Task Force recommends that a focus group should be established consisting of the Task Force's eBusiness Development, Retention, and Recruitment Subcommittee, the Florida State Board of Administration, and the venture capital community to further study and explore the feasibility of channeling state employee pension funds to venture capital funds that either are domiciled in Florida or do regular investing in state-headquartered technology companies. The Task Force further recommends that if this concept is determined to be feasible, the focus group should create a working proposal for further consideration.

Network Access Point

A Network Access Point (NAP) is a switching facility that acts as an exchange point for Internet traffic served by different Internet Service Providers (ISPs), an activity also known as "peering." At a NAP, ISPs connect their networks for the purpose of exchanging traffic with other ISPs.

The *2000 Legislative Report* of the Task Force, at p. 99, states that NAPs are "seen as the technological catalyst for sustained economic growth throughout the state, nationally, and in the continued effort to brand Florida as the gateway to Latin America," and have the capability to "attract huge investments in the latest and fastest technology from telecommunications carriers." Accordingly, the report recommends that the Task Force's eInfrastructure Subcommittee, in coordination with Enterprise Florida, Inc., investigate

opportunities for placement of a NAP in Florida, as well as incentives and advantages for other companies to private peer in Florida.

Discussions on the development of a NAP in Florida are currently under way. Interested parties, including telecommunications providers, ISPs, and Internet solutions companies, have participated in meetings to determine benefits, feasibility, and costs of a NAP, as well as to determine appropriate roles for all interested parties.

Pursuant to s. 282.3093, F.S., the State Technology Office, within the Department of Management Services, is charged with providing support to various workgroups, such as the State Technology Council and the Chief Information Officer's Council. In addition, the State Technology Office is charged with facilitating educational and training efforts with respect to the state's use and management of information technology resources.

Private Sector Incentives/Advantages -- Sales and Use Tax

As part of its implementation strategy for realizing an in-state Global Network Access Point, the Task Force's eInfrastructure Subcommittee, in coordination with Enterprise Florida, itflorida.com, and support of the private sector, will investigate not only opportunities for the placement of a NAP in Florida, but also incentives/advantages for companies to private peer in Florida.

The Task Force has also identified in its *2000 Legislative Report*, at pp. 16-18, existing incentives for information technology businesses to locate or remain in Florida, and recommends potential improvements to these incentives. These include:

- 1) the Qualified Target Industry Tax Refund Program -- this program allows a refund to certain qualified high-value-added service and manufacturing industries based on the number of jobs they provide, with bonuses given for higher wage jobs. However, a lifetime cap on the amount of available refunds limits the potential effectiveness of this incentive for industries like information technology which expand rapidly, adding significant employment; and
- 2) the Silicon Technology Tax Exemption -- this program exempts certified silicon technology businesses from the sales and use tax on production and research and development machinery and equipment. Currently, only silicon wafer manufacturers are eligible for certification. However, silicon is no longer the only medium used to produce semiconductor chips.

The Task Force recommends amendments to each of these programs to foster the growth of Florida's IT industry. However, neither of these tax incentive programs directly fosters incentives toward the use or development of NAP-based private peering in Florida.

In addition, the State currently levies a 6 percent sales tax on most sales of tangible personal property in Florida and on some services. See Ch. 212, F.S. The law provides for more than 200 exemptions. Generally, these exemptions apply either to the sale of specific items (i.e., certain groceries, certain medical items, certain farm equipment), the sale of items that are used for a particular purpose (i.e., items used in agriculture, equipment used to produce steam energy, equipment used for silicon technology production or research and development), or to the purchase or sale of items by a particular organization. Such organizations include government, churches, and charitable organizations. No specific exemption exists which might provide an incentive toward the use and development of a NAP.

Incubators

Sections 240.3341 and 240.540, F.S., authorize community colleges and research development parks, respectively, to provide incubator facilities to a business that is independently owned and operated, incorporated in Florida, not an affiliate or a subsidiary of a business dominant in its field of operation, and employs 25 or fewer full-time employees. An "incubator facility" is a facility where small business concerns share common space, equipment, and support personnel, and through which such concerns have access to professional consultants for advice related to the technical and business aspects of conducting a commercial enterprise.

The Task Force reports that input from many small companies indicates that assistance in the form of shared office space, communications facilities and infrastructure, as well as management expertise and low-interest loans would be very beneficial for the success of an early stage business. Through its Front Porch Initiative, the Governor's Office is already exploring the implementation of a "pilot" venture capital incubator within the next three months, and the idea of private sector companies creating privately run technology incubators has emerged recently. The Task Force has recommended that its eBusiness Subcommittee continue to explore these initiatives and prepare a compilation of "best practices" and successful models, and, at the same time, watch incubator initiatives to determine their success and, more specifically, what aspects of their implementation actually work. (*2000 Legislative Report*, Information Service Technology Development Task Force, pp. 21 - 23).

C. EFFECT OF PROPOSED CHANGES:

Network Access Point

The bill requires the State Technology Office, housed within the Florida Department of Management Services, to facilitate the development of a Network Access Point (NAP) in Florida as needed.

In addition, the bill recognizes the importance of a NAP to address the needs of small information technology (IT) businesses, and expresses the state's support of efforts to enhance the IT industry in Florida, particularly broadband technology. Furthermore, the bill encourages private IT industry partnerships to develop a NAP in Florida.

Marketing and Image Campaign

Section 2 of the bill directs Enterprise Florida, Inc., to work collaboratively with the private sector in an effort to create a marketing campaign designed to help attract, retain, and grow information technology (IT) businesses in Florida. Any such campaign must coordinate with existing economic development promotion efforts, and must be jointly funded from public and private resources.

This marketing campaign must be designed with the purpose of increasing national and international awareness of Florida as a state well-suited for a growing IT industry. In addition, the bill enumerates several strategies and efforts that must be included in the campaign. These must include:

- development of promotional materials;

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- Internet and print advertising;
- public relations and media placement;
- trade show attendance at IT industry events;
- follow-up activities;
- identification and coordination of existing business technology resources;
- partnerships with economic development organizations and private sector businesses;
- continued retention and growth of Florida-based producers of high-tech products or manufacturers using high-tech skills; and
- recruitment of new business in high-tech areas.

Marketing and Workforce Website

The bill requires the Florida Department of Labor and Employment Security (DLES) to facilitate the development of a marketing and promotional website for the state's IT industry that is designed to inform the public about the scope of the state's IT industry and to address the industry's workforce needs. The website must make available: information concerning the state's IT businesses, including links to the businesses; information concerning employment available at these businesses; and means by which job seekers may post a resume on the website.

In addition, the bill requires DLES to coordinate with the State Technology Office and the Workforce Development Board of Enterprise Florida, Inc., to link the website to state agency job-information websites, and to ensure that state IT positions are posted on the website.

Pension Fund Dollars and Venture Capital

The bill requires Enterprise Florida, Inc., to establish a study group to explore the feasibility of using state employee pension funds to support certain Florida-based IT venture capital funds, and directs the corporation to prepare a working proposal if the concept is feasible. Enterprise Florida, Inc., must submit a report on the findings of the study group to the Governor, the Speaker of the House of Representatives and the President of the Senate by October 1, 2000.

Network Access Point Equipment Sales Tax Exemption

The bill allows a sales tax refund to communications service providers¹ who, beginning July 1, 2000, purchase equipment² to deploy broadband technology³ in Florida as part of direct participation in the Network Access Point contemplated by the bill, or a carrier-neutral, public-private Internet traffic exchange point. A communications service provider may only receive a refund of taxes imposed by ch. 212, F.S., as permitted by the bill, if it submits an application under oath within 6 months after purchase. The application must contain the name and address of the purchaser claiming the refund, a specific description of the property including its serial number or other permanent identification number, the location of the property, and the sales invoice or other proof of purchase of the property.

However, the bill does not expressly require certification or other documentation that the purchased equipment is to be used in the deployment of broadband technology for the purpose of private-peering. Additionally, the bill is silent as to whether the equipment for which the refund is sought is to be used *exclusively* in the manner prescribed. The Department of Revenue (department) points out that much of the equipment referenced in the bill could be used in an internal network as well as for providing Internet services.

Section 212.095, F.S., normally governs refunds made under the exemptions provided for in ch. 212, F.S. However, under the bill, a refund made pursuant to the broadband technology equipment exemption would not be subject to the operation of s. 212.095, F.S. Instead, the bill delegates authority to the department to adopt rules governing the manner and form of refund applications, and permits the department to establish guidelines concerning the requirement that a communications service provider must affirmatively show that it is qualified for the exemption. However, since the exemption takes effect July 1, 2000, the department may not have sufficient time to promulgate rules under the general rule making authority granted in Ch. 120, F.S.

Incubators

Enterprise Florida, Inc., is required to review the state's existing incubators to determine whether they are meeting the IT industry's needs. If an unmet need exists, a plan must be developed to address the need. The review and plan, if required, must be presented to the Governor and the Legislature by December 1, 2000.

Any plan developed may, under the requirements of the bill, include recommendations to the legislature to consider promoting the location of private IT business incubators in Florida. The plan may also include recommendations to establish or promote IT business incubators associated with public or private universities or colleges in Florida. Any plan recommending the establishment of an incubator associated with a university or college must provide for the financial self-sufficiency of the incubator within 2 years.

¹The bill defines "communications service provider" as a company that supports or provides individuals and other companies with access to the Internet and other related services.

²The bill defines "equipment" as Asynchronous Transfer Mode switches, Digital Subscriber Line Access Multiplexers, routers, servers, multiplexers, fiber optic connector equipment, database equipment, and other network equipment used to provide broadband technology and information services.

³The bill defines "broadband technology" as packetized technology that has the capability of supporting transmission speeds of at least 1.544 megabits per second in both directions.

The bill defines an IT business incubator as “a facility that allows new businesses engaged in information technology to increase their probability of success through sharing needed equipment, services, and facilities, including substantially all of the following:

- (a) Reception and meeting areas.
- (b) Secretarial services.
- (c) Accounting and bookkeeping services.
- (d) Research libraries.
- (e) Onsite financial, management, legal, and technical counseling.
- (f) Flexible lease arrangements for flexible space.
- (g) Computer and word-processing facilities.
- (h) Office furniture rentals.
- (i) Management and entrepreneurial training programs.”

D. SECTION-BY-SECTION ANALYSIS:

See the “Effect of Proposed Changes” section.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

It is anticipated that there will be a negative fiscal impact on state revenues, but it has not yet been addressed by the Revenue Estimating Conference.

2. Expenditures:

While Enterprise Florida, Inc., will incur costs related to carrying out the requirements of this bill, those costs are unknown at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

It is anticipated that there will be a negative fiscal impact on local revenues, but it has not yet been addressed by the Revenue Estimating Conference.

2. Expenditures:

The bill does not appear to require local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill creates a tax exemption for the purchase of certain “broadband technology” equipment by “communications service providers” who use such equipment in conjunction with a Network Access Point facility or a carrier-neutral, public-private Internet traffic exchange point. Absent the existence of such a facility or exchange point, the impact of such an exemption is indeterminate.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of municipalities or counties to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This bill does not raise constitutional issues.

B. RULE-MAKING AUTHORITY:

The bill provides a sales tax exemption that takes the form of a refund from the Department of Revenue. Under this bill, the statute governing refunds does not apply; instead the department is directed to adopt rules governing the manner and form of refund applications and may establish guidelines as to the requisites for an affirmative showing of qualification for exemption under the bill.

The sales tax exemption applies to equipment purchased beginning July 1, 2000. According to the department, under the general rulemaking authority, granted by s. 120.54, F.S., the department would be unable to promulgate rules in a timely manner. The department asserts that it may take as much as a year or more to promulgate the necessary rules. Therefore, the department has requested inclusion of emergency rulemaking authority in the bill.

C. OTHER COMMENTS:

HB 2401 died in the House Committee on Finance & Taxation. Similar provisions passed the Legislature in CS/CS/SB 1334.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON UTILITIES & COMMUNICATIONS:

Prepared by:

Staff Director:

William C. Garner

Patrick L. "Booter" Imhof

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