

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative(s) Richardson offered the following:

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3 **Amendment to Amendment (147581)**

4 Remove line(s) 341-669 and insert:

5 Section 8. Communications services offered by governmental
6 entities.--

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

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

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

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15 (c) "Communications services" includes any "advanced
16 service," "cable service," or "telecommunications service" and
17 shall be construed in the broadest sense.

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

23 (e) "Governmental entity" means any political subdivision
24 as defined in section 1.01, Florida Statutes, including any
25 county, municipality, special district, school district, utility
26 authority or other authority or any instrumentality, agency,
27 unit or department thereof. The term does not include an
28 independent special district created before 1970 which has been
29 granted express legislative authority to provide a
30 communications service and which does not sell a communications
31 service outside its district boundaries.

32 (f) "Provide," "providing," "provision," or "provisioning"
33 means offering or supplying a communications service for a fee
34 or other consideration to a person, including any portion of the
35 public or private provider, but does not include service by an
36 entity to itself or to any other governmental entity.

37 (g) "Subscriber" means a person who receives a
38 communications service.

39 (h) "Telecommunications services" means the transmission
40 of signs, signals, writing, images, sounds, messages, data, or
41 other information of the user's choosing, by wire, radio, light

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42 waves, or other electromagnetic means, without change in the
43 form or content of the information as sent and received by the
44 user and regardless of the facilities used.

45 (2)(a) A governmental entity that proposes to provide a
46 communications service shall hold no less than two public
47 hearings, which shall be held not less than 30 days apart. At
48 least 30 days before the first of the two public hearings, the
49 governmental entity must give notice of the hearing in the
50 predominant newspaper of general circulation in the area
51 considered for service. At least 40 days before the first public
52 hearing, the governmental entity must electronically provide
53 notice to the Department of Revenue and the Public Service
54 Commission, which shall post the notice on the department's and
55 the commission's website to be available to the public. The
56 Department of Revenue shall also send the notice by United
57 States Postal Service to the known addresses for all dealers of
58 communications services registered with the department under
59 chapter 202, Florida Statutes, or provide an electronic
60 notification, if the means are available, within 10 days after
61 receiving the notice. The notice must include the time and place
62 of the hearings and must state that the purpose of the hearings
63 is to consider whether the governmental entity will provide
64 communications services. The notice must include, at a minimum,
65 the geographic areas proposed to be served by the governmental
66 entity and the services, if any, which the governmental entity
67 believes are not currently being adequately provided. The notice

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68 must also state that any dealer who wishes to do so may appear
69 and be heard at the public hearings.

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

72 1. Whether the service that is proposed to be provided is
73 currently being offered in the community and, if so, whether the
74 service is generally available throughout the community.

75 2. Whether a similar service is currently being offered in
76 the community and, if so, whether the service is generally
77 available throughout the community.

78 3. If the same or similar service is not currently
79 offered, whether any other service provider proposes to offer
80 the same or a similar service and, if so, what assurances that
81 service provider is willing or able to offer regarding the same
82 or similar service.

83 4. The capital investment required by the government
84 entity to provide the communications service, the estimated
85 realistic cost of operation and maintenance and, using a full
86 cost-accounting method, the estimated realistic revenues and
87 expenses of providing the service and the proposed method of
88 financing.

89 5. The private and public costs and benefits of providing
90 the service by a private entity or a governmental entity,
91 including the affect on existing and future jobs, actual
92 economic development prospects, tax-base growth, education, and
93 public health.

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

98 1. The projected number of subscribers to be served by the
99 venture.

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

101 3. The types of communications services to be provided.

102 4. A plan to ensure that revenues exceed operating
103 expenses and payment of principal and interest on debt within 4
104 years.

105 5. Estimated capital and operational costs and revenues
106 for the first 4 years.

107 6. Projected network modernization and technological
108 upgrade plans, including estimated costs.

109 (d) After making specific findings regarding the factors
110 in paragraphs (b) and (c), the governmental entity may authorize
111 providing a communications service by a majority recorded vote
112 and by resolution, ordinance, or other formal means of adoption.

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

116 1. A governmental entity may only pledge revenues in
117 support of the issuance of any bond to finance providing a
118 communications service:

119 a. Within the county in which the governmental entity is
120 located;

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

125 c. If the governmental entity is a municipality or special
126 district, within its corporate limits or in an area in which the
127 municipality or special district provides water, wastewater,
128 electric, or natural gas service, or within an urban service
129 area designated in a comprehensive plan, whichever is larger,
130 unless the municipality or special district obtains the consent
131 of the governmental entity within the boundaries of which the
132 municipality or special district proposes to provide service.

133 2. Revenue bonds issued in order to finance providing a
134 communications service are not subject to the approval of the
135 electors if the revenue bonds mature within 15 years. Revenue
136 bonds issued to finance providing a communications service that
137 does not mature within 15 years must be approved by the
138 electors. The election must be conducted as specified in chapter
139 100, Florida Statutes.

140 (f) A governmental entity providing a communications
141 service may not price any service below the cost of providing
142 the service by subsidizing the communications service with
143 moneys from rates paid by subscribers of a noncommunications
144 services utility or from any other revenues. The cost standard
145 for determining cross-subsidization is whether the total revenue
146 from the service is less than the total long-run incremental

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147 cost of the service. Total long-run incremental cost means
148 service-specific volume and nonvolume-sensitive costs.

149 (g) A governmental entity providing a communications
150 service must comply with the requirements of section 218.32,
151 Florida Statutes, and shall keep separate and accurate books and
152 records, maintained in accordance with generally accepted
153 accounting principles, of a governmental entity's communication
154 service, and they shall be made available for any audits of the
155 books and records conducted under applicable law. To facilitate
156 equitable distribution of indirect costs, a local government
157 shall develop and follow a cost-allocation plan, which is a
158 procedure for allocating direct and indirect costs and which is
159 generally developed in accordance with OMB Circular A-87, Cost
160 Principles for State, Local, and Indian Tribal Government,
161 published by the United States Office of Management and Budget.

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

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

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

169 (k) The governmental entity shall conduct an annual review
170 at a formal public meeting to consider the progress the
171 governmental entity is making toward reaching its business plan
172 goals and objectives for providing communication services. At
173 the public meeting the governmental entity shall review the

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174 related revenues, operating expenses, and payment of interest on
175 debt.

176 (1) If, after 4 years after the initiation of
177 communications services, revenues do not exceed operating
178 expenses and payment of principal and interest on the debt, a
179 governmental entity shall hold a public hearing at which the
180 governmental entity must consider the disposition of the system,
181 a plan to limit or cease operations, a partnership with a
182 private entity, or any other means appropriate to ensure that
183 the goals of the business plan required under paragraph (c) are
184 met, including ways of reducing operating expenses or increasing
185 revenues.

186 (3)(a) A governmental entity that provides a cable service
187 shall comply with the Cable Communications Policy Act of 1984,
188 47 U.S.C. 521, et seq., the regulations issued by the Federal
189 Communications Commission under the Cable Communications Policy
190 Act of 1984, 47 U.S.C. 521, et seq., and all applicable state
191 and federal rules and regulations, including, but not limited
192 to, section 166.046, Florida Statutes, and those provisions of
193 chapters 202, 212, and 337, Florida Statutes, which apply to a
194 provider of the services.

195 (b) A governmental entity that provides a
196 telecommunications service or advanced service must comply, if
197 applicable, with chapter 364, Florida Statutes, and rules
198 adopted by the Public Service Commission; chapter 166, Florida
199 Statutes; and all applicable state and federal rules and
200 regulations, including, but not limited to, those provisions of

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201 chapters 202, 212, and 337, Florida Statutes, which apply to a
202 provider of the services.

203 (c) A governmental entity may not exercise its power or
204 authority in any area, including zoning or land use regulation,
205 to require any person, including residents of a particular
206 development, to use or subscribe to any communication service of
207 a governmental entity.

208 (d) A governmental entity shall apply its ordinances,
209 rules, and policies, and exercise any authority under state or
210 federal laws, including, but not limited to, those relating to
211 the following subjects and without discrimination as to itself
212 when providing a communications service or to any private
213 provider of communications services:

214 1. Access to public rights-of-way; and

215 2. Permitting, access to, use of, and payment for use of
216 governmental entity-owned poles. The governmental entity is
217 subject to the same terms, conditions, and fees, if any, for
218 access to government-owned poles which the governmental entity
219 applies to a private provider for access.

220 (4)(a) If a governmental entity was providing, as of April
221 1, 2005, advanced services, cable services, or
222 telecommunications services, then it is not required to comply
223 with paragraph (2)(a), paragraph (2)(b), paragraph (2)(c),
224 paragraph (2)(d), sub-subparagraph (2)(e)1.c., paragraph (2)(f),
225 paragraph (2)(k), or paragraph (2)(l), in order to continue to
226 provide advanced services, cable services, or telecommunications

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227 services, respectively, but it must comply with and be subject
228 to all other provisions of this section.

229 (b) If a governmental entity, as of April 1, 2005, had
230 issued debt pledging revenues from an advanced service, cable
231 service, or telecommunications service, then it is not required
232 to comply with paragraph (2)(a), paragraph (2)(b), paragraph
233 (2)(c), paragraph (2)(d), sub-subparagraph (2)(e)1.c., paragraph
234 (2)(f), paragraph (2)(k), or paragraph (2)(l), in order to
235 provide advanced services, cable services, or telecommunications
236 services, respectively, but it must comply with and be subject
237 to all other provisions of this section.

238 (c) If a governmental entity, as of April 1, 2005, has
239 purchased equipment specifically for the provisioning of
240 advanced service, cable service, or telecommunication service,
241 and, as of May 6, 2005, has authorized the providing of an
242 advanced service, cable service, or telecommunication service,
243 then it is not required to comply with paragraph (2)(a),
244 paragraph (2)(b), paragraph (2)(c), paragraph (2)(d), sub-
245 subparagraph (2)(e)1.c., paragraph (2)(f), paragraph (2)(k), or
246 paragraph (2)(l) in order to provide advanced service, cable
247 service, or telecommunication service, respectively, but it must
248 comply with and be subject to all other provisions of this
249 section.

250
251 This subsection does not relieve a governmental entity from
252 complying with subsection (5).

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253 (5) Notwithstanding section 542.235, Florida Statutes, or
254 any other law, a governmental entity that provides a
255 communications service is subject to the same prohibitions
256 applicable to private providers under sections 542.18 and
257 542.19, Florida Statutes, as it relates to providing a
258 communications service. In addition, the exemption from
259 complying with paragraph (2)(f), does not confer state action
260 immunity, or any other antitrust immunity or exemption, on any
261 governmental entity providing communications services.

262 (6) To ensure the safe and secure transportation of
263 passengers and freight through an airport facility, as defined
264 in section 159.27(17), Florida Statutes, an airport authority or
265 other governmental entity that provides or is proposing to
266 provide communications services only within the boundaries of
267 its airport layout plan, as defined in section 333.01(6),
268 Florida Statutes, to subscribers which are integral and
269 essential to the safe and secure transportation of passengers
270 and freight through the airport facility, is exempt from this
271 section. An airport authority or other governmental entity that
272 provides or is proposing to provide shared-tenant service under
273 section 364.339, Florida Statutes, but not dial tone enabling
274 subscribers to complete calls outside the airport layout plan,
275 to one or more subscribers within its airport layout plan which
276 are not integral and essential to the safe and secure
277 transportation of passengers and freight through the airport
278 facility is exempt from this section. An airport authority or
279 other governmental entity that provides or is proposing to

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280 provide communications services to one or more subscribers
281 within its airport layout plan which are not integral and
282 essential to the safe and secure transportation of passengers
283 and freight through the airport facility, or to one or more
284 subscribers outside its airport layout plan, is not exempt from
285 this section. By way of example and not limitation, the
286 integral, essential subscribers may include airlines and
287 emergency service entities, and the nonintegral, nonessential
288 subscribers may include retail shops, restaurants, hotels, or
289 rental car companies.

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

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