

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1217 w/CS Relating to Taxation of Governmental Authority Utility Services

SPONSOR(S): Attkisson

TIED BILLS: **IDEN./SIM. BILLS:** SB 2780

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Subcommittee on Energy</u>	<u>7 Y, 0 N w/am</u>	<u>Holt</u>	<u>Liepshutz</u>
2) <u>Business Regulation</u>	<u>35 Y, 1 N w/CS</u>	<u>Holt</u>	<u>Liepshutz</u>
3) <u>State Administration</u>	<u></u>	<u></u>	<u></u>
4) <u>Finance & Tax</u>	<u></u>	<u></u>	<u></u>
5) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 1217 w/CS provides for a comprehensive legislative study that addresses the appropriate level of state regulation for local governments that wish to compete, or are already competing, with private providers of communications services. Provisions of the bill establish the Government-owned Communications Services Study Commission. The bill places until July 1, 2005, a moratorium on local government's ability to pledge any revenues in support of the issuance of any bonds to be used outside of its home county to finance a business venture in competition with private providers of communications services. A severability clause is also included in the bill.

There is an indeterminate fiscal impact on local and state government.

This act takes effect upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1217b.doc
DATE: April 7, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

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B. EFFECT OF PROPOSED CHANGES:

HB 1217 w/CS provides for a comprehensive legislative study that addresses the appropriate level of state regulation for any local government that wishes to compete, or is already competing, with private providers of communications services.

Definitions in the section are used as follows:

(a) "Local government" means any political subdivision as defined in s. 1.01, F.S., and any utility authority, other authority, board, branch, department, or unit thereof.

(b) "Advanced service" means high-speed Internet access service capability in excess of 144 kilobits per second in the upstream or the downstream direction, including any service application provided over the high-speed access service or any information service as defined in 47 U.S.C. s. 153.(20).

(c) "Communications services" includes the offering of any "advanced service," "cable service," or "telecommunications service" and should be construed in the broadest sense.

(d) "Cable service" has the same meaning as that provided in 47 U.S.C. s. 533(6).

(e) "Providing," with respect to a named service, means offering or supplying a service for a fee to a person, including any portion of the public or a local government or private provider.

(f) "Subscriber" means a person who receives a named service.

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

A moratorium until July 1, 2005, is placed on local government's ability to pledge any revenues in support of the issuance of bonds to be used outside of its home county to finance a business venture in competition with private providers of communications services.

Provisions of the bill establish the nine-member, appointed, Government-owned Communications Services Study Commission (Commission). Four members are appointed by the Speaker of the House of Representatives, with at least two House members. Four members are appointed by the President of the Senate, with at least two Senate members. One member is appointed by the Attorney General. Members of the Legislature shall be ex officio, nonvoting members of the Commission. The Commission is to issue a report to the Governor, House Speaker and Senate President on all the regulatory and tax issues related to local government providing communications services. Staffing for the Commission is to be provided by the Legislature.

Identical to private providers, the bill provides that any local government that provides cable service, telecommunications service, or advanced service shall comply with, to the extent applicable, all federal laws and regulations, as well as, state statutes and rules.

Local government is prohibited from using its power or authority to require that any person use its communications services. As a provider of communications services, a local government shall apply to itself all applicable local ordinances, rules, and policies, including permitting, access to, use of, and payment for use of local government poles, and public rights-of-way. The same terms, conditions, and fees that are applicable to private providers of communications services shall also apply to local government-owned communications services.

Further, the bill includes that notwithstanding s. 542.345, F.S., relating to limitations of actions and penalties against local governments and their officials and employees, a local government that provides communications services is subject to the same penalties applicable to private providers under s. 542.18, F.S., relating to restraint of trade or commerce, and s. 542.19, F.S., relating to monopolization; attempts, combinations, or conspiracies to monopolize.

HB 1217 w/CS provides a severability clause. If any provision of this act or the application of any provision of this act is found to be invalid, the remainder of this act shall be given effect without the invalid provision or application.

This act shall take effect upon becoming law.

C. SECTION DIRECTORY:

None

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate. The Legislature shall incur expenses with staffing and presumably with travel and per diem expenses for the nine members to participate in, or attend, any scheduled meetings.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 29, 2004, the Committee on Business Regulation adopted a strike-all amendment. The amendment made the following changes to the bill:

- Deleted creation of s. 213.121, F.S. relating to taxation of governmental authority utility services. The bill was short titled the Utility Revenue Stabilization Act of 2004.
- Deleted are all definitions related to s. 213.121, F.S.
- Restored are certain tax exemptions that were characterized as providing an advantage to governmental utilities over private sector utilities in the utility marketplace.
- Deleted is the provision that authorizes the Department of Revenue (DOR) to adopt rules necessary to implement the section, and the provision that authorizes the executive director of DOR to adopt emergency rules.
- Changes the effective from January 1, 2005, to upon becoming law.