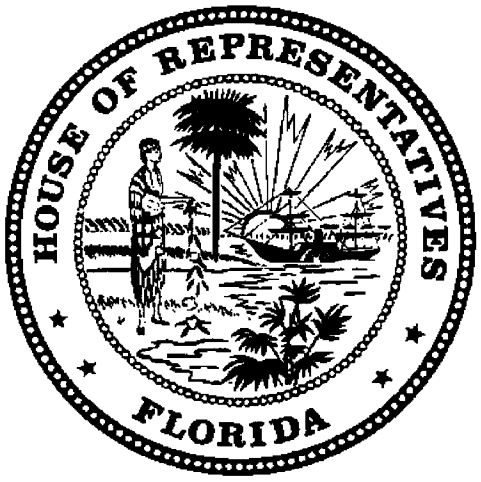

Policy and Budget Council

March 16, 2007
9:00 a.m.
212 Knott Building

Meeting Packet

Marco Rubio
Speaker

Ray Sansom
Chair

The Florida House of Representatives

Policy & Budget Council

Marco Rubio
Speaker

Ray Sansom
Chair

Meeting Agenda
Friday, March 16, 2007
212 Knott Building
9:00 a.m.

I. Call to Order

II. Roll Call

III. Consideration of the following Proposed Council Substitute:

PCS for HB 7001 – Ad Valorem Tax Millage

IV. Consideration of the following bills:

HB 7021 – Merit Award Program for District School Board Employees by Schools and Learning and Representative Pickens

CS/HB 275 – Motor Vehicle, Mobile Home, and Vessel Registration by Economic Expansion & Infrastructure Council and Representative M. Davis

CS/HB 529 – Statewide Cable Television and Video Service Franchises by Jobs & Entrepreneurship Council and Representative Traviesa

CS/HB 567 – Communications Services Tax by Representative Reagan

CS/HB 793 – National Idea Bank by Government Efficiency & Accountability Council and Representative Hasner

V. Adjournment

418 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300
850-488-1601 Fax: 850-414-6879

Differences between
HB 7001 and PCS for HB 7001

The differences between HB 7001 and the Proposed Committee Substitute are:

PCS line 64 -- Changed "may" to "will."

PCS lines 75 and 76 -- Added the underlined language to clarify when the notice is needed.

PCS lines 249-250 – Changed "1967" to "1982-84" to correctly refer to the consumer price index.

PCS line 255 – Changed "2" to "5" to give new taxing authorities more time to ramp up and stabilize prior to the millage limitation applying.

PCS line 266 – Changed "second" to "sixth" to give new taxing authorities more time to stabilize.

PCS lines 276-279 – Added language to properly describe the two revenue sharing programs.

PCS lines 281-285 – Added language to ensure that a taxing authority that chooses to levy a millage rate in excess of the limitation without a 2/3ds vote will have to comply with the millage limitations in the following year using the limited millage rate instead of the rate that was adopted.

PCS line 292 – Added language referring to the state constitution.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7001 PCS/HB 7001 Ad Valorem Tax Millage
SPONSOR(S): Policy & Budget Council
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Policy & Budget Council	10 Y, 5 N	Levin	Cooper
1) Policy & Budget Council		Diez-Arguelles	Hansen MPH
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The property tax is the largest single tax revenue source for government in Florida. Property taxes levied have increased from $15.3 billion in 2000 to $30.5 billion in 2006, an increase of 99%. For the same period, Florida personal income has increased 44% and growth measured by population and inflation has increased by 31%.

HB 7001 creates s. 200.192, F.S., which establishes a millage limitation for ad valorem taxes levied by counties, municipalities, and special districts. Beginning in 2007, these taxing authorities cannot levy a millage rate greater than the "rolled-back rate," adjusted for the change in the Consumer Price Index over the previous year, unless the rate is approved by a supermajority vote of the governing board. This has the effect of limiting annual property tax revenue growth to CPI inflation plus tax revenues associated with net new construction.

In 2007, taxing authorities will be limited to a millage rate calculated as if the millage limitation had been in effect with FY 2000-2001 as the base year and had been continuously applied thereafter, unless a higher millage is adopted by a supermajority vote of the governing board. In effect, this will require governments to reduce their property tax rates so that revenues will be no greater than if FY 2000-01 revenues had grown no faster than CPI inflation plus tax revenues associated with net new construction.

A county or municipality that levies a millage rate exceeding the limitations without complying with the supermajority vote requirement will not be eligible to participate in revenue sharing distributions pursuant to Sections 218.60 – 218.66, F.S. (half-cent sales tax), and pursuant to Section 218.23(3)(e), F.S. (revenue sharing program)

The millage limitations do not apply to ad valorem taxes levied by school districts, levied for the payment of bonds issued pursuant to Section 12, Article VII, Florida Constitution, or levied for periods not longer than 2 years when authorized by a vote of the electors. New taxing authorities that began levying ad valorem taxes after January 1, 1996 and newly created taxing authorities will have five years to establish themselves before the millage limitations apply.

The bill creates new public advertising requirements in s. 200.065(3)(a), F.S., prior to final adoption by a taxing authority of a millage rate that exceeds the limitation. The notice will indicate the total proposed tax levy, and inform the public that the levy exceeds the limitation and that failure of the taxing authority to adopt the tax levy by a supermajority vote will cause the taxing authority to lose state revenue sharing funds.

The bill takes effect July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The bill limits the millage rates that counties, municipalities and special districts adopt without approval from a 2/3ds vote of the governing board.

EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Ad valorem taxation in Florida

The Florida constitution reserves ad valorem taxation to local governments. The state is prohibited from levying ad valorem taxes on real estate and tangible personal property.[1] Local governments may levy ad valorem taxes subject to the following limitations:

Ten mills for county purposes,
Ten mills for municipal purposes,
Ten mills for school purposes,
Millage fixed by law for a county furnishing municipal services, and
Millage authorized by law and approved by voters for special districts.[2]

Taxes levied for the payment of bonds and taxes levied for periods not longer than two years, when authorized by a vote of the electors, are not subject to the millage limitations.[3]

The property tax is the largest single tax revenue source for government in Florida, with $30.5 billion levied in FY 2006 – 07.[4] Property taxes levied in Florida have grown rapidly in recent years from $15.3 billion in 2000 to $30.5 billion in 2006, an increase of 99%. For the same period, Florida personal income has increased 44% and growth measured by population and inflation has increased by 31%.

Unlike most other taxes in the state of Florida, the ad valorem tax does not have a set rate. Instead, the tax rate, or millage rate, is determined by the taxing authority each year. This process begins with the taxing authority considering its budget needs for the coming fiscal year. Then, on July 1, the taxing authority is given an estimate of the taxable value of the property upon which it shall be levying taxes. The taxing authority is also instructed on how to calculate the rolled-back rate for the coming fiscal year.

The rolled-back rate is the millage that would provide the same amount of taxes for the taxing authority that it had during the previous year, and it is computed exclusive of any new construction, major improvements to existing property, or boundary changes. Thus, levying the rolled-back rate typically provides a jurisdiction with higher revenues than it had the year before, even though the tax rate is lower that that of the previous year in most cases.

Under current law, if a taxing authority levies a tax rate in excess of the rolled-back rate, the taxing authority must publish a notice of tax increase. Likewise the Notice of Proposed Property Taxes (TRIM

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[1] Art. VII, sec. 1(a), Fla. Const.
[2] Art. VII, sec. 9, Fla. Const. A mill is equal to $1 per $1,000 of value, or .001. A tax rate of 10 mills is equal to 1%.
[3] Art. VII, sec. 9(b), Fla. Const.
[4] Property Tax Reform Committee: Preliminary Report and Recommendations. Presentation to the House Committee on State Affairs, January 24, 2007.

notice) received by each taxpayer shows the difference between the taxes which would be due if the rolled-back rate were levied and the taxes that would be due under the taxing authority's proposed budget. The intent of these measures is to help taxpayers know when the budgets of local taxing authorities are increasing. Because property values in most jurisdictions increase each year, multiplying the increased value by the millage rate from the prior year can result in large property tax revenue increases, even though the tax rate has remained the same. With the tremendous increases in value of real estate in Florida in recent years, property tax receipts have grown greatly while millage rates have remained the same or been slightly reduced.

Current Property Tax Issues

Many assert that the increases in property taxes are not affordable. Extraordinary strength in the Florida real estate market has resulted in the rapid increase of assessed values for real property in Florida. The median house price soared 90% from July 2001 to July 2006.[5] The fair market value of real property has outstripped taxpayer's growth in income.

The Homestead Exemption is an amendment to the Florida Constitution, originally adopted in 1934 and effective beginning in 1935. The exemption is available to every person having title to Florida real estate and maintaining a permanent residence on the property. The original exemption amount was $5000. Since 1982, the homestead exemption amount has been $25,000 for all property tax levies.[6]

The Save Our Homes assessment growth limitation was added to the Constitution in 1992, although its limitations were effective with the 1995 tax roll. It provides that growth in the assessed value of individual homestead parcels may not exceed the lower of 3% or the percentage change in the Consumer Price Index. Save Our Homes has suppressed the taxable value of homestead properties in Florida. In doing so, it has significantly shifted the tax burden away from homestead property and onto non-homestead residential and non-residential property.[7]

The Tax Foundation has devised a "State Business Tax Climate Index," which is based on the principle that "the ideal tax system . . . is neutral to business activity."[8] But the studies conducted by the Department of Revenue, the Office of Economic and Demographic Research, and the Property Tax Reform Committee all conclude that businesses are bearing an unequal share of the ad valorem tax burden. This tax burden may not be conducive to the growth of business in Florida. Indeed the sharp increases in ad valorem taxation on commercial property may discourage business activity in Florida. Several studies have found that commercial and industrial investment tends to be more responsive to tax rates than residential investment. This means that the increasing shift of the property tax burden to businesses may cause them to reduce or eliminate commercial investment – in some instances, leading them to investments in other states where property taxes are less burdensome.[9]

Residential non-homestead property has also been experiencing sharp increases in ad valorem taxation. Owners of these properties are forced to raise rental rates to pay for property taxes. These increases in residential rent further exacerbate the need for more affordable housing in Florida.

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[5] Property Tax Reform Efforts An Update. Office of Economic and Demographic Research, January 11, 2007

[6] Florida's Property Tax Structure: An Analysis of Save Our Homes and Truth in Millage Pursuant to Chapter 2006 – 311, L.O.F. Florida Department of Revenue. January 2, 2007.

[7]

	Percent of Taxable Value	
	Current	**Without Save Our Homes**
Homestead Property	32.1%	45.5%
Non-Homestead Property	34.5%	28.4%
Non-Residential Property	32.5%	26.1%

Source: Property Tax Reform Efforts An Update. Office of Economic and Demographic Research, January 11, 2007.

[8] Tax Foundation, "State Business Tax Climate Index" presentation to the Property Tax Reform Committee, September 20, 2006.

[9] Florida's Property Tax Study Interim Report. Legislative Office of Economic and Demographic Research.

Revenue Sharing

Florida has three main revenue sharing programs through which the state shares its revenues with local governments. The major source of revenue shared with local governments in all of these programs is the state sales tax.

Under the Local Government Half-cent Sales Tax Program, counties and municipalities receive 8.9% (approx.) of sales tax collections and collections of the state portion of the communications services tax remitted by dealers within each county. For fiscal year 06-07 counties are expected to receive $1.2 billion and municipalities are expected to receive $600 million. Distributions to each eligible county and municipality are based on the taxes remitted by dealers in each county and then apportioned between the county and the cities within each county based on population.

Under the County Revenue Sharing Program, counties receive 2.9% of cigarette tax collections and 2.044% (approx.) of statewide sales tax collections. For fiscal year 06-07, counties are expected to receive $411.7 million (97% from sales tax and 3% from cigarette tax). Distributions to each county are based on a formula that considers county population, unincorporated county population and county sales tax collections.

Under the Municipal Revenue Sharing Program, municipalities receive 100% of collections from the 1-cent municipal fuel tax, 12.5% of the alternative fuel user decal fee collections, and 1.3409% (approx.) of statewide sales tax collections. For fiscal year 06-07 municipalities are expected to receive $361.4 million (sales tax: 72.66%; fuel tax: 27.33%; and decal fee: 0.01%). Distributions to each city are based on a formula that considers population, municipal sales tax collections, and a municipality's relative ability to raise revenues.

CHANGES PROPOSED BY THE BILL:

Millage Rates

The bill limits growth in property taxes by restricting the millage rates that taxing authorities may set. Specifically, the bill provides that taxing authorities may not levy a millage rate in excess of the "rolled-back rate," adjusted by the percentage change in the Consumer Price Index in the year ending the previous June. This has the effect of limiting annual property tax revenue growth to CPI inflation plus tax revenues associated with net new construction.

In 2007, millage rates are limited to what they would be if the millage limitation had been in place in with the 2000 - 2001 fiscal year as the base year and had been carried forward from that year. In effect, this will require governments to reduce their property tax rates so that revenues will be no greater than if FY 2000-01 revenues had grown no faster than CPI inflation plus tax revenues associated with net new construction.

The "rolled-back" rate is defined as "a millage rate that, exclusive of new construction, additions to structures, deletions, increases in the value of improvement that have undergone a substantial rehabilitation that increased the assessed value of such improvements by at least 100 percent, and property added due to geographic boundary changes, will provide the same ad valorem tax revenue for each taxing authority as was levied during the prior year."[10] The exclusions contained in the definition of the rolled-back rate are intended to allow a taxing authority to receive additional property tax revenue from growth in the tax base that is not caused by increases in the value of existing properties. For example, new buildings and annexed territory are increases to the tax base that are not caused by increases in value.

[10] Sec. 200.065, F.S.

Taxing authorities may levy a millage rate in excess of the limitation, if the millage rate is adopted by a vote of the greater of at least a majority plus one or two-thirds of the full membership of the governing board.

The millage limitations do not apply to millage rates set by school districts. Also, the millage limitation does not apply to ad valorem taxes levied for the payment of bonds authorized by a vote of the electors pursuant to Section 12, Article VII, of the Florida Constitution, and to ad valorem taxes levied for periods not longer than two years when authorized by a vote of the electors. Finally, the millage rate limitations do not apply to taxing authorities until the sixth fiscal year in which property taxes are levied.

Revenue Sharing

A county or municipality that adopts a millage rate greater than the limitation with less than a supermajority vote, will not participate in the local government half-cent sales tax distributions provided under Section 218.60-218.66 and in the revenue sharing distributions provided under Section 218.23(3)(e) during the following fiscal year.

Notice requirements

If a taxing authority proposes a tax levy in excess of the millage limitations, it must publish a notice prior to adopting the millage rate stating that it is proposing to adopt a millage rate in excess of the limitations and that unless the levy is adopted by a supermajority vote, the taxing authority will lose state revenue sharing.

C. SECTION DIRECTORY:

Section 1. Amends s. 200.065, F.S., to include an additional public notice requirement.

Section 2. Creates s. 200.192, F.S., which provides millage limitations for property tax levies.

Section 3. Amends s. 373.536, F.S., to conform a cross-reference.

Section 4. Provides an effective date of July 1, 2007.

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:

   Taxing authorities that levy millage rates that do not exceed the limitations set forth in this bill will experience a decline in property tax revenues. If all taxing authorities do not exceed the limitations, the estimated statewide decline in property tax revenues in FY 2007-08 is as follows:

Counties	$3.3 billion (29%)
Municipalities	$1.5 billion (38%)

Independent Special Districts	$1.0 billion (40%)
School Districts	not affected
Total	$5.8 billion (19%)

A county or municipality that levies a millage rate in excess of the limitation without a supermajority vote will not be able to participate in two state revenue sharing programs.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Due to the provisions of this bill, taxpayers should see a decrease in their property tax liability.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require a county or municipality to spend funds and does not reduce the percentage of a state tax shared with counties and municipalities. Therefore, the provisons of Subsections 18 (a) and (c), Article VII, Florida Constitution, do not apply.

Subsection 18(b), Article VII, Florida Constitution, provides that the legislature, except upon approval by a two-thirds vote, may not enact a general law if the anticipated effect of doing so would be to reduce the authority that municipalities and counties have to raise revenues in the aggregate. This bill limits the millage rates that municipalities and counties can levy by a majority vote of the governing board. However, with a supermajority vote of the governing board, cities and counties can exceed the limitations set forth in the bill.

It is unclear whether the requirement for a supermajority vote to exceed the millage limitations represents a reduction of revenue-raising authority as contemplated by subsection 18(b). If the purpose of subsection 18(b) was to determine whether the amount of potential revenue available to cities and counties was reduced, then this bill does not reduce that potential and the requirement for a two-thirds vote is not applicable. However, if the purpose of subsection 18(b) was to look at the method for adopting a millage rate, then the provisons of this bill requiring a supermajority vote to adopt a millage rate that could currently be adopted by a majority vote may be considered a mandate requiring a two-thirds vote of the legislature. There is no legal authority to guide the legislature in making a determination regarding this issue.

2. Other:

A class action lawsuit was filed in February 2007 in the Leon County Circuit Court[11] which alleges that the taxes paid by non-resident owners of residential real property in Florida constitute a disproportionate share of the assessed ad valorem taxes. The lawsuit alleges that the tax burden has a chilling effect on decisions by citizens of the United States to own second homes in Florida and impedes their right to engage in interstate travel and commerce, all in violation of the "dormant commerce clause" of Article I, Section 8 of the United States Constitution and the equal protection clause of the 14th Amendment to the Constitution.

[11] Case No. 37 2007 CA 000582 filed in the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida.

Similar issues were raised in *Reinish v. Clark,* 765 So. 2d 197 (Fla. 1st DCA 2000). Nonresident taxpayers brought an action challenging the constitutionality of the Florida homestead exemption (and also the Save Our Homes assessment limitation). The District Court of Appeal for the First District of Florida affirmed the ruling of the Leon County circuit court. The court held that the exemption did not violate either the privileges and immunities clause of the Federal Constitution or the "dormant" commerce clause.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 7, 2007, the Government Efficiency & Accountability Council adopted a strike-all amendment which included the text of the Notice of Proposed Tax Increase in Excess of the Millage Limitation included in s. 200.065, F.S. This analysis reflects the changes made by the strike-all.

A bill to be entitled

An act relating to ad valorem tax millage; amending s. 200.065, F.S.; specifying a form for advertisements of proposed tax increases in excess of a millage limitation; creating s. 200.192, F.S.; providing ad valorem tax millage limitations; providing exemptions for certain taxing authorities; providing for exceeding the limitations under certain circumstances; prohibiting certain counties or municipalities from participating in certain revenue sharing and local government half-cent sales tax distributions under certain circumstances; specifying a methodology for calculating a rolled-back rate for certain counties or municipalities; requiring forms of property appraisers to contain certain millage calculation instructions; providing for nonapplication to the millage of certain ad valorem tax levies; amending s. 373.536, F.S.; correcting cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 200.065, Florida Statutes, is amended to read:

200.065 Method of fixing millage.--

(3) The advertisement shall be no less than one-quarter page in size of a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified

advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county or in a geographically limited insert of such newspaper. The geographic boundaries in which such insert is circulated shall include the geographic boundaries of the taxing authority. It is the legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least 5 days a week unless the only newspaper in the county is published less than 5 days a week, or that the advertisement appear in a geographically limited insert of such newspaper which insert is published throughout the taxing authority's jurisdiction at least twice each week. It is further the legislative intent that the newspaper selected be one of general interest and readership in the community and not one of limited subject matter, pursuant to chapter 50.

(a) For taxing authorities other than school districts which have tentatively adopted a millage rate in excess of the millage rate limitation contained in s. 200.192, the advertisement shall be in the following form:

NOTICE OF PROPOSED TAX INCREASE IN EXCESS OF THE MILLAGE LIMITATION

The (name of the taxing authority) has tentatively adopted a measure to increase its property tax levy in excess of the millage limitation imposed by statute.

Last year's property tax levy:

A. Initially proposed tax levy ..... $XX,XXX,XXX

B. Less tax reductions due to Value Adjustment Board and

other assessment changes ..... ($XX,XXX,XXX)

C. Actual property tax levy .....$XX,XXX,XXX

This year's proposed tax levy $XX,XXX,XXX

If this proposed tax increase in excess of the millage limitation is levied by less than the required supermajority vote, the (name of taxing authority) will lose state revenue sharing. Last year, the (name of taxing authority) received $XX,XXX,XXX from revenue sharing.

All concerned citizens are invited to attend a public hearing on the tax increase to be held on (date and time) at (meeting place) .

A FINAL DECISION on the proposed tax increase and the budget will be made at this hearing.

(b) ~~(a)~~ For taxing authorities other than school districts which have tentatively adopted a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1), but not in excess of the millage limitation contained in s. 200.192, the advertisement shall be in the following form:

NOTICE OF PROPOSED TAX INCREASE

The (name of the taxing authority) has tentatively adopted a measure to increase its property tax levy.

Last year's property tax levy:

A. Initially proposed tax levy....$XX,XXX,XXX

B. Less tax reductions due to Value Adjustment Board and other assessment changes....($XX,XXX,XXX)

C. Actual property tax levy....$XX,XXX,XXX

This year's proposed tax levy....$XX,XXX,XXX

All concerned citizens are invited to attend a public hearing on the tax increase to be held on (date and time) at (meeting place) .

A FINAL DECISION on the proposed tax increase and the budget will be made at this hearing.

(c) ~~(b)~~ In all instances in which the provisions of paragraphs ~~paragraph~~ (a) and (b) are inapplicable for taxing authorities other than school districts, the advertisement shall be in the following form:

NOTICE OF BUDGET HEARING

The (name of taxing authority) has tentatively adopted a budget for (fiscal year) . A public hearing to make a FINAL DECISION on the budget AND TAXES will be held on (date and time) at (meeting place) .

(d) ~~(c)~~ For school districts which have proposed a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1) and which propose to levy nonvoted millage in excess of the minimum amount required pursuant to s. 1011.60(6), the advertisement shall be in the following form:

NOTICE OF PROPOSED TAX INCREASE

The (name of school district) will soon consider a measure to increase its property tax levy.

Last year's property tax levy:

A. Initially proposed tax levy....$XX,XXX,XXX

B. Less tax reductions due to Value Adjustment Board and other assessment changes....($XX,XXX,XXX)

C. Actual property tax levy....$XX,XXX,XXX

This year's proposed tax levy....$XX,XXX,XXX

A portion of the tax levy is required under state law in order for the school board to receive $ (amount A) in state education grants. The required portion has (increased or decreased) by (amount B) percent and represents approximately (amount C) of the total proposed taxes.

The remainder of the taxes is proposed solely at the discretion of the school board.

All concerned citizens are invited to a public hearing on the tax increase to be held on (date and time) at (meeting place) .

A DECISION on the proposed tax increase and the budget will be made at this hearing.

1. AMOUNT A shall be an estimate, provided by the Department of Education, of the amount to be received in the current fiscal year by the district from state appropriations for the Florida Education Finance Program.

2. AMOUNT B shall be the percent increase over the rolled-back rate necessary to levy only the required local effort in the current fiscal year, computed as though in the preceding fiscal year only the required local effort was levied.

3. AMOUNT C shall be the quotient of required local-effort millage divided by the total proposed nonvoted millage, rounded to the nearest tenth and stated in words; however, the stated amount shall not exceed nine-tenths.

(e) ~~(d)~~ For school districts which have proposed a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1) and which propose to levy as nonvoted millage only the minimum amount required pursuant to s. 1011.60(6), the advertisement shall be the same as provided in paragraph (d) ~~(c)~~, except that the second and third paragraphs shall be replaced with the following paragraph:

This increase is required under state law in order for the school board to receive $ (amount A) in state education grants.

(f) ~~(e)~~ In all instances in which the provisions of paragraphs (d) ~~(c)~~ and (e) ~~(d)~~ are inapplicable for school districts, the advertisement shall be in the following form:

NOTICE OF BUDGET HEARING

The (name of school district) will soon consider a budget for (fiscal year) . A public hearing to make a DECISION on the budget AND TAXES will be held on (date and time) at (meeting place) .

(g) ~~(f)~~ In lieu of publishing the notice set out in this subsection, the taxing authority may mail a copy of the notice to each elector residing within the jurisdiction of the taxing authority.

(h) ~~(g)~~ In the event that the mailing of the notice of proposed property taxes is delayed beyond September 3 in a county, any multicounty taxing authority which levies ad valorem taxes within that county shall advertise its intention to adopt a

tentative budget and millage rate in a newspaper of paid general circulation within that county, as provided in this subsection, and shall hold the hearing required pursuant to paragraph (2)(c) not less than 2 days or more than 5 days thereafter, and not later than September 18. The advertisement shall be in the following form, unless the proposed millage rate is less than or equal to the rolled-back rate, computed pursuant to subsection (1), in which case the advertisement shall be as provided in paragraph (f) ~~(e)~~:

NOTICE OF TAX INCREASE

The (name of the taxing authority) proposes to increase its property tax levy by (percentage of increase over rolled-back rate) percent.

All concerned citizens are invited to attend a public hearing on the proposed tax increase to be held on (date and time) at (meeting place) .

(i) ~~(h)~~ In no event shall any taxing authority add to or delete from the language of the advertisements as specified herein unless expressly authorized by law, except that, if an increase in ad valorem tax rates will affect only a portion of the jurisdiction of a taxing authority, advertisements may include a map or geographical description of the area to be affected and the proposed use of the tax revenues under consideration. The advertisements required herein shall not be accompanied, preceded, or followed by other advertising or notices which conflict with or modify the substantive content prescribed herein.

(j) ~~(i)~~ The advertisements required pursuant to paragraphs (c) ~~(b)~~ and (f) ~~(e)~~ need not be one-quarter page in size or have a headline in type no smaller than 18 point.

(k) ~~(j)~~ The amounts to be published as percentages of increase over the rolled-back rate pursuant to this subsection shall be based on aggregate millage rates and shall exclude voted millage levies unless expressly provided otherwise in this subsection.

(l) ~~(k)~~ Any taxing authority which will levy an ad valorem tax for an upcoming budget year but does not levy an ad valorem tax currently shall, in the advertisement specified in paragraph (a), paragraph (b) ~~(a)~~, paragraph (d) ~~(c)~~, paragraph (e) ~~(d)~~, or paragraph (h) ~~(g)~~, replace the phrase "increase its property tax levy by (percentage of increase over rolled-back rate) percent" with the phrase "impose a new property tax levy of $ (amount) per $1,000 value."

(m) ~~(l)~~ Any advertisement required pursuant to this section shall be accompanied by an adjacent notice meeting the budget summary requirements of s. 129.03(3)(b). Except for those taxing authorities proposing to levy ad valorem taxes for the first time, the following statement shall appear in the budget summary in boldfaced type immediately following the heading, if the applicable percentage is greater than zero:

THE PROPOSED OPERATING BUDGET EXPENDITURES OF (name of taxing authority) ARE (percent rounded to one decimal place) MORE THAN LAST YEAR'S TOTAL OPERATING EXPENDITURES.

For purposes of this paragraph, "proposed operating budget expenditures" or "operating expenditures" means all moneys of the local government, including dependent special districts, that:

1. Were or could be expended during the applicable fiscal year, or

2. Were or could be retained as a balance for future spending in the fiscal year.

Provided, however, those moneys held in or used in trust, agency, or internal service funds, and expenditures of bond proceeds for capital outlay or for advanced refunded debt principal, shall be excluded.

Section 2. Section 200.192, Florida Statutes, is created to read:

200.192 Millage limitation; exception; form; application.--

(1)(a) Ad valorem taxes may not be levied in excess of a millage rate equal to the rolled-back rate as defined in s. 200.065, adjusted by the percentage change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1982-1984=100, or successor reports for the 12-month period through June prior to the beginning of the fiscal year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(b) This subsection does not apply to taxing authorities that have levied ad valorem taxes for 5 years or less.

(2)(a) For the fiscal year beginning October 1, 2007, ad valorem taxes may not be levied in excess of the maximum millage rate that would have resulted from application of subsection (1) if subsection (1) had been in effect beginning January 1, 2001,

and had been applied each year up to and including the fiscal year beginning October 1, 2006.

(b) A taxing authority that began levying ad valorem taxes after January 1, 1996, may not levy ad valorem taxes in excess of the maximum millage rate that would have resulted from application of subsection (1) if subsection (1) had been in effect in the sixth fiscal year in which the authority levied ad valorem taxes and had been applied up to and including the fiscal year beginning October 1, 2006.

(3) Ad valorem taxes may be levied in excess of the limitations provided in this section upon approval by the affirmative vote of the greater of at least a majority plus one or two-thirds of the full membership of the governing body adopting the millage rate.

(4)(a) A county or municipality that levies a millage rate in excess of the maximum millage provided in this section without complying with subsection (3) may not participate in the revenue sharing distributions provided for in s. 218.23(3)(e) and the local government half-cent sales tax distributions provided for in ss. 218.60-218.66 during the fiscal year immediately following the adoption of the excess millage rate.

(b) A county or municipality subject to the provisions of paragraph (a) shall calculate, for the following year, the rolled-back rate to be used for purposes of subsection (1) using the taxes that would have been levied if the maximum millage allowed under subsection (1) had been adopted in the prior year.

(5) The form provided to taxing authorities by the property appraiser pursuant to s. 200.065(1) must include instructions to each taxing authority describing the proper method of computing

the maximum millage described in subsections (1) and (2).

(6) This section does not apply to ad valorem taxes levied by school districts, levied for the payment of bonds issued pursuant to s. 12, Art. VII of the State Constitution, or levied for periods not longer than 2 years when authorized by a vote of the electors.

Section 3. Paragraphs (c) and (d) of subsection (3) of section 373.536, Florida Statutes, are amended to read:

373.536 District budget and hearing thereon.--

(3) BUDGET HEARINGS AND WORKSHOPS; NOTICE.--

(c) The tentative budget shall be adopted in accordance with the provisions of s. 200.065; however, if the mailing of the notice of proposed property taxes is delayed beyond September 3 in any county in which the district lies, the district shall advertise its intention to adopt a tentative budget and millage rate, pursuant to s. 200.065(3)(h)~~(g)~~, in a newspaper of general paid circulation in that county.

(d) As provided in s. 200.065(2)(d), the board shall publish one or more notices of its intention to adopt a final budget for the district for the ensuing fiscal year. The notice shall appear adjacent to an advertisement that sets forth the tentative budget in a format meeting the budget summary requirements of s. 129.03(3)(b). The district shall not include expenditures of federal special revenues and state special revenues when preparing the statement required by s. 200.065(3)(m)~~(l)~~. The notice and advertisement shall be published in one or more newspapers having a combined general paid circulation in each county in which the district lies. Districts may include explanatory phrases and examples in budget

advertisements published under s. 200.065 to clarify or illustrate the effect that the district budget may have on ad valorem taxes.

Section 4. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. PCS/HB 7001

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Galvano offered the following:

Amendment

Between lines 268 and 269 insert:

(c) This subsection does not apply to ad valorem taxes levied by:

(1) Children' Services independent special districts created pursuant to s. 125.901.

(2) A county that is considered a fiscally constrained county pursuant to s. 218.67 for the 2007-08 fiscal year.

(3) A hospital district or health care district created pursuant to ch. 155 or by special act of the legislature which prior to the effective date of this act contributed intergovernmental transfers to the Agency for Health Care Administration for the purpose of securing federal Title 19 matching funds for the following programs: low income pool, disproportionate share program, hospital exemptions or global liver fee.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. PCS/HB 7001

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill:

Representative(s) Seiler offered the following:

Amendment (with title amendment)

Between lines 320 and 321, insert:

Section 4. Notwithstanding the provisions of any general or special law, if any provision of general or special law conflicts with the provisions of this act, the provisions of this act shall preempt, control, and supercede such provision of general or special law to the extent of the conflict.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 15 and insert:

373.536, F.S.; correcting cross-references; providing for preemption, control, and supercession of provisions of general or special law in conflict with provisions of the act; providing an effective

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. PCS/HB 7001

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Cusack and Vana offered the following:

Amendment

Remove line(s) 253 and insert:

Labor Statistics, except that the rollback rate computation shall exclude the average annual increase in expenditures during the rollback period for homeland security.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. PCS/HB 7001

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Seiler and Richardson offered the following:

Amendment

Remove line(s) 253 and insert:

Labor Statistics, except that the rollback rate computation shall exclude the average annual increase in expenditures during the rollback period for law enforcement ,including pensions.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. PCS/HB 7001

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Vana, Gibbons, and Ausley offered the following:

Amendment

Remove line(s) 253 and insert:

Labor Statistics, except that the rollback rate computation shall be exclude the average annual increase in expenditures during the rollback period for firefighting and emergency medical response, including pensions.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. PCS/HB 7001

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Meadows and Cusack offered the following:

Amendment

Remove line(s) 253 and insert:

Labor Statistics, except that the rollback rate computation shall exclude the average annual increase in expenditures during the rollback period for health care for seniors.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. PCS/HB 7001

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Taylor offered the following:

Amendment

Remove line(s) 253 and insert:

Labor Statistics, except that the rollback rate computation shall exclude the average annual increase in expenditures during the rollback period for hurricane or other disaster response and hurricane.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. PCS/HB 7001

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Seiler offered the following:

Amendment

Remove line(s) 253 and insert:

Labor Statistics, except that the rollback rate computation shall exclude the average annual increase in expenditures during the rollback period for state mandates, including concurrency requirements.

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8

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. PCS/HB 7001

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Ausley and Gibbons offered the following:

Amendment

Remove line(s) 253 and insert:

Labor Statistics, except that the rollback rate computation shall exclude the average annual increase in expenditures during the rollback period for capital outlay expenditures not paid for by debt.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. PCS/HB 7001

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	_____	

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Richardson, Vana, and Schwartz offered the following:

Amendment

Remove line(s) 321 and insert:

Section 4. This act shall take effect July 1, 2007, contingent upon the state reducing its budget by the percentage equal to the average percent reduction of the affected taxing entities total budgets in the aggregate.

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10

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7021 PCB SLC 07-01 Performance-based Pay Bonuses
SPONSOR(S): Schools & Learning Council and Pickens
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Schools & Learning Council	11 Y, 3 N	Kooi	Cobb
1) Policy & Budget Council		Martin	Hansen MPH
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill establishes the Merit Award Program for instructional personnel and school-based administrators. District participation in the program is voluntary, but districts will only receive their appropriation if they choose to adopt a plan under this section. The funds for districts that do not choose to participate in the program revert to the fund from which they came.

In order to be eligible for funding under this program, district plans must provide for an assessment and reward eligible employees based upon performance of assigned students (weighted at 60%) as well as principal or superintendent evaluations (weighted at 40%). Student performance is to be measured by statewide standardized tests and, for grades and courses not covered by the statewide assessment program, by district determined testing instruments that meet certain criteria.

The plans are subject to collective bargaining under Ch. 447, F.S. Each district plan must designate top performing employees and must include a supplement of at least 5 percent of the average teacher's salary for that school district, but no more than 10 percent of the average teacher's salary for that district from state appropriated funds. Districts may use their own funds to provide any additional supplements. The amount of the awards may not be based upon length of service or base salary. Funds disbursed to districts for the merit award program must be distributed to qualifying employees who remain employed at a Florida public school no later than September 1 of the following school year.

Merit Award Program plans are to be reviewed by the Commissioner of Education prior to implementation. The implementation of the plans is also to be reviewed by the commissioner the following year for compliance with statutory requirements.

Funding for this program is subject to the legislative appropriation in the 2007-08 GAA (see FISCAL ANALYSIS section below).

Special Teachers Are Rewarded (STAR) proviso language from Specific Appropriation 91 of the 2006-2007 General Appropriations Act (GAA) is codified and repealed. STAR implementation deadlines are pushed back from March 1, 2007 to May 1, 2007 for revisions, and from April 1, 2007 to June 30, 2007 for approval. Funds appropriated for STAR in 2006-2007 are reverted and reappropriated with the new provisions, and with provision for the undisbursed balance of the funds to be refunded to the Department of Education (DOE) by September 1, 2007.

Districts may be eligible for funding if they have a performance pay plan under s. 1012.22(1)(c)4., F.S., but they must either amend their plan to meet the new statutory criteria prior to the disbursement of funds under this section or receive only the amount they disbursed under s. 1012.22(1)(c)4., F.S.

The bill also provides that, except as otherwise provided, this act shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Personal Responsibility and Individual Freedom- The bill allows individual instructional personnel and school-based administrators to be evaluated and rewarded for the academic proficiency or learning gains of students under their instruction. These rewards are determined solely by individual merit rather than through collectively bargained salary structures.

B. EFFECT OF PROPOSED CHANGES:

Background

The Florida Legislature directed the Office of Program Policy Analysis and Government Accountability (OPPAGA) to examine school district performance pay plans. In January 2007, OPPAGA published Report No. 07-01, *Restrictive District Requirements Limited Participation in Performance Pay Systems.* This report found that, historically, most Florida district school boards have paid teachers using salary schedules that have been based on input factors such as highest degree earned, and years of experience.

The 1997 Legislature instructed districts to base a portion of instructional personnel compensation on performance. The 1999 Legislature required districts to implement, by June 30, 2002, performance pay plans that would award 5% bonuses to school administrators and instructional personnel who demonstrated outstanding performance. Districts were to create a reserve fund within their existing budgets to fully fund the additional 5% bonuses.[1]

In implementing performance pay plans, districts are to evaluate instructional personnel primarily on the performance of students assigned to their classrooms or schools, as appropriate. Where applicable, districts must measure student performance by using the Florida Comprehensive Assessment Test (FCAT), the designated state assessment test. In subjects and grade levels that are not covered by the FCAT, districts may use local assessments of student performance.[2]

Districts have the flexibility in assessing the performance of instructional personnel; however, current law sets forth the specific skill-based criteria that districts must include in their evaluation of instructional personnel for performance pay.[3] These criteria are the ability to maintain appropriate discipline; knowledge of subject matter; ability to plan and deliver instruction; the use of technology in the classroom; ability to evaluate instructional needs; and ability to establish and maintain a positive relationship with students' families.[4]

The 2006 Legislature established the Special Teachers Are Rewarded (STAR) program for elementary, middle, and high school instructional personnel and school-based administrators and appropriated $147.5 million to the program in the 2006-2007 General Appropriations Act.[5] In order to receive those funds, districts were required to remove all barriers to eligibility and award 5% performance bonuses to the top performing 25% of their instructional personnel.[6]

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[1] OPPAGA: *Restrictive District Requirements Limited Participation in Performance Pay Systems.* Report No. 07-01. January 2007.
[2] Id.
[3] s. 1012.34(3)(a), F.S.
[4] OPPAGA: *Restrictive District Requirements Limited Participation in Performance Pay Systems.* Report No. 07-01. January 2007.
[5] 2006-2007 General Appropriations Act (ch. 2006-25, L.O.F.), Specific Appropriation 91
[6] OPPAGA: *Restrictive District Requirements Limited Participation in Performance Pay Systems.* Report No. 07-01. January 2007.

Districts may choose whether to participate in STAR but all districts must implement approved performance pay plans[7] for their instructional personnel. Districts participating in STAR may use any remaining funds to provide performance rewards to additional instructional or school-based administrative personnel. Districts electing not to participate in STAR still must implement approved performance pay plans[8] for their instructional personnel and are required to pay for performance pay out of other funds.[9]

Effects of Proposed Changes

The bill establishes the Merit Award Program for instructional personnel and school-based administrators and sets forth findings and intent. District participation in the program is voluntary. However, districts will only receive their appropriation for merit award supplements if they choose to adopt a plan under this section.

In order to be eligible for funding under this program, district plans must provide for an assessment and reward eligible employees based upon performance of assigned students as well as principal or superintendent evaluations. All instructional personnel[10] and school-based administrators[11] are eligible for merit award supplements without having to apply. Substitute teachers are not included. Instructional teams such as those in co-teaching or team teaching situations may be rewarded as a team as well.

Individual merit award supplements are subject to collective bargaining under Ch. 447. An exception is provided relating to the requirements of s. 447.403, F.S., which allows the district and the union to move past the appointment of a mediator or special magistrate and on to resolution of the impasse where one of the parties does not wish to seek such an appointment.

Charter schools are also eligible for merit award supplements. If a charter school follows a district's salary schedule the charter school should be included within the district's plan. However, if a charter school does not follow the district's salary schedule or the district chooses not to adopt a plan, the charter school may adopt their own merit award pay plan pursuant to the requirements of the statute.

The funds for districts that choose not to participate in the program revert to the fund from which they came. All funds appropriated for the program must be disbursed to qualifying employees by September 1 of the following school year.

Each district plan must designate top performing employees and must include a supplement of at least 5 percent of the average teacher's salary for that school district, but no more than 10 percent of the average teacher's salary for that district from state appropriated funds. Districts may use their own funds to provide additional supplements. The amount of the awards may not be based upon length of service or base salary. The employee must also remain employed at a Florida public school in order to receive the bonus. District plans may also include a component rewarding exemplary work attendance of eligible employees.

By October 1st, the districts must submit documentation to the DOE regarding the expenditure of program funds. Any program funds that are not disbursed by the participating district are to be refunded to the DOE. If funds are not refunded to the DOE, the DOE shall withhold Florida Education Finance Program district lottery funds of an equivalent amount. Merit-based supplements may not adversely affect the opportunity of the recipient to receive any other compensation made available to other teachers and principals within the district.

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[7] s. 1012.22(1)(c), F.S.
[8] s. 1012.22(1)(c), F.S.
[9] OPPAGA: *Restrictive District Requirements Limited Participation in Performance Pay Systems.* Report No. 07-01. January 2007.
[10] s. 1012.01(2), F.S., provides for the definition of instructional personnel.
[11] s. 1012.01(3), F.S., provides for the definition of administrative personnel.

District assessment of instructional personnel must consider the performance of students assigned to the teacher, or in the case of co-teaching or team teaching, within that teacher's sphere of responsibility. School-based administrators will be evaluated according to the performance of the entire student body. Improved student performance is to be measured by statewide standardized tests and, for grades and courses not covered by the statewide assessment program, by district determined testing instruments that meet certain criteria. This student performance component must be weighted at no less than 60 percent of the overall evaluation. District assessment measures must also balance student performance based on academic proficiency and learning gains.

District Merit Award plans must require that each employee meet the criteria set forth by the district for its principal/superintendent appraisal. This portion of the assessment shall be weighted at up to 40 percent of the evaluation. The district determined factors must include, but are not limited to:

1. ability to maintain discipline,
2. outstanding knowledge of subject matter and ability to deliver high quality instruction,
3. ability to evaluate student instructional needs,
4. ability of teachers and principals to work well with parents and families of students,
5. the Florida Educator Accomplished Practices for instructional personnel and the Florida Principal Leadership Standards for school-based administrators.

In addition to 1-5 above, the criteria for school-based administrators also includes management of human, financial and material resources to maximize such resources for direct instruction and the ability to recruit and retain high-performing teachers.

Districts are required to notify employees of the criteria and procedures of the district plan. The DOE is required to provide technical assistance upon request on plan development and to collect and disseminate best practices for district-determined testing instruments. The advice and recommendations provided by DOE are not subject to ch. 120, F.S.

Districts must submit their plan to the Commissioner of Education by October 1 of each year. The commissioner shall review the plan for compliance by November 15. If a district plan fails to meet the statutory requirements, the commissioner must detail the revisions that are to be made in writing. Revised plans must be submitted by January 31. The commissioner must certify any district or charter school plans that do not comply to the Governor, President of the Senate, and Speaker of the House by February 15.

Districts are required to annually review their plans for compliance and issue a report that must be sent to the commissioner by October 1 of the following school year to verify compliance the previous year. The commissioner must then submit a report to the Governor, President of the Senate, and Speaker of the House certifying district or charter schools that failed to implement plans in accordance with the statute. The report must be sent by the commissioner by December 1st.

Plans submitted and approved for the 2007-2008 school year shall apply during the 2007-2008 school year and the 2008-2009 school year. Thereafter, all plans submitted shall apply during the following school year. Any subsequent revisions must be reviewed by the district school board and the commissioner.

Beginning with the 2007-2008 school year, participating districts must be able to administer end-of-course exams in all grade groupings and subject areas. Statewide assessments, College Board Advanced Placement Examination, International Baccalaureate Examination, Advanced International Certificate of Education Examination, or national industry certification will satisfy this requirement.

Funding for this program is subject to legislative appropriation in the 2007-08 GAA (see FISCAL ANALYSIS section below).

The STAR proviso language from the 2006-07 GAA is codified and repealed, and the 2006-2007 appropriation is rescinded. The sum of $147.5 million is then appropriated as a supplemental appropriation for Aid to Local Governments, Grants and Aids –Florida Education Finance Program. These funds are to be allocated to districts based on each district's portion of the total state K-12 base funding amount.

The STAR deadline for submission of revised district plans is pushed back from March 1, 2007 to May 1, 2007. Any district that is able to submit its plan by the May 1 deadline and have a plan approved will receive its appropriation. Further, any district with an existing performance pay policy pursuant to s. 1012.22(1)(c), F.S. may also be eligible for funding, but they must amend their plan to meet the new statutory criteria prior to the disbursement of funds under this section, or if they do not amend their plan to meet the statutory requirements, they may receive only the amount they disbursed under s. 1012.22(1)(c)4., F.S.

Any funds that would have been available to districts that choose not to meet any of the above requirements for the 2006-2007 school year revert to the fund from which the appropriation came. Furthermore, any funds the districts do not disburse pursuant to their merit award, STAR or performance pay plan must be returned to the DOE. Any amount of such funds that are not returned shall be withheld by the DOE from the district's Florida Education Finance Program allocations.

The bill also provides that, except as otherwise provided, this act shall take effect upon becoming law.

C. SECTION DIRECTORY:

Section 1. Creates s. 1012.225, F.S., establishing the Merit Award Program a voluntary program to reward the performance of instructional personnel and school-based administrators; providing for the reversion of undistributed funds from entities that do not adopt a plan; providing for an assessment and a merit award based on the student's performance; subjecting each plan to collective bargaining; providing for a formula for the disbursement of merit-based pay supplements; requiring the documentation of each district's expenditures under its plan; requiring undisbursed funds to be returned to the DOE; providing that the supplements are in addition to other salary adjustments; providing assessment requirements; requiring district school boards to inform employees of the evaluation criteria; requiring the DOE to provide technical assistance; requiring plans to be submitted to the Commissioner of Education; requiring the Commissioner to identify required revisions and review such revisions; requiring school boards to document compliance; requiring a report to the Governor and Legislature; and authorizing the State Board to adopt rules.

Section 2. Creates an unnumbered section of law; requiring school districts to be able administer end-of-course examinations with certain exemptions.

Section 3. Amends s. 447.403, F.S., providing procedure for resolving an impasse with respect to a dispute involving a Merit Award pay plan.

Section 4. Codifies the proviso language for the STAR program in the 2006-2007 General Appropriations Act; requires that a specified portion of general revenue funds revert to the General Revenue Fund; repealing a specified portion of proviso following Specific Appropriation 91 in s. 2, ch. 2006-25, L.O.F.

Section 5. Creates an unnumbered section of law; providing an appropriation and specifying purposes.

Section 6. Repeals s. 3, ch. 2006-26, L.O.F.; relating to an implementing provision for the STAR performance pay plan.

Section 7. Repeals s. 1012.22(1)(c)4., F.S.; relating to a performance-pay policy for school administrators and instructional personnel; suspending rules adopted by the State Board that are in conflict with the provisions.

Section 8. Provides that except as otherwise provided, act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Under the STAR Program, funds allocated in 2006-07 for districts that fail to adopt approved STAR plans were to be redistributed to districts with approved STAR plans. Under this bill, funds available to districts that choose not to meet any STAR requirements or performance pay requirements enumerated in this bill must be remitted back to DOE by September 1, 2007 (and will then revert to the funds from which they were appropriated). It is possible that some districts will choose not to participate in a 2006-07 performance pay plan and, therefore, an indeterminate amount of funds could remain unallocated and revert.

Funds for the new Merit Award Program created by this bill are to be appropriated in the 2007-08 GAA.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

District school boards are free to provide whatever additional funding they may choose to add to provide bonuses to more eligible employees. There may also be some district costs to administer the program.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The 2006 Legislature appropriated $147.5 million in the 2006-07 General Appropriations Act, Specific Appropriation 91. This appropriation is rescinded and $147.5 million is appropriated as a supplemental appropriation for Aid to Local Governments, Grants and Aids – Florida Education Finance Program for the 2006-2007 fiscal year. The funding for the Merit Award Program is subject to the 2007 Legislative appropriation in the 2007-2008 General Appropriations Act.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to the State Board of Education for the administration of the program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to a merit award program for district school board employees; creating s. 1012.225, F.S.; establishing the Merit Award Program for instructional personnel and school-based administrators; requiring that a district school board adopt a Merit Award Program plan in order to receive funding under the program; authorizing charter schools to participate in the program or adopt an alternative plan; providing for the plan to be subject to ch. 447, F.S., relating to collective bargaining; providing for the reversion of funds that are not distributed when a district or charter school chooses not to adopt a plan; providing a formula for disbursing merit-based pay supplements to high-performing employees; requiring each school district to document to the Department of Education the district's expenditures under its plan; requiring that undisbursed funds be remitted to the department; providing that the merit-based pay supplements are in addition to other salary adjustments; providing requirements for assessing instructional personnel and school-based administrators which include evaluating student and employee performance; requiring district school boards to inform employees of the criteria for evaluations under the plan; requiring the department to provide technical assistance to school districts in developing program plans and to disseminate best practices; requiring each participating district school board to submit its plan to the Commissioner of Education

for review; requiring the commissioner to identify required revisions in a district's plan; requiring that any revision made to a plan be reviewed by the commissioner; requiring each school board to annually document its compliance to the Commissioner of Education; requiring a report to the Governor and the Legislature; authorizing the State Board of Education to adopt rules; requiring school districts to be able to administer end-of-course examinations with certain exceptions; amending s. 447.403, F.S.; providing a procedure for resolving an impasse with respect to a dispute involving a Merit Award Program plan; requiring that a specified portion of general revenue funds revert to the General Revenue Fund; repealing a specified portion of Specific Appropriation 91 in s. 2, ch. 2006-25, Laws of Florida; providing an appropriation and specifying purposes; repealing s. 3, ch. 2006-26, Laws of Florida, relating to an implementing provision for the Special Teachers Are Rewarded performance pay plan (STAR Plan); repealing s. 1012.22(1)(c)4., F.S., relating to a performance-pay policy for school administrators and instructional personnel; suspending rules adopted by the State Board of Education that are in conflict with such provisions; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1012.225, Florida Statutes, is created

to read:

1012.225 Merit Award Program for instructional personnel and school-based administrators.--

(1) ELIGIBILITY.--In order to be eligible for funding under this section, a district school board must adopt a Merit Award Program plan that provides for an assessment and a merit award based on the performance of students assigned to the employee's classroom or school pursuant to paragraph (3)(a) or paragraph (3)(b). Charter schools may participate in the program by using the district's Merit Award Program plan or may adopt an alternative Merit Award Program plan as provided in paragraph (5)(b). All instructional personnel, as defined in s. 1012.01(2)(a)-(d), and school-based administrators, as defined in s. 1012.01(3)(c), are eligible as individuals or as instructional teams to receive merit awards, with the exception of substitute teachers. In order to receive a merit award as an instructional team under this section, team members must be assessed on the performance of students assigned to the team members' classrooms or within the members' sphere of academic responsibility. The district school board may not require instructional personnel or school-based administrators to apply for an award, or make any presentation, in order to be assessed for or receive a merit award. A plan is subject to negotiation as provided in chapter 447. The Department of Education may not distribute any portion of pro rata funding to a district, or to a district for a charter school within the district, if the district or charter school chooses not to adopt a Merit Award Program plan under this section. Undistributed funds shall be

considered unobligated and shall revert to the fund from which the appropriation was made in accordance with s. 216.301.

(2) PAY SUPPLEMENTS STRUCTURE.--Merit Award Program plans shall provide for the annual disbursement of merit-based pay supplements to high-performing employees in the manner described in this subsection.

(a) Each Merit Award Program plan must designate the top instructional personnel and school-based administrators to be outstanding performers and pay to each such employee who remains employed in a Florida public school, by September 1 of the following school year, a merit-based pay supplement of at least 5 percent of the average teacher's salary for that school district not to exceed 10 percent of the average teacher's salary for that school district. The amount of a merit award may not be based on length of service or base salary. Pay supplements shall be funded from moneys appropriated by the Legislature under this section and from any additional funds that are designated by the district for the Merit Award Program. School districts are not required to implement this section unless the program is specifically funded by the Legislature. By October 1 of each year, each school district shall provide documentation to the Department of Education concerning the expenditure of legislative appropriations for merit-based pay, and shall refund undisbursed appropriations to the department. If such undisbursed funds are not remitted to the department by November 1, the department shall withhold an equivalent amount from the district's allocation of appropriations made under s. 1011.62.

(b) A Merit Award Program plan may include additional pay supplements under this section for employees who manifest exemplary work attendance.

(c) Merit-based pay supplements shall be awarded in addition to any general increase or other adjustments to salaries which are made by a school district. An employee's eligibility for or receipt of merit-based pay supplements shall not adversely affect that employee's opportunity to qualify for or to receive any other compensation that is made generally available to other similarly situated district school board employees.

(3) ASSESSMENT.--

(a) The school district's assessment of an instructional personnel staff member must consider the performance of students assigned to his or her classroom or, in the case of co-teaching or team teaching, within his or her sphere of academic responsibility.

(b) The assessment of a school-based administrator must consider the performance of students assigned to his or her school.

(c) A district school board must evaluate student performance for purposes of this section based upon student academic proficiency or gains in learning or both, as measured by statewide standardized tests, or, for subjects and grades that are not measured by the statewide assessment program, by national, state, or district-determined testing instruments that measure the Sunshine State Standards, curriculum frameworks, or course descriptions for the content area assigned and grade

level taught. This portion of the employee assessment shall be weighted at not less than 60 percent of the overall evaluation.

(d) For purposes of this section, measures adopted by the district school board to assess instructional personnel and school-based administrators must balance student performance based on academic proficiency and gains in learning so that top-performing eligible employees have an opportunity to receive an award under this section.

(e) Using assessment criteria adopted by the district school board, a professional practices component for the assessment of instructional personnel must be based on the principal's assessment of the instructional personnel and the assessment of school-based administrators must be based on the district superintendent's assessment of the administrator. This portion of the employee assessment shall be weighted at up to 40 percent of the overall evaluation. Performance-related assessment criteria adopted by the district school board for personnel assessments by principals and superintendents shall include:

1. The ability to maintain appropriate discipline.

2. The outstanding knowledge of subject matter, with the ability to plan and deliver high-quality instruction and the high-quality use of technology in the classroom.

3. The ability to use diagnostic and assessment data and design and to implement differentiated instructional strategies in order to meet individual student needs for remediation or acceleration.

4. The ability to establish and maintain a positive

collaborative relationship with students' families for the purpose of increasing student achievement.

5. The Florida Educator Accomplished Practices and any other professional competencies, responsibilities, and requirements, as established by rules of the State Board of Education and policies of the district school board.

6. For school-based administrators, in addition to subparagraphs 1.-5.:

a. The ability to manage human, financial, and material resources so as to maximize the share of resources used for direct instruction, as opposed to overhead or other purposes; and

b. The ability to recruit and retain high-performing teachers.

7. Other appropriate factors identified by the district school board.

(4) DUTIES.--

(a) Each district school board shall inform its employees of the criteria and procedures associated with the school district's Merit Award Program plan.

(b)1. Upon request, the department shall provide technical assistance to school districts for the purpose of aiding the development of Merit Award Program plans. The advice and recommendations offered by the department under this paragraph are not subject to the requirements of chapter 120.

2. The department shall collect and disseminate best practices for district-determined testing instruments and Merit Award Program plans.

(5) REVIEW OF PERFORMANCE-BASED PAY PLANS.--

(a) Each participating district school board must submit its Merit Award Program plan to the Commissioner of Education for review by October 1 of each year. The plan must include the negotiated, district-adopted plan or charter school adopted plan if the district does not submit a plan intended for use in the following year. The commissioner shall complete a review of each plan submitted and determine compliance with the requirements of this section by November 15 of each year. If a submitted plan fails to meet the requirements of this section, the commissioner must identify in writing the specific revisions that are required. Revised plans must be finalized and resubmitted by a school district, or by a charter school if the district does not submit a plan, for the commissioner's review by January 31 of each year. The commissioner shall certify those school district or charter school plans that do not comply with this section to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 15 of each year.

(b) Any charter school that does not follow the school district's salary schedule may adopt its own performance-based plan in accordance with this section. Charter school proposals shall be included with the school district plans or may be submitted independently if the district does not submit a plan.

(c) Each district school board shall establish a procedure to annually review both the assessment and compensation components of its plan in order to determine compliance with this section. After this review and by October 1 of each year, the district school board shall submit a report to the

Commissioner of Education, along with supporting documentation that will enable the commissioner to verify the district's compliance with this section during the prior school year. The commissioner shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives certifying those school district or charter school plans that do not comply with this section or whose plans were not implemented in accordance with this section by December 1 of each year.

(d) For purposes of the 2007-2008 school year, the plan submitted as required in paragraph (a) applies to the 2007-2008 school year as well as the 2008-2009 school year. Thereafter, all plans submitted and approved within the timelines set forth in paragraph (a) apply to the following school year.

(6) SUBSEQUENT REVISIONS OF APPROVED PLANS.--Any revision to an approved Merit Award Program plan must be approved by the district school board and reviewed by the commissioner to determine compliance with this section.

(7) RULEMAKING.--The State Board of Education shall adopt rules relating to the calculation of average teacher salaries per district, reporting formats, and the review of plan procedures pursuant to ss. 120.536(1) and 120.54 for purposes of administering this section. The State Board of Education must initiate the rulemaking process within 30 days after this section becomes law.

Section 2. Beginning with the 2007-2008 school year, school districts that participate in the Merit Award Program under s. 1012.225, Florida Statutes, must be able to administer

end-of-course examinations based on the Sunshine State Standards in order to measure a student's understanding and mastery of the entire course in all grade groupings and subjects for any year in which the districts participate in the program. The statewide standardized assessment, College Board Advanced Placement Examination, International Baccalaureate examination, Advanced International Certificate of Education examination, or examinations resulting in national industry certification recognized by the Agency for Workforce Innovation satisfy the requirements of this section for the respective grade groupings and subjects assessed by these examinations and assessments.

Section 3. Paragraph (c) is added to subsection (2) of section 447.403, Florida Statutes, to read:

447.403 Resolution of impasses.--

(2)

(c) If the district school board is the public employer and an impasse is declared under subsection (1) involving a dispute of a Merit Award Program plan under s. 1012.225, no mediator or special magistrate shall be appointed unless both parties agree to such an appointment. If a party does not agree to an appointment, the appointment shall be considered waived and the parties shall proceed directly to resolution of the impasse by the district school board pursuant to paragraph (4)(d).

Section 4. From the general revenue funds appropriated pursuant to Specific Appropriation 91 in section 2 of chapter 2006-25, Laws of Florida, the sum of $147,500,000 is rescinded and shall revert unallocated to the General Revenue Fund on the

effective date of this section, and the following proviso language following Specific Appropriation 91 in section 2 of chapter 2006-25, Laws of Florida, is repealed:

From the funds in Specific Appropriation 91, $147,500,000 is provided for the Special Teachers are Rewarded performance pay plan (STAR plan). Funds shall be distributed to school districts for performance pay rewards to instructional personnel as defined in section 1012.01(2) (a)-(d), Florida Statutes, in all K-12 schools in the district, in accordance with the requirements of section 1012.22, Florida Statutes. STAR Plan funds shall be allocated based on each district's proportion of the state total K-12 base funding, subject to review and approval by the State Board of Education of the district's STAR plan. The district's STAR plan may include information from the district's instructional personnel assessment system, and shall include instructional personnel evaluation based on the performance of their students. The Department of Education shall develop model methodologies that ensure fairness and equity for all instructional personnel, and shall provide technical assistance upon request.

Each school district that chooses to participate in the STAR Plan shall submit its comprehensive STAR plan, which shall include rewards for elementary, middle, and high school instructional personnel, to the State Board of Education by December 31, 2006. Any charter school that does not follow the district's salary schedule may submit a separate proposal with

the district's plan. Charter school proposals shall be included with the district plans or may be submitted independently if the district does not submit a plan. Districts that do not submit a plan by December 31, 2006, shall not be eligible to receive STAR Plan funds. The State Board shall review each district's STAR Plan within 45 days of receipt and shall approve the plan or request revisions. If requesting revisions, the State Board must identify the specific area(s) of the proposed plan needing revision. Districts must submit their revised plan by March 1, 2007. The State Board shall review the revised plan and may either approve the revised plan or deny the district eligibility to receive STAR Plan funds for the 2006-2007 fiscal year. STAR Plan funds shall not be recalculated during the fiscal year except that funds allocated for districts that fail to adopt approved STAR Plans by April 1, 2007, shall be redistributed to those districts that have approved plans in place by the required date. The redistribution calculation shall be verified by the Florida Education Finance Program Appropriation Allocation Conference.

District STAR Plans must meet the following guidelines:

1. Eligibility - All instructional personnel are automatically eligible to receive rewards for improved student achievement without having to apply.

2. Determination of number of rewards - The district plan shall utilize funds received under this program for rewards of at

least 5 percent of the base pay of the best performing 25 percent of instructional personnel. Districts shall use any remaining funds to provide bonuses to additional instructional personnel or school-based leaders pursuant to their plans. District school boards are encouraged to provide additional rewards to instructional personnel they determine to be outstanding. District school boards shall distribute funds for State Board approved charter school plans to charter schools based on each charter school's proportion of the district's total K-12 base funding.

3. Evaluation instrument - Each district school board shall select or develop an evaluation instrument. The instrument's primary determining factor shall be the evaluation of improved student achievement. The instrument's factors shall be scored using the following categories, or categories that are substantially similar in number and connotation: unsatisfactory, needs improvement, satisfactory, high-performing, and outstanding. Instructional personnel must receive no unsatisfactory or needs improvement ratings and may receive no more than one satisfactory rating on the areas evaluated in order to receive a reward.

4. Instructional personnel evaluation based on student performance - District school boards shall determine appropriate methods to evaluate instructional personnel based on the performance of their students. The methods must measure improved student achievement during the course of the school year; and

must be approved by the State Board of Education.

a. Evaluation of improved student achievement for instructional personnel linked by course numbers to instruction in reading or math shall be determined by a standardized test.

b. Evaluation of improved student achievement for instructional personnel not linked by course numbers to instruction in reading or math shall be determined by instruments that measure the Sunshine State Standards for the area, including challenging grade-level content and critical thinking skills. District school boards shall develop methods to evaluate improved student achievement in specialized areas, including exceptional student education, fine arts, career and technical education, and other specialties so that all instructional personnel are eligible for rewards.

c. Evaluation of improved student achievement for secondary instructional personnel linked by course number to instruction in social studies or science may be assessed by a standardized test; by linking improved student achievement in reading or mathematics of the students enrolled in the instructional personnel's social studies or science class, as measured by a standardized test; or by instruments that measure the Sunshine State Standards for the area, including challenging grade-level content and critical thinking skills.

District school board STAR Plan proposals may include a methodology for performance pay rewards for district-selected school-based leaders who supervise or directly assist the instructional personnel whose student achievement results in a

STAR Plan reward.

Section 5. (1) The recurring sum of $147,500,000 from the General Revenue Fund is appropriated to the Department of Education for the 2006-2007 fiscal year as a supplemental appropriation for Aid to Local Governments, Grants and Aids -- Florida Education Finance Program. These funds shall be allocated among school districts based on each district's proportion of the state total K-12 base funding and shall be expended for any of the following purposes:

(a) To fund Special Teachers Are Rewarded performance pay plans (STAR Plans) that are implemented based on proviso language following Specific Appropriation 91 in section 2 of chapter 2006-25, Laws of Florida, in effect as of July 1, 2006. A district that has been requested by the State Board of Education to submit a revised STAR Plan must submit its revised plan by May 1, 2007. The state board shall review the revised plan and may either approve the revised plan or deny the district eligibility to receive STAR Plan funds for the 2006-2007 fiscal year.

(b) To fund performance pay policies adopted pursuant to s. 1012.22, Florida Statutes, if a district school board amends its policy to conform to s. 1012.225(1), (2), and (3), Florida Statutes, prior to the disbursement of funds. However, a school district that does not amend its plan as described in this paragraph may disburse funds only in an amount equal to the amount of funds the district disbursed under its policy for the 2005-2006 school year.

(c) To fund performance pay policies approved by the

district school board which meet the requirements of s. 1012.225(1), (2), and (3), Florida Statutes.

(2) The amended policies adopted under paragraph (1)(b) and the policies adopted under paragraph (1)(c) are subject to negotiation as provided in chapter 447, Florida Statutes, except that if an impasse occurs pursuant to s. 447.403, Florida Statutes, a mediator or special magistrate shall be appointed only if both parties agree to such appointment. If a party does not agree to such appointment, the appointment shall be considered waived and the parties shall proceed directly to resolution of the impasse by the district school board pursuant to s. 447.403(4)(d), Florida Statutes. School districts receiving funds under this section must comply with s. 1012.225(5)(c), Florida Statutes.

(3) Each school district shall refund the undisbursed balance of its allotment from this appropriation as of September 1, 2007, to the Department of Education. If such funds are not remitted to the department by October 1, 2007, the department shall withhold an equivalent amount from the district's allocation from the Florida Education Finance Program for the 2007-2008 fiscal year.

Section 6. Section 3 of chapter 2006-26, Laws of Florida, is repealed.

Section 7. Effective June 30, 2007, s. 1012.22(1)(c)4., Florida Statutes, is repealed. Rules adopted by the State Board of Education pursuant to s. 1012.22, Florida Statutes, which are in conflict with this act are suspended.

Section 8. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 7021

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Pickens offered the following:

Amendment

On page 10, line 280, strike all said line(s), and insert:

and $130,517,222 shall revert unallocated to the General Revenue Fund and $16,982,778 shall revert unallocated to the Principal State School Trust Fund on the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. 7021

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Pickens offered the following:

Amendment

On page 15, lines 394 and 395, strike all said line(s), and insert:

Section 5. (1) The recurring sum of $130,517,222 from the General Revenue Fund and the nonrecurring sum of $16,982,778 from the Principal State School Trust Fund is appropriated to the Department of

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 275 Motor Vehicle, Mobile Home, and Vessel Registration
SPONSOR(S): Davis
TIED BILLS: **IDEN./SIM. BILLS:** SB 442

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Infrastructure	8 Y, 0 N	Creamer	Miller
2) Economic Expansion & Infrastructure Council	12 Y, 0 N, As CS	Creamer	Tinker
3) Policy & Budget Council		Martin	Hansen MPH
4)			
5)			

SUMMARY ANALYSIS

HB 275 contains a number of changes in the law related to motor vehicle, mobile home, and vessel registration. The bill:

- Redefines the term "registration" period to include a 24-month period and defines "extended registration periods" as a period of 24 months during which a motor vehicle or mobile home registration is valid;
- Authorizes an optional biennial renewal of motor vehicle, mobile home and vessel registrations upon payment of double the annual amount of license tax and add-on charges;
- Clarifies that vehicles registered to persons in violation of s. 316.193, F.S., driving under the influence or s. 322.26(2), F.S., mandatory revocation of license by department, are not eligible for the extended registration period;
- Extends the time period from five to six years and increases the fee from $10 to $12 for replacement of registration license plates;
- Extends the period of validity for license plates and validation stickers to provide for the 24-month extended registration period;
- Clarifies that advance registration renewals on extended registrations may occur up to three months prior to the date of expiration of the registration;
- Clarifies that the registration period for a motor vehicle or a mobile home may not exceed 27 months; and
- Provides for disposition of biennial registration revenues.

Implementation of this bill will most likely result in a non-recurring revenue increase in the first year of the two year cycle and a corresponding decrease in revenues the second year. This is based on an assumption that 50 percent of registrants will elect to use the biennial registration. This 50 percent assumption is not based on empirical data, but is used to show the potential fiscal impacts of the bill.

Since the number of persons choosing a two year registration period is unknown the bill's impact to state and local revenues is indeterminate. However, the fiscal impact of HB 275 is expected to be revenue neutral in net long-term effects.

The bill is effective January 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - The bill gives registrants the option of an extended registration period for motor vehicles, mobile homes, and vessels. The bill also allows payment for such registrations every two years. The optional registration period would reduce the citizens' burden of renewing registrations annually.

B. EFFECT OF PROPOSED CHANGES:

Extended Registration Period

Currently the valid registration period for motor vehicles and mobile homes is 12 months. HB 275 defines an "extended registration period" as a period of 24 months during which a motor vehicle or motor home registration is valid. The bill also adds this 24-month period to the definition of "registration period."

Biennial Registration and Renewals

Currently the law provides for a 12-month annual registration of vehicles and mobile homes. The registration period is tied to either the owner's birth month, the calendar year, or in some cases, to a 12-month period set by the Department of Highway Safety and Motor Vehicles (DHSMV).

HB 275 amends the registration and renewal periods to provide that the registration of vehicles described below are eligible for the extended 24-month registration period and may be renewed biennially:

- Motorcycles
- Mopeds
- Automobiles for private use
- Trucks with a net weight of less than 5,000 pounds
- Heavy trucks with a gross vehicle weight of 5,001 pounds or more, but less than 8,000 pounds
- Motor vehicles for hire
- Trailers for private use
- Trailers for hire
- Park trailers
- Travel trailers
- 35 to 40 foot fifth wheel trailers
- Mobile homes

The bill requires payment of the cumulative sum of license taxes, service charges, surcharges, and additional fees on registrations that would normally be paid for two 12-month registrations. The optional registration period would reduce the citizens' burden of renewing registrations annually and reduce vehicle registration renewal workload.

License Plates and Validation Stickers

Under current law, license plates are issued for a five-year period, and replaced upon renewal of the registration at the end of the five-year period. Upon payment of the proper license tax and fees, the registration is issued for 12 months with expiration based on the applicant's appropriate registration period, and a validation decal is attached to the license plate which is valid for not more than 12 months.

HB 275 provides a six-year license plate issuance period, with the current $2 per year fee to be credited towards the next $12 replacement fee. The expiration of the license plate is based on the applicant's appropriate registration period. The bill also provides that license plates equipped with validation stickers are subject to the extended 24-month registration period. Further, the bill provides that for each extended registration period until the license plate is replaced, a validation sticker showing the year of expiration is to be issued and is valid for not more than 24 months.

Advanced Registration

Current law provides for advance registration renewals at any time during the three months preceding the date of expiration of the registration period, but a registration period may not exceed 15 months. HB 275 provides that an advance registration renewal period may not exceed 27 months.

Disposition of Biennial License Tax Moneys

Current law provides for annual distribution of license tax moneys. This bill creates s. 320.203, F.S., to retain 50 percent of the biennial registration revenues in the Motor Vehicle License Clearing Trust Fund until the subsequent fiscal year. This revenue distribution smoothing will ensure that revenue collected for 50 percent of the optional 2-year registration is distributed in the same manner and in the same amounts as revenues currently collected for annual vehicle registrations.

Vessel Registration Renewal

Current law provides that a vessel's annual registration renewal period is 30 days from the first day of the birth month of the owner and ends the last day of the month immediately preceding the owner's birth month in the succeeding year. The bill provides that any vessel owner subject to registration under s. 328.72(12), F.S., is eligible for an extended registration period of 24 months.

B. SECTION DIRECTORY:

Section 1. Amends s. 320.01, F.S., to define extended registration period and redefine registration period.

Section 2. Amends s. 320.055, F.S., to establish extended registration and renewal periods for motor vehicles and mobile homes and clarifies vehicles eligible for the extended registration period.

Section 3. Amends s. 320.06, F.S., to extend the time period and increase the fee for replacement of registration license plates, and to extend the period of validity for license plates and validation stickers to provide for extended registration.

Section 4. Amends s. 320.07, F.S., to authorize the biennial renewal of motor vehicle and mobile home registrations and to require payment of double the amount of license tax, service charge and surcharge on annual registrations and clarifies semiannual registrations.

Section 5. Amends s. 320.071, F.S., to clarify that the registration period for a motor vehicle or mobile home may not exceed 27 months.

Section 6. Creates s. 320.203, F.S., to ensure that revenue collected for the optional 2-year registration is distributed in the same manner and in the same amounts as revenues currently collected for annual vehicle registrations.

Section 7. Amends s. 328.72, F.S., to provide an extended registration period for vessel owners.

Section 8. Provides an effective date of January 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The fiscal impact of the bill is indeterminate. Assuming that 50 percent of all vehicle, mobile home and vessel registrants elect to use a biennial registration, the positive revenue impact for the first year (2nd six months of the fiscal year) would be a non-recurring revenue increase to the State Transportation Trust Fund (STTF), the General Revenue Fund (GR) and other state trust funds totaling $99,812,132. There would be a corresponding decrease in revenues the second year. This 50 percent assumption is not based on empirical data, but is used to show the potential fiscal impacts of the bill.

Assuming an estimated 3,149,991 new vehicles register for the first time in fiscal year 2007-2008, the initial license plate fee increase from $10 to $12 will generate an annual revenue increase up to $6,229,982. Based on the implementation date of January 1, 2008 and the estimate of new vehicle registrations, the 6 month revenue increase may be as much as $3,149,991.

In addition, a temporary influx in revenue would occur as a result of modifying the current license replacement cycle from five years to six years. Registrants currently on the five year replacement cycle would be required to pay an additional $2 fee at the time of license replacement. For the first and sixth year, revenues would increase by only $3,524,609, due to mid- year implementation. For the second through the fifth fiscal year, advanced replacement revenues would increase $7,049,218 per year. Beginning in fiscal year 2013-2014 no additional advanced replacement revenue will be generated, as all registrants will be converted to the six year replacement.

Long term the state revenue may be increased more due to those persons purchasing biennial registrations who do not stay in the state for the second year, thereby paying more to the state than if they had purchased an annual registration and then moved out of state.

2. Expenditures:

According to the DHSMV, this bill will require contracted programming modifications to the Motor Vehicle License Software System. The cost of these modifications will be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The fiscal impact to local governments is indeterminate. Assuming that 50 percent of all vehicle, mobile home and vessel registrants elect to use a biennial registration, the positive revenue impact for the first year (2nd six months of the fiscal year) would be a non-recurring revenue increase to Local Governments of $9,599,706 from tax collector's fees and service charges. There would be a corresponding decrease in revenues the second year. This 50 percent assumption is not based on empirical data, but is used to show the potential fiscal impacts of the bill.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons opting to use an extended registration period would have to pay double the current license tax, service charges and add-on fees for an annual registration. Also, registrants conducting an initial

registration transaction would pay $12 instead of $10 for a license plate that is replaced every six years rather than every five years.

Under current law, refunds are not given when a person moves out of Florida prior to the expiration of their registration. Consistent with the current registration process, the bill does not provide for a refund of license taxes paid for an extended registration period. Therefore, a person who chooses to pay for a 24-month registration and then moves out of Florida prior to the expiration of that registration would not receive a refund for any portion of the taxes and fees paid.

D. FISCAL COMMENTS:

Since the number of persons choosing a two-year registration period is unknown, the bill's impact to state revenue is indeterminate. However, the fiscal impact of HB 275 is expected to be revenue neutral in long range effects.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The DHSMV appears to have sufficient rulemaking authority pursuant to s. 120.536(1), F.S., and s. 120.54, F.S., to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. Drafting:

None

2. Other:

The DHSMV has stated that it is not possible to gauge if there are any significant savings related to the department's cost to purchase license plates every six years rather than every five years. Theoretically, there should be a cost reduction of $1/6^{th}$ over the extended replacement period. However, fewer people are actually waiting five years to replace their plate. Many people will decide they want to switch to a different specialty plate or a different personalized plate prior to the end of the required replacement period. Also, due to the fact there are more and more cars on the road, the DHSMV will have to purchase more and more plates. By the fifth year, growth in the number of cars on the road and any price increases that may come from the vendors between now and then will erode any potential savings. The DHSMV currently has a contract for aluminum license plate material for two years, but after that the contracted price for aluminum will have to be renegotiated; the new contract will be negotiated in the middle of the transition period from the five-year cycle to the six-year cycle.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 8, 2007, this bill was considered by the Committee on Infrastructure. An amendment was adopted which clarified that holders of specialty license plates and personalized license plates are eligible for extended registration. The bill was reported favorably with an amendment.

On February 22, 2007, an amendment was adopted in the Economic Expansion and Infrastructure Council. The amendment ensures that revenue collected for the optional 2-year registration is distributed in the same manner and in the same amounts as revenues currently collected for annual vehicle registrations. The bill was adopted as a committee substitute.

A bill to be entitled

An act relating to motor vehicle, mobile home, and vessel registration; amending s. 320.01, F.S.; redefining the term "registration period"; defining the term "extended registration period"; amending s. 320.055, F.S.; establishing an extended registration period and renewal period for certain motor vehicles and mobile homes; amending s. 320.06, F.S.; extending the time period and revising the fee for replacement of registration license plates; extending the period of validity of license plates and validation stickers to provide for an extended registration period; amending s. 320.07, F.S.; providing for the semiannual, annual, or biennial renewal of motor vehicle and mobile home registrations; authorizing the biennial renewal of certain motor vehicle and mobile home registrations upon payment of the cumulative total of license taxes, service charges, surcharges, and other fees; amending s. 320.071, F.S.; specifying that the registration period for a motor vehicle or mobile home may not exceed a specified number of months; creating s. 320.203, F.S.; providing for the disposition of biennial registration revenues; amending s. 328.72, F.S.; providing for an extended registration period for certain vessel owners; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (19) of section 320.01, Florida

Statutes, is amended to read:

320.01 Definitions, general.--As used in the Florida Statutes, except as otherwise provided, the term:

(19)(a) "Registration period" means a period of 12 months or 24 months during which a motor vehicle or mobile home registration is valid.

(b) "Extended registration period" means a period of 24 months during which a motor vehicle or mobile home registration is valid.

Section 2. Subsection (1) of section 320.055, Florida Statutes, is amended to read:

320.055 Registration periods; renewal periods.--The following registration periods and renewal periods are established:

(1)(a) For a motor vehicle subject to registration under s. 320.08(1), (2), (3), (5)(b), (c), (d), or (f), (6)(a), (7), (8), (9), or (10) and owned by a natural person, the registration period begins the first day of the birth month of the owner and ends the last day of the month immediately preceding the owner's birth month in the succeeding year. If such vehicle is registered in the name of more than one person, the birth month of the person whose name first appears on the registration shall be used to determine the registration period. For a vehicle subject to this registration period, the renewal period is the 30-day period ending at midnight on the vehicle owner's date of birth.

(b) A motor vehicle or mobile home that is subject to registration under s. 320.08(1), (2), (3), (4)(a) or (b), (6),

(7), (8), (9), (10), or (11) is eligible for an extended registration period as defined in s. 320.01(19)(b).

(c) ~~(b)~~ Notwithstanding the requirements of paragraph (a), the owner of a motor vehicle subject to paragraph (a) who has had his or her driver's license suspended pursuant to a violation of s. 316.193 or pursuant to s. 322.26(2) for driving under the influence must obtain a 6-month registration as a condition of reinstating the license, subject to renewal during the 3-year period that financial responsibility requirements apply. The registration period begins the first day of the birth month of the owner and ends the last day of the fifth month immediately following the owner's birth month. For such vehicles, the department shall issue a vehicle registration certificate that is valid for 6 months and shall issue a validation sticker that displays an expiration date of 6 months after the date of issuance. The license tax required by s. 320.08 and all other applicable license taxes shall be one-half of the amount otherwise required, except the service charge required by s. 320.04 shall be paid in full for each 6-month registration. A vehicle required to be registered under this paragraph is not eligible for the extended registration period under paragraph (b).

Section 3. Paragraphs (b) and (c) of subsection (1) of section 320.06, Florida Statutes, are amended to read:

320.06 Registration certificates, license plates, and validation stickers generally.--

(1)

(b) Registration license plates bearing a graphic symbol

and the alphanumeric system of identification shall be issued for a 6-year ~~5-year~~ period. At the end of that 6-year ~~said 5-year~~ period, upon renewal, the plate shall be replaced. The fee for such replacement is $12 ~~shall be $10~~, $2 of which shall be paid each year before the plate is replaced, to be credited towards the next $12 ~~$10~~ replacement fee. The fees shall be deposited into the Highway Safety Operating Trust Fund. A credit or refund shall not be given for any prior years' payments of such prorated replacement fee if ~~when~~ the plate is replaced or surrendered before the end of the 6-year ~~5-year~~ period, except that a credit may be given when a registrant is required by the department to replace a license plate under s. 320.08056(8)(a). With each license plate, there shall be issued a validation sticker showing the owner's birth month, license plate number, and the year of expiration or the appropriate renewal period if the owner is not a natural person. The validation sticker shall ~~is to~~ be placed on the upper right corner of the license plate. Such license plate and validation sticker shall be issued based on the applicant's appropriate renewal period. The registration period is ~~shall be~~ a period of 12 months, the extended registration period is a period of 24 months, and all expirations shall occur based on the applicant's appropriate registration period. A vehicle with an apportioned registration shall be issued an annual license plate and a cab card that denote the declared gross vehicle weight for each apportioned jurisdiction in which the vehicle is authorized to operate.

(c) Registration license plates equipped with validation stickers subject to the registration period are ~~shall be~~ valid

for not more than 12 months and ~~shall~~ expire at midnight on the last day of the registration period. A registration license plate equipped with a validation sticker subject to the extended registration period is valid for not more than 24 months and expires at midnight on the last day of the extended registration period. For each registration period after the one in which the metal registration license plate is issued, and until the license plate is required to be replaced, a validation sticker showing the month and year of expiration shall be issued upon payment of the proper license tax amount and fees and is ~~shall be~~ valid for not more than 12 months. For each extended registration period occurring after the one in which the metal registration license plate is issued and until the license plate is required to be replaced, a validation sticker showing the year of expiration shall be issued upon payment of the proper license tax amount and fees and is valid for not more than 24 months. When license plates equipped with validation stickers are issued in any month other than the owner's birth month or the designated registration period for any other motor vehicle, the effective date shall reflect the birth month or month and the year of renewal. However, when a license plate or validation sticker is issued for a period of less than 12 months, the applicant shall pay the appropriate amount of license tax and the applicable fee under ~~the provisions of~~ s. 320.14 in addition to all other fees. Validation stickers issued for vehicles taxed under ~~the provisions of~~ s. 320.08(6)(a), for any company that ~~which~~ owns 250 vehicles or more, or for semitrailers taxed under the provisions of s. 320.08(5)(a), for any company that ~~which~~

owns 50 vehicles or more, may be placed on any vehicle in the fleet so long as the vehicle receiving the validation sticker has the same owner's name and address as the vehicle to which the validation sticker was originally assigned.

Section 4. Section 320.07, Florida Statutes, is amended to read:

320.07 Expiration of registration; ~~annual~~ renewal required; penalties.--

(1) The registration of a motor vehicle or mobile home expires ~~shall expire~~ at midnight on the last day of the registration or extended registration period. A vehicle shall not be operated on the roads of this state after expiration of the renewal period unless the registration has been renewed according to law.

(2) Registration shall be renewed semiannually, annually, or biennially, as provided in this subsection, during the applicable renewal period, upon payment of the applicable license tax amounts ~~amount~~ required by s. 320.08, service charges required by s. 320.04, and any additional fees required by law.

(a) ~~However,~~ Any person who owns ~~owning~~ a motor vehicle registered under s. 320.08(4), (6)(b), or (13) may register semiannually as provided in s. 320.0705.

(b) Any person who owns a motor vehicle or mobile home registered under s. 320.08(1), (2), (3), (4)(a) or (b), (6), (7), (8), (9), (10), or (11) may renew the vehicle registration biennially during the applicable renewal period upon payment of the 2-year cumulative total of all applicable license tax

amounts required by s. 320.08 and service charges or surcharges required by ss. 320.03, 320.04, 320.0801, 320.08015, 320.0802, 320.0804, 320.0805, 320.08046, and 320.08056 and payment of the 2-year cumulative total of any additional fees required by law for an annual registration.

(3) The operation of any motor vehicle without having attached thereto a registration license plate and validation stickers, or the use of any mobile home without having attached thereto a mobile home sticker, for the current registration period shall subject the owner thereof, if he or she is present, or, if the owner is not present, the operator thereof to the following penalty provisions:

(a) Any person whose motor vehicle or mobile home registration has been expired for a period of 6 months or less commits a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(b) Any person whose motor vehicle or mobile home registration has been expired for more than 6 months, ~~shall~~ upon a first offense, is ~~be~~ subject to the penalty provided in s. 318.14.

(c) Any person whose motor vehicle or mobile home registration has been expired for more than 6 months, ~~shall~~ upon a second or subsequent offense, commits ~~be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) However, an ~~no~~ operator shall not be charged with a violation of this subsection if the operator can show, pursuant to a valid lease agreement, that the vehicle had been leased for

a period of 30 days or less at the time of the offense.

(e) Any servicemember, as defined in s. 250.01, whose mobile home registration ~~has~~ expired while he or she was serving on active duty or state active duty shall not be charged with a violation of this subsection if, at the time of the offense, the servicemember was serving on active duty or state active duty 35 miles or more from the mobile home. The servicemember must present to the department either a copy of the official military orders or a written verification signed by the servicemember's commanding officer to receive a waiver of ~~waive~~ charges.

(f) The owner of a leased motor vehicle is not responsible for any penalty specified in this subsection if the motor vehicle is registered in the name of the lessee of the motor vehicle.

(4)(a) In addition to a penalty provided in subsection (3), a delinquent fee based on the following schedule of license taxes shall be imposed on any applicant who fails to renew a registration prior to the end of the month in which renewal registration is due. The delinquent fee shall be applied beginning on the 11th calendar day of the month succeeding the renewal period. The delinquent fee does ~~shall~~ not apply to those vehicles that ~~which~~ have not been required to be registered during the preceding registration period or as provided in s. 320.18(2). The delinquent fee shall be imposed as follows:

1. License tax of $5 but not more than $25: $5 flat.
2. License tax over $25 but not more than $50: $10 flat.
3. License tax over $50 but not more than $100: $15 flat.
4. License tax over $100 but not more than $400: $50

flat.

5. License tax over $400 but not more than $600: $100 flat.

6. License tax over $600 and up: $250 flat.

(b) A person who has been assessed a penalty pursuant to s. 316.545(2)(b) for failure to have a valid vehicle registration certificate is not subject to the delinquent fee authorized by this subsection if such person obtains a valid registration certificate within 10 working days after such penalty was assessed. The official receipt authorized by s. 316.545(6) constitutes proof of payment of the penalty authorized in s. 316.545(2)(b).

(c) The owner of a leased motor vehicle is not responsible for any delinquent fee specified in this subsection if the motor vehicle is registered in the name of the lessee of the motor vehicle.

(5) Any servicemember, as defined in s. 250.01, whose motor vehicle or mobile home registration has expired while he or she was serving on active duty or state active duty may~~,~~ ~~shall be able to~~ renew his or her registration upon return from active duty or state active duty without penalty, if the servicemember served on active duty or state active duty 35 miles or more from the servicemember's home of record prior to entering active duty or state active duty. The servicemember must provide to the department either a copy of the official military orders or a written verification signed by the servicemember's commanding officer to receive a waiver of ~~waive~~ delinquent fees.

(6) Delinquent fees imposed under this section are ~~shall~~ not ~~be~~ apportionable under the International Registration Plan.

Section 5. Paragraph (a) of subsection (1) of section 320.071, Florida Statutes, is amended to read:

320.071 Advance registration renewal; procedures.--

(1)(a) The owner of any motor vehicle or mobile home currently registered in this state may file an application for renewal of registration with the department, or its authorized agent in the county wherein the owner resides, any time during the 3 months preceding the date of expiration of the registration period. The registration period may not exceed 27 months.

Section 6. Section 320.203, Florida Statutes, is created to read:

320.203 Disposition of biennial license tax moneys.--Notwithstanding s. 320.08(1), (2), (3), (4)(a) or (b), (6), (7), (8), (9), (10), or (11), s. 320.08058, and s. 328.76, after the provisions of s. 320.20(1), (2), (3), and (4) are fulfilled, an amount equal to 50 percent of revenue collected from the biennial registrations created in s. 320.07 shall be retained in the Motor Vehicle License Clearing Trust Fund, authorized in s. 215.32(2)(b)2.f., until July 1 of the following fiscal year and then accounted for as the first proceeds of the revenue derived from the licensing of motor vehicles for that fiscal year.

Section 7. Subsections (1), (3), (9), and (12) of section 328.72, Florida Statutes, are amended to read:

328.72 Classification; registration; fees and charges;

surcharge; disposition of fees; fines; marine turtle stickers.--

(1) VESSEL REGISTRATION FEE.--Vessels that are required to be registered shall be classified for registration purposes according to the following schedule, and the registration certificate fee shall be in the following amounts:

Class A-1--Less than 12 feet in length, and all canoes to which propulsion motors have been attached, regardless of length....$3.50 for each 12-month period registered.

Class A-2--12 feet or more and less than 16 feet in length....10.50 for each 12-month period registered.

(To county)....2.85 for each 12-month period registered.

Class 1--16 feet or more and less than 26 feet in length....18.50 for each 12-month period registered.

(To county)....8.85 for each 12-month period registered.

Class 2--26 feet or more and less than 40 feet in length....50.50 for each 12-month period registered.

(To county)....32.85 for each 12-month period registered.

Class 3--40 feet or more and less than 65 feet in length....82.50 for each 12-month period registered.

(To county)....56.85 for each 12-month period registered.

Class 4--65 feet or more and less than 110 feet in length....98.50 for each 12-month period registered.

(To county)....68.85 for each 12-month period registered.

Class 5--110 feet or more in length....122.50 for each 12-month period registered.

(To county)....86.85 for each 12-month period registered.

Dealer registration certificate ....16.50 for each 12-month period registered.

The county portion of the vessel registration fee is derived from recreational vessels only.

(3) ALIEN OR NONRESIDENT LICENSE FEE.--An additional license fee of $50 for each 12-month period registered shall be required of all aliens or nonresidents of the state on all vessels not subject to a specific reciprocal agreement with another state, which vessels are used for commercial purposes and owned in whole or in part by such aliens or nonresidents. Such fee shall be in addition to the vessel registration fee required by this section.

(9) SURCHARGE.--In addition, there is hereby levied and imposed on each vessel registration fee imposed under subsection (1) a surcharge in the amount of $1 for each 12-month period of registration, which shall be collected in the same manner as the fee and deposited into the State Agency Law Enforcement Radio System Trust Fund of the Department of Management Services.

(12) REGISTRATION.--

(a) "Registration period" is a period of 12 months during which a vessel registration is valid.

(b) Any vessel owner who is subject to registration under subparagraph (c)1. is eligible for an extended registration period that begins the first day of the birth month of the owner and ends the last day of the month immediately preceding the owner's birth month 24 months after the beginning of the registration period. If the vessel is registered in the name of more than one person, the birth month of the person whose name first appears on the registration shall be used to determine the

extended registration period. For a vessel subject to this extended registration period, the renewal period is the 30-day period ending at midnight on the vessel owner's date of birth. ~~"Renewal period" is a period of 30 days during which renewal of a vessel registration is required, except as otherwise provided by law.~~

(c) The following registration periods and renewal periods are established:

1. For vessels owned by individuals, the registration period begins the first day of the birth month of the owner and ends the last day of the month immediately preceding the owner's birth month in the succeeding year. If the vessel is registered in the name of more than one person, the birth month of the person whose name first appears on the registration shall be used to determine the registration period. For a vessel subject to this registration period, the renewal period is the 30-day period ending at midnight on the vessel owner's date of birth.

2. For vessels owned by companies, corporations, governmental entities, and registrations issued to dealers and manufacturers, the registration period begins July 1 and ends June 30. The renewal period is the 30-day period beginning June 1.

Section 8. This act shall take effect January 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (01)

Bill No.CS/HB 275

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy and Budget Council

Representative M. Davis offered the following:

Amendment

Remove lines 267-277 and insert:

320.203 Disposition of biennial license tax moneys.--

(a) Notwithstanding s. 320.08(1), (2), (3), (4)(a) or (b), (6), (7), (8), (9), (10), or (11), s. 320.08058, and s. 328.76 and pursuant to s. 216.351, after the provisions of s. 320.20(1), (2), (3), and (4) are fulfilled, an amount equal to 50 percent of revenues collected from the biennial registrations created in s. 320.07 shall be retained in the Motor Vehicle License Clearing Trust Fund, authorized in s. 215.32(2)(b)2.f., until July 1 of the following fiscal year and then accounted for as revenue for that fiscal year derived from use fees, vessel registrations, and the licensing of motor vehicles.

(b) A tax collector may escrow an amount necessary to annualize revenues collected from the biennial registration service charges, branch charges, or tax collector fees created

in s. 320.07 until July 1 of the following fiscal year and then accounted for as revenue for that fiscal year.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

CS/HB 529 Statewide Cable Television and Video Service Franchises
SPONSOR(S): Traviesa and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Jobs & Entrepreneurship Council	11 Y, 1 N, As CS	Cater	Thorn
2) Policy & Budget Council		Martin	Hansen
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 529 establishes the authority to issue statewide cable and video franchises within the Department of State (DOS) and designates DOS as the state franchising authority. The bill removes local government authority to negotiate cable service franchises.

Generally, the bill:

- Provides definitions;
- Establishes application procedures for a state-issued certificate of franchise authority (certificate), including provisions that establish the circumstances under which a cable operator with an existing franchise with a municipality or county may terminate such franchise agreement and receive a state-issued franchise for its current franchise area;
- Requires certificateholders to update information every five years;
- Provides for application and processing fees, most of which are to be transferred to the Department of Agriculture;
- Prohibits the imposition of franchise fees by local governments, except those franchise fees already collected through the Communications Services Tax and permitting fees collected for the use of the right-of-way;
- Prohibits buildout requirements;
- Provides that the incumbent cable service provider must abide by customer service standards reasonably comparable to those in the Federal Communication Commission's (FCC's) rules until there are two or more cable service providers in the relevant service area;
- Provides guidelines for the number of public, educational, and government (PEG) channels to be provided in a certain area, including when a channel is considered substantially used;
- Prohibits municipalities or counties from discriminating against certificateholders for items such as access to rights-of-way, buildings, or property; terms of utility pole attachments; and the filing of certain documents with the municipality or county;
- Prohibits discrimination against subscribers based on race or income;
- Provides that effective January 1, 2009, cable service quality complaints from municipalities and counties that currently have an office or department dedicated to responding to cable service quality complaints are to be handled by the Department of Agriculture and Consumer Services (DACS);
- Requires the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) and DACS to submit reports to the Legislature ;
- Requires rulemaking by DOS and DACS, as necessary.

The bill amends statutes related to the Communications Services Tax (CST) and the use of rights-of-way to conform to this act. The bill also repeals the current cable franchising law in s. 166.046, F.S. There are no fiscal impacts related to the CST. The Revenue Estimating Conference (REC) met on February 28, 2007 to consider this bill, and adopted an indeterminate negative impact on local governments' in-kind services now received from cable franchises. The REC also concluded that the value of the lost in-kind services would total at least $20 million statewide. This may be construed as a significant reduction in the authority that cities and counties have to raise revenues in the aggregate, which would be considered a local mandate. The fiscal impacts on state agencies are expected to be insignificant for FY 2007-08 such that the agencies will be able to absorb workload increases within existing resources. There are several concerns discussed in the full analysis below relating to impairment of contracts, home rule powers and some technical implementation concerns raised by the Department of State.

This act shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill establishes the authority to issue statewide cable and video franchises within the Department of State, and designates the Department of State as the state franchising authority. The bill removes local government authority to negotiate cable or video service franchises. Further, the bill requires the Department of Agriculture and Consumer Services to expeditiously handle cable service complaints.

Ensure Lower Taxes: The bill requires an application fee of $10,000 and a fee of $1,000 for processing updates of information every five years. The bill also requires filings with the Department of State to be accompanied by a fee equal to that required for filing articles of incorporation (currently $35).

B. EFFECT OF PROPOSED CHANGES:

Background

1. Federal Law[1]

The current federal law related to the provision of cable service[2] is intended to achieve the following purposes:

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

Federal Cable Franchise Requirements

Under federal law, a local franchising authority (LFA) may 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.[3] 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 is required to ensure:

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[1] Much of the information on federal law concerning cable television came from the Federal Communication Commission's June 2000 Cable Television Information Bulletin. It is available at http://www.fcc.gov/mb/facts/csgen.html. (last visited March 14, 2007).
[2] 47 U.S.C. s. 521
[3] 47 U.S.C. s. 541

- 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;
- May require adequate assurances that the cable operator has the financial, technical, and legal qualifications to provide cable service; and
- Shall assure that access to cable service is not denied to a group of potential subscribers because of their economic status.

Federal law allows local franchise authorities 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.[4]

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.

FCC Rulemaking

On December 20, 2006, the FCC adopted a *Report and Order and Further Notice of Proposed Rulemaking*, prohibiting franchising authorities from unreasonably refusing to award competitive franchises for provision cable service. In the *Order,* the FCC cited some examples of local franchising authorities unreasonably refusing to award competitive franchises, including drawn-out negotiations, unreasonable build-out requirements, unreasonable requests for "in-kind" payments in attempt to subvert the five percent cap on franchise fees, and unreasonable demands with respect to public, educational, and government access (PEG). The FCC determined that it is an unreasonable refusal to award a competitive franchise when:

- Franchise negotiations extend beyond certain time frames;
- The LFA requires an applicant to agree to unreasonable build-out requirements;
- The LFA demands specified costs, fees, and other compensation, unless they count towards the five percent cap on franchise fees;
- The LFA denies an application based on a new entrant's refusal to undertake certain unreasonable obligations relating to PEG and institutional networks.

In its *Order*, the FCC proposed to preempt local laws, regulations, and requirements, including local level-playing-field provisions, to the extent such provisions impose greater restrictions than the FCC's rules.

In its *Order*, the FCC concluded that it does not have sufficient information to make a determination as to what is an "unreasonable refusal to award an additional competitive franchise" at the state level, with such things as statewide franchising decisions. Therefore, the *Order* addresses only franchising decisions made by county or municipal franchising authorities.

The FCC also adopted a *Further Notice of Proposed Rulemaking* seeking comment on how its findings should affect existing franchises. It tentatively concluded that the findings should apply to existing

[4] 47 U.S.C. 542

franchises when their franchises are renewed. The FCC requested comments on its statutory authority to take this action.[5]

The *Order* was released on March 5, 2007.[6] It is expected that the new rules will be challenged in federal court on the grounds that the new rules overstep the FCC's legal authority.[7]

2. 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 to be provided, support for PEG channels, use of rights-of-way, and service to government buildings.

Proposed Changes

1. Short Title

The bill creates the "Consumer Choice Act of 2007."

2. Statewide Cable Franchises

Department of State Authority to Issue Statewide Cable and Video Franchises

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[5] Federal Communications Commission, Press Release, *FCC adopts Rules to Ensure Reasonable Franchising Process for New Video Market Entrants*, December 20, 2006.
[6] FCC Order No. FCC 06-180.
[7] Dunbar, John. "Local Governments: FCC Not Playing Fair," *Associated Press*, January 28, 2007. Obtained from http://www.topix.net/content/ap/3762798474414742816105053963662419660426 (January 29, 2007).

The bill creates s. 610.102, F.S., designating the Department of State (DOS) as the franchise authority for state-issued franchises for cable or video service. Additionally, municipalities and counties are prohibited from granting new franchises for cable or video service within their respective jurisdictions.

Definitions

The bill creates s. 610.103, F.S., which provides the following definitions to be used in ss. 610.102-610.116, 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 Service Provider-a person that provides cable service over a cable system.

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;[8]
d) A facility of a common carrier[9] that is subject, in whole or in part, to the provisions of 47 U.S.C. s. 201 et seq,[10] except that the specific bandwidths or wavelengths over such facility shall be considered a cable system only to the extent they are used in the transmission of video programming directly to subscribers, unless the extent of such uses is solely to provide interactive on-demand services, in which case it is not a cable system; or
e) Any facility of any electric utility used solely for operating its electric utility system.

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

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 or video service provider network facilities 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, 2007.

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.

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[8] E.g., satellite service

[9] Federal law defines a "common carrier" or "carrier" as "any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy, except when reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier." 47 U.S.C.A. s. 153(10).

[10] 47 U.S.C. s. 207 et seq. are the federal common carrier regulations for telephone companies.

Video Programming-programming provided by, or generally considered comparable to programming provided by, a television broadcast station as set forth in 47 U.S.C. s. 522(20).[11]

Video Service-video programming services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. s. 332(d),[12] video programming provided via a cable service or video programming provided as part of, and via, a service that enables end users to access content, information, electronic mail, or other services offered over the Internet.

Video Service Provider-A video programming distributor that distributes video programming service through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology. This term does not include a cable service provider.

State Authorization to Provide Cable or Video Service.

The bill creates s. 610.104, F.S., outlining the procedures and requirements associated with applying to the DOS for a state-issued certificate of franchise authority. It provides that after July 1, 2007, any person or entity seeking to provide cable or video service is required to file an application for a state issued certificate with DOS. Any entity or person providing cable or video service under an unexpired franchise agreement with a municipality or county as of July 1, 2007, is not required to obtain such a certificate to continue providing service in such municipality or county until the franchise agreement expires, except in the following circumstances:

(1) A cable or video service provider who is not defined as an incumbent and who provides cable or video service to less than 40% of the total cable or video service subscribers in the franchise area, beginning July 1, 2007, may elect to terminate an existing franchise and seek a state-issued certificate of franchise authority by providing written notice to the Secretary of State and the affected municipality or county after July 1, 2007. In such case, the franchise with the municipality or county is terminated on the date the Department of State issues the state-issued certificate of franchise authority. It is unclear how the 40 percent was established, and no methodology is included for determining the service area percentage or the entity that performs the calculation.

(2) An incumbent cable service provider may elect to terminate an existing municipal or county franchise agreement and apply for a state-issued certificate of franchise authority with respect to such municipality or county if another cable or video service provider has been granted a state-issued certificate of franchise authority for a service area located in whole or in part within the service area covered by the existing municipal or county franchise and such certificateholder has commenced providing service in such area. The incumbent cable service provider is required to provide, at the time of filing its application for a state-issued certificate of franchise authority, written notice of its intent to terminate its existing franchise to DOS and the affected municipality or county. The municipal or county franchise is terminated on the date the DOS issues the state-issued certificate of franchise authority to provide service in such municipality or county franchise area to the incumbent cable service provider. Concern has been raised as to whether this provision creates an unconstitutional impairment of contracts.

An entity or person providing cable or video service may seek authorization from the department to provide service in areas where the entity or person currently does not have an existing franchise agreement as of July 1, 2007.

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[11] 47 U.S.C. 522(20), defines "video programming" as programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

[12] 47 U.S.C. s. 332(d), defines "commercial mobile service" as "any mobile service (as defined in section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission." (47 U.S.C.A. s. 332).

Each applicant is required to submit, with its application to DOS, an affidavit affirming the following:

- That the applicant has filed or will timely file with the FCC all forms required by that agency in advance of offering cable or video service in this state;
- That the applicant agrees to comply with all applicable federal and state laws and regulations, to the extent that such state laws and rules are not in conflict with or superseded by the provisions of this chapter or other applicable state law;
- That the applicant agrees to comply with all lawful state laws and rules and municipal and county ordinances regarding the placement and maintenance of communications facilities in the public rights-of-way that are generally applicable to providers of communications services in accordance with s. 337.401, F.S.;
- A description of the service area for which the applicant seeks the certificate of franchise authority, which need not be coextensive with municipal, county, or other political boundaries;
- The location of the applicant's principal place of business and the names of the applicant's principal executive officers; and
- That the applicant will file with the department a notice of commencement of service within five days after first providing service in each service area.

DOS is required to notify an applicant, within 10 business days after submission of the affidavit, as to whether or not the affidavit is complete. Before the 15th day after receiving a completed affidavit submitted by the applicant as signed by an officer or general partner, DOS is required to issue a certificate of franchise authority to offer cable or video service. If the DOS denies the application, it must specify the particular reasons that the application is denied and permit the applicant to amend the application to cure any deficiency. DOS must act upon an amended application within five business days. If the DOS does not act on the application within 30 business days of receipt, the application shall be deemed approved without further action. If DOS denies an application, the applicant may challenge the denial in a court of competent jurisdiction through a petition for mandamus.[13]

The certificate of franchise authority issued by the DOS must contain:

- A grant of authority to provide cable or video service 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 lawful operation of the cable and video service by the applicant or its successor in interest.

If a certificateholder seeks to include additional service areas in its current certificate, it is required to file notice with DOS to reflect the new service area or areas. The certificateholder is also required to file with DOS a notice of commencement of service within five days after first providing service in each such additional area.

Federal law allows franchise agreements to require the LFA to approve the sale or transfer of a cable system and gives the LFA 120 days to act upon the request for approval. Absent such action, the approval is deemed granted.[14] The bill provides that the certificate of franchise authority issued by DOS is fully transferable to any successor in interest to the applicant to which the certificate was originally granted. However, a notice of transfer must 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 or video service provider by submitting notice to DOS.

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[13] "Mandamus" is "a writ which orders a public agency or governmental body to perform an act required by law when it has neglected or refused to do so." mandamus. (n.d.) The People's Law Dictionary. (2005). Retrieved February 1, 2007, from http://legal-dictionary.thefreedictionary.com/Mandamus

[14] 47 U.S.C. s. 537

Applications are required to be accompanied by a one-time fee of $10,000.

Beginning five years after a certificateholder's initial certificate is issued and every five years thereafter, the certificateholder is required to update the information contained in its original application. When the update is filed, the certificateholder is required to pay a $1,000 processing fee.

The certificateholder's application and processing fees are to be paid to DOS for deposit into its Operations Trust Fund for immediate transfer by the Chief Financial Officer (CFO) to the Department of Agriculture and Consumer Service's (DACS) General Inspections Trust Fund. DACS must maintain a separate account within the General Inspections Trust Fund to distinguish cable franchise revenues from other funds.

The application, any amendments to the certificate, or information updates must be accompanied by a fee equal to that for filing articles of incorporation. This fee is currently $35.[15]

Eligibility for State-Issued Franchises

The bill creates s. 610.105, F.S., establishing, in more detail, eligibility for a state-issued franchise. Section 610.105(1), F.S., provides that, except as otherwise provided, an incumbent cable service provider with an existing, unexpired cable franchise with respect to a municipality or county as of July 1, 2007, is not eligible for a state-issued certificate of franchise authority until the franchise expires.

For purposes of this section, an incumbent 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 an unexpired franchise agreement granted by that specific municipality or county as of July 1, 2007. 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 municipal or county franchise agreement and apply for a state-issued certificate of franchise authority with respect to such municipality or county if another cable or video service provider has been granted a state-issued certificate of franchise authority for a service area located in whole or in part within the service area covered by the existing municipal or county franchise and such certificateholder has commenced providing service in such area.

Franchise Fees

As previously stated, federal law allows local franchise authorities to assess a franchise fee which may not exceed five percent of the cable operator's gross revenues derived from the operation of the cable system to provide cable service.

The bill creates s. 610.106, F.S., providing that, except as otherwise provided in this chapter, DOS is prohibited from imposing any taxes, fees, charges, or other impositions on a cable or video service provider as a condition for the issuance of a state issued certificate of franchise authority. This section also prohibits municipalities or counties from imposing taxes, fees, charges, or other exactions on certificateholders doing business in the municipality or county, or otherwise, except such taxes, fees, charges, or other exactions permitted by the Communications Services Tax[16] and the use of the right-of-way.[17]

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[15] S. 607.0122(1), F.S.
[16] Ch. 202, F.S.
[17] S. 337.401(6), F.S.

Chapter 202, F.S., creates the Communications Services Tax (CST). Pursuant to ch. 202, F.S., cable service is subject to a state CST of 9.17 percent. Municipalities and counties may also assess a local CST, subject to provisions of ch. 202, F.S. Section 337.401(6), F.S., allows municipalities and counties who levy the CST pursuant to ch. 202, F.S., to charge providers who maintain communications facilities on their roads and rights-of-way, but do not remit CST to the municipality or county (pass-through providers) to charge the pass-through provider a fee for the use of the right-of-way.

Buildout

As previously noted, federal law provides that in awarding a franchise, the local franchising authority 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.[18]

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

However, a recent study on cable "build-out" rules concluded that while "build-out" requirements on new cable entrants are imposed "to assure that all constituents in the community receive the benefits of competition" that the opposite may be true. The study concluded that build-out requirements increase the costs and reduce the profits of prospective entrants, and result in less deployment, with new entrants bypassing entire communities. Essentially, the study concluded "a build-out rule designed to prevent 'economic red-lining' *within a community* essentially imposes a different form of 'economic red-lining' *between communities.*"[19]

The bill creates s. 610.107, F.S., which prohibits any franchising authority, state agency, or political subdivision from imposing any buildout, system construction, or service deployment requirements on a certificate holder.

Customer Service Standards

FCC rules[20] provide the following minimum cable service standards, which the local franchise authority 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.

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[18] 47 U.S.C. s. 541(4)(A)

[19] *Phoenix Center Policy Paper Number 22: The Consumer Welfare Cost of Cable "Build-out Rules"*, Phoenix Center For Advanced Legal & Economic Public Policy Studies; January 2007, Third Release; p. 21 (emphasis in original). Available at: http://www.phoenix-center.org/pcpp/PCPP22_Third_Release.pdf (February 20, 2007).

[20] 47 C.F.R. s. 76.309(c)

(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 an 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.
(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.
(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.[21]

The bill creates s. 610.108, F.S., which requires incumbent cable service providers to comply with customers service requirements "reasonably comparable" to the federal standards until there are two or more providers offering service, excluding direct-to-home satellite service, in the incumbent service provider's relevant service area. The term "reasonably comparable" is not defined in the bill.

The bill provides, beginning on July 1, 2009, for all providers of cable service in municipalities or counties that, as of January 1, 2007, have an office or department dedicated to responding to cable service quality

[21] Miami-Date County Consumer Services Department Brochure; *Cable Television Consumer Bill of Rights.*

complaints, all such complaints shall be handled by the Department of Agriculture and Consumer Services (DACS). Until that time, these complaints shall continue to be handled by the municipality or county. The bill provides that this provision shall not be construed to permit a municipality or county to impose customer service standards in conflict with this section. It appears that DACS already handles cable complaints that are not handled by counties and municipalities without consumer complaint departments for cable. Its website provides several links to entities that provide assistance regarding cable television complaints.[22]

The bill requires DACS to receive service quality complaints from customers of a certificateholder and address them in an expeditious manner by assisting in the resolution of such complaint between the complainant and the certificateholder. The bill states that DACS shall adopt any procedural rules necessary to implement this section.

While the bill gives DACS the authority to assist consumers in resolving customer service issues with cable companies, the bill does not contain any enforcement provisions.

Public, Educational, and Governmental Access Channels

As noted above, local franchise authorities may require cable operators to set aside channels for public, educational, and governmental (PEG) use.[23] In addition, the local franchise authority 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 on 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 local franchise authority'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.

Based on a survey of city and county cable TV franchise administrators and coordinators conducted by the Legislative Office of Economic and Demographic Research (EDR), of the 69 responses where the city or county has one or more cable TV franchises in effect, 37 of the agreements required PEG channels and 27 required support for PEG channels. The survey's respondents with PEG channels had between one and twelve PEG channels (the average was 1.76). Several of the respondents also had PEG channels that were either inactive or available.[24]

The bill creates s. 610.109, F.S., relating to PEG channels. Section 610.109(1), F.S., provides that no later than 12 months after a request by a municipality or county within whose jurisdiction the certificateholder is providing cable or video service, the certificateholder must designate a sufficient amount of capacity on its network to allow the provision of PEG channels for noncommercial programming as set forth in this section, except that a holder of a state-issued certificate of authority is required to satisfy the PEG obligation as specified in this section upon issuance of such certificate for any service area covered by such certificate that is located within the service area that was covered by the cable provider's terminated franchise.

Section 610.109(2), F.S., provides that a certificateholder shall designate a sufficient amount of capacity on its network to allow the provision of a comparable number of PEG channels or capacity equivalent that a municipality or county has activated under the incumbent cable service provider's franchise agreement as of July 1, 2007. The bill provides that, for purposes of this section, a PEG channel is deemed activated if it is being used for PEG programming within the municipality for at least 10 hours per day.

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[22] http://www.800helpfla.com/azguide_c.html

[23] 47 U.S.C. s. 531

[24] Survey results provided to House of Representative's Committee on Utilities & Telecommunications Staff by the Legislature's Office of Economic and Demographic Research on February 12, 2007.

If, as of July 1, 2007, a municipality or county did not have PEG channels activated under the incumbent cable service provider's franchise agreement, the bill provides that not later than 12 months following a request from a municipality or county within whose jurisdiction a certificateholder is providing cable or video service, the cable or video service provider shall furnish: (a) up to three PEG channels or capacity equivalent for a municipality or county with a population of at least 50,000, or (b) up to two PEG channels or capacity equivalent for a municipality or county with a population of less than 50,000.

Section 610.109(4), F.S., provides that if a PEG channel provided pursuant to this section is not used by the municipality or county for at least 10 hours a day, it shall no longer be made available to the municipality or county, but may be programmed at cable or video service provider's discretion. When the municipality or county can certify to the cable or video service provider a schedule for at least 10 hours of daily programming, the cable or video service provider shall restore the previously lost channel, but is under no obligation to carry it on a basic or analog tier.

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 on 12 month's written notice if the municipality or county meets the following standard:

- If the municipality or county has one active PEG channel and wishes to activate one additional channel, the initial channel is considered to be substantially used when it is programmed for 12 hours each calendar day. At least 40 percent of the 12 hours of programming for each business day on average must be nonrepeat programming, which is the first three video 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 to be substantially used when 12 hours are programmed on each channel each calendar day and at least 50% of the twelve hours of programming for each business day on average over each calendar quarter is nonrepeat programming for three consecutive calendar 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 of the cable or video service provider, which is comparable to the protocol utilized by the cable service provider to carry such content, including, at the providers 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 networks to provide PEG programming. This interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. The bill provides that certificateholders and incumbent cable service providers shall negotiate in good faith and incumbent cable service providers may not withhold interconnection of 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 marks of another cable or video service provider, and a municipality or county may require a cable or video service provider to remove its logo, name, or other identifying marks from PEG content that is to be 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 requirements under this section.

Nondiscrimination by Municipality or County

The bill creates s. 610.112, 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.[25] 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.

Limitation on Local Authority

The bill creates s. 610.113, F.S., which 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 not related to the use of the public right-of way;
- The inspection of a certificateholder's business records; or
- The approval of transfers of ownership or control. (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 its original condition before the facilities were installed. The terms of the permits shall be consistent with construction permits issued to other providers of communications services placing or maintaining facilities in a public right-of-way.

Discrimination Prohibited

The bill creates s. 610.114, F.S, which prohibits a certificateholder from denying access to service ("redlining") to any group of potential residential subscribers because of the race or income of residents in the local area where such group resides, which conforms to federal law.[26] 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

[25] S. 337.401, F.S.
[26] 47 U.S.C. s. 541(a)(3)

and conciliation and may seek any other resolution of the matter in accordance with its jurisdiction.

The bill provides that in determining whether a certificateholder has violated the above provision, cost, distance, and technological or commercial limitations shall be taken into account. It may not be considered a violation to use an alternative technology that provides comparable content, service, and functionality. In addition, the inability to serve an end user due to lack of access to a building or property is not considered a violation. The bill provides that this section is not to be construed to authorize any buildout requirements. DACS is required to adopt the procedural rules necessary to implement this section.

Compliance

The bill creates s. 610.115, F.S., which provides that if a court of competent jurisdiction finds a certificateholder not to be in compliance with the 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

The bill creates s. 610.116, F.S., requiring two reports to the Legislature. By December 1, 2009, the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) is required 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 House of Representatives on the status of competition in the cable and video service industry. The report shall include, by municipality and county, the number of cable and video service providers, the number of cable and video subscribers served, the number of areas served by fewer than two cable or video service providers, the trend in cable and video service prices, and the identification of any patterns of service as they impact demographic income groups.

By January 15, 2008, DACS is required to make recommendations to the President of the Senate, Speaker of the House of Representatives, and the majority and minority leaders of the Senate and House of Representatives, regarding the workload and staffing requirements associated with consumer complaints related to video and cable certificateholders. DOS shall provide to DACS, for inclusion in the report, the workload requirements for processing the certificates of franchise authority. DOS will also provide the number of applications filed for cable and video certificates of franchise authority, and the number of amendments received to the applications for certificates of franchise authority.

Severability

The bill creates s. 610.117, F.S., which provides that if any provision of ss. 610.102-610.116, F.S., or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of ss. 610.102-610.116, F.S., that can be given effect without the invalid provision or application, and to this end, the provisions of ss. 610.102-610.116 are severable.

3. Communications Services Tax

The bill amends two provisions relating to the Communications Services Tax. First, the bill creates s. 202.11(24), F.S., to provide a definition of "video service" for the purposes of the Communications Services Tax. It defines "video service" as having the same meaning as that provided in s. 610.103, F.S., as set forth above.

The bill also amends Communications Services Tax provisions in ss. 202.24(2)(a) and (c), F.S., to conform to other provisions of the bill. The bill conforms s. 202.24(2)(a), F.S., by providing that 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 or assessment of franchise fess on providers of cable or video service.

Additionally, the bill conforms s. 202.24(2)(c), F.S., by providing that in-kind contributions allowed under federal law and imposed under an existing ordinance of franchise agreement for service provided prior to July 1, 2007, or permitted under ch. 610, F.S., are not subject to the prohibitions in s. 202.24(2), F.S.

4. Use of Right-of-Way

Federal cable law provides the following, concerning the use of rights-of-way in providing cable franchises; 47 U.S.C. 541(2) states:

> (2) Any franchise shall be construed to authorize the construction of a cable system over public rights-of-way, and through easements, which is within the area to be served by the cable system and which have been dedicated for compatible uses, except that in using such easements the cable operator shall ensure--
>
> > (A) that the safety, functioning, and appearance of the property and the convenience and safety of other persons not be adversely affected by the installation or construction of facilities necessary for a cable system;
> > (B) that the cost of the installation, construction, operation, or removal of such facilities be borne by the cable operator or subscriber, or a combination of both; and
> > (C) that the owner of the property be justly compensated by the cable operator for any damages caused by the installation, construction, operation, or removal of such facilities by the cable operator.

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 relates to the awarding of cable franchises by municipalities and counties, including giving them the authority to negotiate terms and conditions related to cable service franchises including franchise fees and in-kind requirements.

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

5. Repeal of s. 166.046, F.S.

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

6. Conforming Statutes

The bill amends ss. 350.81(3)(a) and 364.0361, F.S., to conform to other statutory changes.

7. Effective Date

This act shall take effect upon becoming law.

C. SECTION DIRECTORY:

Section 1 Provides a short title.

Section 2 Creates s. 202.11(24), F.S., providing a definition for "video service".

Section 3 Amends ss. 202.24(2)(a) and (c), F.S., relating to the limitations on local taxes and fees imposed on the dealers of communications services.

Section 4 Amends ss. 337.401(3)(a), (b), (e), and (f), F.S., relating to the use of right-of-way for utilities subject to regulation; permit, fees.

Section 5 Amends s. 337.4061, F.S., relating to definitions; unlawful use of state maintained road right of way by nonfranchised cable and video services.

Section 6 Creates ss. 610.102, 610.103, 610.104, 610.105, 610.106, 610.107, 610.108, 610.109, 610.112, 610.113, 610.114, 610.115, 610.116, and 610.117, F.S., establishing a statewide cable and video franchising authority.

Section 7 Repeals s. 166.046, F.S., relating to cable television franchises.

Section 8 Amends s. 350.81(3)(a), F.S., relating to communications services offered by governmental entities.

Section 9 Amends s. 364.0361, F.S., relating to local government authority, nondiscriminatory exercise.

Section 10 This act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill requires a one-time application fee of $10,000 to accompany an application for a state-issued certificate of franchise authority. The bill also requires a processing fee of $1,000 to be paid by the certificateholder every five years when filing an update to its original application. Additionally, the application, any amendments to the certificate, or information updates must be accompanied by a fee equal to that for filing articles of incorporation. This filing fee is currently $35.[27]

2. Expenditures:

In 2006, Texas adopted a similar application and certification process as contemplated in this bill. Since passage of the Texas legislation, 38 active cable and video franchises have been certified to date. Based on a comparison of current population demographics between Florida and Texas, it appears that Florida may be in a position to experience similar marketplace dynamics for the certification of cable and video franchises if this bill were to become law. Based on information from the Public Utility Commission of Texas, which acts as the statewide cable and video franchising authority in that state, one staff member has handled the workload associated with the cable and video franchise application and certification process.

The Department of State indicated on March 1, 2007 that the DOS responsibilities under this bill will be handled within existing resources.

[27] S. 607.0122(1), F.S.

According to DACS, it currently employs 16 FTE and 4 part-time positions (20 hours per week) on its consumer hotline to handle approximately 325,000 phone calls per year.

This bill provides for counties and municipalities with dedicated staff to continue to handle complaints until July 1, 2009. The counties and municipalities that operate consumer complaint hotlines accept calls and complaints for a wide range of consumer issues, not just limited to cable television. Therefore, it is very unlikely that local consumer service departments will terminate staff or reduce operations due to DACS receiving calls under this bill.

Based on this information and the fact that DACS currently handles cable complaints for counties and municipalities without consumer complaint departments, there may be no need for additional funding prior to July 1, 2009. However, on March 8, 2007, DACS submitted a revised fiscal analysis of this bill which states, in part:

> "The regulation and handling of consumer calls and complaints will shift from local governments to the state. Although the bill allows counties/municipalities with an office or department dedicated to cable service complaints to continue receiving these complaints until July 1, 2009, DACS will likely receive a significant number of complaints from residents in counties/municipalities without consumer complaint offices/departments, because based on our survey only a small number of these type offices currently exist."

The DACS analysis estimated that 8 additional staff would be needed during FY 2007-08, phased-in from July 1, 2007 through April 1, 2008 at a cost of $477,381 to handle as many as 35,000 additional calls and 11,500 additional written complaints per year.

The DACS analysis is predicated on the assumption that consumer awareness of the new legislation will cause a significant increase in complaint calls received by DACS even before July 1, 2009. Available information, though limited, does not support this assumption. For instance, the Miami-Dade County Consumer Services Department reported in a January 2, 2007, news release that the total number of complaints received in 2006 for cable television was 670. In addition, the Palm Beach County Office of Public Information's Cable Television Office receives cable television complaints from unincorporated areas and reported only 137 registered cable television complaints from October 1, 2005, to September 30, 2006. The bill requires DACS to provide a report to the Legislature by January 15, 2008, regarding the workload and staffing requirements related to consumer complaints related to cable and video certificateholders. Should that report justify the need for additional staffing in DACS, the appropriations could be provided during the 2008 regular legislative session. In addition, the bill provides that all of the $10,000 application fees and $1,000 processing fees collected by the Department of State are to be transferred to the Department of Agriculture. While the amount of these revenues is indeterminate, they will provide a source of funding for any increased workload incurred by the Department of Agriculture.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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 local governments' authority to negotiate for them.

The Revenue Estimating Conference (REC) met on February 28, 2007 to consider this bill, and adopted an indeterminate negative impact on local governments' in-kind services now received

from cable franchises. The REC also concluded that the value of the lost in-kind services would total at least $20 million statewide.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Current law requires an entity that wishes to provide cable or video service to obtain a franchise from each individual municipality or county where it wishes to provide service; creating expenses in obtaining each of these agreements. The bill provides that instead of obtaining a cable or video franchise from each municipality or county where it wishes to provide service, an entity will only need to obtain a state-issued certificate of franchise authority at a cost of $10,000 for the entire state. This process could potentially save an applicant thousands of dollars in costs associated with obtaining cable and video service franchises.

Consumers may also see the benefit of lower prices for cable service as a result of this bill. A survey of cable competition in Texas concluded that "[a]fter only a few months of cable TV and video competition in Texas, consumers who switch [providers] are saving about $270 each year." In addition, those consumers who are staying with their original cable provider are saving money with new discount offers.[28]

Studies on the price elasticity of demand for cable television show that with a drop in prices, there is a proportionate increase in demand, creating "a net increase in cable TV and video revenues." A survey of cable competition estimated "that cable and video revenues have increased approximately 3.5% in the competitive portions of communities in the study area."[29]

However, cable competition may not reduce prices in all cases. A recent *Washington Post* article indicates that the cable rates for its largest provider are increasing in Montgomery County, Maryland, even though it has two competitors in the region. The company's officials say that the increase is due to its costs for such things as "adding video titles and improving customer service." However, the companies may be competing over bundled services, since all three providers offer "packages of phone, Internet, and cable television service."[30]

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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[28] *Does Cable Competition Really Work? A Survey of Cable TV Subscribers in Texas;* The American Consumer Institute; March 2, 2006, p. 18. Available at: http://www.theamericanconsumer.org/Consumers%20Saving%20from%20Competition.pdf (February 20, 2007).

[29] *Does Cable Competition Really Work? A Survey of Cable TV Subscribers in Texas;* The American Consumer Institute; March 2, 2006, p. 17-18. Available at: http://www.theamericanconsumer.org/Consumers%20Saving%20from%20Competition.pdf (February 20, 2007).

[30] *Cable Ear Fails to Offer Rate Relief in Montgomery,* Washington Post, February 18, 2007, p. C11; Available at: http://www.washingtonpost.com/wp-dyn/content/article/2007/02/17/AR2007021701334_pf.html

The bill removes the ability of cities and counties to negotiate certain in-kind benefits associated with cable and video franchise agreements. This provision of the bill may decrease the amount of revenues received by cities and counties. If there is a decrease in revenue, such decrease may be construed as a reduction in the authority that cities and counties have to raise revenues in the aggregate.

If a bill reduces the authority of cities and counties to raise revenues in the aggregate, then it must be passed by two-thirds vote of the membership in each house. Since there is doubt as to whether the bill could be construed as a mandate, it is advisable that the bill be passed by a two-thirds vote of the membership in each house.

2. Other:

Impairment of Contracts

Provisions of the bill allow cable operators to unilaterally terminate their existing franchise agreements with municipalities and counties if certain conditions are met. It has been argued that these provisions may create an unconstitutional impairment of contracts under the United States Constitution or the Florida Constitution. Staff was provided much of the following legal analysis by the proponents and the opponents of the bill.

Local Government Authority to Establish Cable Television Franchises

Among the things to consider in determining whether or not provisions in the bill create an unconstitutional impairment of contracts is the source of municipalities' and counties' authority to issue cable franchises.

An argument was raised that because the state granted 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."[31] 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 under federal law.

Another view presented was that municipalities and counties receive their franchising authority from federal law. Federal law generally prohibits cable operators from providing cable service without a franchise.[32] 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 a State Statute

Another question raised is whether the municipalities and counties would have standing to challenge the constitutionality of a state statute.

It has been argued that case law well establishes that subordinates of a state do not have standing to challenge a state's action under the federal contracts clauses contained in Article I, Section 10 of the United States Constitution.[33] The United States Supreme Court has addressed the issue of municipal corporations as subordinates of the state, stating:

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[31] SS. 166.046 and 337.4061, F.S.

[32] 47 U.S.C. s. 541(b)(1). 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.

[33] 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).

> Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the federal Constitution.[34]

Courts have also found that "[a] municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of its creator."[35]

While courts have determined that municipal corporations are creatures of the state, and that their powers are vested with the state, a federal appeals court stated that it was "unable to find a single federal case *holding* that a city cannot sue its parent state for impairing a contract between the city and a third party."[36]

It appears that the Florida Supreme Court has never directly addressed the issue of whether or not a city or county can challenge the constitutionality of a state statute.[37] 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.*[38] However, a state agency or officer may defensively raise the constitutionality of a statute if litigation is brought against it.[39] There appears to be an exception if the law being challenged involves the disbursement of public funds.[40]

Florida courts have noted that "[t]he comptroller is one officer that has been allowed by Florida courts to initiate litigation in his official capacity seeking to establish the unconstitutionality of a statute."[41] It has also been recognized that the attorney general may, in limited circumstances, initiate litigation to challenge the constitutionality of legislation.[42]

In a 1963 case, the City of Plantation challenged the constitutionality of a statute authorizing the Florida Railroad and Public Utilities Commission (now the Florida Public Service Commission) to regulate rates charged by water and sewer companies, arguing that the statute impaired the obligations of a franchise

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[34] *City of Pawhuska v. Pawhuska Oil & Gas Co.* 250 U.S. 394, 397-398, 39 S.Ct. 526-528 (U.S.1919), quoting *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178, 28 S.Ct. 40, 46 (U.S.1907)

[35] See *Metropolitan Development and Housing Agency v. South Central Bell Tel. Co.* 562 S.W.2d 438, 444 (Tenn.App. 1977), citing *Williams v. Mayor and City Council of Baltimore*, 289 U.S. 36, 40, 53 S.Ct. 431, 432, 77 L.Ed. 1015 (1933).

[36] See *City of Charleston v. Public Service Commission of West Virginia*, 57 F.3d 385, 389-390 (4th Cir. 1995) (emphasis in original).

[37] When the question "Does a county have standing to challenge by a declaratory action the constitutionality of a statute or rule which indirectly requires the county to expand public funds in order to comply with the mandates of such statute or rule, and further provides for a potential loss of revenue to the county in the event of noncompliance?" was certified to the Florida Supreme Court in 1995, the court found that a stipulated settlement agreement resolved the dispute and expressed no opinion as to the certified questions. *Santa Rosa County v. Administration Commission, Division of Administrative Hearings,* 661 So.2d 1190, 1193 (Fla. 1995).

[38] See *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).

[39] See *Department of Education v. Lewis*, 416 So.2d 455, 458 (Fla. 1982).

[40] See *Fuchs v. Robbins*, 818 So.2d 460, 464 (Fla. 2002).

[41] See *Dickinson v. Stone*, 251 So.2d 268 (Fla.1971); *Green v. City of Pensacola*, 108 So.2d 897 (Fla. 1st DCA 1959), *aff'd*, 126 So.2d 566 (Fla.1961).

[42] See *Department of Education v. Lewis* 416 So.2d 455, 458-459 (Fla., 1982) citing, *Department of Administration v. Horne*, 269 So.2d 659 (Fla.1972); *State ex rel. Landis v. S. H. Kress & Co.*, 115 Fla. 189, 155 So. 823 (1934); *State ex rel. Moodie v. Bryan*, 50 Fla. 293, 39 So. 929 (1905)."

agreement between the city and the utility company under which the city reserved the power to regulate water and sewer rates. In that case, the Florida Supreme Court stated:

> If the agreement between the parties were a private arrangement between individuals that did not involve a restriction upon the state's police power, the contentions of the appellant would be sound. There is no doubt that by conveying to the state Utilities Commission the power to regulate rates, the Legislature pre-empted the pre-existing authority which the City had reserved by the franchise agreement. Nevertheless, the constitutional rule against impairment does not apply to a contract of the nature now under consideration. This is so because a municipality cannot foreclose the exercise of the State's police power by such an arrangement.[43]

However, it should be noted that at that time of the court's opinion Article XVI, Section 30 of the Florida Constitution gave "the Legislature full power to regulate charges and services performed by public utilities." The court determined a franchise agreement such as the one under dispute in this case "is presumed to have been made with the full knowledge of the inherent reserved power of the State to alter the contract regarding rates at such time as the Legislature deems it appropriate to assert the power under the Constitution."[44] No similar constitutional provision appears to exist that explicitly grants the Legislature the authority regulate or issue cable franchises.

Contract Impairment

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

Concerning the impairment of private 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."[45] Florida courts have held that the following factors are factors that a court might consider in a test to balance the nature of the impairment with the importance of the state objective:

> (a) Was the law enacted to deal with a broad generalized economic or social problem?
> (b) Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by this state?
> (c) Does the law effect a temporary alteration of the contractual relationship of those within its coverage, or does it work a severe, permanent, and immediate change in those relationships- irrevocably and retroactively?[46]

Florida courts have also established that "[v]irtually no degree of contract impairment has been tolerated in this state."[47] 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

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[43] See *City of Plantation v. Utilities Operating Co.* 156 So.2d 842, 843 (Fla.1963), citing *Puget Sound Traction Light & Power Co. v. Reynolds*, 244 U.S. 574, 37 S.Ct. 705, 61 L.Ed. 1325 (1917), emphasis added.
[44] See *City of Plantation v. Utilities Operating Co.* 156 So.2d 842, 843 (Fla.1963).
[45] See *Dewberry v. Auto-Owners Insurance Company*, 363 So.2d 1077, 1080 (Fla. 1978).
[46] See *Yellow Cab Co. of Dade County v. Dade County* 412 So.2d 395, 396 (Fla.App. 3 Dist., 1982), citing *Pomponio v. Claridge of Pompano Condominium, Inc.* 378 So.2d 774, 779(Fla. 1979).
[47] See *Yamaha Parts Distributors, Inc. v. Ehrman*, 316 So. 2d. 557, 559 (Fla. 1975).

> 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.[48]

It is important to note that the cases cited above relate to 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 once the Legislature has accepted and funded a collective bargaining agreement, "the state and all its organs are bound by that agreement under the principles of contract law."[49] In that case, after ratifying a 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 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 funds is not in itself a compelling reason. Rather, the legislature must demonstrate that funds are from no other possible reasonable source.[50]

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.

However, in a case involving county ordinances prohibiting exclusive arrangements between hotels and taxicab companies, the court concluded that the interests of the county in encouraging free competition, providing passenger choice, and improving transportation efficiency far outweighed severity of impairment of private contracts and that the ordinances were reasonable and necessary exercises of the county commission's police power.[51]

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 could act in a manner that would 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 are often specific to the community and address demographics, buildout, PEG channels, safety, and customer services issues. The bill would remove a municipality or county's authority to establish such ordinances or similar cable franchise provisions.

B. RULE-MAKING AUTHORITY:

The Department of State is required to adopt procedural rules, as necessary, relating to its function of issuing statewide cable television franchises.

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[48] See *Pomponio v. Claridge of Pompano Condominium, Inc.* 378 So.2d 774, 780 (Fla. 1979).
[49] See *Chiles v. United Faculty of Florida*, 615 So.2d 671, 673 (Fla. 1993)
[50] See *Chiles v. United Faculty of Florida*, 615 So.2d 671, 673 (Fla. 1993)
[51] See *Yellow Cab Co. of Dade County v. Dade County* 412 So.2d 395 (Fla.App. 3 Dist., 1982)

The Department of Agriculture and Consumer Services is required to adopt rules, as necessary, to implement its function related to customer service standards. It is also required to implement rules relating to its enforcement of discrimination provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DOS, the bill presents some issues relating to the implementation of statewide franchising authority within DOS, as follows:

- It would take three to six months for DOS to set-up systems and procedures, and recruit and train staff prior to receiving any applications for franchise authority.
- Section 610.104(2), F.S., provides that a cable or video service provider with an existing franchise with a municipality or county with less than 40 percent of the cable and video service subscribers in a given area, may elect to terminate its current franchise and obtain a state-issued franchise as of July 1, 2007. DOS states that there is no way for it to determine whether or not a specific applicant has less than 40 percent of the market without some sort of attestation.
- It is unclear what happens between the 15th business day in s. 610.104(4), F.S., when DOS is required to issue the certificate of franchise authority and the 30th business day in s. 610.104(5), F.S. (lines 457 through 460), when the certificate is deemed approved without any further action.

Section 610.104(12), F.S., requires any amendments to the certificate be accompanied by a fee to DOS equal to that for filing articles of incorporation pursuant to s. 610.1022(1), F.S. However, s. 610.104(7), F.S. that allows a certificateholder to include additional service areas in its current certificate, only requires the certificateholder to provide notice of commencement of service to DOS, and not an amendment to the certificate.

Concerns have been raised concerning some of the definitions contained in the bill, and that these definitions may "carve out" certain technologies so that they may not be subject to the franchising requirements of this bill.

D. STATEMENT OF THE SPONSOR

No Statement Submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 22, 2007 the Jobs & Entrepreneurship Council adopted six amendments to the bill. The amendments do the following:

- Change the application fee to file from a maximum of $150 to a fixed fee of $10,000.
- Require certificateholders to file an update every five years, with a processing fee of $1,000.
- Specify the trust funds which the application and processing fees are to be deposited.
- Require that any applications, amendments, and updates must be accompanied by a fee equal to that for filing articles of incorporation pursuant to s. 607.0122(1), F.S.
- Clarify that except for the fees provided in this chapter, DOS is prohibited from charging additional fees related to cable or video franchising.
- Clarify that certificateholders may not deny access to service to a group of potential customers based on their race.

- Require permitholders to restore the right-of-way to its original condition before after work on the right-of-way.
- Require DACS to provide a report to the Legislature by January 15, 2008, regarding the workload and staffing requirements related to consumer complaints related to cable and video certificateholders. DOS is required to provide DACS with its workload requirements related to processing certificates of franchise authority, the number of applications filed, and the number of amendments to the original applications received.

The staff analysis has been updated to incorporate the amendments described above.

A bill to be entitled

An act relating to statewide cable television and video service franchises; providing a short title; amending s. 202.11, F.S.; providing a definition; amending s. 202.24, F.S.; prohibiting counties and municipalities from negotiating terms and conditions relating to cable and video services; deleting authorization to negotiate; revising application to existing ordinances or franchise agreements; amending s. 337.401, F.S.; deleting authorization for counties and municipalities to award cable service franchises and a restriction that cable service companies not operate without such a franchise; amending s. 337.4061, F.S.; revising definitions; creating ss. 610.102, 610.103, 610.104, 610.105, 610.106, 610.107, 610.108, 610.109, 610.112, 610.113, 610.114, 610.115, 610.116, and 610.117, F.S.; designating the Department of State as the authorizing authority; providing definitions; requiring state authorization to provide cable and video services; providing requirements and procedures; providing for fees; providing duties and responsibilities of the Department of State; providing application procedures and requirements; providing for issuing certificates of franchise authority; providing eligibility requirements and criteria for a certificate; authorizing the department to adopt rules; providing for an application form; providing for an application fee; requiring certain information updates; providing for a processing fee; providing for transfer of such fees to the Department of

Agriculture and Consumer Services; requiring the department to maintain a separate account for cable franchise revenues; providing for fees to the Department of State for certain activities; prohibiting the department from imposing additional taxes, fees, or charges on a cable or video service provider to issue a certificate; prohibiting imposing buildout, construction, and deployment requirements on a certificateholder; requiring certificateholders to make cable and video service available at certain public buildings under certain circumstances; imposing certain customer service requirements on cable service providers; requiring the Department of Agriculture and Consumer Services to receive customer service complaints; requiring provision of public, educational, and governmental access channels or capacity equivalent; providing criteria, requirements, and procedures; providing exceptions; providing responsibilities of municipalities and counties relating to such channels; providing for enforcement; providing requirements for and limitations on counties and municipalities relating to access to public right-of-way; prohibiting counties and municipalities from imposing additional requirements on certificateholders; authorizing counties and municipalities to require permits of certificateholders relating to public right-of-way; providing permit criteria and requirements; prohibiting discrimination among cable and video service subscribers; providing for enforcement; providing for determinations of

violations; providing for enforcement of compliance by certificateholders; requiring the Office of Program Policy Analysis and Government Accountability to report to the Legislature on the status of competition in the cable and video service industry; providing report requirements; requiring the Department of Agriculture and Consumer Services to make recommendations to the Legislature; providing duties of the Department of State; providing severability; repealing s. 166.046, F.S., relating to definitions and minimum standards for cable television franchises imposed upon counties and municipalities; amending ss. 350.81 and 364.0361, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Consumer Choice Act of 2007."

Section 2. Subsection (24) is added to section 202.11, Florida Statutes, to read:

202.11 Definitions.--As used in this chapter:

(24) "Video service" has the same meaning as that provided in s. 610.103.

Section 3. Paragraphs (a) and (c) of subsection (2) of section 202.24, Florida Statutes, are amended to read:

202.24 Limitations on local taxes and fees imposed on dealers of communications services.--

(2)(a) Except as provided in paragraph (c), each public

body is prohibited from:

1. Levying on or collecting from dealers or purchasers of communications services any tax, charge, fee, or other imposition on or with respect to the provision or purchase of communications services.

2. Requiring any dealer of communications services to enter into or extend the term of a franchise or other agreement that requires the payment of a tax, charge, fee, or other imposition.

3. Adopting or enforcing any provision of any ordinance or agreement to the extent that such provision obligates a dealer of communications services to charge, collect, or pay to the public body a tax, charge, fee, or other imposition.

Municipalities and counties may not ~~Each municipality and county retains authority to~~ negotiate ~~all terms and conditions of a cable service franchise allowed by federal and state law except~~ those terms and conditions related to franchise fees or ~~and~~ the definition of gross revenues or other definitions or methodologies related to the payment or assessment of franchise fees on providers of cable or video services.

(c) This subsection does not apply to:

1. Local communications services taxes levied under this chapter.

2. Ad valorem taxes levied pursuant to chapter 200.

3. Occupational license taxes levied under chapter 205.

4. "911" service charges levied under chapter 365.

5. Amounts charged for the rental or other use of property

owned by a public body which is not in the public rights-of-way to a dealer of communications services for any purpose, including, but not limited to, the placement or attachment of equipment used in the provision of communications services.

6. Permit fees of general applicability which are not related to placing or maintaining facilities in or on public roads or rights-of-way.

7. Permit fees related to placing or maintaining facilities in or on public roads or rights-of-way pursuant to s. 337.401.

8. Any in-kind requirements, institutional networks, or contributions for, or in support of, the use or construction of public, educational, or governmental access facilities allowed under federal law and imposed on providers of cable or video service pursuant to any existing ordinance or an existing franchise agreement granted by each municipality or county, under which ordinance or franchise agreement service is provided prior to July 1, 2007, or as permitted under chapter 610. Nothing in this subparagraph shall prohibit the ability of providers of cable or video service to recover such expenses as allowed under federal law.

9. Special assessments and impact fees.

10. Pole attachment fees that are charged by a local government for attachments to utility poles owned by the local government.

11. Utility service fees or other similar user fees for utility services.

12. Any other generally applicable tax, fee, charge, or

imposition authorized by general law on July 1, 2000, which is not specifically prohibited by this subsection or included as a replaced revenue source in s. 202.20.

Section 4. Paragraphs (a), (b), (e), and (f) of subsection (3) of section 337.401, Florida Statutes, are amended to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.--

(3)(a)~~1.~~ Because of the unique circumstances applicable to providers of communications services, including, but not limited to, the circumstances described in paragraph (e) and the fact that federal and state law require the nondiscriminatory treatment of providers of telecommunications services, and because of the desire to promote competition among providers of communications services, it is the intent of the Legislature that municipalities and counties treat providers of communications services in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or rights-of-way. Rules or regulations imposed by a municipality or county relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way must be generally applicable to all providers of communications services and, notwithstanding any other law, may not require a provider of communications services~~, except as otherwise provided in subparagraph 2.,~~ to apply for or enter into an individual license, franchise, or other agreement with the municipality or county as a condition of placing or maintaining communications facilities in its roads

or rights-of-way. In addition to other reasonable rules or regulations that a municipality or county may adopt relating to the placement or maintenance of communications facilities in its roads or rights-of-way under this subsection, a municipality or county may require a provider of communications services that places or seeks to place facilities in its roads or rights-of-way to register with the municipality or county and to provide the name of the registrant; the name, address, and telephone number of a contact person for the registrant; the number of the registrant's current certificate of authorization issued by the Florida Public Service Commission, ~~or~~ the Federal Communications Commission, or the Department of State; and proof of insurance or self-insuring status adequate to defend and cover claims.

~~2. Notwithstanding the provisions of subparagraph 1., a municipality or county may, as provided by 47 U.S.C. s. 541, award one or more franchises within its jurisdiction for the provision of cable service, and a provider of cable service shall not provide cable service without such franchise. Each municipality and county retains authority to negotiate all terms and conditions of a cable service franchise allowed by federal law and s. 166.046, except those terms and conditions related to franchise fees and the definition of gross revenues or other definitions or methodologies related to the payment or assessment of franchise fees and permit fees as provided in paragraph (c) on providers of cable services. A municipality or county may exercise its right to require from providers of cable service 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 provider of cable service may exercise its right to recover any such expenses associated with such in-kind requirements, to the extent permitted by federal law.~~

(b) Registration described in paragraph ~~subparagraph~~ (a)~~1.~~ does not establish a right to place or maintain, or priority for the placement or maintenance of, a communications facility in roads or rights-of-way of a municipality or county. Each municipality and county retains the authority to regulate and manage municipal and county roads or rights-of-way in exercising its police power. Any rules or regulations adopted by a municipality or county which govern the occupation of its roads or rights-of-way by providers of communications services must be related to the placement or maintenance of facilities in such roads or rights-of-way, must be reasonable and nondiscriminatory, and may include only those matters necessary to manage the roads or rights-of-way of the municipality or county.

(e) The authority of municipalities and counties to require franchise fees from providers of communications services, with respect to the provision of communications services, is specifically preempted by the state~~, except as otherwise provided in subparagraph (a)2.,~~ because of unique circumstances applicable to providers of communications services when compared to other utilities occupying municipal or county roads or rights-of-way. Providers of communications services may provide similar services in a manner that requires the placement

of facilities in municipal or county roads or rights-of-way or in a manner that does not require the placement of facilities in such roads or rights-of-way. Although similar communications services may be provided by different means, the state desires to treat providers of communications services in a nondiscriminatory manner and to have the taxes, franchise fees, and other fees paid by providers of communications services be competitively neutral. Municipalities and counties retain all existing authority, if any, to collect franchise fees from users or occupants of municipal or county roads or rights-of-way other than providers of communications services, and the provisions of this subsection shall have no effect upon this authority. The provisions of this subsection do not restrict the authority, if any, of municipalities or counties or other governmental entities to receive reasonable rental fees based on fair market value for the use of public lands and buildings on property outside the public roads or rights-of-way for the placement of communications antennas and towers.

(f) Except as expressly allowed or authorized by general law and except for the rights-of-way permit fees subject to paragraph (c), a municipality or county may not levy on a provider of communications services a tax, fee, or other charge or imposition for operating as a provider of communications services within the jurisdiction of the municipality or county which is in any way related to using its roads or rights-of-way. A municipality or county may not require or solicit in-kind compensation, except as otherwise provided in s. 202.24(2)(c)8. or s. 610.109 ~~subparagraph (a)2~~. Nothing in this paragraph shall

impair any ordinance or agreement in effect on May 22, 1998, or any voluntary agreement entered into subsequent to that date, which provides for or allows in-kind compensation by a telecommunications company.

Section 5. Section 337.4061, Florida Statutes, is amended to read:

337.4061 Definitions; unlawful use of state-maintained road right-of-way by nonfranchised cable and video ~~television~~ services.--

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

(a) "Cable service" means:

1. The one-way transmission to subscribers of video programming or any other programming service; and

2. Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

(b) "Cable system" means 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 which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

2. 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;

3. A facility that serves subscribers without using any public right-of-way.

4.~~3.~~ 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., except the specific bandwidths or wavelengths used by ~~that~~ such facility shall be considered a cable system only to the extent such bandwidths or wavelengths are ~~facility is~~ used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services, in which case the use of such bandwidths or wavelengths is not a cable system; or

5.~~4.~~ Any facilities of any electric utility used solely for operating its electric utility systems.

(c) "Franchise" means an initial authorization or renewal thereof issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system or video service provider network facilities.

(d) "Franchising authority" means any governmental entity empowered by federal, state, or local law to grant a franchise.

(e) "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

(f) "Video programming" means programming provided by or generally considered comparable to programming provided by a television broadcast station or cable system.

(g) "Video service" has the same meaning as that provided

in s. 610.103.

(2) It is unlawful to use the right-of-way of any state-maintained road, including appendages thereto, and also including, but not limited to, rest areas, wayside parks, boat-launching ramps, weigh stations, and scenic easements, to provide for cable or video service over facilities ~~purposes~~ within a geographic area subject to a valid existing franchise for cable or video service, unless the cable or video service provider ~~system~~ using such right-of-way holds a franchise from a franchise authority ~~the municipality or county~~ for the area in which the right-of-way is located.

(3) A violation of this section shall be deemed a violation of s. 337.406.

Section 6. Sections 610.102, 610.103, 610.104, 610.105, 610.106, 610.107, 610.108, 610.109, 610.112, 610.113, 610.114, 610.115, 610.116, and 610.117, Florida Statutes, are created to read:

610.102 Department of State authority to issue statewide cable and video franchise.--The department shall be designated as the franchising authority for a state-issued franchise for the provision of cable or video service. A municipality or county may not grant a new franchise for the provision of cable or video service within its jurisdiction.

610.103 Definitions.--As used in ss. 610.102-610.116:

(1) "Cable service" means:

(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.

(2) "Cable service provider" means a person that provides cable service over a cable system.

(3) "Cable system" means 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;

(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., except that 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, 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.

(4) "Certificateholder" means a cable or video service provider that has been issued and holds a certificate of franchise authority from the department.

(5) "Department" means the Department of State.

(6) "Franchise" means 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 or video service provider network facilities in the public right-of-way.

(7) "Franchise authority" means any governmental entity empowered by federal, state, or local law to grant a franchise.

(8) "Incumbent cable service provider" means the cable service provider serving the largest number of cable subscribers in a particular municipal or county franchise area on July 1, 2007.

(9) "Public right-of-way" means 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.

(10) "Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station as set forth in 47 U.S.C. s. 522(20).

(11) "Video service" means video programming services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology,

including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. s. 332(d), video programming provided via a cable service or video programming provided as part of, and via, a service that enables end users to access content, information, electronic mail, or other services offered over the Internet.

(12) "Video service provider" means a video programming distributor that distributes video programming services through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology. This term does not include a cable service provider.

610.104 State authorization to provide cable or video service.--

(1) An entity or person seeking to provide cable or video service in this state after July 1, 2007, shall file an application for a state-issued certificate of franchise authority with the department as required by this section. An entity or person providing cable or video service under an unexpired franchise agreement with a municipality or county as of July 1, 2007, is not subject to this subsection with respect to providing service in such municipality or county until the franchise agreement expires, except as provided by subsection (2) and s. 610.105(4). An entity or person providing cable or video service may seek authorization from the department to provide service in areas where the entity or person currently does not have an existing franchise agreement as of July 1, 2007.

(2) Beginning July 1, 2007, a cable or video service provider that is not an incumbent cable or video service provider and provides cable or video service to less than 40 percent of the total cable and video service subscribers in a particular franchise area may elect to terminate an existing municipal or county franchise and seek a state-issued certificate of franchise authority by providing written notice to the Secretary of State and the affected municipality or county after July 1, 2007. The municipal or county franchise is terminated under this subsection on the date the department issues the state-issued certificate of franchise authority.

(3) Before the 10th business day after an applicant submits the affidavit, the department shall notify the applicant for a state-issued certificate of franchise authority whether the applicant's affidavit described by subsection (4) is complete. If the department denies the application, the department must specify with particularity the reasons for the denial and permit the applicant to amend the application to cure any deficiency. The department shall act upon such amended application within 5 business days.

(4) The department shall issue a certificate of franchise authority to offer cable or video service before the 15th business day after receipt of a completed affidavit submitted by an applicant and signed by an officer or general partner of the applicant affirming:

(a) That the applicant has filed or will timely file with the Federal Communications Commission all forms required by that agency in advance of offering cable or video service in this

state;

(b) That the applicant agrees to comply with all applicable federal and state laws and regulations, to the extent that such state laws and rules are not in conflict with or superseded by the provisions of this chapter or other applicable state law;

(c) That the applicant agrees to comply with all lawful state laws and rules and municipal and county ordinances and regulations regarding the placement and maintenance of communications facilities in the public rights-of-way that are generally applicable to providers of communications services in accordance with s. 337.401;

(d) A description of the service area for which the applicant seeks the certificate of franchise authority, which need not be coextensive with municipal, county, or other political boundaries;

(e) The location of the applicant's principal place of business and the names of the applicant's principal executive officers; and

(f) That the applicant will file with the department a notice of commencement of service within 5 days after first providing service in each service area described in paragraph (d).

(5) If the department fails to act on the application within 30 business days after receiving the application, the application shall be deemed approved by the department without further action.

(6) The certificate of franchise authority issued by the

department shall contain:

(a) A grant of authority to provide cable or video service as requested in the application.

(b) A grant of authority to construct, maintain, and operate facilities through, upon, over, and under any public right-of-way or waters.

(c) A statement that the grant of authority is subject to lawful operation of the cable or video service by the applicant or its successor in interest.

(7) A certificateholder that seeks to include additional service areas in its current certificate shall file notice with the department that reflects the new service area or areas to be served and shall file with the department a notice of commencement of service within 5 days after first providing service in each such additional area.

(8) The certificate of franchise authority issued by the department is fully transferable to any successor in interest to the applicant to which the certificate is initially granted. A notice of transfer shall be filed with the department and the relevant municipality or county within 14 business days following the completion of such transfer.

(9) The certificate of franchise authority issued by the department may be terminated by the cable or video service provider by submitting notice to the department.

(10) An applicant may challenge a denial of an application by the department in a court of competent jurisdiction through a petition for mandamus.

(11) The department shall adopt any procedural rules

pursuant to ss. 120.536(1) and 120.54 necessary to implement this section.

(12) The application shall be accompanied by a one-time fee of $10,000.

(13) Beginning 5 years after approval of the certificateholder's initial certificate of franchise issued by the department, and every 5 years thereafter, the certificateholder shall update the information contained in the original application for a certificate of franchise. At the time of filing the information update, the certificateholder shall pay a processing fee of $1,000. The application and processing fees imposed in this section shall be paid to the Department of State for deposit into the Operating Trust Fund for immediate transfer by the Chief Financial Officer to the General Inspection Trust Fund of the Department of Agriculture and Consumer Services. The Department of Agriculture and Consumer Services shall maintain a separate account within the General Inspection Trust Fund to distinguish cable franchise revenues from all other funds. The application, any amendments to the certificate, or information updates must be accompanied by a fee to the Department of State equal to that for filing articles of incorporation pursuant to s. 607.0122(1).

610.105 Eligibility for state-issued franchise.--

(1) Except as provided in s. 610.104(1) and (2) and subsection (4), an incumbent cable service provider that has an existing, unexpired franchise to provide cable service with respect to a municipality or county as of July 1, 2007, is not eligible to apply for a state-issued certificate of franchise

authority under this chapter as to that municipality or county until the expiration date of the existing franchise agreement.

(2) For purposes of this section, an incumbent cable service provider will be 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 an unexpired franchise agreement granted by that specific municipality or county as of July 1, 2007.

(3) The term "affiliate or successor entity" in this section 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.

(4) Notwithstanding subsection (1), an incumbent cable service provider may elect to terminate an existing municipal or county franchise and apply for a state-issued certificate of franchise authority with respect to such municipality or county if another cable or video service provider has been granted a state-issued certificate of franchise authority for a service area located in whole or in part within the service area covered by the existing municipal or county franchise and such certificateholder has commenced providing service in such area. The incumbent cable service provider shall provide at the time of filing its application for a state-issued certificate of franchise authority written notice of its intent to terminate its existing franchise under this subsection to the department and to the affected municipality or county. The municipal or county franchise shall be terminated under this section on the

date the department issues to the incumbent cable service provider the state-issued certificate of franchise authority to provide service in such municipality or county franchise area to the incumbent cable service provider.

610.106 Franchise fees prohibited.--Except as otherwise provided in this chapter, the department may not impose any taxes, fees, charges, or other impositions on a cable or video service provider as a condition for the issuance of a state-issued certificate of franchise authority. No municipality or county may impose any taxes, fees, charges, or other exactions on certificateholders in connection with use of public right-of-way as a condition of a certificateholder doing business in the municipality or county, or otherwise, except such taxes, fees, charges, or other exactions permitted by chapter 202 and s. 337.401(6).

610.107 Buildout.--No franchising authority, state agency, or political subdivision may impose any buildout, system construction, or service deployment requirements on a certificateholder.

610.108 Customer service standards.--

(1) An incumbent cable service provider shall comply with customer service requirements reasonably comparable to the standards in 47 C.F.R. s. 76.309(c) until there are two or more providers offering service, excluding direct-to-home satellite service, in the incumbent service provider's relevant service area.

(2) Beginning on July 1, 2009, for all providers of cable service in municipalities and counties that, as of January 1,

2007, have an office or department dedicated to responding to cable service quality complaints, all such complaints shall be handled on and after July 1, 2009, by the Department of Agriculture and Consumer Services. Until that time, cable service quality complaints shall continue to be handled by the municipality or county. This provision shall not be construed to permit the municipality or county to impose customer service standards in conflict with this section.

(3) The Department of Agriculture and Consumer Services shall receive service quality complaints from customers of a certificateholder and shall address such complaints in an expeditious manner by assisting in the resolution of such complaint between the complainant and the certificateholder. The Department of Agriculture and Consumer Services shall adopt any procedural rules pursuant to ss. 120.536(1) and 120.54 necessary to implement this section.

610.109 Public, educational, and governmental access channels.--

(1) A certificateholder, not later than 12 months following a request by a municipality or county within whose jurisdiction the certificateholder is providing cable or video service, shall designate a sufficient amount of capacity on its network to allow the provision of public, educational, and governmental access channels for noncommercial programming as set forth in this section, except that a holder of a state-issued certificate of authority granted pursuant to s. 610.105 shall be required to satisfy the public, educational, and government access channel capacity obligations specified in this

section upon issuance of such certificate for any service area covered by such certificate that is located within the service area that was covered by the cable provider's terminated franchise.

(2) A certificateholder shall designate a sufficient amount of capacity on its network to allow the provision of a comparable number of public, educational, and governmental access channels or capacity equivalent that a municipality or county has activated under the incumbent cable service provider's franchise agreement as of July 1, 2007. For the purposes of this section, a public, educational, or governmental channel is deemed activated if the channel is being used for public, educational, or governmental programming within the municipality for at least 10 hours per day.

(3) If a municipality or county did not have public, educational, or governmental access channels activated under the incumbent cable service provider's franchise agreement as of July 1, 2007, not later than 12 months following a request by the municipality or county within whose jurisdiction a certificateholder is providing cable or video service, the cable or video service provider shall furnish:

(a) Up to three public, educational, or governmental channels or capacity equivalent for a municipality or county with a population of at least 50,000.

(b) Up to two public, educational, or governmental channels or capacity equivalent for a municipality or county with a population of less than 50,000.

(4) Any public, educational, or governmental channel

provided pursuant to this section that is not used by the municipality or county for at least 10 hours a day shall no longer be made available to the municipality or county but may be programmed at the cable or video service provider's discretion. At such time as the municipality or county can certify to the cable or video service provider a schedule for at least 10 hours of daily programming, the cable or video service provider shall restore the previously lost channel but shall be under no obligation to carry that channel on a basic or analog tier.

(5) If a municipality or county has not used the number of access channels or capacity equivalent permitted by subsection (3), access to the additional channels or capacity equivalent allowed in subsection (3) shall be provided upon 12 month's written notice if the municipality or county meets the following standard: if a municipality or county has one active public, educational, or governmental channel and wishes to activate an additional public, educational, or governmental channel, the initial channel shall be considered to be substantially used when 12 hours are programmed on that channel each calendar day. In addition, at least 40 percent of the 12 hours of programming for each business day on average over each calendar quarter must be nonrepeat programming. Nonrepeat programming shall include the first three videocastings of a program. If a municipality or county is entitled to three public, educational, or governmental channels under subsection (3) and has in service two active public, educational, or governmental channels, each of the two active channels shall be considered to be substantially used

when 12 hours are programmed on each channel each calendar day and at least 50 percent of the 12 hours of programming for each business day on average over each calendar quarter is nonrepeat programming for three consecutive calendar quarters.

(6) The operation of any public, educational, or governmental access channel or capacity equivalent provided under this section shall be the responsibility of the municipality or county receiving the benefit of such channel or capacity equivalent, and a certificateholder bears only the responsibility for the transmission of such channel content. A certificateholder shall be responsible for providing the connectivity to each public, educational, or governmental access channel distribution point up to the first 200 feet from the certificateholder's activated cable or video transmission system.

(7) The municipality or county shall ensure that all transmissions, content, or programming to be transmitted over a channel or facility by a certificateholder are provided or submitted to the cable or video service provider in a manner or form that is capable of being accepted and transmitted by a provider without any requirement for additional alteration or change in the content by the provider, over the particular network of the cable or video service provider, which is compatible with the technology or protocol used by the cable or video service provider to deliver services. The provision of public, educational, or governmental content to the provider constitutes authorization for the provider to carry such content, including, at the provider's option, authorization to

carry the content beyond the jurisdictional boundaries of the municipality or county.

(8) Where technically feasible, a certificateholder and an incumbent cable service provider shall use reasonable efforts to interconnect their networks for the purpose of providing public, educational, and governmental programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. Certificateholders and incumbent cable service providers shall negotiate in good faith and incumbent cable service providers may not withhold interconnection of public, educational, and governmental channels.

(9) A certificateholder is not required to interconnect for, or otherwise to transmit, public, educational, and governmental content that is branded with the logo, name, or other identifying marks of another cable or video service provider, and a municipality or county may require a cable or video service provider to remove its logo, name, or other identifying marks from public, educational, and governmental content that is to be made available to another provider.

(10) A court of competent jurisdiction shall have exclusive jurisdiction to enforce any requirement under this section.

610.112 Nondiscrimination by municipality or county.--

(1) A municipality or county shall allow a certificateholder to install, construct, and maintain a network within a public right-of-way and shall provide a certificateholder with open, comparable, nondiscriminatory, and

competitively neutral access to the public right-of-way in accordance with the provisions of s. 337.401. All use of a public right-of-way by a certificateholder is nonexclusive.

(2) A municipality or county may not discriminate against a certificateholder regarding:

(a) The authorization or placement of a network in a public right-of-way;

(b) Access to a building or other property; or

(c) Utility pole attachment terms.

610.113 Limitation on local authority.--

(1) A municipality or county may not impose additional requirements on a certificateholder, including, but not limited to, financial, operational, and administrative requirements, except as expressly permitted by this chapter. A municipality or county may not impose on activities of a certificateholder a requirement:

(a) That particular business offices be located in the municipality or county;

(b) Regarding the filing of reports and documents with the municipality or county that are not required by state or federal law and that are not related to the use of the public right-of-way. Reports and documents other than schematics indicating the location of facilities for a specific site that are provided in the normal course of the municipality's or county's permitting process, that are authorized by s. 337.401 for communications services providers, or that are otherwise required in the normal course of such permitting process shall not be considered related to the use of the public right-of-way for communications

service providers. A municipality or county may not request information concerning the capacity or technical configuration of a certificateholder's facilities;

(c) For the inspection of a certificateholder's business records; or

(d) For the approval of transfers of ownership or control of a certificateholder's business, except that a municipality or county may require a certificateholder to provide notice of a transfer within a reasonable time.

(2) Notwithstanding any other provision of law, a municipality or county may require the issuance of a permit in accordance with and subject to s. 337.401 to a certificateholder that is placing and maintaining facilities in or on a public right-of-way in the municipality or county. In accordance with s. 337.402, the permit may require the permitholder to be responsible, at the permitholder's expense, for any damage resulting from the issuance of such permit and for restoring the public right-of-way to its original condition before installation of such facilities. The terms of the permit shall be consistent with construction permits issued to other providers of communications services placing or maintaining communications facilities in a public right-of-way.

610.114 Discrimination prohibited.--

(1) The purpose of this section is to prevent discrimination among potential residential subscribers.

(2) Pursuant to 47 U.S.C. s. 541(a)(3), a certificateholder may not deny access to service to any group of potential residential subscribers because of the race or income

of the residents in the local area in which such group resides.

(3) An affected person may seek enforcement of subsection (2) by initiating a proceeding with the Department of Agriculture and Consumer Services pursuant to s. 570.544.

(4) For purposes of determining whether a certificateholder has violated subsection (2), cost, density, distance, and technological or commercial limitations shall be taken into account. Use of an alternative technology that provides comparable content, service, and functionality may not be considered a violation of subsection (2). The inability to serve an end user because a certificateholder is prohibited from placing its own facilities in a building or property is not a violation of subsection (2). This section may not be construed to authorize any buildout requirements on a certificateholder.

(5) The Department of Agriculture and Consumer Services shall adopt any procedural rules pursuant to ss. 120.536(1) and 120.54 necessary to implement this section.

610.115 Compliance.--If a certificateholder is found by a court of competent jurisdiction not to be in compliance with the requirements of this chapter, the certificateholder shall have a reasonable period of time, as specified by the court, to cure such noncompliance.

610.116 Reports to the Legislature.--

(1) The Office of Program Policy Analysis and Government Accountability shall submit to the President of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders of the Senate and House of Representatives, by December 1, 2009, a report on the status of competition in the

cable and video service industry, including, by each municipality and county, the number of cable and video service providers, the number of cable and video subscribers served, the number of areas served by fewer than two cable or video service providers, the trend in cable and video service prices, and the identification of any patterns of service as they impact demographic and income groups.

(2) By January 15, 2008, the Department of Agriculture and Consumer Services shall make recommendations to the President of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders of the Senate and House of Representatives regarding the workload and staffing requirements associated with consumer complaints related to video and cable certificateholders. The Department of State shall provide to the Department of Agriculture and Consumer Services, for inclusion in the report, the workload requirements for processing the certificates of franchise authority. In addition, the Department of State shall provide the number of applications filed for cable and video certificates of franchise authority and the number of amendments received to original applications for franchise certificate authority.

610.117 Severability.--If any provision of ss. 610.102-610.116 or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of ss. 610.102-610.116 that can be given effect without the invalid provision or application, and to this end the provisions of ss. 610.102-610.116 are severable.

Section 7. Section 166.046, Florida Statutes, is repealed.

Section 8. Paragraph (a) of subsection (3) of section 350.81, Florida Statutes, is amended to read:

350.81 Communications services offered by governmental entities.--

(3)(a) A governmental entity that provides a cable service shall comply with the Cable Communications Policy Act of 1984, 47 U.S.C. ss. 521 et seq., the regulations issued by the Federal Communications Commission under the Cable Communications Policy Act of 1984, 47 U.S.C. ss. 521 et seq., and all applicable state and federal rules and regulations, including, but not limited to, ~~s. 166.046 and~~ those provisions of chapters 202, 212, ~~and~~ 337, and 610 that ~~which~~ apply to a provider of the services.

Section 9. Section 364.0361, Florida Statutes, is amended to read:

364.0361 Local government authority; nondiscriminatory exercise.--A local government shall treat each telecommunications company in a nondiscriminatory manner when exercising its authority to grant franchises to a telecommunications company or to otherwise establish conditions or compensation for the use of rights-of-way or other public property by a telecommunications company. A local government may not directly or indirectly regulate the terms and conditions, including, but not limited to, the operating systems, qualifications, services, service quality, service territory, and prices, applicable to or in connection with the provision of any voice-over-Internet protocol, regardless of the platform, provider, or protocol, broadband or information service. This section does not relieve a provider from any obligations under

~~s. 166.046 or~~ s. 337.401.

Section 10. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. CS/HB 529

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Roberson offered the following:

Amendment

Remove line(s) 812 and insert:

December 1, 2009, and every year for five years, a report on the status of competition in the

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h0529-Roberson Amd.doc

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 567 Communications Services Tax
SPONSOR(S): Reagan
TIED BILLS: **IDEN./SIM. BILLS:** SB 980

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Utilities & Telecommunications	6 Y, 0 N	Cater	Keating
2) Jobs & Entrepreneurship Council	11 Y, 0 N, As CS	Cater	Thorn
3) Policy & Budget Council		Voyles SV	Hansen MPH
4)			
5)			

SUMMARY ANALYSIS

CS/HB 567 reduces the Communications Services Tax (CST) rates for most communications services. The general state CST rate is reduced from 6.8 percent to 6.55 percent. For direct-to-home satellite service, the rate is reduced from 10.8 percent to 10.55 percent, and the state's allocation of revenue on such service is reduced from 63 percent to 62.1 percent.

The bill establishes a new procedural system for the Department of Revenue (DOR) to administer resale certificates to dealers under the CST. The new procedural system is similar to the one DOR utilizes for sales and use tax. The bill requires DOR to establish a toll-free number to verify valid registration numbers and resale certificates, and to establish a system for receiving information from dealers regarding certificate numbers.

The bill provides that commencing July 1, 2007, the emergency rate provision may only be exercised if CST revenue is reallocated away from the local government. Any such adjustment must be made within six months of DOR notifying local governments in writing that complete information related to DOR audits of these amounts is available.

The Revenue Estimating Conference has not adopted an estimate for this Council Substitute. Preliminary estimates are that this bill will have a negative fiscal impact of $15.8 million to state government and $1.1 million to local governments in fiscal year (FY) 2007-08, and of $37.9 million to state government and $4.8 million to local governments in FY 2008-09.

Except as otherwise provided in the act, this act shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes-The bill reduces the communications services tax from its current rate of 6.8 percent to 6.55 percent. For direct-to-home satellite service, the reduction is from its current rate of 10.8 percent to 10.55 percent. The bill also deletes the authority for cities and counties to impose emergency CST rates, except in limited circumstances.

B. EFFECT OF PROPOSED CHANGES:

Background

In 2000 and 2001, the Legislature passed the "Communications Services Tax (CST) Simplification Law,"[1] which was codified in ch. 202, F.S. This was designed to restructure taxes on telecommunications, cable, direct-to-home satellite, and related services.[2,3] The CST replaces and consolidates several different state and local taxes into two taxes: the Florida CST and the local CST.

Old Tax Structure (Prior to October 1, 2001)	New Tax Structure (After October 1, 2001)
Number of Taxes = 7 State Sales Tax Local Option Tax Gross Receipts Tax Public Service Tax Cable Franchise Fee Telecom Franchise Fee Cable and Telecom Permit Fees	Number of Taxes = 2 State Communications Services Tax Local Communications Services Tax

Some examples of services subject to the tax are:

Local and long-distance telephone
Cable television
Direct-to-home satellite television
Mobile communications, including detailed billing charges
Private line services
Pager and beeper
Telephone charges made by a hotel or motel
Facsimiles (FAX), when not provided in the course of professional or advertising service

[1] Ch. 2000-260 and 2001-140, L.O.F.
[2] Much of the general information related to the CST is from the Florida Department of Revenue's website on the CST. http://dor.myflorida.com/dor/taxes/GT-800011.html#comservicetax
[3] Section 202.11(2), F.S., defines "communications services" rather broadly to encompass existing technologies and ones that may later be devised. It includes services such as cable television, local and long distance telephone service, paging service, and satellite television service; however, the definition does not include Internet access or electronic mail services.

In general, the tax includes a state rate of 6.8 percent plus a gross receipts tax rate of 2.37 percent, for a combined state communications services tax rate of 9.17 percent. However, residential wireline telephone service is only subject to the 2.37 percent gross receipts tax.[4] Each local taxing jurisdiction may levy its own local tax rate on communications services. Charter counties and municipalities that have not chosen to levy a permit fee may levy a local CST of up to 5.1 percent. Charter counties and municipalities who have chosen to levy a permit fee may levy a local CST of up to 4.98 percent. Noncharter counties may levy a local CST of up to 1.6 percent.[5] In addition, to the local CST, discretionary sales surtaxes levied by a county or school board are imposed as a local CST tax, with conversion rates of up to one percent.[6] However, these percentages may be higher due to emergency rates and permit fees adopted by the various local jurisdictions.[7]

Direct-to-home satellite services are taxed at a 10.8 percent state tax rate and a gross receipts tax rate of 2.37 percent for a total rate of 13.17 percent. This is due to federal law prohibiting the local taxation of direct-to-home satellite service.[8] The state CST collected, except that collected on direct-to-home satellite service, is distributed the same way as the sales and use tax.[9] For direct-to-home satellite service, 63 percent of the state CST is distributed using the sales tax formula, with the remainder being transferred to the Local Government Half-Cent Clearing Fund, which is allocated in the same proportion as the half-cent sales tax, and the emergency distribution. The gross receipts tax administered under this law goes to the Public Education Capital Outlay and Debt Service Fund (PECO).[10]

In addition to the CST, there may be an E911 fee of up to 50 cents per month for wireless and wireline telephone service.[11] For landline telephones, there is a surcharge on customer bills for telephone relay service for the hard of hearing. This charge is capped at 25 cents per access line;[12] the current surcharge is 15 cents per access line.[13]

In state fiscal year 2005-2006, the state collected $2.325 billion in CST. The breakdown of the receipts is as follows:

- Sales Tax: $1,007.2 million (43.31 percent)
- Local Tax: $843.3 million (36.26 percent)
- Gross Receipts: $382.5 million (18.18 percent)
- Direct-to-Home Satellite Tax: $52.2 million (2.24 percent)

The breakdown of the tax distribution is as follows:

- Local Government: $1,003 million (43.21 percent)
- General Revenue: $887.7 million (38.24 percent)
- PECO: $426.9 million (18.39 percent)
- Administration: $3.6 million (0.16 percent)[14]

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[4] There is also an exemption from the CST for sales to the Federal government, state and local government agencies, and various non-profit organizations. (s. 202.125, F.S.)
[5] S. 202.19(2), F.S.
[6] See s.202.19(5), F.S. The conversion rates are contained in s. 202.20(3), F.S.
[7] Florida Department of Revenue's Presentation to the Florida House of Representative's Committee on Utilities & Telecommunications on January 11, 2007. Emergency rates are authorized in s. 202.20(2), F.S.
[8] Pub. L. 104-104, Title IV, s. 602, February 8, 1996, 110 Stat. 144
[9] S. 202.20(6), F.S.
[10] *2006 Florida Tax Handbook,* Communications Services Tax, p. 38. Available at http://edr.state.fl.us/reports/taxhandbooks/taxhandbook2006.pdf. (February 1, 2007)
[11] S. 365.171(13)(a)1., F.S. for wireline and s. 365.172(8)(a), F.S., for wireless.
[12] S. 427.704, F.S.
[13] Florida Public Service Commission, *The Status of The Telecommunications Access System Act of 1991,* December 2006, p. 14.
[14] Information compiled from the Florida Department of Revenue's Presentation to the Florida House of Representative's Committee on Utilities & Telecommunications on January 11, 2007.

Proposed Changes

Tax Rate

The bill amends s. 202.12(1)(a) F.S., to reduce the general state CST from 6.8 percent to 6.55 percent. The bill also amends s. 202.12(1)(b), F.S., to reduce the general state CST on direct-to-home satellite television service from 10.8 percent to 10.55 percent.

The bill provides that the reduction in the state CST rate applies to bills for communications services dated on or after January 1, 2008.

Resale Certificates

Current law requires that a sale of communications services for resale must be made in compliance with DOR's rules. To ensure that a sale of communications services for resale is not subjected to the CST, DOR's rules provide that resale certificates are issued annually by DOR. These rules provide that a selling dealer must receive a copy of a resale certificate from a reseller purchasing its services. The rules allow a selling dealer, who makes a sale for purposes of resale to a purchaser who has previously provided a copy of its current resale certificate, to seek a new copy of the resale certificate for each subsequent transaction in that calendar year. The selling dealer must obtain a new copy of the resale certificate for sales made for the purpose of resale in subsequent calendar years.[15]

The bill creates s. 202.16(2)(b), F.S, providing that effective January 1, 2008, any dealer who makes a sale for resale is required to document the exempt sale by retaining a copy of the purchaser's initial or annual resale certificate issued by DOR. Under the bill, in lieu of maintaining a copy of the certificate, a dealer may document, prior to the time of sale, an authorization number that will be provided by DOR telephonically, electronically, or by other means established by DOR. The dealer may also rely on an additional or annual resale certificate issued pursuant to s. 202.17(6), F.S., valid at the time of receipt for the purchaser, without seeking additional annual resale certificates from the purchaser, if the dealer makes recurring sales to the purchaser in the normal course of business.

The bill defines "recurring sales to a purchaser in the normal course of business" as a sale in which the dealer extends credit to the purchaser and records the debt as an account receivable, or in which the dealer sells to a purchaser who has an established cash account, similar to an open credit account. For purposes of s. 202.16(2)(b)1, F.S., purchases are made from a selling dealer on a continual basis if, in the normal course of business, the selling dealer makes sales to the purchaser no less frequently than once in every 12-month period.

Through the informal protest process provided in s. 213.21, F.S., and DOR rules, the bill provides that a dealer may submit, in lieu of a resale certificate, an exemption certificate executed by entities that were exempt at the time of sale or resale certificates provided by purchasers who were active dealers at the time of sale. However, this alternative documentation may not be accepted in a proceeding under ch. 120, F.S., or in circuit court proceedings instituted under ch. 72, F.S., relating to tax matters.

The bill provides for a certificate verification system for the CST that is essentially the same as what is currently provided for the sales and use tax. The bill requires DOR, by January 1, 2008, to establish a toll-free number for the verification of valid registration numbers and resale certificates for the CST. The system must be able to guarantee a low busy rate, respond to keypad inquiries, and be updated daily.

The bill also requires DOR to establish a system for receiving information from dealers regarding resale certificate numbers of other dealers who are seeking to make purchases for resale. DOR must provide dealers, free of charge, with verification of certificate numbers that are canceled or invalid.

[15] Rule 12-A19.060, F.A.C.

Allocation and Disposition of Tax Proceeds

Section 202.18, F.S., provides for the distribution of the CST proceeds. Section 202.18(2)(b), F.S., provides that 63 percent of the state CST from direct-to-home satellite service is allocated to the state for distributing the same as state sales taxes. The remaining portion is allocated to the Local Government Half-cent Sales Tax Clearing Trust Fund. Of the amount that is allocated to the Local Government Half-cent Sales Tax Clearing Trust Fund, seventy percent is allocated in the same proportion as the allocation of total receipts of the half-cent sales tax and the emergency distribution in the prior state fiscal year. The remaining thirty percent is distributed to fiscally constrained counties. The bill reduces the allocation to the state to 62.1 percent of the satellite service tax collected, in order to keep the local governments whole with respect to the portion of the taxes they receive from the state on such services.

For example, with a $100 satellite service bill, one would currently pay $10.80 (10.8 percent) in state CST and $2.37 in GRT. Of the $10.80 in state CST, $4 would go to local governments. Under the allocations provided in the bill, one would pay $10.55 (10.55 percent) in state CST, of which $4 would still be going to local governments.

Emergency Local CST Rates

Section 202.20(2)(a)1, F.S., provides that if revenues received by a local government from the CST with respect to certain periods[16] are less than the revenues from the replaced revenue source in the 2000-2001 period, plus reasonably anticipated revenue growth, the governing authority may adjust the rate of the local CST to generate the entire shortfall within one year of the rate adjustment and by an amount necessary to generate the expected amount of revenue on an annual basis. Section 202.20(2)(a)2, F.S., provides that if complete data is not available to determine whether or not the revenues the local government actually received are less than the revenues received from the replaced revenue source, the local government shall use the best data available to make that determination. The bill amends this section to provide that complete data shall be deemed available to local governments after DOR completes audits, including the redistribution of local tax, of dealers who account for no less than 80 percent of the amount of CST received for fiscal year 2005-2006.

Section 202.20(2)(a)3, F.S., allows a local government to make the adjustment permitted under Section 202.20(2)(a)(1), F.S., by emergency ordinance or resolution. The bill provides that beginning July 1, 2007, local governments may use this authority only if DOR or a dealer reallocates revenue away from the local government. However, the adjustments must be made within six months following the date the department notifies local governments in writing that complete data is deemed available.

Effective Date

Except as otherwise expressly provided in the act, this act shall take effect upon becoming law.

C. SECTION DIRECTORY:

Section 1 — Amends ss. 202.12(1)(a) and (b), F.S., relating to tax on the sales of communications services.

Section 2 — Provides that the amendments to s. 202.12, F.S., apply to bills for communications services dated on or after January 1, 2008.

Section 3 — Amends s. 202.16(2), F.S, relating to resale certificates.

[16] The actual periods are the periods ending December 31, 2001, March 31, 2002, June 30, 2002, and September 30, 2002.

Section 4 Requires DOR to establish a toll-free number for the verification of valid registration numbers and resale certificates.

Section 5 Requires DOR to establish a system for receiving information from dealers regarding certificate numbers of those who are seeking to make purchases for resale.

Section 6 Amends s. 202.18(2)(b), F.S., relating to the allocation and disposition of tax proceeds.

Section 7 Amends s. 202.20(2)(a), F.S., relating to local communications services tax conversion rates.

Section 8 Except as otherwise expressly provided in this act, this act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has not estimated this bill. Preliminary estimates are that this bill has the following negative fiscal impact on state government:

	FY 2007-08	FY 2008-09
General Revenue	($ 15.8m)	($ 37.8m)
State Trust	insignificant	($ 0.1m)
Total	($ 15.8m)	($ 37.9m)

2. Expenditures:

The Department of Revenue will incur some expenditure in notifying communications services dealers of the annual change in the CST and in the resale certificate provisions of the bill. The Department has indicated that the operational impact is insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not estimated this bill. Preliminary estimates are that this bill has the following negative fiscal impact on local governments:

	FY 2007-08	FY 2008-09
Revenue Sharing	($ 0.5m)	($ 1.2m)
Local Gov't. Half Cent	($ 0.6m)	($ 3.6m)
Local Option	Insignificant	($ 0.0m)
Total Local Impact	($ 1.1m)	($ 4.8m)

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under the bill, in the first year after the effective date, consumers will see a reduction in the amount of CST paid in the aggregate of approximately $16.9 million. Communications services dealers will incur some administrative costs associated with implementing the bill's provisions.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The provision of the bill limiting the authority of cities and counties to adjust CST rates by emergency ordinance only in certain conditions reduces those entities' authority to raise revenues. The CST was designed as a revenue-neutral tax, and the Legislature made specific findings that the legislation did not reduce the authority that cities or counties had to raise revenues in the aggregate, as such authority existed on February 1, 1989.[17] It is unclear to what extent, if any, the bill's limitation on the emergency rate authority reduces the authority of cities and counties to raise revenues in the aggregate.

2. Other:

None

B. RULE-MAKING AUTHORITY:

According to the Department of Revenue (DOR), its Communications Services Tax Return,[18] will need to be amended to reflect the changes in CST rates. The amended form will need to be promulgated as a rule. DOR will also need to amend its communications services tax rule related to sales for the purpose of resale[19] in a manner consistent with its resale rules for sales and use tax.[20]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

No Statement Submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 8, 2007, the Committee on Utilities & Telecommunications adopted a strike-all amendment. The amendment:

- Reduced the state Communications Services Tax (CST) rates by 1.17 percent, as applied to both the general state CST and the CST on direct-to-home satellite service.
- Provided that the reduction in CST rates shall apply to bills dated on or after January 1, 2008. This gives the Department or Revenue (DOR) time to notify dealers of communications services of the change and to change the forms. This date also coincides with the date that the changes to local CST rates go into effect.

[17] See Section 202.105, F.S.
[18] Form DR-700016.
[19] Rule A-19.060, F.A.C.
[20] Rule 12A-1.039(3)(a) and (b), F.A.C.

- Clarified the procedures for DOR to administer resale certificates issued to dealers under the CST to conform to the administration of resale certificates under the sales tax. This provision would allow dealers to rely on a valid initial or annual resale certificate without having to obtain additional certificates from such purchases. These provisions would become effective January 1, 2008.
- Required DOR, by January 1, 2008, to establish a toll-free number to verify valid registration numbers and resale certificates.
- Required DOR, by January 1, 2008, to establish a system for receiving information from dealers regarding certificate numbers of those who are seeking to make purchases for resale.
- Reduced the percent of the allocation of the state direct-to-home satellite tax that is allocated to the state, in order to keep the local governments whole as to the amount of revenues they receive from the tax.
- As of October 1, 2007, repealed the authority under which local governments are allowed to adopt "emergency rates" exceeding the statutory maximum rates allowed under the local CST. The "emergency rate provision" was intended to be temporary in nature and to provide a safety net and transition from Florida's old tax structure to ensure that local governments were held harmless under the new CST. The amendment allowed local governments to make adjustment, up until October 1, 2007, if the DOR or a dealer reallocates revenue away from the local government.
- Provided that the amendments to the "emergency rates provision" do not apply to emergency rates adopted prior to the effective dates of this act.
- Provided that except as otherwise expressly provided, this act shall take effect upon becoming law.

On March 15, 2007, the Jobs and Entrepreneurship Council adopted three amendments to the strike-all, creating a council substitute. The amendments:

- Reduce the state Communications Services Tax (CST) rates by .25 percent, as applied to both the general state CST and the CST on direct-to-home satellite service.
- Reduce the percent of the allocation of the state direct-to-home satellite tax that is allocated to the state, in order to keep the local governments whole as to the amount of revenues they receive from the tax.
- Amend the local CST emergency rate provisions to provide that after July 1, 2007, local governments can only enact emergency rates following a reallocation of revenue. These adjustments must be made no later than six months after DOR notifies local governments that complete data concerning communications services tax received for fiscal year 2005-2006 is available.

This analysis is drafted to the council substitute.

A bill to be entitled

An act relating to the communications services tax; amending s. 202.12, F.S.; decreasing the rate of the tax; providing for application; amending s. 202.16, F.S.; requiring dealers to document exempt sales for resale; providing requirements and procedures; providing a definition; providing construction; providing for dealer provision of evidence of the exempt status of certain sales through an informal protest process; requiring the Department of Revenue to accept certain evidence during the protest period; providing limitations; requiring the department to establish a toll-free telephone number for the purpose of verifying registration numbers and resale certificates; requiring the department to establish a system for receiving information from dealers regarding certificate numbers; amending s. 202.18, F.S.; decreasing the percentage allocation of certain tax proceeds; amending s. 202.20, F.S.; limiting local governmental authority to make certain rate adjustments in the tax under certain circumstances; providing for a determination of completeness of certain data; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) and (b) of subsection (1) of section 202.12, Florida Statutes, are amended to read:

202.12 Sales of communications services.--The Legislature finds that every person who engages in the business of selling communications services at retail in this state is exercising a taxable privilege. It is the intent of the Legislature that the tax imposed by chapter 203 be administered as provided in this chapter.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction, and the tax is due and payable as follows:

(a) Except as otherwise provided in this subsection, at a rate of 6.55 ~~6.8~~ percent applied to the sales price of the communications service which:

1. Originates and terminates in this state, or

2. Originates or terminates in this state and is charged to a service address in this state,

when sold at retail, computed on each taxable sale for the purpose of remitting the tax due. The gross receipts tax imposed by chapter 203 shall be collected on the same taxable transactions and remitted with the tax imposed by this paragraph. If no tax is imposed by this paragraph by reason of s. 202.125(1), the tax imposed by chapter 203 shall nevertheless be collected and remitted in the manner and at the time prescribed for tax collections and remittances under this chapter.

(b) At the rate of 10.55 ~~10.8~~ percent on the retail sales price of any direct-to-home satellite service received in this state. The proceeds of the tax imposed under this paragraph

shall be accounted for and distributed in accordance with s. 202.18(2). The gross receipts tax imposed by chapter 203 shall be collected on the same taxable transactions and remitted with the tax imposed by this paragraph.

Section 2. The amendments to s. 202.12, Florida Statutes, by this act shall apply to bills for communications services dated on or after January 1, 2008.

Section 3. Effective January 1, 2008, subsection (2) of section 202.16, Florida Statutes, is amended to read:

202.16 Payment.--The taxes imposed or administered under this chapter and chapter 203 shall be collected from all dealers of taxable communications services on the sale at retail in this state of communications services taxable under this chapter and chapter 203. The full amount of the taxes on a credit sale, installment sale, or sale made on any kind of deferred payment plan is due at the moment of the transaction in the same manner as a cash sale.

(2)(a) A sale of communications services that are used as a component part of or integrated into a communications service or prepaid calling arrangement for resale, including, but not limited to, carrier-access charges, interconnection charges paid by providers of mobile communication services or other communication services, charges paid by cable service providers for the transmission of video or other programming by another dealer of communications services, charges for the sale of unbundled network elements, and any other intercompany charges for the use of facilities for providing communications services for resale, must be made in compliance with the rules of the

department. Any person who makes a sale for resale which is not in compliance with these rules is liable for any tax, penalty, and interest due for failing to comply, to be calculated pursuant to s. 202.28(2)(a).

(b)1. Any dealer who makes a sale for resale shall document the exempt nature of the transaction, as established by rules adopted by the department, by retaining a copy of the purchaser's initial or annual resale certificate issued pursuant to s. 202.17(6). In lieu of maintaining a copy of the certificate, a dealer may document, prior to the time of sale, an authorization number provided telephonically or electronically by the department or by such other means established by rule of the department. The dealer may rely on an initial or annual resale certificate issued pursuant to s. 202.17(6), valid at the time of receipt from the purchaser, without seeking additional annual resale certificates from such purchaser, if the dealer makes recurring sales to the purchaser in the normal course of business on a continual basis. For purposes of this paragraph, the term "recurring sales to a purchaser in the normal course of business" means sales in which the dealer extends credit to the purchaser and records the debt as an account receivable, or in which the dealer sells to a purchaser who has an established cash account, similar to an open credit account. For purposes of this paragraph, purchases are made from a selling dealer on a continual basis if the selling dealer makes, in the normal course of business, sales to the purchaser no less frequently than once in every 12-month period.

2. A dealer may, through the informal conference procedures provided for in s. 213.21 and the rules of the department, provide the department with evidence of the exempt status of a sale. Exemption certificates executed by entities that were exempt at the time of sale, resale certificates provided by purchasers who were active dealers at the time of sale, and verification by the department of a purchaser's active dealer status at the time of sale in lieu of a resale certificate shall be accepted by the department when submitted during the protest period but may not be accepted in any proceeding under chapter 120 or any circuit court action instituted under chapter 72. Section 4. Effective January 1, 2008, the Department of Revenue shall establish a toll-free telephone number for the verification of valid dealer registration numbers and resale certificates issued under chapter 202, Florida Statutes. The system must be adequate to guarantee a low busy rate, must respond to keypad inquiries, and must provide data that is updated daily.

Section 5. Effective January 1, 2008, the Department of Revenue shall establish a system for receiving information from dealers regarding certificate numbers of purchasers who are seeking to make purchases for resale under chapter 202, Florida Statutes. The department shall provide such dealers, free of charge, with verification numbers that are canceled or invalid.

Section 6. Effective January 1, 2008, paragraph (b) of subsection (2) of section 202.18, Florida Statutes, is amended to read:

202.18 Allocation and disposition of tax proceeds.--The proceeds of the communications services taxes remitted under this chapter shall be treated as follows:

(2) The proceeds of the taxes remitted under s. 202.12(1)(b) shall be divided as follows:

(b) Sixty-two and one-tenth ~~Sixty-three~~ percent of the remainder shall be allocated to the state and distributed pursuant to s. 212.20(6), except that the proceeds allocated pursuant to s. 212.20(6)(d)3. shall be prorated to the participating counties in the same proportion as that month's collection of the taxes and fees imposed pursuant to chapter 212 and paragraph (1)(b).

Section 7. Paragraph (a) of subsection (2) of section 202.20, Florida Statutes, is amended to read:

202.20 Local communications services tax conversion rates.--

(2)(a)1. With respect to any local taxing jurisdiction, if, for the periods ending December 31, 2001; March 31, 2002; June 30, 2002; or September 30, 2002, the revenues received by that local government from the local communications services tax imposed under subsection (1) are less than the revenues received from the replaced revenue sources for the corresponding 2000-2001 period; plus reasonably anticipated growth in such revenues over the preceding 1-year period, based on the average growth of such revenues over the immediately preceding 5-year period; plus an amount representing the revenues from the replaced revenue sources for the 1-month period that the local taxing jurisdiction was required to forego, the governing authority may

adjust the rate of the local communications services tax upward to the extent necessary to generate the entire shortfall in revenues within 1 year after the rate adjustment and by an amount necessary to generate the expected amount of revenue on an ongoing basis.

2. If complete data are not available at the time of determining whether the revenues received by a local government from the local communications services tax imposed under subsection (1) are less than the revenues received from the replaced revenue sources for the corresponding 2000-2001 period, as set forth in subparagraph 1., the local government shall use the best data available for the corresponding 2000-2001 period in making such determination. Complete data shall be deemed available to all local governments after the department completes audits, including the redistribution of local tax, of dealers who account for no less than 80 percent of the amount of communications services tax revenues received for fiscal year 2005-2006.

3. The adjustment permitted under subparagraph 1. may be made by emergency ordinance or resolution and may be made notwithstanding the maximum rate established under s. 202.19(2) and notwithstanding any schedules or timeframes or any other limitations contained in this chapter. Beginning July 1, 2007, a local government may make such adjustment only if the department or a dealer allocates or reallocates revenues away from the local government. However, any such adjustment shall be made no later than 6 months following the date the department notifies the local governments in writing that complete data is

available. The emergency ordinance or resolution shall specify an effective date for the adjusted rate, which shall be no less than 60 days after the date of adoption of the ordinance or resolution and shall be effective with respect to taxable services included on bills that are dated on the first day of a month subsequent to the expiration of the 60-day period. At the end of 1 year following the effective date of such adjusted rate, the local governing authority shall, as soon as is consistent with s. 202.21, reduce the rate by that portion of the emergency rate which was necessary to recoup the amount of revenues not received prior to the implementation of the emergency rate.

4. If, for the period October 1, 2001, through September 30, 2002, the revenues received by a local government from the local communications services tax conversion rate established under subsection (1), adjusted upward for the difference in rates between paragraphs (1)(a) and (b) or any other rate adjustments or base changes, are above the threshold of 10 percent more than the revenues received from the replaced revenue sources for the corresponding 2000-2001 period plus reasonably anticipated growth in such revenues over the preceding 1-year period, based on the average growth of such revenues over the immediately preceding 5-year period, the governing authority must adjust the rate of the local communications services tax to the extent necessary to reduce revenues to the threshold by emergency ordinance or resolution within the timeframes established in subparagraph 3. The foregoing rate adjustment requirement shall not apply to a local

government that adopts a local communications services tax rate by resolution or ordinance. If complete data are not available at the time of determining whether the revenues exceed the threshold, the local government shall use the best data available for the corresponding 2000-2001 period in making such determination. This subparagraph shall not be construed as establishing a right of action for any person to enforce this subparagraph or challenge a local government's implementation of this subparagraph.

Section 8. Except as otherwise expressly provided by this act, this act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. CS/HB 567

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Policy and Budget Council

Representative(s) Reagan offered the following:

Amendment (with directory and title amendments)

Remove line(s) 135 and insert:

charge, with verification of those numbers that are cancelled or invalid.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 793 Idea Bank
SPONSOR(S): Government Efficiency & Accountability Council, Hasner and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Audit & Performance	5 Y, 0 N	De La Paz	De La Paz
2) Government Efficiency & Accountability Council	13 Y, 0 N, As CS	De La Paz	Cooper
3) Policy & Budget Council		Leznoff	Hansen
4)			
5)			

SUMMARY ANALYSIS

CS/HB 793 implements idea 100 from the book *100 Innovative Ideas For Florida's Future*. The bill establishes the National Idea Bank within the Florida Legislature. The bill places responsibility for operating and maintaining an Idea Bank Internet website with nationwide access within the Legislative Committee on Intergovernmental Relations (LCIR). The website must provide a guided process for citizens and organizations to submit ideas. In addition, the bill provides that the LCIR must:

- Solicit and showcase ideas submitted which subsequently became law, or were otherwise successfully implemented, from across the nation on the website;
- Provide an annual list of the ideas that were the most frequently replicated;
- Organize and present all information to the public and to private organizations in a readily available, systematic and retrievable format; and
- Publicize the existence and use of the Idea Bank.

The bill also requires the LCIR to publish an annual report summarizing the ideas collected during the previous fiscal year. The report must also list the "top ideas" received and submit the report to the Governor, Speaker of the House of Representatives, and the President of the Senate by September 15th of each year. The report must also be posted on the Idea Bank website.

The bill may have some costs associated with the development and maintenance of the website; however these costs can be absorbed within the existing resources of the Legislature's budget.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

It could be said that this bill provides a means for the promotion of potentially all of the House principles through its provision providing for a centralized location for the collection of policy ideas, and its requirement that initiatives and programs that have succeeded be documented. The extent to which the individual House principles of providing limited government, lower taxes, personal responsibility, safeguarding individual liberty, empowering families, and enhancing public security, are advanced as a result of this bill, will depend on the substance, objective and effectiveness of the individual idea proposals themselves which are subsequently implemented.

B. EFFECT OF PROPOSED CHANGES:

In September of 2005, then Speaker Designate Marco Rubio announced his plan to provide Floridians with a more direct role in proposing, determining and directing the development and implementation of public policy by the Florida Legislature. The plan called for the publication of a book entitled *100 Innovative Ideas For Florida's Future.* Prior to the Legislature's organizational session of 2006, numerous public meetings, called "Idearaisers," were held to propose, discuss and evaluate policy ideas which would be considered for inclusion in the book. In addition, an interactive website www.100ideas.org was established for people to schedule their own idearaisers, submit their ideas for consideration, or review and comment on ideas submitted by others. The published book was released in November of 2006.

CS/HB 793 implements idea 100 from the book 100 Innovative Ideas For Florida's Future. The bill establishes the National Idea Bank within the Florida Legislature. The bill places responsibility for operating and maintaining an Idea Bank Internet website with nationwide access within the Legislative Committee on Intergovernmental Relations (LCIR). The website must provide a guided process for citizens and organizations to submit ideas. In addition, the bill provides that the LCIR must:

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- Provide an annual list of the ideas that were the most frequently replicated;
- Organize and present all information to the public and to private organizations in a readily available, systematic and retrievable format; and
- Publicize the existence and use of the Idea Bank.

The bill also requires the LCIR to publish an annual report summarizing the ideas collected during the previous fiscal year. The report must also list the "top ideas" received and submit the report to the Governor, Speaker of the House of Representatives, and the President of the Senate by September 15th of each year. The report must also be posted on the Idea Bank website.

C. SECTION DIRECTORY:

Section 1. Creates the National Idea Bank within the Florida Legislature.

Section 2. Provides and effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Costs associated with website development and maintenance may be absorbed by the Legislature.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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.

D. STATEMENT OF THE SPONSOR

The sponsor has indicated his intention to waive providing a statement.

No statement by Council Chair.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 7, 2007, the Government Efficiency & Accountability Council passed HB 795 as amended by the strike-all amendment adopted by the Committee on Audit & Performance.

A bill to be entitled

An act relating to the National Idea Bank; amending s. 11.70, F.S., relating to the Legislative Committee on Intergovernmental Relations; revising responsibilities and duties of the committee; creating s. 282.40, F.S.; creating the "National Idea Bank Act"; providing intent; directing the committee to create, maintain, and publicize an Idea Bank on an Internet website; providing access criteria for the website; requiring the committee to solicit and display certain information on the website; directing the committee to organize and present information in a systematic and retrievable format that is readily available to citizens and organizations; directing the committee to make annual reports to the Governor and the Legislature; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (2) of section 11.70, Florida Statutes, is amended, and paragraph (k) is added to subsection (4) of that section, to read:

11.70 Legislative Committee on Intergovernmental Relations.--

(2) FINDINGS AND PURPOSE.--

(a) The Legislature finds and declares that there is a need for an official body to:

1. Involve local and state officials in an advisory capacity to the executive and legislative branches of state government.

2. Study problems of the intergovernmental aspects of governmental structure, finance, functional performance, and relationships at the local, regional, state, and interstate levels.

3. Recommend solutions to intergovernmental problems.

4. Establish a regular system of reporting to state and local public officials on the progress of Florida and its political subdivisions toward meeting their intergovernmental responsibilities.

5. Encourage and recommend methods of effective and efficient delivery of services at the state and local levels through services integration and combination of complementary services delivery functions.

6. Assume responsibilities for administering, coordinating, or providing intergovernmental services as may be required by the Legislature or Governor.

7. Provide the Legislature, the Governor, and other interested parties with advice on intergovernmental concerns.

8. Assume responsibilities for creating, maintaining, and operating the National Idea Bank website created in s. 282.40.

(4) FUNCTIONS AND DUTIES.--The committee is authorized to:

(k) Carry out the responsibilities for creating, maintaining, and operating the National Idea Bank website created in s. 282.40.

Section 2. Section 282.40, Florida Statutes, is created to read:

282.40 National Idea Bank.--

(1) This section may be cited as the "National Idea Bank Act."

(2) It is the intent of the Legislature to provide a central location for collecting ideas and documenting programs and initiatives that have succeeded in governments and organizations.

(3) The National Idea Bank is created, and the Legislative Committee on Intergovernmental Relations shall:

(a) By January 1, 2008, create and maintain an "Idea Bank" on an Internet website operated by the Florida Legislature with nationwide access to carry out the purposes of this section.

(b) Provide Internet access to citizens and organizations and a guided process for submitting ideas.

(c) Solicit and showcase on the website ideas submitted from across the nation that subsequently became law or were otherwise successfully implemented.

(d) Provide on the website an annual list of the ideas that were most frequently replicated in this state or in other jurisdictions across the United States.

(e) Organize and present all information in a systematic and retrievable format that is readily available to citizens as well as public and private organizations.

(f) Publicize the existence and use of the Idea Bank.

(4) The committee shall annually publish a report summarizing the ideas received and collected during the previous

fiscal year and listing the ideas described in paragraph (3)(d) and shall submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by September 15 of each year. The full report shall also be posted on the Idea Bank website.

Section 3. This act shall take effect July 1, 2007.

Policy and Budget Council

March 16, 2007
9:00 a.m.
212 Knott Building

Addendum "A" Amendment Packet

Marco Rubio
Speaker

Ray Sansom
Chair

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

1

Amendment No. (for drafter's use only)

Bill No. CS/HB 529

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Traviesa offered the following:

Amendment (with title amendment)

Remove line(s) 432-515 and insert:

(3) An applicant for a state-issued certificate of franchise authority to provide cable or video service shall submit to the Department of State an application which contains:

(a) The official name of the cable or video service provider;

(b) The street address of the principal place of business of the cable or video service provider;

(c) The federal employer identification number or the Department of State's document number;

(d) The name, address, and telephone number of an officer, partner, owner, member, or manager as a contact person for the cable or video service provider to whom questions or concerns may be addressed; and

(e) A duly executed affidavit signed by an officer, partner, owner, or managing member affirming and containing:

1. That the applicant is fully qualified under the provisions of this chapter to file an application and affidavit for a certificate of franchise authority;

2. That the applicant has filed or will timely file with the Federal Communications Commission all forms required by that agency in advance of offering cable or video service in this state;

3. That the applicant agrees to comply with all applicable federal and state laws and regulations, to the extent that such state laws and rules are not in conflict with or superseded by the provisions of this chapter or other applicable state law;

4. That the applicant agrees to comply with all state laws and rules and municipal and county ordinances and regulations regarding the placement and maintenance of communications facilities in the public rights-of-way that are generally applicable to providers of communications services in accordance with s. 337.401;

5. A description of the service area for which the applicant seeks the certificate of franchise authority, which need not be coextensive with municipal, county, or other political boundaries;

6. The location of the applicant's principal place of business, the names of the applicant's principal executive officers, and a physical address sufficient for the purposes of ch. 48;

7. That the applicant will file with the department a notice of commencement of service within 5 business days after first providing service in each area described in paragraph (5); and

8. A statement affirming that the applicant will notify the department of any change of address or contact person.

(4) Before the 10th business day after the department receives the application, the department shall notify the applicant whether the application and affidavit described in subsection (3) are complete. If the department rejects the application and affidavit, the department must specify with particularity the reasons for the rejection and permit the applicant to amend such application/affidavit to cure any deficiency. The department shall act upon the amended application/affidavit within 10 business days of the department's receipt of the corrected application/affidavit.

(5) The department shall issue a certificate of franchise authority to the applicant before the 15th business day after receipt of an accepted application. The certificate of franchise authority issued by the department shall contain:

(a) The name of the certificateholder and its identification number.

(b) A grant of authority to provide cable or video service as requested in the application.

(c) A grant of authority to construct, maintain, and operate facilities through, upon, over, and under any public right-of-way or waters.

(d) A statement that the grant of authority is subject to lawful operation of the cable or video service by the applicant or its successor in interest.

(e) A statement that describes the service area for which this certificate of authority applies.

(f) A statement that includes the effective date of the commencement of this authority.

(6) If the department fails to act on an accepted application within 30 business days after receipt of the accepted application, the application shall be deemed approved without further action.

(7) A certificate holder that seeks to include additional service areas in its current certificate shall file an amendment to the certificate with the department. Such amendment shall specify the name and address of the certificate holder, the new service area or areas to be served, and the effective date of commencement of operations in the new service area or areas. This amendment must be filed with the department within 5 business days after first providing service in each such additional area.

(8) The certificate of franchise authority issued by the department is fully transferable to any successor in interest to the applicant to which the certificate is initially granted. A notice of transfer shall be filed with the department and the relevant municipality or county within 14 business days following the completion of such transfer.

(9) The certificate of franchise authority issued by the department may be terminated by the cable or video service provider by submitting notice to the department.

(10) An applicant may challenge a denial of an application by the department in a court of competent jurisdiction through a petition for mandamus.

(11) In the execution of this section, the department shall function in a ministerial capacity accepting information contained in the application and affidavit at face value. The applicant shall ensure continued compliance with all applicable business formation, registration, and taxation statutes.

(12) The application shall be accompanied by a one-time fee of $10,000.

(13) Beginning 5 years after approval of the certificateholder's initial certificate of franchise issued by the department, and every 5 years thereafter, the certificateholder shall update the information contained in the original application for a certificate of franchise. At the time of filing the information update, the certificateholder shall pay a processing fee of $1,000. Any certificateholder failing to file the updated information and pay the processing fee on the 5 year anniversary dates shall be subject to cancellation of its state-issued certificate of franchise authority if, upon notice given to the certificateholder at its last address on file with the department, the certificateholder fails to file the updated information and pay the processing fee within 30 days of the date notice was mailed. The application and processing

========== T I T L E A M E N D M E N T ==========

Remove line(s) 24-27 and insert:

and criteria for a certificate; providing that the department shall function in a ministerial capacity; providing for an application form; providing for an application fee; requiring certain information updates; providing for a processing fee; providing for cancellation upon notice that information updates and processing fees not received; provides opportunity to cure;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

2

Amendment No. (for drafter's use only)

Bill No. **CS/HB 529**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Traviesa offered the following:

Amendment (with title amendments)

Remove line(s) 788 and insert:

Agriculture and Consumer Services pursuant to s. 570.544. Any request for enforcement provided to the department should contain a clear statement of the facts and the information upon which the complaint is based. The department shall provide any information in the complaint, including supporting documents, to the appropriate certificateholder which shall have 60 days to provide a response to the department and the complainant. If the complainant is not satisfied with the response, the department shall engage in nonbinding mediation between the affected parties. If the mediation does not resolve the matter to each party's satisfaction, an affected party may file a complaint with a court of competent jurisdiction. A person may not file an action in court without having participated in a mediation of the complaint by the department. If such court finds that a certificateholder is in material noncompliance with this

section, the certificateholder shall have a reasonable period of time, as specified by the court, to cure such noncompliance. The court may also award the affected person its reasonable costs and attorneys fees in seeking enforcement of subsection (2).

========== T I T L E A M E N D M E N T ==========

Remove line(s) 6 and insert:

providing for enforcement; providing requirements for request; requiring mediation under certain circumstances; providing for remedy in court; allowing for time to cure; allowing the rewarding of costs and attorneys fees;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

3

Amendment No. (for drafter's use only)

Bill No. **CS/HB 529**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Traviesa offered the following:

Amendment (with title amendments)

Remove line(s) 834 through 839 and insert:

610.117 Severability. -

(1) If any provision of ss. 610.102-610.116 or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of ss. 610.102-610.116 than can be given effect without the invalid provision or application, and to this end the provisions of ss. 610.102-610.116 are severable.

(2) In the event that an incumbent cable service provider is required to operate under its existing franchise and legally prevented by a lawfully issued order of a court of competent jurisdiction from exercising its right to terminate its existing franchise pursuant to the terms of S.610.105(4), any non-incumbent certificateholder providing cable service or video service in whole or in part within the service area which is the subject of the incumbent cable service provider's franchise

shall also comply, but only for so long as such court order remains in effect, with the following franchise terms and conditions as applicable to the incumbent cable service provider in the service area:

(a) The non-incumbent certificateholder shall pay to the municipality or county the lesser of:

1. Any prospective lump sum or recurring per subscriber funding obligations to support public, educational, and governmental access channels, institutional networks if any, or other prospective franchise-required monetary grants related to public, educational, or governmental access facilities and capital costs. Prospective lump sum payments shall be made on an equivalent per subscriber basis calculated as follows: the amount of the prospective funding obligations divided by the number of subscribers being served by the incumbent cable service provider at the time of payment, divided by the number of months remaining in the incumbent cable service provider's franchise equals the monthly per subscriber amount to be paid by the certificateholder until the expiration or termination of the incumbent cable service provider's franchise; or

2. An amount equal to one percent of the sales price as defined in s. 202.11(13) for the taxable monthly retail sales of cable or video programming services the non-incumbent certificateholder received from subscribers in the affected municipality or county. All definitions and exemptions of Chapter 202 shall apply in the determination of taxable monthly retail sales of cable or video programming services.

3. No payments shall be due under this section until 45 days after the municipality or county notifies the respective providers and the Department of Revenue, in writing, of the

appropriate per-subscriber amount. All payments made pursuant to this subsection shall be made as a part of the certificateholder's payment of communications services tax pursuant to s. 202.27 and all administrative provisions of Chapter 202 shall apply to any payments made pursuant to this subsection.

(b) Upon request by a municipality or county, the non-incumbent certificateholder will provide within a reasonable period of time comparable, complimentary basic cable or video service offerings to public K-12 schools, public libraries, or government buildings as is required in the incumbent's existing franchise, to the extent such buildings are located within 200 feet of the non-incumbent certificateholder's activated video distribution plant.

(c) Any non-incumbent certificateholder may designate that portion of that subscriber's bill attributable to any fee imposed pursuant to this section as a separate item on the bill and recover such amount from the subscriber.

(3) The provisions of subsection (2) shall not alter the rights of a non-incumbent cable service or video service provider with respect to service areas designated pursuant to S. 610.104(4)(d). Any certificateholder providing cable service or video service in a service area covered by the terms of an existing cable franchise that is subject to a court or other proceeding challenging the ability of an incumbent cable service provider to exercise its legal right to terminate its existing cable franchise pursuant to Section 610.105(4) shall have the right to intervene in such proceeding.

========== T I T L E A M E N D M E N T ==========

Amendment No. (for drafter's use only)

Remove line(s) 65 and insert:

severability; providing for payment to municipalities and counties under certain circumstances; allowing fee to be separately designated on a customer bill; repealing s. 166.046, F.S., relating to

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

4

Amendment No. (for drafter's use only)

Bill No. **CS/HB 529**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Traviesa offered the following:

Amendment (with title amendments)

Between line(s) 869 and 870 insert:

Section 11. Paragraph (h) of subsection (3) of section 364.10, Florida Statutes, is amended to read:

364.10 Undue advantage to person or locality prohibited; Lifeline service.--

(3)

(h) By December 31, 2003, each state agency that provides benefits to persons eligible for Lifeline service shall undertake, in cooperation with the Department of Children and Family Services, the Department of Education, the commission, the Office of Public Counsel, and telecommunications companies providing Lifeline services, the development of procedures to promote Lifeline participation.

2. If any state agency determines that a person is eligible for Lifeline service, the agency must act immediately to ensure that the person is automatically enrolled in the program with

the appropriate eligible telecommunications carrier. The state agency must include an option for an eligible customer to choose not to subscribe to the Lifeline service. The Public Service Commission shall, no later than September 1, 2007, adopt rules as necessary creating procedures to automatically enroll eligible customers in Lifeline service.

3. The commission, the Department of Children and Family Services, and the Office of Public Counsel shall enter into a memorandum of understanding establishing the respective duties of the commission, the department, and the public counsel with respect to the automatic enrollment procedures.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 69 and insert:

references; amending s. 364.10, F.S.; requiring each state agency that determines that a person is eligible for Lifeline service to act immediately to ensure that the person is enrolled in the Lifeline service program; requiring that the Public Service Commission if necessary adopt rules by a specified date; requiring the Public Service Commission, the Department of Children and Family Services, and the Office of Public Counsel to enter into a memorandum of understanding regarding their respective duties under the Lifeline service program; providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES 5

Amendment No. (for drafter's use only)

Bill No. CS/HB 529

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Mayfield offered the following:

Amendment (with title amendment)

Between line(s) 869-870 insert:

Section 10. Subsection (6), subsection (7), and subsection (8) of section 364.051, Florida Statutes, are amended to read:

364.051 Price regulation.--

~~(6) After a local exchange telecommunications company that has more than 1 million access lines in service has reduced its intrastate switched network access rates to parity, as defined in s. 364.164(5), the local exchange telecommunications company's retail service quality requirements that are not already equal to the service quality requirements imposed upon the competitive local exchange telecommunications companies shall at the company's request to the commission be no greater than those imposed upon competitive local exchange telecommunications companies unless the commission, within 120 days after the company's request, determines otherwise. In such event, the commission may grant some reductions in service~~

~~quality requirements in some or all of the company's local calling areas. The commission may not impose retail service quality requirements on competitive local exchange telecommunications companies greater than those existing on January 1, 2003.~~

~~(7) After a local exchange telecommunications company that has more than 1 million access lines in service has reduced its intrastate switched network access rates to parity, as defined in s. 364.164(5), the local exchange telecommunications company may petition the commission for regulatory treatment of its retail services at a level no greater than that imposed by the commission upon competitive local exchange telecommunications companies. The local exchange telecommunications company shall:~~

~~(a) Show that granting the petition is in the public interest;~~

~~(b) Demonstrate that the competition faced by the company is sufficient and sustainable to allow such competition to supplant regulation by the commission; and~~

~~(c) Reduce its intrastate switched network access rates to its local reciprocal interconnection rate upon the grant of the petition.~~

~~The commission shall act upon such a petition within 9 months after its filing with the commission. The commission may not increase the level of regulation for competitive local exchange telecommunications companies to a level greater than that which exists on the date the local exchange telecommunications company files its petition.~~

~~(8) The provisions described in subsections (6) and (7) shall apply to any local exchange telecommunications company~~

~~with 1 million or fewer lines in service that has reduced its intrastate switched network access rates to a level equal to the company's interstate switched network access rates in effect on January 1, 2003.~~

Section 11. Section 364.163, Florida Statutes, is amended to read:

364.163 Network access services.--For purposes of this section, the term "network access service" is defined as any service provided by a local exchange telecommunications company to a telecommunications company certificated under this chapter or licensed by the Federal Communications Commission to access the local exchange telecommunications network, excluding the local interconnection arrangements in s. 364.16 and the resale arrangements in s. 364.161. Each local exchange telecommunications company subject to s. 364.051 shall maintain tariffs with the commission containing the terms, conditions, and rates for each of its network access services. The switched network access service rates in effect immediately prior to July 1, 2007, shall be, and shall remain, capped at that level until July 1, 2010. No interexchange telecommunications company shall institute any intrastate connection fee or any similarly named fee.

~~(1) After a local exchange telecommunications company's intrastate switched network access rates are reduced to or below parity, as defined in s. 364.164(5), the company's intrastate switched network access rates shall be, and shall remain, capped for 3 years.~~

~~(2) Any intrastate interexchange telecommunications company whose intrastate switched network access rate is reduced as a result of the rate adjustments made by a local exchange~~

~~telecommunications company in accordance with s. 364.164 shall decrease its intrastate long-distance revenues by the amount necessary to return the benefits of such reduction to both its residential and business customers. The intrastate interexchange telecommunications company may determine the specific intrastate rates to be decreased, provided that residential and business customers benefit from the rate decreases. Any in-state connection fee or similarly named fee shall be eliminated by July 1, 2006, provided that the timetable determined pursuant to s. 364.164(1) reduces intrastate switched network access rates in an amount that results in the elimination of such fee in a revenue-neutral manner. The tariff changes, if any, made by the intrastate interexchange telecommunications company to carry out the requirements of this subsection shall be presumed valid and shall become effective on 1 day's notice.~~

~~(3) The commission shall have continuing regulatory oversight of intrastate switched network access and customer long distance rates for purposes of determining the correctness of any rate decrease by a telecommunications company resulting from the application of s. 364.164 and making any necessary adjustments to those rates.~~

Section 12. Section 364.164, Florida Statutes is repealed.

Section 13. Section 364.385, Florida Statutes, is amended to read:

364.385 Saving clauses.—

(4) The rates and charges for basic local telecommunications service and network access service approved by the commission in accordance with the decisions set forth in Orders Nos. PSC-03-1469-FOF-TL and PSC-04-0456-FOF-TL, and which are in effect immediately prior to July 1, 2007, shall remain in

effect and such rates and charges may not be changed after the effective date of this act, except in accordance with the provisions of ss.364.051 and 364.163.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 69 and insert:

references; amending s. 364.051, F.S.; repealing circumstances under which certain telecommunications companies may elect alternative regulation; repealing requirements; amending s. 364.163, F.S.; providing for freeze in intrastate access rates; deleting period in which intrastate access rates are capped; removes regulatory oversight of intrastate access rates; repealing s. 364.164, F.S, deleting authorization for local exchange companies to petition the Public Service Commission for reduction of intrastate access rates under certain circumstances; deleting the requirement for revenue neutrality; deleting criteria for commission to consider; amending s. 364.385, F.S., to provide that certain rates in affect shall remain in effect, providing for exception; providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

6

Amendment No. (for drafter's use only)

Bill No. 529

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Roberson offered the following:

Amendment

Remove line(s) 812 and insert:

December 1, 2009, and December 1, 2014, a report on the status of competition in the

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