

CHAPTER 97-197

Committee Substitute for Committee Substitute for House Bill No. 313

An act relating to telecommunications; creating ss. 125.421, 166.047, F.S.; specifying circumstances under which a county or other entity of local government may obtain or hold a certificate under chapter 364, F.S., relating to telecommunications companies, and under which the provision of telecommunications services constitutes a municipal or public purpose; providing exceptions; amending s. 196.012, F.S.; providing that certain telecommunications services provided to the public for hire are not exempt from taxation unless provided by the operator of a public-use airport or provided by a public hospital; providing that certain property used to provide such services is exempt until a specified date; amending s. 199.183, F.S.; providing that telecommunication services provided to the public for hire by the state or a political subdivision are not exempt from intangible personal property taxes; providing exceptions; amending s. 212.08, F.S.; providing that telecommunication services provided to the public for hire by the state or political subdivision are not exempt from sales or use taxes; providing exceptions; providing a finding of an important state interest; providing an effective date.

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

Section 1. Section 125. 421, Florida Statutes is created to read:

125.421 Telecommunications services.—A telecommunications company that is a county or other entity of local government may obtain or hold a certificate required by chapter 364, and the obtaining or holding of said certificate serves a public purpose only if the county or other entity of local government:(1) Separately accounts for the revenues, expenses, property, and source of investment dollars associated with the provision of such service;

(2) Is subject, without exemption, to all local requirements applicable to telecommunications companies; and

(3) Notwithstanding any other provision of law, pays, on its telecommunications facilities used to provide two-way telecommunication services to the public for hire and for which a certificate is required under chapter 364, ad valorem taxes, or fees in amounts equal thereto, to any taxing jurisdiction in which the county or other entity of local government operates. Any entity of local government may pay and impose such ad valorem taxes or fees. Any immunity of any county or other entity of local government from taxation of the property taxed by this section is hereby waived.

This section does not apply to the provision of telecommunications services for internal operational needs of a county or other entity of local government. This section does not apply to the provision of internal information services,

including, but not limited to, tax records, engineering records, and property records, by a county or other entity of local government to the public for a fee.

Section 2. Section 166.047, Florida Statutes, is created to read:

166.047 Telecommunications services.—A telecommunications company that is a municipality or other entity of local government may obtain or hold a certificate required by chapter 364, and the obtaining or holding of said certificate serves a municipal or public purpose under the provision of Article VIII Section (2)b, Florida Constitution, only if the municipality or other entity of local government:(1) Separately accounts for the revenues, expenses, property, and source of investment dollars associated with the provision of such services;(2) Is subject, without exemption, to all local requirements applicable to telecommunications companies; and

(3) Notwithstanding any other provision of law, pays, on its telecommunications facilities used to provide two-way telecommunications services to the public for hire and for which a certificate is required pursuant to chapter 364, ad valorem taxes, or fees in amounts equal there to, to any taxing jurisdiction in which the municipality or other entity of local government operates. Any entity of local government may pay and impose such ad valorem taxes or fees.

This section does not apply to the provision of telecommunications services for internal operational needs of a municipality or other entity of local government. This sections does not apply to the provision of internal information services, including, but not limited to, tax records, engineering records, and property records, by a municipality or other entity of local government to the public for a fee.

Section 3. Section Subsection (6) of section 196.012, Florida Statutes, is amended to read:

196.012 Definitions.—For the purpose of this chapter, the following terms are defined as follows, except where the context clearly indicates otherwise:

(6) Governmental, municipal, or public purpose or function shall be deemed to be served or performed when the lessee under any leasehold interest created in property of the United States, the state or any of its political subdivisions, or any municipality, agency, authority, or other public body corporate of the state is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds. For purposes of the preceding sentence, an activity undertaken by a lessee which is permitted under the terms of its lease of real property designated as an aviation area on an airport layout plan which has been approved by the Federal Aviation Administration and which real property is used for the administration, operation, business offices and activities related specifically thereto in connection with the conduct of an

aircraft full service fixed base operation which provides goods and services to the general aviation public in the promotion of air commerce shall be deemed an activity which serves a governmental, municipal, or public purpose or function. The use by a lessee, licensee, or management company of real property or a portion thereof as a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach is deemed a use that serves a governmental, municipal, or public purpose or function when access to the property is open to the general public with or without a charge for admission. If property deemed to a municipality by the United States is subject to a requirement that the Federal Government, through a schedule established by the Secretary of the Interior, determine that the property is being maintained for public historic preservation, park, or recreational purposes and if those conditions are not met the property will revert back to the Federal Government, then such property shall be deemed to serve a municipal or public purpose. The term "governmental purpose" also includes a direct use of property on federal lands in connection with the Federal government's Space Exploration Program. Real property and tangible personal property owned by the Federal Government and used for defense and space exploration purposes or which is put to a use in support thereof shall be deemed to perform an essential national governmental purpose and shall be exempt. "Owned by the lessee" as used in this chapter does not include personal property, buildings, or other real property improvements used for the administration, operation, business offices and activities related specifically thereto in connection with the conduct of an aircraft full service fixed based operation which provides goods and services to the general aviation public in the promotion of air commerce provided that the real property is designated as an aviation area on an airport layout plan approved by the Federal Aviation Administration. For purposes of determination of "ownership," buildings and other real property improvements which will revert to the airport authority or other governmental unit upon expiration of the term of the lease shall be deemed "owned" by the governmental unit and not the lessee. Providing two-way telecommunications services to the public for hire by the use of a telecommunications facility, as defined in s. 364.02(13), and for which a certificate is required under chapter 364 does not constitute an exempt use for purposes of s. 196.199, unless the telecommunications services are provided by the operator of a public-use airport, as defined in s. 332.004, for the operator's provision of telecommunications services for the airport or its tenants, concessionaires, or licensees, or unless the telecommunications services are provided by a public hospital. However, property that is being used to provide such telecommunications services on or before October 1, 1997, shall remain exempt, but such exemption expires October 1, 2004.

Section 4. Subsection (1) of section 199.183, Florida Statutes, 1996 Supplement, is amended to read:

199.183 Taxpayers exempt from annual and nonrecurring taxes.—

(1) Intangible personal property owned by this state or any of its political subdivisions or municipalities shall be exempt from taxation under this chapter. This exemption ~~does~~ shall not apply to:

(a) Any leasehold or other interest ~~that which~~ is described in s. 199.023(1)(d).

(b) Property related to the provision of two-way telecommunications services to the public for hire by the use of a telecommunications facility, as defined in s. 364.02(13), and for which a certificate is required under chapter 364, when such service is provided by any county, municipality, or other political subdivision of the state. Any immunity of any political subdivision of the state or other entity of local government from taxation of the property used to provide telecommunication services that is taxed as a result of this paragraph is hereby waived. However, intangible personal property related to the provision of such telecommunications services provided by the operator of a public-use airport, as defined in s. 332.004, for the operator's provision of telecommunications services for the airport or its tenants, concessionaires, or licensees, and intangible personal property related to the provision of such telecommunications services provided by a public hospital, are exempt from taxation under this chapter.

Section 5. Subsection (6) of section 212.08, Florida Statutes, 1996 Supplement, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this part.

(6) EXEMPTIONS; POLITICAL SUBDIVISIONS.—There are also exempt from the tax imposed by this chapter sales made to the United States Government, a state, or any county, municipality, or political subdivision of a state when payment is made directly to the dealer by the governmental entity. This exemption shall not inure to any transaction otherwise taxable under this chapter when payment is made by a government employee by any means, including, but not limited to, cash, check, or credit card when that employee is subsequently reimbursed by the governmental entity. This exemption does not include sales of tangible personal property made to contractors employed either directly or as agents of any such government or political subdivision thereof when such tangible personal property goes into or becomes a part of public works owned by such government or political subdivision thereof. This exemption does not include sales, rental, use, consumption, or storage for use in any political subdivision or municipality in this state of machines and equipment and parts and accessories therefor used in the generation, transmission, or distribution of electrical energy by systems owned and operated by a political subdivision in this state for transmission or distribution expansion. Likewise exempt are charges for services rendered by radio and television stations, including line charges, talent fees, or license fees and charges for films, videotapes, and transcriptions used in producing radio or television broadcasts. The exemption provided in this subsection does not include sales, rental, use, consumption, or storage for use in any political subdivision or municipality in this state of machines and equipment and parts and accessories therefor used in providing two-way telecommunications services to the public for hire by the use

of a telecommunications facility, as defined in s. 364.02(13), and for which a certificate is required under chapter 364, which facility is owned and operated by any county, municipality, or other political subdivision of the state. Any immunity of any political subdivision of the state or other entity of local government from taxation of the property used to provide telecommunication services that is taxed as a result of this section is hereby waived. However, the exemption provided in this subsection includes transactions taxable under this part which are for use by the operator of a public-use airport, as defined in s. 322.004, in providing such telecommunications services for the airport or its tenants, concessionaires, or licensees, or which are for use by a public hospital for the provision of such telecommunications services.

Section 6. Severability Clause

If any section, subsection, paragraph, or other provision of this act, or its application to any person or circumstances shall be held invalid or unconstitutional, such holding shall not affect the validity of any other section, subsection, paragraph, or other provision, or its application to other persons or circumstances. The legislature hereby expresses the intent that it would have enacted the other provisions of this act as if the invalid or unconstitutional provisions was not contained within the act.

Section 7. Under s. 18, Art. VII of the State Constitution, the Legislature determines and declares that the provisions of this act fulfill an important state interest.

Section 8. This act shall take effect October 1, 1997.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.