

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1878

SPONSOR: Finance and Taxation Committee and Senator Horne and others

SUBJECT: Taxation/Communication Services

DATE: April 9, 2001

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fournier</u>	<u>Johansen</u>	<u>FT</u>	<u>Favorable/CS</u>
2.	<u> </u>	<u> </u>	<u>AGG</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
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6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

During the 2000 Regular Session, the Legislature enacted chapter 2000-260, Laws of Florida (CS/CS/CS/SB 1338) that established a unified communications taxation scheme for the state, effective October 1, 2001. Chapter 2000-260, Laws of Florida combined the seven different types of communications taxes and fees into a two-tiered tax composed of a state tax and a local option tax on communications services. It combined the sales tax on communications services, the local public services tax, and local franchise fees on telecommunications companies and cable companies, allocated the gross receipts tax on communications services, and provided a permit fee option for local governments. It provided for a revenue neutral taxing scheme to be administered by the Department of Revenue and provided that the revenues are to be distributed to the Public Education Capital Outlay Fund, the General Revenue Fund and to local governments. The tax rates were not set in the act.

The act directed the communications companies and local governments to supply information regarding the assessment of the various taxes to the Department of Revenue. This information was to be used by the Revenue Estimating Conference for calculating revenue-neutral rates for presentation to the 2001 Legislature. The act is repealed on July 1, 2001, if the act is not reenacted during the 2001 Legislative Session.

This committee substitute amends various sections of chapter 202, Florida Statutes, relating to taxes on communications services. It provides changes with regard to private communication services and mobile communication services. It includes state and local tax rates for communications services. It also amends section 337.401, F.S., relating to local government cable franchises and the choice by local governments of whether or not to levy permit fees. It repeals the repeal of most of the changes that were in ch. 2000-260, L.O.F., which created the communications services tax that were to become effective on June 30, 2001.

This committee substitute substantially amends, sections 202.11, 202.12, 202.16, 202.17, 202.18, 202.19, 202.20, 202.21, 202.22, 202.23, 202.24, 202.27, 202.28, 212.031, 212.20, 212.202, and 337.401, Florida Statutes. It creates sections 202.105, 202.155, 202.231, 202.38, and 202.381, Florida Statutes. It repeals sections 202.26(3)(i) and 337.401(3)(f) and (g), Florida Statutes.

II. Present Situation:

During the 2000 Regular Session, the Legislature enacted chapter 2000-260, Laws of Florida, (CS/CS/CS/SB 1338) that established a unified communications taxation scheme for the state, effective October 1, 2001. This act combined seven different types of communications taxes and fees into a two-tiered tax composed of a state tax and a local option tax on communications services. It combined the sales tax on communications services, the local public services tax, and local franchise fees on telecommunications companies and cable companies, allocated the gross receipts tax on communications services, and provided a permit fee option for local governments. It provided for a revenue neutral taxing scheme to be administered by the Department of Revenue and provided that the revenues are to be distributed to the Public Education Capital Outlay Fund, the General Revenue Fund and to local governments.

The tax rates were not set in the act. The act directed the communications companies and local governments to supply information regarding the assessment of the various taxes to the Department of Revenue. This information would be used by the Revenue Estimating Conference for calculating revenue neutral rates for presentation to the 2001 Legislature. The act creating the communications services tax is repealed on July 1, 2001, if the act is not reenacted during the 2001 Legislative Session.

III. Effect of Proposed Changes:

This committee substitute creates and amends various sections of chapter 202, Florida Statutes, relating to taxes on communications services. It also amends section 337.401, F.S., relating to local government.

Section 1 is a declaration of legislative findings and intent. The creation of Chapter 202, F.S., is declared to fulfill important state interests by reforming the tax laws to provide a fair, efficient, and uniform method for taxing communications services. The tax imposed by this chapter is declared to be a replacement for taxes and fees previously imposed. It is also declared to be a specific legislative finding that the chapter will not reduce the authority that municipalities and counties had to raise revenue in the aggregate, as such authority existed on February 1, 1989.

Section 2. This section amends section 202.11, F.S., regarding definitions. It clarifies that "cable service" includes point to point distribution services. "Mobile communications service" is defined as in 47 C.F.R. s. 20.3 as it was in effect on June 1, 1999. This definition does not include air-ground radiotelephone service as that is defined in 47 C.F.R. s. 22.99 as it was in effect on June 1, 1999.

“Sales price” is amended to include the right or privilege of using communications services. The sales price shall not be reduced by any separately identified component of the charge that constitutes an expense of the dealer.

“Service address” for mobile communications services is defined as the customer’s place of primary use.

“Private communications service” is specifically defined as a service that entitles the subscriber to exclusive or priority use of a communications channel or group of channels between channel termination points regardless of the manner of connection. It includes “switching capacity, extension lines, stations, and any other associated service” that is provided for the use of the channels.

“Customer” is defined as the person or entity that contracts with the home service provider for mobile communications services or, if the end user of the service is not the contracting party, then it is the end user. The provisions dealing with the end user apply only for determining the place of primary use. Customer does not include a reseller of mobile communications services or a carrier that has agreed to serve the customer outside the home service provider’s licensed service area.

“Enhanced zip code” is defined as the United States postal zip code of nine or more digits.

“Home service provider” is defined as the facilities-based carrier or reseller that has contracted with the customer to provide mobile communications services.

“Licensed service area” is defined as the geographic area in which the home service provider is authorized by law or contract to provide mobile communications services.

“Place of primary use” is defined as the street address where the customer’s primary use of the mobile communication services occurs, which must be the primary street address within the licensed service area.

“Reseller” is defined as a provider who purchases communications services from another communications service provider and then resells the services, uses the services as a component or integrates the services into a mobile communications service. It does not include a serving carrier that contracts to serve customers outside the home service provider’s licensed service area.

“Serving carrier” is defined as a facilities-based provider of mobile communications services to a customer outside the home service provider or reseller’s service area.

Section 3. This section amends section 202.12, F.S., setting the tax rates for retail sales of communications services at 6.8 percent. The tax rate for direct-to-home satellite service is set at 10.8 percent. Private communications services are also taxed at 6.8 percent. It provides that a communications services provider can use any method that reasonably allocates the total charges for private communications services among the states in which a channel termination point is located. The method is deemed reasonable if the provider had regularly used the method for

Florida tax purposes prior to December 31, 2000. If a provider uses a reasonable allocation method, then it is held harmless from any liability for tax, interest, or penalties if a different method was used. The gross receipts tax is to be collected on these transactions. Mobile communications services are taxed on services provided pursuant to section 117(a) of the Mobile Telecommunications Sourcing Act, Public Law No. 106-252, if the customer's service address is located in Florida. Direct-pay permits are limited to one per person, and must identify the taxes and service addresses to which it applies.

Section 4. This section amends section 202.12, F.S. that is effective on January 1, 2004. It further amends the taxation of private communications services. It provides that the tax on the sales price of private communications services shall be based on any charge with respect to a channel termination point located in Florida and any charge for use of a channel between two channel termination points in Florida. Where the channel termination points are located both inside and outside of Florida, the tax shall be 50 percent of the charge for any segment between the channel termination points if the segment is separately billed. If the segment is not separately billed, then the tax is assessed on the total charge for the circuit multiplied by the ratio of the number of termination points in Florida to the total number of termination points on the circuit. This amendment strikes the language enacted in section 3 relating to private communications services, effective on January 1, 2004.

Section 5. This section creates section 202.155, F.S., to establish special rules for mobile communications services to be effective on bills after August 1, 2002. A home service provider is responsible for obtaining and maintaining the customer's place of primary use. Subject to two exceptions, the home service provider is entitled to rely on the residential or business street address supplied by the customer and is held harmless from any liability for additional taxes that are based on a different determination of the customer's place of primary use.

The home service provider is allowed to use the street address on the service contract in effect on August 1, 2002 as the customer's place of primary use for the remainder of the contract.

If the Department of Revenue (department) intends to change a customer's place of primary use, it is required to notify the customer. Once a final order is entered that the customer's address being used is not the place of primary use under section 202.11, F.S., the department is required to notify the home service provider of the proper address to be used. The provider has 120 days to begin using the correct address. If the department intends to change the assignment of a taxing jurisdiction by the home service provider under section 202.22, F.S., the department is required to notify the provider of the correct jurisdiction. The provider has 120 days to begin using the correct jurisdiction.

If a mobile communications service is not subject to the taxes administered under chapter 202, F.S., but the sales price of the service is combined with a service subject to these taxes, then the service shall be subject to the tax unless it can be separately identified. A customer must pay the sales tax on the service unless the home service provider separately states the sales price of the nontaxable service or the customer requests the provider in writing to supply verifiable data identifying the sale price of the nontaxable service.

Section 6. This section amends section 202.16, F.S., relating to payment of taxes. It strikes the provisions that the penalties and interest attributable to nonpayment of taxes for chapter 202 and 203, F.S., shall be paid by the purchaser of the communications services.

Section 7. This section amends section 202.17, F.S., relating to registration. It provides that registration under this section does not constitute registration with a municipality or county for the purpose of placing and maintaining communications facilities in rights-of-way. It strikes the registration fee of \$5.00 that is to be deposited into the General Revenue Fund. This section also provides that a newly registered dealer shall receive an initial resale certificate that is valid for the remainder of the period of issuance in addition to the certificate of registration. The department is required to provide each active dealer, except the person registered pursuant to section 202.15, F.S., with an annual resale certificate.

Section 8. This section amends section 202.18, F.S., relating to the allocation and disposition of the tax on direct to home satellite service. It provides that after the gross receipts tax portion is distributed as provided in the Florida Constitution, 63 percent of the remaining proceeds will be distributed pursuant to s. 212.20(6), F.S., except that the proceeds deposited into the Local Government Half-cent Sales Tax Clearing Trust Fund by s. 212.20(6)(e)3., F.S., will be prorated to the participating counties in the same proportion as the month's collection of taxes and fees pursuant to chapter 212 and the rates established by section 202.20(1)(b), F.S. During each calendar year, the remaining proceeds will be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and will be allocated in the same proportion as the allocation of receipts under sections 218.61 and 218.65, F.S., for prior state fiscal years, except for calendar year 2001, when the fiscal year 2000-2001 will be used. For each calendar year the proportion of the proceeds from the half-cent sales tax pursuant to section 218.61, F.S., will be allocated to each county in the same proportion as the county's percentage of total sales tax allocated for the prior fiscal year and distributed pursuant to section 218.62, F.S. For the proceeds for calendar year 2001, the fiscal year 2000-2001 will be used. This section also provides that if the department makes any adjustments in the amount due to a correction of a customer's location, the adjustment is limited to the amount of tax actually collected from the customer.

Section 9. This section amends section 202.19, F.S., relating to the authorization to impose local communications services tax pursuant to section 202.12, F.S. It provides a maximum tax rate for municipalities and charter counties of 5.1 percent and a maximum rate for noncharter counties of 1.6 percent. These maximum rate do not include the add-ons authorized under s. 337.401, F.S., nor do they supercede conversion or emergency rates authorized by s. 212.20, F.S. It provides that the sales price for private communications services will be the price of the service provided within the municipality. The communications services provider is entitled to use any method that reasonably allocates the total charges among the state and local taxing jurisdictions where the channel termination points are located. The method is reasonable if it had been regularly used for Florida tax purposes prior to December 31, 2000. If a provider uses a reasonable allocation method, it will be held harmless from any liability for additional tax, interest, or penalty based on a different allocation method. This section also provides the same provisions for the unincorporated area of a county. Similar provisions are also included for the discretionary sales surtax levied by a county or school board pursuant to section 212.055, F.S..

This section also provides for deducting the credit for any franchise payments that a communications services provider may be required to make to a taxing jurisdiction from the amount the taxing jurisdiction is entitled to receive under section 202.18(3), F.S..

Section 10. This section amends section 202.19, F.S., effective January 1, 2004. The tax on private communications services subject to section 202.12, F.S., will be on the charge with respect to a channel termination point within a municipality or for use of a channel for two termination points within a municipality. For channel termination points that are located both within and outside of the municipality, 50 percent of the charge for any segment separately billed between the channel termination points. If it is not separately billed then the charge will be based on the proportion of channel termination points within the municipality compared to the total number of channel termination points on the circuit. The same provisions apply to a county under section 202.12, F.S., and the discretionary sales surtax that a county or school board levies under section 212.055, F.S..

Section 11. Section 202.19, F.S., is further amended to add a new subsection (12). It provides that, for mobile communications services, the local communications services tax will apply to the sales price of all mobile communications services provided pursuant to section 117(a) of the Mobile Telecommunications Sourcing Act, Public Law No. 106-252.

Section 12 This section amends section 202.20, F.S., relating to local communications services tax rates. It provides local communications services tax conversion rates for the period of October 1, 2001, through September 30, 2002. The conversion rates take effect without any action required by the local government. Two rates are reported for each local government: one applies if the local government chooses not to levy permit fees; the other applies if the local government chooses to levy permit fees. The rates for local governments that choose not to levy permit fees do not include the add-ons allowed under s. 337.401, F.S.

This section also provides local communications services tax conversion rates effective October 1, 2002.

Local communications services tax conversion rates are provided which shall take effect upon the expiration of existing franchise agreements which provide fees in excess of those authorized by s. 337.401.

This section also provides that if complete data are not available to determine if tax revenues are less than the revenues from replaced revenue sources for 2000-2001, then the local government may use the best data available for that period. It provides that any adjustment of local rates will be effective on the first day of the month after the effective date of the ordinance making the adjustment.

This section also provides discretionary surtax conversion rates for any county or school board that levies a discretionary surtax under s. 212.055, F.S., and provides for calculating the discretionary sales surtax rate for a county or school board levying a combined rate which is not listed in the committee substitute.

Section 13. This section provides that a local government may increase its tax rate to the maximum rate under the act, to be effective October 1, 2001. The local government is required to notify the department of the increased rate by certified mail, postmarked by July 16, 2001.

Section 14. This section amends s. 202.21, F.S., conforming the language pertaining to the procedures for informing dealers of communications services of tax levies and rate changes.

Section 15. This section amends section 202.22, F.S., relating to the determination of the local tax situs. If an application for certification is submitted before October 1, 2001, and the application has not been approved or denied, the dealer is deemed to have used the certified database until the application has been denied. If the application is approved, the approval is effective on the date of the application or October 1, 2001, whichever is later.

Section 16. This section amends section 202.23, F.S., relating to the procedure for refunds. It provides for the refund by the department of overpaid taxes.

Section 17. This section creates s. 202.231, F.S., requiring the department to provide a monthly report to each local government imposing a local communications services tax, including identification necessary to identify each dealer of communications services in the jurisdiction, the gross taxable sales reported by each dealer, the amount of the dealer's collection allowance, and any adjustments specified on the return affecting the net tax from each dealer. The report shall total the net amount transferred to the jurisdiction. These reports must be transmitted to each municipality and county through a secure electronic mail system or other suitable means.

Section 18. This section amends section 202.24, F.S., relating to limitations on local taxes and fees. It strikes the legislative review of the paragraph dealing with cable specific provisions.

Section 19. This section repeals paragraph (i) of subsection (3) of s. 202.26, F.S.

Section 20. This section amends section 202.27, F.S., relating to filing of returns. It strikes the provisions relating to multiply location filings.

Section 21. This section amends section 202.28, F.S., relating to credits for collecting taxes and penalties to add a cross reference.

Section 22. This section amends s. 202.37, F.S., requiring that audits performed by the Department of Revenue of communications services dealers shall include a determination of the dealer's compliance with the jurisdictional situsing of its customers' service addresses and a determination of whether the rate collected for the local tax is correct. It allows a local government to work with the department to ensure that all taxpayers fully and correctly report taxable communications services.

Section 23. This section creates s. 202.38, F.S., providing special rules for bad debts and adjustments under previous taxes. It provides that adjustments of taxes imposed by chapter 212 or the local public service tax on telecommunications services may be refunded or credited under this chapter.

Section 24. This section amends s.202.381, F.S., providing for a transition from existing taxes and fees to any replacement tax. It provides that the intent of the Legislature is that a person not be subject to an adverse administrative action solely due to the tax changes that take effect October 1, 2001.

Section 25. This section amends s. 212.031, F.S., replacing the current sales tax exemption for cable television in using rights of way with an exemption for a “provider of communications services, as defined in s. 202.11.”

Section 26. This section amends s. 203.01, F.S. as amended by chapter 2000-260, L.O.F., to provide a tax rate for communications services of 2.36 percent.

Section 27. This section amends s. 337.401, F.S. Effective upon becoming a law, a municipality or charter county that elects not to require and collect permit fees from any provider of communications may increase its tax rate by up to 0.12 percent for the local communications services tax by ordinance or resolution, and must inform the department of such increased rate by July 16, 2001. A noncharter county that elects not to require and collect permit fees from any provider of communications may increase its tax rate by up to 0.24 percent for the local communications services tax by ordinance or resolution, and must inform the department of such increased rate by July 16, 2001.

Section 28. This section amends 337.401, F.S., relating to the use of rights-of-way. This section provides that a municipality or county may award one or more cable franchise under federal law and that the local government may negotiate all the terms and conditions of the franchise, except those terms related to franchise fees and permit fees. This provision does not limit or expand existing zoning or land use authority of a municipality or county, and registration under this section by a provider of communications services 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. It further provides for the procedure for a local government to change its election under this section with respect to permit fees. This section also amends section 337.401, F.S., relating to the use of rights-of-way, to define cable services the same as in 47 U.S.C. 522.

Section 29. This section provides that the provisions of section 166.234, F.S., will apply to all public service taxes imposed on telecommunications services under section 166.231(9), F.S., prior to its amendment by chapter 2000-260, Laws of Florida.

Section 30. This section provides for the payment schedule of license, franchise, ordinance, or other payment arrangements for services provided before October 1, 2001.

Section 31. This section repeals subsection (1) and (2) of section 58 and repeals section 59 of chapter 2000-260, Laws of Florida.

Section 32. This section amends s. 212.20, F.S., removing a reference to the Mail Order Sales Tax Clearing Trust Fund.

Section 33. This section amends s. 212.202, F.S., renaming the Mail Order Sales Tax Clearing Trust Fund, a dormant trust funds in the Department of Revenue, so it can be used to distribute communications services tax revenue.

Section 34. This section provides an effective date of October 1, 2001, unless otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This committee substitute contains a specific legislative finding that it does not reduce the authority that municipalities and counties had to raise revenue in the aggregate, as such authority existed on February 1, 1989.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The provision of this committee substitute are intended to be revenue neutral.

B. Private Sector Impact:

C. Government Sector Impact:

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.