

# 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 1406

SPONSOR: Regulated Industries Committee and Senator Pruitt

SUBJECT: Public Records/ Telecommunications

DATE: February 23, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vaccaro	Caldwell	RI	Favorable/CS
2.	Rhea	Wilson	GO	Favorable
3.			RC	
4.				
5.				
6.				

## I. Summary:

Prior to October 1, 2001, municipalities had the authority to levy public service taxes on the purchase of telecommunications services pursuant to s. 166.231(9), F.S. Under s. 166.231(9)(c), F.S., a municipality could audit the telecommunications provider's records pursuant to s. 166.234, F.S.; however, any information received in connection with the audit was confidential and exempt from the provisions of s. 119.07(1), F.S.

In 2000, the Legislature repealed s. 166.231(9), F.S., effective October 1, 2001.<sup>1</sup> Pursuant to section 36 of ch. 2001-140, L.O.F., municipalities may still conduct public service tax audits of telecommunications companies pursuant to s. 166.234, F.S., for periods prior to the repeal of s. 166.231(9), F.S. This committee substitute provides an exemption for information obtained during the audit as originally provided in s. 166.231(9), F.S.

This committee substitute creates an unnumbered section of the Florida Statutes.

## II. Present Situation:

Pursuant to s. 166.234, F.S., a municipality may audit the books and records of any seller of a service that is taxable by the municipality under s. 166.231, F.S. Section 166.231, F.S., authorizes a municipality to levy a public service tax on the purchase of electricity, metered natural gas, liquefied petroleum gas, manufactured gas, and water service.

Pursuant to s. 166.234(4)(a), F.S., a municipality may issue a proposed assessment of tax for a period of three years after the date the tax was due. The three-year period may be tolled for one year if within the three-year period the municipality issues to the seller a notice of intent to audit.

<sup>1</sup> See s. 38, ch. 2000-260, L.O.F.

If the audit cannot be completed within the three-year period as extended by tolling because the seller refuses access to its records, the municipality may make a proposed assessment from an estimate based upon the best information available for the taxable period.

Prior to the repeal of s. 166.231(9), F.S., municipalities had the authority to levy public service taxes on the purchase of telecommunications services. Pursuant to section 36 of ch. 2001-104, L.O.F., the audit provisions contained in s. 166.234, F.S., still apply with respect to those taxes; however, there is no existing provision to exempt audit information from the inspection requirements of s. 119.07(1), F.S.

Section 119.07(1), F.S., provides that every person who has custody of a public record must remit the record for inspection by any person desiring to do so, at any reasonable time, under reasonable conditions, and under the supervision of the custodian of the public record. Section 24(a) of Article I of the State Constitution provides that every person has the right to inspect or copy any public record made or received in connection with the public business of any public body, officer or employee of the state. Section 24 (c) of Article I, however, provides that the Legislature may provide by general law for the exemption of records from the requirements of Section 24(a), provided that such law state with specificity the public necessity justifying the exemption. The law must be no broader than necessary to accomplish its purpose. Section 119.15(2), F.S., provides that exemptions to s. 119.07(1), F.S., shall be created if the exemption affects confidential information concerning an entity. Section 119.15(3)(a), F.S., requires the repeal of an enactment of a new exemption on October 2<sup>nd</sup> of the 5<sup>th</sup> year, unless the Legislature acts to reenact it.

### III. **Effect of Proposed Changes:**

**Section 1** provides that that information received from an audit of a telecommunications service provider pursuant to section 36 of ch. 2001-140, L.O.F., and s. 166.234, F.S., is confidential and exempt from s. 119.07(1), F.S., and Section 24(a) of Article I of the State Constitution. The committee substitute also provides that section 1 is subject to the Open Government Sunset Review Act of 1995, and will be repealed on October 2, 2007, unless the Legislature reenacts it.

**Section 2** provides that section 1 is remedial in nature and applies to all audits conducted under section 36 of ch. 2001-140, L.O.F., and s. 166.234, F.S., regardless of whether the audit was begun before or after the effective date of this act.

**Section 3** sets forth the Legislative finding regarding the necessity for the exemption created by section 1. The committee substitute explains that disclosure of the audit information would adversely affect the business interests of the telecommunications service provider by harming the provider in the marketplace and would compromise the security of the communications network. The committee substitute further explains that disclosure of the information would reveal the business interests of the provider, and such information could be used by competitors to impair full and fair competition in the marketplace; thus, causing public and private harm that significantly outweighs any public benefit derived from disclosing the information.

**Section 4** provides that the act takes effect upon becoming a law.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.