

STORAGE NAME: h1511s1.ric.doc

DATE: February 25, 2002

**HOUSE OF REPRESENTATIVES
COUNCIL FOR READY INFRASTRUCTURE
ANALYSIS**

BILL #: CS/HB 1511

RELATING TO: Telecommunications Services Taxation

SPONSOR(S): Council for Ready Infrastructure and Representative(s) Ritter & others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) UTILITIES & TELECOMMUNICATIONS YEAS 15 NAYS 0
 - (2) FISCAL POLICY & RESOURCES YEAS 13 NAYS 0
 - (3) READY INFRASTRUCTURE COUNCIL YEAS 17 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

This bill addresses several issues relating to the administration of the communications services tax.

It creates a transition rule for counties and municipalities that reduced the local communications services tax on a specified date. It conforms the communications services tax exemptions for religious and educational institutions to similar provisions in the sales tax statute. It clarifies that the use tax is due on purchases of communications services from dealers outside the state, unless that dealer has already collected the tax.

The bill provides an exception for the public lodging industry from the requirement that dealers separately state the communications services tax. It clarifies provisions governing the electronic database used to determine local tax situs for the communications services tax. It repeals the sales tax on substitute communications systems.

The bill conforms the date for local governments to notify the dealers of permit fee changes to the date required for local governments to notify the Department of Revenue (department) of local communications services tax rate changes. It clarifies that the monthly E911 fee applies to a mobile communications services customers whose place of primary use is within the state. It corrects several cross-references.

The bill authorizes counties and cities that levy a tax pursuant to chapter 202, F.S., to charge a fee to pass-through providers that maintain communications facilities on counties and cities roads or rights-of-way.

The bill requires the department to report to the Legislature and the Governor the revenue neutrality effects of the Telecommunication Services Tax.

The bill has a recurring, negative \$100,000 impact on the General Revenue Fund.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. PRESENT SITUATION:

Communications services are subject to state and local taxes under chapter 202, F.S., the Communications Services Tax Simplification Law, chapter 2000-260, Laws of Florida. The gross receipts tax on communications services imposed by chapter 203, F.S., is also administered under chapter 202, F.S. Revenue-neutral tax rates for communications services were established in 2001 by chapter 2001-140, Laws of Florida, and the tax took effect October 1, 2001. Several administrative issues concerning this tax have been identified by a working group of representatives from the communications industry and state and local governments.

State communications taxes are imposed and administered under the provisions of section 202.12, F.S. Local communications are imposed under the provisions of section 202.19, F.S.

Local governments are authorized under chapter 202, F.S., to adopt ordinances or resolutions establishing higher rates for the first 12 months to cover the loss of the first month's receipts during the transition to the new communications services tax. Since the new rates need only to apply between October 1, 2001 and September 30, 2002 (the time-span of revenue neutrality), there will be three months within the calendar year that will have a higher-than-needed rate, unless the rates are lowered on October 1, 2002. There is no authority in the act, for local government to adopt ordinances or resolutions lowering the rates on any date other than January 1.

Section 202.125, F.S., provides an exemption for the sale of communications services to a religious or educational organization that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Administration of this exemption has caused confusion because it does not conform to similar sales and use tax exemptions under chapter 212, F.S.

Section 202.16, F.S., provides the state and local communications services tax must be stated separately from all other charges on the bill or invoice. This provision has caused billing problems for the public lodging industry.

Section 202.22, F.S., provides that local tax situs for the purposes of the local communications services tax may be determined by employing an electronic database provided by the Department of Revenue (department), employing a database developed by a dealer or supplied by a vendor certified by the department, or employing the enhanced zip code. The department is required to establish a database under the provisions of this section. The department is also required to maintain the database, and may certify databases prepared by private vendors. Local taxing jurisdictions are required to furnish the department with all the information needed to create and update the database. Each dealer of communications services is only required to collect and remit

the local communications taxes for the service addresses contained in the department database in standard postal format. This section also provides criteria by which private databases shall be evaluated for certification, and the process by which certification is accomplished. The accuracy of the database must be measured on the entire state, or the dealer's entire service area.

Section 212.05 (1)(g), F.S., imposes sales and use tax upon any person who purchases, installs, rents, or leases a telephone system or telecommunication system for his or her own use to provide telephone or telecommunication service which is a substitute for such service provided by a telephone company. The tax is based upon the actual cost of operating such system. Section 202.12(3)(b), F.S., imposes the communications services tax upon the same costs.

Section 337.401, F.S., regulates the imposition of fees by local governments for use of rights-of-way by utilities. Subsection (3) requires local governments to choose between two options with respect to permit fees imposed on dealers of communications services. Local governments that choose to retain the authority to impose permit fees are capped in the level of fees they may impose and must lower their communications services tax rate. A local government that changes its election on this issue must provide written notice to all communications services dealers in the jurisdiction by July 1 immediately preceding January 1 on which the change becomes effective.

Subsection (8) of section 365.172, F.S., requires each provider of wireless telephone service to collect a monthly fee from each service subscriber who has a service number that has a billing address within this state. The purpose of this fee is to recover the costs of developing and maintaining an E911 system. Subsection (9) of this section requires that each provider shall provide a monthly report of the billing address of wireless subscribers in each county.

C. EFFECT OF PROPOSED CHANGES:

Please see Section-by-Section Analysis.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends section 202.125(4), F.S., to conform to the sales tax exemption for religious and educational institutions to similar provisions in chapter 212, F.S.

Section 2 creates section 202.151, F.S., to impose a use tax on purchases of communications services from a seller outside of Florida, if those purchases are otherwise taxable under sections 202.12 and 202.19, F.S. This section does not apply if the out-of-state seller registers as a dealer in this state and collects tax from the purchaser.

Section 3 amends section 202.16, F.S., to allow a public lodging establishment to post information about communications services taxes in a manner consistent with section 509.2015, F.S., instead of separately stating them on the guest bill or invoice.

Section 4 creates section 202.205, F.S. to ratify the local communications services tax rate that a county or municipality adopted by resolution or ordinance reducing the rate effective October 1, 2002, and provides that the rate shall be the adopted local communications services tax rate beginning on October 1, 2002.

Section 5 amends section 202.22, F.S., to clarify that when an address is known and used by a provider, the provider shall collect the tax even if the address is not in the department's electronic database. It provides the department shall determine the accuracy of a database, other than its own database, by the geographic area covered by that database. It also clarifies the application of the 180-day period for the department's determination as to whether a database meets the certification criteria.

Section 6 amends section 337.401, F.S., to allow a local government to notify communications service dealers of a change in the local government's election with respect to permit fees by September 1 instead of July 1 of each year. This conforms to the date for notifying the department of any change in election. It also caps existing fees on pass-through providers for placement or maintenance of communication facilities in municipality or county rights-of-way where no retail sales are involved. The charges are limited to an annual amount not to exceed \$500 per linear mile.

Section 7 amends section 365.172(8)(a), F.S., to specify each "home service provider" is responsible for collecting the monthly E911 fee from "customers whose place of primary use is" within the state, rather than each "provider" is responsible for collecting the monthly E911 fee from each "service subscriber who has a service number that has a billing address" within this state. This change conforms to specifications in federal law and does not alter the tax base on which the fee is levied. Paragraph (9)(d) is amended to conform to these changes. Additionally, section 365.172(9)(e), F.S., is created to clarify that situsing of mobile telecommunications customers for the monthly E911 fee is the same as situsing for the local communications services tax under chapter 202, F.S. The changes to this section are effective with respect to bills issued by providers of mobile telecommunications services after August 1, 2002.

Section 8 corrects a cross-reference.

Section 9 corrects a cross-reference.

Section 10 corrects a cross-reference.

Section 11 corrects a cross-reference.

Section 12 corrects a cross-reference.

Section 13 provides that amendments to sections 202.125(4), 202.22(2)(b) and (3)(a) and (g), F.S., and the repeal of section 212.05(1)(g), F.S., are remedial in nature and intended to clarify the law in effect on the effective date of the bill.

Section 14 requires the department to report to the Legislature and the Governor on the accuracy of the 2001 revenue estimates of state and local communications service taxes imposed under chapter 202, F.S. by February 1, 2003.

Section 15 repeals (g) of subsection (1) of section 212.05, F.S., as amended by section 38 of chapter 2001-140, Laws of Florida. This corrects an error in the Communications Services Tax Simplification act that inadvertently subjected substitute telephone systems to both sales tax and communications services tax.

Section 16 provides that the bill takes effect upon becoming law except as otherwise provided for in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Impact Conference estimated the fiscal impact of the exemption of sales of communications by religious institutions with 501(c)(3) status in the Internal Revenue Code included in the amendment to be \$100,00 per year.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There will be an insignificant reduction in local revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to communication service providers, this bill clarifies certain administrative issues with respect to the communications services tax, and will make it easier for the communication service providers to comply with the law.

D. FISCAL COMMENTS:

None.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

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

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The department may adopt rules pertaining to the reporting and remitting of the communications services tax by purchasers who purchase from out-of-state sellers who do not collect the taxes imposed by chapter 202, F.S.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Utilities & Telecommunications adopted a strike-everything amendment that conformed the language to CS/SB 1610 except for clarifying the wording dealing with tax exemptions for religious institutions.

This amendment addresses several issues relating to the administration of the communications services tax. It conforms the communications services tax exemptions for the sale of communications services to, and the sale of communications services by, religious and educational institutions to those in the sales tax statute. It clarifies that use tax is due on transactions that are taxable under the state and local communications services tax, as well as taxes administered under chapter 202. It provides an exception for the public lodging industry from the requirement that dealers separately state the communications services tax. It creates a transition rule for counties and municipalities that reduced the local communications services tax on a specified date. It clarifies provisions governing the electronic database used to determine local tax situs for the communications services tax. It repeals the sales tax on substitute communications systems. It conforms the date for local governments to notify the dealers of permit fee changes to the date required for local governments to notify the department of local communications services tax rate changes. It clarifies that the monthly E911 fee applies to a mobile communications services customers whose place of primary use is within the state.

On February 22, 2002, the Committee on Fiscal Policy & Resources adopted one amendment to the strike-everything amendment. This amendment instructs the department to report to the Legislature and the Governor the revenue neutrality effects of the Telecommunication Services Tax.

On February 26, 2002, the Council for Ready Infrastructure adopted one amendment to the strike-everything amendment. This amendment caps existing fees on pass-through providers for placement or maintenance of communication facilities in municipality or county rights-of-way where no retail sales are involved. The charges are limited to an annual amount not to exceed \$500 per linear mile. The bill was passed favorably as a council substitute.

VI. SIGNATURES:

COMMITTEE ON UTILITIES & TELECOMMUNICATIONS:

Prepared by:

Patrick L. "Booter" Imhof

Staff Director:

Patrick L. "Booter" Imhof

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AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

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Staff Director:

Lynne Overton

AS REVISED BY THE COUNCIL FOR READY INFRASTRUCTURE:

Prepared by:

Randy L. Havlicak

Council Director:

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