

# 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: SB 1338

SPONSOR: Senator Campbell

SUBJECT: Determination of Tax Situs for the Communications Services Tax

DATE: April 19, 2004 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/1 amendment</u>
2.	<u>Fournier</u>	<u>Johansen</u>	<u>FT</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill requires that any database of enhanced zip codes which is used to determine the local taxing jurisdiction in which a service address is located must be certified by DOR by January 1, 2005.

This bill amends section 202.22 of the Florida Statutes.

## II. Present Situation:

“Zip codes” are a major contributor to the ability of the United States Postal Service to employ automation in the processing of mail. The use of “enhanced” or Zip + 4 codes allow machines to even further pinpoint the final destination of each letter. The enhanced zip code is also used to more precisely identify the billing addresses of individuals and businesses for tax purposes.

Currently, communications services providers that are responsible for collecting local communications services tax are required to assign customer service addresses to local taxing jurisdictions in order to collect tax at the correct rates. Pursuant to s. 202.22, F.S., a provider is not liable (held harmless) for tax, interest, and penalty resulting from the incorrect assignment of a service address if it exercises “due diligence” in employing one of the following methods to assign service addresses to local taxing jurisdictions:

- The Department of Revenue (DOR) database;
- A database that has been certified by DOR;
- An enhanced zip code method; or
- A database that is determined in an audit to meet the requirements for certification, even though such database had not been certified by DOR.

In order for a provider that assigns service addresses to local taxing jurisdictions based on the use of zip codes to be held harmless, the assignments must be based on enhanced zip codes of at least nine digits. In addition, if an enhanced zip code area overlaps jurisdictional boundaries, or if an enhanced zip code cannot be assigned (i.e., because an address is in a rural area or a location without postal delivery), a provider must use a reasonable methodology to determine the taxing jurisdiction to which the affected address will be assigned. A methodology is reasonable if the information a provider obtains to assign the affected addresses is obtained from one of the following sources:

- The DOR database;
- A database certified by DOR;
- A responsible representative of the relevant local taxing jurisdiction;
- The U.S. Census Bureau; or
- The U.S. Postal Service

Pursuant to s. 202.28(1), F.S., a provider that uses the DOR database, a certified database, or an enhanced zip code method to assign service addresses is entitled to a .75% collection allowance in regard to taxes collected in respect of addresses so assigned. Pursuant to s. 202.22(6)(a), F.S., a provider who fails to use an eligible method will only receive a .25% collection allowance. A provider who uses a database that could be, but has not been, certified is only eligible for the .25% collection allowance, even though that provider is held harmless against assessment upon audit.

### III. Effect of Proposed Changes:

**Section 1** amends s. 202.22(1) F.S., to require that any database of enhanced zip codes which is used to determine the local taxing jurisdiction in which a service address is located must be certified by DOR by January 1, 2005.

**Section 2** provides that this act will take 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:**

DOR reports that due to the “flush left” placement of the certification requirement, a person that uses an enhanced zip code database must have the database certified to receive the “held harmless” protection and the increased collection allowance of .75%. Persons that use an enhanced zip code database that is not certified would be treated in the same manner as a person that does not use any of the eligible methods. Such persons receive no “held harmless” protection, unless upon audit the database would have qualified for certification, and would only receive a .25% collection allowance.

**C. Government Sector Impact:**

This bill requires that any database of enhanced zip codes which is used to determine the local taxing jurisdiction in which a service address is located must be certified by DOR by January 1, 2005. The impact on DOR is unavailable at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

DOR reports that pursuant to s. 202.22(3), F.S., the department has 180 days to provide written notice of a certification applicant’s approval or denial. Therefore, users of enhanced zip code databases that are currently entitled to a .75 percent (.0075) collection allowance and “hold harmless” protection must apply for certification no later than June 1, 2004, to allow time for the department to process the certification application prior to the mandated January 1, 2005, deadline. Without knowledge of how many enhanced zip code database users would apply for certification, it is not possible to determine whether the department would be able to process the applications by the required deadline of 180 days or the January 1, 2005, deadline for the database users. There are 256 registered providers who have indicated on their Form DR-700020, Notification of Method Employed to Determine Taxing Jurisdiction (Communications Services Tax), that they use an enhanced zip code database to determine the local taxing jurisdiction. These include many major mobile service providers. Based on the problems that the department has encountered in certifying address databases for other communications services providers, the January 1, 2005 deadline to complete the certification process is probably unrealistic.

**VIII. Amendments:**

#1 by Comprehensive Planning Committee:

This amendment allows DOR an additional 6 months to certify databases of enhanced zip codes, and allows dealers to receive the appropriate service charges should their database be approved.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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