

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Innovation, Industry, and Technology

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BILL: SB 1174

INTRODUCER: Senator Hutson

SUBJECT: Communications Services Tax

DATE: January 31, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	<b>Favorable</b>
2.			CA	
3.			AP	

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**I. Summary:**

SB 1174 amends the definition of “video service” for purposes of the Communications Services Tax (CST) to include streaming and similar services. This codifies the existing interpretation and implementation by the Department of Revenue (DOR).

The bill reduces the state CST rate from 4.92 percent to 4.9 percent.

The bill reduces the local CST to implement a streamlined rate system with one tax rate for municipalities and charter counties and a second tax rate for noncharter counties. First, it deletes the authority for the current rate caps of: 5.1 percent for municipalities and charter counties that have not chosen to levy permit fees; 4.98 percent for municipalities and charter counties that have chosen to levy permit fees; and 1.6 percent for noncharter counties. Second, it deletes the authority for add-ons for local governments that have chosen not to levy right-of-way permit fees; these add-ons are of up to 0.12 percent for municipalities and charter counties and up to 0.24 percent for noncharter counties. Third, it deletes the authority for conversion or emergency rates. Fourth, it replaces these current local CST rates and add-ons with standardized local CST rates, through phased-in rate reductions, with the end result being a local CST rate of a flat 4 percent for a charter county or municipality and a flat 2 percent for a noncharter county.

The bill creates a process by which a local government expecting that local CST revenues which have, due to the bill’s local CST rate changes, become insufficient to timely pay principal and interest or to comply with any covenant under a bond resolution for bonds or other indebtedness may seek a legislative appropriation in an amount necessary to eliminate the insufficiency.

The bill takes effect January 1, 2021, except for the effective date provision and the amendment to the definition of “video service,” which take effect upon the act becoming a law.

## II. Present Situation:

Chapter 202, F.S., is the Communications Services Tax Simplification Law. The term “communications services” includes video services transmitted or conveyed by or through any medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.<sup>1</sup> The term “video service” means the transmission of video, audio, or other programming service to a purchaser, regardless of whether the programming is transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services. The term includes point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser’s premises, but does not include direct-to-home satellite service. The term includes basic, extended, premium, pay-per-view, digital video, two-way cable, and music services.<sup>2</sup> The Department of Revenue (DOR) has interpreted this to include video streaming services.<sup>3</sup>

Section 202.105, F.S., provides the legislative findings and intent related to enactment of the CST simplification law. The law simplified an extremely complicated state and local tax and fee system, restructuring separate taxes and fees into a revenue-neutral communications services tax centrally administered by the Department of Revenue (DOR), a single tax to replace multiple taxes and fees previously imposed. Among the Legislature’s stated intentions in creating the communications services tax (CST) was that it not reduce the authority that municipalities or counties had to raise revenue in the aggregate, as such authority existed on February 1, 1989.

The state CST is 4.92 percent.<sup>4</sup> Local governments may also levy a discretionary CST:

- Charter counties and municipalities may levy the CST at a rate of up to 5.1 percent for municipalities and charter counties that have not chosen to levy permit fees, and at a rate of up to 4.98 percent for municipalities and charter counties that have chosen to levy permit fees; and
- Noncharter counties may levy the CST at a rate of up to 1.6 percent.

These maximum rates do not include the add-ons of up to 0.12 percent for municipalities and charter counties or of up to 0.24 percent for noncharter counties, if those local governments have elected not to require right-of-way permit fees.<sup>5</sup>

The local CST includes and is in lieu of any fee or other consideration, including, but not limited to, application fees, transfer fees, renewal fees, or claims for related costs, to which the municipality or county is otherwise entitled for granting permission to dealers of communications services to use or occupy its roads or rights-of-way for the placement, construction, and maintenance of poles, wires, and other fixtures used in the provision of communications services.<sup>6</sup> Additionally, the term “replaced revenue sources” includes permit fees relating to use of rights-of-way collected from communication services providers; however,

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<sup>1</sup> Section 202.11(1), F.S.

<sup>2</sup> Section 202.11(24), F.S.

<sup>3</sup> See, Department of Revenue, Technical Assistance Advisement 14A-010.

<sup>4</sup> Section 202.12(1)(a) and(b), F.S.

<sup>5</sup> Section 337.401(3)(c), F.S.

<sup>6</sup> Section 202.19(3)(a), F.S.

if a municipality or charter county elects the option to charge permit fees pursuant to s. 337.401(3)(c), F.S., such fees are not be included as a replaced revenue source.<sup>7</sup>

The state CST is deposited into the General Revenue Fund and the proceeds of the local CSTs, less DOR's costs of administration, are transferred to the Local Communications Services Tax Clearing Trust Fund and held there to be distributed to such municipality or county.<sup>8</sup>

### III. Effect of Proposed Changes:

Effective upon the act becoming law, the bill (Section 2) amends the definition of "video service" to include subscriptions to digital video content and the rental of digital video content delivered to a Florida service address by download, streaming, or some combination thereof, and where the access to such content expires at a specific time or on the occurrence of a condition subsequent. The term does not include the sale of digital video content stored online or downloaded to a customer's device if the purchaser's access to such content does not expire and may be viewed as long as the purchaser retains the digital video content. This codifies DOR's current interpretation of the term.<sup>9</sup>

The bill (Section 3) reduces the state CST rate from 4.92 percent to 4.9 percent.

The bill (Section 1) amends the statements of legislative intent regarding local CST rates by deleting an existing statement that the simplification law "will not reduce the authority that municipalities or counties had to raise revenue in the aggregate, as such authority existed on February 1, 1989" and replacing this with a statement that "to promote greater tax transparency and improve tax compliance, the local communications services tax rates, which vary substantially across more than 480 jurisdictions, should be replaced by a streamlined rate system with one tax rate for municipalities and charter counties and a second tax rate for noncharter counties."

The new intent is accomplished (Section 6) in four steps. The first step is the deletion of the current local CST rate caps of: 5.1 percent for municipalities and charter counties that have not chosen to levy permit fees; 4.98 percent for municipalities and charter counties that have chosen to levy permit fees; and 1.6 percent for noncharter counties. The second is the deletion of the authority for add-ons for local governments that have chosen not to levy right-of-way permit fees; these add-ons are of up to 0.12 percent for municipalities and charter counties and up to 0.24 percent for noncharter counties. The third step is the deletion of the authority for conversion or emergency rates. The fourth step is the replacement of these current local CST rates and add-ons with standardized local CST rates, through provisions which phase in rate reductions.

The bill provides that local CST rates in effect on January 1, 2020, which are 5 percent or less may not be amended beyond their current rates. Local CST rates in effect on January 1, 2020, which are greater than 5 percent must be reduced to 5 percent or less on January 1, 2021. Each county and municipality must adopt a local CST rate ordinance of 5 percent or less by September 1, 2020. If a county or municipality fails to adopt a rate ordinance on or before September 1,

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<sup>7</sup> Section 202.20(2)(b)1.e, F.S.

<sup>8</sup> Section 202.18, F.S.

<sup>9</sup> See *supra* note 5.

2020, a dealer may not collect or remit the local communications services tax in excess of 5 percent on or after January 1, 2021.

Beginning January 1, 2022, the local CST rate is a flat 4 percent for a charter county or municipality and a flat 2 percent for a noncharter county. To levy the tax at these rates on this date, the county or municipality must adopt the specified rate by ordinance by September 1, 2021. If a county or municipality that levies the local CST on January 1, 2021, fails to adopt the rate ordinance by that date, a dealer must collect and remit the local CST at the specified rate on and after January 1, 2022. Each county and municipality may levy a tax at the specified rate or repeal a tax at any time, but the levy or repeal is effective for bills dated on or after the following January 1.

The bill deletes the current provision that the local CST includes and is in lieu of any fee or other consideration to which the municipality or county is otherwise entitled for granting permission to dealers of communications services to use or occupy its roads or rights-of-way. It replaces this language with a provision that the local CST replaces other revenue sources for municipalities and counties, including specified taxes and fees.

To conform to these new standard CST provisions, the bill: deletes existing provisions authorizing local governments to adjust their CST rate (Section 8); repeals the current provisions allowing and providing for local CST conversion rates (Section 12); and deletes existing provisions for allocation and disposition of CST proceeds (Section 5).

The bill (Section 7) provides that if in any year, as a direct result of the CST rate changes required by the bill, local CST revenues are expected to be insufficient to timely pay principal and interest or to comply with any covenant under a bond resolution for bonds or other indebtedness outstanding as of January 1, 2020, the Legislature may appropriate to the affected jurisdiction an amount needed to eliminate the insufficiency. Either a general pledge of local CST revenues or a pledge of multiple revenue streams creates a presumption that the jurisdiction's insufficient revenue amount does not directly result from the CST rate changes. Additionally, local CST revenue decreases due to consumer price reductions for taxable services or due to reduced purchases of taxable services are not a direct result of the bill's CST rate changes. To obtain a legislative appropriation, on or before November 15 each affected jurisdiction expecting an insufficient amount of CST revenue must apply to DOR for an appropriation on a form and in the manner prescribed by DOR. DOR must review the applications and, on or before January 1, submit a report to the Legislature containing each jurisdiction's application, aggregate taxable sales amounts, and any supporting documentation provided by the jurisdiction to substantiate the expected shortfall in revenues to meet debt service or bond covenant requirements.

The bill also make technical, conforming changes (Sections 4, 9, 10, and 11).

The bill takes effect January 1, 2021, except for the effective date provision and the amendment to the definition of "video service" to include streaming (Section 2), which take effect upon the act becoming a law. The bill directs the Division of Law Revision within the Office of Legislative Services to replace the phrase "this act" (in Section 7 on a legislative appropriation to offset a loss in local CST revenues) with the chapter law of this act.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The Revenue Estimating Conference does not have a consensus estimate of the impact of the language in this bill. It is anticipated to have an impact on both state and local governments.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 202.105, 202.11, 202.12, 202.13, 202.18, 202.19, 202.21, 202.24, 202.37, and 337.401.

This bill creates section 202.197 of the Florida Statutes.

This bill repeals section 202.20 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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