

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.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 1432

INTRODUCER: Regulated Industries Committee and Senator Trumbull

SUBJECT: Communications Services Tax

DATE: March 22, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Imhof	RI	Fav/CS
2.			CA	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1432 revises the Communications Services Tax Simplification Law under ch. 202, F.S., to:

- Decrease the state tax rate on the retail sale of communications services, including that of direct-to-home satellite service;
- Specify that the local discretionary communications services tax, authorized under s. 212.19, F.S., be may not be increased until January 1, 2026;
- Specify that the local discretionary communications services tax under s. 212.19, F.S., shall replace other revenue sources for counties and municipalities and includes specified taxes, charges, fees, and other impositions to the extent that the respective local taxing jurisdictions were authorized to impose those taxes, charges, fees and other impositions before July 1, 2000, and after January 1, 2023; and
- Specify that any increases to discretionary sales tax, levied pursuant to s. 212.055, F.S., may not be added to the local communications services tax under s. 202.19, F.S., before January 1, 2026

The bill takes effect upon becoming a law.

II. Present Situation:

Chapter 202, F.S., is the Communications Services Tax (CST) Simplification Law. The term “communications services” means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or

among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method, regardless of the protocol used for such transmission or conveyance.¹

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, by restructuring separate taxes and fees into a revenue-neutral CST centrally administered by the Department of Revenue (DOR), i.e. a single tax to replace multiple taxes and fees previously imposed. Among the Legislature's stated intentions in creating the 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 rate, except for direct-to-home satellite service, is 4.92 percent.² 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.³

These maximum rates do not include the add-ons, pursuant to s. 337.401, F.S., 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.⁴

The local discretionary CST and add-on rates, if applicable, constitute the total local adopted rate.⁵

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.⁶ Additionally, the term "replaced revenue sources" includes permit fees relating to use of rights-of-way collected from communication services providers; however, 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.⁷

¹ Section 202.11(1), F.S. Excluded from this definition is information services; installation or maintenance of wiring or equipment on a customer's premises; the sale or rental of tangible personal property; the sale of advertising, including, but not limited to, directory advertising; bad check charges; late payment charges; billing and collection services; and internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

² Section 202.12(1)(a) and (b), F.S.

³ Section 202.19, F.S.

⁴ Section 337.401(3)(c), F.S.

⁵ Florida Department of Revenue, *2023 Agency Legislative Bill Analysis for SB 1432*, (Mar. 14, 2023) (on file with the Senate Regulated Industries Committee).

⁶ Section 202.19(3)(a), F.S.

⁷ Section 202.20(2)(b)1.e, F.S.

Under s. 202.19(5), F.S., any discretionary sales surtax levied by a county or school board under s. 212.055, F.S., is imposed as a local CST. This surtax is added to the adopted local rate at the respective conversion rate, as determined in accordance with methodology and chart in s. 202.20(3), F.S. The total local CST rate is the total adopted rate plus the local option tax (at the converted rate), if applicable. The total local CST rates vary by jurisdiction.

III. Effect of Proposed Changes:

Section 1 of the bill revises s. 202.12(1)(a), F.S., to reduce the CST rate imposed by the state from 4.92 percent to 3.48 percent. The bill also revises the rate charged under s. 202.12(1)(b), F.S., for direct-to-home satellite service, lowering it from 7.63 to 9.07 percent.

Section 2 of the bill revises s. 202.19, F.S., to require that any local CST rate in effect as of January 1, 2023, cannot be increased before January 1, 2026.

The bill also states that the local CST authorized under s. 202.19, F.S., replaces other revenue sources for municipalities and counties and includes the following taxes, charges, fees, and other impositions to the extent that the respective local taxing jurisdictions were authorized to impose those taxes, charges, fees, and other impositions before July 1, 2000, and after January 1, 2023:

- For charter counties or municipalities:
 - The public service tax on telecommunications authorized by s. 166.231(9), F.S., as published in the 2001 version of the Florida Statutes;
 - Franchise fees on providers of cable television services as authorized by 47 U.S.C. s. 542;⁸
 - The public service tax on prepaid calling arrangements;
 - Franchise fees on dealers of communications services that use the public roads or rights-of-way;
 - Actual permit fees relating to placing or maintaining facilities in or on public roads or rights-of-way collected from providers of long-distance, cable, and mobile communications services for the fiscal year ending September 30, 1999; however, if a municipality or charter county elected to continue charging permit fees as authorized by s. 337.401, F.S., on or before January 1, 2019, the fees may not be included as a replaced revenue source; and
 - 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, including providers of cable television services as authorized by 47 U.S.C. s. 542, 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.
- For noncharter counties: franchise fees on providers of cable television services as authorized by 47 U.S.C. s. 542;

⁸ 47 U.S.C. s. 542, authorizes any governmental entity empowered by Federal, State, or local law to grant a franchise to assess a “franchise fee” (defined as “any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such”) on a cable operator granted a franchise to operate in that authority’s jurisdiction.

The bill also provides that any increases to discretionary sales tax, levied pursuant to s. 212.055, F.S., may not be added to the local CST under s. 202.19, F.S., before January 1, 2026.

Section 3 of the bill provides that it shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of Art. VII, s. 18 of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,⁹ which is \$2.3 million or less for Fiscal Year 2023-2024.¹⁰

The Revenue Estimating Conference determined that the bill will not impact the revenues raised from local option taxes. Therefore, the mandates provision may not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

⁹ FLA. CONST. art. VII, s. 18(d). An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Mar. 8, 2023).

¹⁰ Based on the Demographic Estimating Conference's estimated population adopted on July 18, 2022. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/archives/220718demographic.pdf> (last visited Mar. 8, 2023).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference (REC) adopted the following consensus estimates on March 17, 2023 for the bill:

	GR		Trust		Revenue Sharing		Local Half Cent	
	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring
2023-24	(136.9)	(149.4)	*	*	(4.6)	(5.0)	(13.1)	(14.3)
2024-25	(155.5)	(155.5)	*	*	(5.2)	(5.2)	(14.9)	(14.9)
2025-26	(160.0)	(160.0)	*	*	(5.4)	(5.4)	(15.3)	(15.3)
2026-27	(164.0)	(164.0)	*	*	(5.5)	(5.5)	(15.7)	(15.7)
2027-28	(167.7)	(167.7)	*	*	(5.6)	(5.6)	(16.1)	(16.1)

* Insignificant: The REC holds local rates constant in its deliberations. Thus, the REC considers that the local CST rate freeze proposed in the bill is zero impact.

	Local Option		Total Local		Total	
	Cash	Recurring	Cash	Recurring	Cash	Recurring
2023-24	0.0	0.0	(17.7)	(19.3)	(154.6)	(168.7)
2024-25	0.0	0.0	(20.1)	(20.1)	(175.6)	(175.6)
2025-26	0.0	0.0	(20.7)	(20.7)	(180.7)	(180.7)
2026-27	0.0	0.0	(21.2)	(21.2)	(185.2)	(185.2)
2027-28	0.0	0.0	(21.7)	(21.7)	(189.4)	(189.4)

B. Private Sector Impact:

Persons purchasing communications services, including direct-to-home satellite service, in Florida at retail are likely to benefit from reduced CST. Retailers selling communications services, including direct-to-home satellite service, may also benefit from increased sales of such services as the total purchase cost for consumers may decrease under the bill.

C. Government Sector Impact:

CS/SB 1432 will impact local and state tax revenues as provided in Section V.A. (Fiscal Impact Statement: Tax/Fee Issues) above.

VI. Technical Deficiencies:

In its analysis, the Department of Revenue (DOR), identified two potential technical deficiencies regarding the provision of the bill that states that any increases to discretionary sales tax, levied pursuant to s. 212.055, F.S., may not be added to the local CST under s. 202.19, F.S., before January 1, 2026 (lines 106-110):

- The provision section does not indicate when a change to the discretionary sales surtax that is levied on or after January 1, 2023, would be included in the local communications services tax.
- While the provision removes the addition of the discretionary sales surtax imposed pursuant to s. 212.055, F.S., to the local tax rate imposed by counties and municipalities, the bill does not appear to account for this by making corresponding revisions to s. 212.054(2)(a), F.S. Currently, s. 212.054(2)(a), F.S., states, in part:

The tax imposed by the governing body of any county authorized to so levy pursuant to s. 212.055 shall be a discretionary surtax on all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by this chapter and communications services as defined for purposes of chapter 202. The surtax, if levied, shall be computed as the applicable rate or rates authorized pursuant to s. 212.055 times the amount of taxable sales and taxable purchases representing such transactions.¹¹

VII. Related Issues:

In addition to the technical issues identified above, the DOR provided in its analysis that it is unclear to the agency what is intended by the time period of July 1, 2000, and January 1, 2023, specified in lines 61-66 of the bill, where revenue sources of municipalities and counties are to be replaced by the tax authorized by the proposed s. 202.19(3)(a), F.S. DOR states that local governments have been prohibited from imposing the taxes, charges and fees discussed in this paragraph since July 1, 2000. The DOR asks whether the intent of the bill is for local governments to be able to impose such taxes, charges and fees after January 1, 2023.¹²

The sponsor may also wish to consider the following revisions recommended by the DOR:

- On line 69 of the bill: revise “by s. 166.231(9), Florida Statutes (2001)” to read “by s. 166.231(9), Florida Statutes (2000).”
- On line 74 of the bill: add the phrase “, up to the limit set forth in s. 337.401.” after the phrase in the bill that states, “that use the public roads or rights-of-way.”
- On line 115 of the bill: change “communication” to “communications.”¹³

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 202.12 and 202.19.

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 21, 2023:

¹¹ Department of Revenue, *supra* note 5.

¹² *Id.*

¹³ *Id.*

The committee substitute amends s. 202.12(1)(b), F.S., to reduce the communications services tax on direct-to-home satellite service from 9.07 percent to 7.63 percent.

B. Amendments:

None.

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