

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1338

SPONSOR: Regulated Industries Committee, Fiscal Resource Committee, and Senator Horne

SUBJECT: Telecommunications

DATE: April 14, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fournier & Keating</u>	<u>Wood</u>	<u>FR</u>	<u>Favorable/CS</u>
2.	<u>Wimsett</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill substantially changes Florida's communications tax law. It creates Chapter 202, F.S., the Communications Services Tax Simplification Law, and provides that communications services are subject to a uniform state tax and a local tax to be administered by the Florida Department of Revenue.

This bill substantially creates the following sections of the Florida Statutes: 202.10, 202.11, 202.12, 202.125, 202.13, 202.14, 202.15, 202.16, 202.17, 202.18, 202.19, 202.20, 202.21, 202.22, 202.23, 202.24, 202.25, 202.26, 202.27, 202.28, 202.29, 202.30, 202.31, 202.32, 202.33, 202.34, 202.35, 202.36, 202.37.

This bill amends the following Florida Statutes: 72.011, 213.05, 213.053, 212.20, 166.231, 166.233, 203.01, 203.012, 212.05, 212.054, 337.401, 212.031.

This bill repeals the following Florida Statutes: 203.013, 203.60, 203.61, 203.62, 203.63.

II. Present Situation:

The tax rate on telecommunications services varies considerably in Florida. Telecommunications services are subject to four different taxes: gross receipts, state sales and use, local sales and use, and municipal utility tax. Each of these taxes has a different base, and the revenue raised is used for different purposes. Telephone and cable companies also pay franchise fees to municipalities for using public rights-of-way.

1. Gross Receipts Tax

Chapter 203, Florida Statutes, imposes a 2.5 percent tax on the gross receipts of "every person that receives payment for any utility service." Proceeds of this tax are bonded to pay for

construction of public school and higher education facilities through the Public Education Capital Outlay (PECO) and Debt Service Trust Fund.

Tax Base

The tax base for the gross receipts tax on telecommunications services is fairly broad. As defined in s. 203.012, F.S., the term includes local telephone service, toll telephone service, telegram or telegraph service, teletypewriter service, and private communication service. Cellular service, specialized mobile radio, and paging service are also included in the definition of telecommunications services.

However, s. 203.012, F.S., specifically excludes certain services from the definition of telecommunications services. Charges for customer premises equipment; charges for commercial or cable television, unless it is used for two-way communication; charges made by hotels or motels for local telephone service or toll telephone service, when such charges occur incidental to the right of occupancy in such hotel or motel; connection and disconnection and similar charges; and charges for services or items of equipment supplied by providers of cellular telecommunication service or mobile radio and paging service, which are incidental to the provision of telecommunication services, provided that these charges are separately stated on the bill or invoice, are excluded.

The 1997 Legislature provided an exemption for Internet access, electronic mail, electronic bulletin board service, and similar on-line computer service by removing them from the definition of "telecommunications services."

Exemptions

The gross receipts tax is a tax on the company providing the service, not on the customer. Unlike the sales tax, there are virtually no exemptions based on the nature of the purchaser. The major gross receipts tax exemption, found in s. 203.01(4), F.S., is for telecommunications services that are sold for resale by the purchaser. Resale by the purchaser, if the sale is considered to be in Florida, would be subject to tax. There are, however, specific exemptions for the state, political subdivisions, and municipalities from having to pay the tax on telecommunications systems operated for their own use.

Location

Telecommunications originating and terminating in Florida are subject to the tax. For an interstate telecommunication service to be taxable in Florida, it must meet a two-part test. First, it must be billed or charged to a Florida telecommunications number or device and secondly, it must either originate or terminate in this state.

Interstate private communications services in which the purchaser has exclusive or priority use of a communication channel are taxed differently. Charges for such services are apportioned based on the location of channel termination points. Such charges billed to a Florida user are fully taxable for the charge imposed for channel mileage between points within Florida. Fifty percent of

the charge for the channel mileage between the first termination point within Florida and the nearest termination point outside Florida is taxable.

Billing

The provider is responsible for remitting the tax. Providers, however, are given the option of separately stating the tax on a bill or invoice sent to the customer. When the provider of taxable utility services elects to state the tax as a component of the charge for the service, every person, including all governmental units, must remit the tax, and the tax is a component part of the debt of the purchaser to the person who provides the taxable service.

Bundled Services

Cable television services are specifically exempt from the gross receipts tax. Section 203.01(9), F.S., however, contains a special provision for bundled services. If the telecommunications service is sold separately by the provider of the services, the taxable portion of the bill is to be equal to the value of the taxable service when it is sold separately. If the service is not offered separately, consideration for the taxable telecommunication service is to be based on the statewide average tariff for such service, as determined by the Florida Public Service Commission.

2. Sales and Use Tax

Florida's sales tax on telecommunications, with a few major exceptions, is based on the definition of the telecommunications tax base for gross receipts. The major differences in the tax base are the sales tax exemptions for residential service, other sales tax exemptions based on the type of entity purchasing the telecommunications service, and the inclusion in the sales tax base of various services related to the installation of telecommunications equipment.

Tax Base

Paragraph (e) of s. 212.05(1), F.S., states that sales tax applies to: (1) all telegraph messages and long distance telephone calls beginning and terminating in this state, telecommunication service as defined in s. 203.012, F.S., and those services defined in s. 203.012(2)(a), F.S.; (2) any television system program service; and (3) the installation of telecommunication and telegraphic equipment.

The statute provides that "telecommunication service" does not include local service provided through a pay telephone, and charges for service do not include any excise tax levied by the Federal Government, any political subdivision of the state, or any municipality, when the tax is collected by the seller from the purchaser. The statutes also provide that television system program services, in addition to the transmitting of an audio or video signal, include the "installing, connecting, reconnecting, disconnecting, moving, or changing of any equipment related to such service." The sales tax statutes have a provision similar to that for the gross receipts tax for those who operate a telecommunications system for their own use. These operations are taxed at a rate of 6 percent based on the actual cost of operating the system.

Paragraph (e) also provides that the tax on calls made with a prepaid calling card shall be collected at the time of sale and remitted by the dealer selling or recharging a prepaid card.

Tax Rate

While the general state sales tax rate is 6 percent, the rate for telecommunications services and electrical power and energy is 7 percent. This higher rate was enacted in 1992.

Exemptions

The most significant sales tax exemption for telecommunications services is for residential service. Paragraph (j) of s. 212.08(7), F.S., exempts “utilities” sold to residential households by utility companies that pay gross receipts tax under s. 203.01, F.S. This includes electricity, telecommunications services and natural or manufactured gas. This residential exemption was enacted in 1972.

In addition to the residential exemption, a variety of other exemptions based on the nature of the purchaser that apply to the general sales tax also apply for sales of telecommunications services. These include governmental, religious, charitable and educational entities and other types of organizations with sales tax exemptions.

Location

The rules regarding the application of the sales tax on interstate calls are almost the same as for the gross receipts tax. To be taxable in Florida, a call must either originate or terminate in Florida and be billed to a customer, number, or device in this state. For interstate private communications services, there is a slight difference in the apportionment method. Instead of being apportioned based on half the distance between the last channel termination point in Florida and the first outside the state, the sales tax apportionment method measures mileage from the last channel termination point in Florida to a single point near the Georgia border and calculates a ratio using that mileage compared to the total mileage between the last channel termination point in Florida and the first outside the state.

3. Local Option Sales Taxes

Local option sales taxes include telecommunications services as part of the tax base. While the tax base for the local option sales tax is generally the same as for the state sales tax, one major difference concerns telecommunications services.

Tax Base

With regard to telecommunications services, the tax base for local option general sales taxes is the same as for the state sales tax except for the taxation of long distance telephone service. Paragraph 212.054(2)(b), F.S., expressly exempts long distance telephone service from all local option sales taxes.

Tax Rate

There are a total of 7 local option sales taxes authorized by statute. With the exception of two of these taxes, the Charter County Transit System Surtax with a maximum rate of 1 percent and the School Capital Outlay Surtax with a maximum rate of .5 percent, the total levy for these local option taxes is limited to a total of 1 percent. Again with two exceptions, the Small County Surtax and the Small County Indigent Care Surtax, these taxes may be levied only pursuant to a vote of the residents. Counties with a population under 50,000 qualifying to levy the small county taxes may do so by a majority plus one vote of their county commissions. Fifty of the sixty-seven counties levy at least one of the surtaxes.

4. Municipal Utility Tax (Public Service Tax)

The Municipal Utility Tax or MUT, is a tax authorized by the Legislature for municipalities to levy on a variety of utility services. The courts have extended the authority to allow the fifteen charter counties in Florida to levy the tax within their unincorporated areas. "Utility" services that may be taxed include electricity, natural gas, propane, fuel oil, kerosene, water, telecommunications, and cable television. Authority to tax cable television was repealed in 1977 with only those municipalities pledging the revenues for bond repayment allowed to continue to levy the tax. Telecommunications services may be taxed on two different bases with different maximum rates for each. Except for fuel oil, which can be taxed at no more than 4 cents per gallon, and telecommunications, which has a maximum tax of 7 percent on its broadest base, the maximum MUT levy is 10 percent of payments received by the seller for the taxable service.

Tax Bases

Telecommunications services may be taxed on two different bases.

10 Percent Base

The first base is taxable pursuant to s.166.231 (9)(a)(1), F.S., which includes only local telephone service as defined in s. 203.012, F.S. This is a reference to definitions used for the gross receipts tax. For purposes of gross receipts tax, local telephone service is defined as "the access to a local telephone system, and the privilege of telephonic-quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system or any facility or service provided in connection with such service."

The term "local telephone service" does not include any service which is a toll telephone service; private communication service; cellular mobile telephone or telecommunication service; specialized mobile radio, or pagers and paging, service, including but not limited to "beepers" and any other form of mobile and portable one-way or two-way communication; or teletypewriter service.

In addition to the exclusions from the definition of local telephone service listed in Chapter 203, F.S., s. 166.231, F.S., also excludes public telephone charges collected onsite, access charges, and any customer access line charges paid to a local telephone company.

Municipalities and charter counties may levy a tax of up to 10 percent of payments received for taxable services if choosing to levy the tax on this base.

7 Percent Base

The second, and broader, municipal utility tax base includes telecommunications services as defined in s. 203.012, F.S., which originate and terminate in Florida. This includes all of the services in the municipal utility tax described above and a broad range of other services. Municipalities electing to levy on this base may levy a rate of no more than 7 percent of payments received for taxable services. Telecommunications services in s. 203.012(5), F.S., are defined as:

Local telephone service, toll telephone service, telegram or telegraph service, teletypewriter service, or private communication service, cellular mobile telephone or telecommunication service; or specialized mobile radio, and pagers and paging, service, including but not limited to “beepers” and any other form of mobile and portable one-way or two-way communication.

Section 203.012, F.S., specifically excludes from the definition of telecommunications services charges for rented or leased equipment, connect and disconnect charges, move or change charges, suspension of service charges, service order, number change and restoration charges, and charges for equipment maintenance, sales or rental, provided such charges are separately stated.

In addition to the services excluded from the definition in chapter 203, F.S., s. 166.231, F.S., also excludes the following from taxation:

Public telephone charges collected on site, charges for any foreign exchange service or any private line service except when such services are used or sold as a substitute for any telephone company switched service or dedicated facility by which a telephone company provides a communication path, access charges, and any customer access line charges paid to a local telephone company.

In addition, the tax on cellular phones, pagers and beepers is limited to only the monthly recurring customer service charges and excludes any variable charges.

Exemptions

Exemptions from the tax based on the nature of the purchaser are relatively limited. While the statutes state that municipalities may exempt purchases by federal, state, or county governments, the courts have ruled that such entities are immune from taxation and cannot be taxed. The statutes also require municipalities to exempt “purchases by any recognized church in this state for use exclusively for church purposes.” Credit unions and various instrumentalities of the federal government such as the Red Cross are also exempt pursuant to federal law.

Location

The intent of the municipal utility tax is to tax telecommunications services provided in the municipality. For purposes of determining which services are subject to tax under the second, broader MUT tax base, s. 166.23 1(9)(a)2., F.S., states that the 7 percent tax shall apply to:

The total amount charged for any telecommunications service provided within the municipality or, if the location of the telecommunications service provided cannot be determined, the total amount billed for such telecommunications service to a telephone or telephone number, a telecommunications number or device, or a customers' billing address located within the municipality.

Sellers of telecommunications services are allowed to keep 1 percent of the amount of the tax collected and due to the municipality as compensation for tax collecting and remission.

Administration

The tax may be levied by ordinance. The choice of tax base may not be changed more often than once in 12 months, with at least 120 days notice required to the companies collecting the tax. Municipalities must furnish the companies collecting tax with a listing of all street names and numbers forming the municipal boundaries. Municipalities must update this information as necessary but may charge the service providers a fee not exceeding the cost of providing the information. Municipalities may audit the records of telecommunications providers. With 60 days notice, providers must give municipalities access to all applicable records. Service providers are only liable for taxable accounts corresponding to information provided by the municipality. Audit records are confidential.

Bundled Services

When a telecommunications provider offers taxable telecommunications services and exempt cable services, the tax on the telecommunications services must be based on the value of the taxable service as sold separately. If the service is not sold separately, the charges must be separated as a condition to receiving the exemption. When separately stating charges, the charge for telecommunications service cannot be less than the statewide average tariff rates set by the local exchange telecommunications companies in the tariffs filed with the Commission.

5. Franchise Fees

Section 337.401, F.S., provides that a municipality is authorized to charge telecommunications companies up to 1 percent of local recurring revenues for the use of the rights-of-way. Long-distance companies are assessed franchise fees based on lineal distance in the right-of-way. *See, s. 337.401(4), F.S.*

Counties and cities have the authority to enter into franchise agreements with cable television system operators to provide service. Federal law provides that the franchise fee may not exceed 5 percent of the cable operator's gross revenues for a 12 month period. 47 U.S.C. 542(b).

Current Telecommunications Services Tax Rates Based on Type of Service					
Type of Service	Sales Tax	Gross Receipts Tax	Max. Local Option Sales Tax	Max. Public Service Tax (MUT)	Franchise Fees
Residential Local	0.0%	2.5%	0.0%	10.0%	1.0%
Residential Intrastate	0.0%	2.5%	0.0%	7.0%	0.0%
Residential Interstate	0.0%	2.5%	0.0%	0.0%	0.0%
Commercial Local	7.0%	2.5%	1.5%	7.0%	1.0%
Commercial Intrastate	7.0%	2.5%	0.0%	7.0%	0.0%
Commercial Interstate	7.0%	2.5%	0.0%	0.0%	0.0%
Cellular Local	7.0%	2.5%	1.5%	7.0%	0.0%
Cellular Intrastate	7.0%	2.5%	0.0%	7.0%	0.0%
Cellular Interstate	7.0%	2.5%	0.0%	0.0%	0.0%
Cable	6.0%	0.0%	1.5%	0.0%	5.0%

III. Effect of Proposed Changes:

Section 1 creates s. 202.10, F.S., entitled the “Communications Services Tax Simplification Law.”

Section 2 creates s. 202.11, F.S., which provides definitions relevant to the Communications Services Tax Simplification Law, including an expansive definition of “communications services,” and specific “sales price” provisions.

Section 3 creates s. 202.12, F.S., effective January 1, 2002, to provide that the legislature finds that every person who engages in the business of selling communications services at retail is exercising a taxable privilege. The gross receipts tax imposed by chapter 203 will be administered by this new chapter. It provides that the sales of communications service will be taxed at the rate of 6.33 percent, except that direct-to-home satellite service will be taxed at a different rate established by a formula. It provides procedures for collection and distribution of tax proceeds. Taxes imposed on any person for interstate communication services that originate outside this state and terminate within the state are capped at \$100,000.

Section 4 creates s. 202.125, F.S., effective January 1, 2002, which provides that communication services sold to residential households is exempt from the tax imposed by s. 202.12, F.S. Communications services sold to governments or education or religious organizations exempt under s. 501(c)(3) of the Internal Revenue Code are exempt from the taxes imposed or administered pursuant to ss. 202.12 and 202.19, F.S.

Section 5 creates s. 202.13, F.S., effective January 1, 2002, which provides savings language for Chapters 166, 203, 212, and 337, in the event the taxes imposed or administered under this chapter 202 are declared invalid. It states that exemptions to the taxes are limited to those expressly exempted by the chapter or exempted by the constitutions of the United States or Florida. The tax on dealers of communications services authorized under chapter 202 will supersede the authority of local governments to levy a franchise fee as set out in 47 U.S.C. s. 542.

Section 6 creates s. 202.14, F.S., effective January 1, 2002, which provides a credit for taxes imposed by other states or jurisdictions.

Section 7 creates s. 202.15, F.S., F.S., effective January 1, 2002, a special rule for users of substitute communication systems, requiring them to register with the department and pay the tax imposed under s. 202.12, F.S.

Section 8 creates s. 202.16, F.S., effective January 1, 2002, which provides tax payment rules for dealers of taxable communications services. The taxes will be paid by the purchaser and will be collected from the dealer of communications services.

Section 9 creates s. 202.17, F.S., effective January 1, 2002, which requires dealers of communications services to register with the Department of Revenue. It provides specific registration rules and procedures. Failure to register is a misdemeanor of the first degree. A certificate of registration may be revoked by the Department of Revenue when a dealer fails to comply with either Chapter 202, or Chapter 203.

Section 10 creates s. 202.18, F.S., effective January 1, 2002, which provides for allocation and disposition of tax proceeds.

Section 11 creates s. 202.19, F.S., effective January 1, 2002, which authorizes the governing body of each county and municipality to levy a discretionary communications services tax. Municipalities and charter counties may levy the tax up to the maximum rate determined for such entities in s. 202.20(2), F.S., and other counties may levy up to the maximum rate established in s. 202.20(2), F.S. The intent is expressed that the maximum tax rate be the rate that would allow each municipality or county to raise the maximum revenue it was authorized to raise under current law.

Section 12 creates s. 202.20, F.S., describing the process by which initial and maximum rates of local telecommunications services taxes shall be established by the Revenue Estimating Conference. These rates are subject to review by the Legislature during the 2001 regular session. It also defines "replaced revenue sources" for purposes of determining the local portion of the tax.

Section 13 creates s. 202.21, F.S., effective January 1, 2002, which describes the process by which local communications tax rates shall be changed and the requirements for notifying dealers of communications services of these changes.

Section 14 creates s. 202.22, F.S., effective January 1, 2002, which provides for determination of local tax situs. It provides that dealers of communications services that conform to certain

requirements for determining proper taxing jurisdictions held harmless from any liability that would arise from assigning the service address incorrectly.

Section 15 creates s. 202.23, F.S., effective January 1, 2002, providing the procedure by which communications services taxes may be refunded to purchasers of these services. This section provides the exclusive remedy for a purchaser who claims that a dealer has collected communications services taxes imposed or administered under this chapter which were not due.

Section 16 creates s. 202.24, F.S., effective January 1, 2002, limiting local taxes and fees which may be imposed on dealers of communications services. However, each municipality and county retains authority to negotiate all terms and conditions of a cable service franchise allowed by federal and state law with certain exceptions. This limitation does not apply to the local communications services tax levied pursuant to this chapter, ad valorem taxes, occupational license taxes, 911 service charge, or rental of property not in the public right-of-way, permit fees under certain circumstances, existing agreements with cable providers for in-kind property or service, special assessments or impact fees, pole attachment fees, and other taxes or fees authorized by general law on the effective date of this act.

Section 17 creates s. 202.25, F.S., effective January 1, 2002, providing for suits by the Department of Revenue against dealers for violation of this chapter, including dealers not qualified to do business in this state.

Section 18 creates s. 202.26, F.S., which directs the Department of Revenue to administer and enforce the assessment and collection of the taxes imposed by this chapter. The department is authorized to adopt rules to enforce the chapter, including emergency rules.

Section 19 creates s. 202.27, F.S., effective January 1, 2002, requiring dealers to file returns and remit the tax to the department on or before the 20th of each month. Dealers with small amounts of tax due may return and remit taxes less often, with an annual return and payment if the previous year's tax did not exceed \$100. The department is authorized to provide for self-accrual of taxes by certain dealers.

Section 20 creates s. 202.28, F.S., effective January 1, 2002, which allows persons providing communications services a collection allowance of .75 percent of the amount of tax remitted to the department. This collection allowance may not be granted for delinquent taxes or tax returns and may be denied for incomplete returns. The department is authorized to adopt rules requiring such information as it may deem necessary to ensure that the communications services taxes levied under this chapter are properly collected. Penalties are provided for failure to return or pay these taxes within the prescribed time period, and for tax evasion and filing a false or fraudulent return.

Section 21 creates s. 202.29, F.S., effective January 1, 2002, providing a credit for taxes paid on bad debts.

Section 22 creates s. 202.30, F.S., effective January 1, 2002, requiring a dealer to remit taxes by electronic funds transfer and make returns through electronic data interchange when the amount of tax paid under this chapter, chapter 203, F.S., or chapter 212, F.S., by such dealer was greater

than \$50,000 in the previous fiscal year. The department is allowed to waive this requirement, under certain circumstances. The department is also required to provide forms or electronic formats for filing returns and providing instructions to dealers.

Section 23 creates s. 202.31, F.S., effective January 1, 2002, providing for the sale of any business which is liable for taxes. The purchaser of the business is required to withhold a sufficient portion of the purchase money to cover the account of such taxes until the former owner produces a receipt from the department stating that no taxes, penalty, or interest are due. If a dealer of communications services quits the business without a purchaser or successor and is delinquent in the payment of taxes, the department may notify all persons having any credits or personal property belonging to the dealer, to prevent them from disposing of these credits or property.

Section 24 creates s. 202.32, F.S., effective January 1, 2002, empowering the Department to call on any state or local agency for any information necessary or useful in administering this chapter.

Section 25 creates s. 202.33, F.S., effective January 1, 2002, declares that taxes collected pursuant to this chapter shall become state or local government funds at the moment of collection, and provides criminal sanctions for failure to remit taxes collected under this chapter. The department is also directed to issue a warrant for the full amount of tax due or estimated to be due when any tax becomes delinquent or is otherwise in jeopardy. The warrant becomes a lien on any real or personal property of the taxpayer.

Section 26 creates s. 202.34, F.S., effective January 1, 2002, requiring a dealer of communications services to keep a complete record of communications services sold at retail, together with invoices, gross receipts from such sales, and other pertinent records required by the department. These records shall be open for inspection by the department at all reasonable hours at the dealer's place of business. The department is authorized to audit by sampling the dealer's records. Wholesale dealers of communications services are also required to maintain books and records as required by s. 213.35, F.S., and to permit the department to examine their books and records at all reasonable hours. This section also provides instructions concerning the conduct of audits by the department.

Section 27 creates s. 202.35, F.S., effective January 1, 2002, imposing interest on delinquent taxes, provides for assessment of taxes if a dealer fails to make his or her records available, fails to register as a dealer, or makes a grossly incorrect or false or fraudulent return. This section also requires a dealer to separately state the amount of tax collected under this chapter on all invoices. A dealer may not offer to absorb any part of the tax, or relieve the purchaser of the payment of any part of the tax.

Section 28 creates s. 202.36, F.S., effective January 1, 2002, providing departmental powers for issuing distress warrants, subpoenas, or subpoenas duces tecum.

Section 29 creates s. 202.37, F.S., providing special rules for administration of the local communications services tax.

Section 30 provides that the Revenue Estimating Conference will compute the rate of the tax on the sales price of direct-to-home satellite services, on or before December 31, 2000. The rate will be presented to the legislature for review and approval during the 2001 Regular Session.

Section 31 provides that the executive director of the Department of Revenue will appoint members to an advisory committee by August 1, 2000. It provides for the make-up of the committee.

Section 32 amends s. 72.011, F.S., effective January 1, 2002, adding chapter 202, F.S., to the list of chapters for which a taxpayer may file an action in circuit court or under chapter 120, F.S.

Section 33 amends s. 213.05, F.S., effective January 1, 2002, adding the communications tax in chapter 202 to the to the list of taxes for which the Department of Revenue has responsibility for regulating, controlling, and administering.

Section 34 amends s. 213.053, F.S., allowing the Department of Revenue to share information relative to the local communications services tax with local government officials.

Section 35 amends s. 212.20, F.S., effective January 1, 2002, providing that revenue collected under s. 202.18(1)(b) and (2)(b) will be distributed by the sales tax distribution formula.

Section 36 amends s. 166.231, F.S., to provide that the public service tax shall not be collected at retail on prepaid calling arrangements.

Section 37 provides that, effective July 1, 2000, taxes that have been collected at retail on prepaid calling arrangements under s. 166.231(9), F.S., before July 1, 2000, must be remitted, but taxes not collected before such date need not be paid and are forgiven.

Section 38 repeals s. 166.231(9), F.S., effective January 1, 2002, deleting provisions authorizing a municipality to levy the public utility tax on the purchase of telecommunication services

Section 39 amends s. 166.233, F.S., effective January 1, 2002, conforming provisions to changes made by this act.

Section 40 amends s. 203.01, F.S., provides that the sale of telecommunication services to a person reselling such services by a prepaid calling arrangement is not subject to the gross receipts tax.

Section 41 amends s. 203.01, F.S., effective January 1, 2002, providing that the tax on communications services imposed by this chapter shall be administered and collected under the provisions of Chapter 202. The tax rate for communications services is set at 2.2 percent.

Section 42 amends s. 203.012, F.S., effective January 1, 2002, deleting provisions relating to the taxation of telecommunication service and clarifying the definition of "utility service."

Section 43 repeals, effective January 1, 2002, ss. 203.013, 203.60, 203.61, 202.62, and 202.63, F.S., relating to the gross receipts tax on interstate telecommunication services and other taxes on interstate and international telecommunication services.

Section 44 amends s. 212.05, F.S., to remove prepaid calling arrangements from telecommunication service taxable at 7 percent. It also provides a definition of prepaid calling arrangement, and states that the sale or recharge of such arrangement shall be treated as a sales of tangible personal property.

Section 45 provides, effective July 1, 2000, that taxes that have been collected at retail on prepaid calling arrangements under s. 212.05(1)(e), F.S., before July 1, 2000, must be remitted, but taxes not collected before such date need not be paid and are forgiven.

Section 46 amends s. 212.054, F.S., effective January 1, 2002, providing that charges for prepaid calling arrangements will be subject to the discretionary sales tax.

Section 47 amends s. 212.05, F.S., effective January 1, 2002, to provide that prepaid calling arrangements will be as tangible personal property at a rate of 6 percent.

Section 48 amends s. 212.054, F.S., effective January 1, 2002, removing references to telephone, telecommunication and television system program from this section.

Section 49 amends s. 337.401, F.S., effective January 1, 2001, and states the legislature's intent that municipalities and counties treat telecommunications companies in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of telecommunications facilities in the public roads or rights-of-way. It requires local governments to make an election regarding the imposition of permit fees no later than October 1, 2001.

Section 50 amends s. 337.401, F.S., effective January 1, 2002, to provide that a local government's right to charge franchise fees is preempted. A local government may still request and negotiate for in-kind contributions from providers of cable service.

Section 51 provides findings regarding the need to adopt a state policy regarding in-kind requirements and contributions for the use or construction of public, educational, or governmental access facilities authorized under federal law currently imposed only on providers of cable service. It requires the appropriate legislative committees to study this issue.

Section 52 amends s. 212.031, F.S., effective July 1, 2000, to include leases for the placement of wireless towers and leases of space on buildings for the placement of wireless antennas to the exemption from sales tax for the lease or rental of public or private streets or rights-of-way for purposes of placing utility facilities.

Section 53 provides that taxes imposed by s. 203.01, 202.12, and 202.19, F.S., on communications services shall be applied in accordance with chapter 202, F.S., as created in this act, to communications services reflected on bills dated on or after January 1, 2002.

Section 54 provides an appropriation to the Department of Revenue for \$189,000 in fiscal year 2000-2001 to implement the provisions of this act.

Section 55 provides that \$1,372,195 is appropriated from General revenue to the Department of Revenue and 22 full-time equivalent positions are authorized to implement the provisions of this act.

Section 56 provides an effective date of July 1, 2000, except as otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

This bill directs the Department of Revenue to transfer the proceeds of the local communications services tax to the Local Communications Services Clearing Tax Trust Fund. This trust fund must be created before January 1, 2002.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill makes significant changes in the taxation of communications services, by both state and local governments. Effective January 1, 2002, communications services will be subject to a new state tax under s. 202.12, F.S., as well as the gross receipts tax under Chapter 203, F.S. Local taxation of communications services will occur pursuant to s. 202.19, F.S., and the public services tax (municipal utility tax) on telecommunication and certain franchise fees on communications services providers will be repealed.

Taxation of prepaid calling arrangements (phone cards) is also amended, and such arrangements are subject to the 6 percent sales tax and the discretionary sales surtax pursuant to s. 212.054, F.S., and are exempted from the gross receipts tax and the public services tax, effective July 1, 2000. Leases of building space for the placement of communication antennas are exempted from sales tax, effective January 1, 2000.

The Revenue Estimating Conference has not made an official estimate of the revenue impact of this committee substitute.

B. Private Sector Impact:

Communications services providers will benefit from the simplification of the tax structure. The bill makes it easier for providers to comply with state and local tax laws. There will be one statewide tax rate on communications services with limited exemptions, and local taxes will be administered and collected by the Department of Revenue. The bill also provides a mechanism for determining the situs of each customer for local tax purposes, and if a service provider satisfies the requirements of the law, the provider is not subject to penalty for failure to situs correctly.

The effect of the bill on consumers is indeterminate. However, the bill is designed to be revenue neutral. The tax on certain services will increase, while others will be taxed at a lower rate. Franchise and permit fees that are currently billed to providers of communications services will be included in the broad-based communications taxes which are directly passed on to consumers.

C. Government Sector Impact:

The bill revises the collection, administration, imposition, and definition of taxable sales of five taxes and fees currently authorized to be levied by municipalities and counties on the various types of communications services. The following county and municipal taxes and fees that currently apply to communications services are affected: the Public Service Tax, which may be levied by municipalities within the incorporated area and charter counties within the unincorporated area; the local option sales surtax, which is levied county wide with revenue shared by counties, municipalities and school boards; a cable franchise fee, which may be levied by municipalities within the incorporated area and by counties within the unincorporated area; and the telephone franchise fee, which is currently authorized to municipalities by statute.

The bill repeals these local taxes and fees and replaces them with a local option component of the new communications tax that is intended to be revenue neutral. The new communications tax has a broad base that encompasses more services than taxable under any single municipal or county tax currently authorized. The Department of Revenue is designated as the tax collector for all the local taxes, removing tax collections duties from local governments for the Public Service Tax and the local fees. Local governments are specifically prohibited from charging communication service providers for use of the public rights of way in the bill, although the bill allows local governments to continue to regulate communication service providers use of the rights-of-way as long as the regulations apply also to other users, such as utility companies. Local governments also retain the authority to negotiate with cable providers for in-kind compensation, capital contributions, and community benefits.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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