

STORAGE NAME: h1889.fpr.doc

DATE: April 16, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FISCAL POLICY & RESOURCES
ANALYSIS**

BILL #: HB 1889 (PCB UTCO 01-02)

RELATING TO: Tax on Communications Services

SPONSOR(S): Committee on Utilities and Telecommunications and Representatives Ritter and Barreiro

TIED BILL(S): PCB UTCO 01-01 and PCB UTCO 01-03

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

- (1) UTILITIES AND TELECOMMUNICATIONS (RIC) YEAS 14 NAYS 2
 - (2) FISCAL POLICY & RESOURCES
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

During the 2000 Regular Session, the Legislature enacted chapter 2000-260, Laws of Florida (CS/CS/CS/SB 1338) that established a unified communications tax structure for the state, effective October 1, 2001. Chapter 2000-260, Laws of Florida combined the seven different types of communications taxes and fees into a two-tiered tax composed of a state tax and a local option tax on communications services. It combined the sales tax on communications services, the local public services tax, and local franchise fees on telecommunications companies and cable companies, allocates the gross receipts tax on communications services, and provides a permit fee option for local governments. It provided for a revenue neutral tax structure to be administered by the Department of Revenue and provides that the revenues are to be distributed to the Public Education Capital Outlay Fund, the General Revenue Fund and to local governments.

The tax rates were not set in the act. The act directed the communications companies and local governments to supply information regarding the assessment of the various taxes to the Department of Revenue. This information would be used by the Revenue Estimating Conference for calculating revenue neutral rates for presentation to the 2001 Legislature. Significant provisions of the act are repealed on June 30, 2001.

This bill amends various sections of chapter 202, Florida Statutes, relating to taxes on communications services. It provides changes with regard to private communication services and mobile communication services. It also amends section 337.401, Florida Statutes, relating to local government cable franchises and the election of permit fees. It sets the tax rate for the state and the variable rates for the local governments. It repeals the repeal of chapter 202, Florida Statutes, and repeals the changes to section 337.401, Florida Statutes that were to become effective on June 30, 2001.

This bill does not appear to have a fiscal impact on state or local governments.

II. 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:

During the 2000 Regular Session, the Legislature enacted chapter 2000-260, Laws of Florida (CS/CS/CS/SB 1338) that established a unified communications taxation scheme for the state, effective October 1, 2001. This act combined the seven different types of communications taxes and fees into a two-tiered tax composed of a state tax and a local option tax on communications services. It combined the sales tax on communications services, the local public services tax, and local franchise fees on telecommunications companies and cable companies, allocates the gross receipts tax on communications services, and provides a permit fee option for local governments. It provided for a revenue neutral taxing scheme to be administered by the Department of Revenue and provides that the revenues are to be distributed to the Public Education Capital Outlay Fund, the General Revenue Fund and to local governments.

The tax rates were not set in the act. The act directed the communications companies and local governments to supply information regarding the assessment of the various taxes to the Department of Revenue. This information would be used by the Revenue Estimating Conference for calculating revenue neutral rates for presentation to the 2001 Legislature. Significant provisions of the act are repealed on June 30, 2001.

C. EFFECT OF PROPOSED CHANGES:

This bill amends various sections of chapter 202, Florida Statutes, relating to taxes on communications services. It also amends section 337.401, Florida Statutes, relating to local government.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. This section provides a declaration of legislative findings and intent.

Section 2. This section amends section 202.11, Florida Statutes, regarding definitions. It clarifies that "cable service" includes point to point distribution services. "Mobile communications service" is defined as in 47 C.F.R. s. 20.3 as it was in effect on June 1, 1999. This definition does not include air-ground radiotelephone service as that is defined in 47 C.F.R. s. 22.99 as it was in effect on June 1, 1999.

“Sales price” is amended to include the right or privilege of using communications services. The sale price shall not be reduced by any separately identified component of the charge that constitutes an expense of the dealer. It clarifies that the sales price of communications services includes the service of sending or receiving a document as a facsimile, except when performed during the course of providing a professional or advertising service.

“Service address” for mobile communications services is defined as the customer’s place of primary use.

“Substitute communications system” is defined as a substitute system for any switched service or dedicated facility by which a communications services dealer provides a communications path.

“Private communications service” is specifically defined as a service that entitles the subscriber to exclusive or priority use of a communications channel or group of channels between channel termination points regardless of the manner of connection. It includes “switching capacity, extension lines, stations, and any other associated service” that is provided for the use of the channels.

“Customer” is defined as the person or entity that contracts with the home service provider for mobile communications services, or if the end user of the service is not the contracting party, then the customer is the end user. The provisions dealing with the end user only apply for determining the place of primary use. Customer does not include a reseller of mobile communications services or a carrier that has agreed to serve the customer outside the home service provider’s licensed service area.

The term “enhanced zip code” is defined as the United States postal zip code of nine or more digits.

“Home service provider” is defined as the facilities-based carrier or reseller that has contracted with the customer to provide mobile communications services.

“Licensed service area” is defined as the geographic area that the home service provider is authorized by law or contract to provide mobile communications services.

The “place of primary use” is defined as the street address where the customer’s primary use of the mobile communication services occurs, which must be the primary street address within the licensed service area.

“Reseller” is defined as a provider who purchases communications services from another communications service provider and then resells the services, uses the services as a component or integrates the services into a mobile communications service. It does not include a serving carrier that contracts to serve customers outside the home service provider’s licensed service area.

A “serving carrier” is defined as a facilities-based provider of mobile communications services to a customer outside the home service provider or reseller’s service area.

Section 3. This section amends section 202.12, Florida Statutes regarding the calculation of the tax rate on the sales price of communications services. It establishes the state tax rate of 6.8 percent to be applied to the sales price of communications services. It provides for a rate of 10.8 percent on the retail sales price of any direct-to-home satellite service received in Florida. It strikes the provisions requiring the Revenue Estimating Conference to compute those rates. It provides that a communications services provider can use any method that reasonably allocates the total charges for private communications services among the states in which a channel termination point is located. The method is deemed reasonable if the provider regularly used the method for Florida

tax purposes prior to December 31, 2000. If a provider uses a reasonable allocation method, then it is held harmless from any liability for tax, interest, or penalties if a different method was used. The gross receipts tax is to be collected on these transactions. Mobile communications services are taxed on services provided pursuant to section 117(a) of the Mobile Telecommunications Sourcing Act, Public Law No. 106-252, if the customer's service address is located in Florida.

Section 4. This section amends section 202.12, Florida Statutes that is effective on January 1, 2004. It further amends the taxation of private communications services. It provides that the tax on the sales price of private communications services shall be based on any charge with respect to a channel termination point located in Florida and any charge of use of a channel between two channel termination points in Florida. Where the channel termination points are located both inside and outside of Florida, the tax shall be 50 percent of the charge for any segment between the channel termination points if the segment is separately billed. If the segment is not separately billed, then the tax is assessed on the total charge for the circuit multiplied by the ratio of the number of termination points in Florida to the total number of termination points on the circuit. This amendment strikes the language enacted in section 2, effective on January 1, 2004.

Section 5. This section creates section 202.155, Florida Statutes, to establish special rules for mobile communications services to be effective on bills after August 1, 2002. A home service provider is responsible for obtaining and maintaining the customer's place of primary use. Subject to two exceptions, the home service provider is entitled to rely on the residential or business street address supplied by the customer and is held harmless from any liability for additional taxes that are based on a different determination of the customer's place of primary use.

The home service provider is allowed to use the street address on the service contract in effect on August 1, 2002 as the customer's place of primary use for the remainder of the contract.

If the Department of Revenue (department) intends to change a customer's place of primary use, it is required to notify the customer. Once a final order is entered that the customer's address being used is not the place of primary use under section 202.11, Florida Statutes, the department is required to notify the home service provider of the proper address to be used. The provider has 120 days to begin using the correct address. If the department intends to change the assignment of a taxing jurisdiction by the home service provider under section 202.22, Florida Statutes, the department is required to notify the provider of the correct jurisdiction. The provider has 120 days to begin using the correct jurisdiction.

If a mobile communications service is not subject to the taxes administered under chapter 202, Florida Statutes, but the sales price of the service is combined with a service subject to these taxes, then the service shall be subject to the tax unless it can be separately identified. A customer must pay the sales tax on the service unless the home service provider separately states the sales price of the nontaxable service or the customer requests the provider in writing to supply verifiable data identifying the sale price of the nontaxable service.

Section 6. This section amends section 202.16, Florida Statutes, relating to payment of taxes. It strikes the provisions that the penalties and interest attributable to nonpayment of taxes for chapter 202 and 203, Florida Statutes, shall be paid by the purchaser of the communications services. It also provides that the department shall make the tax amount and brackets applicable to each taxable sale in electronic format or otherwise.

Section 7. This section amends section 202.17, Florida Statutes, relating to registration. It provides that registration under this section does not constitute registration with a municipality or a county for the purpose of placing or maintaining communications facilities in the rights-of-way as described in section 337.401, Florida Statutes. It strikes the registration fee of \$5.00 that is to be

deposited into the General Revenue Fund. This section also provides that a newly registered dealer shall receive an initial resale certificate that is valid for the remainder of the period of issuance in addition to the certificate of registration. The department is required to provide each active dealer, except the person registered pursuant to section 202.15, Florida Statutes, with an annual resale certificate.

Section 8. This section amends section 202.18, Florida Statutes, relating to the allocation and disposition of tax proceeds. It provides that the proceeds of the tax remitted under section 202.12(1)(c) shall be divided as provided. The portion that constitutes the gross receipts taxes shall be deposited as provided by law and the constitution. Sixty-three percent of the remainder shall be allocated to the state and distributed pursuant to section 212.20(6), Florida Statutes. The proceeds allocated pursuant to section 212.20(6)(e) 3., Florida Statutes, concerning the deposit into the Local Government Half-cent Sales Tax Clearing Trust Fund will be prorated to the participating counties in the same proportion as the month's collection of taxes and fees pursuant to chapter 212 and the rates established by section 212.20(1)(b), Florida Statutes. During each calendar year, the remaining proceeds will be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and will be allocated in the same proportion as the allocation of receipts under sections 218.61 and 218.65, Florida Statutes, for prior state fiscal years, except for calendar year 2001, the fiscal year 2000-2001 will be used. For each calendar year the proportion of the proceeds from the half-cent sales tax pursuant to section 218.61, Florida Statutes, will be allocated to each county in the same proportion as the county's percentage of total sales tax allocated for the prior fiscal year and distributed pursuant to section 218.62, Florida Statutes. The proceeds for calendar year 2001, the fiscal year 2000-2001 will be used. This section also provides that if the department makes any adjustments in the amount due to a correction of a customer's location, the adjustment is limited to the amount of tax actually collected from the customer.

Section 9. This section amends section 202.19, Florida Statutes, relating to the authorization to impose local communications services tax pursuant to section 202.12, Florida Statutes. It provides that charter counties and municipalities may levy a communications services tax at a rate of up to 5.1 percent. Non-charter counties may levy the tax at a rate of up to 1.6 percent. These maximum rates do not include any add-ons nor do they supercede conversion or emergency rates authorized by section 202.20, Florida Statutes, in excess of those rates. It strikes the provisions regarding how the rates were to be established.

It provides that the sales price for private communications services will be the price of the service provided within the municipality. The communications services provider is entitled to use any method that reasonably allocates the total charges among the state and local taxing jurisdictions where the channel termination points are located. The method is reasonable if it had been regularly used for Florida tax purposes prior to December 31, 2000. If a provider uses a reasonable allocation method, it will be held harmless from any liability for additional tax, interest, or penalty based on a different allocation method. This section also provides the same provisions for unincorporated area of a county. Similar provisions are also included for the discretionary sales surtax levied by a county or school board pursuant to section 212.055, Florida Statutes. It provides that if a person who does not qualify for a direct-pay permit under section 202.12(3), Florida Statutes, does not qualify under the provisions of paragraph (8). The bill also requires the department to identify the service addresses that qualify for the direct-pay permit and requires the purchaser to pay the local communications tax on interstate services directly to the department if the majority of the services are for those originating outside the state and terminating in Florida. The permit is required to indicate the counties or municipalities to which it applies.

This section also provides for deducting the credit for franchise payments from the amount the taxing jurisdiction is entitled to receive under section 202.18(3), Florida Statutes.

Section 10. This section amends section 202.19, Florida Statutes, effective January 1, 2004. The tax on private communications services subject to section 202.12, Florida Statutes, will be on the charge with respect to a channel termination point within a municipality or for use of a channel for two termination points within a municipality. For channel termination points that are located both within and outside of the municipality, 50 percent of the charge for any segment separately billed between the channel termination points. If it is not separately then the charge will be based on the proportion of channel termination points within the municipality compared to the total number of channel termination points on the circuit. The same provisions apply to a county under section 202.12, Florida Statutes, and the discretionary sales surtax that a county or school board levies under section 212.055, Florida Statutes.

Section 11. Effective for bills issued by communications services providers after August 1, 2002, section 202.19, Florida Statutes, is further amended to add a new subsection (12). It provides that, for mobile communications services, the local communications services tax will apply to the sales price of all mobile communications services provided pursuant to section 117(a) of the Mobile Telecommunications Sourcing Act, Public Law No. 106-252.

Section 12. This section amends section 202.20, Florida Statutes, relating to local communications services tax rates. Subsection (1)(a) sets the conversion rates for the taxable sales as authorized under section 202.19, Florida Statutes, for the period of October 1, 2001 through September 30, 2002. These rates take effect without any further action by the local governments. The conversion rates for local governments that have chosen to levy permit fees do not include any authorized additions. The rates are listed by the county in all caps and the rates for the unincorporated areas of the county, followed by a listing of the cities and the respective rates for each city. Paragraph (a) is repealed on October 1, 2002. Subsection (1)(b) sets the conversion rates for October 1, 2002 and afterwards. Subsection (1)(c) sets the conversion rates that take effect upon the expiration of existing franchise agreements as authorized by section 337.401, Florida Statutes.

This section strikes the language providing for the computation of the conversion rates by the Revenue Estimating Conference.

It provides that if complete data is not available to determine if tax revenues are less than the revenues from replaced revenue sources for 2000-2001, then the local government may use the best data available for that period. It provides that any adjustment of local rates will be effective on the first day of the month after the effective date of the ordinance making the adjustment. A local government may increase its tax rate to the maximum rate under the act, to be effective October 1, 2001. The local government is required to notify the department of the increased rate by certified mail, postmarked by July 1, 2001.

Section 13. This section provides that any municipality or county that has a local communications services tax rate that is less than the maximum rate allowed by law, may, by resolution or ordinance, increase the rate up to the maximum allowed by law. The change will be effective on October 1, 2001. The municipality or the county must notify the department of the change by certified mail postmarked on or before July 16, 2001. This section takes effect upon becoming a law.

Section 14. This section corrects a cross reference.

Section 15. This section amends section 202.22, Florida Statutes, relating to the determination of the local tax situs. If an application for certification submitted before October 1, 2001, or 30 days after the department's rules become effective, and the application has not been approved or denied, the dealer is deemed to have used the certified database until the application has been

denied. If the application is approved, the approval is effective on the date of the application or October 1, 2001, whichever is later.

Section 16. This section amends section 202.23, Florida Statutes, relating to the procedure for refunds. It provides for the refund by the department of overpaid taxes. Subject to the provisions of section 213.756, Florida Statutes, upon examination or proof submitted to the department that an overpayment of tax has been paid, the department is authorized to refund that amount without the dealer having to file a written claim. The department may require the dealer to submit a statement affirming the overpayment. No refund is allowed after 3 years pursuant to section 215.26(2), Florida Statutes. If the refunds exceed the amount due the dealer, no penalties or interest will apply if the dealer reimburses the department within 60 days of receiving notice of the overpayment.

Section 17. This section creates section 202.231, Florida Statutes, relating to the provision of information to the local taxing jurisdictions. It requires the department to provide a monthly report to the local taxing jurisdictions. The report must contain the name and other information to identify each dealer providing service in the jurisdiction including the dealer's Federal Employer Identification Number, the gross taxable sales reported by each dealer, the amount of the dealer's collection allowance, and any adjustments specified on the return. The report must total the net amount transferred to the jurisdiction and show the net taxes remitted by the dealers less the administrative fees deducted by the department. The monthly reports must be transmitted through a secure electronic mail system or by other suitable means.

Section 18. This section amends section 202.24, Florida Statutes, relating to limitations on local taxes and fees. It strikes the legislative review of the paragraph dealing with cable specific provisions.

Section 19. This section repeals paragraph (i) of subsection (3) of section 202.26, Florida Statutes, to conform with provisions in the bill.

Section 20. This section amends section 202.27, Florida Statutes, relating to filing of returns. It strikes the provisions relating to multiply location filings.

Section 21. This section amends section 202.28, Florida Statutes, relating to credits for collecting taxes and penalties to add a cross reference.

Section 22. This section amends section 202.37, Florida Statutes, relating to special rules for administration of the local communications services tax. It provides that audits performed by the department must include a determination if the customer's address is in the correct jurisdiction and if the local tax rate collected is correct.

Section 23. This section creates section 202.38, Florida Statutes, relating to special rules for bad debts and adjustments under previous taxes. It provides that any dealer who has paid the tax on telecommunications services imposed by chapter 212, Florida Statutes, billed prior to October 1, 2001, that is no longer subject to the tax on communications services, may take a credit or obtain a refund on unpaid balances due on worthless accounts within 12 months of the last day of the year the debt was charged off on federal income taxes. The same provisions are provided for dealers who have paid the public service tax on telecommunications services that are not longer taxed under this act. The amount of credit or refund must be included on the dealer's first communications services tax return. Bad debts associated with accounts receivable which have been assigned or sold with recourse are eligible, upon reassignment in the credit or refund. The credit or refunds provisions are also available to a dealer who was entitled to an adjustment of the tax imposed by chapter 212 or the public service tax billed prior to October 1, 2001. Chapter 202, Florida Statutes will also govern credits and refunds for telecommunications services under chapter

203, Florida Statutes. The refunds and credits allowed by this section are subject to audit by the state and local governments.

Section 24. This section amends section 203.01, Florida Statutes, relating to the gross receipts tax to set the rate for communications services at 2.36 percent.

Section 25. This section amends section 337.401, Florida Statutes, as amended by section 50 of chapter 2000-260, Laws of Florida, relating to the use of rights-of way. This section corrects reporting dates and provides that if a local government elects to increase its rate under section 202.20, Florida Statutes, effective October 1, 2001, it must notify the department of a rate increase by certified mail postmarked by July 16, 2001. This section is effective upon becoming a law.

Section 26. This section amends section 337.401, Florida Statutes, relating to the use of rights-of-way effective October 1, 2001. This section provides that a municipality or county may award one or more cable franchise under federal law. The municipality or the county may negotiate all the terms and conditions of the franchise as provided by law, except the terms and conditions of franchise fees, the definition of gross revenue, or other definitions or methodologies related to franchise and permits fees on cable providers. A municipality or county may require in-kind contributions to the extent permitted by federal law. Under section 337.401, Florida Statutes, a local government may elect to charge permit fees with an offset from the communications tax rate. If the local government elects not to collect permit fees, it may increase its local communications tax rate by 0.12 percent. If it elects to increase its rate, it will be effective October 1, 2001 and the department must be notified by certified mail on or before July 16, 2001.

This section now allows an election on permit fees every year, not just a one-time election. If a municipality or charter county changes its election to collect permit fees, the rate of the communications services tax is automatically reduced by 0.12 percent, plus the percentage, if any, that it was increased pursuant to this section. If a municipality or charter county discontinues collecting permit fees, the local communications services tax may be increased by ordinance or resolution by up to 0.24 percent. If a noncharter county changes its election to collect permit fees, the local communications services tax will be automatically reduced by the percentage it was increased pursuant to this section. Any change of election is subject to the notice requirements of section 202.21, Florida Statutes and cannot become effective before January 1, 2003. A local government changing its election must also provide the dealers of communications services within its jurisdiction written notice of the change by July 1 immediately preceding the January 1 it becomes effective. The rate change is not rounded to tenths.

This section also amends section 337.401, Florida Statutes, relating to the use of rights-of-way to define cable services the same as in 47 U.S.C. 522.

Section 27. This section provides that the provisions of section 166.234, Florida Statutes, will apply to all public service taxes imposed under section 166.231(9), Florida Statutes, prior to its amendment by chapter 2000-260, Laws of Florida.

Section 28. This section provides for the payment schedule of license, franchise, ordinance, or other payment arrangements. It provides that any payment after December 31, 2001, under any license, franchise, ordinance, or other payment arrangement for telecommunications or cable services provided prior to October 1, 2001, must be paid by December 31, 2001. If a payment is due prior to October 1, 2001, then it is to be paid when it is due. It also requires cable and telecommunications service providers to remit franchise fees from their subscribers billed prior to October 1, 2001, regardless of their actual collection date.

Section 29. This section repeals section 52 of chapter 2000-260, Laws of Florida, regarding a legislative study of alternative choices in the delivery of multichannel video programming, subsection (1) and (2) of section 58 which is the repeal of the majority of the changes made by chapter 2000-260, Laws of Florida, and section 59 of chapter 2000-260, Laws of Florida, which were additional amendments to section 337.401, Florida Statutes.

Section 26. This section provides an effective date of October 1, 2001, unless otherwise provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. 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.

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V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND TELECOMMUNICATIONS:

Prepared by:

Staff Director:

Patrick L. "Booter" Imhof

Patrick L. "Booter" Imhof

AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

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