

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1836

SPONSOR: Finance and Taxation Committee and Senator Carlton

SUBJECT: Public Records

DATE: April 9, 2001                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fournier</u>	<u>Johansen</u>	<u>FT</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Chapter 2000-260, Laws of Florida, enacted a major revision to the communication taxation laws in Florida. It created the “Communications Services Tax Simplification Law,” that was codified in a new chapter 202, Florida Statutes. The act combined seven different state and local taxes and fees and replaced those revenues with a two tiered tax composed of a state tax and a local option tax on communications services. The new tax structure will be effective on October 1, 2001.

This committee substitute amends section 213.053, Florida Statutes, to provide a public records exemption for information in the possession of the Department of Revenue (department) relating to the tax imposed pursuant to chapter 202, Florida Statutes. It provides that all information contained in returns, reports, accounts, declarations received by the department, investigative reports and information, and letters of technical advice are confidential except for official purposes and exempt from section 119.07(1), Florida Statutes. It incorporates the current exceptions found in section 213.053, Florida Statutes. It also provides that information related to the tax imposed under chapter 202, Florida Statutes, may be provided by the department to local jurisdictions imposing that tax.

This committee substitute provides that it is a public necessity that any information or material contained in returns, reports, accounts, or declarations received by the department pursuant to chapter 202, Florida Statutes be exempt from the public records law. It shall take effect October 1, 2001, if CS for SB 1878 or similar legislation is enacted.

This committee substitute substantially amends s. 213.053, F.S:

## II. Present Situation:

Chapter 2000-260, Laws of Florida, enacted a major revision to the communication taxation laws in Florida. It created the "Communications Services Tax Simplification Law," that was codified in a new chapter 202, Florida Statutes. The act combined seven different state and local taxes and fees and replaced those revenues with a two tiered tax composed of a state tax and a local option tax on communications services. The new tax structure will be effective on October 1, 2001. The tax is imposed on a broad base of telecommunications and cable services and applies the tax to persons selling communications services at retail in Florida.

The Department of Revenue will receive and share information with local governments regarding the administration of the tax. The department is charged with administering taxes and fees that have been collected by local governments through the public service tax under section 166.231, Florida Statutes, the local option sales tax under chapter 212, Florida Statutes, and communications related franchise fees.

Article I, section 24, Florida Constitution, expresses Florida's public policy regarding access to government records in providing that:

(a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, section 24, Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of section 24. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

### **III. Effect of Proposed Changes:**

This bill amends section 213.053, Florida Statutes, to provide a public records exemption for information in the possession of the Department of Revenue relating to the tax imposed pursuant to chapter 202, Florida Statutes. It provides that all information contained in returns, reports, accounts, declarations received by the department, investigative reports and information, and letters of technical advice are confidential except for official purposes and exempt from section 119.07(1), Florida Statutes. It incorporates the current exceptions provided in section 213.053, Florida Statutes. It also provides that the department may provide information concerning the tax imposed under chapter 202, Florida Statutes to local jurisdictions imposing that tax. This information includes, but is not limited to tax reports, notification of intent to audit, audit reports, audit work papers, tax returns, and any other information in the possession of the department relating to this tax.

The data shared by the department is prohibited from being disclosed to any other person or entity other than those persons designated by the local government with direct responsibility for budgeting, revenue, or financial administration. Any information or material furnished to a local government, which is exempt from the provisions of section 119.07(1), Florida Statutes and article I, section 24(a) of the Florida Constitution when in the possession of the Department of Revenue is also exempt from disclosure when in the possession of the local government.

The bill provides legislative findings that it is a public necessity that any information or material contained in returns, reports, accounts, or declarations received by the department pursuant to chapter 202, Florida Statutes, be exempt from the public records law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

Article I, section 24, Florida Constitution, expresses Florida's public policy regarding access to government records in providing that:

(a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, section 24, Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of section 24. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:****V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:****C. Government Sector Impact:****VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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