

# 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/CS/SB 1610

SPONSOR: Finance and Taxation Committee, Regulated Industries Committee and Senator Pruitt

SUBJECT: Communications Services Tax

DATE: February 28, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vaccaro	Caldwell	RI	Favorable/CS
2.	Cooper	Yeatman	CA	Fav/I amendment
3.	Fournier	Johansen	FT	Favorable/CS
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This committee substitute addresses several issues relating to the administration of the communications services tax:

- It conforms the communications services tax exemptions for the sale of communications services to religious and educational institutions, and the sale of communications services by religious institutions, to those in the sales tax statute;
- It clarifies that use tax is due on transactions that are taxable under the state and local communications services tax, as well as taxes administered under chapter 202;
- It provides an exception for the public lodging industry from the requirement that dealers separately state the communications services tax;
- It creates a transition rule for counties and municipalities that reduces the local communications services tax on a specified date;
- It clarifies provisions governing the electronic database used to determine local tax situs for the communications services tax;
- It repeals the sales tax on substitute communications systems;
- It conforms the date for local governments to notify the dealers of permit fee changes to the date required for local governments to notify the Department of Revenue of local communications services tax rate changes, and authorizes municipalities and counties to impose charges on pass-through providers up to \$500 per linear mile per year; and
- It clarifies that the monthly E911 fee applies to a mobile communications services customers whose place of primary use is within the state.

This committee substitute substantially amends the following sections of the Florida Statutes: 202.125, 202.16, 202.22, 212.05, 212.0501, 212.08, 212.20, 337.401, 365.172, 509.032, and 561.1105.

This committee substitute creates ss. 202.151 and 202.205, and repeals s. 212.05(1)(g) of the Florida Statutes.

## **II. Present Situation:**

Communications services are subject to state and local taxes under ch. 202, F.S., the Communications Services Tax Simplification Law, which was enacted in 2000. The Gross Receipts tax on communications services, imposed by ch. 203, F.S., is also administered under ch. 202, F.S. Revenue-neutral tax rates for communications services were established in 2001, and the tax took effect October 1, 2001. Several administrative issues concerning this tax have been identified by a working group of representatives from the communications industry and state and local governments.

Section 202.125, F.S., provides an exemption for the sale of communications services to a religious or educational organization that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code. Administration of this exemption has caused confusion because it does not conform to a similar sales and use tax exemption.

Section 202.16, F.S., provides that the state and local communications services tax must be stated separately from all other charges on the bill or invoice.

Section 202.22, F.S., provides that local tax situs for the purposes of the local communications services tax may be determined by use of an electronic database. The Department of Revenue maintains such a database, and may certify databases prepared by private vendors. This section provides criteria by which private databases shall be evaluated for certification, and the process by which certification is accomplished.

Section 212.05(1)(g), F.S., imposes a sales and use tax upon any person who purchases, installs, rents, or leases a telephone system or telecommunication system for his or her own use to provide telephone or telecommunication service which is a substitute for such service provided by a telephone company. The tax is based upon the actual cost of operating such system. Section 202.12(3)(b), F.S., imposes the communications services tax upon the same costs.

Section 337.401, F.S., regulates the imposition of fees by local governments for use of rights-of-way by utilities. Subsection (3) requires local governments to choose between two options with respect to fees imposed on dealers of communications services. Local governments that choose to retain the authority to impose fees are capped in the level of fees they may impose and must lower their communications services tax rate. A local government that changes its election on this issue must provide written notice to all communications services dealers in the jurisdiction by July 1 immediately preceding the January 1 on which the change becomes effective. Subsection (6) provides that charges imposed on a “person or entity other than a provider of communications services in connection with the placement or maintenance ... of a communication facility in municipal or county roads or rights-of-way” (pass-through charges) are capped at the highest amount that was being imposed when Ch. 2001-140, L.O.F., became law. If a municipality or county not imposing any amount on these entities as of that date chooses to impose such a charge it must be at least \$500 per linear mile annually, and any excess

over \$500 must be applied in a nondiscriminatory manner and not exceed the actual costs imposed on the local government by the facility, including costs of inconvenience or impairment, regulatory costs, and a proportionate share of the cost of land used by the facility.

Section s. 365.172(8), F.S., requires each provider of wireless telephone service to collect a monthly fee from each service subscriber who has a service number that has a billing address within this state. The purpose of this fee is to recover the costs of developing and maintaining an E911 system. Subsection (9) of this section requires that each provider shall provide a monthly report of the number of billing addresses of wireless subscribers in each county.

Section 212.0501, F.S., provides for a tax on diesel fuel used for business purposes.

Section 212.08(7), F.S., provides for miscellaneous exemption to the sales and use tax.

Section 212.20(6), F.S., provides for distribution of sales and use tax collections.

Section 509.032(2), F.S., and s. 561.1105, F.S, provide for inspection of the premises of any coin-operated amusement machine.

### III. Effect of Proposed Changes:

**Section 1** amends s. 202.125(4), F.S., to conform to the sales tax exemption the sale of communications services to religious and educational institutions, and the sale of communications services by religious institutions. (*see ss. 212.08(7)(m) and (cc)8.a., F.S.*)

**Section 2** creates s. 202.151, F.S., to impose a use tax on purchases of communications services from a seller outside of Florida, if those purchases are otherwise taxable under ss. 202.12 and 202.19, F.S. This section does not apply if the out-of-state seller registers as a dealer in this state and collects tax from the purchaser. The Department of Revenue is authorized to adopt rules governing the reporting and remitting of communications services taxes by such purchasers.

**Section 3** amends s. 202.16, F.S., to allow a public lodging establishment to post information about communications services taxes in guest rooms instead of separately stating them on the guest bill or invoice.

**Section 4** creates s. 202.205, F.S., which provides a transition rule for local governments to roll back their local communications services tax rate, effective October 1, 2002, by an ordinance or resolution effective October 1, 2001, and sent to the Department of Revenue postmarked no later than July 16, 2001.

**Section 5** amends s. 202.22, F.S., specifying that when an address is known and used by a provider, the provider must collect the tax even if the address is not in the Department of Revenue's electronic database. It provides that the department must determine the accuracy of a database other than its own database by the geographic area covered by that database, and clarifies the application of the 180-day time period for the department's determination as to whether a database meets the criteria.

**Section 6** repeals paragraph (g) of subsection (1) of s. 212.05, F.S., as amended by chapter 38 of ch. 2001-140, L.O.F. This corrects an error in the Communications Services Tax Simplification Law that inadvertently subjected substitute telephone systems to both sales tax and communications services tax.

**Section 7** amends s. 337.401, F.S., to allow a local government to notify communications service dealers of a change in the local government's election with respect to franchise fees by September 1 instead of July 1. This conforms to the date for notifying the Department of Revenue of any change in election. This section is also amended to authorize charges imposed upon person or entity other than a provider of communications services in connection with the placement or maintenance of a communication facility in municipal or county roads or rights-of-way. These persons or entities are called "pass-through providers," and charges imposed on their facilities may not exceed \$500 per linear mile or portion thereof. Existing agreements concerning charges on pass-through providers are allowed to continue until October 1, 2005, and pass-through charges do not apply to the internal communication system of an electric utility or other entity transmitting or distributing electrical energy.

**Section 8** amends s. 365.172(8)(a), F.S., to specify that each "home service provider" is responsible for collecting the monthly E911 fee from "customers whose place of primary use is" within the state, rather than each "provider" is responsible for collecting the monthly E911 fee from each "service subscriber who has a service number that has a billing address" within this state. This change conforms to specifications in the federal Mobile Telecommunications Sourcing Act and does not alter the tax base on which the fee is levied. Paragraph (9)(d) is amended to conform to these changes.

In addition, s. 365.172(9)(e), F.S., is created to specify that situsing of mobile telecommunications customers for the monthly E911 fee is the same as situsing for the local communications services tax under ch. 202. The Department of Revenue notes that this reference has the effect of including the definitions of "customer," "service address," and "home service provider," as well as the home service provider requirement to determine the place of primary use in s. 202.155, F.S.

**Section 9** amends s. 212.0501, F.S., to re-designate s. 212.05(1)(l), F.S., as s.212.05(1)(k), F.S., to reflect the repeal of s. 202.05(1)(g), F.S., effected in Section 6 of this committee substitute.

**Section 10** amends s. 212.08, F.S., to re-designate s. 212.05(1)(j), F.S., as s.212.05(1)(i), F.S., to reflect the repeal of s. 202.05(1)(g), F.S., effected in Section 6 of this committee substitute.

**Section 11** amends s. 212.20, F.S., to re-designate s. 212.05(1)(i), F.S., as s.212.05(1)(h), F.S., to reflect the repeal of s. 202.05(1)(g), F.S., effected in Section 6 of this committee substitute.

**Section 12** amends s. 509.032, F.S., to re-designate s. 212.05(1)(i), F.S., as s.212.05(1)(h), F.S., to reflect the repeal of s. 202.05(1)(g), F.S., effected in Section 6 of this committee substitute.

**Section 13** amends s. 561.1105, F.S., to re-designate s. 212.05(1)(i), F.S., as s.212.05(1)(h), F.S., to reflect the repeal of s. 202.05(1)(g), F.S., effected in Section 6 of this committee substitute.

**Section 14** provides that amendments to ss. 202.125(4), 202.22(2)(b) and (3)(a) and (g), and 212.05(1)(g), F.S., are remedial and intended to clarify existing law. These include sections 1, 5, and 6 of this committee substitute.

**Section 15** provides that except as otherwise expressly provided, this act shall take effect upon becoming a law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

The tax exemption for sales of communications services by a religious organization created by this bill will result in a loss of \$0.1 million in General Revenue in FY 2002-03 and thereafter, and an insignificant loss in local revenue.

B. Private Sector Impact:

This committee substitute clarifies certain administrative issues with respect to the communications services tax, and will make it easier for service providers to comply with the law.

C. Government Sector Impact:

This committee substitute clarifies certain administrative issues with respect to the communications services tax, and will make it easier for the Department of Revenue to administer the law and for local governments to comply with the law.

**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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