

# 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 2322

SPONSOR: Comprehensive Planning Committee and Senator Haridopolos

SUBJECT: Communications Services Taxes

DATE: April 16, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Caldwell</u>	<u>Caldwell</u>	<u>CU</u>	<u>Favorable</u>
2.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/CS</u>
3.	_____	_____	<u>FT</u>	_____
4.	_____	_____	<u>AGG</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

**I. Summary:**

The Committee Substitute (CS) establishes a new procedural system for the Department of Revenue (DOR) to administer resale certificates issued to dealers under the Communication Services Tax Simplification Law (CST); amends the authority for a local government to adopt by ordinance or resolution “emergency rates” which exceed the statutory maximum rates allowed under the local CST; and expands the list of prohibited taxes, charges, and fees that each public body can levy with respect to the sale or purchase of communications services.

This CS substantially amends the following sections of the Florida Statutes: 202.16, 202.19, 202.20, and 202.21. The bill also repeals, effective July 1, 2007, s. 202.20(2)(a), F.S.

**II. Present Situation:**

The Legislature substantially rewrote Florida’s communications tax law in the 2000 Regular Session. Chapter 202, Florida Statutes, creates the Communication Services Tax Simplification Law (CST) which became effective January 1, 2002. Communications services are now subject to a uniform statewide tax rate and a local tax administered by DOR.

The new CST law combined seven different state taxes, local taxes, and fees into a two-tiered tax composed of a state communications services tax and a local communications services tax. The CST broadened, among other things, the taxable base of communications services by restructuring separate taxes and fees into a revenue-neutral CST centrally administered by the DOR. Included in the legislative findings and intent, chapter 202 is to “ensure that the growth of the industry is unimpaired by excessive governmental regulation. The tax imposed pursuant to this chapter is a replacement for taxes and fees previously imposed and it is not a new tax.” Because the rewrite was so substantial, some provisions need further clarification.

### III. Effect of Proposed Changes:

**Section 1** amends subsection 202.16(2), F.S., relating to payments. Currently the CST has its own annual resale certificate that is separate from the one issued for sales and use tax. Once registered, a CST dealer will receive an annual resale certificate. This certificate is used only for tax-exempt purchases of communications services that are intended to be resold or used as a component part of, or integrated into, communications services that are offered for retail sale. Each active dealer will receive a new annual resale certificate each year. A CST dealer is required to maintain copies of the purchaser's annual CST resale certificate to document the nature of the sale made for the purpose of resale.

The CS provides that, effective December 31, 2004, a dealer must document the exempt nature of the transaction by retaining a copy of the purchaser's annual resale certificate. The CS also provides that a dealer may, prior to the sale, in lieu of maintaining a copy of the annual resale certificate, document an authorization number that will be provided by the DOR telephonically or electronically, or by other means established by the department by rule. A dealer may rely on an initial or annual resale certificate accepted from a purchaser without seeking additional annual resale certificates from the purchaser provided the dealer makes recurring sales to the purchaser on a continual basis which means no less frequently than once in every 12 month period. The CS adds a definition for the term "recurring sales to a purchaser in the normal course of business." The bill provides that dealers may provide the department with evidence that a sale was for resale and exempt from tax through the informal protest provided in s. 213.21, F.S., but may not provide such evidence in any proceeding under chapter 120, F.S., or any circuit court action under chapter 72, F.S.

**Section 2** amends s. 202.19, F.S. Section 202.19(3)(a), F.S., currently provides that the local CST rates authorized under s. 202.19, F.S., include "any fee or other consideration" that a local taxing jurisdiction may impose upon dealers of communications services for the right to use or occupy public roads or rights-of-way. The CS amends s. 202.19(3)(a), F.S., specifying that the local CST rates authorized under s. 202.19, F.S., includes "and is in lieu of . . . application fees, transfer fees, siting fees, renewal fees, or claims for related costs" that a local taxing jurisdiction may impose upon dealers of communications services for the right to use or occupy public roads or rights-of-way.

**Section 3** amends s. 202.20, F.S., relating to local CST conversion rates. Section 202.20(2)(a), F.S., provides a local taxing jurisdiction with the authority to change its local CST rate by emergency ordinance or resolution if the transition from the previous state and local taxing structure failed to generate revenues equal to the revenues from the taxes and fees imposed under the previous structure. Subparagraph 3. is amended to specify that the "authority to make such adjustment may be exercised only in the event of a reallocation of revenue away from the local government by the Department of Revenue or a dealer."

**Section 4** provides that effective July 1, 2007, s. 202.20(2)(a), F.S., is repealed. (See section 3).

**Section 5** amends s. 202.21, F.S. This section provides that any local taxing jurisdiction that changes its local CST rate by emergency ordinance or resolution must immediately inform DOR of such rate change. DOR has 30 days after receiving such notice to inform all dealers of the rate

change. The CS deletes reference to local CST rate changes by emergency ordinance or resolution.

**Section 6** provides that the amendments to sections 202.19(3)(a), F.S., which relate to what local government fees were replaced by the CST, are intended to clarify the law in effect on the effective date of the act, but do not grant any right to a refund of any fees or charges paid prior to July 1, 2004, with limited exception.

**Section 7** provides that except as otherwise provided, this act takes effective July 1, 2004.

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

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

Article 18, Section VII of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met. Subsection (b) of the provision prohibits, with some exceptions, the Legislature from enacting, amending, or repealing any general law if the anticipated effect is to reduce county or municipal aggregate revenue generating authority<sup>1</sup> or aggregate percentage of state shared revenues as they exist on February 1, 1989. The principal exception to this prohibition is if the Legislature passes such a law by 2/3 of the membership of each chamber.

Subsection (d) exempts certain categories of laws from the enacting conditions contained in the constitutional provision. These exemptions include laws having insignificant fiscal impact.<sup>2</sup>

This CS amends provisions in s. 202.20(2)(a), F.S., which authorizes a local taxing jurisdiction to change its local CST rate by emergency ordinance or resolution if the transition from the previous state and local taxing structure failed to generate revenues, within a specified period of time, equal to the revenues from the taxes and fees imposed under the previous structure. Current law appears to continue to allow this “adjustment” in rates if the revenues collected within the specified period of time are less than previously collected.

If this interpretation is accurate, then county revenue generating authority may be reduced by this bill – because an additional limitation is imposed that would restrict exercising this authority.

In addition, the “adjustment” option is repealed July 1, 2007.

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<sup>1</sup> “Authority applies to the power to levy a tax; the vote required to levy the tax; the rate which the tax may be levied; and the base against which the tax is levied.

<sup>2</sup> Insignificant Fiscal Impact means an amount not greater than the average statewide population for the applicable fiscal year times ten cents, which is \$1.7 million for FY 2004/05; the average fiscal impact, including any offsetting effects over the long term, is also considered.

The fiscal impact of these two provisions is indeterminate.

If the fiscal impact is above \$1.7 million, the bill must have an affirmative 2/3 vote of the membership of each chamber.

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

None.

**C. Trust Funds Restrictions:**

None.

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

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Companies that are charged additional fees by local governments will no longer have to pay such fees.

**C. Government Sector Impact:**

Local governments that are currently charging additional fees will be restricted from charging those fees and this will result in the loss of that revenue.

DOR estimates that it will need a nonrecurring appropriation of \$53,205 to implement section 2 of the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.