



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

**Ensure Lower Taxes**-The bill reduces the communications services tax from its current rate of 6.8 percent to 5.63 percent. For direct-to-home satellite service, the reduction is from its current rate of 10.8 percent to 9.63 percent.

### B. EFFECT OF PROPOSED CHANGES:

#### Background

In 2000 and 2001 the Legislature passed the "Communications Services Tax (CST) Simplification Law,"<sup>1</sup> which was codified in ch. 202, F.S. This was designed to restructure taxes on telecommunications, cable, direct-to-home satellite, and related services.<sup>2,3</sup> The CST replaces and consolidates several different state and local taxes into two taxes: the Florida CST and the local CST.

Old Tax Structure (Prior to October 1, 2001)	New Tax Structure (After October 1, 2001)
Number of Taxes = 7  State Sales Tax Local Option Tax Gross Receipts Tax Public Service Tax Cable Franchise Fee Telecom Franchise Fee Cable and Telecom Permit Fees	Number of Taxes = 2  State Communications Services Tax Local Communications Services Tax

Some examples of services subject to the tax are:

- Local and long-distance telephone
- Cable television
- Direct-to-home satellite television
- Mobile communications, including detailed billing charges
- Private line services
- Pager and beeper
- Telephone charges made by a hotel or motel
- Facsimiles (FAX), when not provided in the course of professional or advertising service

In general, the tax includes a state rate of 6.8 percent plus a gross receipts tax rate of 2.37 percent, for a combined state communications services tax rate of 9.17 percent. However, residential wireline telephone

<sup>1</sup> Ch. 2000-260 and 2001-140, L.O.F.

<sup>2</sup> Much of the general information related to the CST is from the Florida Department of Revenue's website on the CST.  
<http://dor.myflorida.com/dor/taxes/GT-800011.html#comservicetax>

<sup>3</sup> Section 202.11(2), F.S., defines "communications services" rather broadly to encompass existing technologies and ones that may later be devised. It includes services such as cable television, local and long distance telephone service, paging service, and satellite television service; however, the definition does not include Internet access or electronic mail services.

service is only subject to the 2.37 percent gross receipts tax.<sup>4</sup> Each local taxing jurisdiction may levy its own local tax rate on communications services. Charter counties and municipalities that have not chosen to levy a permit fee may levy a local CST of up to 5.1 percent. Charter counties and municipalities who have chosen to levy a permit fee may levy a local CST of up to 4.98 percent. Noncharter counties may levy a local CST of up to 1.6 percent.<sup>5</sup> In addition, to the local CST, discretionary sales surtaxes levied by a county or school board are imposed as a local CST tax, with conversion rates of up to one percent.<sup>6</sup> However, these percentages may be higher due to emergency rates and permit fees adopted by the various local jurisdictions.<sup>7</sup>

Direct-to-home satellite services are taxed at a 10.8 percent state tax rate and a gross receipts tax rate of 2.37 percent for a total rate of 13.17 percent. This is due to federal law prohibiting the local taxation of direct-to-home satellite service.<sup>8</sup>

The state CST collected, except that collected on direct-to-home satellite service, is distributed the same way as the sales and use tax.<sup>9</sup> For direct-to-home satellite service, 63 percent of the state CST is distributed using the sales tax formula, with the remainder being transferred to the Local Government Half-Cent Clearing Fund, which is allocated in the same proportion as the half-cent sales tax, and the emergency distribution. The gross receipts tax administered under this law goes to the Public Education Capital Outlay and Debt Service Fund (PECO).<sup>10</sup>

In addition to the CST, there may be an E911 fee of up to 50 cents per month for wireless and wireline telephone service.<sup>11</sup> For landline telephones, there is a surcharge on customer bills for telephone relay service for the hard of hearing. This charge is capped at 25 cents per access line;<sup>12</sup> the current surcharge is 15 cents per access line.<sup>13</sup>

In state fiscal year 2005-2006, the state collected \$2.325 billion in CST. The breakdown of the receipts is as follows:

- Sales Tax: \$1,007.2 million (43.31 percent)
- Local Tax: \$843.3 million (36.26 percent)
- Gross Receipts: \$382.5 million (18.18 percent)
- Direct-to-Home Satellite Tax: \$52.2 million (2.24 percent)

The breakdown of the tax distribution is as follows:

- Local Government: \$1,003 million (43.21 percent)
- General Revenue: \$887.7 million (38.24 percent)
- PECO: \$426.9 million (18.39 percent)
- Administration: \$3.6 million (0.16 percent)<sup>14</sup>

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<sup>4</sup> There is also an exemption from the CST for sales to the Federal government, state and local government agencies, and various non-profit organizations. (s. 202.125, F.S.)

<sup>5</sup> S. 202.19(2), F.S.

<sup>6</sup> See s.202.19(5), F.S. The conversion rates are contained in s. 202.20(3), F.S.

<sup>7</sup> Florida Department of Revenue's Presentation to the Florida House of Representative's Committee on Utilities & Telecommunications on January 11, 2007. Emergency rates are authorized in s. 202.20(2), F.S.

<sup>8</sup> Pub. L. 104-104, Title IV, s. 602, February 8, 1996, 110 Stat. 144

<sup>9</sup> S. 202.20(6), F.S.

<sup>10</sup> *2006 Florida Tax Handbook*, Communications Services Tax, p. 38. Available at <http://edr.state.fl.us/reports/taxhandbooks/taxhandbook2006.pdf>. (February 1, 2007)

<sup>11</sup> S. 365.171(13)(a)1., F.S. for wireline and s. 365.172(8)(a), F.S., for wireless.

<sup>12</sup> S. 427.704, F.S.

<sup>13</sup> Florida Public Service Commission, *The Status of The Telecommunications Access System Act of 1991*, December 2006, p. 14.

<sup>14</sup> Information compiled from the Florida Department of Revenue's Presentation to the Florida House of Representative's Committee on Utilities & Telecommunications on January 11, 2007.

## Proposed Changes

The bill amends s. 202.12(1)(a) F.S., to reduce the general state CST from 6.8 percent to 5.63 percent. The bill also amends s. 202.12(1)(b), F.S., to reduce the general state CST on satellite television service from 10.8 percent to 9.63 percent.

Section 202.18, F.S., provides for the distribution of the CST proceeds. Section 202.18(2)(b), F.S., provides that 63 percent of the state CST from direct-to-home satellite service is distributed to the state, with the remainder distributed to the counties in the same proportion as the general sales tax and the general state CST. The bill reduces the allocation to the state to 58½ percent of the satellite service tax collected, in order to keep the local governments whole with respect to the portion of the taxes they receive from the state on such services.

For example, with a \$100 satellite service bill, one would currently pay \$10.80 (10.8 percent) in state CST and \$2.37 in GRT. Of the \$10.80 in state CST, \$4 would go to local governments. Under the allocations provided in the bill, one would pay \$9.63 (9.63 percent) in state CST, of which \$4 would still be going to local governments.

This act shall take effect July 1, 2007.

### C. SECTION DIRECTORY:

Section 1 Amends ss. 202.12(1)(a) and (b), F.S., relating to the sales of communications services.

Section 2 Amends s. 202.18(2)(b), F.S., relating to the allocation and disposition of tax proceeds.

Section 3 This act shall take effect July 1, 2007.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Using the latest available data from the Revenue Estimating Conference's November 7, 2006 forecast, it is estimated that this bill has the following negative fiscal impact on state government:

	<u>FY 2007-08</u>	<u>FY 2008-09</u>
General Revenue	(\$153.4m)	(\$174.9m)
State Trust	<u>(\$ 0.4m)</u>	<u>(\$ 0.4m)</u>
Total	(\$153.8m)	(\$175.3m)

#### 2. Expenditures:

The Department of Revenue will incur some expenditure in notifying communications services dealers of the annual change in the CST.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

It is estimated that this bill will have the following negative fiscal impact on local governments:

	<u>FY 2007-08</u>	<u>FY 2008-09</u>
Revenue Sharing	(\$ 5.5m)	(\$ 5.8m)
Local Gov't. Half Cent	(\$14.2m)	(\$16.7m)
Local Option	<u>(\$ 0.0m)</u>	<u>(\$ 0.0m)</u>
Total Local Impact	(\$19.7m)	(\$22.5m)

**2. Expenditures:**

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Consumers will see a reduction in the amount of CST paid. Communications services dealers will incur some administrative costs associated with implementing the bill's provisions.

**D. FISCAL COMMENTS:**

None

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the authority that municipalities have to raise revenue. This bill does not reduce the percentage of a state tax shared with counties or municipalities.

**2. Other:**

None

**B. RULE-MAKING AUTHORITY:**

According to the Department of Revenue (DOR), its Communications Services Tax Return,<sup>15</sup> will need to be amended to reflect the changes in CST rates. The amended form will need to be promulgated as a rule.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

According to the DOR, except in emergency situations, the annual local CST rates must become effective on January 1 of each year. DOR is required to notify dealers of communications services of the annual local rate changes.<sup>16</sup> DOR states that it would be more cost-effective for the rate changes in state CST rates to become effective January 1, 2008, rather than the July 1, 2007, effective date provided in the bill, so that DOR may notify dealers of communications services of all annual rate changes in a single notification.

According to DOR, dealers of communications services generally bill their customers on various billing cycles throughout the month, so it is necessary to provide a specific date for dealers to begin billing their customers the low tax rate. DOR recommends that this date be January 1, 2008.

<sup>15</sup> Form DR-700016.

<sup>16</sup> S. 202.21, F.S.

## D. STATEMENT OF THE SPONSOR

No Statement Submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 8, 2007, the Committee on Utilities & Telecommunications adopted a strike-all amendment. The amendment:

- Reduces the state Communications Services Tax (CST) rates by 1.17 percent. This applies to both the general state CST and the CST on direct-to-home satellite service.
- Provides that the reduction in CST rates applies to bills dated on or after January 1, 2008. This gives the Department of Revenue (DOR) time to notify dealers of communications services of the change and to change the forms. This date also coincides with the date that the changes to local CST rates go into effect.
- Clarifies the procedures for DOR to administer resale certificates issued to dealers under the CST to conform to the administration of resale certificates under the sales tax. This provision would allow dealers to rely on a valid initial or annual resale certificate without having to obtain additional certificates from such purchases. These provisions would become effective January 1, 2008.
- Requires DOR, by January 1, 2008, to establish a toll-free number to verify valid registration numbers and resale certificates.
- Requires DOR, by January 1, 2008, to establish a system for receiving information from dealers regarding certificate numbers of those who are seeking to make purchases for resale.
- Reduces the percent of the state CST on direct-to-home satellite service that is allocated to the state, in order to keep the local governments whole as to the amount of revenues they receive from the tax.
- As of October 1, 2007, repeals the authority under which local governments are allowed to adopt "emergency rates" exceeding the statutory maximum rates allowed under the local CST. The "emergency rate provision" was intended to be temporary in nature and to provide a safety net and transition from Florida's old tax structure to ensure that local governments were held harmless under the new CST. The amendment allows local governments to make adjustments, up until October 1, 2007, if the DOR or a dealer reallocates revenue away from the local government.
- Provides that the amendments to the "emergency rates provision" do not apply to emergency rates adopted prior to the effective dates of this act.
- Provides that except as otherwise expressly provided, this act shall take effect upon becoming law.