

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1200

SPONSOR: Committee on Regulated Industries and Senator Sullivan

SUBJECT: Telecommunications

DATE: April 7, 1999

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Keating</u>	<u>Wood</u>	<u>FR</u>	<u>Fav/1 amendment</u>
2.	<u>Wimsett</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill creates for franchised cable television companies a statutory exemption from the taxation of leases, rentals and licenses in real property and improvements located in a public or private street or right-of-way and used for communications or television.

This bill substantially amends the following section of the Florida Statutes: 212.031.

II. Present Situation:

Section 212.031(1)(a), F. S., provides that “every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property.” Numerous types of property are exempt from this provision including “a public or private street or right-of-way occupied or used by a utility for utility purposes.”

Franchised cable television companies are not utilities. *See e.g., Florida Cable Television Ass’n, et al. v. Dep’t of Revenue*, Case No. 93-0239RP. They have enjoyed tax exempt status, however, under the Department of Revenue’s application of Rule 12A-1.046(4)(b), Florida Administrative Code, which provides that “the charge by the owner of utility or transmission poles to others for the privilege of attaching wires and other equipment thereto is exempt from taxation as a service transaction.”

In 1993, the cable companies’ tax exempt status was threatened by a proposed amendment to Rule 12A-1.053(7), F.A.C. *See Florida Cable Television Ass’n, et al. v. Dep’t of Revenue*, Case No. 93-0239RP. The Proposed Amendment provided that:

The charge by the owner of a utility or transmission poles to anyone other than a utility service provider as the term “utility service” is defined in s. 203.012(9), Florida Statutes, for the privilege of attaching wires and other equipment is taxable as provided in s. 212.031, Florida Statutes, as a license to real property.

The Florida Cable Television Association and others (Cable Industry) asserted that the proposed amendment was invalid on several grounds, including its inconsistency with Rule 12A-1.046(4)(b), Florida Administrative Code. The hearing officer agreed and ruled that the proposed amendment was an invalid exercise of delegated legislative authority.

Notwithstanding the favorable ruling on technical grounds, the hearing officer's analysis of the cable industry's asserted entitlement to the "utility exemption" from the tax raised important questions. Accordingly, the Department believes that it may lack specific legislative authority for Rule 12A-1.046(4)(b), and it has scheduled a Rule Development Workshop for May 25, 1999, to consider repealing the rule. Repeal of the rule would have the effect of eliminating the current tax exemption for franchised cable television providers.

III. Effect of Proposed Changes:

The bill amends s. 212.031, F.S., to create a statutory sales tax exemption for leases, rentals, and licenses in real property and improvements in a public or private street or right-of-way used by franchised cable television companies for television or other communications purposes. The statutory exemption is consistent with current Department of Revenue practice regarding taxation of franchised cable television company pole attachment agreements.

The bill takes effect upon becoming 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:

Depending on the outcome of the Department of Revenue Workshop on Rule 12A-1.046(4)(b), F.A.C., there could be a positive impact on revenues if the bill does not pass.

If the bill is passed, it could be argued that the fiscal impact is neutral, since under current administration, such transactions are exempt from the sales and use tax.

B. Private Sector Impact:

Passage of the bill would ensure the continuation of the exemption for franchised cable companies from the taxation of leases, rentals and license agreements that allow such companies to occupy and use rights-of-way and roads.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 1200 is identical to HB 317.

VIII. Amendments:

None.

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