

STORAGE NAME: h2415s1z.uco
DATE: June 28, 2000

****FAILED TO PASS THE LEGISLATURE****
HOUSE OF REPRESENTATIVES

**AS REVISED BY THE COMMITTEE ON
COMMITTEE ON UTILITIES & COMMUNICATIONS
FINAL ANALYSIS**

BILL #: CS/HB 2415 (PCB UCO 00-06)
RELATING TO: Communications Services
SPONSOR(S): Committee on Finance and Taxation, Committee on Utilities and Communications,
and Rep. Rojas
TIED BILL(S): HB 2417 (PCB UCO 00-10)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMITTEE ON UTILITIES & COMMUNICATIONS (CAC) YEAS 11 NAYS 0
- (2) FINANCE AND TAXATION (FRC) YEAS 14 NAYS 0
- (3)
- (4)
- (5)

I. SUMMARY:

This bill substantially rewrites Florida's communications tax law. It creates a new chapter 202, Florida Statutes, the Communications Services Tax Simplification Law, and provides that communications services are subject to a uniform statewide tax rate and a local tax to be administered by the Department of Revenue.

Both the state and local communications services tax rates are not set in the bill. The industry and local governments are directed to supply pertinent information to the Department of Revenue for use by the Revenue Estimating Conference for calculating revenue neutral rates to be presented to the Legislature for review and approval during the 2001 Regular Session. Unless action is taken by the Legislature before June 30, 2001, the act is repealed¹.

The bill provides an appropriation of \$202,000 to the Department of Revenue effective upon the act becoming a law and \$1,327,195 and 22 FTE's on July 1, 2000 to the department to implement the provisions of the bill.

The estimated fiscal impact upon General Revenue is (\$1.5) million for FY 00-01. There will be a negative, but insignificant impact on the Solid Waste Management Trust Fund. The estimated fiscal impact upon local governments is (\$0.2) million for FY 00-01. The total estimated fiscal impact for this bill is (\$1.7) million for FY 00-01. The fiscal impact of the bill is exclusively due to the sections relating to the taxation of prepaid calling arrangements and the sales tax exemption for leases of certain property for the placement of towers used in the provision of mobile communication services. The state and local communications services taxes imposed by this bill are expressly calculated as to be revenue neutral.

¹All of the act is repealed effective June 30, 2001, except for sections relating to the taxation of prepaid calling arrangements and the sales tax exemption for leases of certain property for the placement of towers used in the provision of mobile communication services.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The tax rate on telecommunications services varies considerably from location to location across Florida. Telecommunications services are subject to four different taxes: gross receipts tax, state sales and use tax, local sales and use tax, and municipal utility tax. Each of these taxes has a different base, and the revenue raised by each tax is used for different purposes. Telephone companies also pay franchise fees to municipalities for the privilege of using public rights-of-way.

1. Gross Receipts Tax

Chapter 203, Florida Statutes, imposes a 2.5 percent tax upon the gross receipts of "every person that receives payment for any utility service." This tax was first imposed in 1931, and proceeds of this tax are bonded to pay for construction of public schools and higher education facilities through the Public Education Capital Outlay and Debt Service Trust Fund. In addition to telecommunications services, the gross receipts tax also applies to electricity and natural and manufactured gas.

Tax Base

With regard to telecommunications services, the tax base for the gross receipts tax is fairly broad. As defined in section 203.012, F.S., the term includes local telephone service, toll telephone service, telegram or telegraph service, teletypewriter service, and private communication service. In addition, cellular mobile telephone or telecommunications service, specialized mobile radio, and pagers and paging service, including but not limited to "beepers" and any other form of mobile and portable one-way or two-way communication are specifically included in the definition of telecommunications services. Definitions are also provided in this section for local telephone service, private communication service, teletypewriter service, toll telephone service and "interstate", as applied to telecommunication services.

Section 203.012, F.S., also specifically excludes a number of services from the definition of telecommunications services. Specifically excluded in paragraph (2)(b) are gross receipts for:

- charges for customer premises equipment;

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- charges for commercial or cable television, unless it is used for two-way communication;
- charges made by hotels or motels for local telephone service or toll telephone service, when such charge occurs incidental to the right of occupancy in such hotel or motel;
- connection and disconnection and similar charges;
- charges for services or items of equipment supplied by providers of cellular telecommunication service or mobile radio and paging service, which are incidental to the provision of telecommunication services, provided these charges are separately stated on the bill or invoice.

The 1997 Legislature provided an exemption for Internet access service, electronic mail service, electronic bulletin board service, or similar on-line computer service by removing them from the definition of "telecommunications services".

The gross receipts tax on telecommunications services applies not only to sellers of such services but also to persons operating telecommunications systems for their own use based on the "actual cost" of operating the system. Paragraph (c) of section 203.01(1), F.S., provides that "any person who purchases, installs, rents, or leases a telephone system or telecommunication system for his or her own use to provide that person with telephone service or telecommunication service which is a substitute for any telephone company switched service or a substitute for any dedicated facility by which a telephone company provides a communication path shall register with the Department of Revenue and pay into the State Treasury a yearly amount equal to a percentage of the actual cost of operating such system at the rate set forth in paragraph (b)." This paragraph goes on to describe what is included in "actual cost" and provides that these provisions do not apply to telephone companies or telecommunications carriers themselves or to the use of any radio system operated by the state or any political subdivision thereof, or to municipalities.

Exemptions

As the name implies, the gross receipts tax is a tax on the company providing the service, not on the final customer. Therefore, unlike the sales tax, there are virtually no exemptions based on the nature of the purchaser. The major gross receipts tax exemption which is found in section 203.01(4), F.S., is for telecommunications services that are sold for later resale by the purchaser. The resale by the purchaser, if the sale is considered to be in Florida, would be subject to tax. There are, however, specific exemptions for the state, political subdivisions, and municipalities from having to pay the tax on telecommunications systems operated for their own use.

Location

Telecommunications originating and terminating in Florida are subject to the gross receipts tax. For an interstate telecommunication service to be taxable in Florida, it must meet a two-part test. First, it must be billed or charged to a Florida telecommunications number or device and secondly, it must either originate or terminate in this state. Services meeting both parts of this test are subject to the gross receipts tax.

Interstate private communications services in which the purchaser has exclusive or priority use of a communication channel are taxed differently. Charges for such services are apportioned based on the location of channel termination points. Such charges billed to a Florida user are fully taxable for the charge imposed for channel mileage between points within Florida. Fifty percent of the charge for the channel mileage between the first termination point within Florida and the nearest termination point outside Florida is taxable.

Billing

As a gross receipts tax, the tax is on the provider of the utility service with that provider being fully liable for the tax. Providers, however, are given the option of separately stating the tax on any bill or invoice sent to the customer. When the provider of taxable utility services elects to separately state the tax as a component of the charge for the service, every person, including all governmental units, must remit the tax, and the tax is a component part of the debt of the purchaser to the person who provides the taxable service.

Bundled Services

Cable television services are specifically exempt from the gross receipts tax. Section 203.01(9), F.S., however, contains a special provision for instances when cable television services and telecommunications services are provided together. If the telecommunications service is sold separately by the provider of the services, the taxable portion of the bill is to be equal to the value of the taxable service when it is sold separately. If the service is not offered separately, the consideration for the taxable telecommunication service is to be based on the statewide average tariff for such service, as determined by the Public Service Commission.

2. Sales and Use Tax

Florida's sales tax on telecommunications, with a few major exceptions, is based heavily on the definition of the telecommunications tax base for gross receipts tax purposes. The definition for telecommunications service for sales tax purposes is by direct reference to the definition in ch. 203, F.S., for the gross receipts tax. The major differences in the tax base are the sales tax exemption for residential service, other sales tax exemptions based on the type of entity purchasing the telecommunications service, and the inclusion in the sales tax base of various services related to the installation of telecommunications equipment.

Tax Base

Paragraph (e) of section 212.05(1), F.S., states that the sales tax applies to:

- a. All telegraph messages and long distance telephone calls beginning and terminating in this state, telecommunication service as defined in section 203.012, and those services defined in section 203.012(2)(a)
- b. Any television system program service.
- c. The installation of telecommunication and telegraphic equipment.

The statute goes on to provide that "telecommunication service" does not include local service provided through a pay telephone, and "charges" for service do not include any excise tax levied by the Federal Government, any political subdivision of the state, or any municipality, when the tax is collected by the seller from the purchaser. The statutes also provide that television system program services, in addition to the transmitting of an audio or video signal, include the "installing, connecting, reconnecting, disconnecting, moving, or changing of any equipment related to such service. The sales tax statutes have a provision similar to that for the gross receipts tax for those who operate a telecommunications system

for their own use. Such operations are taxed at a rate of 6 percent based on the “actual cost” of operating the system.

Paragraph (e) also provides that the tax on calls made with a prepaid telephone calling card shall be collected at the time of sale and remitted by the dealer selling or recharging a prepaid telephone card.

Tax Rate

While the general state sales tax rate is 6 percent, the rate for telecommunications services and electrical power and energy is 7 percent. This higher rate was enacted in 1992.

Exemptions

The most significant sales tax exemption for telecommunications services is for residential households. Paragraph (j) of section 212.08(7), F.S., exempts “utilities” sold to residential households or residential models by utility companies which pay gross receipts tax under section 203.01, F.S. This includes electricity, telecommunications services and natural or manufactured gas. The sale of fuels such as oil and kerosene to residential households for cooking, lighting or heating are also exempt from the sales tax. This residential exemption was enacted in 1972.

In addition to the residential exemption, a wide variety of other exemptions based on the nature of the purchaser which apply to the sales tax in general also apply for sales of telecommunications services. These include governmental, religious, charitable and educational entities and many other types of organizations with sales tax exemptions.

Location

The rules regarding the application of the sales tax on interstate calls are almost the same as for the gross receipts tax. As with the gross receipts tax, to be taxable in Florida a call must either originate or terminate in Florida and be billed to a customer, number, or device in this state. For interstate private communications services, there is a slight difference in the apportionment method. Instead of being apportioned based on half the distance between the last channel termination point in Florida and the first outside the state, the sales tax apportionment method measures mileage from the last channel termination point in Florida to a single point near the Georgia border and calculates a ratio using that mileage compared to the total mileage between the last channel termination point in Florida and the first outside the state.

3. Local Option Sales Taxes

Local option sales taxes levied by local governments include telecommunications services as part of their tax base. While the tax base for the local option sales tax is generally the same as for the state sales tax, one major difference concerns telecommunications services.

Tax Base

With regard to telecommunications services, the tax base for local option general sales taxes is the same as for the state sales tax except for the taxation of long distance telephone service. Paragraph 212.054(2)(b), F.S., expressly exempts long distance telephone service from all local option sales taxes.

Tax Rate

There are a total of 7 separate local option sales taxes authorized by statute. With the exception of two of these taxes, the Charter County Transit System Surtax with a maximum rate of 1 percent and the School Capital Outlay Surtax with a maximum rate of .5 percent, the total levy for these local option taxes is limited to a total of 1.0 percent. Again with two exceptions, the Small County Surtax and the Small County Indigent Care Surtax, these taxes may be levied only pursuant to a vote of the people. Counties with a population under 50,000 qualifying to levy the small county taxes may do so by a majority plus one vote of their county commissions. Fifty of the sixty-seven counties levy at least one of the sales surtaxes.

4. Municipal Utility Tax (Public Service Tax)

The Municipal Public Service Tax, often called the Municipal Utility Tax or MUT, is a tax authorized by the Legislature for municipalities to levy on a variety of "utility" services. The courts have extended the authority to also allow the fifteen charter counties in Florida to levy the tax within their unincorporated areas. "Utility" services that may be taxed include electricity, natural gas, propane, fuel oil, kerosene, water, telecommunications, and cable television. Authority to tax cable television was repealed in 1977 with only those municipalities pledging the revenues for bond repayment allowed to continue. Telecommunications services may be taxed on two different bases with different maximum rates for each. Except for fuel oil, which can be taxed at no more than 4 cents per gallon, and telecommunications, which has a maximum tax of 7 percent on its broadest base, the maximum MUT levy is 10 percent of payments received by the seller for the taxable service.

Tax Bases

Telecommunications services may be taxed on two different bases.

10 Percent Base

The first base is taxable pursuant to section 166.231 (9)(a)1., F.S., which includes only local telephone service as defined in section 203.012, F.S. This is a reference to definitions used for the Gross Receipts Tax. For purposes of gross receipts tax, local telephone service is defined as:

The access to a local telephone system, and the privilege of telephonic-quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system or any facility or service provided in connection with such service.

The term "local telephone service" does not include any service which is a toll telephone service; private communication service; cellular mobile telephone or telecommunication service; specialized mobile radio, or pagers and paging service, including but not limited to "beepers" and any other form of mobile and portable one-way or two-way communication; or teletypewriter service.

In addition to the exclusions from the definition of local telephone service listed in ch. 203, F.S., section 166.231, F.S., also excludes public telephone charges collected on site, access charges, and any customer access line charges paid to a local telephone company.

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Municipalities and charter counties may levy a tax of up to 10 percent of payments received for taxable services if choosing to levy the tax on this base.

7 Percent Base

The second, and broader, municipal utility tax base includes telecommunications services as defined in section 203.012, F.S., which originate and terminate in Florida. This includes all of the services in the first MUT telecommunications base plus a broad range of other services. Municipalities electing to levy on this base may levy a rate of no more than 7 percent of payments received for taxable services. Telecommunications services in section 203.012(5), F.S., are defined as:

Local telephone service, toll telephone service, telegram or telegraph service, teletypewriter service, or private communication service, cellular mobile telephone or telecommunication service; or specialized mobile radio, and pagers and paging, service, including but not limited to "beepers" and any other form of mobile and portable one-way or two-way communication.

Section 203.012, F.S., specifically excludes from the definition of telecommunications services charges for rented or leased equipment, connect and disconnect charges, move or change charges, suspension of service charges, service order, number change and restoration charges, and charges for equipment maintenance, sales or rental, provided such charges are separately stated.

In addition to the services excluded from the definition in ch. 203, F.S., section 166.231, F.S., also excludes the following from taxation:

Public telephone charges collected on site, charges for any foreign exchange service or any private line service except when such services are used or sold as a substitute for any telephone company switched service or dedicated facility by which a telephone company provides a communication path, access charges, and any customer access line charges paid to a local telephone company.

In addition, the tax on cellular phones, pagers and beepers is limited to only the monthly recurring customer service charges and excludes any variable charges.

Exemptions

Exemptions from the tax based on the nature of the purchaser are relatively limited. While the statutes state that municipalities may exempt purchases by federal, state, or county governments, the courts have ruled that such entities are immune from taxation and cannot be taxed. The statutes also require municipalities to exempt "purchases by any recognized church in this state for use exclusively for church purposes." Credit unions and various instrumentalities of the federal government such as the Red Cross are also exempt pursuant to federal law.

Location

The intent of the MUT is to tax telecommunications services provided within the municipality. For purposes of determining which services are subject to tax under the

second, broader MUT tax base, section 166.23 l(9)(a)2., F.S., states that the 7% tax shall apply to:

The total amount charged for any telecommunications service provided within the municipality or, if the location of the telecommunications service provided cannot be determined, the total amount billed for such telecommunications service to a telephone or telephone number, a telecommunications number or device, or a customers' billing address located within the municipality.

Sellers of telecommunications services are allowed to keep 1 percent of the amount of the tax collected and due the municipality as compensation for tax collecting and remission.

Administration

The tax may be levied by ordinance. The choice of tax base may not be changed more often than once in 12 months, with at least 120 days notice required to the companies collecting the tax. Municipalities must furnish the companies collecting tax with a listing of all street names and numbers forming the municipal boundaries. Municipalities must update this information as necessary, but may charge the service providers a fee not exceeding the cost of providing the information. Municipalities may audit the records of telecommunications providers. With 60 days notice, providers are to give municipalities access to all applicable records. Service providers are only liable for taxable accounts corresponding to information provided by the municipality. Audit records are confidential.

Bundled Services

When a telecommunications provider offers taxable telecommunications services and exempt cable services, the tax on the telecommunications services must be based on the value of the taxable service as sold separately. If the service is not sold separately, the charges must be separated as a condition to receiving the exemption. When separately stating charges, the charge for telecommunications service cannot be less than the statewide average tariff rates set forth by the local exchange telecommunications companies in the tariffs filed with the PSC on the previous January 1.

5. Franchise Fees

Franchise fees are payments made by utility or cable television companies to local governments for the grant of a franchise and use of public rights-of-way for placement of facilities. A franchise fee constitutes a fair rental for the use of a right-of-way, and as consideration for the local government agreeing not to provide competing services during the franchise term. These fees are based upon contractual agreements between the companies and the local governments, but the terms of these contracts are constrained by state and federal law. Telephone company franchise fees are regulated by the state, and cable franchise fees are subject to federal limits.

Cable Companies

Counties and cities have the authority to enter into a franchise agreement with a cable television system operator to provide service within their jurisdiction. (County governments charge franchise fees to cable companies in unincorporated areas.) These governments

also have home rule authority to provide cable service directly by entering the cable business. Federal law prohibits counties and municipalities from awarding exclusive cable franchises and limits franchise fees for cable television providers to 5 percent of revenue. (Sec. 622, Cable Television Consumer Protection and Competition Act of 1992.) According to representatives of the cable industry, the actual fee base is a matter of negotiation between the company and the local government, and may include advertising revenue. Under the Telecommunications Act of 1996, if a cable operator provides telecommunications services, that operator cannot be required to obtain a franchise for the provision of telecommunications services.

Telephone Companies

Subsection 337.401(3), F.S., provides that telephone company franchise fees required by a municipality cannot exceed 1 percent of gross receipts on recurring revenue for services provided within the community. Franchise fees for companies providing toll telephone service are governed by section 337.401(4), F.S., which states that such fees cannot be less than \$500 per linear mile of cable or line, plus other fees which are limited to the costs of the use of the right-of-way and regulatory costs borne by the municipality. Only municipalities and charter counties are permitted to charge franchise fees to companies providing telecommunications services.

For many years, non-charter counties and utilities disagreed about whether such counties have the authority to impose franchise fees. While cable television companies have been willing to enter into franchise agreements with non-charter counties, the electrical power utilities and many other utilities have challenged the home-rule authority of counties to require them to pay franchise fees. This issue was raised in Santa Rosa County v. Gulf Power, 635 So. 2d. 96 (Fla. 1st DCA 1994). The court found in this case that no statutory provision preempts the home rule power of non-charter counties to require payment of franchise fees by electric utilities for the use of county rights-of-way, but ch. 364, F.S., expressly preempts counties from imposing franchise fees on telephone companies. Municipalities are given statutory authority to impose such fees in section 337.401, F.S. Further, the court found that properly imposed franchise fees are not taxes requiring general law authorization under Article VII, Florida Constitution.

C. EFFECT OF PROPOSED CHANGES:

This bill substantially rewrites Florida's communications tax law. It creates a new chapter 202, Florida Statutes, the Communications Services Tax Simplification Law, and provides that communications services are subject to a uniform statewide tax rate and a local tax to be administered by the Department of Revenue.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 creates section 202.10, F.S., the "Communications Services Tax Simplification Law," a new chapter 202 of the Florida Statutes.

Section 2 creates section 202.11, F.S., which provides definitions for terms used in the chapter.

Section 3 creates section 202.12, F.S., effective January 1, 2002, which levies a tax on taxable sales of communications services, the actual cost of operating a substitute communications system, and on the sales price of any direct-to-home satellite service. The

amount of tax imposed in a year is capped for certain holders of direct pay permits. This section also provides that gross receipts tax imposed by ch. 203, F.S., shall be collected on the same taxable transactions and remitted with the taxes imposed by this section. The tax rate shall be calculated pursuant to section 30 of the bill.

Section 4 creates section 202.125, F.S., effective January 1, 2002, which provides for exemptions from the tax imposed or administered by ss. 202.12 and 202.19, F.S. Certain communications services sold to residential households are exempt from the state portion of the tax; communications services sold to governments or educational or religious organizations exempt under section 501(c)(3) of the Internal Revenue Code are exempt from both the state and local taxes.

Section 5 creates section 202.13, F.S., effective January 1, 2002, which provides intent that if any part of the taxes imposed by this chapter are declared invalid, chapters 166, 203, 212, or 337, Florida Statutes, as such chapters existed prior to the enactment of this chapter, will apply to the sale or use of communications services. It also states that exemptions to the taxes are limited to those expressly exempted by the chapter or exempted by the constitutions of the United States or Florida.

Section 6 creates section 202.14, F.S., effective January 1, 2002, which provides a credit for taxes imposed by other states or jurisdictions.

Section 7 creates section 202.15, F.S., F.S., effective January 1, 2002, a special rule for users of substitute communication systems, requiring them to register with the department and pay the tax imposed under section 202.12, F.S.

Section 8 creates section 202.16, F.S., effective January 1, 2002, which provides that the tax imposed by section 202.12, F.S., is to be paid by purchasers of communications services and collected by dealers. The tax is to be separately stated on the bill or invoice for service.

Section 9 creates section 202.17, F.S., effective January 1, 2002, which requires dealers of communications services to register with the Department of Revenue, and imposes a registration fee of \$5.

Section 10 creates section 202.18, F.S., effective January 1, 2002, which provides for allocation and disposition of tax proceeds. It provides that the department shall deposit the portion of tax remitted under section 202.12(1)(a), (b) and (c), F.S., which is imposed under ch. 203, F.S., as provided by law and in accordance with section 9 of Art. XII of the Florida Constitution. The remaining portion will be distributed according to the provisions of section 212.20(6), F.S., except for a portion to be determined which shall be distributed in the same manner the half-cent sales tax distribution under section 218.61, F.S., and emergency distribution under section 218.65, F.S. The tax collected pursuant to section 202.19, F.S., less costs of administration, shall be transferred to the Local Communications Services Tax Clearing Trust Fund to be distributed to municipalities and counties. In a county which has enacted a discretionary surtax, this surtax shall be deemed to be a tax on communications services, and shall be distributed accordingly.

Section 11 creates section 202.19, F.S., effective January 1, 2002, which authorizes the governing body of each county and municipality to levy a discretionary communications services tax. Municipalities and charter counties may levy the tax up to the maximum rate determined for such entities in section 202.20(2), F.S., and other counties may levy up to the maximum rate established for other counties in section 202.20(2), F.S. The intent is

expressed that the maximum tax rate be the rate that would allow each municipality or county, respectively, to raise the maximum revenue it was authorized to raise under current law, including charges for use of right-of-way. Revenues raised by this tax may be used for any public purpose, including pledging such revenues for the repayment of current or future bonded indebtedness.

Section 12 creates section 202.20, F.S., describing the process by which initial and maximum rates of local telecommunications services taxes shall be established by the Revenue Estimating Conference. These rates are subject to review and approval by the Legislature during the 2001 regular session.

Section 13 creates section 202.21, F.S., effective January 1, 2002, which describes the process by which local communications tax rates may be changed and the requirements for notifying dealers of communications services of these changes.

Section 14 creates section 202.22, F.S., effective January 1, 2002, which provides for determination of local tax situs. It provides that dealers of communications services that conform to the requirements set out in the statute for determining to which locality each service address should be assigned are held harmless from any liability that would arise from assigning the service address incorrectly.

Section 15 creates section 202.23, F.S., effective January 1, 2002, providing the procedure by which communications services taxes may be refunded to purchasers of these services. Refunds may be made only if the tax was collected and was not due.

Section 16 creates section 202.24, F.S., effective January 1, 2002, limiting local taxes and fees which may be imposed on dealers of communications services. The reason given for this limitation is that competing communications services are provided under dissimilar circumstances, and it is in the public interest to treat these dealers in a nondiscriminatory and competitively neutral manner. This limitation does not apply to the local communications services tax levied pursuant to this chapter, ad valorem taxes, occupational license taxes, 911 service charges, or rental of property not in the public right-of-way, permit fees under certain circumstances, existing agreements with cable providers for in-kind property or service, special assessments or impact fees, pole attachment fees, or other taxes or fees authorized by general law on the effective date of this act, except for franchise fees, certain permit fees, discretionary sales taxes, and the municipal utility tax in section 166.231, F.S.

Section 17 creates section 202.25, F.S., effective January 1, 2002, providing for suits by the Department of Revenue against dealers for violation of this chapter, including dealers not qualified to do business in this state.

Section 18 creates section 202.26, F.S., which directs the Department of Revenue to administer and enforce the assessment and collection of the taxes imposed by this chapter. The department is authorized to adopt rules to enforce the chapter, including emergency rules.

Section 19 creates section 202.27, F.S., effective January 1, 2002, requiring dealers to file returns and remit the tax to the department on or before the 20th of each month. Dealers with small amounts of tax due may return and remit taxes less often, with an annual return and payment if the previous year's tax did not exceed \$100. The department is authorized to provide for self-accrual of taxes by certain dealers.

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Section 20 creates section 202.28, F.S., effective January 1, 2002, allows persons providing communications services a collection allowance of .75 percent of the amount of tax remitted to the department. This collection allowance may not be granted for delinquent taxes or tax returns and may be denied for incomplete returns. The department is authorized to adopt rules requiring such information as it may deem necessary to ensure that the communications services taxes levied under this chapter are properly collected. Penalties are provided for failure to return or pay these taxes within the prescribed time period, and for tax evasion and filing a false or fraudulent return.

Section 21 creates section 202.29, F.S., effective January 1, 2002, providing a credit for taxes paid on bad debts.

Section 22 creates section 202.30, F.S., effective January 1, 2002, requiring a dealer to remit taxes by electronic funds transfer and make returns through electronic data interchange when the amount of tax paid under this chapter, ch. 203, or ch. 212, F.S. by such dealer was greater than \$50,000 in the previous fiscal year. The department is allowed to waive this requirement, under certain circumstances. The department is also required to provide forms or electronic formats for filing returns and providing instructions to dealers.

Section 23 creates section 202.31, F.S., effective January 1, 2002, providing for the sale of any business which is liable for taxes. The purchaser of the business is required to withhold a sufficient portion of the purchase money to cover the account of such taxes until the former owner produces a receipt from the department stating that no taxes, penalty, or interest are due. If a dealer of communications services quits the business without a purchaser or successor and is delinquent in the payment of taxes, the department may notify all persons having any credits or personal property belonging to the dealer, to prevent them from disposing of these credits or property.

Section 24 creates section 202.32, F.S., effective January 1, 2002, empowering the department to call on any state or local agency for any information necessary or useful in administering this chapter.

Section 25 creates section 202.33, F.S., effective January 1, 2002, declares that taxes collected pursuant to this chapter shall become state or local government funds at the moment of collection, and provides criminal sanctions for failure to remit taxes collected under this chapter. The department is also directed to issue a warrant for the full amount of tax due or estimated to be due when any tax becomes delinquent or is otherwise in jeopardy. The warrant becomes a lien on any real or personal property of the taxpayer.

Section 26 creates section 202.34, F.S., effective January 1, 2002, which requires a dealer of communications services to keep a complete record of communications services sold at retail, together with invoices, gross receipts from such sales, and other pertinent records required by the department. These records shall be open for inspection by the department at all reasonable hours at the dealer's place of business. The department is authorized to audit by sampling the dealer's records. Wholesale dealers of communications services are also required to maintain books and records as required by section 213.35, F.S., and to permit the department to examine their books and records at all reasonable hours. This section also provides instructions concerning the conduct of audits by the department.

Section 27 creates section 202.35, F.S., effective January 1, 2002, which imposes interest on delinquent taxes, provides for assessment of taxes if a dealer fails to make his or her records available, fails to register as a dealer, or makes a grossly incorrect or false or

fraudulent return. This section also requires a dealer to separately state the amount of tax collected under this chapter on all invoices. A dealer may not offer to absorb any part of the tax, or relieve the purchaser of the payment of any part of the tax.

Section 28 creates section 202.36, F.S., effective January 1, 2002, providing departmental powers for issuing distress warrants, subpoenas, or subpoenas duces tecum.

Section 29 creates section 202.37, F.S., providing special rules for administration of the local communications services tax.

Section 30 provides that the Revenue Estimating Conference shall compute the rate of communications services tax which would provide the same revenues as estimated to be actually collected pursuant to chapter 212, Sales and Use Tax. The rate will be revenue neutral. The rate shall be presented to the Legislature for review and approval during the 2001 Regular Session.

Section 31 provides that the Revenue Estimating Conference shall compute the rate of the tax on the sales price of direct-to-home satellite services and present it to the Legislature for review and approval during the 2001 Regular Session.

Section 32 directs the executive director of the Department of Revenue to appoint an advisory council by August 1, 2000. Provides for membership of the council. The council shall advise the executive director of the department during the bill's implementation period on a transition strategy, development of necessary business processes, rule adoption processes, and processes for identifying issues for further legislative consideration. This section is effective upon the bill becoming a law.

Section 33 amends section 72.011, F.S., effective January 1, 2002, adding ch. 202, F.S., to the list of chapters for which a taxpayer may file an action in circuit court or under ch. 120, F.S.

Section 34 amends section 213.05, F.S., effective January 1, 2002, adding the communications services tax in ch. 202, F.S., to the list of taxes for which the Department of Revenue has responsibility for regulating, controlling, and administering.

Section 35 amends section 212.20, F.S., effective January 1, 2002, providing that revenue collected under section 202.18(1)(b) and (2)(b), F.S., shall be distributed by the sales tax distribution formula.

Section 36 amends section 166.231(9)(e) and (F.S.), F.S., to provide that the public service tax shall not be collected at retail on prepaid calling arrangements (calling cards).

Section 37 provides that, effective July 1, 2000, taxes that have been collected at the point of sale on prepaid calling arrangements under section 166.231(9)(F.S.), F.S., before July 1, 2000, must be remitted, and are not subject to refund. Any taxes not collected before such date need not be paid and are forgiven.

Section 38 repeals section 166.231(9), F.S., effective January 1, 2002, deleting provisions authorizing a municipality to levy the public utility tax on the purchase of telecommunication services. It also amends section 166.231(2), (5), (7), and (10), F.S., conforming provisions to changes made by this act.

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Section 39 amends s 166.233(1)(c) and (2), F.S., effective January 1, 2002, conforming provisions to changes made by this act.

Section 40 amends section 203.01(3) and (4), F.S., provides that the sale of telecommunication services to a person reselling such services by way of a prepaid calling arrangement is not subject to the gross receipts tax.

Section 41 amends section 203.01, F.S., effective January 1, 2002, providing that the tax on communications services imposed by this chapter shall be administered and collected under the provisions of ch. 202, F.S. The tax rate for communications services is set at the rate which shall be calculated pursuant to section 44 of the bill.

Section 42 amends section 203.012, F.S., effective January 1, 2002, deleting provisions related to the taxation of telecommunication service, and adds "communications services" as defined in section 202.11(3) to the definition of "utility services."

Sections 43 repeals, effective January 1, 2002, ss. 203.013, 203.60, 203.61, 202.62, and 202.63, F.S., relating to the gross receipts tax on interstate telecommunication services and other taxes on interstate and international telecommunication services.

Section 44 provides that the Revenue Estimating Conference shall compute the rate of communications services tax which would provide the same revenues as estimated to be actually collected pursuant to chapter 202, Gross Receipts Tax. The rate will be revenue neutral. The rate shall be presented to the Legislature for review and approval during the 2001 Regular Session.

Section 45 amends section 212.05(1)(e), F.S., to remove prepaid calling arrangements from telecommunication service taxable at 7 percent. It also provides a definition of prepaid calling arrangement, and states that the sale or recharge of such arrangement shall be treated as a sale of tangible personal property.

Section 46 provides, effective July 1, 2000, that taxes that have been collected at the point of sale on prepaid calling arrangements under section 212.05(1)(e), F.S., before July 1, 2000, must be remitted, and are not subject to refund. Any taxes not collected before such date need not be paid and are forgiven.

Section 47 amends section 212.054(2)(b), F.S., to subject charges for prepaid calling arrangements to a discretionary sales surtax imposed pursuant to this section.

Section 48 amends section 212.05(1)(e), F.S., effective January 1, 2002, removing telecommunication services, except for prepaid calling arrangements (calling cards) and television system program services, from the list of items subject to sales tax.

Section 49 amends section 212.054(2)(b) and (3)(c), F.S., effective January 1, 2002, removing references to telephone, telecommunication and television system program from this section. It provides that "utility service" as used in this section does not include any communications services as defined in ch. 202, F.S.

Section 50 amends section 337.401, F.S., effective January 1, 2001, providing legislative intent for the treatment of telecommunications companies in a nondiscriminatory manner by municipalities and counties. It provides authority for the regulation and management of roads and rights-of-way. It 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. Local governments that do not impose fees will recover the amount of any previously imposed fees through their local communications tax.

Section 51 amends section 337.401, F.S., effective January 1, 2002, conforming this section to prior amendments. It preempts to the state, the authority of municipalities and counties to require franchise fees from communications services providers, except for certain in-kind services.

Section 52 provides legislative findings that it may be necessary to adopt a state policy regarding in-kind services and contributions for public, educational, or governmental access facilities currently imposed only on cable service providers. Legislative committees shall evaluate the replacement of such services and contributions through the local communications services tax.

Section 53 amends section 212.031, F.S., effective July 1, 2000, to include leases for the placement of wireless towers and leases of space on buildings for the placement of wireless antennas to the exemption from sales tax for the lease or rental of public or private streets or rights-of-way for purposes of placing utility facilities.

Section 54 provides that if the repeal by this bill of a taxing authority's authority to levy taxes or fees impairs security pledged to retire the authority's bonded indebtedness secured by the taxes and fees, then to the extent of any such impairment, a like sum of revenue received by the authority under the bill shall be deemed as a matter of law to replace said taxes and fees as security for the bonded indebtedness.

Section 55 provides that taxes imposed by ss. 203.01, 202.12, and 202.19, F.S., on communications services shall be applied in accordance with ch. 202, F.S., as created in this act, to communications services reflected on bills dated on or after January 1, 2002.

Section 56 provides an appropriation on this act becoming a law of \$202,000 to the Department of Revenue from the General Revenue Fund to implement the provisions of this act.

Section 57 provides an appropriation of \$1,327,195 from the General Revenue Fund to the Department of Revenue and authorizes 22 FTE's to implement the provisions of this act.

Section 58 provides that effective June 30, 2001, that sections 202.10, 202.11, 202.20, 202.26, and 202.37, F.S., as created by this bill, are repealed. Also sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 38, 39, 41, 42, 43, 48, 49, 51, 54, and 55 of the bill are also repealed. The advisory committee appointed pursuant to section 32 of the bill is abolished.

Section 59 provides that section 337.401, F.S., is amended to revert to current law.

Section 60 provides an effective date of July 1, 2000, except as otherwise provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill revises the taxes levied on communications services providers by the state. The bill will establish a uniform statewide rate, with limited exceptions, that is expressly calculated to be revenue neutral.

This bill also provides for a tax exemption in Section 53 for towers used by a utility as defined by section 203.012, F.S., or a franchised cable television company. Additionally, the bill lowers the sales tax rate on prepaid calling arrangements. The fiscal impacts of these provisions are as follows:

<u>Towers</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
General Revenue	(\$0.6M)	(\$0.8M)
Trust Fund	(*)	(*)
<u>Prepaid Calling Arrangements</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
General Revenue	(\$0.9M)	(\$3.0M)
Trust Fund	(*)	(*)

2. Expenditures:

This bill provides an appropriation of \$202,000 to the Department of Revenue from the General Revenue Fund on the effective date of this act to implement the provisions of this act. Effective on July 1, 2000, \$1,327,195 is appropriated from the General Revenue Fund to the Department of Revenue and 22 FTE positions are authorized to implement the provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill revises the collection, administration, imposition, and definition of taxable sales of five taxes and fees currently authorized to be levied by municipalities and counties on the various types of communications services. The following county and municipal taxes and fees that currently apply to communications services are affected: the Public Service Tax, which may be levied by municipalities within the incorporated area and charter counties within the unincorporated area; the local option sales surtax, which is levied county-wide with revenue shared by counties, municipalities and school boards; a cable franchise fee, which may be levied by municipalities within the incorporated area and by counties within the unincorporated area; and the telephone franchise fee, which is currently authorized to municipalities by statute.

This bill repeals all these local taxes and fees and replaces them with a local option component of the new communications services tax that is intended to be a revenue neutral replacement. The new communications services tax has a broad base that encompasses more services than are taxable under any single municipal or county tax currently authorized. The Department of Revenue is designated as the tax collector for all the local taxes, removing tax collections duties from local governments for the Public Service Tax and the local fees. Local governments are specifically prohibited from charging communication service providers for the use of the public rights of way, although the bill allows local governments to continue to regulate communication service providers use of the rights of way as long as the regulations apply to other users, such as electric utilities. Local governments also retain the authority to negotiate with cable providers for in-kind compensation, capital contributions, and community benefits.

The bill also lowers the sales tax rate on prepaid calling arrangements. The bill provides a sales tax exemption for leases of certain property for the placement of towers used in the provision of mobile communication services. The fiscal impact of these provisions are as follows:

<u>Towers</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
Local	(\$0.1M)	(\$0.1M)
<u>Prepaid Calling Arrangements</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
Local - Sales Tax	(\$0.1M)	(\$0.3M)

2. Expenditures:

None.

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

This bill establishes one statewide tax rate on communications services with limited exemptions, and local taxes will be administered and collected by the Department of Revenue. The bill also provides a mechanism for determining the situs of each customer for local tax purposes; if a dealer satisfies the requirements of the law it is not subject to penalty for failure to situs correctly.

Although the effect of the bill on consumers of communications services is indeterminate for individuals, the intention of the legislation is overall revenue neutrality. The tax burden on certain services will increase, while others will be taxed at a lower rate. Franchise and permit fees that are currently billed to providers of communications services will be included in the broad-based communications services taxes which are directly passed on to consumers.

D. FISCAL COMMENTS:

This bill directs the Department of Revenue to transfer the proceeds of the local communications services tax to the Local Communications Services Clearing Tax Trust Fund. This trust fund must be created before January 1, 2002.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The communications services tax created by this bill replaces five distinct taxes and fees which cities and counties may currently impose. As set forth in the bill, if rates are set by the Legislature during the 2001 Regular Session, this bill will not reduce the authority that municipalities or counties have to raise revenues in the aggregate. While the authority to levy the public services tax pursuant to ch. 166, F.S., will be reduced, the bill provides for replacement authority to raise revenues so that the change will be neutral to local governments. Therefore, if rates are set in the Legislature in the 2001 Regular Session, there will be no change in local governments authority to raise revenue in the aggregate. Alternately, if the Legislature fails to act in the 2001 Regular Session, the communications services tax will not be imposed and the current authority to raise revenue will be preserved.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill creates a sales tax exemption which will reduce the amount of the Local Government Half Cent Sales Tax shared with municipalities and counties. The bill does not reduce the percentage of a state tax shared with municipalities and counties; therefore, Article VII, Section 18(b), Florida Constitution does not apply.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue is authorized to adopt rules to administer the tax imposed by ch. 202, F.S. The department is also authorized to adopt emergency rules that are valid for 180 days after adoption, notwithstanding the provisions of section 120.54(4), F.S. Section 120.54(4), F.S., provides that emergency rules are effective for 90 days after adoption.

C. OTHER COMMENTS:

The bill died on the House Calendar. Its companion, CS/CS/CS/SB 1338 passed the legislature and was signed by the Governor, chapter 2000-260.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 24, 2000, the Committee on Finance and Taxation adopted a Committee Substitute. In addition to making technical corrections, the Committee Substitute differed from the original bill in the following:

The original bill set a state tax rate of 6.22 percent and a gross receipts tax rate of 2.2 percent on telecommunications services. The Committee Substitute requires that both rates be computed by the Revenue Estimating Conference and the rate shall be presented to the Legislature for review and approval during the 2001 Regular Session. The rate will be revenue neutral.

The Committee Substitute clarifies the information that the local taxing jurisdictions and the communications services providers are required to submit to the Department of Revenue for use by the Revenue Estimating Conference in calculating the rates. The Department of Revenue is provided additional rulemaking authority for collecting the data.

The Committee Substitute revises the methodology which the Revenue Estimating Conference is directed to use in calculating the rates.

The Committee Substitute increases the initial appropriation to the Department of Revenue from \$189,000 to \$202,000.

The Committee Substitute provides that effective June 30, 2001, that sections 202.10, 202.11, 202.20, 202.26, and 202.37, F.S., as created by this bill, are repealed. Also sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 38, 39, 41, 42, 43, 48, 49, 51, 54, and 55 of the bill are also repealed. The advisory committee appointed pursuant to section 32 of the bill is abolished.

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON UTILITIES & COMMUNICATIONS:

Prepared by:

Staff Director:

Patrick L. "Booter" Imhof

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DATE: June 28, 2000

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AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Staff Director:

Lynne Overton

Alan Johansen

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON COMMITTEE ON UTILITIES & COMMUNICATIONS:

Prepared by:

Staff Director:

Patrick L. "Booter" Imhof

Patrick L. "Booter" Imhof