

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
STATE ADMINISTRATION  
FINAL ANALYSIS**

**BILL #:** CS/HB 1487

**RELATING TO:** Public Records / Telecommunications

**SPONSOR(S):** Council for Smarter Government, Representative(s) Attkisson and Ritter

**TIED BILL(S):**

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

- (1) STATE ADMINISTRATION YEAS 3 NAYS 0
  - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 13 NAYS 0
  - (3)
  - (4)
  - (5)
- 

I. SUMMARY:

**On April 16, 2002, CS/HB 1487 was approved by the Governor and became law as Chapter 2002-47, Laws of Florida (act). The effective date of the act is "upon becoming a law," which is April 16, 2002.**

This act creates a public records exemption for any information received by a taxing authority or its agent in connection with an audit of a telecommunications service provider who had collected a public service tax during any period of time prior to the repeal of that tax.<sup>1</sup>

This act provides a public necessity statement, as required by the Florida Constitution, which states that any information received by a local government in connection with an audit of a public service tax collected by a telecommunications service provider should be made exempt because disclosing such information would adversely affect the business interests of such provider by harming that provider in the marketplace and would compromise the security of the communications network. Disclosure of such information would impair competition within the telecommunications industry.

This act provides that the exemption is remedial in nature and provides for retroactive application of the public records exemption. Additionally, this act provides for future review and repeal of the public records exemption.

This act does not appear to have a fiscal impact on state or local governments.

**THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.**

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<sup>1</sup> This public records exemption was formerly found in s. 166.231(9)(c), F.S. During the 2000 legislative session, the legislature repealed the exemption. Section 38, chapter 2000-260, L.O.F.

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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

**Section 166.234(9), F.S.**

Prior to October 1, 2001, municipalities had the authority to levy public service taxes on the purchase of telecommunications services pursuant to s. 166.231(9), F.S. (1999). Pursuant to s. 166.231(9)(c), F.S. (1999), a municipality could audit the telecommunications provider's records pursuant to s. 166.234, F.S. (1999); however, any information received in connection with the audit was confidential and exempt from public disclosure.

During the 2000 legislative session, the Legislature repealed s. 166.231(9), F.S.<sup>2</sup> However, in the 2001 legislative session the legislature passed CS/CS/SB 1878, which became law as chapter 2001-140, Laws of Florida (L.O.F.). Section 36, chapter 2001-140, L.O.F., provided that municipalities may still conduct public service tax audits of telecommunications companies pursuant to s. 166.234, F.S., for any period of time prior to the repeal of s. 166.231(9), F.S.;<sup>3</sup> however, no commensurate public records exemption for such audits was passed.

**Public Records Law**

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer,

<sup>2</sup> Section 38, chapter 2000-260, L.O.F.

<sup>3</sup> See s. 116.231, F.S. (2001), Note 1.

board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

#### Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

#### Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

#### C. EFFECT OF PROPOSED CHANGES:

This act recreates the public records exemption for any information *received*<sup>4</sup> by a taxing authority or its agent in connection with an audit of a telecommunications service provider conducted under

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<sup>4</sup> This public records exemption applies to information received by a taxing authority in connection with an audit of a telecommunications service provider. The exemption does not apply to documents created by a taxing authority in connection with such audit.

s. 36, chapter 2001-140, L.O.F., and s. 166.234, F.S.<sup>5</sup> This exemption applies to a taxing authority conducting an audit of a public service tax collected by a telecommunications service provider during any period of time prior to the repeal of such tax.<sup>6</sup> Section 163.340(2), F.S., defines a “taxing authority” as the state or any county, municipality, authority, special district, or other public body of the state, except a school district. Although a taxing authority is defined as the state or any county, municipality, authority, special district, or other public body of the state, s. 36, chapter 2001-140, L.O.F., provides that only *municipalities*<sup>7</sup> may conduct public service tax audits of telecommunications companies pursuant to s. 166.234, F.S., for any period of time prior to the repeal of s. 166.231(9), F.S.<sup>8</sup>

This act provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that any information received by a *local government* in connection with an audit of a public service tax collected by a telecommunications service provider should be made exempt because disclosing such information would adversely affect the business interests of such provider by harming that provider in the marketplace and would compromise the security of the communications network. Some might argue that this exemption appears overly broad because the exemption is for taxing authorities that conduct audits of telecommunications service providers whereas the public necessity statement only addresses the need to exempt such information when received by a local government in connection with an audit of a public service tax. Because the public records exemption specifically states that such audits are conducted pursuant to s. 166.234, F.S., this exemption cannot be construed as overly broad due to the fact that such section only applies to audits conducted by a municipality, which is a local government.

This act provides that the public records exemption is remedial in nature and provides for retroactive application of the exemption. Additionally, this exemption is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2007, unless reviewed and saved from repeal through reenactment by the legislature.

**D. SECTION-BY-SECTION ANALYSIS:**

See “Effect of Proposed Changes.”

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<sup>5</sup> This public records exemption was formerly found in s. 166.231(9)(c), F.S. During the 2000 legislative session, the legislature repealed the exemption. Section 38, chapter 2000-260, L.O.F.

<sup>6</sup> Section 36, chapter 2001-140, L.O.F., provides that, notwithstanding any provision of law to the contrary, the provisions of s. 166.234, F.S., must continue to “apply with respect to all public service taxes imposed on telecommunications services under section 166.231(9), Florida Statutes, prior to its amendment by chapter 2000-260, Laws of Florida.”

<sup>7</sup> Section 165.031(4), F.S., defines “municipality” as “a municipality created pursuant to general or special law authorized or recognized pursuant to s. 2 or s. 6, Art. VIII of the State Constitution.” Section 2, Art. VIII of the State Constitution provides that Municipalities may be established or abolished and their charters amended pursuant to general or special law. When any municipality is abolished, provision shall be made for the protection of its creditors . . . Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective . . . Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law.

<sup>8</sup> Prior to October 1, 2001, municipalities had the authority to levy public service taxes on the purchase of telecommunications services pursuant to s. 166.231(9), F.S. (1999). Pursuant to s. 166.231(9)(c), F.S. (1999), a municipality could audit the telecommunications provider’s records pursuant to s. 166.234, F.S. (1999); however, any information received in connection with the audit was confidential and exempt from public disclosure. During the 2000 legislative session, the Legislature repealed s. 166.231(9), F.S.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

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

This act does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

**Committee on State Administration**

On February 21, 2002, the Committee on State Administration reported HB 1487 favorably, with one amendment. The amendment merely rewords the actual exemption language contained in the bill to conform the House bill to the Senate bill. The amendment makes no substantive changes.

**Council for Smarter Government**

On February 26, 2002, the Council for Smarter Government reported HB 1487 favorably, as a council substitute. The council substitute merely rewords the actual exemption language contained in the original bill to conform the House version to the Senate version. The council substitute makes no substantive changes.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Heather A. Williamson, M.S.W.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Heather A. Williamson, M.S.W.

Staff Director:

Don Rubottom

**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON STATE ADMINISTRATION:**

Prepared by:

Heather A. Williamson, M.S.W.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.