

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 2302

SPONSOR: Finance and Taxation Committee and Senator Haridopolos

SUBJECT: Tax/Substitute Communications

DATE: April 20, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	Favorable
2.			CP	Withdrawn
3.	Fournier	Johansen	FT	Fav/CS
4.			AGG	
5.			AP	
6.				

I. Summary:

The committee substitute creates the Substitute Communications Systems Tax Relief Act, which provides that the state and local communications services taxes and the gross receipts tax will not be levied on the actual cost of operating a substitute communications system from the effective date of the bill through December 31, 2005. It also provides that the Department of Revenue shall not make assessments on these costs for the period of October 1, 2001 through the effective date of the bill, but no refunds shall be made of any tax that has already been paid.

The committee substitute creates the nine-member Communications Policy Task Force. The Governor, the President of the Senate, and the Speaker of the House of Representatives each appoint three members. The task force is charged with reviewing and evaluating existing national and state regulatory and tax policies relating to the communications industry and making recommendations to the Legislature by January 15, 2005.

II. Present Situation:

In 1985, the Legislature added a substitute telephone or telecommunication system to the list of services subject to gross receipts and sales tax. At that time, most of the communications services available today did not exist. Ch. 85-174, Laws of Florida, provided:

Any person who purchases, installs, rents, or leases a telephone system or telecommunications system for his own use to provide himself with telephone service or telecommunication service which is wholly or partially independent of any local telephone system or any intrastate or interstate interexchange network or which is a substitute for any telephone company switched service or a substitute for any dedicated

facility by which a telephone company provides a communications path is exercising a taxable privilege. . . .

The Legislature substantially rewrote Florida's communications tax law in the 2000 Regular Session. Chapter 202, Florida Statutes, creates the Communications 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 the Department of Revenue (DOR). While many issues were addressed in the rewrite, substitute communications systems were not, except to change the term "telephone service or telecommunication service" to the conforming term "communications service." Presently, the term "substitute communications system" is defined in s. 202.11(16), F.S., to mean:

Any telephone system, or other system capable of providing communications services, which a person purchases, installs, rents or leases for his or her own use to provide himself or herself with services used as a substitute for any switched service or dedicated facility by which a dealer of communications services provides a communication path.

The intent of taxing substitute telephone service or telecommunications services was to provide equal tax treatment on an in-house telephone system and telephone service purchased from a commercial provider. Today, there is uncertainty as to the proper interpretation of a "substitute communications system."

To address that uncertainty, the DOR issued a draft rule, 12A-19.036 on substitute communications systems to initiate discussion of this issue. A public workshop was held on August 1, 2003. At the workshop, many members of the business community expressed concern that the DOR's interpretation of the term was too broad. The department has not taken further steps in the rulemaking process for this rule. Examples of taxable substitute communications services from the rule include:

- A telephone system with switching and routing capabilities allowing for intercom and other self-contained communications at the taxpayer's facility.
- A computer local area network (LAN) system that uses a router to provide switching capabilities necessary to connect the multiple computers used by the taxpayer's employees.
- A wireless dispatch system that transmits and switches voice or data signals to provide a communications path between and among remote receivers and a central base station.
- Telephone transmission and receiving equipment located at various sites where the owner does business which include a tower for the purpose of providing communications services between those sites in lieu of using a local exchange provider and long distance provider.
- A system to transmit, route, and switch data to permit monitoring the activities and operations of manufacturing equipment, pipelines, rail systems, or utilities.
- A small business with five computers each connected to a central router that allows the computers to share printers, files and documents, and other business related activities.

- A two-way mobile radio system that includes a base station, central tower used for signal switching, and several mobile radio units and for which the company does not buy airtime or switching services from a provider.

DOR states that each of these examples fit the definition of a substitute communications system. (Home users of local area networks would not be taxable since the tax liability is based on depreciation and allocation of other business costs not typically incurred in residential households.)

Generally, sales tax and the CST attempt to create an equal tax situation between a business that buys its goods or services from another and businesses that create the goods or services in-house. Taxing substitutes is generally viewed as a tax fairness issue rather than simply a way to raise additional revenue. According to the DOR, however, defining and valuing a substitute communications service is more difficult than defining and valuing a service that is purchased from another entity.

The substitute communications concept has long been in statute, but has not been defined or examined in light of the switch to a tax on communications services. DOR reports approximately 10 companies presently pay taxes for substitute communications systems. DOR states it has not actively enforced the measure, but at the request of local governments, it will ultimately have to implement and enforce taxation of substitute communications systems.

III. **Effect of Proposed Changes:**

Section 1 creates the Substitute Communications Systems Tax Relief Act, which provides that the state and local communications services taxes and the gross receipts tax will not be levied on the actual cost of operating a substitute communications system from the effective date of the bill through December 31, 2005. It also provides that the Department of Revenue shall not make assessments on these costs for the period of October 1, 2001 through the effective date of the bill, but no refunds shall be made of any tax that has already been paid.

Section 2 creates the nine-member Communications Policy Task Force. The Governor, the President of the Senate, and the Speaker of the House of Representatives each appoint three members. The task force is charged with reviewing and evaluating existing national and state regulatory and tax policies relating to the communications industry and making recommendations to the Legislature by January 15, 2005.

The task force is housed for administrative purposes within the Public Service Commission but shall operate independently of the commission. The commission is directed to provide administrative support and staff for the technical and regulatory issues addressed by the task force; the Department of Revenue must provide staff for the tax issues addressed by the task force.

The task force is charged with reviewing and evaluating existing national and state regulatory and tax policies relating to the communications industry and making recommendations to the Legislature on the following:

- The scope of substitute communications services that should be subject to taxation;
-
- The legal or regulatory actions that will impact the implementation of the Tele-Competition and Innovation Act of 2003;
-
- The adequacy of the implementation of Lifeline Assistance under the 2003 Act;
-
- The impact on competition by emerging technologies including voice over Internet protocol, wireless, and any other developing technology that provides similar end-to-end communications service;
-
- The impact on private competitors of local government entities, or their affiliates, that provide communications services to the public; and
-
- Any other legal, regulatory, or technological development during the course of the study that impacts Florida's communications policies.

Section 3 provides the act shall take 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:

According to DOR, approximately \$300,000 of revenue is currently collected annually from the tax on substitute communication systems, which will not be collected between the effective date of this bill and December 31, 2005 if this bill passes. The loss will be split among PECO, General Revenue, and local revenue.

B. Private Sector Impact:

Approximately ten businesses will not be required to pay approximately \$300,000 annually in substitute communications systems taxes while the provisions of this committee substitute are in effect.

C. **Government Sector Impact:**

This committee substitute requires the Public Service Commission to provide administrative support and staff for the task force created by the bill, and requires the Department of Revenue to provide staff for the tax issues addressed by the task force. The cost of these activities has not been determined.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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