

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: SB 2322

SPONSOR: Senator Haridopolos

SUBJECT: Communications Services Taxes

DATE: March 3, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Caldwell</u>	<u>Caldwell</u>	<u>CU</u>	<u>Favorable</u>
2.	_____	_____	<u>CP</u>	_____
3.	_____	_____	<u>FT</u>	_____
4.	_____	_____	<u>AGG</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

The bill deletes the legislative intent language that provided for reversion to the pre-2001 tax structure if the communications services tax (CST) law is declared invalid, ineffective, inapplicable, or unconstitutional, or void. The bill establishes a new procedural system for the Department of Revenue (DOR) to administer resale certificates issued to dealers under the CST. The bill repeals the authority for local government to adopt by ordinance or resolution "emergency rates" which exceed the statutory maximum rates allowed under the local CST. The bill also expands the list of prohibited taxes, charges, and fees that each public body can levy with respect to the sale or purchase of communications services. The act takes effect on July 1, 2004.

This bill substantially amends the following sections of the Florida Statutes: 202.13, 202.16, 202.19, 202.20, 202.21, and 202.24.

II. Present Situation:

The Legislature substantially rewrote Florida's communications tax law in the 2000 Regular Session. Chapter 202, Florida Statutes, creates the Communication 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).

The new CST law combined seven different state taxes, local taxes, and fees into a two-tiered tax composed of a state communications services tax and a local communications services tax. The CST broadened, among other things, the taxable base of communications services by restructuring separate taxes and fees into a revenue-neutral communications services tax

centrally administered by the DOR. Included in the legislative findings and intent, chapter 202 is to “ensure that the growth of the industry is unimpaired by excessive governmental regulation. The tax imposed pursuant to this chapter is a replacement for taxes and fees previously imposed and it is not a new tax.” Because the rewrite was so substantial, some provisions need further clarification.

III. Effect of Proposed Changes:

Section 1 amends s. 202.13, F.S., relating to intent. The bill deletes the provision in subsection (1) that provides for reversion to the prior tax structure if the CST is declared invalid, ineffective, inapplicable, unconstitutional, or void.

Section 2 amends subsection 202.16(2), F.S., relating to payments. Currently the CST has its own annual resale certificate that is separate from the one issued for sales and use tax. Once registered, a communications services tax dealer will receive an annual resale certificate. This certificate is used only for tax-exempt purchases of communications services that are intended to be resold or used as a component part of, or integrated into, communications services that are offered for retail sale. Each active dealer will receive a new annual resale certificate each year. A communications services tax dealer is required to maintain copies of the purchaser’s annual communications services tax resale certificate to document the nature of the sale made for the purpose of resale.

The bill provides that a dealer must document the exempt nature of the transaction by retaining a copy of the purchaser’s annual resale certificate. The bill also provides that a dealer may, prior to the sale, in lieu of maintaining a copy of the annual resale certificate, document an authorization number that will be provided by the DOR telephonically or electronically, or by other means established by the department by rule. A dealer may rely on an initial or annual resale certificate accepted from a purchaser without seeking additional annual resale certificates from the purchaser provided the dealer makes recurring sales to the purchaser on a continual basis which means no less frequently than once in every 12 month period. The bill adds a definition for the term “recurring sales to a purchaser in the normal course of business.” The bill provides that dealers may provide the department with evidence that a sale was for resale and exempt from tax through the informal protest provided in s. 213.21, F.S., but may not provide such evidence in any proceeding under chapter 120, F.S., or any circuit court action under chapter 72, F.S.

Section 3 amends s. 202.19, F.S. This section provides for authorization to impose local communications services tax. Section 202.19(2)(c), F.S., provides that the maximum local communications services tax rates authorized under paragraphs (a) and (b) of s. 202.19(2), F.S., do not include permit fee tax rate add-ons relating to placing or maintaining facilities in or on public roads or rights-of-way of up to 0.12 percent for municipalities and charter counties and up to 0.24 percent for noncharter counties authorized under s. 337.401, F.S. These maximum rates also do not supersede conversion or emergency rates authorized under s. 202.20, F.S. Section 202.19(3)(a), F.S., also provides that the local communications services tax rates authorized under s. 202.19, F.S., include “any fee or other consideration” that a local taxing jurisdiction may impose upon dealers of communications services for the right to use or occupy public roads or rights-of-way.

The bill amends s. 202.19(3)(a), F.S., specifying that the local communications services tax rates authorized under s. 202.19, F.S., includes “and is in lieu of . . . application fees, transfer fees, siting fees, renewal fees, or claims for related costs” that a local taxing jurisdiction may impose upon dealers of communications services for the right to use or occupy public roads or rights-of-way. The adds the term “towers” to “poles, wires, and other fixtures” for the placement, construction, and maintenance used in the provision of communications services. Finally, the bill makes conforming cross references made in Section 4.

Section 4 amends s. 202.20, F.S., relating to local communications services tax conversion rates. The bill deletes s. 202.20(2)(a), F.S., which provides a local taxing jurisdiction with the authority to change its local communications services tax rate by emergency ordinance or resolution if the transition from the previous state and local taxing structure failed to generate revenues equal to the revenues from the taxes and fees imposed under the previous structure. The bill also deletes s. 202.20(2)(b), F.S., which provides a list of the taxes and fees replaced by the new taxing structure identified as “replaced revenue sources” for purposes of emergency rate authority. This eliminates the emergency rate authority currently granted to local jurisdictions.

Section 5 amends s. 202.21, F.S. This section provides that any local taxing jurisdiction that changes its local communications services tax rate by emergency ordinance or resolution must immediately inform the Department of Revenue of such rate change. The Department of Revenue has 30 days after receiving such notice to inform all dealers of the rate change. The bill deletes reference to local communications services tax rate changes by emergency ordinance or resolution.

Section 6 amends s. 202.24(2)(a)1., F. S. This section provides that except for the list of taxes and fees contained in paragraph (c) of s. 202.24(2), F.S., each public body is prohibited from levying on or collecting any tax, charge, or fee with respect to the sale or purchase of communications services. The bill adds “application fees, transfer fees, siting fees, renewal fees, or claims for related costs” to the list prohibited in s. 202.24(2)(a)1., F.S.

Section 7 provides that the amendments to sections 202.19(3)(a) and 202.24(2)(a), F.S., which relate to what local government fees were replaced by the CST, are intended to clarify the law in effect on the effective date of the act and not to make substantive changes to that law.

Section 8 provides an effective date of July 1, 2004.

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:

None.

B. Private Sector Impact:

Companies that are charged additional fees by local governments will no longer have to pay such fees.

C. Government Sector Impact:

Local governments that are currently charging additional fees will be restricted from charging those fees and resulting in the loss of that revenue.

DOR estimates that it will need a nonrecurring appropriation of \$53,205 to implement section 2 of the bill.

VI. Technical Deficiencies:

According to DOR, an effective date of July 1, 2004, will not provide sufficient time to develop and make computer software changes to comply with the alternative method for maintaining a copy of the annual resale certificates. The new system, which corresponds with a similar provision for sale and use tax under s. 212.07(1)(b), F.S., provides for an authorization number that will be provided by the DOR telephonically, or electronically, or by other means established by the DOR. DOR suggests that an effective date of January 1, 2005, for section 2 of the bill will provide them the time needed for making the necessary computer software and operational changes and for preparing educational materials for taxpayers and DOR personnel.

VII. Related Issues:

None.

VIII. Amendments:

None.