

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.)

Prepared By: Government Efficiency Appropriations Committee

BILL: CS/SB 2066

SPONSOR: Government Efficiency Appropriations Committee and Senator Constantine

SUBJECT: Tax on Communication Services

DATE: April 14, 2005

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|-----------------|-----------|--------------------|
| 1. | <u>Fournier</u> | <u>Johansen</u> | <u>GE</u> | <u>Fav/CS</u> |
| 2. | <u>Caldwell</u> | <u>Caldwell</u> | <u>CU</u> | <u>Pre-Meeting</u> |
| 3. | _____ | _____ | <u>CA</u> | _____ |
| 4. | _____ | _____ | <u>WM</u> | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The bill provides statutory governance for sales of communications services for resale. It limits the fees local governments may impose upon communications services dealers for use of roads or rights-of-way. It limits the adoption of emergency communications services tax rates through July 1, 2007, and repeals the section of the statutes providing for emergency rates after that date.

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

II. Present Situation:

Sale for Resale

Section 202.12, F.S., imposes the communications services tax on communications services sold at retail. Subsection 202.16(2), F.S., provides that any person who makes a sale for resale of communications services must comply with the rules of the Department of Revenue. Rule 12A-19.060, F.A.C., Sales for the Purpose of Resale, governs these transactions, and any person who makes a sale for resale that is not in compliance with this rule is liable for any tax, penalty, and interest due for failure to comply.

Rule 12A-19.060, F.A.C., provides that each registered dealer of communications services will receive an annual resale certificate, to be 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 receives a new annual resale certificate each year, and 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.

Local Communications Services Tax

Section 202.19(3)(a), F.S., provides that the local communications services tax rates authorized under s. 202.19, F.S., includes “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.

Under s. 202.20(2)(a), F.S., a local taxing jurisdiction may adjust its local communications services tax rate by emergency ordinance or resolution if, for the periods ending December 31, 2001, March 31, 2002, June 30, 2002, or September 30, 2002, the revenue generated by the local communications services tax was less than the revenues received from the replaced revenue sources for the corresponding 2000-2001 period, plus reasonably anticipated growth in such revenues. The adjustment may be high enough to generate the entire revenue shortfall within 1 year after the rate adjustment and by an amount necessary to generate the expected amount of revenue on an ongoing basis.

If, during the period October 1, 2002 through September 30, 2002, revenues under the new tax exceed revenues from the replaced revenue sources for the corresponding 2002-2001 period, plus reasonably anticipated growth, by more than 10 percent, the local taxing jurisdiction is required to reduce its communications services tax rate, unless the tax rate was adopted by resolution or ordinance.

Section 202.21, F.S., requires any local taxing authority that changes its local communications services tax rate by emergency ordinance or resolution to immediately notify the Department of Revenue of the rate change, and the department has 30 days after receiving the notice to inform all dealers of the rate change.

III. Effect of Proposed Changes:

The bill amends s. 202.16(2), F.S., to clarify the law on sale for resale of communications services. It requires a dealer to document the exempt nature of a sale for resale by retaining a copy of the purchaser’s initial or annual resale certificate. In lieu of maintaining a copy of the certificate, it allows a dealer to document an authorization number provided by the Department of Revenue. It provides that a dealer may rely on an initial or annual resale certificate without seeking additional annual resale certificates from a purchaser if the dealer makes sales to the purchaser no less frequently than once every twelve months. The bill provides that a dealer may provide the Department of Revenue with evidence of the exempt status of a sale through the informal protest process provided for in s. 213.21, F.S. It also requires the Department of Revenue to create an automated system to provide authorization numbers for sales for resale by January 1, 2006, allowing the department time to make the necessary changes to create the system or modify the authorization system used by sales tax dealers.

The bill amends s. 202.19(3)(a), F.S., to specify that the local communications services tax rate authorized under s. 202.19, F.S., is in lieu of any fee or other consideration, including, but not limited to, application fees, transfer fees, renewal fees, or claims for related costs that a local jurisdiction may impose upon dealers of communications services for the right to use or occupy its roads or rights-of-way. The bill specifies that amendments to s. 202.19(3)(a), F.S., contained

in the act are remedial in nature and are intended to clarify the law in effect of October 1, 2001. It specifies that the amendments do not grant any right of refund of fees or charges paid before July 1, 2004, unless the monies were paid under written protest as to the local government's authority to impose the fees or charges.

The bill amends s. 202.20(2)(a)3., F.S, to limit the authority of local taxing jurisdictions to increase the local communications services tax rate by emergency ordinance or resolution. Such increases would be allowed only when a reallocation of revenue away from the local government is made by the Department of Revenue or a dealer.

Effective July 1, 2007, the bill repeals the authority for local governments to change a local communications services tax rate by emergency ordinance or resolution.

The bill amends s. 202.21, F.S., deleting a reference to local communications services tax rate changes adopted by emergency ordinance or resolution, effective July 1, 2007.

Except as otherwise provided, this bill takes effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None. The bill's provisions pertaining to local communications services tax rates are not mandates under Article VII, sec. 18(b) of the Florida Constitution. Subsection (2) of s. 202.20, F.S., which is amended by this bill, was created to allow local governments to adjust their tax rates by emergency ordinance or resolution if the statutory conversion tax rates did not generate as much revenue as had been expected. Local governments have had three years' experience to make these adjustments, and the case for continued emergency rate authority in jurisdictions which have not exercised it is not compelling. Local governments will retain the authority to levy, by ordinance, local communications services tax up to the statutory maximum rate as provided in s. 202.19, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Revenue Estimating Conference has determined that the bill would have an indeterminate negative impact on local revenue. Jurisdictions whose adopted rates have allowed revenue to exceed FY 2000-01 replacement revenues, adjusted for growth, but have not adopted these rates by ordinance will experience lower revenues. Jurisdictions

whose adopted rates have resulted in revenues less than the FY 2000-01 replacement revenues, adjusted for growth, will be foreclosed from making up that revenue through emergency rate impositions. Some jurisdictions will lose revenue from application fees, transfer fees, siting fees, or claims for related costs.

B. Private Sector Impact:

The limits placed by the bill on communications services tax rates will lower the tax rates in some jurisdictions and preclude other jurisdictions from adopting higher emergency rates. This will decrease the taxes paid by some purchasers of these services. Some communications services dealers will pay lower fees and related costs to local jurisdictions.

C. Government Sector Impact:

Local governments will have less authority to impose emergency tax rates to make up for lost revenue, and they will be precluded from imposing additional charges for use of roads or public rights-of-way.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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