

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 567

Communications Services Tax

**SPONSOR(S):** Reagan

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 980

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Utilities &amp; Telecommunications</u>	<u>6 Y, 0 N</u>	<u>Cater</u>	<u>Keating</u>
2) <u>Jobs &amp; Entrepreneurship Council</u>	<u>11 Y, 0 N, As CS</u>	<u>Cater</u>	<u>Thorn</u>
3) <u>Policy &amp; Budget Council</u>	<u>27 Y, 0 N, As CS</u>	<u>Voyles</u>	<u>Hansen</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

CS/CS/HB 567 reduces the Communications Services Tax (CST) rates for most communications services. The general state CST rate is reduced from 6.8 percent to 6.55 percent. For direct-to-home satellite service, the rate is reduced from 10.8 percent to 10.55 percent, and the state's allocation of revenue on such service is reduced from 63 percent to 62.1 percent.

The bill establishes a new procedural system for the Department of Revenue (DOR) to administer resale certificates to dealers under the CST. The new procedural system is similar to the one DOR utilizes for sales and use tax. The bill requires DOR to establish a toll-free number to verify valid registration numbers and resale certificates, and to establish a system for receiving information from dealers regarding certificate numbers.

The bill provides that commencing July 1, 2007, the emergency rate provision may only be exercised if CST revenue is reallocated away from the local government. Any such adjustment must be made within six months of DOR notifying local governments in writing that complete information related to DOR audits of these amounts is available.

The Revenue Estimating Conference adopted a negative fiscal impact of \$15.1 million to state government and \$1.9 million to local governments in fiscal year (FY) 2007-08, and of \$37.9 million to state government and \$4.8 million to local governments in FY 2008-09.

Except as otherwise provided in the act, this act shall take effect upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

**Ensure Lower Taxes**-The bill reduces the communications services tax from its current rate of 6.8 percent to 6.55 percent. For direct-to-home satellite service, the reduction is from its current rate of 10.8 percent to 10.55 percent. The bill also deletes the authority for cities and counties to impose emergency CST rates, except in limited circumstances.

### B. EFFECT OF PROPOSED CHANGES:

#### Background

In 2000 and 2001, the Legislature passed the "Communications Services Tax (CST) Simplification Law,"<sup>1</sup> which was codified in ch. 202, F.S. This was designed to restructure taxes on telecommunications, cable, direct-to-home satellite, and related services.<sup>2,3</sup> The CST replaces and consolidates several different state and local taxes into two taxes: the Florida CST and the local CST.

Old Tax Structure (Prior to October 1, 2001)	New Tax Structure (After October 1, 2001)
Number of Taxes = 7  State Sales Tax Local Option Tax Gross Receipts Tax Public Service Tax Cable Franchise Fee Telecom Franchise Fee Cable and Telecom Permit Fees	Number of Taxes = 2  State Communications Services Tax Local Communications Services Tax

Some examples of services subject to the tax are:

- Local and long-distance telephone
- Cable television
- Direct-to-home satellite television
- Mobile communications, including detailed billing charges
- Private line services
- Pager and beeper
- Telephone charges made by a hotel or motel
- Facsimiles (FAX), when not provided in the course of professional or advertising service

<sup>1</sup> Ch. 2000-260 and 2001-140, L.O.F.

<sup>2</sup> Much of the general information related to the CST is from the Florida Department of Revenue's website on the CST.  
<http://dor.myflorida.com/dor/taxes/GT-800011.html#comservicetax>

<sup>3</sup> Section 202.11(2), F.S., defines "communications services" rather broadly to encompass existing technologies and ones that may later be devised. It includes services such as cable television, local and long distance telephone service, paging service, and satellite television service; however, the definition does not include Internet access or electronic mail services.

In general, the tax includes a state rate of 6.8 percent plus a gross receipts tax rate of 2.37 percent, for a combined state communications services tax rate of 9.17 percent. However, residential wireline telephone service is only subject to the 2.37 percent gross receipts tax.<sup>4</sup> Each local taxing jurisdiction may levy its own local tax rate on communications services. Charter counties and municipalities that have not chosen to levy a permit fee may levy a local CST of up to 5.1 percent. Charter counties and municipalities who have chosen to levy a permit fee may levy a local CST of up to 4.98 percent. Noncharter counties may levy a local CST of up to 1.6 percent.<sup>5</sup> In addition, to the local CST, discretionary sales surtaxes levied by a county or school board are imposed as a local CST tax, with conversion rates of up to one percent.<sup>6</sup> However, these percentages may be higher due to emergency rates and permit fees adopted by the various local jurisdictions.<sup>7</sup>

Direct-to-home satellite services are taxed at a 10.8 percent state tax rate and a gross receipts tax rate of 2.37 percent for a total rate of 13.17 percent. This is due to federal law prohibiting the local taxation of direct-to-home satellite service.<sup>8</sup> The state CST collected, except that collected on direct-to-home satellite service, is distributed the same way as the sales and use tax.<sup>9</sup> For direct-to-home satellite service, 63 percent of the state CST is distributed using the sales tax formula, with the remainder being transferred to the Local Government Half-Cent Clearing Fund, which is allocated in the same proportion as the half-cent sales tax, and the emergency distribution. The gross receipts tax administered under this law goes to the Public Education Capital Outlay and Debt Service Fund (PECO).<sup>10</sup>

In addition to the CST, there may be an E911 fee of up to 50 cents per month for wireless and wireline telephone service.<sup>11</sup> For landline telephones, there is a surcharge on customer bills for telephone relay service for the hard of hearing. This charge is capped at 25 cents per access line,<sup>12</sup> the current surcharge is 15 cents per access line.<sup>13</sup>

In state fiscal year 2005-2006, the state collected \$2.325 billion in CST. The breakdown of the receipts is as follows:

- Sales Tax: \$1,007.2 million (43.31 percent)
- Local Tax: \$843.3 million (36.26 percent)
- Gross Receipts: \$382.5 million (18.18 percent)
- Direct-to-Home Satellite Tax: \$52.2 million (2.24 percent)

The breakdown of the tax distribution is as follows:

- Local Government: \$1,003 million (43.21 percent)
- General Revenue: \$887.7 million (38.24 percent)
- PECO: \$426.9 million (18.39 percent)
- Administration: \$3.6 million (0.16 percent)<sup>14</sup>

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<sup>4</sup> There is also an exemption from the CST for sales to the Federal government, state and local government agencies, and various non-profit organizations. (s. 202.125, F.S.)

<sup>5</sup> S. 202.19(2), F.S.

<sup>6</sup> See s.202.19(5), F.S. The conversion rates are contained in s. 202.20(3), F.S.

<sup>7</sup> Florida Department of Revenue's Presentation to the Florida House of Representative's Committee on Utilities & Telecommunications on January 11, 2007. Emergency rates are authorized in s. 202.20(2), F.S.

<sup>8</sup> Pub. L. 104-104, Title IV, s. 602, February 8, 1996, 110 Stat. 144

<sup>9</sup> S. 202.20(6), F.S.

<sup>10</sup> *2006 Florida Tax Handbook*, Communications Services Tax, p. 38. Available at <http://edr.state.fl.us/reports/taxhandbooks/taxhandbook2006.pdf>. (February 1, 2007)

<sup>11</sup> S. 365.171(13)(a)1., F.S. for wireline and s. 365.172(8)(a), F.S., for wireless.

<sup>12</sup> S. 427.704, F.S.

<sup>13</sup> Florida Public Service Commission, *The Status of The Telecommunications Access System Act of 1991*, December 2006, p. 14.

<sup>14</sup> Information compiled from the Florida Department of Revenue's Presentation to the Florida House of Representative's Committee on Utilities & Telecommunications on January 11, 2007.

## Proposed Changes

### *Tax Rate*

The bill amends s. 202.12(1)(a) F.S., to reduce the general state CST from 6.8 percent to 6.55 percent. The bill also amends s. 202.12(1)(b), F.S., to reduce the general state CST on direct-to-home satellite television service from 10.8 percent to 10.55 percent.

The bill provides that the reduction in the state CST rate applies to bills for communications services dated on or after January 1, 2008.

### *Resale Certificates*

Current law requires that a sale of communications services for resale must be made in compliance with DOR's rules. To ensure that a sale of communications services for resale is not subjected to the CST, DOR's rules provide that resale certificates are issued annually by DOR. These rules provide that a selling dealer must receive a copy of a resale certificate from a reseller purchasing its services. The rules allow a selling dealer, who makes a sale for purposes of resale to a purchaser who has previously provided a copy of its current resale certificate, to seek a new copy of the resale certificate for each subsequent transaction in that calendar year. The selling dealer must obtain a new copy of the resale certificate for sales made for the purpose of resale in subsequent calendar years.<sup>15</sup>

The bill creates s. 202.16(2)(b), F.S, providing that effective January 1, 2008, any dealer who makes a sale for resale is required to document the exempt sale by retaining a copy of the purchaser's initial or annual resale certificate issued by DOR. Under the bill, in lieu of maintaining a copy of the certificate, a dealer may document, prior to the time of sale, an authorization number that will be provided by DOR telephonically, electronically, or by other means established by DOR. The dealer may also rely on an additional or annual resale certificate issued pursuant to s. 202.17(6), F.S., valid at the time of receipt for the purchaser, without seeking additional annual resale certificates from the purchaser, if the dealer makes recurring sales to the purchaser in the normal course of business.

The bill defines "recurring sales to a purchaser in the normal course of business" as a sale in which the dealer extends credit to the purchaser and records the debt as an account receivable, or in which the dealer sells to a purchaser who has an established cash account, similar to an open credit account. For purposes of s. 202.16(2)(b)1, F.S., purchases are made from a selling dealer on a continual basis if, in the normal course of business, the selling dealer makes sales to the purchaser no less frequently than once in every 12-month period.

Through the informal protest process provided in s. 213.21, F.S., and DOR rules, the bill provides that a dealer may submit, in lieu of a resale certificate, an exemption certificate executed by entities that were exempt at the time of sale or resale certificates provided by purchasers who were active dealers at the time of sale. However, this alternative documentation may not be accepted in a proceeding under ch. 120, F.S., or in circuit court proceedings instituted under ch. 72, F.S., relating to tax matters.

The bill provides for a certificate verification system for the CST that is essentially the same as what is currently provided for the sales and use tax. The bill requires DOR, by January 1, 2008, to establish a toll-free number for the verification of valid registration numbers and resale certificates for the CST. The system must be able to guarantee a low busy rate, respond to keypad inquiries, and be updated daily.

The bill also requires DOR to establish a system for receiving information from dealers regarding resale certificate numbers of other dealers who are seeking to make purchases for resale. DOR must provide dealers, free of charge, with verification of certificate numbers that are canceled or invalid.

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<sup>15</sup> Rule 12-A19.060, F.A.C.

### *Allocation and Disposition of Tax Proceeds*

Section 202.18, F.S., provides for the distribution of the CST proceeds. Section 202.18(2)(b), F.S., provides that 63 percent of the state CST from direct-to-home satellite service is allocated to the state for distributing the same as state sales taxes. The remaining portion is allocated to the Local Government Half-cent Sales Tax Clearing Trust Fund. Of the amount that is allocated to the Local Government Half-cent Sales Tax Clearing Trust Fund, seventy percent is allocated in the same proportion as the allocation of total receipts of the half-cent sales tax and the emergency distribution in the prior state fiscal year. The remaining thirty percent is distributed to fiscally constrained counties. The bill reduces the allocation to the state to 62.1 percent of the satellite service tax collected, in order to keep the local governments whole with respect to the portion of the taxes they receive from the state on such services.

For example, with a \$100 satellite service bill, one would currently pay \$10.80 (10.8 percent) in state CST and \$2.37 in GRT. Of the \$10.80 in state CST, \$4 would go to local governments. Under the allocations provided in the bill, one would pay \$10.55 (10.55 percent) in state CST, of which \$4 would still be going to local governments.

### *Emergency Local CST Rates*

Section 202.20(2)(a)1, F.S., provides that if revenues received by a local government from the CST with respect to certain periods<sup>16</sup> are less than the revenues from the replaced revenue source in the 2000-2001 period, plus reasonably anticipated revenue growth, the governing authority may adjust the rate of the local CST to generate the entire shortfall within one year of the rate adjustment and by an amount necessary to generate the expected amount of revenue on an annual basis. Section 202.20(2)(a)2, F.S., provides that if complete data is not available to determine whether or not the revenues the local government actually received are less than the revenues received from the replaced revenue source, the local government shall use the best data available to make that determination. The bill amends this section to provide that complete data shall be deemed available to local governments after DOR completes audits, including the redistribution of local tax, of dealers who account for no less than 80 percent of the amount of CST received for fiscal year 2005-2006.

Section 202.20(2)(a)3, F.S., allows a local government to make the adjustment permitted under Section 202.20(2)(a)(1), F.S., by emergency ordinance or resolution. The bill provides that beginning July 1, 2007, local governments may use this authority only if DOR or a dealer reallocates revenue away from the local government. However, the adjustments must be made within six months following the date the department notifies local governments in writing that complete data is deemed available.

### *Effective Date*

Except as otherwise expressly provided in the act, this act shall take effect upon becoming law.

### C. SECTION DIRECTORY:

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| Section 1 | Amends ss. 202.12(1)(a) and (b), F.S., relating to tax on the sales of communications services.                                |
| Section 2 | Provides that the amendments to s. 202.12, F.S., apply to bills for communications services dated on or after January 1, 2008. |
| Section 3 | Amends s. 202.16(2), F.S, relating to resale certificates.   |

<sup>16</sup> The actual periods are the periods ending December 31, 2001, March 31, 2002, June 30, 2002, and September 30, 2002.

- Section 4 Requires DOR to establish a toll-free number for the verification of valid registration numbers and resale certificates.
- Section 5 Requires DOR to establish a system for receiving information from dealers regarding certificate numbers of those who are seeking to make purchases for resale.
- Section 6 Amends s. 202.18(2)(b), F.S., relating to the allocation and disposition of tax proceeds.
- Section 7 Amends s. 202.20(2)(a), F.S., relating to local communications services tax conversion rates.
- Section 8 Except as otherwise expressly provided in this act, this act shall take effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Revenue Estimating Conference has estimated the following negative fiscal impact on state government:

	<u>FY 2007-08</u>	<u>FY 2008-09</u>
General Revenue	(\$ 15.1m)	(\$ 37.8m)
State Trust	insignificant	(\$ 0.1m)
Total	(\$ 15.1m)	(\$ 37.9m)

#### 2. Expenditures:

The Department of Revenue will incur some expenditure in notifying communications services dealers of the annual change in the CST and in the resale certificate provisions of the bill. The Department has indicated that the operational impact is insignificant.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The Revenue Estimating Conference has estimated the following negative fiscal impact on local governments:

	<u>FY 2007-08</u>	<u>FY 2008-09</u>
Revenue Sharing	(\$ 0.5m)	(\$ 1.2m)
Local Gov't. Half Cent	(\$ 1.4m)	(\$ 3.6m)
Local Option	Insignificant	(\$ 0.0m)
Total Local Impact	(\$ 1.9m)	(\$ 4.8m)

#### 2. Expenditures:

None

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

Under the bill, in the first year after the effective date, consumers will see a reduction in the amount of CST paid in the aggregate of approximately \$17.0 million. Communications services dealers will incur some administrative costs associated with implementing the bill's provisions.

D. FISCAL COMMENTS:

None

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The provision of the bill limiting the authority of cities and counties to adjust CST rates by emergency ordinance only in certain conditions reduces those entities' authority to raise revenues. The CST was designed as a revenue-neutral tax, and the Legislature made specific findings that the legislation did not reduce the authority that cities or counties had to raise revenues in the aggregate, as such authority existed on February 1, 1989.<sup>17</sup> It is unclear to what extent, if any, the bill's limitation on the emergency rate authority reduces the authority of cities and counties to raise revenues in the aggregate.

2. Other:

None

B. RULE-MAKING AUTHORITY:

According to the Department of Revenue (DOR), its Communications Services Tax Return,<sup>18</sup> will need to be amended to reflect the changes in CST rates. The amended form will need to be promulgated as a rule. DOR will also need to amend its communications services tax rule related to sales for the purpose of resale<sup>19</sup> in a manner consistent with its resale rules for sales and use tax.<sup>20</sup>

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

No Statement Submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On February 8, 2007, the Committee on Utilities & Telecommunications adopted a strike-all amendment. The amendment:

- Reduced the state Communications Services Tax (CST) rates by 1.17 percent, as applied to both the general state CST and the CST on direct-to-home satellite service.
- Provided that the reduction in CST rates shall apply to bills dated on or after January 1, 2008. This gives the Department of Revenue (DOR) time to notify dealers of communications services of the change and to change the forms. This date also coincides with the date that the changes to local CST rates go into effect.

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<sup>17</sup> See Section 202.105, F.S.

<sup>18</sup> Form DR-700016.

<sup>19</sup> Rule A-19.060, F.A.C.

<sup>20</sup> Rule 12A-1.039(3)(a) and (b), F.A.C.

- Clarified the procedures for DOR to administer resale certificates issued to dealers under the CST to conform to the administration of resale certificates under the sales tax. This provision would allow dealers to rely on a valid initial or annual resale certificate without having to obtain additional certificates from such purchases. These provisions would become effective January 1, 2008.
- Required DOR, by January 1, 2008, to establish a toll-free number to verify valid registration numbers and resale certificates.
- Required DOR, by January 1, 2008, to establish a system for receiving information from dealers regarding certificate numbers of those who are seeking to make purchases for resale.
- Reduced the percent of the allocation of the state direct-to-home satellite tax that is allocated to the state, in order to keep the local governments whole as to the amount of revenues they receive from the tax.
- As of October 1, 2007, repealed the authority under which local governments are allowed to adopt “emergency rates” exceeding the statutory maximum rates allowed under the local CST. The “emergency rate provision” was intended to be temporary in nature and to provide a safety net and transition from Florida’s old tax structure to ensure that local governments were held harmless under the new CST. The amendment allowed local governments to make adjustment, up until October 1, 2007, if the DOR or a dealer reallocates revenue away from the local government.
- Provided that the amendments to the “emergency rates provision” do not apply to emergency rates adopted prior to the effective dates of this act.
- Provided that except as otherwise expressly provided, this act shall take effect upon becoming law.

On March 15, 2007, the Jobs and Entrepreneurship Council adopted three amendments to the strike-all, creating a council substitute. The amendments:

- Reduce the state Communications Services Tax (CST) rates by .25 percent, as applied to both the general state CST and the CST on direct-to-home satellite service.
- Reduce the percent of the allocation of the state direct-to-home satellite tax that is allocated to the state, in order to keep the local governments whole as to the amount of revenues they receive from the tax.
- Amend the local CST emergency rate provisions to provide that after July 1, 2007, local governments can only enact emergency rates following a reallocation of revenue. These adjustments must be made no later than six months after DOR notifies local governments that complete data concerning communications services tax received for fiscal year 2005-2006 is available.

On March 16, 2007, the Policy and Budget Council adopted one amendment. The amendment clarifies that the Department of Revenue must provide to dealers, free of charge, verification of registration numbers that are canceled or invalid.

This analysis is drafted to the council substitute.