

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill repeals the temporary audit authority granted to municipalities for purposes of assessing taxes on telecommunications companies pursuant to the Public Service Tax statute. The bill also repeals the public records exemption created to accompany the temporary audit authority.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

Telecommunication Audits

Prior to 2000, municipalities assessed taxes on telecommunications companies pursuant to the Public Service Tax statute. To ensure proper payment of the tax, the statute authorized municipalities to audit relevant company records. In addition, the statute contained a public records exemption for any proprietary confidential business information received during the course of the audit.

In 2000, the Communication Service Tax (CST) was created and the Public Service Tax on telecommunications was subsumed into the CST. When this shift in statutory authority occurred, all of the Public Service Tax audits had not been conducted. These audits were conducted after the tax payments were received. Therefore, audits to ensure that accurate taxes had been paid in the years immediately prior to 2000 had not been conducted.

¹ Section 119.15, F.S.

In order to transition from one tax to the other, temporary audit authority was granted² and a public records exemption was created.³ Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2007, unless reenacted by the Legislature.

The transition period has ended. As such, representatives of municipalities and telecommunication service providers have confirmed that the audit authority and public records exemption are no longer necessary.

EFFECT OF BILL

The bill repeals the temporary audit authority and the accompanying public records exemption.

C. SECTION DIRECTORY:

Section 1 repeals s. 36 of chapter 2001-140, L.O.F., which grants temporary audit authority.

Section 2 repeals s. 166.236, F.S., which provides a public records exemption for certain audits.

Section 3 provides an effective date of October 1, 2007.

II. 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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

² Section 36 of chapter 2001-140, L.O.F.

³ Section 166.236, F.S.

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.