



Energy & Utilities Subcommittee

MEETING PACKET

**Tuesday, January 31, 2012
212 Knott Building
12:30 PM – 3:00 PM**

**Dean Cannon
Speaker**

**Scott Plakon
Chair**

The Florida House of Representatives

State Affairs Committee

Energy & Utilities Subcommittee

**Dean Cannon
Speaker**

**Scott Plakon
Chair**

AGENDA

January 30, 2012

12:30 p.m. - 3:00 p.m.

Webster Hall, 212 Knott Building

Opening Remarks by Chair Plakon

Consideration of the following bill(s):

HB 743 - Energy Efficiency by Rehwinkel Vasilinda

CS/HB 809 - Communications Services Taxes by Finance & Tax Committee and Grant

PCS for HB 1379 - Water and Wastewater Utilities by Brodeur

Closing Remarks by Chair Plakon

Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 743 Energy Efficiency
SPONSOR(S): Rehwinkel Vasilinda
TIED BILLS: None. **IDEN./SIM. BILLS:** None.

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Whittier <i>shw</i>	Collins <i>BC</i>
2) Economic Affairs Committee			
3) Finance & Tax Committee			
4) State Affairs Committee			

SUMMARY ANALYSIS

Local discretionary sales surtaxes, also referred to as local option sales taxes, are authorized under s. 212.055, F.S., and provide potential revenue sources for county and municipal governments and school districts. There are eight different types of local discretionary sales surtaxes currently authorized in law. One such surtax is the Local Government Infrastructure Surtax which authorizes school districts, counties and municipalities to expend the proceeds of the surtax and any accrued interest for the following purposes:

- To finance, plan, and construct infrastructure;
- To acquire land for public recreation, conservation, or protection of natural resources; or
- To finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection.

The bill adds the following to the above list of authorized uses of the surtax proceeds, **if a local government ordinance authorizing such use is approved by referendum:**

- To provide loans, grants, or rebates to residential property owners, with preference given to low-income elders, Florida veterans of the Armed Forces, and disabled adults, who make energy efficiency improvements to their residential property.

The bill defines “energy efficiency improvement” as any energy conservation and efficiency measure that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to:

- Air sealing;
- Installation of insulation;
- Installation of energy-efficient heating, cooling, or ventilation systems;
- Installation of solar panels;
- Building modifications to increase the use of daylight or shade;
- Replacement of windows;
- Installation of energy controls or energy recovery systems;
- Installation of electric vehicle charging equipment; and
- Installation of efficient lighting equipment.

The bill does not amend the percentage rate that local governments are authorized to levy for purposes of the Local Government Infrastructure Surtax. It does not appear to have a negative fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Energy Efficiency and Conservation

In recent years, the Florida Legislature has placed an increased emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency in Florida on a state and local level. In Chapter 2008-227, L.O.F., the Legislature amended the energy goal of the state comprehensive plan to provide, in part, that the state shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. That act also declared it the public policy of the state to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security, and the reduction of greenhouse gases. In Chapter 2008-191, L.O.F., the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments.

In 2010, the Legislature found that, "In order to make [renewable energy improvements or energy conservation and efficiency improvements] more affordable and assist property owners who wish to undertake such improvements...there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance."¹

Local Discretionary Sales Surtaxes

Local discretionary sales surtaxes, also referred to as local option sales taxes, are authorized under s. 212.055, F.S., and provide potential revenue sources for county and municipal governments and school districts. The local discretionary sales surtaxes apply to all transactions that are subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions, pursuant to ch. 212, F.S., and communications services as defined for purposes of ch. 202, F.S. Discretionary sales surtax must be collected when the transaction occurs in, or delivery is into, a county that imposes the surtax, and the sale is subject to the state's sales and use tax.² The surtax applies to the first \$5,000 of any single taxable item when sold to the same purchaser at the same time.³

There are eight different types of local discretionary sales surtaxes currently authorized in law:

- Charter County and Regional Transportation System Surtax;
- Local Government Infrastructure Surtax;
- Small County Surtax;
- Indigent Care and Trauma Center Surtax;
- County Public Hospital Surtax;
- School Capital Outlay Surtax;
- Voter-Approved Indigent Care Surtax; and
- Emergency Fire Rescue Services and Facilities Surtax.

The local discretionary sales surtax rate varies from county to county, depending on the particular levies authorized in that jurisdiction.

¹ Section 163.08(1)(b), F.S.

² 2012 Florida Tax Handbook, p. 207.

³ Section 212.054(2)(b)1., F.S.

Local Government Infrastructure Surtax

Section 212.055(2)(a)1., F.S., provides that the Local Government Infrastructure Surtax shall be levied at the rate of 0.5 or 1 percent pursuant to an ordinance enacted by a majority vote of the members of the county's governing body and approved by voters in a countywide referendum.⁴ If the proposal to levy the surtax is approved by a majority of the electors, the levy shall take effect. The levy may only be extended by voter approval in a countywide referendum. There is no state-mandated limit on the length of levy for surtax ordinances enacted after July 1, 1993.⁵

All counties are eligible to levy this surtax.⁶ During the 2012 calendar year, three counties will be levying at the 0.5 percent rate and 15 counties will be levying at the 1 percent rate.⁷

Specifically, the following counties will be levying this surtax during the 2012 calendar year:

County	Percentage
Charlotte	1%
Clay	1%
Duval	0.5%
Escambia	1%
Flagler	0.5%
Glades	1%
Highlands	1%
Hillsborough	0.5%
Indian River	1%
Lake	1%
Leon	1%
Monroe	1%
Osceola	1%
Pasco	1%
Pinellas	1%
Putnam	1%
Sarasota	1%
Wakulla	1%

Source: 2012 Florida Tax Handbook, pp. 212-213.

The following chart estimates what these counties will collect for the current and upcoming fiscal year and provides historical collections for the Local Government Infrastructure Surtax:

Fiscal Year	Total Collections
2012-2013 estimate	\$659,170,463
2011-2012 estimate	\$624,214,453
2010-2011	\$604,273,430
2009-2010	\$593,680,024
2008-2009	\$629,887,765
2007-2008	\$658,207,195
2006-2007	\$685,978,662

Source: 2012 Florida Tax Handbook, p. 218.

⁴ In lieu of action by the county's governing body, municipalities representing a majority of the county's population may initiate the surtax through the adoption of uniform resolutions calling for a countywide referendum on the issue.

⁵ If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance. If the pre-July 1, 1993, ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years.

⁶ The Local Government Infrastructure Surtax is one of four surtaxes subject to a combined rate limitation. A county cannot levy this surtax and the Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax in excess of a combined rate of 1 percent.

⁷ 2012 Florida Tax Handbook, pp. 212-213.

Pursuant to s. 212.055(2)(d), F.S., school districts, counties and municipalities⁸ may expend the proceeds of the Local Government Infrastructure Surtax and any accrued interest for the following purposes:

- To finance, plan, and construct infrastructure;
- To acquire land for public recreation, conservation, or protection of natural resources; or
- To finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection.

For purposes of s. 212.055(2)(d), F.S., the term “infrastructure” means the following:

- Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years and any related land acquisition, land improvement, design, and engineering costs.
- A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.
- Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities, as defined in s. 29.008, F.S.
- Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government.⁹
- Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing.¹⁰

Any Local Government Infrastructure Surtax imposed or extended after July 1, 1998, may allocate up to 15 percent of the proceeds to be deposited in a trust fund for the purpose of funding economic development projects having a general public purpose of improving local economies, including the funding of operational costs and incentives related to economic development.¹¹ This intention must be on the ballot statement.

A county with a total population of 50,000 or less on April 1, 1992, or any county designated as an area of critical state concern that imposed the surtax before July 1, 1992, may use the proceeds and accrued interest of the surtax for any public purpose if the county satisfies all of the following criteria:

- The debt service obligations for any year are met;
- The county's comprehensive plan has been determined to be in compliance with part II of ch. 163, F.S.; and
- The county has adopted an amendment to the surtax ordinance pursuant to the procedure provided in s. 125.66, F.S., authorizing additional uses of the proceeds and accrued interest.¹²

⁸ Pursuant to s. 212.055(2)(d), F.S., proceeds of the surtax may also be expended within another county in the case of a negotiated joint county agreement.

⁹ Such improvements are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner must enter into a written contract with the local government providing the improvement funding to make the private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum of 10 years after completion of the improvement, with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

¹⁰ The local government or special district may enter into a ground lease with a public or private person or entity for nominal or other consideration for the construction of the residential housing project on land acquired pursuant to this sub-subparagraph.

¹¹ Section 212.055(2)(d)2., F.S.

¹² Section 212.055(2)(f)1., F.S.

Pursuant to s. 125.66(2)(a), F.S., a board of county commissioners at any regular or special meeting may enact or amend any ordinance, if notice of intent to consider the ordinance is given at least 10 days prior to the meeting by publication in a newspaper of general circulation in the county. A copy of the notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the board of county commissioners.

The notice of proposed enactment must state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the county where the proposed ordinance(s) may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

Effect of Proposed Changes

The bill amends s. 212.055(2)(d), F.S., which provides specifications for which the Local Government Infrastructure Surtax may be used.

As listed in the Current Situation Section, school districts, counties and municipalities may expend the proceeds of the Local Government Infrastructure Surtax and any accrued interest for the following purposes:

- To finance, plan, and construct infrastructure;
- To acquire land for public recreation, conservation, or protection of natural resources; or
- To finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection.

The bill adds the following to the list of authorized uses of the surtax proceeds:

- To provide loans, grants, or rebates to residential property owners, with preference given to low-income elders, Florida veterans of the Armed Forces, and disabled adults, who make energy efficiency improvements to their residential property, if a local government ordinance authorizing such use is approved by referendum.

The bill defines "energy efficiency improvement" as any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to:

- Air sealing;
- Installation of insulation;
- Installation of energy-efficient heating, cooling, or ventilation systems;
- Installation of solar panels;
- Building modifications to increase the use of daylight or shade;
- Replacement of windows;
- Installation of energy controls or energy recovery systems;
- Installation of electric vehicle charging equipment; and
- Installation of efficient lighting equipment.

A local government choosing to expend funds under this new provision would be required to enact or amend its ordinance pursuant to s. 125.66, F.S., and have the ordinance approved by referendum in a subsequent election.

B. SECTION DIRECTORY:

Section 1. Amends s. 212.055, F.S., revising uses for local government infrastructure surtaxes.

Section 2. Provides an effective date of July 1, 2012.

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. See *Fiscal Comments* section.

2. Expenditures:

None. See *Fiscal Comments* section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provision may result in more low-income elders, Florida veterans, and disabled adults choosing to make energy efficiency improvements to their real property, within counties that approve this particular use of Local Government Infrastructure Surtax proceeds.

D. FISCAL COMMENTS:

The bill does not amend the percentage rate that local governments are authorized to levy for purposes of local option sales taxes; therefore, there is no impact on local government revenues or expenditures.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled
 2 An act relating to energy efficiency; amending s.
 3 212.055, F.S.; providing for a portion of the proceeds
 4 of the local government infrastructure surtax to be
 5 used to provide loans, grants, and rebates to
 6 residential property owners who make energy efficiency
 7 improvements to their residential property, subject to
 8 referendum; defining the term "energy efficiency
 9 improvement"; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Paragraph (d) of subsection (2) of section
 14 212.055, Florida Statutes, is amended to read:

15 212.055 Discretionary sales surtaxes; legislative intent;
 16 authorization and use of proceeds.—It is the legislative intent
 17 that any authorization for imposition of a discretionary sales
 18 surtax shall be published in the Florida Statutes as a
 19 subsection of this section, irrespective of the duration of the
 20 levy. Each enactment shall specify the types of counties
 21 authorized to levy; the rate or rates which may be imposed; the
 22 maximum length of time the surtax may be imposed, if any; the
 23 procedure which must be followed to secure voter approval, if
 24 required; the purpose for which the proceeds may be expended;
 25 and such other requirements as the Legislature may provide.
 26 Taxable transactions and administrative procedures shall be as
 27 provided in s. 212.054.

28 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

29 (d) The proceeds of the surtax authorized by this
 30 subsection and any accrued interest shall be expended by the
 31 school district, within the county and municipalities within the
 32 county, or, in the case of a negotiated joint county agreement,
 33 within another county, to finance, plan, and construct
 34 infrastructure; to acquire land for public recreation,
 35 conservation, or protection of natural resources; to provide
 36 loans, grants, or rebates to residential property owners, with
 37 preference given to low-income elders, Florida veterans of the
 38 Armed Forces of the United States, and disabled adults, who make
 39 energy efficiency improvements to their residential property, if
 40 a local government ordinance authorizing such use is approved by
 41 referendum; or to finance the closure of county-owned or
 42 municipally owned solid waste landfills that have been closed or
 43 are required to be closed by order of the Department of
 44 Environmental Protection. Any use of the proceeds or interest
 45 for purposes of landfill closure before July 1, 1993, is
 46 ratified. The proceeds and any interest may not be used for the
 47 operational expenses of infrastructure, except that a county
 48 that has a population of fewer than 75,000 and that is required
 49 to close a landfill may use the proceeds or interest for long-
 50 term maintenance costs associated with landfill closure.
 51 Counties, as defined in s. 125.011, and charter counties may, in
 52 addition, use the proceeds or interest to retire or service
 53 indebtedness incurred for bonds issued before July 1, 1987, for
 54 infrastructure purposes, and for bonds subsequently issued to
 55 refund such bonds. Any use of the proceeds or interest for
 56 purposes of retiring or servicing indebtedness incurred for

57 refunding bonds before July 1, 1999, is ratified.

58 1. For the purposes of this paragraph, the term
59 "infrastructure" means:

60 a. Any fixed capital expenditure or fixed capital outlay
61 associated with the construction, reconstruction, or improvement
62 of public facilities that have a life expectancy of 5 or more
63 years and any related land acquisition, land improvement,
64 design, and engineering costs.

65 b. A fire department vehicle, an emergency medical service
66 vehicle, a sheriff's office vehicle, a police department
67 vehicle, or any other vehicle, and the equipment necessary to
68 outfit the vehicle for its official use or equipment that has a
69 life expectancy of at least 5 years.

70 c. Any expenditure for the construction, lease, or
71 maintenance of, or provision of utilities or security for,
72 facilities, as defined in s. 29.008.

73 d. Any fixed capital expenditure or fixed capital outlay
74 associated with the improvement of private facilities that have
75 a life expectancy of 5 or more years and that the owner agrees
76 to make available for use on a temporary basis as needed by a
77 local government as a public emergency shelter or a staging area
78 for emergency response equipment during an emergency officially
79 declared by the state or by the local government under s.

80 252.38. Such improvements are limited to those necessary to
81 comply with current standards for public emergency evacuation
82 shelters. The owner must enter into a written contract with the
83 local government providing the improvement funding to make the
84 private facility available to the public for purposes of

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85 emergency shelter at no cost to the local government for a
 86 minimum of 10 years after completion of the improvement, with
 87 the provision that the obligation will transfer to any
 88 subsequent owner until the end of the minimum period.

89 e. Any land acquisition expenditure for a residential
 90 housing project in which at least 30 percent of the units are
 91 affordable to individuals or families whose total annual
 92 household income does not exceed 120 percent of the area median
 93 income adjusted for household size, if the land is owned by a
 94 local government or by a special district that enters into a
 95 written agreement with the local government to provide such
 96 housing. The local government or special district may enter into
 97 a ground lease with a public or private person or entity for
 98 nominal or other consideration for the construction of the
 99 residential housing project on land acquired pursuant to this
 100 sub-subparagraph.

101 2. For the purposes of this paragraph, the term "energy
 102 efficiency improvement" means any energy conservation and
 103 efficiency measure that reduces consumption through conservation
 104 or a more efficient use of electricity, natural gas, propane, or
 105 other forms of energy on the property, including, but not
 106 limited to, air sealing; installation of insulation;
 107 installation of energy-efficient heating, cooling, or
 108 ventilation systems; installation of solar panels; building
 109 modifications to increase the use of daylight or shade;
 110 replacement of windows; installation of energy controls or
 111 energy recovery systems; installation of electric vehicle
 112 charging equipment; and installation of efficient lighting

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113 equipment.

114 ~~3.2.~~ Notwithstanding any other provision of this
 115 subsection, a local government infrastructure surtax imposed or
 116 extended after July 1, 1998, may allocate up to 15 percent of
 117 the surtax proceeds for deposit in a trust fund within the
 118 county's accounts created for the purpose of funding economic
 119 development projects having a general public purpose of
 120 improving local economies, including the funding of operational
 121 costs and incentives related to economic development. The ballot
 122 statement must indicate the intention to make an allocation
 123 under the authority of this subparagraph.

124 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 809 Communications Services Taxes
SPONSOR(S): Finance & Tax Committee, Grant
TIED BILLS: IDEN./SIM. BILLS: CS/SB 1060

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	23 Y, 0 N	Flieger	Langston
2) Energy & Utilities Subcommittee		Keating <i>CK</i>	Collins <i>JBC</i>
3) State Affairs Committee			

SUMMARY ANALYSIS

CS/HB 809 updates and modernizes a number of definitions related to the communications services tax:

- The term "cable service" is replaced with "video service."
- The term "internet access" is defined through reference to federal statute.
- Definitions for the terms "digital good" and "digital service" are provided and both terms are exempted from the communications services tax.
- The definition of "sales price" is revised to allow additional nontaxable items to be billed together in a single line item on a customer's invoice without the entire amount of the line item being taxable.

The provisions that govern the assignment of customers to local taxing jurisdictions for the purpose of imposing the applicable local communications services tax are revised to modify the liability of a communications services tax dealer in the event of underpayment of the tax resulting from the dealer assigning a service address to the incorrect local taxing jurisdiction.

The bill makes these revised definitions and liability provisions retroactive and remedial.

The 2012 Revenue Estimating Conference estimates that the changes to dealer liability for incorrectly assigned service addresses will have a negative impact to local governments of -\$4.3 million in FY 2012-13 and a recurring negative impact of -\$4.7 million. Other changes made by the bill will have a negative indeterminate effect on local government revenues.

The bill has an effective date of July 1, 2012.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1. of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 202, F.S., provides that the sale of communications services,¹ except direct-to-home satellite service,² is subject to a state communications services tax ("CST"), gross receipts tax, and a locally levied CST. Federal law prohibits direct-to-home satellite sales from being subject to a local CST. Collected local and state communications services taxes are remitted to the Department of Revenue ("the department"), who distributes the proceeds to the appropriate jurisdictions.³

The revenue collected pursuant to this tax (except for 37 percent of the direct-to-home satellite tax revenue) is distributed by the same formula as the state sales tax, as provided by s. 212.20(6), F.S. Approximately 10.8 percent is distributed to local governments through county and municipal revenue sharing, the Local Government Half-cent Sales Tax Clearing Trust Fund, and the distribution to counties of \$29,915,500 that was formerly funded from pari-mutuel tax revenues. Smaller amounts are distributed to qualified counties for emergency distributions, selected sports facilities, and to the Public Employee Relations Trust Fund. The remainder of state CST remitted goes into the General Revenue Fund.

The state CST is currently set at a rate of 6.65 percent.⁴ The gross receipt tax is 2.37 percent plus an additional 0.15 percent, for a combined rate of 2.52 percent.⁵ Thus, the state CST and gross receipt tax are imposed at a combined rate of 9.17 percent. Local CST rates, as authorized in s. 202.19, F.S., vary widely, ranging from 0.1% to 7.0%.⁶

Direct-to-home satellite service sales are subject to a state CST at a rate of 10.8 percent⁷ and a gross receipt tax of 2.37 percent,⁸ for a combined rate of 13.17 percent.

Prior to 2001, much of what is now taxed under ch. 202, F.S. as communication services was subject to the state sales and use tax imposed by ch. 212, F.S. The Communications Services Tax Simplification Law⁹ revamped definitions and consolidated the taxation of communications services into ch. 202, F.S.

Current law defines communications services as "the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance."¹⁰ Section 202.11(2), F.S., lists a number of specifically excluded items,

¹ For purposes of ch. 202, F.S., "communications services" is defined in s. 202.11(2), F.S., as "the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added."

² For purposes of ch. 202, F.S., direct-to-home satellite service is defined in 47 U.S.C. s. 303(v) as the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

³ Section 202.18, F.S.

⁴ Section 202.12(1)(a), F.S.

⁵ Section 203.01(1)(b), F.S.

⁶ Local CST rates can be found at the "Jurisdiction Rate Table" at http://dor.myflorida.com/dor/taxes/local_tax_rates.html.

⁷ Section 202.12(1)(b), F.S.

⁸ Section 203.01(1)(b), F.S.

⁹ Chapter 2000-260, L.O.F.

¹⁰ Section 202.11(2), F.S.

such as information services, bad check and late payment charges, internet access services (currently undefined in statute), and the sale or rental of tangible personal property, which are not subject to the communications services tax.

Digital Goods and Services

There is no provision in ch. 202, F.S., defining “digital goods” or “digital services” or providing for their communications services tax treatment.

Situsing

Currently, communications services dealers must assign customers to local tax jurisdictions (“siting”) so that the correct local CST rate can be applied to each sale. Section 202.22, F.S., provides that a dealer who uses one of three specific methods to determine to which local taxing jurisdiction a customer’s service address should be assigned and who exercises due diligence in that use is held harmless from any taxes, penalties, and interest that result from incorrect assignment of a customer. The three methods are:

- Employing an electronic database provided by the department.¹¹
- Employing a database developed by the dealer or supplied by a vendor that has been certified by the department.¹²
- Employing enhanced zip codes to assign each street address, address range, post office box, or post office box range in the dealer’s service area to a specific local taxing jurisdiction.¹³

A dealer that does not use one of the approved methods may be held liable for any tax, interest, and penalty which is due as a result of incorrectly assigning service addresses among jurisdictions. However, a dealer is not liable for taxes, interest, or penalties to the extent that such amount was collected and remitted with respect to a tax imposed by another jurisdiction.

A dealer who uses one of the three methods is granted a collection allowance deduction of 0.75 percent of the amount of tax due, while a dealer who does not use one of these methods is permitted to deduct only 0.25 percent.

Taxation of items that are not separately stated

Federal law exempts internet access from state or local taxation.¹⁴ In complying with that directive, s. 202.11(13)(b)8., F.S., allows charges for Internet access services that are not separately itemized on a customer’s bill but which can be reasonably identified from the selling dealer’s books and records to be excluded from the taxable sale. However, s. 202.11(13), F.S., defines the “sales price” as the total amount charged by a dealer, including any services that are part of the sale.

Thus, if a single line item contains both communications services and products that are not communications services, the CST is imposed on that entire sale unless the non-communications service product is Internet access and the charges for Internet access can be reasonably identified. If a dealer wishes to carve out nontaxable items,¹⁵ those items would need to be separately stated.

¹² The certification process currently involves testing the accuracy of the third-party database against the master database maintained by the department.

¹³ Section 202.22(1)(a)-(c), F.S.

¹⁴ 47 U.S.C. §151.

¹⁵ E.g., the sale or rental of personal property such as a cable box.

Effect of Proposed Changes

The bill makes a number of definitional and terminology updates. The bill redefines “cable service” as “video service,”¹⁶ and language is changed throughout ch. 202, F.S., to conform to that redefinition. The previously undefined term “Internet access service” is defined to have the same meaning as “Internet access” as used in the relevant federal law.¹⁷

The bill also updates the legislative intent contained in s. 202.105, F.S.

Digital Goods and Services

The bill defines the terms “digital goods” and “digital services” and adds both to the list of items that are excluded from the definition of “communication services” in s. 202.11, F.S.

The bill defines “digital good” to mean any downloaded good or product that is delivered or transferred by means other than tangible storage media, including downloaded games, software, music,¹⁸ or other digital content. The term does not include video service, which remains taxable.

The bill defines “digital service” as any service, other than video service, that is provided electronically, including remotely provided access to or use of software or another digital good. Digital services also include the following services, if they are provided remotely: monitoring, security, distance learning, energy management, medical diagnostic, mechanical diagnostic, and vehicle tracking services.

Situsing

The bill modifies the requirements of s. 202.22, F.S., relating to a dealer that does not use one of the three approved situsing methods. A dealer who incorrectly assigns a customer to a local CST taxing jurisdiction may be held liable for the net aggregate underpaid local CST tax and any penalties or interest due as a result of that incorrect assignment only if:

- The failure to use one of the approved situsing methods results in a net aggregate underpayment of local tax, and
- The department has first determined the amount misallocated by the dealer between all jurisdictions.

The bill also provides that if a dealer does use one of the three methods described in s. 202.22(1), F.S., with or without due diligence, the department may not deny that dealer’s collection allowance because of incorrectly assigned customers.

The bill requires the department to make monthly reports on jurisdiction-by-jurisdiction gross taxable sales and net tax information available to the public.

Taxation of items that are not separately stated

The bill revises the definition of “sales price” in renumbered s. 202.11(15), F.S., to expand the existing provisions relating to what charges a dealer may exclude from the taxable sales price of

¹⁶ “Video service” is defined in the bill to mean “the transmission of video, audio, or other programming service to a purchaser, and the purchaser interaction, if any, required for the selection or use of a programming service, regardless of whether the programming is transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services. The term includes point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser’s premises, but the term does not include direct-to-home satellite service. The term includes basic, extended, premium, pay-per-view, digital video, two-way cable, and music services.”

¹⁷ 47 U.S.C. §151.

¹⁸ Including ringtones, etc.

communications services.¹⁹ The bill provides that a dealer may exclude charges for any good or service that is exempt from the CST, except those listed in renumbered s. 202.11(15)(a), F.S.,²⁰ so long as those exempt items can be reasonably identified from the selling dealer's books and records. The bill extends the list of allowable excluded charges that do not need to be separately stated from Internet access to any good or service that is not otherwise taxable.

Remedial and Retroactive Nature of Changes

The definition changes, modification of taxation of items not separately stated, and new situsing procedures contained within the bill are remedial and retroactive but do not provide a basis for a right to a refund or credit for any tax paid, nor do they provide the basis for an assessment of tax not paid.

B. SECTION DIRECTORY:

Section 1 . Amends s. 202.105, F.S., modifying legislative intent.

Section 2. Amends s. 202.11, F.S., modifying definitions, including cable service, digital good, digital service, sales price, and video service.

Section 3. Amends s. 202.125, F.S., conforming terminology to changed definitions.

Section 4. Amends s. 202.16, F.S., conforming terminology to changed definitions.

Section 5. Amends s. 202.24, F.S., conforming adjustment process to new situsing procedures.

Section 6. Amends s. 202.18, F.S., clarifying public records status of certain confidential information.

Section 7. Amends s. 202.195, F.S., clarifying public records status of certain confidential information.

Section 8. Amends s. 202.22, F.S., modifying situsing procedure for assigning customer service addresses to local taxing jurisdictions, changing the liability dealers of communications services have in cases of incorrectly assigned service addresses.

Section 9. Amends s. 202.231, F.S., requiring the department to make monthly reports available to the public.

Section 10. Amends s. 202.24, F.S., conforming terminology to changed definitions.

Section 11. Amends s. 202.26, F.S., changing a cross-reference.

Section 12. Amends s. 203.01, F.S., changing a cross-reference.

Section 13. Amends s. 610.118, F.S., changing a cross-reference.

Section 14. Amends s. 624.105, F.S., changing a cross-reference.

¹⁹ Currently solely applicable to the cost of Internet access.

²⁰ Section 202.11(15)(a), as revised in the bill, establishes that charges for the following items are included in the sales price of communications services:

1. The connection, movement, change, or termination of communications services.
2. The detailed billing of communications services.
3. The sale of directory listings in connection with a communications service.
4. Central office and custom calling features.
5. Voice mail and other messaging service.
6. Directory assistance.
7. The service of sending or receiving a document commonly referred to as a facsimile or "fax," except when performed during the course of providing professional or advertising services.

Section 15. Establishes that some of the changes above are of a remedial nature and have retroactive application.

Section 16. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The 2012 Revenue Estimating Conference estimates that the bill will have a negative indeterminate impact on state revenues.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The 2012 Revenue Estimating Conference estimates the changes to dealer liability for incorrectly assigned service addresses will have a negative recurring impact to local governments of -\$4.3 million in FY 2012-13 and a recurring negative impact of -\$4.7 million. Other changes made by the bill will have a negative indeterminate effect on local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The changes to the siting process may decrease the administrative burden placed on communications services dealers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may reduce the revenues collected by local governments by revising the liability dealers of communications services have in cases of underpayment due to incorrect assigned of service addresses. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS / COMMITTEE SUBSTITUTE CHANGES

On January 26, 2012, the Finance and Tax Committee adopted a proposed committee substitute that included the following changes to the original bill:

- Removes the elimination of the situsing database procedure and replaces that with significant modifications to when a dealer has liability for incorrectly assigning a customer's service address to a local taxing jurisdiction.
- Removes a change to the definition of "prepaid calling arrangement."

These changes are reflected in the committee substitute that is the subject of this analysis.

29 public on a jurisdiction-by-jurisdiction basis certain
 30 sales and net tax information; amending s. 202.26,
 31 F.S.; conforming a cross-reference; amending ss.
 32 203.01, 610.118, and 624.105, F.S.; conforming cross-
 33 references; providing for certain retroactive effect;
 34 providing an effective date.

35

36 Be It Enacted by the Legislature of the State of Florida:

37

38 Section 1. Subsection (1) of section 202.105, Florida
 39 Statutes, is amended to read:

40 202.105 Legislative findings and intent.—

41 (1) It is declared to be a specific legislative finding
 42 that the creation of this chapter fulfills important state
 43 interests by reforming the tax laws to provide a fair,
 44 efficient, and uniform method for taxing communications services
 45 sold in this state. This chapter is essential to the continued
 46 economic vitality of this increasingly important industry
 47 because it restructures state and local taxes and fees to
 48 account for the impact of federal legislation, industry
 49 deregulation, and the multitude of convergence of service
 50 offerings that is now taking place among providers offering
 51 functionally equivalent communications services in today's
 52 marketplace. This chapter promotes the increased competition
 53 that accompanies deregulation by embracing a competitively
 54 neutral tax policy that will free consumers to choose a provider
 55 based on tax-neutral considerations. This chapter further spurs
 56 new competition by simplifying an extremely complicated state

57 and local tax and fee system. Simplification will lower the cost
 58 of collecting taxes and fees, increase service availability, and
 59 place downward pressure on price. Newfound administrative
 60 efficiency is demonstrated by a reduction in the number of
 61 returns that a provider must file each month. By restructuring
 62 separate taxes and fees into a revenue-neutral communications
 63 services tax centrally administered by the department, this
 64 chapter will ensure that the growth of the industry is
 65 unimpaired by excessive governmental regulation. The tax imposed
 66 pursuant to this chapter is a replacement for taxes and fees
 67 previously imposed and is not a new tax. The taxes imposed and
 68 administered pursuant to this chapter are of general application
 69 and are imposed in a uniform, consistent, and nondiscriminatory
 70 manner.

71 Section 2. Section 202.11, Florida Statutes, is amended to
 72 read:

73 202.11 Definitions.—As used in this chapter:

74 ~~(1) "Cable service" means the transmission of video,~~
 75 ~~audio, or other programming service to purchasers, and the~~
 76 ~~purchaser interaction, if any, required for the selection or use~~
 77 ~~of any such programming service, regardless of whether the~~
 78 ~~programming is transmitted over facilities owned or operated by~~
 79 ~~the cable service provider or over facilities owned or operated~~
 80 ~~by one or more other dealers of communications services. The~~
 81 ~~term includes point-to-point and point-to-multipoint~~
 82 ~~distribution services by which programming is transmitted or~~
 83 ~~broadcast by microwave or other equipment directly to the~~
 84 ~~purchaser's premises, but does not include direct-to-home~~

85 ~~satellite service. The term includes basic, extended, premium,~~
 86 ~~pay-per-view, digital, and music services.~~

87 (1)~~(2)~~ "Communications services" means the transmission,
 88 conveyance, or routing of voice, data, audio, video, or any
 89 other information or signals, including video ~~cable~~ services, to
 90 a point, or between or among points, by or through any
 91 electronic, radio, satellite, cable, optical, microwave, or
 92 other medium or method now in existence or hereafter devised,
 93 regardless of the protocol used for such transmission or
 94 conveyance. The term includes such transmission, conveyance, or
 95 routing in which computer processing applications are used to
 96 act on the form, code, or protocol of the content for purposes
 97 of transmission, conveyance, or routing without regard to
 98 whether such service is referred to as voice-over-Internet-
 99 protocol services or is classified by the Federal Communications
 100 Commission as enhanced or value-added. The term does not
 101 include:

- 102 (a) Information services.
- 103 (b) Installation or maintenance of wiring or equipment on
 104 a customer's premises.
- 105 (c) The sale or rental of tangible personal property.
- 106 (d) The sale of advertising, including, but not limited
 107 to, directory advertising.
- 108 (e) Bad check charges.
- 109 (f) Late payment charges.
- 110 (g) Billing and collection services.
- 111 (h) Internet access service, electronic mail service,
 112 electronic bulletin board service, or similar online computer

113 services.

114 (i) Digital goods.

115 (j) Digital services.

116 ~~(2)(3)~~ "Dealer" means a person registered with the
 117 department as a provider of communications services in this
 118 state.

119 ~~(3)(4)~~ "Department" means the Department of Revenue.

120 (4) "Digital good" means any downloaded good or product
 121 that is delivered or transferred by means other than tangible
 122 storage media, including downloaded games, software, music, or
 123 other digital content. The term does not include video service.

124 (5) "Digital service" means any service, other than video
 125 service, which is provided electronically, including remotely
 126 provided access to or use of software or another digital good,
 127 and also includes the following services, if they are provided
 128 remotely: monitoring, security, distance learning, energy
 129 management, medical diagnostic, mechanical diagnostic, and
 130 vehicle tracking services. If a digital service is bundled for
 131 sale with the transmission, conveyance, or routing of any
 132 information or signals, the bundled service is a digital service
 133 unless the tax imposed under this chapter and chapter 203 has
 134 not been paid with respect to such transmission, conveyance, or
 135 routing.

136 ~~(6)(5)~~ "Direct-to-home satellite service" has the meaning
 137 ascribed in the Communications Act of 1934, 47 U.S.C. s. 303(v).

138 ~~(7)(6)~~ "Information service" means the offering of a
 139 capability for generating, acquiring, storing, transforming,
 140 processing, retrieving, using, or making available information

141 via communications services, including, but not limited to,
 142 electronic publishing, web-hosting service, and end-user 900
 143 number service. The term does not include ~~any video, audio, or~~
 144 ~~other programming service that uses point-to-multipoint~~
 145 ~~distribution by which programming is delivered, transmitted, or~~
 146 ~~broadcast by any means, including any interaction that may be~~
 147 ~~necessary for selecting and using the service, regardless of~~
 148 ~~whether the programming is delivered, transmitted, or broadcast~~
 149 ~~over facilities owned or operated by the seller or another, or~~
 150 ~~whether denominated as cable service or as basic, extended,~~
 151 ~~premium, pay-per-view, digital, music, or two-way cable service.~~

152 (8) "Internet access service" has the same meaning as
 153 ascribed to the term "Internet access" by s. 1105(5) of the
 154 Internet Tax Freedom Act, 47 U.S.C. s. 151 note, as amended by
 155 Pub. L. No. 110-108.

156 (9)~~(7)~~ "Mobile communications service" means ~~commercial~~
 157 mobile ~~radio~~ service, as defined in 47 C.F.R. s. 20.3 as in
 158 effect on June 1, 1999. The term does not include air-ground
 159 radiotelephone service as defined in 47 C.F.R. s. 22.99 as in
 160 effect on June 1, 1999.

161 (10)~~(8)~~ "Person" has the meaning ascribed in s. 212.02.

162 (11)~~(9)~~ "Prepaid calling arrangement" means the separately
 163 stated retail sale by advance payment of communications services
 164 that consist exclusively of telephone calls originated by using
 165 an access number, authorization code, or other means that may be
 166 manually, electronically, or otherwise entered;~~7~~ and that are
 167 sold in predetermined units or dollars of which the number
 168 declines with use in a known amount.

169 ~~(12)~~~~(10)~~ "Purchaser" means the person paying for or
 170 obligated to pay for communications services.

171 ~~(13)~~~~(11)~~ "Retail sale" means the sale of communications
 172 services for any purpose other than for resale or for use as a
 173 component part of or for integration into communications
 174 services to be resold in the ordinary course of business.
 175 However, any sale for resale must comply with s. 202.16(2) and
 176 the rules adopted thereunder.

177 ~~(14)~~~~(12)~~ "Sale" means the provision of communications
 178 services for a consideration.

179 ~~(15)~~~~(13)~~ "Sales price" means the total amount charged in
 180 money or other consideration by a dealer for the sale of the
 181 right or privilege of using communications services in this
 182 state, including any property or other service, not described in
 183 paragraph (a), which is services that are part of the sale and
 184 for which the charge is not separately itemized on a customer's
 185 bill or separately allocated under subparagraph (b)8. The sales
 186 price of communications services may ~~shall~~ not be reduced by any
 187 separately identified components of the charge which ~~that~~
 188 constitute expenses of the dealer, including, but not limited
 189 to, sales taxes on goods or services purchased by the dealer,
 190 property taxes, taxes measured by net income, and universal-
 191 service fund fees.

192 (a) The sales price of communications services includes
 193 ~~shall include~~, whether or not separately stated, charges for any
 194 of the following:

195 1. The connection, movement, change, or termination of
 196 communications services.

- 197 2. The detailed billing of communications services.
- 198 3. The sale of directory listings in connection with a
199 communications service.
- 200 4. Central office and custom calling features.
- 201 5. Voice mail and other messaging service.
- 202 6. Directory assistance.
- 203 7. The service of sending or receiving a document commonly
204 referred to as a facsimile or "fax," except when performed
205 during the course of providing professional or advertising
206 services.
- 207 (b) The sales price of communications services does not
208 include charges for any of the following:
- 209 1. An ~~Any~~ excise tax, sales tax, or similar tax levied by
210 the United States or any state or local government on the
211 purchase, sale, use, or consumption of any communications
212 service, including, but not limited to, a ~~any~~ tax imposed under
213 this chapter or chapter 203 which is permitted or required to be
214 added to the sales price of such service, if the tax is stated
215 separately.
- 216 2. A ~~Any~~ fee or assessment levied by the United States or
217 any state or local government, including, but not limited to,
218 regulatory fees and emergency telephone surcharges, which must
219 ~~is required to~~ be added to the price of the ~~such~~ service if the
220 fee or assessment is separately stated.
- 221 3. Communications services paid for by inserting coins
222 into coin-operated communications devices available to the
223 public.
- 224 4. The sale or recharge of a prepaid calling arrangement.

225 5. The provision of air-to-ground communications services,
 226 defined as a radio service provided to a purchaser ~~purchasers~~
 227 while on board an aircraft.

228 6. A dealer's internal use of communications services in
 229 connection with its business of providing communications
 230 services.

231 7. Charges for property or other services that are not
 232 part of the sale of communications services, if such charges are
 233 stated separately from the charges for communications services.

234 8. ~~To the extent required by federal law,~~ Charges for
 235 goods and services that are exempt from tax under this chapter,
 236 including Internet access services but excluding any item
 237 described in paragraph (a), that ~~which~~ are not separately
 238 itemized on a customer's bill, but that ~~which~~ can be reasonably
 239 identified from the selling dealer's books and records kept in
 240 the regular course of business. The dealer may support the
 241 allocation of charges with books and records kept in the regular
 242 course of business covering the dealer's entire service area,
 243 including territories outside this state.

244 ~~(16)(14)~~ "Service address" means:

245 (a) Except as otherwise provided in this section:

246 1. The location of the communications equipment from which
 247 communications services originate or at which communications
 248 services are received by the customer;

249 2. In the case of a communications service paid through a
 250 credit or payment mechanism that does not relate to a service
 251 address, such as a bank, travel, debit, or credit card, and in
 252 the case of third-number and calling-card calls, the term

253 "service address" means the address of the central office, as
 254 determined by the area code and the first three digits of the
 255 seven-digit originating telephone number; or

256 3. If the location of the equipment described in
 257 subparagraph 1. is not known and subparagraph 2. is
 258 inapplicable, the term "service address" means the location of
 259 the customer's primary use of the communications service. For
 260 purposes of this subparagraph, the location of the customer's
 261 primary use of a communications service is the residential
 262 street address or the business street address of the customer.

263 (b) In the case of video ~~cable~~ services and direct-to-home
 264 satellite services, the location where the customer receives the
 265 services in this state.

266 (c) In the case of mobile communications services, the
 267 customer's place of primary use.

268 ~~(17)-(15)~~ "Unbundled network element" means a network
 269 element, as defined in 47 U.S.C. s. 153(29), to which access is
 270 provided on an unbundled basis pursuant to 47 U.S.C. s.
 271 251(c)(3).

272 ~~(18)-(16)~~ "Private communications service" means a
 273 communications service that entitles the subscriber or user to
 274 exclusive or priority use of a communications channel or group
 275 of channels between or among channel termination points,
 276 regardless of the manner in which such channel or channels are
 277 connected, and includes switching capacity, extension lines,
 278 stations, and any other associated services that ~~which~~ are
 279 provided in connection with the use of such channel or channels.

280 ~~(19)-(17)~~(a) "Customer" means:

281 1. The person or entity that contracts with the home
 282 service provider for mobile communications services; or
 283 2. If the end user of mobile communications services is
 284 not the contracting party, the end user of the mobile
 285 communications service. This subparagraph only applies for the
 286 purpose of determining the place of primary use.

287 (b) "Customer" does not include:

- 288 1. A reseller of mobile communications services; or
- 289 2. A serving carrier under an agreement to serve the
- 290 customer outside the home service provider's licensed service
- 291 area.

292 (20)~~(18)~~ "Enhanced zip code" means a United States postal
 293 zip code of 9 or more digits.

294 (21)~~(19)~~ "Home service provider" means the facilities-
 295 based carrier or reseller with which the customer contracts for
 296 the provision of mobile communications services.

297 (22)~~(20)~~ "Licensed service area" means the geographic area
 298 in which the home service provider is authorized by law or
 299 contract to provide mobile communications service to the
 300 customer.

301 (23)~~(21)~~ "Place of primary use" means the street address
 302 representative of where the customer's use of the mobile
 303 communications service primarily occurs, which must be:

304 (a) The residential street address or the primary business
 305 street address of the customer; and

306 (b) Within the licensed service area of the home service
 307 provider.

308 (24)~~(22)~~ (a) "Reseller" means a provider who purchases

309 | communications services from another communications service
 310 | provider and then resells, uses as a component part of, or
 311 | integrates the purchased services into a mobile communications
 312 | service.

313 | (b) The term "Reseller" does not include a serving carrier
 314 | with which a home service provider arranges for the services to
 315 | its customers outside the home service provider's licensed
 316 | service area.

317 | (25)-(23) "Serving carrier" means a facilities-based
 318 | carrier providing mobile communications service to a customer
 319 | outside a home service provider's or reseller's licensed service
 320 | area.

321 | (26)-(24) "Video service" means the transmission of video,
 322 | audio, or other programming service to a purchaser, and the
 323 | purchaser interaction, if any, required for the selection or use
 324 | of a programming service, regardless of whether the programming
 325 | is transmitted over facilities owned or operated by the video
 326 | service provider or over facilities owned or operated by another
 327 | dealer of communications services. The term includes point-to-
 328 | point and point-to-multipoint distribution services through
 329 | which programming is transmitted or broadcast by microwave or
 330 | other equipment directly to the purchaser's premises, but does
 331 | not include direct-to-home satellite service. The term includes
 332 | basic, extended, premium, pay-per-view, digital video, two-way
 333 | cable, and music services ~~has the same meaning as that provided~~
 334 | ~~in s. 610.103.~~

335 | Section 3. Subsection (1) of section 202.125, Florida
 336 | Statutes, is amended to read:

337 202.125 Sales of communications services; specified
 338 exemptions.—

339 (1) The separately stated sales price of communications
 340 services sold to residential households is exempt from the tax
 341 imposed by s. 202.12 and s. 203.01(1)(b)3. This exemption does
 342 not apply to any residence that constitutes all or part of a
 343 transient public lodging establishment as defined in chapter
 344 509, any mobile communications service, any video ~~cable~~ service,
 345 or any direct-to-home satellite service.

346 Section 4. Paragraph (a) of subsection (2) of section
 347 202.16, Florida Statutes, is amended to read:

348 202.16 Payment.—The taxes imposed or administered under
 349 this chapter and chapter 203 shall be collected from all dealers
 350 of taxable communications services on the sale at retail in this
 351 state of communications services taxable under this chapter and
 352 chapter 203. The full amount of the taxes on a credit sale,
 353 installment sale, or sale made on any kind of deferred payment
 354 plan is due at the moment of the transaction in the same manner
 355 as a cash sale.

356 (2) (a) A sale of communications services that are used as
 357 a component part of or integrated into a communications service
 358 or prepaid calling arrangement for resale, including, but not
 359 limited to, carrier-access charges, interconnection charges paid
 360 by providers of mobile communication services or other
 361 communication services, charges paid by a video ~~cable~~ service
 362 provider ~~providers~~ for the purchase of video programming or the
 363 transmission of video or other programming by another dealer of
 364 communications services, charges for the sale of unbundled

365 network elements, and any other intercompany charges for the use
 366 of facilities for providing communications services for resale,
 367 must be made in compliance with the rules of the department. A
 368 ~~Any~~ person who makes a sale for resale which is not in
 369 compliance with these rules is liable for any tax, penalty, and
 370 interest due for failing to comply, to be calculated pursuant to
 371 s. 202.28(2)(a).

372 Section 5. Paragraph (c) of subsection (3) of section
 373 202.18, Florida Statutes, is amended to read:

374 202.18 Allocation and disposition of tax proceeds.—The
 375 proceeds of the communications services taxes remitted under
 376 this chapter shall be treated as follows:

377 (3)

378 (c)1. Except as otherwise provided in this paragraph,
 379 proceeds of the taxes levied pursuant to s. 202.19, less amounts
 380 deducted for costs of administration in accordance with
 381 paragraph (b), shall be distributed monthly to the appropriate
 382 jurisdictions. The proceeds of taxes imposed pursuant to s.
 383 202.19(5) shall be distributed in the same manner as
 384 discretionary surtaxes are distributed, in accordance with ss.
 385 212.054 and 212.055.

386 2. The department shall make any adjustments to the
 387 distributions pursuant to this section which are necessary to
 388 reflect the proper amounts due to individual jurisdictions or
 389 trust funds. In the event that the department adjusts amounts
 390 due to reflect a correction in the situsing of a customer, such
 391 adjustment shall be limited to the amount of tax actually
 392 collected from such customer by the dealer of communication

393 services.

394 3.a. ~~Notwithstanding the time period specified in s.~~
 395 ~~202.22(5)~~, Adjustments in distributions which are necessary to
 396 correct misallocations between jurisdictions shall be governed
 397 by this subparagraph. If the department determines that
 398 misallocations between jurisdictions occurred, it shall provide
 399 written notice of such determination to all affected
 400 jurisdictions. The notice shall include the amount of the
 401 misallocations, the basis upon which the determination was made,
 402 data supporting the determination, and the identity of each
 403 affected jurisdiction. The notice shall also inform all affected
 404 jurisdictions of their authority to enter into a written
 405 agreement establishing a method of adjustment as described in
 406 sub-subparagraph c.

407 b. An adjustment affecting a distribution to a
 408 jurisdiction which is less than 90 percent of the average
 409 monthly distribution to that jurisdiction for the 6 months
 410 immediately preceding the department's determination, as
 411 reported by all communications services dealers, shall be made
 412 in the month immediately following the department's
 413 determination that misallocations occurred.

414 c. If an adjustment affecting a distribution to a
 415 jurisdiction equals or exceeds 90 percent of the average monthly
 416 distribution to that jurisdiction for the 6 months immediately
 417 preceding the department's determination, as reported by all
 418 communications services dealers, the affected jurisdictions may
 419 enter into a written agreement establishing a method of
 420 adjustment. If the agreement establishing a method of adjustment

421 provides for payments of local communications services tax
 422 monthly distributions, the amount of any such payment agreed to
 423 may not exceed the local communications services tax monthly
 424 distributions available to the jurisdiction that was allocated
 425 amounts in excess of those to which it was entitled. If affected
 426 jurisdictions execute a written agreement specifying a method of
 427 adjustment, a copy of the written agreement shall be provided to
 428 the department no later than the first day of the month
 429 following 90 days after the date the department transmits notice
 430 of the misallocation. If the department does not receive a copy
 431 of the written agreement within the specified time period, an
 432 adjustment affecting a distribution to a jurisdiction made
 433 pursuant to this sub-subparagraph shall be prorated over a time
 434 period that equals the time period over which the misallocations
 435 occurred.

436 Section 6. Subsections (1) and (3) of section 202.195,
 437 Florida Statutes, are amended to read:

438 202.195 Proprietary confidential business information;
 439 public records exemption.—

440 (1) Proprietary confidential business information obtained
 441 from a telecommunications company or from a franchised or
 442 certificated video service provider ~~cable company~~ for the
 443 purposes of ~~imposing fees for occupying the public rights-of-~~
 444 ~~way,~~ assessing the local communications services tax pursuant to
 445 s. 202.19, or occupying or regulating the public rights-of-way,
 446 held by a local governmental entity, is confidential and exempt
 447 from s. 119.07(1) and s. 24(a), Art. I of the State
 448 Constitution. Such proprietary confidential business information

449 held by a local governmental entity may be used only for the
 450 purposes of ~~imposing such fees,~~ assessing such tax, or
 451 regulating such rights-of-way, and may not be used for any other
 452 purposes, including, but not limited to, commercial or
 453 competitive purposes.

454 (3) ~~Nothing in~~ This exemption does not expand ~~expands~~ the
 455 information or documentation that a local governmental entity
 456 may properly request under applicable law pursuant to ~~the~~
 457 ~~imposition of fees for~~ occupying the rights-of-way, the local
 458 communication services tax, or the regulation of its public
 459 rights-of-way.

460 Section 7. Paragraph (b) of subsection (2) of section
 461 202.20, Florida Statutes, is amended to read:

462 202.20 Local communications services tax conversion
 463 rates.—

464 (2)

465 (b) Except as otherwise provided in this subsection, the
 466 term "replaced revenue sources," as used in this section, means
 467 the following taxes, charges, fees, or other impositions to the
 468 extent that the respective local taxing jurisdictions were
 469 authorized to impose them prior to July 1, 2000.

470 1. With respect to municipalities and charter counties and
 471 the taxes authorized by s. 202.19(1):

472 a. The public service tax on telecommunications authorized
 473 by former s. 166.231(9).

474 b. Franchise fees on video ~~cable~~ service providers as
 475 authorized by 47 U.S.C. s. 542.

476 c. The public service tax on prepaid calling arrangements.

477 d. Franchise fees on dealers of communications services
 478 which use the public roads or rights-of-way, up to the limit set
 479 forth in s. 337.401. For purposes of calculating rates under
 480 this section, it is the legislative intent that charter counties
 481 be treated as having had the same authority as municipalities to
 482 impose franchise fees on recurring local telecommunication
 483 service revenues before ~~prior to~~ July 1, 2000. However, the
 484 Legislature recognizes that the authority of charter counties to
 485 impose such fees is in dispute, and the treatment provided in
 486 this section is not an expression of legislative intent that
 487 charter counties actually do or do not possess such authority.

488 e. Actual permit fees relating to placing or maintaining
 489 facilities in or on public roads or rights-of-way, collected
 490 from providers of long-distance, cable, and mobile
 491 communications services for the fiscal year ending September 30,
 492 1999; however, if a municipality or charter county elects the
 493 option to charge permit fees pursuant to s. 337.401(3)(c)1.a.,
 494 such fees may ~~shall~~ not be included as a replaced revenue
 495 source.

496 2. With respect to all other counties and the taxes
 497 authorized in s. 202.19(1), franchise fees on video ~~cable~~
 498 service providers as authorized by 47 U.S.C. s. 542.

499 Section 8. Subsections (5) and (6) of section 202.22,
 500 Florida Statutes, are amended to read:

501 202.22 Determination of local tax situs.—

502 (5) If a dealer of communications services does not use
 503 one or more of the methods specified in subsection (1) for
 504 determining the local taxing jurisdiction in which one or more

505 service addresses are a ~~service address is~~ located and:
 506 (a) The dealer's failure to use one or more of such
 507 methods results in a net aggregate underpayment of all taxes
 508 levied pursuant to s. 202.19 with respect to one or more tax
 509 periods that are being examined by the department; and
 510 (b) The department has determined the misallocations
 511 between jurisdictions for all taxes levied pursuant to s. 202.19
 512 and collected by the dealer with respect to any tax period being
 513 examined by the department; then,
 514
 515 the dealer of communications services may be held liable to the
 516 department for the net aggregate underpayment of any tax, and
 517 for ~~including~~ interest and penalties attributable to the net
 518 aggregate underpayment of tax, which is due as a result of
 519 assigning one or more the service addresses address to an
 520 incorrect local taxing jurisdiction. However, the dealer of
 521 communications services is not liable for any tax, interest, or
 522 penalty under this subsection unless the department has
 523 determined the net aggregate underpayment of tax for any tax
 524 period that is being examined, taking into account all
 525 underpayments and overpayments for such period or periods ~~to the~~
 526 ~~extent that such amount was collected and remitted by the dealer~~
 527 ~~of communications services with respect to a tax imposed by~~
 528 ~~another local taxing jurisdiction. Upon determining that an~~
 529 ~~amount was collected and remitted by a dealer of communications~~
 530 ~~services with respect to a tax imposed by another local taxing~~
 531 ~~jurisdiction, the department shall adjust the respective amounts~~
 532 ~~of the proceeds paid to each such taxing jurisdiction under s.~~

533 ~~202.18 in the month immediately following such determination.~~

534 (6) (a) Pursuant to rules adopted by the department, each
 535 dealer of communications services must notify the department of
 536 the methods it intends to employ for determining the local
 537 taxing jurisdiction in which service addresses are located.

538 (b) Notwithstanding s. 202.28, if a dealer of
 539 communications services:

540 1. Employs a method of assigning service addresses other
 541 than as set forth in paragraph (1) (a), paragraph (1) (b), or
 542 paragraph (1) (c), the deduction allowed to the dealer of
 543 communications services as compensation under s. 202.28 shall be
 544 0.25 percent of that portion of the tax due and accounted for
 545 and remitted to the department which is attributable to such
 546 method of assigning service addresses other than as set forth in
 547 paragraph (1) (a), paragraph (1) (b), or paragraph (1) (c).

548 2. Employs a method of assigning service addresses as set
 549 forth in paragraph (1) (a), paragraph (1) (b), or paragraph
 550 (1) (c), the department may not deny the deduction allowed to the
 551 dealer of communications services as compensation allowed under
 552 s. 202.28 because the dealer assigned one or more service
 553 addresses to an incorrect local taxing jurisdiction.

554 Section 9. Subsection (3) is added to section 202.231,
 555 Florida Statutes, to read:

556 202.231 Provision of information to local taxing
 557 jurisdictions.—

558 (3) The gross taxable sales and net tax information
 559 contained in the monthly reports required by this section shall
 560 be aggregated on a jurisdiction-by-jurisdiction basis, and the

561 | aggregate jurisdiction-by-jurisdiction information shall be made
 562 | available by the department to the public through the
 563 | department's website for each fiscal year this chapter has been
 564 | in effect.

565 | Section 10. Paragraphs (a) and (c) of subsection (2) of
 566 | section 202.24, Florida Statutes, are amended to read:

567 | 202.24 Limitations on local taxes and fees imposed on
 568 | dealers of communications services.—

569 | (2)(a) Except as provided in paragraph (c), each public
 570 | body is prohibited from:

571 | 1. Levying on or collecting from dealers or purchasers of
 572 | communications services any tax, charge, fee, or other
 573 | imposition on or with respect to the provision or purchase of
 574 | communications services.

575 | 2. Requiring any dealer of communications services to
 576 | enter into or extend the term of a franchise or other agreement
 577 | that requires the payment of a tax, charge, fee, or other
 578 | imposition.

579 | 3. Adopting or enforcing any provision of any ordinance or
 580 | agreement to the extent that such provision obligates a dealer
 581 | of communications services to charge, collect, or pay to the
 582 | public body a tax, charge, fee, or other imposition.

583 |
 584 | Municipalities and counties may not negotiate those terms and
 585 | conditions related to franchise fees or the definition of gross
 586 | revenues or other definitions or methodologies related to the
 587 | payment or assessment of franchise fees on providers of ~~cable or~~
 588 | video services.

589 (c) This subsection does not apply to:
 590 1. Local communications services taxes levied under this
 591 chapter.
 592 2. Ad valorem taxes levied pursuant to chapter 200.
 593 3. Business taxes levied under chapter 205.
 594 4. "911" service charges levied under chapter 365.
 595 5. Amounts charged for the rental or other use of property
 596 owned by a public body which is not in the public rights-of-way
 597 to a dealer of communications services for any purpose,
 598 including, but not limited to, the placement or attachment of
 599 equipment used in the provision of communications services.
 600 6. Permit fees of general applicability which are not
 601 related to placing or maintaining facilities in or on public
 602 roads or rights-of-way.
 603 7. Permit fees related to placing or maintaining
 604 facilities in or on public roads or rights-of-way pursuant to s.
 605 337.401.
 606 8. Any in-kind requirements, institutional networks, or
 607 contributions for, or in support of, the use or construction of
 608 public, educational, or governmental access facilities allowed
 609 under federal law and imposed on providers of ~~cable or~~ video
 610 service pursuant to any existing ordinance or an existing
 611 franchise agreement granted by each municipality or county,
 612 under which ordinance or franchise agreement service is provided
 613 before ~~prior to~~ July 1, 2007, or as permitted under chapter 610.
 614 ~~Nothing in~~ This subparagraph does not ~~shall~~ prohibit ~~the ability~~
 615 ~~of~~ providers of ~~cable or~~ video service from recovering the ~~to~~
 616 ~~recover such~~ expenses as allowed under federal law.

617 9. Special assessments and impact fees.

618 10. Pole attachment fees that are charged by a local
619 government for attachments to utility poles owned by the local
620 government.

621 11. Utility service fees or other similar user fees for
622 utility services.

623 12. Any other generally applicable tax, fee, charge, or
624 imposition authorized by general law on July 1, 2000, which is
625 not specifically prohibited by this subsection or included as a
626 replaced revenue source in s. 202.20.

627 Section 11. Paragraph (j) of subsection (3) of section
628 202.26, Florida Statutes, is amended to read:

629 202.26 Department powers.—

630 (3) To administer the tax imposed by this chapter, the
631 department may adopt rules relating to:

632 (j) The types of books and records kept in the regular
633 course of business which must be available during an audit of a
634 dealer's books and records when the dealer has made an
635 allocation or attribution pursuant to the definition of sales
636 prices in s. 202.11(15)(b)8. ~~202.11(13)(b)8.~~ and examples of
637 methods for determining the reasonableness thereof. Books and
638 records kept in the regular course of business include, but are
639 not limited to, general ledgers, price lists, cost records,
640 customer billings, billing system reports, tariffs, and other
641 regulatory filings and rules of regulatory authorities. The ~~Such~~
642 records may be required to be made available to the department
643 in an electronic format when so kept by the dealer. The dealer
644 may support the allocation of charges with books and records

645 kept in the regular course of business covering the dealer's
 646 entire service area, including territories outside this state.
 647 During an audit, the department may reasonably require
 648 production of any additional books and records found necessary
 649 to assist in its determination.

650 Section 12. Paragraph (a) of subsection (1) of section
 651 203.01, Florida Statutes, is amended to read:

652 203.01 Tax on gross receipts for utility and
 653 communications services.—

654 (1)(a)1. A tax is imposed on gross receipts from utility
 655 services that are delivered to a retail consumer in this state.
 656 The ~~Such~~ tax shall be levied as provided in paragraphs (b)-(j).

657 2. A tax is levied on communications services as defined
 658 in s. 202.11(1) ~~202.11(2)~~. The ~~Such~~ tax shall be applied to the
 659 same services and transactions as are subject to taxation under
 660 chapter 202, and to communications services that are subject to
 661 the exemption provided in s. 202.125(1). The ~~Such~~ tax shall be
 662 applied to the sales price of communications services when sold
 663 at retail, as the ~~such~~ terms are defined in s. 202.11, shall be
 664 due and payable at the same time as the taxes imposed pursuant
 665 to chapter 202, and shall be administered and collected pursuant
 666 to the provisions of chapter 202.

667 Section 13. Paragraph (a) of subsection (1) of section
 668 610.118, Florida Statutes, is amended to read:

669 610.118 Impairment; court-ordered operations.—

670 (1) If an incumbent cable or video service provider is
 671 required to operate under its existing franchise and is legally
 672 prevented by a lawfully issued order of a court of competent

673 jurisdiction from exercising its right to terminate its existing
 674 franchise pursuant to the terms of s. 610.105, any
 675 certificateholder providing cable service or video service in
 676 whole or in part within the service area that is the subject of
 677 the incumbent cable or video service provider's franchise shall,
 678 for as long as the court order remains in effect, comply with
 679 the following franchise terms and conditions as applicable to
 680 the incumbent cable or video service provider in the service
 681 area:

682 (a) The certificateholder shall pay to the municipality or
 683 county:

684 1. Any prospective lump-sum or recurring per-subscriber
 685 funding obligations to support public, educational, and
 686 governmental access channels or other prospective franchise-
 687 required monetary grants related to public, educational, or
 688 governmental access facilities equipment and capital costs.
 689 Prospective lump-sum payments shall be made on an equivalent
 690 per-subscriber basis calculated as follows: the amount of the
 691 prospective funding obligations divided by the number of
 692 subscribers being served by the incumbent cable service provider
 693 at the time of payment, divided by the number of months
 694 remaining in the incumbent cable or video service provider's
 695 franchise equals the monthly per subscriber amount to be paid by
 696 the certificateholder until the expiration or termination of the
 697 incumbent cable or video service provider's franchise; and

698 2. If the incumbent cable or video service provider is
 699 required to make payments for the funding of an institutional
 700 network, the certificateholder shall pay an amount equal to the

701 incumbent's funding obligations but not to exceed 1 percent of
 702 the sales price, as defined in s. 202.11(15) ~~202.11(13)~~, for the
 703 taxable monthly retail sales of cable or video programming
 704 services the certificateholder received from subscribers in the
 705 affected municipality or county. All definitions and exemptions
 706 under chapter 202 apply in the determination of taxable monthly
 707 retail sales of cable or video programming services.

708 Section 14. Section 624.105, Florida Statutes, is amended
 709 to read:

710 624.105 Waiver of customer liability.—Any regulated
 711 company as defined in s. 350.111, any electric utility as
 712 defined in s. 366.02(2), any utility as defined in s.
 713 367.021(12) or s. 367.022(2) and (7), and any provider of
 714 communications services as defined in s. 202.11(1) ~~202.11(2)~~ may
 715 charge for and include an optional waiver of liability provision
 716 in their customer contracts under which the entity agrees to
 717 waive all or a portion of the customer's liability for service
 718 from the entity for a defined period in the event of the
 719 customer's call to active military service, death, disability,
 720 involuntary unemployment, qualification for family leave, or
 721 similar qualifying event or condition. Such provisions may not
 722 be effective in the customer's contract with the entity unless
 723 affirmatively elected by the customer. No such provision shall
 724 constitute insurance so long as the provision is a contract
 725 between the entity and its customer.

726 Section 15. The following changes made in this act are
 727 intended to be remedial in nature and apply retroactively, but
 728 do not provide a basis for an assessment of any tax not paid or

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2012

729 create a right to a refund or credit of any tax paid before the
730 general effective date of this act:

731 (1) The changes made in section 2 of this act to
732 subsections renumbered as subsections (9) and (15) of s. 202.11,
733 Florida Statutes.

734 (2) The changes made in section 8 of this act to s.
735 202.22, Florida Statutes.

736 Section 16. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1379 Water and Wastewater Utilities
SPONSOR(S): Energy & Utilities Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 1244

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: Orig. Comm.: Energy & Utilities Subcommittee, Keating, Collins

SUMMARY ANALYSIS

In 2011, the Public Service Commission (PSC) conducted workshops to address challenges facing the water and wastewater industry, with a focus on small water and wastewater utility systems that struggle to achieve economies of scale, financial stability, and technical proficiency.

The bill creates the Study Committee on Investor-Owned Water and Wastewater Utility Systems (study committee or committee). The bill requires this study committee to "identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers and research possible solutions."

- The ability of a small investor-owned water and wastewater utility to achieve economies of scale when purchasing equipment, commodities, or services.
• The availability of low interest loans to a small, privately-owned water or wastewater utility.
• Any tax incentives or exemptions, temporary or permanent, which are available to a small water or wastewater utility.
• The impact on customer rates if a utility purchases an existing water or wastewater utility system.
• The impact on customer rates of a utility providing service through the use of a reseller.
• Other issues that the committee identifies during its investigation.

The committee is composed of 17 members and is comprised of legislators, regulators, industry representatives, local government representatives, and customer representatives.

The bill requires the study committee, by February 15, 2012, to prepare and submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and any appropriate agencies, a report detailing its findings and making specific legislative and rulemaking recommendations.

The bill has no impact on state or local revenues or on local expenditures. The bill requires the Public Service Commission to provide staff, assistance, and facilities to support the study committee.

FULL ANALYSIS

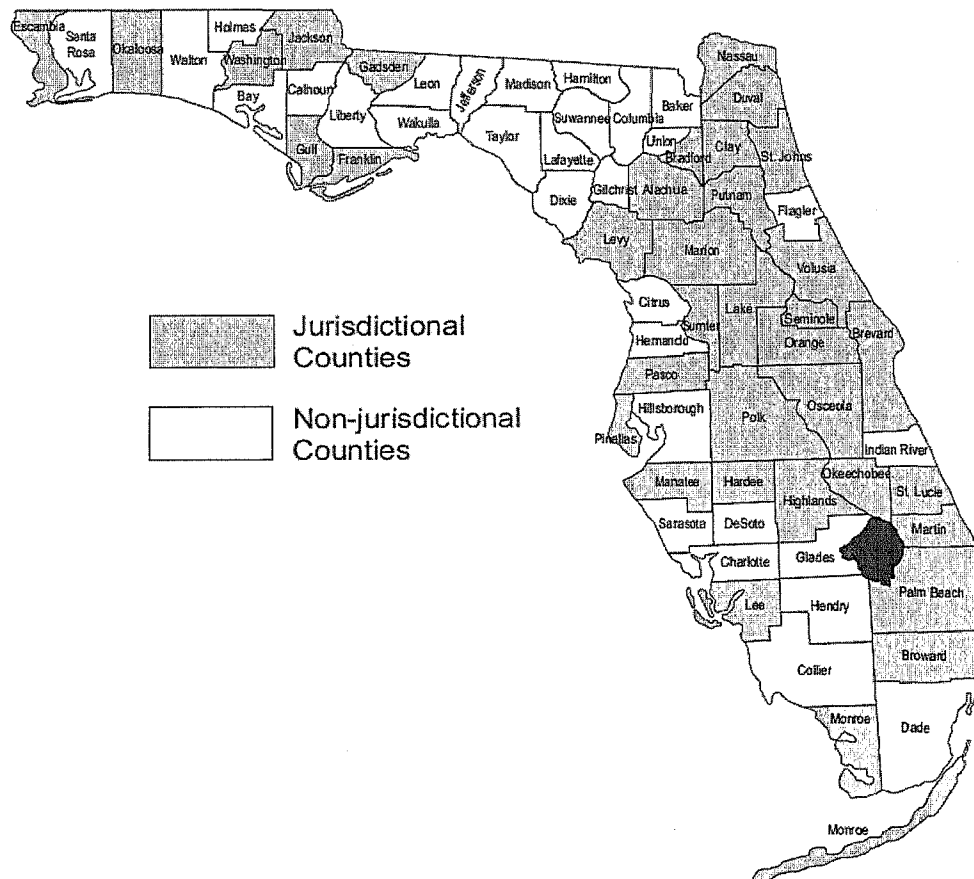
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In Florida, several entities are responsible for regulating water quality, water supply, and rates and service for water and wastewater utilities. The Department of Environmental Protection (DEP) has primary responsibility for regulating the quality and supply of water.¹ With respect to rates and service, the specific regulatory entities vary. For privately-owned utilities operating within a single county, the county has the option to regulate rates and service or allow the Public Service Commission (PSC) to regulate those utilities.² The PSC currently has jurisdiction over privately-owned water and wastewater utilities in 35 of the 67 counties in Florida. Regardless of whether the county has opted to regulate privately-owned utilities, the PSC has jurisdiction over all water or wastewater utility systems whose service transverses county boundaries, except for systems owned and regulated by intergovernmental authorities.³ Systems owned, operated, managed, or controlled by governmental authorities are not subject to PSC regulation.⁴

The map below identifies those counties in which the PSC currently exercises jurisdiction and can be found at <http://www.psc.state.fl.us/utilities/waterwastewater/wawmap.pdf>.



¹ Part VI, Chapter 403, F.S., and Parts I and II, Chapter 373, F.S.

² Section 367.171, F.S. If a county chooses to allow regulation by the PSC, it may rescind this choice only after 10 continuous years of PSC regulation.

³ *Id.*

⁴ Section 367.022(2), F.S.

For regulatory purposes, the PSC classifies utilities into one of three categories based on annual operating revenues.⁵

- Class A – Operating revenues greater than \$1,000,000
- Class B – Operating revenues greater than \$200,000 but less than \$1,000,000
- Class C – Operating revenues less than \$200,000

Currently, there are 15 Class A utilities, 33 Class B utilities, and 96 Class C utilities under the PSC's jurisdiction. These utilities serve approximately 3 to 4 percent of Florida's population. The remaining population is served either by private utilities in non-jurisdictional counties, by statutorily exempt utilities (such as municipal utilities, cooperatives, and non-profits), or by wells and septic tanks. The 15 Class A utilities serve approximately 50% of the customers for all classes. In general, filing requirements, fees, penalties, and regulatory treatment are eased for Class B and C utilities.

On September 29, 2011, the PSC conducted an informal staff workshop in Orlando to address challenges facing the water and wastewater industry. By letter dated September 13, 2011, to all PSC-regulated water and wastewater utilities, the PSC invited the industry stakeholders to this workshop.⁶ The letter stated, in part:

As you are well aware, many water and wastewater utilities, particularly the small systems, struggle to achieve economies of scale, financial stability, and technical proficiency. As a result, many utilities have difficulty operating effectively and efficiently, maintaining equipment and infrastructure, complying with federal and state regulations, and providing adequate customer service at reasonable rates. This situation is likely only to worsen as infrastructure replacement needs increase and as new regulatory requirements demand increased investment in water and wastewater systems.

The letter indicated that the workshop would "provide an open forum to look at probable solutions to the many financial and environmental challenges facing utilities" and invited input and discussion concerning currently available options as well as solutions that may require regulatory or statutory changes.

Following the informal staff workshop, the PSC conducted a formal agency workshop in Tallahassee on November 3, 2011, "to discuss ways to increase efficiencies in the water and wastewater industry in order to hold and/or lower rates."⁷ In opening remarks at the workshop, PSC Chairman Art Graham indicated that the main purpose of the workshop was to hear and address ideas to help alleviate financial strains on small water and wastewater utilities.⁸

The PSC heard discussion on several potential mechanisms to address these issues, including, among others, the creation of a legislative study commission comprised of legislators, regulators, industry representatives, local government representatives, and customer representatives.⁹ This proposal, drafted by the PSC's staff, provided that the study commission would be staffed by the PSC staff and have use of the PSC's facilities. The proposal required that the study commission meet at least four times, with two of those meetings held in areas where utility customers had been impacted by recent rate increases. The proposal required that the study commission submit a report, including specific findings and legislative recommendations, to the Governor and the Legislature by December 31, 2012. The study commission would terminate on June 30, 2012.

⁵ Rules 25-30.110(4) and 25-30.115, F.A.C. As noted in these rules, this classification system is used by the National Association of Regulatory Utility Commissioners for publishing its system of accounts.

⁶ http://www.psc.state.fl.us/common/controls/workshop09_29_11.pdf

⁷ <http://www.psc.state.fl.us/library/filings/11/07437-11/07437-11.pdf>

⁸ Workshop Transcript, pp.2-3. <http://www.psc.state.fl.us/library/filings/11/08324-11/08324-11.pdf>

⁹ <http://www.psc.state.fl.us/agendas/workshops/Materials.11.03.2011.pdf>

Effect of Proposed Changes

The bill creates the Study Committee on Investor-Owned Water and Wastewater Utility Systems (study committee or committee). The committee will consist of 17 members, 13 of which are voting members. The voting members consist of:

- Two Senators appointed by the President of the Senate, one of whom will be appointed as the chair of the study committee.
- Two Representatives appointed by the Speaker of the House of Representatives.
- A representative of a water management district, appointed by the Governor.
- A representative of a water or wastewater system owned or operated by a municipal government, appointed by the Governor.
- A representative of a water or wastewater system owned or operated by a county government, appointed by the Governor.
- A representative of the Florida Rural Water Association, appointed by the Governor.
- A representative of a small investor-owned water or wastewater utility, appointed by the Governor.
- A representative of a large investor-owned water or wastewater utility, appointed by the Governor.
- The Public Counsel or his or her designee.
- A customer of a Class C water or wastewater utility, appointed by the Governor.
- A representative of a government authority that was created pursuant to chapter 367, Florida Statutes, appointed by the Governor.

The four remaining, nonvoting members are:

- The Secretary of the Department of Environmental Protection, or his or her designee.
- The chair of the Public Service Commission, or his or her designee.
- The chair of a county commission that regulates investor-owned water or wastewater utility systems.
- A representative of a county health department appointed by the Governor.

The appointing authority may remove or suspend a member appointed by it for cause, including failure to attend two or more committee meetings.

The bill provides that the study committee must “identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers and research possible solutions.” In addition, the bill requires the committee to consider:

- The ability of a small investor-owned water and wastewater utility to achieve economies of scale when purchasing equipment, commodities, or services.
- The availability of low interest loans to a small, privately-owned water or wastewater utility.
- Any tax incentives or exemptions, temporary or permanent, which are available to a small water or wastewater utility.
- The impact on customer rates if a utility purchases an existing water or wastewater utility system.
- The impact on customer rates of a utility providing service through the use of a reseller.
- Other issues that the committee identifies during its investigation.

The bill requires that the study committee shall meet a minimum of four times at a time and place determined by the chair. At least two meetings must be held in an area “centrally located to utility customers who have recently been affected by a significant increase in water or wastewater utility rates.” The bill provides that the public shall be given the opportunity to speak at these meetings.

The bill requires the PSC to provide staff, information, assistance, and facilities as deemed necessary by the study committee to perform its duties. Funding for the committee will come from the Florida

Public Service Regulatory Trust Fund. Members of the committee will not be compensated but are entitled to reimbursement for all reasonable and necessary expenses, including travel expenses.

The bill requires the study committee, by February 15, 2012, to prepare and submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, a report detailing its findings and making specific legislative recommendations, including proposed legislation. If the committee finds that an issue may effectively be addressed through agency rulemaking, the committee must submit its report and recommendations, including proposed rules, to the appropriate agencies. The bill provides for termination of the committee on June 30, 2013.

B. SECTION DIRECTORY:

Section 1. Creates the Study Committee on Investor-Owned Water and Wastewater Utility Systems.

Section 2. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires the Public Service Commission to provide staff, assistance, and facilities to support the study committee. Further, funding for the committee, including funding for travel and other reimbursable expenses of members and rental of necessary meeting facilities, will be paid from the Florida Public Service Regulatory Trust Fund.

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:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Amendments will be offered by the bill sponsor to change the due date for the study committee's report to February 15, 2013, and to identify the authority responsible for appointing to the committee a chair of a county commission that regulates investor-owned water or wastewater utility systems.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

PCS for HB 1379

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to water and wastewater utilities;
 3 creating the Study Committee on Investor-Owned Water
 4 and Wastewater Utility Systems; providing for
 5 membership and terms of service; prohibiting
 6 compensation of the members; providing for
 7 reimbursement of the members for certain expenses;
 8 providing for removal or suspension of members by the
 9 appointing authority; requiring the Public Service
 10 Commission to provide staff, information, assistance,
 11 and facilities that are deemed necessary for the
 12 committee to perform its duties; providing for funding
 13 from the Florida Public Service Regulatory Trust Fund;
 14 providing duties for the committee; providing for
 15 public meetings; requiring the committee to report to
 16 the Governor and Legislature its findings and make
 17 recommendation for legislative changes; requiring the
 18 committee to submit its report and recommendations to
 19 appropriate agencies; providing for future termination
 20 of the committee; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Study Committee on Investor-Owned Water and
 25 Wastewater Utility Systems.-

26 (1) There is created a Study Committee on Investor-Owned
 27 Water and Wastewater Utility Systems, which shall be composed of
 28 17 members designated and appointed as follows:

PCS for HB 1379

ORIGINAL

YEAR

29 (a) Two Senators appointed by the President of the Senate,
 30 one of whom shall be appointed as chair by the President of the
 31 Senate.

32 (b) Two Representatives appointed by the Speaker of the
 33 House of Representatives.

34 (c) The Secretary of the Department of Environmental
 35 Protection or his or her designee, who shall be a nonvoting
 36 member of the committee.

37 (d) The chair of the Public Service Commission or his or
 38 her designee, who shall be a nonvoting member of the committee.

39 (e) A representative of a water management district
 40 appointed by the Governor.

41 (f) A representative of a water or wastewater system owned
 42 or operated by a municipal government appointed by the Governor.

43 (g) A representative of a water or wastewater system owned
 44 or operated by a county government appointed by the Governor.

45 (h) The chair of a county commission that regulates
 46 investor-owned water or wastewater utility systems, who shall be
 47 a nonvoting member of the committee.

48 (i) A representative of a county health department
 49 appointed by the Governor, who shall be a nonvoting member of
 50 the committee.

51 (j) A representative of the Florida Rural Water
 52 Association appointed by the Governor.

53 (k) A representative of a small investor-owned water or
 54 wastewater utility appointed by the Governor.

55 (l) A representative of a large investor-owned water or
 56 wastewater utility appointed by the Governor.

PCS for HB 1379

ORIGINAL

YEAR

- 57 | (m) The Public Counsel or his or her designee.
- 58 | (n) A customer of a Class C water or wastewater utility
 59 | appointed by the Governor.
- 60 | (o) A representative of a government authority that was
 61 | created pursuant to chapter 163, Florida Statutes, appointed by
 62 | the Governor.
- 63 | (2) The members shall serve until the work of the
 64 | committee is complete and the committee is terminated, except
 65 | that if a member no longer serves in the position required for
 66 | appointment, the member shall be replaced by the individual who
 67 | serves in such position.
- 68 | (3) Members of the committee shall serve without
 69 | compensation, but are entitled to reimbursement for all
 70 | reasonable and necessary expenses, including travel expenses, in
 71 | the performance of their duties as provided in s. 112.061,
 72 | Florida Statutes.
- 73 | (4) The appointing authority may remove or suspend a
 74 | member appointed by it for cause, including, but not limited to,
 75 | failure to attend two or more meetings of the committee.
- 76 | (5) The Public Service Commission shall provide the staff,
 77 | information, assistance, and facilities as are deemed necessary
 78 | for the committee to carry out its duties under this section.
 79 | Funding for the committee shall be paid from the Florida Public
 80 | Service Regulatory Trust Fund.
- 81 | (6) The committee shall identify issues of concern of
 82 | investor-owned water and wastewater utility systems,
 83 | particularly small systems, and their customers and research
 84 | possible solutions. In addition, the committee shall consider:

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85 (a) The ability of a small investor-owned water and
 86 wastewater utility to achieve economies of scale when purchasing
 87 equipment, commodities, or services.

88 (b) The availability of low interest loans to a small,
 89 privately owned water or wastewater utility.

90 (c) Any tax incentives or exemptions, temporary or
 91 permanent, which are available to a small water or wastewater
 92 utility.

93 (d) The impact on customer rates if a utility purchases an
 94 existing water or wastewater utility system.

95 (e) The impact on customer rates of a utility providing
 96 service through the use of a reseller.

97 (f) Other issues that the committee identifies during its
 98 investigation.

99 (7) The committee shall meet at the time and location as
 100 the chair determines, except that the committee shall meet a
 101 minimum of four times. At least two meetings must be held in an
 102 area that is centrally located to utility customers who have
 103 recently been affected by a significant increase in water or
 104 wastewater utility rates. The public shall be given the
 105 opportunity to speak at the meeting.

106 (8) By February 15, 2012, the committee shall prepare and
 107 submit to the Governor, the President of the Senate, and the
 108 Speaker of the House of Representatives a report detailing its
 109 findings pursuant to subsection (6) and making specific
 110 legislative recommendations, including proposed legislation
 111 intended to implement its recommendations. If the committee, in
 112 its report, finds that an issue may effectively be addressed

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113 through agency rulemaking, the committee shall submit to the
114 appropriate agencies its report and recommendations, including
115 proposed rules.

116 (9) This section expires and the committee terminates June
117 30, 2013.

118 Section 2. This act shall take effect upon becoming law.

COMMITTEE/SUBCOMMITTEE AMENDMENT
PCB Name: PCS for HB 1379 (2012)

Amendment No. a1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing PCB: Energy & Utilities
2 Subcommittee
3 Representative Brodeur offered the following:

4
5 **Amendment**

6 Remove line 46 and insert:

7 investor-owned water or wastewater utility systems, appointed by
8 the Governor, who shall be
9

COMMITTEE/SUBCOMMITTEE AMENDMENT
PCB Name: PCS for HB 1379 (2012)

Amendment No. a2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing PCB: Energy & Utilities
2 Subcommittee
3 Representative Brodeur offered the following:

4
5 **Amendment**

6 Remove line 106 and insert:

7 (8) By February 15, 2013, the committee shall prepare and
8