

REVENUE ESTIMATING CONFERENCE

Tax: Local Taxes and Fees

Issue: Amends the definition of a *pass-through provider* to exclude certain persons, and these excluded persons would not be subject to an annual charge, not to exceed \$500 per linear mile, which CST-levying county and municipal governments may currently impose on pass-through providers.

Bill Number(s): Proposed House Bill Language

☒ **Entire Bill**

☐ **Partial Bill:**

Sponsor(s): House of Representatives

Month/Year Impact Begins: July 1, 2018

Date of Analysis: March 5, 2018

Section 1: Narrative

- a. Current Law:** Pursuant to s. 337.401, F.S., the Department of Transportation (DOT) and each local governmental entity that has jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with regard to the placement and maintenance of utility facilities across, on, or within the right-of-way limits of any road or publicly owned rail corridors under its jurisdiction. These entities are referred to individually as the *authority*. The authority may authorize any person who is a resident of this state, or any corporation which is organized under the laws of this state or licensed to do business within this state, to use a right-of-way for a utility in accordance with the authority's rules or regulations. A utility may not be installed, located, or relocated within a right-of-way unless authorized by a written permit. The permit must require the permit holder to be responsible for any damage resulting from the permitted use of the right-of-way.

Municipalities and counties must treat providers of communications services in a nondiscriminatory and competitively neutral manner when imposing such rules or regulations. The rules and regulations must be generally applicable to all such providers and may not require such providers to apply for or enter into an individual license, franchise, or other agreement as a condition of using the right-of-way.

Pursuant to s. 202.24(1), F.S., the authority of a public body to require taxes, fees, charges, or other impositions from dealers of communications services for occupying its roads and rights-of-way is specifically preempted by the state, with certain exceptions. Section 202.24(2)(c)7., F.S., provides that permit fees related to placing or maintaining facilities in or on public roads or rights-of-way pursuant to s. 337.401, F.S., are one of several taxes, fees, and charges not preempted.

Section 337.401(6)(a)1., F.S., defines a *pass-through provider* as any person who:

1. places or maintains a communications facility in the roads or rights-of-way of a municipality or county that levies a Communications Services Tax (CST) pursuant to chapter 202; and,
2. does not remit CST imposed by that municipality or county.

A communications facility is defined as a facility that may be used to provide communications services. Multiple cables, conduits, strands, or fibers located within the same conduit shall be considered one communications facility for purposes of subsection (6).

Pursuant to s. 337.401(6)(b)-(c), F.S., a municipal or county government that levies a local CST may impose a charge on a pass-through provider, as outlined below.

1. A municipality that levies CST may charge a pass-through provider that places or maintains a communications facility in the municipality's roads or rights-of-way an annual amount not to exceed \$500 per linear mile or portion thereof. A municipality's roads or rights-of-way do not include roads or rights-of-way that extend in or through the municipality but are state, county, or another authority's roads or rights-of-way.
2. A county that levies CST may charge a pass-through provider that places or maintains a communications facility in the county's roads or rights-of-way, including county roads or rights-of-way within a municipality in the county, an annual amount not to exceed \$500 per linear mile or portion thereof. However, a county shall not impose a charge for any linear miles, or portions thereof, of county roads or rights-of-way where a communications facility is placed that extend through any municipality within the county to which the pass-through provider remits a tax imposed pursuant to chapter 202. A county's roads or rights-of-way do not include roads or rights-of-way that extend in or through the county but are state, municipal, or another authority's roads or rights-of-way.

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Bill Number(s): Proposed House Bill Language

b. Proposed Change: The proposed bill language amends the definition of *pass-through provider* as defined in s. 337.401, F.S., as follows.

(6)(a) As used in this subsection, the following definitions apply:

1.a. A “pass-through provider” is any person who places or maintains a communications facility in the roads or rights-of way of a municipality or county that levies a tax pursuant to chapter 202 and who does not remit taxes imposed by that municipality or county pursuant to chapter 202.

b. Notwithstanding sub-subparagraph a., a person who does not remit taxes imposed by a municipality or county pursuant to chapter 202, but pursuant to s. 202.16(2) sells communications services for resale to a person who sells such services at retail or who integrates such services into communications services sold at retail in that municipality or county and who remits taxes imposed by that municipality or county pursuant to chapter 202, is not a pass-through provider.

Section 2: Description of Data and Sources

EDR staff contacted representatives of the Florida Association of Counties (FAC) and Florida League of Cities (FLC) to ask if they might solicit data pertaining to the potential fiscal impact from their respective memberships. As March 2nd, only one local government response (i.e., the City of Tampa) had been forwarded to EDR staff, and the City of Tampa reported \$23,000 of pass-through provider fees were collected during the period of January 2017 through January 2018.

At the March 2, 2018 REC, the principals delayed action on this proposed bill language and asked staff to contact additional local governments to determine if such charges are currently being imposed on pass-through providers. EDR and Governor’s OPB staff contacted the following counties and municipalities: 1) All Counties Having a 2017 Population Greater Than 500,000: Miami-Dade, Broward, Palm Beach, Hillsborough, Orange, Pinellas, Lee, Polk, Brevard, Volusia, and Pasco; and 2) Additional Municipalities Having a 2017 Population Greater Than 100,000: Jacksonville, Miami, Orlando, St. Petersburg, Fort Lauderdale, Pembroke Pines, Hollywood, and Miramar.

Section 3: Methodology (Include Assumptions and Attach Details)

As previously mentioned, local CST-levying county and municipal governments may impose an annual charge, not to exceed \$500 per linear mile, on pass-through providers. The total number of county and municipal governments currently imposing such a charge and the charge amounts imposed by individual local governments are currently unknown. Furthermore, in local government Annual Financial Reports (AFRs), such charges are not reflected in a single discrete revenue account.

Based on communications received from industry and local government representatives, the number of pass-through providers would be reduced if this proposed change becomes law. Because fewer persons would be subject to any locally-imposed, per linear mile charges, total revenue received from such charges would decrease. After this proposed change, the number of remaining pass-through providers in the City of Tampa is expected to be minimal.

As of March 5th, only Broward, Lee, Miami-Dade, and Polk counties responded. Broward, Lee, and Polk counties indicated that no such charges are currently being imposed on pass-through providers. Miami-Dade County imposes a charge and estimated the annual loss of revenue at \$25,000. Furthermore, only the cities of Orlando and Miramar responded and indicated that no such charges are currently being imposed on pass-through providers.

EDR staff made the following fiscal impact recommendations.

Low: Sum of the estimated revenue losses reported by the two survey respondents: Miami-Dade County (\$25,000) and City of Tampa (\$23,000).

Middle: See attached spreadsheet.

High: Negative indeterminate – based on the limited number of survey responses, but the expectation that there are additional, unidentified local governments imposing such charges.

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Bill Number(s): Proposed House Bill Language

Section 4: Proposed Fiscal Impact (Millions \$)

	High		Middle		Low	
	Cash	Recurring	Cash	Recurring	Cash	Recurring
2018-19	(**)	(**)	(\$357,038)	(\$357,038)	(\$48,000)	(\$48,000)
2019-20	(**)	(**)	(\$357,038)	(\$357,038)	(\$48,000)	(\$48,000)
2020-21	(**)	(**)	(\$357,038)	(\$357,038)	(\$48,000)	(\$48,000)
2021-22	(**)	(**)	(\$357,038)	(\$357,038)	(\$48,000)	(\$48,000)
2022-23	(**)	(**)	(\$357,038)	(\$357,038)	(\$48,000)	(\$48,000)

List of Affected Trust Funds: Local funds only.

Section 5: Consensus Estimate (Adopted: 03/05/2018): The Conference adopted the middle estimate.

	GR		Trust		Local/Other		Total	
	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring
2018-19	0.0	0.0	0.0	0.0	(0.4)	(0.4)	(0.4)	(0.4)
2019-20	0.0	0.0	0.0	0.0	(0.4)	(0.4)	(0.4)	(0.4)
2020-21	0.0	0.0	0.0	0.0	(0.4)	(0.4)	(0.4)	(0.4)
2021-22	0.0	0.0	0.0	0.0	(0.4)	(0.4)	(0.4)	(0.4)
2022-23	0.0	0.0	0.0	0.0	(0.4)	(0.4)	(0.4)	(0.4)

Office of Economic and Demographic Research

	A	B	C
1	Fiscal Impact Analysis of Proposed House Bill Language		
2	Amends the Definition of Pass-Through Providers		
3			
4	Unincorporated	2017 Population	Reported Fiscal Impact
5	Broward County	15,006	\$ -
6	Lee County	350,230	\$ -
7	Miami-Dade County	1,191,589	\$ 25,000.00
8	Polk County	407,963	\$ -
9	<i>Total</i>	<i>1,964,788</i>	<i>\$ 25,000.00</i>
10	Incorporated		
11	City of Miramar	136,246	\$ -
12	City of Orlando	279,789	\$ -
13	City of Tampa	373,058	\$ 23,000.00
14	<i>Total</i>	<i>789,093</i>	<i>\$ 23,000.00</i>
15			
16	Unincorporated Population	10,115,386	
17	Incorporated Population	10,368,756	
18	Total Population	20,484,142	
19	Fee per Capita	\$ 0.0174	
20			
21	Unreported Unincorporated	8,150,598	
22	Unreported Incorporated	9,579,663	
23	Total Unreported Population	17,730,261	
24			
25	Unreported Impact	\$ 309,038	
26	Reported Impact	\$ 48,000	
27	Total Impact	\$ 357,038	
28			
29	Assumes: Remaining Counties and Cities assess the fees (or not) to the same extent that the responding governments do.		
30			

REVENUE ESTIMATING CONFERENCE

Tax: Reemployment Tax

Issue: Marketplace Contractors

Bill Number(s): Proposed Amendment

☒ **Entire Bill**

☐ **Partial Bill:**

Sponsor(s):

Month/Year Impact Begins: July 1, 2018

Date of Analysis: March 3, 2018

Section 1: Narrative

a. Current Law: There is no Chapter 451 in Florida Statutes.

b. Proposed Change: Creates Chapter 451, Florida Statutes, to read:

CHAPTER 451

MARKETPLACE CONTRACTORS

451.01. Definitions. —For purposes of this chapter, the term:

(1) "Household services" means:

- (a) furniture assembly;
- (b) interior painting;
- (c) television mounting;
- (d) local moving help, such as packing, lifting, loading, and rearranging household items, but excluding transporting items;
- (e) hanging pictures, mirrors, curtains, blinds, and shelves;
- (f) home cleaning;
- (g) installation of in home technology;
- (h) installing or replacing door hardware;

(2) "Marketplace contractor" or "contractor" means any individual or entity that:

- (a) Enters into an agreement with a marketplace platform to use the platform's technology application to receive connections to third-party individuals or entities seeking temporary household services; and
- (b) In return for compensation, offers or provides services to third-party individuals or entities through the marketplace platform's technology application.

(3) "Marketplace platform" or "platform" means an entity operating in this state that:

- (a) Offers an online-enabled technology application service, website, or system that enables marketplace contractors to provide services to third-party individuals or entities seeking such temporary household services;
- (b) Accepts service requests from the public only through its online-enabled technology application service, website, or system.

451.02 Marketplace contractors.—

(1) A marketplace contractor shall be treated as an independent contractor, and not an employee, of the marketplace platform for all purposes under state and local laws, regulations, and ordinances, including, but not limited to, chapters 440 and 443, if all of the following conditions are met:

- (a) The marketplace platform does not unilaterally prescribe specific hours during which the marketplace contractor must be available to accept service requests from third-party individuals or entities submitted through the platform.
- (b) The marketplace platform does not prohibit the marketplace contractor from using the technology application offered by other marketplace platforms.
- (c) The marketplace platform does not restrict the contractor from engaging in any other occupation or business.
- (d) The marketplace platform and marketplace contractor agree in writing that the contractor is an independent contractor with respect to the marketplace platform.
- (e) The marketplace contractor bears all or substantially all of the marketplace contractor's expenses incurred by the marketplace contractor in performing the services.
- (f) The marketplace contractor is responsible for the taxes on the marketplace contractor's income.

(2) The provisions of subsection (1) apply to services performed by a marketplace contractor before July 1, 2018, if the conditions set forth in subsection (1) were satisfied during the period when the services were performed.

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Issue: Marketplace Contractors

Bill Number(s): Proposed Amendment

(3) Compliance with this section is not mandatory to establish the existence of an independent contractor relationship. The exclusion of any contractor or digital platform from this section does not create any presumption and is not admissible to deny the existence of an independent contractor relationship.

(4) This section does not apply to:

(a) Services performed in the employ of the state, a political subdivision of the state, an Indian tribe, an instrumentality of a state, or any political subdivision of a state or an Indian tribe that is wholly owned by one or more states, political subdivisions, or Indian tribes, respectively, provided that such service is excluded from employment as defined in ss. 3301 and 3306 of the Federal Unemployment Tax Act.

(b) Services performed in the employ of a religious, charitable, educational, or other organization that is excluded from employment as defined in ss. 3301 through 3311 of the Federal Unemployment Tax Act, solely by reason of s. 3306(c)(8) of the act.

Section 2: Description of Data and Sources

2016-17 Reemployment Tax data

Long-Term Revenue Analysis Fall 2017 Volume 33

North American Industrial Classification System (NAICS)

Section 3: Methodology (Include Assumptions and Attach Details)

Identified those NAICS codes most likely to include the activities that are specified in the proposed language. The template was constructed by estimating the percent of reemployment taxes paid at the 4 digit NAICS code level during State Fiscal Year 2016-17. The template is structured to provide the impact of a percentage of any given 4 digit NAICS code migrating to the Marketplace Platform/ Contractor model.

To demonstrate possible magnitudes, the analyst simulated a migration across those identified NAICS codes for the low. Where there appeared to be more activities that might be able to avail themselves of the proposed language, the percentage was set slightly higher. The low was doubled for the middle, and the middle was doubled for the high. Growth throughout the forecast period was modeled using the rate of growth in the forecast for the Reemployment tax receipts from the Long-Term Revenue Analysis - Fall 2017 Volume 33

Section 4: Proposed Fiscal Impact

	High		Middle		Low	
	Cash	Recurring	Cash	Recurring	Cash	Recurring
2018-19	(\$10.6 M)	(\$10.6 M)	(\$5.3 M)	(\$5.3 M)	(\$2.6 M)	(\$2.6 M)
2019-20	(\$10.8 M)	(\$10.8 M)	(\$5.4 M)	(\$5.4 M)	(\$2.7 M)	(\$2.7 M)
2020-21	(\$10.9 M)	(\$10.9 M)	(\$5.5 M)	(\$5.5 M)	(\$2.7 M)	(\$2.7 M)
2021-22	(\$11.1 M)	(\$11.1 M)	(\$5.6 M)	(\$5.6 M)	(\$2.8 M)	(\$2.8 M)
2022-23	(\$11.3 M)	(\$11.3 M)	(\$5.7 M)	(\$5.7 M)	(\$2.8 M)	(\$2.8 M)

List of affected Trust Funds:

Reemployment Group

Section 5: Consensus Estimate (Adopted: 03/05/2018): The Conference adopted the low estimate.

	GR		Trust		Local/Other		Total	
	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring
2018-19	0.0	0.0	0.0	0.0	(2.6)	(2.6)	(2.6)	(2.6)
2019-20	0.0	0.0	0.0	0.0	(2.7)	(2.7)	(2.7)	(2.7)
2020-21	0.0	0.0	0.0	0.0	(2.7)	(2.7)	(2.7)	(2.7)
2021-22	0.0	0.0	0.0	0.0	(2.8)	(2.8)	(2.8)	(2.8)
2022-23	0.0	0.0	0.0	0.0	(2.8)	(2.8)	(2.8)	(2.8)

Proposed Amendment- Marketplace Contractors

	A	B	C	D	E	F	G
1	rr	Reemployment tax Receipts Forecast					
2		Long Term Revenue Analysis					
3		2018-19 733.1					
4		2019-20 746.6 1.84%					
5		2020-21 759.7 1.75%					
6		2021-22 772.5 1.68%					
7		2022-23 784.8 1.59%					
8							
9							
10	Impact						
11			High	Middle	Low		
12		2018-19	\$10,564,029	\$5,282,015	\$2,641,007		
13		2019-20	\$10,758,566	\$5,379,283	\$2,689,641		
14		2020-21	\$10,947,338	\$5,473,669	\$2,736,834		
15		2021-22	\$11,131,787	\$5,565,893	\$2,782,947		
16		2022-23	\$11,309,031	\$5,654,515	\$2,827,258		

	A	B	C	D	E	F	G
1	Total Reemployment Taxes			\$733,100,000			
2							
						Assumed Percent of Taxable Activity that converts to Marketplace Platform/Contractor Model	Impact at 4 digit NAICS level
3	2 Digit Group Description	NAICS_4_ Digit	NAICS 4 Digit Description	Percent of Taxes	Implied Taxes by 4 digit NAICS		
37	Construction	2381	Foundation, Structure, and Building Exterior Contractors	0.950%	\$6,967,344	1.0%	\$69,673
38	Construction	2382	Building Equipment Contractors	2.550%	\$18,694,521	3.0%	\$560,836
39	Construction	2383	Building Finishing Contractors	0.861%	\$6,310,477	3.0%	\$189,314
40	Construction	2389	Other Specialty Trade Contractors	0.506%	\$3,711,266	3.0%	\$111,338
149	Retail Trade	4421	Furniture Stores	0.329%	\$2,408,591	3.0%	\$72,258
150	Retail Trade	4422	Home Furnishings Stores	0.145%	\$1,061,818	3.0%	\$31,855
151	Retail Trade	4431	Electronics and Appliance Stores	0.648%	\$4,748,741	3.0%	\$142,462
179	Transportation	4842	Specialized Freight Trucking	0.240%	\$1,761,423	3.0%	\$52,843
197	Transportation	4889	Other Support Activities for Transportation	0.036%	\$263,094	2.0%	\$5,262
249	Adminstrative and Support	5617	Services to Buildings and Dwellings	1.870%	\$13,708,977	10.0%	\$1,370,898
295	Other Services	8112	Electronic and Precision Equipment Repair and Maintenance	0.161%	\$1,181,363	1.0%	\$11,814
297	Other Services	8114	Personal and Household Goods Repair and Maintenance	0.102%	\$748,520	3.0%	\$22,456
317							\$2,641,007

	A	B
2	6 Digit NAICS	Description
3	238150	Glass Installation
4	238150	Window Pane or Sheet Installation
5	238150	Mirror Installation
6	238210	Audio Equipment Installation (except Automotive) Contractors
7	238210	Intercommunication (intercom) system installation
8	238210	Fiber optic cable (except transmission lines) installation
9	238210	Alarm system (e.g., fire, burglar), electric, installation only
10	238210	Telephone installation contractors
11	238210	Control system (e.g., environmental, humidity, temperature) installation
12	238210	Smoke detection system, installation only
13	238210	Environmental control system installation
14	238210	Humidity control system installation
15	238210	Computer and network cable installation
16	238210	Telecommunications equipment and wiring (except transmission line) installation contractors
17	238210	Home theater installation
18	238210	Sound equipment installation
19	238220	Water meter installation
20	238220	Solar heating equipment installation
21	238220	Lawn sprinkler system installation
22	238220	Air-conditioning system (except window) installation
23	238230	Painting (except Roof) Contractors
24	238230	House Painting
25	238230	Painting and Wallpapering
26	238290	Satellite dish, household-type, installation
27	238290	Antenna, household-type, installation
28	238290	Garage door, commercial- or industrial-type, installation
29	238290	Automatic gate (e.g., garage, parking lot) installation
30	238290	Vacuum cleaning system, built-in, installation
31	238350	Door and window, prefabricated, installation
32	238350	Window and door (residential-type) of any material, prefabricated, installation
33	238390	Window shade and blind installation
34	238390	Closet organizer system installation
35	238390	Ventilated wire shelving (i.e., closet organizing-type) installation
36	238390	Modular furniture system attachment and installation
37	484210	Van Lines, Moving and Storage Services
38	484210	Used Household and Office Goods Moving
39	484210	Furniture Moving, Used
40	488991	Preparing goods for transportation
41	488991	Packing and preparing goods for Shipping
42	561720	Residential Cleaning Services
43	561720	Cleaning Homes
44	561720	Maid services
45	561720	Venetian Blind Cleaning Services
46	561720	Housekeeping Services
47	561740	Carpet Cleaning Services
48	561740	Furniture Cleaning Services
49	811211	Television repair services without retailing new televisions
50	811490	Venetian Blind Repair Shops without retailing new Venetian blinds
51	811490	Window shade repair and maintenance shops