

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): CS/HB 7123 (codified as Chapter 2019-42, Laws of Florida)

Entire Bill

Partial Bill: (Section 15 only)

Sponsor(s): House Ways and Means Committee

Month/Year Impact Begins: May 15, 2019

Date of Analysis: June 12, 2019

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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b. Proposed Change: Section 15 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

The REC reviewed identical language during the 2018 legislative session, and the description below summarizes the data sources used at that time. EDR staff contacted representatives of the Florida Association of Counties (FAC) and Florida League of Cities (FLC) to ask if they would solicit data pertaining to the potential fiscal impact from their respective memberships. As of March 2, 2018, 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 (i.e., Miami-Dade, Broward, Palm Beach, Hillsborough, Orange, Pinellas, Lee, Polk, Brevard, Volusia, and Pasco) and municipalities (i.e., Jacksonville, Miami, Orlando, St. Petersburg, Fort Lauderdale, Pembroke Pines, Hollywood, and Miramar).

Prior to the March 5, 2018 REC, only Broward, Lee, Miami-Dade, and Polk counties had responded to the request for information. Broward, Lee, and Polk counties indicated that no such charges were imposed on pass-through providers. Miami-Dade County imposed a charge and estimated the annual loss of revenue at \$25,000. Furthermore, the cities of Orlando and Miramar responded and indicated that no charges were imposed on pass-through providers. At the March 5, 2018 REC, the Conference adopted an estimated annual fiscal impact of (\$0.4) million.

For this 2019 update, EDR staff employed a similar methodology as that used in the 2018 analysis. EDR staff surveyed the 11 counties having a 2018 population greater than 500,000 and the 22 municipalities having a 2018 population greater than 100,000. The response rate to EDR’s data request was very low. Consequently, in the analysis, EDR staff used either the reported 2019 fiscal impact or the reported 2018 fiscal impact if there was no 2019 response. For the majority of local governments surveyed, there are no response in either year.

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 is expected to be reduced by this law change. Because fewer providers would be subject to any locally-imposed, per linear mile charges, total revenue received from such charges are expected to decrease.

See the attached spreadsheet.

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Section 4: Proposed Fiscal Impact

	High		Middle		Low	
	Cash	Recurring	Cash	Recurring	Cash	Recurring
2019-20	(\$310,403)	(\$310,403)	(\$182,965)	(\$182,965)	(\$55,527)	(\$55,527)
2020-21	(\$310,403)	(\$310,403)	(\$182,965)	(\$182,965)	(\$55,527)	(\$55,527)
2021-22	(\$310,403)	(\$310,403)	(\$182,965)	(\$182,965)	(\$55,527)	(\$55,527)
2022-23	(\$310,403)	(\$310,403)	(\$182,965)	(\$182,965)	(\$55,527)	(\$55,527)
2023-24	(\$310,403)	(\$310,403)	(\$182,965)	(\$182,965)	(\$55,527)	(\$55,527)

List of Affected Trust Funds: Local funds only.

Section 5: Consensus Estimate (Adopted: 06/12/2019): The Conference adopted the high estimate.

	GR		Trust		Local/Other		Total	
	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring
2019-20	0.0	0.0	0.0	0.0	(0.3)	(0.3)	(0.3)	(0.3)
2020-21	0.0	0.0	0.0	0.0	(0.3)	(0.3)	(0.3)	(0.3)
2021-22	0.0	0.0	0.0	0.0	(0.3)	(0.3)	(0.3)	(0.3)
2022-23	0.0	0.0	0.0	0.0	(0.3)	(0.3)	(0.3)	(0.3)
2023-24	0.0	0.0	0.0	0.0	(0.3)	(0.3)	(0.3)	(0.3)

	A	B	C	D
1	Fiscal Impact Analysis of CS/HB 7123 (Section 15)			
2	Amends the Definition of Pass-Through Providers			
3				
4	County Survey Respondents	2018 Unincorporated Population	Estimated FY2017-18 Fiscal Impact	2018 or 2019 Survey Response
5	Miami-Dade	1,203,732	\$ 25,000	2018 response
6	Broward	15,120	\$ -	2018 response
7	Palm Beach	624,941		no response
8	Hillsborough	964,883		no response
9	Orange	855,307		no response
10	Pinellas	276,490	\$ -	2019 response
11	Lee	355,737	\$ -	2018 response
12	Polk	413,182	\$ -	2019 response
13	Brevard	217,902		no response
14	Volusia	116,678		no response
15	Pasco	470,721	\$ -	2019 response
16	Total Population of County Respondents	2,734,982	\$ 25,000	
17	<i>Total Population of All Counties Surveyed</i>	5,514,693		
18				
19	Municipal Survey Respondents	2018 Population	Estimated FY2017-18 Fiscal Impact	
20	Jacksonville	907,093		no response
21	Miami	481,333		no response
22	Tampa	378,531	\$ 30,000	2019 response
23	Orlando	285,099	\$ -	2018 response
24	St. Petersburg	266,076		no response
25	Hialeah	238,906		no response
26	Tallahassee	192,381	\$ 527	2019 response
27	Port St. Lucie	185,843		no response
28	Fort Lauderdale	182,827		no response
29	Cape Coral	180,204		no response
30	Pembroke Pines	165,352		no response
31	Hollywood	149,028		no response
32	Miramar	137,107	\$ -	2018 response
33	Gainesville	131,217		no response
34	Coral Springs	128,757		no response
35	Clearwater	115,589		no response
36	Miami Gardens	113,628		no response
37	West Palm Beach	112,906		no response
38	Palm Bay	112,703		no response
39	Pompano Beach	110,371		no response
40	Lakeland	105,586		no response
41	Davie	103,171		no response
42	Total Population of Municipal Respondents	993,118	\$ 30,527	
43	<i>Total Population of Municipalities Surveyed</i>	4,783,708		
44				
45	Statewide Unincorporated Population	10,283,598		
46	Statewide Incorporated Population	10,556,970		
47	Total Statewide Population	20,840,568		
48	Per Capita Fee Based on Survey Respondents	\$ 0.0149		
49				
50	Unincorporated Population of Unsurveyed Counties	7,548,616		
51	Incorporated Population of Unsurveyed Municipalities	9,563,852		
52	Total Population of Unsurveyed Local Governments	17,112,468		
53				
54	Fiscal Impact Reported by Surveyed Counties and Municipalities	\$ 55,527		
55	Fiscal Impact Extrapolated to Unsurveyed Counties and Municipalities	\$ 254,876		
56	Total Estimated Fiscal Impact	\$ 310,403		
57	Assumption: All unsurveyed local gov'ts assess the fees to the same extent as the responding local gov'ts.			
58				
59	Proposed Fiscal Impacts			
60	Low: Sum of Impacts Reported by Surveyed Local Gov'ts (see Row 54)	\$ 55,527		
61	Middle: Average of the Low and High Impacts	\$ 182,965		
62	High: Sum of Reported and Extrapolated Impacts (see Row 56)	\$ 310,403		