

Florida State University College of Law

Scholarship Repository

Staff Analyses & Legislative Documents

Florida Legislative Documents

1997

Session Law 97-233

Florida Senate & House of Representatives

Follow this and additional works at: <https://ir.law.fsu.edu/staff-analysis>



Part of the Law Commons

Recommended Citation

.

This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analyses & Legislative Documents by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.

By Senator Lee

23-811-97

A bill to be entitled

1 An act relating to the municipal public service
2 tax; providing legislative intent; amending s.
3 166.231, F.S.; providing that specified
4 governmental bodies are exempt from the tax;
5 providing that religious institutions that
6 possess sales tax exemption certificates are
7 exempt from the tax; providing that religious
8 institutions that possess sales tax exemption
9 certificates are exempt from the tax on
10 telecommunication services; providing for the
11 liability of sellers for taxes that are not
12 remitted; requiring purchasers claiming
13 exemptions to certify that they are qualified
14 therefor; creating s. 166.233, F.S.; providing
15 requirements for levy of the tax; specifying
16 effective dates; providing duties of the
17 Department of Revenue; requiring municipalities
18 to furnish certain information relating to the
19 tax to the Department of Revenue and to other
20 persons; providing for fees; providing
21 limitations on the responsibilities of sellers
22 if information is not furnished as required;
23 providing procedures that apply when more than
24 one municipality claims an address; creating s.
25 166.234, F.S.; providing procedures for audits
26 by municipalities of sellers of services;
27 prescribing record retention requirements for
28 sellers; providing time limitations on
29 assessments of taxes and on applications for
30 refunds or credits; providing for offsets of
31

1 overpayments against underpayments and for
2 refunds and credits; providing requirements
3 with respect to a determination by a
4 municipality of amounts of tax; providing
5 protest procedures and judicial remedies;
6 providing for settlement or compromise of a
7 seller's liability for taxes; providing rights
8 and duties of municipalities and sellers;
9 providing that public service tax payment dates
10 and return filing dates must conform to due
11 dates established under ch. 212, F.S.;

12 providing a schedule for application of the
13 requirements of the act; providing an
14 appropriation; providing for severability;
15 providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. The Legislature find that a taxpayer bill
20 of rights has not been prescribed for the municipal public
21 service tax in accordance with Section 25, Article I of the
22 State Constitution. It is therefore the intent of the
23 Legislature to improve the ability of municipalities and
24 sellers to administer this tax at reasonable cost, to protect
25 sellers who act in good faith, to ensure that sellers are
26 furnished the information necessary for remitting collected
27 tax proceeds to the correct municipality, and to prescribe a
28 procedural framework for the administration and auditing
29 functions. The Legislature finds that this act fulfills an
30 important state interest.

1 Section 2. Section 166.231, Florida Statutes, 1996
2 Supplement, is amended to read:

3 166.231 Municipalities; public service tax.--

4 (1)(a) A municipality may levy a tax on the purchase
5 of electricity, metered natural gas, liquefied petroleum gas
6 either metered or bottled, manufactured gas either metered or
7 bottled, and water service. The tax shall be levied only upon
8 purchases within the municipality and shall not exceed 10
9 percent of the payments received by the seller of the taxable
10 item from the purchaser for the purchase of such service.
11 Municipalities imposing a tax on the purchase of cable
12 television service as of May 4, 1977, may continue to levy
13 such tax to the extent necessary to meet all obligations to or
14 for the benefit of holders of bonds or certificates which were
15 issued prior to May 4, 1977. Purchase of electricity means
16 the purchase of electric power by a person who will consume it
17 within the municipality.

18 (b) The tax imposed by paragraph (a) shall not be
19 applied against any fuel adjustment charge, and such charge
20 shall be separately stated on each bill. The term "fuel
21 adjustment charge" means all increases in the cost of utility
22 services to the ultimate consumer resulting from an increase
23 in the cost of fuel to the utility subsequent to October 1,
24 1973.

25 (2) Services competitive with those enumerated in
26 subsection (1) or subsection (9), as defined by ordinance,
27 shall be taxed on a comparable base at the same rates.
28 However, fuel oil shall be taxed at a rate not to exceed 4
29 cents per gallon. However, for municipalities levying less
30 than the maximum rate allowable in subsection (1), the maximum
31 tax on fuel oil shall bear the same proportion to 4 cents

1 which the tax rate levied under subsection (1) bears to the
2 maximum rate allowable in subsection (1).

3 (3) A municipality may exempt from the tax imposed by
4 this section any amount up to, and including, the first 500
5 kilowatt hours of electricity purchased per month for
6 residential use. Such exemption shall apply to each separate
7 residential unit, regardless of whether such unit is on a
8 separate meter or a central meter, and shall be passed on to
9 each individual tenant.

10 (4)(a) The purchase of natural gas or fuel oil by a
11 public or private utility, either for resale or for use as
12 fuel in the generation of electricity, or the purchase of fuel
13 oil or kerosene for use as an aircraft engine fuel or
14 propellant or for use in internal combustion engines is exempt
15 from taxation hereunder.

16 (b) A municipality may exempt from the tax imposed by
17 this section the purchase of metered or bottled gas (natural
18 liquefied petroleum gas or manufactured) or fuel oil for
19 agricultural purposes. As used in this paragraph,
20 "agricultural purposes" means bona fide farming, pasture,
21 grove, or forestry operations, including horticulture,
22 floriculture, viticulture, dairy, livestock, poultry, bee, and
23 aquaculture.

24 (5) A purchase made by the United States Government,
25 by this state, or by any county, municipality, school
26 district, or public body that is exempted by law or court
27 order is exempt from the tax authorized by this section. A
28 municipality may exempt from the tax imposed by this section
29 ~~taxation-hereunder~~ the purchase of the taxable items by the
30 ~~United States Government, this state,~~ any other public body as
31 defined in s. 1.01, or by a nonprofit corporation or

1 cooperative association organized under chapter 617 which
2 provides water utility services to no more than 13,500
3 equivalent residential units, ownership of which will revert
4 to a political subdivision upon retirement of all outstanding
5 indebtedness, and shall exempt purchases by any recognized
6 church in this state for use exclusively for church purposes,
7 and shall exempt from the tax authorized in subsection (8)
8 purchases made by any religious institution that possesses a
9 consumer certificate of exemption issued under chapter 212.

10 (6) A municipality may exempt from the tax imposed by
11 this section any amount up to, and including, the total amount
12 of electricity, metered natural gas, liquefied petroleum gas
13 either metered or bottled, or manufactured gas either metered
14 or bottled purchased per month, or reduce the rate of taxation
15 on the purchase of such electricity or gas when purchased by
16 an industrial consumer which uses the electricity or gas
17 directly in industrial manufacturing, processing, compounding,
18 or a production process, at a fixed location in the
19 municipality, of items of tangible personal property for sale.
20 The municipality shall establish the requirements for
21 qualification for this exemption in the manner prescribed by
22 ordinance. Possession by a seller of a written certification
23 by the purchaser, certifying the purchaser's entitlement to an
24 exemption permitted by this subsection, relieves the seller
25 from the responsibility of collecting the tax on the
26 nontaxable amounts, and the municipality shall look solely to
27 the purchaser for recovery of such tax if it determines that
28 the purchaser was not entitled to the exemption. Any
29 municipality granting an exemption pursuant to this subsection
30 shall grant the exemption to all companies classified in the
31 same SIC Industry Major Group Number.

1 (7) The tax authorized hereunder shall be collected by
2 the seller of the taxable item from the purchaser at the time
3 of the payment for such service. The seller shall remit the
4 taxes collected to the municipality in the manner prescribed
5 by ordinance.

6 ~~(8)--A municipality shall notify in writing any known~~
7 ~~seller of items taxable hereunder of any change in the~~
8 ~~boundaries of the municipality or in the rate of taxation.~~

9 (8)(9)(a) Beginning July 1, 1995, a municipality may
10 by ordinance exempt not less than 50 percent of the tax
11 imposed under this section on purchasers of electrical energy
12 who are determined to be eligible for the exemption provided
13 by s. 212.08(15) by the Department of Revenue. The exemption
14 shall be administered as provided in that section. A copy of
15 any ordinance adopted pursuant to this subsection shall be
16 provided to the Department of Revenue not less than 14 days
17 prior to its effective date.

18 (b) If ~~in the event~~ an area that is nominated as an
19 enterprise zone pursuant to s. 290.0055 has not yet been
20 designated pursuant to s. 290.0065, a municipality may enact
21 an ordinance for such exemption; however, the ordinance shall
22 not be effective until such area designated pursuant to s.
23 290.0065.

24 (c) This subsection shall expire and be void on
25 December 31, 2005, except that any qualified business which
26 has satisfied the requirements of this subsection prior to
27 December 31, 2005, shall be allowed the full benefit of the
28 exemption allowed under this subsection as if this subsection
29 had not expired on December 31, 2005.

30
31

23-811-97

1 ~~(9)(+0)~~ A municipality may levy a tax on the purchase
2 of telecommunication services as defined in s. 203.012 as
3 follows:

4 (a)1. Only upon purchases within the municipality of
5 local telephone service as defined in s. 203.012(3) at a rate
6 not to exceed 10 percent of the monthly recurring customer
7 service charges, excluding public telephone charges collected
8 on site, access charges, and any customer access line charges
9 paid to a local telephone company; or

10 2. Only upon purchases within the municipality of
11 telecommunications service ~~that~~ which originates and
12 terminates in this state at a rate not to exceed 7 percent of
13 the total amount charged for any telecommunications service
14 the source of which is ascribed to the municipality on the
15 basis of billing address or service address as used
16 consistently by the seller, provided within the municipality
17 ~~or, if the location of the telecommunications service provided~~
18 ~~cannot be determined, the total amount billed for such~~
19 ~~telecommunications service to a telephone or telephone number,~~
20 ~~a telecommunications number or device, or a customer's billing~~
21 ~~address located within the municipality,~~ excluding public
22 telephone charges collected on site, charges for any foreign
23 exchange service or any private line service except when such
24 services are used or sold as a substitute for any telephone
25 company switched service or dedicated facility by which a
26 telephone company provides a communication path, access
27 charges, and any customer access line charges paid to a local
28 telephone company. However, telecommunications service as
29 defined in s. 203.012(5)(b) shall be taxed only on the monthly
30 recurring customer service charges excluding variable usage
31 charges.

1 (b) For the purpose of compensating the seller, the
2 seller shall be allowed 1 percent of the amount of the tax
3 collected and due to the municipality in the form of a
4 deduction from the amount collected for remittance. The
5 deduction shall be allowed as compensation for the keeping of
6 records and for the collection of, and the remitting of, the
7 tax.

8 ~~(c) -- A municipality shall elect by ordinance the tax~~
9 ~~specified in subparagraph (a)4 or subparagraph (a)27, and any~~
10 ~~such election shall not be changed until after the expiration~~
11 ~~of at least 12 months after the effective date of the~~
12 ~~ordinance levying the tax specified in such subparagraph. -- A~~
13 ~~municipality shall notify the companies responsible for~~
14 ~~collecting such tax at least 120 days prior to such change of~~
15 ~~election.~~

16 ~~(d) -- A municipality electing by ordinance the tax~~
17 ~~specified in subparagraph (a)27 shall provide to a~~
18 ~~telecommunications service provider who is responsible for~~
19 ~~collecting the tax, upon its request, a printed alphabetical~~
20 ~~listing of all street names including block numbers and street~~
21 ~~numbers for streets which cross or form municipal boundaries~~
22 ~~within the municipality for use by the provider of the~~
23 ~~telecommunications service in calculating the proper amount of~~
24 ~~tax payable to the municipality. -- The municipality shall be~~
25 ~~responsible for updating this listing as changes occur and for~~
26 ~~providing this information to the telecommunications service~~
27 ~~provider. -- The provider, in turn, shall be responsible for~~
28 ~~charging the tax only to service and billing addresses~~
29 ~~contained in this listing. -- The municipality shall be entitled~~
30 ~~to collect a fee not to exceed the actual cost of providing~~

31

23-811-97

1 ~~the information to the telecommunications service provider~~
2 ~~requesting it.~~

3 ~~(c)(e)~~ A municipality may audit the records of any
4 provider of telecommunications service taxable by the such
5 municipality under s. 166.234, ~~each such provider shall~~
6 ~~provide to the municipality, upon 60 days' notice, access to~~
7 ~~all applicable records for such telecommunications service.~~
8 ~~In an audit, the telecommunications service provider shall be~~
9 ~~liable only for its taxable accounts collected corresponding~~
10 ~~to the information provided to it by the municipality.~~
11 However, any information received by the municipality or its
12 agent in connection with such audit is confidential and exempt
13 from the provisions of s. 119.07(1).

14 ~~(d)(f)~~1. If the sale of a taxable telecommunication
15 service also involves the sale of an exempt cable television
16 service, the tax shall be applied to the value of the taxable
17 service when it is sold separately.

18 2. If the company does not offer this service
19 separately, the consideration paid shall be separately
20 identified and stated with respect to the taxable and exempt
21 portions of the transaction as a condition of the exemption.

22 3. The amounts identified as taxable in subparagraph
23 2. shall not be less than the statewide average tariff rates
24 set forth by the local exchange telecommunications companies
25 in the tariffs filed with the Public Service Commission on
26 January 1, 1995, and on January 1 of each year thereafter for
27 the equivalent services subject to this section. The Public
28 Service Commission shall publish the statewide average tariff
29 rates annually, beginning on January 1, 1996.

30 4. If the total amount of municipal utility tax
31 collected by a municipality or charter county from

1 telecommunication services pursuant to this subsection for the
2 period of July 1, 1995, to June 30, 1996, is less than the
3 amount collected for the period July 1, 1994, to June 30,
4 1995, the municipality or charter county shall assess each
5 company that remits such tax a pro rata share of the
6 shortfall. The shortfall shall be prorated based on the
7 amount of tax remitted by each company for the period July 1,
8 1995, to June 30, 1996, and the total amount of tax remitted
9 for the same period. By September 1, 1996, the municipality
10 or charter county shall certify to each company the amount of
11 additional tax owed and the tax shall be remitted to the
12 municipality or charter county by October 1, 1996. Provided,
13 however, that this assessment may only be imposed if, in
14 addition to the conditions above, a municipality or charter
15 county has levied the applicable maximum tax rate allowed
16 under this paragraph during the period July 1, 1995, and June
17 30, 1996, and has not switched between the two options allowed
18 under subparagraph ~~f~~1. or subparagraph ~~f~~2. during the
19 period July 1, 1995, and June 30, 1996.

20 (e) Purchases of local telephone service or other
21 telecommunications service for use in the conduct of a
22 telecommunications service for hire or otherwise for resale
23 are exempt from the tax imposed by this subsection.

24 (9) A purchaser who claims an exemption under
25 subsection (4), subsection (5), or paragraph (8)(e) shall
26 certify to the seller that he or she qualifies for the
27 exemption, which certification may encompass all purchases
28 after a specified date or other multiple purchases. For
29 purchases made under paragraph (8)(e) which are exempted upon
30 the presentation of a certificate from the tax imposed by
31 chapter 212, the certification required by this subsection may

1 be satisfied by presentation of a certificate that satisfies
2 the requirements of chapter 212. A seller accepting the
3 certification required by this subsection is relieved of the
4 obligation to collect and remit tax; however, a governmental
5 body that is exempt from the tax authorized by this section
6 may not be required to furnish such certification, and a
7 seller is not required to collect tax from such an exempt
8 governmental body.

9 Section 3. Section 166.233, Florida Statutes, is
10 created to read:

11 166.233 Public service tax; effective dates;
12 procedures for informing sellers of tax levies and related
13 information.--

14 (1) As used in this section, ss. 166.231, 166.232, and
15 166.234, the term:

16 (a) "Address database" means a database created by the
17 department from information provided by the municipalities as
18 prescribed in paragraphs (4)(a)-(c).

19 (b) "Department" means the Department of Revenue or
20 its designated agent.

21 (c) "Effective date" with respect to any levy, repeal
22 of a levy, or update to a list required under this section
23 means the effective date of the related obligation or change
24 in the obligation of sellers to collect the tax; however, with
25 respect to taxable service that is regularly billed on a
26 monthly cycle basis, each levy, repeal, or update applies to
27 any bill dated on or after the effective date of such event.

28 (d) "Levy" means and includes the imposition of a tax
29 under s. 166.231 or s. 166.232, all changes in the rate of a
30 tax imposed under either of those sections, and all changes of
31 election under s. 166.231(8)(a).

1 (e) "Seller" means a person who sells a service that
2 is subject to a levy.

3 (2)(a) A tax levy must be adopted by ordinance, and
4 the effective date of every levy or repeal thereof must be a
5 subsequent January 1 or July 1. A municipality shall notify
6 the department of the adoption or repeal of a levy at least
7 120 days before the effective date thereof. Such notification
8 must be furnished in a manner prescribed by the department and
9 must specify the services taxed under s. 166.231 or s.
10 166.232, including any election under s. 166.231(8)(a), the
11 rate of tax applied to each service, the effective date of the
12 levy or repeal thereof, and the name, mailing address, and
13 telephone number of a person designated by the municipality to
14 respond to inquiries concerning the tax. In addition, the
15 municipality shall furnish the department address information
16 as required under subsections (4) and (5). The department
17 shall maintain this information for the purposes of seller
18 notification, database maintenance, and responses to inquiries
19 with respect thereto. Any person may request, in writing, such
20 information from the department. For purposes of this section,
21 a response to such a person is timely if in writing and dated
22 no later than 20 days after the receipt of the request. The
23 department has no liability for any loss of or decrease in
24 revenue by reason of any error, omission, or untimely action
25 that results in the nonpayment of the tax imposed by ss.
26 166.231 and 166.232. The provisions of this paragraph which
27 prescribe effective dates and require municipalities to
28 furnish notifications and address information to the
29 department do not apply to taxes levied on service, other than
30 telecommunication service, provided by the municipality
31

1 levying the tax or by a separate utility authority, board, or
2 commission of the municipality.

3 (b) The department may contract with a private entity
4 to maintain and furnish to sellers the information described
5 in paragraph (a).

6 (3) A municipality shall provide to any person, within
7 10 days following receipt of the person's written request, a
8 copy of the ordinance adopting any levy and all amendments
9 thereto.

10 (4) The address database must be available to sellers
11 electronically at no charge. The address database, or portions
12 thereof, must be available in another medium, and the
13 department shall publish the types of media on which the
14 address database described in this subsection are available,
15 the charges, if any, for supplying the information in each
16 available medium, and the address to which a request for such
17 information should be transmitted. Within 20 days after its
18 receipt of a written request for such information, accompanied
19 by payment of the cost, if any, the department must transmit
20 the information to the person who has requested it.

21 (5) For each municipality, the address database must
22 contain:

23 (a) For all street addresses located within the
24 municipality, each street name, including street name aliases,
25 street address number ranges, leading or trailing
26 directionals, all city names, and zip codes associated with
27 each street name, as approved by the United States Postal
28 Service for the delivery of mail. For a range of street
29 address numbers located within a municipality which consists
30 only of odd or even street numbers, the address database must
31

23-811-97

1 specify whether the street numbers in the range are odd or
2 even;

3 (b) Each postal zip code and all the city names
4 associated therewith, as approved by the United States Postal
5 Service for the delivery of mail, for all zip codes assigned
6 to geographic areas located entirely within the municipality,
7 including zip codes assigned to post office boxes; and

8 (c) All post office box number ranges and the city
9 names and zip codes associated therewith, as approved by the
10 United States Postal Service for the delivery of mail, for all
11 post office boxes located within the municipality, except that
12 post office boxes with postal zip codes entirely within the
13 municipality which are included on the list furnished under
14 paragraph (b) need not be duplicated.

15
16 The information required under this section must include the
17 effective date of any changes. Changes in the format of an
18 address necessitate the creation of a new address record,
19 except that, if there is a change in zip code only, the
20 original address record must be modified to include the new
21 zip code with a new effective date and, in addition, the
22 previous zip code with its corresponding effective date.
23 Historical data must be maintained in the address database for
24 a period of 7 years. The address database must separately
25 identify the additions, deletions, and other changes to the
26 preceding version of the address database. The seller is
27 responsible for charging the tax only to service and billing
28 addresses listed in the database.

29 (6) Each municipality shall provide this information
30 to the department in a format prescribed by the department.
31 The municipality shall provide updates to the address database

1 at least 120 days before the January 1 or July 1 on which the
2 database becomes effective. The department shall update the
3 database no later than 90 days before the January 1 or July 1
4 on which the changes are effective. Any changes to the address
5 database which are made less than 90 days before January 1 or
6 July 1 become effective on the following July 1 or January 1,
7 respectively.

8 (7) The obligation of a seller to collect and remit
9 the tax for any municipality is conditioned upon the timely
10 availability to the seller of accurate information as
11 described in subsections (2)-(6) in the manner prescribed in
12 those subsections. For purposes of determining the timeliness
13 of such information, the date of a request, response, update,
14 or other transmittal is the date received. If any such
15 information is not timely furnished to a seller, any related
16 obligation to collect and remit tax is suspended during the
17 period of delay, except that:

18 (a) If a request for information described in
19 subsections (2)-(6) precedes the date on which the department
20 is required to update the address database as prescribed in
21 subsection (6), the lack of a timely response to the request
22 does not affect the seller's obligation to collect and remit
23 tax for that municipality.

24 (b) If a seller is collecting and remitting tax on a
25 taxable service from customers within a municipality as of the
26 date of any request for information under subsections (2)-(6),
27 the lack of a timely response to the request does not affect
28 the seller's obligation to continue collecting and remitting
29 the tax levied on the same service from the same customers.

30 (c) If a failure to furnish timely information under
31 subsections (2)-(6) causes a delay in a seller's receipt of a

1 list or update required by subsections (2), (4), (5), and (6)
2 to a date less than 90 days before the effective date of a
3 levy or update, the obligation to collect and remit tax
4 pursuant to the revised levy may not commence until the next
5 subsequent January 1 or July 1.

6 (8) If it is determined from lists or updates
7 furnished under subsection (6) that more than one municipality
8 claims the same address or group of addresses, the department
9 shall notify the municipalities affected within 30 days after
10 receipt of the duplicative information. Upon resolution of the
11 competing claims, the affected municipalities shall furnish
12 the department with a signed agreement describing the
13 resolution. The department shall update the address database
14 pursuant to the agreement as of the next ensuing January 1 or
15 July 1 that is at least 120 days after its receipt of the
16 signed agreement. The seller has no liability to any affected
17 municipality for amounts not collected and remitted before the
18 agreement was implemented, except to the extent that the
19 seller's previous tax treatment was confirmed as correct in
20 the agreement.

21 (9) By submitting a written request and the relevant
22 formatting information, municipalities can elect to have the
23 address information formatted to the United States Postal
24 Service database for the delivery of mail by the department.
25 The department shall notify the municipalities within 30 days
26 of any address that cannot be matched to the postal database
27 so that the municipality may investigate the problem. The
28 department shall update the database once the address is
29 properly identified and formatted in accordance with the
30 postal database. The effective date for such addresses is the
31

23-811-97

1 next ensuing January 1 or July 1 that is at least 90 days
2 after the department updates its database.

3 Section 4. Section 166.234, Florida Statutes, is
4 created to read:

5 166.234 Public service tax; administrative provisions;
6 rights and remedies.--

7 (1) A municipality may, during the seller's normal
8 business hours at the official location of the seller's books
9 and records, audit the records of any seller of a service that
10 is taxable by the municipality under s. 166.231 or s. 166.232,
11 for the purpose of ascertaining the correctness of any return
12 that has been filed or payment that has been made, if the
13 municipality's power to assess tax or grant a refund is not
14 barred by the applicable limitations period. Each such seller
15 must provide to the municipality, upon 60 days' written
16 notice, access to applicable records for such service, except
17 that extensions of this 60-day period must be granted if
18 reasonably requested by the seller. If either the municipality
19 or the seller requires an additional extension, it must give
20 notice to the other no less than 30 days before the existing
21 extension expires, except in cases of bona fide emergency or
22 waiver of the notice requirement by the other party. In an
23 audit, the seller is liable only for its taxable accounts
24 collected which correspond to the information provided to it
25 by the department under s. 166.233. As used in this section,
26 the term "applicable records" means records kept in the
27 ordinary course of business which establish the collection and
28 remittance of taxes due. A municipality may not charge any
29 seller for costs or expenses associated with an audit. An
30 employee or agent of a municipality may not be paid,

31

1 evaluated, or promoted on the basis of the amount of taxes
2 assessed or tax proceeds collected from sellers.

3 (2) Each seller of services that are taxable under s.
4 166.231 or s. 166.232 shall preserve applicable records
5 relating to such taxes until the expiration of the time within
6 which the municipality may make an assessment with respect to
7 that tax; however, a seller is not required to retain
8 duplicative or redundant records.

9 (3) Before auditing a seller under subsection (1), the
10 municipality shall, upon request of the seller, discuss with
11 the seller the municipality's proposed audit methodology. The
12 municipality shall prepare and furnish to the seller a report
13 of each audit which identifies the nature of any deficiency or
14 overpayment, the amount thereof, and the manner in which the
15 amount was computed. In addition, the municipality, upon
16 request and no less than 45 days before issuing a
17 determination under subsection (7), shall furnish the seller
18 with all other information or material in possession of the
19 municipality or its agents which is necessary to supplement
20 the audit findings, including any computer program or software
21 that pertains to or was used in the conduct of the audit and
22 the computation of the deficiency or overpayment. However, if
23 the identical computer program or software that was used in
24 conducting the audit is nontransferrable, the municipality
25 must furnish the seller with sufficient information to enable
26 the seller to procure such program or software.

27 (4) A municipality may issue a proposed assessment of
28 tax levied under s. 166.231 or s. 166.232 within 3 years after
29 the date the tax was due. A seller may apply to a municipality
30 for refund of, or may take a credit for, any overpayment of
31 such tax thereon within 3 years following remittance by the

1 seller, and the municipality must refund or allow the seller
2 credit for such overpayments as were remitted to the
3 municipality. Upon expiration of these 3-year periods, the
4 municipality's right to assess tax and the seller's right to
5 apply for a refund or credit expire and are barred, unless
6 fraud has occurred; however, sellers and municipalities may
7 enter into agreements to extend these periods.

8 (5) Notwithstanding subsection (4), a municipality
9 shall offset a seller's overpayment of any tax revealed by an
10 audit against any deficiency of such tax which is determined
11 to be due for the same audit period, and such offsets must be
12 reflected in any proposed assessment of tax. If the
13 overpayments by the seller exceed the deficiency, the
14 municipality must refund to the seller the amount by which the
15 aggregate overpayments exceed the total deficiency. Absent
16 proof to the contrary, the methodology that is employed in
17 computing the amount of a deficiency is presumed to yield an
18 appropriate computation of the amount of any overpayments. As
19 used in subsection (4) and this subsection, the term
20 "overpayment" to a municipality means and includes all
21 remittances of public service tax which were not owed to the
22 municipality, including amounts properly collected but
23 remitted to the incorrect municipality, except that the term
24 does not include remittances of amounts collected in error.

25 (6) Any purchaser of a service may request from a
26 seller a refund of, or credit for, taxes collected from the
27 purchaser upon the ground that the amounts collected were not
28 due to any municipality. The seller shall issue the refund or
29 allow a credit to the purchaser entitled thereto, if the
30 request is made within 3 years following collection of the tax
31 from the purchaser. In any event, a seller shall issue a

1 refund or credit to a purchaser following the seller's
2 determination that taxes collected from that purchaser within
3 the preceding 3 years were not due to any municipality.

4 (7) Any proposed assessment or finding of amounts due
5 the seller constitutes a determination of the municipality for
6 purposes of this section. A determination must separately
7 state the amounts of tax claimed to be due or to be refunded,
8 must be accompanied by a written narrative explanation of the
9 basis for the municipality's determinations, must inform the
10 seller of the remedies available to it if it disagrees with
11 any such determination, and must state the consequences of the
12 seller's failure to comply with any demand of the municipality
13 which is stated in the determination.

14 (8) A seller may file with the municipality a written
15 protest of any determination within 60 days after the
16 determination is issued. The municipality must consider the
17 protest and must, within 60 days, issue a written notice of
18 decision to the seller. The seller may petition the
19 municipality for reconsideration of a notice of decision
20 within 30 days after the issuance of the notice, and,
21 following reconsideration of such a petition, the municipality
22 must, within 30 days, issue a written notice of
23 reconsideration to the seller.

24 (9) A determination becomes final 60 days after the
25 date of issuance, unless the seller, before the 60-day period
26 expires, has filed a protest or secured a written extension of
27 time within which to file a protest. If the seller has secured
28 a written extension of time and fails to file a protest within
29 the extended time period, the proposed assessment becomes a
30 final assessment at the expiration of the extended filing
31 period. If a protest is timely filed and the seller and the

1 municipality are unable to resolve the disputed issues, the
2 determination becomes final as of the date of issuance of the
3 notice of decision, unless the seller timely files a petition
4 for reconsideration. If a petition for reconsideration is
5 timely filed, the determination becomes final upon issuance of
6 a notice of reconsideration.

7 (10) A notice of decision or a notice of
8 reconsideration must address each issue raised in the protest
9 or petition, must explain the reasoning underlying the
10 conclusions reached, and must advise the seller of the
11 remedies available to it if it disagrees with the
12 municipality's disposition of the issues.

13 (11) A seller may contest the legality of any
14 determination by filing an action in circuit court within 60
15 days after the date the determination becomes final. However,
16 in any action filed in circuit court to contest the legality
17 of any tax assessed under this section, the plaintiff must pay
18 the municipality the amount of the tax which is not being
19 contested by the seller. Venue lies in the county where the
20 municipality is located. The defendant in any such action is
21 the municipality.

22 (12) A seller's failure to protest a determination
23 under this section administratively or judicially does not
24 wave or impair the seller's right to seek refund of any
25 overpayment within the time allowed under subsection (4).

26 (13) A seller's liability for any tax may be settled
27 or compromised by the municipality upon the grounds of doubt
28 as to liability or doubt as to the collectibility of the tax.
29 In addition, municipalities may enter into settlements
30 prescribing the future tax treatment of specified
31 transactions. A municipality and a seller may enter into a

316-1936-97

1 A bill to be entitled

2 An act relating to the municipal public service
3 tax; providing legislative intent; amending s.
4 166.231, F.S.; providing that specified
5 governmental bodies are exempt from the tax;
6 exempting certain religious institutions from
7 the tax on telecommunication services; revising
8 provisions relating to determination of the
9 situs of telecommunication services; providing
10 requirements for returns and remittance of the
11 tax on telecommunication services; requiring
12 certain purchasers claiming exemptions to
13 certify that they are qualified therefor;
14 requiring governmental bodies that sell taxable
15 services to nonexempt users to collect and
16 remit the tax; creating s. 166.233, F.S.;
17 providing requirements for levy of the tax;
18 specifying effective dates; providing duties of
19 the Department of Revenue; requiring
20 municipalities to furnish certain information
21 relating to the tax to the Department of
22 Revenue and to other persons; providing for
23 fees; providing limitations on the
24 responsibilities of sellers if information is
25 not furnished as required; providing procedures
26 that apply when more than one municipality
27 claims an address or when information does not
28 conform to the seller's address records;
29 creating s. 166.234, F.S.; providing procedures
30 for audits of sellers by municipalities;
31 prohibiting contingent fee audits; prescribing

1 record retention requirements for sellers;
2 providing time limitations on assessments of
3 taxes and on applications for refunds or
4 credits; providing for offsets of overpayments
5 against underpayments and for refunds and
6 credits; authorizing municipalities to assess
7 interest and penalties; providing requirements
8 with respect to a determination by a
9 municipality of amounts of tax; providing
10 protest procedures and judicial remedies;
11 providing for settlement or compromise of a
12 seller's liability for taxes; providing for
13 interest on refunds if a law is enacted
14 requiring interest on sales or gross receipts
15 tax refunds; providing rights and duties of
16 municipalities and sellers; providing for
17 communications between municipalities with
18 respect to specified matters relating to audits
19 and the identities of sellers; prescribing the
20 circumstances for assessment of audit expenses
21 against a seller; providing a schedule for
22 application of the requirements of the act;
23 providing an appropriation; providing for
24 severability; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. It is the intent of the Legislature to
29 improve the ability of municipalities and sellers to
30 administer the municipal public service tax at reasonable
31 cost, to protect sellers who act in good faith, to improve the

1 information furnished to sellers to facilitate remitting
2 collected tax proceeds to the correct municipality, and to
3 prescribe a procedural framework for administration and
4 auditing functions. The Legislature finds that this act
5 fulfills an important state interest.

6 Section 2. Section 166.231, Florida Statutes, 1996
7 Supplement, is amended to read:

8 166.231 Municipalities; public service tax.--

9 (1)(a) A municipality may levy a tax on the purchase
10 of electricity, metered natural gas, liquefied petroleum gas
11 either metered or bottled, manufactured gas either metered or
12 bottled, and water service. The tax shall be levied only upon
13 purchases within the municipality and shall not exceed 10
14 percent of the payments received by the seller of the taxable
15 item from the purchaser for the purchase of such service.
16 Municipalities imposing a tax on the purchase of cable
17 television service as of May 4, 1977, may continue to levy
18 such tax to the extent necessary to meet all obligations to or
19 for the benefit of holders of bonds or certificates which were
20 issued prior to May 4, 1977. Purchase of electricity means
21 the purchase of electric power by a person who will consume it
22 within the municipality.

23 (b) The tax imposed by paragraph (a) shall not be
24 applied against any fuel adjustment charge, and such charge
25 shall be separately stated on each bill. The term "fuel
26 adjustment charge" means all increases in the cost of utility
27 services to the ultimate consumer resulting from an increase
28 in the cost of fuel to the utility subsequent to October 1,
29 1973.

30 (2) Services competitive with those enumerated in
31 subsection (1) or subsection (9), as defined by ordinance,

1 shall be taxed on a comparable base at the same rates.
2 However, fuel oil shall be taxed at a rate not to exceed 4
3 cents per gallon. However, for municipalities levying less
4 than the maximum rate allowable in subsection (1), the maximum
5 tax on fuel oil shall bear the same proportion to 4 cents
6 which the tax rate levied under subsection (1) bears to the
7 maximum rate allowable in subsection (1).

8 (3) A municipality may exempt from the tax imposed by
9 this section any amount up to, and including, the first 500
10 kilowatt hours of electricity purchased per month for
11 residential use. Such exemption shall apply to each separate
12 residential unit, regardless of whether such unit is on a
13 separate meter or a central meter, and shall be passed on to
14 each individual tenant.

15 (4)(a) The purchase of natural gas or fuel oil by a
16 public or private utility, either for resale or for use as
17 fuel in the generation of electricity, or the purchase of fuel
18 oil or kerosene for use as an aircraft engine fuel or
19 propellant or for use in internal combustion engines is exempt
20 from taxation hereunder.

21 (b) A municipality may exempt from the tax imposed by
22 this section the purchase of metered or bottled gas (natural
23 liquefied petroleum gas or manufactured) or fuel oil for
24 agricultural purposes. As used in this paragraph,
25 "agricultural purposes" means bona fide farming, pasture,
26 grove, or forestry operations, including horticulture,
27 floriculture, viticulture, dairy, livestock, poultry, bee, and
28 aquaculture.

29 (5) Purchases by the United States Government, this
30 state, and all counties, school districts, and municipalities
31 of the state, and by public bodies exempted by law or court

1 order, are exempt from the tax authorized by this section. A
2 municipality may exempt from the tax imposed by this section
3 taxation-hereunder the purchase of the taxable items by the
4 United-States-Government, this-state, any other public body as
5 defined in s. 1.01, or by a nonprofit corporation or
6 cooperative association organized under chapter 617 which
7 provides water utility services to no more than 13,500
8 equivalent residential units, ownership of which will revert
9 to a political subdivision upon retirement of all outstanding
10 indebtedness, and shall exempt purchases by any recognized
11 church in this state for use exclusively for church purposes,
12 and shall exempt from the tax authorized by subsection (9)
13 purchases made by any religious institution that possesses a
14 consumer certificate of exemption issued under chapter 212.

15 (6) A municipality may exempt from the tax imposed by
16 this section any amount up to, and including, the total amount
17 of electricity, metered natural gas, liquefied petroleum gas
18 either metered or bottled, or manufactured gas either metered
19 or bottled purchased per month, or reduce the rate of taxation
20 on the purchase of such electricity or gas when purchased by
21 an industrial consumer which uses the electricity or gas
22 directly in industrial manufacturing, processing, compounding,
23 or a production process, at a fixed location in the
24 municipality, of items of tangible personal property for sale.
25 The municipality shall establish the requirements for
26 qualification for this exemption in the manner prescribed by
27 ordinance. Possession by a seller of a written certification
28 by the purchaser, certifying the purchaser's entitlement to an
29 exemption permitted by this subsection, relieves the seller
30 from the responsibility of collecting the tax on the
31 nontaxable amounts, and the municipality shall look solely to

1 the purchaser for recovery of such tax if it determines that
2 the purchaser was not entitled to the exemption. Any
3 municipality granting an exemption pursuant to this subsection
4 shall grant the exemption to all companies classified in the
5 same SIC Industry Major Group Number.

6 (7) The tax authorized hereunder shall be collected by
7 the seller of the taxable item from the purchaser at the time
8 of the payment for such service. The seller shall remit the
9 taxes collected to the municipality in the manner prescribed
10 by ordinance, except that remittance of taxes by sellers of
11 telecommunication services shall be governed by paragraph
12 (9)(f). Except as otherwise provided in ss. 166.233 and
13 166.234, the seller shall be liable for taxes that are due and
14 not remitted to the municipality. This shall not bar the
15 seller from recovering such taxes from purchasers.

16 ~~(8) A municipality shall notify in writing any known~~
17 ~~seller of items taxable hereunder of any change in the~~
18 ~~boundaries of the municipality or in the rate of taxation.~~

19 (8)(9)(a) Beginning July 1, 1995, a municipality may
20 by ordinance exempt not less than 50 percent of the tax
21 imposed under this section on purchasers of electrical energy
22 who are determined to be eligible for the exemption provided
23 by s. 212.08(15) by the Department of Revenue. The exemption
24 shall be administered as provided in that section. A copy of
25 any ordinance adopted pursuant to this subsection shall be
26 provided to the Department of Revenue not less than 14 days
27 prior to its effective date.

28 (b) ~~If in the event~~ an area that is nominated as an
29 enterprise zone pursuant to s. 290.0055 has not yet been
30 designated pursuant to s. 290.0065, a municipality may enact
31 an ordinance for such exemption; however, the ordinance shall

1 not be effective until such area designated pursuant to s.
2 290.0065.

3 (c) This subsection shall expire and be void on
4 December 31, 2005, except that any qualified business which
5 has satisfied the requirements of this subsection prior to
6 December 31, 2005, shall be allowed the full benefit of the
7 exemption allowed under this subsection as if this subsection
8 had not expired on December 31, 2005.

9 ~~(9)~~ A municipality may levy a tax on the purchase
10 of telecommunication services as defined in s. 203.012 as
11 follows:

12 (a)1. Only upon purchases within the municipality of
13 local telephone service as defined in s. 203.012(3) at a rate
14 not to exceed 10 percent of the monthly recurring customer
15 service charges, excluding public telephone charges collected
16 on site, access charges, and any customer access line charges
17 paid to a local telephone company; or

18 2. Only upon purchases within the municipality of
19 telecommunications service that which originates and
20 terminates in this state at a rate not to exceed 7 percent of
21 the total amount charged for any telecommunications service
22 provided within the municipality or, if the location of the
23 telecommunications service provided cannot be determined as
24 part of the billing process, the total amount billed for such
25 telecommunications service to a telephone or telephone number,
26 a telecommunications number or device, a service address, or a
27 customers' billing address located within the municipality,
28 excluding public telephone charges collected on site, charges
29 for any foreign exchange service or any private line service
30 except when such services are used or sold as a substitute for
31 any telephone company switched service or dedicated facility

1 by which a telephone company provides a communication path,
2 access charges, and any customer access line charges paid to a
3 local telephone company. However, telecommunications service
4 as defined in s. 203.012(5)(b) shall be taxed only on the
5 monthly recurring customer service charges excluding variable
6 usage charges.

7 (b) For the purpose of compensating the seller, the
8 seller shall be allowed 1 percent of the amount of the tax
9 collected and due to the municipality in the form of a
10 deduction from the amount collected for remittance. The
11 deduction shall be allowed as compensation for the keeping of
12 records and for the collection of, and the remitting of, the
13 tax.

14 ~~(c)--A municipality shall elect by ordinance the tax~~
15 ~~specified in subparagraph (a)1, or subparagraph (a)2, 7 and any~~
16 ~~such election shall not be changed until after the expiration~~
17 ~~of at least 12 months after the effective date of the~~
18 ~~ordinance levying the tax specified in such subparagraph.--A~~
19 ~~municipality shall notify the companies responsible for~~
20 ~~collecting such tax at least 120 days prior to such change of~~
21 ~~election.~~

22 ~~(d)--A municipality electing by ordinance the tax~~
23 ~~specified in subparagraph (a)2, shall provide to a~~
24 ~~telecommunications service provider who is responsible for~~
25 ~~collecting the tax, upon its request, a printed alphabetical~~
26 ~~listing of all street names including block numbers and street~~
27 ~~numbers for streets which cross or form municipal boundaries~~
28 ~~within the municipality for use by the provider of the~~
29 ~~telecommunications service in calculating the proper amount of~~
30 ~~tax payable to the municipality.--The municipality shall be~~
31 ~~responsible for updating this listing as changes occur and for~~

1 ~~providing this information to the telecommunications service~~
2 ~~provider. The provider, in turn, shall be responsible for~~
3 ~~charging the tax only to service and billing addresses~~
4 ~~contained in this listing. The municipality shall be entitled~~
5 ~~to collect a fee not to exceed the actual cost of providing~~
6 ~~the information to the telecommunications service provider~~
7 ~~requesting it.~~

8 (c)(e) A municipality may audit the records of any
9 provider of telecommunications service taxable by the such
10 municipality under s. 166.234.7 ~~each such provider shall~~
11 ~~provide to the municipality, upon 60 days' notice, access to~~
12 ~~all applicable records for such telecommunications service.~~
13 ~~In an audit, the telecommunications service provider shall be~~
14 ~~liable only for its taxable accounts collected corresponding~~
15 ~~to the information provided to it by the municipality.~~
16 However, any information received by the municipality or its
17 agent in connection with such audit is confidential and exempt
18 from the provisions of s. 119.07(1).

19 (d)(f)1. If the sale of a taxable telecommunication
20 service also involves the sale of an exempt cable television
21 service, the tax shall be applied to the value of the taxable
22 service when it is sold separately.

23 2. If the company does not offer this service
24 separately, the consideration paid shall be separately
25 identified and stated with respect to the taxable and exempt
26 portions of the transaction as a condition of the exemption.

27 3. The amounts identified as taxable in subparagraph
28 2. shall not be less than the statewide average tariff rates
29 set forth by the local exchange telecommunications companies
30 in the tariffs filed with the Public Service Commission on
31 January 1, 1995, and on January 1 of each year thereafter for

1 the equivalent services subject to this section. The Public
2 Service Commission shall publish the statewide average tariff
3 rates annually, beginning on January 1, 1996.

4 4. If the total amount of municipal utility tax
5 collected by a municipality or charter county from
6 telecommunication services pursuant to this subsection for the
7 period of July 1, 1995, to June 30, 1996, is less than the
8 amount collected for the period July 1, 1994, to June 30,
9 1995, the municipality or charter county shall assess each
10 company that remits such tax a pro rata share of the
11 shortfall. The shortfall shall be prorated based on the
12 amount of tax remitted by each company for the period July 1,
13 1995, to June 30, 1996, and the total amount of tax remitted
14 for the same period. By September 1, 1996, the municipality
15 or charter county shall certify to each company the amount of
16 additional tax owed and the tax shall be remitted to the
17 municipality or charter county by October 1, 1996. Provided,
18 however, that this assessment may only be imposed if, in
19 addition to the conditions above, a municipality or charter
20 county has levied the applicable maximum tax rate allowed
21 under this paragraph during the period July 1, 1995, and June
22 30, 1996, and has not switched between the two options allowed
23 under subparagraph ~~(f)~~1. or subparagraph ~~(f)~~2. during the
24 period July 1, 1995, and June 30, 1996.

25 ~~(e)~~ Purchases of local telephone service or other
26 telecommunications service for use in the conduct of a
27 telecommunications service for hire or otherwise for resale
28 are exempt from the tax imposed by this subsection.

29 ~~(f)~~ A seller of services that are subject to the tax
30 imposed by a municipality under this subsection shall file a
31 return with the municipality each month. The form of the

1 return shall be determined by the seller, and the return shall
2 be deemed sufficient if it identifies the name and address of
3 the seller, the period of the return, the amount collected
4 from the sale of taxable services, any collection allowance
5 taken, the amount of tax remitted with the return, and the
6 name and telephone number of a person authorized by the seller
7 to respond to inquiries from municipalities concerning the
8 seller's administration of the tax. A municipality may not
9 require any return or payment of public service tax other than
10 on a date when returns and payments of tax are required under
11 chapter 212. However, a municipality may grant an extension of
12 the due date for a return or payment upon written request from
13 the seller. The deduction authorized by paragraph (b) shall
14 not be allowed in the event of an untimely return, unless the
15 seller has in writing requested and been granted an extension
16 of time for filing such return. Extensions of time shall be
17 granted if reasonable cause is shown, whether requested before
18 or after the due date of the return.

19 (g) Notwithstanding any other provision of this
20 section, in the event the total amount of tax anticipated to
21 be collected within a calendar quarter does not exceed \$120,
22 the seller of such service may, with the written authorization
23 of the municipality, remit the taxes collected during such
24 calendar quarter to the municipality quarterly. In such case,
25 the tax shall be due on or before the 20th day of the month
26 following the end of the calendar quarter in which the taxes
27 were collected.

28 (10) A purchaser who claims an exemption under
29 subsection (4), subsection (5), or paragraph (9)(e) shall
30 certify to the seller that he or she qualifies for the
31 exemption, which certification may encompass all purchases

1 after a specified date or other multiple purchases. For
2 purchases made under paragraph (9)(e) which are exempted, upon
3 the presentation of a certificate, from the tax imposed by
4 chapter 212, the certification required by this subsection may
5 be satisfied by presentation of a certificate that satisfies
6 the requirements of chapter 212. A seller accepting the
7 certification required by this subsection is relieved of the
8 obligation to collect and remit tax; however, a governmental
9 body that is exempt from the tax authorized by this section
10 shall not be required to furnish such certification, and a
11 seller is not required to collect tax from such an exempt
12 governmental body.

13 (11) Governmental bodies that sell or resell taxable
14 service to nonexempt end users must collect and remit the tax
15 levied under this section.

16 Section 3. Section 166.233, Florida Statutes, is
17 created to read:

18 166.233 Public service tax; effective dates;
19 procedures for informing sellers of tax levies and related
20 information.--

21 (1) As used in this section and ss. 166.231, 166.232,
22 and 166.234:

23 (a) "Department" means the Department of Revenue or
24 its designated agent.

25 (b) "Effective date," with respect to any levy, repeal
26 of a levy, or update to a list required under this section,
27 means the effective date of the related obligation or change
28 in the obligation of sellers to collect the tax; however, with
29 respect to taxable service that is regularly billed on a
30 monthly cycle basis, each levy, repeal, or update applies to
31 any bill dated on or after the effective date of such event.

1 (c) "Levy" means and includes the imposition of a tax
2 under s. 166.231 or s. 166.232, all changes in the rate of a
3 tax imposed under either of those sections, and all changes of
4 election under s. 166.231(9)(a).

5 (d) "Seller" means a person who sells a service that
6 is subject to a levy.

7 (2)(a) A tax levy must be adopted by ordinance, and
8 the effective date of every levy or repeal thereof must be a
9 subsequent January 1, April 1, July 1, or October 1. A
10 municipality shall notify the department of the adoption or
11 repeal of a levy at least 120 days before the effective date
12 thereof. Such notification must be furnished on a form
13 prescribed by the department and must specify the services
14 taxed under the authority of s. 166.231 or s. 166.232,
15 including any election under s. 166.231(9)(a), the rate of tax
16 applied to each service, the effective date of the levy or
17 repeal thereof, and the name, mailing address, and telephone
18 number of a person designated by the municipality to respond
19 to inquiries concerning the tax. The department shall maintain
20 this information for the purpose of responding to inquiries
21 with respect thereto, and any person may in writing request
22 such information from the department. For purposes of this
23 section, a response to such a person is timely if in writing
24 and dated no later than 20 days after the receipt of the
25 request. The department shall charge such persons a fee to
26 recover the actual cost of maintaining and furnishing such
27 information. The department has no liability for any loss of
28 or decrease in revenue by reason of any error, omission, or
29 untimely action that results in the nonpayment of the tax
30 imposed under s. 166.231 or s. 166.232. The provisions of this
31 paragraph which prescribe effective dates and require

1 municipalities to furnish notifications to the department do
2 not apply to taxes levied on service, other than
3 telecommunication service, provided by the municipality
4 levying the tax or by a separate utility authority, board, or
5 commission of the municipality.

6 (b) The department may contract with a private entity
7 to maintain and furnish the information described in paragraph
8 (a); however, the department shall establish the fee charged
9 to persons requesting that information.

10 (3) A municipality shall provide to any person, within
11 20 days following receipt of the person's written request, a
12 copy of the ordinance adopting any levy and all amendments
13 thereto, and shall advise such person in writing of the types
14 of media on which the lists described in this subsection are
15 available, the charges, if any, for supplying the lists on
16 each available medium, and the address to which a request for
17 such lists should be transmitted. Within 20 days following
18 receipt of a written request therefor accompanied by payment
19 of the cost, the municipality shall transmit the following to
20 the person requesting them:

21 (a) A list containing each street name, known street
22 name aliases, street address number ranges, applicable
23 directionals, and zip codes associated with each street name,
24 for all street addresses located within the municipality. For
25 a range of street address numbers located within a
26 municipality which consists only of odd or even street
27 numbers, the list must specify whether the street numbers in
28 the range are odd or even. The list shall be alphabetical,
29 except that numbered streets shall be in numerical sequence;

30 (b) A list containing each postal zip code and all the
31 city names associated therewith for all zip codes assigned to

1 geographic areas located entirely within the municipality,
2 including zip codes assigned to post office boxes; and
3 (c) A sequential list containing all post office box
4 number ranges and the city names and zip codes associated
5 therewith, for all post office boxes located within the
6 municipality, except that post office boxes with postal zip
7 codes entirely within the municipality which are included on
8 the list furnished under paragraph (b) need not be duplicated.

9
10 The lists shall be printed, except that, if a list is
11 available on another medium, the municipality shall, upon
12 request, furnish the list on such medium in addition to or in
13 lieu of the printed lists. The municipality shall be
14 responsible for updating the lists as changes occur and for
15 furnishing this information to all sellers affected by the
16 changes. Each update shall specify an effective date which
17 shall be either the next ensuing January 1, April 1, July 1,
18 or October 1; shall be furnished to sellers not less than 60
19 days prior to the effective date; and shall identify the
20 additions, deletions, and other changes to the preceding
21 version of the list. The seller shall be responsible for
22 charging the tax only to service and billing addresses
23 contained in the lists which include all the required elements
24 required by this subsection, including lists furnished to it
25 by a municipality without the seller's request. The
26 municipality shall be entitled to collect a fee not to exceed
27 the actual cost of duplicating the information furnished to
28 the person requesting it.

29 (4) The obligation of a seller to collect and remit
30 the tax for any municipality is conditioned upon the timely
31 availability to the seller of accurate information as

1 described in subsections (2) and (3) in the manner prescribed
2 in those subsections. For purposes of determining the
3 timeliness of such information, the date of a request,
4 response, update, or other transmittal is the date received.
5 If any such information is not timely furnished to a seller,
6 any related obligation to collect and remit tax is suspended
7 during the period of delay, except that:

8 (a) If a request for information described in
9 subsection (2) or subsection (3) precedes the date on which a
10 municipality is required to furnish notification to the
11 department as prescribed in subsection (2), the lack of a
12 timely response to the request does not affect the seller's
13 obligation to collect and remit tax for that municipality.

14 (b) If a seller is properly collecting and remitting
15 tax on a taxable service from customers within a municipality
16 as of the date of any request for information under subsection
17 (2) or subsection (3), the lack of a timely response to the
18 request does not affect the seller's obligation to continue
19 collecting and remitting the tax levied on the same service
20 from the same customers.

21 (c) If a failure to furnish timely information under
22 subsection (2) or subsection (3) causes a delay in a seller's
23 receipt of a list or update required by subsection (3) to a
24 date less than 60 days before the effective date of a levy or
25 update, the obligation to collect and remit tax pursuant
26 thereto may not commence until the next subsequent January 1,
27 April 1, July 1, or October 1.

28 (5) If it is determined from lists or updates
29 furnished under subsection (3) that more than one municipality
30 claims the same address or group of addresses, the seller
31 shall notify the municipalities affected within 60 days. Upon

1 resolution of the competing claims, the affected
2 municipalities shall furnish the seller with a signed
3 agreement describing the resolution. The seller shall begin
4 collecting and remitting tax pursuant to the agreement as of
5 the next ensuing January 1, April 1, July 1, or October 1 that
6 is at least 60 days after its receipt of the signed agreement.
7 Prior to such date, the seller shall continue its prior tax
8 treatment of charges to customers with addresses subject to
9 competing claims. For purposes of this subsection, "prior tax
10 treatment" means the practice of collecting and remitting or
11 not collecting and remitting tax during periods prior to
12 discovery of the competing claims. The seller has no liability
13 to any affected municipality for amounts not collected and
14 remitted before the agreement was implemented, except to the
15 extent that the seller's prior tax treatment was confirmed as
16 correct in the agreement.

17 (6) If a list or update furnished pursuant to
18 subsection (3) contains all the elements required by that
19 subsection, but such information does not conform with address
20 information in the seller's records, the seller may so notify
21 the municipality that furnished the list or update. The
22 notification shall identify the portion of the list or update
23 that is in question and describe the nature of the problem. If
24 the seller furnishes such a notification within 60 days after
25 first receiving the list or update from the municipality, the
26 seller shall not be obligated to collect and remit the tax
27 with respect to the portion of the list or update at issue
28 until the next ensuing January 1, April 1, July 1, or October
29 1 that is at least 60 days after the municipality furnishes
30 the seller with information which resolves the issue raised by
31 the seller.

316-1936-97

1 Section 4. Section 166.234, Florida Statutes, is
2 created to read:

3 166.234 Public service tax; administrative provisions;
4 rights and remedies.--

5 (1) A municipality may, during the seller's normal
6 business hours at the official location of the seller's books
7 and records, audit the records of any seller of a service that
8 is taxable by the municipality under s. 166.231 or s. 166.232,
9 for the purpose of ascertaining whether taxable services have
10 been provided or the correctness of any return that has been
11 filed or payment that has been made, if the municipality's
12 power to assess tax or grant a refund is not barred by the
13 applicable limitations period. Each such seller must provide
14 to the municipality, upon 60 days' written notice of intent to
15 audit from the municipality, access to applicable records for
16 such service, except an extension of this 60-day period must
17 be granted if reasonably requested by the seller. The seller
18 may at its option waive the 60-day notice requirement. If
19 either the municipality or the seller requires an additional
20 extension, it must give notice to the other no less than 30
21 days before the existing extension expires, except in cases of
22 bona fide emergency or waiver of the notice requirement by the
23 other party. In an audit, the seller is liable only for its
24 taxable accounts collected which correspond to the information
25 provided to it by the municipality under s. 166.233(3). As
26 used in this section, "applicable records" means records kept
27 in the ordinary course of business which establish the
28 collection and remittance of taxes due. Such applicable
29 records may be provided to the municipality on an electronic
30 medium if agreed to by the seller and the municipality. No
31 fee or any portion of a fee for audits conducted on behalf of

1 a municipality shall be based upon the amount assessed or
2 collected as a result of the audit, and no determination based
3 upon an audit conducted in violation of this prohibition shall
4 be valid.

5 (2) Each seller of services that are taxable under s.
6 166.231 or s. 166.232 shall preserve applicable records
7 relating to such taxes until the expiration of the time within
8 which the municipality may make an assessment with respect to
9 that tax; however, a seller is not required to retain
10 duplicative or redundant records.

11 (3) Before auditing a seller under subsection (1), the
12 municipality shall, upon request of the seller, discuss with
13 the seller the municipality's proposed audit methodology. The
14 municipality shall prepare and furnish to the seller a report
15 of each audit which identifies the nature of any deficiency or
16 overpayment, the amount thereof, and the manner in which the
17 amount was computed. In addition, the municipality, upon
18 request and no less than 45 days before issuing a
19 determination under subsection (8), shall furnish the seller
20 with all other information or material in possession of the
21 municipality or its agents which is necessary to supplement
22 the audit findings.

23 (4)(a) A municipality may issue a proposed assessment
24 of tax levied under s. 166.231 or s. 166.232 within 3 years
25 after the date the tax was due. However, this limitation is
26 tolled for 1 year if within the 3-year period the municipality
27 issues to the seller a notice of intent to audit. If the
28 audit cannot be completed prior to the expiration of this
29 limitation period as extended by tolling, and such condition
30 is due to the seller's refusal or delay in allowing access to
31 applicable records, the municipality may make a proposed

1 assessment from an estimate based upon the best information
2 available for the taxable period, unless the seller agrees in
3 writing to extend the limitations period. The municipality
4 may also make a proposed assessment from such an estimate if,
5 notwithstanding agreed extensions of the limitations period to
6 a date which is 3 years following issuance of the notice of
7 intent to audit, the seller does not allow access to
8 applicable records prior to such date.

9 (b) A seller may apply to a municipality for refund
10 of, or may take a credit for, any overpayment of tax or
11 interest or penalty thereon within 3 years following
12 remittance by the seller, and the municipality must refund or
13 allow the seller credit for such overpayments as were remitted
14 to the municipality. However, in the case of an overpayment
15 which the seller has previously refunded or credited to a
16 purchaser in accordance with subsection (6), the limitation
17 period for the seller's refund application or credit shall
18 expire 3 years following the seller's remittance to the
19 municipality or 60 days following the seller's issuance of the
20 refund or credit to the purchaser, whichever is later.

21 (c) Upon expiration of the periods set forth in this
22 subsection, the municipality's right to assess tax, interest,
23 or penalty and the seller's right to apply for a refund or
24 credit expire and are barred, unless fraud has occurred;
25 however, sellers and municipalities may enter into agreements
26 to extend these periods.

27 (5) Notwithstanding subsection (4), a municipality
28 shall offset a seller's overpayment of any tax, interest, or
29 penalty revealed by an audit against any deficiency of tax,
30 interest, or penalty which is determined to be due for the
31 same audit period, and such offsets must be reflected in any

1 proposed assessment. If the overpayments by the seller exceed
2 the deficiency, the municipality must refund to the seller the
3 amount by which the aggregate overpayments exceed the total
4 deficiency. Absent proof to the contrary, the methodology
5 that is employed in computing the amount of a deficiency is
6 presumed to yield an appropriate computation of the amount of
7 any overpayments. As used in subsection (4) and this
8 subsection, "overpayment" to a municipality means and includes
9 all remittances of public service tax, interest, or penalty
10 which were not due to the municipality, including amounts
11 properly collected but remitted to the incorrect municipality.

12 (6) Any purchaser of a service may request from a
13 seller a refund of, or credit for, taxes collected from the
14 purchaser upon the ground that the amounts collected were not
15 due to any municipality. The seller shall issue the refund or
16 allow a credit to the purchaser entitled thereto, if the
17 request is made within 3 years following collection of the tax
18 from the purchaser. In any event, a seller shall issue a
19 refund or credit to a purchaser within 45 days following the
20 seller's determination of the amount of taxes collected from
21 the purchaser within the preceding 3 years which were not due
22 to any municipality.

23 (7) Municipalities are authorized to assess interest
24 and penalties in accordance with this subsection for failure
25 to pay any tax when due or to file any required return, except
26 that no penalty shall be assessed absent willful neglect,
27 willful negligence, or fraud. Interest may be assessed at a
28 maximum rate of 1 percent per month of the delinquent tax from
29 the date the tax was due until paid. Penalties may be
30 assessed at a maximum rate of 5 percent per month of the
31 delinquent tax, not to exceed a total penalty of 25 percent.

1 except that a municipality may provide that in no event will
2 the penalty for failure to file a return be less than \$15. In
3 the case of a fraudulent return or a willful intent to evade
4 payment of the tax, the seller making such fraudulent return
5 or willfully attempting to evade payment of the tax shall be
6 liable for a specific penalty of 100 percent of the tax.
7 Interest and penalties shall be computed on the net tax due
8 after application of any overpayments, and are subject to
9 compromise pursuant to subsection (14). Interest or penalties
10 and the rates thereof shall be authorized by ordinance.

11 (8) Any proposed assessment or finding of amounts due
12 the seller constitutes a determination of the municipality for
13 purposes of this section. A determination must separately
14 state the amounts of tax, interest, and penalty claimed to be
15 due or to be refunded, must be accompanied by a written
16 narrative explanation of the basis for the municipality's
17 determinations, must inform the seller of the remedies
18 available to it if it disagrees with any such determination,
19 and must state the consequences of the seller's failure to
20 comply with any demand of the municipality which is stated in
21 the determination.

22 (9) A seller may file with the municipality a written
23 protest of any determination within 60 days after the
24 determination is issued. The municipality must consider the
25 protest and must, within 60 days, issue a written notice of
26 decision to the seller. The seller may petition the
27 municipality for reconsideration of a notice of decision
28 within 30 days after the issuance of the notice, and,
29 following reconsideration of such a petition, the municipality
30 must, within 30 days, issue a written notice of
31 reconsideration to the seller.

1 (10) A determination becomes final 60 days after the
2 date of issuance, unless the seller, before the 60-day period
3 expires, has filed a protest or secured a written extension of
4 time within which to file a protest. If the seller has
5 secured a written extension of time and fails to file a
6 protest within the extended time period, the proposed
7 assessment becomes a final assessment at the expiration of the
8 extended filing period. If a protest is timely filed and the
9 seller and the municipality are unable to resolve the disputed
10 issues, the determination becomes final as of the date of
11 issuance of the notice of decision, unless the seller timely
12 files a petition for reconsideration. If a petition for
13 reconsideration is timely filed, the determination becomes
14 final upon issuance of a notice of reconsideration.

15 (11) A notice of decision or a notice of
16 reconsideration must address each issue raised in the protest
17 or petition, must explain the reasoning underlying the
18 conclusions reached, and must advise the seller of the
19 remedies available to it if it disagrees with the
20 municipality's disposition of the issues.

21 (12) A seller may contest the legality of any
22 determination by filing an action in circuit court within 60
23 days after the date the determination becomes final. However,
24 in any action filed in circuit court to contest the legality
25 of any tax, penalty, or interest assessed under this section,
26 the plaintiff must pay the municipality the amount of the tax,
27 penalty, and accrued interest which is not being contested by
28 the seller. Venue lies in the county where the municipality
29 is located. The defendant in any such action is the
30 municipality.

1 (13) A seller's failure to protest a determination
2 under this section administratively or judicially does not
3 waive or impair the seller's right to seek refund of any
4 overpayment within the time allowed under subsection (4).

5 (14) A seller's liability for any tax, interest, or
6 penalty may be settled or compromised by the municipality upon
7 the grounds of doubt as to liability or doubt as to the
8 collectibility of such tax, interest, or penalty. A
9 municipality and a seller may enter into a written closing
10 agreement that reflects the terms of any settlement or
11 compromise. When such a closing agreement has been approved
12 on behalf of the municipality and the seller, it is final,
13 conclusive, and binding on the parties with respect to all
14 matters set forth therein; and, except upon a showing of fraud
15 or misrepresentation of material fact, additional assessment
16 may not be made against the seller for the tax, interest, or
17 penalty specified in the closing agreement for the time period
18 specified in the closing agreement, and the seller may not
19 institute any judicial or administrative proceeding to recover
20 any tax, interest, or penalty paid under the closing
21 agreement. In issuing a determination, a municipality must
22 include in its notification thereof to the seller the names of
23 the persons authorized to approve compromises and to execute
24 closing agreements. A municipality may also enter into
25 agreements for scheduling payments of taxes, interest, and
26 penalties, which agreements must recognize both the seller's
27 financial condition and the best interest of the municipality,
28 if the seller gives accurate, current information and meets
29 all other tax obligations on schedule.

30 (15) All notices of intent to audit, determinations,
31 notices of decisions, and notices of reconsideration issued

1 under this section must be transmitted to the seller by
2 certified mail, return receipt requested, and the date of
3 issuance is the postmark date of the transmittal. All
4 protests and petitions for reconsideration are timely filed if
5 postmarked or received by the municipality within the time
6 prescribed by this section. If mailed, protests and petitions
7 must be transmitted by certified mail, return receipt
8 requested.

9 (16) A seller may pay any contested amount, in whole
10 or in part, at any time, and the payment does not impair any
11 of the seller's remedies as provided in this section.

12 (17) Each municipality that levies the public service
13 tax shall furnish sellers with prompt, accurate responses to
14 questions and to requests for tax assistance. In the event a
15 law is enacted requiring payment of interest on refunds of
16 taxes paid pursuant to chapter 203 or chapter 212,
17 municipalities shall pay interest on public service tax
18 refunds at the rate required by such law.

19 (18) In all matters connected with the administration
20 of the public service tax, sellers have the right:

21 (a) To be represented by counsel or other qualified
22 representatives;

23 (b) To procedural safeguards with respect to the
24 recording of interviews during tax determination processes
25 conducted by the municipality; and

26 (c) To have audits, inspections of records, and
27 interviews conducted at a reasonable time and place.

28 (19) Municipalities may communicate with each other
29 concerning the following:

30 (a) Technical information concerning a seller's tax
31 and accounting system necessary to conduct an accurate and

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
 COMMITTEE SUBSTITUTE FOR
Senate Bill 1958

The Committee Substitute:

Requires a seller of services subject to the public service tax to file a return with the municipality monthly. The information to be provided is included.

Requires tax levies to be adopted by ordinance with an effective date of January 1, April 1, July 1, or October 1.

Authorizes the Department of Revenue to charge a fee to persons requesting information to recover the actual cost of maintaining and furnishing the information pertaining to the services tax. The Department of Revenue is also authorized to contract with a private entity to provide its services, provided the department sets the authorized fees.

Clarifies the process for providing information to the public and developing address lists.

Authorizes municipalities to collect a fee which cannot exceed the actual cost of duplicating the information furnished to a person requesting it.

Provides that contingency audit fees are prohibited and any determination established through this method would be invalid.

Authorizes municipalities to assess interest or penalties for failure to pay any tax when due or to file any required return.

Provides that in the event a law is enacted requiring payment of interest on refunds of taxes paid pursuant to chapter 203, F.S., or chapter 212, F.S., municipalities must pay interest on public service tax refunds at the rate required by such law.

Authorized municipalities to communicate with each other concerning certain matters related to sellers.

Prohibits municipalities from assessing or attempting to assess a seller for any costs incurred by or charged to the municipality in connection with performing an audit of the seller's books and records, including all travel expenses. Also permits municipalities to assess and collect from the seller under certain circumstances.

Appropriates the sum of \$35,000 to the Department of Revenue from the Administrative Trust Fund for the purpose of furnishing tax related information to the public.

By Representatives Valdes, Edwards, Lacasa, Garcia,
Villalobos, Barreiro, Morse and Meek

A bill to be entitled

2 An act relating to the municipal public service
3 tax; providing legislative intent; amending s.
4 166.231, F.S.; providing that specified
5 governmental bodies are exempt from the tax;
6 providing that religious institutions that
7 possess sales tax exemption certificates are
8 exempt from the tax; providing that religious
9 institutions that possess sales tax exemption
10 certificates are exempt from the tax on
11 telecommunication services; providing for the
12 liability of sellers for taxes that are not
13 remitted; requiring purchasers claiming
14 exemptions to certify that they are qualified
15 therefor; creating s 166.233, F.S.; providing
16 requirements for levy of the tax; specifying
17 effective dates; providing duties of the
18 Department of Revenue; requiring municipalities
19 to furnish certain information relating to the
20 tax to the Department of Revenue and to other
21 persons; providing for fees; providing
22 limitations on the responsibilities of sellers
23 if information is not furnished as required;
24 providing procedures that apply when more than
25 one municipality claims an address; creating s.
26 166.234, F.S ; providing procedures for audits
27 by municipalities of sellers of services;
28 prescribing record retention requirements for
29 sellers; providing time limitations on
30 assessments of taxes and on applications for
31 refunds or credits; providing for offsets of

225-196-97

1 overpayments against underpayments and for
2 refunds and credits; providing requirements
3 with respect to a determination by a
4 municipality of amounts of tax; providing
5 protest procedures and judicial remedies;
6 providing for settlement or compromise of a
7 seller's liability for taxes; providing rights
8 and duties of municipalities and sellers;
9 providing that public service tax payment dates
10 and return filing dates must conform to due
11 dates established under ch. 212, F.S.;
12 providing a schedule for application of the
13 requirements of the act; providing an
14 appropriation; providing for severability;
15 providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. The Legislature find that a taxpayer bill
20 of rights has not been prescribed for the municipal public
21 service tax in accordance with Section 25, Article I of the
22 State Constitution. It is therefore the intent of the
23 Legislature to improve the ability of municipalities and
24 sellers to administer this tax at reasonable cost, to protect
25 sellers who act in good faith, to ensure that sellers are
26 furnished the information necessary for remitting collected
27 tax proceeds to the correct municipality, and to prescribe a
28 procedural framework for the administration and auditing
29 functions. The Legislature finds that this act fulfills an
30 important state interest.

225-196-97

1 Section 2. Section 166 231, Florida Statutes, 1996
2 Supplement, is amended to read:

3 166.231 Municipalities; public service tax.--

4 (1)(a) A municipality may levy a tax on the purchase
5 of electricity, metered natural gas, liquefied petroleum gas
6 either metered or bottled, manufactured gas either metered or
7 bottled, and water service. The tax shall be levied only upon
8 purchases within the municipality and shall not exceed 10
9 percent of the payments received by the seller of the taxable
10 item from the purchaser for the purchase of such service
11 Municipalities imposing a tax on the purchase of cable
12 television service as of May 4, 1977, may continue to levy
13 such tax to the extent necessary to meet all obligations to or
14 for the benefit of holders of bonds or certificates which were
15 issued prior to May 4, 1977. Purchase of electricity means
the purchase of electric power by a person who will consume it
17 within the municipality.

18 (b) The tax imposed by paragraph (a) shall not be
19 applied against any fuel adjustment charge, and such charge
20 shall be separately stated on each bill. The term "fuel
21 adjustment charge" means all increases in the cost of utility
22 services to the ultimate consumer resulting from an increase
23 in the cost of fuel to the utility subsequent to October 1,
24 1973.

25 (2) Services competitive with those enumerated in
26 subsection (1) or subsection (9), as defined by ordinance,
27 shall be taxed on a comparable base at the same rates.
28 However, fuel oil shall be taxed at a rate not to exceed 4
29 cents per gallon. However, for municipalities levying less
than the maximum rate allowable in subsection (1), the maximum
31 tax on fuel oil shall bear the same proportion to 4 cents

1 which the tax rate levied under subsection (1) bears to the
2 maximum rate allowable in subsection (1).

3 (3) A municipality may exempt from the tax imposed by
4 this section any amount up to, and including, the first 500
5 kilowatt hours of electricity purchased per month for
6 residential use. Such exemption shall apply to each separate
7 residential unit, regardless of whether such unit is on a
8 separate meter or a central meter, and shall be passed on to
9 each individual tenant.

10 (4)(a) The purchase of natural gas or fuel oil by a
11 public or private utility, either for resale or for use as
12 fuel in the generation of electricity, or the purchase of fuel
13 oil or kerosene for use as an aircraft engine fuel or
14 propellant or for use in internal combustion engines is exempt
15 from taxation hereunder.

16 (b) A municipality may exempt from the tax imposed by
17 this section the purchase of metered or bottled gas (natural
18 liquefied petroleum gas or manufactured) or fuel oil for
19 agricultural purposes. As used in this paragraph,
20 "agricultural purposes" means bona fide farming, pasture,
21 grove, or forestry operations, including horticulture,
22 floriculture, viticulture, dairy, livestock, poultry, bee, and
23 aquaculture.

24 (5) A purchase made by the United States Government,
25 by this state, or by any county, municipality, school
26 district, or public body that is exempted by law or court
27 order is exempt from the tax authorized by this section. A
28 municipality may exempt from the tax imposed by this section
29 taxation hereunder the purchase of the taxable items by the
30 United States Government; this state; any other public body as
31 defined in s. 1.01, or by a nonprofit corporation or

1 cooperative association organized under chapter 617 which
2 provides water utility services to no more than 13,500
3 equivalent residential units, ownership of which will revert
4 to a political subdivision upon retirement of all outstanding
5 indebtedness, and shall exempt purchases by any recognized
6 church in this state for use exclusively for church purposes,
7 and shall exempt from the tax authorized in subsection (8)
8 purchases made by any religious institution that possesses a
9 consumer certificate of exemption issued under chapter 212.

10 (6) A municipality may exempt from the tax imposed by
11 this section any amount up to, and including, the total amount
12 of electricity, metered natural gas, liquefied petroleum gas
13 either metered or bottled, or manufactured gas either metered
14 or bottled purchased per month, or reduce the rate of taxation
15 on the purchase of such electricity or gas when purchased by
16 an industrial consumer which uses the electricity or gas
17 directly in industrial manufacturing, processing, compounding,
18 or a production process, at a fixed location in the
19 municipality, of items of tangible personal property for sale.
20 The municipality shall establish the requirements for
21 qualification for this exemption in the manner prescribed by
22 ordinance. Possession by a seller of a written certification
23 by the purchaser, certifying the purchaser's entitlement to an
24 exemption permitted by this subsection, relieves the seller
25 from the responsibility of collecting the tax on the
26 nontaxable amounts, and the municipality shall look solely to
27 the purchaser for recovery of such tax if it determines that
28 the purchaser was not entitled to the exemption. Any
29 municipality granting an exemption pursuant to this subsection
30 shall grant the exemption to all companies classified in the
31 same SIC Industry Major Group Number.

1 (7) The tax authorized hereunder shall be collected by
2 the seller of the taxable item from the purchaser at the time
3 of the payment for such service. The seller shall remit the
4 taxes collected to the municipality in the manner prescribed
5 by ordinance.

6 ~~(8)--A municipality shall notify in writing any known~~
7 ~~seller of items taxable hereunder of any change in the~~
8 ~~boundaries of the municipality or in the rate of taxation:~~

9 (8)(9)(a) Beginning July 1, 1995, a municipality may
10 by ordinance exempt not less than 50 percent of the tax
11 imposed under this section on purchasers of electrical energy
12 who are determined to be eligible for the exemption provided
13 by s. 212.08(15) by the Department of Revenue. The exemption
14 shall be administered as provided in that section. A copy of
15 any ordinance adopted pursuant to this subsection shall be
16 provided to the Department of Revenue not less than 14 days
17 prior to its effective date.

18 (b) If in the event an area that is nominated as an
19 enterprise zone pursuant to s. 290.0055 has not yet been
20 designated pursuant to s. 290.0065, a municipality may enact
21 an ordinance for such exemption; however, the ordinance shall
22 not be effective until such area designated pursuant to s.
23 290.0065.

24 (c) This subsection shall expire and be void on
25 December 31, 2005, except that any qualified business which
26 has satisfied the requirements of this subsection prior to
27 December 31, 2005, shall be allowed the full benefit of the
28 exemption allowed under this subsection as if this subsection
29 had not expired on December 31, 2005.

225-196-97

1 (9)(10) A municipality may levy a tax on the purchase
2 of telecommunication services as defined in s. 203.012 as
3 follows:

4 (a)1. Only upon purchases within the municipality of
5 local telephone service as defined in s. 203.012(3) at a rate
6 not to exceed 10 percent of the monthly recurring customer
7 service charges, excluding public telephone charges collected
8 on site, access charges, and any customer access line charges
9 paid to a local telephone company; or

10 2. Only upon purchases within the municipality of
11 telecommunications service that which originates and
12 terminates in this state at a rate not to exceed 7 percent of
13 the total amount charged for any telecommunications service
14 the source of which is ascribed to the municipality on the
15 basis of billing address or service address as used
16 consistently by the seller, provided within the municipality
17 ~~or; if the location of the telecommunications service provided~~
18 ~~cannot be determined; the total amount billed for such~~
19 ~~telecommunications service to a telephone or telephone number;~~
20 ~~a telecommunications number or device; or a customer's billing~~
21 ~~address located within the municipality; excluding public~~
22 telephone charges collected on site, charges for any foreign
23 exchange service or any private line service except when such
24 services are used or sold as a substitute for any telephone
25 company switched service or dedicated facility by which a
26 telephone company provides a communication path, access
27 charges, and any customer access line charges paid to a local
28 telephone company. However, telecommunications service as
29 defined in s. 203.012(5)(b) shall be taxed only on the monthly
30 recurring customer service charges excluding variable usage
31 charges.

225-196-97

1 (b) For the purpose of compensating the seller, the
2 seller shall be allowed 1 percent of the amount of the tax
3 collected and due to the municipality in the form of a
4 deduction from the amount collected for remittance. The
5 deduction shall be allowed as compensation for the keeping of
6 records and for the collection of, and the remitting of, the
7 tax

8 ~~(c)--A municipality shall elect by ordinance the tax~~
9 ~~specified in subparagraph (a)1; or subparagraph (a)2; and any~~
10 ~~such election shall not be changed until after the expiration~~
11 ~~of at least 12 months after the effective date of the~~
12 ~~ordinance levying the tax specified in such subparagraph.--A~~
13 ~~municipality shall notify the companies responsible for~~
14 ~~collecting such tax at least 120 days prior to such change of~~
15 ~~election:~~

16 ~~(d)--A municipality electing by ordinance the tax~~
17 ~~specified in subparagraph (a)2; shall provide to a~~
18 ~~telecommunications service provider who is responsible for~~
19 ~~collecting the tax; upon its request; a printed alphabetical~~
20 ~~listing of all street names including block numbers and street~~
21 ~~numbers for streets which cross or form municipal boundaries~~
22 ~~within the municipality for use by the provider of the~~
23 ~~telecommunications service in calculating the proper amount of~~
24 ~~tax payable to the municipality.--The municipality shall be~~
25 ~~responsible for updating this listing as changes occur and for~~
26 ~~providing this information to the telecommunications service~~
27 ~~provider.--The provider; in turn; shall be responsible for~~
28 ~~charging the tax only to service and billing addresses~~
29 ~~contained in this listing.--The municipality shall be entitled~~
30 ~~to collect a fee not to exceed the actual cost of providing~~
31

1 the information to the telecommunications service provider
2 requesting it:

3 (c)(e) A municipality may audit the records of any
4 provider of telecommunications service taxable by the such
5 municipality under s. 166.234; each such provider shall
6 provide to the municipality; upon 60 days' notice; access to
7 all applicable records for such telecommunications service;
8 In an audit, the telecommunications service provider shall be
9 liable only for its taxable accounts collected corresponding
10 to the information provided to it by the municipality:
11 However, any information received by the municipality or its
12 agent in connection with such audit is confidential and exempt
13 from the provisions of s. 119.07(1).

14 (d)(f)1. If the sale of a taxable telecommunication
15 service also involves the sale of an exempt cable television
16 service, the tax shall be applied to the value of the taxable
17 service when it is sold separately.

18 2 If the company does not offer this service
19 separately, the consideration paid shall be separately
20 identified and stated with respect to the taxable and exempt
21 portions of the transaction as a condition of the exemption.

22 3 The amounts identified as taxable in subparagraph
23 2 shall not be less than the statewide average tariff rates
24 set forth by the local exchange telecommunications companies
25 in the tariffs filed with the Public Service Commission on
26 January 1, 1995, and on January 1 of each year thereafter for
27 the equivalent services subject to this section. The Public
28 Service Commission shall publish the statewide average tariff
29 rates annually, beginning on January 1, 1996.

30 4. If the total amount of municipal utility tax
31 collected by a municipality or charter county from

1 telecommunication services pursuant to this subsection for the
2 period of July 1, 1995, to June 30, 1996, is less than the
3 amount collected for the period July 1, 1994, to June 30,
4 1995, the municipality or charter county shall assess each
5 company that remits such tax a pro rata share of the
6 shortfall. The shortfall shall be prorated based on the
7 amount of tax remitted by each company for the period July 1,
8 1995, to June 30, 1996, and the total amount of tax remitted
9 for the same period. By September 1, 1996, the municipality
10 or charter county shall certify to each company the amount of
11 additional tax owed and the tax shall be remitted to the
12 municipality or charter county by October 1, 1996. Provided,
13 however, that this assessment may only be imposed if, in
14 addition to the conditions above, a municipality or charter
15 county has levied the applicable maximum tax rate allowed
16 under this paragraph during the period July 1, 1995, and June
17 30, 1996, and has not switched between the two options allowed
18 under subparagraph (f)1. or subparagraph (f)2. during the
19 period July 1, 1995, and June 30, 1996.

20 (e) Purchases of local telephone service or other
21 telecommunications service for use in the conduct of a
22 telecommunications service for hire or otherwise for resale
23 are exempt from the tax imposed by this subsection.

24 (9) A purchaser who claims an exemption under
25 subsection (4), subsection (5), or paragraph (8)(e) shall
26 certify to the seller that he or she qualifies for the
27 exemption, which certification may encompass all purchases
28 after a specified date or other multiple purchases. For
29 purchases made under paragraph (8)(e) which are exempted upon
30 the presentation of a certificate from the tax imposed by
31 chapter 212, the certification required by this subsection may

1 be satisfied by presentation of a certificate that satisfies
2 the requirements of chapter 212. A seller accepting the
3 certification required by this subsection is relieved of the
4 obligation to collect and remit tax; however, a governmental
5 body that is exempt from the tax authorized by this section
6 may not be required to furnish such certification, and a
7 seller is not required to collect tax from such an exempt
8 governmental body.

9 Section 3. Section 166.233, Florida Statutes, is
10 created to read:

11 166.233 Public service tax, effective dates;
12 procedures for informing sellers of tax levies and related
13 information.--

14 (1) As used in this section, ss. 166.231, 166.232, and
15 166.234, the term:

16 (a) "Address database" means a database created by the
17 department from information provided by the municipalities as
18 prescribed in paragraphs (4)(a)-(c).

19 (b) "Department" means the Department of Revenue or
20 its designated agent.

21 (c) "Effective date" with respect to any levy, repeal
22 of a levy, or update to a list required under this section
23 means the effective date of the related obligation or change
24 in the obligation of sellers to collect the tax; however, with
25 respect to taxable service that is regularly billed on a
26 monthly cycle basis, each levy, repeal, or update applies to
27 any bill dated on or after the effective date of such event.

28 (d) "Levy" means and includes the imposition of a tax
29 under s. 166.231 or s. 166.232, all changes in the rate of a
30 tax imposed under either of those sections, and all changes of
31 election under s. 166.231(8)(a).

1 (e) "Seller" means a person who sells a service that
2 is subject to a levy.

3 (2)(a) A tax levy must be adopted by ordinance, and
4 the effective date of every levy or repeal thereof must be a
5 subsequent January 1 or July 1. A municipality shall notify
6 the department of the adoption or repeal of a levy at least
7 120 days before the effective date thereof. Such notification
8 must be furnished in a manner prescribed by the department and
9 must specify the services taxed under s. 166.231 or s.
10 166.232, including any election under s. 166.231(8)(a), the
11 rate of tax applied to each service, the effective date of the
12 levy or repeal thereof, and the name, mailing address, and
13 telephone number of a person designated by the municipality to
14 respond to inquiries concerning the tax. In addition, the
15 municipality shall furnish the department address information
16 as required under subsections (4) and (5). The department
17 shall maintain this information for the purposes of seller
18 notification, database maintenance, and responses to inquiries
19 with respect thereto. Any person may request, in writing, such
20 information from the department. For purposes of this section,
21 a response to such a person is timely if in writing and dated
22 no later than 20 days after the receipt of the request. The
23 department has no liability for any loss of or decrease in
24 revenue by reason of any error, omission, or untimely action
25 that results in the nonpayment of the tax imposed by ss.
26 166.231 and 166.232. The provisions of this paragraph which
27 prescribe effective dates and require municipalities to
28 furnish notifications and address information to the
29 department do not apply to taxes levied on service, other than
30 telecommunication service, provided by the municipality
31

1 levying the tax or by a separate utility authority, board, or
2 commission of the municipality.

3 (b) The department may contract with a private entity
4 to maintain and furnish to sellers the information described
5 in paragraph (a).

6 (3) A municipality shall provide to any person, within
7 10 days following receipt of the person's written request, a
8 copy of the ordinance adopting any levy and all amendments
9 thereto.

10 (4) The address database must be available to sellers
11 electronically at no charge. The address database, or portions
12 thereof, must be available in another medium, and the
13 department shall publish the types of media on which the
14 address database described in this subsection are available,
15 the charges, if any, for supplying the information in each
16 available medium, and the address to which a request for such
17 information should be transmitted. Within 20 days after its
18 receipt of a written request for such information, accompanied
19 by payment of the cost, if any, the department must transmit
20 the information to the person who has requested it.

21 (5) For each municipality, the address database must
22 contain:

23 (a) For all street addresses located within the
24 municipality, each street name, including street name aliases,
25 street address number ranges, leading or trailing
26 directionals, all city names, and zip codes associated with
27 each street name, as approved by the United States Postal
28 Service for the delivery of mail. For a range of street
29 address numbers located within a municipality which consists
0 only of odd or even street numbers, the address database must
31

225-196-97

1 specify whether the street numbers in the range are odd or
2 even;

3 (b) Each postal zip code and all the city names
4 associated therewith, as approved by the United States Postal
5 Service for the delivery of mail, for all zip codes assigned
6 to geographic areas located entirely within the municipality,
7 including zip codes assigned to post office boxes; and

8 (c) All post office box number ranges and the city
9 names and zip codes associated therewith, as approved by the
10 United States Postal Service for the delivery of mail, for all
11 post office boxes located within the municipality, except that
12 post office boxes with postal zip codes entirely within the
13 municipality which are included on the list furnished under
14 paragraph (b) need not be duplicated.

15
16 The information required under this section must include the
17 effective date of any changes. Changes in the format of an
18 address necessitate the creation of a new address record,
19 except that, if there is a change in zip code only, the
20 original address record must be modified to include the new
21 zip code with a new effective date and, in addition, the
22 previous zip code with its corresponding effective date.
23 Historical data must be maintained in the address database for
24 a period of 7 years. The address database must separately
25 identify the additions, deletions, and other changes to the
26 preceding version of the address database. The seller is
27 responsible for charging the tax only to service and billing
28 addresses listed in the database.

29 (6) Each municipality shall provide this information
30 to the department in a format prescribed by the department.
31 The municipality shall provide updates to the address database

225-196-97

1 at least 120 days before the January 1 or July 1 on which the
2 database becomes effective. The department shall update the
3 database no later than 90 days before the January 1 or July 1
4 on which the changes are effective. Any changes to the address
5 database which are made less than 90 days before January 1 or
6 July 1 become effective on the following July 1 or January 1,
7 respectively.

8 (7) The obligation of a seller to collect and remit
9 the tax for any municipality is conditioned upon the timely
10 availability to the seller of accurate information as
11 described in subsections (2)-(6) in the manner prescribed in
12 those subsections. For purposes of determining the timeliness
13 of such information, the date of a request, response, update,
14 or other transmittal is the date received. If any such
15 information is not timely furnished to a seller, any related
16 obligation to collect and remit tax is suspended during the
17 period of delay, except that:

18 (a) If a request for information described in
19 subsections (2)-(6) precedes the date on which the department
20 is required to update the address database as prescribed in
21 subsection (6), the lack of a timely response to the request
22 does not affect the seller's obligation to collect and remit
23 tax for that municipality.

24 (b) If a seller is collecting and remitting tax on a
25 taxable service from customers within a municipality as of the
26 date of any request for information under subsections (2)-(6),
27 the lack of a timely response to the request does not affect
28 the seller's obligation to continue collecting and remitting
29 the tax levied on the same service from the same customers.

30 (c) If a failure to furnish timely information under
31 subsections (2)-(6) causes a delay in a seller's receipt of a

1 list or update required by subsections (2), (4), (5), and (6)
2 to a date less than 90 days before the effective date of a
3 levy or update, the obligation to collect and remit tax
4 pursuant to the revised levy may not commence until the next
5 subsequent January 1 or July 1.

6 (8) If it is determined from lists or updates
7 furnished under subsection (6) that more than one municipality
8 claims the same address or group of addresses, the department
9 shall notify the municipalities affected within 30 days after
10 receipt of the duplicative information. Upon resolution of the
11 competing claims, the affected municipalities shall furnish
12 the department with a signed agreement describing the
13 resolution. The department shall update the address database
14 pursuant to the agreement as of the next ensuing January 1 or
15 July 1 that is at least 120 days after its receipt of the
16 signed agreement. The seller has no liability to any affected
17 municipality for amounts not collected and remitted before the
18 agreement was implemented, except to the extent that the
19 seller's previous tax treatment was confirmed as correct in
20 the agreement.

21 (9) By submitting a written request and the relevant
22 formatting information, municipalities can elect to have the
23 address information formatted to the United States Postal
24 Service database for the delivery of mail by the department.
25 The department shall notify the municipalities within 30 days
26 of any address that cannot be matched to the postal database
27 so that the municipality may investigate the problem. The
28 department shall update the database once the address is
29 properly identified and formatted in accordance with the
30 postal database. The effective date for such addresses is the
31

225-196-97

1 next ensuing January 1 or July 1 that is at least 90 days
2 after the department updates its database.

3 Section 4. Section 166.234, Florida Statutes, is
4 created to read:

5 166.234 Public service tax; administrative provisions;
6 rights and remedies.--

7 (1) A municipality may, during the seller's normal
8 business hours at the official location of the seller's books
9 and records, audit the records of any seller of a service that
10 is taxable by the municipality under s. 166.231 or s. 166.232,
11 for the purpose of ascertaining the correctness of any return
12 that has been filed or payment that has been made, if the
13 municipality's power to assess tax or grant a refund is not
14 barred by the applicable limitations period. Each such seller
15 must provide to the municipality, upon 60 days' written
16 notice, access to applicable records for such service, except
17 that extensions of this 60-day period must be granted if
18 reasonably requested by the seller. If either the municipality
19 or the seller requires an additional extension, it must give
20 notice to the other no less than 30 days before the existing
21 extension expires, except in cases of bona fide emergency or
22 waiver of the notice requirement by the other party. In an
23 audit, the seller is liable only for its taxable accounts
24 collected which correspond to the information provided to it
25 by the department under s. 166.233. As used in this section,
26 the term "applicable records" means records kept in the
27 ordinary course of business which establish the collection and
28 remittance of taxes due. A municipality may not charge any
29 seller for costs or expenses associated with an audit. An
30 employee or agent of a municipality may not be paid,

31

225-196-97

1 evaluated, or promoted on the basis of the amount of taxes
2 assessed or tax proceeds collected from sellers.

3 (2) Each seller of services that are taxable under s.
4 166.231 or s. 166.232 shall preserve applicable records
5 relating to such taxes until the expiration of the time within
6 which the municipality may make an assessment with respect to
7 that tax; however, a seller is not required to retain
8 duplicative or redundant records.

9 (3) Before auditing a seller under subsection (1), the
10 municipality shall, upon request of the seller, discuss with
11 the seller the municipality's proposed audit methodology. The
12 municipality shall prepare and furnish to the seller a report
13 of each audit which identifies the nature of any deficiency or
14 overpayment, the amount thereof, and the manner in which the
15 amount was computed. In addition, the municipality, upon
16 request and no less than 45 days before issuing a
17 determination under subsection (7), shall furnish the seller
18 with all other information or material in possession of the
19 municipality or its agents which is necessary to supplement
20 the audit findings, including any computer program or software
21 that pertains to or was used in the conduct of the audit and
22 the computation of the deficiency or overpayment. However, if
23 the identical computer program or software that was used in
24 conducting the audit is nontransferrable, the municipality
25 must furnish the seller with sufficient information to enable
26 the seller to procure such program or software.

27 (4) A municipality may issue a proposed assessment of
28 tax levied under s. 166.231 or s. 166.232 within 3 years after
29 the date the tax was due. A seller may apply to a municipality
30 for refund of, or may take a credit for, any overpayment of
31 such tax thereon within 3 years following remittance by the

225-196-97

1 seller, and the municipality must refund or allow the seller
2 credit for such overpayments as were remitted to the
3 municipality. Upon expiration of these 3-year periods, the
4 municipality's right to assess tax and the seller's right to
5 apply for a refund or credit expire and are barred, unless
6 fraud has occurred; however, sellers and municipalities may
7 enter into agreements to extend these periods.

8 (5) Notwithstanding subsection (4), a municipality
9 shall offset a seller's overpayment of any tax revealed by an
10 audit against any deficiency of such tax which is determined
11 to be due for the same audit period, and such offsets must be
12 reflected in any proposed assessment of tax. If the
13 overpayments by the seller exceed the deficiency, the
14 municipality must refund to the seller the amount by which the
15 aggregate overpayments exceed the total deficiency. Absent
16 proof to the contrary, the methodology that is employed in
17 computing the amount of a deficiency is presumed to yield an
18 appropriate computation of the amount of any overpayments. As
19 used in subsection (4) and this subsection, the term
20 "overpayment" to a municipality means and includes all
21 remittances of public service tax which were not owed to the
22 municipality, including amounts properly collected but
23 remitted to the incorrect municipality, except that the term
24 does not include remittances of amounts collected in error.

25 (6) Any purchaser of a service may request from a
26 seller a refund of, or credit for, taxes collected from the
27 purchaser upon the ground that the amounts collected were not
28 due to any municipality. The seller shall issue the refund or
29 allow a credit to the purchaser entitled thereto, if the
30 request is made within 3 years following collection of the tax
31 from the purchaser. In any event, a seller shall issue a

1 refund or credit to a purchaser following the seller's
2 determination that taxes collected from that purchaser within
3 the preceding 3 years were not due to any municipality.

4 (7) Any proposed assessment or finding of amounts due
5 the seller constitutes a determination of the municipality for
6 purposes of this section. A determination must separately
7 state the amounts of tax claimed to be due or to be refunded,
8 must be accompanied by a written narrative explanation of the
9 basis for the municipality's determinations, must inform the
10 seller of the remedies available to it if it disagrees with
11 any such determination, and must state the consequences of the
12 seller's failure to comply with any demand of the municipality
13 which is stated in the determination.

14 (8) A seller may file with the municipality a written
15 protest of any determination within 60 days after the
16 determination is issued. The municipality must consider the
17 protest and must, within 60 days, issue a written notice of
18 decision to the seller. The seller may petition the
19 municipality for reconsideration of a notice of decision
20 within 30 days after the issuance of the notice, and,
21 following reconsideration of such a petition, the municipality
22 must, within 30 days, issue a written notice of
23 reconsideration to the seller.

24 (9) A determination becomes final 60 days after the
25 date of issuance, unless the seller, before the 60-day period
26 expires, has filed a protest or secured a written extension of
27 time within which to file a protest. If the seller has secured
28 a written extension of time and fails to file a protest within
29 the extended time period, the proposed assessment becomes a
30 final assessment at the expiration of the extended filing
31 period. If a protest is timely filed and the seller and the

225-196-97

1 municipality are unable to resolve the disputed issues, the
2 determination becomes final as of the date of issuance of the
3 notice of decision, unless the seller timely files a petition
4 for reconsideration. If a petition for reconsideration is
5 timely filed, the determination becomes final upon issuance of
6 a notice of reconsideration.

7 (10) A notice of decision or a notice of
8 reconsideration must address each issue raised in the protest
9 or petition, must explain the reasoning underlying the
10 conclusions reached, and must advise the seller of the
11 remedies available to it if it disagrees with the
12 municipality's disposition of the issues.

13 (11) A seller may contest the legality of any
14 determination by filing an action in circuit court within 60
15 days after the date the determination becomes final. However,
16 in any action filed in circuit court to contest the legality
17 of any tax assessed under this section, the plaintiff must pay
18 the municipality the amount of the tax which is not being
19 contested by the seller. Venue lies in the county where the
20 municipality is located. The defendant in any such action is
21 the municipality.

22 (12) A seller's failure to protest a determination
23 under this section administratively or judicially does not
24 waive or impair the seller's right to seek refund of any
25 overpayment within the time allowed under subsection (4).

26 (13) A seller's liability for any tax may be settled
27 or compromised by the municipality upon the grounds of doubt
28 as to liability or doubt as to the collectibility of the tax.
29 In addition, municipalities may enter into settlements
30 prescribing the future tax treatment of specified
31 transactions. A municipality and a seller may enter into a

1 written closing agreement that reflects the terms of any
2 settlement or compromise. When such a closing agreement has
3 been approved on behalf of the municipality and the seller, it
4 is final, conclusive, and binding on the parties with respect
5 to all matters set forth therein; and, except upon a showing
6 of fraud or misrepresentation of material fact, additional
7 assessment may not be made against the seller for the tax
8 specified in the closing agreement for the time period
9 specified in the closing agreement, and the seller may not
10 institute any judicial or administrative proceeding to recover
11 any tax paid under the closing agreement. In issuing a
12 determination, a municipality must include in its notification
13 thereof to the seller the names of the persons authorized to
14 approve compromises and to execute closing agreements. A
15 municipality may also enter into agreements for scheduling
16 payments of taxes which agreements must recognize both the
17 seller's financial condition and the best interests of the
18 municipality, if the seller gives accurate, current
19 information and meets all other tax obligations on schedule

20 (14) All determinations, notices of decision, and
21 notices of reconsideration issued under this section must be
22 transmitted to the seller by certified mail, return receipt
23 requested, and the date of issuance is the postmark date of
24 the transmittal. All protests and petitions for
25 reconsideration are timely filed if postmarked or received by
26 the municipality within the time prescribed by this section.
27 If mailed, protests and petitions must be transmitted by
28 certified mail, return receipt requested.

29 (15) A seller may pay any contested amount, in whole
30 or in part, at any time, and the payment does not impair any
31 of the seller's remedies as provided in this section.

1 (16) Each municipality that levies the public service
2 tax shall furnish sellers with prompt, accurate responses to
3 questions and to requests for tax assistance.

4 (17) In all matters connected with the administration
5 of the public service tax, sellers have the right:

6 (a) To be represented by counsel or other qualified
7 representatives;

8 (b) To procedural safeguards with respect to the
9 recording of interviews during tax determination processes
10 conducted by the municipality; and

11 (c) To have audits, inspections of records, and
12 interviews conducted at a reasonable time and place.

13 (18) A municipality may not require any report,
14 return, or payment of public service tax to be submitted on a
15 date other than as required under chapter 212.

16 Section 5. (1) No later than September 1, 1997, each
17 municipality levying a tax under section 166.231 or section
18 166.232, Florida Statutes, shall furnish to the Department of
19 Revenue a notification that specifies the services taxed by
20 the municipality under section 166.231 or section 166.232,
21 Florida Statutes, including any election under section
22 166.231(8)(a), Florida Statutes; the rate of tax applied to
23 each service; the effective date of the levy; and the name,
24 mailing address, and telephone number of a person designated
25 by the municipality to respond to inquires concerning the tax.
26 The notification must include such information for levies with
27 prior and future effective dates.

28 (2) Address listings and updates that conform to the
29 requirements of section 166.231(9)(d), Florida Statutes, as in
30 effect before July 1, 1997, are in compliance with this act
31 until December 31, 1998. By January 1, 1998, each municipality

1 shall make available to the department address information
2 that conforms to the requirements of this act and, if it
3 elects to have the department format such addresses to the
4 United States Postal Service database, the municipality must
5 so specify. The department must notify municipalities of any
6 addresses that have been claimed by multiple jurisdictions and
7 those that cannot be matched to the postal database as
8 provided, respectively, in subsections 166.231(7) and (8). The
9 updated address database must be made available to
10 municipalities for review by June 1, 1998, and to sellers by
11 July 1, 1998, and is effective January 1, 1999. Updates may be
12 issued with an effective date of January 1, 1999, if the lists
13 are received by the department by September 1, 1998. The
14 department shall update the database by October 1, 1998, for
15 the revisions.

16 (3) Section 166.234, Florida Statutes, as created by
17 this act, applies to all taxes, assessments, and audits for
18 periods both before and after the effective date of this act,
19 except for provisions requiring the performance of acts prior
20 to the commencement of an audit and except for taxes and
21 assessments that have been resolved by concession of liability
22 and payment, by settlement, or by other means. In addition, in
23 the case of audits that are the subject of pending litigation
24 as of the effective date of this section, the requirements and
25 limitations of section 166.234(3), (8)-(12), and (15), Florida
26 Statutes, do not apply to determinations, as defined by
27 section 166.234(8), Florida Statutes, issued before the
28 commencement of such litigation.

29 Section 6. The sum of \$100,000 is appropriated to the
30 Department of Revenue from the Administrative Trust Fund for
31 fiscal year 1997-1998, and one full-time-equivalent position

225-196-97

1 is authorized, for the purpose of performing the functions
2 identified in section 166.233(2), Florida Statutes, as created
3 by this act.

4 Section 7. If any provision of this act or the
5 application thereof to any person or circumstance is held
6 invalid, the invalidity shall not affect other provisions or
7 applications of the act which can be given effect without the
8 invalid provision or application, and to this end the
9 provisions of this act are declared severable.

10 Section 8. This act shall take effect July 1, 1997.

11
12 *****

13 SENATE SUMMARY

14 Pertains to the municipal public service tax. Provides
15 legislative intent. Provides that specified governmental
16 bodies are exempt from the tax. Provides that religious
17 institutions that possess sales tax exemption
18 certificates are exempt from the municipal public service
19 tax and from the tax on telecommunication services.
20 Provides for the liability of sellers for taxes that are
21 not remitted. Requires purchasers claiming exemptions to
22 certify that they are qualified therefor. Provides
23 requirements for levy of the tax. Specifies effective
24 dates. Provides duties of the Department of Revenue.
25 Requires municipalities to furnish certain information
26 relating to the tax to the Department of Revenue and to
27 other persons. Provides for fees. Provides limitations on
28 the responsibilities of sellers if information is not
29 furnished as required. Provides procedures that apply
30 when more than one municipality claims an address.
31 Provides procedures for audits by municipalities of
sellers of services. Prescribes record retention
requirements for sellers. Provides time limitations on
assessments of taxes and on applications for refunds or
credits. Provides for offsets of overpayments against
underpayments and for refunds and credits. Provides
requirements with respect to a determination by a
municipality of amounts of tax. Provides protest
procedures and judicial remedies. Provides for settlement
or compromise of a seller's liability for taxes. Provides
rights and duties of municipalities and sellers. Provides
that public service tax payment and return filing dates
must conform to due dates established under ch. 212, F.S.
Provides a schedule for application of the requirements
of the act. Provides an appropriation. Provides for
severability.

By the Committee on Finance & Taxation and Representatives
 Valdes, Edwards, Lacasa, Garcia, Villalobos, Barreiro, Morse
 and Meek

1 A bill to be entitled
 2 An act relating to taxation; providing
 3 legislative intent with respect to the
 4 municipal public service tax; amending s.
 5 166.231, F.S.; providing that specified
 6 governmental bodies are exempt from said tax;
 7 exempting certain religious institutions from
 8 the tax on telecommunication services;
 9 providing that state universities shall not be
 10 deemed sellers of taxable items under certain
 11 circumstances; revising provisions relating to
 12 determination of the situs of telecommunication
 13 services; providing requirements for returns
 14 and remittance of the tax on telecommunication
 15 services; requiring certain purchasers claiming
 16 exemptions to certify that they are qualified
 17 therefor; requiring governmental bodies that
 18 sell taxable services to nonexempt users to
 19 collect and remit the tax; creating s. 166.233,
 20 F.S.; providing requirements for levy of the
 21 tax; specifying effective dates; providing
 22 duties of the Department of Revenue; requiring
 23 municipalities to furnish certain information
 24 relating to the tax to the Department of
 25 Revenue and to other persons; providing for
 26 fees; providing limitations on the
 27 responsibilities of sellers if information is
 28 not furnished as required; providing procedures
 29 that apply when more than one municipality
 30 claims an address or when information does not
 31 conform to the seller's address records;

696-118-97

1 creating s. 166.234, F.S.; providing procedures
2 for audits of sellers by municipalities;
3 prohibiting contingent fee audits; prescribing
4 record retention requirements for sellers;
5 providing time limitations on assessments of
6 taxes and on applications for refunds or
7 credits; providing for offsets of overpayments
8 against underpayments and for refunds and
9 credits; authorizing municipalities to assess
10 interest and penalties; providing requirements
11 with respect to a determination by a
12 municipality of amounts of tax; providing
13 protest procedures and judicial remedies;
14 providing for settlement or compromise of a
15 seller's liability for taxes; providing for
16 interest on refunds if a law is enacted
17 requiring interest on sales or gross receipts
18 tax refunds; providing rights and duties of
19 municipalities and sellers; providing for
20 communications between municipalities with
21 respect to specified matters relating to audits
22 and the identities of sellers; prescribing the
23 circumstances for assessment of audit expenses
24 against a seller; providing a schedule for
25 application of the requirements of the act;
26 amending ss. 203.01 and 203.63, F.S., relating
27 to taxes on gross receipts for utility services
28 and on interstate and international
29 telecommunication services; specifying that
30 certain sums charged as taxes under said
31 sections and under ch. 212, F.S., shall not be

1 subject to refund, notwithstanding requirements
2 relating to separate statement of such taxes on
3 bills or invoices; providing legislative
4 intent; providing an appropriation; providing
5 for severability; providing an effective date.
6

7 Be It Enacted by the Legislature of the State of Florida:
8

9 Section 1. It is the intent of the Legislature to
10 improve the ability of municipalities and sellers to
11 administer the municipal public service tax at reasonable
12 cost, to protect sellers who act in good faith, to improve the
13 information furnished to sellers to facilitate remitting
14 collected tax proceeds to the correct municipality, and to
15 prescribe a procedural framework for administration and
16 auditing functions. The Legislature finds that this act
17 fulfills an important state interest.

18 Section 2. Section 166.231, Florida Statutes, 1996
19 Supplement, is amended to read:

20 166.231 Municipalities; public service tax.--

21 (1)(a) A municipality may levy a tax on the purchase
22 of electricity, metered natural gas, liquefied petroleum gas
23 either metered or bottled, manufactured gas either metered or
24 bottled, and water service. The tax shall be levied only upon
25 purchases within the municipality and shall not exceed 10
26 percent of the payments received by the seller of the taxable
27 item from the purchaser for the purchase of such service.
28 Municipalities imposing a tax on the purchase of cable
29 television service as of May 4, 1977, may continue to levy
30 such tax to the extent necessary to meet all obligations to or
31 for the benefit of holders of bonds or certificates which were

1 issued prior to May 4, 1977. Purchase of electricity means
2 the purchase of electric power by a person who will consume it
3 within the municipality.

4 (b) The tax imposed by paragraph (a) shall not be
5 applied against any fuel adjustment charge, and such charge
6 shall be separately stated on each bill. The term "fuel
7 adjustment charge" means all increases in the cost of utility
8 services to the ultimate consumer resulting from an increase
9 in the cost of fuel to the utility subsequent to October 1,
10 1973.

11 (2) Services competitive with those enumerated in
12 subsection (1) or subsection (9), as defined by ordinance,
13 shall be taxed on a comparable base at the same rates.
14 However, fuel oil shall be taxed at a rate not to exceed 4
15 cents per gallon. However, for municipalities levying less
16 than the maximum rate allowable in subsection (1), the maximum
17 tax on fuel oil shall bear the same proportion to 4 cents
18 which the tax rate levied under subsection (1) bears to the
19 maximum rate allowable in subsection (1).

20 (3) A municipality may exempt from the tax imposed by
21 this section any amount up to, and including, the first 500
22 kilowatt hours of electricity purchased per month for
23 residential use. Such exemption shall apply to each separate
24 residential unit, regardless of whether such unit is on a
25 separate meter or a central meter, and shall be passed on to
26 each individual tenant.

27 (4)(a) The purchase of natural gas or fuel oil by a
28 public or private utility, either for resale or for use as
29 fuel in the generation of electricity, or the purchase of fuel
30 oil or kerosene for use as an aircraft engine fuel or
31

1 propellant or for use in internal combustion engines is exempt
2 from taxation hereunder.

3 (b) A municipality may exempt from the tax imposed by
4 this section the purchase of metered or bottled gas (natural
5 liquefied petroleum gas or manufactured) or fuel oil for
6 agricultural purposes. As used in this paragraph,
7 "agricultural purposes" means bona fide farming, pasture,
8 grove, or forestry operations, including horticulture,
9 floriculture, viticulture, dairy, livestock, poultry, bee, and
10 aquaculture.

11 (5) Purchases by the United States Government, this
12 state, and all counties, school districts, and municipalities
13 of the state, and by public bodies exempted by law or court
14 order, are exempt from the tax authorized by this section. A
15 municipality may exempt from the tax imposed by this section
16 taxation-hereunder the purchase of the taxable items by the
17 United-States-Government;-this-state; any other public body as
18 defined in s. 1.01, or by a nonprofit corporation or
19 cooperative association organized under chapter 617 which
20 provides water utility services to no more than 13,500
21 equivalent residential units, ownership of which will revert
22 to a political subdivision upon retirement of all outstanding
23 indebtedness, and shall exempt purchases by any recognized
24 church in this state for use exclusively for church purposes,
25 and shall exempt from the tax authorized by subsection (9)
26 purchases made by any religious institution that possesses a
27 consumer certificate of exemption issued under chapter 212.

28 (6) A municipality may exempt from the tax imposed by
29 this section any amount up to, and including, the total amount
30 of electricity, metered natural gas, liquefied petroleum gas
31 either metered or bottled, or manufactured gas either metered

696-118-97

1 or bottled purchased per month, or reduce the rate of taxation
2 on the purchase of such electricity or gas when purchased by
3 an industrial consumer which uses the electricity or gas
4 directly in industrial manufacturing, processing, compounding,
5 or a production process, at a fixed location in the
6 municipality, of items of tangible personal property for sale.
7 The municipality shall establish the requirements for
8 qualification for this exemption in the manner prescribed by
9 ordinance. Possession by a seller of a written certification
10 by the purchaser, certifying the purchaser's entitlement to an
11 exemption permitted by this subsection, relieves the seller
12 from the responsibility of collecting the tax on the
13 nontaxable amounts, and the municipality shall look solely to
14 the purchaser for recovery of such tax if it determines that
15 the purchaser was not entitled to the exemption. Any
16 municipality granting an exemption pursuant to this subsection
17 shall grant the exemption to all companies classified in the
18 same SIC Industry Major Group Number.

19 (7) The tax authorized hereunder shall be collected by
20 the seller of the taxable item from the purchaser at the time
21 of the payment for such service. The seller shall remit the
22 taxes collected to the municipality in the manner prescribed
23 by ordinance, except that remittance of taxes by sellers of
24 telecommunication services shall be governed by paragraph
25 (9)(f). Except as otherwise provided in ss. 166.233 and
26 166.234, the seller shall be liable for taxes that are due and
27 not remitted to the municipality. This shall not bar the
28 seller from recovering such taxes from purchasers; however,
29 the universities in the State University System shall not be
30 deemed a seller of any item otherwise taxable hereunder when
31

1 such item is provided to university residences incidental to
2 the provision of educational services.

3 ~~(8)--A municipality shall notify in writing any known~~
4 ~~seller of items taxable hereunder of any change in the~~
5 ~~boundaries of the municipality or in the rate of taxation:~~

6 (9)(a) Beginning July 1, 1995, a municipality may
7 by ordinance exempt not less than 50 percent of the tax
8 imposed under this section on purchasers of electrical energy
9 who are determined to be eligible for the exemption provided
10 by s. 212.08(15) by the Department of Revenue. The exemption
11 shall be administered as provided in that section. A copy of
12 any ordinance adopted pursuant to this subsection shall be
13 provided to the Department of Revenue not less than 14 days
14 prior to its effective date.

5 (b) If in the event an area that is nominated as an
16 enterprise zone pursuant to s. 290.0055 has not yet been
17 designated pursuant to s. 290.0065, a municipality may enact
18 an ordinance for such exemption; however, the ordinance shall
19 not be effective until such area designated pursuant to s.
20 290.0065.

21 (c) This subsection shall expire and be void on
22 December 31, 2005, except that any qualified business which
23 has satisfied the requirements of this subsection prior to
24 December 31, 2005, shall be allowed the full benefit of the
25 exemption allowed under this subsection as if this subsection
26 had not expired on December 31, 2005.

27 (2)(10) A municipality may levy a tax on the purchase
28 of telecommunication services as defined in s. 203.012 as
29 follows:

30 (a)1. Only upon purchases within the municipality of
31 local telephone service as defined in s. 203.012(3) at a rate

1 net to exceed 10 percent of the monthly recurring customer
2 service charges, excluding public telephone charges collected
3 on site, access charges, and any customer access line charges
4 paid to a local telephone company; or

5 2. Only upon purchases within the municipality of
6 telecommunications service ~~that~~ which originates and
7 terminates in this state at a rate not to exceed 7 percent of
8 the total amount charged for any telecommunications service
9 provided within the municipality or, if the location of the
10 telecommunications service provided cannot be determined ~~as~~
11 part of the billing process, the total amount billed for such
12 telecommunications service to a telephone or telephone number,
13 a telecommunications number or device, a service address, or a
14 customers' billing address located within the municipality,
15 excluding public telephone charges collected on site, charges
16 for any foreign exchange service or any private line service
17 except when such services are used or sold as a substitute for
18 any telephone company switched service or dedicated facility
19 by which a telephone company provides a communication path,
20 access charges, and any customer access line charges paid to a
21 local telephone company. However, telecommunications service
22 as defined in s. 203.012(5)(b) shall be taxed only on the
23 monthly recurring customer service charges excluding variable
24 usage charges.

25 (b) For the purpose of compensating the seller, the
26 seller shall be allowed 1 percent of the amount of the tax
27 collected and due to the municipality in the form of a
28 deduction from the amount collected for remittance. The
29 deduction shall be allowed as compensation for the keeping of
30 records and for the collection of, and the remitting of, the
31 tax.

1 ~~(c)--A municipality shall elect by ordinance the tax~~
2 ~~specified in subparagraph (a)1; or subparagraph (a)2; and any~~
3 ~~such election shall not be changed until after the expiration~~
4 ~~of at least 12 months after the effective date of the~~
5 ~~ordinance levying the tax specified in such subparagraph:--A~~
6 ~~municipality shall notify the companies responsible for~~
7 ~~collecting such tax at least 120 days prior to such change of~~
8 ~~election:~~

9 ~~(d)--A municipality electing by ordinance the tax~~
10 ~~specified in subparagraph (a)2; shall provide to a~~
11 ~~telecommunications service provider who is responsible for~~
12 ~~collecting the tax; upon its request; a printed alphabetical~~
13 ~~listing of all street names including block numbers and street~~
14 ~~numbers for streets which cross or form municipal boundaries~~
15 ~~within the municipality for use by the provider of the~~
16 ~~telecommunications service in calculating the proper amount of~~
17 ~~tax payable to the municipality:--The municipality shall be~~
18 ~~responsible for updating this listing as changes occur and for~~
19 ~~providing this information to the telecommunications service~~
20 ~~provider:--The provider; in turn; shall be responsible for~~
21 ~~charging the tax only to service and billing addresses~~
22 ~~contained in this listing:--The municipality shall be entitled~~
23 ~~to collect a fee not to exceed the actual cost of providing~~
24 ~~the information to the telecommunications service provider~~
25 ~~requesting it:~~

26 ~~(c)(e) A municipality may audit the records of any~~
27 ~~provider of telecommunications service taxable by the such~~
28 ~~municipality under s. 166.234; each such provider shall~~
29 ~~provide to the municipality; upon 60 days' notice; access to~~
30 ~~all applicable records for such telecommunications service:~~
31 ~~In an audit; the telecommunications service provider shall be~~

1 ~~liable-only-fer-its-taxable-accounts-collected-corresponding~~
2 ~~te-the-infermation-provided-te-it-by-the-municipality:~~
3 However, any information received by the municipality or its
4 agent in connection with such audit is confidential and exempt
5 from the provisions of s. 119.07(1).

6 (d)(f)1. If the sale of a taxable telecommunication
7 service also involves the sale of an exempt cable television
8 service, the tax shall be applied to the value of the taxable
9 service when it is sold separately.

10 2. If the company does not offer this service
11 separately, the consideration paid shall be separately
12 identified and stated with respect to the taxable and exempt
13 portions of the transaction as a condition of the exemption.

14 3. The amounts identified as taxable in subparagraph
15 2. shall not be less than the statewide average tariff rates
16 set forth by the local exchange telecommunications companies
17 in the tariffs filed with the Public Service Commission on
18 January 1, 1995, and on January 1 of each year thereafter for
19 the equivalent services subject to this section. The Public
20 Service Commission shall publish the statewide average tariff
21 rates annually, beginning on January 1, 1996.

22 4. If the total amount of municipal utility tax
23 collected by a municipality or charter county from
24 telecommunication services pursuant to this subsection for the
25 period of July 1, 1995, to June 30, 1996, is less than the
26 amount collected for the period July 1, 1994, to June 30,
27 1995, the municipality or charter county shall assess each
28 company that remits such tax a pro rata share of the
29 shortfall. The shortfall shall be prorated based on the
30 amount of tax remitted by each company for the period July 1,
31 1995, to June 30, 1996, and the total amount of tax remitted

1 for the same period. By September 1, 1996, the municipality
2 or charter county shall certify to each company the amount of
3 additional tax owed and the tax shall be remitted to the
4 municipality or charter county by October 1, 1996. Provided,
5 however, that this assessment may only be imposed if, in
6 addition to the conditions above, a municipality or charter
7 county has levied the applicable maximum tax rate allowed
8 under this paragraph during the period July 1, 1995, and June
9 30, 1996, and has not switched between the two options allowed
10 under subparagraph (f)1. or subparagraph (f)2. during the
11 period July 1, 1995, and June 30, 1996.

12 (e) Purchases of local telephone service or other
13 telecommunications service for use in the conduct of a
14 telecommunications service for hire or otherwise for resale
15 are exempt from the tax imposed by this subsection.

16 (f) A seller of services which are subject to the tax
17 imposed by a municipality under this subsection shall file a
18 return with the municipality each month. The form of the
19 return shall be determined by the seller, and the return shall
20 be deemed sufficient if it identifies the name and address of
21 the seller, the period of the return, the amount collected
22 from the sale of taxable services, any collection allowance
23 taken, the amount of tax remitted with the return, and the
24 name and telephone number of a person authorized by the seller
25 to respond to inquiries from municipalities concerning the
26 seller's administration of the tax. A municipality may not
27 require any return or payment of public service tax other than
28 on a date returns and payments of tax are required under
29 chapter 212. However, a municipality may grant an extension of
30 the due date for a return or payment upon written request from
31 the seller. The deduction authorized by paragraph (b) shall

1 not be allowed in the event of an untimely return, unless the
2 seller has in writing requested and been granted an extension
3 of time for filing such return. Extensions of time shall be
4 granted if reasonable cause is shown, whether requested before
5 or after the due date of the return.

6 (g) Notwithstanding any other provision of this
7 section, in the event the total amount of tax anticipated to
8 be collected within a calendar quarter does not exceed \$120,
9 the seller of such service may, with the written authorization
10 of the municipality, remit the taxes collected during such
11 calendar quarter to the municipality quarterly. In such case,
12 the tax shall be due on or before the 20th day of the month
13 following the end of the calendar quarter in which the taxes
14 were collected.

15 (10) A purchaser who claims an exemption under
16 subsection (4), subsection (5), or paragraph (9)(c) shall
17 certify to the seller that he or she qualifies for the
18 exemption, which certification may encompass all purchases
19 after a specified date or other multiple purchases. For
20 purchases made under paragraph (9)(c) which are exempted, upon
21 the presentation of a certificate, from the tax imposed by
22 chapter 212, the certification required by this subsection may
23 be satisfied by presentation of a certificate that satisfies
24 the requirements of chapter 212. A seller accepting the
25 certification required by this subsection is relieved of the
26 obligation to collect and remit tax; however, a governmental
27 body that is exempt from the tax authorized by this section
28 shall not be required to furnish such certification, and a
29 seller is not required to collect tax from such an exempt
30 governmental body.

31

1 (11) Governmental bodies which sell or resell taxable
2 service to nonexempt end users must collect and remit the tax
3 levied under this section.

4 Section 3. Section 166.233, Florida Statutes, is
5 created to read:

6 166.233 Public service tax; effective dates;
7 procedures for informing sellers of tax levies and related
8 information.--

9 (1) As used in this section and ss. 166.231, 166.232,
10 and 166.234:

11 (a) "Department" means the Department of Revenue or
12 its designated agent.

13 (b) "Effective date," with respect to any levy, repeal
14 of a levy, or update to a list required under this section,
15 means the effective date of the related obligation or change
16 in the obligation of sellers to collect the tax; however, with
17 respect to taxable service that is regularly billed on a
18 monthly cycle basis, each levy, repeal, or update applies to
19 any bill dated on or after the effective date of such event.

20 (c) "Levy" means and includes the imposition of a tax
21 under s. 166.231 or s. 166.232, all changes in the rate of a
22 tax imposed under either of those sections, and all changes of
23 election under s. 166.231(9)(a).

24 (d) "Seller" means a person who sells a service that
25 is subject to a levy.

26 (2)(a) A tax levy must be adopted by ordinance, and
27 the effective date of every levy or repeal thereof must be a
28 subsequent January 1, April 1, July 1, or October 1. A
29 municipality shall notify the department of the adoption or
30 repeal of a levy at least 120 days before the effective date
31 thereof. Such notification must be furnished on a form

1 prescribed by the department and must specify the services
2 taxed under the authority of s. 166.231 or s. 166.232,
3 including any election under s. 166.231(9)(a), the rate of tax
4 applied to each service, the effective date of the levy or
5 repeal thereof, and the name, mailing address, and telephone
6 number of a person designated by the municipality to respond
7 to inquiries concerning the tax. The department shall maintain
8 this information for the purpose of responding to inquiries
9 with respect thereto, and any person may in writing request
10 such information from the department. For purposes of this
11 section, a response to such a person is timely if in writing
12 and dated no later than 20 days after the receipt of the
13 request. The department shall charge such persons a fee to
14 recover the actual cost of maintaining and furnishing such
15 information. The department has no liability for any loss of
16 or decrease in revenue by reason of any error, omission, or
17 untimely action that results in the nonpayment of the tax
18 imposed under s. 166.231 or s. 166.232. The provisions of this
19 paragraph which prescribe effective dates and require
20 municipalities to furnish notifications to the department do
21 not apply to taxes levied on service, other than
22 telecommunication service, provided by the municipality
23 levying the tax or by a separate utility authority, board, or
24 commission of the municipality.

25 (b) The department may contract with a private entity
26 to maintain and furnish the information described in paragraph
27 (a); however, the department shall establish the fee charged
28 to persons requesting that information.

29 (3) A municipality shall provide to any person, within
30 20 days following receipt of the person's written request, a
31 copy of the ordinance adopting any levy and all amendments

1 thereto, and shall advise such person in writing of the types
2 of media on which the lists described in this subsection are
3 available, the charges, if any, for supplying the lists on
4 each available medium, and the address to which a request for
5 such lists should be transmitted. Within 20 days following
6 receipt of a written request therefor accompanied by payment
7 of the cost, the municipality shall transmit the following to
8 the person requesting them:

9 (a) A list containing each street name, known street
10 name aliases, street address number ranges, applicable
11 directionals, and zip codes associated with each street name,
12 for all street addresses located within the municipality. For
13 a range of street address numbers located within a
14 municipality which consists only of odd or even street
15 numbers, the list must specify whether the street numbers in
16 the range are odd or even. The list shall be alphabetical,
17 except that numbered streets shall be in numerical sequence;

18 (b) A list containing each postal zip code and all the
19 city names associated therewith for all zip codes assigned to
20 geographic areas located entirely within the municipality,
21 including zip codes assigned to post office boxes; and

22 (c) A sequential list containing all post office box
23 number ranges and the city names and zip codes associated
24 therewith, for all post office boxes located within the
25 municipality, except that post office boxes with postal zip
26 codes entirely within the municipality which are included on
27 the list furnished under paragraph (b) need not be duplicated.

28
29 The lists shall be printed, except that, if a list is
30 available on another medium, the municipality shall, upon
31 request, furnish the list on such medium in addition to or in

696-118-97

1 lieu of the printed lists. The municipality shall be
2 responsible for updating the lists as changes occur and for
3 furnishing this information to all sellers affected by the
4 changes. Each update shall specify an effective date which
5 shall be either the next ensuing January 1, April 1, July 1,
6 or October 1; shall be furnished to sellers not less than 60
7 days prior to the effective date; and shall identify the
8 additions, deletions, and other changes to the preceding
9 version of the list. The seller shall be responsible for
10 charging the tax only to service and billing addresses
11 contained in the lists which include all the required elements
12 required by this subsection, including lists furnished to it
13 by a municipality without the seller's request. The
14 municipality shall be entitled to collect a fee not to exceed
15 the actual cost of duplicating the information furnished to
16 the person requesting it.

17 (4) The obligation of a seller to collect and remit
18 the tax for any municipality is conditioned upon the timely
19 availability to the seller of accurate information as
20 described in subsections (2) and (3) in the manner prescribed
21 in those subsections. For purposes of determining the
22 timeliness of such information, the date of a request,
23 response, update, or other transmittal is the date received.
24 If any such information is not timely furnished to a seller,
25 any related obligation to collect and remit tax is suspended
26 during the period of delay, except that:

27 (a) If a request for information described in
28 subsection (2) or subsection (3) precedes the date on which a
29 municipality is required to furnish notification to the
30 department as prescribed in subsection (2), the lack of a
31

696-118-97

1 timely response to the request does not affect the seller's
2 obligation to collect and remit tax for that municipality.

3 (b) If a seller is properly collecting and remitting
4 tax on a taxable service from customers within a municipality
5 as of the date of any request for information under subsection
6 (2) or subsection (3), the lack of a timely response to the
7 request does not affect the seller's obligation to continue
8 collecting and remitting the tax levied on the same service
9 from the same customers.

10 (c) If a failure to furnish timely information under
11 subsection (2) or subsection (3) causes a delay in a seller's
12 receipt of a list or update required by subsection (3) to a
13 date less than 60 days before the effective date of a levy or
14 update, the obligation to collect and remit tax pursuant
15 thereto may not commence until the next subsequent January 1,
16 April 1, July 1, or October 1.

17 (5) If it is determined from lists or updates
18 furnished under subsection (3) that more than one municipality
19 claims the same address or group of addresses, the seller
20 shall notify the municipalities affected within 60 days. Upon
21 resolution of the competing claims, the affected
22 municipalities shall furnish the seller with a signed
23 agreement describing the resolution. The seller shall begin
24 collecting and remitting tax pursuant to the agreement as of
25 the next ensuing January 1, April 1, July 1, or October 1 that
26 is at least 60 days after its receipt of the signed agreement.
27 Prior to such date, the seller shall continue its prior tax
28 treatment of charges to customers with addresses subject to
29 competing claims. For purposes of this subsection, "prior tax
30 treatment" means the practice of collecting and remitting or
31 not collecting and remitting tax during periods prior to

1 discovery of the competing claims. The seller has no liability
2 to any affected municipality for amounts not collected and
3 remitted before the agreement was implemented, except to the
4 extent that the seller's prior tax treatment was confirmed as
5 correct in the agreement.

6 (6) If a list or update furnished pursuant to
7 subsection (3) contains all the elements required by that
8 subsection, but such information does not conform with address
9 information in the seller's records, the seller may so notify
10 the municipality that furnished the list or update. The
11 notification shall identify the portion of the list or update
12 that is in question and describe the nature of the problem. If
13 the seller furnishes such a notification within 60 days after
14 first receiving the list or update from the municipality, the
15 seller shall not be obligated to collect and remit the tax
16 with respect to the portion of the list or update at issue
17 until the next ensuing January 1, April 1, July 1, or October
18 1 which is at least 60 days after the municipality furnishes
19 the seller with information which resolves the issue raised by
20 the seller.

21 Section 4. Section 166.234, Florida Statutes, is
22 created to read:

23 166.234 Public service tax; administrative provisions;
24 rights and remedies.--

25 (1) A municipality may, during the seller's normal
26 business hours at the official location of the seller's books
27 and records, audit the records of any seller of a service that
28 is taxable by the municipality under s. 166.231 or s. 166.232,
29 for the purpose of ascertaining whether taxable services have
30 been provided or the correctness of any return that has been
31 filed or payment that has been made, if the municipality's

1 power to assess tax or grant a refund is not barred by the
2 applicable limitations period. Each such seller must provide
3 to the municipality, upon 60 days' written notice of intent to
4 audit from the municipality, access to applicable records for
5 such service, except an extension of this 60-day period must
6 be granted if reasonably requested by the seller. The seller
7 may at its option waive the 60-day notice requirement. If
8 either the municipality or the seller requires an additional
9 extension, it must give notice to the other no less than 30
10 days before the existing extension expires, except in cases of
11 bona fide emergency or waiver of the notice requirement by the
12 other party. In an audit, the seller is liable only for its
13 taxable accounts collected which correspond to the information
14 provided to it by the municipality under s. 166.233(3). As
15 used in this section, "applicable records" means records kept
16 in the ordinary course of business which establish the
17 collection and remittance of taxes due. Such applicable
18 records may be provided to the municipality on an electronic
19 medium if agreed to by the seller and the municipality. No
20 fee or any portion of a fee for audits conducted on behalf of
21 a municipality shall be based upon the amount assessed or
22 collected as a result of the audit, and no determination based
23 upon an audit conducted in violation of this prohibition shall
24 be valid.

25 (2) Each seller of services that are taxable under s.
26 166.231 or s. 166.232 shall preserve applicable records
27 relating to such taxes until the expiration of the time within
28 which the municipality may make an assessment with respect to
29 that tax; however, a seller is not required to retain
30 duplicative or redundant records.

31

1 (3) Before auditing a seller under subsection (1), the
2 municipality shall, upon request of the seller, discuss with
3 the seller the municipality's proposed audit methodology. The
4 municipality shall prepare and furnish to the seller a report
5 of each audit which identifies the nature of any deficiency or
6 overpayment, the amount thereof, and the manner in which the
7 amount was computed. In addition, the municipality, upon
8 request and no less than 45 days before issuing a
9 determination under subsection (8), shall furnish the seller
10 with all other information or material in possession of the
11 municipality or its agents which is necessary to supplement
12 the audit findings.

13 (4)(a) A municipality may issue a proposed assessment
14 of tax levied under s. 166.231 or s. 166.232 within 3 years
15 after the date the tax was due. However, this limitation is
16 tolled for 1 year if within the 3-year period the municipality
17 issues to the seller a notice of intent to audit. If the
18 audit cannot be completed prior to the expiration of this
19 limitation period as extended by tolling, and such condition
20 is due to the seller's refusal or delay in allowing access to
21 applicable records, the municipality may make a proposed
22 assessment from an estimate based upon the best information
23 available for the taxable period, unless the seller agrees in
24 writing to extend the limitations period. The municipality
25 may also make a proposed assessment from such an estimate if,
26 notwithstanding agreed extensions of the limitations period to
27 a date which is 3 years following issuance of the notice of
28 intent to audit, the seller does not allow access to
29 applicable records prior to such date.

30 (b) A seller may apply to a municipality for refund
31 of, or may take a credit for, any overpayment of tax or

1 interest or penalty thereon within 3 years following
2 remittance by the seller, and the municipality must refund or
3 allow the seller credit for such overpayments as were remitted
4 to the municipality. However, in the case of an overpayment
5 which the seller has previously refunded or credited to a
6 purchaser in accordance with subsection (6), the limitation
7 period for the seller's refund application or credit shall
8 expire 3 years following the seller's remittance to the
9 municipality or 60 days following the seller's issuance of the
10 refund or credit to the purchaser, whichever is later.

11 (c) Upon expiration of the periods set forth in this
12 subsection, the municipality's right to assess tax, interest,
13 or penalty and the seller's right to apply for a refund or
14 credit expire and are barred, unless fraud has occurred;
15 however, sellers and municipalities may enter into agreements
16 to extend these periods.

17 (5) Notwithstanding subsection (4), a municipality
18 shall offset a seller's overpayment of any tax, interest, or
19 penalty revealed by an audit against any deficiency of tax,
20 interest, or penalty which is determined to be due for the
21 same audit period, and such offsets must be reflected in any
22 proposed assessment. If the overpayments by the seller exceed
23 the deficiency, the municipality must refund to the seller the
24 amount by which the aggregate overpayments exceed the total
25 deficiency. Absent proof to the contrary, the methodology
26 that is employed in computing the amount of a deficiency is
27 presumed to yield an appropriate computation of the amount of
28 any overpayments. As used in subsection (4) and this
29 subsection, "overpayment" to a municipality means and includes
30 all remittances of public service tax, interest, or penalty
31

1 which were not due to the municipality, including amounts
2 properly collected but remitted to the incorrect municipality.

3 (6) Any purchaser of a service may request from a
4 seller a refund of, or credit for, taxes collected from the
5 purchaser upon the ground that the amounts collected were not
6 due to any municipality. The seller shall issue the refund or
7 allow a credit to the purchaser entitled thereto, if the
8 request is made within 3 years following collection of the tax
9 from the purchaser. In any event, a seller shall issue a
10 refund or credit to a purchaser within 45 days following the
11 seller's determination of the amount of taxes collected from
12 the purchaser within the preceding 3 years that were not due
13 to any municipality.

14 (7) Municipalities are authorized to assess interest
15 and penalties in accordance with this subsection for failure
16 to pay any tax when due or to file any required return, except
17 that no penalty shall be assessed absent willful neglect,
18 willful negligence, or fraud. Interest may be assessed at a
19 maximum rate of 1 percent per month of the delinquent tax from
20 the date the tax was due until paid. Penalties may be
21 assessed at a maximum rate of 5 percent per month of the
22 delinquent tax, not to exceed a total penalty of 25 percent,
23 except that a municipality may provide that in no event will
24 the penalty for failure to file a return be less than \$15. In
25 the case of a fraudulent return or a willful intent to evade
26 payment of the tax, the seller making such fraudulent return
27 or willfully attempting to evade payment of the tax, shall be
28 liable for a specific penalty of 100 percent of the tax.
29 Interest and penalties shall be computed on the net tax due
30 after application of any overpayments, and are subject to
31

1 compromise pursuant to subsection (14). Interest or penalties
2 and the rates thereof shall be authorized by ordinance.

3 (8) Any proposed assessment or finding of amounts due
4 the seller constitutes a determination of the municipality for
5 purposes of this section. A determination must separately
6 state the amounts of tax, interest, and penalty claimed to be
7 due or to be refunded, must be accompanied by a written
8 narrative explanation of the basis for the municipality's
9 determinations, must inform the seller of the remedies
10 available to it if it disagrees with any such determination,
11 and must state the consequences of the seller's failure to
12 comply with any demand of the municipality which is stated in
13 the determination.

14 (9) A seller may file with the municipality a written
15 protest of any determination within 60 days after the
16 determination is issued. The municipality must consider the
17 protest and must, within 60 days, issue a written notice of
18 decision to the seller. The seller may petition the
19 municipality for reconsideration of a notice of decision
20 within 30 days after the issuance of the notice, and,
21 following reconsideration of such a petition, the municipality
22 must, within 30 days, issue a written notice of
23 reconsideration to the seller.

24 (10) A determination becomes final 60 days after the
25 date of issuance, unless the seller, before the 60-day period
26 expires, has filed a protest or secured a written extension of
27 time within which to file a protest. If the seller has
28 secured a written extension of time and fails to file a
29 protest within the extended time period, the proposed
30 assessment becomes a final assessment at the expiration of the
31 extended filing period. If a protest is timely filed and the

1 seller and the municipality are unable to resolve the disputed
2 issues, the determination becomes final as of the date of
3 issuance of the notice of decision, unless the seller timely
4 files a petition for reconsideration. If a petition for
5 reconsideration is timely filed, the determination becomes
6 final upon issuance of a notice of reconsideration.

7 (11) A notice of decision or a notice of
8 reconsideration must address each issue raised in the protest
9 or petition, must explain the reasoning underlying the
10 conclusions reached, and must advise the seller of the
11 remedies available to it if it disagrees with the
12 municipality's disposition of the issues.

13 (12) A seller may contest the legality of any
14 determination by filing an action in circuit court within 60
15 days after the date the determination becomes final. However,
16 in any action filed in circuit court to contest the legality
17 of any tax, penalty, or interest assessed under this section,
18 the plaintiff must pay the municipality the amount of the tax,
19 penalty, and accrued interest which is not being contested by
20 the seller. Venue lies in the county where the municipality
21 is located. The defendant in any such action is the
22 municipality.

23 (13) A seller's failure to protest a determination
24 under this section administratively or judicially does not
25 waive or impair the seller's right to seek refund of any
26 overpayment within the time allowed under subsection (4).

27 (14) A seller's liability for any tax, interest, or
28 penalty may be settled or compromised by the municipality upon
29 the grounds of doubt as to liability or doubt as to the
30 collectibility of such tax, interest, or penalty. A
31 municipality and a seller may enter into a written closing

1 agreement that reflects the terms of any settlement or
2 compromise. When such a closing agreement has been approved
3 on behalf of the municipality and the seller, it is final,
4 conclusive, and binding on the parties with respect to all
5 matters set forth therein; and, except upon a showing of fraud
6 or misrepresentation of material fact, additional assessment
7 may not be made against the seller for the tax, interest, or
8 penalty specified in the closing agreement for the time period
9 specified in the closing agreement, and the seller may not
10 institute any judicial or administrative proceeding to recover
11 any tax, interest, or penalty paid under the closing
12 agreement. In issuing a determination, a municipality must
13 include in its notification thereof to the seller the names of
14 the persons authorized to approve compromises and to execute
15 closing agreements. A municipality may also enter into
16 agreements for scheduling payments of taxes, interest, and
17 penalties, which agreements must recognize both the seller's
18 financial condition and the best interest of the municipality,
19 if the seller gives accurate, current information and meets
20 all other tax obligations on schedule.

21 (15) All notices of intent to audit, determinations,
22 notices of decisions, and notices of reconsideration issued
23 under this section must be transmitted to the seller by
24 certified mail, return receipt requested, and the date of
25 issuance is the postmark date of the transmittal. All
26 protests and petitions for reconsideration are timely filed if
27 postmarked or received by the municipality within the time
28 prescribed by this section. If mailed, protests and petitions
29 must be transmitted by certified mail, return receipt
30 requested.

1 (16) A seller may pay any contested amount, in whole
2 or in part, at any time, and the payment does not impair any
3 of the seller's remedies as provided in this section.

4 (17) Each municipality that levies the public service
5 tax shall furnish sellers with prompt, accurate responses to
6 questions and to requests for tax assistance. In the event a
7 law is enacted requiring payment of interest on refunds of
8 taxes paid pursuant to chapter 203 or chapter 212,
9 municipalities shall pay interest on public service tax
10 refunds at the rate required by such law.

11 (18) In all matters connected with the administration
12 of the public service tax, sellers have the right:

13 (a) To be represented by counsel or other qualified
14 representatives;

15 (b) To procedural safeguards with respect to the
16 recording of interviews during tax determination processes
17 conducted by the municipality; and

18 (c) To have audits, inspections of records, and
19 interviews conducted at a reasonable time and place.

20 (19) Municipalities may communicate with each other
21 concerning the following:

22 (a) Technical information concerning a seller's tax
23 and accounting system necessary to conduct an accurate and
24 efficient audit of a specific company; however, in no event
25 shall the information include any data relevant to a specific
26 purchaser or account or the seller's tax treatment of specific
27 services;

28 (b) Names and addresses of companies selling taxable
29 services within their respective jurisdictions; and

30 (c) The name of any company issued a refund of taxes
31 and the total amount of taxes refunded to such company.

1 of its transmittal do not comply with s. 166.234, Florida
2 Statutes.

3 (d) In the case of audits that are the subject of
4 pending litigation as of the effective date of this act, the
5 requirements and limitations of s. 166.234(12), Florida
6 Statutes, do not apply to actions filed before the effective
7 date of this act.

8 (e) The provisions of s. 166.234(4)(a), Florida
9 Statutes, shall not apply to taxes due prior to July 1, 1994.
10 A proposed assessment for taxes due prior to July 1, 1994, may
11 be issued on or before July 1, 1997, for any audit period
12 beginning on or after July 1, 1992, which is specified in a
13 notice of intent to audit issued before March 1, 1997. After
14 July 1, 1997, the municipality's right to assess such taxes
15 shall expire and be barred. However, if the municipality is
16 unable to complete such an audit due to the seller's refusal
17 or delay in allowing access to applicable records, the
18 municipality may make an estimate based upon the best
19 information available unless the seller agrees in writing to
20 extend the limitations period.

21 Section 6. Subsection (10) is added to section 203.01,
22 Florida Statutes, 1996 Supplement, to read:

23 203.01 Tax on gross receipts for utility services.--

24 (10) Notwithstanding the provisions of subsection (5)
25 and s. 212.07(2), sums that were charged or billed as taxes
26 under this section and chapter 212 and that were remitted to
27 the state in full as taxes shall not be subject to refund by
28 the state or by the utility which remitted the sums, when the
29 amount remitted was not in excess of the amount of tax imposed
30 by chapter 212 and this section.

1 Section 7. Subsection (4) is added to section 203.63,
2 Florida Statutes, to read:

3 203.63 Tax on interstate and international
4 telecommunication services.--

5 (4) Notwithstanding the provisions of subsection (1)
6 and s. 212.07(2), sums that were charged or billed as taxes
7 under this section and chapter 212 and that were remitted to
8 the state in full as taxes shall not be subject to refund by
9 the state or by the utility which remitted the sums when the
10 amount remitted was not in excess of the amount of tax imposed
11 by chapter 212 and this section.

12 Section 8. It is the intent of the Legislature that
13 the creation of s. 203.01(10), Florida Statutes, 1996
14 Supplement, and s. 203.63(4), Florida Statutes, by this act
15 are remedial and are intended to clarify existing law.

16 Section 9. The sum of \$35,000 is appropriated to the
17 Department of Revenue from the Administrative Trust Fund for
18 fiscal year 1997-1998, and one full-time-equivalent position
19 is authorized, for the purpose of performing the functions
20 identified in s. 166.233(2), Florida Statutes, as created by
21 this act.

22 Section 10. If any provision of this act or the
23 application thereof to any person or circumstance is held
24 invalid, the invalidity shall not affect other provisions or
25 applications of the act which can be given effect without the
26 invalid provision or application, and to this end the
27 provisions of this act are declared severable.

28 Section 11. This act shall take effect upon becoming a
29 law.

Florida Legislature On-Line Sunshine

[Bill By](#) [Bill Text](#) [Amendments](#) [Staff Analysis/Bill](#) [Vote History](#) [Citations](#)
[Hundreds](#) [Research](#)

H1275: Municipal Public Service Tax

H 1275 GENERAL BILL/CS by Finance & Taxation (FRC); Valdes; (CO-SPONSORS) Edwards; Lacasa; Garcia; Villalobos; Barreiro; Morse; Meek (Similar CS/1ST ENG/S 1958, Compare H 2035, CS/S 1680)
Municipal Public Service Tax; provides legislative intent; provides that specified governmental bodies are exempt from said tax; exempts certain religious institutions from tax on telecommunication services; provides that state universities shall not be deemed sellers of taxable items under certain circumstances; revises provisions re determination of situs of telecommunication services; provides for severability, etc. Amends 166.231; 203.01, .63; creates 166.233, .234. APPROPRIATION: \$35,000. EFFECTIVE DATE: 05/30/1997.

03/10/97 HOUSE Filed
 03/11/97 HOUSE Introduced -HJ 00172
 03/24/97 HOUSE Referred to Utilities & Communications (EIC); Finance & Taxation (FRC); General Government Appropriations -HJ 00323
 03/27/97 HOUSE On Committee agenda-- Utilities & Communications (EIC), 04/03/97, 8:30 am, 317C
 04/03/97 HOUSE Comm. Action: Unanimously Favorable with 1 amendment(s) by Utilities & Communications (EIC) -HJ 00495
 04/08/97 HOUSE Now in Finance & Taxation (FRC) -HJ 00495
 04/09/97 HOUSE On Committee agenda-- Finance & Taxation (FRC), 04/15/97, 1:00 pm, Morris Hall
 04/15/97 HOUSE Comm. Action: Unanimously CS by Finance & Taxation (FRC) -HJ 00658
 04/17/97 HOUSE CS read first time on 04/17/97 -HJ 00654; Now in General Government Appropriations -HJ 00658; On Committee agenda-- General Government Appropriations, 04/18/97, 9:00 am, 214C
 04/18/97 HOUSE Comm. Action:-Unanimously Favorable by General Government Appropriations -HJ 00666; Placed on Economic Impact Council Calendar -HJ 00665
 04/25/97 HOUSE Read second time -HJ 01049
 04/29/97 HOUSE Read third time -HJ 01184; CS passed; YEAS 117 NAYS 0 -HJ 01185
 04/29/97 SENATE In Messages
 04/30/97 SENATE Received, referred to Community Affairs; Regulated Industries; Ways and Means -SJ 01097; Immediately withdrawn from Community Affairs; Regulated Industries; Ways and Means -SJ 00958; Substituted for CS/SB 1958 -SJ 00958; Read second and third times -SJ 00958; CS passed; YEAS 29 NAYS 0 -SJ 00958
 04/30/97 HOUSE Ordered enrolled -HJ 01347
 05/14/97 Signed by Officers and presented to Governor
 05/30/97 Became Law without Governor's Signature; Chapter No. 97-233

BILL TEXT: [\(Top\)](#)

[hb1275 \(HTML, As Printed\)](#)

[hb1275c1 \(HTML, As Printed\)](#)

Florida Legislature On-Line Sunshine

[Bill By](#) [Bill Text](#) [Amendments](#) [Staff Analysis/Bill](#) [Vote History](#) [Citations](#)
[Hundreds](#) [Research](#)

S1958: Municipal Public Service Tax

S 1958 **GENERAL BILL/CS/1ST ENG by Community Affairs; Lee** (Similar CS/H 1275,
Compare H 2035, CS/S 1680)

Municipal Public Service Tax; provides legislative intent; provides that specified governmental bodies are exempt from tax; exempts certain religious institutions from tax on telecommunication services; requires certain purchasers claiming exemptions to certify that they are qualified therefor; provides limitations on responsibilities of sellers if info is not furnished as required; provides for severability, etc. Amends 166.231, 203.01, .63; creates 166.233, .234. APPROPRIATION: \$35,000. EFFECTIVE DATE: Upon becoming law.

03/04/97 SENATE Filed

03/12/97 SENATE Introduced, referred to Community Affairs; Commerce and Economic Opportunities; Ways and Means -SJ 00193

04/11/97 SENATE On Committee agenda-- Community Affairs, 04/15/97, 9:00 am, Room-1C(309)

04/15/97 SENATE Comm. Action: CS by Community Affairs -SJ 00521; CS read first time on 04/17/97 -SJ 00525

04/17/97 SENATE Now in Commerce and Economic Opportunities -SJ 00521; Withdrawn from Commerce and Economic Opportunities -SJ 00509; Now in Ways and Means

04/18/97 SENATE On Committee agenda-- Ways and Means, 04/23/97, 2:00 pm, Room-EL --Temporarily postponed

04/24/97 SENATE On Committee agenda-- Ways and Means, 04/25/97, 9:00 am, Room-EL -SJ 00535; Withdrawn from Ways and Means -SJ 00535; Placed on Calendar

04/29/97 SENATE Placed on Special Order Calendar -SJ 00938; Read second time -SJ 00730; Amendment(s) adopted -SJ 00730; Ordered engrossed -SJ 00730

04/30/97 SENATE House Bill substituted -SJ 00958; Laid on Table, Iden./Sim./Compare Bill(s) passed, refer to CS/HB 1275 (Ch. 97-233)

BILL TEXT: ([Top](#))

[sb1958 \(HTML, As Printed\)](#)

[sb1958c1 \(HTML, As Printed\)](#)

[sb1958e1 \(HTML, As Printed\)](#)

AMENDMENTS: ([Top](#))

NO AMENDMENTS AVAILABLE

STORAGE NAME: h1275s1z.uco
DATE: June 20, 1997

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 97-233, Laws of Florida

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
UTILITIES AND COMMUNICATIONS
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1275

RELATING TO: Municipal Public Service Tax

SPONSOR(S): The Committee on Finance and Taxation and Representative Valdes and others

STATUTE(S) AFFECTED: ss. 166.231, 166.233, 166.234, 203.01, and 203.63

COMPANION BILL(S): SB 1958

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) UTILITIES AND COMMUNICATIONS YEAS 11 NAYS 0
- (2) FINANCE AND TAXATION YEAS 13 NAYS 0
- (3) GENERAL GOVERNMENT APPROPRIATIONS YEAS 8 NAYS 0
- (4)
- (5)

I. SUMMARY:

This bill provides the legislative intent to establish a taxpayer's bill of rights for public service taxes under section 166.231, Florida Statutes. The bill would provide detailed procedures for the administration of the public services taxes and would provide rights and remedies to a seller concerning the assessments or determinations.

The bill would appropriate \$35,000 and one full-time equivalent position to the Department of Revenue to implement the provisions of the bill.

The bill was substantially amended in the Committee on Utilities and Communications. The committee adopted an amendment that removed everything after the enacting clause and inserted several new provisions.

The bill was further amended and made a committee substitute in the Committee on Finance and Taxation to provide language exempting university residences from the municipal utility taxes and restrictions on refunds of gross receipts that have already been collected and remitted to the state by the seller.

The bill would take effect upon becoming a law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Florida Constitution in Article VII, section 9(a) provides that counties, school districts, municipalities, and special districts may be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, except for ad valorem taxes on intangible personal property and taxes not prohibited by the Constitution

Section 166.231, Florida Statutes, authorizes municipalities to levy a public service tax. The seller of the service collects the tax from the purchaser and sends it to the municipality as prescribed by ordinance. Subsection (1) of section 166.231, Florida Statutes, specifically authorizes municipalities to levy a tax on the purchase of electricity, metered or bottled gas, and water service within the municipality not to exceed 10 percent of the amount received for the service. Competitive services are taxed on a comparable base at the same rates. Except for certain continuing obligations, cable television services are not taxed. Fuel adjustment charges are not taxed, and a fuel oil tax may not exceed four cents per gallon. Municipalities must notify sellers in writing of any change in municipal boundaries or in the rate of taxation.

Municipalities levying the tax may exempt certain purchases. Municipalities also may exempt from these taxes, purchases by the United States government, the state, a public body as defined in section 1.01, Florida Statutes, or certain nonprofit corporations whose water utility services will revert to a political subdivision upon retirement of all outstanding indebtedness. The municipality is required to exempt those purchases by any recognized church that are to be used exclusively for church purposes. There is also an enterprise zone exemption from the tax.

Section 166.231(9), Florida Statutes, authorizes a public services tax on telecommunications services. The municipality is required to elect one of two alternative methods of levying the telecommunications tax and to provide a telecommunications provider with an alphabetical listing of street names and numbers within the municipality for use in calculating the tax. The municipality is authorized to audit the records of any taxable telecommunications service provider, however, the information received is exempt from the open public records requirements in section 119.07(1), Florida Statutes. Under certain circumstances, shortfalls in the collection of the tax may be determined for July 1, 1995, through June 30, 1996, and collections assessed from each company.

Although section 166.231, Florida Statutes, only grants the authority to levy public service taxes to municipalities, charter counties are also authorized to levy these taxes. In Volusia County v. Dickinson, 269 So. 2d 9 (Fla. 1972), the Florida Supreme Court stated that charter counties have the right to levy any tax that municipalities may levy. The Court subsequently found the logic in the Dickinson case applicable to "a public service tax" under section 166.231, Florida Statutes. According to the Florida Supreme Court, when Article VII, Section 9(a) of the Florida Constitution on local taxes and Article VIII, Section 1(g) of the Florida Constitution on charter government are "read together," they "give charter counties the authority to levy any tax that a municipality may impose, if it is within the county's taxing jurisdiction." McLeod v. Orange County, 645 So. 2d 411, 413, (Fla. 1994).

The *1997 Florida Tax Handbook*, Florida Legislature and Florida Department of Revenue, estimated that municipalities collected \$664.9 million and charter counties collected \$244.2 million from public services taxes in fiscal year 1996-97. As of 1995, seven charter counties, Alachua, Broward, Dade, Orange, Palm Beach, Seminole and Volusia and consolidated Duval/Jacksonville levied the public service tax. Charter counties may only levy the tax in unincorporated areas of the county.

B. EFFECT OF PROPOSED CHANGES:

This bill would provide that the intent of the Legislature to improve the ability of municipalities and sellers to administer this tax at reasonable cost, protects sellers who act in good faith, ensure that sellers are furnished the information necessary for remitting the taxes to the correct municipality, and prescribe a framework for administration and auditing of the tax.

Purchases made by the United States Government, the State of Florida, counties, municipalities, school districts, or public bodies that are exempt by law or court decisions would also be exempt from the public service tax. The bill would also exempt telephone lines in local dormitories owned and operated by state universities from the local municipal utility taxes. The bill would continue to authorize municipalities to exempt other public bodies, as defined in section 1.01, Florida Statutes, nonprofit corporations or cooperative associations organized under chapter 617, Florida Statutes, which provide water utility services to more than 13,500 equivalent residential units, that revert to a political subdivision after any indebtedness is paid, and any recognized church used exclusively for church purposes. Municipalities would be required to exempt any religious institution that possesses a consumer certificate of exemption issued under chapter 212, Florida Statutes, from the tax on telecommunications services.

The bill would provide that if a municipality levies a tax on telecommunications services as defined in section 203.012, Florida Statutes, on purchases in which the location cannot be determined, the source of the tax may be ascribed to the municipality on the basis of the telephone number, billing address, or service address which is used by the seller.

The bill would provide that the seller remains liable for taxes that are due and not remitted to a municipality, however, it does not prevent the seller from recovering these taxes from the purchaser.

The bill would provide for the filing of tax returns by the sellers of services each month. The form would be determined by the seller and would be sufficient if it identifies the name and address of the seller, the period of the return, any collection allowance taken, the amount of tax remitted, and the name and telephone number of the person to contact for information about the seller's administration of the tax. A municipality can only require the same date of return and payment of tax as is required by chapter 212, Florida Statutes. A municipality may grant an extension of time for the return. However, the collection allowance would not be allowed unless the seller requested the extension in writing and the extension had been granted. The extensions are required to be granted if reasonable cause is shown. The seller may also be allowed to, with written authorization from the municipality, to remit any taxes collected on a quarterly basis if

the amount of tax collected does not exceed \$120 per quarter. The taxes would be due on the 20th day of the month following the end of the quarter.

The bill would provide that any purchaser who claims the exemptions in subsections (4), (5), or (9)(e), must certify to the seller that they qualify for the exemption. The purchaser of telecommunications service for resale may satisfy this certification requirement by presentation of a certificate that satisfies the requirements of chapter 212, Florida Statutes. A seller would be relieved from collecting and remitting the tax when the seller accepts the certification provided by this act. A governmental body does not have to furnish this certification. However, governmental bodies that sell or resell taxable service to nonexempt end users would be required to collect and remit the tax levied under this section.

The bill would provide definitions procedures to identify where addresses of purchasers are located for sections 166.231, 166.232, and 166.234, Florida Statutes. Subsection (2)(a) would provide that the tax levy be adopted by ordinance and would be effective either the subsequent January 1, April 1, July 1, or October 1 following the adoption of the ordinance. The municipality is required to notify the Department of Revenue of the action at least 120 days before the effective date of the ordinance on a form prescribed by the department. The notification would be required to specify the services taxed, including any election under section 166.231(9)(a), Florida Statutes, the rate, the effective date, and the name, address, and telephone number of a person designated to respond to inquiries about the tax. The department is required to maintain this information to respond to inquiries and any person may obtain this information by requesting it in writing from the department. A response would be timely under this section if it is in writing and dated no later than 20 days after the receipt of the request. The department would be authorized to charge a fee for the actual cost of maintaining and providing the information. The department would have no liability for any loss or decrease of revenue by reason of any error, omission, or untimely action that results in nonpayment of taxes. The effective date and departmental notification requirements apply only to taxes levied on telecommunication services by municipalities. Paragraph (b) would allow the Department of Revenue to contract with a private entity to provide its services provided the department sets the authorized fees.

The bill would also require a municipality to furnish any person, within 20 days of a request, a copy of the ordinance and amendments adopting any tax levy, a written notification indicating the type of medium is available for the address list required by this section, the charges for the list, and the person or office to contact to obtain a copy of the list. Upon any written request and payment of the cost, the municipality must send a copy of the appropriate address list to the person requesting it. A municipality must compile a list containing each street name, know street name aliases, street address number ranges, applicable directionals, and zip codes associated with each street name, for all street address numbers located within the municipality. In addition, a municipality must compile a list containing each postal zip code and all the city names associated with the zip codes located entirely within the municipality, including zip codes for post office boxes. A municipality also must compile a list containing all post office box number ranges, including the city names and zip codes located entirely within the municipality. The zip codes lists need not be duplicated. The lists may be printed or available in another medium. The lists must be updated as changes occur and must specify the effective date which must be the next ensuing quarterly effective date -- i.e., January 1, April 1, July 1, or October 1. Sellers must be furnished the updated list not

less than 60 days prior to the effective date. The updated list must show additions, deletions, and other changes made to the preceding list. The sellers are only responsible for charging the public service tax only to service and billing addresses contained in the lists supplied by the municipality. This includes lists that are furnished by a municipality without the seller's request. The municipality may collect a fee not to exceed the actual cost of duplicating the information. The compilation of these lists replaces the address database that was in the original bill.

The bill would also provide that the seller is only liable for collecting and remitting the taxes due to the extent that the address information received is accurate

The seller's obligation to collect and remit the public service tax is suspended during any delay in timely receiving the information required. The obligation would not be suspended if:

1. the request precedes the date on which a municipality is required to furnish notification to the department; or
2. the seller has been properly collecting and remitting the tax on a taxable service from customers on the date of the request.

If a seller is delayed in receiving the information required, and receives it less than 60 days before the effective date of a tax levy or update, then the seller does not have to collect and remit the taxes until the next quarterly effective date.

If more than one municipality claims the same address or group of addresses, the seller is required to notify the affected municipalities within 60 days of the determination of the competing claims. Once the municipalities resolve the competing claims, the affected municipalities must supply the seller with a signed agreement describing the resolution. The seller must begin collecting and remitting the tax after the next quarterly effective date that is at least 60 days after the receipt of the agreement. Prior to that date, the seller must continue the prior tax treatment on the addresses involved in the competing claims. The seller is not liable for the amounts that are not collected and remitted before the agreement unless the prior tax treatment was correct.

If the information supplied by the municipality does not agree with the seller's records, the sellers must notify the municipality about the problem. The seller must identify and describe the nature of the problem. If the seller notifies the municipality within 60 days of receiving the information, then the seller is not obligated to collect and remit the taxes until the next quarterly effective date that is at least 60 days after the municipality has resolved the problem.

The bill would allow a municipality to audit the records of any seller of a service that is taxable by a municipality under sections 166.231 or 166.232, Florida Statutes, during normal business hours at the location of the seller's official records. The municipalities would be required to give 60 days written notice of an audit and the seller would be required to give the municipalities access to the applicable records for such service. An extension to the 60-day period must be granted to the seller if reasonably requested by the seller. The seller may waive the 60-day notice requirement. If the municipality or seller requires an additional extension, it must give notice of at least 30 days to the other party before the extension expires. This time limit does not apply in a bona fide

emergency or the waiver of the notice requirement. In an audit, the seller would be liable only for the taxable accounts that correspond to the information provided by the municipality under section 166.233(3), Florida Statutes. The applicable records means "records kept in the ordinary course of business which establish the collection and remittance of taxes due." The records may be provided in an electronic medium if agreed to by the municipality and the seller. Contingency audit fees are prohibited and determination established through this method would be invalid.

Each seller must also preserve the applicable records until the expiration of the time that the municipality has to make an assessment. The seller is not required to keep duplicate or redundant records.

The bill would require that, before an audit is conducted, a municipality discuss with the seller, upon request, the proposed audit methodology and furnish the seller a report of each audit that identifies the nature of the deficiency or overpayment, the amount, and the manner of computation. A seller may request and the municipality must furnish all material necessary to supplement the audit findings, no less than 45 days before issuing a determination.

The bill would allow a municipality to issue a proposed assessment within three years after the date when the tax was due. This limitation would be tolled for one year if, within that time, the municipality issues a notice of intent to audit to the seller. If the audit cannot be completed within these time frames because of the seller's refusal or delay in allowing the municipality access to its records, the municipality may make a proposed assessment from an estimate based upon the best available information for the taxable period, unless the seller agrees in writing to an extension of time. If the seller still denies the municipality access to its records, the municipality may make a proposed assessment after three years from the issuance of the notice of intent to audit.

The bill would allow a seller to apply for a refund or credit for any overpayment of tax, including interest and penalties, within three years of the remittance by the seller. The municipality must refund or allow a credit for those overpayments. If the seller has refunded or credited the purchaser for the overpayment pursuant to subsection (6), the seller may apply within the above three years or within 60 days following the seller's issuance of the refund or credit to the purchaser, whichever is later.

The bill would also include a provision that would bar the municipality's right to assess the tax, including interest and penalties and the seller's right to apply for a refund or credit after the time limitations. However, if fraud has occurred or the parties agree, the time periods may be extended.

The bill would require a municipality to offset a seller's overpayment of tax, including interest and penalties against any deficiency of tax, interest or penalty during the same audit period and the offset must be reflected in any proposed assessment. If the overpayments exceed the deficiency, then the municipality must refund the amount the aggregate overpayments exceed the total deficiency. The audit methodology is presumed to be correct absent proof to the contrary. "Overpayment" is defined as "all remittances of public service tax, interest, or penalty which were not due to the municipality, including amounts properly collected but remitted to the incorrect municipality."

Subsection (6) would allow a purchaser of a service to request a refund or credit from the seller of the tax collected based on the tax not being due the municipality. The seller would be required to refund or credit the amount if the request is made within three years following the collection of the tax from the purchaser. If the seller determines that the amount of taxes collected from the purchaser within the preceding three years were not due the municipality, the seller must refund or credit the purchaser within 45 days of that determination.

The bill would authorize a municipality to assess interest and penalties for failure to pay any tax when due or to file any required return. However, no penalty may be assessed absent willful neglect, willful negligence or fraud. Interest may be assessed at a maximum rate of one percent per month from the date the tax was due and paid. Penalties may be assessed at a maximum rate of five percent per month, not to exceed a total of 25 percent. The minimum penalty is \$15.00. If the seller makes a fraudulent return or willfully attempts to evade payment of the tax, the seller is liable for a specific penalty of 100 percent of the tax. Interest and penalties are computed on the net tax due after application of overpayments; they can be compromised under subsection (14) and must be authorized by ordinance.

The bill would provide that a proposed assessment or finding of amounts due the seller constitutes a determination of the municipality for the purposes of this section. The determination must separately state the amount of the tax, interest, and penalty claimed to be due or refunded. It must be accompanied by a written narrative explaining the basis for the municipality's determination and it must state the seller's remedies if it disagrees with the determination. Finally, the narrative must indicate the consequences of the seller's failure to comply with any demand of the municipality that is stated in the determination.

The bill would allow a seller to file a written protest of any determination with the municipality within 60 days of the determination. The municipality must consider the protest and issue a written decision within 60 days of the protest. The seller may petition the municipality for a reconsideration of the decision within 30 days. The municipality then must issue a reconsideration notice within 30 days.

The bill would provide that the determination becomes final 60 days after the date of issuance, unless the seller, before the 60-day period expires, files a protest or secures a written extension of time within which to file a protest. The determination becomes final if the seller has not filed its protest within the time period of the extension. If the seller files a protest and the seller and municipality cannot resolve the disputed issues, the determination becomes final as of the date of the issuance of the notice of decision. However, if the seller has timely filed a petition for reconsideration, then the determination becomes final upon the issuance of a notice or reconsideration.

The bill would require the notice of decision or reconsideration to address each issue raised in the protest or petition and must explain the reasons for the conclusions and advise the seller of the remedies available if the seller disagrees with the decision.

The bill would allow a seller to contest the legality of any determination by filing an action in circuit court within 60 days of the final determination. The seller must pay the municipality the amount of the tax, penalty, and accrued interest which is not being contested. The venue for the actions lies in the county where the municipality is located

and the defendant in the action is the municipality. A seller's failure to protest a determination does not waive or impair its right to seek a refund of any overpayment.

The bill would allow the municipality and the seller to settle or compromise the seller's liability for any tax, interest, or penalty based on the grounds of doubt as to the liability or doubt as to the collectibility of the tax, interest, or penalty. A municipality and a seller may enter into a written closing agreement that reflects the settlement or compromise, and once it has been approved by the parties, it is binding on them. Absent a showing of fraud or misrepresentation of a material fact, no additional assessment or recovery may be made on matters agreed to in the settlement or compromise.

When a municipality issues a determination, it must include the names of persons authorized to approve compromises and to execute closing agreements. A municipality may also agree to schedule payments of taxes, interest, and penalties which recognize the seller's financial condition and the best interests of the municipality, if the seller gives accurate, current information and meets all other tax obligations on schedule.

The bill would require that all notices, determinations, protests, petitions, must be sent by certified mail, return receipt requested. The date of issuance would be the date the notice or determination is postmarked. Protests and petitions are timely filed if they are postmarked or received by the municipality within the appropriate time limits. It would also allow the seller to pay any contested amount, in whole or in part, at any time without impairing its remedies.

The bill would require each municipality that levies the public service tax to furnish sellers with prompt, accurate responses to questions and request for tax assistance. If chapter 203 or chapter 212 is amended to require payment of interest on the refund of taxes, then municipalities would be required to pay interest on public service refunds at the rate required by such law.

Sellers would be entitled with the following right to:

- (a) be represented by counsel or qualified representative;
- (b) have procedural safeguards concerning recording interviews during the tax determination process; and
- (c) have audits, record inspections, and interviews conducted at a reasonable time and place.

The bill would allow municipalities to communicate with each other about the following information:

- (a) technical information concerning a seller's tax and accounting system necessary to conduct an accurate and efficient audit, however, this information cannot include any data relevant to a specific purchaser or account, or the seller's tax treatment of specific services;
- (b) names and addresses of companies selling taxable services within the municipalities' respective jurisdictions; and

(c) the name of any company issued a refund and the total amount of the refund.

The bill would prohibit a municipality from assessing a seller for any costs incurred or charged to the municipality for performing an audit, including travel expenses. Any assessment or proposed assessment of these costs would be void and unenforceable. However, a municipality may assess and collect from a seller for reasonable travel expenses incurred in performing an audit if the seller received timely notice of the audit and did not permit access to the records on the audit date or any alternative date agreed to by the parties.

The bill provides that only subsection (6) of this section shall apply to a seller who is a municipality or to its subdivisions levying the tax under an audit.

The bill would require municipalities that are levying the public service tax to notify the Department of Revenue what services are being taxed, including which alternative it is using for telecommunication services, the tax rate, the effective date of the tax, and the name and address of the contact person. The notification must include information for levies with prior and future effective dates. The bill would allow sellers to rely on the address listings and updates that conform to this act and were in existence prior to the act, until July 1, 1998. The lists required by this act must be made available by the municipalities no later than January 1, 1998. The lists would be effective on July 1, 1998.

The bill would provide that the provisions of the new section 166.234, Florida Statutes, apply to all taxes, assessments, and audits. Section 166.234, Florida Statutes, would not apply to:

(a) provisions requiring performance of an act before the commencement of an audit do not apply until the effective date of this act;

(b) taxes and assessments that have been resolved by concession of liability and payment, settlement, or other means before the effective date of this act are not affected;

(c) the information requirements do not apply to determinations issued before the effective date of this act. However, a municipality is required to furnish the information if requested by a seller. In addition, no document issued before the effective date of this act is invalid merely because its contents, or the manner or times of its transmittal do not comply with section 166.234, Florida Statutes.

(d) audits that are the subject of pending litigation filed before the effective date of this act are not subject to the provisions of section 166.234(12), Florida Statutes; and

The bill would provide that the provisions of section 166.234(4)(a) as created by this act shall not apply to taxes due prior to July 1, 1994. A proposed assessment for taxes due prior to July 1, 1994 may be issued on or before July 1, 1997 for any audit period beginning on or after July 1, 1992 which is specified in a notice of intent to audit issued before March 1, 1997. After July 1, 1997, the municipality's right to assess such taxes shall expire and be barred. However, if the municipality is unable to complete such an audit due to the seller's refusal or delay in allowing access to

applicable records, the municipality may make an estimate based upon the best information available unless the seller agrees in writing to extend the limitations period.

The bill would provide an appropriation of \$35,000 and one full-time equivalent position to the Department of Revenue for the purposes of implementing the provisions of section 166.233(2), Florida Statutes.

The bill would provide a severability clause.

The bill provides that gross receipts taxes that were charged on utilities and telecommunications under section 203.01, F.S., and Ch. 212, F.S., and remitted in full to the state in the correct amount, shall not be subject to refund by the state or seller. This section is intended as remedial and intended to clarify existing law.

The bill provides that this act shall take effect upon becoming a law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2 Lower Taxes:

a Does the bill increase anyone's taxes?

No.

b Does the bill require or authorize an increase in any fees?

No.

c Does the bill reduce total taxes, both rates and revenues?

No.

d Does the bill reduce total fees, both rates and revenues?

No.

e Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

- N/A

- (2) Who makes the decisions?

- N/A

- (3) Are private alternatives permitted?

- N/A

- (4) Are families required to participate in a program?

- N/A

- (5) Are families penalized for not participating in a program?

- N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

Section 1. This section would provide that intent of the Legislature to improve the ability of municipalities and sellers to administer this tax at reasonable cost, protect sellers who act in good faith, ensure that sellers are furnished the information necessary for remitting the taxes to the correct municipality, and prescribe a framework for administration and auditing of the tax.

Section 2. Section 166.231(5), Florida Statutes, would be amended to provide that purchases made by the United States Government, the State of Florida, counties, municipalities, school districts, or public bodies that are exempt by law or court decisions would also be exempt from the public service tax. The bill would also exempt telephone lines in local dormitories owned and operated by state universities from the local municipal utility taxes. The bill would continue to authorize municipalities to exempt other public bodies, as defined in section 1.01, Florida Statutes, nonprofit corporations or cooperative associations organized under chapter 617, Florida Statutes, which provide water utility services to more than 13,500 equivalent residential units, that revert to a political subdivision after any indebtedness is paid, and any recognized church used exclusively for church purposes. Municipalities would be required to exempt any religious institution that possesses a consumer certificate of exemption issued under chapter 212, Florida Statutes, from the tax on telecommunications services.

Subsection (7) would be amended to require that the remittance of taxes by sellers of telecommunications services will be governed by the provisions of a new paragraph (f) of subsection (9). It would further provide that the seller remains liable for taxes that are due and not remitted to a municipality, however, it does not prevent the seller from recovering these taxes from the purchaser.

Subsection (10) would be renumbered (9) and paragraph (a)1 would be amended to provide that if the location cannot be determined as part of the billing address the tax will be levied on the total amount billed for the telecommunications service at the service address in addition to the telephone or telephone number or customer's billing address.

Paragraphs (c) and (d) of the new subsection (9) that provide the current administrative procedures to be followed would be deleted. Paragraph (e) would be re-lettered paragraph (c) and would delete the current provisions concerning the municipalities auditing the sellers' tax records. It would reference the new auditing provisions in the new section 166.234, Florida Statutes. The provisions requiring the municipalities and

their agents to maintain the information received as confidential and exempt from section 119.07(1), Florida Statutes, would be retained.

A new paragraph (f) would be created to provide for the filing of tax returns by the sellers of services each month. The form would be determined by the seller and would be sufficient if it identifies the name and address of the seller, the period of the return, any collection allowance taken, the amount of tax remitted, and the name and telephone number of the person to contact for information about the seller's administration of the tax. A municipality can only require the same date of return and payment of tax as is required by chapter 212, Florida Statutes. A municipality may grant an extension of time for the return. However, the collection allowance would not be allowed unless the seller requested the extension in writing and the extension had been granted. The extensions are required to be granted if reasonable cause is shown.

Paragraph (g) would be created that would allow the seller, with written authorization from the municipality, to remit any taxes collected on a quarterly basis if the amount of tax collected does not exceed \$120 per quarter. The taxes would be due on the 20th day of the month following the end of the quarter.

A new subsection (10) would provide that any purchaser who claims the exemptions in subsections (4), (5), or (9)(e), must certify to the seller that the purchaser qualifies for the exemption. The purchaser of telecommunications service for resale may satisfy this certification requirement by presentation of a certificate that satisfies the requirements of chapter 212, Florida Statutes. A seller would be relieved from collecting and remitting the tax when the seller accepts the certification provided by this act. A governmental body does not have to furnish this certification. However, governmental bodies that sell or resell taxable service to nonexempt end users would be required to collect and remit the tax levied under this section.

Section 3. This section would create a new section 166.233, Florida Statutes, which provides definitions and the procedure to identify where addresses of purchasers are located.

Subsection (1) would provide definitions for sections 166.231, 166.232, and 166.234, Florida Statutes.

Subsection (2)(a) would provide that the tax levy be adopted by ordinance and would be effective either the subsequent January 1, April 1, July 1, or October 1 following the adoption of the ordinance. The municipality is required to notify the Department of Revenue of the action at least 120 days before the effective date of the ordinance on a form prescribed by the department. The notification would be required to specify the services taxed, including any election under section 166.231(9)(a), Florida Statutes, the rate, the effective date, and the name, address, and telephone number of a person designated to respond to inquiries about the tax. The department is required to maintain this information to respond to inquiries and any person may obtain this information by requesting it in writing from the department. A response would be timely under this section if it is in writing and dated no later than 20 days after the receipt of the request. The department would be authorized to charge a fee for the actual cost of maintaining and providing the information. The department would have no liability for any loss or decrease of revenue by reason of any error, omission, or untimely action that results in nonpayment of taxes. The effective date and departmental notification requirements

apply only to taxes levied on telecommunication services by municipalities. Paragraph (b) would allow the Department of Revenue to contract with a private entity to provide its services provided the department sets the authorized fees.

Subsection (3) would require a municipality to furnish any person, within 20 days of a request, a copy of the ordinance and amendments adopting any tax levy, a written notification indicating the type of medium is available for the address list required by this section, the charges for the list, and the person or office to contact to obtain a copy of the list. Upon any written request and payment of the cost, the municipality must send a copy of the appropriate address list to the person requesting it. A municipality must compile a list containing each street name, know street name aliases, street address number ranges, applicable directionals, and zip codes associated with each street name, for all street address numbers located within the municipality. In addition, a municipality must compile a list containing each postal zip code and all the city names associated with the zip codes located entirely within the municipality, including zip codes for post office boxes. A municipality also must compile a list containing all post office box number ranges, including the city names and zip codes located entirely within the municipality. The zip codes lists need not be duplicated.

The lists may be printed or available in another medium. The lists must be updated as changes occur and must specify the effective date which must be the next ensuing quarterly effective date -- i.e., January 1, April 1, July 1, or October 1. Sellers must be furnished the updated list not less than 60 days prior to the effective date. The updated list must show additions, deletions, and other changes made to the preceding list. The sellers are only responsible for charging the public service tax only to service and billing addresses contained in the lists supplied by the municipality. This includes lists that are furnished by a municipality without the seller's request. The municipality may collect a fee not to exceed the actual cost of duplicating the information. The compilation of these lists replaces the address database that was in the original bill.

Subsection (4) would condition the obligation of a seller to collect and remit the public service tax upon the timely availability to the seller of accurate information maintained by the Department of Revenue and the municipality as required by subsection (2) and (3). For the purposes of timeliness, the date of each action is the date received.

The seller's obligation to collect and remit the public service tax is suspended during any delay in timely receiving the information required by this section. The obligation would not be suspended if:

1. the request precedes the date on which a municipality is required to furnish notification to the department; or
2. the seller has been properly collecting and remitting the tax on a taxable service from customers on the date of the request.

If a seller is delayed in receiving the information required by this section and receives it less than 60 days before the effective date of a tax levy or update, then the seller does not have to collect and remit the taxes until the next quarterly effective date.

If more than one municipality claims the same address or group of addresses, the seller is required to notify the affected municipalities within 60 days of the determination of the

competing claims. Once the municipalities resolve the competing claims, the affected municipalities must supply the seller with a signed agreement describing the resolution. The seller must begin collecting and remitting the tax after the next quarterly effective date that is at least 60 days after the receipt of the agreement. Prior to that date, the seller must continue the prior tax treatment on the addresses involved in the competing claims. The seller is not liable for the amounts that are not collected and remitted before the agreement unless the prior tax treatment was correct.

If the information supplied by the municipality does not agree with the seller's records, the sellers must notify the municipality about the problem. The seller must identify and describe the nature of the problem. If the seller notifies the municipality within 60 days of receiving the information, then the seller is not obligated to collect and remit the taxes until the next quarterly effective date that is at least 60 days after the municipality has resolved the problem.

Section 4. This section would create a new section 166.234, Florida Statutes, to provide for administrative provisions, rights and remedies for the public service tax.

Subsection (1) would allow a municipality to audit the records of any seller of a service that is taxable by a municipality under sections 166.231 or 166.232, Florida Statutes, during normal business hours at the location of the seller's official records. The municipalities would be required to give 60 days written notice of an audit and the seller would be required to give the municipalities access to the applicable records for such service. An extension to the 60-day period must be granted to the seller if reasonably requested by the seller. The seller may waive the 60-day notice requirement. If the municipality or seller requires an additional extension, it must give notice of at least 30 days to the other party before the extension expires. This time limit does not apply in a bona fide emergency or the waiver of the notice requirement. In an audit, the seller would be liable only for the taxable accounts that correspond to the information provided by the municipality under section 166.233(3), Florida Statutes. The applicable records means "records kept in the ordinary course of business which establish the collection and remittance of taxes due." The records may be provided in an electronic medium if agreed to by the municipality and the seller. Contingency audit fees are prohibited and determination established through this method would be invalid.

Subsection (2) would require each seller to preserve the applicable records until the expiration of the time that the municipality has to make an assessment. The seller is not required to keep duplicate or redundant records.

Subsection (3) would require that, before an audit is conducted, a municipality discuss with the seller, upon request, the proposed audit methodology and furnish the seller a report of each audit that identifies the nature of the deficiency or overpayment, the amount, and the manner of computation. A seller may request and the municipality must furnish all material necessary to supplement the audit findings, no less than 45 days before issuing a determination.

Subsection (4)(a) would allow a municipality to issue a proposed assessment within three years after the date when the tax was due. This limitation would be tolled for one year if, within that time, the municipality issues a notice of intent to audit to the seller. If the audit cannot be completed within these time frames because of the seller's refusal or delay in allowing the municipality access to its records, the municipality may make a

proposed assessment from an estimate based upon the best available information for the taxable period, unless the seller agrees in writing to an extension of time. If the seller still denies the municipality access to its records, the municipality may make a proposed assessment after three years from the issuance of the notice of intent to audit.

Subsection (4)(b) would allow a seller to apply for a refund or credit for any overpayment of tax, including interest and penalties, within three years of the remittance by the seller. The municipality must refund or allow a credit for those overpayments. If the seller has refunded or credited the purchaser for the overpayment pursuant to subsection (6), the seller may apply within the above three years or within 60 days following the seller's issuance of the refund or credit to the purchaser, whichever is later.

Subsection (4)(c) would bar the municipality's right to assess the tax, including interest and penalties and the seller's right to apply for a refund or credit after the time limitations set forth in this subsection. However, if fraud has occurred or the parties agree, the time periods may be extended.

Subsection (5) would require a municipality to offset a seller's overpayment of tax, including interest and penalties against any deficiency of tax, interest or penalty during the same audit period and the offset must be reflected in any proposed assessment. If the overpayments exceed the deficiency, then the municipality must refund the amount the aggregate overpayments exceed the total deficiency. The audit methodology is presumed to be correct absent proof to the contrary. "Overpayment" is defined as "all remittances of public service tax, interest, or penalty which were not due to the municipality, including amounts properly collected but remitted to the incorrect municipality."

Subsection (6) would allow a purchaser of a service to request a refund or credit from the seller of the tax collected based on the tax not being due the municipality. The seller would be required to refund or credit the amount if the request is made within three years following the collection of the tax from the purchaser. If the seller determines that the amount of taxes collected from the purchaser within the preceding three years were not due the municipality, the seller must refund or credit the purchaser within 45 days of that determination.

Subsection (7) would authorize a municipality to assess interest and penalties for failure to pay any tax when due or to file any required return. However, no penalty may be assessed absent willful neglect, willful negligence or fraud. Interest may be assessed at a maximum rate of one percent per month from the date the tax was due and paid. Penalties may be assessed at a maximum rate of five percent per month, not to exceed a total of 25 percent. The minimum penalty is \$15.00. If the seller makes a fraudulent return or willfully attempts to evade payment of the tax, the seller is liable for a specific penalty of 100 percent of the tax. Interest and penalties are computed on the net tax due after application of overpayments, they can be compromised under subsection (14) and must be authorized by ordinance.

Subsection (8) would provide that a proposed assessment or finding of amounts due the seller constitutes a determination of the municipality for the purposes of this section. The determination must separately state the amount of the tax, interest, and penalty claimed to be due or refunded. It must be accompanied by a written narrative explaining the basis for the municipality's determination and it must state the seller's remedies if it

disagrees with the determination. Finally, the narrative must indicate the consequences of the seller's failure to comply with any demand of the municipality that is stated in the determination.

Subsection (9) would allow a seller to file a written protest of any determination with the municipality within 60 days of the determination. The municipality must consider the protest and issue a written decision within 60 days of the protest. The seller may petition the municipality for a reconsideration of the decision within 30 days. The municipality then must issue a reconsideration notice within 30 days.

Subsection (10) would provide that the determination becomes final 60 days after the date of issuance, unless the seller, before the 60-day period expires, files a protest or secures a written extension of time within which to file a protest. The determination becomes final if the seller has not filed its protest within the time period of the extension. If the seller files a protest and the seller and municipality cannot resolve the disputed issues, the determination becomes final as of the date of the issuance of the notice of decision. However, if the seller has timely filed a petition for reconsideration, then the determination becomes final upon the issuance of a notice or reconsideration.

Subsection (11) would require the notice of decision or reconsideration to address each issue raised in the protest or petition and must explain the reasons for the conclusions and advise the seller of the remedies available if the seller disagrees with the decision.

Subsection (12) would allow a seller to contest the legality of any determination by filing an action in circuit court within 60 days of the final determination. The seller must pay the municipality the amount of the tax, penalty, and accrued interest which is not being contested. The venue for the actions lies in the county where the municipality is located and the defendant in the action is the municipality.

Subsection (13) would provide that a seller's failure to protest a determination does not waive or impair its right to seek a refund of any overpayment.

Subsection (14) would allow the municipality and the seller to settle or compromise the seller's liability for any tax, interest, or penalty based on the grounds of doubt as to the liability or doubt as to the collectibility of the tax, interest, or penalty. A municipality and a seller may enter into a written closing agreement that reflects the settlement or compromise, and once it has been approved by the parties, it is binding on them. Absent a showing of fraud or misrepresentation of a material fact, no additional assessment or recovery may be made on matters agreed to in the settlement or compromise.

When a municipality issues a determination, it must include the names of persons authorized to approve compromises and to execute closing agreements. A municipality may also agree to schedule payments of taxes, interest, and penalties which recognize the seller's financial condition and the best interests of the municipality, if the seller gives accurate, current information and meets all other tax obligations on schedule.

Subsection (15) would require that all notices, determinations, protests, petitions, must be sent by certified mail, return receipt requested. The date of issuance would be the date the notice or determination is postmarked. Protests and petitions are timely filed if they are postmarked or received by the municipality within the appropriate time limits.

Subsection (16) would allow the seller to pay any contested amount, in whole or in part, at any time without impairing its remedies.

Subsection (17) would require each municipality that levies the public service tax to furnish sellers with prompt, accurate responses to questions and request for tax assistance. If chapter 203 or chapter 212 is amended to require payment of interest on the refund of taxes, then municipalities would be required to pay interest on public service refunds at the rate required by such law.

Subsection (18) would provide sellers with the following right to:

- (a) be represented by counsel or qualified representative;
- (b) have procedural safeguards concerning recording interviews during the tax determination process; and
- (c) have audits, record inspections, and interviews conducted at a reasonable time and place.

Subsection (19) would allow municipalities to communicate with each other about the following information:

- (a) technical information concerning a seller's tax and accounting system necessary to conduct an accurate and efficient audit, however, this information cannot include any data relevant to a specific purchaser or account, or the seller's tax treatment of specific services;
- (b) names and addresses of companies selling taxable services within the municipalities' respective jurisdictions; and
- (c) the name of any company issued a refund and the total amount of the refund.

Subsection (20) would prohibit a municipality from assessing a seller for any costs incurred or charged to the municipality for performing an audit, including travel expenses. Any assessment or proposed assessment of these costs would be void and unenforceable. However, a municipality may assess and collect from a seller for reasonable travel expenses incurred in performing an audit if the seller received timely notice of the audit and did not permit access to the records on the audit date or any alternative date agreed to by the parties.

Subsection (21) provides that only subsection (6) of this section shall apply to a seller who is a municipality or to its subdivisions levying the tax under an audit.

Section 5. Subsection (1) would require municipalities that are levying the public service tax to notify the Department of Revenue what services are being taxed, including which alternative it is using for telecommunication services, the tax rate, the effective date of the tax, and the name and address of the contact person. The notification must include information for levies with prior and future effective dates.

Subsection (2) would allow sellers to rely on the address listings and updates that conform to this act and were in existence prior to the act, until July 1, 1998. The lists

required by this act must be made available by the municipalities no later than January 1, 1998. The lists would be effective on July 1, 1998.

Subsection (3) would provide that the provisions of the new section 166.234, Florida Statutes, apply to all taxes, assessments, and audits. Section 166.234, Florida Statutes, would not apply to:

(a) provisions requiring performance of an act before the commencement of an audit do not apply until the effective date of this act;

(b) taxes and assessments that have been resolved by concession of liability and payment, settlement, or other means before the effective date of this act are not affected;

(c) the information requirements do not apply to determinations issued before the effective date of this act. However, a municipality is required to furnish the information if requested by a seller. In addition, no document issued before the effective date of this act is invalid merely because its contents, or the manner or times of its transmittal do not comply with section 166.234, Florida Statutes.

(d) audits that are the subject of pending litigation filed before the effective date of this act are not subject to the provisions of section 166.234(12), Florida Statutes; and

Paragraph (e) would provide that the provisions of section 166.234(4)(a) as created by this act shall not apply to taxes due prior to July 1, 1994. A proposed assessment for taxes due prior to July 1, 1994 may be issued on or before July 1, 1997 for any audit period beginning on or after July 1, 1992 which is specified in a notice of intent to audit issued before March 1, 1997. After July 1, 1997, the municipality's right to assess such taxes shall expire and be barred. However, if the municipality is unable to complete such an audit due to the seller's refusal or delay in allowing access to applicable records, the municipality may make an estimate based upon the best information available unless the seller agrees in writing to extend the limitations period.

Section 6. This section would provide an appropriation of \$35,000 and one full-time equivalent position to the Department of Revenue for the purposes of implementing the provisions of section 166.233(2), Florida Statutes.

Section 7. This section would provide a severability clause.

Section 8. This section provides that gross receipts taxes that were charged on utilities under section 203.01, F.S., and Ch. 212, F.S., and remitted in full to the state in the correct amount, shall not be subject to refund by the state or seller.

Section 9. This section provides that gross receipts taxes that were charged on interstate and international telecommunications services under section 203.01, F.S., and Ch. 212, F.S., and remitted in full to the state in the correct amount, shall not be subject to refund by the state or seller.

Section 11. This section provides that these amendments are remedial and intended to clarify existing law.

Section 12. This section provides that this act shall take effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Department of Revenue will incur expenses in starting up the address database.

2. Recurring Effects:

The bill would exempt university residences from municipal utility and telecommunications taxes when the service is provided incidental to the provision of educational services. Only Orange County has been collecting these taxes to date. Their estimates show the revenue decrease to be approximately \$20,000 dollars a year. This fiscal impact for this issue is indeterminate.

The bill would appropriate \$35,000 from the Administrative Trust Fund and one full-time equivalent position for the purposes of seller notification, maintenance of the database and responses to inquiries under section 166.233(2), Florida Statutes.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See "Recurring Effects" section above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Indeterminate.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D FISCAL COMMENTS:

None.

IV CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill would require the municipalities and charter counties to expend funds to meet the requirements of this bill. The amount to be expended cannot be determined at this time.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Utilities and Communications adopted amendment # 1 as amended, that removed from the bill everything after the enacting clause.

The Committee on Finance and Taxation adopted the committee substitute combining the amendment from the previous committee with three amendments adopted in Finance and Taxation. The analysis reflects these changes.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Legislative Research Director:

Patrick L. "Booter" Imhof

Patrick L. "Booter" Imhof

AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Legislative Research Director:

George T. Levesque

Keith G. Baker, Ph.D.

AS FURTHER REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT
APPROPRIATIONS:

Prepared by:

Legislative Research Director:

Eliza Hawkins

Cynthia P. Kelly

FINAL RESEARCH PREPARED BY COMMITTEE ON UTILITIES AND
COMMUNICATIONS:

Prepared by:

Legislative Research Director:

Patrick L. "Booter" Imhof

Patrick L. "Booter" Imhof

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 15, 1997 Revised: _____

Subject: Municipal Public Service Tax

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Duncan</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CM</u>	<u>Withdrawn</u>
3.	_____	_____	<u>WM</u>	<u>Withdrawn</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute (CS) revises provisions relating to the municipal public service tax and serves as a Taxpayers' Bill of Rights for public service taxes. Specifically, the CS provides that specified governmental bodies are exempt from the municipal public service tax and exempts certain religious bodies from the tax on telecommunications services. Also, the CS contains detailed procedures for the administration of public service taxes and provides rights and remedies for a seller who protests a proposed assessment or determination. Municipalities are required to furnish certain tax information to the Department of Revenue

The bill substantially amends section 166.231, F.S., 1996 Supplement, and creates sections 163.233 and 163.234 of the Florida Statutes

II. Present Situation:

Article 1, Section 25, Florida Constitution, provides for the Taxpayers' Bill of Rights Effective July 1, 1993, this provision states that by general law the Legislature shall prescribe and adopt a Taxpayers' Bill of Rights that, in clear and concise language, sets forth the taxpayers' rights and responsibilities as well as government's responsibility to deal with them fairly under the laws of this state.

Article VII, Section 9(a) of the Florida Constitution provides that, in addition to ad valorem taxes, counties, school districts, municipalities, and special districts may be authorized by general law to levy other taxes not prohibited by the Constitution.

Section 166.231, F.S., 1996 Supplement, authorizes a municipality to levy a public service tax, which does not exceed 10% of the amount received for the service, on the purchase of electricity,

metered or bottled gas (natural liquefied petroleum gas or manufactured), water service, and telecommunication services. Competitive services are taxed on a comparable base at the same rates and except for certain continuing obligations, cable television services are not taxed. Fuel adjustment charges are not taxed, and a fuel oil tax may not exceed four cents per gallon. Municipalities must notify sellers, in writing, of any change in municipal boundaries or in the rate of taxation.

Municipalities levying the tax may exempt certain purchases and they may also exempt the United States government, the state, a public body as defined in s 1 01, F S., or certain non-profit corporations whose water utility services will revert to a political subdivision. The municipality is required to exempt purchases by any recognized church used exclusively for church purposes. Enterprise zone areas are also exempted from the tax.

Subsection (9) of section 166.231, F.S., authorizes a public service tax on telecommunications services. The municipality is required to elect one of two alternative methods of levying the tax and to provide a telecommunications provider with an alphabetical listing of street names and numbers within the municipality for use in circulating the tax. The municipality is authorized to audit the records of any taxable telecommunications service provider, however this information is exempt from the open public records requirements found in section 119.07(1), F.S.

Although section 166.231, F.S., only grants the authority to levy a public service tax to municipalities, charter counties are also authorized to levy these taxes. In Volusia County v. Dickinson, 269 So. 2d 9 (Fla. 1972), the Florida Supreme Court gave charter counties the right to levy any tax that municipalities may levy. The Court subsequently found the logic in the Dickinson case applicable to a public service tax under section 166.321, F.S. (McLeod v. Orange County, 645 So. 2d 411, 413, (Fla. 1994)). According to the Florida Supreme Court, when Article VII, Section 9(a), Florida Constitution, on local taxes and Article VIII, Section 1(g), Florida Constitution, on charter government are read together, they “give charter counties the authority to levy any tax that a municipality may impose, if it is within the county’s taxing jurisdiction.”

According to the Legislative Committee on Intergovernmental Relations, 306 or 77% of all municipalities levied a public service tax on at least one of the authorized utilities in the 1994-95 fiscal year. Additionally, according to the 1997 *Florida Tax Handbook*, prepared by the House Finance and Taxation Committee, the Senate Ways and Means Committee and others, “As of 1995, seven charter counties (Alachua, Broward, Dade, Orange, Palm Beach, Seminole, and Volusia), and consolidated Duval/Jacksonville levied the municipal utility or public service tax.”

The estimated public service tax collected during the 1997-98 fiscal year by municipalities will be \$688.3 million and by counties it will be \$252 million, according to the 1997 *Florida Tax Handbook*.

III. Effect of Proposed Changes:

Section 1 provides legislative intent in order to prescribe a taxpayer bill of rights for the municipal public service tax in accordance with Article I, Section 25 of the Florida Constitution. The intent of the Legislature is to provide improved administration of the tax at a reasonable cost, to protect sellers who act in good faith, to ensure delivery of information needed to remit taxes correctly to sellers, and to prescribe a procedural framework for administration and auditing functions. In this section, the Legislature finds that the act fulfills an important state interest.

Section 2 amends section 166.231, F.S., 1996 Supplement, in order to require that municipalities exempt the United States government, this state, and all counties, school districts, and municipalities of the state and public bodies exempted by law or court order from the public service tax. This section requires municipalities to exempt from telecommunication taxes any religious institution that holds a consumer certificate of need issued under chapter 212, F.S. The requirement that sellers of taxable items receive written notification of any change in municipal boundaries or in the rate of taxation is deleted.

The remittance of taxes by sellers of telecommunications services is governed by a new provision established in subsection (9)(f). The seller remains liable for taxes due and not remitted to a municipality, however, the seller is not prevented from receiving these taxes from the purchaser.

If the location of the telecommunications service cannot be determined as part of the billing process, the tax will be levied on the total amount billed for telecommunications service at the service address in addition to the telephone or telephone number or a customer's billing address. Although section 166.231, F.S., provides two methods for taxing telecommunication services, section 2 of this bill deletes extensive requirements relating to the passage of an ordinance in order to choose the method of taxation as well as its minimum duration. This section also deletes the procedures that must be complied with if the municipality chooses the second method of taxation. The section references the new auditing provisions in s. 166.234, F.S., which is created in section 4 of this bill.

A seller must file a return with a municipality monthly. Although the form of the return is determined by the seller, the specific information required to be included by the seller is provided. A municipality can only require the same date returns and payments of tax as is required by chapter 212, F.S. A municipality may grant an extension of the due date for the return or payment. However, the collection allowance would not be permitted unless the seller requested the extension in writing and the extension had been granted. Whether requested before or after the due date, extensions must be granted if reasonable cause is shown.

The seller is permitted, with written authorization from the municipality, to remit any taxes collected on a quarterly basis if the amount of tax collected does not exceed \$120 per quarter. The taxes would be due on the 20th day of the month following the end of the quarter.

Finally, this section provides that a purchaser claiming an exemption from the tax as a public or private utility selling or using the fuel for the generation of electricity, or for the purchase of fuel oil or kerosene for use as aircraft engine fuel, for agricultural purposes, as a governmental or public body or religious institution, or as a purchaser of telephone or telecommunications service for use in the conduct of a telecommunications service for resale must certify to the seller that the purchaser qualifies for the exemption. Certification may encompass all purchases after a certain date or multiple purchases and the certificate should satisfy the requirements of chapter 212, F.S. Sellers need not collect the tax from a governmental body or from buyers presenting the required certification. A governmental body does not have to furnish this certification. However, governmental bodies that sell or resell taxable service to nonexempt end users are required to collect and remit the public service tax.

Section 3 creates section 166.233, F.S., which provides for a central clearinghouse whereby a person may obtain information on varying rates and other data relative to the municipal public service tax.

Subsection (1) of this new section defines the terms "levy," "effective date," "seller," and "Department."

Subsection (2) requires tax levies to be adopted by an ordinance with an effective date of January 1, April 1, July 1, or October 1. A municipality is required to notify the Department of Revenue (DOR) at least 120 days before the effective date on a form prescribed by DOR. The notification must specify the services taxed, the rate of tax applied to each service, the effective date of the levy or repeal, and the name, address and telephone number of the person designated to respond to inquiries about the tax. DOR is required to maintain this information for the purposes of responding to inquiries and any person may request, in writing, such information. A response to such person is timely if in writing and dated no later than 20 days after the receipt of the request. *DOR is authorized to charge a fee to such persons to recover the actual cost of maintaining and furnishing the information pertaining to the tax.*

DOR has no liability for any loss of or decrease in revenue by reason of any error, omission, or untimely action that results in nonpayment of taxes. The previously mentioned effective dates, municipal notification requirements, and address information provided to DOR, do not apply to taxes levied on service, other than telecommunication service, provided by the municipality levying the tax or by a separate utility authority, board, or commission of the municipality. *DOR is authorized to contract with a private entity to provide its services; provided DOR sets the authorized fees.*

Subsection (3) requires a municipality to provide any person, within 20 days following receipt of the person's written request, a copy of the ordinance adopting any levy and all amendments.

The municipality must inform the person in writing of the types of media on which the address lists are available, the charges, if any, for supplying the information on each available medium, and the address to which a request for such information should be transmitted. Within 20 days after a

written request for such information has been received, accompanied by payment of the cost, the municipality must transmit the following information to the person who requested it:

- (a) A list with each street name, including known street name aliases, street address number ranges, applicable directionals and zip codes associated with each street name for all street addresses in the municipality, and when appropriate whether the street numbers are odd or even. The list must be alphabetical and numbered streets must be in numerical sequence,
- (b) A list with each postal zip code and all city names for all zip codes assigned to geographic areas located entirely within the municipality, including zip codes assigned to post office boxes; and
- (c) A sequential list with all post office box number ranges and the city names and zip codes for all post office boxes located within the municipality. However, post office boxes with postal zip codes entirely within the municipality which are included on the list required under paragraph (b) do not have to be duplicated

The lists must be printed and if the lists are available on another medium the municipality must, upon request, provide the list on such medium in addition to or in lieu of the printed lists. The information that is needed when the list is updated is provided. The seller is responsible for charging the tax only to service and billing addresses contained in the lists. *The municipality is authorized to collect a fee to cover the actual cost of duplication.* Updates to the address list must be provided to the seller at least 60 days before the January 1, April 1, July 1, or October 1 effective dates.

Subsection (4) provides that the obligation of the seller to collect and remit the tax for any municipality is conditioned upon the timely availability to the seller of accurate information in the address lists. To determine the timeliness of such information, the date of a request, response, update, or other transmittal is the date received. If the information is not timely furnished to a seller, any related obligation to collect and remit the tax is suspended during the period of delay except:

- (a) If the request for information precedes the date the municipality is required to notify DOR, an untimely response to the request does not affect the seller's obligation to collect and remit tax for the municipality.
- (b) If the seller is properly collecting and remitting tax on a taxable service from customers within a municipality as of the date of request for information, an untimely response does not affect the seller's obligation to continue collecting and remitting the tax levied on the same service from the same customers.
- (c) If a failure to furnish timely information causes a delay in a seller's receipt of a list or update to a date less than 60 days before the effective date of a levy or update, the

obligation to collect and remit the tax would not be valid until the next effective date (January 1, April 1, July 1, or October 1).

Subsections (5) and (6) establish procedures for resolving duplicative and incorrect address information

Section 4 creates s. 166.234, F.S., to provide for administrative provisions, rights, and remedies for the public service tax.

Subsection (1) authorizes a municipality to audit any seller's service tax records to ascertain the correctness of a return, if not barred by the applicable limitations period. The seller is entitled to 60 days' written notice before providing access to applicable records and the municipality has to grant reasonably requested time extensions. The seller's liability is limited to only its taxable accounts according to the information it was provided. This subsection also defines the term "applicable records." The records may be provided in an electronic medium if agreed to by the municipality and the seller. *Contingency audit fees are prohibited and determination established through this method would be invalid.*

Subsection (2) requires sellers of taxable services to preserve applicable records relating to the tax until the expiration of the time within which the municipality may make an assessment with respect to that tax. Sellers are not required, however, to retain duplicative or redundant records.

Subsection (3) requires the municipality, upon request of the seller and prior to an audit, to discuss the municipality's proposed audit methodology in order to minimize the audit burden. The seller is entitled to each audit report including the amount of the problem (deficiency or overpayment) and an explanation of how it was computed. Upon request, the municipality, no less than 45 days before it issues a determination, must provide the seller with all other information or material necessary to supplement the audit findings

Subsection (4) authorizes the municipality to, within three years after the tax was due, issue a proposed assessment of the public service tax levied. This limitation would be tolled for one year if, within that time, the municipality issues a notice of intent to audit the seller. If the audit cannot be completed within these time frames because of a seller's refusal or delay in allowing the municipality access to its records, the municipality may make a proposed assessment from an estimate based upon the best available information for the taxable period, unless the seller agrees in writing to an extension of time. If the seller still denies the municipality access to its records, the municipality may make a proposed assessment after three years from the issuance of the notice of intent to audit.

The seller is granted three years to apply for refund or credit of any overpayment of the tax, interest, or penalty. The municipality is required to refund or allow the seller credit for overpayments. If the seller has previously refunded or credited the purchaser for the overpayment pursuant to subsection (6), the seller may apply within the three-year period or within 60 days following the seller's issuance of the refund or credit to the purchaser, whichever is later.

Although the rights of the municipality and seller expire and are barred after the three years, this subsection allows municipalities and sellers to enter into agreements to extend these periods, except in the case of fraud

The subsection bars the municipality's right to assess taxes, interest, or penalties and the seller's right to apply for a refund or credit after the time limitations established, unless fraud has occurred. However, sellers and municipalities may enter into agreements to extend these periods.

Subsection (5) provides an exception to the preceding subsection when an audit reveals an overpayment of a tax, interest, or penalty for the same audit period where there is a deficiency. The municipality is then required to offset a seller's overpayment against this deficiency and refund any overpayments after application to the deficiency. This subsection defines the expression "overpayment" to a municipality, and provides a presumption that the methodology used to compute the deficiency amount yields an appropriate computation of the amount of any overpayments.

Subsection (6) allows any purchaser of service to apply to a seller for a tax refund on the ground that the tax was not due. If furnished with proof establishing grounds for a refund and if the application is made within three years following collection of the tax, the seller is required to issue the refund within 45 days following the seller's determination that the taxes were not due.

Subsection (7) would authorize a municipality to assess interest or penalties for failure to pay any tax when due or to file any required return. However, no penalty may be assessed absent willful neglect, willful negligence or fraud. Interest may be assessed at a maximum rate of one percent per month from the date the tax was due until paid. Penalties may be assessed at a maximum rate of five percent per month, not to exceed a total of 25%. The minimum penalty is \$15.00. If the seller makes a fraudulent return or willfully attempts to evade payment of the tax, the seller is liable for a specific penalty of 100% of the tax. Interest and penalties are computed on the net tax due after application of overpayments; they can be compromised under subsection (14) and must be authorized by ordinance.

Subsection (8) requires that a municipality's proposed assessment include: a separate statement of the amounts of tax, interest, or penalty due or to be refunded; a written narrative explaining the basis for the determination, the remedies available if the seller disagrees with the determination; and the consequences for the seller's failure to comply with any demand stated in the determination.

Subsection (9) allows a seller to file a written protest of a determination within 60 days after its issuance. The municipality is required to consider and respond to the protest and within 60 days issue a written notice of decision and the seller has 30 days to petition for reconsideration. The municipality must also respond in writing within 30 days to the reconsideration request.

Subsection (10) provides for a determination to become final 60 days after its issuance unless the seller has, before the 60-day period expires, filed a protest or secured a written extension of time

within which to file a protest. If the seller secures a written extension and fails to file a protest within the time period, the proposed assessment becomes the final assessment. If the disputed issues are unresolved, the determination shall become final upon issuance of the notice of decision or, if applicable, upon issuance of a notice of reconsideration.

Subsection (11) requires the notices of decision and of reconsideration to address each issue raised in the protest or petition, to explain the reasoning, and to advise the seller of any available remedies.

Subsection (12) allows a seller to contest the legality of any determination by filing an action in the circuit court where the municipality is located within 60 days after the determination becomes final. Any uncontested amounts must be paid by the seller while the action is pending.

Subsection (13) preserves a seller's right to seek a refund of any overpayment within the time allowed without regard to any failure to administratively or judicially protest the determination.

Subsection (14) authorizes the municipality to settle or compromise with the seller when there are doubts about the liability or collect ability of the tax, interest, or penalty. Municipalities are authorized to settle with regard to the future tax treatment of specified transactions. This subsection allows municipalities to enter into a written closing agreement with any seller that is binding on all the parties. Absent fraud, no additional assessment or judicial or administrative remedy may be sought for the same period as covered by the closing agreement. The names of persons authorized to execute closing agreements must be provided in the determination. Municipalities must enter into agreements for scheduling payments that recognize the seller's financial condition, as well as its own interests, provided the seller gives accurate information and is on time in meeting other tax obligations.

Subsection (15) requires information regarding any determination, notice of intent to audit, notice of decision, or notice of reconsideration to be transmitted to the seller via certified mail.

Subsection (16) allows a seller to pay any contested amount without impairment of any of the seller's remedies.

Subsection (17) requires each municipality that levies the public service tax to furnish sellers with prompt, accurate responses to questions and to requests for tax assistance. *In the event a law is enacted requiring payment of interest on refunds of taxes paid pursuant to chapter 203, F.S., or chapter 212, F.S., municipalities must pay interest on public service tax refunds at a rate required by such law.*

Subsection (18) provides sellers with the right to be represented by counsel or other qualified representative, the right to procedural safeguards with respect to recording of interviews, and the right to have audits, record inspections, and interviews at a reasonable time and place.

Subsection (19) permits municipalities to communicate with each other about the following information:

- (a) Technical information concerning a seller's tax and accounting system necessary to conduct an accurate and efficient audit, however, this information cannot include any data relevant to a specific purchaser account, or the seller's tax treatment of specific services;
- (b) Names and addresses of companies selling taxable services within the municipalities' respective jurisdictions; and
- (c) The name of any company issued a refund and the total amount of the refund.

Subsection (20) would prohibit a municipality from assessing a seller for costs incurred or charged to the municipality for performing an audit, including all travel expenses. Any assessment or proposed assessment of these costs would be void and unenforceable. However, a municipality may assess and collect from a seller for reasonable travel expenses incurred in performing an audit if the seller received timely notice of the audit and did not permit access to the records on the audit date or any alternative date agreed to by the parties.

Subsection (21) provides that only subsection (6) of this section applies to a seller who is a municipality or to its subdivisions levying the tax under an audit.

Section 5 requires municipalities levying the tax to provide the Department of Revenue with the following information by September 1, 1997:

- (a) services taxed;
- (b) rate of tax applied to each service;
- (c) effective date of the levy including prior and future effective dates; and
- (d) the name, mailing address, and telephone number of the contact person for responding to inquiries concerning the tax.

This section authorizes municipalities to use address listings and updates that conform to the law in effect prior to the effective date of this act, July 1, 1997, until July 1, 1998. By January 1, 1998, municipalities must make address lists required in the act available. The lists will become effective July 1, 1998

Section 166 234, F.S., as created in this bill applies to all taxes, assessments, and audits except the following:

- (a) Provisions requiring performance of an act before the commencement of an audit do not apply until the effective date of this act;

- (b) Taxes and assessments that have been resolved by concession of liability and payment, settlement, or other means before the effective date of this act,
- (c) The information requirements pursuant to s. 166.234(3) and (8), F.S., do not apply to determinations issued before the effective date of this act. However, a municipality is required to furnish the information if requested by a seller. In addition, no document issued before the effective date of this act is invalid merely because its contents, or the manner or times of its transmittal do not comply with s. 166.234, F.S.;
- (d) Audits that are the subject of pending litigation filed before the effective date of the act are not subject to the provisions of subsection (12) of s. 166.234, F.S.; and
- (e) The provisions of s. 166.234(4), F.S., as created by this act do not apply to taxes due prior to July 1, 1994. A proposed assessment for taxes due prior to July 1, 1994 may be issued on or before July 1, 1997 for any audit period beginning on or after July 1, 1992 which is specified in a notice of intent to audit issued before March 1, 1997. After July 1, 1997, the municipality's right to assess such taxes expires and is barred. However, if the municipality is unable to complete such an audit due to the seller's refusal or delay in allowing access to applicable records, the municipality may make an estimate based upon the best information available unless the seller agrees in writing to extend the limitations period.

Section 6 appropriates \$35,000 from the Administrative Trust Fund for fiscal year 1997-1998, and authorizes one full-time-equivalent position for performing functions required in s. 166.233(2), F.S., created by this act

Section 7 contains a severability clause so that the invalidity of one section of the act will not affect other provisions

Section 8 provides that this act shall take effect July 1, 1997

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Since the CS requires municipalities and charter counties that levy public service taxes to expend funds or to take action requiring the expenditure of funds it falls under subsection (a) of Section 18 of Article VII, Florida Constitution, which provides that cities and counties are not bound by general laws requiring them to spend funds or take action which requires the expenditure of funds unless certain specified exemptions or exceptions are met.

The CS also falls under subsection (b) of Section 18 of Article VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate. In analyzing this criterion, the term "authority" includes

the base against which the tax is levied. The CS creates a new exemption from the public service tax imposed on telecommunications for religious organizations holding exempt certificates pursuant to chapter 212, F.S.

The CS may be exempted from subsections (a) and (b) if the CS's net aggregate fiscal impact on cities and counties does not exceed \$1.4 million. However, the fiscal impact cannot be accurately determined at this time. If such costs were determined to exceed the threshold amount of \$1.4 million, subsection (a) of section 18 would require that the CS contain a finding of important state interest and enactment by vote of two-thirds of the membership of each house. *Section 1 of the CS contains a finding of an important state interest.*

B. Public Records/Open Meetings Issues.

None

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Revenue will incur the expense of developing a format that each charter county and municipality levying the tax will have to comply with regarding the public services being taxed. DOR will also have to maintain the information on the services being taxed and provide this information in a timely fashion if requested.

The CS contains a \$35,000 appropriation from the Administrative Trust Fund for fiscal year 1997-1998, and one full-time-equivalent position at the Department of Revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate
