FLORIDA DEPARTMENT OF REVENUE

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MEMBERS:

Marshall Stranburg, Chair

Brian Smith

Gary Resnick (Appearing by telephone)

Sharon R. Fox

Alan Rosenzweig

Gary S. Lindsey

Kathleen Kittrick

Charlie Dudley

Davin Suggs

Also Present:

Andrea Moreland

PROCEEDINGS

MR. STRANBURG: Welcome back, everyone. We've provided you copies of the federal -- telecommunication sourcing act language. We've also got the streamline sales tax language. And while we gave you a copy of the definition of sales price in Florida Statutes that has the bundling language in it, we didn't give you a copy of the Florida Statute with provisions dealing with bundling with respect to wireless. And that's 202.155 subsection four. If anybody would like, we can get you copies of that. Or if you just want to take a look at it.

I think we're giving you these more as kind of reference material based on discussions we had this morning with what we might include in some of the options. And I don't know that we spent a lot of time on that this morning or we need to go back and spend a lot more time this afternoon talking about that. But we got those to you. And again, if you'd like a copy of that other provision, let us know if you aren't able to find it yourself. We may just go ahead and post it to the website as well, too. So take a look. And as we further work on our options, keep these things in mind.

Okay. We've got just one -- a couple other items in our list of options that we didn't get through this morning. I'd like to go back and finish those up real quick. I think if you flip over to the Roman III, which is on page two of the list of options, we did not talk this morning or last meeting about one of the options that was put forth about convening a working group to draft legislation. I believe we had a little discussion about that possibility at our last meeting. I don't know if others -- if anyone submitted that. I think, Sharon, you did and Davin, that was part of the submission on the part of the Association of Counties. If you want to speak any more to that?

MS. FOX: From my perspective, not only is this a recommendation for this group, but it's also a recommendation that we propose to the legislation. I didn't anticipate, given the time frame that we had, that we were going to be able to come up with legislative language since we don't even have any consensus with regard to what is going to be addressed specifically by the committee in the report. But I definitely believe that if legislation is going to be proposed, that there needs to be a consensus of all of the parties. And

I believe that cities should be on the table as well.

MR. SUGGS: And in terms of the Association, when we vote ourselves -- because ours came from our conference -- that was before, I think -- then we came back to the meeting on the 16th and you sort of addressed that in terms of how we were going to do -- consensus based, some recognition of those options that had consensus or recommendations, and then other options that we were to discuss.

Still, I mean, I agree with Sharon. At some point, if we can't get it out of this group, I think it works better for everybody including the legislators if we can sit down -- we've already done -- had a lot of background work and reports and stuff and we've pitched this stuff around, you know. If we can't get it done under this group, I think this group sort of needs to be reconvened or some of the group to put forth a solution. Because I think we're getting closer and closer. I haven't given up on this process yet. And so I think we're getting closer. And we'll see by the end of the day. But if not, something like this going forward, some similar type group needs to --

everybody needs to be on the ground versus one person and everybody else -- I reiterate, I haven't given up. I think we can still get there.

MR. STRANBURG: Then one other item that had been submitted, recommend that the legislature adopt a policy concerning local governments. Mayor Resnick, do you have a little more you want to add regarding that option?

MR. RESNICK: No. It's set forth in my written option that I submitted earlier. I don't think there's anything currently in -- while the statute creating this work group provided that we're supposed to take into consideration any options that we propose not have -- what's the exact language, not have a negative impact on local governments or not unduly harm local governments with respect to the revenues. I'd like to see that as a legislative policy actually placed in the statutes. Because honestly, you know, most of the local governments in the state, as you heard, you know, obviously they rely on the CST for their general funds. But many, many of them have also pledged CST for specific obligations. So we need to make sure that that's the policy of the legislature.

MR. STRANBURG: Okay. Is there something that either we've not covered as we go through these options or something that someone would like to go back and spend a little more time talking about these options before we move on?

Sharon, you want to go first?

MS. FOX: I wanted to point out that there is kind of a composite system in place in Virginia that has a statewide sales tax that the sales tax is distributed. But there's also a component that is tied directly to use of the rights of way for those entities that are -- that have land lines. And the amount is calculated by the state and it's paid based on a number of access lines. There are exemptions just like there are for other taxes, but there's a small component that is directly related to the use of the rights of way. And I have mentioned earlier some type of an alternate methodology, and this seems that it -- if this group is going to be going more towards statewide sales tax, kind of a comprise that still indicates the importance of the local governments and the rights of way maintenance and costs and still recognizes that there is a nexus tied to the use of the rights of way by one of those companies that are using the rights of way.

So I just put that out there. And I can provide more information that I found on the Internet with regard to the detail if anyone is interested. But the state of Virginia apparently revised their taxation of communications in 2007 and incorporated all of the land line rights of way users.

MR. STRANBURG: Davin, you had something you wanted to mention?

MR. SUGGS: Sort of in between. Still on this but also sort of moving forward. I don't know if this is -- you want me to wait to --

MR. STRANBURG: Just see, does anybody else have anything they want to bring up as something for consideration? Okay.

MR. SUGGS: Can I borrow your facilitator on the white board or --

MR. STRANBURG: I think we want to move forward and take a look at --

MR. SUGGS: That's what I'm trying -- just let me put it out there. For me and you guys, I guess I ask for everybody's opinion. Right now there's sort of three main directions that we can categorize everything that we sort of talked about.

One direction is trying to fix CST as it currently is. We talked a little bit at the end of last meeting. And what Bob's got on number two, sort of about partial fix and a partial replacement strategy. And then this morning associated with Bob's number three, we sort of focus on sort of a holistic replacement strategy of CST. And those three buckets, I think, we can sort of put everything in that we sort of discussed about.

I was just going to ask -- I mean, since we're bound by Sunshine Law, we can only talk about it here. We could use the facilitator to sort of -- if we can temporarily agree on those three main buckets. I'd also like to poll the group and see where everybody's head is at right now in terms of -- like my preference would probably be -- I wanted to share my preference in terms of those directions and putting forth effort with our remaining limited time together, but also I was interested in what everybody else thought in terms of direction or strategy as a group.

Sort of I'm going back to sort of big picture and we can come back down to what we think. I'm trying to see where we have the most chance or opportunity for success as consensus.

MS. KITTRICK: I think it's a good idea. I mean, I think that from my perspective, I'm happy to sort of throw those darts on the board and see where everybody lands. We've certainly discussed a lot of information over the past couple of weeks. And, you know, from my perspective, I know what my choice is and I'd like to hear what everybody else's is.

MR. LINDSEY: I think that's consistent with what -- I think we had said last time around that we would -- as we looked at the different options, we might look at ones that we said we would rank them, but we would look at ones that as a group that we might have had -- pretty consistent with where we said we'd go with this part with the options. I'm okay with that.

MR. STRANBURG: Do you want to -- to make sure I'm understanding, do we want to talk about some of these broader categories that Davin talked about first and then work into some of the more specific items within each of those categories?

MS. KITTRICK: I think that would be the best plan.

MR. STRANBURG: That seems to be what the group feels it would be a productive way. We can have Jeff come on up and help us work through that.

While he's doing that, we had one submission provided to us by e-mail that would like to be read into the record. This came from Glenn Bedonie. He would like to put into the record this submission: "The change in law which levies the tax on video services as compared to cable services has created some serious unintended consequences. There doesn't seem to be any guidance to the purchasers, consumers, or suppliers of video services to know what is intended to be subject to the CST levy.

Tax practitioners and taxpayers do not have any official guidance on what is subject to the tax levy. I do not have information regarding how to comply with the various provisions including the use tax. Questions on who was subject to the tax levy include are games played by patrons in restaurants and establishments serving alcoholic beverages subject to the tax? Currently there's audit activity taking place where the auditor has accessed the tax on the establishment providing buzz time games including Texas Holdem. These patrons do not pay anything to play these games, but the establishment does pay the vendor for -- the software game controllers.

Are webcasts subject to the tax and how does a taxpayer comply? Is outdoor advertising provided by digital means subject to the tax? Is video checkout provided at hotels subject to the tax? These are just a few of many, many instances where it appears video services have not been defined to describe and creates uncertainty about tax compliance for taxpayers and practitioners. These consequences will affect taxpayers and the Florida Department of Revenue in its administration of the tax.

Clarity, certainty, and predictability are the hallmarks of a fairly administered tax affecting many taxpayers who aren't aware of their tax liabilities."

Okay. Jeff, thank you for coming and helping us. As I think you heard Davin talk about, we have three broad categories here. I guess one is fix the tax under current structure that exists.

MR. RESNICK: May I ask a question, Marshall?

MR. STRANBURG: Go right ahead, Mayor.

MR. RESNICK: I'm not sure how within these three categories the idea that Sharon and I have advocated about reestablishing local government's ability to charge for use of the rights of way fits into these buckets or if it's a separate buck.

MR. STRANBURG: And I'll just take a shot at this, Mayor. I could see where it could fit into all three of these buckets as part of the -- under the current structure, there might be a suggestion that maybe we need to go back and look in some way imposing franchise fees and similar fees on rights of way usage as part of a partial replacement strategy. Again, that could be one of the things that's looked at as one of those options under a partial replacement strategy. Or if there's total replacement, again, that would be another option that would be available under a total replacement scenario.

So I think that -- the various options that we've talked about might fit within one or more of the big buckets that we're talking about now. And I think that's where we're headed is to get an idea of is the sense of the group -- and, Davin, if I've got this wrong, please, let me know, and others -- if there's, you know, a stronger feeling in the group that maybe one of these three buckets is a bucket we want to spend more time on, look at that as maybe a preferred option but then have the other options out there as things that we would also include either in the body of the report if they're with sufficient support or include as part of an appendix submission to say these were things that were talked about by the group but there was no broad level of consensus on this being an option that they would sense there'd be a good amount of support for.

MR. ROSENZWEIG: Marshall, on the replacement one, since our last meeting I've been talking to some individuals about -- now it looks like something we may want to look at talking about, focused in today clearly on sales tax because that has the ability to levy statewide, a state portion of it as well. And I'm probably not going to get all the details correct, but talking to some of the people in the industry as another possible replacement and more for the locals, I don't know how we deal with the state piece, but it's a different revenue that we have the ability to levy locally and I'm not sure all cities will levy it or not, some charter county issues as well, but it may be a revenue we can play with. I mean, we levy the public service tax. As you know, we're the authority to levy that locally to charter counties --

Within the public services tax, there's an exemption right now that's been in existence for I don't know how many years -- Sharon, Davin probably know more than I do, the details, but there's a fuel component of public service tax that's exempt or flattened in terms of taxable component. And so what happens is you get the taxes levied on the service portion of the utility, but then the fuel is levied out X number of years ago. We ran some local numbers and extrapolating -- some of the private -- locally, and if that exemption was eliminated or reduced or something to that portion, it would more than replace what we're levying at a local level right now in terms of the CST. So, there's a possibility -- it would take a little more work. You'd have to obviously change the charter county exemption, let all counties be able to levy it, but it's one of those situations where you can theoretically, if the numbers were -- DOR really do a little more diligence on it because my sample model is two jurisdictions myself and a city, so I'm not saying that's going to translate statewide, but if it did, you'd be in a dynamic on a local level where you'd eliminate a tax, not raise another tax. But by eliminating an exemption on the local level, you more control the ability to still replace that revenue stream in a very meaningful manner. So there is another option at least for the locals. As I said, it's a little more complex than the straight-out sales tax, but it might have a little more appeal at the legislature.

Now I was told from people that I talked to that this has come up in discussions in the past, but I don't know if it came up in any context of a swap. You know, I think it might have come up a revenue opportunity. But if you're talking about in the context of getting rid of another tax, that may well be a very meaningful way to do it by eliminating an exemption on something we get to levy without having any more additional capacity afforded to us.

MR. DUDLEY: I'm not sure I understand. Is this like the City of Tallahassee Electric buys fuel and there's fuel charges but the charge is exempt from the county?

MR. ROSENZWEIG: They're capped. They're capped under the PST. So, for example, even Talquin situation, we levy the PST on top for the city, the fuel component that's taxed is set at X number of years ago, 10 years ago, 15 years ago, whatever, utility regulation all took place, the fuels were set and locked in. So when all the broken fuel, et cetera -- and there's more volatility in that tax obviously, but even in the least volatile when we went back and did the analysis, we were still well ahead of what we were levying for the CST. And more volatile times, you obviously generate more money. But then at the local level, you have the ability to reduce even the PST rate.

MR. DUDLEY: So the revenue trade off comes from my City of Tallahassee electric bill; the tax on it would go up?

MR. ROSENZWEIG: Correct. That would go up there. But they could eliminate the CST completely.

MR. DUDLEY: Right, I understand.

MR. ROSENZWEIG: But at the local level, you'd have the ability to adjust that rate. And again, as I said, all counties don't have the ability to levy that tax now; only charter counties do. All cities have it. So there would have to be some movement in the -- but it is another approach of the replacement concept -- to do that.

Just something to throw on the table, Marshall. If we're looking at replacement as an option, that's one that we may want to look at further.

MR. STRANBURG: Okay. Thank you, Alan.

Okay. We had -- getting back to our bigger buckets. The fixes is partial replacement and then the holistic or total replacement.

MR. SUGGS: I'll start with an example. In order of preference, three would be fixed under current structure for me. And then second, a close second -- one and two are sort of close to me because it deals with maintaining local discretion. Right now the partial replacement idea may be like fix the locals, get us out, make it easier for the industry to work with state is second.

And then based on further discussion right now, I mean, if there's a mindset for a collective effort for a holistic replacement where everybody wins -- where state, industry, and the locals win -- we win but there's some sacrifice, but the details have to be worked out. For right now it would be a close first in terms of -- I'm interested in discussing that further to see what we -- right now that's where I'm at.

MR. STRANBURG: Any other volunteers to give a sense of where they are? Kathleen?

MS. KITTRICK: If I had to, you know, do the 3, 2, 1, my first choice would be the same as Davin's, holistic replacement. And my number two, partial replacement using the local sales tax. And number three would be fixing the CST.

MR. STRANBURG: Brian?

MR. SMITH: I don't know that I want to go -- well, I think I'd be the same one, two, three, holistic replacement being one.

MR. LINDSEY: I would be the same -- that same number.

MR. STRANBURG: Sharon?

MS. FOX: This is a very difficult one for me because the stability of the revenues is critical. I mean, it's come to survivor standpoint. In order to survive, we have to have some stable revenue stream that's bondable and can be used for multiple purposes. And if the holistic replacement including -- I mean, there's so much that can be incorporated in there that we've talked about. Like you said, if that included a piece that tied the users of the rights of way in some kind of composite, that would be my first choice, I think, for the stability. And the fact that the recognition that the local rights-of-ways are being utilized and are creating an impact on the local government so that if some of the details could be worked out so that there was very direct accountability. Because all of our other users of the rights of way are accountable in both utility taxes and franchise fees. And the franchise fees are gone now. But there are other states that are utilizing a different system and still recognize the use of the rights of way to the local government.

So, I think that if there's some kind of recognition included in that, but there would also have to be some caveats and guarantees. I don't know the extent of what those would be. But making sure that we got the revenues that we need -- when you bond something, you've got 30 years of bond payments here. So it's not something that you can just willy nilly. If the rates are changed after ten years, then you're still stuck on the hook here. So there would have to be some caveats that are incorporated in there. And what all those are, I'd have to talk with people that are way more educated in this field than I am. But if those kinds of hurtles can be overcome, then that could be a very viable option for us.

I really like the first one as my number two choice except that the writing's on the wall that unless Internet becomes taxable in 2014, you know, I just don't see how that's going to produce the revenues that we need in order to sustain our infrastructure. Just bonding for our infrastructure repair is expensive. I don't see how we're going to end up with enough funding without something else changing so that the base broadens more than what I see that happening with the first option.

And the partial replacement, I guess, I don't fully understand that option unless it has to do with --

MR. SUGGS: That was the part that Bob did the analysis on section two of where we -- what if the local piece was replaced with like a local option sales tax.

MS. FOX: I don't fully understand how that would work. So I'm hesitant to go with that option. I would have to talk a little bit more with, again, people that are more educated than I am with that regard. But the fact that number one could -- doesn't decrease the base, which my understanding of number two decreases the base somewhat.

MR. SUGGS: It will remove locals from the CST and give us our own revenue. Sort of similar to most places have a penny, half cent local option sales tax. We will replace -- we would pull ourselves out of CST and ask as a replacement, an additional -- Bob gave us the rates, but a quarter cent, half cent local options sales tax as a replacement.

MS. FOX: That seems to me to be tied somehow to a referendum and I don't see that going forward either. So I'm a little concerned about that one. Maybe it's just because I don't fully understand it. And I may come back in the next meeting and say, wait a minute, now I get it. But for right now, I think that one is probably the most prudent option if there are enough caveats and protections for us built into that. And I really do like the component piece that incorporates rights of way because we have other users of the rights of way as well. I just think that that's important to have some accountability in --

MR. DUDLEY: I mean, I think, Marshall, from my perspective, I think we have consensus that the overall best option in a perfect world is the last one, is the holistic replacement. I think we're not going to have consensus on going back in time to a day where we decided that we weren't going to care about delivery systems anymore and we were going to replace the revenue that came with franchise fees and right of way fees. We're going to replace that. Say the replace revenue definition of CST, that money was made up with the current local CST rates which are embedded in this holistic replacement, that money will continue to go to local governments and be replaced with, in this case, the sales tax that Bob calculated, all that historical franchise fee, user fee money has continued in the system or embedded in the local CST replacement rates -- carry forward in a holistic rate.

In terms of the going back to some, you know, plus feature or recognition for franchise fees or user fees, I think what that does is it goes back and undermines everything that was done in '99 through 2001 when we redid the rights of way law in a consensus product and said other than communication dealers, status quo continues. But communication dealers, we're going to do away with franchise and right of way fees. Because there's a recognition that those services can be brought by wires or without wires in the right of way, not in the right of way. And we don't want taxes or fees to become an impediment to competition. And so we replace the money.

And I recognize there was a trade off of, you know, revenue for home rule. And then the legislature continued that policy by deregulating telecom stuff even further. And by totally removing all video franchising in '07 to the state. So, all those decisions, in my opinion, have to all be revisited. And I just don't think that's a very practical or a good public policy. We're going to disagree over that and that's fine. I get that.

So, I mean, I think what we may want to consider is working on what I think Sharon referred as the devil's in the details of the holistic replacement and what some of those details may look like, what some of the recommended details would look like. And there may just have to be a note that there's a disagreement over whether or not there should be a separate carve out or category for return of some sort of franchise or occupational right of way fee structure for that. Because I know that's not where I would be. That day left a decade ago.

But I think that I was pleasantly surprised by Bob's numbers in terms of how potentially feasible it would be to demonstrate to policymakers that there is a way of replacing CST with a slight change in state sales tax. And there would be ways to take a look at how that would impact Floridians and businesses that consume and pay CST taxes and also consume -- and they're subject to sales taxes. And there actually may be a very viable trade off here. The legislature considered replacing property taxes with sales tax, which I know was very controversial. But I think they've shown an appetite for understanding that the sales tax is paid by out-of-state providers, and I think if we educate them on the fact that future solutions to the online sales and Amazon thing involves getting rid of discriminatory taxes like CST, that this would actually be helpful in that particular issue, even though we're not going to be able to solve the nexus thing.

So I think it may be smart or give you some more time to think about developing this holistic replacement approach as one of the options we can recommend or maybe the one that we garner the most support here, understanding there's going to be a disagreement on the franchise fee.

MS. FOX: And I agree, we will continue to disagree. Because going to a holistic replacement is undoing what we did in 2001. So I don't perceive that it's going backwards, I perceive it's just a different avenue going forward to address some of the continuing issues that we have now with those users.

MR. ROSENZWEIG: Marshall, obviously, I mean, I said earlier today, where Sharon's at from a local government perspective, we don't have any CST pledged to Leon County, but I can imagine if I did, I'd be very, very nervous. I mean, we worked through before when the legislature changed revenue sharing formulas. We had to be very cautious. The -- markets get very skittish and nervous when we do things down here. We're constantly talking to the -- and reporters when the legislature's convening and -- property taxes. And anything else that affects revenues of the local government -- get very, very, very nervous.

So I want to put my one down for holistic replacement, but we have to ensure that there's language or ways to work through -- and I don't know how you do it through all the ordinances and resolutions and covenants and pledges because everybody's bond coverage is going to go upside down and you're not going to make coverages. We can sit here and say, oh, it's a holistic replacement. There's a lot to work through to ensure the bondholders that that really is taking place.

So again, Leon County, a lot of people don't have a pledge, it won't affect us, so my one would go on there. And we are giving up some home rule. I fully appreciate that. I'd much rather give up home rule for the state revenue. I agree with the three and two across the other two. I'm not crazy about the partial replacement, but I like it more than the CST. Because I just see the CST, we're having the discussion the next year, the following year that the revenues are dying and we know it. We can fix it this year and next year it's going to be broken again. And that's --

MS. KITTRICK: Right.

MR. ROSENZWEIG: So in any scenario, fixing it, you're always going to be having a problem with your pledges. So those are my thoughts. And the revenue swap I talked about, you know, it's something to be considered. Sales tax a lot cleaner, addresses the state piece. If that's something the legislature has an appetite for, I'm all for somebody --

MR. STRANBURG: Mayor Resnick, do you have any thoughts you'd like to --

MR. RESNICK: Yeah, I mean, I'll chime in. You know, as -- it's surprising, but I'm actually going to agree with everyone so far that I think a holistic replacement is probably the best way to go. I just want to -- I echo Sharon's comments entirely with respect to the rights of way and fees. It just seems, you know, not only unfair but also to some extent probably unconstitutional that private for-profit entities can use private property or public property, in this case, for free. If we go to a system of sales tax or as suggested earlier, a tax on electric service or some other replacement source, that seems against everything that we're against.

And, you know, I know Charlie and I are going to disagree on this, but I don't think -- with respect to that. And even while one segment of the industry may wind up paying those fees while another segment of the industry that provides similar services does not, that happens all over the place. I mean, I -- theoretically, I can get from Ft. Lauderdale to Orlando by driving, in which case I pay tolls on the turnpike. By flying, in which case I pay absorbent taxes and fees on tickets for a flight.

Or I guess theoretically, not so much in Florida, by train, in which case I could pay whatever taxes are imposed on train tickets. They're all going to be different and they're all -- and I'm going to get there basically the same, you know, regardless of which technology I use. But it's going to be different fees that those providers are going to pay based on their technology. And that happens in every industry. So I'm sure DBS has plenty of costs that cable doesn't have, you know, with respect to the infrastructure and technology that they've chosen. And I don't think anyone's going to propose getting rid of the fees and costs that are associated with DBS so that they don't have any greater fees or costs than cable.

Technology is technology; you can't do

anything about it. But I think rights of way is a public resource. We're obligated to maintain it. And if we don't charge users of that resource, it's not really fair on the other people that are having to pay for that. So, you know, I just echo Sharon's comments as the rights of way fees have to be part of any replacement recommendation that we may make.

MR. DUDLEY: Hey --

MR. RESNICK: With respect to the other options -- I mean, I also would echo Sharon's comments on the bondable nature of this. We have already bonded CST. So if we talk about a replacement source, it has to be dealt with so that local government's -- use their bonding -- either we're not in violation of the bonds that were already issued and that we don't lose our bonding ability for this revenue stream.

With respect to the other options, you know, I agree totally with Alan. You know, we can try to fix the CST, but that's never going to be a permanent fix. And it's going to be, you know, obviously very subject to the political whims of the time. That's not a solution that's probably in the best interest of Florida. And a partial replacement, I really -- like Sharon said, I'm not sure how that would work, you know, in terms of a partial replacement of the current CST. The other options that haven't really been put in this bucket are, you know, we can just leave the CST as is and figure out, you know, how that's going to affect things and wait to see whether the Internet service is something that is capable of being taxed or not in 2014 or at the end of 2014. That's always an option. I'm not sure I would support that as well.

And the other option which I guess is very similar to going to a replacement source is just going back to the system that existed before the CST was in place. I mean, we're talking about getting rid of the CST and coming up with something else; that was something else. So that's another option that we can take a look at.

MR. DUDLEY: I guess the one question I have, then, for everyone is if we're going to want to have this discussion of some sort of caveat or hold out for a return to user fees or right of way fees or franchise fees, then I guess Bob should go back to the 6.34 and back out all of the revenue that's associated with those types of fees that were included in any replaced revenue back in 2001, 2002 when the local CST rates were calculated and take that out of the calculation. Because then you're saying if you truly want to not make us pay twice for the right of way, you've got to back all that revenue out. You have a new 6. something rate, and then you would have some sort of, I guess, up to local option that would be out there that would have to been enacted by an ordinance that's either a -- or something. But you wouldn't be paying 6.34 because then we would have paid twice for the same occupation. So --

MR. LINDSEY: Yeah, I think --

MR. RESNICK: Well, no, actually the consumers would. But not necessarily twice because, you know, first of all when the CST was first created, it was anticipated there would be growth in the revenue that CST was calculated on. So I don't know if we would have to necessarily back anything out because we haven't seen the growth. In fact, it's declined. So even though the company's profits keep going up, the growth in revenue doesn't go up.

MR. DUDLEY: I think, Gary, one thing that's important there is there seems to be some assumption that there was back when CST was adopted, and I tried to provide this information a couple months ago. The FCC's rule that franchise fees cannot be placed on Internet access fees were IP revenue. So the stuff that's grown has been found to not be quote, unquote "cable" or "video" service, and therefore the FCC found it to be not includable in local franchise fees and right of way fees. That's -- so if you think you can go back and get that by calling it something else, the FCC said you can't.

MR. LINDSEY: I think if we're -- you know, it looks like we've got consensus on having discussion about this holistic replacement. I think as we talk through, we can look at that projected model, which is the right of way fee based on costs. We can look at it and say, well, that's another way one can do it. You can do a totally sales tax or you can carve out the -- and I think an appropriate back-out out of the tax rate and carve out that right of way fee if you want to follow that particular model.

So, you know, maybe as we talk through this, that's something we can look at and say, okay, that's how that would work and that's how the -- this is how the more generic sales tax approach would work. And I think the holistic replacement, the whole idea is to make the locals whole, taking into account the right of way fees. So, you know, I think that every effort would be made in doing this evaluation to say that by doing the 6.34 percent or whatever it ends up being, that we would make that right of way amount whole. So I don't -- I think this is good that we're reaching this consensus and that we can kind of talk through these. Maybe that's a variation on it. Maybe that's a 1B that might be in the options that we put out there for people to consider.

MS. KITTRICK: I think that's right, Gary. It's a good point. You know, my concern from a practical matter is while we agreed from a tax policy perspective the sales tax is the solution and I strongly, strongly believe that. It will be still a push for the legislature, you know -- I think we're all together and united and we have a solution to a myriad of problems that the CST has, then we stand a good chance of being successful. My concern would be to ask the legislature for a sales tax increase of .34 percent and something on top of it at the level -- I think --

(Interruption by side conversation by Amber

Hughes and unidentified gentleman.)

MS. KITTRICK: -- needs to be accepted that we can be successful and try to make the local governments whole through the sales tax is our best shot of getting it done.

MR. RESNICK: Are you assuming like something on top of that would only be on these services or just generally like the sales tax surcharge?

MS. KITTRICK: I'm sorry, say that again.

MR. RESNICK: Were you suggesting something on top of the new sales tax rate would only be for communication services or for all --

MS. KITTRICK: No, no. For everybody. The 6.34 would not just be for --

MR. RESNICK: Just wanted to make sure I understood what you were suggesting.

MR. SUGGS: Marshall, are you going to weigh in?

MR. STRANBURG: Well, again, I'm not sure it's really my place to weigh in, but I wanted to ask this question about a holistic or total replacement. As Kathleen just indicated, you know, we're taking and moving what has been the base for communication services tax to the sales tax base. And as we just talked about expanding the entire sales tax base, are there other things people want to consider as a holistic? I mean, is that the one model for total way of looking at it is you consider one of the options that we discussed at our meeting a couple of weeks ago was, you know, going to a statewide CST rate. Not a sales tax -- moving everything to sales tax, but it's going to one. Would you consider that to fall under a partial replacement or under fix it under the current structure?

Again, I'm trying to generate people thinking about when you say holistic, is the sales tax model the only model you want to consider or might there be some other possibilities of options under holistic to think about?

MS. KITTRICK: From my perspective, I like the sales tax for a couple of reasons. I think that as we discussed before, if you're looking at trying to do a CST and you have a different rate other than the sales tax, then you're always going to be sort of trying to figure out which service is in which bucket. You know, you've got the prepaid issue. You don't want to have to have retailers filing to be, you know, CST vendors and having a new administrative burden to collect the CST on prepaid. I just think if you keep it under the sales tax, administratively pure, if you will, makes it easier for them. They're not trying to figure out what's in what bucket. Just seems to me that as the new services develop, you -- it's just all under the sales tax.

MR. SUGGS: Marshall, I mean, I agree. Anything tied to the -- what we today call the CST base, we'll be chasing technology. Even if it's just one rate or 122 different rates. The problem is still going to be -- so that's the biggest thing that makes the sales tax work. The base is sort of -- the base is probably more -- I can probably tell you what the sales tax base is going to be two years from now better than I can tell you what the CST base would look like two years from now. So, I mean, those options, I think, will still fall under fix the CST.

MR. STRANBURG: Then my follow-up question would be: Where do you think -- do you want to be as a group in talking about some of those things that it's now a little bit uncertain whether they fall under the CST base or not, certain digital products, et cetera? Would the anticipation be you would adopt some type of definition of digital projects and put in the sales tax statutes as part of this holistic replacement?

Because, again, if we're talking about just moving the CST base over to the sales tax base, there's still going to be some of those products that it's uncertain under the current definitions in the CST statutes, whether they're a taxable product or not a taxable product. And then you lay that into the sales tax statutes where there's a case law that talks in terms of product that's delivered electronically, digitally is not subject to the sales tax base. Is there some consideration to adding some definitions or some clarity about some of those things that may fall outside of CST? But if you're going to move things over into the sales tax base, don't you want to clean up that uncertainty that already exists in the CST base?

MR. SUGGS: I think we need to talk about it.

MS. KITTRICK: Yeah, I think we do.

MR. SUGGS: I think if somebody has this, I mean, we can start -- I mean, if you guys -- Marshall, if you want -- we have consensus that we want to press forward with holistic, I think we can pepper the board with issues that we need to think about to sort of default under holistic. I mean, things like that. Because, I mean, we talked about that earlier.

MR. DUDLEY: I'm not really conversant in all those things, Marshall. But if there's a bunch of those things that are in the Department's various TAs and others that have been found to be taxable and maybe there's administrative or compliance issues, you know, to me, that generates revenue. And if you can pinpoint what that generates, you can lower the rate even further down to keep it revenue neutral by encouraging compliance and leveling the playing field and making it clear. There's ways to do that. Those are options, I think, the legislature should know about it.

MR. ROSENZWEIG: You're also -- part of the discussion the revenue sharing between the cities and counties. That is a very large issue because the rate conversion is not going to be -- there's going be winners and losers, obviously. Some jurisdictions -- more, some less. But even within the jurisdiction, where you have 24 cities in one county, the sales tax distribution formula is not going to replicate what the CST is currently generating given the fact that -- different rates -- collections. So there's going to have to be some acknowledgment of possibly -- I'm thinking some formula a little different actually than to have sales tax currently -- this is just thrown into the half cent sales tax distribution formula flow down. It's not going to come down cleanly to replicate what the CST is doing. So there may have to be some other type of formula attached to this.

MR. SUGGS: And what he's talking about, we're experiencing --

MR. RESNICK: Yeah, I think we need more information. And I'm not that knowledgeable currently about how the sales tax is distributed.

MR. ROSENZWEIG: We're fine with the counties taking lead and throwing --

MS. HUGHES: No.

MR. ROSENZWEIG: We're all good with that.

MS. FOX: You're really good with talking for the cities.

MR. SUGGS: -- what's going to have to happen, Alan, the counties, we're facing another issue with in Medicaid state and separating that out. I mean, one thing we've said is that, look, in distributing in that case pain or cuts, we have to decide on the end goal, which this end goal would be the same as no negative fiscal impact in a switch. And then we have people like Bob and people all over the state that can write a law to fit to -- I mean, the last time you guys did CST, you put a spreadsheet in the statutes for the most part showing what everybody was going to get. So, I mean, if we all agree there's not going to be any negative fiscal impact in the city or county and Bob has calculated a rate to generate the same or equal amount of revenue -- split it up, how you would -- start there at the goal. Nobody's going to -- and we'll figure out whatever formula it takes. And if we have to do another spreadsheet in the statute that every jurisdiction gets this because it was equal to what they would have gotten, then we accomplished our goal. But if we decided to stop worrying about actually writing the law, let's figure out what we want to say and then there's somebody in the state that's smart enough to write it.

MR. ROSENZWEIG: We're also acknowledging that there's -- maybe we are or we aren't -- but there's capacity that hasn't been levied, and that's gone. Basically you got in the door now, you're in. If you didn't levy your CST -- I mean, this scenario, you don't have any -- I mean, that's the local control giving up for -- that's a big leap for some of those jurisdictions.

MR. RESNICK: Why would that be given up?

MR. ROSENZWEIG: I think that the data that Bob gave us this morning was exclusive of -- I can't remember if it included the conversions or not for the maximum -- I can't remember if you said it did not include it. I mean, this definition of revenue neutral, is revenue neutral what you could have levied or what you are levying?

MS. FOX: And we --

MR. RESNICK: You know, we should go back to some of that information that we got at the very beginning of the workgroup. Because if Florida ultimately adopts a 6. something percent tax on these services, wouldn't it be one of the lowest taxes on these services in the country?

MR. SMITH: No.

MS. KITTRICK: No. It would just move you out of the top three.

MS. FOX: One of the other details is that you have to be able to adjust for -- and unused capacity as well. There are a lot of details that are going to have to go into something like this for it to work.

MR. ROSENZWEIG: Perhaps --

MS. FOX: One set of solutions brings up a whole set of problems.

MR. RESNICK: I'd rather be working with that problem than the problem now.

MS. FOX: This is going to involve a lot of number crunching and it's way beyond my capability.

MR. STRANBURG: Bob, if you want to comment on the unused capacity.

MR. McKEE: Yeah. In the scenario that we did that had the local option surcharge, in that scenario, the capacity was included.

MR. ROSENZWEIG: Was?

MR. McKEE: Was included as discussed at the last meeting with respect to the unused CST capacity. When I talked about the unused discretionary surcharge capacity, that was not included in the analysis.

MR. ROSENZWEIG: Now in the statewide scenario --

MR. McKEE: In the statewide scenario, it was current collection. But I do remind you that I think in total the number of unused capacity is about $17 million statewide compared to $750 million in actual collections. So most -- for the most part, the capacity has been utilized by local governments.

There is sort of a guide when you talk about distribution formulas. There is a little bit of a guide. The one that's closest to what you're talking about is what's called the revenue sharing formula where there are some guarantees for certain local governments. There's a guaranteed amount, there's a formula amount. The guarantee supercedes the formula. And then there's a distribution for how growth takes place.

MR. SUGGS: The guarantee --

MR. McKEE: For the county revenue sharing, there's also a guarantee, but there's enough dollars in the fund today that the guarantee no longer comes in play for the -- it operates simply as the amount that can be pledged. But for the municipal, there are a number of jurisdictions that still receive their guaranteed. I'll tell you it's one every time we have to calculate them, but it is probably the closest model in the statute. You know, there probably -- because there's a part of the state portion that gets distributed out through the half cent today just like state sales tax goes in the half cent on that part.

There might be some -- still come back as a half cent like it does currently, but there might be some, you know, winners and losers with respect to the switch from sales tax to -- from CST portion. I'd just have to look at those.

MR. STRANBURG: Brian?

MR. SMITH: As we look at kind of leaning towards the holistic replacement or putting things back under the sales tax, I think we need to kind of give a lot of weight to national definitions, if any, provided. Because, you know, we talked about protecting yourself from the unknown. If we go ahead and adopt and closely follow what's been kind of at the national level and then if something passes, it's not a shock to the system. It's not like jumping into a pool. If we -- or closely aligned with that, then something passes at the national level, it's kind of like, yeah.

MS. KITTRICK: Right.

MR. DUDLEY: So you're suggesting go to the SSTP stuff that's been --

MR. SMITH: Where we need definitions of undefined things, let's look at something that already has momentum and --

MS. KITTRICK: Right.

MR. SMITH: -- other people have argued about for years and years and years.

MS. KITTRICK: We want to set up Florida for a very easy transition -- and then use adopted definitions that have already been agreed on, already been -- then I think -- so much, you know, sort of --

MR. SMITH: I think it goes to the value of why you have multi-state companies here because, you know, that's kind of what we bring to the table is having participated and kind of run through this issue a couple of times, so whichever one can swallow those, I think we can -- it is kind of unique for --

MR. LINDSEY: And I think the idea of the intent of those definitions is to take into account broadly anticipated changes in technology so that we're not, like you said earlier, we're not going to have to come back every year saying what's this new thing? It will be covered under the sales tax with the broader definitions.

MR. ROSENZWEIG: When writing the report, Marshall, I don't know, if we go with this approach, you know, I think we write a lot of policy for our Board locally and obviously we write for the legislation and the governor, but ultimately a much larger audience. I'd want to be sensitive to the fact that ultimately we're dealing with the end consumer here as well and how much they're paying and what they're paying.

So Bob may not like the crass examples mathematically, but I think there will be some benefits to the report of providing some illustrative examples. We were just messing around at lunch and we were looking at our cable bills, phone bills. And we're probably paying, you know, $300 a year in CST tax between the cable bill and our phone bill. If you convert that over to .34 in sales tax, you have to have an excess of $90,000 in taxable transactions to come back even. And then if we don't fall off the fiscal cliff, you can actually then deduct some of that as part of your tax.

So I think it's very important if we're beyond consensus and we're actually trying to shape this as a policy document for the legislature and the governor, show that we were thinking about everybody's constituents and why in the end we think this makes the most sense. And I don't know if it's state or for the ultimate end consumer by providing some examples. Again, Bob may not love my random examples. He probably can do the numbers a lot better. But in that range, we can come up with some ideas. If you have a phone bill, you have a cable bill, you're paying this much. Guess what, convert it over to this. This is the magnitude we're talking about. And most people would never get to that number because a portion is being paid by people coming from out of the state.

I think that's helpful instead of just throwing forward of an idea that we thought about it all the way through to the end consumer. We're all worried about, them as consumers, our taxpayers, and constituents. So just a thought in drafting the document.

MR. STRANBURG: Let me make a couple suggestion here. One is, I think I'm hearing from everyone, there's a consensus on focusing on this as an option to put forward. Secondly, what I'm also hearing is maybe it won't be a bad idea today to spend a little bit of time glistening from everyone some more thoughts and ideas about things to consider in putting together this option.

I think that leads us, though, to something we were going to eventually get around to talking about which is I don't think we're going to get this all done today. I think we need to take a look at when we'd like to get back together to not only have some further look at the things we throw out on the table as discussion points today, but if there's some things when everybody goes back, spends a little more time contemplating this option, some additional thoughts might pop up. Things like Alan talked about, maybe putting together some examples, something of that nature that you all might want to bring back to include in; that might not be a bad thing.

So, you know, I don't want to kill the momentum here. But we can either start talking about other considerations and then we need to reserve about 15 minutes at the end to set up a date or we can talk about a date now and then back to throw some more things on the table. Kathleen, you've got to leave in a little bit, so that's why I don't want to --

MR. ROSENZWEIG: Do the date now.

MR. STRANBURG: Try to find a date now and then we can focus our efforts on coming up with some more things to explore as the options. Now we had looked at the possibility, I think we got some feedback from some people of maybe trying to do something late November or early December. And I don't know how those -- right now off the top of my head, I can't remember, Andrea's, I think, has got a list of where we were with respect to people's availability and calendars.

MR. DUDLEY: This is post Thanksgiving?

MR. STRANBURG: Post Thanksgiving, yeah. Not only my schedule but other people's schedule. I think trying to do anything before Thanksgiving is not realistic. We'd be looking at either that week after Thanksgiving or that following week. And Andrea points out to me that there is interim committee meetings for the legislature that first week of December. It's a possibility, if that plays into anybody's schedule. But to throw out there as something that seemed to work from the feedback everybody gave us, the 27th of November which is a Tuesday. And that seemed to hit a lot of people, not everybody perfectly, but a lot of people, that seemed to be a workable date.

MR. DUDLEY: The thing I'd point out looking to Bob is my calendar shows revenue estimating conference for CT that day.

MR. McKEE: Yeah, that was the day I got incorrect earlier. November 27th is the GR --

gross receipts CST estimating conference. And that's just --

MR. DUDLEY: How long does that take, Bob, just typically?

MR. McKEE: Two to three hours usually I would expect. Probably not less than three hours. It's a morning conference.

MR. DUDLEY: It's pretty relevant to what we're doing. That's why I was thinking we may not do that on the same day, but we can work around it and make it work because it's pretty relevant to these recommendations. Potentially relevant.

MR. McKEE: It's 1:30 that day.

MR. RESNICK: -- right after Thanksgiving, but the 27^{th}, city commission meetings, sorry.

MR. SUGGS: That's our policy meeting. Starts the 27^{th}.

MR. STRANBURG: All right. Well, the week of December 3^{rd}.

MR. RESNICK: December is better. That week is better.

MR. DUDLEY: If --

MR. RESNICK: Wednesday or Tuesday if that's good for people if they don't mind meeting on a Monday.

MR. DUDLEY: Try the end of the week because they did have interim committees, so Thursday or Friday -- Friday's possibly the safest.

MR. LINDSEY: I've got travel in the middle of the week, so either the beginning of the week or end of that week. Monday or the Friday.

MS. FOX: That Monday and Tuesday is not good for me.

MR. STRANBURG: Friday the 7th?

MR. RESNICK: Friday's good for me.

MR. McKEE: There's a -- estimating conference, but that would just be me. So I wouldn't be available. 9:00 a.m. conference.

MR. STRANBURG: So why don't we then pencil in Friday, December 7th. We'll probably try to do what we've been doing similarly here, start at 9:00 unless people would like to start a little earlier. Again, it's up to you all. 8:00, 8:30. I don't push people. I'm here usually in the wee hours of the morning. So early doesn't bother me. I'd even be willing to start at 7:00, but I know that's a little early.

MR. RESNICK: 8:30.

MR. STRANBURG: 8:30. Okay. We'll start at 8:30. That will give us a little earlier start and then hopefully we'll schedule it to 4:00, but hopefully if we plow through things quickly, we might be able to get you out of here a little sooner on that Friday. Okay.

Well, then why don't we get -- do we want to have Jeff capture this on the board, do we just want to capture them in the record?

MR. SUGGS: Can we talk about some goals first?

MR. RESNICK: I had a question for DOR to try to get some more information before that meeting if we're looking at this new approach. But I'm sure everybody -- that's what we wanted to do next, right, is talk about some of the issues you want to raise at that meeting?

MR. STRANBURG: Issues raised at the meeting, Mayor, maybe I'm misunderstanding, but what did -- let me get a little more info from what you mean by that.

MR. RESNICK: Well, I wanted to get -- if we're looking at the sales tax approach, I wanted to see if DOR can get us some more information about sales tax currently distributed and the exemptions from some of the -- from the sales tax that some of these services may enjoy. Do you understand what I mean by that or I can explain it more?

MR. STRANBURG: Why don't you explain a little bit more so that there's no confusion.

MR. RESNICK: Right. I just wanted to -- if DOR, I know I asked earlier for the list of how the DBS tax was distributed currently to locals. Does DOR maintain information now as to how the sales tax is distributed to the counties and cities and -- do other entities share in the sales tax revenue?

MR. STRANBURG: Well, I think there is information available on those distributions. I think a lot of that is probably found in two resources already. There's both the Florida tax handbook, which would talk in terms of some of the things that you mentioned, exemptions and so forth. And then the local government handbook, which would have information on distributions that are received by local governments. So those are things that you probably could pull up if you go to the economic and DBR web page. Those publications are on their web page. So you can probably page that information sitting back at your computer.

MR. RESNICK: Okay. And then do other governments as far as sharing the sales tax other than to state and local governments?

MR. STRANBURG: I think Bob -- let Bob talk a little bit more about that because again, there are -- there's various distributions made to them as well as certain levies that we talked about with sales tax that local governments are authorized to put in place.

MR. McKEE: Section 212.20 Florida Statutes provides for the distribution of state sales tax. The -- there are several distributions within 212.20 that come out to local governments. The primary one is half cent distribution. The half cent distribution is a percentage of state sales tax that goes back to the county wherein which the activity occurred and then with -- at the county level. It's then split between the cities and the county and the Board of County Commissioners on a population-based formula. I say the term "population based" because it is not a straight incorporated, unincorporated format. That formula, it's a little bit complex. It basically creates three distributions -- one to the county for county-wide services, one to the city for city services, one to the county for services in the unincorporated area. So that's essentially, you know, just a quick thumbnail of how the half cent works.

The county revenue sharing used to come out of another source but was swapped out in 2000 for sales tax. That's a three-part formula based on population -- two population components and then a sales tax component. The percentage of sales tax in that county compared to all counties statewide. The total population of that county to all populations statewide, the unincorporated population as a percentage of the statewide unincorporated population. There's a municipal revenue sharing formula that you need calculus to be able to understand how it's distributed. I referred to that earlier. It was also a replacement in 2000 for some other sources that were replaced with sales tax, tobacco tax and was replaced with sales tax. It comes out.

There's also a little distribution that's considered a part of the half cent. It's called the emergency distribution. It goes out to certain small counties. It's about $15 million or $17 million. There's another one that's called supplemental distribution. It's about $500,000 that goes out to certain small counties with a high percentage of inmate population. There's a small distribution to the public employee relation commission that comes out of the half cent. There are certain distributions to sports facilities comes out of the half cent, but they're set dollar amounts each year. There's some distributions that come out, I think --

MR. RESNICK: Not to cut you off, but I was trying to make a note but -- I think if you could put together this information that basically you're explaining now and have Andrea send it to us, I think that would be helpful.

MR. McKEE: I think the best thing to do would be to point to you the local government financial information handbook. They have a section that's specific to the distributions. I mean, there's the Florida tax handbook as Marshall mentioned. There's a specific discussion of the distributions that come out of sales tax. And then the Florida information -- local government information handbook. There's a discussion about the formulas and then the county-by-county estimates of the amounts that come out. And EDR also has historic distribution amounts for most of these on their website as well.

MR. RESNICK: Okay.

MR. McKEE: If I can, Marshall, I did want to make sure that one issue was discussed with respect to the statewide holistic replacement. Today in sales tax, there's still a locational component to it. And based on some of these, particularly the half cent distribution formula and the county revenue sharing formula, components that deal with the distributions at the county level. So, you know, I think that's at least something for consideration, whether there would be situsing to the county level that would allow for those types of information to be obtained to allow for those distributions back through those revenue sharing programs or whether there would need to be another approach to approximate it. So just something to think about as far as the statewide approach. There is, in state sales tax, a county level situsing that is significant for both local options sales taxes and the distributions from the half cent and revenue sharing distributions.

MR. LINDSEY: I may be oversimplifying this, but aren't we -- in the approach we're talking about, are we -- we're talking about taking the .34

percentage, and that's a number, and then that is going to be distributed in a way that holds harmless all the local governments and protects that they get that same money going forward.

MR. SUGGS: State government, too, holds harmless everybody.

MR. DUDLEY: And PECO.

MR. SUGGS: Pretty much everybody has to be held harmless, but -- I know where you're getting at, and this goes back to what Kathleen said. In doing this, we got to keep it simple. But, what we need, based on what Bob just said -- and, Marshall, I'm just going to ask of your entire staff, as we bring back sort of policy representing options or things we need to think about representing the people that we represent, but can your staff bring back a list of technical things? There's some things that you know about PECO, like you brought up, that we need to think about. The county level -- what you just mentioned about the county level situsing. There's probably a bunch of technical stuff that we need to work through and make it -- we can avoid it or we cannot. Can we make it simple without it or something has to be included, but I think that's going to be very beneficial.

MR. McKEE: If I can, Marshall, sort of getting to your point, for years when I wore my county hats, I joked that we'd call it the simplified tax because it's -- so simple would be in the name because it wasn't anywhere in the tax. What I'm talking about for the situsing issue is not with the .34, it comes out of the -- because the replacement for the state portion gets distributed like state sales tax. And so a portion of that today goes into the half cent program and gets distributed out to the counties. So presumably under the replacement, since the base is now bigger, they're taxable for sales tax, those things would continue to be identified at the county level and continue to be available to be distributed back in that format under the state portion. It's not the new .34; it would be the state portion that would be taxed, that would flow back through there. And then also there would be some additional calculations that would be necessary to make sure that the percentages that were going to those programs wouldn't rob from the additional percentage that was added on top. So there'd need to be some adjustments within the current statute to accommodate true revenue neutrality. Again, however that ends up being defined.

MR. SUGGS: Bob, if we can just --

MR. McKEE: November 7th, we have to forecast the motor fuel revenues.

MR. SUGGS: That guy sitting next to you is pretty good.

MR. McKEE: Yes. We're very lucky.

MR. STRANBURG: All right. So we honed in on the 7th. So do we want to spend a few minutes going through and talking about some more considerations, some more things that we need to keep in mind as we're looking at what we want to include as the options for the total replacement model?

MR. ROSENZWEIG: I recommend just throwing on the white board issues that are outstanding so that when we come back again, we're pretty much done. At that point, we'll have the data back. If we need more data, let's get it now. Issues Bob raised, issues I've raised, anything you want to think of that relates to this recommendation and this consensus, let's get -- we're here now. Hang in there for another half hour or so, make the next meeting --

MR. SUGGS: Can I ask? I agree with what Alan said, but I have access to people that are smarter than me to make sure I think of everything.

MR. STRANBURG: I agree, Davin. That's why I said, let's get things out and this gives you time to go back and think about it. And at the meeting in December -- send them in, please.

MR. SUGGS: We can do the homework thing. We can talk about it now, but if you give us two weeks, too, we can e-mail back to Andrea. So by the time we come back, everybody -- we got a comprehensive list of everything.

MR. DUDLEY: Like I've heard a lot of consensus today and the last meeting about five or six almost like findings or recitals that we may want to put in the beginning of this where the group, you know, met and heard all this information and agree with something that Sharon said that the CST may not be fixable with the technology. But it's an incredibly important revenue source for state, local governments and it's bonded. And the replacement needs to have the ability to be bonded and can't be messed with. Because there's a lot of little things that there's been consensus on amongst all of us that we just think are the facts. We just think it's the -- our analysis of what we've heard and seen, and there's probably five or six or seven things that we can get on paper and agree that those are all things that in the course of the task force meeting, we agreed on kind of the following statement of state. And because of that, we're recommending option or options and --

MR. STRANBURG: Let's start capturing some of those things. People want to go up and down the table?

Jeff, what would be the best way for you to handle this?

MR. ROSENZWEIG: I'll reiterate, I think we need some end user policy analysis. Illustrative as it may be, but somehow that would show that we didn't do this in a vacuum, that we were obvious that in the end -- the end game here, it's the consumer, the constituent, the taxpayers paying this. And this approach we felt that not only are they held harmless from a revenue neutrality standpoint, but in reality, they will be theoretically better off by virtue of the fact of the two main issues that sales tax is whatever percent -- 10, 20 percent is paid by out of state.

And that if we don't fall off the fiscal cliff, there's some federal tax benefits. I just think that's important that the legislature or governor see that we thought that through.

MS. KITTRICK: I think that's a great idea.

MR. ROSENZWEIG: Again, I don't think Bob wants me making up examples. I think he'd rather -- Bob wants to come and meet with me on that. We can give him some more insight.

MR. SUGGS: I guess a neutral fiscal impact for all parties. State, local, and I guess PECO.

MR. ROSENZWEIG: Bonding. Any outstanding debt is not jeopardized or put in jeopardy. And as a side note to that, I don't know when FAC and League of Cities, the original survey, I know there was a question asked if you had CST pledged, but I don't know if the question was asked, if you had CST pledged in a bucket with other revenues. And if you did, then most likely if it's pledged with half cent sales tax, which in our county are not ad valorem revenues, they're all pledged together typically. So if it's pledged together and you're swapping CST for half cent or sales tax, the bond holders aren't going to care because the calculations are the same. The only situation it's going to be is if it's bifurcated by itself and it's not associated with sales tax. So the bonding issue in a lot of jurisdictions may not be a problem.

MS. HUGHES: It was broken out in the survey. We covered the -- appropriate specifically. You can say it.

MR. SUGGS: Amber did -- what Amber presented, but we both did surveys -- how many people use it primary and how many people use it in the budget.

MS. HUGHES: Or secondary.

MR. SUGGS: We had primary, secondary. She's very thorough.

MR. ROSENZWEIG: It's an issue for something -- smaller -- everybody was collecting CST.

MR. STRANBURG: Kathleen, let me get some ideas from you since you may have to leave us in a couple of minutes.

MS. KITTRICK: I think we would like to make the point that Gary made and Brian made that we want -- in looking at the sales tax and the base, that we want to include definitions that are setting Florida up for an easy transition to, you know, a mainstream -- bill or that are, you know, I guess streamlined easily acceptable amongst corporations.

MS. FOX: I have a side question about that. If the state sales taxes are applied to everything, why is the definition as critical in this regard?

MR. LINDSEY: I didn't hear. What was the question?

MS. FOX: My understanding is we're talking about not a new CST rate; we're talking about --

MS. KITTRICK: If you're looking at like a definition of communication services, you're still going to want to -- you can't just have a definition -- you can't just say service, right, you're going to have to say communication service. And you're going to want communication service that may be the definition that's developed in streamlines that's consistent with what other states are doing.

MS. FOX: It's not that I disagree with the concept because I -- it's been one of my concerns. What happens now with CST if we go to the streamline sales tax? Because that's perfectly possible. And if that wrecks city bond covenants, then we're really messed up. So I don't disagree. I was just curious how it would change things if the rate --

MR. LINDSEY: We could say we revisit the definitions to make sure that they cover the things, for example, the digital goods example that was mentioned. That we just revisit to be sure that they are covered in the foreseeable future, technology that may come about that we don't know of. And I think a lot of the streamline definitions have taken that into consideration. A lot of thought was put in there. So we may look at a definition that's currently in the statute and say, you know what, that's pretty darn close to the streamline. Or we can say, you know, we can tweak it and that makes it even better going forward. So I think that would be the intent to be sure that the intended revenue base is there and just look at the --

MS. KITTRICK: Clarify. Right, like the video example that we just heard this afternoon that, you know, we can maybe define video as cleanly as they would have liked so that there's some certainty from the taxpayer perspective. So, I mean, to the extent that we can provide certainty and clarify with the streamline definitions or what have you, then I think it makes it a lot easier for the DOR and those companies that are providing the service.

MR. SUGGS: And I think the more we can get in line now, and counties we support streamline, but the more we can do it now, like I said, it doesn't future-proof it. But we don't have to go back and change it again. But also moving forward, this is a heavy lift. But those other groups to support mainstream -- support from everybody.

MR. SMITH: Just for clarity, I guess I see definitions just being moved from CST over to sales tax. But I guess I'd look to the Department to highlight areas where there's current known controversy as items that we should be looking to to provide clarity and definition to remove the controversy. We don't want to adopt all the definitions out of streamline, that's not the point. This point is just to add clarity where it needs to be added here.

MR. STRANBURG: Gary?

MR. LINDSEY: Well, another attributable thing to talk about is under the holistic option, I think it will greatly simplify audit issues, the bundling for certain sourcing. Because it's going to be statewide. So I think that's another point to be made as we're looking through this outline -- the administrative ease and that we really are going to be simplifying a lot of the administration and compliance issues and audit issues related to this new concept.

MR. STRANBURG: Sharon?

MS. FOX: With regard to the neutral physical impact for all parties, as in the devil-is-in-the-details category, there are issues to be discussed with regard to unused capacity and the funding that was lost because of the confusion with the prepaid and those kinds of things that have contributed to the current significant decrease in CST revenues. So I think there are some issues that we can further spend time on with regard to --

MR. SUGGS: Based on -- can we put an offset, I think, first, unused capacity. I mean, we know it's not a lot -- maybe put defining what neutral really is. Unutilized capacity, absence of prepaid. Because this stuff is just for discussion next time.

MS. FOX: How we're going to deal with --

MR. SUGGS: Can you put, I think, as another subject, local government distribution? Although I think Bob sort of -- that we can bifurcate initial transfer with future distributions. But it needs to be --

MS. FOX: The problem with that is that's why we were not real enthused about distribution to begin with because -- issues with the CST.

(Kathleen Kittrick leaves the meeting.)

MR. SUGGS: Also, just technical issues that we might not know about but that your staff -- like technical and legal issues that you guys --

MR. STRANBURG: Particularly the PECO issue.

MR. SUGGS: Yeah, the PECO issue is going to have a big say on this.

MR. RESNICK: You may want to suggest something that we look at, that a different work group be formed that has more of an expertise on sales tax to deal with some of the technical issues with the principles that we've outlined in terms of neutral fiscal impact, et cetera. This work group might not be the right work group to work on those issues.

MR. ROSENZWEIG: I don't know how you want to address sort of the issue.

MR. RESNICK: Can't do much about it, right?

MR. ROSENZWEIG: It's bondable.

MR. SUGGS: Can that be important enough to be on there? Maintain our ability to satisfy bond --

MR. ROSENZWEIG: Outstanding bond --

MR. SUGGS: Maintain our loan --

MR. ROSENZWEIG: To make current and future bonding abilities including outstanding --

MR. SUGGS: Is there anything in doing this or it will be captured in definitions in terms of the competitive issues, disadvantages? Is there anything else that we need to do about or is this -- everything going to sales tax, does that cover most of your stuff and --

MR. LINDSEY: I think so. I was just kind of looking back over those principles of good tax policy. I think it hits those pretty well. We might just want to say -- just put tax policy as an item just so we -- to the extent that we might do a preamble or write something up, we can talk about how it meets some of these things that we talked about earlier as far as representing good tax policy.

MR. STRANBURG: Did we need to have -- even though we mentioned it briefly under the simplify audit and administration issues, a little more work at the bundling issue as part of this, too?

MR. LINDSEY: Yes. I think if we put

bundling, we'll know what that means, even if we end up consolidating it later.

MR. SUGGS: Okay. Is that different than looking at the definitions? Or I thought -- it's different?

MR. DUDLEY: You'd be bundling stuff that's subject to sales tax and stuff that's not. So, you're still going to have the issue unless something happens on Internet -- and remember the Internet stuff has to happen --

MR. SMITH: You bring up a point on the Internet. Should we put a trigger in that if the Internet access does become taxable, there's a step down in rate? I mean, do we put something that anticipates, you know, something like that?

MR. DUDLEY: I don't know if you need to because Florida now has it, too, adopting now the '07 definition and they have their own.

MS. HUGHES: Uh-huh.

MR. DUDLEY: So there's several areas of the statute that if -- even if the feds said the Internet, it is taxable, Florida's saying it's not. So there would have to be another complete legislative decision on whether Florida's going to join that --

MR. SMITH: Separate issue, separate --

MR. DUDLEY: That's my view.

MR. SUGGS: We would have to come back in and rewrite the state law -- that would affect a lot of stuff.

MR. DUDLEY: Right. I follow what you're saying if we ever went down that road and it created $500 million in revenue --

MS. HUGHES: Woo hoo.

MR. DUDLEY: -- and it dropped the rate so that it was revenue neutral. Or some people would want to drop the rate. Make it very clear.

MR. LINDSEY: Davin, I just want to mention on the bundling issue, one of the things we were handed out, the streamline -- use tax agreement, bundled transactions. I think what we mean there about bundling issues as we're kind of putting all this together to consider making that part of -- you know, adopting that into it.

MS. FOX: One of the caveats that we're going to be concerned about is making sure that the revenues that we receive under this -- are as flexible as the CST revenues are.

MR. ROSENZWEIG: Unrestricted.

MS. FOX: Also it needs to be expressed that it's a replacement revenue to tie it to the constitution, the mandate constitution. I also think that it needs to also tie in -- you know, the CST was a trade of local taxes and fees. And it was a bargain, so to speak. We've already said that that's kind of old and done with. But those were real revenues to us and that stream is gone unless we bring it back in some form or fashion. I think that -- that recognition needs to be there.

If we get some kind of capacity that is tied to the rights of way, like a rights of way use -- that's a recognition of that. And I just don't want that original bargain to disappear. It needs to be recognized that we had skin in the game, so to speak.

MR. DUDLEY: So do we want Bob to back out that revenue that's been replaced from the 6.34?

MS. FOX: I think it's a useful exercise that he --

MR. DUDLEY: Ask him to try to.

MS. FOX: How else to figure out how much that that was and how much it needs to be charged on some kind of a bases. I just -- I don't see how else we can do it without making that calculation like you suggested earlier today.

MR. STRANBURG: Just a caveat, Bob. Maybe you can come up and speak to this, but those are calculations that were done well over ten years ago. I don't know how much of that information is still around and how -- if it is still around, how useful it's going to be, but I'll let Bob talk about that.

MR. McKEE: I want to make sure that I'm in the same place. You're talking about rights of way charges?

MR. LINDSEY: Rights of way because I think --

MR. McKEE: Are we talking specifically about what was actually replaced in 2000? I mean, you tasked me with with an exercise of looking at the 5 percent essentially franchise fee on anything that -- on services of rights of way that I think we did for you at the last meeting.

The historic numbers, as I talked about previously, are a little challenging to replicate going forward because they were individually negotiated. So trying to replicate -- and what would be a part of those agreements is a little challenging. Because they were individually negotiated between jurisdictions and the providers. And they were somewhat negotiated in a little bit of a different air, as I understood it, because at the time they provided, I think, Charlie, correct me if I'm wrong -- originally when they were negotiated, they were exclusive access agreements or no? Is that --

MR. DUDLEY: Some were, some weren't. The exclusive ones were preempted in '92 by the governor. But I guess the point is that charter and non-charter and cities all have the ability to levy up to 5 percent of the gross revenues on which -- again, as I mentioned, certain things determined not to be captured --

MR. McKEE: But that was on your clients. There was a 1 percent, I believe, telecommunications franchise fee that was in place for cities -- arguably, I think, in the replacement revenues it was included in the counties' replacement because similar to the public service tax argument, the charter counties argued that they should have that among the replacement revenues. My understanding, my recollection is that it was not something similar to non-charter counties at the time. Although I think the non-chartered counties at the time argued that the 1 percent was a restriction, not a -- it was a limitation, not an allowance on what they could otherwise charge for accessing the rights of way and so that they could have --

MR. DUDLEY: You remember arguments very well.

MR. McKEE: Yes.

MR. DUDLEY: I guess my point is, and I'm not -- in terms of numbers or anything else or anything else for that matter. But as an example, let's say that if you look at Christian's spreadsheets from 2000 and there was 700 million in total replaced local revenues statewide, you know, 30, 40, some percentage of that was franchise and right of way fees, the rest was mostly public service tax. Because I think the old telephone 1 percent franchise fee had a netting of a -- so in some respects, people didn't even bother -- either didn't bother to collect permit fees or really never got a franchise fee because the permit fees would have been bigger. I wasn't in that --

MR. McKEE: That was actually the basis to why there's a .12 reduction on municipal charter county rates that they chose to do permit fees.

MR. DUDLEY: So I'm wondering if there's at least a way to say this is about the ratio or percentage. I don't know if there's a way to do a dollar for dollar because it's been so long, but it was around a third or 20 percent or 40 percent of the total replaced revenue came from these right of way fees. Then you could at least apply that ratio to today's combined local CST revenues and be able to say, okay, well, we're not going to replace that third and you're going to set it aside and let Sharon and Gary call it some sort of separate local option right of way fee, but we're going to take it out of the 6.34 and drop 6.34 down by whatever corresponds to that value. I think that's what would be --

MR. LINDSEY: I'll speak a little bit from experience because I worked on the Virginia effort when the Virginia communication sales tax was developed and -- component was -- and, you know, I think if we want to do this as an exercise and look at a reduction, you know, look at tweaking the 6.34 and then look at what it would be if there was a right of way fee based on the cost of maintaining the right of way which is what was done in Virginia and see what that would be based on access lines. I mean, that could be an exercise that we do and say that's one option. You could keep, you know, a straight sales tax or you could do a slightly reduced sales tax and have this right of way fee. And if the -- you know, there was an interest in, you know, continuing to have a right of way fee on those who are only in the right of way as opposed to everyone else.

MR. DUDLEY: Gary, how did they arrive at the cost of --

MR. LINDSEY: It's a cost study.

MR. DUDLEY: A cost study was done by?

MR. LINDSEY: It's an annual cost study that the Virginia Department of Revenue does that's based purely on the costs of maintaining the right of way, which is not a very -- all things considered, it's not a real big fee for accessing that throughout the state. But at least, you know, that's something that we can look at if we want to consider it for an exercise. So it's not a franchise fee. It's strictly for the true cost of maintaining the right of way that the local jurisdictions confirm. And they do it based -- they look at it annually. They submit their costs and they determine what the current access line fee is subject to -- I think it adds a little more complexity, but, you know, in the interest of looking at it, we can certainly take a look at

Virginia and how that's done.

MS. FOX: Gary, do you know if there are any other states that utilized that model?

MR. LINDSEY: No. That's -- Virginia's kind of the -- as far as the last time a really significant sales tax reform was done -- kind of look back to Virginia. So I'm not aware of another state that's done a cost based -- like that, there might be.

MS. FOX: Have you heard of issues that have arisen because of that model?

MR. LINDSEY: No. I think it's just based on a -- kind of what we're saying earlier -- it might be based on a diminishing base. Because as one of the issues we've talked about is how everything's becoming, you know, over the top and not occupying the right of way. So it might be a base that's not really growing. So, you know -- but as far as any problems with administering it, I think it's pretty straightforward. But again, it's -- it would be, you know, taken out of the sales tax base and just be a separate carve out.

MR. McKEE: For me to estimate that amount to have a better understanding, I'd have to look at what Virginia does, how they come up with that cost. And then I think the locals would certainly be interested in how it gets distributed back to various jurisdictions in Virginia. Once it's -- would be my expectation.

MR. STRANBURG: You want us to take a shot at looking at that, Gary?

MR. LINDSEY: Well, if there's an interest in looking at it, it probably would --

MR. STRANBURG: If you wouldn't mind getting with Bob and Andrea about providing that info so we can do that. See if we can find out and get that information put together.

MR. McKEE: If I could comment back on Charlie's sort of idea, you know, I'd have to verify whether we still have the actual amounts that were used at that period of time. Sort of the basket of goods that are available have changed so much since 2000. I have some concern about how representative those portions would be given that at the time, taxable long distance was a major portion of the base. At the time, Internet was a very minor part of the base. At the time, prepaid was a calling card and not a phone that's otherwise, you know, identical to the post paid. But I have some concern about how representative those proportions might be. But that's just, you know, a comment more than a capability.

MR. LINDSEY: And I think that's -- you know, when you look at the Virginia model, that was developed, it was enacted after 2007, but that was work done in early -- you know, early 2000's. So it's kind of a 20th -- I mean, it's kind of an older model that made sense at the time given the number of things out in the right of way. And I think that continues to diminish. So I think we can look at it, but not necessarily something I would recommend from a revenue standpoint.

MR. ROSENZWEIG: I didn't agree -- I know where Sharon's going, but I, from our county's perspective, the simplicity of a swap off in sales tax with right of way -- will be used less and less. That as long as the sales tax rate was put in and stays, that is potentially -- actions. Again, in terms of CST, a point in time it may not be as advantageous, so --

MR. RESNICK: You know, actually it's not working that way. Wireless providers are using the rights of way. You know, any data system has a fiber back call, wireless cell service has a fiber back call. So they're using the rights of way. In fact, the rights of way are being used more as wireless services increase.

MR. SUGGS: Mayor, can I ask a question?

MR. STRANBURG: Well, Davin, I just need to say quickly, the court reporter has to leave at 4:00, so we have to wrap this up today pretty quickly. Two other quick points that people will make and then I just want to wrap things up. So, Brian, go ahead.

MR. SMITH: We need to make sure that if there's any unique exclusions or exemptions in the CST, we need to replicate them over.

MR. STRANBURG: Okay. And did you have something real quick?

MR. SUGGS: Yeah, real quick with the right of way thing and having done the IT in a while, but I know back when I was doing it, one company was putting on the fiber in my right of way and leasing it when you guys were talking about going on top. So there may be more people using stuff in your right of way, but only one person that owns the strand or fiber. They may put in 48 strands and then go split those up and lease them to 96 companies and -- but I'm only collecting a franchise fee or a fee from that one company, correct? Even though --

MR. RESNICK: Right.

MR. SUGGS: And so I think what Alan is saying, I'd rather tax on 96 companies instead of taxing the one.

MR. RESNICK: I'm not saying it's one way or the other. You know, my model is that -- because we need the revenue to maintain the rights of way. You know, concern is that the CST is not kept safe with that and -- or permit fees for that matter. We keep forgetting to talk about permit fees. But the costs to review an engineering application to install fiber in your rights of way is tremendous and we cannot even charge permanent fees for that. So it's significant costs that local governments have now that's not being met, and so I think it needs to be addressed as part of this new model that we're coming up with.

MR. STRANBURG: All right. We've captured that for consideration. Just quickly, you know, we talked about we've got a number of good things here that we've captured today. If you've got other ideas, other options or other considerations to put together this approach, if I could ask you to get it to us sometime by the -- we can either do like around the 16^{th} of the month -- that gives you a couple of weeks, and that will give us a little bit of time to put them together for the 7th. Would that be okay? That will be before Thanksgiving. So people aren't up bumping up against Thanksgiving and not lingering over Thanksgiving. And then we will take those, put those together with what we've done today and hopefully have them out for all to have in advance before our next meeting.

MR. SUGGS: Marshall, this stuff right here, can we e-mail this out as soon as possible?

MR. STRANBURG: Yeah, we will make a copy of that and get that out to you and get that posted on the website.

MR. SUGGS: Comments are open to any --

MR. STRANBURG: Well, we'll see if anybody that's here, anybody that's been participating, attending, listening in on, have the ability to send us something. That's available to comment through the website like we received one comment today, so --

MR. DUDLEY: Yeah, my comment on that is just, you know, I'd love if people have some submissions of changes to definitions that they'd like us to consider. Because I didn't think anyone here intended -- when I read the definition of information service, that's what it looks like when they tell us -- looks to me like it's -- but I'm not the Department. I'm not giving you a legal opinion. I'm just saying, I'd like to see submissions as well as if there's a problem, give us some examples of how to fix it.

MR. STRANBURG: All right. I want to thank everyone for their participation today. I think we've made some good progress. We'll get back together on the 7th. Thank you again. And those of you, please remember to leave your badges on the back counter before you leave today.

(Meeting adjourned at 4:01 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA:
COUNTY OF LEON:

I, TRACY L. BROWN, court reporter and Notary Public do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated, and that the foregoing pages numbered 1 through are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the foregoing action.

DATED THIS day of , 2012.

____

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