

By the Committees on Regulated Industries, Fiscal Resource and  
Senator Horne

315-2100-00

1                                   A bill to be entitled  
2           An act relating to communications services;  
3           creating ch. 202, F.S., the Communications  
4           Services Tax Simplification Law; providing  
5           definitions; providing for taxation of the sale  
6           of communications services, effective January  
7           1, 2002; providing for the rate of the tax on  
8           the sales price of communications services and  
9           on the cost of operating a substitute  
10          communications system; providing for  
11          computation by the Revenue Estimating  
12          Conference of a rate applicable to  
13          direct-to-home satellite service and for  
14          approval by the Legislature; providing for  
15          collection and remittance of the taxes on  
16          communications services imposed by chapters 202  
17          and 203, F.S., on a combined basis; providing a  
18          limitation on such taxes on certain interstate  
19          communications services; requiring the  
20          purchaser to obtain a direct-pay permit;  
21          providing exemptions for certain sales to  
22          residential households, to governmental  
23          entities, and to certain religious or  
24          educational organizations; providing  
25          legislative intent with respect to future  
26          findings of invalidity, exemptions, and local  
27          government franchise fees; providing for  
28          credits for taxes paid in other jurisdictions;  
29          providing special provisions for users of  
30          substitute communications systems; providing  
31          for payment and collection of the taxes on

1           communications; providing for sales for resale;  
2           providing requirements for registration of  
3           dealers of communications services; providing  
4           penalties; providing for fees; providing for  
5           annual resale certificates; providing  
6           procedures for revocation of registration;  
7           providing for disposition of the proceeds of  
8           the taxes on communications services;  
9           authorizing counties and municipalities to levy  
10          a discretionary local communications services  
11          tax; providing intent regarding tax rates;  
12          providing for imposition of a discretionary  
13          sales surtax levied by a county or school board  
14          under s. 212.055, F.S., as a local  
15          communications services tax; providing for  
16          application of local taxes to substitute  
17          communications systems; providing a limitation  
18          on local taxes on certain interstate  
19          communications services; requiring the  
20          purchaser to obtain a direct-pay permit;  
21          providing for use of tax revenues; providing  
22          for credit against local taxes for fees  
23          required under a franchise agreement; providing  
24          for computation by the Revenue Estimating  
25          Conference of the initial and maximum rates for  
26          local taxes and providing for approval by the  
27          Legislature; providing for effectiveness of the  
28          initial rates and for increase by emergency  
29          ordinance under certain conditions; requiring  
30          providers of communications services and local  
31          taxing jurisdictions to furnish information;

1 providing for determination by the Revenue  
2 Estimating Conference of a rate conversion  
3 factor for counties and school boards that levy  
4 a discretionary sales surtax and providing for  
5 approval by the Legislature; providing for  
6 certain automatic rate reductions; providing  
7 for effective dates and notification with  
8 respect to adoption, repeal, or rate changes of  
9 local taxes; providing procedures and  
10 requirements for determination of the local  
11 taxing jurisdiction in which a service address  
12 is located; providing for creation of an  
13 electronic database by the Department of  
14 Revenue; providing for certification of  
15 databases by the department; providing effect  
16 on dealers who do not use the specified methods  
17 for such determination; providing procedures  
18 and requirements for refunds or credits of  
19 communications services taxes; specifying that  
20 the authority of public bodies to require taxes  
21 or other impositions from dealers of  
22 communications services for occupying roads and  
23 rights-of-way is preempted by the state;  
24 prohibiting public bodies from levying  
25 specified taxes and other charges; providing  
26 for jurisdiction for suits against dealers;  
27 providing for dealers not qualified to do  
28 business in this state; specifying powers of  
29 the department; providing for rules; providing  
30 requirements for the filing of returns and  
31 payment of taxes; providing penalties;

1 providing for rules for self-accrual; providing  
2 for a dealer's credit; providing penalties for  
3 failure to file returns or for filing false or  
4 fraudulent returns; providing for credits or  
5 refunds for bad debts; requiring certain  
6 dealers to remit taxes by electronic funds  
7 transfer and make returns through an electronic  
8 data interchange; providing for payment of  
9 taxes upon sale or quitting of business;  
10 providing for notice to certain persons  
11 regarding a dealer's delinquency and providing  
12 such persons' duties; providing a penalty;  
13 providing for cooperation of state and local  
14 agencies; providing that taxes collected become  
15 government funds; providing penalties for the  
16 theft of government funds; providing department  
17 powers regarding warrants, tax executions, and  
18 writs of garnishment; providing recordkeeping  
19 requirements for dealers; providing a penalty;  
20 authorizing sampling by the department;  
21 providing for examination of records; providing  
22 for audits; providing for assessment of  
23 interest and penalties; providing powers of the  
24 department to assess from estimates; requiring  
25 that taxes be separately stated; prohibiting  
26 certain advertising or refunds by dealers;  
27 providing a penalty; providing department  
28 powers with respect to hearings, cash deposits  
29 or bonds, and subpoenas; providing for venue;  
30 providing special rules for the administration  
31 of local taxes; providing for an advisory

1 committee to advise the executive director of  
2 the department regarding implementation of  
3 communications services taxes; amending s.  
4 72.011, F.S.; authorizing taxpayers to contest  
5 assessments or denials of refund under ch. 202,  
6 F.S., in circuit court or pursuant to the  
7 Administrative Procedure Act; amending s.  
8 213.05, F.S.; including ch. 202, F.S., within  
9 the revenue laws for which the department has  
10 responsibility; amending s. 213.053, F.S.;  
11 including ch. 202, F.S., within confidentiality  
12 provisions; authorizing provision of  
13 information to local governments that impose a  
14 local communications services tax; amending s.  
15 212.20, F.S.; providing for distribution of  
16 portions of the communications services tax;  
17 amending s. 166.231, F.S.; providing that, for  
18 the interim period prior to January 1, 2002,  
19 the exemption from the municipal public service  
20 tax for telecommunications services for resale  
21 includes resale by way of a prepaid calling  
22 arrangement; providing that taxes not collected  
23 thereon prior to July 1, 2000, need not be  
24 paid; repealing s. 166.231(9), F.S., which  
25 provides for levy of the municipal public  
26 service tax on telecommunication services,  
27 effective January 1, 2002; conforming language;  
28 amending s. 166.233, F.S.; conforming language;  
29 amending s. 203.01, F.S.; providing that, for  
30 the interim period prior to January 1, 2002,  
31 the exemption from the gross receipts tax for

1 telecommunication services for resale includes  
2 resale by way of a prepaid calling arrangement;  
3 providing for a gross receipts tax on  
4 communications services, effective January 1,  
5 2002, to be applied pursuant to ch. 202, F.S.;  
6 amending s. 203.012, F.S.; removing and  
7 revising definitions relating to the gross  
8 receipts tax, to conform; repealing s. 203.013,  
9 F.S., which provides for payment of the gross  
10 receipts tax on interstate private  
11 communications services, and ss. 203.60,  
12 203.61, 203.62, and 203.63, F.S., which provide  
13 for payment of the gross receipts tax on other  
14 interstate and international telecommunication  
15 services, to conform; amending s. 212.05, F.S.;  
16 providing that the sale or recharge of a  
17 prepaid calling arrangement shall be treated as  
18 a sale of tangible personal property under ch.  
19 212, F.S.; providing that the sale of  
20 telecommunication services to a person who  
21 furnishes such services pursuant to such an  
22 arrangement is a sale for resale; providing  
23 that taxes not collected thereon prior to July  
24 1, 2000, neednot be paid; removing the  
25 imposition of tax under ch. 212, F.S., on  
26 telecommunications service, telegraph messages,  
27 long distance telephone calls, and television  
28 system program service, effective January 1,  
29 2002; amending s. 212.054, F.S.; providing that  
30 charges for prepaid calling arrangements are  
31 subject to discretionary sales surtaxes;

1 conforming language; amending s. 337.401, F.S.;  
2 providing requirements with respect to the  
3 authority of counties and municipalities to  
4 regulate the placement of telecommunications  
5 facilities in the public roads or  
6 rights-of-way; requiring certain notice to the  
7 Secretary of State; revising such requirements,  
8 effective January 1, 2002, and providing for  
9 application to providers of communications  
10 services; requiring municipalities and charter  
11 counties and noncharter counties to choose  
12 whether or not to impose permit fees on such  
13 providers and providing requirements with  
14 respect to such fees; providing effect of such  
15 choice on the rate of the local communications  
16 services tax under ch. 202, F.S., for the local  
17 government; providing that the authority of  
18 municipalities and counties to require  
19 franchise fees from such providers is preempted  
20 by the state; authorizing municipalities and  
21 counties to request certain in-kind  
22 requirements and contributions from cable  
23 service providers; providing for a legislative  
24 study with respect to state policy regarding  
25 such in-kind requirements and contributions;  
26 amending s. 212.031, F.S.; revising the  
27 exemption from the tax on the lease or rental  
28 of or license in real property for streets or  
29 rights-of-way and improvements located thereon  
30 used by a utility or cable television company;  
31 including such exemption within provisions

1 relating to leases involving multiple use of  
2 property; providing appropriations and  
3 authorizing positions; providing effective  
4 dates.

5  
6 Be It Enacted by the Legislature of the State of Florida:

7  
8 Section 1. Section 202.10, Florida Statutes, is  
9 created to read:

10 202.10 Short title.--This chapter may be cited as the  
11 "Communications Services Tax Simplification Law."

12 Section 2. Section 202.11, Florida Statutes, is  
13 created to read:

14 202.11 Definitions.--As used in this chapter:

15 (1) "Actual cost of operating a substitute  
16 communications system" includes, but is not limited to,  
17 depreciation, interest, maintenance, repair, and other  
18 expenses directly attributable to the operation of such  
19 system. For purposes of this chapter, the depreciation expense  
20 included in actual cost is the depreciation expense claimed  
21 for federal income tax purposes. The total amount of any  
22 payment required by a lease or rental contract or agreement  
23 must be included within the actual cost of operating the  
24 substitute communications system.

25 (2) "Cable service" means the transmission of video,  
26 audio, or other programming service to purchasers, and the  
27 purchaser interaction, if any, required for the selection or  
28 use of any such programming service, regardless of whether the  
29 programming is transmitted over facilities owned or operated  
30 by the cable service provider or over facilities owned or  
31 operated by one or more other dealers of communications



1 services. The term includes point-to-multipoint distribution  
2 services by which programming is transmitted or broadcast by  
3 microwave or other equipment directly to the purchaser's  
4 premises, but does not include direct-to-home satellite  
5 service. The term includes basic, extended, premium,  
6 pay-per-view, digital, and music services.

7 (3) "Communications services" means the transmission,  
8 conveyance, or routing of voice, data, audio, video, or any  
9 other information or signals, including cable services, to a  
10 point, or between or among points, by or through any  
11 electronic, radio, satellite, cable, optical, microwave, or  
12 other medium or method now in existence or hereafter devised,  
13 regardless of the protocol used for such transmission or  
14 conveyance. The term does not include:

15 (a) Information services.

16 (b) Installation or maintenance of wiring or equipment  
17 on a customer's premises.

18 (c) The sale or rental of tangible personal property.

19 (d) The sale of advertising, including, but not  
20 limited to, directory advertising.

21 (e) Bad check charges.

22 (f) Late payment charges.

23 (g) Billing and collection services.

24 (h) Internet access service, electronic mail service,  
25 electronic bulletin board service, or similar on-line computer  
26 services.

27 (4) "Dealer" means a person registered with the  
28 department as a provider of communications services in this  
29 state.

30 (5) "Department" means the Department of Revenue.

31

1           (6) "Direct-to-home satellite service" has the meaning  
2 ascribed in the Communications Act of 1934, 47 U.S.C. s.  
3 303(v).

4           (7) "Information service" means the offering of a  
5 capability for generating, acquiring, storing, transforming,  
6 processing, retrieving, using, or making available information  
7 via communications services, including, but not limited to,  
8 electronic publishing, web-hosting service, and end-user 900  
9 number service. The term does not include any video, audio, or  
10 other programming service that uses point-to-multipoint  
11 distribution by which programming is delivered, transmitted,  
12 or broadcast by any means, including any interaction that may  
13 be necessary for selecting and using the service, regardless  
14 of whether the programming is delivered, transmitted, or  
15 broadcast over facilities owned or operated by the seller or  
16 another, or whether denominated as cable service or as basic,  
17 extended, premium, pay-per-view, digital, music, or two-way  
18 cable service.

19           (8) "Mobile communications service" means any one-way  
20 or two-way radio communications service, whether identified by  
21 the dealer as local, toll, long distance, or otherwise, and  
22 which is carried between mobile stations or receivers and land  
23 stations, or by mobile stations communicating among  
24 themselves, and includes, but is not limited to, cellular  
25 communications services, personal communications services,  
26 paging services, specialized mobile radio services, and any  
27 other form of mobile one-way or two-way communications  
28 service.

29           (9) "Person" has the meaning ascribed in s. 212.02.

30           (10) "Prepaid calling arrangement" means the  
31 separately stated retail sale by advance payment of

1 communications services that consist exclusively of telephone  
2 calls originated by using an access number, authorization  
3 code, or other means that may be manually, electronically, or  
4 otherwise entered, and that are sold in predetermined units or  
5 dollars of which the number declines with use in a known  
6 amount.

7 (11) "Purchaser" means the person paying for or  
8 obligated to pay for communications services.

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

15 (13) "Sale" means the provision of communications  
16 services for a consideration.

17 (14) "Sales price" means the total amount charged in  
18 money or other consideration by a dealer for the sale of  
19 communications services in this state, including any property  
20 or other services that are part of the sale.

21 (a) The sales price of communications services shall  
22 not be reduced by charges for any of the following:

23 1. Separately identified components of the charge or  
24 expenses of the dealer, including, but not limited to, sales  
25 taxes on goods or services purchased by the dealer, property  
26 taxes, taxes measured by net income, and federal  
27 universal-service fund fees.

28 2. The connection, movement, change, or termination of  
29 communications services.

30 3. The detailed billing of communications services.  
31

1           4. The sale of directory listings in connection with a  
2 communications service.

3           (b) The sales price of communications services does  
4 not include charges for any of the following:

5           1. Any excise tax, sales tax, or similar tax levied by  
6 the United States or any state or local government on the  
7 purchase, sale, use, or consumption of any communications  
8 service, including, but not limited to, any tax imposed under  
9 this chapter or chapter 203 which is permitted or required to  
10 be added to the sales price of such service, if the tax is  
11 stated separately.

12           2. Any fee or assessment levied by the United States  
13 or any state or local government, including, but not limited  
14 to, regulatory fees and emergency telephone surcharges, which  
15 is required to be added to the price of such service if the  
16 fee or assessment is separately stated.

17           3. Local telephone service paid for by inserting coins  
18 into coin-operated communications devices available to the  
19 public.

20           4. The sale or recharge of a prepaid calling  
21 arrangement.

22           5. The provision of air-to-ground communications  
23 services, defined as a radio service provided to purchasers  
24 while on board an aircraft.

25           6. A dealer's internal use of communications services  
26 in connection with its business of providing communications  
27 services.

28           7. Charges for property or other services that are not  
29 part of the sale of communications services, if such charges  
30 are stated separately from the charges for communications  
31 services.

1           (15) "Service address" means:

2           (a) In the case of cable services and direct-to-home  
3 satellite services, the location where the customer receives  
4 the services in this state.

5           (b) In the case of all other communications services,  
6 the location of the communications equipment from which  
7 communications services originate or at which communications  
8 services are received by the customer. If the location of such  
9 equipment cannot be determined as part of the billing process,  
10 as in the case of mobile communications services, paging  
11 systems, maritime systems, third-number and calling-card  
12 calls, and similar services, the term means the location  
13 determined by the dealer based on the customer's telephone  
14 number, the customer's mailing address to which bills are sent  
15 by the dealer, or another street address provided by the  
16 customer. However, such address must be within the licensed  
17 service area of the dealer. In the case of a communications  
18 service paid through a credit or payment mechanism that does  
19 not relate to a service address, such as a bank, travel,  
20 debit, or credit card, the service address is the address of  
21 the central office, as determined by the area code and the  
22 first three digits of the seven-digit originating telephone  
23 number.

24           (16) "Substitute communications system" means any  
25 telephone system, or other system capable of providing  
26 communications services, which a person purchases, installs,  
27 rents, or leases for his or her own use to provide himself or  
28 herself with services used as a substitute for communications  
29 services provided by a dealer of communications services.

30           (17) "Unbundled network element" means a network  
31 element, as defined in 47 U.S.C. s. 153(29), to which access

1 is provided on an unbundled basis pursuant to 47 U.S.C. s.  
2 251(c)(3).

3 Section 3. Effective January 1, 2002, section 202.12,  
4 Florida Statutes, is created to read:

5 202.12 Sales of communications services.--The  
6 Legislature finds that every person who engages in the  
7 business of selling communications services at retail in this  
8 state is exercising a taxable privilege. It is the intent of  
9 the Legislature that the tax imposed by chapter 203 be  
10 administered as provided in this chapter.

11 (1) For the exercise of such privilege, a tax is  
12 levied on each taxable transaction, and the tax is due and  
13 payable as follows:

14 (a) At the rate of 6.33 percent of the sales price of  
15 the communications service, except for direct-to-home  
16 satellite service, which:

17 1. Originates and terminates in this state, or

18 2. Originates or terminates in this state and is  
19 charged to a service address in this state,

20  
21 when sold at retail, computed on each taxable sale for the  
22 purpose of remitting the tax due. The gross receipts tax  
23 imposed by chapter 203 shall be collected on the same taxable  
24 transactions and remitted with the tax imposed by this  
25 paragraph. If no tax is imposed by this paragraph by reason of  
26 s. 202.125(1), the tax imposed by chapter 203 shall  
27 nevertheless be collected and remitted in the manner and at  
28 the time prescribed for tax collections and remittances under  
29 this chapter.

30 (b) At the rate set forth in paragraph (a) on the  
31 actual cost of operating a substitute communications system,

1 to be paid in accordance with s. 202.15. This paragraph does  
2 not apply to the use by any dealer of its own communications  
3 system to conduct a business of providing communications  
4 services or any communications system operated by a county, a  
5 municipality, the state, or any political subdivision of the  
6 state. The gross receipts tax imposed by chapter 203 shall be  
7 applied to the same costs, and remitted with the tax imposed  
8 by this paragraph.

9 (c) At a rate to be computed by the Revenue Estimating  
10 Conference and approved by the Legislature on the retail sales  
11 price of any direct-to-home satellite service received in this  
12 state. The rate computed by the Revenue Estimating Conference  
13 shall be the sum of:

- 14 1. The rate set forth in paragraph (a); and
- 15 2. The weighted average, based on the aggregate  
16 population in the respective taxing jurisdictions, of the rate  
17 computed under s. 202.20(2)(a)1. for municipalities and  
18 charter counties and the rate computed under such subparagraph  
19 for all other counties.

20  
21 The proceeds of the tax imposed under this paragraph shall be  
22 accounted for and distributed in accordance with s. 202.18(2).  
23 The gross receipts tax imposed by chapter 203 shall be  
24 collected on the same taxable transactions and remitted with  
25 the tax imposed by this paragraph.

26 (2) A dealer of taxable communications services shall  
27 bill, collect, and remit the taxes on communications services  
28 imposed pursuant to chapter 203 and this section at a combined  
29 rate that is the sum of the rate of tax on communications  
30 services prescribed in chapter 203 and the applicable rate of  
31 tax prescribed in this section. Each dealer subject to the tax

1 provided in paragraph (1)(b) shall also remit the taxes  
2 imposed pursuant to chapter 203 and this section on a combined  
3 basis. However, a dealer shall, in reporting each remittance  
4 to the department, identify the portion thereof which consists  
5 of taxes remitted pursuant to chapter 203. Return forms  
6 prescribed by the department shall facilitate such reporting.

7 (3) Notwithstanding any law to the contrary, the  
8 combined amount of taxes imposed under this section and s.  
9 203.01(1)(a)2. shall not exceed \$100,000 per calendar year on  
10 charges to any person for interstate communications services  
11 that originate outside this state and terminate within this  
12 state. This subsection applies only to holders of a  
13 direct-pay permit issued under this subsection. A refund may  
14 not be given for taxes paid before receiving a direct-pay  
15 permit. Upon application, the department may issue a  
16 direct-pay permit to the purchaser of communications services  
17 authorizing such purchaser to pay tax on such services  
18 directly to the department. Any dealer of communications  
19 services furnishing communications services to the holder of a  
20 valid direct-pay permit is relieved of the obligation to  
21 collect and remit the taxes imposed under this section and s.  
22 203.01(1)(a)2. on such services. Tax payments and returns  
23 pursuant to a direct-pay permit shall be monthly. As used in  
24 this subsection, "person" means a single legal entity and does  
25 not mean a group or combination of affiliated entities or  
26 entities controlled by one person or group of persons.

27 Section 4. Effective January 1, 2002, section 202.125,  
28 Florida Statutes, is created to read:

29 202.125 Sales of communications services; specified  
30 exemptions.--

31



1           (1) The separately stated sales price of  
2 communications services sold to residential households is  
3 exempt from the tax imposed by s. 202.12. This exemption shall  
4 not apply to any residence that constitutes all or part of a  
5 public lodging establishment as defined in chapter 509, any  
6 mobile communications service, any cable service, or any  
7 direct-to-home satellite service.

8           (2) The sale of communications services provided to  
9 the Federal Government, any agency or instrumentality of the  
10 Federal Government, or any entity that is exempt from state  
11 taxes under federal law is exempt from the taxes imposed or  
12 administered pursuant to ss. 202.12 and 202.19.

13           (3) The sale of communications services to the state  
14 or any county, municipality, or political subdivision of the  
15 state when payment is made directly to the dealer by the  
16 governmental entity is exempt from the taxes imposed or  
17 administered pursuant to ss. 202.12 and 202.19. This exemption  
18 does not inure to any transaction otherwise taxable under this  
19 chapter when payment is made by a government employee by any  
20 means, including, but not limited to, cash, check, or credit  
21 card even when that employee is subsequently reimbursed by the  
22 governmental entity.

23           (4) The sale of communications services to a religious  
24 or educational organization that is exempt from federal income  
25 tax under s. 501(c)(3) of the Internal Revenue Code is exempt  
26 from the taxes imposed or administered pursuant to ss. 202.12  
27 and 202.19.

28           Section 5. Effective January 1, 2002, section 202.13,  
29 Florida Statutes, is created to read:

30           202.13 Intent.--  
31

1           (1) If the operation or imposition of the taxes  
2 imposed or administered under this chapter is declared  
3 invalid, ineffective, inapplicable, unconstitutional, or void  
4 for any reason, chapters 166, 203, 212, and 337, as such  
5 chapters existed before January 1, 2000, shall fully apply to  
6 the sale, use, or consumption of communications services. If  
7 any exemption from the tax is declared invalid, ineffective,  
8 inapplicable, unconstitutional, or void for any reason, such  
9 declaration shall not affect the taxes imposed or administered  
10 under this chapter, but such sale, use, or consumption shall  
11 be subject to the taxes imposed under this chapter to the same  
12 extent as if such exemption never existed.

13           (2) It is the intent of the Legislature to exempt from  
14 the taxes imposed or administered pursuant to this chapter  
15 only the communications services set forth in this chapter as  
16 exempt from such taxes, to the extent that such exemptions are  
17 in accordance with the constitutions of this state and of the  
18 United States.

19           (3) The tax on dealers of communications services  
20 authorized under this chapter, including the tax imposed by  
21 local governments under ss. 202.19 and 202.20, shall supersede  
22 the authority of local governments to levy franchise fees as  
23 set out in 47 U.S.C. s. 542 without regard to the fact that  
24 this is a tax of general applicability on all providers of  
25 communications services.

26           Section 6. Effective January 1, 2002, section 202.14,  
27 Florida Statutes, is created to read:

28           202.14 Credit against tax imposed.--To prevent actual  
29 multistate taxation of communications services subject to tax  
30 under this chapter, any taxpayer, upon proof that such  
31 taxpayer has paid a tax legally imposed by another state or

1 local jurisdiction in such other state with respect to such  
2 services, shall be allowed a credit against the taxes imposed  
3 under this chapter to the extent of the amount of tax paid in  
4 the other state or local jurisdiction.

5 Section 7. Effective January 1, 2002, section 202.15,  
6 Florida Statutes, is created to read:

7 202.15 Special rule for users of substitute  
8 communications systems.--Any person who purchases, installs,  
9 rents, or leases a substitute communications system must  
10 register with the department and pay the taxes imposed or  
11 administered pursuant to s. 202.12 annually pursuant to rules  
12 prescribed by the department.

13 Section 8. Effective January 1, 2002, section 202.16,  
14 Florida Statutes, is created to read:

15 202.16 Payment.--The taxes imposed or administered  
16 under this chapter and chapter 203 shall be collected from all  
17 dealers of taxable communications services on the sale at  
18 retail in this state of communications services taxable under  
19 this chapter and chapter 203. The full amount of the taxes on  
20 a credit sale, installment sale, or sale made on any kind of  
21 deferred payment plan is due at the moment of the transaction  
22 in the same manner as a cash sale.

23 (1)(a) Except as otherwise provided in ss.  
24 202.12(1)(b) and 202.15, the taxes collected under this  
25 chapter and chapter 203, including any penalties or interest  
26 attributable to the nonpayment of such taxes or for  
27 noncompliance with this chapter or chapter 203, shall be paid  
28 by the purchaser of the communications service and shall be  
29 collected from such person by the dealer of communications  
30 services.

31

1           (b) Each dealer of communications services selling  
2 communications services in this state shall collect the taxes  
3 imposed under this chapter and chapter 203 from the purchaser  
4 of such services, and such taxes must be stated separately  
5 from all other charges on the bill or invoice.

6           (2) A sale of communications services that are used as  
7 a component part of or integrated into a communications  
8 service or prepaid calling arrangement for resale, including,  
9 but not limited to, carrier-access charges, interconnection  
10 charges paid by providers of mobile communication services or  
11 other communication services, charges paid by cable service  
12 providers for the transmission of video or other programming  
13 by another dealer of communications services, charges for the  
14 sale of unbundled network elements, and any other intercompany  
15 charges for the use of facilities for providing communications  
16 services for resale, must be made in compliance with the rules  
17 of the department. Any person who makes a sale for resale  
18 which is not in compliance with these rules is liable for any  
19 tax, penalty, and interest due for failing to comply, to be  
20 calculated pursuant to s. 202.28(2)(a).

21           (3) Notwithstanding the rate of tax on the sale of  
22 communications services imposed pursuant to this chapter and  
23 chapter 203, the department shall prescribe by rule the tax  
24 amounts and brackets applicable to each taxable sale such that  
25 the tax collected results in a tax rate no less than the tax  
26 rate imposed pursuant to this chapter and chapter 203.

27           (4) Each purchaser of a communications service is  
28 liable for the taxes imposed under this chapter and chapter  
29 203. The purchaser's liability is not extinguished until the  
30 tax has been paid to the department, except that proof of  
31 payment of the tax to a dealer of communications services

1 engaged in business in this state is sufficient to relieve the  
2 purchaser from further liability for the tax.

3 Section 9. Effective January 1, 2002, section 202.17,  
4 Florida Statutes, is created to read:

5 202.17 Registration.--

6 (1) Each person seeking to engage in business as a  
7 dealer of communications services must file with the  
8 department an application for a certificate of registration.

9 (2) A person may not engage in the business of  
10 providing communications services without first obtaining a  
11 certificate of registration. The failure or refusal to submit  
12 an application by any person required to register, as required  
13 by this section, is a misdemeanor of the first degree,  
14 punishable as provided in s. 775.082 or s. 775.083. Any person  
15 who fails or refuses to register shall pay an initial  
16 registration fee of \$100 in lieu of the \$5 registration fee  
17 prescribed under subsection (5). However, this fee increase  
18 may be waived by the department if the failure is due to  
19 reasonable cause.

20 (3)(a) An application for a certificate of  
21 registration must be completed by the dealer of communications  
22 services before engaging in business. The application for a  
23 certificate of registration must contain the information  
24 required by rule of the department.

25 (b) The department, upon receipt of a completed  
26 application, shall grant to the applicant a certificate of  
27 registration.

28 (4)(a) Any person who exclusively resells  
29 communications services to a dealer of communications services  
30 must submit an application for registration before engaging in  
31 business in this state.

1           (b) The department, upon receipt of a completed  
2 application, shall grant to the applicant a certificate of  
3 registration which states that the applicant is a reseller of  
4 communications services.

5           (5) Each application required by paragraph (3)(a) or  
6 paragraph (4)(a) must be accompanied by a registration fee of  
7 \$5, to be deposited in the General Revenue Fund, and must set  
8 forth:

9           (a) The name under which the person will transact  
10 business within this state.

11           (b) The street address of his or her principal office  
12 or place of business within this state and of the location  
13 where records are available for inspection.

14           (c) The name and complete residence address of the  
15 owner or the names and residence addresses of the partners, if  
16 the applicant is a partnership, or of the principal officers,  
17 if the applicant is a corporation or association. If the  
18 applicant is a corporation organized under the laws of another  
19 state, territory, or country, he or she must also file with  
20 the application a certified copy of the certificate or license  
21 issued by the Department of State showing that the corporation  
22 is authorized to transact business in this state.

23           (d) Any other data required by the department.

24           (6) Certificates of registration issued by the  
25 department are not assignable.

26           (7) In addition to the certificate of registration,  
27 the department shall provide to each newly registered dealer  
28 an annual resale certificate that is valid for the remaining  
29 portion of the year. The department shall provide to each  
30 active dealer an annual resale certificate. As used in this  
31 section, "active dealer" means a person who is registered with

1 the department and who is required to file a return at least  
2 once during each applicable reporting period.

3 (8) A certificate of registration issued by the  
4 department may be revoked by the department or its designated  
5 agent when a dealer fails to comply with this chapter or  
6 chapter 203. Before revoking a dealer's certificate of  
7 registration, the department must schedule an informal  
8 conference at which the dealer may present evidence regarding  
9 the department's intended revocation or enter into a  
10 compliance agreement with the department. The department must  
11 notify the dealer of its intended action and of the time,  
12 place, and date of the scheduled informal conference by  
13 written notification sent by United States mail to the  
14 dealer's last known address of record furnished by the dealer  
15 on a form prescribed by the department. The dealer must attend  
16 the informal conference and present evidence refuting the  
17 department's intended revocation or enter into a compliance  
18 agreement with the department which resolves the dealer's  
19 failure to comply with this chapter or chapter 203. The  
20 department shall issue an administrative complaint under s.  
21 120.60 if the dealer fails to attend the department's informal  
22 conference, fails to enter into a compliance agreement with  
23 the department resolving the dealer's noncompliance with this  
24 chapter, or fails to comply with the executed compliance  
25 agreement.

26 Section 10. Effective January 1, 2002, section 202.18,  
27 Florida Statutes, is created to read:

28 202.18 Allocation and disposition of tax  
29 proceeds.--The proceeds of the communications services taxes  
30 remitted under this chapter shall be treated as follows:

31

1           (1) The proceeds of the taxes remitted under s.  
2 202.12(1)(a) and (b) shall be divided as follows:

3           (a) The portion of such proceeds which constitutes  
4 gross receipts taxes, imposed at the rate prescribed in  
5 chapter 203, shall be deposited as provided by law and in  
6 accordance with s. 9, Art. XII of the State Constitution.

7           (b) The remaining portion shall be distributed  
8 according to s. 212.20(6).

9           (2) The proceeds of the taxes remitted under s.  
10 202.12(1)(c) shall be divided as follows:

11           (a) The portion of such proceeds which constitutes  
12 gross receipts taxes, imposed at the rate prescribed in  
13 chapter 203, shall be deposited as provided by law and in  
14 accordance with s. 9, Art. XII of the State Constitution.

15           (b) The portion of such proceeds which constitutes the  
16 tax imposed under s. 202.12(1)(a) shall be allocated to the  
17 state and distributed pursuant to s. 212.20(6).

18           (c) The remaining portion of such proceeds shall be  
19 allocated to the municipalities and counties in proportion to  
20 the allocation of receipts from the half-cent sales tax under  
21 s. 218.61 and the emergency distribution of such tax under s.  
22 218.65. The department shall distribute the appropriate amount  
23 to each municipality and county each month at the same time  
24 that local communications services taxes are distributed  
25 pursuant to subsection (3).

26           (3)(a) Notwithstanding any law to the contrary, the  
27 proceeds of each local communications services tax levied by a  
28 municipality or county pursuant to s. 202.19, less the  
29 department's costs of administration, shall be transferred to  
30 the Local Communications Services Tax Clearing Trust Fund and  
31 held there to be distributed to such municipality or county.



1 However, the proceeds of any communications services tax  
2 imposed pursuant to s. 202.19(5) shall be deposited and  
3 disbursed in accordance with ss. 212.054 and 212.055. For  
4 purposes of this section, the proceeds of any tax levied by a  
5 municipality, county, or school board under s. 202.19 are all  
6 funds collected and received by the department pursuant to a  
7 specific levy authorized by such section, including any  
8 interest and penalties attributable to the tax levy.

9 (b) The amount deducted for the costs of  
10 administration may not exceed 1 percent of the total revenue  
11 generated for all municipalities, counties, and school boards  
12 levying a tax pursuant to s. 202.19. The amount deducted for  
13 the costs of administration shall be used only for those costs  
14 that are attributable to the taxes imposed pursuant to s.  
15 202.19. The total cost of administration shall be prorated  
16 among those jurisdictions levying the tax on the basis of the  
17 amount collected for a particular jurisdiction to the total  
18 amount collected for all such jurisdictions.

19 (c)1. Except as otherwise provided in this paragraph,  
20 proceeds of the taxes levied pursuant to s. 202.19, less  
21 amounts deducted for costs of administration in accordance  
22 with paragraph (b), shall be distributed monthly to the  
23 appropriate jurisdictions. The proceeds of taxes imposed  
24 pursuant to s. 202.19(5) shall be distributed in the same  
25 manner as discretionary surtaxes are distributed, in  
26 accordance with ss. 212.054 and 212.055.

27 2. The department shall make any adjustments to the  
28 distributions pursuant to this paragraph which are necessary  
29 to reflect the proper amounts due to individual jurisdictions.

30 Section 11. Effective January 1, 2002, section 202.19,  
31 Florida Statutes, is created to read:

1           202.19 Authorization to impose local communications  
2 services tax.--

3           (1) The governing authority of each county and  
4 municipality may, by ordinance, levy a discretionary  
5 communications services tax.

6           (2) The rate of such tax shall be as follows:

7           (a) For municipalities and charter counties, the rate  
8 shall be up to the maximum rate determined for municipalities  
9 and charter counties in accordance with s. 202.20(2).

10           (b) For all other counties, the rate shall be up to  
11 the maximum rate determined for other counties in accordance  
12 with s. 202.20(2).

13  
14 The rate imposed by any municipality or county shall be  
15 expressed in increments of one-tenth of a percent and rounded  
16 up to the nearest one-tenth percent.

17           (3)(a) The maximum rates established under subsection  
18 (2) reflect the rates for communications services taxes  
19 imposed under this chapter which are necessary for each  
20 municipality or county to raise the maximum amount of revenues  
21 which it was authorized to raise prior to July 1, 2000,  
22 through the imposition of taxes, charges, and fees, but that  
23 it is prohibited from imposing under s. 202.24, other than the  
24 discretionary surtax authorized under s. 212.055. It is the  
25 legislative intent that the maximum rates for charter counties  
26 be calculated by treating them as having had the same  
27 authority as municipalities to impose franchise fees on  
28 recurring local telecommunication service revenues prior to  
29 July 1, 2000. However, the Legislature recognizes that the  
30 authority of charter counties to impose such fees is in  
31 dispute, and the treatment provided in this section is not an

1 expression of legislative intent that charter counties  
2 actually do or do not possess such authority.

3 (b) The tax authorized under this section includes any  
4 fee or other consideration to which the municipality or county  
5 is otherwise entitled for granting permission to dealers of  
6 communications services or providers of cable television  
7 services, as authorized in 47 U.S.C. s. 542, to use or occupy  
8 its roads or rights-of-way for the placement, construction,  
9 and maintenance of poles, wires, and other fixtures used in  
10 the provision of communications services.

11 (c) This subsection does not supersede or impair the  
12 right, if any, of a municipality or county to require the  
13 payment of consideration or to require the payment of  
14 regulatory fees or assessments pursuant to s. 337.401 by  
15 persons using or occupying its roads or rights-of-way in a  
16 capacity other than that of a dealer of communications  
17 services.

18 (4)(a) Except as otherwise provided in this section,  
19 the tax imposed by any municipality shall be on all  
20 communications services subject to tax under s. 202.12 which:

- 21 1. Originate or terminate in this state; and  
22 2. Are charged to a service address in the  
23 municipality.

24 (b) The tax imposed by any county under subsection (1)  
25 shall be on all communications services subject to tax under  
26 s. 202.12 which:

- 27 1. Originate or terminate in this state; and  
28 2. Are charged to a service address in the  
29 unincorporated area of the county.

30 (5) In addition to the communications services taxes  
31 authorized by subsection (1), a discretionary surtax that a

1 county or school board has levied under s. 212.055 is imposed  
2 as a local communications services tax under this section, and  
3 the rate shall be determined in accordance with s. 202.20(5).  
4 Each such tax rate shall be applied, in addition to the other  
5 tax rates applied under this chapter, to communications  
6 services subject to tax under s. 202.12 which:  
7       (a) Originate or terminate in this state; and  
8       (b) Are charged to a service address in the county.  
9       (6) Notwithstanding any other provision of this  
10 section, a tax imposed under this section does not apply to  
11 any direct-to-home satellite service.  
12       (7) Any tax imposed by a municipality, school board,  
13 or county under this section also applies to the actual cost  
14 of operating a substitute communications system, to be paid in  
15 accordance with s. 202.15. This subsection does not apply to  
16 the use by any provider of its own communications system to  
17 conduct a business of providing communications services or to  
18 the use of any communications system operated by a county, a  
19 municipality, the state, or any political subdivision of the  
20 state.  
21       (8) Notwithstanding any law to the contrary, a tax  
22 imposed under this section shall not exceed \$100,000 per  
23 calendar year on charges to any person for interstate  
24 communications services that originate outside this state and  
25 terminate within this state. This subsection applies only to  
26 holders of a direct-pay permit issued under this subsection. A  
27 refund may not be given for taxes paid before receiving a  
28 direct-pay permit. Upon application, the department may issue  
29 a direct-pay permit to the purchaser of communications  
30 services authorizing such purchaser to pay tax on such  
31 services directly to the department. Any dealer of

1 communications services furnishing communications services to  
2 the holder of a valid direct-pay permit is relieved of the  
3 obligation to collect and remit the tax on such services. Tax  
4 payments and returns pursuant to a direct-pay permit shall be  
5 monthly. As used in this subsection, "person" means a single  
6 legal entity and does not mean a group or combination of  
7 affiliated entities or entities controlled by one person or  
8 group of persons.

9 (9) A municipality or county that imposes a tax under  
10 this section may use the revenues raised by such tax for any  
11 public purpose, including, but not limited to, pledging such  
12 revenues for the repayment of current or future bonded  
13 indebtedness.

14 (10) Notwithstanding any provision of law to the  
15 contrary, the exemption set forth in s. 202.125(1) shall not  
16 apply to a tax imposed by a municipality, school board, or  
17 county pursuant to subsection (4) or subsection (5).

18 (11) To the extent that a provider of communications  
19 services is required to pay a tax, charge, or other fee under  
20 any franchise agreement or ordinance with respect to the  
21 services or revenues that are also subject to the tax imposed  
22 by this section, such provider is entitled to a credit against  
23 the amount payable to the state pursuant to this section in  
24 the amount of such tax, charge, or fee with respect to such  
25 services or revenues.

26 Section 12. Section 202.20, Florida Statutes, is  
27 created to read:

28 202.20 Establishment of initial and maximum rates of  
29 local communications services taxes.--The initial rates and  
30 maximum rates for the local communications services taxes

31

1 imposed under s. 202.19(1) shall be determined in accordance  
2 with this section.

3 (1)(a) On or before December 31, 2000, the Revenue  
4 Estimating Conference shall compute for each municipality and  
5 county the rate of local communications services tax which  
6 would be required to be levied under s. 202.19(1) in order for  
7 such local taxing jurisdiction to raise, through the  
8 imposition of a local communications services tax, revenues  
9 equal to the sum of:

10 1. The amount of revenues that were actually received  
11 from the replaced revenue sources in the fiscal year ending  
12 September 30, 2000;

13 2. An amount representing the reasonably anticipated  
14 growth in such revenues over a period of 1 year, based on the  
15 average growth of such revenues over the 5-year period  
16 immediately preceding September 30, 2000; and

17 3. An amount representing the revenues from the  
18 replaced revenue sources for the 1-month period which local  
19 taxing jurisdictions will be required to forego as a result of  
20 the repeal of the public service tax.

21 (b) The rates computed by the Revenue Estimating  
22 Conference shall be presented to the Legislature for review  
23 and approval during the 2001 Regular Session. The rates  
24 approved by the Legislature under this section shall be  
25 effective in the respective local taxing jurisdictions on  
26 January 1, 2002, without any action being taken by the  
27 governing authority or voters of such local taxing  
28 jurisdictions. The rate computed and approved pursuant to this  
29 subsection shall be reduced on January 1, 2003, by that  
30 portion of the rate which was necessary to recoup the 1 month  
31 of foregone revenues addressed in subparagraph (a)3.

1           (c) With respect to any local taxing jurisdiction, if,  
2 for the periods ending March 31, 2002, June 30, 2002,  
3 September 30, 2002, or December 31, 2002, the revenues  
4 received by that local government from the local  
5 communications services tax imposed under this section are  
6 less than the revenues received from the replaced revenue  
7 sources for the corresponding 2001 period; plus reasonably  
8 anticipated growth in such revenues over the preceding 1-year  
9 period, based on the average growth of such revenues over the  
10 immediately preceding 5-year period; plus an amount  
11 representing the revenues from the replaced revenue sources  
12 for the 1-month period that the local taxing jurisdiction was  
13 required to forego as a result of the repeal of the public  
14 service tax, the governing authority may adjust the rate of  
15 the local communications services tax upward to the extent  
16 necessary to generate the entire shortfall in revenues within  
17 1 year after the rate adjustment and by an amount necessary to  
18 generate the expected amount of revenue on an ongoing basis.  
19 The adjustment may be made by emergency ordinance and may be  
20 made notwithstanding the maximum rate established under  
21 subsection (2) and notwithstanding any schedules or timeframes  
22 or any other limitations contained in this section. The  
23 emergency ordinance shall specify an effective date for the  
24 adjusted rate, which shall be no less than 90 days after the  
25 date of adoption of the ordinance. At the end of that year,  
26 the local governing authority shall, as soon as is consistent  
27 with s. 202.21, reduce the rate by that portion of the  
28 emergency rate which was necessary to recoup the amount of  
29 revenues not received prior to the implementation of the  
30 emergency rate.  
31

1           (2)(a) On or before December 31, 2000, the Revenue  
2 Estimating Conference shall compute, in accordance with this  
3 paragraph, the maximum rates at which local taxing  
4 jurisdictions shall be permitted to impose local  
5 communications services taxes under s. 202.19(1).

6           1. A single maximum rate shall apply to all  
7 municipalities and charter counties and another single maximum  
8 rate shall apply to all other counties.

9           2. Each respective maximum rate shall reflect the  
10 greatest possible amount of revenues which could have been  
11 generated from the replaced revenue sources, assuming that  
12 each local taxing jurisdiction had imposed every replaced  
13 revenue source in the manner and at the rate that would have  
14 produced the greatest amount of revenues.

15           (b) The rates computed by the Revenue Estimating  
16 Conference shall be presented to the Legislature for review  
17 and approval during the 2001 Regular Session. The rates  
18 approved by the Legislature pursuant to this subsection shall  
19 be the maximum rates for purposes of s. 202.19(1).

20           (3) Each person who provides communications services  
21 and each local taxing jurisdiction shall furnish to the  
22 Department of Revenue the information necessary for the  
23 Revenue Estimating Conference to make the computations  
24 required by subsections (1), (2), and (5). All information  
25 furnished to the department under this subsection shall be  
26 available to all local taxing jurisdictions. The department  
27 shall provide technical assistance to the Revenue Estimating  
28 Conference and compile and analyze the information in the  
29 manner requested by the Revenue Estimating Conference.

30           (4) Except as otherwise provided in this subsection,  
31 "replaced revenue sources" as used in this section means the



1 following taxes, charges, fees, or other impositions to the  
2 extent that the respective local taxing jurisdictions were  
3 authorized to impose them prior to July 1, 2000.

4 (a) With respect to municipalities and charter  
5 counties and the taxes authorized by s. 202.19(1):

6 1. The public service tax on telecommunications  
7 authorized by s. 166.231(9).

8 2. Franchise fees on cable service providers as  
9 authorized by 47 U.S.C. s. 542.

10 3. The public service tax on prepaid calling  
11 arrangements.

12 4. Franchise fees on dealers of communications  
13 services which use the public roads or rights-of-way, up to  
14 the limit set forth in s. 337.401. For purposes of calculating  
15 rates under this section, it is the legislative intent that  
16 charter counties be treated as having had the same authority  
17 as municipalities to impose franchise fees on recurring local  
18 telecommunication service revenues prior to July 1, 2000.

19 However, the Legislature recognizes that the authority of  
20 charter counties to impose such fees is in dispute, and the  
21 treatment provided in this section is not an expression of  
22 legislative intent that charter counties actually do or do not  
23 possess such authority.

24 5. Actual permit fees relating to placing or  
25 maintaining facilities in or on public roads or rights-of-way,  
26 collected from providers of long-distance, cable, and mobile  
27 communications services for the fiscal year ending September  
28 30, 2000; however, if a municipality or charter county elects  
29 to charge permit fees pursuant to s. 337.401(3)(c)1.a., such  
30 fees shall not be included as a replaced revenue source.

31

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

4           (5) For any county or school board that levies a  
5 discretionary surtax under s. 212.055, the rate of such tax  
6 shall be multiplied by a factor to determine the applicable  
7 rate of tax under s. 202.19(5). The Revenue Estimating  
8 Conference shall compute the factor on or before December 31,  
9 2000. The factor shall be calculated such that any rate  
10 applied under s. 202.19(5) will produce substantially the same  
11 tax revenues as the corresponding rate levied on  
12 telecommunication services under s. 212.055. The factor shall  
13 be calculated to three decimal places, and the tax rates  
14 calculated by applying the factor for purposes of s. 202.19(5)  
15 shall be rounded up to the nearest one-tenth percent. The  
16 factor shall be presented to the Legislature for review and  
17 approval during the 2001 Regular Session.

18           (6) For purposes of calculating the appropriate value  
19 of the replaced revenue under (4)(a)2. and (4)(b), and in  
20 conjunction with the study required by this act, the Revenue  
21 Estimating Conference may include in its computation any  
22 adjustment necessary to include the value of any in-kind  
23 requirements and contributions for, or in support of, the use  
24 or construction of public, educational, or governmental access  
25 facilities authorized under federal law.

26           (7)(a) The provisions of this subsection shall apply  
27 only with respect to the initial and maximum tax rates of a  
28 local taxing jurisdiction which on January 1, 2002, is  
29 entitled to receive from any dealer of communications services  
30 fees in excess of the applicable limitation set forth in s.  
31 337.401, as such section existed prior to the effective date

1 of this section, pursuant to an agreement with such dealer of  
2 communications services in effect on such date.

3 (b) Immediately upon the expiration of an agreement  
4 described in paragraph (a), the rate determined under  
5 subsection (1), as it applies to such local taxing  
6 jurisdiction, shall automatically be reduced by the portion of  
7 such rates representing the difference between the fees  
8 actually received by the taxing jurisdiction pursuant to the  
9 agreement described in paragraph (a) for the fiscal year  
10 ending September 30, 2000, and the fees that such jurisdiction  
11 would have received for such period under the applicable  
12 limitation set forth in s. 337.401, as such section existed  
13 prior to the effective date of this section.

14 Section 13. Effective January 1, 2002, section 202.21,  
15 Florida Statutes, is created to read:

16 202.21 Effective dates; procedures for informing  
17 dealers of communications services of tax levies and rate  
18 changes.--Any adoption, repeal, or change in the rate of a  
19 local communications services tax imposed under s. 202.19 is  
20 effective with respect to taxable services included on bills  
21 that are dated on or after the January 1 subsequent to such  
22 adoption, repeal, or change. A municipality or county  
23 adopting, repealing, or changing the rate of such tax must  
24 notify the department of the adoption, repeal, or change by  
25 September 1 immediately preceding such January 1. Notification  
26 must be furnished on a form prescribed by the department and  
27 must specify the rate of tax; the effective date of the  
28 adoption, repeal, or change thereof; and the name, mailing  
29 address, and telephone number of a person designated by the  
30 municipality or county to respond to inquiries concerning the  
31 tax. The department shall provide notice of such adoption,

1 repeal, or change to all affected dealers of communications  
2 services at least 90 days before the effective date of the  
3 tax. Any local government that adjusts the rate of its local  
4 communications services tax by emergency ordinance pursuant to  
5 s. 202.20(1)(c) shall notify the department of the new tax  
6 rate immediately upon its adoption. The department shall  
7 provide written notice of the adoption of the new rate to all  
8 affected dealers within 30 days after receiving such notice.  
9 In any notice to providers or publication of local tax rates  
10 for purposes of this chapter, the department shall express the  
11 rate for a municipality or charter county as the sum of the  
12 tax rates levied within such jurisdiction pursuant to s.  
13 202.19(2)(a) and (5), and shall express the rate for any other  
14 county as the sum of the tax rates levied pursuant to s.  
15 202.19(2)(b) and (5). The department is not liable for any  
16 loss of or decrease in revenue by reason of any error,  
17 omission, or untimely action that results in the nonpayment of  
18 a tax imposed under s. 202.19.

19 Section 14. Effective January 1, 2002, section 202.22,  
20 Florida Statutes, is created to read:

21 202.22 Determination of local tax situs.--

22 (1) A dealer of communications services who is  
23 obligated to collect and remit a local communications services  
24 tax imposed under s. 202.19 shall be held harmless from any  
25 liability, including tax, interest, and penalties, which would  
26 otherwise be due solely as a result of an assignment of a  
27 service address to an incorrect local taxing jurisdiction, if  
28 the dealer of communications services exercises due diligence  
29 in applying one or more of the following methods for  
30 determining the local taxing jurisdiction in which a service  
31 address is located:

1           (a) Employing an electronic database provided by the  
2 department under subsection (2).

3           (b) Employing a database developed by the dealer or  
4 supplied by a vendor which has been certified by the  
5 department under subsection (3).

6           (c) Employing enhanced zip codes to assign each street  
7 address, address range, post office box, or post office box  
8 range in the dealer's service area to a specific local taxing  
9 jurisdiction. If an enhanced zip code overlaps boundaries of  
10 municipalities or counties, or if an enhanced zip code cannot  
11 be assigned to the service address because the service address  
12 is in a rural area or a location without postal delivery, the  
13 dealer of communications services or its database vendor shall  
14 assign the affected service addresses to one specific local  
15 taxing jurisdiction within such zip code based on a reasonable  
16 methodology. A methodology satisfies this paragraph if the  
17 information used to assign service addresses is obtained by  
18 the dealer or its database vendor from:

19                 1. A database provided by the department;

20                 2. A database certified by the department under  
21 subsection (3);

22                 3. Responsible representatives of the relevant local  
23 taxing jurisdictions; or

24                 4. The United States Census Bureau or the United  
25 States Postal Service.

26           (d) Employing a database of street addresses or other  
27 assignments that does not meet the requirements of paragraphs  
28 (a)-(c), but meets the criteria set forth in paragraph (3)(a)  
29 at the time of audit by the department.

30           (2)(a) The department shall, subject to legislative  
31 appropriation, create as soon as practical and feasible, and

1 thereafter maintain, an electronic database that gives due and  
2 proper regard to any format that is approved by the American  
3 National Standards Institute's Accredited Standards Committee  
4 X12 and that designates for each street address, address  
5 range, post office box, or post office box range in the state,  
6 including any multiple postal street addresses applicable to  
7 one street location, the local taxing jurisdiction in which  
8 the street address, address range, post office box, or post  
9 office box range is located and the appropriate code for each  
10 such local taxing jurisdiction, identified by one nationwide  
11 standard numeric code. The nationwide standard numeric code  
12 must contain the same number of numeric digits, and each  
13 digit, or combination of digits, must refer to the same level  
14 of taxing jurisdiction throughout the United States using a  
15 format similar to FIPS 55-3 or other appropriate standard  
16 approved by the Federation of Tax Administrators and the  
17 Multistate Tax Commission. Each address or address range or  
18 post office box or post office box range must be provided in  
19 standard postal format, including the street number, street  
20 number range, street name, post office box number, post office  
21 box range, and zip code. The department shall provide notice  
22 of the availability of the database, and any subsequent  
23 revision thereof, by publication in the Florida Administrative  
24 Weekly.

25 (b)1. Each local taxing jurisdiction shall furnish to  
26 the department all information needed to create and update the  
27 electronic database, including changes in service addresses,  
28 annexations, incorporations, reorganizations, and any other  
29 changes in jurisdictional boundaries. The information  
30 furnished to the department must specify an effective date,  
31 which must be the next ensuing January 1 or July 1, and such

1 information must be furnished to the department at least 120  
2 days prior to the effective date. However, the requirement  
3 that counties submit information pursuant to this paragraph  
4 shall be subject to appropriation.

5 2. The department shall update the electronic database  
6 in accordance with the information furnished by local taxing  
7 jurisdictions under subparagraph 1. Each update must specify  
8 the effective date as the next ensuing January 1 or July 1 and  
9 must be posted by the department on a website not less than 90  
10 days prior to the effective date. The department shall also  
11 furnish the update on magnetic or electronic media to any  
12 dealer of communications services or vendor who requests the  
13 update on such media. However, the department may collect a  
14 fee from the dealer of communications services which does not  
15 exceed the actual cost of furnishing the update on magnetic or  
16 electronic media.

17 3. Each update must identify the additions, deletions,  
18 and other changes to the preceding version of the database.  
19 Each dealer of communications services shall collect and remit  
20 local communications services taxes imposed under this chapter  
21 only for those service addresses that are contained in the  
22 database and for which all of the elements required by this  
23 subsection are included in the database.

24 (3) For purposes of this section, a database must be  
25 certified by the department pursuant to rules that implement  
26 the following criteria and procedures:

27 (a) The database must assign street addresses, address  
28 ranges, post office boxes, or post office box ranges to the  
29 proper jurisdiction with an overall accuracy rate of 95  
30 percent at a 95 percent level of confidence, as determined  
31 through a statistically reliable sample. The accuracy must be

1 measured based on the entire state or, if the service area of  
2 the dealer does not encompass the entire state, based on the  
3 dealer's entire service area.

4 (b) Upon receipt of an application for certification  
5 or recertification of a database, the department shall examine  
6 the application and, within 90 days after receipt, notify the  
7 applicant of any apparent errors or omissions and request any  
8 additional information, conduct any inspection, or perform any  
9 testing determined necessary. The applicant shall designate an  
10 individual responsible for providing access to all records,  
11 facilities, and processes the department determines are  
12 reasonably necessary to review and make a determination  
13 regarding the application. Such access must be provided within  
14 10 working days after notification.

15 (c) The application must be in the form prescribed by  
16 rule and must include the applicant's name, federal employer  
17 identification number, mailing address, business address, and  
18 any other information required by the department. The  
19 application must identify, among other elements required by  
20 the department, the applicant's proposal for testing the  
21 database.

22 (d) Each application for certification must be  
23 approved or denied upon written notice within 180 days after  
24 receipt of a completed application. The notice must specify  
25 the grounds for denial, inform the applicant of any remedy  
26 that is available, and indicate the procedure that must be  
27 followed. Filing of a petition under chapter 120 does not  
28 preclude the department from certifying the database upon a  
29 demonstration that the deficiencies have been corrected.

30 (e) Certification or recertification of a database  
31 under this subsection is effective from the date of the



1 department's notice approving the application until the  
2 expiration of 3 or 4 years following such date, as set forth  
3 in the notice, except as provided in paragraph (f).

4 (f) An application for recertification of a database  
5 must be received by the department not more than 3 years after  
6 the date of any prior certification. The application and  
7 procedures relating thereto shall be governed by this  
8 subsection, except as otherwise provided in this paragraph.  
9 When an application for recertification has been timely  
10 submitted, the existing certification shall not expire but  
11 shall remain effective until the application has received  
12 final action by the department, or if the application is  
13 denied, until the denial is no longer subject to  
14 administrative or judicial review or such later date as may be  
15 fixed by order of the reviewing court.

16 (4)(a) As used in this section, "due diligence" means  
17 the care and attention that is expected from, and ordinarily  
18 exercised by, a reasonable and prudent person under the  
19 circumstances.

20 (b) Notwithstanding any law to the contrary, a dealer  
21 of communications services is exercising due diligence in  
22 applying one or more of the methods set forth in subsection  
23 (1) if the dealer:

24 1. Expend reasonable resources to accurately and  
25 reliably implement such method. However, the employment of  
26 enhanced zip codes pursuant to paragraph (1)(c) satisfies the  
27 requirements of this subparagraph; and

28 2. Maintains adequate internal controls in assigning  
29 street addresses, address ranges, post offices boxes, and post  
30 office box ranges to taxing jurisdictions. Internal controls  
31 are adequate if the dealer of communications services:

1           a. Maintains and follows procedures to obtain and  
2 implement periodic and consistent updates to the database; and

3           b. Corrects errors in the assignments of service  
4 addresses to local taxing jurisdictions within 120 days after  
5 the dealer discovers such errors.

6           (5) If a dealer of communications services does not  
7 use one or more of the methods specified in subsection (1) for  
8 determining the local taxing jurisdiction in which a service  
9 address is located, the dealer of communications services may  
10 be held liable to the department for any tax, including  
11 interest and penalties, which is due as a result of assigning  
12 the service address to an incorrect local taxing jurisdiction.  
13 However, the dealer of communications services is not liable  
14 for any tax, interest, or penalty to the extent that such  
15 amount was collected and remitted by the dealer of  
16 communications services with respect to a tax imposed by  
17 another local taxing jurisdiction. Upon determining that an  
18 amount was collected and remitted by a dealer of  
19 communications services with respect to a tax imposed by  
20 another local taxing jurisdiction, the department shall adjust  
21 the respective amounts of the proceeds paid to each such  
22 taxing jurisdiction under s. 202.18 in the month immediately  
23 following such determination.

24           (6)(a) Pursuant to rules adopted by the department,  
25 each dealer of communications services must notify the  
26 department of the methods it intends to employ for determining  
27 the local taxing jurisdiction in which service addresses are  
28 located.

29           (b) Notwithstanding s. 202.28, if a dealer of  
30 communications services employs a method of assigning service  
31 addresses other than as set forth in paragraph (1)(a), (b), or

1 (c), the deduction allowed to the dealer of communications  
2 services as compensation under s. 202.28 shall be 0.25 percent  
3 of the tax due and accounted for and remitted to the  
4 department.

5 (7) As used in this section, "enhanced zip code" means  
6 a United States postal zip code of 9 or more digits.

7 Section 15. Effective January 1, 2002, section 202.23,  
8 Florida Statutes, is created to read:

9 202.23 Procedure on purchaser's request for refund or  
10 credit of communications services taxes.--

11 (1) Notwithstanding any other law, a purchaser seeking  
12 a refund of or credit for a tax collected by a dealer under  
13 this chapter must, within 3 years following collection of the  
14 tax from the purchaser, submit a written request for the  
15 refund or credit to the dealer in accordance with this  
16 section. A request shall not be granted unless the amount  
17 claimed was collected from the purchaser and was not due to  
18 the state or to any local taxing jurisdiction.

19 (a) A request for a refund or credit may be submitted  
20 under this section if:

21 1. The dealer charged and collected the tax with  
22 respect to a transaction or charge that was not subject to the  
23 communications services taxes imposed by this chapter or  
24 chapter 203, or applied a tax rate in excess of the lawful  
25 rate.

26 2. The purchaser or the transaction was exempt or  
27 immune from such taxes.

28 3. The purchaser was assigned to the incorrect local  
29 taxing jurisdiction for purposes of the taxes authorized in s.  
30 202.19.

31 4. The purchaser paid the tax in error.

1           (b) A purchaser's request for a refund or credit must  
2 be signed by the purchaser and is complete for purposes of  
3 this section and the limitation period if it states the  
4 purchaser's name, mailing address, account number, the tax  
5 amounts claimed, the specific months during which those  
6 amounts were collected, and the reason for the purchaser's  
7 claim that such amounts were not due to the state or to any  
8 local taxing jurisdiction. If the reason for the request is an  
9 exemption or immunity or a claim that the purchaser was  
10 assigned to the incorrect local taxing jurisdiction for  
11 purposes of a tax imposed under s. 202.19, a completed request  
12 must also include any additional information the department  
13 prescribes by rule to facilitate verification of the  
14 purchaser's eligibility for exemption or immunity or to  
15 facilitate verification of the purchaser's service address.  
16 Upon receipt of a completed request, the dealer shall  
17 ascertain whether it collected the tax claimed from the  
18 purchaser and whether the request is timely.

19           (c) Within 30 days following receipt of a completed  
20 request, the dealer shall determine whether any portion of the  
21 tax was collected solely as the result of an error of the  
22 dealer or the purchaser or solely as the result of a  
23 combination of errors of the dealer and the purchaser. The  
24 dealer shall refund any such amount or credit the purchaser's  
25 account for such amount within 45 days following such  
26 determination.

27           (d) With respect to all amounts timely claimed which  
28 the dealer collected from the purchaser and which the dealer  
29 has not determined to be subject to refund or credit pursuant  
30 to paragraph (c), the dealer shall, within 30 days following  
31 receipt of the purchaser's completed request for refund or

1 credit, provide a copy of the request to the department. If  
2 the reason for the purchaser's request is described in  
3 subparagraph (a)1. or 3., the dealer shall contemporaneously  
4 furnish to the department an identification of the charges  
5 included in the taxable measure and the tax rates applied to  
6 the charges, or a written identification of each local  
7 jurisdiction to which the purchaser was assigned and the  
8 amounts collected from the purchaser and reported for each  
9 such jurisdiction, as the case may be. If a purchaser's  
10 request submitted to the department under this section sets  
11 forth another reason for claiming a refund or credit, the  
12 dealer shall furnish to the department information to  
13 facilitate the department's evaluation of the request.  
14 (e) Within 90 days following receipt of the  
15 purchaser's request from the dealer, the department shall  
16 determine whether the tax was correctly applied and notify the  
17 dealer in writing of its determination. If the department  
18 determines that the tax was incorrectly applied, its  
19 notification to the dealer must inform the dealer how the tax  
20 should have been applied, including, in the case of an  
21 incorrect assignment of the purchaser to a local taxing  
22 jurisdiction, an identification of the correct local taxing  
23 jurisdiction and the applicable rates of tax levied by the  
24 local jurisdiction. The department's notification must also  
25 inform the dealer of any portion of the amount claimed which  
26 was not due to the state or to any local taxing jurisdiction  
27 and approve the refund or credit of such amount to the  
28 purchaser. Within 45 days following receipt of notification  
29 from the department, the dealer shall issue a refund or credit  
30 the purchaser's account for any such amount. The dealer's  
31 obligation to issue a refund or credit the purchaser's account

1 is limited to amounts approved in accordance with this  
2 section.

3 (f) The dealer shall issue a written response advising  
4 the purchaser of the disposition of the purchaser's request.  
5 The response must specify any portion of the tax claimed which  
6 is being refunded or credited to the purchaser's account and  
7 the reason for denial of any portion of the request. The  
8 request may be denied if the request was untimely or  
9 incomplete, the dealer did not collect the tax claimed, the  
10 purchaser previously received a refund of or credit for the  
11 same tax, the tax collected was due, or the department failed  
12 to furnish the notification required by paragraph (e). With  
13 respect to any portion of the request which is granted, the  
14 response must be issued at the time of the refund or credit to  
15 the purchaser's account. With respect to any portion of the  
16 request which is denied, the response must be issued within 45  
17 days following the dealer's receipt of the request if the  
18 request was not submitted to the department pursuant to  
19 paragraph (d), within 45 days following the dealer's receipt  
20 of the department's notification pursuant to paragraph (e) if  
21 the denial is based on the department's notification, or  
22 within 135 days following submission of the request to the  
23 department if the dealer has not received the department's  
24 notification.

25 (g) The dealer may deduct from any refund or credit  
26 under this section any amount owed by the purchaser to the  
27 dealer which is delinquent.

28 (2) This section provides the sole and exclusive  
29 procedure and remedy for a purchaser who claims that a dealer  
30 has collected communications services taxes imposed or  
31 administered under this chapter which were not due. An action

1 that arises as a result of the claimed collection of taxes  
2 that were not due may not be commenced or maintained by or on  
3 behalf of a purchaser against a dealer, a municipality, a  
4 county, or the state unless the purchaser pleads and proves  
5 that the purchaser has exhausted the procedures in subsection  
6 (1) and that the defendant has failed to comply with  
7 subsection (1). However, no determination by a dealer under  
8 paragraph (1)(c) shall be deemed a failure to comply with  
9 subsection (1) if the dealer has complied with the obligations  
10 imposed on the dealer by paragraphs (1)(d), (e), and (f). In  
11 any such action, it is a complete defense that the dealer, a  
12 municipality, a county, or the state has refunded the taxes  
13 claimed or credited the purchaser's account. In such an action  
14 against a dealer, it is also a complete defense that, in  
15 collecting the tax, the dealer used one or more of the methods  
16 set forth in s. 202.22 for assigning the purchaser to a local  
17 taxing jurisdiction. Such action is barred unless it is  
18 commenced within 180 days following the date of the dealer's  
19 written response under paragraph (1)(f), or within 1 year  
20 following submission of the purchaser's request to the dealer  
21 if the dealer failed to issue a timely written response. The  
22 relief available to a purchaser as a result of collection of  
23 communications services taxes that were not due is limited to  
24 a refund of or credit for such taxes.

25 (3) A dealer who remitted a tax amount to the  
26 department for which the dealer subsequently issued a refund  
27 or credit to the purchaser pursuant to this section, and a  
28 dealer who has otherwise remitted to the department a tax  
29 amount with respect to communications services which was not  
30 due under this chapter or chapter 203, is entitled to a refund  
31 or credit of such amount from the department. The dealer may

1 apply for a refund within the period prescribed in s. 215.26,  
2 or may take a credit against a tax remittance otherwise  
3 required under this chapter within 3 years after the date that  
4 the amount for which credit is claimed was remitted to the  
5 department, or within 60 days following such provider's  
6 issuance of a refund or credit to the purchaser for such  
7 amount, whichever occurs later. In addition, s. 213.34 applies  
8 to the offset of overpayments against deficiencies in audits  
9 of dealers and purchasers.

10 (4) A dealer who takes a credit on a subsequent  
11 return, as provided in subsection (3), for a tax imposed  
12 pursuant to s. 202.19 which has been collected and remitted by  
13 the dealer must indicate such credit in the portion of the  
14 return applicable to the local taxing jurisdiction for which  
15 the tax was originally reported.

16 (5) A dealer who has collected and remitted amounts  
17 that were not due, as determined by the department under  
18 paragraph (1)(e), who has issued a refund or credit to the  
19 purchaser for such amounts, and who takes a credit or receives  
20 a refund from the department for such amounts as provided in  
21 subsection (3) is not subject to assessment for any of the tax  
22 that was refunded or credited or for any interest or penalty  
23 with respect to the tax. In addition, a dealer who modifies  
24 his or her tax compliance practices to conform to a department  
25 determination under paragraph (1)(e) is not subject to  
26 assessment as a result of such modification, absent a  
27 subsequent change in law or update to a database pursuant to  
28 s. 202.22.

29 (6) A purchaser who seeks a refund of communications  
30 services taxes that the purchaser paid directly to the  
31



1 department must apply to the department for such refund in  
2 accordance with s. 215.26 and may not apply to the dealer.

3 (7) The rights to a refund or credit provided in this  
4 section for purchasers and dealers may be assigned.

5 Section 16. Effective January 1, 2002, section 202.24,  
6 Florida Statutes, is created to read:

7 202.24 Limitations on local taxes and fees imposed on  
8 dealers of communications services.--

9 (1) The authority of a public body to require taxes,  
10 fees, charges, or other impositions from dealers of  
11 communications services for occupying its roads and  
12 rights-of-way is specifically preempted by the state because  
13 of unique circumstances applicable to communications services  
14 dealers. Communications services may be provided by certain  
15 dealers of communications services in a manner that requires  
16 the use of public roads or rights-of-way while similar  
17 communications services may be provided by other dealers of  
18 communications services in a manner that does not require the  
19 use of public roads or rights-of-way. Although similar  
20 communications services may be provided by different means,  
21 the state seeks to treat dealers of communications services in  
22 a nondiscriminatory and competitively neutral manner.

23 (2)(a) Except as provided in paragraph (c), each  
24 public body is prohibited from:

25 1. Levying on or collecting from dealers or purchasers  
26 of communications services any tax, charge, fee, or other  
27 imposition on or with respect to the provision or purchase of  
28 communications services.

29 2. Requiring any dealer of communications services to  
30 enter into or extend the term of a franchise or other  
31

1 agreement that requires the payment of a tax, charge, fee, or  
2 other imposition.

3 3. Adopting or enforcing any provision of any  
4 ordinance or agreement to the extent that such provision  
5 obligates a dealer of communications services to charge,  
6 collect, or pay to the public body a tax, charge, fee, or  
7 other imposition.

8  
9 Each municipality and county retains authority to negotiate  
10 all terms and conditions of a cable service franchise allowed  
11 by federal and state law except those terms and conditions  
12 related to franchise fees and the definition of gross revenues  
13 or other definitions or methodologies related to the payment  
14 or assessment of franchise fees on providers of cable  
15 services.

16 (b) For purposes of this subsection, a tax, charge,  
17 fee, or other imposition includes any amount or in-kind  
18 payment of property or services which is required by ordinance  
19 or agreement to be paid or furnished to a public body by or  
20 through a dealer of communications services in its capacity as  
21 a dealer of communications services, regardless of whether  
22 such amount or in-kind payment of property or services is:

23 1. Designated as a sales tax, excise tax, subscriber  
24 charge, franchise fee, user fee, privilege fee, occupancy fee,  
25 rental fee, license fee, pole fee, tower fee, base-station  
26 fee, or other tax or fee;

27 2. Measured by the amounts charged or received for  
28 services, regardless of whether such amount is permitted or  
29 required to be separately stated on the customer's bill, by  
30 the type or amount of equipment or facilities deployed, or by  
31 other means; or

1           3. Intended as compensation for the use of public  
2 roads or rights-of-way, for the right to conduct business, or  
3 for other purposes.

4           (c) This subsection does not apply to:

5           1. Local communications services taxes levied under  
6 this chapter.

7           2. Ad valorem taxes levied pursuant to chapter 200.

8           3. Occupational license taxes levied under chapter  
9 205.

10          4. "911" service charges levied under chapter 365.

11          5. Amounts charged for the rental or other use of  
12 property owned by a public body which is not in the public  
13 rights-of-way to a dealer of communications services for any  
14 purpose, including, but not limited to, the placement or  
15 attachment of equipment used in the provision of  
16 communications services.

17          6. Permit fees of general applicability which are not  
18 related to placing or maintaining facilities in or on public  
19 roads or rights-of-way.

20          7. Permit fees related to placing or maintaining  
21 facilities in or on public roads or rights-of-way pursuant to  
22 s. 337.401.

23          8. Any in-kind requirements or contributions for, or  
24 in support of the use or construction of, public, educational,  
25 or governmental access facilities authorized under federal law  
26 and imposed on providers of cable service pursuant to any  
27 ordinance or agreement. Nothing in this subparagraph shall  
28 prohibit the ability of providers of cable service to recover  
29 such expenses as allowed under federal law. This subparagraph  
30 shall be reviewed by the Legislature during the 2001  
31

1 legislative session in conjunction with the study required by  
2 this act.

3 9. Special assessments and impact fees.

4 10. Pole attachment fees that are charged by a local  
5 government for attachments to utility poles owned by the local  
6 government.

7 11. Utility service fees or other similar user fees  
8 for utility services.

9 12. Any other generally applicable tax, fee, charge,  
10 or imposition authorized by general law on the effective date  
11 of this section which is not specifically prohibited by this  
12 subsection or included as a replaced revenue source in s.  
13 202.20.

14 (3) As used in this section, "public body" has the  
15 meaning ascribed in s. 1.01(8), and includes, without  
16 limitation, every division, agency, and instrumentality  
17 thereof; however, the term does not include the state or any  
18 branch of state government.

19 Section 17. Effective January 1, 2002, section 202.25,  
20 Florida Statutes, is created to read:

21 202.25 Jurisdiction; dealers not qualified to do  
22 business in this state.--

23 (1) All suits brought by the department against any  
24 dealer for any violation of this chapter for the purpose of  
25 collecting any tax due from the dealer, including garnishment  
26 proceedings, regardless of the amount, must be brought in the  
27 circuit court of this state having jurisdiction of the subject  
28 matter.

29 (2) Each dealer who is not qualified to do business in  
30 this state shall designate with the department an agent within  
31 this state for service of process to enforce this chapter. If

1 a dealer fails to designate such an agent, the Secretary of  
2 State or any agent or employee of the dealer within this state  
3 constitutes the agent for the service of such process.

4 Section 18. Section 202.26, Florida Statutes, is  
5 created to read:

6 202.26 Department powers.--

7 (1) The department shall administer and enforce the  
8 assessment and collection of the taxes, interest, and  
9 penalties collected under or imposed by this chapter.

10 (2) The provisions of chapter 213 shall, as far as  
11 lawful and practicable, be applicable to the taxes imposed and  
12 administered under this chapter and to the collection thereof  
13 as if fully set out in this chapter. However, no provision of  
14 chapter 213 shall apply if it conflicts with any provision of  
15 this chapter.

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

18 (a) The filing of returns and remittance of tax,  
19 including provisions concerning electronic funds transfer and  
20 electronic data interchange.

21 (b) The determination of customer service addresses.

22 (c) The interpretation or definition of any exemptions  
23 or exclusions from taxation granted by law.

24 (d) Procedures for handling sales for resale and for  
25 determining the taxable status of discounts and rebates.

26 (e) Methods for granting self-accrual authority to  
27 taxpayers.

28 (f) The records and methods necessary for a dealer to  
29 demonstrate the exercise of due diligence as defined by s.  
30 202.22(4)(b).

31

1           (g) The creation of the database described in s.  
2 202.22(2) and the certification and recertification of the  
3 databases as described in s. 202.22(3).

4           (h) The registration of dealers.

5           (4) The executive director of the department is  
6 authorized, and all conditions are deemed met, to adopt  
7 emergency rules under ss. 120.536(1) and 120.54(4) to  
8 implement this chapter. Notwithstanding any other provision of  
9 law, such emergency rules shall remain effective for 6 months  
10 after the date of adoption and may be renewed during the  
11 pendency of procedures to adopt rules addressing the subject  
12 of the emergency rules.

13           Section 19. Effective January 1, 2002, section 202.27,  
14 Florida Statutes, is created to read:

15           202.27 Return filing; rules for self-accrual.--

16           (1) For the purpose of ascertaining the amount of tax  
17 payable under this chapter and chapter 203, every dealer has  
18 the duty to file a return and remit the taxes to the  
19 department, on or before the 20th day of the month, upon forms  
20 prepared and furnished by the department or in a format  
21 prescribed by it. The department shall, by rule, prescribe the  
22 information to be furnished by taxpayers on such returns.

23           (2) The department may require:

24           (a) A quarterly return and payment when the tax  
25 remitted by the dealer for the preceding four calendar  
26 quarters did not exceed \$1,000.

27           (b) A semiannual return and payment when the tax  
28 remitted by the dealer for the preceding four calendar  
29 quarters did not exceed \$500.

30  
31

1           (c) An annual return and payment when the tax remitted  
2 by the dealer for the preceding four calendar quarters did not  
3 exceed \$100.

4           (d) A quarterly return and monthly payment when the  
5 tax remitted by the dealer for the preceding four calendar  
6 quarters exceeded \$1,000 but did not exceed \$12,000.

7           (3) The department shall accept returns, except those  
8 required to be initiated through an electronic data  
9 interchange, as timely if postmarked on or before the 20th day  
10 of the month; if the 20th day falls on a Saturday, Sunday, or  
11 federal or state legal holiday, returns are timely if  
12 postmarked on the next succeeding workday. Any dealer who  
13 makes sales of any nature in two or more locations for which  
14 returns are required to be filed with the department and who  
15 maintains records for such locations in a central office or  
16 place may, on each reporting date, file one return for all  
17 such places of business in lieu of separate returns for each  
18 location; however, the return must clearly indicate the  
19 amounts collected within each location. Each dealer shall file  
20 a return for each tax period even though no tax is due for  
21 such period.

22           (4) Whenever returns are required to be made to the  
23 department, the full amount of the taxes required to be paid  
24 as shown by the return must be paid and accompany the return,  
25 and the failure to remit the full amount of taxes at the time  
26 of making the return shall cause the taxes to become  
27 delinquent. All taxes and all interest and penalties imposed  
28 or administered under this chapter must be remitted to the  
29 department at Tallahassee or at another office designated by  
30 the department, in the form required by the department.

31

1           (5) The department may require all returns of taxes  
2 under this chapter to be accompanied by a written statement,  
3 by the person or by an officer of any firm or corporation  
4 required to pay such taxes, setting forth the facts that the  
5 department requires in order to ascertain the amount of taxes  
6 that are due and payable with the return. The filing of a  
7 return that is not accompanied by payment is prima facie  
8 evidence of the wrongful conversion of the money due. Any  
9 person or any duly authorized corporation officer or agent, or  
10 members of any firm or incorporated society or organization,  
11 who refuses to make a return and pay the taxes due, as  
12 required by the department and in the manner and in the form  
13 that the department requires, or to state in writing that the  
14 return is correct to the best of his or her knowledge and  
15 belief, as required by the department, is subject to a penalty  
16 of 6 percent per annum of the amount due and commits a  
17 misdemeanor of the first degree, punishable as provided in s.  
18 775.082 or s. 775.083. The signing of a written return has the  
19 same legal effect as if made under oath without the necessity  
20 of appending an oath thereto.

21           (6) The department may provide by rule for  
22 self-accrual of the communications services tax when:

23           (a) Authorized by law for holders of direct-pay  
24 permits; or

25           (b) The taxable status of sales of communications  
26 services will be known only upon use.

27           Section 20. Effective January 1, 2002, section 202.28,  
28 Florida Statutes, is created to read:

29           202.28 Credit for collecting tax; penalties.--

30           (1) Except as otherwise provided in s. 202.22, for the  
31 purpose of compensating persons providing communications



1 services for the keeping of prescribed records, the filing of  
2 timely tax returns, and the proper accounting and remitting of  
3 taxes, persons collecting taxes imposed under this chapter  
4 shall be allowed to deduct 0.75 percent of the amount of the  
5 tax due and accounted for and remitted to the department.

6 (a) The collection allowance may not be granted, nor  
7 may any deduction be permitted, if the required tax return or  
8 tax is delinquent at the time of payment.

9 (b) The department may deny the collection allowance  
10 if a taxpayer files an incomplete return.

11 1. For the purposes of this chapter, a return is  
12 incomplete if it is lacking such uniformity, completeness, and  
13 arrangement that the physical handling, verification, review  
14 of the return, or determination of other taxes and fees  
15 reported on the return can not be readily accomplished.

16 2. The department shall adopt rules requiring the  
17 information that it considers necessary to ensure that the  
18 taxes levied or administered under this chapter are properly  
19 collected, reviewed, compiled, reported, and enforced,  
20 including, but not limited to, rules requiring the reporting  
21 of the amount of gross sales; the amount of taxable sales; the  
22 amount of tax collected or due; the amount of lawful refunds,  
23 deductions, or credits claimed; the amount claimed as the  
24 dealer's collection allowance; the amount of penalty and  
25 interest; and the amount due with the return.

26 (c) The collection allowance and other credits or  
27 deductions provided in this chapter shall be applied to the  
28 taxes reported for the jurisdiction previously credited with  
29 the tax paid.

30 (2)(a) Any person who is required to make a return or  
31 pay the taxes imposed by this chapter who fails to timely file

1 such return or fails to pay the taxes due within the time  
2 required, in addition to all other penalties provided by law,  
3 is subject to a specific penalty in the amount of 10 percent  
4 of any unpaid tax if the failure is for not more than 30 days,  
5 and an additional 10 percent of any unpaid tax for each  
6 additional 30 days, or fraction thereof, during which the  
7 failure continues, not to exceed a total penalty of 50  
8 percent, in the aggregate, of any unpaid tax.

9 (b) Any person who knowingly and with a willful intent  
10 to evade any tax imposed under this chapter fails to file six  
11 consecutive returns as required by law commits a felony of the  
12 third degree, punishable as provided in s. 775.082 or s.  
13 775.083.

14 (c) Any person who makes a false or fraudulent return  
15 with a willful intent to evade payment of any tax or fee  
16 imposed under this chapter is liable, in addition to the other  
17 penalties provided by law, for a specific penalty of 100  
18 percent of the tax bill or fee, and:

19 1. If the total amount of unreported taxes or fees is  
20 less than \$300:

21 a. Such person commits, for the first offense, a  
22 misdemeanor of the second degree, punishable as provided in s.  
23 775.082 or s. 775.083.

24 b. Such person commits, for the second offense, a  
25 misdemeanor of the first degree, punishable as provided in s.  
26 775.082 or s. 775.083.

27 c. Such person commits, for the third and subsequent  
28 offenses, a felony of the third degree, punishable as provided  
29 in s. 775.082, s. 775.083, or s. 775.084.

30 2. If the total amount of unreported taxes or fees is  
31 \$300 or more but less than \$20,000, such person commits a

1 felony of the third degree, punishable as provided in s.  
2 775.082, s. 775.083, or s. 775.084.

3 3. If the total amount of unreported taxes or fees is  
4 \$20,000 or more but less than \$100,000, such person commits a  
5 felony of the second degree, punishable as provided in s.  
6 775.082, s. 775.083, or s. 775.084.

7 4. If the total amount of unreported taxes or fees is  
8 \$100,000 or more, such person commits a felony of the first  
9 degree, punishable as provided in s. 775.082, s. 775.083, or  
10 s. 775.084.

11 Section 21. Effective January 1, 2002, section 202.29,  
12 Florida Statutes, is created to read:

13 202.29 Bad debts.--

14 (1) A dealer who has paid the tax imposed by this  
15 chapter may take a credit or obtain a refund for tax paid by  
16 the dealer on unpaid balances due on worthless accounts within  
17 12 months following the last day of the calendar year for  
18 which the bad debt was charged off on the taxpayer's federal  
19 income tax return.

20 (2) If any accounts for which a credit or refund has  
21 been received are then in whole or in part paid to the dealer,  
22 the amount paid must be included in the first return filed  
23 after such receipt and the tax paid accordingly.

24 (3) Bad debts associated with accounts receivable  
25 which have been assigned or sold with recourse are eligible  
26 for inclusion by the dealer in the credit or refund authorized  
27 by this section.

28 Section 22. Effective January 1, 2002, section 202.30,  
29 Florida Statutes, is created to read:

30 202.30 Payment of taxes by electronic funds transfer;  
31 filing of returns by electronic data interchange.--

1           (1) A dealer of communications services is required to  
2 remit taxes by electronic funds transfer, in the manner  
3 prescribed by the department, when the amount of tax paid by  
4 the dealer under this chapter, chapter 203, or chapter 212 in  
5 the previous state fiscal year was \$50,000 or more.

6           (2)(a) A dealer who is required to remit taxes by  
7 electronic funds transfer shall make a return in a manner that  
8 is initiated through an electronic data interchange. The  
9 department shall prescribe the acceptable method of transfer;  
10 the method, form, and content of the electronic data  
11 interchange, giving due regard to developing uniform standards  
12 for formats as adopted by the American National Standards  
13 Institute; the circumstances under which an electronic data  
14 interchange will serve as a substitute for the filing of  
15 another form of return; and the means, if any, by which  
16 taxpayers will be provided with acknowledgments. The  
17 department must accept such returns as timely if initiated and  
18 accepted on or before the 20th day of the month. If the 20th  
19 day falls on a Saturday, Sunday, or federal or state legal  
20 holiday, returns are timely if initiated and accepted on the  
21 next succeeding workday.

22           (b) The department may waive the requirement to make a  
23 return through an electronic data interchange when problems  
24 arise with respect to the taxpayer's computer capabilities,  
25 data systems changes, or operating procedures. To obtain a  
26 waiver, the taxpayer must prove to the department that such  
27 problems exist.

28           (3)(a) The department shall design, prepare, print,  
29 and furnish to all dealers, except dealers filing through  
30 electronic data interchange, or make available or prescribe to  
31 the dealers all necessary forms for filing returns and

1 instructions to ensure a full collection from dealers and an  
2 accounting for the taxes due, but failure of any dealer to  
3 secure such forms does not relieve the dealer of the  
4 obligation to pay the tax at the time and in the manner  
5 required.

6 (b) The department shall prescribe the format and  
7 instructions necessary for filing returns in a manner that is  
8 initiated through an electronic data interchange to ensure a  
9 full collection from dealers and an accounting for the taxes  
10 due. The failure of any dealer to use such format does not  
11 relieve the dealer of the obligation to pay the tax at the  
12 time and in the manner required.

13 Section 23. Effective January 1, 2002, section 202.31,  
14 Florida Statutes, is created to read:

15 202.31 Sale of business; liability for tax;  
16 procedures; penalty for violations.--

17 (1) If any dealer of communications services who is  
18 liable for any tax, interest, or penalty under this chapter  
19 sells his or her business or substantially all of his or her  
20 assets, the dealer shall make a final return and payment  
21 within 15 days thereafter. The dealer's successors or assigns  
22 shall withhold a sufficient portion of the purchase money to  
23 safely cover the amount of such taxes, interest, and penalties  
24 due and unpaid until the former owner produces a receipt from  
25 the department showing that they have been paid or a  
26 certificate stating that no taxes, interest, or penalties are  
27 due. If the purchaser of a business or the purchaser of  
28 substantially all of the assets of a business fails to  
29 withhold a sufficient amount of the purchase money as required  
30 by this subsection, he or she is personally liable for the  
31 payment of the taxes, interest, and penalties accruing and

1 unpaid on account of the operation of the business by any  
2 former owners or assigns. Any receipt or certificate from the  
3 department does not, without an audit of the selling dealer's  
4 books and records by the department, guarantee that there is  
5 not a tax deficiency owed the state from operation of the  
6 seller's business. To secure protection from the transferee's  
7 liability under this section, the seller or purchaser may  
8 request an audit of the seller's books and records. The  
9 department may contract with private auditors pursuant to s.  
10 213.28 to perform the audit. The department may charge the  
11 cost of the audit to the person requesting the audit.

12 (2) If any dealer who is liable for any tax, interest,  
13 or penalty quits the business without the benefit of a  
14 purchaser and there are no successors or assigns, he or she  
15 shall make a final return and payment within 15 days. Any  
16 person who fails to file such final return and make payment is  
17 prohibited from engaging in any business in this state until  
18 the person has filed such final return and paid any moneys  
19 due. The Department of Legal Affairs may seek an injunction,  
20 at the request of the department, to prevent any activity in  
21 the performance of further business activity until such tax is  
22 paid. A temporary injunction enjoining further business  
23 activity may be granted by a court without notice.

24 (3) If a dealer is delinquent in the payment of the  
25 taxes imposed or administered by this chapter, the department  
26 may give notice of the amount of such delinquency by  
27 registered mail to all persons having in their possession or  
28 under their control any credits or other personal property  
29 belonging to such dealer or owing any debts to such dealer at  
30 the time of receipt by them of such notice. All persons so  
31 notified shall within 5 days after receipt of the notice

1 advise the department of all such credits, other personal  
2 property, or debts in their possession, under their control,  
3 or owing by them. After receiving the notice, the persons so  
4 notified may not transfer or make any other disposition of the  
5 credits, other personal property, or debts in their possession  
6 or under their control at the time they receive the notice  
7 until the department consents to a transfer or disposition or  
8 until 60 days elapse after the receipt of the notice,  
9 whichever occurs first, except that the credits, other  
10 personal property, or debts that exceed the delinquent amount  
11 stipulated in the notice are not subject to the provisions of  
12 this section, wherever held, if such dealer does not have a  
13 prior history of sales tax delinquencies. All persons notified  
14 must, within 5 days, advise the department of any credits or  
15 other personal property belonging to such dealer or any debts  
16 incurred and owing to such dealer which subsequently come into  
17 their possession or under their control during the time  
18 prescribed by the notice or until the department consents to a  
19 transfer or disposition, whichever occurs first. If the notice  
20 seeks to prevent the transfer or other disposition of a  
21 deposit in a bank or other credits or personal property in the  
22 possession or under the control of a bank, the notice is  
23 ineffective unless it is delivered or mailed to the office of  
24 the bank at which the deposit is carried or at which the  
25 credits or personal property are held. If, during the  
26 effective period of the notice to withhold, any person so  
27 notified makes any transfer or disposition of the property or  
28 debts required to be withheld, he or she is liable to the  
29 state for any indebtedness due under this chapter from the  
30 person with respect to whose obligation the notice was given  
31 to the extent of the value of the property or the amount of

1 the debts thus transferred or paid if, solely by reason of  
2 such transfer or disposition, the state is unable to recover  
3 the indebtedness of the person with respect to whose  
4 obligation the notice was given. All such credits or other  
5 personal property or debts are subject to garnishment by the  
6 department for satisfaction of the delinquent taxes due.

7 (4) After notice by the department of a transferee's  
8 liability under this section, the dealer shall have 60 days  
9 within which to file an action as provided in chapter 72.

10 (5) Any violation of this section is a misdemeanor of  
11 the first degree, punishable as provided in s. 775.082 or s.  
12 775.083.

13 Section 24. Effective January 1, 2002, section 202.32,  
14 Florida Statutes, is created to read:

15 202.32 State and local agencies to cooperate in  
16 administration of law.--The department may request from any  
17 state, county, municipal, or local governmental agency any  
18 information that the department considers necessary in  
19 administering this chapter, and such agency shall furnish such  
20 information.

21 Section 25. Effective January 1, 2002, section 202.33,  
22 Florida Statutes, is created to read:

23 202.33 Taxes declared to be government funds;  
24 penalties for failure to remit taxes; warrants.--

25 (1) The taxes collected under this chapter become  
26 government funds from the moment of collection by the dealer.

27 (2) Any person who, with intent to unlawfully deprive  
28 or defraud the state or a local government of its moneys or  
29 the use or benefit thereof, fails to remit taxes collected  
30 under this chapter is guilty of the theft of government funds,  
31 punishable as follows:



1           (a) If the total amount of stolen revenue is less than  
2 \$300, the offense is a misdemeanor of the second degree,  
3 punishable as provided in s. 775.082 or s. 775.083. For a  
4 second offense, the offender is guilty of a misdemeanor of the  
5 first degree, punishable as provided in s. 775.082 or s.  
6 775.083. For a third or subsequent offense, the offender is  
7 guilty of a felony of the third degree, punishable as provided  
8 in s. 775.082, s. 775.083, or s. 775.084.

9           (b) If the total amount of stolen revenue is \$300 or  
10 more, but less than \$20,000, the offense is a felony of the  
11 third degree, punishable as provided in s. 775.082, s.  
12 775.083, or s. 775.084.

13           (c) If the total amount of stolen revenue is \$20,000  
14 or more, but less than \$100,000, the offense is a felony of  
15 the second degree, punishable as provided in s. 775.082, s.  
16 775.083, or s. 775.084.

17           (d) If the total amount of stolen revenue is \$100,000  
18 or more, the offense is a felony of the first degree,  
19 punishable as provided in s. 775.082, s. 775.083, or s.  
20 775.084.

21           (3) All taxes collected under this chapter must be  
22 remitted to the department. In addition to criminal sanctions,  
23 the department shall, when any tax becomes delinquent or is  
24 otherwise in jeopardy under this chapter, issue a warrant for  
25 the full amount of the tax due or estimated to be due, with  
26 the interest, penalties, and cost of collection, directed to  
27 the sheriffs of the state, and mail the warrant to the clerk  
28 of the circuit court of the county where any property of the  
29 taxpayer is located. Upon receipt of the warrant, the clerk of  
30 the circuit court shall record it, and thereupon the amount of  
31 the warrant becomes a lien on any real or personal property of

1 the taxpayer in the same manner as a recorded judgment. The  
2 department may issue a tax execution to enforce the collection  
3 of taxes imposed by this chapter and deliver it to any  
4 sheriff. The sheriff shall thereupon proceed in the same  
5 manner as prescribed by law for executions and shall be  
6 entitled to the same fees for his or her services in executing  
7 the warrant to be collected. The department may also have a  
8 writ of garnishment with respect to any indebtedness due to  
9 the delinquent dealer by a third person in any goods, money,  
10 chattels, or effects of the delinquent dealer in the hands,  
11 possession, or control of the third person. Upon payment of  
12 the execution, warrant, judgment, or garnishment, the  
13 department shall satisfy the lien of record within 30 days. If  
14 there is jeopardy to the revenue and jeopardy is asserted in  
15 or with an assessment, the department shall proceed in the  
16 manner specified for jeopardy assessments in s. 213.732.

17 Section 26. Effective January 1, 2002, section 202.34,  
18 Florida Statutes, is created to read:

19 202.34 Records required to be kept; power to inspect;  
20 audit procedure.--

21 (1)(a) Each dealer shall secure, maintain, and keep as  
22 long as required by s. 213.35 a complete record of  
23 communications services sold at retail by the dealer, together  
24 with invoices, records of gross receipts from such sales, and  
25 other pertinent records and papers required by the department  
26 for the reasonable administration of this chapter. All such  
27 records that are located or maintained in this state must be  
28 made available for inspection by the department at all  
29 reasonable hours at the dealer's office or other place of  
30 business located in this state. Any dealer who maintains such  
31 books and records outside this state must make such books and

1 records available for inspection by the department wherever  
2 the dealer's general records are kept. Any dealer subject to  
3 the provisions of this chapter who violates this subsection is  
4 guilty of a misdemeanor of the first degree, punishable as  
5 provided in s. 775.082 or s. 775.083. If, however, any  
6 subsequent offense involves intentional destruction of such  
7 records with an intent to evade payment of or deprive the  
8 government of any tax revenues, such subsequent offense  
9 constitutes a felony of the third degree, punishable as  
10 provided in s. 775.082 or s. 775.083.

11 (b) For the purpose of this subsection, if a dealer  
12 does not have adequate records of its sales of communications  
13 services, the department may, upon the basis of a test or  
14 sampling of the dealer's available records or other  
15 information relating to the sales made by such dealer for a  
16 representative period, determine the proper basis for  
17 assessing tax. This subsection does not affect the duty of the  
18 dealer to collect, or the liability of any consumer to pay,  
19 any tax imposed or administered under this chapter.

20 (c) If the records of a dealer are adequate but  
21 voluminous, the department may reasonably sample such records  
22 and project the audit findings derived therefrom over the  
23 entire audit period to determine the proper basis for  
24 assessing tax. In order to conduct such a sample, the  
25 department must first make a good faith effort to reach an  
26 agreement with the dealer which provides for the means and  
27 methods to be used in the sampling process. If an agreement is  
28 not reached, the dealer is entitled to a review by the  
29 executive director or the executive director's designee of the  
30 sampling method to be used by the auditor.

31

1           (2) For the purpose of enforcement of this chapter,  
2 each dealer shall allow the department to examine its books  
3 and records at all reasonable hours; and, if the dealer  
4 refuses, the department may petition the circuit court to  
5 order the dealer to permit such examination, subject to the  
6 right of removal of the cause to the judicial circuit wherein  
7 such person's business is located or wherein such person's  
8 books and records are kept.

9           (3) Each person who sells or purchases communications  
10 services shall permit the department to examine his or her  
11 books and records at all reasonable hours. The person shall  
12 also maintain books and records as long as required by s.  
13 213.35 in order to disclose the sales and purchases of all  
14 services sold, to whom sold, and the amount sold, in the form  
15 and manner that the department requires, so that the  
16 department can determine the volume of services sold or  
17 purchased, as defined by this chapter, and the dates and  
18 amounts of such sales and purchases. The department may  
19 petition the circuit court to require any person who refuses  
20 to keep such records to permit such inspection, subject to the  
21 right of removal of the cause to the judicial circuit wherein  
22 such person's business is located or wherein such person's  
23 books and records are kept.

24           (4)(a) The department shall send written notification,  
25 at least 60 days prior to the date an auditor is scheduled to  
26 begin an audit, informing the person of the audit. The  
27 department is not required to give 60 days' prior notification  
28 of a forthcoming audit whenever the person requests an  
29 emergency audit.

30           (b) The written notification must specify:  
31

1           1. The approximate date on which the auditor is  
2 scheduled to begin the audit.

3           2. A reminder that all of the records, receipts,  
4 invoices, resale certificates, and related documentation of  
5 the person must be made available to the auditor.

6           3. Any other requests or suggestions that the  
7 department considers necessary.

8           (c) Only records, receipts, invoices, resale  
9 certificates, and related documentation that are available to  
10 the auditor when the audit begins are acceptable for the  
11 purposes of the audit. A resale certificate containing a date  
12 prior to the date the audit commences constitutes acceptable  
13 documentation of the specific transactions that occurred in  
14 the past.

15           (d) The provisions of this chapter concerning  
16 fraudulent or improper records, receipts, invoices, resale  
17 certificates, and related documentation apply with respect to  
18 any audit.

19           (e) The requirement in paragraph (a) of 60 days'  
20 written notification does not apply in cases of distress or  
21 jeopardy as provided in s. 202.33 or s. 202.36.

22           Section 27. Effective January 1, 2002, section 202.35,  
23 Florida Statutes, is created to read:

24           202.35 Powers of department in dealing with  
25 delinquents; tax to be separately stated.--

26           (1) If any dealer or other person fails to remit the  
27 tax, or any portion thereof, on or before the day when the tax  
28 is required by law to be paid, there will be added to the  
29 amount due interest at the rate calculated pursuant to s.  
30 213.235 of the amount due from the date due until paid.  
31 Interest on the delinquent tax is to be calculated beginning

1 on the 21st day of the month following the month for which the  
2 tax is due, except as otherwise provided in this chapter.

3 (2) All penalties and interest imposed by this chapter  
4 are payable to and collectible by the department in the same  
5 manner as if they were a part of the tax collected under this  
6 chapter. The department may settle or compromise any such  
7 interest or penalties pursuant to s. 213.21.

8 (3) If a dealer or other person fails or refuses to  
9 make his or her records available for inspection so that an  
10 audit or examination of his or her books and records cannot be  
11 made, fails or refuses to register as a dealer, fails to make  
12 a report and pay the tax as provided by this chapter, makes a  
13 grossly incorrect report, or makes a report that is false or  
14 fraudulent, the department shall make an assessment from an  
15 estimate based upon the best information then available to it  
16 for the taxable period of retail sales of the dealer, together  
17 with any accrued interest and penalties. The department shall  
18 then proceed to collect the taxes, interest, and penalties on  
19 the basis of such assessment, which shall be considered prima  
20 facie correct; and the burden to show the contrary rests upon  
21 the dealer or other person.

22 (4) Each dealer who makes retail sales of  
23 communications services shall add the amount of the taxes  
24 imposed or administered under this chapter to the price of the  
25 services sold by him or her and shall state the taxes  
26 separately from the price of the services on all invoices. The  
27 combined amount of taxes due under ss. 202.12 and 203.01 shall  
28 be stated and identified as the Florida communications  
29 services tax, and the combined amount of taxes due under s.  
30 202.19 shall be stated and identified as the local  
31 communications services tax.

1           (5) A dealer may not advertise or hold out to the  
2 public, in any manner, directly or indirectly, that he or she  
3 will absorb all or any part of the tax; that he or she will  
4 relieve the purchaser of the payment of all or any part of the  
5 tax; that the tax will not be added to the selling price of  
6 the property or services sold or released; or, when added,  
7 that it or any part thereof will be refunded either directly  
8 or indirectly by any method. A person who violates this  
9 subsection with respect to advertising or refund is guilty of  
10 a misdemeanor of the second degree, punishable as provided in  
11 s. 775.082 or s. 775.083. A second or subsequent offense  
12 constitutes a misdemeanor of the first degree, punishable as  
13 provided in s. 775.082 or s. 775.083.

14           (6) Whenever in the construction, administration, or  
15 enforcement of this chapter there is any question respecting a  
16 duplication of the tax, the sale to the end consumer or last  
17 retail sale is the sale to be taxed, and, insofar as is  
18 practicable, there is to be no duplication or pyramiding of  
19 the tax.

20           Section 28. Effective January 1, 2002, section 202.36,  
21 Florida Statutes, is created to read:

22           202.36 Departmental powers; hearings; distress  
23 warrants; bonds; subpoenas and subpoenas duces tecum.--

24           (1) Any person required to pay a tax imposed or  
25 administered under this chapter or to make a return who  
26 renders a return or makes a payment of a tax with intent to  
27 deceive or defraud the government and prevent the government  
28 from collecting the amount of taxes imposed or administered by  
29 this chapter, or who otherwise fails to comply with this  
30 chapter for the taxable period for which any return is made,  
31 any tax is paid, or any report is made to the department, may

1 be required by the department to show cause at a time and  
2 place to be set by the department, after 10 days' notice in  
3 writing requiring the production of such books, records, or  
4 papers relating to the business of such person for such tax  
5 period as the department requires. The department may require  
6 such person or his or her employees to give testimony under  
7 oath and answer interrogatories respecting the sale of  
8 communications services within this state, the failure to make  
9 a true report thereof, or failure to pay the true amount of  
10 the tax required to be paid under this chapter. If such person  
11 fails to produce such books, records, or papers or to appear  
12 and answer questions within the scope of investigation  
13 relating to matters concerning taxes to be imposed or  
14 administered under this chapter, or fails to allow his or her  
15 agents or employees to give testimony, the department may  
16 estimate any unpaid deficiencies in taxes to be assessed  
17 against such person based on whatever information is available  
18 to it and may issue a distress warrant for the collection of  
19 such taxes, interest, or penalties estimated by the department  
20 to be due and payable; and such assessment shall be deemed  
21 prima facie correct. In such cases, the warrant shall be  
22 issued to the sheriff of any county in the state where such  
23 person owns or possesses any property; and the sheriff shall  
24 seize such property as is required to satisfy any such taxes,  
25 interest, or penalties and sell such property under the  
26 distress warrant in the same manner as property is permitted  
27 to be seized and sold under distress warrants issued to secure  
28 the payment of delinquent taxes. The department shall also  
29 have the right to writ of garnishment to subject any  
30 indebtedness due to the delinquent dealer by a third person in  
31 any goods, money, chattels, or effects of the delinquent



1 dealer in the hands, possession, or control of the third  
2 person in the manner provided by law. The person whose tax  
3 return or report is being investigated may by written request  
4 to the department require that the hearing be set at a place  
5 within the judicial circuit wherein the person's business is  
6 located or wherein such person's books and records are kept.  
7 If there is jeopardy to the revenue and jeopardy is asserted  
8 in or with an assessment, the department shall proceed in the  
9 manner specified for jeopardy assessment in s. 213.732.

10 (2) Whenever it is necessary to ensure compliance with  
11 this chapter, the department shall require a cash deposit,  
12 bond, or other security as a condition to a person's obtaining  
13 or retaining a dealer's certificate of registration under this  
14 chapter. The bond must be in such form and amount as the  
15 department deems appropriate under the particular  
16 circumstances. Any person who fails to produce such cash  
17 deposit, bond, or other security may not obtain or retain a  
18 dealer's certificate of registration under this chapter. The  
19 Department of Legal Affairs may seek an injunction, when  
20 requested by the department, to prevent such person from doing  
21 business subject to the provisions of this chapter until the  
22 cash deposit, bond, or other security is posted with the  
23 department. Any security required to be deposited may be sold  
24 by the department at public sale if it becomes necessary to do  
25 so in order to recover any tax, interest, or penalty due.  
26 Notice of such sale may be served personally or by mail upon  
27 the person who deposited the security. Mailing the notice to  
28 the last known address appearing on the records of the  
29 department constitutes adequate service. Any proceeds of the  
30 sale exceeding the amount due under this chapter must be  
31 returned to the person who deposited the security.

1           (3) The department or any person authorized by it in  
2 writing is authorized to make and sign assessments, tax  
3 warrants, assignments of tax warrants, and satisfaction of tax  
4 warrants.

5           (4)(a) The department may issue subpoenas or subpoenas  
6 duces tecum compelling the attendance and testimony of  
7 witnesses and the production of books, records, written  
8 materials, and electronically recorded information. Subpoenas  
9 must be issued with the written and signed approval of the  
10 executive director or his or her designee on written and sworn  
11 application by any employee of the department. The application  
12 must set forth the reason for the application, the name of the  
13 person subpoenaed, the time and place of appearance of the  
14 witness, and a description of any books, records, or  
15 electronically recorded information to be produced, together  
16 with a statement by the applicant that the department has  
17 unsuccessfully attempted other reasonable means of securing  
18 information and that the testimony of the witness or the  
19 written or electronically recorded materials sought in the  
20 subpoena are necessary for the collection of taxes, penalty,  
21 or interest or the enforcement of the taxes levied or  
22 administered under this chapter. A subpoena shall be served in  
23 the manner provided by law and by the Florida Rules of Civil  
24 Procedure and shall be returnable only during regular business  
25 hours and at least 20 calendar days after the date of service  
26 of the subpoena. Any subpoena to which this subsection applies  
27 must identify the taxpayer to whom the subpoena relates and to  
28 whom the records pertain and must provide other information to  
29 enable the person subpoenaed to locate the records required  
30 under the subpoena. The department shall give notice to the  
31 taxpayer to whom the subpoena relates within 3 days after the

1 day on which the service of the subpoena is made. Within 14  
2 days after service of the subpoena, the person to whom the  
3 subpoena is directed may serve written objection to the  
4 inspection or copying of any of the designated materials. If  
5 objection is made, the department may not inspect or copy the  
6 materials, except pursuant to an order of the circuit court.  
7 If an objection is made, the department may petition any  
8 circuit court for an order to comply with the subpoena. The  
9 subpoena must contain a written notice of the right to object  
10 to the subpoena. Every subpoena served upon the witness or  
11 custodian of records must be accompanied by a copy of the  
12 provisions of this subsection. If a person refuses to obey a  
13 subpoena or subpoena duces tecum, the department may apply to  
14 any circuit court of this state to enforce compliance with the  
15 subpoena. Witnesses are entitled to be paid a mileage  
16 allowance and witness fees as authorized for witnesses in  
17 civil cases.

18 (b)1. If any subpoena is served on any person who is a  
19 third-party recordkeeper and the subpoena requires the  
20 production of any portion of the records made or kept of the  
21 business transactions or affairs of any person other than the  
22 person subpoenaed, notice of the subpoena must be given to any  
23 person to whom the records pertain and to the taxpayer to whom  
24 the subpoena relates. Such notice must be given within 3 days  
25 after the day on which the service on the third-party  
26 recordkeeper is made, if the department can at that time  
27 identify the person to whom the records pertain. If the person  
28 to whom the records pertain cannot be identified at the time  
29 of issuance of the subpoena, the third-party recordkeeper  
30 shall immediately inform the department of such person's  
31 identity, and the department shall give notice to that person

1 within 3 days thereafter. The notice must be accompanied by a  
2 copy of the subpoena that has been served and must contain  
3 directions for staying compliance with the subpoena under  
4 subparagraph (c)2.

5 2. The notice is sufficient if, on or before the third  
6 day, the notice is delivered in hand to the person entitled to  
7 notice or is mailed by certified or registered mail to the  
8 last known mailing address of the person, or, in the absence  
9 of a last known address, is left with the person subpoenaed.

10 3. As used in this subsection, "third-party  
11 recordkeeper" means:

12 a. Any mutual savings bank, cooperative bank, domestic  
13 building and loan association, or other savings institution  
14 chartered and supervised as a savings and loan association or  
15 similar association under federal or state law; a bank as  
16 defined in s. 581 of the Internal Revenue Code; or any credit  
17 union within the meaning of s. 501(c)(14)(A) of the Internal  
18 Revenue Code.

19 b. Any consumer reporting agency as defined under s.  
20 603(f) of the Fair Credit Reporting Act, 15 U.S.C. s.  
21 1681a(f).

22 c. Any person extending credit through the use of  
23 credit cards or similar devices.

24 d. Any broker as defined in s. 3(a)(4) of the  
25 Securities Exchange Act of 1934, 15 U.S.C. s. 78c(a)(4).

26 e. Any attorney.

27 f. Any accountant.

28 g. Any barter exchange as defined in s. 6045(c)(3) of  
29 the Internal Revenue Code.

30 h. Any regulated investment company as defined in s.  
31 851 of the Internal Revenue Code.

1           4. This paragraph does not apply to a subpoena served  
2 on the person with respect to whose liability the subpoena is  
3 issued or an officer or employee of the person; to a subpoena  
4 to determine whether or not records of the business  
5 transactions or affairs of an identified person have been made  
6 or kept; or to a subpoena described in paragraph (f).

7           (c)1. Notwithstanding any other law, a person who is  
8 entitled to notice of a subpoena under paragraph (b) and the  
9 taxpayer to whom the subpoena relates have the right to  
10 intervene in any proceeding with respect to the enforcement of  
11 the subpoena under paragraph (a).

12           2. Notwithstanding any other law, a person who is  
13 entitled to notice of a subpoena under paragraph (b) and the  
14 taxpayer to whom the subpoena relates have the right to stay  
15 compliance with the subpoena if, not later than the 14th day  
16 after the day the notice is given in the manner provided in  
17 subparagraph (b)2.:

18           a. Notice of intent to stay the subpoena is given in  
19 writing to the person subpoenaed;

20           b. A copy of the notice of intent to stay the subpoena  
21 is mailed by registered or certified mail to the person and to  
22 the department; and

23           c. Suit is filed against the department in the circuit  
24 court to stay compliance with the subpoena.

25           (d) An examination of any records required to be  
26 produced under a subpoena as to which notice is required under  
27 paragraph (b) may not be made:

28           1. Before the expiration of the 14-day period allowed  
29 for the notice of intent to stay under subparagraph (c)2.; or

30           2. When the requirements of subparagraph (c)2. have  
31 been met, except in accordance with an order issued by the

1 circuit court authorizing examination of the records or with  
2 the consent of the person staying compliance.

3 (e) Any subpoena issued under paragraph (a) which does  
4 not identify the person with respect to whose liability the  
5 subpoena is issued may be served only after a proceeding in  
6 any circuit court in which the department establishes that:

7 1. The subpoena relates to the investigation of a  
8 particular person or ascertainable group or class of persons.

9 2. There is reasonable basis for believing that the  
10 person or group or class of persons may fail or may have  
11 failed to comply with any provision of state law.

12 3. The information sought to be obtained from the  
13 examination of the records and the identity of the person or  
14 persons with respect to whose liability the subpoena is issued  
15 is not readily available from other sources.

16 (f) In the case of a subpoena issued under paragraph  
17 (a), the provisions of subparagraph (b)1. and paragraph (c) do  
18 not apply if, upon petition by the department, a circuit court  
19 determines, on the basis of the facts and circumstances  
20 alleged, that there is reasonable cause to believe that the  
21 giving of notice may lead to attempts to conceal, destroy, or  
22 alter records relevant to the examination, may prevent the  
23 communication of information from other persons through  
24 intimidation, bribery, or collusion, or may result in flight  
25 to avoid prosecution, testifying, or production of records.

26 (g)1. Any circuit court has jurisdiction to hear and  
27 determine proceedings brought under paragraph (e) or paragraph  
28 (f). The determinations required to be made under paragraphs  
29 (e) and (f) shall be ex parte and shall be made solely upon  
30 the petition and supporting affidavits. An order denying the  
31 petition shall be deemed a final order that may be appealed.

1           2. Except for cases that the court considers of great  
2 importance, any proceeding brought for the enforcement of any  
3 subpoena or any proceeding under this subsection, and any  
4 appeal therefrom, takes precedence on the docket over all  
5 cases and shall be assigned for hearing and decided at the  
6 earliest practicable date.

7           (h) The department shall by rule establish the rates  
8 and conditions for payments to reimburse reasonably necessary  
9 costs directly incurred by third-party recordkeepers in  
10 searching for, reproducing, or transporting books, papers,  
11 records, or other data required to be produced by subpoena  
12 upon request of the department. The reimbursement shall be in  
13 addition to any mileage allowance and fees paid under  
14 paragraph (a).

15           (i)1. Except as provided in subparagraph 2., an action  
16 initiated in circuit court under this subsection must be filed  
17 in the circuit court in the county where:

18           a. The taxpayer to whom the subpoena relates resides  
19 or maintains his or her principal commercial domicile in this  
20 state;

21           b. The person subpoenaed resides or maintains his or  
22 her principal commercial domicile in this state; or

23           c. The person to whom the records pertain resides or  
24 maintains his or her principal commercial domicile in this  
25 state.

26           2. Venue in an action initiated in circuit court under  
27 this subsection by a person who is not a resident of this  
28 state or does not maintain a commercial domicile in this state  
29 rests in Leon County.

1           3. Venue in an action initiated in circuit court  
2 pursuant to paragraph (e) rests in the Second Judicial Circuit  
3 Court in and for Leon County.

4           Section 29. Section 202.37, Florida Statutes, is  
5 created to read:

6           202.37 Special rules for administration of local  
7 communications services tax.--

8           (1)(a) Except as otherwise provided in this section,  
9 all statutory provisions and administrative rules applicable  
10 to the communications services tax imposed by s. 202.12 apply  
11 to any local communications services tax imposed under s.  
12 202.19, and the department shall administer, collect, and  
13 enforce all taxes imposed under s. 202.19, including interest  
14 and penalties attributable thereto, in accordance with the  
15 same procedures used in the administration, collection, and  
16 enforcement of the communications services tax imposed by s.  
17 202.12.

18           (b) The department may contract with one or more  
19 private entities to assist it in fulfilling its obligation of  
20 administering the local communications services taxes imposed  
21 under this chapter, including, but not limited to, the  
22 compilation, maintenance, and publication of data pursuant to  
23 ss. 202.21 and 202.22.

24           (2) Each dealer of communications services obligated  
25 to collect and remit one or more local communications services  
26 taxes imposed under s. 202.19 shall separately report and  
27 identify each such tax to the department, by jurisdiction, on  
28 a form prescribed by the department, and shall pay such taxes  
29 to the department. However, taxes imposed under s. 202.19(5)  
30 shall be added to and included in the amounts reported to the  
31 department as taxes imposed under s. 202.19(1). A dealer of



1 communications services may include in a single payment to the  
2 department:

3 (a) The total amount of all local communications  
4 services taxes imposed pursuant to s. 202.19; and

5 (b) The amount of communications services tax imposed  
6 by ss. 202.12 and 203.01.

7 Section 30. The Revenue Estimating Conference shall  
8 compute the rate of the tax on the sales price of  
9 direct-to-home satellite services pursuant to s. 202.12(1)(c),  
10 Florida Statutes, on or before December 31, 2000, and such  
11 rate shall be presented to the Legislature for review and  
12 approval during the 2001 Regular Session.

13 Section 31. The executive director of the Department  
14 of Revenue shall appoint members to an advisory committee by  
15 August 1, 2000. Each member shall serve at the discretion of  
16 the executive director. The committee shall include consumer,  
17 county, municipal, state, and communications services dealer  
18 representatives, along with other interested parties the  
19 executive director deems appropriate. During the period of  
20 implementation of the communications services tax  
21 simplification law, the committee shall advise the executive  
22 director regarding the department's transition strategy,  
23 development of necessary business processes, rule adoption  
24 processes, and processes for identifying issues for further  
25 legislative consideration.

26 Section 32. Effective January 1, 2002, paragraph (a)  
27 of subsection (1) of section 72.011, Florida Statutes, is  
28 amended to read:

29 72.011 Jurisdiction of circuit courts in specific tax  
30 matters; administrative hearings and appeals; time for  
31 commencing action; parties; deposits.--

1           (1)(a) A taxpayer may contest the legality of any  
2 assessment or denial of refund of tax, fee, surcharge, permit,  
3 interest, or penalty provided for under s. 125.0104, s.  
4 125.0108, chapter 198, chapter 199, chapter 201, chapter 202,  
5 chapter 203, chapter 206, chapter 207, chapter 210, chapter  
6 211, chapter 212, chapter 213, chapter 220, chapter 221, s.  
7 370.07(3), chapter 376, s. 403.717, s. 403.718, s. 403.7185,  
8 s. 403.7195, s. 538.09, s. 538.25, chapter 550, chapter 561,  
9 chapter 562, chapter 563, chapter 564, chapter 565, chapter  
10 624, or s. 681.117 by filing an action in circuit court; or,  
11 alternatively, the taxpayer may file a petition under the  
12 applicable provisions of chapter 120. However, once an action  
13 has been initiated under s. 120.56, s. 120.565, s. 120.569, s.  
14 120.57, or s. 120.80(14)(b), no action relating to the same  
15 subject matter may be filed by the taxpayer in circuit court,  
16 and judicial review shall be exclusively limited to appellate  
17 review pursuant to s. 120.68; and once an action has been  
18 initiated in circuit court, no action may be brought under  
19 chapter 120.

20           Section 33. Effective January 1, 2002, section 213.05,  
21 Florida Statutes, is amended to read:

22           213.05 Department of Revenue; control and  
23 administration of revenue laws.--The Department of Revenue  
24 shall have only those responsibilities for ad valorem taxation  
25 specified to the department in chapter 192, taxation, general  
26 provisions; chapter 193, assessments; chapter 194,  
27 administrative and judicial review of property taxes; chapter  
28 195, property assessment administration and finance; chapter  
29 196, exemption; chapter 197, tax collections, sales, and  
30 liens; chapter 199, intangible personal property taxes; and  
31 chapter 200, determination of millage. The Department of

1 Revenue shall have the responsibility of regulating,  
2 controlling, and administering all revenue laws and performing  
3 all duties as provided in s. 125.0104, the Local Option  
4 Tourist Development Act; s. 125.0108, tourist impact tax;  
5 chapter 198, estate taxes; chapter 201, excise tax on  
6 documents; chapter 202, communications services tax; chapter  
7 203, gross receipts taxes; chapter 206, motor and other fuel  
8 taxes; chapter 211, tax on production of oil and gas and  
9 severance of solid minerals; chapter 212, tax on sales, use,  
10 and other transactions; chapter 220, income tax code; chapter  
11 221, emergency excise tax; ss. 336.021 and 336.025, taxes on  
12 motor fuel and special fuel; s. 370.07(3), Apalachicola Bay  
13 oyster surcharge; s. 376.11, pollutant spill prevention and  
14 control; s. 403.718, waste tire fees; s. 403.7185, lead-acid  
15 battery fees; s. 403.7195, waste newsprint disposal fees; s.  
16 538.09, registration of secondhand dealers; s. 538.25,  
17 registration of secondary metals recyclers; s. 624.4621, group  
18 self-insurer's fund premium tax; s. 624.5091, retaliatory tax;  
19 s. 624.475, commercial self-insurance fund premium tax; ss.  
20 624.509-624.511, insurance code: administration and general  
21 provisions; s. 624.515, State Fire Marshal regulatory  
22 assessment; s. 627.357, medical malpractice self-insurance  
23 premium tax; s. 629.5011, reciprocal insurers premium tax; and  
24 s. 681.117, motor vehicle warranty enforcement.

25 Section 34. Effective January 1, 2002, subsection (1)  
26 of section 213.053, Florida Statutes, is amended, and  
27 paragraph (r) is added to subsection (7) of that section, to  
28 read:

29 213.053 Confidentiality and information sharing.--  
30 (1) The provisions of this section apply to s.  
31 125.0104, county government; s. 125.0108, tourist impact tax;

1 chapter 175, municipal firefighters' pension trust funds;  
2 chapter 185, municipal police officers' retirement trust  
3 funds; chapter 198, estate taxes; chapter 199, intangible  
4 personal property taxes; chapter 201, excise tax on documents;  
5 chapter 202, communications services tax;chapter 203, gross  
6 receipts taxes; chapter 211, tax on severance and production  
7 of minerals; chapter 212, tax on sales, use, and other  
8 transactions; chapter 220, income tax code; chapter 221,  
9 emergency excise tax; s. 252.372, emergency management,  
10 preparedness, and assistance surcharge; s. 370.07(3),  
11 Apalachicola Bay oyster surcharge; chapter 376, pollutant  
12 spill prevention and control; s. 403.718, waste tire fees; s.  
13 403.7185, lead-acid battery fees; s. 403.7195, waste newsprint  
14 disposal fees; s. 538.09, registration of secondhand dealers;  
15 s. 538.25, registration of secondary metals recyclers; ss.  
16 624.501 and 624.509-624.515, insurance code; s. 681.117, motor  
17 vehicle warranty enforcement; and s. 896.102, reports of  
18 financial transactions in trade or business.

19 (7) Notwithstanding any other provision of this  
20 section, the department may provide:

21 (r) Information relative to chapter 202 to each local  
22 government that imposes a tax pursuant to s. 202.19 in the  
23 conduct of its official duties as specified in chapter 202.  
24 Data provided under this paragraph shall not be disclosed to  
25 any other person or entity other than a person or entity  
26 directly responsible for administering the tax. Such data  
27 shall not be used for any purpose other than for administering  
28 the tax and assisting the department's administration of  
29 chapter 202.  
30  
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1 Disclosure of information under this subsection shall be  
2 pursuant to a written agreement between the executive director  
3 and the agency. Such agencies, governmental or  
4 nongovernmental, shall be bound by the same requirements of  
5 confidentiality as the Department of Revenue. Breach of  
6 confidentiality is a misdemeanor of the first degree,  
7 punishable as provided by s. 775.082 or s. 775.083.

8 Section 35. Effective January 1, 2002, subsection (6)  
9 of section 212.20, Florida Statutes, is amended to read:

10 212.20 Funds collected, disposition; additional powers  
11 of department; operational expense; refund of taxes  
12 adjudicated unconstitutionally collected.--

13 (6) Distribution of all proceeds under this chapter  
14 and s. 202.18(1)(b) and (2)(b) shall be as follows:

15 (a) Proceeds from the convention development taxes  
16 authorized under s. 212.0305 shall be reallocated to the  
17 Convention Development Tax Clearing Trust Fund.

18 (b) Proceeds from discretionary sales surtaxes imposed  
19 pursuant to ss. 212.054 and 212.055 shall be reallocated to  
20 the Discretionary Sales Surtax Clearing Trust Fund.

21 (c) Proceeds from the tax imposed pursuant to s.  
22 212.06(5)(a)2. shall be reallocated to the Mail Order Sales  
23 Tax Clearing Trust Fund.

24 (d) Proceeds from the fee imposed pursuant to s.  
25 212.18(5) shall be deposited in the Solid Waste Management  
26 Clearing Trust Fund, which is hereby created to be used by the  
27 department, and shall be subsequently transferred to the State  
28 Treasurer to be deposited into the Solid Waste Management  
29 Trust Fund.

30  
31

1 (e) Proceeds from the fees imposed under ss.  
2 212.05(1)(i)3. and 212.18(3) shall remain with the General  
3 Revenue Fund.

4 (f) The proceeds of all other taxes and fees imposed  
5 pursuant to this chapter or remitted pursuant to s.  
6 202.18(1)(b) and (2)(b) shall be distributed as follows:

7 1. In any fiscal year, the greater of \$500 million,  
8 minus an amount equal to 4.6 percent of the proceeds of the  
9 taxes collected pursuant to chapter 201, or 5 percent of all  
10 other taxes and fees imposed pursuant to this chapter or  
11 remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be  
12 deposited in monthly installments into the General Revenue  
13 Fund.

14 2. Two-tenths of one percent shall be transferred to  
15 the Solid Waste Management Trust Fund.

16 3. After the distribution under subparagraphs 1. and  
17 2., 9.653 percent of the amount remitted by a sales tax dealer  
18 located within a participating county pursuant to s. 218.61  
19 shall be transferred into the Local Government Half-cent Sales  
20 Tax Clearing Trust Fund.

21 4. After the distribution under subparagraphs 1., 2.,  
22 and 3., 0.054 percent shall be transferred to the Local  
23 Government Half-cent Sales Tax Clearing Trust Fund and  
24 distributed pursuant to s. 218.65.

25 5. Of the remaining proceeds:

26 a. Beginning July 1, 1992, \$166,667 shall be  
27 distributed monthly by the department to each applicant that  
28 has been certified as a "facility for a new professional  
29 sports franchise" or a "facility for a retained professional  
30 sports franchise" pursuant to s. 288.1162 and \$41,667 shall be  
31 distributed monthly by the department to each applicant that

1 has been certified as a "new spring training franchise  
2 facility" pursuant to s. 288.1162. Distributions shall begin  
3 60 days following such certification and shall continue for 30  
4 years. Nothing contained herein shall be construed to allow an  
5 applicant certified pursuant to s. 288.1162 to receive more in  
6 distributions than actually expended by the applicant for the  
7 public purposes provided for in s. 288.1162(7). However, a  
8 certified applicant shall receive distributions up to the  
9 maximum amount allowable and undistributed under this section  
10 for additional renovations and improvements to the facility  
11 for the franchise without additional certification.

12         b. Beginning 30 days after notice by the Office of  
13 Tourism, Trade, and Economic Development to the Department of  
14 Revenue that an applicant has been certified as the  
15 professional golf hall of fame pursuant to s. 288.1168 and is  
16 open to the public, \$166,667 shall be distributed monthly, for  
17 up to 300 months, to the applicant.

18         c. Beginning 30 days after notice by the Department of  
19 Commerce to the Department of Revenue that the applicant has  
20 been certified as the International Game Fish Association  
21 World Center facility pursuant to s. 288.1169, and the  
22 facility is open to the public, \$83,333 shall be distributed  
23 monthly, for up to 180 months, to the applicant. This  
24 distribution is subject to reduction pursuant to s. 288.1169.

25         6. All other proceeds shall remain with the General  
26 Revenue Fund.

27         Section 36. Paragraphs (e) and (f) of subsection (9)  
28 of section 166.231, Florida Statutes, are amended to read:

29             166.231 Municipalities; public service tax.--  
30  
31

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

4           (e) Purchases of local telephone service or other  
5 telecommunications service for use in the conduct of a  
6 telecommunications service for hire or otherwise for resale,  
7 including resale of telecommunication services paid by using a  
8 prepaid calling arrangement as defined in s. 212.05(1)(e)1.a.,  
9 are exempt from the tax imposed by this subsection.

10          (f) A seller of services which are subject to the tax  
11 imposed by a municipality under this subsection shall file a  
12 return with the municipality each month. The form of the  
13 return shall be determined by the seller, and the return shall  
14 be deemed sufficient if it identifies the name and address of  
15 the seller, the period of the return, the amount collected  
16 from the sale of taxable services, any collection allowance  
17 taken, the amount of tax remitted with the return, and the  
18 name and telephone number of a person authorized by the seller  
19 to respond to inquiries from municipalities concerning the  
20 seller's administration of the tax. A municipality may not  
21 require any return or payment of public service tax other than  
22 on a date returns and payments of tax are required under  
23 chapter 212. However, a municipality may grant an extension of  
24 the due date for a return or payment upon written request from  
25 the seller. The deduction authorized by paragraph (b) shall  
26 not be allowed in the event of an untimely return, unless the  
27 seller has in writing requested and been granted an extension  
28 of time for filing such return. Extensions of time shall be  
29 granted if reasonable cause is shown, whether requested before  
30 or after the due date of the return. Notwithstanding any other  
31



1 provision of law, the public service tax shall not be  
2 collected at point of sale on prepaid calling arrangements.

3       Section 37. Effective July 1, 2000, all taxes that  
4 have been collected pursuant to section 166.231(9)(f), Florida  
5 Statutes, at the point of sale on prepaid calling arrangements  
6 prior to July 1, 2000, must be remitted, and taxes that have  
7 been collected at the point of sale on prepaid calling  
8 arrangements and remitted before July 1, 2000, are not subject  
9 to refund. Any taxes that were not collected pursuant to  
10 section 166.231(9)(f), Florida Statutes, prior to July 1,  
11 2000, at the point of sale on prepaid calling arrangements  
12 need not be paid and are forgiven.

13       Section 38. Effective January 1, 2002, and applicable  
14 to communications services reflected on bills dated on or  
15 after that date, subsection (9) of section 166.231, Florida  
16 Statutes, as amended by this act, is repealed, and subsections  
17 (2), (5), (7), and (10) of that section are amended to read:

18       166.231 Municipalities; public service tax.--

19       (2) Services competitive with those enumerated in  
20 subsection (1) ~~or subsection (9)~~, as defined by ordinance,  
21 shall be taxed on a comparable base at the same rates.  
22 However, fuel oil shall be taxed at a rate not to exceed 4  
23 cents per gallon. However, for municipalities levying less  
24 than the maximum rate allowable in subsection (1), the maximum  
25 tax on fuel oil shall bear the same proportion to 4 cents  
26 which the tax rate levied under subsection (1) bears to the  
27 maximum rate allowable in subsection (1).

28       (5) Purchases by the United States Government, this  
29 state, and all counties, school districts, and municipalities  
30 of the state, and by public bodies exempted by law or court  
31 order, are exempt from the tax authorized by this section. A

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

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

27 (10) A purchaser who claims an exemption under  
28 subsection (4) or, ~~subsection (5), or paragraph (9)(e)~~ shall  
29 certify to the seller that he or she qualifies for the  
30 exemption, which certification may encompass all purchases  
31 after a specified date or other multiple purchases. ~~For~~

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

12 Section 39. Effective January 1, 2002, paragraph (c)  
13 of subsection (1) and subsection (2) of section 166.233,  
14 Florida Statutes, are amended to read:

15 166.233 Public service tax; effective dates;  
16 procedures for informing sellers of tax levies and related  
17 information.--

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

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

24 (2)(a) A tax levy must be adopted by ordinance, and  
25 the effective date of every levy or repeal thereof must be a  
26 subsequent January 1, April 1, July 1, or October 1. A  
27 municipality shall notify the department of the adoption or  
28 repeal of a levy at least 120 days before the effective date  
29 thereof. Such notification must be furnished on a form  
30 prescribed by the department and must specify the services  
31 taxed under the authority of s. 166.231 or s. 166.232,

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

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

27 Section 40. Subsections (3) and (4) of section 203.01,  
28 Florida Statutes, are amended to read:

29 203.01 Tax on gross receipts for utility services.--

30 (3) The term "gross receipts" as used herein does not  
31 include gross receipts of any person derived from:

1 (a) The sale of natural gas to a public or private  
2 utility, including a municipal corporation or rural electric  
3 cooperative association, either for resale or for use as fuel  
4 in the generation of electricity;

5 (b) The sale of electricity to a public or private  
6 utility, including a municipal corporation or rural electric  
7 cooperative association, for resale within the state, or as  
8 part of an electrical interchange agreement or contract  
9 between such utilities for the purpose of transferring more  
10 economically generated power; or

11 (c) The sale of telecommunication services for resale  
12 of telecommunication services wholly or partially within this  
13 state, which includes, for purposes of this subsection, the  
14 sale of telecommunication services to a person reselling such  
15 telecommunication services by way of a prepaid calling  
16 arrangement as defined in s. 212.05(1)(e)1.a.;

17  
18 provided the person deriving gross receipts from such sale  
19 demonstrates that a resale in fact occurred and complies with  
20 the following requirements: A resale in this state must be in  
21 strict compliance with the rules and regulations of the  
22 Department of Revenue; and any person making a sale for resale  
23 in this state which is not in strict compliance with the rules  
24 and regulations of the Department of Revenue shall be liable  
25 for and pay the tax. Any person making a sale for resale in  
26 this state may, through an informal protest provided for in s.  
27 213.21 and the rules of the Department of Revenue, provide the  
28 department with evidence of the exempt status of a sale. The  
29 department shall adopt rules which provide that valid proof  
30 and documentation of the resale in this state by a person  
31 making the sale for resale in this state will be accepted by

1 the department when submitted during the protest period but  
2 will not be accepted when submitted in any proceeding under  
3 chapter 120 or any circuit court action instituted under  
4 chapter 72.

5 (4) Gross receipts subject to the tax imposed by this  
6 section shall not include receipts from sales or leases of  
7 telecommunications service for use in the conduct of a  
8 telecommunications service for hire or otherwise for resale,  
9 including resale of telecommunication services paid by using a  
10 prepaid calling arrangement as defined in s. 212.05(1)(e)1.a.

11 Section 41. Effective January 1, 2002, and applicable  
12 to communications services reflected on bills dated on or  
13 after that date, section 203.01, Florida Statutes, as amended  
14 by this act, is amended to read:

15 203.01 Tax on gross receipts for utility and  
16 communications services.--

17 (1)(a)1. Every person that receives payment for any  
18 utility service shall report by the last day of each month to  
19 the Department of Revenue, under oath of the secretary or some  
20 other officer of such person, the total amount of gross  
21 receipts derived from business done within this state, or  
22 between points within this state, for the preceding month and,  
23 at the same time, shall pay into the State Treasury an amount  
24 equal to a percentage of such gross receipts at the rate set  
25 forth in paragraph (b). Such collections shall be certified  
26 by the Comptroller upon the request of the State Board of  
27 Education.

28 2. A tax is levied on communications services as  
29 defined in s. 202.11(3). Such tax shall be applied to the same  
30 services and transactions as are subject to taxation under  
31 chapter 202, and to communications services that are subject

1 to the exemption provided in s. 202.125(1). Such tax shall be  
2 applied to the sales price of communications services when  
3 sold at retail and to the actual cost of operating substitute  
4 communications systems, as such terms are defined in s.  
5 202.11, shall be due and payable at the same time as the taxes  
6 imposed pursuant to chapter 202, and shall be administered and  
7 collected pursuant to the provisions of chapter 202.

8 (b) ~~Beginning July 1, 1992, and thereafter,~~The rate  
9 applied to utility services shall be 2.5 percent. The rate  
10 applied to communications services shall be 2.2 percent.

11 ~~(c) Any person who purchases, installs, rents, or~~  
12 ~~leases a telephone system or telecommunication system for his~~  
13 ~~or her own use to provide that person with telephone service~~  
14 ~~or telecommunication service which is a substitute for any~~  
15 ~~telephone company switched service or a substitute for any~~  
16 ~~dedicated facility by which a telephone company provides a~~  
17 ~~communication path shall register with the Department of~~  
18 ~~Revenue and pay into the State Treasury a yearly amount equal~~  
19 ~~to a percentage of the actual cost of operating such system at~~  
20 ~~the rate set forth in paragraph (b). "Actual cost" includes,~~  
21 ~~but is not limited to, depreciation, interest, maintenance,~~  
22 ~~repair, and other expenses directly attributable to the~~  
23 ~~operation of such system. For purposes of this paragraph, the~~  
24 ~~depreciation expense to be included in actual cost shall be~~  
25 ~~the depreciation expense claimed for federal income tax~~  
26 ~~purposes. The total amount of any payment required by a lease~~  
27 ~~or rental contract or agreement shall be included within the~~  
28 ~~actual cost. The provisions of this paragraph do not apply to~~  
29 ~~the use by any local telephone company or any~~  
30 ~~telecommunication carrier of its own telephone system or~~  
31 ~~telecommunication system to conduct a telecommunication~~

1 ~~service for hire or to the use of any radio system operated by~~  
2 ~~any county or municipality or by the state or any political~~  
3 ~~subdivision thereof. If a system described in this paragraph~~  
4 ~~is located in more than one state, the actual cost of such~~  
5 ~~system for purposes of this paragraph shall be the actual cost~~  
6 ~~of the system's equipment located in Florida. The term~~  
7 ~~"telecommunications carrier" specifically includes cellular~~  
8 ~~telephone carriers and other radio common carriers.~~

9       (c)~~(d)~~ Electricity produced by cogeneration or by  
10 small power producers which is transmitted and distributed by  
11 a public utility between two locations of a customer of the  
12 utility pursuant to s. 366.051 is subject to the tax imposed  
13 by this section. The tax shall be applied to the cost price  
14 of such electricity as provided in s. 212.02(4) and shall be  
15 paid each month by the producer of such electricity.

16       (d)~~(e)~~ Electricity produced by cogeneration or by  
17 small power producers during the 12-month period ending June  
18 30 of each year which is in excess of nontaxable electricity  
19 produced during the 12-month period ending June 30, 1990, is  
20 subject to the tax imposed by this section. The tax shall be  
21 applied to the cost price of such electricity as provided in  
22 s. 212.02(4) and shall be paid each month, beginning with the  
23 month in which total production exceeds the production of  
24 nontaxable electricity for the 12-month period ending June 30,  
25 1990. For purposes of this paragraph, "nontaxable  
26 electricity" means electricity produced by cogeneration or by  
27 small power producers which is not subject to tax under  
28 paragraph(c)~~(d)~~. Taxes paid pursuant to paragraph(c)~~(d)~~  
29 may be credited against taxes due under this paragraph.  
30 Electricity generated as part of an industrial manufacturing  
31 process which manufactures products from phosphate rock, raw



1 wood fiber, paper, citrus or any agricultural product shall  
2 not be subject to the tax imposed by this paragraph.

3 "Industrial manufacturing process" means the entire process  
4 conducted at the location where the process takes place.

5 ~~(e)(f)~~ Any person other than a cogenerator or small  
6 power producer described in paragraph (d) ~~(e)~~ who produces for  
7 his or her own use electrical energy which is a substitute for  
8 electrical energy produced by an electric utility as defined  
9 in s. 366.02 is subject to the tax imposed by this section.

10 The tax shall be applied to the cost price of such electrical  
11 energy as provided in s. 212.02(4) and shall be paid each  
12 month. The provisions of this paragraph do not apply to any  
13 electrical energy produced and used by an electric utility.

14 (2)(a) In addition to any other penalty provided by  
15 law, any person who fails to timely report and pay any tax  
16 imposed on gross receipts from utility services under this  
17 chapter shall pay a penalty equal to 10 percent of any unpaid  
18 tax, if the failure is for less than 31 days, plus an  
19 additional 10 percent of any unpaid tax for each additional 30  
20 days or fraction thereof. However, such penalty may not be  
21 less than \$10 or exceed a total of 50 percent in the aggregate  
22 of any unpaid tax.

23 (b) In addition to any other penalty provided by law,  
24 any person who falsely or fraudulently reports or unlawfully  
25 attempts to evade paying any tax imposed on gross receipts  
26 from utility services under this chapter shall pay a penalty  
27 equal to 100 percent of any tax due and is guilty of a  
28 misdemeanor of the second degree, punishable as provided under  
29 s. 775.082 or s. 775.083.

30 (3) The term "gross receipts" as used herein does not  
31 include gross receipts of any person derived from:

1           (a) The sale of natural gas to a public or private  
2 utility, including a municipal corporation or rural electric  
3 cooperative association, either for resale or for use as fuel  
4 in the generation of electricity; or

5           (b) The sale of electricity to a public or private  
6 utility, including a municipal corporation or rural electric  
7 cooperative association, for resale within the state, or as  
8 part of an electrical interchange agreement or contract  
9 between such utilities for the purpose of transferring more  
10 economically generated power; ~~or~~

11           ~~(c) The sale of telecommunication services for resale~~  
12 ~~of telecommunication services wholly or partially within this~~  
13 ~~state, which includes, for purposes of this subsection, the~~  
14 ~~sale of telecommunication services to a person reselling such~~  
15 ~~telecommunication services by way of a prepaid calling~~  
16 ~~arrangement as defined in s. 212.05(1)(e)1.a.;~~

17  
18 provided the person deriving gross receipts from such sale  
19 demonstrates that a resale in fact occurred and complies with  
20 the following requirements: A resale in this state must be in  
21 strict compliance with the rules and regulations of the  
22 Department of Revenue; and any person making a sale for resale  
23 in this state which is not in strict compliance with the rules  
24 and regulations of the Department of Revenue shall be liable  
25 for and pay the tax. Any person making a sale for resale in  
26 this state may, through an informal protest provided for in s.  
27 213.21 and the rules of the Department of Revenue, provide the  
28 department with evidence of the exempt status of a sale. The  
29 department shall adopt rules which provide that valid proof  
30 and documentation of the resale in this state by a person  
31 making the sale for resale in this state will be accepted by

1 the department when submitted during the protest period but  
2 will not be accepted when submitted in any proceeding under  
3 chapter 120 or any circuit court action instituted under  
4 chapter 72.

5 ~~(4) Gross receipts subject to the tax imposed by this~~  
6 ~~section shall not include receipts from sales or leases of~~  
7 ~~telecommunications service for use in the conduct of a~~  
8 ~~telecommunications service for hire or otherwise for resale,~~  
9 ~~including resale of telecommunication services paid by using a~~  
10 ~~prepaid calling arrangement as defined in s. 212.05(1)(e)1.a.~~

11 (4)(5) The tax imposed pursuant to this chapter part  
12 relating to the provision of any utility services at the  
13 option of the person supplying the taxable services may be  
14 separately stated as Florida gross receipts tax on the total  
15 amount of any bill, invoice, or other tangible evidence of the  
16 provision of such taxable services and may be added as a  
17 component part of the total charge. Whenever a provider of  
18 taxable services elects to separately state such tax as a  
19 component of the charge for the provision of such taxable  
20 services, every person, including all governmental units,  
21 shall remit the tax to the person who provides such taxable  
22 services as a part of the total bill, and the tax is a  
23 component part of the debt of the purchaser to the person who  
24 provides such taxable services until paid and, if unpaid, is  
25 recoverable at law in the same manner as any other part of the  
26 charge for such taxable services. For a utility, the decision  
27 to separately state any increase in the rate of tax imposed by  
28 this chapter part which is effective after December 31, 1989,  
29 and the ability to recover the increased charge from the  
30 customer shall not be subject to regulatory approval.

31

1           (5)~~(6)~~ The tax is imposed upon every person for the  
2 privilege of conducting a utility or communications services  
3 business, and each provider of the taxable services remains  
4 fully and completely liable for the tax, even if the tax is  
5 separately stated as a line item or component of the total  
6 bill.

7           (6)~~(7)~~ Any person who provides such services and who  
8 fails, neglects, or refuses to remit the tax imposed in this  
9 chapter part, either by himself or herself, or through agents  
10 or employees, is liable for the tax and is guilty of a  
11 misdemeanor of the first degree, punishable as provided in s.  
12 775.082 or s. 775.083.

13           (7)~~(8)~~ Gross receipts subject to the tax imposed by  
14 this section for the provision of electricity shall include  
15 receipts from monthly customer charges or monthly customer  
16 facility charges.

17           ~~(9)(a) If the sale of a taxable telecommunication~~  
18 ~~service also involves the sale of commercial or cable~~  
19 ~~television service exempt under the provision of s.~~  
20 ~~203.012(2)(b)2., the tax shall be applied to the value of the~~  
21 ~~taxable service when it is sold separately.~~

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

26           ~~(c) The amounts identified as taxable in paragraph (b)~~  
27 ~~shall not be less than the statewide average tariff rates set~~  
28 ~~forth by the local exchange telecommunications companies in~~  
29 ~~the tariffs filed with the Public Service Commission on~~  
30 ~~January 1, 1995, and on January 1 of each year thereafter for~~  
31 ~~the equivalent services subject to the provisions of this~~

1 ~~section. The Public Service Commission shall publish the~~  
2 ~~statewide average tariff rates for commonly used services~~  
3 ~~annually, beginning on January 1, 1996.~~

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

12 Section 42. Effective January 1, 2002, section  
13 203.012, Florida Statutes, is amended to read:

14 203.012 Definitions.--As used in this chapter:

15 ~~(1) The term "access charge" or "right of access"~~  
16 ~~means any charge to any person for the right to use or for the~~  
17 ~~use of a telephone system which includes equipment,~~  
18 ~~facilities, or services to originate or terminate any of the~~  
19 ~~services defined in subsection (4), subsection (5), subsection~~  
20 ~~(6), or subsection (7) and which specifically includes~~  
21 ~~customer access line charges, which includes the gross amount~~  
22 ~~paid by subscribers and users in this state for access into~~  
23 ~~the intrastate or interstate interexchange network as~~  
24 ~~authorized by the Federal Communications Commission or the~~  
25 ~~Florida Public Service Commission.~~

26 ~~(2)(a) Gross receipts from telecommunication services~~  
27 ~~include the gross receipts for all telecommunication services~~  
28 ~~of whatever nature, including, but not limited to, access~~  
29 ~~charges and charges for right of access; residential and~~  
30 ~~business 1-party, 2-party, and 4-party rotary charges; centrex~~  
31 ~~charges; directory assistance charges; public telephone~~

1 ~~charges; touch-tone charges; emergency number charges; private~~  
2 ~~branch exchange message charges; public announcement service~~  
3 ~~charges; dial-it charges; local area data transport charges;~~  
4 ~~key lines charges; private branch exchange trunk-flat rate~~  
5 ~~charges; and directory listing charges other than yellow-page~~  
6 ~~classified listing charges.~~

7 ~~(b) Gross receipts for telecommunication services do~~  
8 ~~not include:~~

9 ~~1. Charges for customer premises equipment, including~~  
10 ~~such equipment that is leased or rented by the customer from~~  
11 ~~any source;~~

12 ~~2. Charges made to the public for commercial or cable~~  
13 ~~television, unless it is used for two-way communication;~~  
14 ~~however, if such two-way communication service is separately~~  
15 ~~billed, only the charges made for two-way communication~~  
16 ~~service will be subject to tax hereunder;~~

17 ~~3. Charges made by hotels and motels, which are~~  
18 ~~required under the provisions of s. 212.03 to collect~~  
19 ~~transient rentals tax from tenants and lessees, for local~~  
20 ~~telephone service or toll telephone service, when such charge~~  
21 ~~occurs incidental to the right of occupancy in such hotel or~~  
22 ~~motel;~~

23 ~~4. Connection and disconnection charges; move or~~  
24 ~~change charges; suspension of service charges; and service~~  
25 ~~order, number change, and restoration charges; or~~

26 ~~5. Charges for services or items of equipment supplied~~  
27 ~~by providers of the telecommunication services described in~~  
28 ~~paragraph (5)(b), such as maintenance charges, equipment~~  
29 ~~sales, or rental which are incidental to the provision of such~~  
30 ~~telecommunication services, provided such charges are~~  
31 ~~separately stated, itemized, or described on the bill,~~

1 ~~invoice, or other tangible evidence of the provision of such~~  
2 ~~service.~~

3 ~~(3) The term "local telephone service" means:~~

4 ~~(a) The access to a local telephone system, and the~~  
5 ~~privilege of telephonic-quality communication with~~  
6 ~~substantially all persons having telephone or radio telephone~~  
7 ~~stations constituting a part of such local telephone system;~~  
8 ~~or~~

9 ~~(b) Any facility or service provided in connection~~  
10 ~~with a service described in paragraph (a).~~

11

12 ~~The term "local telephone service" does not include any~~  
13 ~~service which is a toll telephone service; private~~  
14 ~~communication service; cellular mobile telephone or~~  
15 ~~telecommunication service; specialized mobile radio, or pagers~~  
16 ~~and paging, service, including but not limited to "beepers"~~  
17 ~~and any other form of mobile and portable one-way or two-way~~  
18 ~~communication; or teletypewriter service.~~

19 ~~(4) The term "private communication service" means:~~

20 ~~(a) A communication service furnished to a subscriber~~  
21 ~~or user that entitles the subscriber or user to exclusive or~~  
22 ~~priority use of a communication channel or groups of channels,~~  
23 ~~or to the use of an intercommunication system for the~~  
24 ~~subscriber's stations, regardless of whether such channel,~~  
25 ~~groups of channels, or intercommunication system may be~~  
26 ~~connected through switching with a service described in~~  
27 ~~subsection (3), subsection (6), or subsection (7);~~

28 ~~(b) Switching capacity, extension lines, and stations,~~  
29 ~~or other associated services which are provided in connection~~  
30 ~~with, and which are necessary or unique to the use of,~~  
31 ~~channels or systems described in paragraph (a); or~~

1           ~~(c) The channel mileage which connects a telephone~~  
2 ~~station located outside a local telephone system area with a~~  
3 ~~central office in such local telephone system.~~

4           ~~(5) The term "telecommunication service" means:~~

5           ~~(a) Local telephone service, toll telephone service,~~  
6 ~~telegram or telegraph service, teletypewriter service, or~~  
7 ~~private communication service; or~~

8           ~~(b) Cellular mobile telephone or telecommunication~~  
9 ~~service; or specialized mobile radio, and pagers and paging,~~  
10 ~~service, including but not limited to "beepers" and any other~~  
11 ~~form of mobile and portable one-way or two-way communication;~~  
12 ~~but does not include services or equipment incidental to~~  
13 ~~telecommunication services enumerated in this paragraph such~~  
14 ~~as maintenance of customer premises equipment, whether owned~~  
15 ~~by the customer or not, or equipment sales or rental for which~~  
16 ~~charges are separately stated, itemized, or described on the~~  
17 ~~bill, invoice, or other tangible evidence of the provision of~~  
18 ~~such service.~~

19  
20 ~~The term "telecommunication service" does not include any~~  
21 ~~Internet access service, electronic mail service, electronic~~  
22 ~~bulletin board service, or similar on-line computer service.~~

23           ~~(6) The term "teletypewriter service" means the access~~  
24 ~~from a teletypewriter, telephone, or other data station of~~  
25 ~~which such station is a part, and the privilege of~~  
26 ~~intercommunication by such station with substantially all~~  
27 ~~persons having teletypewriter, telephone, or other data~~  
28 ~~stations constituting a part of the same teletypewriter~~  
29 ~~system, to which the subscriber or user is entitled upon~~  
30 ~~payment of a charge or charges, whether such charge or charges~~  
31 ~~are determined as a flat periodic amount, on the basis of~~



1 ~~distance and elapsed transmission time, or some other method.~~

2 ~~The term "teletypewriter service" does not include local~~  
3 ~~telephone service or toll telephone service.~~

4 ~~(7) The term "toll telephone service" means:~~

5 ~~(a) A telephonic-quality communication for which there~~  
6 ~~is a toll charge which varies in amount with the distance and~~  
7 ~~elapsed transmission time of each individual communication; or~~

8 ~~(b) A service which entitles the subscriber or user,~~  
9 ~~upon the payment of a periodic charge which is determined as a~~  
10 ~~flat amount or upon the basis of total elapsed transmission~~  
11 ~~time, to the privilege of an unlimited number of telephonic~~  
12 ~~communications to or from all or a substantial portion of the~~  
13 ~~persons having telephone or radio telephone stations in a~~  
14 ~~specified area which is outside the local telephone system~~  
15 ~~area in which the station provided with this service is~~  
16 ~~located.~~

17  
18 ~~The term "toll telephone service" includes interstate and~~  
19 ~~intrastate wide-area telephone service charges.~~

20 ~~(8) The term "interstate," as applied to~~  
21 ~~telecommunication services, means originating in this state~~  
22 ~~but not terminating in this state, or terminating in this~~  
23 ~~state but not originating in this state.~~

24 ~~(1)(9) The term "Utility service" means electricity~~  
25 ~~for light, heat, or power; and natural or manufactured gas for~~  
26 ~~light, heat, or power; or telecommunication services.~~

27 ~~(2)(10) The term "Person" means any person as defined~~  
28 ~~in s. 212.02.~~

29 Section 43. Effective January 1, 2002, sections  
30 203.013, 203.60, 203.61, 203.62, and 203.63, Florida Statutes,  
31 are repealed.

1           Section 44. Paragraph (e) of subsection (1) of section  
2 212.05, Florida Statutes, is amended to read:

3           212.05 Sales, storage, use tax.--It is hereby declared  
4 to be the legislative intent that every person is exercising a  
5 taxable privilege who engages in the business of selling  
6 tangible personal property at retail in this state, including  
7 the business of making mail order sales, or who rents or  
8 furnishes any of the things or services taxable under this  
9 chapter, or who stores for use or consumption in this state  
10 any item or article of tangible personal property as defined  
11 herein and who leases or rents such property within the state.

12           (1) For the exercise of such privilege, a tax is  
13 levied on each taxable transaction or incident, which tax is  
14 due and payable as follows:

15           (e)1. At the rate of 6 percent on charges for:

16           a. All telegraph messages and long-distance telephone  
17 calls beginning and terminating in this state,  
18 telecommunication service as defined in s. 203.012, and those  
19 services described in s. 203.012(2)(a), except that the tax  
20 rate for charges for telecommunication service other than  
21 charges for prepaid calling arrangements is 7 percent. The tax  
22 on charges for prepaid calling arrangements ~~calls made with a~~  
23 ~~prepaid telephone calling card~~ shall be collected at the time  
24 of sale and remitted by the selling dealer ~~selling or~~  
25 ~~recharging a prepaid telephone card.~~

26           (I) "Prepaid calling arrangement" means the separately  
27 stated retail sale by advance payment of communications  
28 services that consist exclusively of telephone calls  
29 originated by using an access number, authorization code, or  
30 other means that may be manually, electronically, or otherwise  
31 entered and that are sold in predetermined units or dollars

1 whose number declines with use in a known amount. ~~A prepaid~~  
2 ~~telephone card or authorization number means the right to~~  
3 ~~exclusively make telephone calls that must be paid for in~~  
4 ~~advance and that enable the origination of calls using an~~  
5 ~~access number, prepaid mobile account, or authorization code,~~  
6 ~~whether manually or electronically dialed.~~

7 (II) If the sale or recharge of the prepaid ~~telephone~~  
8 calling arrangement card does not take place at the dealer's  
9 place of business, it shall be deemed to take place at the  
10 customer's shipping address or, if no item is shipped, at the  
11 customer's address or the location associated with the  
12 customer's mobile telephone number.

13 (III) The sale or recharge of a prepaid calling  
14 arrangement shall be treated as a sale of tangible personal  
15 property for purposes of this chapter, whether or not a  
16 tangible item evidencing such arrangement is furnished to the  
17 purchaser, and such sale within this state phone card  
18 ~~constitutes property in this state and~~ subjects the selling  
19 dealer to the jurisdiction of this state for purposes of this  
20 subsection. Notwithstanding any other provision of this  
21 sub-sub-subparagraph, the sale of telecommunication services  
22 to a person who furnishes telecommunication services pursuant  
23 to a prepaid calling arrangement is deemed a sale for resale,  
24 and a dealer selling telecommunication services to such a  
25 person shall accept a resale certificate in lieu of the tax,  
26 in accordance with rules of the department.

27 b. Any television system program service.

28 c. The installation of telecommunication and  
29 telegraphic equipment.

30 d. Electrical power or energy, except that the tax  
31 rate for charges for electrical power or energy is 7 percent.

1           2. For purposes of this chapter, "television system  
2 program service" means the transmitting, by any means, of any  
3 audio or video signal to a subscriber for other than  
4 retransmission, or the installing, connecting, reconnecting,  
5 disconnecting, moving, or changing of any equipment related to  
6 such service. For purposes of this chapter, the term  
7 "telecommunication service" does not include local service  
8 provided through a pay telephone. The provisions of s.  
9 212.17(3), regarding credit for tax paid on charges  
10 subsequently found to be worthless, shall be equally  
11 applicable to any tax paid under the provisions of this  
12 section on charges for prepaid calling arrangements,  
13 telecommunication or telegraph services, or electric power  
14 subsequently found to be uncollectible. The word "charges" in  
15 this paragraph does not include any excise or similar tax  
16 levied by the Federal Government, any political subdivision of  
17 the state, or any municipality upon the purchase, or sale, or  
18 recharge of prepaid calling arrangements or upon the purchase  
19 or sale of telecommunication, television system program, or  
20 telegraph service or electric power, which tax is collected by  
21 the seller from the purchaser.

22           3. Telegraph messages and telecommunication services  
23 which originate or terminate in this state, other than  
24 interstate private communication services, and are billed to a  
25 customer, telephone number, or device located within this  
26 state are taxable under this paragraph. Interstate private  
27 communication services are taxable under this paragraph as  
28 follows:

29           a. One hundred percent of the charge imposed at each  
30 channel termination point within this state;

31

1           b. One hundred percent of the charge imposed for the  
2 total channel mileage between each channel termination point  
3 within this state; and

4           c. The portion of the interstate interoffice channel  
5 mileage charge as determined by multiplying said charge times  
6 a fraction, the numerator of which is the air miles between  
7 the last channel termination point in this state and the  
8 vertical and horizontal coordinates, 7856 and 1756,  
9 respectively, and the denominator of which is the air miles  
10 between the last channel termination point in this state and  
11 the first channel termination point outside this state. The  
12 denominator of this fraction shall be adjusted, if necessary,  
13 by adding the numerator of said fraction to similarly  
14 determined air miles in the state in which the other channel  
15 termination point is located, so that the summation of the  
16 apportionment factor for this state and the apportionment  
17 factor for the other state is not greater than one, to ensure  
18 that no more than 100 percent of the interstate interoffice  
19 channel mileage charge can be taxed by this state and another  
20 state.

21           4. The tax imposed pursuant to this paragraph shall  
22 not exceed \$50,000 per calendar year on charges to any person  
23 for interstate telecommunications services defined in s.  
24 203.012(4) and (7)(b), if the majority of such services used  
25 by such person are for communications originating outside of  
26 this state and terminating in this state. This exemption  
27 shall only be granted to holders of a direct pay permit issued  
28 pursuant to this subparagraph. No refunds shall be given for  
29 taxes paid prior to receiving a direct pay permit. Upon  
30 application, the department may issue a direct pay permit to  
31 the purchaser of telecommunications services authorizing such

1 purchaser to pay tax on such services directly to the  
2 department. Any vendor furnishing telecommunications services  
3 to the holder of a valid direct pay permit shall be relieved  
4 of the obligation to collect and remit the tax on such  
5 service. Tax payments and returns pursuant to a direct pay  
6 permit shall be monthly. For purposes of this subparagraph,  
7 the term "person" shall be limited to a single legal entity  
8 and shall not be construed as meaning a group or combination  
9 of affiliated entities or entities controlled by one person or  
10 group of persons.

11           5. If the sale of a television system program service,  
12 as defined in this paragraph, also involves the sale of an  
13 item exempt under s. 212.08(7)(j), the tax shall be applied to  
14 the value of the taxable service when it is sold separately.  
15 If the company does not offer this service separately, the  
16 consideration paid shall be separately identified and stated  
17 with respect to the taxable and exempt portions of the  
18 transaction as a condition of the exemption, except that the  
19 amount identified as taxable shall not be less than the cost  
20 of the service.

21           Section 45. Effective July 1, 2000, all taxes that  
22 have been collected pursuant to section 212.05(1)(e), Florida  
23 Statutes, at the point of sale on prepaid calling arrangements  
24 before July 1, 2000, must be remitted, and taxes that have  
25 been collected at the point of sale on prepaid calling  
26 arrangements and remitted before July 1, 2000, are not subject  
27 to refund. Any taxes that were not collected pursuant to  
28 section 212.05(1)(e) before July 1, 2000, at point of sale on  
29 prepaid calling arrangements need not be paid and are  
30 forgiven.

31

1           Section 46. Paragraph (b) of subsection (2) of section  
2 212.054, Florida Statutes, is amended to read:

3           212.054 Discretionary sales surtax; limitations,  
4 administration, and collection.--

5           (2)

6           (b) However:

7           1. The ~~tax on any~~ sales amount above \$5,000 on any  
8 item of tangible personal property and on long-distance  
9 telephone service shall not be subject to the surtax.

10 However, charges for prepaid calling arrangements, as defined  
11 in s. 212.05(1)(e)1.a., shall be subject to the surtax.For

12 purposes of administering the \$5,000 limitation on an item of  
13 tangible personal property, if two or more taxable items of  
14 tangible personal property are sold to the same purchaser at  
15 the same time and, under generally accepted business practice  
16 or industry standards or usage, are normally sold in bulk or  
17 are items that, when assembled, comprise a working unit or  
18 part of a working unit, such items must be considered a single  
19 item for purposes of the \$5,000 limitation when supported by a  
20 charge ticket, sales slip, invoice, or other tangible evidence  
21 of a single sale or rental. The limitation provided in this  
22 subparagraph does not apply to the sale of any other service.

23           2. In the case of utility, telecommunication, or  
24 television system program services billed on or after the  
25 effective date of any such surtax, the entire amount of the  
26 charge tax for utility, telecommunication, or television  
27 system program services shall be subject to the surtax. In  
28 the case of utility, telecommunication, or television system  
29 program services billed after the last day the surtax is in  
30 effect, the entire amount of the charge tax on said items  
31 shall not be subject to the surtax.

1           3. In the case of written contracts which are signed  
2 prior to the effective date of any such surtax for the  
3 construction of improvements to real property or for  
4 remodeling of existing structures, the surtax shall be paid by  
5 the contractor responsible for the performance of the  
6 contract. However, the contractor may apply for one refund of  
7 any such surtax paid on materials necessary for the completion  
8 of the contract. Any application for refund shall be made no  
9 later than 15 months following initial imposition of the  
10 surtax in that county. The application for refund shall be in  
11 the manner prescribed by the department by rule. A complete  
12 application shall include proof of the written contract and of  
13 payment of the surtax. The application shall contain a sworn  
14 statement, signed by the applicant or its representative,  
15 attesting to the validity of the application. The department  
16 shall, within 30 days after approval of a complete  
17 application, certify to the county information necessary for  
18 issuance of a refund to the applicant. Counties are hereby  
19 authorized to issue refunds for this purpose and shall set  
20 aside from the proceeds of the surtax a sum sufficient to pay  
21 any refund lawfully due. Any person who fraudulently obtains  
22 or attempts to obtain a refund pursuant to this subparagraph,  
23 in addition to being liable for repayment of any refund  
24 fraudulently obtained plus a mandatory penalty of 100 percent  
25 of the refund, is guilty of a felony of the third degree,  
26 punishable as provided in s. 775.082, s. 775.083, or s.  
27 775.084.

28           4. In the case of any vessel, railroad, or motor  
29 vehicle common carrier entitled to partial exemption from tax  
30 imposed under this chapter pursuant to s. 212.08(4), (8), or  
31 (9), the basis for imposition of surtax shall be the same as



1 provided in s. 212.08 and the ratio shall be applied each  
2 month to total purchases in this state of property qualified  
3 for proration which is delivered or sold in the taxing county  
4 to establish the portion used and consumed in intracounty  
5 movement and subject to surtax.

6 Section 47. Effective January 1, 2002, and applicable  
7 to communications services reflected on bills dated on or  
8 after that date, paragraph (e) of subsection (1) of section  
9 212.05, Florida Statutes, as amended by this act, is amended  
10 to read:

11 212.05 Sales, storage, use tax.--It is hereby declared  
12 to be the legislative intent that every person is exercising a  
13 taxable privilege who engages in the business of selling  
14 tangible personal property at retail in this state, including  
15 the business of making mail order sales, or who rents or  
16 furnishes any of the things or services taxable under this  
17 chapter, or who stores for use or consumption in this state  
18 any item or article of tangible personal property as defined  
19 herein and who leases or rents such property within the state.

20 (1) For the exercise of such privilege, a tax is  
21 levied on each taxable transaction or incident, which tax is  
22 due and payable as follows:

23 (e)1. At the rate of 6 percent on charges for:

24 a. Prepaid calling arrangements.~~All telegraph~~  
25 ~~messages and long-distance telephone calls beginning and~~  
26 ~~terminating in this state, telecommunication service as~~  
27 ~~defined in s. 203.012, and those services described in s.~~  
28 ~~203.012(2)(a), except that the tax rate for charges for~~  
29 ~~telecommunication service other than charges for prepaid~~  
30 ~~calling arrangements is 7 percent.~~The tax on charges for  
31

1 prepaid calling arrangements shall be collected at the time of  
2 sale and remitted by the selling dealer.

3 (I) "Prepaid calling arrangement" means the separately  
4 stated retail sale by advance payment of communications  
5 services that consist exclusively of telephone calls  
6 originated by using an access number, authorization code, or  
7 other means that may be manually, electronically, or otherwise  
8 entered and that are sold in predetermined units or dollars  
9 whose number declines with use in a known amount.

10 (II) If the sale or recharge of the prepaid calling  
11 arrangement does not take place at the dealer's place of  
12 business, it shall be deemed to take place at the customer's  
13 shipping address or, if no item is shipped, at the customer's  
14 address or the location associated with the customer's mobile  
15 telephone number.

16 (III) The sale or recharge of a prepaid calling  
17 arrangement shall be treated as a sale of tangible personal  
18 property for purposes of this chapter, whether or not a  
19 tangible item evidencing such arrangement is furnished to the  
20 purchaser, and such sale within this state subjects the  
21 selling dealer to the jurisdiction of this state for purposes  
22 of this subsection. ~~Notwithstanding any other provision of~~  
23 ~~this sub-sub-subparagraph, the sale of telecommunication~~  
24 ~~services to a person who furnishes telecommunication services~~  
25 ~~pursuant to a prepaid calling arrangement is deemed a sale for~~  
26 ~~resale, and a dealer selling telecommunication services to~~  
27 ~~such a person shall accept a resale certificate in lieu of the~~  
28 ~~tax, in accordance with rules of the department.~~

29 ~~b. Any television system program service.~~

30 b.c. The installation of telecommunication and  
31 telegraphic equipment.

1           c.d. Electrical power or energy, except that the tax  
2 rate for charges for electrical power or energy is 7 percent.

3           2. ~~For purposes of this chapter, "television system~~  
4 ~~program service" means the transmitting, by any means, of any~~  
5 ~~audio or video signal to a subscriber for other than~~  
6 ~~retransmission, or the installing, connecting, reconnecting,~~  
7 ~~disconnecting, moving, or changing of any equipment related to~~  
8 ~~such service. For purposes of this chapter, the term~~

9 ~~"telecommunication service" does not include local service~~  
10 ~~provided through a pay telephone.~~The provisions of s.

11 212.17(3), regarding credit for tax paid on charges  
12 subsequently found to be worthless, shall be equally  
13 applicable to any tax paid under the provisions of this  
14 section on charges for prepaid calling arrangements,  
15 telecommunication or telegraph services, or electric power  
16 subsequently found to be uncollectible. The word "charges" in  
17 this paragraph does not include any excise or similar tax  
18 levied by the Federal Government, any political subdivision of  
19 the state, or any municipality upon the purchase, sale, or  
20 recharge of prepaid calling arrangements or upon the purchase  
21 or sale of telecommunication, television system program, or  
22 telegraph service or electric power, which tax is collected by  
23 the seller from the purchaser.

24           3. ~~Telegraph messages and telecommunication services~~  
25 ~~which originate or terminate in this state, other than~~  
26 ~~interstate private communication services, and are billed to a~~  
27 ~~customer, telephone number, or device located within this~~  
28 ~~state are taxable under this paragraph. Interstate private~~  
29 ~~communication services are taxable under this paragraph as~~  
30 ~~follows:~~

31

1           ~~a. One hundred percent of the charge imposed at each~~  
2 ~~channel termination point within this state;~~

3           ~~b. One hundred percent of the charge imposed for the~~  
4 ~~total channel mileage between each channel termination point~~  
5 ~~within this state; and~~

6           ~~c. The portion of the interstate interoffice channel~~  
7 ~~mileage charge as determined by multiplying said charge times~~  
8 ~~a fraction, the numerator of which is the air miles between~~  
9 ~~the last channel termination point in this state and the~~  
10 ~~vertical and horizontal coordinates, 7856 and 1756,~~  
11 ~~respectively, and the denominator of which is the air miles~~  
12 ~~between the last channel termination point in this state and~~  
13 ~~the first channel termination point outside this state. The~~  
14 ~~denominator of this fraction shall be adjusted, if necessary,~~  
15 ~~by adding the numerator of said fraction to similarly~~  
16 ~~determined air miles in the state in which the other channel~~  
17 ~~termination point is located, so that the summation of the~~  
18 ~~apportionment factor for this state and the apportionment~~  
19 ~~factor for the other state is not greater than one, to ensure~~  
20 ~~that no more than 100 percent of the interstate interoffice~~  
21 ~~channel mileage charge can be taxed by this state and another~~  
22 ~~state.~~

23           ~~4. The tax imposed pursuant to this paragraph shall~~  
24 ~~not exceed \$50,000 per calendar year on charges to any person~~  
25 ~~for interstate telecommunications services defined in s.~~  
26 ~~203.012(4) and (7)(b), if the majority of such services used~~  
27 ~~by such person are for communications originating outside of~~  
28 ~~this state and terminating in this state. This exemption~~  
29 ~~shall only be granted to holders of a direct pay permit issued~~  
30 ~~pursuant to this subparagraph. No refunds shall be given for~~  
31 ~~taxes paid prior to receiving a direct pay permit. Upon~~

1 ~~application, the department may issue a direct pay permit to~~  
2 ~~the purchaser of telecommunications services authorizing such~~  
3 ~~purchaser to pay tax on such services directly to the~~  
4 ~~department. Any vendor furnishing telecommunications services~~  
5 ~~to the holder of a valid direct pay permit shall be relieved~~  
6 ~~of the obligation to collect and remit the tax on such~~  
7 ~~service. Tax payments and returns pursuant to a direct pay~~  
8 ~~permit shall be monthly. For purposes of this subparagraph,~~  
9 ~~the term "person" shall be limited to a single legal entity~~  
10 ~~and shall not be construed as meaning a group or combination~~  
11 ~~of affiliated entities or entities controlled by one person or~~  
12 ~~group of persons.~~

13         ~~5. If the sale of a television system program service,~~  
14 ~~as defined in this paragraph, also involves the sale of an~~  
15 ~~item exempt under s. 212.08(7)(j), the tax shall be applied to~~  
16 ~~the value of the taxable service when it is sold separately.~~  
17 ~~If the company does not offer this service separately, the~~  
18 ~~consideration paid shall be separately identified and stated~~  
19 ~~with respect to the taxable and exempt portions of the~~  
20 ~~transaction as a condition of the exemption, except that the~~  
21 ~~amount identified as taxable shall not be less than the cost~~  
22 ~~of the service.~~

23         Section 48. Effective January 1, 2002, and applicable  
24 to communications services reflected on bills dated on or  
25 after such date, paragraph (b) of subsection (2) and paragraph  
26 (c) of subsection (3) of section 212.054, Florida Statutes, as  
27 amended by this act, are amended to read:

28         212.054 Discretionary sales surtax; limitations,  
29 administration, and collection.--

30                 (2)

31                 (b) However:

1           1. The sales amount above \$5,000 on any item of  
2 tangible personal property ~~and on long-distance telephone~~  
3 ~~service~~ shall not be subject to the surtax. However, charges  
4 for prepaid calling arrangements, as defined in s.  
5 212.05(1)(e)1.a., shall be subject to the surtax. For purposes  
6 of administering the \$5,000 limitation on an item of tangible  
7 personal property, if two or more taxable items of tangible  
8 personal property are sold to the same purchaser at the same  
9 time and, under generally accepted business practice or  
10 industry standards or usage, are normally sold in bulk or are  
11 items that, when assembled, comprise a working unit or part of  
12 a working unit, such items must be considered a single item  
13 for purposes of the \$5,000 limitation when supported by a  
14 charge ticket, sales slip, invoice, or other tangible evidence  
15 of a single sale or rental. ~~The limitation provided in this~~  
16 ~~subparagraph does not apply to the sale of any other service.~~

17           2. In the case of utility, ~~telecommunication, or~~  
18 ~~television system program~~ services billed on or after the  
19 effective date of any such surtax, the entire amount of the  
20 charge for utility, ~~telecommunication, or television system~~  
21 ~~program~~ services shall be subject to the surtax. In the case  
22 of utility, ~~telecommunication, or television system program~~  
23 services billed after the last day the surtax is in effect,  
24 the entire amount of the charge on said items shall not be  
25 subject to the surtax. "Utility service," as used in this  
26 section, does not include any communications services as  
27 defined in chapter 202.

28           3. In the case of written contracts which are signed  
29 prior to the effective date of any such surtax for the  
30 construction of improvements to real property or for  
31 remodeling of existing structures, the surtax shall be paid by

1 the contractor responsible for the performance of the  
2 contract. However, the contractor may apply for one refund of  
3 any such surtax paid on materials necessary for the completion  
4 of the contract. Any application for refund shall be made no  
5 later than 15 months following initial imposition of the  
6 surtax in that county. The application for refund shall be in  
7 the manner prescribed by the department by rule. A complete  
8 application shall include proof of the written contract and of  
9 payment of the surtax. The application shall contain a sworn  
10 statement, signed by the applicant or its representative,  
11 attesting to the validity of the application. The department  
12 shall, within 30 days after approval of a complete  
13 application, certify to the county information necessary for  
14 issuance of a refund to the applicant. Counties are hereby  
15 authorized to issue refunds for this purpose and shall set  
16 aside from the proceeds of the surtax a sum sufficient to pay  
17 any refund lawfully due. Any person who fraudulently obtains  
18 or attempts to obtain a refund pursuant to this subparagraph,  
19 in addition to being liable for repayment of any refund  
20 fraudulently obtained plus a mandatory penalty of 100 percent  
21 of the refund, is guilty of a felony of the third degree,  
22 punishable as provided in s. 775.082, s. 775.083, or s.  
23 775.084.

24 4. In the case of any vessel, railroad, or motor  
25 vehicle common carrier entitled to partial exemption from tax  
26 imposed under this chapter pursuant to s. 212.08(4), (8), or  
27 (9), the basis for imposition of surtax shall be the same as  
28 provided in s. 212.08 and the ratio shall be applied each  
29 month to total purchases in this state of property qualified  
30 for proration which is delivered or sold in the taxing county  
31

1 to establish the portion used and consumed in intracounty  
2 movement and subject to surtax.

3 (3) For the purpose of this section, a transaction  
4 shall be deemed to have occurred in a county imposing the  
5 surtax when:

6 (c) The consumer of utility ~~or television system~~  
7 ~~program~~ services is located in the county, ~~or the~~  
8 ~~telecommunication services are provided to a location within~~  
9 ~~the county.~~

10 Section 49. Effective January 1, 2001, section  
11 337.401, Florida Statutes, is amended to read:

12 337.401 Use of right-of-way for utilities subject to  
13 regulation; permit; fees.--

14 (1) The department and local governmental entities,  
15 referred to in ss. 337.401-337.404 as the "authority," that  
16 have jurisdiction and control of public roads or publicly  
17 owned rail corridors are authorized to prescribe and enforce  
18 reasonable rules or regulations with reference to the placing  
19 and maintaining along, across, or on any road or publicly  
20 owned rail corridors under their respective jurisdictions any  
21 electric transmission, telephone, or telegraph lines; pole  
22 lines; poles; railways; ditches; sewers; water, heat, or gas  
23 mains; pipelines; fences; gasoline tanks and pumps; or other  
24 structures hereinafter referred to as the "utility."

25 (2) The authority may grant to any person who is a  
26 resident of this state, or to any corporation which is  
27 organized under the laws of this state or licensed to do  
28 business within this state, the use of a right-of-way for the  
29 utility in accordance with such rules or regulations as the  
30 authority may adopt. No utility shall be installed, located,  
31 or relocated unless authorized by a written permit issued by



1 the authority. The permit shall require the permit holder to  
2 be responsible for any damage resulting from the issuance of  
3 such permit. The authority may initiate injunctive  
4 proceedings as provided in s. 120.69 to enforce provisions of  
5 this subsection or any rule or order issued or entered into  
6 pursuant thereto.

7 (3)(a) Because federal and state law require the  
8 nondiscriminatory treatment of providers of telecommunications  
9 services and because of the desire to promote competition  
10 among providers of telecommunications services, it is the  
11 intent of the Legislature that municipalities and counties  
12 treat telecommunications companies in a nondiscriminatory and  
13 competitively neutral manner when imposing rules or  
14 regulations governing the placement or maintenance of  
15 telecommunications facilities in the public roads or  
16 rights-of-way. Rules or regulations imposed by a municipality  
17 or county relating to telecommunications companies placing or  
18 maintaining telecommunications facilities in its roads or  
19 rights-of-way must be generally applicable to all  
20 telecommunications companies and, notwithstanding any other  
21 law, may not require a telecommunications company to apply for  
22 or enter into an individual license, franchise, or other  
23 agreement with the municipality or county as a condition of  
24 placing or maintaining telecommunications facilities in its  
25 roads or rights-of-way. In addition to other reasonable rules  
26 or regulations that a municipality or county may adopt  
27 relating to the placement or maintenance of telecommunications  
28 facilities in its roads or rights-of-way under this  
29 subsection, a municipality or county may require a  
30 telecommunications company that places or seeks to place  
31 facilities in its roads or rights-of-way to register with the

1 municipality or county and to provide the name of the  
2 registrant; the name, address, and telephone number of a  
3 contact person for the registrant; the number of the  
4 registrant's current certificate of authorization issued by  
5 the Florida Public Service Commission or the Federal  
6 Communications Commission; and proof of insurance or  
7 self-insuring status adequate to defend and cover claims.

8 (b) Each municipality and county retains the authority  
9 to regulate and manage municipal and county roads or  
10 rights-of-way in exercising its police power. Any rules or  
11 regulations adopted by a municipality or county which govern  
12 the occupation of its roads or rights-of-way by  
13 telecommunications companies must be related to the placement  
14 or maintenance of facilities in such roads or rights-of-way,  
15 must be reasonable and nondiscriminatory, and may include only  
16 those matters necessary to manage the roads or rights-of-way  
17 of the municipality or county.

18 (c)1. It is the intention of the state to treat all  
19 providers of communications services that use or occupy  
20 municipal or charter county roads or rights-of-way for the  
21 provision of communications services in a nondiscriminatory  
22 and competitively neutral manner with respect to the payment  
23 of permit fees. Certain providers of communications services  
24 have been granted by general law the authority to offset  
25 permit fees against franchise or other fees while other  
26 providers of communications services have not been granted  
27 this authority. In order to treat all providers of  
28 communications services in a nondiscriminatory and  
29 competitively neutral manner with respect to the payment of  
30 permit fees, each municipality and charter county shall make  
31 an election under either sub-subparagraph a. or

1 sub-subparagraph b. and must inform the Department of Revenue  
2 of the election by certified mail by October 1, 2001. Such  
3 election take effect January 1, 2002.

4 a.(I) The municipality or charter county may require  
5 and collect permit fees from any providers of communications  
6 services that use or occupy municipal or county roads or  
7 rights-of-way. All fees permitted under this sub-subparagraph  
8 must be reasonable and commensurate with the direct and actual  
9 cost of the regulatory activity, including issuing and  
10 processing permits, plan reviews, physical inspection, and  
11 direct administrative costs; must be demonstrable; and must be  
12 equitable among users of the roads or rights-of-way. A fee  
13 permitted under this sub-subparagraph may not: be offset  
14 against the tax imposed under chapter 202; include the costs  
15 of roads or rights-of-way acquisition or roads or  
16 rights-of-way rental; include any general administrative,  
17 management, or maintenance costs of the roads or  
18 rights-of-way; or be based on a percentage of the value or  
19 costs associated with the work to be performed on the roads or  
20 rights-of-way. In an action to recover amounts due for a fee  
21 not permitted under this sub-subparagraph, the prevailing  
22 party may recover court costs and attorney's fees at trial and  
23 on appeal. In addition to the limitations set forth in this  
24 section, a fee levied by a municipality or charter county  
25 under this sub-subparagraph may not exceed \$100. However,  
26 permit fees may not be imposed with respect to permits that  
27 may be required for service drop lines not required to be  
28 noticed under s. 556.108(5)(b) or for any activity that does  
29 not require the physical disturbance of the roads or  
30 rights-of-way or does not impair access to or full use of the  
31 roads or rights-of-way.

1           (II) To ensure competitive neutrality among providers  
2 of communications services, for any municipality or charter  
3 county that elects to exercise its authority to require and  
4 collect permit fees under this sub-subparagraph, the rate of  
5 the local communications services tax imposed by such  
6 jurisdiction, as computed under s. 202.20(1)(a) and (2), shall  
7 automatically be reduced by 0.12 percent.

8           b. Alternatively, the municipality or charter county  
9 may elect not to require and collect permit fees from any  
10 provider of communications services that uses or occupies  
11 municipal or charter county roads or rights-of-way for the  
12 provision of communications services; however, each  
13 municipality or charter county that elects to operate under  
14 this sub-subparagraph retains all authority to establish rules  
15 and regulations for providers of communications services to  
16 use or occupy roads or rights-of-way as provided in this  
17 section. If a municipality or charter county elects to operate  
18 under this sub-subparagraph, the total rate for the local  
19 communications services tax as computed under s. 202.20 for  
20 that municipality or charter county may be increased by  
21 ordinance to an amount not to exceed 0.12 percent.

22           c. A municipality or charter county that does not make  
23 an election as provided for in this subparagraph shall be  
24 presumed to have elected to operate under the provisions of  
25 sub-subparagraph b.

26           2. Each noncharter county shall make an election under  
27 either sub-subparagraph a. or sub-subparagraph b. and shall  
28 inform the Department of Revenue of the election by certified  
29 mail by October 1, 2001. Such election shall take effect  
30 January 1, 2002.

31

1           a. The noncharter county may elect to require and  
2 collect permit fees from any providers of communications  
3 services that use or occupy noncharter county roads or  
4 rights-of-way. All fees permitted under this sub-subparagraph  
5 must be reasonable and commensurate with the direct and actual  
6 cost of the regulatory activity, including issuing and  
7 processing permits, plan reviews, physical inspection, and  
8 direct administrative costs; must be demonstrable; and must be  
9 equitable among users of the roads or rights-of-way. A fee  
10 permitted under this sub-subparagraph may not: be offset  
11 against the tax imposed under chapter 202; include the costs  
12 of roads or rights-of-way acquisition or roads or  
13 rights-of-way rental; include any general administrative,  
14 management, or maintenance costs of the roads or  
15 rights-of-way; or be based on a percentage of the value or  
16 costs associated with the work to be performed on the roads or  
17 rights-of-way. In an action to recover amounts due for a fee  
18 not permitted under this sub-subparagraph, the prevailing  
19 party may recover court costs and attorney's fees at trial and  
20 on appeal. In addition to the limitations set forth in this  
21 section, a fee levied by a noncharter county under this  
22 sub-subparagraph may not exceed \$100. However, permit fees may  
23 not be imposed with respect to permits that may be required  
24 for service drop lines not required to be noticed under s.  
25 556.108(5)(b) or for any activity that does not require the  
26 physical disturbance of the roads or rights-of-way or does not  
27 impair access to or full use of the roads or rights-of-way.

28           b. Alternatively, the noncharter county may elect not  
29 to require and collect permit fees from any provider of  
30 communications services that uses or occupies noncharter  
31 county roads or rights-of-way for the provision of

1 communications services; however, each noncharter county that  
2 elects to operate under this sub-subparagraph shall retain all  
3 authority to establish rules and regulations for providers of  
4 communications services to use or occupy roads or  
5 rights-of-way as provided in this section. If a noncharter  
6 county elects to operate under this sub-subparagraph, the  
7 total rate for the local communications services tax as  
8 computed under s. 202.20 for that noncharter county may be  
9 increased by ordinance to an amount not to exceed 0.24  
10 percent, to replace the revenue the noncharter county would  
11 otherwise have received from permit fees for providers of  
12 communications services.

13 c. A noncharter county that does not make an election  
14 as provided for in this subparagraph shall be presumed to have  
15 elected to operate under the provisions of sub-subparagraph b.

16 3. Except as provided in this paragraph,  
17 municipalities and counties retain all existing authority to  
18 require and collect permit fees from users or occupants of  
19 municipal or county roads or rights-of-way and to set  
20 appropriate permit fee amounts.

21 (d) After January 1, 2001, in addition to any other  
22 notice requirements, a municipality must provide to the  
23 Secretary of State, at least 10 days prior to consideration on  
24 first reading, notice of a proposed ordinance governing a  
25 telecommunications company placing or maintaining  
26 telecommunications facilities in its roads or rights-of-way.  
27 After January 1, 2001, in addition to any other notice  
28 requirements, a county must provide to the Secretary of State,  
29 at least 15 days prior to consideration at a public hearing,  
30 notice of a proposed ordinance governing a telecommunications  
31 company placing or maintaining telecommunications facilities

1 in its roads or rights-of-way. The notice required by this  
2 paragraph must be published by the Secretary of State on a  
3 designated Internet website. The failure of a municipality or  
4 county to provide such notice does not render the ordinance  
5 invalid.

6 (e) If any municipality requires any  
7 telecommunications company to pay a fee or other consideration  
8 as a condition for granting permission to occupy municipal  
9 streets and rights-of-way for poles, wires, and other  
10 fixtures, such fee or consideration may not exceed 1 percent  
11 of the gross receipts on recurring local service revenues for  
12 services provided within the corporate limits of the  
13 municipality by such telecommunications company. Included  
14 within such 1-percent maximum fee or consideration are all  
15 taxes, licenses, fees, in-kind contributions accepted pursuant  
16 to paragraph (g) subsection (5), and other impositions except  
17 ad valorem taxes and amounts for assessments for special  
18 benefits, such as sidewalks, street pavings, and similar  
19 improvements, and occupational license taxes levied or imposed  
20 by a municipality upon the telecommunications company. This  
21 paragraph subsection shall not impair any franchise in  
22 existence on July 1, 1985.

23 (f)(4) A municipality may require ~~by ordinance enter~~  
24 ~~into an agreement with~~ any person providing telecommunication  
25 services defined in s. 203.012(7) as a condition for granting  
26 permission to occupy or use any city street, alley, viaduct,  
27 elevated roadway, bridge, or other public way to pay. ~~The~~  
28 ~~agreement shall permit the telecommunication service provider~~  
29 ~~to construct, operate, maintain, repair, rebuild, or replace a~~  
30 ~~telecommunications route within a municipal right-of-way. The~~  
31 ~~agreement shall provide for a fee or other consideration~~

1 payable annually based on actual linear feet of any cable,  
2 fiber optic, or other pathway that makes physical use of the  
3 municipal right-of-way. In no event shall the fee or other  
4 consideration imposed pursuant to this paragraph ~~subsection~~ be  
5 less than \$500 per linear mile of any cable, fiber optic, or  
6 other pathway that makes physical use of the municipal  
7 right-of-way. Any fee or other consideration imposed by this  
8 paragraph ~~subsection~~ in excess of \$500 shall be applied in a  
9 nondiscriminatory manner and shall not exceed the sum of:

10 1.(a) Costs directly related to the inconvenience or  
11 impairment solely caused by the disturbance of the municipal  
12 right-of-way; ~~and~~

13 2.(b) The reasonable cost of the regulatory activity  
14 of the municipality; ~~and-~~

15 3.(c) The proportionate share of cost of land for such  
16 street, alley, or other public way attributable to utilization  
17 of the right-of-way by a telecommunication service provider.

18  
19 Furthermore, no telecommunication service provider shall be  
20 required to pay more than one such fee or other consideration  
21 annually for the construction, maintenance, operation, repair,  
22 rebuilding, or replacement of a parallel telecommunications  
23 route owned by it, or by a subsidiary under its direct  
24 control, which makes use of the right-of-way of any  
25 municipality enacting an ordinance pursuant to this paragraph  
26 ~~subsection~~. The fee or other consideration imposed pursuant  
27 to this paragraph ~~subsection~~ shall not apply in any manner to  
28 any telecommunication service provider who provides  
29 telecommunication services as defined in s. 203.012(3) for any  
30 services provided by such service provider. Any agreement  
31 entered into pursuant to the authority of this paragraph



1 ~~subsection~~ prior to June 3, 1988, and the fees or fee schedule  
2 in effect on that date shall remain in full force and effect  
3 until such agreement expires. Any ordinance enacted pursuant  
4 to this paragraph ~~subsection~~ prior to June 3, 1988, and the  
5 fees or fee schedule in effect on that date shall remain in  
6 full force and effect unless the ordinance is repealed by the  
7 municipality. Notwithstanding the language contained herein a  
8 municipality may reenact any ordinance which has an automatic  
9 expiration date provided the ordinance does not increase the  
10 fees in effect in said ordinance in violation of this section.

11 (g)(5) Except as expressly allowed or authorized by  
12 general law and except for the rights-of-way permit fees  
13 subject to paragraph (e) ~~subsection (3)~~, a municipality may  
14 not levy on a telecommunications company a tax, fee, or other  
15 charge for operating as a telecommunications company within  
16 the jurisdiction of the municipality or which is in any way  
17 related to using its roads or rights-of-way. A municipality  
18 may not allow a telecommunications company to pay a fee or  
19 provide compensation in excess of the limits prescribed in  
20 this section. A municipality may not require or solicit  
21 in-kind compensation in lieu of any fees imposed pursuant to  
22 this section. Nothing in this paragraph ~~subsection~~ shall  
23 impair any ordinance or agreement in effect on May 22, 1998,  
24 ~~the effective date of this act~~ which provides for or allows  
25 in-kind compensation by a telecommunications company.

26 (h)(6) A local governmental entity may not use its  
27 authority over the placement of facilities in its roads and  
28 rights-of-way as a basis for asserting or exercising  
29 regulatory control over a telecommunications company regarding  
30 matters within the exclusive jurisdiction of the Florida  
31 Public Service Commission or the Federal Communications

1 Commission, including, but not limited to, the operations,  
2 systems, qualifications, services, service quality, service  
3 territory, and prices of a telecommunications company.

4 (i)~~(7)~~ A telecommunications company that has obtained  
5 permission to occupy the roads and rights-of-way of an  
6 incorporated municipality pursuant to s. 362.01 ~~city or town~~  
7 or that is otherwise lawfully occupying the roads or  
8 rights-of-way of a municipality on the effective date of this  
9 act shall not be required to obtain ~~additional~~ consent to  
10 continue such lawful occupation of those roads or  
11 rights-of-way; however, nothing in this paragraph ~~subsection~~  
12 shall be interpreted to limit the power of a municipality to  
13 impose a fee or adopt or enforce reasonable rules or  
14 regulations as provided in this section.

15 (j)~~(8)~~ Except as expressly provided in this section,  
16 this section does not modify the authority of local  
17 governmental entities to levy the tax authorized in s. 166.231  
18 or the duties of telecommunications companies under ss.  
19 337.402-337.404. This section does not apply to building  
20 permits, pole attachments, or private roads, private  
21 easements, and private rights-of-way. Except as expressly  
22 provided in this section, this section does not limit or  
23 expand whatever powers counties may have relating to roads and  
24 rights-of-way. Nothing in this section shall limit or expand  
25 whatever authority a local government may have to impose any  
26 fee pursuant to 47 U.S.C. ss. 542 and 573.

27 (k)~~(9)~~ As used in this section, "telecommunications  
28 company" has the same meaning as defined in s. 364.02.

29 (4)~~(10)~~ This section, except subsections (1) and~~(2)~~,  
30 and paragraph (3)(h)~~(6)~~, does not apply to the provision of  
31

1 pay telephone service on public or municipal roads or  
2 rights-of-way.

3 Section 50. Effective January 1, 2002, section  
4 337.401, Florida Statutes, as amended by this act, is amended  
5 to read:

6 337.401 Use of right-of-way for utilities subject to  
7 regulation; permit; fees.--

8 (1) The department and local governmental entities,  
9 referred to in ss. 337.401-337.404 as the "authority," that  
10 have jurisdiction and control of public roads or publicly  
11 owned rail corridors are authorized to prescribe and enforce  
12 reasonable rules or regulations with reference to the placing  
13 and maintaining along, across, or on any road or publicly  
14 owned rail corridors under their respective jurisdictions any  
15 electric transmission, telephone, ~~or telegraph, or other~~  
16 communications services lines; pole lines; poles; railways;  
17 ditches; sewers; water, heat, or gas mains; pipelines; fences;  
18 gasoline tanks and pumps; or other structures hereinafter  
19 referred to as the "utility."

20 (2) The authority may grant to any person who is a  
21 resident of this state, or to any corporation which is  
22 organized under the laws of this state or licensed to do  
23 business within this state, the use of a right-of-way for the  
24 utility in accordance with such rules or regulations as the  
25 authority may adopt. No utility shall be installed, located,  
26 or relocated unless authorized by a written permit issued by  
27 the authority. The permit shall require the permitholder to  
28 be responsible for any damage resulting from the issuance of  
29 such permit. The authority may initiate injunctive  
30 proceedings as provided in s. 120.69 to enforce provisions of  
31

1 this subsection or any rule or order issued or entered into  
2 pursuant thereto.

3 (3)(a) Because of the unique circumstances applicable  
4 to providers of communications services, including, but not  
5 limited to, the circumstances described in paragraph (e) and  
6 the fact that federal and state law require the  
7 nondiscriminatory treatment of providers of telecommunications  
8 services, and because of the desire to promote competition  
9 among providers of communications ~~telecommunications~~ services,  
10 it is the intent of the Legislature that municipalities and  
11 counties treat providers of communications services  
12 ~~telecommunications companies~~ in a nondiscriminatory and  
13 competitively neutral manner when imposing rules or  
14 regulations governing the placement or maintenance of  
15 communications ~~telecommunications~~ facilities in the public  
16 roads or rights-of-way. Rules or regulations imposed by a  
17 municipality or county relating to providers of communications  
18 services ~~telecommunications companies~~ placing or maintaining  
19 communications ~~telecommunications~~ facilities in its roads or  
20 rights-of-way must be generally applicable to all providers of  
21 communications services ~~telecommunications companies~~ and,  
22 notwithstanding any other law, may not require a provider of  
23 communications services, except as otherwise provided in  
24 paragraph (f), ~~telecommunications company~~ to apply for or  
25 enter into an individual license, franchise, or other  
26 agreement with the municipality or county as a condition of  
27 placing or maintaining communications ~~telecommunications~~  
28 facilities in its roads or rights-of-way. In addition to other  
29 reasonable rules that a municipality or county may adopt  
30 relating to the placement or maintenance of communications  
31 ~~telecommunications~~ facilities in its roads or rights-of-way

1 under this subsection, a municipality or county may require a  
2 provider of communications services ~~telecommunications company~~  
3 that places or seeks to place facilities in its roads or  
4 rights-of-way to register with the municipality or county and  
5 to provide the name of the registrant; the name, address, and  
6 telephone number of a contact person for the registrant; the  
7 number of the registrant's current certificate of  
8 authorization issued by the Florida Public Service Commission  
9 or the Federal Communications Commission; and proof of  
10 insurance or self-insuring status adequate to defend and cover  
11 claims.

12 (b) Each municipality and county retains the authority  
13 to regulate and manage municipal and county roads or  
14 rights-of-way in exercising its police power. Any rules or  
15 regulations adopted by a municipality or county which govern  
16 the occupation of its roads or rights-of-way by providers of  
17 communications services ~~telecommunications companies~~ must be  
18 related to the placement or maintenance of facilities in such  
19 roads or rights-of-way, must be reasonable and  
20 nondiscriminatory, and may include only those matters  
21 necessary to manage the roads or rights-of-way of the  
22 municipality or county.

23 (c)1. It is the intention of the state to treat all  
24 providers of communications services that use or occupy  
25 municipal or charter county roads or rights-of-way for the  
26 provision of communications services in a nondiscriminatory  
27 and competitively neutral manner with respect to the payment  
28 of permit fees. Certain providers of communications services  
29 have been granted by general law the authority to offset  
30 permit fees against franchise or other fees while other  
31 providers of communications services have not been granted

1 | this authority. In order to treat all providers of  
2 | communications services in a nondiscriminatory and  
3 | competitively neutral manner with respect to the payment of  
4 | permit fees, each municipality and charter county shall make  
5 | an election under either sub-subparagraph a. or  
6 | sub-subparagraph b. and must inform the Department of Revenue  
7 | of the election by certified mail by October 1, 2001. Such  
8 | election shall take effect January 1, 2002.

9 |         a.(I) The municipality or charter county may require  
10 | and collect permit fees from any providers of communications  
11 | services that use or occupy municipal or county roads or  
12 | rights-of-way. All fees permitted under this sub-subparagraph  
13 | must be reasonable and commensurate with the direct and actual  
14 | cost of the regulatory activity, including issuing and  
15 | processing permits, plan reviews, physical inspection, and  
16 | direct administrative costs; must be demonstrable; and must be  
17 | equitable among users of the roads or rights-of-way. A fee  
18 | permitted under this sub-subparagraph may not: be offset  
19 | against the tax imposed under chapter 202; include the costs  
20 | of roads or rights-of-way acquisition or roads or  
21 | rights-of-way rental; include any general administrative,  
22 | management, or maintenance costs of the roads or  
23 | rights-of-way; or be based on a percentage of the value or  
24 | costs associated with the work to be performed on the roads or  
25 | rights-of-way. In an action to recover amounts due for a fee  
26 | not permitted under this sub-subparagraph, the prevailing  
27 | party may recover court costs and attorney's fees at trial and  
28 | on appeal. In addition to the limitations set forth in this  
29 | section, a fee levied by a municipality or charter county  
30 | under this sub-subparagraph may not exceed \$100. However,  
31 | permit fees may not be imposed with respect to permits that

1 may be required for service drop lines not required to be  
2 noticed under s. 556.108(5)(b) or for any activity that does  
3 not require the physical disturbance of the roads or  
4 rights-of-way or does not impair access to or full use of the  
5 roads or rights-of-way.

6 (II) To ensure competitive neutrality among providers  
7 of communications services, for any municipality or charter  
8 county that elects to exercise its authority to require and  
9 collect permit fees under this sub-subparagraph, the rate of  
10 the local communications services tax imposed by such  
11 jurisdiction, as computed under s. 202.20(1)(a) and (2), shall  
12 automatically be reduced by 0.12 percent.

13 b. Alternatively, the municipality or charter county  
14 may elect not to require and collect permit fees from any  
15 provider of communications services that uses or occupies  
16 municipal or charter county roads or rights-of-way for the  
17 provision of communications services; however, each  
18 municipality or charter county that elects to operate under  
19 this sub-subparagraph retains all authority to establish rules  
20 and regulations for providers of communications services to  
21 use or occupy roads or rights-of-way as provided in this  
22 section. If a municipality or charter county elects to operate  
23 under this sub-subparagraph, the total rate for the local  
24 communications services tax as computed under s. 202.20 for  
25 that municipality or charter county may be increased by  
26 ordinance to an amount not to exceed 0.12 percent.

27 c. A municipality or charter county that does not make  
28 an election as provided for in this subparagraph shall be  
29 presumed to have elected to operate under the provisions of  
30 sub-subparagraph b.

31

1           2. Each noncharter county shall make an election under  
2 either sub-subparagraph a. or sub-subparagraph b. and shall  
3 inform the Department of Revenue of the election by certified  
4 mail by October 1, 2001. Such election shall take effect  
5 January 1, 2002.

6           a. The noncharter county may elect to require and  
7 collect permit fees from any providers of communications  
8 services that use or occupy noncharter county roads or  
9 rights-of-way. All fees permitted under this sub-subparagraph  
10 must be reasonable and commensurate with the direct and actual  
11 cost of the regulatory activity, including issuing and  
12 processing permits, plan reviews, physical inspection, and  
13 direct administrative costs; must be demonstrable; and must be  
14 equitable among users of the roads or rights-of-way. A fee  
15 permitted under this sub-subparagraph may not: be offset  
16 against the tax imposed under chapter 202; include the costs  
17 of roads or rights-of-way acquisition or roads or  
18 rights-of-way rental; include any general administrative,  
19 management, or maintenance costs of the roads or  
20 rights-of-way; or be based on a percentage of the value or  
21 costs associated with the work to be performed on the roads or  
22 rights-of-way. In an action to recover amounts due for a fee  
23 not permitted under this sub-subparagraph, the prevailing  
24 party may recover court costs and attorney's fees at trial and  
25 on appeal. In addition to the limitations set forth in this  
26 section, a fee levied by a noncharter county under this  
27 sub-subparagraph may not exceed \$100. However, permit fees may  
28 not be imposed with respect to permits that may be required  
29 for service drop lines not required to be noticed under s.  
30 556.108(5)(b) or for any activity that does not require the  
31



1 physical disturbance of the roads or rights-of-way or does not  
2 impair access to or full use of the roads or rights-of-way.

3       b. Alternatively, the noncharter county may elect not  
4 to require and collect permit fees from any provider of  
5 communications services that uses or occupies noncharter  
6 county roads or rights-of-way for the provision of  
7 communications services; however, each noncharter county that  
8 elects to operate under this sub-subparagraph shall retain all  
9 authority to establish rules and regulations for providers of  
10 communications services to use or occupy roads or  
11 rights-of-way as provided in this section. If a noncharter  
12 county elects to operate under this sub-subparagraph, the  
13 total rate for the local communications services tax as  
14 computed under s. 202.20 for that noncharter county may be  
15 increased by ordinance to an amount not to exceed 0.24  
16 percent, to replace the revenue the noncharter county would  
17 otherwise have received from permit fees for providers of  
18 communications services.

19       c. A noncharter county that does not make an election  
20 as provided for in this subparagraph shall be presumed to have  
21 elected to operate under the provisions of sub-subparagraph b.

22       3. Except as provided in this paragraph,  
23 municipalities and counties retain all existing authority to  
24 require and collect permit fees from users or occupants of  
25 municipal or county roads or rights-of-way and to set  
26 appropriate permit fee amounts.

27       (d) After January 1, 2001, in addition to any other  
28 notice requirements, a municipality must provide to the  
29 Secretary of State, at least 10 days prior to consideration on  
30 first reading, notice of a proposed ordinance governing a  
31 provider of communications services ~~telecommunications company~~

1 placing or maintaining communications ~~telecommunications~~  
2 facilities in its roads or rights-of-way. After January 1,  
3 2001, in addition to any other notice requirements, a county  
4 must provide to the Secretary of State, at least 15 days prior  
5 to consideration at a public hearing, notice of a proposed  
6 ordinance governing a provider of communications services  
7 ~~telecommunications company~~ placing or maintaining  
8 communications ~~telecommunications~~ facilities in its roads or  
9 rights-of-way. The notice required by this paragraph must be  
10 published by the Secretary of State on a designated Internet  
11 website. The failure of a municipality or county to provide  
12 such notice does not render the ordinance invalid.

13 (e) The authority of municipalities and counties to  
14 require franchise fees from providers of communications  
15 services, with respect to the provision of communications  
16 services, is specifically preempted by the state, except as  
17 otherwise provided in paragraph (f), because of unique  
18 circumstances applicable to providers of communications  
19 services when compared to other utilities occupying municipal  
20 or county roads or rights-of-way. Providers of communications  
21 services may provide similar services in a manner that  
22 requires the placement of facilities in municipal or county  
23 roads or rights-of-way or in a manner that does not require  
24 the placement of facilities in such roads or rights-of-way.  
25 Although similar communications services may be provided by  
26 different means, the state desires to treat providers of  
27 communications services in a nondiscriminatory manner and to  
28 have the taxes, franchise fees, and other fees paid by  
29 providers of communications services be competitively neutral.  
30 Municipalities and counties retain all existing authority, if  
31 any, to collect franchise fees from users or occupants of

1 municipal or county roads or rights-of-way other than  
2 providers of communications services, and the provisions of  
3 this subsection shall have no effect upon this authority. The  
4 provisions of this subsection do not restrict the authority,  
5 if any, of municipalities or counties or other governmental  
6 entities to receive reasonable rental fees based on fair  
7 market value for the use of public lands and buildings on  
8 property outside the public roads or rights-of-way for the  
9 placement of communications antennas and towers.

10 (f) A municipality or county may request and negotiate  
11 for in-kind requirements and contributions for, or in support  
12 of, the use or construction of public, educational, or  
13 governmental access facilities authorized under federal law  
14 from providers of cable service, and nothing in this section  
15 shall impair any ordinance or agreement in effect on July 1,  
16 2000, which provides for or allows for such requirements or  
17 contributions, including the ability of providers of cable  
18 service to recover any such expenses pursuant to federal law.  
19 This subsection shall be reviewed by the Legislature during  
20 the 2001 legislative session in conjunction with the study  
21 required by this act.

22 (g) Each municipality and county retains authority to  
23 negotiate all terms and conditions of a cable service  
24 franchise allowed by federal and state law except those terms  
25 and conditions related to franchise fees and the definition of  
26 gross revenues or other definitions or methodologies related  
27 to the payment or assessment of franchise fees on providers of  
28 cable services.

29 ~~(e) If any municipality requires any~~  
30 ~~telecommunications company to pay a fee or other consideration~~  
31 ~~as a condition for granting permission to occupy municipal~~

1 ~~streets and rights of way for poles, wires, and other~~  
2 ~~fixtures, such fee or consideration may not exceed 1 percent~~  
3 ~~of the gross receipts on recurring local service revenues for~~  
4 ~~services provided within the corporate limits of the~~  
5 ~~municipality by such telecommunications company. Included~~  
6 ~~within such 1-percent maximum fee or consideration are all~~  
7 ~~taxes, licenses, fees, in-kind contributions accepted pursuant~~  
8 ~~to paragraph (g), and other impositions except ad valorem~~  
9 ~~taxes and amounts for assessments for special benefits, such~~  
10 ~~as sidewalks, street pavings, and similar improvements, and~~  
11 ~~occupational license taxes levied or imposed by a municipality~~  
12 ~~upon the telecommunications company. This paragraph shall not~~  
13 ~~impair any franchise in existence on July 1, 1985.~~

14 ~~(f) A municipality may require any person providing~~  
15 ~~telecommunication services defined in s. 203.012(7) as a~~  
16 ~~condition for granting permission to occupy or use any city~~  
17 ~~street, alley, viaduct, elevated roadway, bridge, or other~~  
18 ~~public way to pay a fee or other consideration payable~~  
19 ~~annually based on actual linear feet of any cable, fiber~~  
20 ~~optic, or other pathway that makes physical use of the~~  
21 ~~municipal right-of-way. In no event shall the fee or other~~  
22 ~~consideration imposed pursuant to this paragraph be less than~~  
23 ~~\$500 per linear mile of any cable, fiber optic, or other~~  
24 ~~pathway that makes physical use of the municipal right-of-way.~~  
25 ~~Any fee or other consideration imposed by this paragraph in~~  
26 ~~excess of \$500 shall be applied in a nondiscriminatory manner~~  
27 ~~and shall not exceed the sum of:~~

28 ~~1. Costs directly related to the inconvenience or~~  
29 ~~impairment solely caused by the disturbance of the municipal~~  
30 ~~right-of-way;~~

31

1           ~~2. The reasonable cost of the regulatory activity of~~  
2 ~~the municipality; and~~

3           ~~3. The proportionate share of cost of land for such~~  
4 ~~street, alley, or other public way attributable to utilization~~  
5 ~~of the right-of-way by a telecommunication service provider.~~

6  
7 ~~Furthermore, no telecommunication service provider shall be~~  
8 ~~required to pay more than one such fee or other consideration~~  
9 ~~annually for the construction, maintenance, operation, repair,~~  
10 ~~rebuilding, or replacement of a parallel telecommunications~~  
11 ~~route owned by it, or by a subsidiary under its direct~~  
12 ~~control, which makes use of the right-of-way of any~~  
13 ~~municipality enacting an ordinance pursuant to this paragraph.~~  
14 ~~The fee or other consideration imposed pursuant to this~~  
15 ~~paragraph shall not apply in any manner to any~~  
16 ~~telecommunication service provider who provides~~  
17 ~~telecommunication services as defined in s. 203.012(3) for any~~  
18 ~~services provided by such service provider. Any agreement~~  
19 ~~entered into pursuant to the authority of this paragraph prior~~  
20 ~~to June 3, 1988, and the fees or fee schedule in effect on~~  
21 ~~that date shall remain in full force and effect until such~~  
22 ~~agreement expires. Any ordinance enacted pursuant to this~~  
23 ~~paragraph prior to June 3, 1988, and the fees or fee schedule~~  
24 ~~in effect on that date shall remain in full force and effect~~  
25 ~~unless the ordinance is repealed by the municipality.~~

26 ~~Notwithstanding the language contained herein a municipality~~  
27 ~~may reenact any ordinance which has an automatic expiration~~  
28 ~~date provided the ordinance does not increase the fees in~~  
29 ~~effect in said ordinance in violation of this section.~~

30           ~~(h)(g)~~ Except as expressly allowed or authorized by  
31 general law and except for the rights-of-way permit fees

1 subject to paragraph ~~(c)~~(e), a municipality or county may not  
2 levy on a provider of communications services  
3 ~~telecommunications company~~ a tax, fee, or other charge or  
4 imposition for operating as a provider of communications  
5 services telecommunications company within the jurisdiction of  
6 the municipality or county which is in any way related to  
7 using its roads or rights-of-way. ~~A municipality may not allow~~  
8 ~~a telecommunications company to pay a fee or provide~~  
9 ~~compensation in excess of the limits prescribed in this~~  
10 ~~section.~~ A municipality or county may not require or solicit  
11 in-kind compensation except as otherwise provided in paragraph  
12 ~~(f)~~ in lieu of any fees imposed pursuant to this section.

13 Nothing in this paragraph shall impair any ordinance or  
14 agreement in effect on May 22, 1998, or any voluntary  
15 agreement entered into subsequent to that date, which provides  
16 for or allows in-kind compensation by a telecommunications  
17 company.

18 (i)~~(h)~~ A municipality or county ~~local governmental~~  
19 ~~entity~~ may not use its authority over the placement of  
20 facilities in its roads and rights-of-way as a basis for  
21 asserting or exercising regulatory control over a provider of  
22 communications services telecommunications company regarding  
23 matters within the exclusive jurisdiction of the Florida  
24 Public Service Commission or the Federal Communications  
25 Commission, including, but not limited to, the operations,  
26 systems, qualifications, services, service quality, service  
27 territory, and prices of a provider of communications services  
28 ~~telecommunications company~~.

29 (j)~~(i)~~ A provider of communications services  
30 ~~telecommunications company~~ that has obtained permission to  
31 occupy the roads or ~~and~~ rights-of-way of an incorporated

1 municipality pursuant to s. 362.01 or that is otherwise  
2 lawfully occupying the roads or rights-of-way of a  
3 municipality ~~on the effective date of this act~~ shall not be  
4 required to obtain consent to continue such lawful occupation  
5 of those roads or rights-of-way; however, nothing in this  
6 paragraph shall be interpreted to limit the power of a  
7 municipality to ~~impose a fee or~~ adopt or enforce reasonable  
8 rules or regulations as provided in this section.

9 (k)~~(j)~~ Except as expressly provided in this section,  
10 this section does not modify the authority of municipalities  
11 and counties ~~local governmental entities~~ to levy the tax  
12 authorized in chapter 202 s. 166.231 or the duties of  
13 providers of communications services ~~telecommunications~~  
14 ~~companies~~ under ss. 337.402-337.404. This section does not  
15 apply to building permits, pole attachments, or private roads,  
16 private easements, and private rights-of-way. ~~Except as~~  
17 ~~expressly provided in this section, this section does not~~  
18 ~~limit or expand whatever powers counties may have relating to~~  
19 ~~roads and rights-of-way. Nothing in this section shall limit~~  
20 ~~or expand whatever authority a local government may have to~~  
21 ~~impose any fee pursuant to 47 U.S.C. ss. 542 and 573.~~

22 (4)~~(k)~~ As used in this section, "communications  
23 services" and "cable services" have "telecommunications  
24 company" ~~has~~ the same meanings ascribed in chapter 202 ~~meaning~~  
25 ~~as defined in s. 364.02.~~

26 (5)~~(4)~~ This section, except subsections (1) and (2)  
27 and paragraph (3)(i)~~(h)~~, does not apply to the provision of  
28 pay telephone service on public, or municipal, or county roads  
29 or rights-of-way.

30 Section 51. The Legislature finds that it may be  
31 necessary to adopt a state policy regarding in-kind

1 requirements and contributions for, or in support of, the use  
2 or construction of public, educational, or governmental access  
3 facilities authorized under federal law currently imposed only  
4 on providers of cable service, especially in light of the  
5 in-kind requirements for providers of telecommunications  
6 services under section 337.401(5), Florida Statutes, 1999.  
7 Given the development of alternative choices in the delivery  
8 of multichannel video programming, including programming by  
9 providers of wireless, satellite, Internet, and other video  
10 delivery systems, and the potential competitive inequities  
11 which may be associated with such requirements and  
12 contributions, the appropriate committees of the Legislature  
13 shall study and evaluate, during the 2001 legislative session,  
14 an appropriate state policy regarding these issues, including  
15 the option of calculating the present and future value of such  
16 requirements and contributions available to local governments  
17 in excess of the limitations imposed on franchise fees under  
18 47 U.S.C. s. 542(b) as a part of the computation of  
19 replacement revenues under section 202.20, Florida Statutes,  
20 in setting the local communications services tax rate.

21 Section 52. Subsection (1) of section 212.031, Florida  
22 Statutes, is amended to read:

23 212.031 Lease or rental of or license in real  
24 property.--

25 (1)(a) It is declared to be the legislative intent  
26 that every person is exercising a taxable privilege who  
27 engages in the business of renting, leasing, letting, or  
28 granting a license for the use of any real property unless  
29 such property is:

- 30 1. Assessed as agricultural property under s. 193.461.  
31 2. Used exclusively as dwelling units.



1           3. Property subject to tax on parking, docking, or  
2 storage spaces under s. 212.03(6).

3           4. Recreational property or the common elements of a  
4 condominium when subject to a lease between the developer or  
5 owner thereof and the condominium association in its own right  
6 or as agent for the owners of individual condominium units or  
7 the owners of individual condominium units. However, only the  
8 lease payments on such property shall be exempt from the tax  
9 imposed by this chapter, and any other use made by the owner  
10 or the condominium association shall be fully taxable under  
11 this chapter.

12           5. A public or private street or right-of-way and  
13 poles, conduits, fixtures, and similar improvements located on  
14 such streets or rights-of-way, occupied or used by a utility  
15 or franchised cable television company for utility or  
16 communications or television purposes. For purposes of this  
17 subparagraph, the term "utility" means any person providing  
18 utility services as defined in s. 203.012. This exception also  
19 applies to property, ~~excluding buildings,~~ wherever located, on  
20 which the following are placed: towers, antennas, cables,  
21 ~~adjacent accessory structures, or adjacent accessory~~  
22 equipment, not including switching equipment, used in the  
23 provision of ~~cellular, enhanced specialized mobile radio, or~~  
24 ~~personal~~ communications services as defined in s. 202.11 ~~are~~  
25 ~~placed.~~ For purposes of this chapter, towers used in the  
26 provision of mobile communications services, as defined in s.  
27 202.11, are considered to be fixtures.

28           6. A public street or road which is used for  
29 transportation purposes.

30           7. Property used at an airport exclusively for the  
31 purpose of aircraft landing or aircraft taxiing or property

1 used by an airline for the purpose of loading or unloading  
2 passengers or property onto or from aircraft or for fueling  
3 aircraft.

4           8.a. Property used at a port authority, as defined in  
5 s. 315.02(2), exclusively for the purpose of oceangoing  
6 vessels or tugs docking, or such vessels mooring on property  
7 used by a port authority for the purpose of loading or  
8 unloading passengers or cargo onto or from such a vessel, or  
9 property used at a port authority for fueling such vessels, or  
10 to the extent that the amount paid for the use of any property  
11 at the port is based on the charge for the amount of tonnage  
12 actually imported or exported through the port by a tenant.

13           b. The amount charged for the use of any property at  
14 the port in excess of the amount charged for tonnage actually  
15 imported or exported shall remain subject to tax except as  
16 provided in sub-subparagraph a.

17           9. Property used as an integral part of the  
18 performance of qualified production services. As used in this  
19 subparagraph, the term "qualified production services" means  
20 any activity or service performed directly in connection with  
21 the production of a qualified motion picture, as defined in s.  
22 212.06(1)(b), and includes:

23           a. Photography, sound and recording, casting, location  
24 managing and scouting, shooting, creation of special and  
25 optical effects, animation, adaptation (language, media,  
26 electronic, or otherwise), technological modifications,  
27 computer graphics, set and stage support (such as  
28 electricians, lighting designers and operators, greensmen,  
29 prop managers and assistants, and grips), wardrobe (design,  
30 preparation, and management), hair and makeup (design,  
31 production, and application), performing (such as acting,

1 dancing, and playing), designing and executing stunts,  
2 coaching, consulting, writing, scoring, composing,  
3 choreographing, script supervising, directing, producing,  
4 transmitting dailies, dubbing, mixing, editing, cutting,  
5 looping, printing, processing, duplicating, storing, and  
6 distributing;

7           b. The design, planning, engineering, construction,  
8 alteration, repair, and maintenance of real or personal  
9 property including stages, sets, props, models, paintings, and  
10 facilities principally required for the performance of those  
11 services listed in sub-subparagraph a.; and

12           c. Property management services directly related to  
13 property used in connection with the services described in  
14 sub-subparagraphs a. and b.

15           10. Leased, subleased, licensed, or rented to a person  
16 providing food and drink concessionaire services within the  
17 premises of a convention hall, exhibition hall, auditorium,  
18 stadium, theater, arena, civic center, performing arts center,  
19 recreational facility, or any business operated under a permit  
20 issued pursuant to chapter 550. A person providing retail  
21 concessionaire services involving the sale of food and drink  
22 or other tangible personal property within the premises of an  
23 airport shall be subject to tax on the rental of real property  
24 used for that purpose, but shall not be subject to the tax on  
25 any license to use the property. For purposes of this  
26 subparagraph, the term "sale" shall not include the leasing of  
27 tangible personal property.

28           11. Property occupied pursuant to an instrument  
29 calling for payments which the department has declared, in a  
30 Technical Assistance Advisement issued on or before March 15,  
31 1993, to be nontaxable pursuant to rule 12A-1.070(19)(c),

1 Florida Administrative Code; provided that this subparagraph  
2 shall only apply to property occupied by the same person  
3 before and after the execution of the subject instrument and  
4 only to those payments made pursuant to such instrument,  
5 exclusive of renewals and extensions thereof occurring after  
6 March 15, 1993.

7 (b) When a lease involves multiple use of real  
8 property wherein a part of the real property is subject to the  
9 tax herein, and a part of the property would be excluded from  
10 the tax under subparagraph (a)1., subparagraph (a)2., ~~or~~  
11 subparagraph (a)3., or subparagraph (a)5., the department  
12 shall determine, from the lease or license and such other  
13 information as may be available, that portion of the total  
14 rental charge which is exempt from the tax imposed by this  
15 section. The portion of the premises leased or rented by a  
16 for-profit entity providing a residential facility for the  
17 aged will be exempt on the basis of a pro rata portion  
18 calculated by combining the square footage of the areas used  
19 for residential units by the aged and for the care of such  
20 residents and dividing the resultant sum by the total square  
21 footage of the rented premises. For purposes of this section,  
22 the term "residential facility for the aged" means a facility  
23 that is licensed or certified in whole or in part under  
24 chapter 400 or chapter 651; or that provides residences to the  
25 elderly and is financed by a mortgage or loan made or insured  
26 by the United States Department of Housing and Urban  
27 Development under s. 202, s. 202 with a s. 8 subsidy, s.  
28 221(d)(3) or (4), s. 232, or s. 236 of the National Housing  
29 Act; or other such similar facility that provides residences  
30 primarily for the elderly.

31

1           (c) For the exercise of such privilege, a ~~as~~ tax is  
2 levied in an amount equal to 6 percent of and on the total  
3 rent or license fee charged for such real property by the  
4 person charging or collecting the rental or license fee. The  
5 total rent or license fee charged for such real property shall  
6 include payments for the granting of a privilege to use or  
7 occupy real property for any purpose and shall include base  
8 rent, percentage rents, or similar charges. Such charges shall  
9 be included in the total rent or license fee subject to tax  
10 under this section whether or not they can be attributed to  
11 the ability of the lessor's or licensor's property as used or  
12 operated to attract customers. Payments for intrinsically  
13 valuable personal property such as franchises, trademarks,  
14 service marks, logos, or patents are not subject to tax under  
15 this section. In the case of a contractual arrangement that  
16 provides for both payments taxable as total rent or license  
17 fee and payments not subject to tax, the tax shall be based on  
18 a reasonable allocation of such payments and shall not apply  
19 to that portion which is for the nontaxable payments.

20           (d) When the rental or license fee of any such real  
21 property is paid by way of property, goods, wares,  
22 merchandise, services, or other thing of value, the tax shall  
23 be at the rate of 6 percent of the value of the property,  
24 goods, wares, merchandise, services, or other thing of value.

25           Section 53. The taxes imposed by sections 203.01,  
26 202.12, and 202.19, Florida Statutes, on communications  
27 services shall be applied in accordance with chapter 202,  
28 Florida Statutes, as created by this act, to communications  
29 services reflected on bills dated on or after January 1, 2002.

30           Section 54. Effective upon this act becoming a law,  
31 the sum of \$189,000 is appropriated from the General Revenue

1 Fund to the Department of Revenue in fiscal year 2000-2001 to  
2 implement the provisions of this act.

3           Section 55. The sum of \$1,327,195 is appropriated from  
4 the General Revenue Fund to the Department of Revenue and 22  
5 full-time equivalent positions are authorized to implement the  
6 provisions of this act.

7           Section 56. Except as otherwise provided in this act,  
8 this act shall take effect July 1, 2000.

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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   CS for SB 1338

4 The Committee Substitute for CS/SB 1338:

- 5 - Clarifies various definitions;
- 6 - Provides for the calculation of the rate for direct  
7 broadcast satellite;
- 8 - Clarifies billing, collection, and remittance provisions  
9 and describes reporting requirements to the Department  
10 of Revenue;
- 11 - Provides that a local government that does not receive  
12 the expected amount of revenue in the first year of the  
13 tax can enact an emergency ordinance to hold itself  
14 harmless against the shortfall;
- 15 - Clarifies the definition of "replaced revenue sources";
- 16 - Provides for a conversion rate procedure;
- 17 - Provides administrative procedures for certification of  
18 databases;
- 19 - Clarifies the Department of Revenue's rule-making  
20 authority with respect to the communications services  
21 tax;
- 22 - Clarifies that the Department of Revenue can audit  
23 either a dealer or a purchaser;
- 24 - Explains the state's intent to treat all providers the  
25 same regarding the payment of permit fees;
- 26 - Clarifies that \$100 is a cap and that permit fees must  
27 relate to actual costs;
- 28 - Provides that Internet access, electronic mail, and  
29 online services are not taxed;
- 30 - Clarifies that both state-level taxes are to be applied  
31 toward the \$100,000 threshold for the large user  
exemption;
- Reduces the allowable deduction for Department of  
Revenue costs to administer the local taxes from 2  
percent to 1 percent;
- Adds provisions directing a study of in-kind  
contributions by cable operators and their valuation in  
calculating replacement revenues for the local taxes;
- Provides that municipalities and counties retain the  
authority to negotiate terms and conditions of cable  
franchise agreements except regarding franchise fees,  
which are replaced with the new local taxes;

- 1 - Prescribes the treatment of telephone franchise fees  
2 under older franchises in calculating local tax rates;
- 3 - Specifies the rate adjustments that result from a local  
4 government's decision whether to charge permit fees;
- 5 - Clarifies that the replaced revenues used in calculating  
6 local rates do not include permit fees for cities that  
7 elect to charge permit fees separately; and
- 8 - Clarifies effective dates as they relate to local  
9 jurisdictions electing whether to continue collecting  
10 permit fees.
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