

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 October
7 1, 2001; providing for imposition of the tax on
8 the sales price of communications services, the
9 cost of operating a substitute communications
10 system, and the sales price of direct-to-home
11 satellite service; providing for computation of
12 tax rates by the Revenue Estimating Conference
13 and for approval by the Legislature; providing
14 for collection and remittance of the taxes on
15 communications services imposed by chapters 202
16 and 203, F.S., on a combined basis; providing a
17 limitation on such taxes on certain interstate
18 communications services; requiring the
19 purchaser to obtain a direct-pay permit;
20 providing exemptions for certain sales to
21 residential households, to governmental
22 entities, and to certain religious or
23 educational organizations; providing
24 legislative intent with respect to future
25 findings of invalidity, exemptions, and local
26 government franchise fees; providing for
27 credits for taxes paid in other jurisdictions;
28 providing special provisions for users of
29 substitute communications systems; providing
30 for payment and collection of the taxes on
31 communications; providing for sales for resale;

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

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

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

1 the department regarding implementation of
2 communications services taxes; amending s.
3 72.011, F.S.; authorizing taxpayers to contest
4 assessments or denials of refund under ch. 202,
5 F.S., in circuit court or pursuant to the
6 Administrative Procedure Act; amending s.
7 213.05, F.S.; including ch. 202, F.S., within
8 the revenue laws for which the department has
9 responsibility; amending s. 212.20, F.S.;
10 providing for distribution of portions of the
11 communications services tax; amending s.
12 166.231, F.S.; providing that the exemption
13 from the municipal public service tax for
14 telecommunications services for resale includes
15 resale by way of a prepaid calling arrangement;
16 providing that taxes not collected thereon
17 prior to July 1, 2000, need not be paid;
18 repealing s. 166.231(9), F.S., which provides
19 for levy of the municipal public service tax on
20 telecommunication services, effective October
21 1, 2001; conforming language; amending s.
22 166.233, F.S.; conforming language; amending s.
23 203.01, F.S.; providing that the exemption from
24 the gross receipts tax for telecommunication
25 services for resale includes resale by way of a
26 prepaid calling arrangement; providing for a
27 gross receipts tax on communications services,
28 effective October 1, 2001, to be applied
29 pursuant to ch. 202, F.S.; providing for
30 computation of the tax rate by the Revenue
31 Estimating Conference and for approval by the

1 Legislature; amending s. 203.012, F.S.;
2 removing and revising definitions relating to
3 the gross receipts tax, to conform; repealing
4 s. 203.013, F.S., which provides for payment of
5 the gross receipts tax on interstate private
6 communications services, and ss. 203.60,
7 203.61, 203.62, and 203.63, F.S., which provide
8 for payment of the gross receipts tax on other
9 interstate and international telecommunication
10 services, to conform; amending s. 212.05, F.S.;
11 providing that the sale or recharge of a
12 prepaid calling arrangement shall be treated as
13 a sale of tangible personal property under ch.
14 212, F.S.; providing that the sale of
15 telecommunication services to a person who
16 furnishes such services pursuant to such an
17 arrangement is a sale for resale; providing
18 that taxes not collected thereon prior to July
19 1, 2000, need not be paid; removing the
20 imposition of tax under ch. 212, F.S., on
21 telecommunication service, telegraph messages,
22 long distance telephone calls, and television
23 system program service, effective October 1,
24 2001; amending s. 212.054, F.S.; providing that
25 charges for prepaid calling arrangements are
26 subject to discretionary sales surtaxes;
27 conforming language; amending s. 337.401, F.S.;
28 providing requirements with respect to the
29 authority of counties and municipalities to
30 regulate the placement of telecommunications
31 facilities in the public roads or

1 rights-of-way; requiring certain notice to the
2 Secretary of State; revising such requirements,
3 effective October 1, 2001, and providing for
4 application to providers of communications
5 services; requiring municipalities and charter
6 counties and noncharter counties to choose
7 whether or not to impose permit fees on such
8 providers and providing requirements with
9 respect to such fees; providing effect of such
10 choice on the rate of the local communications
11 services tax under ch. 202, F.S., for the local
12 government; providing that the authority of
13 municipalities and counties to require
14 franchise fees from such providers is preempted
15 by the state; authorizing municipalities and
16 counties to request certain in-kind
17 requirements, institutional networks, and
18 contributions from cable service providers;
19 providing for a legislative study with respect
20 to state policy regarding such in-kind
21 requirements and contributions; amending s.
22 212.031, F.S.; revising the exemption from the
23 tax on the lease or rental of or license in
24 real property for streets or rights-of-way and
25 improvements located thereon used by a utility
26 or cable television company; including such
27 exemption within provisions relating to leases
28 involving multiple use of property; providing
29 status of revenues received under the act with
30 respect to taxes or fees previously imposed and
31 bonded indebtedness; providing appropriations

1 and authorizing positions; repealing the
2 following, effective June 30, 2001: ss.
3 202.10, 202.11, 202.20, 202.26, and 202.37,
4 F.S., and ss. 3-11, 13-17, and 19-28 of the
5 act, which constitute the creation of ch. 202,
6 F.S., effective October 1, 2001, to provide for
7 the taxation of the sale of communications
8 services; ss. 33-35 of the act, which amend ss.
9 72.011, 213.05, and 212.20, F.S., to provide
10 related administrative provisions effective
11 October 1, 2001; ss. 38 and 39 of the act,
12 which repeal s. 166.231(9), F.S., and amend ss.
13 166.231 and 166.233, F.S., to remove levy of
14 the municipal public service tax on
15 telecommunication services effective October 1,
16 2001; ss. 41-43 of the act, which amend ss.
17 203.01 and 203.012, F.S., and repeal ss.
18 203.013 and 203.60-203.63, F.S., to provide for
19 a gross receipts tax on communications
20 services, effective October 1, 2001, to be
21 applied pursuant to ch. 202, F.S.; ss. 48 and
22 49 of the act, which amend ss. 212.05 and
23 212.054, F.S., to remove the imposition of tax
24 under ch. 212, F.S., on telecommunication
25 service effective October 1, 2001; s. 51 of the
26 act, which amends s. 337.401, F.S., relating to
27 the authority of counties and municipalities to
28 regulate the placement of telecommunications
29 facilities in roads and rights-of-way and to
30 impose permit fees and franchise fees,
31 effective October 1, 2001; and ss. 54 and 55 of

1 the act, which provide for application of
2 amendments made by the act; abolishing, on June
3 30, 2001, an advisory committee appointed
4 pursuant to the act; amending s. 337.401, F.S.,
5 effective June 30, 2001, to remove amendments
6 made by the act which take effect January 1,
7 2001; providing effective dates.

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9 Be It Enacted by the Legislature of the State of Florida:

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11 Section 1. Section 202.10, Florida Statutes, is
12 created to read:

13 202.10 Short title.--This chapter may be cited as the
14 "Communications Services Tax Simplification Law."

15 Section 2. Section 202.11, Florida Statutes, is
16 created to read:

17 202.11 Definitions.--As used in this chapter:

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

28 (2) "Cable service" means the transmission of video,
29 audio, or other programming service to purchasers, and the
30 purchaser interaction, if any, required for the selection or
31 use of any such programming service, regardless of whether the

1 programming is transmitted over facilities owned or operated
2 by the cable service provider or over facilities owned or
3 operated by one or more other dealers of communications
4 services. The term includes point-to-multipoint distribution
5 services by which programming is transmitted or broadcast by
6 microwave or other equipment directly to the purchaser's
7 premises, but does not include direct-to-home satellite
8 service. The term includes basic, extended, premium,
9 pay-per-view, digital, and music services.

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

18 (a) Information services.

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

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

22 (d) The sale of advertising, including, but not
23 limited to, directory advertising.

24 (e) Bad check charges.

25 (f) Late payment charges.

26 (g) Billing and collection services.

27 (h) Internet access service, electronic mail service,
28 electronic bulletin board service, or similar on-line computer
29 services.

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1 (4) "Dealer" means a person registered with the
2 department as a provider of communications services in this
3 state.

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

5 (6) "Direct-to-home satellite service" has the meaning
6 ascribed in the Communications Act of 1934, 47 U.S.C. s.
7 303(v).

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

23 (8) "Mobile communications service" means any one-way
24 or two-way radio communications service, whether identified by
25 the dealer as local, toll, long distance, or otherwise, and
26 which is carried between mobile stations or receivers and land
27 stations, or by mobile stations communicating among
28 themselves, and includes, but is not limited to, cellular
29 communications services, personal communications services,
30 paging services, specialized mobile radio services, and any
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- 1 other form of mobile one-way or two-way communications
2 service.
- 3 (9) "Person" has the meaning ascribed in s. 212.02.
- 4 (10) "Prepaid calling arrangement" means the
5 separately stated retail sale by advance payment of
6 communications services that consist exclusively of telephone
7 calls originated by using an access number, authorization
8 code, or other means that may be manually, electronically, or
9 otherwise entered, and that are sold in predetermined units or
10 dollars of which the number declines with use in a known
11 amount.
- 12 (11) "Purchaser" means the person paying for or
13 obligated to pay for communications services.
- 14 (12) "Retail sale" means the sale of communications
15 services for any purpose other than for resale or for use as a
16 component part of or for integration into communications
17 services to be resold in the ordinary course of business.
18 However, any sale for resale must comply with s. 202.16(2) and
19 the rules adopted thereunder.
- 20 (13) "Sale" means the provision of communications
21 services for a consideration.
- 22 (14) "Sales price" means the total amount charged in
23 money or other consideration by a dealer for the sale of
24 communications services in this state, including any property
25 or other services that are part of the sale.
- 26 (a) The sales price of communications services shall
27 also include, whether or not separately stated, charges for
28 any of the following:
- 29 1. Separately identified components of the charge or
30 expenses of the dealer, including, but not limited to, sales
31 taxes on goods or services purchased by the dealer, property

1 taxes, taxes measured by net income, and federal
2 universal-service fund fees.

3 2. The connection, movement, change, or termination of
4 communications services.

5 3. The detailed billing of communications services.

6 4. The sale of directory listings in connection with a
7 communications service.

8 5. Central office and custom calling features.

9 6. Voice mail and other messaging service.

10 7. Directory assistance.

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

13 1. Any excise tax, sales tax, or similar tax levied by
14 the United States or any state or local government on the
15 purchase, sale, use, or consumption of any communications
16 service, including, but not limited to, any tax imposed under
17 this chapter or chapter 203 which is permitted or required to
18 be added to the sales price of such service, if the tax is
19 stated separately.

20 2. Any fee or assessment levied by the United States
21 or any state or local government, including, but not limited
22 to, regulatory fees and emergency telephone surcharges, which
23 is required to be added to the price of such service if the
24 fee or assessment is separately stated.

25 3. Local telephone service paid for by inserting coins
26 into coin-operated communications devices available to the
27 public.

28 4. The sale or recharge of a prepaid calling
29 arrangement.

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

4 6. A dealer's internal use of communications services
5 in connection with its business of providing communications
6 services.

7 7. Charges for property or other services that are not
8 part of the sale of communications services, if such charges
9 are stated separately from the charges for communications
10 services.

11 (15) "Service address" means:

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

15 (b) In the case of all other communications services,
16 the location of the communications equipment from which
17 communications services originate or at which communications
18 services are received by the customer. If the location of such
19 equipment cannot be determined as part of the billing process,
20 as in the case of mobile communications services, paging
21 systems, maritime systems, third-number and calling-card
22 calls, and similar services, the term means the location
23 determined by the dealer based on the customer's telephone
24 number, the customer's mailing address to which bills are sent
25 by the dealer, or another street address provided by the
26 customer. However, such address must be within the licensed
27 service area of the dealer. In the case of a communications
28 service paid through a credit or payment mechanism that does
29 not relate to a service address, such as a bank, travel,
30 debit, or credit card, the service address is the address of
31 the central office, as determined by the area code and the

1 first three digits of the seven-digit originating telephone
2 number.

3 (16) "Substitute communications system" means any
4 telephone system, or other system capable of providing
5 communications services, which a person purchases, installs,
6 rents, or leases for his or her own use to provide himself or
7 herself with services used as a substitute for communications
8 services provided by a dealer of communications services.

9 (17) "Unbundled network element" means a network
10 element, as defined in 47 U.S.C. s. 153(29), to which access
11 is provided on an unbundled basis pursuant to 47 U.S.C. s.
12 251(c)(3).

13 Section 3. Effective October 1, 2001, section 202.12,
14 Florida Statutes, is created to read:

15 202.12 Sales of communications services.--The
16 Legislature finds that every person who engages in the
17 business of selling communications services at retail in this
18 state is exercising a taxable privilege. It is the intent of
19 the Legislature that the tax imposed by chapter 203 be
20 administered as provided in this chapter.

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

24 (a) At the rate calculated pursuant to section 30 of
25 this act applied to the sales price of the communications
26 service, except for direct-to-home satellite service, which:

- 27 1. Originates and terminates in this state, or
28 2. Originates or terminates in this state and is
29 charged to a service address in this state,
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1 when sold at retail, computed on each taxable sale for the
2 purpose of remitting the tax due. The gross receipts tax
3 imposed by chapter 203 shall be collected on the same taxable
4 transactions and remitted with the tax imposed by this
5 paragraph. If no tax is imposed by this paragraph by reason of
6 s. 202.125(1), the tax imposed by chapter 203 shall
7 nevertheless be collected and remitted in the manner and at
8 the time prescribed for tax collections and remittances under
9 this chapter.

10 (b) At the rate set forth in paragraph (a) on the
11 actual cost of operating a substitute communications system,
12 to be paid in accordance with s. 202.15. This paragraph does
13 not apply to the use by any dealer of his or her own
14 communications system to conduct a business of providing
15 communications services or any communications system operated
16 by a county, a municipality, the state, or any political
17 subdivision of the state. The gross receipts tax imposed by
18 chapter 203 shall be applied to the same costs, and remitted
19 with the tax imposed by this paragraph.

20 (c) At a rate to be computed by the Revenue Estimating
21 Conference and approved by the Legislature on the retail sales
22 price of any direct-to-home satellite service received in this
23 state. The rate computed by the Revenue Estimating Conference
24 shall be the sum of:

- 25 1. The rate set forth in paragraph (a); and
- 26 2. The weighted average, based on the aggregate
27 population in the respective taxing jurisdictions, of the rate
28 computed under s. 202.20(2)(a)1. for municipalities and
29 charter counties and the rate computed under such subparagraph
30 for all other counties.

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1 The proceeds of the tax imposed under this paragraph shall be
2 accounted for and distributed in accordance with s. 202.18(2).

3 The gross receipts tax imposed by chapter 203 shall be
4 collected on the same taxable transactions and remitted with
5 the tax imposed by this paragraph.

6 (2) A dealer of taxable communications services shall
7 bill, collect, and remit the taxes on communications services
8 imposed pursuant to chapter 203 and this section at a combined
9 rate that is the sum of the rate of tax on communications
10 services prescribed in chapter 203 and the applicable rate of
11 tax prescribed in this section. Each dealer subject to the tax
12 provided in paragraph (1)(b) shall also remit the taxes
13 imposed pursuant to chapter 203 and this section on a combined
14 basis. However, a dealer shall, in reporting each remittance
15 to the department, identify the portion thereof which consists
16 of taxes remitted pursuant to chapter 203. Return forms
17 prescribed by the department shall facilitate such reporting.

18 (3) Notwithstanding any law to the contrary, the
19 combined amount of taxes imposed under this section and s.
20 203.01(1)(a)2. shall not exceed \$100,000 per calendar year on
21 charges to any person for interstate communications services
22 that originate outside this state and terminate within this
23 state. This subsection applies only to holders of a
24 direct-pay permit issued under this subsection. A refund may
25 not be given for taxes paid before receiving a direct-pay
26 permit. Upon application, the department may issue a
27 direct-pay permit to the purchaser of communications services
28 authorizing such purchaser to pay tax on such services
29 directly to the department if the majority of such services
30 used by such person are for communications originating outside
31 of this state and terminating in this state. 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 taxes imposed under this
4 section and s. 203.01(1)(a)2. on such services. Tax payments
5 and returns pursuant to a direct-pay permit shall be monthly.
6 As used in this subsection, "person" means a single legal
7 entity and does not mean a group or combination of affiliated
8 entities or entities controlled by one person or group of
9 persons.

10 Section 4. Effective October 1, 2001, section 202.125,
11 Florida Statutes, is created to read:

12 202.125 Sales of communications services; specified
13 exemptions.--

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

21 (2) The sale of communications services provided to
22 the Federal Government, any agency or instrumentality of the
23 Federal Government, or any entity that is exempt from state
24 taxes under federal law is exempt from the taxes imposed or
25 administered pursuant to ss. 202.12 and 202.19.

26 (3) The sale of communications services to the state
27 or any county, municipality, or political subdivision of the
28 state when payment is made directly to the dealer by the
29 governmental entity is exempt from the taxes imposed or
30 administered pursuant to ss. 202.12 and 202.19. This exemption
31 does not inure to any transaction otherwise taxable under this

1 chapter when payment is made by a government employee by any
2 means, including, but not limited to, cash, check, or credit
3 card even when that employee is subsequently reimbursed by the
4 governmental entity.

5 (4) The sale of communications services to a religious
6 or educational organization that is exempt from federal income
7 tax under s. 501(c)(3) of the Internal Revenue Code is exempt
8 from the taxes imposed or administered pursuant to ss. 202.12
9 and 202.19.

10 Section 5. Effective October 1, 2001, section 202.13,
11 Florida Statutes, is created to read:

12 202.13 Intent.--

13 (1) If the operation or imposition of the taxes
14 imposed or administered under this chapter is declared
15 invalid, ineffective, inapplicable, unconstitutional, or void
16 for any reason, chapters 166, 203, 212, and 337, as such
17 chapters existed before January 1, 2000, shall fully apply to
18 the sale, use, or consumption of communications services. If
19 any exemption from the tax is declared invalid, ineffective,
20 inapplicable, unconstitutional, or void for any reason, such
21 declaration shall not affect the taxes imposed or administered
22 under this chapter, but such sale, use, or consumption shall
23 be subject to the taxes imposed under this chapter to the same
24 extent as if such exemption never existed.

25 (2) It is the intent of the Legislature to exempt from
26 the taxes imposed or administered pursuant to this chapter
27 only the communications services set forth in this chapter as
28 exempt from such taxes, to the extent that such exemptions are
29 in accordance with the constitutions of this state and of the
30 United States.

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

8 Section 6. Effective October 1, 2001, section 202.14,
9 Florida Statutes, is created to read:

10 202.14 Credit against tax imposed.--To prevent actual
11 multistate taxation of communications services subject to tax
12 under this chapter, any taxpayer, upon proof that such
13 taxpayer has paid a tax legally imposed by another state or
14 local jurisdiction in such other state with respect to such
15 services, shall be allowed a credit against the taxes imposed
16 under this chapter to the extent of the amount of tax paid in
17 the other state or local jurisdiction.

18 Section 7. Effective October 1, 2001, section 202.15,
19 Florida Statutes, is created to read:

20 202.15 Special rule for users of substitute
21 communications systems.--Any person who purchases, installs,
22 rents, or leases a substitute communications system must
23 register with the department and pay the taxes imposed or
24 administered pursuant to s. 202.12 annually pursuant to rules
25 prescribed by the department.

26 Section 8. Effective October 1, 2001, section 202.16,
27 Florida Statutes, is created to read:

28 202.16 Payment.--The taxes imposed or administered
29 under this chapter and chapter 203 shall be collected from all
30 dealers of taxable communications services on the sale at
31 retail in this state of communications services taxable under

1 this chapter and chapter 203. The full amount of the taxes on
2 a credit sale, installment sale, or sale made on any kind of
3 deferred payment plan is due at the moment of the transaction
4 in the same manner as a cash sale.

5 (1)(a) Except as otherwise provided in ss.
6 202.12(1)(b) and 202.15, the taxes collected under this
7 chapter and chapter 203, including any penalties or interest
8 attributable to the nonpayment of such taxes or for
9 noncompliance with this chapter or chapter 203, shall be paid
10 by the purchaser of the communications service and shall be
11 collected from such person by the dealer of communications
12 services.

13 (b) Each dealer of communications services selling
14 communications services in this state shall collect the taxes
15 imposed under this chapter and chapter 203 from the purchaser
16 of such services, and such taxes must be stated separately
17 from all other charges on the bill or invoice.

18 (2) A sale of communications services that are used as
19 a component part of or integrated into a communications
20 service or prepaid calling arrangement for resale, including,
21 but not limited to, carrier-access charges, interconnection
22 charges paid by providers of mobile communication services or
23 other communication services, charges paid by cable service
24 providers for the transmission of video or other programming
25 by another dealer of communications services, charges for the
26 sale of unbundled network elements, and any other intercompany
27 charges for the use of facilities for providing communications
28 services for resale, must be made in compliance with the rules
29 of the department. Any person who makes a sale for resale
30 which is not in compliance with these rules is liable for any
31

1 tax, penalty, and interest due for failing to comply, to be
2 calculated pursuant to s. 202.28(2)(a).

3 (3) Notwithstanding the rate of tax on the sale of
4 communications services imposed pursuant to this chapter and
5 chapter 203, the department shall prescribe by rule the tax
6 amounts and brackets applicable to each taxable sale such that
7 the tax collected results in a tax rate no less than the tax
8 rate imposed pursuant to this chapter and chapter 203.

9 (4) Each purchaser of a communications service is
10 liable for the taxes imposed under this chapter and chapter
11 203. The purchaser's liability is not extinguished until the
12 tax has been paid to the department, except that proof of
13 payment of the tax to a dealer of communications services
14 engaged in business in this state is sufficient to relieve the
15 purchaser from further liability for the tax.

16 Section 9. Effective October 1, 2001, section 202.17,
17 Florida Statutes, is created to read:

18 202.17 Registration.--

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

22 (2) A person may not engage in the business of
23 providing communications services without first obtaining a
24 certificate of registration. The failure or refusal to submit
25 an application by any person required to register, as required
26 by this section, is a misdemeanor of the first degree,
27 punishable as provided in s. 775.082 or s. 775.083. Any person
28 who fails or refuses to register shall pay an initial
29 registration fee of \$100 in lieu of the \$5 registration fee
30 prescribed under subsection (4). However, this fee increase

31

1 may be waived by the department if the failure is due to
2 reasonable cause.

3 (3)(a) An application for a certificate of
4 registration must be completed by the dealer of communications
5 services before engaging in business. The application for a
6 certificate of registration must contain the information
7 required by rule of the department.

8 (b) The department, upon receipt of a completed
9 application, shall grant to the applicant a certificate of
10 registration.

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

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

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

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

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

29 (5) Certificates of registration issued by the
30 department are not assignable.

31

1 (6) In addition to the certificate of registration,
2 the department shall provide to each newly registered dealer
3 an annual resale certificate that is valid for the remaining
4 portion of the year. The department shall provide to each
5 active dealer an annual resale certificate. As used in this
6 section, "active dealer" means a person who is registered with
7 the department and who is required to file a return at least
8 once during each applicable reporting period.

9 (7) A certificate of registration issued by the
10 department may be revoked by the department or its designated
11 agent when a dealer fails to comply with this chapter or
12 chapter 203. Before revoking a dealer's certificate of
13 registration, the department must schedule an informal
14 conference at which the dealer may present evidence regarding
15 the department's intended revocation or enter into a
16 compliance agreement with the department. The department must
17 notify the dealer of its intended action and of the time,
18 place, and date of the scheduled informal conference by
19 written notification sent by United States mail to the
20 dealer's last known address of record furnished by the dealer
21 on a form prescribed by the department. The dealer must attend
22 the informal conference and present evidence refuting the
23 department's intended revocation or enter into a compliance
24 agreement with the department which resolves the dealer's
25 failure to comply with this chapter or chapter 203. The
26 department shall issue an administrative complaint under s.
27 120.60 if the dealer fails to attend the department's informal
28 conference, fails to enter into a compliance agreement with
29 the department resolving the dealer's noncompliance with this
30 chapter, or fails to comply with the executed compliance
31 agreement.

1 Section 10. Effective October 1, 2001, section 202.18,
2 Florida Statutes, is created to read:

3 202.18 Allocation and disposition of tax
4 proceeds.--The proceeds of the communications services taxes
5 remitted under this chapter shall be treated as follows:

6 (1) The proceeds of the taxes remitted under s.
7 202.12(1)(a) and (b) shall be divided as follows:

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

12 (b) The remaining portion shall be distributed
13 according to s. 212.20(6).

14 (2) The proceeds of the taxes remitted under s.
15 202.12(1)(c) shall be divided as follows:

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

20 (b) The portion of such proceeds which is derived from
21 the rate component specified in s. 202.12(1)(c)1. shall be
22 allocated to the state and distributed pursuant to s.
23 212.20(6).

24 (c) The remaining portion of such proceeds shall be
25 allocated to the municipalities and counties in proportion to
26 the allocation of receipts from the half-cent sales tax under
27 s. 218.61 and the emergency distribution of such tax under s.
28 218.65. The department shall distribute the appropriate amount
29 to each municipality and county each month at the same time
30 that local communications services taxes are distributed
31 pursuant to subsection (3).

1 (3)(a) Notwithstanding any law to the contrary, the
2 proceeds of each local communications services tax levied by a
3 municipality or county pursuant to s. 202.19, less the
4 department's costs of administration, shall be transferred to
5 the Local Communications Services Tax Clearing Trust Fund and
6 held there to be distributed to such municipality or county.
7 However, the proceeds of any communications services tax
8 imposed pursuant to s. 202.19(5) shall be deposited and
9 disbursed in accordance with ss. 212.054 and 212.055. For
10 purposes of this section, the proceeds of any tax levied by a
11 municipality, county, or school board under s. 202.19 are all
12 funds collected and received by the department pursuant to a
13 specific levy authorized by such section, including any
14 interest and penalties attributable to the tax levy.

15 (b) The amount deducted for the costs of
16 administration may not exceed 1 percent of the total revenue
17 generated for all municipalities, counties, and school boards
18 levying a tax pursuant to s. 202.19. The amount deducted for
19 the costs of administration shall be used only for those costs
20 that are attributable to the taxes imposed pursuant to s.
21 202.19. The total cost of administration shall be prorated
22 among those jurisdictions levying the tax on the basis of the
23 amount collected for a particular jurisdiction to the total
24 amount collected for all such jurisdictions.

25 (c)1. Except as otherwise provided in this paragraph,
26 proceeds of the taxes levied pursuant to s. 202.19, less
27 amounts deducted for costs of administration in accordance
28 with paragraph (b), shall be distributed monthly to the
29 appropriate jurisdictions. The proceeds of taxes imposed
30 pursuant to s. 202.19(5) shall be distributed in the same
31

1 manner as discretionary surtaxes are distributed, in
2 accordance with ss. 212.054 and 212.055.

3 2. The department shall make any adjustments to the
4 distributions pursuant to this paragraph which are necessary
5 to reflect the proper amounts due to individual jurisdictions.

6 Section 11. Effective October 1, 2001, section 202.19,
7 Florida Statutes, is created to read:

8 202.19 Authorization to impose local communications
9 services tax.--

10 (1) The governing authority of each county and
11 municipality may, by ordinance, levy a discretionary
12 communications services tax.

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

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

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

20
21 The rate imposed by any municipality or county shall be
22 expressed in increments of one-tenth of a percent and rounded
23 up to the nearest one-tenth percent.

24 (3)(a) The maximum rates established under subsection
25 (2) reflect the rates for communications services taxes
26 imposed under this chapter which are necessary for each
27 municipality or county to raise the maximum amount of revenues
28 which it was authorized to raise prior to July 1, 2000,
29 through the imposition of taxes, charges, and fees, but that
30 it is prohibited from imposing under s. 202.24, other than the
31 discretionary surtax authorized under s. 212.055. It is the

1 legislative intent that the maximum rates for charter counties
2 be calculated by treating them as having had the same
3 authority as municipalities to impose franchise fees on
4 recurring local telecommunication service revenues prior to
5 July 1, 2000. However, the Legislature recognizes that the
6 authority of charter counties to impose such fees is in
7 dispute, and the treatment provided in this section is not an
8 expression of legislative intent that charter counties
9 actually do or do not possess such authority.

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

18 (c) This subsection does not supersede or impair the
19 right, if any, of a municipality or county to require the
20 payment of consideration or to require the payment of
21 regulatory fees or assessments by persons using or occupying
22 its roads or rights-of-way in a capacity other than that of a
23 dealer of communications services.

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

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

30

31

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

4 1. Originate or terminate in this state; and

5 2. Are charged to a service address in the
6 unincorporated area of the county.

7 (5) In addition to the communications services taxes
8 authorized by subsection (1), a discretionary sales surtax
9 that a county or school board has levied under s. 212.055 is
10 imposed as a local communications services tax under this
11 section, and the rate shall be determined in accordance with
12 s. 202.20(5). Each such tax rate shall be applied, in addition
13 to the other tax rates applied under this chapter, to
14 communications services subject to tax under s. 202.12 which:

15 (a) Originate or terminate in this state; and

16 (b) Are charged to a service address in the county.

17 (6) Notwithstanding any other provision of this
18 section, a tax imposed under this section does not apply to
19 any direct-to-home satellite service.

20 (7) Any tax imposed by a municipality, school board,
21 or county under this section also applies to the actual cost
22 of operating a substitute communications system, to be paid in
23 accordance with s. 202.15. This subsection does not apply to
24 the use by any provider of its own communications system to
25 conduct a business of providing communications services or to
26 the use of any communications system operated by a county, a
27 municipality, the state, or any political subdivision of the
28 state.

29 (8) Notwithstanding any law to the contrary, a tax
30 imposed under this section shall not exceed \$25,000 per
31 calendar year on communications services charges billed to a

1 service address located in a municipality or county imposing a
2 local communications services tax for interstate
3 communications services that originate outside this state and
4 terminate within this state. This subsection applies only to
5 holders of a direct-pay permit issued under this subsection. A
6 refund may not be given for taxes paid before receiving a
7 direct-pay permit. Upon application, the department may issue
8 a direct-pay permit to the purchaser of communications
9 services authorizing such purchaser to pay tax on such
10 services directly to the department if the majority of such
11 services used by such person are for communications
12 originating outside of this state and terminating in this
13 state. Any dealer of communications services furnishing
14 communications services to the holder of a valid direct-pay
15 permit is relieved of the obligation to collect and remit the
16 tax on such services. Tax payments and returns pursuant to a
17 direct-pay permit shall be monthly. As used in this
18 subsection, "person" means a single legal entity and does not
19 mean a group or combination of affiliated entities or entities
20 controlled by one person or group of persons.

21 (9) A municipality or county that imposes a tax under
22 subsection (1) may use the revenues raised by such tax for any
23 public purpose, including, but not limited to, pledging such
24 revenues for the repayment of current or future bonded
25 indebtedness. Revenues raised by a tax imposed under
26 subsection (5) shall be used for the same purposes as the
27 underlying discretionary sales surtax imposed by the county or
28 school board under s. 212.055.

29 (10) Notwithstanding any provision of law to the
30 contrary, the exemption set forth in s. 202.125(1) shall not
31

1 apply to a tax imposed by a municipality, school board, or
2 county pursuant to subsection (4) or subsection (5).

3 (11) To the extent that a provider of communications
4 services is required to pay a tax, charge, or other fee under
5 any franchise agreement or ordinance with respect to the
6 services or revenues that are also subject to the tax imposed
7 by this section, such provider is entitled to a credit against
8 the amount payable to the state pursuant to this section in
9 the amount of such tax, charge, or fee with respect to such
10 services or revenues.

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

13 202.20 Local communications services tax rates.--

14 (1)(a) On or before December 31, 2000, the Revenue
15 Estimating Conference shall compute for each municipality and
16 county the rate of local communications services tax which
17 would be required to be levied under s. 202.19(1) in order for
18 such local taxing jurisdiction to raise in calendar year 1999,
19 through the imposition of a local communications services tax,
20 revenues equal to the sum of:

21 1. The amount of revenues estimated to have been
22 received in calendar year 1999 based on the revenues that were
23 actually received from the replaced revenue sources in the
24 fiscal year ending September 30, 1999, adjusted to reflect the
25 growth reasonably estimated to have occurred in the final
26 quarter of calendar year 1999; and

27 2. An amount representing the revenues the
28 jurisdiction would have received from the replaced revenue
29 sources during the month immediately preceding the month in
30 which local taxing jurisdictions receive their first
31 distributions of revenues under this chapter.

1
2 In computing the amounts in subparagraphs 1. and 2., the
3 Revenue Estimating Conference shall consider, to the maximum
4 extent practicable, changes in local replaced revenues, other
5 than changes due to normal growth, and shall adjust the
6 amounts in subparagraphs 1. and 2. accordingly.

7 (b) The rates computed by the Revenue Estimating
8 Conference shall be presented to the Legislature for review
9 and approval during the 2001 Regular Session. The rates
10 approved by the Legislature under this subsection shall be
11 effective in the respective local taxing jurisdictions on
12 October 1, 2001, without any action being taken by the
13 governing authority or voters of such local taxing
14 jurisdictions. The rate computed and approved pursuant to this
15 subsection shall be reduced on October 1, 2002, by that
16 portion of the rate which was necessary to recoup the 1 month
17 of foregone revenues addressed in subparagraph (a)2.

18 (c) With respect to any local taxing jurisdiction, if,
19 for the periods ending December 31, 2001, March 31, 2002, June
20 30, 2002, or September 30, 2002, the revenues received by that
21 local government from the local communications services tax
22 imposed under s. 202.19(1) are less than the revenues received
23 from the replaced revenue sources for the corresponding
24 2000-2001 period; plus reasonably anticipated growth in such
25 revenues over the preceding 1-year period, based on the
26 average growth of such revenues over the immediately preceding
27 5-year period; plus an amount representing the revenues from
28 the replaced revenue sources for the 1-month period that the
29 local taxing jurisdiction was required to forego, the
30 governing authority may adjust the rate of the local
31 communications services tax upward to the extent necessary to

1 generate the entire shortfall in revenues within 1 year after
2 the rate adjustment and by an amount necessary to generate the
3 expected amount of revenue on an ongoing basis. The adjustment
4 may be made by emergency ordinance and may be made
5 notwithstanding the maximum rate established under subsection
6 (2) and notwithstanding any schedules or timeframes or any
7 other limitations contained in this chapter. The emergency
8 ordinance shall specify an effective date for the adjusted
9 rate, which shall be no less than 90 days after the date of
10 adoption of the ordinance. At the end of that year, the local
11 governing authority shall, as soon as is consistent with s.
12 202.21, reduce the rate by that portion of the emergency rate
13 which was necessary to recoup the amount of revenues not
14 received prior to the implementation of the emergency rate.

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

20 1. A single maximum rate shall apply to all
21 municipalities and charter counties and another single maximum
22 rate shall apply to all other counties.

23 2. Each respective maximum rate, when applied to the
24 services taxed pursuant to this chapter, shall be calculated
25 to produce the revenues which could have been generated from
26 the replaced revenue sources, assuming that all local taxing
27 jurisdictions had imposed every replaced revenue source in the
28 manner and at the rate that would have produced the greatest
29 amount of revenues.

30 (b) The rates computed by the Revenue Estimating
31 Conference shall be presented to the Legislature for review

1 and approval during the 2001 Regular Session. The rates
2 approved by the Legislature pursuant to this subsection shall
3 be the maximum rates for purposes of s. 202.19(1).

4 (3)(a) Each person who provides communications
5 services shall include as part of the August 2000 return due
6 pursuant to chapter 212 on or before September 20, 2000, the
7 information set forth in this paragraph, in a format
8 prescribed by the department. Returns shall contain data for
9 calendar year 1999 that may include, but are not limited to,
10 remittances of replaced revenue sources for each local taxing
11 jurisdiction and an estimate of the revenue from
12 communications services that will be taxable pursuant to this
13 chapter for each local taxing jurisdiction. Such data may also
14 include, on an aggregated statewide basis, each person's
15 statewide sales taxable under chapter 203, taxable sales under
16 s. 212.05(1)(e), and estimates for sales exempt under s.
17 212.08(7)(j) and exempt sales to governmental and other exempt
18 entities under chapter 212.

19 (b) All information furnished to the department under
20 this subsection shall be available to all local taxing
21 jurisdictions. Such taxpayer information shall remain subject
22 to s. 213.053. Such data may not be disclosed or used by local
23 taxing jurisdictions for any purpose other than to review the
24 validity of data and the calculations made pursuant to this
25 subsection.

26 (c) For each replaced revenue source, each county and
27 each municipality shall provide the following data to the
28 Department of Revenue on or before September 30, 2000:

- 29 1. The rate of the levy for calendar year 1999.
30 2. The amount of revenues received during fiscal year
31 1998-1999 and, if known, the 1999 calendar year.

1 3. A description of the revenue base or taxable
2 services.

3 4. The name and federal employer identification number
4 of each taxpayer.

5 5. For the purpose of assisting the Revenue Estimating
6 Conference in the computations required by this section, any
7 other relevant information, including, but not limited to,
8 changes in the rate of replaced revenues or imposition of
9 additional replaced revenues subsequent to September 30, 1999.

10 (d) The department shall provide technical assistance
11 to the Revenue Estimating Conference and compile and analyze
12 the information submitted pursuant to this subsection in the
13 manner requested by the Revenue Estimating Conference.

14 (4) Except as otherwise provided in this subsection,
15 "replaced revenue sources," as used in this section, means the
16 following taxes, charges, fees, or other impositions to the
17 extent that the respective local taxing jurisdictions were
18 authorized to impose them prior to July 1, 2000.

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

21 1. The public service tax on telecommunications
22 authorized by s. 166.231(9).

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

25 3. The public service tax on prepaid calling
26 arrangements.

27 4. Franchise fees on dealers of communications
28 services which use the public roads or rights-of-way, up to
29 the limit set forth in s. 337.401. For purposes of calculating
30 rates under this section, it is the legislative intent that
31 charter counties be treated as having had the same authority

1 as municipalities to impose franchise fees on recurring local
2 telecommunication service revenues prior to July 1, 2000.
3 However, the Legislature recognizes that the authority of
4 charter counties to impose such fees is in dispute, and the
5 treatment provided in this section is not an expression of
6 legislative intent that charter counties actually do or do not
7 possess such authority.

8 5. Actual permit fees relating to placing or
9 maintaining facilities in or on public roads or rights-of-way,
10 collected from providers of long distance, cable, and mobile
11 communications services for the fiscal year ending September
12 30, 1999; however, if a municipality or charter county elects
13 the option to charge permit fees pursuant to s.
14 337.401(3)(c)1.a., such fees shall not be included as a
15 replaced revenue source.

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

19 (5) For any county or school board that levies a
20 discretionary surtax under s. 212.055, the rate of such tax
21 shall be multiplied by a factor to determine the applicable
22 rate of tax under s. 202.19(5). The Revenue Estimating
23 Conference shall compute the factor on or before December 31,
24 2000. The factor shall be calculated such that any rate
25 applied under s. 202.19(5) will produce substantially the same
26 tax revenues as the corresponding rate levied on
27 telecommunication services under s. 212.055 during the year
28 ending September 30, 1999. The factor shall be calculated to
29 three decimal places, and the tax rates calculated by applying
30 the factor for purposes of s. 202.19(5) shall be rounded up to
31 the nearest one-tenth percent. The factor shall be presented

1 to the Legislature for review and approval during the 2001
2 Regular Session.

3 (6) For purposes of calculating the appropriate value
4 of the replaced revenue under subparagraph (4)(a)2. and
5 paragraph (4)(b), and in conjunction with the study required
6 by this act, the Revenue Estimating Conference may include in
7 its computation any adjustment necessary to include the value
8 of any in-kind requirements, institutional networks, and
9 contributions for, or in support of, the use or construction
10 of public, educational, or governmental access facilities
11 allowed under federal law.

12 (7)(a) The provisions of this subsection shall apply
13 only with respect to the initial tax rate of a local taxing
14 jurisdiction which on October 1, 2001, is entitled to receive
15 from any dealer of communications services fees in excess of
16 the applicable limitation set forth in s. 337.401, as such
17 section existed prior to the effective date of this section,
18 pursuant to an agreement with such dealer of communications
19 services in effect on such date.

20 (b) Immediately upon the expiration of an agreement
21 described in paragraph (a), the rate determined under
22 subsection (1), as it applies to such local taxing
23 jurisdiction, shall automatically be reduced by the portion of
24 such rate representing the difference between the fees
25 actually received by the taxing jurisdiction pursuant to the
26 agreement described in paragraph (a) for the fiscal year
27 ending September 30, 1999, and the fees that such jurisdiction
28 would have received for such period under the applicable
29 limitation set forth in s. 337.401, as such section existed
30 prior to the effective date of this section.

31

1 Section 13. Effective October 1, 2001, section 202.21,
2 Florida Statutes, is created to read:

3 202.21 Effective dates; procedures for informing
4 dealers of communications services of tax levies and rate
5 changes.--Any adoption, repeal, or change in the rate of a
6 local communications services tax imposed under s. 202.19 is
7 effective with respect to taxable services included on bills
8 that are dated on or after the January 1 subsequent to such
9 adoption, repeal, or change. A municipality or county
10 adopting, repealing, or changing the rate of such tax must
11 notify the department of the adoption, repeal, or change by
12 September 1 immediately preceding such January 1. Notification
13 must be furnished on a form prescribed by the department and
14 must specify the rate of tax; the effective date of the
15 adoption, repeal, or change thereof; and the name, mailing
16 address, and telephone number of a person designated by the
17 municipality or county to respond to inquiries concerning the
18 tax. The department shall provide notice of such adoption,
19 repeal, or change to all affected dealers of communications
20 services at least 90 days before the effective date of the
21 tax. Any local government that adjusts the rate of its local
22 communications services tax by emergency ordinance pursuant to
23 s. 202.20(1)(c) shall notify the department of the new tax
24 rate immediately upon its adoption. The department shall
25 provide written notice of the adoption of the new rate to all
26 affected dealers within 30 days after receiving such notice.
27 In any notice to providers or publication of local tax rates
28 for purposes of this chapter, the department shall express the
29 rate for a municipality or charter county as the sum of the
30 tax rates levied within such jurisdiction pursuant to s.
31 202.19(2)(a) and (5), and shall express the rate for any other

1 county as the sum of the tax rates levied pursuant to s.
2 202.19(2)(b) and (5). The department is not liable for any
3 loss of or decrease in revenue by reason of any error,
4 omission, or untimely action that results in the nonpayment of
5 a tax imposed under s. 202.19.

6 Section 14. Effective October 1, 2001, section 202.22,
7 Florida Statutes, is created to read:

8 202.22 Determination of local tax situs.--

9 (1) A dealer of communications services who is
10 obligated to collect and remit a local communications services
11 tax imposed under s. 202.19 shall be held harmless from any
12 liability, including tax, interest, and penalties, which would
13 otherwise be due solely as a result of an assignment of a
14 service address to an incorrect local taxing jurisdiction, if
15 the dealer of communications services exercises due diligence
16 in applying one or more of the following methods for
17 determining the local taxing jurisdiction in which a service
18 address is located:

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

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

24 (c) Employing enhanced zip codes to assign each street
25 address, address range, post office box, or post office box
26 range in the dealer's service area to a specific local taxing
27 jurisdiction. If an enhanced zip code overlaps boundaries of
28 municipalities or counties, or if an enhanced zip code cannot
29 be assigned to the service address because the service address
30 is in a rural area or a location without postal delivery, the
31 dealer of communications services or its database vendor shall

1 assign the affected service addresses to one specific local
2 taxing jurisdiction within such zip code based on a reasonable
3 methodology. A methodology satisfies this paragraph if the
4 information used to assign service addresses is obtained by
5 the dealer or its database vendor from:

6 1. A database provided by the department;

7 2. A database certified by the department under
8 subsection (3);

9 3. Responsible representatives of the relevant local
10 taxing jurisdictions; or

11 4. The United States Census Bureau or the United
12 States Postal Service.

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

17 (2)(a) The department shall, subject to legislative
18 appropriation, create as soon as practical and feasible, and
19 thereafter maintain, an electronic database that gives due and
20 proper regard to any format that is approved by the American
21 National Standards Institute's Accredited Standards Committee
22 X12 and that designates for each street address, address
23 range, post office box, or post office box range in the state,
24 including any multiple postal street addresses applicable to
25 one street location, the local taxing jurisdiction in which
26 the street address, address range, post office box, or post
27 office box range is located and the appropriate code for each
28 such local taxing jurisdiction, identified by one nationwide
29 standard numeric code. The nationwide standard numeric code
30 must contain the same number of numeric digits, and each
31 digit, or combination of digits, must refer to the same level

1 of taxing jurisdiction throughout the United States using a
2 format similar to FIPS 55-3 or other appropriate standard
3 approved by the Federation of Tax Administrators and the
4 Multistate Tax Commission. Each address or address range or
5 post office box or post office box range must be provided in
6 standard postal format, including the street number, street
7 number range, street name, post office box number, post office
8 box range, and zip code. The department shall provide notice
9 of the availability of the database, and any subsequent
10 revision thereof, by publication in the Florida Administrative
11 Weekly.

12 (b)1. Each local taxing jurisdiction shall furnish to
13 the department all information needed to create and update the
14 electronic database, including changes in service addresses,
15 annexations, incorporations, reorganizations, and any other
16 changes in jurisdictional boundaries. The information
17 furnished to the department must specify an effective date,
18 which must be the next ensuing January 1 or July 1, and such
19 information must be furnished to the department at least 120
20 days prior to the effective date. However, the requirement
21 that counties submit information pursuant to this paragraph
22 shall be subject to appropriation.

23 2. The department shall update the electronic database
24 in accordance with the information furnished by local taxing
25 jurisdictions under subparagraph 1. Each update must specify
26 the effective date as the next ensuing January 1 or July 1 and
27 must be posted by the department on a website not less than 90
28 days prior to the effective date. The department shall also
29 furnish the update on magnetic or electronic media to any
30 dealer of communications services or vendor who requests the
31 update on such media. However, the department may collect a

1 fee from the dealer of communications services which does not
2 exceed the actual cost of furnishing the update on magnetic or
3 electronic media.

4 3. Each update must identify the additions, deletions,
5 and other changes to the preceding version of the database.

6 Each dealer of communications services shall collect and remit
7 local communications services taxes imposed under this chapter
8 only for those service addresses that are contained in the
9 database and for which all of the elements required by this
10 subsection are included in the database.

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

14 (a) The database must assign street addresses, address
15 ranges, post office boxes, or post office box ranges to the
16 proper jurisdiction with an overall accuracy rate of 95
17 percent at a 95 percent level of confidence, as determined
18 through a statistically reliable sample. The accuracy must be
19 measured based on the entire state or, if the service area of
20 the dealer does not encompass the entire state, based on the
21 dealer's entire service area.

22 (b) Upon receipt of an application for certification
23 or recertification of a database, the department shall examine
24 the application and, within 90 days after receipt, notify the
25 applicant of any apparent errors or omissions and request any
26 additional information, conduct any inspection, or perform any
27 testing determined necessary. The applicant shall designate an
28 individual responsible for providing access to all records,
29 facilities, and processes the department determines are
30 reasonably necessary to review and make a determination
31

1 regarding the application. Such access must be provided within
2 10 working days after notification.

3 (c) The application must be in the form prescribed by
4 rule and must include the applicant's name, federal employer
5 identification number, mailing address, business address, and
6 any other information required by the department. The
7 application must identify, among other elements required by
8 the department, the applicant's proposal for testing the
9 database.

10 (d) Each application for certification must be
11 approved or denied upon written notice within 180 days after
12 receipt of a completed application. The notice must specify
13 the grounds for denial, inform the applicant of any remedy
14 that is available, and indicate the procedure that must be
15 followed. Filing of a petition under chapter 120 does not
16 preclude the department from certifying the database upon a
17 demonstration that the deficiencies have been corrected.

18 (e) Certification or recertification of a database
19 under this subsection is effective from the date of the
20 department's notice approving the application until the
21 expiration of 3 or 4 years following such date, as set forth
22 in the notice, except as provided in paragraph (f).

23 (f) An application for recertification of a database
24 must be received by the department not more than 3 years after
25 the date of any prior certification. The application and
26 procedures relating thereto shall be governed by this
27 subsection, except as otherwise provided in this paragraph.
28 When an application for recertification has been timely
29 submitted, the existing certification shall not expire but
30 shall remain effective until the application has received
31 final action by the department, or if the application is

1 denied, until the denial is no longer subject to
2 administrative or judicial review or such later date as may be
3 fixed by order of the reviewing court.

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

8 (b) Notwithstanding any law to the contrary, a dealer
9 of communications services is exercising due diligence in
10 applying one or more of the methods set forth in subsection
11 (1) if the dealer:

12 1. Expends reasonable resources to accurately and
13 reliably implement such method. However, the employment of
14 enhanced zip codes pursuant to paragraph (1)(c) satisfies the
15 requirements of this subparagraph; and

16 2. Maintains adequate internal controls in assigning
17 street addresses, address ranges, post offices boxes, and post
18 office box ranges to taxing jurisdictions. Internal controls
19 are adequate if the dealer of communications services:

20 a. Maintains and follows procedures to obtain and
21 implement periodic and consistent updates to the database; and

22 b. Corrects errors in the assignments of service
23 addresses to local taxing jurisdictions within 120 days after
24 the dealer discovers such errors.

25 (5) If a dealer of communications services does not
26 use one or more of the methods specified in subsection (1) for
27 determining the local taxing jurisdiction in which a service
28 address is located, the dealer of communications services may
29 be held liable to the department for any tax, including
30 interest and penalties, which is due as a result of assigning
31 the service address to an incorrect local taxing jurisdiction.

1 However, the dealer of communications services is not liable
2 for any tax, interest, or penalty to the extent that such
3 amount was collected and remitted by the dealer of
4 communications services with respect to a tax imposed by
5 another local taxing jurisdiction. Upon determining that an
6 amount was collected and remitted by a dealer of
7 communications services with respect to a tax imposed by
8 another local taxing jurisdiction, the department shall adjust
9 the respective amounts of the proceeds paid to each such
10 taxing jurisdiction under s. 202.18 in the month immediately
11 following such determination.

12 (6)(a) Pursuant to rules adopted by the department,
13 each dealer of communications services must notify the
14 department of the methods it intends to employ for determining
15 the local taxing jurisdiction in which service addresses are
16 located.

17 (b) Notwithstanding s. 202.28, if a dealer of
18 communications services employs a method of assigning service
19 addresses other than as set forth in paragraph (1)(a), (b), or
20 (c), the deduction allowed to the dealer of communications
21 services as compensation under s. 202.28 shall be 0.25 percent
22 of the tax due and accounted for and remitted to the
23 department.

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

26 Section 15. Effective October 1, 2001, section 202.23,
27 Florida Statutes, is created to read:

28 202.23 Procedure on purchaser's request for refund or
29 credit of communications services taxes.--

30 (1) Notwithstanding any other law, a purchaser seeking
31 a refund of or credit for a tax collected by a dealer under

1 this chapter must, within 3 years following collection of the
2 tax from the purchaser, submit a written request for the
3 refund or credit to the dealer in accordance with this
4 section. A request shall not be granted unless the amount
5 claimed was collected from the purchaser and was not due to
6 the state or to any local taxing jurisdiction.

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

9 1. The dealer charged and collected the tax with
10 respect to a transaction or charge that was not subject to the
11 communications services taxes imposed by this chapter or
12 chapter 203, or applied a tax rate in excess of the lawful
13 rate.

14 2. The purchaser or the transaction was exempt or
15 immune from such taxes.

16 3. The purchaser was assigned to the incorrect local
17 taxing jurisdiction for purposes of the taxes authorized in s.
18 202.19.

19 4. The purchaser paid the tax in error.

20 (b) A purchaser's request for a refund or credit must
21 be signed by the purchaser and is complete for purposes of
22 this section and the limitation period if it states the
23 purchaser's name, mailing address, account number, the tax
24 amounts claimed, the specific months during which those
25 amounts were collected, and the reason for the purchaser's
26 claim that such amounts were not due to the state or to any
27 local taxing jurisdiction. If the reason for the request is an
28 exemption or immunity or a claim that the purchaser was
29 assigned to the incorrect local taxing jurisdiction for
30 purposes of a tax imposed under s. 202.19, a completed request
31 must also include any additional information the department

1 prescribes by rule to facilitate verification of the
2 purchaser's eligibility for exemption or immunity or to
3 facilitate verification of the purchaser's service address.
4 Upon receipt of a completed request, the dealer shall
5 ascertain whether it collected the tax claimed from the
6 purchaser and whether the request is timely.

7 (c) Within 30 days following receipt of a completed
8 request, the dealer shall determine whether any portion of the
9 tax was collected solely as the result of an error of the
10 dealer or the purchaser or solely as the result of a
11 combination of errors of the dealer and the purchaser. The
12 dealer shall refund any such amount or credit the purchaser's
13 account for such amount within 45 days following such
14 determination.

15 (d) With respect to all amounts timely claimed which
16 the dealer collected from the purchaser and which the dealer
17 has not determined to be subject to refund or credit pursuant
18 to paragraph (c), the dealer shall, within 30 days following
19 receipt of the purchaser's completed request for refund or
20 credit, provide a copy of the request to the department. If
21 the reason for the purchaser's request is described in
22 subparagraph (a)1. or 3., the dealer shall contemporaneously
23 furnish to the department an identification of the charges
24 included in the taxable measure and the tax rates applied to
25 the charges, or a written identification of each local
26 jurisdiction to which the purchaser was assigned and the
27 amounts collected from the purchaser and reported for each
28 such jurisdiction, as the case may be. If a purchaser's
29 request submitted to the department under this section sets
30 forth another reason for claiming a refund or credit, the
31

1 dealer shall furnish to the department information to
2 facilitate the department's evaluation of the request.

3 (e) Within 90 days following receipt of the
4 purchaser's request from the dealer, the department shall
5 determine whether the tax was correctly applied and notify the
6 dealer in writing of its determination. If the department
7 determines that the tax was incorrectly applied, its
8 notification to the dealer must inform the dealer how the tax
9 should have been applied, including, in the case of an
10 incorrect assignment of the purchaser to a local taxing
11 jurisdiction, an identification of the correct local taxing
12 jurisdiction and the applicable rates of tax levied by the
13 local jurisdiction. The department's notification must also
14 inform the dealer of any portion of the amount claimed which
15 was not due to the state or to any local taxing jurisdiction
16 and approve the refund or credit of such amount to the
17 purchaser. Within 45 days following receipt of notification
18 from the department, the dealer shall issue a refund or credit
19 the purchaser's account for any such amount. The dealer's
20 obligation to issue a refund or credit the purchaser's account
21 is limited to amounts approved in accordance with this
22 section.

23 (f) The dealer shall issue a written response advising
24 the purchaser of the disposition of the purchaser's request.
25 The response must specify any portion of the tax claimed which
26 is being refunded or credited to the purchaser's account and
27 the reason for denial of any portion of the request. The
28 request may be denied if the request was untimely or
29 incomplete, the dealer did not collect the tax claimed, the
30 purchaser previously received a refund of or credit for the
31 same tax, the tax collected was due, or the department failed

1 to furnish the notification required by paragraph (e). With
2 respect to any portion of the request which is granted, the
3 response must be issued at the time of the refund or credit to
4 the purchaser's account. With respect to any portion of the
5 request which is denied, the response must be issued within 45
6 days following the dealer's receipt of the request if the
7 request was not submitted to the department pursuant to
8 paragraph (d), within 45 days following the dealer's receipt
9 of the department's notification pursuant to paragraph (e) if
10 the denial is based on the department's notification, or
11 within 135 days following submission of the request to the
12 department if the dealer has not received the department's
13 notification.

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

17 (2) This section provides the sole and exclusive
18 procedure and remedy for a purchaser who claims that a dealer
19 has collected communications services taxes imposed or
20 administered under this chapter which were not due. An action
21 that arises as a result of the claimed collection of taxes
22 that were not due may not be commenced or maintained by or on
23 behalf of a purchaser against a dealer, a municipality, a
24 county, or the state unless the purchaser pleads and proves
25 that the purchaser has exhausted the procedures in subsection
26 (1) and that the defendant has failed to comply with
27 subsection (1). However, no determination by a dealer under
28 paragraph (1)(c) shall be deemed a failure to comply with
29 subsection (1) if the dealer has complied with the obligations
30 imposed on the dealer by paragraphs (1)(d), (e), and (f). In
31 any such action, it is a complete defense that the dealer, a

1 municipality, a county, or the state has refunded the taxes
2 claimed or credited the purchaser's account. In such an action
3 against a dealer, it is also a complete defense that, in
4 collecting the tax, the dealer used one or more of the methods
5 set forth in s. 202.22 for assigning the purchaser to a local
6 taxing jurisdiction. Such action is barred unless it is
7 commenced within 180 days following the date of the dealer's
8 written response under paragraph (1)(f), or within 1 year
9 following submission of the purchaser's request to the dealer
10 if the dealer failed to issue a timely written response. The
11 relief available to a purchaser as a result of collection of
12 communications services taxes that were not due is limited to
13 a refund of or credit for such taxes.

14 (3) A dealer who remitted a tax amount to the
15 department for which the dealer subsequently issued a refund
16 or credit to the purchaser pursuant to this section, and a
17 dealer who has otherwise remitted to the department a tax
18 amount with respect to communications services which was not
19 due under this chapter or chapter 203, is entitled to a refund
20 or credit of such amount from the department. The dealer may
21 apply for a refund within the period prescribed in s. 215.26,
22 or may take a credit against a tax remittance otherwise
23 required under this chapter within 3 years after the date that
24 the amount for which credit is claimed was remitted to the
25 department, or within 60 days following such provider's
26 issuance of a refund or credit to the purchaser for such
27 amount, whichever occurs later. In addition, s. 213.34 applies
28 to the offset of overpayments against deficiencies in audits
29 of dealers and purchasers.

30 (4) A dealer who takes a credit on a subsequent
31 return, as provided in subsection (3), for a tax imposed

1 pursuant to s. 202.19 which has been collected and remitted by
2 the dealer must indicate such credit in the portion of the
3 return applicable to the local taxing jurisdiction for which
4 the tax was originally reported.

5 (5) A dealer who has collected and remitted amounts
6 that were not due, as determined by the department under
7 paragraph (1)(e), who has issued a refund or credit to the
8 purchaser for such amounts, and who takes a credit or receives
9 a refund from the department for such amounts as provided in
10 subsection (3) is not subject to assessment for any of the tax
11 that was refunded or credited or for any interest or penalty
12 with respect to the tax. In addition, a dealer who modifies
13 his or her tax compliance practices to conform to a department
14 determination under paragraph (1)(e) is not subject to
15 assessment as a result of such modification, absent a
16 subsequent change in law or update to a database pursuant to
17 s. 202.22.

18 (6) A purchaser who seeks a refund of communications
19 services taxes that the purchaser paid directly to the
20 department must apply to the department for such refund in
21 accordance with s. 215.26 and may not apply to the dealer.

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

24 Section 16. Effective October 1, 2001, section 202.24,
25 Florida Statutes, is created to read:

26 202.24 Limitations on local taxes and fees imposed on
27 dealers of communications services.--

28 (1) The authority of a public body to require taxes,
29 fees, charges, or other impositions from dealers of
30 communications services for occupying its roads and
31 rights-of-way is specifically preempted by the state because

1 of unique circumstances applicable to communications services
2 dealers. Communications services may be provided by certain
3 dealers of communications services in a manner that requires
4 the use of public roads or rights-of-way while similar
5 communications services may be provided by other dealers of
6 communications services in a manner that does not require the
7 use of public roads or rights-of-way. Although similar
8 communications services may be provided by different means,
9 the state seeks to treat dealers of communications services in
10 a nondiscriminatory and competitively neutral manner.

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

13 1. Levying on or collecting from dealers or purchasers
14 of communications services any tax, charge, fee, or other
15 imposition on or with respect to the provision or purchase of
16 communications services.

17 2. Requiring any dealer of communications services to
18 enter into or extend the term of a franchise or other
19 agreement that requires the payment of a tax, charge, fee, or
20 other imposition.

21 3. Adopting or enforcing any provision of any
22 ordinance or agreement to the extent that such provision
23 obligates a dealer of communications services to charge,
24 collect, or pay to the public body a tax, charge, fee, or
25 other imposition.

26
27 Each municipality and county retains authority to negotiate
28 all terms and conditions of a cable service franchise allowed
29 by federal and state law except those terms and conditions
30 related to franchise fees and the definition of gross revenues
31 or other definitions or methodologies related to the payment

1 or assessment of franchise fees on providers of cable
2 services.

3 (b) For purposes of this subsection, a tax, charge,
4 fee, or other imposition includes any amount or in-kind
5 payment of property or services which is required by ordinance
6 or agreement to be paid or furnished to a public body by or
7 through a dealer of communications services in its capacity as
8 a dealer of communications services, regardless of whether
9 such amount or in-kind payment of property or services is:

10 1. Designated as a sales tax, excise tax, subscriber
11 charge, franchise fee, user fee, privilege fee, occupancy fee,
12 rental fee, license fee, pole fee, tower fee, base-station
13 fee, or other tax or fee;

14 2. Measured by the amounts charged or received for
15 services, regardless of whether such amount is permitted or
16 required to be separately stated on the customer's bill, by
17 the type or amount of equipment or facilities deployed, or by
18 other means; or

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

22 (c) This subsection does not apply to:

23 1. Local communications services taxes levied under
24 this chapter.

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

26 3. Occupational license taxes levied under chapter
27 205.

28 4. "911" service charges levied under chapter 365.

29 5. Amounts charged for the rental or other use of
30 property owned by a public body which is not in the public
31 rights-of-way to a dealer of communications services for any

1 purpose, including, but not limited to, the placement or
2 attachment of equipment used in the provision of
3 communications services.

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

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

10 8. Any in-kind requirements, institutional networks,
11 or contributions for, or in support of, the use or
12 construction of public, educational, or governmental access
13 facilities allowed under federal law and imposed on providers
14 of cable service pursuant to any ordinance or agreement.
15 Nothing in this subparagraph shall prohibit the ability of
16 providers of cable service to recover such expenses as allowed
17 under federal law. This subparagraph shall be reviewed by the
18 Legislature during the 2001 legislative session in conjunction
19 with the study required by this act.

20 9. Special assessments and impact fees.

21 10. Pole attachment fees that are charged by a local
22 government for attachments to utility poles owned by the local
23 government.

24 11. Utility service fees or other similar user fees
25 for utility services.

26 12. Any other generally applicable tax, fee, charge,
27 or imposition authorized by general law on July 1, 2000, which
28 is not specifically prohibited by this subsection or included
29 as a replaced revenue source in s. 202.20.

30 (3) As used in this section, "public body" has the
31 meaning ascribed in s. 1.01(8), and includes, without

1 limitation, every division, agency, and instrumentality
2 thereof; however, the term does not include the state or any
3 branch of state government.

4 Section 17. Effective October 1, 2001, section 202.25,
5 Florida Statutes, is created to read:

6 202.25 Jurisdiction; dealers not qualified to do
7 business in this state.--

8 (1) All suits brought by the department against any
9 dealer for any violation of this chapter for the purpose of
10 collecting any tax due from the dealer, including garnishment
11 proceedings, regardless of the amount, must be brought in the
12 circuit court of this state having jurisdiction of the subject
13 matter.

14 (2) Each dealer who is not qualified to do business in
15 this state shall designate with the department an agent within
16 this state for service of process to enforce this chapter. If
17 a dealer fails to designate such an agent, the Secretary of
18 State or any agent or employee of the dealer within this state
19 constitutes the agent for the service of such process.

20 Section 18. Section 202.26, Florida Statutes, is
21 created to read:

22 202.26 Department powers.--

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

26 (2) The provisions of chapter 213 shall, as far as
27 lawful and practicable, be applicable to the taxes imposed and
28 administered under this chapter and to the collection thereof
29 as if fully set out in this chapter. However, no provision of
30 chapter 213 shall apply if it conflicts with any provision of
31 this chapter.

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

3 (a) The filing of returns and remittance of tax,
4 including provisions concerning electronic funds transfer and
5 electronic data interchange.

6 (b) The determination of customer service addresses.

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

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

11 (e) Methods for granting self-accrual authority to
12 taxpayers.

13 (f) The records and methods necessary for a dealer to
14 demonstrate the exercise of due diligence as defined by s.
15 202.22(4)(b).

16 (g) The creation of the database described in s.
17 202.22(2) and the certification and recertification of the
18 databases as described in s. 202.22(3).

19 (h) The registration of dealers.

20 (i) The information that is necessary and the methods,
21 forms, and deadlines for providing the information collected
22 pursuant to s. 202.20(3).

23 (j) The review of applications for, and the issuance
24 of, direct-pay permits, and the returns required to be filed
25 by holders thereof.

26 (4) The executive director of the department is
27 authorized, and all conditions are deemed met, to adopt
28 emergency rules under ss. 120.536(1) and 120.54(4) to
29 implement this chapter. Notwithstanding any other provision of
30 law, such emergency rules shall remain effective for 6 months
31 after the date of adoption and may be renewed during the

1 pendency of procedures to adopt rules addressing the subject
2 of the emergency rules.

3 Section 19. Effective October 1, 2001, section 202.27,
4 Florida Statutes, is created to read:

5 202.27 Return filing; rules for self-accrual.--

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

13 (2) The department may require:

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

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

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

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

26 (3) The department shall accept returns, except those
27 required to be initiated through an electronic data
28 interchange, as timely if postmarked on or before the 20th day
29 of the month; if the 20th day falls on a Saturday, Sunday, or
30 federal or state legal holiday, returns are timely if
31 postmarked on the next succeeding workday. Any dealer who

1 makes sales of any nature in two or more locations for which
2 returns are required to be filed with the department and who
3 maintains records for such locations in a central office or
4 place may, on each reporting date, file one return for all
5 such places of business in lieu of separate returns for each
6 location; however, the return must clearly indicate the
7 amounts collected within each location. Each dealer shall file
8 a return for each tax period even though no tax is due for
9 such period.

10 (4) Whenever returns are required to be made to the
11 department, the full amount of the taxes required to be paid
12 as shown by the return must be paid and accompany the return,
13 and the failure to remit the full amount of taxes at the time
14 of making the return shall cause the taxes to become
15 delinquent. All taxes and all interest and penalties imposed
16 or administered under this chapter must be remitted to the
17 department at Tallahassee or at another office designated by
18 the department, in the form required by the department.

19 (5) The department may require all returns of taxes
20 under this chapter to be accompanied by a written statement,
21 by the person or by an officer of any firm or corporation
22 required to pay such taxes, setting forth the facts that the
23 department requires in order to ascertain the amount of taxes
24 that are due and payable with the return. The filing of a
25 return that is not accompanied by payment is prima facie
26 evidence of the wrongful conversion of the money due. Any
27 person or any duly authorized corporation officer or agent, or
28 members of any firm or incorporated society or organization,
29 who refuses to make a return and pay the taxes due, as
30 required by the department and in the manner and in the form
31 that the department requires, or to state in writing that the

1 return is correct to the best of his or her knowledge and
2 belief, as required by the department, is subject to a penalty
3 of 6 percent per annum of the amount due and commits a
4 misdemeanor of the first degree, punishable as provided in s.
5 775.082 or s. 775.083. The signing of a written return has the
6 same legal effect as if made under oath without the necessity
7 of appending an oath thereto.

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

10 (a) Authorized by law for holders of direct-pay
11 permits; or

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

14 Section 20. Effective October 1, 2001, section 202.28,
15 Florida Statutes, is created to read:

16 202.28 Credit for collecting tax; penalties.--

17 (1) Except as otherwise provided in s. 202.22, for the
18 purpose of compensating persons providing communications
19 services for the keeping of prescribed records, the filing of
20 timely tax returns, and the proper accounting and remitting of
21 taxes, persons collecting taxes imposed under this chapter
22 shall be allowed to deduct 0.75 percent of the amount of the
23 tax due and accounted for and remitted to the department.

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

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

29 1. For the purposes of this chapter, a return is
30 incomplete if it is lacking such uniformity, completeness, and
31 arrangement that the physical handling, verification, review

1 of the return, or determination of other taxes and fees
2 reported on the return can not be readily accomplished.

3 2. The department shall adopt rules requiring the
4 information that it considers necessary to ensure that the
5 taxes levied or administered under this chapter are properly
6 collected, reviewed, compiled, reported, and enforced,
7 including, but not limited to, rules requiring the reporting
8 of the amount of gross sales; the amount of taxable sales; the
9 amount of tax collected or due; the amount of lawful refunds,
10 deductions, or credits claimed; the amount claimed as the
11 dealer's collection allowance; the amount of penalty and
12 interest; and the amount due with the return.

13 (c) The collection allowance and other credits or
14 deductions provided in this chapter shall be applied to the
15 taxes reported for the jurisdiction previously credited with
16 the tax paid.

17 (2)(a) Any person who is required to make a return or
18 pay the taxes imposed by this chapter who fails to timely file
19 such return or fails to pay the taxes due within the time
20 required, in addition to all other penalties provided by law,
21 is subject to a specific penalty in the amount of 10 percent
22 of any unpaid tax if the failure is for not more than 30 days,
23 and an additional 10 percent of any unpaid tax for each
24 additional 30 days, or fraction thereof, during which the
25 failure continues, not to exceed a total penalty of 50
26 percent, in the aggregate, of any unpaid tax.

27 (b) Any person who knowingly and with a willful intent
28 to evade any tax imposed under this chapter fails to file six
29 consecutive returns as required by law commits a felony of the
30 third degree, punishable as provided in s. 775.082 or s.
31 775.083.

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

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

8 a. Such person commits, for the first offense, a
9 misdemeanor of the second degree, punishable as provided in s.
10 775.082 or s. 775.083.

11 b. Such person commits, for the second offense, a
12 misdemeanor of the first degree, punishable as provided in s.
13 775.082 or s. 775.083.

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

17 2. If the total amount of unreported taxes or fees is
18 \$300 or more but less than \$20,000, such person commits a
19 felony of the third degree, punishable as provided in s.
20 775.082, s. 775.083, or s. 775.084.

21 3. If the total amount of unreported taxes or fees is
22 \$20,000 or more but less than \$100,000, such person commits a
23 felony of the second degree, punishable as provided in s.
24 775.082, s. 775.083, or s. 775.084.

25 4. If the total amount of unreported taxes or fees is
26 \$100,000 or more, such person commits a felony of the first
27 degree, punishable as provided in s. 775.082, s. 775.083, or
28 s. 775.084.

29 Section 21. Effective October 1, 2001, section 202.29,
30 Florida Statutes, is created to read:

31 202.29 Bad debts.--

1 (1) A dealer who has paid the tax imposed by this
2 chapter may take a credit or obtain a refund for tax paid by
3 the dealer on unpaid balances due on worthless accounts within
4 12 months following the last day of the calendar year for
5 which the bad debt was charged off on the taxpayer's federal
6 income tax return.

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

11 (3) Bad debts associated with accounts receivable
12 which have been assigned or sold with recourse are eligible
13 upon reassignment for inclusion by the dealer in the credit or
14 refund authorized by this section.

15 Section 22. Effective October 1, 2001, section 202.30,
16 Florida Statutes, is created to read:

17 202.30 Payment of taxes by electronic funds transfer;
18 filing of returns by electronic data interchange.--

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

24 (2)(a) A dealer who is required to remit taxes by
25 electronic funds transfer shall make a return in a manner that
26 is initiated through an electronic data interchange. The
27 department shall prescribe the acceptable method of transfer;
28 the method, form, and content of the electronic data
29 interchange, giving due regard to developing uniform standards
30 for formats as adopted by the American National Standards
31 Institute; the circumstances under which an electronic data

1 interchange will serve as a substitute for the filing of
2 another form of return; and the means, if any, by which
3 taxpayers will be provided with acknowledgments. The
4 department must accept such returns as timely if initiated and
5 accepted on or before the 20th day of the month. If the 20th
6 day falls on a Saturday, Sunday, or federal or state legal
7 holiday, returns are timely if initiated and accepted on the
8 next succeeding workday.

9 (b) The department may waive the requirement to make a
10 return through an electronic data interchange when problems
11 arise with respect to the taxpayer's computer capabilities,
12 data systems changes, or operating procedures. To obtain a
13 waiver, the taxpayer must prove to the department that such
14 problems exist.

15 (3)(a) The department shall design, prepare, print,
16 and furnish to all dealers, except dealers filing through
17 electronic data interchange, or make available or prescribe to
18 the dealers all necessary forms for filing returns and
19 instructions to ensure a full collection from dealers and an
20 accounting for the taxes due, but failure of any dealer to
21 secure such forms does not relieve the dealer of the
22 obligation to pay the tax at the time and in the manner
23 required.

24 (b) The department shall prescribe the format and
25 instructions necessary for filing returns in a manner that is
26 initiated through an electronic data interchange to ensure a
27 full collection from dealers and an accounting for the taxes
28 due. The failure of any dealer to use such format does not
29 relieve the dealer of the obligation to pay the tax at the
30 time and in the manner required.

31

1 Section 23. Effective October 1, 2001, section 202.31,
2 Florida Statutes, is created to read:

3 202.31 Sale of business; liability for tax;
4 procedures; penalty for violations.--

5 (1) If any dealer of communications services who is
6 liable for any tax, interest, or penalty under this chapter
7 sells his or her business or substantially all of his or her
8 assets, the dealer shall make a final return and payment
9 within 15 days thereafter. The dealer's successors or assigns
10 shall withhold a sufficient portion of the purchase money to
11 safely cover the amount of such taxes, interest, and penalties
12 due and unpaid until the former owner produces a receipt from
13 the department showing that they have been paid or a
14 certificate stating that no taxes, interest, or penalties are
15 due. If the purchaser of a business or the purchaser of
16 substantially all of the assets of a business fails to
17 withhold a sufficient amount of the purchase money as required
18 by this subsection, he or she is personally liable for the
19 payment of the taxes, interest, and penalties accruing and
20 unpaid on account of the operation of the business by any
21 former owners or assigns. Any receipt or certificate from the
22 department does not, without an audit of the selling dealer's
23 books and records by the department, guarantee that there is
24 not a tax deficiency owed the state from operation of the
25 seller's business. To secure protection from the transferee's
26 liability under this section, the seller or purchaser may
27 request an audit of the seller's books and records. The
28 department may contract with private auditors pursuant to s.
29 213.28 to perform the audit. The department may charge the
30 cost of the audit to the person requesting the audit.
31

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

13 (3) If a dealer is delinquent in the payment of the
14 taxes imposed or administered by this chapter, the department
15 may give notice of the amount of such delinquency by
16 registered mail to all persons having in their possession or
17 under their control any credits or other personal property
18 belonging to such dealer or owing any debts to such dealer at
19 the time of receipt by them of such notice. All persons so
20 notified shall within 5 days after receipt of the notice
21 advise the department of all such credits, other personal
22 property, or debts in their possession, under their control,
23 or owing by them. After receiving the notice, the persons so
24 notified may not transfer or make any other disposition of the
25 credits, other personal property, or debts in their possession
26 or under their control at the time they receive the notice
27 until the department consents to a transfer or disposition or
28 until 60 days elapse after the receipt of the notice,
29 whichever occurs first, except that the credits, other
30 personal property, or debts that exceed the delinquent amount
31 stipulated in the notice are not subject to the provisions of

1 this section, wherever held, if such dealer does not have a
2 prior history of tax delinquencies under this chapter. All
3 persons notified must, within 5 days, advise the department of
4 any credits or other personal property belonging to such
5 dealer or any debts incurred and owing to such dealer which
6 subsequently come into their possession or under their control
7 during the time prescribed by the notice or until the
8 department consents to a transfer or disposition, whichever
9 occurs first. If the notice seeks to prevent the transfer or
10 other disposition of a deposit in a bank or other credits or
11 personal property in the possession or under the control of a
12 bank, the notice is ineffective unless it is delivered or
13 mailed to the office of the bank at which the deposit is
14 carried or at which the credits or personal property are held.
15 If, during the effective period of the notice to withhold, any
16 person so notified makes any transfer or disposition of the
17 property or debts required to be withheld, he or she is liable
18 to the state for any indebtedness due under this chapter from
19 the person with respect to whose obligation the notice was
20 given to the extent of the value of the property or the amount
21 of the debts thus transferred or paid if, solely by reason of
22 such transfer or disposition, the state is unable to recover
23 the indebtedness of the person with respect to whose
24 obligation the notice was given. All such credits or other
25 personal property or debts are subject to garnishment by the
26 department for satisfaction of the delinquent taxes due.
27 (4) After notice by the department of a transferee's
28 liability under this section, the dealer shall have 60 days
29 within which to file an action as provided in chapter 72.

30
31

1 (5) Any violation of this section is a misdemeanor of
2 the first degree, punishable as provided in s. 775.082 or s.
3 775.083.

4 Section 24. Effective October 1, 2001, section 202.32,
5 Florida Statutes, is created to read:

6 202.32 State and local agencies to cooperate in
7 administration of law.--The department may request from any
8 state, county, municipal, or local governmental agency any
9 information that the department considers necessary in
10 administering this chapter, and such agency shall furnish such
11 information.

12 Section 25. Effective October 1, 2001, section 202.33,
13 Florida Statutes, is created to read:

14 202.33 Taxes declared to be government funds;
15 penalties for failure to remit taxes; warrants.--

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

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

23 (a) If the total amount of stolen revenue is less than
24 \$300, the offense is a misdemeanor of the second degree,
25 punishable as provided in s. 775.082 or s. 775.083. For a
26 second offense, the offender is guilty of a misdemeanor of the
27 first degree, punishable as provided in s. 775.082 or s.
28 775.083. For a third or subsequent offense, the offender is
29 guilty of a felony of the third degree, punishable as provided
30 in s. 775.082, s. 775.083, or s. 775.084.

31

1 (b) If the total amount of stolen revenue is \$300 or
2 more, but less than \$20,000, the offense is a felony of the
3 third degree, punishable as provided in s. 775.082, s.
4 775.083, or s. 775.084.

5 (c) If the total amount of stolen revenue is \$20,000
6 or more, but less than \$100,000, the offense is a felony of
7 the second degree, punishable as provided in s. 775.082, s.
8 775.083, or s. 775.084.

9 (d) If the total amount of stolen revenue is \$100,000
10 or more, the offense is a felony of the first degree,
11 punishable as provided in s. 775.082, s. 775.083, or s.
12 775.084.

13 (3) All taxes collected under this chapter must be
14 remitted to the department. In addition to criminal sanctions,
15 the department shall, when any tax becomes delinquent or is
16 otherwise in jeopardy under this chapter, issue a warrant for
17 the full amount of the tax due or estimated to be due, with
18 the interest, penalties, and cost of collection, directed to
19 the sheriffs of the state, and mail the warrant to the clerk
20 of the circuit court of the county where any property of the
21 taxpayer is located. Upon receipt of the warrant, the clerk of
22 the circuit court shall record it, and thereupon the amount of
23 the warrant becomes a lien on any real or personal property of
24 the taxpayer in the same manner as a recorded judgment. The
25 department may issue a tax execution to enforce the collection
26 of taxes imposed by this chapter and deliver it to any
27 sheriff. The sheriff shall thereupon proceed in the same
28 manner as prescribed by law for executions and shall be
29 entitled to the same fees for his or her services in executing
30 the warrant to be collected. The department may also have a
31 writ of garnishment with respect to any indebtedness due to

1 the delinquent dealer by a third person in any goods, money,
2 chattels, or effects of the delinquent dealer in the hands,
3 possession, or control of the third person. Upon payment of
4 the execution, warrant, judgment, or garnishment, the
5 department shall satisfy the lien of record within 30 days. If
6 there is jeopardy to the revenue and jeopardy is asserted in
7 or with an assessment, the department shall proceed in the
8 manner specified for jeopardy assessments in s. 213.732.

9 Section 26. Effective October 1, 2001, section 202.34,
10 Florida Statutes, is created to read:

11 202.34 Records required to be kept; power to inspect;
12 audit procedure.--

13 (1)(a) Each dealer shall secure, maintain, and keep as
14 long as required by s. 213.35 a complete record of
15 communications services sold at retail by the dealer, together
16 with invoices, records of gross receipts from such sales, and
17 other pertinent records and papers required by the department
18 for the reasonable administration of this chapter. All such
19 records that are located or maintained in this state must be
20 made available for inspection by the department at all
21 reasonable hours at the dealer's office or other place of
22 business located in this state. Any dealer who maintains such
23 books and records outside this state must make such books and
24 records available for inspection by the department wherever
25 the dealer's general records are kept. Any dealer subject to
26 the provisions of this chapter who violates this subsection is
27 guilty of a misdemeanor of the first degree, punishable as
28 provided in s. 775.082 or s. 775.083. If, however, any
29 subsequent offense involves intentional destruction of such
30 records with an intent to evade payment of or deprive the
31 government of any tax revenues, such subsequent offense

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

3 (b) For the purpose of this subsection, if a dealer
4 does not have adequate records of its sales of communications
5 services, the department may, upon the basis of a test or
6 sampling of the dealer's available records or other
7 information relating to the sales made by such dealer for a
8 representative period, determine the proper basis for
9 assessing tax. This subsection does not affect the duty of the
10 dealer to collect, or the liability of any consumer to pay,
11 any tax imposed or administered under this chapter.

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

23 (2) For the purpose of enforcement of this chapter,
24 each dealer shall allow the department to examine its books
25 and records at all reasonable hours; and, if the dealer
26 refuses, the department may petition the circuit court to
27 order the dealer to permit such examination, subject to the
28 right of removal of the cause to the judicial circuit wherein
29 such person's business is located or wherein such person's
30 books and records are kept.

31

1 (3) Each person who sells or purchases communications
2 services shall permit the department to examine his or her
3 books and records at all reasonable hours. The person shall
4 also maintain books and records as long as required by s.
5 213.35 in order to disclose the sales and purchases of all
6 services sold, to whom sold, and the amount sold, in the form
7 and manner that the department requires, so that the
8 department can determine the volume of services sold or
9 purchased, as defined by this chapter, and the dates and
10 amounts of such sales and purchases. The department may
11 petition the circuit court to require any person who refuses
12 to keep such records to permit such inspection, subject to the
13 right of removal of the cause to the judicial circuit wherein
14 such person's business is located or wherein such person's
15 books and records are kept.

16 (4)(a) The department shall send written notification,
17 at least 60 days prior to the date an auditor is scheduled to
18 begin an audit, informing the person of the audit. The
19 department is not required to give 60 days' prior notification
20 of a forthcoming audit whenever the person requests an
21 emergency audit.

22 (b) The written notification must specify:

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

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

28 3. Any other requests or suggestions that the
29 department considers necessary.

30 (c) Only records, receipts, invoices, resale
31 certificates, and related documentation that are available to

1 the auditor when the audit begins are acceptable for the
2 purposes of the audit. A resale certificate containing a date
3 prior to the date the audit commences constitutes acceptable
4 documentation of the specific transactions that occurred in
5 the past.

6 (d) The provisions of this chapter concerning
7 fraudulent or improper records, receipts, invoices, resale
8 certificates, and related documentation apply with respect to
9 any audit.

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

13 Section 27. Effective October 1, 2001, section 202.35,
14 Florida Statutes, is created to read:

15 202.35 Powers of department in dealing with
16 delinquents; tax to be separately stated.--

17 (1) If any dealer or other person fails to remit the
18 tax, or any portion thereof, on or before the day when the tax
19 is required by law to be paid, there will be added to the
20 amount due interest at the rate calculated pursuant to s.
21 213.235 of the amount due from the date due until paid.
22 Interest on the delinquent tax is to be calculated beginning
23 on the 21st day of the month following the month for which the
24 tax is due, except as otherwise provided in this chapter.

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

30 (3) If a dealer or other person fails or refuses to
31 make his or her records available for inspection so that an

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

13 (4) Each dealer who makes retail sales of
14 communications services shall add the amount of the taxes
15 imposed or administered under this chapter to the price of the
16 services sold by him or her and shall state the taxes
17 separately from the price of the services on all invoices. The
18 combined amount of taxes due under ss. 202.12 and 203.01 shall
19 be stated and identified as the Florida communications
20 services tax, and the combined amount of taxes due under s.
21 202.19 shall be stated and identified as the local
22 communications services tax.

23 (5) A dealer may not advertise or hold out to the
24 public, in any manner, directly or indirectly, that he or she
25 will absorb all or any part of the tax; that he or she will
26 relieve the purchaser of the payment of all or any part of the
27 tax; that the tax will not be added to the selling price of
28 the property or services sold or released; or, when added,
29 that it or any part thereof will be refunded either directly
30 or indirectly by any method. A person who violates this
31 subsection with respect to advertising or refund is guilty of

1 a misdemeanor of the second degree, punishable as provided in
2 s. 775.082 or s. 775.083. A second or subsequent offense
3 constitutes a misdemeanor of the first degree, punishable as
4 provided in s. 775.082 or s. 775.083.

5 (6) Whenever in the construction, administration, or
6 enforcement of this chapter there is any question respecting a
7 duplication of the tax, the sale to the end consumer or last
8 retail sale is the sale to be taxed, and, insofar as is
9 practicable, there is to be no duplication or pyramiding of
10 the tax.

11 Section 28. Effective October 1, 2001, section 202.36,
12 Florida Statutes, is created to read:

13 202.36 Departmental powers; hearings; distress
14 warrants; bonds; subpoenas and subpoenas duces tecum.--

15 (1) Any person required to pay a tax imposed or
16 administered under this chapter or to make a return who
17 renders a return or makes a payment of a tax with intent to
18 deceive or defraud the government and prevent the government
19 from collecting the amount of taxes imposed or administered by
20 this chapter, or who otherwise fails to comply with this
21 chapter for the taxable period for which any return is made,
22 any tax is paid, or any report is made to the department, may
23 be required by the department to show cause at a time and
24 place to be set by the department, after 10 days' notice in
25 writing requiring the production of such books, records, or
26 papers relating to the business of such person for such tax
27 period as the department requires. The department may require
28 such person or his or her employees to give testimony under
29 oath and answer interrogatories respecting the sale of
30 communications services within this state, the failure to make
31 a true report thereof, or failure to pay the true amount of

1 the tax required to be paid under this chapter. If such person
2 fails to produce such books, records, or papers or to appear
3 and answer questions within the scope of investigation
4 relating to matters concerning taxes to be imposed or
5 administered under this chapter, or fails to allow his or her
6 agents or employees to give testimony, the department may
7 estimate any unpaid deficiencies in taxes to be assessed
8 against such person based on whatever information is available
9 to it and may issue a distress warrant for the collection of
10 such taxes, interest, or penalties estimated by the department
11 to be due and payable; and such assessment shall be deemed
12 prima facie correct. In such cases, the warrant shall be
13 issued to the sheriff of any county in the state where such
14 person owns or possesses any property; and the sheriff shall
15 seize such property as is required to satisfy any such taxes,
16 interest, or penalties and sell such property under the
17 distress warrant in the same manner as property is permitted
18 to be seized and sold under distress warrants issued to secure
19 the payment of delinquent taxes. The department shall also
20 have the right to writ of garnishment to subject any
21 indebtedness due to the delinquent dealer by a third person in
22 any goods, money, chattels, or effects of the delinquent
23 dealer in the hands, possession, or control of the third
24 person in the manner provided by law. The person whose tax
25 return or report is being investigated may by written request
26 to the department require that the hearing be set at a place
27 within the judicial circuit wherein the person's business is
28 located or wherein such person's books and records are kept.
29 If there is jeopardy to the revenue and jeopardy is asserted
30 in or with an assessment, the department shall proceed in the
31 manner specified for jeopardy assessment in s. 213.732.

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

23 (3) The department or any person authorized by it in
24 writing is authorized to make and sign assessments, tax
25 warrants, assignments of tax warrants, and satisfaction of tax
26 warrants.

27 (4)(a) The department may issue subpoenas or subpoenas
28 duces tecum compelling the attendance and testimony of
29 witnesses and the production of books, records, written
30 materials, and electronically recorded information. Subpoenas
31 must be issued with the written and signed approval of the

1 executive director or his or her designee on written and sworn
2 application by any employee of the department. The application
3 must set forth the reason for the application, the name of the
4 person subpoenaed, the time and place of appearance of the
5 witness, and a description of any books, records, or
6 electronically recorded information to be produced, together
7 with a statement by the applicant that the department has
8 unsuccessfully attempted other reasonable means of securing
9 information and that the testimony of the witness or the
10 written or electronically recorded materials sought in the
11 subpoena are necessary for the collection of taxes, penalty,
12 or interest or the enforcement of the taxes levied or
13 administered under this chapter. A subpoena shall be served in
14 the manner provided by law and by the Florida Rules of Civil
15 Procedure and shall be returnable only during regular business
16 hours and at least 20 calendar days after the date of service
17 of the subpoena. Any subpoena to which this subsection applies
18 must identify the taxpayer to whom the subpoena relates and to
19 whom the records pertain and must provide other information to
20 enable the person subpoenaed to locate the records required
21 under the subpoena. The department shall give notice to the
22 taxpayer to whom the subpoena relates within 3 days after the
23 day on which the service of the subpoena is made. Within 14
24 days after service of the subpoena, the person to whom the
25 subpoena is directed may serve written objection to the
26 inspection or copying of any of the designated materials. If
27 objection is made, the department may not inspect or copy the
28 materials, except pursuant to an order of the circuit court.
29 If an objection is made, the department may petition any
30 circuit court for an order to comply with the subpoena. The
31 subpoena must contain a written notice of the right to object

1 to the subpoena. Every subpoena served upon the witness or
2 custodian of records must be accompanied by a copy of the
3 provisions of this subsection. If a person refuses to obey a
4 subpoena or subpoena duces tecum, the department may apply to
5 any circuit court of this state to enforce compliance with the
6 subpoena. Witnesses are entitled to be paid a mileage
7 allowance and witness fees as authorized for witnesses in
8 civil cases.

9 (b)1. If any subpoena is served on any person who is a
10 third-party recordkeeper and the subpoena requires the
11 production of any portion of the records made or kept of the
12 business transactions or affairs of any person other than the
13 person subpoenaed, notice of the subpoena must be given to any
14 person to whom the records pertain and to the taxpayer to whom
15 the subpoena relates. Such notice must be given within 3 days
16 after the day on which the service on the third-party
17 recordkeeper is made, if the department can at that time
18 identify the person to whom the records pertain. If the person
19 to whom the records pertain cannot be identified at the time
20 of issuance of the subpoena, the third-party recordkeeper
21 shall immediately inform the department of such person's
22 identity, and the department shall give notice to that person
23 within 3 days thereafter. The notice must be accompanied by a
24 copy of the subpoena that has been served and must contain
25 directions for staying compliance with the subpoena under
26 subparagraph (c)2.

27 2. The notice is sufficient if, on or before the third
28 day, the notice is delivered in hand to the person entitled to
29 notice or is mailed by certified or registered mail to the
30 last known mailing address of the person, or, in the absence
31 of a last known address, is left with the person subpoenaed.

1 3. As used in this subsection, "third-party
2 recordkeeper" means:

3 a. Any mutual savings bank, cooperative bank, domestic
4 building and loan association, or other savings institution
5 chartered and supervised as a savings and loan association or
6 similar association under federal or state law; a bank as
7 defined in s. 581 of the Internal Revenue Code; or any credit
8 union within the meaning of s. 501(c)(14)(A) of the Internal
9 Revenue Code.

10 b. Any consumer reporting agency as defined under s.
11 603(f) of the Fair Credit Reporting Act, 15 U.S.C. s.
12 1681a(f).

13 c. Any person extending credit through the use of
14 credit cards or similar devices.

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

17 e. Any attorney.

18 f. Any accountant.

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

21 h. Any regulated investment company as defined in s.
22 851 of the Internal Revenue Code.

23 4. This paragraph does not apply to a subpoena served
24 on the person with respect to whose liability the subpoena is
25 issued or an officer or employee of the person; to a subpoena
26 to determine whether or not records of the business
27 transactions or affairs of an identified person have been made
28 or kept; or to a subpoena described in paragraph (f).

29 (c)1. Notwithstanding any other law, a person who is
30 entitled to notice of a subpoena under paragraph (b) and the
31 taxpayer to whom the subpoena relates have the right to

1 intervene in any proceeding with respect to the enforcement of
2 the subpoena under paragraph (a).

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

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

11 b. A copy of the notice of intent to stay the subpoena
12 is mailed by registered or certified mail to the person and to
13 the department; and

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

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

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

21 2. When the requirements of subparagraph (c)2. have
22 been met, except in accordance with an order issued by the
23 circuit court authorizing examination of the records or with
24 the consent of the person staying compliance.

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

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

31

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

4 3. The information sought to be obtained from the
5 examination of the records and the identity of the person or
6 persons with respect to whose liability the subpoena is issued
7 is not readily available from other sources.

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

18 (g)1. Any circuit court has jurisdiction to hear and
19 determine proceedings brought under paragraph (e) or paragraph
20 (f). The determinations required to be made under paragraphs
21 (e) and (f) shall be ex parte and shall be made solely upon
22 the petition and supporting affidavits. An order denying the
23 petition shall be deemed a final order that may be appealed.

24 2. Except for cases that the court considers of great
25 importance, any proceeding brought for the enforcement of any
26 subpoena or any proceeding under this subsection, and any
27 appeal therefrom, takes precedence on the docket over all
28 cases and shall be assigned for hearing and decided at the
29 earliest practicable date.

30 (h) The department shall by rule establish the rates
31 and conditions for payments to reimburse reasonably necessary

1 costs directly incurred by third-party recordkeepers in
2 searching for, reproducing, or transporting books, papers,
3 records, or other data required to be produced by subpoena
4 upon request of the department. The reimbursement shall be in
5 addition to any mileage allowance and fees paid under
6 paragraph (a).

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

10 a. The taxpayer to whom the subpoena relates resides
11 or maintains his or her principal commercial domicile in this
12 state;

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

15 c. The person to whom the records pertain resides or
16 maintains his or her principal commercial domicile in this
17 state.

18 2. Venue in an action initiated in circuit court under
19 this subsection by a person who is not a resident of this
20 state or does not maintain a commercial domicile in this state
21 rests in Leon County.

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

25 Section 29. Section 202.37, Florida Statutes, is
26 created to read:

27 202.37 Special rules for administration of local
28 communications services tax.--

29 (1)(a) Except as otherwise provided in this section,
30 all statutory provisions and administrative rules applicable
31 to the communications services tax imposed by s. 202.12 apply

1 to any local communications services tax imposed under s.
2 202.19, and the department shall administer, collect, and
3 enforce all taxes imposed under s. 202.19, including interest
4 and penalties attributable thereto, in accordance with the
5 same procedures used in the administration, collection, and
6 enforcement of the communications services tax imposed by s.
7 202.12.

8 (b) The department may contract with one or more
9 private entities to assist it in fulfilling its obligation of
10 administering the local communications services taxes imposed
11 under this chapter, including, but not limited to, the
12 compilation, maintenance, and publication of data pursuant to
13 ss. 202.21 and 202.22.

14 (2) Each dealer of communications services obligated
15 to collect and remit one or more local communications services
16 taxes imposed under s. 202.19 shall separately report and
17 identify each such tax to the department, by jurisdiction, on
18 a form prescribed by the department, and shall pay such taxes
19 to the department. However, taxes imposed under s. 202.19(5)
20 shall be added to and included in the amounts reported to the
21 department as taxes imposed under s. 202.19(1). A dealer of
22 communications services may include in a single payment to the
23 department:

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

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

28 Section 30. The Revenue Estimating Conference shall
29 compute the rate of communications services tax which would be
30 required to be levied under s. 202.12(1)(a), Florida Statutes,
31 to raise, through the imposition of a communications services

1 tax, revenues equal to the taxes estimated to be actually
2 collected under chapter 212, Florida Statutes, on
3 communications services. The rates computed by the Revenue
4 Estimating Conference shall be presented to the Legislature
5 for review and approval during the 2001 Regular Session.

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

12 Section 32. (1) The executive director of the
13 Department of Revenue shall appoint members to an advisory
14 committee by August 1, 2000. Each member shall serve at the
15 discretion of the executive director. The committee shall
16 include consumer, county, municipal, state, and communications
17 services dealer representatives, along with other interested
18 parties the executive director deems appropriate. During the
19 period of implementation of the Communications Services Tax
20 Simplification Law, the committee shall advise the executive
21 director regarding the department's transition strategy,
22 development of necessary business processes, rule adoption
23 processes, and processes for identifying issues for further
24 legislative consideration.

25 (2) This section shall take effect upon this act
26 becoming a law.

27 Section 33. Effective October 1, 2001, paragraph (a)
28 of subsection (1) of section 72.011, Florida Statutes, is
29 amended to read:

30
31

1 72.011 Jurisdiction of circuit courts in specific tax
2 matters; administrative hearings and appeals; time for
3 commencing action; parties; deposits.--

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

23 Section 34. Effective October 1, 2001, section 213.05,
24 Florida Statutes, is amended to read:

25 213.05 Department of Revenue; control and
26 administration of revenue laws.--The Department of Revenue
27 shall have only those responsibilities for ad valorem taxation
28 specified to the department in chapter 192, taxation, general
29 provisions; chapter 193, assessments; chapter 194,
30 administrative and judicial review of property taxes; chapter
31 195, property assessment administration and finance; chapter

1 196, exemption; chapter 197, tax collections, sales, and
2 liens; chapter 199, intangible personal property taxes; and
3 chapter 200, determination of millage. The Department of
4 Revenue shall have the responsibility of regulating,
5 controlling, and administering all revenue laws and performing
6 all duties as provided in s. 125.0104, the Local Option
7 Tourist Development Act; s. 125.0108, tourist impact tax;
8 chapter 198, estate taxes; chapter 201, excise tax on
9 documents; chapter 202, communications services tax; chapter
10 203, gross receipts taxes; chapter 206, motor and other fuel
11 taxes; chapter 211, tax on production of oil and gas and
12 severance of solid minerals; chapter 212, tax on sales, use,
13 and other transactions; chapter 220, income tax code; chapter
14 221, emergency excise tax; ss. 336.021 and 336.025, taxes on
15 motor fuel and special fuel; s. 370.07(3), Apalachicola Bay
16 oyster surcharge; s. 376.11, pollutant spill prevention and
17 control; s. 403.718, waste tire fees; s. 403.7185, lead-acid
18 battery fees; s. 403.7195, waste newsprint disposal fees; s.
19 538.09, registration of secondhand dealers; s. 538.25,
20 registration of secondary metals recyclers; s. 624.4621, group
21 self-insurer's fund premium tax; s. 624.5091, retaliatory tax;
22 s. 624.475, commercial self-insurance fund premium tax; ss.
23 624.509-624.511, insurance code: administration and general
24 provisions; s. 624.515, State Fire Marshal regulatory
25 assessment; s. 627.357, medical malpractice self-insurance
26 premium tax; s. 629.5011, reciprocal insurers premium tax; and
27 s. 681.117, motor vehicle warranty enforcement.

28 Section 35. Effective October 1, 2001, subsection (6)
29 of section 212.20, Florida Statutes, is amended to read:
30
31

1 212.20 Funds collected, disposition; additional powers
2 of department; operational expense; refund of taxes
3 adjudicated unconstitutionally collected.--

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

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

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

12 (c) Proceeds from the tax imposed pursuant to s.
13 212.06(5)(a)2. shall be reallocated to the Mail Order Sales
14 Tax Clearing Trust Fund.

15 (d) Proceeds from the fee imposed pursuant to s.
16 212.18(5) shall be deposited in the Solid Waste Management
17 Clearing Trust Fund, which is hereby created to be used by the
18 department, and shall be subsequently transferred to the State
19 Treasurer to be deposited into the Solid Waste Management
20 Trust Fund.

21 (e) Proceeds from the fees imposed under ss.
22 212.05(1)(i)3. and 212.18(3) shall remain with the General
23 Revenue Fund.

24 (f) The proceeds of all other taxes and fees imposed
25 pursuant to this chapter or remitted pursuant to s.
26 202.18(1)(b) and (2)(b) shall be distributed as follows:

27 1. In any fiscal year, the greater of \$500 million,
28 minus an amount equal to 4.6 percent of the proceeds of the
29 taxes collected pursuant to chapter 201, or 5 percent of all
30 other taxes and fees imposed pursuant to this chapter or
31 remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be

1 deposited in monthly installments into the General Revenue
2 Fund.

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

5 3. After the distribution under subparagraphs 1. and
6 2., 9.653 percent of the amount remitted by a sales tax dealer
7 located within a participating county pursuant to s. 218.61
8 shall be transferred into the Local Government Half-cent Sales
9 Tax Clearing Trust Fund.

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

14 5. Of the remaining proceeds:

15 a. Beginning July 1, 1992, \$166,667 shall be
16 distributed monthly by the department to each applicant that
17 has been certified as a "facility for a new professional
18 sports franchise" or a "facility for a retained professional
19 sports franchise" pursuant to s. 288.1162 and \$41,667 shall be
20 distributed monthly by the department to each applicant that
21 has been certified as a "new spring training franchise
22 facility" pursuant to s. 288.1162. Distributions shall begin
23 60 days following such certification and shall continue for 30
24 years. Nothing contained herein shall be construed to allow an
25 applicant certified pursuant to s. 288.1162 to receive more in
26 distributions than actually expended by the applicant for the
27 public purposes provided for in s. 288.1162(7). However, a
28 certified applicant shall receive distributions up to the
29 maximum amount allowable and undistributed under this section
30 for additional renovations and improvements to the facility
31 for the franchise without additional certification.

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

7 c. Beginning 30 days after notice by the Department of
8 Commerce to the Department of Revenue that the applicant has
9 been certified as the International Game Fish Association
10 World Center facility pursuant to s. 288.1169, and the
11 facility is open to the public, \$83,333 shall be distributed
12 monthly, for up to 180 months, to the applicant. This
13 distribution is subject to reduction pursuant to s. 288.1169.

14 6. All other proceeds shall remain with the General
15 Revenue Fund.

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

18 166.231 Municipalities; public service tax.--

19 (9) A municipality may levy a tax on the purchase of
20 telecommunication services as defined in s. 203.012 as
21 follows:

22 (e) Purchases of local telephone service or other
23 telecommunications service for use in the conduct of a
24 telecommunications service for hire or otherwise for resale,
25 including resale of telecommunication services paid by using a
26 prepaid calling arrangement as defined in s. 212.05(1)(e)1.a.,
27 are exempt from the tax imposed by this subsection.

28 (f) A seller of services which are subject to the tax
29 imposed by a municipality under this subsection shall file a
30 return with the municipality each month. The form of the
31 return shall be determined by the seller, and the return shall

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

20 Section 37. Effective July 1, 2000, all taxes that
21 have been collected pursuant to s. 166.231(9)(f), Florida
22 Statutes, at the point of sale on prepaid calling arrangements
23 prior to July 1, 2000, must be remitted, and taxes that have
24 been collected at the point of sale on prepaid calling
25 arrangements and remitted before July 1, 2000, are not subject
26 to refund. Any taxes that were not collected pursuant to s.
27 166.231(9)(f), Florida Statutes, prior to July 1, 2000, at the
28 point of sale on prepaid calling arrangements need not be paid
29 and are forgiven.

30 Section 38. Effective October 1, 2001, and applicable
31 to communications services reflected on bills dated on or

1 after that date, subsection (9) of section 166.231, Florida
2 Statutes, as amended by this act, is repealed, and subsections
3 (2), (5), (7), and (10) of said section are amended to read:

4 166.231 Municipalities; public service tax.--

5 (2) Services competitive with those enumerated in
6 subsection (1) ~~or subsection (9)~~, as defined by ordinance,
7 shall be taxed on a comparable base at the same rates.

8 However, fuel oil shall be taxed at a rate not to exceed 4
9 cents per gallon. However, for municipalities levying less
10 than the maximum rate allowable in subsection (1), the maximum
11 tax on fuel oil shall bear the same proportion to 4 cents
12 which the tax rate levied under subsection (1) bears to the
13 maximum rate allowable in subsection (1).

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

30 (7) The tax authorized hereunder shall be collected by
31 the seller of the taxable item from the purchaser at the time

1 of the payment for such service. The seller shall remit the
2 taxes collected to the municipality in the manner prescribed
3 by ordinance, ~~except that remittance of taxes by sellers of~~
4 ~~telecommunication services shall be governed by paragraph~~
5 ~~(9)(f)~~. Except as otherwise provided in ss. 166.233 and
6 166.234, the seller shall be liable for taxes that are due and
7 not remitted to the municipality. This shall not bar the
8 seller from recovering such taxes from purchasers; however,
9 the universities in the State University System shall not be
10 deemed a seller of any item otherwise taxable hereunder when
11 such item is provided to university residences incidental to
12 the provision of educational services.

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

29 Section 39. Effective October 1, 2001, paragraph (c)
30 of subsection (1) and subsection (2) of section 166.233,
31 Florida Statutes, are amended to read:

1 166.233 Public service tax; effective dates;
2 procedures for informing sellers of tax levies and related
3 information.--

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

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

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

1 untimely action that results in the nonpayment of the tax
2 imposed under s. 166.231 or s. 166.232. The provisions of this
3 paragraph which prescribe effective dates and require
4 municipalities to furnish notifications to the department do
5 not apply to taxes levied on service, ~~other than~~
6 ~~telecommunication service~~, provided by the municipality
7 levying the tax or by a separate utility authority, board, or
8 commission of the municipality.

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

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

15 203.01 Tax on gross receipts for utility services.--

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

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

22 (b) The sale of electricity to a public or private
23 utility, including a municipal corporation or rural electric
24 cooperative association, for resale within the state, or as
25 part of an electrical interchange agreement or contract
26 between such utilities for the purpose of transferring more
27 economically generated power; or

28 (c) The sale of telecommunication services for resale
29 of telecommunication services wholly or partially within this
30 state, which includes, for purposes of this subsection, the
31 sale of telecommunication services to a person reselling such

1 telecommunication services by way of a prepaid calling
2 arrangement as defined in s. 212.05(1)(e)1.a.;

3
4 provided the person deriving gross receipts from such sale
5 demonstrates that a resale in fact occurred and complies with
6 the following requirements: A resale in this state must be in
7 strict compliance with the rules and regulations of the
8 Department of Revenue; and any person making a sale for resale
9 in this state which is not in strict compliance with the rules
10 and regulations of the Department of Revenue shall be liable
11 for and pay the tax. Any person making a sale for resale in
12 this state may, through an informal protest provided for in s.
13 213.21 and the rules of the Department of Revenue, provide the
14 department with evidence of the exempt status of a sale. The
15 department shall adopt rules which provide that valid proof
16 and documentation of the resale in this state by a person
17 making the sale for resale in this state will be accepted by
18 the department when submitted during the protest period but
19 will not be accepted when submitted in any proceeding under
20 chapter 120 or any circuit court action instituted under
21 chapter 72.

22 (4) Gross receipts subject to the tax imposed by this
23 section shall not include receipts from sales or leases of
24 telecommunications service for use in the conduct of a
25 telecommunications service for hire or otherwise for resale,
26 including resale of telecommunication services paid by using a
27 prepaid calling arrangement as defined in s. 212.05(1)(e)1.a.

28 Section 41. Effective October 1, 2001, and applicable
29 to communications services reflected on bills dated on or
30 after that date, section 203.01, Florida Statutes, as amended
31 by this act, is amended to read:

1 203.01 Tax on gross receipts for utility and
2 communications services.--

3 (1)(a)1. Every person that receives payment for any
4 utility service shall report by the last day of each month to
5 the Department of Revenue, under oath of the secretary or some
6 other officer of such person, the total amount of gross
7 receipts derived from business done within this state, or
8 between points within this state, for the preceding month and,
9 at the same time, shall pay into the State Treasury an amount
10 equal to a percentage of such gross receipts at the rate set
11 forth in paragraph (b). Such collections shall be certified
12 by the Comptroller upon the request of the State Board of
13 Education.

14 2. A tax is levied on communications services as
15 defined in s. 202.11(3). Such tax shall be applied to the same
16 services and transactions as are subject to taxation under
17 chapter 202, and to communications services that are subject
18 to the exemption provided in s. 202.125(1). Such tax shall be
19 applied to the sales price of communications services when
20 sold at retail and to the actual cost of operating substitute
21 communications systems, as such terms are defined in s.
22 202.11, shall be due and payable at the same time as the taxes
23 imposed pursuant to chapter 202, and shall be administered and
24 collected pursuant to the provisions of chapter 202.

25 (b) ~~Beginning July 1, 1992, and thereafter,~~The rate
26 applied to utility services shall be 2.5 percent. The rate
27 applied to communications services shall be the rate
28 calculated pursuant to section 44 of this act.

29 (c) ~~Any person who purchases, installs, rents, or~~
30 ~~leases a telephone system or telecommunication system for his~~
31 ~~or her own use to provide that person with telephone service~~

1 ~~or telecommunication service which is a substitute for any~~
2 ~~telephone company switched service or a substitute for any~~
3 ~~dedicated facility by which a telephone company provides a~~
4 ~~communication path shall register with the Department of~~
5 ~~Revenue and pay into the State Treasury a yearly amount equal~~
6 ~~to a percentage of the actual cost of operating such system at~~
7 ~~the rate set forth in paragraph (b). "Actual cost" includes,~~
8 ~~but is not limited to, depreciation, interest, maintenance,~~
9 ~~repair, and other expenses directly attributable to the~~
10 ~~operation of such system. For purposes of this paragraph, the~~
11 ~~depreciation expense to be included in actual cost shall be~~
12 ~~the depreciation expense claimed for federal income tax~~
13 ~~purposes. The total amount of any payment required by a lease~~
14 ~~or rental contract or agreement shall be included within the~~
15 ~~actual cost. The provisions of this paragraph do not apply to~~
16 ~~the use by any local telephone company or any~~
17 ~~telecommunication carrier of its own telephone system or~~
18 ~~telecommunication system to conduct a telecommunication~~
19 ~~service for hire or to the use of any radio system operated by~~
20 ~~any county or municipality or by the state or any political~~
21 ~~subdivision thereof. If a system described in this paragraph~~
22 ~~is located in more than one state, the actual cost of such~~
23 ~~system for purposes of this paragraph shall be the actual cost~~
24 ~~of the system's equipment located in Florida. The term~~
25 ~~"telecommunications carrier" specifically includes cellular~~
26 ~~telephone carriers and other radio common carriers.~~

27 (c)(d) Electricity produced by cogeneration or by
28 small power producers which is transmitted and distributed by
29 a public utility between two locations of a customer of the
30 utility pursuant to s. 366.051 is subject to the tax imposed
31 by this section. The tax shall be applied to the cost price

1 of such electricity as provided in s. 212.02(4) and shall be
2 paid each month by the producer of such electricity.

3 (d)~~(e)~~ Electricity produced by cogeneration or by
4 small power producers during the 12-month period ending June
5 30 of each year which is in excess of nontaxable electricity
6 produced during the 12-month period ending June 30, 1990, is
7 subject to the tax imposed by this section. The tax shall be
8 applied to the cost price of such electricity as provided in
9 s. 212.02(4) and shall be paid each month, beginning with the
10 month in which total production exceeds the production of
11 nontaxable electricity for the 12-month period ending June 30,
12 1990. For purposes of this paragraph, "nontaxable
13 electricity" means electricity produced by cogeneration or by
14 small power producers which is not subject to tax under
15 paragraph~~(c)~~(d). Taxes paid pursuant to paragraph~~(c)~~(d)
16 may be credited against taxes due under this paragraph.
17 Electricity generated as part of an industrial manufacturing
18 process which manufactures products from phosphate rock, raw
19 wood fiber, paper, citrus or any agricultural product shall
20 not be subject to the tax imposed by this paragraph.
21 "Industrial manufacturing process" means the entire process
22 conducted at the location where the process takes place.

23 (e)~~(f)~~ Any person other than a cogenerator or small
24 power producer described in paragraph~~(d)~~(e) who produces for
25 his or her own use electrical energy which is a substitute for
26 electrical energy produced by an electric utility as defined
27 in s. 366.02 is subject to the tax imposed by this section.
28 The tax shall be applied to the cost price of such electrical
29 energy as provided in s. 212.02(4) and shall be paid each
30 month. The provisions of this paragraph do not apply to any
31 electrical energy produced and used by an electric utility.

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

10 (b) In addition to any other penalty provided by law,
11 any person who falsely or fraudulently reports or unlawfully
12 attempts to evade paying any tax imposed on gross receipts
13 from utility services under this chapter shall pay a penalty
14 equal to 100 percent of any tax due and is guilty of a
15 misdemeanor of the second degree, punishable as provided under
16 s. 775.082 or s. 775.083.

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

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

23 (b) The sale of electricity to a public or private
24 utility, including a municipal corporation or rural electric
25 cooperative association, for resale within the state, or as
26 part of an electrical interchange agreement or contract
27 between such utilities for the purpose of transferring more
28 economically generated power; ~~or~~

29 ~~(c) The sale of telecommunication services for resale~~
30 ~~of telecommunication services wholly or partially within this~~
31 ~~state, which includes, for purposes of this subsection, the~~

1 ~~sale of telecommunication services to a person reselling such~~
2 ~~telecommunication services by way of a prepaid calling~~
3 ~~arrangement as defined in s. 212.05(1)(e)1.a.~~

4
5 provided the person deriving gross receipts from such sale
6 demonstrates that a resale in fact occurred and complies with
7 the following requirements: A resale in this state must be in
8 strict compliance with the rules and regulations of the
9 Department of Revenue; and any person making a sale for resale
10 in this state which is not in strict compliance with the rules
11 and regulations of the Department of Revenue shall be liable
12 for and pay the tax. Any person making a sale for resale in
13 this state may, through an informal protest provided for in s.
14 213.21 and the rules of the Department of Revenue, provide the
15 department with evidence of the exempt status of a sale. The
16 department shall adopt rules which provide that valid proof
17 and documentation of the resale in this state by a person
18 making the sale for resale in this state will be accepted by
19 the department when submitted during the protest period but
20 will not be accepted when submitted in any proceeding under
21 chapter 120 or any circuit court action instituted under
22 chapter 72.

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

29 (4)(5) The tax imposed pursuant to this chapter part
30 relating to the provision of any utility services at the
31 option of the person supplying the taxable services may be

1 separately stated as Florida gross receipts tax on the total
2 amount of any bill, invoice, or other tangible evidence of the
3 provision of such taxable services and may be added as a
4 component part of the total charge. Whenever a provider of
5 taxable services elects to separately state such tax as a
6 component of the charge for the provision of such taxable
7 services, every person, including all governmental units,
8 shall remit the tax to the person who provides such taxable
9 services as a part of the total bill, and the tax is a
10 component part of the debt of the purchaser to the person who
11 provides such taxable services until paid and, if unpaid, is
12 recoverable at law in the same manner as any other part of the
13 charge for such taxable services. For a utility, the decision
14 to separately state any increase in the rate of tax imposed by
15 this chapter part which is effective after December 31, 1989,
16 and the ability to recover the increased charge from the
17 customer shall not be subject to regulatory approval.

18 ~~(5)(6)~~ The tax is imposed upon every person for the
19 privilege of conducting a utility or communications services
20 business, and each provider of the taxable services remains
21 fully and completely liable for the tax, even if the tax is
22 separately stated as a line item or component of the total
23 bill.

24 ~~(6)(7)~~ Any person who provides such services and who
25 fails, neglects, or refuses to remit the tax imposed in this
26 chapter part, either by himself or herself, or through agents
27 or employees, is liable for the tax and is guilty of a
28 misdemeanor of the first degree, punishable as provided in s.
29 775.082 or s. 775.083.

30 ~~(7)(8)~~ Gross receipts subject to the tax imposed by
31 this section for the provision of electricity shall include

1 receipts from monthly customer charges or monthly customer
2 facility charges.

3 ~~(9)(a) If the sale of a taxable telecommunication~~
4 ~~service also involves the sale of commercial or cable~~
5 ~~television service exempt under the provision of s.~~
6 ~~203.012(2)(b)2., the tax shall be applied to the value of the~~
7 ~~taxable service when it is sold separately.~~

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

12 ~~(c) The amounts identified as taxable in paragraph (b)~~
13 ~~shall not be less than the statewide average tariff rates set~~
14 ~~forth by the local exchange telecommunications companies in~~
15 ~~the tariffs filed with the Public Service Commission on~~
16 ~~January 1, 1995, and on January 1 of each year thereafter for~~
17 ~~the equivalent services subject to the provisions of this~~
18 ~~section. The Public Service Commission shall publish the~~
19 ~~statewide average tariff rates for commonly used services~~
20 ~~annually, beginning on January 1, 1996.~~

21 (8)~~(10)~~ Notwithstanding the provisions of subsection
22 ~~(4)~~(5) and s. 212.07(2), sums that were charged or billed as
23 taxes under this section and chapter 212 and that were
24 remitted to the state in full as taxes shall not be subject to
25 refund by the state or by the utility or other person that
26 ~~which~~ remitted the sums, when the amount remitted was not in
27 excess of the amount of tax imposed by chapter 212 and this
28 section.

29 Section 42. Effective October 1, 2001, section
30 203.012, Florida Statutes, is amended to read:

31 203.012 Definitions.--As used in this chapter:

1 ~~(1) The term "access charge" or "right of access"~~
2 ~~means any charge to any person for the right to use or for the~~
3 ~~use of a telephone system which includes equipment,~~
4 ~~facilities, or services to originate or terminate any of the~~
5 ~~services defined in subsection (4), subsection (5), subsection~~
6 ~~(6), or subsection (7) and which specifically includes~~
7 ~~customer access line charges, which includes the gross amount~~
8 ~~paid by subscribers and users in this state for access into~~
9 ~~the intrastate or interstate interexchange network as~~
10 ~~authorized by the Federal Communications Commission or the~~
11 ~~Florida Public Service Commission.~~

12 ~~(2)(a) Gross receipts from telecommunication services~~
13 ~~include the gross receipts for all telecommunication services~~
14 ~~of whatever nature, including, but not limited to, access~~
15 ~~charges and charges for right of access; residential and~~
16 ~~business 1-party, 2-party, and 4-party rotary charges; centrex~~
17 ~~charges; directory assistance charges; public telephone~~
18 ~~charges; touch-tone charges; emergency number charges; private~~
19 ~~branch exchange message charges; public announcement service~~
20 ~~charges; dial-it charges; local area data transport charges;~~
21 ~~key lines charges; private branch exchange trunk-flat rate~~
22 ~~charges; and directory listing charges other than yellow-page~~
23 ~~classified listing charges.~~

24 ~~(b) Gross receipts for telecommunication services do~~
25 ~~not include:~~

26 ~~1. Charges for customer premises equipment, including~~
27 ~~such equipment that is leased or rented by the customer from~~
28 ~~any source;~~

29 ~~2. Charges made to the public for commercial or cable~~
30 ~~television, unless it is used for two-way communication;~~
31 ~~however, if such two-way communication service is separately~~

1 ~~billed, only the charges made for two-way communication~~
2 ~~service will be subject to tax hereunder;~~

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

9 ~~4. Connection and disconnection charges; move or~~
10 ~~change charges; suspension of service charges; and service~~
11 ~~order, number change, and restoration charges; or~~

12 ~~5. Charges for services or items of equipment supplied~~
13 ~~by providers of the telecommunication services described in~~
14 ~~paragraph (5)(b), such as maintenance charges, equipment~~
15 ~~sales, or rental which are incidental to the provision of such~~
16 ~~telecommunication services, provided such charges are~~
17 ~~separately stated, itemized, or described on the bill,~~
18 ~~invoice, or other tangible evidence of the provision of such~~
19 ~~service.~~

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

21 ~~(a) The access to a local telephone system, and the~~
22 ~~privilege of telephonic-quality communication with~~
23 ~~substantially all persons having telephone or radio telephone~~
24 ~~stations constituting a part of such local telephone system;~~
25 ~~or~~

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

28
29 ~~The term "local telephone service" does not include any~~
30 ~~service which is a toll telephone service; private~~
31 ~~communication service; cellular mobile telephone or~~

1 ~~telecommunication service; specialized mobile radio, or pagers~~
2 ~~and paging, service, including but not limited to "beepers"~~
3 ~~and any other form of mobile and portable one-way or two-way~~
4 ~~communication; or teletypewriter service.~~

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

6 ~~(a) A communication service furnished to a subscriber~~
7 ~~or user that entitles the subscriber or user to exclusive or~~
8 ~~priority use of a communication channel or groups of channels,~~
9 ~~or to the use of an intercommunication system for the~~
10 ~~subscriber's stations, regardless of whether such channel,~~
11 ~~groups of channels, or intercommunication system may be~~
12 ~~connected through switching with a service described in~~
13 ~~subsection (3), subsection (6), or subsection (7);~~

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

18 ~~(c) The channel mileage which connects a telephone~~
19 ~~station located outside a local telephone system area with a~~
20 ~~central office in such local telephone system.~~

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

22 ~~(a) Local telephone service, toll telephone service,~~
23 ~~telegram or telegraph service, teletypewriter service, or~~
24 ~~private communication service; or~~

25 ~~(b) Cellular mobile telephone or telecommunication~~
26 ~~service; or specialized mobile radio, and pagers and paging,~~
27 ~~service, including but not limited to "beepers" and any other~~
28 ~~form of mobile and portable one-way or two-way communication;~~
29 ~~but does not include services or equipment incidental to~~
30 ~~telecommunication services enumerated in this paragraph such~~
31 ~~as maintenance of customer premises equipment, whether owned~~

1 ~~by the customer or not, or equipment sales or rental for which~~
2 ~~charges are separately stated, itemized, or described on the~~
3 ~~bill, invoice, or other tangible evidence of the provision of~~
4 ~~such service.~~

5
6 ~~The term "telecommunication service" does not include any~~
7 ~~Internet access service, electronic mail service, electronic~~
8 ~~bulletin board service, or similar on-line computer service.~~

9 ~~(6) The term "teletypewriter service" means the access~~
10 ~~from a teletypewriter, telephone, or other data station of~~
11 ~~which such station is a part, and the privilege of~~
12 ~~intercommunication by such station with substantially all~~
13 ~~persons having teletypewriter, telephone, or other data~~
14 ~~stations constituting a part of the same teletypewriter~~
15 ~~system, to which the subscriber or user is entitled upon~~
16 ~~payment of a charge or charges, whether such charge or charges~~
17 ~~are determined as a flat periodic amount, on the basis of~~
18 ~~distance and elapsed transmission time, or some other method.~~
19 ~~The term "teletypewriter service" does not include local~~
20 ~~telephone service or toll telephone service.~~

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

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

25 ~~(b) A service which entitles the subscriber or user,~~
26 ~~upon the payment of a periodic charge which is determined as a~~
27 ~~flat amount or upon the basis of total elapsed transmission~~
28 ~~time, to the privilege of an unlimited number of telephonic~~
29 ~~communications to or from all or a substantial portion of the~~
30 ~~persons having telephone or radio telephone stations in a~~
31 ~~specified area which is outside the local telephone system~~

1 ~~area in which the station provided with this service is~~
2 ~~located.~~

3
4 ~~The term "toll telephone service" includes interstate and~~
5 ~~intrastate wide-area telephone service charges.~~

6 ~~(8) The term "interstate," as applied to~~
7 ~~telecommunication services, means originating in this state~~
8 ~~but not terminating in this state, or terminating in this~~
9 ~~state but not originating in this state.~~

10 ~~(1)(9) The term "Utility service" means electricity~~
11 ~~for light, heat, or power; and natural or manufactured gas for~~
12 ~~light, heat, or power; or telecommunication services.~~

13 ~~(2)(10) The term "Person" means any person as defined~~
14 ~~in s. 212.02.~~

15 Section 43. Effective October 1, 2001, sections
16 203.013, 203.60, 203.61, 203.62, and 203.63, Florida Statutes,
17 are repealed.

18 Section 44. The Revenue Estimating Conference shall
19 compute the rate of communications services tax which would be
20 required to be levied under chapter 203, Florida Statutes, as
21 amended by this act, to raise, through the imposition of a tax
22 on communications services as defined in chapter 202, Florida
23 Statutes, revenues equal to the taxes estimated to be actually
24 collected under chapter 203, Florida Statutes, on
25 communications services. The rates computed by the Revenue
26 Estimating Conference shall be presented to the Legislature
27 for review and approval during the 2001 Regular Session.

28 Section 45. Paragraph (e) of subsection (1) of section
29 212.05, Florida Statutes, is amended to read:

30 212.05 Sales, storage, use tax.--It is hereby declared
31 to be the legislative intent that every person is exercising a

1 taxable privilege who engages in the business of selling
2 tangible personal property at retail in this state, including
3 the business of making mail order sales, or who rents or
4 furnishes any of the things or services taxable under this
5 chapter, or who stores for use or consumption in this state
6 any item or article of tangible personal property as defined
7 herein and who leases or rents such property within the state.

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

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

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

22 (I) "Prepaid calling arrangement" means the separately
23 stated retail sale by advance payment of communications
24 services that consist exclusively of telephone calls
25 originated by using an access number, authorization code, or
26 other means that may be manually, electronically, or otherwise
27 entered, and that are sold in predetermined units or dollars
28 of which the number declines with use in a known amount.~~A~~
29 ~~prepaid telephone card or authorization number means the right~~
30 ~~to exclusively make telephone calls that must be paid for in~~
31 ~~advance and that enable the origination of calls using an~~

1 ~~access number, prepaid mobile account, or authorization code,~~
2 ~~whether manually or electronically dialed.~~

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

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

23 b. Any television system program service.

24 c. The installation of telecommunication and
25 telegraphic equipment.

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

28 2. For purposes of this chapter, "television system
29 program service" means the transmitting, by any means, of any
30 audio or video signal to a subscriber for other than
31 retransmission, or the installing, connecting, reconnecting,

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

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

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

27 b. One hundred percent of the charge imposed for the
28 total channel mileage between each channel termination point
29 within this state; and

30 c. The portion of the interstate interoffice channel
31 mileage charge as determined by multiplying said charge times

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

16 4. The tax imposed pursuant to this paragraph shall
17 not exceed \$50,000 per calendar year on charges to any person
18 for interstate telecommunications services defined in s.
19 203.012(4) and (7)(b), if the majority of such services used
20 by such person are for communications originating outside of
21 this state and terminating in this state. This exemption
22 shall only be granted to holders of a direct pay permit issued
23 pursuant to this subparagraph. No refunds shall be given for
24 taxes paid prior to receiving a direct pay permit. Upon
25 application, the department may issue a direct pay permit to
26 the purchaser of telecommunications services authorizing such
27 purchaser to pay tax on such services directly to the
28 department. Any vendor furnishing telecommunications services
29 to the holder of a valid direct pay permit shall be relieved
30 of the obligation to collect and remit the tax on such
31 service. Tax payments and returns pursuant to a direct pay

1 permit shall be monthly. For purposes of this subparagraph,
2 the term "person" shall be limited to a single legal entity
3 and shall not be construed as meaning a group or combination
4 of affiliated entities or entities controlled by one person or
5 group of persons.

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

16 Section 46. Effective July 1, 2000, all taxes that
17 have been collected pursuant to s. 212.05(1)(e), Florida
18 Statutes, at the point of sale on prepaid calling arrangements
19 before July 1, 2000, must be remitted, and taxes that have
20 been collected at the point of sale on prepaid calling
21 arrangements and remitted before July 1, 2000, are not subject
22 to refund. Any taxes that were not collected pursuant to s.
23 212.05(1)(e) before July 1, 2000, at point of sale on prepaid
24 calling arrangements need not be paid and are forgiven.

25 Section 47. Paragraph (b) of subsection (2) of section
26 212.054, Florida Statutes, is amended to read:

27 212.054 Discretionary sales surtax; limitations,
28 administration, and collection.--

29 (2)

30 (b) However:

31

- 1 1. The ~~tax on any~~ sales amount above \$5,000 on any
2 item of tangible personal property and on long-distance
3 telephone service shall not be subject to the surtax.
4 However, charges for prepaid calling arrangements, as defined
5 in s. 212.05(1)(e)1.a., shall be subject to the surtax.For
6 purposes of administering the \$5,000 limitation on an item of
7 tangible personal property, if two or more taxable items of
8 tangible personal property are sold to the same purchaser at
9 the same time and, under generally accepted business practice
10 or industry standards or usage, are normally sold in bulk or
11 are items that, when assembled, comprise a working unit or
12 part of a working unit, such items must be considered a single
13 item 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 tax for utility, telecommunication, or television
21 system program services shall be subject to the surtax. In
22 the case of utility, telecommunication, or television system
23 program services billed after the last day the surtax is in
24 effect, the entire amount of the charge tax on said items
25 shall not be subject to the surtax.
- 26 3. In the case of written contracts which are signed
27 prior to the effective date of any such surtax for the
28 construction of improvements to real property or for
29 remodeling of existing structures, the surtax shall be paid by
30 the contractor responsible for the performance of the
31 contract. However, the contractor may apply for one refund of

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

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

31

1 Section 48. Effective October 1, 2001, and applicable
2 to communications services reflected on bills dated on or
3 after that date, paragraph (e) of subsection (1) of section
4 212.05, Florida Statutes, as amended by this act, is amended
5 to read:

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

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

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

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

28 (I) "Prepaid calling arrangement" means the separately
29 stated retail sale by advance payment of communications
30 services that consist exclusively of telephone calls
31 originated by using an access number, authorization code, or

1 other means that may be manually, electronically, or otherwise
2 entered and that are sold in predetermined units or dollars
3 whose number declines with use in a known amount.

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

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

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

24 ~~b.c.~~ The installation of telecommunication and
25 telegraphic equipment.

26 ~~c.d.~~ Electrical power or energy, except that the tax
27 rate for charges for electrical power or energy is 7 percent.

28 2. ~~For purposes of this chapter, "television system~~
29 ~~program service" means the transmitting, by any means, of any~~
30 ~~audio or video signal to a subscriber for other than~~
31 ~~retransmission, or the installing, connecting, reconnecting,~~

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

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

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

27 ~~b. One hundred percent of the charge imposed for the~~
28 ~~total channel mileage between each channel termination point~~
29 ~~within this state; and~~

30 ~~c. The portion of the interstate interoffice channel~~
31 ~~mileage charge as determined by multiplying said charge times~~

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

16 ~~4. The tax imposed pursuant to this paragraph shall~~
17 ~~not exceed \$50,000 per calendar year on charges to any person~~
18 ~~for interstate telecommunications services defined in s.~~
19 ~~203.012(4) and (7)(b), if the majority of such services used~~
20 ~~by such person are for communications originating outside of~~
21 ~~this state and terminating in this state. This exemption~~
22 ~~shall only be granted to holders of a direct pay permit issued~~
23 ~~pursuant to this subparagraph. No refunds shall be given for~~
24 ~~taxes paid prior to receiving a direct pay permit. Upon~~
25 ~~application, the department may issue a direct pay permit to~~
26 ~~the purchaser of telecommunications services authorizing such~~
27 ~~purchaser to pay tax on such services directly to the~~
28 ~~department. Any vendor furnishing telecommunications services~~
29 ~~to the holder of a valid direct pay permit shall be relieved~~
30 ~~of the obligation to collect and remit the tax on such~~
31 ~~service. Tax payments and returns pursuant to a direct pay~~

1 ~~permit shall be monthly. For purposes of this subparagraph,~~
2 ~~the term "person" shall be limited to a single legal entity~~
3 ~~and shall not be construed as meaning a group or combination~~
4 ~~of affiliated entities or entities controlled by one person or~~
5 ~~group of persons.~~

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

16 Section 49. Effective October 1, 2001, and applicable
17 to communications services reflected on bills dated on or
18 after such date, paragraph (b) of subsection (2) and paragraph
19 (c) of subsection (3) of section 212.054, Florida Statutes, as
20 amended by this act, are amended to read:

21 212.054 Discretionary sales surtax; limitations,
22 administration, and collection.--

23 (2)

24 (b) However:

25 1. The sales amount above \$5,000 on any item of
26 tangible personal property ~~and on long-distance telephone~~
27 ~~service~~ shall not be subject to the surtax. However, charges
28 for prepaid calling arrangements, as defined in s.
29 212.05(1)(e)1.a., shall be subject to the surtax. For purposes
30 of administering the \$5,000 limitation on an item of tangible
31 personal property, if two or more taxable items of tangible

1 personal property are sold to the same purchaser at the same
2 time and, under generally accepted business practice or
3 industry standards or usage, are normally sold in bulk or are
4 items that, when assembled, comprise a working unit or part of
5 a working unit, such items must be considered a single item
6 for purposes of the \$5,000 limitation when supported by a
7 charge ticket, sales slip, invoice, or other tangible evidence
8 of a single sale or rental. ~~The limitation provided in this~~
9 ~~subparagraph does not apply to the sale of any other service.~~

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

21 3. In the case of written contracts which are signed
22 prior to the effective date of any such surtax for the
23 construction of improvements to real property or for
24 remodeling of existing structures, the surtax shall be paid by
25 the contractor responsible for the performance of the
26 contract. However, the contractor may apply for one refund of
27 any such surtax paid on materials necessary for the completion
28 of the contract. Any application for refund shall be made no
29 later than 15 months following initial imposition of the
30 surtax in that county. The application for refund shall be in
31 the manner prescribed by the department by rule. A complete

1 application shall include proof of the written contract and of
2 payment of the surtax. The application shall contain a sworn
3 statement, signed by the applicant or its representative,
4 attesting to the validity of the application. The department
5 shall, within 30 days after approval of a complete
6 application, certify to the county information necessary for
7 issuance of a refund to the applicant. Counties are hereby
8 authorized to issue refunds for this purpose and shall set
9 aside from the proceeds of the surtax a sum sufficient to pay
10 any refund lawfully due. Any person who fraudulently obtains
11 or attempts to obtain a refund pursuant to this subparagraph,
12 in addition to being liable for repayment of any refund
13 fraudulently obtained plus a mandatory penalty of 100 percent
14 of the refund, is guilty of a felony of the third degree,
15 punishable as provided in s. 775.082, s. 775.083, or s.
16 775.084.

17 4. In the case of any vessel, railroad, or motor
18 vehicle common carrier entitled to partial exemption from tax
19 imposed under this chapter pursuant to s. 212.08(4), (8), or
20 (9), the basis for imposition of surtax shall be the same as
21 provided in s. 212.08 and the ratio shall be applied each
22 month to total purchases in this state of property qualified
23 for proration which is delivered or sold in the taxing county
24 to establish the portion used and consumed in intracounty
25 movement and subject to surtax.

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

29 (c) The consumer of utility ~~or television system~~
30 ~~program~~ services is located in the county, ~~or the~~

31

1 ~~telecommunication services are provided to a location within~~
2 ~~the county.~~

3 Section 50. Effective January 1, 2001, section
4 337.401, Florida Statutes, is amended to read:

5 337.401 Use of right-of-way for utilities subject to
6 regulation; permit; fees.--

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

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

31

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

1 Communications Commission; and proof of insurance or
2 self-insuring status adequate to defend and cover claims.

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

13 (c)1. It is the intention of the state to treat all
14 providers of communications services that use or occupy
15 municipal or charter county roads or rights-of-way for the
16 provision of communications services in a nondiscriminatory
17 and competitively neutral manner with respect to the payment
18 of permit fees. Certain providers of communications services
19 have been granted by general law the authority to offset
20 permit fees against franchise or other fees while other
21 providers of communications services have not been granted
22 this authority. In order to treat all providers of
23 communications services in a nondiscriminatory and
24 competitively neutral manner with respect to the payment of
25 permit fees, each municipality and charter county shall make
26 an election under either sub-subparagraph a. or
27 sub-subparagraph b. and must inform the Department of Revenue
28 of the election by certified mail by July 1, 2001. Such
29 election shall take effect October 1, 2001.

30 a.(I) The municipality or charter county may require
31 and collect permit fees from any providers of communications

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

27 (II) To ensure competitive neutrality among providers
28 of communications services, for any municipality or charter
29 county that elects to exercise its authority to require and
30 collect permit fees under this sub-subparagraph, the rate of
31 the local communications services tax imposed by such

1 jurisdiction, as computed under s. 202.20(1) and (2), shall
2 automatically be reduced by a rate of 0.12 percent.

3 b. Alternatively, the municipality or charter county
4 may elect not to require and collect permit fees from any
5 provider of communications services that uses or occupies
6 municipal or charter county roads or rights-of-way for the
7 provision of communications services; however, each
8 municipality or charter county that elects to operate under
9 this sub-subparagraph retains all authority to establish rules
10 and regulations for providers of communications services to
11 use or occupy roads or rights-of-way as provided in this
12 section. If a municipality or charter county elects to operate
13 under this sub-subparagraph, the total rate for the local
14 communications services tax as computed under s. 202.20(1) and
15 (2) for that municipality or charter county may be increased
16 by ordinance by an amount not to exceed a rate of 0.12
17 percent.

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

22 2. Each noncharter county shall make an election under
23 either sub-subparagraph a. or sub-subparagraph b. and shall
24 inform the Department of Revenue of the election by certified
25 mail by July 1, 2001. Such election shall take effect October
26 1, 2001.

27 a. The noncharter county may elect to require and
28 collect permit fees from any providers of communications
29 services that use or occupy noncharter county roads or
30 rights-of-way. All fees permitted under this sub-subparagraph
31 must be reasonable and commensurate with the direct and actual

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

23 b. Alternatively, the noncharter county may elect not
24 to require and collect permit fees from any provider of
25 communications services that uses or occupies noncharter
26 county roads or rights-of-way for the provision of
27 communications services; however, each noncharter county that
28 elects to operate under this sub-subparagraph shall retain all
29 authority to establish rules and regulations for providers of
30 communications services to use or occupy roads or
31 rights-of-way as provided in this section. If a noncharter

1 county elects to operate under this sub-subparagraph, the
2 total rate for the local communications services tax as
3 computed under s. 202.20(1) and (2) for that noncharter county
4 may be increased by ordinance by an amount not to exceed a
5 rate of 0.24 percent, to replace the revenue the noncharter
6 county would otherwise have received from permit fees for
7 providers of communications services.

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

11 3. Except as provided in this paragraph,
12 municipalities and counties retain all existing authority to
13 require and collect permit fees from users or occupants of
14 municipal or county roads or rights-of-way and to set
15 appropriate permit fee amounts.

16 (d) After January 1, 2001, in addition to any other
17 notice requirements, a municipality must provide to the
18 Secretary of State, at least 10 days prior to consideration on
19 first reading, notice of a proposed ordinance governing a
20 telecommunications company placing or maintaining
21 telecommunications facilities in its roads or rights-of-way.
22 After January 1, 2001, in addition to any other notice
23 requirements, a county must provide to the Secretary of State,
24 at least 15 days prior to consideration at a public hearing,
25 notice of a proposed ordinance governing a telecommunications
26 company placing or maintaining telecommunications facilities
27 in its roads or rights-of-way. The notice required by this
28 paragraph must be published by the Secretary of State on a
29 designated Internet website. The failure of a municipality or
30 county to provide such notice does not render the ordinance
31 invalid.

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

18 ~~(f)(4)~~ A municipality may require ~~by ordinance enter~~
19 ~~into an agreement with~~ any person providing telecommunication
20 services defined in s. 203.012(7) as a condition for granting
21 permission to occupy or use any city street, alley, viaduct,
22 elevated roadway, bridge, or other public way to pay. ~~The~~
23 ~~agreement shall permit the telecommunication service provider~~
24 ~~to construct, operate, maintain, repair, rebuild, or replace a~~
25 ~~telecommunications route within a municipal right-of-way. The~~
26 ~~agreement shall provide for a fee or other consideration~~
27 payable annually based on actual linear feet of any cable,
28 fiber optic, or other pathway that makes physical use of the
29 municipal right-of-way. In no event shall the fee or other
30 consideration imposed pursuant to this paragraph subsection be
31 less than \$500 per linear mile of any cable, fiber optic, or

1 other pathway that makes physical use of the municipal
2 right-of-way. Any fee or other consideration imposed by this
3 paragraph subsection in excess of \$500 shall be applied in a
4 nondiscriminatory manner and shall not exceed the sum of:

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

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

10 3.(c) The proportionate share of cost of land for such
11 street, alley, or other public way attributable to utilization
12 of the right-of-way by a telecommunication service provider.
13

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

1 full force and effect unless the ordinance is repealed by the
2 municipality. Notwithstanding the language contained herein a
3 municipality may reenact any ordinance which has an automatic
4 expiration date provided the ordinance does not increase the
5 fees in effect in said ordinance in violation of this section.

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

21 (h)~~(6)~~ A local governmental entity may not use its
22 authority over the placement of facilities in its roads and
23 rights-of-way as a basis for asserting or exercising
24 regulatory control over a telecommunications company regarding
25 matters within the exclusive jurisdiction of the Florida
26 Public Service Commission or the Federal Communications
27 Commission, including, but not limited to, the operations,
28 systems, qualifications, services, service quality, service
29 territory, and prices of a telecommunications company.

30 (i)~~(7)~~ A telecommunications company that has obtained
31 permission to occupy the roads and rights-of-way of an

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

10 (j)~~(8)~~ Except as expressly provided in this section,
11 this section does not modify the authority of local
12 governmental entities to levy the tax authorized in s. 166.231
13 or the duties of telecommunications companies under ss.
14 337.402-337.404. This section does not apply to building
15 permits, pole attachments, or private roads, private
16 easements, and private rights-of-way. Except as expressly
17 provided in this section, this section does not limit or
18 expand whatever powers counties may have relating to roads and
19 rights-of-way. Nothing in this section shall limit or expand
20 whatever authority a local government may have to impose any
21 fee pursuant to 47 U.S.C. ss. 542 and 573.

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

24 (4)~~(10)~~ This section, except subsections (1) and~~(2)~~
25 and paragraph (3)(h)~~(6)~~, does not apply to the provision of
26 pay telephone service on public or municipal roads or
27 rights-of-way.

28 Section 51. Effective October 1, 2001, section
29 337.401, Florida Statutes, as amended by this act, is amended
30 to read:

31

1 337.401 Use of right-of-way for utilities subject to
2 regulation; permit; fees.--

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

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

28 (3)(a) Because of the unique circumstances applicable
29 to providers of communications services, including, but not
30 limited to, the circumstances described in paragraph (e) and
31 the fact that federal and state law require the

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

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

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

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

1 of the election by certified mail by July 1, 2001 ~~October 1,~~
2 ~~2001~~. Such election shall take effect October 1, 2001 ~~January~~
3 ~~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) and (2), shall
7 automatically be reduced by a rate of 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(1) and
20 (2) for that municipality or charter county may be increased
21 by ordinance by an amount not to exceed a rate of 0.12
22 percent.

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

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

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(1) and (2) for that noncharter county
9 may be increased by ordinance by an amount not to exceed a
10 rate of 0.24 percent, to replace the revenue the noncharter
11 county would otherwise have received from permit fees for
12 providers of 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 provider of communications services ~~telecommunications company~~
26 placing or maintaining communications ~~telecommunications~~
27 facilities in its roads or rights-of-way. After January 1,
28 2001, in addition to any other notice requirements, a county
29 must provide to the Secretary of State, at least 15 days prior
30 to consideration at a public hearing, notice of a proposed
31 ordinance governing a provider of communications services

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

7 (e) The authority of municipalities and counties to
8 require franchise fees from providers of communications
9 services, with respect to the provision of communications
10 services, is specifically preempted by the state, except as
11 otherwise provided in paragraph (f), because of unique
12 circumstances applicable to providers of communications
13 services when compared to other utilities occupying municipal
14 or county roads or rights-of-way. Providers of communications
15 services may provide similar services in a manner that
16 requires the placement of facilities in municipal or county
17 roads or rights-of-way or in a manner that does not require
18 the placement of facilities in such roads or rights-of-way.
19 Although similar communications services may be provided by
20 different means, the state desires to treat providers of
21 communications services in a nondiscriminatory manner and to
22 have the taxes, franchise fees, and other fees paid by
23 providers of communications services be competitively neutral.
24 Municipalities and counties retain all existing authority, if
25 any, to collect franchise fees from users or occupants of
26 municipal or county roads or rights-of-way other than
27 providers of communications services, and the provisions of
28 this subsection shall have no effect upon this authority. The
29 provisions of this subsection do not restrict the authority,
30 if any, of municipalities or counties or other governmental
31 entities to receive reasonable rental fees based on fair

1 market value for the use of public lands and buildings on
2 property outside the public roads or rights-of-way for the
3 placement of communications antennas and towers.

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

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

24 ~~(e) If any municipality requires any~~
25 ~~telecommunications company to pay a fee or other consideration~~
26 ~~as a condition for granting permission to occupy municipal~~
27 ~~streets and rights-of-way for poles, wires, and other~~
28 ~~fixtures, such fee or consideration may not exceed 1 percent~~
29 ~~of the gross receipts on recurring local service revenues for~~
30 ~~services provided within the corporate limits of the~~
31 ~~municipality by such telecommunications company. Included~~

1 ~~within such 1-percent maximum fee or consideration are all~~
2 ~~taxes, licenses, fees, in-kind contributions accepted pursuant~~
3 ~~to paragraph (g), and other impositions except ad valorem~~
4 ~~taxes and amounts for assessments for special benefits, such~~
5 ~~as sidewalks, street pavings, and similar improvements, and~~
6 ~~occupational license taxes levied or imposed by a municipality~~
7 ~~upon the telecommunications company. This paragraph shall not~~
8 ~~impair any franchise in existence on July 1, 1985.~~

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

23 ~~1. Costs directly related to the inconvenience or~~
24 ~~impairment solely caused by the disturbance of the municipal~~
25 ~~right-of-way;~~

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

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

31

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

24 (h)(g) Except as expressly allowed or authorized by
25 general law and except for the rights-of-way permit fees
26 subject to paragraph(c)(e), a municipality or county may not
27 levy on a provider of communications services
28 ~~telecommunications company~~ a tax, fee, or other charge or
29 imposition for operating as a provider of communications
30 services telecommunications company within the jurisdiction of
31 the municipality or county which is in any way related to

1 using its roads or rights-of-way. ~~A municipality may not allow~~
2 ~~a telecommunications company to pay a fee or provide~~
3 ~~compensation in excess of the limits prescribed in this~~
4 ~~section.~~ A municipality or county may not require or solicit
5 in-kind compensation, except as otherwise provided in
6 paragraph (f) ~~in lieu of any fees imposed pursuant to this~~
7 ~~section.~~ Nothing in this paragraph shall impair any ordinance
8 or agreement in effect on May 22, 1998, or any voluntary
9 agreement entered into subsequent to that date, which provides
10 for or allows in-kind compensation by a telecommunications
11 company.

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

23 (j)(i) A provider of communications services
24 ~~telecommunications company~~ that has obtained permission to
25 occupy the roads or ~~and~~ rights-of-way of an incorporated
26 municipality pursuant to s. 362.01 or that is otherwise
27 lawfully occupying the roads or rights-of-way of a
28 municipality ~~on the effective date of this act~~ shall not be
29 required to obtain consent to continue such lawful occupation
30 of those roads or rights-of-way; however, nothing in this
31 paragraph shall be interpreted to limit the power of a

1 municipality to ~~impose a fee or~~ adopt or enforce reasonable
2 rules or regulations as provided in this section.

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

16 ~~(4)(k)~~ As used in this section, "communications
17 services" and "cable services" have ~~"telecommunications~~
18 ~~company"~~ the same meanings ascribed in chapter 202 meaning
19 as defined in s. 364.02.

20 ~~(5)(4)~~ This section, except subsections (1) and (2)
21 and paragraph (3) ~~(i)(h)~~, does not apply to the provision of
22 pay telephone service on public, or municipal, or county roads
23 or rights-of-way.

24 Section 52. The Legislature finds that it may be
25 necessary to adopt a state policy regarding in-kind
26 requirements, institutional networks, and contributions for,
27 or in support of, the use or construction of public,
28 educational, or governmental access facilities allowed under
29 federal law currently imposed only on providers of cable
30 service, especially in light of the in-kind requirements for
31 providers of telecommunications services under s. 337.401(5),

1 Florida Statutes, 1999. Given the development of alternative
2 choices in the delivery of multichannel video programming,
3 including programming by providers of wireless, satellite,
4 Internet, and other video delivery systems, and the potential
5 competitive inequities which may be associated with such
6 requirements, networks, and contributions, the appropriate
7 committees of the Legislature shall study and evaluate, during
8 the 2001 legislative session, an appropriate state policy
9 regarding these issues, including the option of calculating
10 the present and future value of such requirements, networks,
11 and contributions available to local governments in excess of
12 the limitations imposed on franchise fees under 47 U.S.C. s.
13 542(b) as a part of the computation of replacement revenues
14 under s. 202.20, Florida Statutes, in setting the local
15 communications services tax rate.

16 Section 53. Subsection (1) of section 212.031, Florida
17 Statutes, is amended to read:

18 212.031 Lease or rental of or license in real
19 property.--

20 (1)(a) It is declared to be the legislative intent
21 that every person is exercising a taxable privilege who
22 engages in the business of renting, leasing, letting, or
23 granting a license for the use of any real property unless
24 such property is:

25 1. Assessed as agricultural property under s. 193.461.

26 2. Used exclusively as dwelling units.

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

29 4. Recreational property or the common elements of a
30 condominium when subject to a lease between the developer or
31 owner thereof and the condominium association in its own right

1 or as agent for the owners of individual condominium units or
2 the owners of individual condominium units. However, only the
3 lease payments on such property shall be exempt from the tax
4 imposed by this chapter, and any other use made by the owner
5 or the condominium association shall be fully taxable under
6 this chapter.

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

23 6. A public street or road which is used for
24 transportation purposes.

25 7. Property used at an airport exclusively for the
26 purpose of aircraft landing or aircraft taxiing or property
27 used by an airline for the purpose of loading or unloading
28 passengers or property onto or from aircraft or for fueling
29 aircraft.

30 8.a. Property used at a port authority, as defined in
31 s. 315.02(2), exclusively for the purpose of oceangoing

1 vessels or tugs docking, or such vessels mooring on property
2 used by a port authority for the purpose of loading or
3 unloading passengers or cargo onto or from such a vessel, or
4 property used at a port authority for fueling such vessels, or
5 to the extent that the amount paid for the use of any property
6 at the port is based on the charge for the amount of tonnage
7 actually imported or exported through the port by a tenant.

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

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

18 a. Photography, sound and recording, casting, location
19 managing and scouting, shooting, creation of special and
20 optical effects, animation, adaptation (language, media,
21 electronic, or otherwise), technological modifications,
22 computer graphics, set and stage support (such as
23 electricians, lighting designers and operators, greensmen,
24 prop managers and assistants, and grips), wardrobe (design,
25 preparation, and management), hair and makeup (design,
26 production, and application), performing (such as acting,
27 dancing, and playing), designing and executing stunts,
28 coaching, consulting, writing, scoring, composing,
29 choreographing, script supervising, directing, producing,
30 transmitting dailies, dubbing, mixing, editing, cutting,
31

1 looping, printing, processing, duplicating, storing, and
2 distributing;

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

8 c. Property management services directly related to
9 property used in connection with the services described in
10 sub-subparagraphs a. and b.

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

24 11. Property occupied pursuant to an instrument
25 calling for payments which the department has declared, in a
26 Technical Assistance Advisement issued on or before March 15,
27 1993, to be nontaxable pursuant to rule 12A-1.070(19)(c),
28 Florida Administrative Code; provided that this subparagraph
29 shall only apply to property occupied by the same person
30 before and after the execution of the subject instrument and
31 only to those payments made pursuant to such instrument,

1 exclusive of renewals and extensions thereof occurring after
2 March 15, 1993.

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

27 (c) For the exercise of such privilege, a ~~as~~ tax is
28 levied in an amount equal to 6 percent of and on the total
29 rent or license fee charged for such real property by the
30 person charging or collecting the rental or license fee. The
31 total rent or license fee charged for such real property shall

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

15 (d) When the rental or license fee of any such real
16 property is paid by way of property, goods, wares,
17 merchandise, services, or other thing of value, the tax shall
18 be at the rate of 6 percent of the value of the property,
19 goods, wares, merchandise, services, or other thing of value.

20 Section 54. Revenue received by a taxing authority
21 under this act shall be deemed to replace any taxes or fees
22 previously imposed but repealed by this act without any
23 further action on the part of such taxing authority. If the
24 repeal under this act of a taxing authority's authority to
25 levy taxes or fees impairs security pledged to retire the
26 authority's bonded indebtedness secured by such taxes or fees,
27 then to the extent of any such impairment, a like sum of
28 revenue received by the authority under this act shall be
29 deemed as a matter of law to replace said taxes and fees as
30 security for the bonded indebtedness.

31

1 Section 55. The taxes imposed by ss. 203.01, 202.12,
2 and 202.19, Florida Statutes, on communications services shall
3 be applied in accordance with chapter 202, Florida Statutes,
4 as created by this act, to communications services reflected
5 on bills dated on or after October 1, 2001.

6 Section 56. Effective upon this act becoming a law,
7 the sum of \$201,587 is appropriated from the General Revenue
8 Fund to the Department of Revenue in fiscal year 1999-2000 to
9 implement the provisions of this act.

10 Section 57. The sum of \$3,583,441 is appropriated in
11 fiscal year 2000-2001 from the General Revenue Fund to the
12 Department of Revenue and 32 full-time equivalent positions
13 are authorized to implement the provisions of this act.

14 Section 58. Effective June 30, 2001:

15 (1) Sections 202.10, 202.11, 202.20, 202.26, and
16 202.37, Florida Statutes, as created by this act, are
17 repealed.

18 (2) Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15,
19 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35,
20 38, 39, 41, 42, 43, 48, 49, 51, 54, and 55 of this act are
21 repealed.

22 (3) The advisory committee appointed pursuant to
23 section 32 of this act is abolished.

24 Section 59. Effective June 30, 2001, section 337.401,
25 Florida Statutes, as amended by this act, is amended to read:

26 337.401 Use of right-of-way for utilities subject to
27 regulation; permit; fees.--

28 (1) The department and local governmental entities,
29 referred to in ss. 337.401-337.404 as the "authority," that
30 have jurisdiction and control of public roads or publicly
31 owned rail corridors are authorized to prescribe and enforce

1 reasonable rules or regulations with reference to the placing
2 and maintaining along, across, or on any road or publicly
3 owned rail corridors under their respective jurisdictions any
4 electric transmission, telephone, or telegraph lines; pole
5 lines; poles; railways; ditches; sewers; water, heat, or gas
6 mains; pipelines; fences; gasoline tanks and pumps; or other
7 structures hereinafter referred to as the "utility."

8 (2) The authority may grant to any person who is a
9 resident of this state, or to any corporation which is
10 organized under the laws of this state or licensed to do
11 business within this state, the use of a right-of-way for the
12 utility in accordance with such rules or regulations as the
13 authority may adopt. No utility shall be installed, located,
14 or relocated unless authorized by a written permit issued by
15 the authority. The permit shall require the permitholder to
16 be responsible for any damage resulting from the issuance of
17 such permit. The authority may initiate injunctive
18 proceedings as provided in s. 120.69 to enforce provisions of
19 this subsection or any rule or order issued or entered into
20 pursuant thereto.

21 ~~(3)(a) Because federal and state law require the~~
22 ~~nondiscriminatory treatment of providers of telecommunications~~
23 ~~services and because of the desire to promote competition~~
24 ~~among providers of telecommunications services, it is the~~
25 ~~intent of the Legislature that municipalities and counties~~
26 ~~treat telecommunications companies in a nondiscriminatory and~~
27 ~~competitively neutral manner when imposing rules or~~
28 ~~regulations governing the placement or maintenance of~~
29 ~~telecommunications facilities in the public roads or~~
30 ~~rights-of-way. Rules or regulations imposed by a municipality~~
31 ~~or county relating to telecommunications companies placing or~~

1 ~~maintaining telecommunications facilities in its roads or~~
2 ~~rights-of-way must be generally applicable to all~~
3 ~~telecommunications companies and, notwithstanding any other~~
4 ~~law, may not require a telecommunications company to apply for~~
5 ~~or enter into an individual license, franchise, or other~~
6 ~~agreement with the municipality or county as a condition of~~
7 ~~placing or maintaining telecommunications facilities in its~~
8 ~~roads or rights-of-way. In addition to other reasonable rules~~
9 ~~or regulations that a municipality or county may adopt~~
10 ~~relating to the placement or maintenance of telecommunications~~
11 ~~facilities in its roads or rights-of-way under this~~
12 ~~subsection, a municipality or county may require a~~
13 ~~telecommunications company that places or seeks to place~~
14 ~~facilities in its roads or rights-of-way to register with the~~
15 ~~municipality or county and to provide the name of the~~
16 ~~registrant; the name, address, and telephone number of a~~
17 ~~contact person for the registrant; the number of the~~
18 ~~registrant's current certificate of authorization issued by~~
19 ~~the Florida Public Service Commission or the Federal~~
20 ~~Communications Commission; and proof of insurance or~~
21 ~~self-insuring status adequate to defend and cover claims.~~

22 ~~(b) Each municipality and county retains the authority~~
23 ~~to regulate and manage municipal and county roads or~~
24 ~~rights-of-way in exercising its police power. Any rules or~~
25 ~~regulations adopted by a municipality or county which govern~~
26 ~~the occupation of its roads or rights-of-way by~~
27 ~~telecommunications companies must be related to the placement~~
28 ~~or maintenance of facilities in such roads or rights-of-way,~~
29 ~~must be reasonable and nondiscriminatory, and may include only~~
30 ~~those matters necessary to manage the roads or rights-of-way~~
31 ~~of the municipality or county.~~

1 ~~(c)1. It is the intention of the state to treat all~~
2 ~~providers of communications services that use or occupy~~
3 ~~municipal or charter county roads or rights-of-way for the~~
4 ~~provision of communications services in a nondiscriminatory~~
5 ~~and competitively neutral manner with respect to the payment~~
6 ~~of permit fees. Certain providers of communications services~~
7 ~~have been granted by general law the authority to offset~~
8 ~~permit fees against franchise or other fees while other~~
9 ~~providers of communications services have not been granted~~
10 ~~this authority. In order to treat all providers of~~
11 ~~communications services in a nondiscriminatory and~~
12 ~~competitively neutral manner with respect to the payment of~~
13 ~~permit fees, each municipality and charter county shall make~~
14 ~~an election under either sub-subparagraph a. or~~
15 ~~sub-subparagraph b. and must inform the Department of Revenue~~
16 ~~of the election by certified mail by October 1, 2001. Such~~
17 ~~election take effect January 1, 2002.~~

18 ~~a.(1) The municipality or charter county may require~~
19 ~~and collect permit fees from any providers of communications~~
20 ~~services that use or occupy municipal or county roads or~~
21 ~~rights-of-way. All fees permitted under this sub-subparagraph~~
22 ~~must be reasonable and commensurate with the direct and actual~~
23 ~~cost of the regulatory activity, including issuing and~~
24 ~~processing permits, plan reviews, physical inspection, and~~
25 ~~direct administrative costs; must be demonstrable; and must be~~
26 ~~equitable among users of the roads or rights-of-way. A fee~~
27 ~~permitted under this sub-subparagraph may not: be offset~~
28 ~~against the tax imposed under chapter 202; include the costs~~
29 ~~of roads or rights-of-way acquisition or roads or~~
30 ~~rights-of-way rental; include any general administrative,~~
31 ~~management, or maintenance costs of the roads or~~

1 ~~rights-of-way; or be based on a percentage of the value or~~
2 ~~costs associated with the work to be performed on the roads or~~
3 ~~rights-of-way. In an action to recover amounts due for a fee~~
4 ~~not permitted under this sub-subparagraph, the prevailing~~
5 ~~party may recover court costs and attorney's fees at trial and~~
6 ~~on appeal. In addition to the limitations set forth in this~~
7 ~~section, a fee levied by a municipality or charter county~~
8 ~~under this sub-subparagraph may not exceed \$100. However,~~
9 ~~permit fees may not be imposed with respect to permits that~~
10 ~~may be required for service drop lines not required to be~~
11 ~~noticed under s. 556.108(5)(b) or for any activity that does~~
12 ~~not require the physical disturbance of the roads or~~
13 ~~rights-of-way or does not impair access to or full use of the~~
14 ~~roads or rights-of-way.~~

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

22 ~~b. Alternatively, the municipality or charter county~~
23 ~~may elect not to require and collect permit fees from any~~
24 ~~provider of communications services that uses or occupies~~
25 ~~municipal or charter county roads or rights-of-way for the~~
26 ~~provision of communications services; however, each~~
27 ~~municipality or charter county that elects to operate under~~
28 ~~this sub-subparagraph retains all authority to establish rules~~
29 ~~and regulations for providers of communications services to~~
30 ~~use or occupy roads or rights-of-way as provided in this~~
31 ~~section. If a municipality or charter county elects to operate~~

1 ~~under this sub-subparagraph, the total rate for the local~~
2 ~~communications services tax as computed under s. 202.20(1) and~~
3 ~~(2) for that municipality or charter county may be increased~~
4 ~~by ordinance by an amount not to exceed a rate of 0.12~~
5 ~~percent.~~

6 ~~c. A municipality or charter county that does not make~~
7 ~~an election as provided for in this subparagraph shall be~~
8 ~~presumed to have elected to operate under the provisions of~~
9 ~~sub-subparagraph b.~~

10 ~~2. Each noncharter county shall make an election under~~
11 ~~either sub-subparagraph a. or sub-subparagraph b. and shall~~
12 ~~inform the Department of Revenue of the election by certified~~
13 ~~mail by October 1, 2001. Such election shall take effect~~
14 ~~January 1, 2002.~~

15 ~~a. The noncharter county may elect to require and~~
16 ~~collect permit fees from any providers of communications~~
17 ~~services that use or occupy noncharter county roads or~~
18 ~~rights-of-way. All fees permitted under this sub-subparagraph~~
19 ~~must be reasonable and commensurate with the direct and actual~~
20 ~~cost of the regulatory activity, including issuing and~~
21 ~~processing permits, plan reviews, physical inspection, and~~
22 ~~direct administrative costs; must be demonstrable; and must be~~
23 ~~equitable among users of the roads or rights-of-way. A fee~~
24 ~~permitted under this sub-subparagraph may not: be offset~~
25 ~~against the tax imposed under chapter 202; include the costs~~
26 ~~of roads or rights-of-way acquisition or roads or~~
27 ~~rights-of-way rental; include any general administrative,~~
28 ~~management, or maintenance costs of the roads or~~
29 ~~rights-of-way; or be based on a percentage of the value or~~
30 ~~costs associated with the work to be performed on the roads or~~
31 ~~rights-of-way. In an action to recover amounts due for a fee~~

1 ~~not permitted under this sub-subparagraph, the prevailing~~
2 ~~party may recover court costs and attorney's fees at trial and~~
3 ~~on appeal. In addition to the limitations set forth in this~~
4 ~~section, a fee levied by a noncharter county under this~~
5 ~~sub-subparagraph may not exceed \$100. However, permit fees may~~
6 ~~not be imposed with respect to permits that may be required~~
7 ~~for service drop lines not required to be noticed under s.~~
8 ~~556.108(5)(b) or for any activity that does not require the~~
9 ~~physical disturbance of the roads or rights-of-way or does not~~
10 ~~impair access to or full use of the roads or rights-of-way.~~

11 ~~b. Alternatively, the noncharter county may elect not~~
12 ~~to require and collect permit fees from any provider of~~
13 ~~communications services that uses or occupies noncharter~~
14 ~~county roads or rights-of-way for the provision of~~
15 ~~communications services; however, each noncharter county that~~
16 ~~elects to operate under this sub-subparagraph shall retain all~~
17 ~~authority to establish rules and regulations for providers of~~
18 ~~communications services to use or occupy roads or~~
19 ~~rights-of-way as provided in this section. If a noncharter~~
20 ~~county elects to operate under this sub-subparagraph, the~~
21 ~~total rate for the local communications services tax as~~
22 ~~computed under s. 202.20(1) and (2) for that noncharter county~~
23 ~~may be increased by ordinance by an amount not to exceed a~~
24 ~~rate of 0.24 percent, to replace the revenue the noncharter~~
25 ~~county would otherwise have received from permit fees for~~
26 ~~providers of communications services.~~

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

30 ~~3. Except as provided in this paragraph,~~
31 ~~municipalities and counties retain all existing authority to~~

1 ~~require and collect permit fees from users or occupants of~~
2 ~~municipal or county roads or rights-of-way and to set~~
3 ~~appropriate permit fee amounts.~~

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

20 ~~(e) If any municipality requires any~~
21 ~~telecommunications company to pay a fee or other consideration~~
22 ~~as a condition for granting permission to occupy municipal~~
23 ~~streets and rights-of-way for poles, wires, and other~~
24 ~~fixtures, such fee or consideration may not exceed 1 percent~~
25 ~~of the gross receipts on recurring local service revenues for~~
26 ~~services provided within the corporate limits of the~~
27 ~~municipality by such telecommunications company. Included~~
28 ~~within such 1-percent maximum fee or consideration are all~~
29 ~~taxes, licenses, fees, in-kind contributions accepted pursuant~~
30 ~~to subsection (5) ~~paragraph (g)~~, and other impositions except~~
31 ~~ad valorem taxes and amounts for assessments for special~~

1 benefits, such as sidewalks, street pavings, and similar
2 improvements, and occupational license taxes levied or imposed
3 by a municipality upon the telecommunications company. This
4 ~~subsection~~ ~~paragraph~~ shall not impair any franchise in
5 existence on July 1, 1985.

6 ~~(4)(f)~~ A municipality may by ordinance enter into an
7 agreement with ~~require~~ any person providing telecommunication
8 services defined in s. 203.012(7) as a condition for granting
9 permission to occupy or use any city street, alley, viaduct,
10 elevated roadway, bridge, or other public way. The agreement
11 shall permit the telecommunication service provider to
12 construct, operate, maintain, repair, rebuild, or replace a
13 telecommunications route within a municipal right-of-way. The
14 agreement shall provide for ~~to pay~~ a fee or other
15 consideration payable annually based on actual linear feet of
16 any cable, fiber optic, or other pathway that makes physical
17 use of the municipal right-of-way. In no event shall the fee
18 or other consideration imposed pursuant to this subsection
19 ~~paragraph~~ be less than \$500 per linear mile of any cable,
20 fiber optic, or other pathway that makes physical use of the
21 municipal right-of-way. Any fee or other consideration
22 imposed by this subsection ~~paragraph~~ in excess of \$500 shall
23 be applied in a nondiscriminatory manner and shall not exceed
24 the sum of:

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

28 ~~(b)2.~~ (b) The reasonable cost of the regulatory activity
29 of the municipality. ~~and~~

30
31

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

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

28 ~~(5)(g)~~ Except as expressly allowed or authorized by
29 general law and except for the rights-of-way permit fees
30 subject to subsection (3) ~~paragraph (e)~~, a municipality may
31 not levy on a telecommunications company a tax, fee, or other

1 charge for operating as a telecommunications company within
2 the jurisdiction of the municipality or which is in any way
3 related to using ~~its~~ roads or rights-of-way. A municipality
4 may not allow a telecommunications company to pay a fee or
5 provide compensation in excess of the limits prescribed in
6 this section. A municipality may not require or solicit
7 in-kind compensation in lieu of any fees imposed pursuant to
8 this section. Nothing in this subsection ~~paragraph~~ shall
9 impair any ordinance or agreement in effect on the effective
10 date of this act ~~May 22, 1998,~~ which provides for or allows
11 in-kind compensation by a telecommunications company.

12 (6)(h) A local governmental entity may not use its
13 authority over the placement of facilities in its roads and
14 rights-of-way as a basis for asserting or exercising
15 regulatory control over a telecommunications company regarding
16 matters within the exclusive jurisdiction of the Florida
17 Public Service Commission or the Federal Communications
18 Commission, including, but not limited to, the operations,
19 systems, qualifications, services, service quality, service
20 territory, and prices of a telecommunications company.

21 (7)(i) A telecommunications company that has obtained
22 permission to occupy the roads and rights-of-way of an
23 incorporated city or town ~~municipality pursuant to s. 362.01~~
24 or that is otherwise lawfully occupying the roads or
25 rights-of-way of a municipality on the effective date of this
26 act shall not be required to obtain additional consent to
27 continue such lawful occupation of those roads or
28 rights-of-way; however, nothing in this subsection ~~paragraph~~
29 shall be interpreted to limit the power of a municipality to
30 impose a fee or adopt or enforce reasonable rules or
31 regulations as provided in this section.

1 (8)~~(j)~~ Except as expressly provided in this section,
2 this section does not modify the authority of local
3 governmental entities to levy the tax authorized in s. 166.231
4 or the duties of telecommunications companies under ss.
5 337.402-337.404. This section does not apply to building
6 permits, pole attachments, or private roads, private
7 easements, and private rights-of-way. Except as expressly
8 provided in this section, this section does not limit or
9 expand whatever powers counties may have relating to roads and
10 rights-of-way. Nothing in this section shall limit or expand
11 whatever authority a local government may have to impose any
12 fee pursuant to 47 U.S.C. ss. 542 and 573.

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

15 (10)~~(4)~~ This section, except subsections (1), and (2),
16 and (6)~~paragraph (3)(h)~~, does not apply to the provision of
17 pay telephone service on public or municipal roads or
18 rights-of-way.

19 Section 60. Except as otherwise provided herein, this
20 act shall take effect July 1, 2000.

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