

By the Committees on Finance & Taxation, Utilities &  
Communications and Representative Rojas

1                                   A bill to be entitled  
2           An act relating to communications services;  
3           creating ch. 202, F.S., the Communications  
4           Services Tax Simplification Law; providing  
5           definitions; providing for taxation of the sale  
6           of communications services, effective January  
7           1, 2002; providing for 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 January  
21 1, 2002; 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 January 1, 2002, 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 January 1,

24          2002; 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 January 1, 2002, 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 January 1, 2002, 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 January 1, 2002; 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 January 1,  
16 2002; 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 January 1, 2002, 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 January 1, 2002; 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 January 1, 2002; 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 January 1, 2002, 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 January 1, 2002, 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 January 1, 2002, 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.

31

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 January 1, 2002, 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 January 1, 2002, 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 January 1, 2002, 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 January 1, 2002, 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 January 1, 2002, 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 January 1, 2002, 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.

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 January 1, 2002, 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 January 1, 2003, 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 March 31, 2002, June 30, 2002,  
20 September 30, 2002, or December 31, 2002, the revenues  
21 received by that local government from the local  
22 communications services tax imposed under s. 202.19(1) are  
23 less than the revenues received from the replaced revenue  
24 sources for the corresponding 2001 period; plus reasonably  
25 anticipated growth in such revenues over the preceding 1-year  
26 period, based on the average growth of such revenues over the  
27 immediately preceding 5-year period; plus an amount  
28 representing the revenues from the replaced revenue sources  
29 for the 1-month period that the local taxing jurisdiction was  
30 required to forego, the governing authority may adjust the  
31 rate of the local communications services tax upward to the



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

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

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

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

31

1       (b) The rates computed by the Revenue Estimating  
2 Conference shall be presented to the Legislature for review  
3 and approval during the 2001 Regular Session. The rates  
4 approved by the Legislature pursuant to this subsection shall  
5 be the maximum rates for purposes of s. 202.19(1).

6       (3)(a) Each person who provides communications  
7 services shall include as part of the August 2000 return due  
8 pursuant to chapter 212 on or before September 20, 2000, the  
9 information set forth in this paragraph, in a format  
10 prescribed by the department. Returns shall contain data for  
11 calendar year 1999 that may include, but are not limited to,  
12 remittances of replaced revenue sources for each local taxing  
13 jurisdiction and an estimate of the revenue from  
14 communications services that will be taxable pursuant to this  
15 chapter for each local taxing jurisdiction. Such data may also  
16 include, on an aggregated statewide basis, each person's  
17 statewide sales taxable under chapter 203, taxable sales under  
18 s. 212.05(1)(e), and estimates for sales exempt under s.  
19 212.08(7)(j) and exempt sales to governmental and other exempt  
20 entities under chapter 212.

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

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

31       1. The rate of the levy for calendar year 1999.

- 1           2. The amount of revenues received during fiscal year  
2 1998-1999 and, if known, the 1999 calendar year.
- 3           3. A description of the revenue base or taxable  
4 services.
- 5           4. The name and federal employer identification number  
6 of each taxpayer.
- 7           5. For the purpose of assisting the Revenue Estimating  
8 Conference in the computations required by this section, any  
9 other relevant information, including, but not limited to,  
10 changes in the rate of replaced revenues or imposition of  
11 additional replaced revenues subsequent to September 30, 1999.
- 12           (d) The department shall provide technical assistance  
13 to the Revenue Estimating Conference and compile and analyze  
14 the information submitted pursuant to this subsection in the  
15 manner requested by the Revenue Estimating Conference.
- 16           (4) Except as otherwise provided in this subsection,  
17 "replaced revenue sources," as used in this section, means the  
18 following taxes, charges, fees, or other impositions to the  
19 extent that the respective local taxing jurisdictions were  
20 authorized to impose them prior to July 1, 2000.
- 21           (a) With respect to municipalities and charter  
22 counties and the taxes authorized by s. 202.19(1):
- 23           1. The public service tax on telecommunications  
24 authorized by s. 166.231(9).
- 25           2. Franchise fees on cable service providers as  
26 authorized by 47 U.S.C. s. 542.
- 27           3. The public service tax on prepaid calling  
28 arrangements.
- 29           4. Franchise fees on dealers of communications  
30 services which use the public roads or rights-of-way, up to  
31 the limit set forth in s. 337.401. For purposes of calculating

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

10 5. Actual permit fees relating to placing or  
11 maintaining facilities in or on public roads or rights-of-way,  
12 collected from providers of long distance, cable, and mobile  
13 communications services for the fiscal year ending September  
14 30, 1999; however, if a municipality or charter county elects  
15 the option to charge permit fees pursuant to s.  
16 337.401(3)(c)1.a., such fees shall not be included as a  
17 replaced revenue source.

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

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

1 the factor for purposes of s. 202.19(5) shall be rounded up to  
2 the nearest one-tenth percent. The factor shall be presented  
3 to the Legislature for review and approval during the 2001  
4 Regular Session.

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

14 (7)(a) The provisions of this subsection shall apply  
15 only with respect to the initial tax rate of a local taxing  
16 jurisdiction which on January 1, 2002, is entitled to receive  
17 from any dealer of communications services fees in excess of  
18 the applicable limitation set forth in s. 337.401, as such  
19 section existed prior to the effective date of this section,  
20 pursuant to an agreement with such dealer of communications  
21 services in effect on such date.

22 (b) Immediately upon the expiration of an agreement  
23 described in paragraph (a), the rate determined under  
24 subsection (1), as it applies to such local taxing  
25 jurisdiction, shall automatically be reduced by the portion of  
26 such rate representing the difference between the fees  
27 actually received by the taxing jurisdiction pursuant to the  
28 agreement described in paragraph (a) for the fiscal year  
29 ending September 30, 1999, and the fees that such jurisdiction  
30 would have received for such period under the applicable  
31

1 limitation set forth in s. 337.401, as such section existed  
2 prior to the effective date of this section.

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

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

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

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

10 202.22 Determination of local tax situs.--

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

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

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

26 (c) Employing enhanced zip codes to assign each street  
27 address, address range, post office box, or post office box  
28 range in the dealer's service area to a specific local taxing  
29 jurisdiction. If an enhanced zip code overlaps boundaries of  
30 municipalities or counties, or if an enhanced zip code cannot  
31 be assigned to the service address because the service address

1 is in a rural area or a location without postal delivery, the  
2 dealer of communications services or its database vendor shall  
3 assign the affected service addresses to one specific local  
4 taxing jurisdiction within such zip code based on a reasonable  
5 methodology. A methodology satisfies this paragraph if the  
6 information used to assign service addresses is obtained by  
7 the dealer or its database vendor from:  
8       1. A database provided by the department;  
9       2. A database certified by the department under  
10 subsection (3);  
11       3. Responsible representatives of the relevant local  
12 taxing jurisdictions; or  
13       4. The United States Census Bureau or the United  
14 States Postal Service.  
15       (d) Employing a database of street addresses or other  
16 assignments that does not meet the requirements of paragraphs  
17 (a)-(c), but meets the criteria set forth in paragraph (3)(a)  
18 at the time of audit by the department.  
19       (2)(a) The department shall, subject to legislative  
20 appropriation, create as soon as practical and feasible, and  
21 thereafter maintain, an electronic database that gives due and  
22 proper regard to any format that is approved by the American  
23 National Standards Institute's Accredited Standards Committee  
24 X12 and that designates for each street address, address  
25 range, post office box, or post office box range in the state,  
26 including any multiple postal street addresses applicable to  
27 one street location, the local taxing jurisdiction in which  
28 the street address, address range, post office box, or post  
29 office box range is located and the appropriate code for each  
30 such local taxing jurisdiction, identified by one nationwide  
31 standard numeric code. The nationwide standard numeric code



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

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

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

1 dealer of communications services or vendor who requests the  
2 update on such media. However, the department may collect a  
3 fee from the dealer of communications services which does not  
4 exceed the actual cost of furnishing the update on magnetic or  
5 electronic media.

6 3. Each update must identify the additions, deletions,  
7 and other changes to the preceding version of the database.  
8 Each dealer of communications services shall collect and remit  
9 local communications services taxes imposed under this chapter  
10 only for those service addresses that are contained in the  
11 database and for which all of the elements required by this  
12 subsection are included in the database.

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

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

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

1 reasonably necessary to review and make a determination  
2 regarding the application. Such access must be provided within  
3 10 working days after notification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31

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

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

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

16           2. The purchaser or the transaction was exempt or  
17 immune from such taxes.

18           3. The purchaser was assigned to the incorrect local  
19 taxing jurisdiction for purposes of the taxes authorized in s.  
20 202.19.

21           4. The purchaser paid the tax in error.

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

1 purposes of a tax imposed under s. 202.19, a completed request  
2 must also include any additional information the department  
3 prescribes by rule to facilitate verification of the  
4 purchaser's eligibility for exemption or immunity or to  
5 facilitate verification of the purchaser's service address.  
6 Upon receipt of a completed request, the dealer shall  
7 ascertain whether it collected the tax claimed from the  
8 purchaser and whether the request is timely.

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

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

1 forth another reason for claiming a refund or credit, the  
2 dealer shall furnish to the department information to  
3 facilitate the department's evaluation of the request.  
4 (e) Within 90 days following receipt of the  
5 purchaser's request from the dealer, the department shall  
6 determine whether the tax was correctly applied and notify the  
7 dealer in writing of its determination. If the department  
8 determines that the tax was incorrectly applied, its  
9 notification to the dealer must inform the dealer how the tax  
10 should have been applied, including, in the case of an  
11 incorrect assignment of the purchaser to a local taxing  
12 jurisdiction, an identification of the correct local taxing  
13 jurisdiction and the applicable rates of tax levied by the  
14 local jurisdiction. The department's notification must also  
15 inform the dealer of any portion of the amount claimed which  
16 was not due to the state or to any local taxing jurisdiction  
17 and approve the refund or credit of such amount to the  
18 purchaser. Within 45 days following receipt of notification  
19 from the department, the dealer shall issue a refund or credit  
20 the purchaser's account for any such amount. The dealer's  
21 obligation to issue a refund or credit the purchaser's account  
22 is limited to amounts approved in accordance with this  
23 section.  
24 (f) The dealer shall issue a written response advising  
25 the purchaser of the disposition of the purchaser's request.  
26 The response must specify any portion of the tax claimed which  
27 is being refunded or credited to the purchaser's account and  
28 the reason for denial of any portion of the request. The  
29 request may be denied if the request was untimely or  
30 incomplete, the dealer did not collect the tax claimed, the  
31 purchaser previously received a refund of or credit for the



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

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

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

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

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

31

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

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

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

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

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

28       202.24 Limitations on local taxes and fees imposed on  
29 dealers of communications services.--

30       (1) The authority of a public body to require taxes,  
31 fees, charges, or other impositions from dealers of

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

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

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

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

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

28  
29 Each municipality and county retains authority to negotiate  
30 all terms and conditions of a cable service franchise allowed  
31 by federal and state law except those terms and conditions

1 related to franchise fees and the definition of gross revenues  
2 or other definitions or methodologies related to the payment  
3 or assessment of franchise fees on providers of cable  
4 services.

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

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

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

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

24 (c) This subsection does not apply to:

25 1. Local communications services taxes levied under  
26 this chapter.

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

28 3. Occupational license taxes levied under chapter  
29 205.

30 4. "911" service charges levied under chapter 365.  
31

1           5. Amounts charged for the rental or other use of  
2 property owned by a public body which is not in the public  
3 rights-of-way to a dealer of communications services for any  
4 purpose, including, but not limited to, the placement or  
5 attachment of equipment used in the provision of  
6 communications services.

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

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

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

23           9. Special assessments and impact fees.

24           10. Pole attachment fees that are charged by a local  
25 government for attachments to utility poles owned by the local  
26 government.

27           11. Utility service fees or other similar user fees  
28 for utility services.

29           12. Any other generally applicable tax, fee, charge,  
30 or imposition authorized by general law on July 1, 2000, which  
31

1 is not specifically prohibited by this subsection or included  
2 as a replaced revenue source in s. 202.20.

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

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

10 202.25 Jurisdiction; dealers not qualified to do  
11 business in this state.--

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

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

24 Section 18. Section 202.26, Florida Statutes, is  
25 created to read:

26 202.26 Department powers.--

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

30 (2) The provisions of chapter 213 shall, as far as  
31 lawful and practicable, be applicable to the taxes imposed and

1 administered under this chapter and to the collection thereof  
2 as if fully set out in this chapter. However, no provision of  
3 chapter 213 shall apply if it conflicts with any provision of  
4 this chapter.

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

7 (a) The filing of returns and remittance of tax,  
8 including provisions concerning electronic funds transfer and  
9 electronic data interchange.

10 (b) The determination of customer service addresses.

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

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

15 (e) Methods for granting self-accrual authority to  
16 taxpayers.

17 (f) The records and methods necessary for a dealer to  
18 demonstrate the exercise of due diligence as defined by s.  
19 202.22(4)(b).

20 (g) The creation of the database described in s.  
21 202.22(2) and the certification and recertification of the  
22 databases as described in s. 202.22(3).

23 (h) The registration of dealers.

24 (i) The information that is necessary and the methods,  
25 forms, and deadlines for providing the information collected  
26 pursuant to s. 202.20(3).

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

30 (4) The executive director of the department is  
31 authorized, and all conditions are deemed met, to adopt



1 emergency rules under ss. 120.536(1) and 120.54(4) to  
2 implement this chapter. Notwithstanding any other provision of  
3 law, such emergency rules shall remain effective for 6 months  
4 after the date of adoption and may be renewed during the  
5 pendency of procedures to adopt rules addressing the subject  
6 of the emergency rules.

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

9 202.27 Return filing; rules for self-accrual.--

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

17 (2) The department may require:

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

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

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

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

30 (3) The department shall accept returns, except those  
31 required to be initiated through an electronic data

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

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

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

1 members of any firm or incorporated society or organization,  
2 who refuses to make a return and pay the taxes due, as  
3 required by the department and in the manner and in the form  
4 that the department requires, or to state in writing that the  
5 return is correct to the best of his or her knowledge and  
6 belief, as required by the department, is subject to a penalty  
7 of 6 percent per annum of the amount due and commits a  
8 misdemeanor of the first degree, punishable as provided in s.  
9 775.082 or s. 775.083. The signing of a written return has the  
10 same legal effect as if made under oath without the necessity  
11 of appending an oath thereto.

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

14 (a) Authorized by law for holders of direct-pay  
15 permits; or

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

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

20 202.28 Credit for collecting tax; penalties.--

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

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

31

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

3           1. For the purposes of this chapter, a return is  
4 incomplete if it is lacking such uniformity, completeness, and  
5 arrangement that the physical handling, verification, review  
6 of the return, or determination of other taxes and fees  
7 reported on the return can not be readily accomplished.

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

18       (c) The collection allowance and other credits or  
19 deductions provided in this chapter shall be applied to the  
20 taxes reported for the jurisdiction previously credited with  
21 the tax paid.

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

- 1       (b) Any person who knowingly and with a willful intent  
2 to evade any tax imposed under this chapter fails to file six  
3 consecutive returns as required by law commits a felony of the  
4 third degree, punishable as provided in s. 775.082 or s.  
5 775.083.
- 6       (c) Any person who makes a false or fraudulent return  
7 with a willful intent to evade payment of any tax or fee  
8 imposed under this chapter is liable, in addition to the other  
9 penalties provided by law, for a specific penalty of 100  
10 percent of the tax bill or fee, and:
- 11       1. If the total amount of unreported taxes or fees is  
12 less than \$300:
- 13           a. Such person commits, for the first offense, a  
14 misdemeanor of the second degree, punishable as provided in s.  
15 775.082 or s. 775.083.
- 16           b. Such person commits, for the second offense, a  
17 misdemeanor of the first degree, punishable as provided in s.  
18 775.082 or s. 775.083.
- 19           c. Such person commits, for the third and subsequent  
20 offenses, a felony of the third degree, punishable as provided  
21 in s. 775.082, s. 775.083, or s. 775.084.
- 22       2. If the total amount of unreported taxes or fees is  
23 \$300 or more but less than \$20,000, such person commits a  
24 felony of the third degree, punishable as provided in s.  
25 775.082, s. 775.083, or s. 775.084.
- 26       3. If the total amount of unreported taxes or fees is  
27 \$20,000 or more but less than \$100,000, such person commits a  
28 felony of the second degree, punishable as provided in s.  
29 775.082, s. 775.083, or s. 775.084.
- 30       4. If the total amount of unreported taxes or fees is  
31 \$100,000 or more, such person commits a felony of the first

1 degree, punishable as provided in s. 775.082, s. 775.083, or  
2 s. 775.084.

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

5 202.29 Bad debts.--

6 (1) A dealer who has paid the tax imposed by this  
7 chapter may take a credit or obtain a refund for tax paid by  
8 the dealer on unpaid balances due on worthless accounts within  
9 12 months following the last day of the calendar year for  
10 which the bad debt was charged off on the taxpayer's federal  
11 income tax return.

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

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

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

22 202.30 Payment of taxes by electronic funds transfer;  
23 filing of returns by electronic data interchange.--

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

29 (2)(a) A dealer who is required to remit taxes by  
30 electronic funds transfer shall make a return in a manner that  
31 is initiated through an electronic data interchange. The

1 department shall prescribe the acceptable method of transfer;  
2 the method, form, and content of the electronic data  
3 interchange, giving due regard to developing uniform standards  
4 for formats as adopted by the American National Standards  
5 Institute; the circumstances under which an electronic data  
6 interchange will serve as a substitute for the filing of  
7 another form of return; and the means, if any, by which  
8 taxpayers will be provided with acknowledgments. The  
9 department must accept such returns as timely if initiated and  
10 accepted on or before the 20th day of the month. If the 20th  
11 day falls on a Saturday, Sunday, or federal or state legal  
12 holiday, returns are timely if initiated and accepted on the  
13 next succeeding workday.

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

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

29 (b) The department shall prescribe the format and  
30 instructions necessary for filing returns in a manner that is  
31 initiated through an electronic data interchange to ensure a

1 full collection from dealers and an accounting for the taxes  
2 due. The failure of any dealer to use such format does not  
3 relieve the dealer of the obligation to pay the tax at the  
4 time and in the manner required.

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

7 202.31 Sale of business; liability for tax;  
8 procedures; penalty for violations.--

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



1 department may contract with private auditors pursuant to s.  
2 213.28 to perform the audit. The department may charge the  
3 cost of the audit to the person requesting the audit.  
4 (2) If any dealer who is liable for any tax, interest,  
5 or penalty quits the business without the benefit of a  
6 purchaser and there are no successors or assigns, he or she  
7 shall make a final return and payment within 15 days. Any  
8 person who fails to file such final return and make payment is  
9 prohibited from engaging in any business in this state until  
10 the person has filed such final return and paid any moneys  
11 due. The Department of Legal Affairs may seek an injunction,  
12 at the request of the department, to prevent any activity in  
13 the performance of further business activity until such tax is  
14 paid. A temporary injunction enjoining further business  
15 activity may be granted by a court without notice.  
16 (3) If a dealer is delinquent in the payment of the  
17 taxes imposed or administered by this chapter, the department  
18 may give notice of the amount of such delinquency by  
19 registered mail to all persons having in their possession or  
20 under their control any credits or other personal property  
21 belonging to such dealer or owing any debts to such dealer at  
22 the time of receipt by them of such notice. All persons so  
23 notified shall within 5 days after receipt of the notice  
24 advise the department of all such credits, other personal  
25 property, or debts in their possession, under their control,  
26 or owing by them. After receiving the notice, the persons so  
27 notified may not transfer or make any other disposition of the  
28 credits, other personal property, or debts in their possession  
29 or under their control at the time they receive the notice  
30 until the department consents to a transfer or disposition or  
31 until 60 days elapse after the receipt of the notice,

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

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

4       (5) Any violation of this section is a misdemeanor of  
5 the first degree, punishable as provided in s. 775.082 or s.  
6 775.083.

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

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

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

17       202.33 Taxes declared to be government funds;  
18 penalties for failure to remit taxes; warrants.--

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

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

26       (a) If the total amount of stolen revenue is less than  
27 \$300, the offense is a misdemeanor of the second degree,  
28 punishable as provided in s. 775.082 or s. 775.083. For a  
29 second offense, the offender is guilty of a misdemeanor of the  
30 first degree, punishable as provided in s. 775.082 or s.  
31 775.083. For a third or subsequent offense, the offender is

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

3 (b) If the total amount of stolen revenue is \$300 or  
4 more, but less than \$20,000, the offense is a felony of the  
5 third degree, punishable as provided in s. 775.082, s.  
6 775.083, or s. 775.084.

7 (c) If the total amount of stolen revenue is \$20,000  
8 or more, but less than \$100,000, the offense is a felony of  
9 the second degree, punishable as provided in s. 775.082, s.  
10 775.083, or s. 775.084.

11 (d) If the total amount of stolen revenue is \$100,000  
12 or more, the offense is a felony of the first degree,  
13 punishable as provided in s. 775.082, s. 775.083, or s.  
14 775.084.

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

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

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

13 202.34 Records required to be kept; power to inspect;  
14 audit procedure.--

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

1 records with an intent to evade payment of or deprive the  
2 government of any tax revenues, such subsequent offense  
3 constitutes a felony of the third degree, punishable as  
4 provided in s. 775.082 or s. 775.083.

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

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

25 (2) For the purpose of enforcement of this chapter,  
26 each dealer shall allow the department to examine its books  
27 and records at all reasonable hours; and, if the dealer  
28 refuses, the department may petition the circuit court to  
29 order the dealer to permit such examination, subject to the  
30 right of removal of the cause to the judicial circuit wherein  
31

1 such person's business is located or wherein such person's  
2 books and records are kept.

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

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

24 (b) The written notification must specify:

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

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

30 3. Any other requests or suggestions that the  
31 department considers necessary.

1       (c) Only records, receipts, invoices, resale  
2 certificates, and related documentation that are available to  
3 the auditor when the audit begins are acceptable for the  
4 purposes of the audit. A resale certificate containing a date  
5 prior to the date the audit commences constitutes acceptable  
6 documentation of the specific transactions that occurred in  
7 the past.

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

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

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

17       202.35 Powers of department in dealing with  
18 delinquents; tax to be separately stated.--

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

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



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

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

25       (5) A dealer may not advertise or hold out to the  
26 public, in any manner, directly or indirectly, that he or she  
27 will absorb all or any part of the tax; that he or she will  
28 relieve the purchaser of the payment of all or any part of the  
29 tax; that the tax will not be added to the selling price of  
30 the property or services sold or released; or, when added,  
31 that it or any part thereof will be refunded either directly

1 or indirectly by any method. A person who violates this  
2 subsection with respect to advertising or refund is guilty of  
3 a misdemeanor of the second degree, punishable as provided in  
4 s. 775.082 or s. 775.083. A second or subsequent offense  
5 constitutes a misdemeanor of the first degree, punishable as  
6 provided in s. 775.082 or s. 775.083.

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

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

15 202.36 Departmental powers; hearings; distress  
16 warrants; bonds; subpoenas and subpoenas duces tecum.--

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

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

1 in or with an assessment, the department shall proceed in the  
2 manner specified for jeopardy assessment in s. 213.732.

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

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

29 (4)(a) The department may issue subpoenas or subpoenas  
30 duces tecum compelling the attendance and testimony of  
31 witnesses and the production of books, records, written

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

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

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

29 2. The notice is sufficient if, on or before the third  
30 day, the notice is delivered in hand to the person entitled to  
31 notice or is mailed by certified or registered mail to the

1 last known mailing address of the person, or, in the absence  
2 of a last known address, is left with the person subpoenaed.  
3 3. As used in this subsection, "third-party  
4 recordkeeper" means:  
5 a. Any mutual savings bank, cooperative bank, domestic  
6 building and loan association, or other savings institution  
7 chartered and supervised as a savings and loan association or  
8 similar association under federal or state law; a bank as  
9 defined in s. 581 of the Internal Revenue Code; or any credit  
10 union within the meaning of s. 501(c)(14)(A) of the Internal  
11 Revenue Code.  
12 b. Any consumer reporting agency as defined under s.  
13 603(f) of the Fair Credit Reporting Act, 15 U.S.C. s.  
14 1681a(f).  
15 c. Any person extending credit through the use of  
16 credit cards or similar devices.  
17 d. Any broker as defined in s. 3(a)(4) of the  
18 Securities Exchange Act of 1934, 15 U.S.C. s. 78c(a)(4).  
19 e. Any attorney.  
20 f. Any accountant.  
21 g. Any barter exchange as defined in s. 6045(c)(3) of  
22 the Internal Revenue Code.  
23 h. Any regulated investment company as defined in s.  
24 851 of the Internal Revenue Code.  
25 4. This paragraph does not apply to a subpoena served  
26 on the person with respect to whose liability the subpoena is  
27 issued or an officer or employee of the person; to a subpoena  
28 to determine whether or not records of the business  
29 transactions or affairs of an identified person have been made  
30 or kept; or to a subpoena described in paragraph (f).  
31

1        (c)1. Notwithstanding any other law, a person who is  
2 entitled to notice of a subpoena under paragraph (b) and the  
3 taxpayer to whom the subpoena relates have the right to  
4 intervene in any proceeding with respect to the enforcement of  
5 the subpoena under paragraph (a).

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

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

14        b. A copy of the notice of intent to stay the subpoena  
15 is mailed by registered or certified mail to the person and to  
16 the department; and

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

27           Section 29. Section 202.37, Florida Statutes, is  
28 created to read:

29           202.37 Special rules for administration of local  
30 communications services tax.--

31

1       (1)(a) Except as otherwise provided in this section,  
2 all statutory provisions and administrative rules applicable  
3 to the communications services tax imposed by s. 202.12 apply  
4 to any local communications services tax imposed under s.  
5 202.19, and the department shall administer, collect, and  
6 enforce all taxes imposed under s. 202.19, including interest  
7 and penalties attributable thereto, in accordance with the  
8 same procedures used in the administration, collection, and  
9 enforcement of the communications services tax imposed by s.  
10 202.12.

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

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

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

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

31

1           Section 30. The Revenue Estimating Conference shall  
2 compute the rate of communications services tax which would be  
3 required to be levied under s. 202.12(1)(a), Florida Statutes,  
4 to raise, through the imposition of a communications services  
5 tax, revenues equal to the taxes estimated to be actually  
6 collected under chapter 212, Florida Statutes, on  
7 communications services. The rates computed by the Revenue  
8 Estimating Conference shall be presented to the Legislature  
9 for review and approval during the 2001 Regular Session.

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

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

29           (2) This section shall take effect upon this act  
30 becoming a law.

31

1           Section 33. Effective January 1, 2002, paragraph (a)  
2 of subsection (1) of section 72.011, Florida Statutes, is  
3 amended to read:

4           72.011 Jurisdiction of circuit courts in specific tax  
5 matters; administrative hearings and appeals; time for  
6 commencing action; parties; deposits.--

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

26           Section 34. Effective January 1, 2002, section 213.05,  
27 Florida Statutes, is amended to read:

28           213.05 Department of Revenue; control and  
29 administration of revenue laws.--The Department of Revenue  
30 shall have only those responsibilities for ad valorem taxation  
31 specified to the department in chapter 192, taxation, general

1 provisions; chapter 193, assessments; chapter 194,  
2 administrative and judicial review of property taxes; chapter  
3 195, property assessment administration and finance; chapter  
4 196, exemption; chapter 197, tax collections, sales, and  
5 liens; chapter 199, intangible personal property taxes; and  
6 chapter 200, determination of millage. The Department of  
7 Revenue shall have the responsibility of regulating,  
8 controlling, and administering all revenue laws and performing  
9 all duties as provided in s. 125.0104, the Local Option  
10 Tourist Development Act; s. 125.0108, tourist impact tax;  
11 chapter 198, estate taxes; chapter 201, excise tax on  
12 documents; chapter 202, communications services tax; chapter  
13 203, gross receipts taxes; chapter 206, motor and other fuel  
14 taxes; chapter 211, tax on production of oil and gas and  
15 severance of solid minerals; chapter 212, tax on sales, use,  
16 and other transactions; chapter 220, income tax code; chapter  
17 221, emergency excise tax; ss. 336.021 and 336.025, taxes on  
18 motor fuel and special fuel; s. 370.07(3), Apalachicola Bay  
19 oyster surcharge; s. 376.11, pollutant spill prevention and  
20 control; s. 403.718, waste tire fees; s. 403.7185, lead-acid  
21 battery fees; s. 403.7195, waste newsprint disposal fees; s.  
22 538.09, registration of secondhand dealers; s. 538.25,  
23 registration of secondary metals recyclers; s. 624.4621, group  
24 self-insurer's fund premium tax; s. 624.5091, retaliatory tax;  
25 s. 624.475, commercial self-insurance fund premium tax; ss.  
26 624.509-624.511, insurance code: administration and general  
27 provisions; s. 624.515, State Fire Marshal regulatory  
28 assessment; s. 627.357, medical malpractice self-insurance  
29 premium tax; s. 629.5011, reciprocal insurers premium tax; and  
30 s. 681.117, motor vehicle warranty enforcement.  
31

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

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

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

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

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

14           (c) Proceeds from the tax imposed pursuant to s.  
15 212.06(5)(a)2. shall be reallocated to the Mail Order Sales  
16 Tax Clearing Trust Fund.

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

23           (e) Proceeds from the fees imposed under ss.  
24 212.05(1)(i)3. and 212.18(3) shall remain with the General  
25 Revenue Fund.

26           (f) The proceeds of all other taxes and fees imposed  
27 pursuant to this chapter or remitted pursuant to s.  
28 202.18(1)(b) and (2)(b) shall be distributed as follows:

29           1. In any fiscal year, the greater of \$500 million,  
30 minus an amount equal to 4.6 percent of the proceeds of the  
31 taxes collected pursuant to chapter 201, or 5 percent of all

1 other taxes and fees imposed pursuant to this chapter or  
2 remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be  
3 deposited in monthly installments into the General Revenue  
4 Fund.

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

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

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

16         5. Of the remaining proceeds:

17         a. Beginning July 1, 1992, \$166,667 shall be  
18 distributed monthly by the department to each applicant that  
19 has been certified as a "facility for a new professional  
20 sports franchise" or a "facility for a retained professional  
21 sports franchise" pursuant to s. 288.1162 and \$41,667 shall be  
22 distributed monthly by the department to each applicant that  
23 has been certified as a "new spring training franchise  
24 facility" pursuant to s. 288.1162. Distributions shall begin  
25 60 days following such certification and shall continue for 30  
26 years. Nothing contained herein shall be construed to allow an  
27 applicant certified pursuant to s. 288.1162 to receive more in  
28 distributions than actually expended by the applicant for the  
29 public purposes provided for in s. 288.1162(7). However, a  
30 certified applicant shall receive distributions up to the  
31 maximum amount allowable and undistributed under this section



1 for additional renovations and improvements to the facility  
2 for the franchise without additional certification.

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

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

16           6. All other proceeds shall remain with the General  
17 Revenue Fund.

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

20           166.231 Municipalities; public service tax.--

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

24           (e) Purchases of local telephone service or other  
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 are exempt from the tax imposed by this subsection.

30           (f) A seller of services which are subject to the tax  
31 imposed by a municipality under this subsection shall file a

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

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

1           Section 38. Effective January 1, 2002, and applicable  
2 to communications services reflected on bills dated on or  
3 after that date, subsection (9) of section 166.231, Florida  
4 Statutes, as amended by this act, is repealed, and subsections  
5 (2), (5), (7), and (10) of said section are amended to read:  
6           166.231 Municipalities; public service tax.--  
7           (2) Services competitive with those enumerated in  
8 subsection (1) ~~or subsection (9)~~, as defined by ordinance,  
9 shall be taxed on a comparable base at the same rates.  
10 However, fuel oil shall be taxed at a rate not to exceed 4  
11 cents per gallon. However, for municipalities levying less  
12 than the maximum rate allowable in subsection (1), the maximum  
13 tax on fuel oil shall bear the same proportion to 4 cents  
14 which the tax rate levied under subsection (1) bears to the  
15 maximum rate allowable in subsection (1).  
16           (5) Purchases by the United States Government, this  
17 state, and all counties, school districts, and municipalities  
18 of the state, and by public bodies exempted by law or court  
19 order, are exempt from the tax authorized by this section. A  
20 municipality may exempt from the tax imposed by this section  
21 the purchase of taxable items by any other public body as  
22 defined in s. 1.01, or by a nonprofit corporation or  
23 cooperative association organized under chapter 617 which  
24 provides water utility services to no more than 13,500  
25 equivalent residential units, ownership of which will revert  
26 to a political subdivision upon retirement of all outstanding  
27 indebtedness, and shall exempt purchases by any recognized  
28 church in this state for use exclusively for church purposes,  
29 ~~and shall exempt from the tax authorized by subsection (9)~~  
30 ~~purchases made by any religious institution that possesses a~~  
31 ~~consumer certificate of exemption issued under chapter 212.~~

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

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

31

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

4           166.233 Public service tax; effective dates;  
5 procedures for informing sellers of tax levies and related  
6 information.--

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

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

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

1 recover the actual cost of maintaining and furnishing such  
2 information. The department has no liability for any loss of  
3 or decrease in revenue by reason of any error, omission, or  
4 untimely action that results in the nonpayment of the tax  
5 imposed under s. 166.231 or s. 166.232. The provisions of this  
6 paragraph which prescribe effective dates and require  
7 municipalities to furnish notifications to the department do  
8 not apply to taxes levied on service, ~~other than~~  
9 ~~telecommunication service~~, provided by the municipality  
10 levying the tax or by a separate utility authority, board, or  
11 commission of the municipality.

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

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

18 203.01 Tax on gross receipts for utility services.--

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

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

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

31

1           (c) The sale of telecommunication services for resale  
2 of telecommunication services wholly or partially within this  
3 state, which includes, for purposes of this subsection, the  
4 sale of telecommunication services to a person reselling such  
5 telecommunication services by way of a prepaid calling  
6 arrangement as defined in s. 212.05(1)(e)1.a.;  
7

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

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

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

5           203.01 Tax on gross receipts for utility and  
6 communications services.--

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

18           2. A tax is levied on communications services as  
19 defined in s. 202.11(3). Such tax shall be applied to the same  
20 services and transactions as are subject to taxation under  
21 chapter 202, and to communications services that are subject  
22 to the exemption provided in s. 202.125(1). Such tax shall be  
23 applied to the sales price of communications services when  
24 sold at retail and to the actual cost of operating substitute  
25 communications systems, as such terms are defined in s.  
26 202.11, shall be due and payable at the same time as the taxes  
27 imposed pursuant to chapter 202, and shall be administered and  
28 collected pursuant to the provisions of chapter 202.

29           ~~(b) Beginning July 1, 1992, and thereafter,~~The rate  
30 applied to utility services shall be 2.5 percent. The rate  
31



1 applied to communications services shall be the rate  
2 calculated pursuant to section 44 of this act.  
3 ~~(c) Any person who purchases, installs, rents, or~~  
4 ~~leases a telephone system or telecommunication system for his~~  
5 ~~or her own use to provide that person with telephone service~~  
6 ~~or telecommunication service which is a substitute for any~~  
7 ~~telephone company switched service or a substitute for any~~  
8 ~~dedicated facility by which a telephone company provides a~~  
9 ~~communication path shall register with the Department of~~  
10 ~~Revenue and pay into the State Treasury a yearly amount equal~~  
11 ~~to a percentage of the actual cost of operating such system at~~  
12 ~~the rate set forth in paragraph (b). "Actual cost" includes,~~  
13 ~~but is not limited to, depreciation, interest, maintenance,~~  
14 ~~repair, and other expenses directly attributable to the~~  
15 ~~operation of such system. For purposes of this paragraph, the~~  
16 ~~depreciation expense to be included in actual cost shall be~~  
17 ~~the depreciation expense claimed for federal income tax~~  
18 ~~purposes. The total amount of any payment required by a lease~~  
19 ~~or rental contract or agreement shall be included within the~~  
20 ~~actual cost. The provisions of this paragraph do not apply to~~  
21 ~~the use by any local telephone company or any~~  
22 ~~telecommunication carrier of its own telephone system or~~  
23 ~~telecommunication system to conduct a telecommunication~~  
24 ~~service for hire or to the use of any radio system operated by~~  
25 ~~any county or municipality or by the state or any political~~  
26 ~~subdivision thereof. If a system described in this paragraph~~  
27 ~~is located in more than one state, the actual cost of such~~  
28 ~~system for purposes of this paragraph shall be the actual cost~~  
29 ~~of the system's equipment located in Florida. The term~~  
30 ~~"telecommunications carrier" specifically includes cellular~~  
31 ~~telephone carriers and other radio common carriers.~~

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

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

28        (e)~~(f)~~ Any person other than a cogenerator or small  
29 power producer described in paragraph(d)~~(e)~~ who produces for  
30 his or her own use electrical energy which is a substitute for  
31 electrical energy produced by an electric utility as defined

1 in s. 366.02 is subject to the tax imposed by this section.  
2 The tax shall be applied to the cost price of such electrical  
3 energy as provided in s. 212.02(4) and shall be paid each  
4 month. The provisions of this paragraph do not apply to any  
5 electrical energy produced and used by an electric utility.

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

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

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

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

28 (b) The sale of electricity to a public or private  
29 utility, including a municipal corporation or rural electric  
30 cooperative association, for resale within the state, or as  
31 part of an electrical interchange agreement or contract

1 between such utilities for the purpose of transferring more  
2 economically generated power; or  
3 ~~(c) The sale of telecommunication services for resale~~  
4 ~~of telecommunication services wholly or partially within this~~  
5 ~~state, which includes, for purposes of this subsection, the~~  
6 ~~sale of telecommunication services to a person reselling such~~  
7 ~~telecommunication services by way of a prepaid calling~~  
8 ~~arrangement as defined in s. 212.05(1)(e)1.a.;~~  
9  
10 provided the person deriving gross receipts from such sale  
11 demonstrates that a resale in fact occurred and complies with  
12 the following requirements: A resale in this state must be in  
13 strict compliance with the rules and regulations of the  
14 Department of Revenue; and any person making a sale for resale  
15 in this state which is not in strict compliance with the rules  
16 and regulations of the Department of Revenue shall be liable  
17 for and pay the tax. Any person making a sale for resale in  
18 this state may, through an informal protest provided for in s.  
19 213.21 and the rules of the Department of Revenue, provide the  
20 department with evidence of the exempt status of a sale. The  
21 department shall adopt rules which provide that valid proof  
22 and documentation of the resale in this state by a person  
23 making the sale for resale in this state will be accepted by  
24 the department when submitted during the protest period but  
25 will not be accepted when submitted in any proceeding under  
26 chapter 120 or any circuit court action instituted under  
27 chapter 72.  
28 ~~(4) Gross receipts subject to the tax imposed by this~~  
29 ~~section shall not include receipts from sales or leases of~~  
30 ~~telecommunications service for use in the conduct of a~~  
31 ~~telecommunications service for hire or otherwise for resale,~~

1 ~~including resale of telecommunication services paid by using a~~  
2 ~~prepaid calling arrangement as defined in s. 212.05(1)(e)1.a.~~  
3       (4)~~(5)~~ The tax imposed pursuant to this chapter part  
4 relating to the provision of any utility services at the  
5 option of the person supplying the taxable services may be  
6 separately stated as Florida gross receipts tax on the total  
7 amount of any bill, invoice, or other tangible evidence of the  
8 provision of such taxable services and may be added as a  
9 component part of the total charge. Whenever a provider of  
10 taxable services elects to separately state such tax as a  
11 component of the charge for the provision of such taxable  
12 services, every person, including all governmental units,  
13 shall remit the tax to the person who provides such taxable  
14 services as a part of the total bill, and the tax is a  
15 component part of the debt of the purchaser to the person who  
16 provides such taxable services until paid and, if unpaid, is  
17 recoverable at law in the same manner as any other part of the  
18 charge for such taxable services. For a utility, the decision  
19 to separately state any increase in the rate of tax imposed by  
20 this chapter part which is effective after December 31, 1989,  
21 and the ability to recover the increased charge from the  
22 customer shall not be subject to regulatory approval.  
23       (5)~~(6)~~ The tax is imposed upon every person for the  
24 privilege of conducting a utility or communications services  
25 business, and each provider of the taxable services remains  
26 fully and completely liable for the tax, even if the tax is  
27 separately stated as a line item or component of the total  
28 bill.  
29       (6)~~(7)~~ Any person who provides such services and who  
30 fails, neglects, or refuses to remit the tax imposed in this  
31 chapter part, either by himself or herself, or through agents

1 or employees, is liable for the tax and is guilty of a  
2 misdemeanor of the first degree, punishable as provided in s.  
3 775.082 or s. 775.083.

4 (7)~~(8)~~ Gross receipts subject to the tax imposed by  
5 this section for the provision of electricity shall include  
6 receipts from monthly customer charges or monthly customer  
7 facility charges.

8 ~~(9)(a) If the sale of a taxable telecommunication~~  
9 ~~service also involves the sale of commercial or cable~~  
10 ~~television service exempt under the provision of s.~~  
11 ~~203.012(2)(b)2., the tax shall be applied to the value of the~~  
12 ~~taxable service when it is sold separately.~~

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

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

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

1 excess of the amount of tax imposed by chapter 212 and this  
2 section.

3 Section 42. Effective January 1, 2002, section  
4 203.012, Florida Statutes, is amended to read:

5 203.012 Definitions.--As used in this chapter:

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

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

29 ~~(b) Gross receipts for telecommunication services do~~  
30 ~~not include:~~

31

- 1           ~~1. Charges for customer premises equipment, including~~  
2 ~~such equipment that is leased or rented by the customer from~~  
3 ~~any source;~~
- 4           ~~2. Charges made to the public for commercial or cable~~  
5 ~~television, unless it is used for two-way communication;~~  
6 ~~however, if such two-way communication service is separately~~  
7 ~~billed, only the charges made for two-way communication~~  
8 ~~service will be subject to tax hereunder;~~
- 9           ~~3. Charges made by hotels and motels, which are~~  
10 ~~required under the provisions of s. 212.03 to collect~~  
11 ~~transient rentals tax from tenants and lessees, for local~~  
12 ~~telephone service or toll telephone service, when such charge~~  
13 ~~occurs incidental to the right of occupancy in such hotel or~~  
14 ~~motel;~~
- 15           ~~4. Connection and disconnection charges; move or~~  
16 ~~change charges; suspension of service charges; and service~~  
17 ~~order, number change, and restoration charges; or~~
- 18           ~~5. Charges for services or items of equipment supplied~~  
19 ~~by providers of the telecommunication services described in~~  
20 ~~paragraph (5)(b), such as maintenance charges, equipment~~  
21 ~~sales, or rental which are incidental to the provision of such~~  
22 ~~telecommunication services, provided such charges are~~  
23 ~~separately stated, itemized, or described on the bill,~~  
24 ~~invoice, or other tangible evidence of the provision of such~~  
25 ~~service.~~
- 26           ~~(3) The term "local telephone service" means:~~
- 27           ~~(a) The access to a local telephone system, and the~~  
28 ~~privilege of telephonic-quality communication with~~  
29 ~~substantially all persons having telephone or radio telephone~~  
30 ~~stations constituting a part of such local telephone system;~~  
31 ~~or~~



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

3  
4 ~~The term "local telephone service" does not include any~~  
5 ~~service which is a toll telephone service; private~~  
6 ~~communication service; cellular mobile telephone or~~  
7 ~~telecommunication service; specialized mobile radio, or pagers~~  
8 ~~and paging, service, including but not limited to "beepers"~~  
9 ~~and any other form of mobile and portable one-way or two-way~~  
10 ~~communication; or teletypewriter service.~~

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

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

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

24           ~~(c) The channel mileage which connects a telephone~~  
25 ~~station located outside a local telephone system area with a~~  
26 ~~central office in such local telephone system.~~

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

28           ~~(a) Local telephone service, toll telephone service,~~  
29 ~~telegram or telegraph service, teletypewriter service, or~~  
30 ~~private communication service; or~~

31

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

12  
13 ~~The term "telecommunication service" does not include any~~  
14 ~~Internet access service, electronic mail service, electronic~~  
15 ~~bulletin board service, or similar on-line computer service.~~

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

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

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

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

10  
11 ~~The term "toll telephone service" includes interstate and~~  
12 ~~intrastate wide-area telephone service charges.~~

13       ~~(8) The term "interstate," as applied to~~  
14 ~~telecommunication services, means originating in this state~~  
15 ~~but not terminating in this state, or terminating in this~~  
16 ~~state but not originating in this state.~~

17       ~~(1)(9) The term "Utility service" means electricity~~  
18 ~~for light, heat, or power; and natural or manufactured gas for~~  
19 ~~light, heat, or power; or telecommunication services.~~

20       ~~(2)(10) The term "Person" means any person as defined~~  
21 ~~in s. 212.02.~~

22       Section 43. Effective January 1, 2002, sections  
23 203.013, 203.60, 203.61, 203.62, and 203.63, Florida Statutes,  
24 are repealed.

25       Section 44. The Revenue Estimating Conference shall  
26 compute the rate of communications services tax which would be  
27 required to be levied under chapter 203, Florida Statutes, as  
28 amended by this act, to raise, through the imposition of a tax  
29 on communications services as defined in chapter 202, Florida  
30 Statutes, revenues equal to the taxes estimated to be actually  
31 collected under chapter 203, Florida Statutes, on

1 communications services. The rates computed by the Revenue  
2 Estimating Conference shall be presented to the Legislature  
3 for review and approval during the 2001 Regular Session.

4 Section 45. Paragraph (e) of subsection (1) of section  
5 212.05, Florida Statutes, is amended 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. All telegraph messages and long-distance telephone  
20 calls beginning and terminating in this state,  
21 telecommunication service as defined in s. 203.012, and those  
22 services described in s. 203.012(2)(a), except that the tax  
23 rate for charges for telecommunication service other than  
24 charges for prepaid calling arrangements is 7 percent. The tax  
25 on charges for prepaid calling arrangements ~~calls made with a~~  
26 ~~prepaid telephone calling card~~ shall be collected at the time  
27 of sale and remitted by the selling dealer ~~selling or~~  
28 ~~recharging a prepaid telephone card.~~

29 (I) "Prepaid calling arrangement" means the separately  
30 stated retail sale by advance payment of communications  
31 services that consist exclusively of telephone calls

1 originated by using an access number, authorization code, or  
2 other means that may be manually, electronically, or otherwise  
3 entered, and that are sold in predetermined units or dollars  
4 of which the number declines with use in a known amount.~~A~~  
5 ~~prepaid telephone card or authorization number means the right~~  
6 ~~to exclusively make telephone calls that must be paid for in~~  
7 ~~advance and that enable the origination of calls using an~~  
8 ~~access number, prepaid mobile account, or authorization code,~~  
9 ~~whether manually or electronically dialed.~~

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

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

30 b. Any television system program service.  
31

1           c. The installation of telecommunication and  
2 telegraphic equipment.

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

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

26           3. Telegraph messages and telecommunication services  
27 which originate or terminate in this state, other than  
28 interstate private communication services, and are billed to a  
29 customer, telephone number, or device located within this  
30 state are taxable under this paragraph. Interstate private  
31

1 communication services are taxable under this paragraph as  
2 follows:

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

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

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

25 4. The tax imposed pursuant to this paragraph shall  
26 not exceed \$50,000 per calendar year on charges to any person  
27 for interstate telecommunications services defined in s.  
28 203.012(4) and (7)(b), if the majority of such services used  
29 by such person are for communications originating outside of  
30 this state and terminating in this state. This exemption  
31 shall only be granted to holders of a direct pay permit issued

1 pursuant to this subparagraph. No refunds shall be given for  
2 taxes paid prior to receiving a direct pay permit. Upon  
3 application, the department may issue a direct pay permit to  
4 the purchaser of telecommunications services authorizing such  
5 purchaser to pay tax on such services directly to the  
6 department. Any vendor furnishing telecommunications services  
7 to the holder of a valid direct pay permit shall be relieved  
8 of the obligation to collect and remit the tax on such  
9 service. Tax payments and returns pursuant to a direct pay  
10 permit shall be monthly. For purposes of this subparagraph,  
11 the term "person" shall be limited to a single legal entity  
12 and shall not be construed as meaning a group or combination  
13 of affiliated entities or entities controlled by one person or  
14 group of persons.

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

25           Section 46. Effective July 1, 2000, all taxes that  
26 have been collected pursuant to s. 212.05(1)(e), Florida  
27 Statutes, at the point of sale on prepaid calling arrangements  
28 before July 1, 2000, must be remitted, and taxes that have  
29 been collected at the point of sale on prepaid calling  
30 arrangements and remitted before July 1, 2000, are not subject  
31 to refund. Any taxes that were not collected pursuant to s.



1 212.05(1)(e) before July 1, 2000, at point of sale on prepaid  
2 calling arrangements need not be paid and are forgiven.

3 Section 47. Paragraph (b) of subsection (2) of section  
4 212.054, Florida Statutes, is amended to read:

5 212.054 Discretionary sales surtax; limitations,  
6 administration, and collection.--

7 (2)

8 (b) However:

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

25 2. In the case of utility, telecommunication, or  
26 television system program services billed on or after the  
27 effective date of any such surtax, the entire amount of the  
28 charge tax for utility, telecommunication, or television  
29 system program services shall be subject to the surtax. In  
30 the case of utility, telecommunication, or television system  
31 program services billed after the last day the surtax is in

1 effect, the entire amount of the charge ~~tax~~ on said items  
2 shall not be subject to the surtax.

3 3. In the case of written contracts which are signed  
4 prior to the effective date of any such surtax for the  
5 construction of improvements to real property or for  
6 remodeling of existing structures, the surtax shall be paid by  
7 the contractor responsible for the performance of the  
8 contract. However, the contractor may apply for one refund of  
9 any such surtax paid on materials necessary for the completion  
10 of the contract. Any application for refund shall be made no  
11 later than 15 months following initial imposition of the  
12 surtax in that county. The application for refund shall be in  
13 the manner prescribed by the department by rule. A complete  
14 application shall include proof of the written contract and of  
15 payment of the surtax. The application shall contain a sworn  
16 statement, signed by the applicant or its representative,  
17 attesting to the validity of the application. The department  
18 shall, within 30 days after approval of a complete  
19 application, certify to the county information necessary for  
20 issuance of a refund to the applicant. Counties are hereby  
21 authorized to issue refunds for this purpose and shall set  
22 aside from the proceeds of the surtax a sum sufficient to pay  
23 any refund lawfully due. Any person who fraudulently obtains  
24 or attempts to obtain a refund pursuant to this subparagraph,  
25 in addition to being liable for repayment of any refund  
26 fraudulently obtained plus a mandatory penalty of 100 percent  
27 of the refund, is guilty of a felony of the third degree,  
28 punishable as provided in s. 775.082, s. 775.083, or s.  
29 775.084.

30 4. In the case of any vessel, railroad, or motor  
31 vehicle common carrier entitled to partial exemption from tax

1 imposed under this chapter pursuant to s. 212.08(4), (8), or  
2 (9), the basis for imposition of surtax shall be the same as  
3 provided in s. 212.08 and the ratio shall be applied each  
4 month to total purchases in this state of property qualified  
5 for proration which is delivered or sold in the taxing county  
6 to establish the portion used and consumed in intracounty  
7 movement and subject to surtax.

8 Section 48. Effective January 1, 2002, and applicable  
9 to communications services reflected on bills dated on or  
10 after that date, paragraph (e) of subsection (1) of section  
11 212.05, Florida Statutes, as amended by this act, is amended  
12 to read:

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

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

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

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

1 ~~calling arrangements is 7 percent.~~The tax on charges for  
2 prepaid calling arrangements shall be collected at the time of  
3 sale and remitted by the selling dealer.

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

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

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

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

31

1           b.e. The installation of telecommunication and  
2 telegraphic equipment.

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

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

26           3. ~~Telegraph messages and telecommunication services~~  
27 ~~which originate or terminate in this state, other than~~  
28 ~~interstate private communication services, and are billed to a~~  
29 ~~customer, telephone number, or device located within this~~  
30 ~~state are taxable under this paragraph. Interstate private~~  
31

1 ~~communication services are taxable under this paragraph as~~  
2 ~~follows:~~

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

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

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

25       ~~4. The tax imposed pursuant to this paragraph shall~~  
26 ~~not exceed \$50,000 per calendar year on charges to any person~~  
27 ~~for interstate telecommunications services defined in s.~~  
28 ~~203.012(4) and (7)(b), if the majority of such services used~~  
29 ~~by such person are for communications originating outside of~~  
30 ~~this state and terminating in this state. This exemption~~  
31 ~~shall only be granted to holders of a direct pay permit issued~~

1 ~~pursuant to this subparagraph. No refunds shall be given for~~  
2 ~~taxes paid prior to receiving a direct pay permit. Upon~~  
3 ~~application, the department may issue a direct pay permit to~~  
4 ~~the purchaser of telecommunications services authorizing such~~  
5 ~~purchaser to pay tax on such services directly to the~~  
6 ~~department. Any vendor furnishing telecommunications services~~  
7 ~~to the holder of a valid direct pay permit shall be relieved~~  
8 ~~of the obligation to collect and remit the tax on such~~  
9 ~~service. Tax payments and returns pursuant to a direct pay~~  
10 ~~permit shall be monthly. For purposes of this subparagraph,~~  
11 ~~the term "person" shall be limited to a single legal entity~~  
12 ~~and shall not be construed as meaning a group or combination~~  
13 ~~of affiliated entities or entities controlled by one person or~~  
14 ~~group of persons.~~

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

25 Section 49. Effective January 1, 2002, and applicable  
26 to communications services reflected on bills dated on or  
27 after such date, paragraph (b) of subsection (2) and paragraph  
28 (c) of subsection (3) of section 212.054, Florida Statutes, as  
29 amended by this act, are amended to read:

30 212.054 Discretionary sales surtax; limitations,  
31 administration, and collection.--

1           (2)  
2           (b) However:  
3           1. The sales amount above \$5,000 on any item of  
4 tangible personal property ~~and on long-distance telephone~~  
5 ~~service~~ shall not be subject to the surtax. However, charges  
6 for prepaid calling arrangements, as defined in s.  
7 212.05(1)(e)1.a., shall be subject to the surtax. For purposes  
8 of administering the \$5,000 limitation on an item of tangible  
9 personal property, if two or more taxable items of tangible  
10 personal property are sold to the same purchaser at the same  
11 time and, under generally accepted business practice or  
12 industry standards or usage, are normally sold in bulk or are  
13 items that, when assembled, comprise a working unit or part of  
14 a working unit, such items must be considered a single item  
15 for purposes of the \$5,000 limitation when supported by a  
16 charge ticket, sales slip, invoice, or other tangible evidence  
17 of a single sale or rental. ~~The limitation provided in this~~  
18 ~~subparagraph does not apply to the sale of any other service.~~  
19           2. In the case of utility, ~~telecommunication, or~~  
20 ~~television system program~~ services billed on or after the  
21 effective date of any such surtax, the entire amount of the  
22 charge for utility, ~~telecommunication, or television system~~  
23 ~~program~~ services shall be subject to the surtax. In the case  
24 of utility, ~~telecommunication, or television system program~~  
25 services billed after the last day the surtax is in effect,  
26 the entire amount of the charge on said items shall not be  
27 subject to the surtax. "Utility service," as used in this  
28 section, does not include any communications services as  
29 defined in chapter 202.  
30           3. In the case of written contracts which are signed  
31 prior to the effective date of any such surtax for the



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

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

1 for proration which is delivered or sold in the taxing county  
2 to establish the portion used and consumed in intracounty  
3 movement and subject to surtax.

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

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

11 Section 50. Effective January 1, 2001, section  
12 337.401, Florida Statutes, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 2. Each noncharter county shall make an election under  
30 either sub-subparagraph a. or sub-subparagraph b. and shall  
31 inform the Department of Revenue of the election by certified

1 mail by October 1, 2001. Such election shall take effect  
2 January 1, 2002.

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

30 b. Alternatively, the noncharter county may elect not  
31 to require and collect permit fees from any provider of

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

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

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

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



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

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

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

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

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

15       2.(b) The reasonable cost of the regulatory activity  
16 of the municipality; ~~and~~

17       3.(c) The proportionate share of cost of land for such  
18 street, alley, or other public way attributable to utilization  
19 of the right-of-way by a telecommunication service provider.  
20

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

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

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

28 (h)~~(6)~~ A local governmental entity may not use its  
29 authority over the placement of facilities in its roads and  
30 rights-of-way as a basis for asserting or exercising  
31 regulatory control over a telecommunications company regarding

1 matters within the exclusive jurisdiction of the Florida  
2 Public Service Commission or the Federal Communications  
3 Commission, including, but not limited to, the operations,  
4 systems, qualifications, services, service quality, service  
5 territory, and prices of a telecommunications company.

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

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

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

31

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

5           Section 51. Effective January 1, 2002, section  
6 337.401, Florida Statutes, as amended by this act, is amended  
7 to read:

8           337.401 Use of right-of-way for utilities subject to  
9 regulation; permit; fees.--

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

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

1 proceedings as provided in s. 120.69 to enforce provisions of  
2 this subsection or any rule or order issued or entered into  
3 pursuant thereto.

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

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

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

24 (c)1. It is the intention of the state to treat all  
25 providers of communications services that use or occupy  
26 municipal or charter county roads or rights-of-way for the  
27 provision of communications services in a nondiscriminatory  
28 and competitively neutral manner with respect to the payment  
29 of permit fees. Certain providers of communications services  
30 have been granted by general law the authority to offset  
31 permit fees against franchise or other fees while other

1 providers of communications services have not been granted  
2 this authority. In order to treat all providers of  
3 communications services in a nondiscriminatory and  
4 competitively neutral manner with respect to the payment of  
5 permit fees, each municipality and charter county shall make  
6 an election under either sub-subparagraph a. or  
7 sub-subparagraph b. and must inform the Department of Revenue  
8 of the election by certified mail by October 1, 2001. Such  
9 election shall take effect January 1, 2002.

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



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

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

14 b. Alternatively, the municipality or charter county  
15 may elect not to require and collect permit fees from any  
16 provider of communications services that uses or occupies  
17 municipal or charter county roads or rights-of-way for the  
18 provision of communications services; however, each  
19 municipality or charter county that elects to operate under  
20 this sub-subparagraph retains all authority to establish rules  
21 and regulations for providers of communications services to  
22 use or occupy roads or rights-of-way as provided in this  
23 section. If a municipality or charter county elects to operate  
24 under this sub-subparagraph, the total rate for the local  
25 communications services tax as computed under s. 202.20(1) and  
26 (2) for that municipality or charter county may be increased  
27 by ordinance by an amount not to exceed a rate of 0.12  
28 percent.

29 c. A municipality or charter county that does not make  
30 an election as provided for in this subparagraph shall be  
31

1 presumed to have elected to operate under the provisions of  
2 sub-subparagraph b.

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

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

1 556.108(5)(b) or for any activity that does not require the  
2 physical disturbance of the roads or rights-of-way or does not  
3 impair access to or full use of the roads or rights-of-way.

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

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

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

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

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

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

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

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

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

31

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), and other impositions except ad valorem~~  
12 ~~taxes and amounts for assessments for special benefits, such~~  
13 ~~as sidewalks, street pavings, and similar improvements, and~~  
14 ~~occupational license taxes levied or imposed by a municipality~~  
15 ~~upon the telecommunications company. This paragraph shall not~~  
16 ~~impair any franchise in existence on July 1, 1985.~~

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

31

1           ~~1. Costs directly related to the inconvenience or~~  
2 ~~impairment solely caused by the disturbance of the municipal~~  
3 ~~right-of-way;~~  
4           ~~2. The reasonable cost of the regulatory activity of~~  
5 ~~the municipality; and~~  
6           ~~3. The proportionate share of cost of land for such~~  
7 ~~street, alley, or other public way attributable to utilization~~  
8 ~~of the right-of-way by a telecommunication service provider.~~  
9  
10 ~~Furthermore, no telecommunication service provider shall be~~  
11 ~~required to pay more than one such fee or other consideration~~  
12 ~~annually for the construction, maintenance, operation, repair,~~  
13 ~~rebuilding, or replacement of a parallel telecommunications~~  
14 ~~route owned by it, or by a subsidiary under its direct~~  
15 ~~control, which makes use of the right-of-way of any~~  
16 ~~municipality enacting an ordinance pursuant to this paragraph.~~  
17 ~~The fee or other consideration imposed pursuant to this~~  
18 ~~paragraph shall not apply in any manner to any~~  
19 ~~telecommunication service provider who provides~~  
20 ~~telecommunication services as defined in s. 203.012(3) for any~~  
21 ~~services provided by such service provider. Any agreement~~  
22 ~~entered into pursuant to the authority of this paragraph prior~~  
23 ~~to June 3, 1988, and the fees or fee schedule in effect on~~  
24 ~~that date shall remain in full force and effect until such~~  
25 ~~agreement expires. Any ordinance enacted pursuant to this~~  
26 ~~paragraph prior to June 3, 1988, and the fees or fee schedule~~  
27 ~~in effect on that date shall remain in full force and effect~~  
28 ~~unless the ordinance is repealed by the municipality.~~  
29 ~~Notwithstanding the language contained herein a municipality~~  
30 ~~may reenact any ordinance which has an automatic expiration~~  
31

1 ~~date provided the ordinance does not increase the fees in~~  
2 ~~effect in said ordinance in violation of this section.~~  
3 (h)~~(g)~~ Except as expressly allowed or authorized by  
4 general law and except for the rights-of-way permit fees  
5 subject to paragraph (c)~~(e)~~, a municipality or county may not  
6 levy on a provider of communications services  
7 ~~telecommunications company~~ a tax, fee, or other charge or  
8 imposition for operating as a provider of communications  
9 services telecommunications company within the jurisdiction of  
10 the municipality or county which is in any way related to  
11 using its roads or rights-of-way. ~~A municipality may not allow~~  
12 ~~a telecommunications company to pay a fee or provide~~  
13 ~~compensation in excess of the limits prescribed in this~~  
14 ~~section.~~ A municipality or county may not require or solicit  
15 in-kind compensation, except as otherwise provided in  
16 paragraph (f) ~~in lieu of any fees imposed pursuant to this~~  
17 ~~section.~~ Nothing in this paragraph shall impair any ordinance  
18 or agreement in effect on May 22, 1998, or any voluntary  
19 agreement entered into subsequent to that date, which provides  
20 for or allows in-kind compensation by a telecommunications  
21 company.

22 (i)~~(h)~~ A municipality or county local governmental  
23 ~~entity~~ may not use its authority over the placement of  
24 facilities in its roads and rights-of-way as a basis for  
25 asserting or exercising regulatory control over a provider of  
26 communications services telecommunications company regarding  
27 matters within the exclusive jurisdiction of the Florida  
28 Public Service Commission or the Federal Communications  
29 Commission, including, but not limited to, the operations,  
30 systems, qualifications, services, service quality, service  
31



1 territory, and prices of a provider of communications services  
2 ~~telecommunications company~~.

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

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

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

31

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

5           Section 52. The Legislature finds that it may be  
6 necessary to adopt a state policy regarding in-kind  
7 requirements, institutional networks, and contributions for,  
8 or in support of, the use or construction of public,  
9 educational, or governmental access facilities allowed under  
10 federal law currently imposed only on providers of cable  
11 service, especially in light of the in-kind requirements for  
12 providers of telecommunications services under s. 337.401(5),  
13 Florida Statutes, 1999. Given the development of alternative  
14 choices in the delivery of multichannel video programming,  
15 including programming by providers of wireless, satellite,  
16 Internet, and other video delivery systems, and the potential  
17 competitive inequities which may be associated with such  
18 requirements, networks, and contributions, the appropriate  
19 committees of the Legislature shall study and evaluate, during  
20 the 2001 legislative session, an appropriate state policy  
21 regarding these issues, including the option of calculating  
22 the present and future value of such requirements, networks,  
23 and contributions available to local governments in excess of  
24 the limitations imposed on franchise fees under 47 U.S.C. s.  
25 542(b) as a part of the computation of replacement revenues  
26 under s. 202.20, Florida Statutes, in setting the local  
27 communications services tax rate.

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

30           212.031 Lease or rental of or license in real  
31 property.--

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

6           1. Assessed as agricultural property under s. 193.461.  
7           2. Used exclusively as dwelling units.  
8           3. Property subject to tax on parking, docking, or  
9 storage spaces under s. 212.03(6).

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

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

1 ~~placed.~~ For purposes of this chapter, towers used in the  
2 provision of mobile communications services, as defined in s.  
3 202.11, are considered to be fixtures.

4           6. A public street or road which is used for  
5 transportation purposes.

6           7. Property used at an airport exclusively for the  
7 purpose of aircraft landing or aircraft taxiing or property  
8 used by an airline for the purpose of loading or unloading  
9 passengers or property onto or from aircraft or for fueling  
10 aircraft.

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

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

24           9. Property used as an integral part of the  
25 performance of qualified production services. As used in this  
26 subparagraph, the term "qualified production services" means  
27 any activity or service performed directly in connection with  
28 the production of a qualified motion picture, as defined in s.  
29 212.06(1)(b), and includes:

30           a. Photography, sound and recording, casting, location  
31 managing and scouting, shooting, creation of special and

1 optical effects, animation, adaptation (language, media,  
2 electronic, or otherwise), technological modifications,  
3 computer graphics, set and stage support (such as  
4 electricians, lighting designers and operators, greensmen,  
5 prop managers and assistants, and grips), wardrobe (design,  
6 preparation, and management), hair and makeup (design,  
7 production, and application), performing (such as acting,  
8 dancing, and playing), designing and executing stunts,  
9 coaching, consulting, writing, scoring, composing,  
10 choreographing, script supervising, directing, producing,  
11 transmitting dailies, dubbing, mixing, editing, cutting,  
12 looping, printing, processing, duplicating, storing, and  
13 distributing;

14         b. The design, planning, engineering, construction,  
15 alteration, repair, and maintenance of real or personal  
16 property including stages, sets, props, models, paintings, and  
17 facilities principally required for the performance of those  
18 services listed in sub-subparagraph a.; and

19         c. Property management services directly related to  
20 property used in connection with the services described in  
21 sub-subparagraphs a. and b.

22         10. Leased, subleased, licensed, or rented to a person  
23 providing food and drink concessionaire services within the  
24 premises of a convention hall, exhibition hall, auditorium,  
25 stadium, theater, arena, civic center, performing arts center,  
26 recreational facility, or any business operated under a permit  
27 issued pursuant to chapter 550. A person providing retail  
28 concessionaire services involving the sale of food and drink  
29 or other tangible personal property within the premises of an  
30 airport shall be subject to tax on the rental of real property  
31 used for that purpose, but shall not be subject to the tax on

1 any license to use the property. For purposes of this  
2 subparagraph, the term "sale" shall not include the leasing of  
3 tangible personal property.

4 11. Property occupied pursuant to an instrument  
5 calling for payments which the department has declared, in a  
6 Technical Assistance Advisement issued on or before March 15,  
7 1993, to be nontaxable pursuant to rule 12A-1.070(19)(c),  
8 Florida Administrative Code; provided that this subparagraph  
9 shall only apply to property occupied by the same person  
10 before and after the execution of the subject instrument and  
11 only to those payments made pursuant to such instrument,  
12 exclusive of renewals and extensions thereof occurring after  
13 March 15, 1993.

14 (b) When a lease involves multiple use of real  
15 property wherein a part of the real property is subject to the  
16 tax herein, and a part of the property would be excluded from  
17 the tax under subparagraph (a)1., subparagraph (a)2., ~~or~~  
18 subparagraph (a)3., or subparagraph (a)5. the department  
19 shall determine, from the lease or license and such other  
20 information as may be available, that portion of the total  
21 rental charge which is exempt from the tax imposed by this  
22 section. The portion of the premises leased or rented by a  
23 for-profit entity providing a residential facility for the  
24 aged will be exempt on the basis of a pro rata portion  
25 calculated by combining the square footage of the areas used  
26 for residential units by the aged and for the care of such  
27 residents and dividing the resultant sum by the total square  
28 footage of the rented premises. For purposes of this section,  
29 the term "residential facility for the aged" means a facility  
30 that is licensed or certified in whole or in part under  
31 chapter 400 or chapter 651; or that provides residences to the

1 elderly and is financed by a mortgage or loan made or insured  
2 by the United States Department of Housing and Urban  
3 Development under s. 202, s. 202 with a s. 8 subsidy, s.  
4 221(d)(3) or (4), s. 232, or s. 236 of the National Housing  
5 Act; or other such similar facility that provides residences  
6 primarily for the elderly.

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

26 (d) When the rental or license fee of any such real  
27 property is paid by way of property, goods, wares,  
28 merchandise, services, or other thing of value, the tax shall  
29 be at the rate of 6 percent of the value of the property,  
30 goods, wares, merchandise, services, or other thing of value.  
31

1           Section 54. Revenue received by a taxing authority  
2 under this act shall be deemed to replace any taxes or fees  
3 previously imposed but repealed by this act without any  
4 further action on the part of such taxing authority. If the  
5 repeal under this act of a taxing authority's authority to  
6 levy taxes or fees impairs security pledged to retire the  
7 authority's bonded indebtedness secured by such taxes or fees,  
8 then to the extent of any such impairment, a like sum of  
9 revenue received by the authority under this act shall be  
10 deemed as a matter of law to replace said taxes and fees as  
11 security for the bonded indebtedness.

12           Section 55. The taxes imposed by ss. 203.01, 202.12,  
13 and 202.19, Florida Statutes, on communications services shall  
14 be applied in accordance with chapter 202, Florida Statutes,  
15 as created by this act, to communications services reflected  
16 on bills dated on or after January 1, 2002.

17           Section 56. Effective upon this act becoming a law,  
18 the sum of \$202,000 is appropriated from the General Revenue  
19 Fund to the Department of Revenue in fiscal year 2000-2001 to  
20 implement the provisions of this act.

21           Section 57. The sum of \$1,327,195 is appropriated from  
22 the General Revenue Fund to the Department of Revenue and 22  
23 full-time equivalent positions are authorized to implement the  
24 provisions of this act.

25           Section 58. Effective June 30, 2001:

26           (1) Sections 202.10, 202.11, 202.20, 202.26, and  
27 202.37, Florida Statutes, as created by this act, are  
28 repealed.

29           (2) Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15,  
30 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35,  
31



1 38, 39, 41, 42, 43, 48, 49, 51, 54, and 55 of this act are  
2 repealed.

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

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

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

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

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

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

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

1 ~~the Florida Public Service Commission or the Federal~~  
2 ~~Communications Commission; and proof of insurance or~~  
3 ~~self-insuring status adequate to defend and cover claims.~~  
4       ~~(b) Each municipality and county retains the authority~~  
5 ~~to regulate and manage municipal and county roads or~~  
6 ~~rights-of-way in exercising its police power. Any rules or~~  
7 ~~regulations adopted by a municipality or county which govern~~  
8 ~~the occupation of its roads or rights-of-way by~~  
9 ~~telecommunications companies must be related to the placement~~  
10 ~~or maintenance of facilities in such roads or rights-of-way,~~  
11 ~~must be reasonable and nondiscriminatory, and may include only~~  
12 ~~those matters necessary to manage the roads or rights-of-way~~  
13 ~~of the municipality or county.~~  
14       ~~(c)1. It is the intention of the state to treat all~~  
15 ~~providers of communications services that use or occupy~~  
16 ~~municipal or charter county roads or rights-of-way for the~~  
17 ~~provision of communications services in a nondiscriminatory~~  
18 ~~and competitively neutral manner with respect to the payment~~  
19 ~~of permit fees. Certain providers of communications services~~  
20 ~~have been granted by general law the authority to offset~~  
21 ~~permit fees against franchise or other fees while other~~  
22 ~~providers of communications services have not been granted~~  
23 ~~this authority. In order to treat all providers of~~  
24 ~~communications services in a nondiscriminatory and~~  
25 ~~competitively neutral manner with respect to the payment of~~  
26 ~~permit fees, each municipality and charter county shall make~~  
27 ~~an election under either sub-subparagraph a. or~~  
28 ~~sub-subparagraph b. and must inform the Department of Revenue~~  
29 ~~of the election by certified mail by October 1, 2001. Such~~  
30 ~~election take effect January 1, 2002.~~  
31

1           ~~a.(I) The municipality or charter county may require~~  
2 ~~and collect permit fees from any providers of communications~~  
3 ~~services that use or occupy municipal or 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 municipality or charter county~~  
22 ~~under this sub-subparagraph may not exceed \$100. However,~~  
23 ~~permit fees may not be imposed with respect to permits that~~  
24 ~~may be required for service drop lines not required to be~~  
25 ~~noticed under s. 556.108(5)(b) or for any activity that does~~  
26 ~~not require the physical disturbance of the roads or~~  
27 ~~rights-of-way or does not impair access to or full use of the~~  
28 ~~roads or rights-of-way.~~

29           ~~(II) To ensure competitive neutrality among providers~~  
30 ~~of communications services, for any municipality or charter~~  
31 ~~county that elects to exercise its authority to require and~~

1 ~~collect permit fees under this sub-subparagraph, the rate of~~  
2 ~~the local communications services tax imposed by such~~  
3 ~~jurisdiction, as computed under s. 202.20(1) and (2), shall~~  
4 ~~automatically be reduced by a rate of 0.12 percent.~~

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

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

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

29 ~~a. The noncharter county may elect to require and~~  
30 ~~collect permit fees from any providers of communications~~  
31 ~~services that use or occupy noncharter county roads or~~

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

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

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

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

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

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

1 ~~county to provide such notice does not render the ordinance~~  
2 ~~invalid.~~

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

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



1 or other consideration imposed pursuant to this subsection  
2 ~~paragraph~~ be less than \$500 per linear mile of any cable,  
3 fiber optic, or other pathway that makes physical use of the  
4 municipal right-of-way. Any fee or other consideration  
5 imposed by this subsection ~~paragraph~~ in excess of \$500 shall  
6 be applied in a nondiscriminatory manner and shall not exceed  
7 the sum of:

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

11       (b)~~2~~. The reasonable cost of the regulatory activity  
12 of the municipality. ~~and~~

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

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

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

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

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

1 systems, qualifications, services, service quality, service  
2 territory, and prices of a telecommunications company.

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

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

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

28 (10)~~(4)~~ This section, except subsections (1), and (2),  
29 and~~(6)~~ ~~paragraph (3)(h)~~, does not apply to the provision of  
30 pay telephone service on public or municipal roads or  
31 rights-of-way.

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