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A bill to be entitled

An act relating to communications services taxes; amending s. 202.13, F.S.; revising legislative intent; amending s. 202.16, F.S.; providing requirements for dealers making certain sales for resale; providing procedures and limitations; providing a definition; providing responsibilities of the Department of Revenue; amending s. 202.19, F.S.; revising provisions limiting certain maximum rates; clarifying the inclusion of certain fees and costs in the tax rate; amending s. 202.20, F.S.; deleting certain obsolete tax rate provisions; amending s. 202.21, F.S., to conform; amending s. 202.24, F.S.; including certain fees and costs within a prohibition against public bodies from levying or collecting certain taxes from dealers or purchasers of communications services certain taxes, charges, and fees; specifying certain revisions to law as remedial and clarifying; providing an effective date.

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

Section 1. Subsection (1) of section 202.13, Florida Statutes, is amended to read:

202.13 Intent.--

(1) ~~If the operation or imposition of the taxes imposed or administered under this chapter is declared invalid, ineffective, inapplicable, unconstitutional, or void for any reason, chapters 166, 203, 212, and 337, as such chapters existed before January 1, 2000, shall fully apply to the sale,~~

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30 ~~use, or consumption of communications services.~~ If any exemption  
 31 from the tax imposed or administered under this chapter is  
 32 declared invalid, ineffective, inapplicable, unconstitutional,  
 33 or void for any reason, such declaration shall not affect the  
 34 taxes imposed or administered under this chapter, but such sale,  
 35 use, or consumption shall be subject to the taxes imposed under  
 36 this chapter to the same extent as if such exemption never  
 37 existed.

38 Section 2. Subsection (2) of section 202.16, Florida  
 39 Statutes, is amended to read:

40 202.16 Payment.--The taxes imposed or administered under  
 41 this chapter and chapter 203 shall be collected from all dealers  
 42 of taxable communications services on the sale at retail in this  
 43 state of communications services taxable under this chapter and  
 44 chapter 203. The full amount of the taxes on a credit sale,  
 45 installment sale, or sale made on any kind of deferred payment  
 46 plan is due at the moment of the transaction in the same manner  
 47 as a cash sale.

48 (2)(a) A sale of communications services that are used as  
 49 a component part of or integrated into a communications service  
 50 or prepaid calling arrangement for resale, including, but not  
 51 limited to, carrier-access charges, interconnection charges paid  
 52 by providers of mobile communication services or other  
 53 communication services, charges paid by cable service providers  
 54 for the transmission of video or other programming by another  
 55 dealer of communications services, charges for the sale of  
 56 unbundled network elements, and any other intercompany charges  
 57 for the use of facilities for providing communications services  
 58 for resale, must be made in compliance with the rules of the

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59 department. Any person who makes a sale for resale which is not  
60 in compliance with these rules is liable for any tax, penalty,  
61 and interest due for failing to comply, to be calculated  
62 pursuant to s. 202.28(2)(a).

63 (b) Any dealer who makes a sale for resale shall document  
64 the exempt nature of the transaction, as established by rules  
65 adopted by the department, by retaining a copy of the  
66 purchaser's initial or annual resale certificate issued pursuant  
67 to s. 202.17(6). In lieu of maintaining a copy of the  
68 certificate, a dealer may document, prior to the time of sale,  
69 an authorization number provided telephonically or  
70 electronically by the department, or by such other means  
71 established by rule of the department. The dealer may rely on an  
72 initial or annual resale certificate issued pursuant to s.  
73 202.17(6), valid at the time of receipt from the purchaser,  
74 without seeking additional annual resale certificates from such  
75 purchaser, if the dealer makes recurring sales to such purchaser  
76 in the normal course of business on a continual basis. For  
77 purposes of this paragraph, the term "recurring sales to a  
78 purchaser in the normal course of business" means a sale in  
79 which the dealer extends credit to the purchaser and records the  
80 debt as an account receivable, or in which the dealer sells to a  
81 purchaser who has an established cash account, similar to an  
82 open credit account. For purposes of this paragraph, purchases  
83 are made from a selling dealer on a continual basis if the  
84 selling dealer makes, in the normal course of business, sales to  
85 the purchaser no less frequently than once in every 12-month  
86 period. A dealer may, through the informal protest provided for  
87 in s. 213.21 and the rules of the Department of Revenue, provide

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88 the department with evidence of the exempt status of a sale.  
 89 Exemption certificates executed by entities that were exempt at  
 90 the time of sale, resale certificates provided by purchasers who  
 91 were active dealers at the time of sale, and verification by the  
 92 department of a purchaser's active dealer status at the time of  
 93 sale in lieu of a resale certificate shall be accepted by the  
 94 department when submitted during the protest period, but may not  
 95 be accepted in any proceeding under chapter 120 or any circuit  
 96 court action instituted under chapter 72.

97 Section 3. Paragraph (c) of subsection (2), paragraph (a)  
 98 of subsection (3), and subsection (5) of section 202.19, Florida  
 99 Statutes, are amended to read:

100 202.19 Authorization to impose local communications  
 101 services tax.--

102 (2)

103 (c) The maximum rates authorized by paragraphs (a) and (b)  
 104 do not include the add-ons of up to 0.12 percent for  
 105 municipalities and charter counties or of up to 0.24 percent for  
 106 noncharter counties authorized pursuant to s. 337.401, nor do  
 107 they supersede conversion ~~or emergency~~ rates authorized by s.  
 108 202.20(1), or emergency rates previously authorized by s.  
 109 202.20(2) as such provision existed prior to July 1, 2004,  
 110 ~~202.20~~ which are in excess of these maximum rates.

111 (3)(a) The tax authorized under this section includes and  
 112 is in lieu of any fee or other consideration, including, but not  
 113 limited to, application fees, transfer fees, siting fees,  
 114 renewal fees, or claims for related costs, to which the  
 115 municipality or county is otherwise entitled for granting  
 116 permission to dealers of communications services, including, but

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117 not limited to, providers of cable television services, as  
 118 authorized in 47 U.S.C. s. 542, to use or occupy its roads or  
 119 rights-of-way for the placement, construction, and maintenance  
 120 of poles, wires, towers, and other fixtures used in the  
 121 provision of communications services.

122 (5) In addition to the communications services taxes  
 123 authorized by subsection (1), a discretionary sales surtax that  
 124 a county or school board has levied under s. 212.055 is imposed  
 125 as a local communications services tax under this section, and  
 126 the rate shall be determined in accordance with s. 202.20(2)~~(3)~~.

127 (a) Except as otherwise provided in this subsection, each  
 128 such tax rate shall be applied, in addition to the other tax  
 129 rates applied under this chapter, to communications services  
 130 subject to tax under s. 202.12 which:

- 131 1. Originate or terminate in this state; and
- 132 2. Are charged to a service address in the county.

133 (b) With respect to private communications services, the  
 134 tax shall be on the sales price of such services provided within  
 135 the county, which shall be determined in accordance with the  
 136 following provisions:

- 137 1. Any charge with respect to a channel termination point  
 138 located within such county;
- 139 2. Any charge for the use of a channel between two channel  
 140 termination points located in such county; and
- 141 3. Where channel termination points are located both  
 142 within and outside of such county:
  - 143 a. If any segment between two such channel termination  
 144 points is separately billed, 50 percent of such charge; and

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145           b. If any segment of the circuit is not separately billed,  
 146 an amount equal to the total charge for such circuit multiplied  
 147 by a fraction, the numerator of which is the number of channel  
 148 termination points within such county and the denominator of  
 149 which is the total number of channel termination points of the  
 150 circuit.

151           Section 4. Subsections (2) and (3) of section 202.20,  
 152 Florida Statutes, are amended to read:

153           202.20 Local communications services tax conversion  
 154 rates.--

155           ~~(2)(a)1. With respect to any local taxing jurisdiction,~~  
 156 ~~if, for the periods ending December 31, 2001; March 31, 2002;~~  
 157 ~~June 30, 2002; or September 30, 2002, the revenues received by~~  
 158 ~~that local government from the local communications services tax~~  
 159 ~~imposed under subsection (1) are less than the revenues received~~  
 160 ~~from the replaced revenue sources for the corresponding 2000-~~  
 161 ~~2001 period; plus reasonably anticipated growth in such revenues~~  
 162 ~~over the preceding 1-year period, based on the average growth of~~  
 163 ~~such revenues over the immediately preceding 5-year period; plus~~  
 164 ~~an amount representing the revenues from the replaced revenue~~  
 165 ~~sources for the 1-month period that the local taxing~~  
 166 ~~jurisdiction was required to forego, the governing authority may~~  
 167 ~~adjust the rate of the local communications services tax upward~~  
 168 ~~to the extent necessary to generate the entire shortfall in~~  
 169 ~~revenues within 1 year after the rate adjustment and by an~~  
 170 ~~amount necessary to generate the expected amount of revenue on~~  
 171 ~~an ongoing basis.~~

172           ~~2. If complete data are not available at the time of~~  
 173 ~~determining whether the revenues received by a local government~~

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174 ~~from the local communications services tax imposed under~~  
175 ~~subsection (1) are less than the revenues received from the~~  
176 ~~replaced revenue sources for the corresponding 2000-2001 period,~~  
177 ~~as set forth in subparagraph 1., the local government shall use~~  
178 ~~the best data available for the corresponding 2000-2001 period~~  
179 ~~in making such determination.~~

180 ~~3. The adjustment permitted under subparagraph 1. may be~~  
181 ~~made by emergency ordinance or resolution and may be made~~  
182 ~~notwithstanding the maximum rate established under s. 202.19(2)~~  
183 ~~and notwithstanding any schedules or timeframes or any other~~  
184 ~~limitations contained in this chapter. The emergency ordinance~~  
185 ~~or resolution shall specify an effective date for the adjusted~~  
186 ~~rate, which shall be no less than 60 days after the date of~~  
187 ~~adoption of the ordinance or resolution and shall be effective~~  
188 ~~with respect to taxable services included on bills that are~~  
189 ~~dated on the first day of a month subsequent to the expiration~~  
190 ~~of the 60-day period. At the end of 1 year following the~~  
191 ~~effective date of such adjusted rate, the local governing~~  
192 ~~authority shall, as soon as is consistent with s. 202.21, reduce~~  
193 ~~the rate by that portion of the emergency rate which was~~  
194 ~~necessary to recoup the amount of revenues not received prior to~~  
195 ~~the implementation of the emergency rate.~~

196 ~~4. If, for the period October 1, 2001, through September~~  
197 ~~30, 2002, the revenues received by a local government from the~~  
198 ~~local communications services tax conversion rate established~~  
199 ~~under subsection (1), adjusted upward for the difference in~~  
200 ~~rates between paragraphs (1)(a) and (b) or any other rate~~  
201 ~~adjustments or base changes, are above the threshold of 10~~  
202 ~~percent more than the revenues received from the replaced~~

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203 ~~revenue sources for the corresponding 2000-2001 period plus~~  
 204 ~~reasonably anticipated growth in such revenues over the~~  
 205 ~~preceding 1-year period, based on the average growth of such~~  
 206 ~~revenues over the immediately preceding 5-year period, the~~  
 207 ~~governing authority must adjust the rate of the local~~  
 208 ~~communications services tax to the extent necessary to reduce~~  
 209 ~~revenues to the threshold by emergency ordinance or resolution~~  
 210 ~~within the timeframes established in subparagraph 3. The~~  
 211 ~~foregoing rate adjustment requirement shall not apply to a local~~  
 212 ~~government that adopts a local communications services tax rate~~  
 213 ~~by resolution or ordinance. If complete data are not available~~  
 214 ~~at the time of determining whether the revenues exceed the~~  
 215 ~~threshold, the local government shall use the best data~~  
 216 ~~available for the corresponding 2000-2001 period in making such~~  
 217 ~~determination. This subparagraph shall not be construed as~~  
 218 ~~establishing a right of action for any person to enforce this~~  
 219 ~~subparagraph or challenge a local government's implementation of~~  
 220 ~~this subparagraph.~~

221 ~~(b) Except as otherwise provided in this subsection,~~  
 222 ~~"replaced revenue sources," as used in this section, means the~~  
 223 ~~following taxes, charges, fees, or other impositions to the~~  
 224 ~~extent that the respective local taxing jurisdictions were~~  
 225 ~~authorized to impose them prior to July 1, 2000.~~

226 ~~1. With respect to municipalities and charter counties and~~  
 227 ~~the taxes authorized by s. 202.19(1):~~

228 ~~a. The public service tax on telecommunications authorized~~  
 229 ~~by former s. 166.231(9).~~

230 ~~b. Franchise fees on cable service providers as authorized~~  
 231 ~~by 47 U.S.C. s. 542.~~



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232 ~~e. The public service tax on prepaid calling arrangements.~~  
 233 ~~d. Franchise fees on dealers of communications services~~  
 234 ~~which use the public roads or rights-of-way, up to the limit set~~  
 235 ~~forth in s. 337.401. For purposes of calculating rates under~~  
 236 ~~this section, it is the legislative intent that charter counties~~  
 237 ~~be treated as having had the same authority as municipalities to~~  
 238 ~~impose franchise fees on recurring local telecommunication~~  
 239 ~~service revenues prior to July 1, 2000. However, the Legislature~~  
 240 ~~recognizes that the authority of charter counties to impose such~~  
 241 ~~fees is in dispute, and the treatment provided in this section~~  
 242 ~~is not an expression of legislative intent that charter counties~~  
 243 ~~actually do or do not possess such authority.~~

244 ~~e. Actual permit fees relating to placing or maintaining~~  
 245 ~~facilities in or on public roads or rights-of-way, collected~~  
 246 ~~from providers of long-distance, cable, and mobile~~  
 247 ~~communications services for the fiscal year ending September 30,~~  
 248 ~~1999; however, if a municipality or charter county elects the~~  
 249 ~~option to charge permit fees pursuant to s. 337.401(3)(c)1.a.,~~  
 250 ~~such fees shall not be included as a replaced revenue source.~~

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

254 (2)(3) For any county or school board that levies a  
 255 discretionary surtax under s. 212.055, the rate of such tax on  
 256 communications services as authorized by s. 202.19(5) shall be  
 257 as follows:

County	.5%	1%	1.5%
	Discretionary	Discretionary	Discretionary
	surtax	surtax	surtax

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	conversion rates	conversion rates	conversion rates
258	Alachua	0.3%	0.8%
259	Baker	0.3%	0.8%
260	Bay	0.3%	0.8%
261	Bradford	0.3%	0.8%
262	Brevard	0.3%	0.9%
263	Broward	0.3%	0.8%
264	Calhoun	0.3%	0.8%
265	Charlotte	0.3%	0.9%
266	Citrus	0.3%	0.9%
267	Clay	0.3%	0.8%
268	Collier	0.4%	1.0%
269	Columbia	0.3%	0.9%
270	Dade	0.3%	0.8%
271	Desoto	0.3%	0.8%
272	Dixie	0.3%	0.8%
273	Duval	0.3%	0.8%

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274	Escambia	0.3%	0.6%	0.9%
275	Flagler	0.4%	0.7%	1.0%
276	Franklin	0.3%	0.6%	0.9%
277	Gadsden	0.3%	0.5%	0.8%
278	Gilchrist	0.3%	0.5%	0.7%
279	Glades	0.3%	0.6%	0.8%
280	Gulf	0.3%	0.5%	0.8%
281	Hamilton	0.3%	0.6%	0.8%
282	Hardee	0.3%	0.5%	0.8%
283	Hendry	0.3%	0.6%	0.9%
284	Hernando	0.3%	0.6%	0.9%
285	Highlands	0.3%	0.6%	0.9%
286	Hillsborough	0.3%	0.6%	0.8%
287	Holmes	0.3%	0.6%	0.8%
288	Indian River	0.3%	0.6%	0.9%
289	Jackson	0.3%	0.5%	0.7%
290	Jefferson	0.3%	0.5%	0.8%
291				

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292	Lafayette	0.3%	0.5%	0.7%
293	Lake	0.3%	0.6%	0.9%
294	Lee	0.3%	0.6%	0.9%
295	Leon	0.3%	0.6%	0.8%
296	Levy	0.3%	0.5%	0.8%
297	Liberty	0.3%	0.6%	0.8%
298	Madison	0.3%	0.5%	0.8%
299	Manatee	0.3%	0.6%	0.8%
300	Marion	0.3%	0.5%	0.8%
301	Martin	0.3%	0.6%	0.8%
302	Monroe	0.3%	0.6%	0.9%
303	Nassau	0.3%	0.6%	0.8%
304	Okaloosa	0.3%	0.6%	0.8%
305	Okeechobee	0.3%	0.6%	0.9%
306	Orange	0.3%	0.5%	0.8%
307	Osceola	0.3%	0.5%	0.8%
308	Palm Beach	0.3%	0.6%	0.8%

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309	HB 1237 Pasco	0.3%	0.6%	0.9%
310	Pinellas	0.3%	0.6%	0.9%
311	Polk	0.3%	0.6%	0.8%
312	Putnam	0.3%	0.6%	0.8%
313	St. Johns	0.3%	0.6%	0.8%
314	St. Lucie	0.3%	0.6%	0.8%
315	Santa Rosa	0.3%	0.6%	0.9%
316	Sarasota	0.3%	0.6%	0.9%
317	Seminole	0.3%	0.6%	0.8%
318	Sumter	0.3%	0.5%	0.8%
319	Suwannee	0.3%	0.6%	0.8%
320	Taylor	0.3%	0.6%	0.9%
321	Union	0.3%	0.5%	0.8%
322	Volusia	0.3%	0.6%	0.8%
323	Wakulla	0.3%	0.6%	0.9%
324	Walton	0.3%	0.6%	0.9%
325	Washington	0.3%	0.5%	0.8%

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326 The discretionary surtax conversion rate with respect to  
 327 communications services reflected on bills dated on or after  
 328 October 1, 2001, shall take effect without any further action by  
 329 a county or school board that has levied a surtax on or before  
 330 October 1, 2001. For a county or school board that levies a  
 331 surtax subsequent to October 1, 2001, the discretionary surtax  
 332 conversion rate with respect to communications services shall  
 333 take effect upon the effective date of the surtax as provided in  
 334 s. 212.054. The discretionary sales surtax rate on  
 335 communications services for a county or school board levying a  
 336 combined rate which is not listed in the table provided by this  
 337 subsection shall be calculated by averaging or adding the  
 338 appropriate rates from the table and rounding up to the nearest  
 339 tenth of a percent.

340 Section 5. Section 202.21, Florida Statutes, is amended to  
 341 read:

342 202.21 Effective dates; procedures for informing dealers  
 343 of communications services of tax levies and rate changes.--Any  
 344 adoption, repeal, or change in the rate of a local  
 345 communications services tax imposed under s. 202.19 is effective  
 346 with respect to taxable services included on bills that are  
 347 dated on or after the January 1 subsequent to such adoption,  
 348 repeal, or change. A municipality or county adopting, repealing,  
 349 or changing the rate of such tax must notify the department of  
 350 the adoption, repeal, or change by September 1 immediately  
 351 preceding such January 1. Notification must be furnished on a  
 352 form prescribed by the department and must specify the rate of  
 353 tax; the effective date of the adoption, repeal, or change  
 354 thereof; and the name, mailing address, and telephone number of

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355 a person designated by the municipality or county to respond to  
 356 inquiries concerning the tax. The department shall provide  
 357 notice of such adoption, repeal, or change to all affected  
 358 dealers of communications services at least 90 days before the  
 359 effective date of the tax. ~~Any local government that adjusts the~~  
 360 ~~rate of its local communications services tax by emergency~~  
 361 ~~ordinance or resolution pursuant to s. 202.20(2) shall notify~~  
 362 ~~the department of the new tax rate immediately upon its~~  
 363 ~~adoption. The department shall provide written notice of the~~  
 364 ~~adoption of the new rate to all affected dealers within 30 days~~  
 365 ~~after receiving such notice.~~ In any notice to providers or  
 366 publication of local tax rates for purposes of this chapter, the  
 367 department shall express the rate for a municipality or charter  
 368 county as the sum of the tax rates levied within such  
 369 jurisdiction pursuant to s. 202.19(2)(a) and (5), and shall  
 370 express the rate for any other county as the sum of the tax  
 371 rates levied pursuant to s. 202.19(2)(b) and (5). The department  
 372 is not liable for any loss of or decrease in revenue by reason  
 373 of any error, omission, or untimely action that results in the  
 374 nonpayment of a tax imposed under s. 202.19.

375 Section 6. Paragraph (a) of subsection (2) of section  
 376 202.24, Florida Statutes, is amended to read:

377 202.24 Limitations on local taxes and fees imposed on  
 378 dealers of communications services.--

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

381 1. Levying on or collecting from dealers or purchasers of  
 382 communications services any tax, charge, fee, or other  
 383 imposition on or with respect to the provision or purchase of

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384 communications services, including, but not limited to,  
 385 application fees, transfer fees, siting fees, renewal fees, or  
 386 claims for related costs.

387 2. Requiring any dealer of communications services to  
 388 enter into or extend the term of a franchise or other agreement  
 389 that requires the payment of a tax, charge, fee, or other  
 390 imposition.

391 3. Adopting or enforcing any provision of any ordinance or  
 392 agreement to the extent that such provision obligates a dealer  
 393 of communications services to charge, collect, or pay to the  
 394 public body a tax, charge, fee, or other imposition.

395  
 396 Each municipality and county retains authority to negotiate all  
 397 terms and conditions of a cable service franchise allowed by  
 398 federal and state law except those terms and conditions related  
 399 to franchise fees and the definition of gross revenues or other  
 400 definitions or methodologies related to the payment or  
 401 assessment of franchise fees on providers of cable services.

402 Section 7. The amendments to ss. 202.19(3)(a) and  
 403 202.24(2)(a), Florida Statutes, contained in this act are  
 404 remedial in nature and intended to clarify the law in effect on  
 405 the effective date of this act.

406 Section 8. This act shall take effect July 1, 2004.