

CHAMBER ACTION

1 The Committee on Business Regulation recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to communications services taxes; amending
7 s. 202.13, F.S.; revising legislative intent; amending s.
8 202.16, F.S.; providing requirements for dealers making
9 certain sales for resale; providing procedures and
10 limitations; providing a definition; providing
11 responsibilities of the Department of Revenue; amending s.
12 202.19, F.S.; revising provisions limiting certain maximum
13 rates; clarifying the inclusion of certain fees and costs
14 in the tax rate; amending s. 202.20, F.S.; deleting
15 certain obsolete tax rate provisions; amending s. 202.21,
16 F.S., to conform; amending s. 202.24, F.S.; including
17 certain fees and costs within a prohibition against public
18 bodies from levying or collecting certain taxes from
19 dealers or purchasers of communications services certain
20 taxes, charges, and fees; specifying certain revisions to
21 law as remedial and clarifying; providing effective dates.

22
23 Be It Enacted by the Legislature of the State of Florida:

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

Section 2. Effective December 31, 2004, subsection (2) of section 202.16, Florida Statutes, is amended to read:

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

51 (2)(a) A sale of communications services that are used as
 52 a component part of or integrated into a communications service
 53 or prepaid calling arrangement for resale, including, but not
 54 limited to, carrier-access charges, interconnection charges paid
 55 by providers of mobile communication services or other
 56 communication services, charges paid by cable service providers
 57 for the transmission of video or other programming by another
 58 dealer of communications services, charges for the sale of
 59 unbundled network elements, and any other intercompany charges
 60 for the use of facilities for providing communications services
 61 for resale, must be made in compliance with the rules of the
 62 department. Any person who makes a sale for resale which is not
 63 in compliance with these rules is liable for any tax, penalty,
 64 and interest due for failing to comply, to be calculated
 65 pursuant to s. 202.28(2)(a).

66 (b) Any dealer who makes a sale for resale shall document
 67 the exempt nature of the transaction, as established by rules
 68 adopted by the department, by retaining a copy of the
 69 purchaser's initial or annual resale certificate issued pursuant
 70 to s. 202.17(6). In lieu of maintaining a copy of the
 71 certificate, a dealer may document, prior to the time of sale,
 72 an authorization number provided telephonically or
 73 electronically by the department, or by such other means
 74 established by rule of the department. The dealer may rely on an
 75 initial or annual resale certificate issued pursuant to s.
 76 202.17(6), valid at the time of receipt from the purchaser,
 77 without seeking additional annual resale certificates from such
 78 purchaser, if the dealer makes recurring sales to such purchaser

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79 | in the normal course of business on a continual basis. For
 80 | purposes of this paragraph, the term "recurring sales to a
 81 | purchaser in the normal course of business" means a sale in
 82 | which the dealer extends credit to the purchaser and records the
 83 | debt as an account receivable, or in which the dealer sells to a
 84 | purchaser who has an established cash account, similar to an
 85 | open credit account. For purposes of this paragraph, purchases
 86 | are made from a selling dealer on a continual basis if the
 87 | selling dealer makes, in the normal course of business, sales to
 88 | the purchaser no less frequently than once in every 12-month
 89 | period. A dealer may, through the informal protest provided for
 90 | in s. 213.21 and the rules of the Department of Revenue, provide
 91 | the department with evidence of the exempt status of a sale.
 92 | Exemption certificates executed by entities that were exempt at
 93 | the time of sale, resale certificates provided by purchasers who
 94 | were active dealers at the time of sale, and verification by the
 95 | department of a purchaser's active dealer status at the time of
 96 | sale in lieu of a resale certificate shall be accepted by the
 97 | department when submitted during the protest period, but may not
 98 | be accepted in any proceeding under chapter 120 or any circuit
 99 | court action instituted under chapter 72.

100 | Section 3. Paragraph (c) of subsection (2), paragraph (a)
 101 | of subsection (3), and subsection (5) of section 202.19, Florida
 102 | Statutes, are amended to read:

103 | 202.19 Authorization to impose local communications
 104 | services tax.--

105 | (2)

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106 (c) The maximum rates authorized by paragraphs (a) and (b)
 107 do not include the add-ons of up to 0.12 percent for
 108 municipalities and charter counties or of up to 0.24 percent for
 109 noncharter counties authorized pursuant to s. 337.401, nor do
 110 they supersede conversion ~~or emergency~~ rates authorized by s.
 111 202.20(1), or emergency rates previously authorized by s.
 112 202.20(2) as such provision existed prior to July 1, 2004,
 113 ~~202.20~~ which are in excess of these maximum rates.

114 (3)(a) The tax authorized under this section includes and
 115 is in lieu of any fee or other consideration, including, but not
 116 limited to, application fees, transfer fees, siting fees,
 117 renewal fees, or claims for related costs, to which the
 118 municipality or county is otherwise entitled for granting
 119 permission to dealers of communications services, including, but
 120 not limited to, providers of cable television services, as
 121 authorized in 47 U.S.C. s. 542, to use or occupy its roads or
 122 rights-of-way for the placement, construction, and maintenance
 123 of poles, wires, towers, and other fixtures used in the
 124 provision of communications services.

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

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

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134 1. Originate or terminate in this state; and

135 2. Are charged to a service address in the county.

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

140 1. Any charge with respect to a channel termination point
141 located within such county;

142 2. Any charge for the use of a channel between two channel
143 termination points located in such county; and

144 3. Where channel termination points are located both
145 within and outside of such county:

146 a. If any segment between two such channel termination
147 points is separately billed, 50 percent of such charge; and

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

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

156 202.20 Local communications services tax conversion
157 rates.--

158 ~~(2)(a)1. With respect to any local taxing jurisdiction,~~
159 ~~if, for the periods ending December 31, 2001; March 31, 2002;~~
160 ~~June 30, 2002; or September 30, 2002, the revenues received by~~
161 ~~that local government from the local communications services tax~~

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162 ~~imposed under subsection (1) are less than the revenues received~~
163 ~~from the replaced revenue sources for the corresponding 2000-~~
164 ~~2001 period; plus reasonably anticipated growth in such revenues~~
165 ~~over the preceding 1-year period, based on the average growth of~~
166 ~~such revenues over the immediately preceding 5-year period; plus~~
167 ~~an amount representing the revenues from the replaced revenue~~
168 ~~sources for the 1-month period that the local taxing~~
169 ~~jurisdiction was required to forego, the governing authority may~~
170 ~~adjust the rate of the local communications services tax upward~~
171 ~~to the extent necessary to generate the entire shortfall in~~
172 ~~revenues within 1 year after the rate adjustment and by an~~
173 ~~amount necessary to generate the expected amount of revenue on~~
174 ~~an ongoing basis.~~

175 ~~2. If complete data are not available at the time of~~
176 ~~determining whether the revenues received by a local government~~
177 ~~from the local communications services tax imposed under~~
178 ~~subsection (1) are less than the revenues received from the~~
179 ~~replaced revenue sources for the corresponding 2000-2001 period,~~
180 ~~as set forth in subparagraph 1., the local government shall use~~
181 ~~the best data available for the corresponding 2000-2001 period~~
182 ~~in making such determination.~~

183 ~~3. The adjustment permitted under subparagraph 1. may be~~
184 ~~made by emergency ordinance or resolution and may be made~~
185 ~~notwithstanding the maximum rate established under s. 202.19(2)~~
186 ~~and notwithstanding any schedules or timeframes or any other~~
187 ~~limitations contained in this chapter. The emergency ordinance~~
188 ~~or resolution shall specify an effective date for the adjusted~~
189 ~~rate, which shall be no less than 60 days after the date of~~

190 ~~adoption of the ordinance or resolution and shall be effective~~
 191 ~~with respect to taxable services included on bills that are~~
 192 ~~dated on the first day of a month subsequent to the expiration~~
 193 ~~of the 60 day period. At the end of 1 year following the~~
 194 ~~effective date of such adjusted rate, the local governing~~
 195 ~~authority shall, as soon as is consistent with s. 202.21, reduce~~
 196 ~~the rate by that portion of the emergency rate which was~~
 197 ~~necessary to recoup the amount of revenues not received prior to~~
 198 ~~the implementation of the emergency rate.~~

199 ~~4. If, for the period October 1, 2001, through September~~
 200 ~~30, 2002, the revenues received by a local government from the~~
 201 ~~local communications services tax conversion rate established~~
 202 ~~under subsection (1), adjusted upward for the difference in~~
 203 ~~rates between paragraphs (1)(a) and (b) or any other rate~~
 204 ~~adjustments or base changes, are above the threshold of 10~~
 205 ~~percent more than the revenues received from the replaced~~
 206 ~~revenue sources for the corresponding 2000-2001 period plus~~
 207 ~~reasonably anticipated growth in such revenues over the~~
 208 ~~preceding 1-year period, based on the average growth of such~~
 209 ~~revenues over the immediately preceding 5-year period, the~~
 210 ~~governing authority must adjust the rate of the local~~
 211 ~~communications services tax to the extent necessary to reduce~~
 212 ~~revenues to the threshold by emergency ordinance or resolution~~
 213 ~~within the timeframes established in subparagraph 3. The~~
 214 ~~foregoing rate adjustment requirement shall not apply to a local~~
 215 ~~government that adopts a local communications services tax rate~~
 216 ~~by resolution or ordinance. If complete data are not available~~
 217 ~~at the time of determining whether the revenues exceed the~~

218 ~~threshold, the local government shall use the best data~~
 219 ~~available for the corresponding 2000-2001 period in making such~~
 220 ~~determination. This subparagraph shall not be construed as~~
 221 ~~establishing a right of action for any person to enforce this~~
 222 ~~subparagraph or challenge a local government's implementation of~~
 223 ~~this subparagraph.~~

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

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

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

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

235 ~~c. The public service tax on prepaid calling arrangements.~~

236 ~~d. Franchise fees on dealers of communications services~~
 237 ~~which use the public roads or rights-of-way, up to the limit set~~
 238 ~~forth in s. 337.401. For purposes of calculating rates under~~
 239 ~~this section, it is the legislative intent that charter counties~~
 240 ~~be treated as having had the same authority as municipalities to~~
 241 ~~impose franchise fees on recurring local telecommunication~~
 242 ~~service revenues prior to July 1, 2000. However, the Legislature~~
 243 ~~recognizes that the authority of charter counties to impose such~~
 244 ~~fees is in dispute, and the treatment provided in this section~~

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245 ~~is not an expression of legislative intent that charter counties~~
 246 ~~actually do or do not possess such authority.~~

247 ~~e. Actual permit fees relating to placing or maintaining~~
 248 ~~facilities in or on public roads or rights of way, collected~~
 249 ~~from providers of long distance, cable, and mobile~~
 250 ~~communications services for the fiscal year ending September 30,~~
 251 ~~1999; however, if a municipality or charter county elects the~~
 252 ~~option to charge permit fees pursuant to s. 337.401(3)(c)1.a.,~~
 253 ~~such fees shall not be included as a replaced revenue source.~~

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

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

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

261 Alachua 0.3% 0.6% 0.8%

262 Baker 0.3% 0.5% 0.8%

263 Bay 0.3% 0.5% 0.8%

264 Bradford 0.3% 0.6% 0.8%

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266	Brevard	0.3%	0.6%	0.9%
267	Broward	0.3%	0.5%	0.8%
268	Calhoun	0.3%	0.5%	0.8%
269	Charlotte	0.3%	0.6%	0.9%
270	Citrus	0.3%	0.6%	0.9%
271	Clay	0.3%	0.6%	0.8%
272	Collier	0.4%	0.7%	1.0%
273	Columbia	0.3%	0.6%	0.9%
274	Dade	0.3%	0.5%	0.8%
275	Desoto	0.3%	0.6%	0.8%
276	Dixie	0.3%	0.5%	0.8%
277	Duval	0.3%	0.6%	0.8%
278	Escambia	0.3%	0.6%	0.9%
279	Flagler	0.4%	0.7%	1.0%
280	Franklin	0.3%	0.6%	0.9%
281	Gadsden	0.3%	0.5%	0.8%
282	Gilchrist	0.3%	0.5%	0.7%

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283	Glades	0.3%	0.6%	0.8%
284	Gulf	0.3%	0.5%	0.8%
285	Hamilton	0.3%	0.6%	0.8%
286	Hardee	0.3%	0.5%	0.8%
287	Hendry	0.3%	0.6%	0.9%
288	Hernando	0.3%	0.6%	0.9%
289	Highlands	0.3%	0.6%	0.9%
290	Hillsborough	0.3%	0.6%	0.8%
291	Holmes	0.3%	0.6%	0.8%
292	Indian River	0.3%	0.6%	0.9%
293	Jackson	0.3%	0.5%	0.7%
294	Jefferson	0.3%	0.5%	0.8%
295	Lafayette	0.3%	0.5%	0.7%
296	Lake	0.3%	0.6%	0.9%
297	Lee	0.3%	0.6%	0.9%
298	Leon	0.3%	0.6%	0.8%
299	Levy	0.3%	0.5%	0.8%

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300	Liberty	0.3%	0.6%	0.8%
301	Madison	0.3%	0.5%	0.8%
302	Manatee	0.3%	0.6%	0.8%
303	Marion	0.3%	0.5%	0.8%
304	Martin	0.3%	0.6%	0.8%
305	Monroe	0.3%	0.6%	0.9%
306	Nassau	0.3%	0.6%	0.8%
307	Okaloosa	0.3%	0.6%	0.8%
308	Okeechobee	0.3%	0.6%	0.9%
309	Orange	0.3%	0.5%	0.8%
310	Osceola	0.3%	0.5%	0.8%
311	Palm Beach	0.3%	0.6%	0.8%
312	Pasco	0.3%	0.6%	0.9%
313	Pinellas	0.3%	0.6%	0.9%
314	Polk	0.3%	0.6%	0.8%
315	Putnam	0.3%	0.6%	0.8%
316	St. Johns	0.3%	0.6%	0.8%

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317	St. Lucie	0.3%	0.6%	0.8%
318	Santa Rosa	0.3%	0.6%	0.9%
319	Sarasota	0.3%	0.6%	0.9%
320	Seminole	0.3%	0.6%	0.8%
321	Sumter	0.3%	0.5%	0.8%
322	Suwannee	0.3%	0.6%	0.8%
323	Taylor	0.3%	0.6%	0.9%
324	Union	0.3%	0.5%	0.8%
325	Volusia	0.3%	0.6%	0.8%
326	Wakulla	0.3%	0.6%	0.9%
327	Walton	0.3%	0.6%	0.9%
328	Washington	0.3%	0.5%	0.8%

329 The discretionary surtax conversion rate with respect to
 330 communications services reflected on bills dated on or after
 331 October 1, 2001, shall take effect without any further action by
 332 a county or school board that has levied a surtax on or before
 333 October 1, 2001. For a county or school board that levies a
 334 surtax subsequent to October 1, 2001, the discretionary surtax
 335 conversion rate with respect to communications services shall
 336 take effect upon the effective date of the surtax as provided in

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337 s. 212.054. The discretionary sales surtax rate on
 338 communications services for a county or school board levying a
 339 combined rate which is not listed in the table provided by this
 340 subsection shall be calculated by averaging or adding the
 341 appropriate rates from the table and rounding up to the nearest
 342 tenth of a percent.

343 Section 5. Section 202.21, Florida Statutes, is amended to
 344 read:

345 202.21 Effective dates; procedures for informing dealers
 346 of communications services of tax levies and rate changes.--Any
 347 adoption, repeal, or change in the rate of a local
 348 communications services tax imposed under s. 202.19 is effective
 349 with respect to taxable services included on bills that are
 350 dated on or after the January 1 subsequent to such adoption,
 351 repeal, or change. A municipality or county adopting, repealing,
 352 or changing the rate of such tax must notify the department of
 353 the adoption, repeal, or change by September 1 immediately
 354 preceding such January 1. Notification must be furnished on a
 355 form prescribed by the department and must specify the rate of
 356 tax; the effective date of the adoption, repeal, or change
 357 thereof; and the name, mailing address, and telephone number of
 358 a person designated by the municipality or county to respond to
 359 inquiries concerning the tax. The department shall provide
 360 notice of such adoption, repeal, or change to all affected
 361 dealers of communications services at least 90 days before the
 362 effective date of the tax. ~~Any local government that adjusts the~~
 363 ~~rate of its local communications services tax by emergency~~
 364 ~~ordinance or resolution pursuant to s. 202.20(2) shall notify~~

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365 ~~the department of the new tax rate immediately upon its~~
 366 ~~adoption. The department shall provide written notice of the~~
 367 ~~adoption of the new rate to all affected dealers within 30 days~~
 368 ~~after receiving such notice.~~ In any notice to providers or
 369 publication of local tax rates for purposes of this chapter, the
 370 department shall express the rate for a municipality or charter
 371 county as the sum of the tax rates levied within such
 372 jurisdiction pursuant to s. 202.19(2)(a) and (5), and shall
 373 express the rate for any other county as the sum of the tax
 374 rates levied pursuant to s. 202.19(2)(b) and (5). The department
 375 is not liable for any loss of or decrease in revenue by reason
 376 of any error, omission, or untimely action that results in the
 377 nonpayment of a tax imposed under s. 202.19.

378 Section 6. Paragraph (a) of subsection (2) of section
 379 202.24, Florida Statutes, is amended to read:

380 202.24 Limitations on local taxes and fees imposed on
 381 dealers of communications services.--

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

384 1. Levying on or collecting from dealers or purchasers of
 385 communications services any tax, charge, fee, or other
 386 imposition on or with respect to the provision or purchase of
 387 communications services, including, but not limited to,
 388 application fees, transfer fees, siting fees, renewal fees, or
 389 claims for related costs.

390 2. Requiring any dealer of communications services to
 391 enter into or extend the term of a franchise or other agreement

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392 that requires the payment of a tax, charge, fee, or other
393 imposition.

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

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

405 Section 7. The amendments to ss. 202.19(3)(a) and
406 202.24(2)(a), Florida Statutes, contained in this act are
407 remedial in nature and intended to clarify the law in effect on
408 the effective date of this act.

409 Section 8. Except as otherwise provided herein, this act
410 shall take effect July 1, 2004.