

CHAMBER ACTION

1 The Committee on Finance & Tax 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. 202.16, F.S.; providing requirements for dealers making
8 certain sales for resale; providing procedures and
9 limitations; providing a definition; providing
10 responsibilities of the Department of Revenue; amending s.
11 202.19, F.S.; clarifying the inclusion of certain fees and
12 costs in the tax rate; amending s. 202.20, F.S.;
13 specifying certain conditions for governing authority
14 authorization to make certain adjustments; repealing s.
15 202.20(2), F.S., relating to authorizing governing
16 authorities to adjust the rate of local communications
17 services taxes; amending s. 202.21, F.S., to conform;
18 specifying certain revisions to law as remedial and
19 clarifying; prohibiting the refund of certain fees or
20 costs under certain circumstances; providing an exception;
21 providing effective dates.

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

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25 Section 1. Effective December 31, 2004, subsection (2) of
26 section 202.16, Florida Statutes, is amended to read:

27 202.16 Payment.--The taxes imposed or administered under
28 this chapter and chapter 203 shall be collected from all dealers
29 of taxable communications services on the sale at retail in this
30 state of communications services taxable under this chapter and
31 chapter 203. The full amount of the taxes on a credit sale,
32 installment sale, or sale made on any kind of deferred payment
33 plan is due at the moment of the transaction in the same manner
34 as a cash sale.

35 (2)(a) A sale of communications services that are used as
36 a component part of or integrated into a communications service
37 or prepaid calling arrangement for resale, including, but not
38 limited to, carrier-access charges, interconnection charges paid
39 by providers of mobile communication services or other
40 communication services, charges paid by cable service providers
41 for the transmission of video or other programming by another
42 dealer of communications services, charges for the sale of
43 unbundled network elements, and any other intercompany charges
44 for the use of facilities for providing communications services
45 for resale, must be made in compliance with the rules of the
46 department. Any person who makes a sale for resale which is not
47 in compliance with these rules is liable for any tax, penalty,
48 and interest due for failing to comply, to be calculated
49 pursuant to s. 202.28(2)(a).

50 (b) Any dealer who makes a sale for resale shall document
51 the exempt nature of the transaction, as established by rules

52 adopted by the department, by retaining a copy of the
 53 purchaser's initial or annual resale certificate issued pursuant
 54 to s. 202.17(6). In lieu of maintaining a copy of the
 55 certificate, a dealer may document, prior to the time of sale,
 56 an authorization number provided telephonically or
 57 electronically by the department or by such other means
 58 established by rule of the department. The dealer may rely on an
 59 initial or annual resale certificate issued pursuant to s.
 60 202.17(6), valid at the time of receipt from the purchaser,
 61 without seeking additional annual resale certificates from such
 62 purchaser if the dealer makes recurring sales to such purchaser
 63 in the normal course of business on a continual basis. For
 64 purposes of this paragraph, the term "recurring sales to a
 65 purchaser in the normal course of business" means a sale in
 66 which the dealer extends credit to the purchaser and records the
 67 debt as an account receivable or in which the dealer sells to a
 68 purchaser who has an established cash account, similar to an
 69 open credit account. For purposes of this paragraph, purchases
 70 are made from a selling dealer on a continual basis if the
 71 selling dealer makes, in the normal course of business, sales to
 72 the purchaser no less frequently than once in every 12-month
 73 period. A dealer may, through the informal protest provided for
 74 in s. 213.21 and the rules of the department, provide the
 75 department with evidence of the exempt status of a sale.
 76 Exemption certificates executed by entities that were exempt at
 77 the time of sale, resale certificates provided by purchasers who
 78 were active dealers at the time of sale, and verification by the
 79 department of a purchaser's active dealer status at the time of

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80 sale in lieu of a resale certificate shall be accepted by the
 81 department when submitted during the protest period but may not
 82 be accepted in any proceeding under chapter 120 or any circuit
 83 court action instituted under chapter 72.

84 Section 2. Paragraph (a) of subsection (3) of section
 85 202.19, Florida Statutes, is amended to read:

86 202.19 Authorization to impose local communications
 87 services tax.--

88 (3)(a) The tax authorized under this section includes and
 89 is in lieu of any fee or other consideration, including, but not
 90 limited to, application fees, transfer fees, renewal fees, or
 91 claims for related costs, to which the municipality or county is
 92 otherwise entitled for granting permission to dealers of
 93 communications services, including, but not limited to,
 94 providers of cable television services, as authorized in 47
 95 U.S.C. s. 542, to use or occupy its roads or rights-of-way for
 96 the placement, construction, and maintenance of poles, wires,
 97 and other fixtures used in the provision of communications
 98 services.

99 Section 3. Paragraph (a) of subsection (2) of section
 100 202.20, Florida Statutes, is amended to read:

101 202.20 Local communications services tax conversion
 102 rates.--

103 (2)(a)1. With respect to any local taxing jurisdiction,
 104 if, for the periods ending December 31, 2001; March 31, 2002;
 105 June 30, 2002; or September 30, 2002, the revenues received by
 106 that local government from the local communications services tax
 107 imposed under subsection (1) are less than the revenues received

108 | from the replaced revenue sources for the corresponding 2000-
 109 | 2001 period; plus reasonably anticipated growth in such revenues
 110 | over the preceding 1-year period, based on the average growth of
 111 | such revenues over the immediately preceding 5-year period; plus
 112 | an amount representing the revenues from the replaced revenue
 113 | sources for the 1-month period that the local taxing
 114 | jurisdiction was required to forego, the governing authority may
 115 | adjust the rate of the local communications services tax upward
 116 | to the extent necessary to generate the entire shortfall in
 117 | revenues within 1 year after the rate adjustment and by an
 118 | amount necessary to generate the expected amount of revenue on
 119 | an ongoing basis.

120 | 2. If complete data are not available at the time of
 121 | determining whether the revenues received by a local government
 122 | from the local communications services tax imposed under
 123 | subsection (1) are less than the revenues received from the
 124 | replaced revenue sources for the corresponding 2000-2001 period,
 125 | as set forth in subparagraph 1., the local government shall use
 126 | the best data available for the corresponding 2000-2001 period
 127 | in making such determination.

128 | 3. The adjustment permitted under subparagraph 1. may be
 129 | made by emergency ordinance or resolution and may be made
 130 | notwithstanding the maximum rate established under s. 202.19(2)
 131 | and notwithstanding any schedules or timeframes or any other
 132 | limitations contained in this chapter. The authority to make
 133 | such adjustment may only be exercised if the department or a
 134 | dealer reallocates revenue away from the local government. The
 135 | emergency ordinance or resolution shall specify an effective

136 date for the adjusted rate, which shall be no less than 60 days
 137 after the date of adoption of the ordinance or resolution and
 138 shall be effective with respect to taxable services included on
 139 bills that are dated on the first day of a month subsequent to
 140 the expiration of the 60-day period. At the end of 1 year
 141 following the effective date of such adjusted rate, the local
 142 governing authority shall, as soon as is consistent with s.
 143 202.21, reduce the rate by that portion of the emergency rate
 144 which was necessary to recoup the amount of revenues not
 145 received prior to the implementation of the emergency rate.

146 4. If, for the period October 1, 2001, through September
 147 30, 2002, the revenues received by a local government from the
 148 local communications services tax conversion rate established
 149 under subsection (1), adjusted upward for the difference in
 150 rates between paragraphs (1)(a) and (b) or any other rate
 151 adjustments or base changes, are above the threshold of 10
 152 percent more than the revenues received from the replaced
 153 revenue sources for the corresponding 2000-2001 period plus
 154 reasonably anticipated growth in such revenues over the
 155 preceding 1-year period, based on the average growth of such
 156 revenues over the immediately preceding 5-year period, the
 157 governing authority must adjust the rate of the local
 158 communications services tax to the extent necessary to reduce
 159 revenues to the threshold by emergency ordinance or resolution
 160 within the timeframes established in subparagraph 3. The
 161 foregoing rate adjustment requirement shall not apply to a local
 162 government that adopts a local communications services tax rate
 163 by resolution or ordinance. If complete data are not available

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164 at the time of determining whether the revenues exceed the
 165 threshold, the local government shall use the best data
 166 available for the corresponding 2000-2001 period in making such
 167 determination. This subparagraph shall not be construed as
 168 establishing a right of action for any person to enforce this
 169 subparagraph or challenge a local government's implementation of
 170 this subparagraph.

171 Section 4. Effective July 1, 2007, subsection (2) of
 172 section 202.20, Florida Statutes, as amended by this act, is
 173 repealed:

174 202.20 Local communications services tax conversion
 175 rates.--

176 ~~(2)(a)1. With respect to any local taxing jurisdiction,~~
 177 ~~if, for the periods ending December 31, 2001; March 31, 2002;~~
 178 ~~June 30, 2002; or September 30, 2002, the revenues received by~~
 179 ~~that local government from the local communications services tax~~
 180 ~~imposed under subsection (1) are less than the revenues received~~
 181 ~~from the replaced revenue sources for the corresponding 2000-~~
 182 ~~2001 period; plus reasonably anticipated growth in such revenues~~
 183 ~~over the preceding 1-year period, based on the average growth of~~
 184 ~~such revenues over the immediately preceding 5-year period; plus~~
 185 ~~an amount representing the revenues from the replaced revenue~~
 186 ~~sources for the 1-month period that the local taxing~~
 187 ~~jurisdiction was required to forego, the governing authority may~~
 188 ~~adjust the rate of the local communications services tax upward~~
 189 ~~to the extent necessary to generate the entire shortfall in~~
 190 ~~revenues within 1 year after the rate adjustment and by an~~

191 ~~amount necessary to generate the expected amount of revenue on~~
 192 ~~an ongoing basis.~~

193 ~~2. If complete data are not available at the time of~~
 194 ~~determining whether the revenues received by a local government~~
 195 ~~from the local communications services tax imposed under~~
 196 ~~subsection (1) are less than the revenues received from the~~
 197 ~~replaced revenue sources for the corresponding 2000-2001 period,~~
 198 ~~as set forth in subparagraph 1., the local government shall use~~
 199 ~~the best data available for the corresponding 2000-2001 period~~
 200 ~~in making such determination.~~

201 ~~3. The adjustment permitted under subparagraph 1. may be~~
 202 ~~made by emergency ordinance or resolution and may be made~~
 203 ~~notwithstanding the maximum rate established under s. 202.19(2)~~
 204 ~~and notwithstanding any schedules or timeframes or any other~~
 205 ~~limitations contained in this chapter. The authority to make~~
 206 ~~such adjustment may only be exercised if the department or a~~
 207 ~~dealer reallocates revenue away from the local government. The~~
 208 ~~emergency ordinance or resolution shall specify an effective~~
 209 ~~date for the adjusted rate, which shall be no less than 60 days~~
 210 ~~after the date of adoption of the ordinance or resolution and~~
 211 ~~shall be effective with respect to taxable services included on~~
 212 ~~bills that are dated on the first day of a month subsequent to~~
 213 ~~the expiration of the 60-day period. At the end of 1 year~~
 214 ~~following the effective date of such adjusted rate, the local~~
 215 ~~governing authority shall, as soon as is consistent with s.~~
 216 ~~202.21, reduce the rate by that portion of the emergency rate~~
 217 ~~which was necessary to recoup the amount of revenues not~~
 218 ~~received prior to the implementation of the emergency rate.~~

219 4. ~~If, for the period October 1, 2001, through September~~
 220 ~~30, 2002, the revenues received by a local government from the~~
 221 ~~local communications services tax conversion rate established~~
 222 ~~under subsection (1), adjusted upward for the difference in~~
 223 ~~rates between paragraphs (1)(a) and (b) or any other rate~~
 224 ~~adjustments or base changes, are above the threshold of 10~~
 225 ~~percent more than the revenues received from the replaced~~
 226 ~~revenue sources for the corresponding 2000-2001 period plus~~
 227 ~~reasonably anticipated growth in such revenues over the~~
 228 ~~preceding 1-year period, based on the average growth of such~~
 229 ~~revenues over the immediately preceding 5-year period, the~~
 230 ~~governing authority must adjust the rate of the local~~
 231 ~~communications services tax to the extent necessary to reduce~~
 232 ~~revenues to the threshold by emergency ordinance or resolution~~
 233 ~~within the timeframes established in subparagraph 3. The~~
 234 ~~foregoing rate adjustment requirement shall not apply to a local~~
 235 ~~government that adopts a local communications services tax rate~~
 236 ~~by resolution or ordinance. If complete data are not available~~
 237 ~~at the time of determining whether the revenues exceed the~~
 238 ~~threshold, the local government shall use the best data~~
 239 ~~available for the corresponding 2000-2001 period in making such~~
 240 ~~determination. This subparagraph shall not be construed as~~
 241 ~~establishing a right of action for any person to enforce this~~
 242 ~~subparagraph or challenge a local government's implementation of~~
 243 ~~this subparagraph.~~

244 ~~(b) Except as otherwise provided in this subsection,~~
 245 ~~"replaced revenue sources," as used in this section, means the~~
 246 ~~following taxes, charges, fees, or other impositions to the~~

247 ~~extent that the respective local taxing jurisdictions were~~
 248 ~~authorized to impose them prior to July 1, 2000.~~

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

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

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

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

256 ~~d. Franchise fees on dealers of communications services~~
 257 ~~which use the public roads or rights-of-way, up to the limit set~~
 258 ~~forth in s. 337.401. For purposes of calculating rates under~~
 259 ~~this section, it is the legislative intent that charter counties~~
 260 ~~be treated as having had the same authority as municipalities to~~
 261 ~~impose franchise fees on recurring local telecommunication~~
 262 ~~service revenues prior to July 1, 2000. However, the Legislature~~
 263 ~~recognizes that the authority of charter counties to impose such~~
 264 ~~fees is in dispute, and the treatment provided in this section~~
 265 ~~is not an expression of legislative intent that charter counties~~
 266 ~~actually do or do not possess such authority.~~

267 ~~e. Actual permit fees relating to placing or maintaining~~
 268 ~~facilities in or on public roads or rights-of-way, collected~~
 269 ~~from providers of long-distance, cable, and mobile~~
 270 ~~communications services for the fiscal year ending September 30,~~
 271 ~~1999; however, if a municipality or charter county elects the~~
 272 ~~option to charge permit fees pursuant to s. 337.401(3)(c)1.a.,~~
 273 ~~such fees shall not be included as a replaced revenue source.~~

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

277 Section 5. Effective July 1, 2007, section 202.21, Florida
 278 Statutes, is amended to read:

279 202.21 Effective dates; procedures for informing dealers
 280 of communications services of tax levies and rate changes.--Any
 281 adoption, repeal, or change in the rate of a local
 282 communications services tax imposed under s. 202.19 is effective
 283 with respect to taxable services included on bills that are
 284 dated on or after the January 1 subsequent to such adoption,
 285 repeal, or change. A municipality or county adopting, repealing,
 286 or changing the rate of such tax must notify the department of
 287 the adoption, repeal, or change by September 1 immediately
 288 preceding such January 1. Notification must be furnished on a
 289 form prescribed by the department and must specify the rate of
 290 tax; the effective date of the adoption, repeal, or change
 291 thereof; and the name, mailing address, and telephone number of
 292 a person designated by the municipality or county to respond to
 293 inquiries concerning the tax. The department shall provide
 294 notice of such adoption, repeal, or change to all affected
 295 dealers of communications services at least 90 days before the
 296 effective date of the tax. ~~Any local government that adjusts the~~
 297 ~~rate of its local communications services tax by emergency~~
 298 ~~ordinance or resolution pursuant to s. 202.20(2) shall notify~~
 299 ~~the department of the new tax rate immediately upon its~~
 300 ~~adoption. The department shall provide written notice of the~~
 301 ~~adoption of the new rate to all affected dealers within 30 days~~

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302 ~~after receiving such notice.~~ In any notice to providers or
303 publication of local tax rates for purposes of this chapter, the
304 department shall express the rate for a municipality or charter
305 county as the sum of the tax rates levied within such
306 jurisdiction pursuant to s. 202.19(2)(a) and (5), and shall
307 express the rate for any other county as the sum of the tax
308 rates levied pursuant to s. 202.19(2)(b) and (5). The department
309 is not liable for any loss of or decrease in revenue by reason
310 of any error, omission, or untimely action that results in the
311 nonpayment of a tax imposed under s. 202.19.

312 Section 6. The amendment to s. 202.19(3)(a), Florida
313 Statutes, contained in this act is remedial in nature and
314 intended to clarify the law in effect on October 1, 2001, but
315 shall not grant any right to a refund of any fees or costs paid
316 prior to July 1, 2004, unless the payment was made under written
317 protest as to the authority of any local government to impose
318 such fees or costs on a dealer.

319 Section 7. Except as otherwise provided herein, this act
320 shall take effect July 1, 2004.