

Bill No. CS for SB 2302

Amendment No. ____ Barcode 804654

CHAMBER ACTION

Senate

House

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Senator Haridopolos moved the following amendment:

Senate Amendment (with title amendment)

On page 1, line 30, through
page 4, line 4, delete those lines

and insert:

Section 2. (1) The Legislature finds that it is the policy of this state to ensure that local governments operate on a level playing field with private providers of communications services and that local governments should not enjoy any undue advantages simply due to their status as a local government.

(2) The Legislature hereby provides notice to all local governments in this state that in the ensuing year, the Legislature shall conduct a study of the appropriate level of state regulation for local governments wishing to offer communications services in competition with private providers. This study by the Legislature shall be comprehensive and shall be considered for adoption during the 2005 Regular Session. Any local government that is providing such services currently

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1 or considering providing such services in the future is hereby
2 given notice of these legislative deliberations and should be
3 prepared to comply with said legislation upon adoption.

4 (3) As used in this act, the term:

5 (a) "Local government" means any political
6 subdivision, as defined in section 101.01, Florida Statutes,
7 and any utility authority, other authority, board, branch,
8 department, or unit thereof.

9 (b) "Advanced service" means high-speed Internet
10 access service capability in excess of 144 kilobites per
11 second in the upstream or the downstream directions, including
12 any service application provided over the high-speed access
13 service or any information services as defined in 47 U.S.C. s.
14 153(20).

15 (c) "Communications services" include the offering of
16 any advanced service, cable service, or telecommunications
17 service, and shall be construed in the broadest sense.

18 (d) "Cable service" has the same meaning as in 47
19 U.S.C. s. 522(6).

20 (e) "Providing," with respect to a named service,
21 means offering or supplying a service for a fee to a person,
22 including any portion of the public or a local government or
23 private provider.

24 (f) "Subscriber" means a person who receives a named
25 service.

26 (g) "Telecommunications services" means the
27 transmission of signs, signals, writing, images, sounds,
28 messages, data, or other information of the user's choosing,
29 by wire, radio, light waves, or other electromagnetic means,
30 without change in the form or content of the information as
31 sent and received by the user and regardless of the facilities

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1 used.

2 (4)(a) The Government-Owned Communications Study
3 Commission is created. The study commission shall be composed
4 of nine voting members, appointed as follows:

5 1. Four members appointed by the President of the
6 Senate, at least two of whom shall be members of the Senate.

7 2. Four members appointed by the Speaker of the House
8 of Representatives, at least two of whom shall be members of
9 the House of Representatives.

10 3. One member shall be appointed by the Attorney
11 General.

12
13 The nonlegislative members shall be knowledgeable regarding
14 one or more aspects of the provision of government-owned
15 communications services and shall include representatives from
16 both local government and industry.

17 (b) The Legislature shall provide staffing for the
18 members of the study commission, whose meetings shall be
19 noticed and open to the public.

20 (c) The study commission shall issue a report to the
21 Governor, the President of the Senate, and the Speaker of the
22 House of Representatives by January 15, 2005.

23 (d) The study commission shall review any and all
24 regulatory, tax, competitive issues, and court decisions
25 related to the provision of communications services by any
26 local government in the State of Florida.

27 (5) Any local government that provides a cable service
28 shall comply with section 166.046, Florida Statutes, and those
29 provisions of chapters 202, 212, and 337, Florida Statutes,
30 applicable to a provider of such services.

31 (6) A local government that provides a

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1 telecommunications service or advanced service shall comply,
2 if applicable, with chapter 364, Florida Statutes, and rules
3 adopted by the Florida Public Service Commission under section
4 166.047, Florida Statutes, and those provisions of chapters
5 202, 212, and 337, Florida Statutes, applicable to a provider
6 of such services.

7 (7) The exercise of a local government's power or
8 authority, including zoning or land use, to require the use by
9 any person, including residents of a particular development,
10 of any of the local government's communications services, is
11 prohibited.

12 (8) A local government may not pledge any revenues in
13 support of the issuance of any bonds to be used to finance a
14 business venture outside the local government's geographical
15 boundaries in competition with providers for the provision of
16 communications services until July 1, 2005.

17 (9) A local government shall apply the local
18 government's ordinances, rules, and policies, including those
19 relating to the following subjects, without discrimination as
20 to itself and any private provider of communications services:

21 (a) Access to public rights-of-way; and

22 (b) Permitting, access to, use of and payment for use
23 of local government-owned poles, such that the local
24 government shall be subject to the same terms, conditions, and
25 fees, if any, for access to governmental poles that the local
26 government applies to a private provider for such access.

27 Section 3. (1) The Florida Telecommunications Policy
28 Strategy Task Force is created and housed for administrative
29 purposes within the Florida Public Service Commission. The
30 task force shall operate independently of the commission.

31 (2)(a) The task force shall consist of seven members,

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1 three appointed by the Governor, two appointed by the
2 President of the Senate, and two appointed by the Speaker of
3 the House of Representatives. Members shall serve at the
4 pleasure of the appointing official. Any vacancy shall be
5 filled in the same manner as the original appointment.

6 (b) Any nonlegislative member shall possess expertise
7 in state or national telecommunications policy, legal
8 developments, and technical matters.

9 (c) A person who works directly for or who performs
10 contract work for a telecommunications company or any entity
11 or agency that has appeared before the commission on a
12 docketed telecommunications matter in the past 6 years may not
13 be appointed to the task force.

14 (d) Members shall serve without compensation but are
15 entitled to reimbursement of travel and per diem expenses
16 pursuant to section 112.061, Florida Statutes, relating to
17 completing their duties and responsibilities under this
18 section.

19 (3) The task force shall:

20 (a) Survey existing national and state regulatory,
21 rate, and tax policies relating to the telecommunications
22 industry;

23 (b) Provide a concise presentation of the
24 telecommunications policy landscape; and

25 (c) Identify and make recommendations relating to key
26 tax and regulatory issues that the Legislature and the Public
27 Service Commission should address, consistent with the
28 principles enumerated in subsection (4).

29 (4) In conducting its investigations, deliberating,
30 and making recommendations, the task force shall consider the
31 following principles:

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1 (a) The state should explore policies that seek to
2 promote the widest deployment of telecommunications
3 technologies and thereby maximize access by residents of this
4 state to the greatest variety of telecommunications service
5 offerings and pricing options.

6 (b) Recommendations, if any, should be revenue neutral
7 or revenue reducing; that is, revenues generated from
8 telecommunications taxes in the aggregate should in no case
9 exceed projected aggregate revenues if no changes in policies
10 are made.

11 (c) Taxes and regulations should be applied equitably;
12 that is, government policies should not favor certain
13 technologies over others.

14 (d) Government intervention should be avoided to the
15 greatest extent possible, except as necessary to ensure a
16 predictable, competitive telecommunications environment that
17 minimizes the likelihood of litigation and provides basic
18 consumer protections.

19 (e) Competition should be encouraged among
20 telecommunications companies and among telecommunications
21 technologies.

22 (5) The task force shall select a chair and vice chair
23 and shall meet at the call of the chair or as often as
24 necessary to accomplish the purposes of this section.

25 (6) The task force shall hold its organizational
26 meeting by July 15, 2004, and thereafter shall meet as
27 necessary at the call of the chair at the time and place
28 designated by the chair. A quorum is necessary for the purpose
29 of conducting official business of the task force. The task
30 force shall use accepted rules of procedure to conduct its
31 meetings and shall keep a complete record of each meeting.

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1 (7) The Florida Public Service Commission shall
2 provide administrative support and staff for the task force.

3 (8) The task force shall prepare a report containing a
4 summary of its investigations and deliberations and any
5 recommendations and submit the report to the Governor, the
6 President of the Senate, and the Speaker of the House of
7 Representatives by January 15, 2005.

8 Section 4. Effective December 31, 2004, subsection (2)
9 of section 202.16, Florida Statutes, is amended to read:

10 202.16 Payment.--The taxes imposed or administered
11 under this chapter and chapter 203 shall be collected from all
12 dealers of taxable communications services on the sale at
13 retail in this state of communications services taxable under
14 this chapter and chapter 203. The full amount of the taxes on
15 a credit sale, installment sale, or sale made on any kind of
16 deferred payment plan is due at the moment of the transaction
17 in the same manner as a cash sale.

18 (2)(a) A sale of communications services that are used
19 as 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 tax, penalty, and interest due for failing to comply, to be

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1 calculated pursuant to s. 202.28(2)(a).

2 (b) Any dealer who makes a sale for resale shall
3 document the exempt nature of the transaction, as established
4 by rules adopted by the department, by retaining a copy of the
5 purchaser's initial or annual resale certificate issued
6 pursuant to s. 202.17(6). In lieu of maintaining a copy of the
7 certificate, a dealer may document, prior to the time of sale,
8 an authorization number provided telephonically or
9 electronically by the department, or by such other means
10 established by rule of the department. The dealer may rely on
11 an initial or annual resale certificate issued pursuant to s.
12 202.17(6), valid at the time of receipt from the purchaser,
13 without seeking additional annual resale certificates from
14 such purchaser, if the dealer makes recurring sales to the
15 purchaser in the normal course of business on a continual
16 basis. For purposes of this paragraph, the term "recurring
17 sales to a purchaser in the normal course of business" means a
18 sale in which the dealer extends credit to the purchaser and
19 records the debt as an account receivable, or in which the
20 dealer sells to a purchaser who has an established cash
21 account, similar to an open credit account. For purposes of
22 this paragraph, purchases are made from a selling dealer on a
23 continual basis if the selling dealer makes, in the normal
24 course of business, sales to the purchaser no less frequently
25 than once in every 12-month period. A dealer may, through the
26 informal protest provided for in s. 213.21 and the rules of
27 the Department of Revenue, provide the department with
28 evidence of the exempt status of a sale. Exemption
29 certificates executed by entities that were exempt at the time
30 of sale, resale certificates provided by purchasers who were
31 active dealers at the time of sale, and verification by the

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1 department of a purchaser's active dealer status at the time
2 of sale in lieu of a resale certificate shall be accepted by
3 the department when submitted during the protest period, but
4 may not be accepted in any proceeding under chapter 120 or any
5 circuit court action instituted under chapter 72.

6 Section 5. Paragraph (a) of subsection (3) of section
7 202.19, Florida Statutes, is amended to read:

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

10 (3)(a) The tax authorized under this section includes
11 and is in lieu of any fee or other consideration, including,
12 but not limited to, application fees, transfer fees, renewal
13 fees, or claims for related costs, to which the municipality
14 or county is otherwise entitled for granting permission to
15 dealers of communications services, including, but not limited
16 to, providers of cable television services, as authorized in
17 47 U.S.C. s. 542, to use or occupy its roads or rights-of-way
18 for the placement, construction, and maintenance of poles,
19 wires, and other fixtures used in the provision of
20 communications services.

21 Section 6. Subsection (2) of section 202.20, Florida
22 Statutes, is amended to read:

23 202.20 Local communications services tax conversion
24 rates.--

25 (2)(a)1. With respect to any local taxing
26 jurisdiction, if, for the periods ending December 31, 2001;
27 March 31, 2002; June 30, 2002; or September 30, 2002, the
28 revenues received by that local government from the local
29 communications services tax imposed under subsection (1) are
30 less than the revenues received from the replaced revenue
31 sources for the corresponding 2000-2001 period; plus

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1 reasonably anticipated growth in such revenues over the
2 preceding 1-year period, based on the average growth of such
3 revenues over the immediately preceding 5-year period; plus an
4 amount representing the revenues from the replaced revenue
5 sources for the 1-month period that the local taxing
6 jurisdiction was required to forego, the governing authority
7 may adjust the rate of the local communications services tax
8 upward to the extent necessary to generate the entire
9 shortfall in revenues within 1 year after the rate adjustment
10 and by an amount necessary to generate the expected amount of
11 revenue on an ongoing basis.

12 2. If complete data are not available at the time of
13 determining whether the revenues received by a local
14 government from the local communications services tax imposed
15 under subsection (1) are less than the revenues received from
16 the replaced revenue sources for the corresponding 2000-2001
17 period, as set forth in subparagraph 1., the local government
18 shall use the best data available for the corresponding
19 2000-2001 period in making such determination.

20 3. The adjustment permitted under subparagraph 1. may
21 be made by emergency ordinance or resolution and may be made
22 notwithstanding the maximum rate established under s.
23 202.19(2) and notwithstanding any schedules or timeframes or
24 any other limitations contained in this chapter. The authority
25 to make such adjustment may only be exercised in the event of
26 a reallocation of revenue away from the local government by
27 the Department of Revenue or a dealer. The emergency ordinance
28 or resolution shall specify an effective date for the adjusted
29 rate, which shall be no less than 60 days after the date of
30 adoption of the ordinance or resolution and shall be effective
31 with respect to taxable services included on bills that are

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1 | dated on the first day of a month subsequent to the expiration
2 | of the 60-day period. At the end of 1 year following the
3 | effective date of such adjusted rate, the local governing
4 | authority shall, as soon as is consistent with s. 202.21,
5 | reduce the rate by that portion of the emergency rate which
6 | was necessary to recoup the amount of revenues not received
7 | prior to the implementation of the emergency rate.

8 | 4. If, for the period October 1, 2001, through
9 | September 30, 2002, the revenues received by a local
10 | government from the local communications services tax
11 | conversion rate established under subsection (1), adjusted
12 | upward for the difference in rates between paragraphs (1)(a)
13 | and (b) or any other rate adjustments or base changes, are
14 | above the threshold of 10 percent more than the revenues
15 | received from the replaced revenue sources for the
16 | corresponding 2000-2001 period plus reasonably anticipated
17 | growth in such revenues over the preceding 1-year period,
18 | based on the average growth of such revenues over the
19 | immediately preceding 5-year period, the governing authority
20 | must adjust the rate of the local communications services tax
21 | to the extent necessary to reduce revenues to the threshold by
22 | emergency ordinance or resolution within the timeframes
23 | established in subparagraph 3. The foregoing rate adjustment
24 | requirement shall not apply to a local government that adopts
25 | a local communications services tax rate by resolution or
26 | ordinance. If complete data are not available at the time of
27 | determining whether the revenues exceed the threshold, the
28 | local government shall use the best data available for the
29 | corresponding 2000-2001 period in making such determination.
30 | This subparagraph shall not be construed as establishing a
31 | right of action for any person to enforce this subparagraph or

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1 challenge a local government's implementation of this
2 subparagraph.

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

8 1. With respect to municipalities and charter counties
9 and the taxes authorized by s. 202.19(1):

10 a. The public service tax on telecommunications
11 authorized by former s. 166.231(9).

12 b. Franchise fees on cable service providers as
13 authorized by 47 U.S.C. s. 542.

14 c. The public service tax on prepaid calling
15 arrangements.

16 d. Franchise fees on dealers of communications
17 services which use the public roads or rights-of-way, up to
18 the limit set forth in s. 337.401. For purposes of calculating
19 rates under this section, it is the legislative intent that
20 charter counties be treated as having had the same authority
21 as municipalities to impose franchise fees on recurring local
22 telecommunication service revenues prior to July 1, 2000.

23 However, the Legislature recognizes that the authority of
24 charter counties to impose such fees is in dispute, and the
25 treatment provided in this section is not an expression of
26 legislative intent that charter counties actually do or do not
27 possess such authority.

28 e. Actual permit fees relating to placing or
29 maintaining facilities in or on public roads or rights-of-way,
30 collected from providers of long-distance, cable, and mobile
31 communications services for the fiscal year ending September

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1 30, 1999; however, if a municipality or charter county elects
2 the option to charge permit fees pursuant to s.
3 337.401(3)(c)1.a., such fees shall not be included as a
4 replaced revenue source.

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

8 Section 7. Effective July 1, 2007, paragraph (a) of
9 subsection (2) of section 202.20, Florida Statutes, is
10 repealed.

11 Section 8. Effective July 1, 2007, section 202.21,
12 Florida Statutes, is amended to read:

13 202.21 Effective dates; procedures for informing
14 dealers of communications services of tax levies and rate
15 changes.--Any adoption, repeal, or change in the rate of a
16 local communications services tax imposed under s. 202.19 is
17 effective with respect to taxable services included on bills
18 that are dated on or after the January 1 subsequent to such
19 adoption, repeal, or change. A municipality or county
20 adopting, repealing, or changing the rate of such tax must
21 notify the department of the adoption, repeal, or change by
22 September 1 immediately preceding such January 1. Notification
23 must be furnished on a form prescribed by the department and
24 must specify the rate of tax; the effective date of the
25 adoption, repeal, or change thereof; and the name, mailing
26 address, and telephone number of a person designated by the
27 municipality or county to respond to inquiries concerning the
28 tax. The department shall provide notice of such adoption,
29 repeal, or change to all affected dealers of communications
30 services at least 90 days before the effective date of the
31 tax. ~~Any local government that adjusts the rate of its local~~

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1 ~~communications services tax by emergency ordinance or~~
2 ~~resolution pursuant to s. 202.20(2) shall notify the~~
3 ~~department of the new tax rate immediately upon its adoption.~~
4 ~~The department shall provide written notice of the adoption of~~
5 ~~the new rate to all affected dealers within 30 days after~~
6 ~~receiving such notice.~~ In any notice to providers or
7 publication of local tax rates for purposes of this chapter,
8 the department shall express the rate for a municipality or
9 charter county as the sum of the tax rates levied within such
10 jurisdiction pursuant to s. 202.19(2)(a) and (5), and shall
11 express the rate for any other county as the sum of the tax
12 rates levied pursuant to s. 202.19(2)(b) and (5). The
13 department is not liable for any loss of or decrease in
14 revenue by reason of any error, omission, or untimely action
15 that results in the nonpayment of a tax imposed under s.
16 202.19.

17 Section 9. The amendments to section 202.19(3)(a),
18 Florida Statutes, contained in this act are remedial in nature
19 and intended to clarify the law in effect on October 1, 2001,
20 but will not grant any right to a refund of any fees or
21 charges paid prior to July 1, 2004, unless the payment was
22 made under written protest as to the authority of any local
23 government to impose such fees or costs on a dealer.

24 Section 10. Any rate changes authorized by the Florida
25 Public Service Commission's decision of December 24, 2003, in
26 Docket Nos. 030867-TL, 030868-TL, 030869-TL, and 030961-TI
27 granting petitions filed pursuant to section 364.164(1),
28 Florida Statutes, shall not take effect before May 10, 2005.
29 Nothing contained in this act shall be construed to defer or
30 otherwise interfere with the timely resolution of any pending
31 commission or court proceeding addressing commission decisions

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1 issued pursuant to section 364.164(1), Florida Statutes.

2 Section 11. If any provision of this act or its
3 application to any person or circumstance is held invalid, the
4 invalidity does not affect other provisions or applications of
5 the act which can be given effect without the invalid
6 provision or application, and to this end the provisions of
7 this act are severable.

8 Section 12. Except as otherwise expressly provided in
9 this act, this act shall take effect upon becoming a law.

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12 ===== T I T L E A M E N D M E N T =====

13 And the title is amended as follows:

14 On page 1, lines 6-11, delete those lines

15

16 and insert:

17 the tax on communications services; providing
18 legislative findings with respect to the
19 provision of communications services by local
20 governments; providing definitions; creating
21 the Government-Owned Communications Study
22 Commission to review the provision of
23 communications services by local governments;
24 providing for membership; requiring the study
25 commission to be staffed by the Legislature;
26 requiring a report be submitted to the Governor
27 and the Legislature; requiring local
28 governments that provide cable service to
29 comply with specified provisions; requiring
30 local governments that provide
31 telecommunications service or advanced service

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1 to comply with certain provisions; prohibiting
2 a local government from requiring the use of
3 its communications services; prohibiting local
4 governments from pledging bond revenues for
5 specified purposes until a date certain;
6 requiring local governments to apply certain
7 ordinances, rules, and policies without
8 discrimination; creating the Florida
9 Telecommunications Policy Strategy Task Force;
10 locating the task force within the Florida
11 Public Service Commission for administrative
12 purposes; providing for membership; authorizing
13 reimbursement to members for travel and per
14 diem expenses; specifying duties of the task
15 force; providing for meetings; requiring the
16 task force to provide a report to the Governor
17 and the Legislature; amending s. 202.16, F.S.;
18 providing requirements for dealers of taxable
19 communications services when making a sale for
20 resale which is exempt from taxation; providing
21 procedures for a dealer that makes recurring
22 sales in the normal course of business;
23 amending s. 202.19, F.S.; providing for the
24 local communications services tax to be in lieu
25 of certain fees and costs; amending s. 202.20,
26 F.S.; providing a limitation with respect to
27 the adjustment of the local communications
28 services tax; repealing s. 202.20(2)(a), F.S.,
29 relating to conversion rates for such tax;
30 amending s. 202.21, F.S., relating to tax
31 levies and rate changes; conforming provisions

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1 to changes made by the act; specifying that
2 certain amendments made by the act are remedial
3 in nature and do not grant any right to a
4 refund of fees or charges paid before a
5 specified date; prohibiting certain rate
6 changes of the Florida Public Service
7 Commission from taking effect before a
8 specified date; providing for severability;
9 providing effective dates.

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