

1 A bill to be entitled
2 An act relating to communications services;
3 providing a short title; specifying the period
4 during which the actual cost of operating a
5 substitute communications system is exempt from
6 the tax on communications services; providing
7 legislative findings with respect to the
8 provision of communications services by local
9 governments; providing definitions; creating
10 the Government-Owned Communications Study
11 Commission to review the provision of
12 communications services by local governments;
13 providing for membership; requiring the study
14 commission to be staffed by the Legislature;
15 requiring a report be submitted to the Governor
16 and the Legislature; requiring local
17 governments that provide cable service to
18 comply with specified provisions; requiring
19 local governments that provide
20 telecommunications service or advanced service
21 to comply with certain provisions; prohibiting
22 a local government from requiring the use of
23 its communications services; prohibiting local
24 governments from pledging bond revenues for
25 specified purposes until a date certain;
26 requiring local governments to apply certain
27 ordinances, rules, and policies without
28 discrimination; creating the Florida
29 Telecommunications Policy Strategy Task Force;
30 locating the task force within the Florida
31 Public Service Commission for administrative

1 | purposes; providing for membership; authorizing
2 | reimbursement to members for travel and per
3 | diem expenses; specifying duties of the task
4 | force; providing for meetings; requiring the
5 | task force to provide a report to the Governor
6 | and the Legislature; amending s. 202.16, F.S.;
7 | providing requirements for dealers of taxable
8 | communications services when making a sale for
9 | resale which is exempt from taxation; providing
10 | procedures for a dealer that makes recurring
11 | sales in the normal course of business;
12 | amending s. 202.19, F.S.; providing for the
13 | local communications services tax to be in lieu
14 | of certain fees and costs; amending s. 202.20,
15 | F.S.; providing a limitation with respect to
16 | the adjustment of the local communications
17 | services tax; repealing s. 202.20(2)(a), F.S.,
18 | relating to conversion rates for such tax;
19 | amending s. 202.21, F.S., relating to tax
20 | levies and rate changes; conforming provisions
21 | to changes made by the act; specifying that
22 | certain amendments made by the act are remedial
23 | in nature and do not grant any right to a
24 | refund of fees or charges paid before a
25 | specified date; prohibiting certain rate
26 | changes of the Florida Public Service
27 | Commission from taking effect before a
28 | specified date; providing for severability;
29 | providing effective dates.

30 |
31 | Be It Enacted by the Legislature of the State of Florida:

1 Section 1. (1) This section may be cited as the
2 "Substitute Communications Systems Tax Relief Act."

3 (2) The taxes levied under sections 202.12(1),
4 202.19(7), 202.15, and 203.01, Florida Statutes, shall not be
5 levied on the actual cost of operating a substitute
6 communications system, as defined in section 202.11, Florida
7 Statutes, during the period from the effective date of this
8 act through December 31, 2005.

9 (3) The Department of Revenue shall not make
10 assessments of tax on the costs of operating a substitute
11 communications system for the period October 1, 2001, through
12 the effective date of this act. No refunds shall be made of
13 any tax that has been remitted to the Department of Revenue on
14 the costs of operating a substitute communications system
15 prior to the effective date of this act.

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

22 (2) The Legislature hereby provides notice to all
23 local governments in this state that in the ensuing year, the
24 Legislature shall conduct a study of the appropriate level of
25 state regulation for local governments wishing to offer
26 communications services in competition with private providers.
27 This study by the Legislature shall be comprehensive and shall
28 be considered for adoption during the 2005 Regular Session.
29 Any local government that is providing such services currently
30 or considering providing such services in the future is hereby
31

1 given notice of these legislative deliberations and should be
2 prepared to comply with said legislation upon adoption.

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

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

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

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

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

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

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

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

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

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

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

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

11
12 The nonlegislative members shall be knowledgeable regarding
13 one or more aspects of the provision of government-owned
14 communications services and shall include representatives from
15 both local government and industry.

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

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

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

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

30 (6) A local government that provides a
31 telecommunications service or advanced service shall comply,

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

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

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

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

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

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

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

30 (2)(a) The task force shall consist of seven members,
31 three appointed by the Governor, two appointed by the

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

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

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

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

18 (3) The task force shall:

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

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

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

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

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.

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

1 tax, penalty, and interest due for failing to comply, to be
2 calculated pursuant to s. 202.28(2)(a).

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

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

7 Section 5. Paragraph (a) of subsection (3) of section
8 202.19, Florida Statutes, is amended to read:

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

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

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

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

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

1 sources for the corresponding 2000-2001 period; plus
2 reasonably anticipated growth in such revenues over the
3 preceding 1-year period, based on the average growth of such
4 revenues over the immediately preceding 5-year period; plus an
5 amount representing the revenues from the replaced revenue
6 sources for the 1-month period that the local taxing
7 jurisdiction was required to forego, the governing authority
8 may adjust the rate of the local communications services tax
9 upward to the extent necessary to generate the entire
10 shortfall in revenues within 1 year after the rate adjustment
11 and by an amount necessary to generate the expected amount of
12 revenue on an ongoing basis.

13 2. If complete data are not available at the time of
14 determining whether the revenues received by a local
15 government from the local communications services tax imposed
16 under subsection (1) are less than the revenues received from
17 the replaced revenue sources for the corresponding 2000-2001
18 period, as set forth in subparagraph 1., the local government
19 shall use the best data available for the corresponding
20 2000-2001 period in making such determination.

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

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

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

1 right of action for any person to enforce this subparagraph or
2 challenge a local government's implementation of this
3 subparagraph.

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

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

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

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

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

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

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

29 e. Actual permit fees relating to placing or
30 maintaining facilities in or on public roads or rights-of-way,
31 collected from providers of long-distance, cable, and mobile

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

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

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

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

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

1 tax. ~~Any local government that adjusts the rate of its local~~
2 ~~communications services tax by emergency ordinance or~~
3 ~~resolution pursuant to s. 202.20(2) shall notify the~~
4 ~~department of the new tax rate immediately upon its adoption.~~
5 ~~The department shall provide written notice of the adoption of~~
6 ~~the new rate to all affected dealers within 30 days after~~
7 ~~receiving such notice.~~ In any notice to providers or
8 publication of local tax rates for purposes of this chapter,
9 the department shall express the rate for a municipality or
10 charter county as the sum of the tax rates levied within such
11 jurisdiction pursuant to s. 202.19(2)(a) and (5), and shall
12 express the rate for any other county as the sum of the tax
13 rates levied pursuant to s. 202.19(2)(b) and (5). The
14 department is not liable for any loss of or decrease in
15 revenue by reason of any error, omission, or untimely action
16 that results in the nonpayment of a tax imposed under s.
17 202.19.

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

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

1 commission or court proceeding addressing commission decisions
2 issued pursuant to section 364.164(1), Florida Statutes.

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

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

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31