

By Senator Haridopolos

26-946A-04

See HB

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

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

24
 25 Section 1. Subsection (1) of section 202.13, Florida
 26 Statutes, is amended to read:

27 202.13 Intent.--

28 (1) ~~If the operation or imposition of the taxes~~
 29 ~~imposed or administered under this chapter is declared~~
 30 ~~invalid, ineffective, inapplicable, unconstitutional, or void~~
 31 ~~for any reason, chapters 166, 203, 212, and 337, as such~~

1 ~~chapters existed before January 1, 2000, shall fully apply to~~
2 ~~the sale, use, or consumption of communications services. If~~
3 ~~any exemption from the tax imposed or administered under this~~
4 ~~chapter is declared invalid, ineffective, inapplicable,~~
5 ~~unconstitutional, or void for any reason, such declaration~~
6 ~~shall not affect the taxes imposed or administered under this~~
7 ~~chapter, but such sale, use, or consumption shall be subject~~
8 ~~to the taxes imposed under this chapter to the same extent as~~
9 ~~if such exemption never existed.~~

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

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

20 (2)(a) A sale of communications services that are used
21 as a component part of or integrated into a communications
22 service or prepaid calling arrangement for resale, including,
23 but not limited to, carrier-access charges, interconnection
24 charges paid by providers of mobile communication services or
25 other communication services, charges paid by cable service
26 providers for the transmission of video or other programming
27 by another dealer of communications services, charges for the
28 sale of unbundled network elements, and any other intercompany
29 charges for the use of facilities for providing communications
30 services for resale, must be made in compliance with the rules
31 of the department. Any person who makes a sale for resale

1 which is not in compliance with these rules is liable for any
2 tax, penalty, and interest due for failing to comply, to be
3 calculated pursuant to s. 202.28(2)(a).

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

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

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

11 202.19 Authorization to impose local communications
12 services tax.--

13 (2)

14 (c) The maximum rates authorized by paragraphs (a) and
15 (b) do not include the add-ons of up to 0.12 percent for
16 municipalities and charter counties or of up to 0.24 percent
17 for noncharter counties authorized pursuant to s. 337.401, nor
18 do they supersede conversion ~~or emergency~~ rates authorized by
19 s. 202.20(1), or emergency rates previously authorized by s.
20 202.20(2) as such provision existed prior to July 1, 2004,
21 ~~202.20~~ which are in excess of these maximum rates.

22 (3)(a) The tax authorized under this section includes
23 and is in lieu of any fee or other consideration, including,
24 but not limited to, application fees, transfer fees, siting
25 fees, renewal fees, or claims for related costs,to which the
26 municipality or county is otherwise entitled for granting
27 permission to dealers of communications services, including,
28 but not limited to, providers of cable television services, as
29 authorized in 47 U.S.C. s. 542, to use or occupy its roads or
30 rights-of-way for the placement, construction, and maintenance
31

1 of poles, wires, towers, and other fixtures used in the
2 provision of communications services.

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

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

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

15 (b) With respect to private communications services,
16 the tax shall be on the sales price of such services provided
17 within the county, which shall be determined in accordance
18 with the following provisions:

- 19 1. Any charge with respect to a channel termination
20 point located within such county;
- 21 2. Any charge for the use of a channel between two
22 channel termination points located in such county; and
- 23 3. Where channel termination points are located both
24 within and outside of such county:
 - 25 a. If any segment between two such channel termination
26 points is separately billed, 50 percent of such charge; and
 - 27 b. If any segment of the circuit is not separately
28 billed, an amount equal to the total charge for such circuit
29 multiplied by a fraction, the numerator of which is the number
30 of channel termination points within such county and the
31

1 denominator of which is the total number of channel
2 termination points of the circuit.

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

5 202.20 Local communications services tax conversion
6 rates.--

7 ~~(2)(a)1. With respect to any local taxing~~
8 ~~jurisdiction, if, for the periods ending December 31, 2001;~~
9 ~~March 31, 2002; June 30, 2002; or September 30, 2002, the~~
10 ~~revenues received by that local government from the local~~
11 ~~communications services tax imposed under subsection (1) are~~
12 ~~less than the revenues received from the replaced revenue~~
13 ~~sources for the corresponding 2000-2001 period; plus~~
14 ~~reasonably anticipated growth in such revenues over the~~
15 ~~preceding 1-year period, based on the average growth of such~~
16 ~~revenues over the immediately preceding 5-year period; plus an~~
17 ~~amount representing the revenues from the replaced revenue~~
18 ~~sources for the 1-month period that the local taxing~~
19 ~~jurisdiction was required to forego, the governing authority~~
20 ~~may adjust the rate of the local communications services tax~~
21 ~~upward to the extent necessary to generate the entire~~
22 ~~shortfall in revenues within 1 year after the rate adjustment~~
23 ~~and by an amount necessary to generate the expected amount of~~
24 ~~revenue on an ongoing basis.~~

25 ~~2. If complete data are not available at the time of~~
26 ~~determining whether the revenues received by a local~~
27 ~~government from the local communications services tax imposed~~
28 ~~under subsection (1) are less than the revenues received from~~
29 ~~the replaced revenue sources for the corresponding 2000-2001~~
30 ~~period, as set forth in subparagraph 1., the local government~~

31

1 ~~shall use the best data available for the corresponding~~
2 ~~2000-2001 period in making such determination.~~

3 ~~3. The adjustment permitted under subparagraph 1. may~~
4 ~~be made by emergency ordinance or resolution and may be made~~
5 ~~notwithstanding the maximum rate established under s.~~
6 ~~202.19(2) and notwithstanding any schedules or timeframes or~~
7 ~~any other limitations contained in this chapter. The emergency~~
8 ~~ordinance or resolution shall specify an effective date for~~
9 ~~the adjusted rate, which shall be no less than 60 days after~~
10 ~~the date of adoption of the ordinance or resolution and shall~~
11 ~~be effective with respect to taxable services included on~~
12 ~~bills that are dated on the first day of a month subsequent to~~
13 ~~the expiration of the 60-day period. At the end of 1 year~~
14 ~~following the effective date of such adjusted rate, the local~~
15 ~~governing authority shall, as soon as is consistent with s.~~
16 ~~202.21, reduce the rate by that portion of the emergency rate~~
17 ~~which was necessary to recoup the amount of revenues not~~
18 ~~received prior to the implementation of the emergency rate.~~

19 ~~4. If, for the period October 1, 2001, through~~
20 ~~September 30, 2002, the revenues received by a local~~
21 ~~government from the local communications services tax~~
22 ~~conversion rate established under subsection (1), adjusted~~
23 ~~upward for the difference in rates between paragraphs (1)(a)~~
24 ~~and (b) or any other rate adjustments or base changes, are~~
25 ~~above the threshold of 10 percent more than the revenues~~
26 ~~received from the replaced revenue sources for the~~
27 ~~corresponding 2000-2001 period plus reasonably anticipated~~
28 ~~growth in such revenues over the preceding 1-year period,~~
29 ~~based on the average growth of such revenues over the~~
30 ~~immediately preceding 5-year period, the governing authority~~
31 ~~must adjust the rate of the local communications services tax~~

1 ~~to the extent necessary to reduce revenues to the threshold by~~
2 ~~emergency ordinance or resolution within the timeframes~~
3 ~~established in subparagraph 3. The foregoing rate adjustment~~
4 ~~requirement shall not apply to a local government that adopts~~
5 ~~a local communications services tax rate by resolution or~~
6 ~~ordinance. If complete data are not available at the time of~~
7 ~~determining whether the revenues exceed the threshold, the~~
8 ~~local government shall use the best data available for the~~
9 ~~corresponding 2000-2001 period in making such determination.~~
10 ~~This subparagraph shall not be construed as establishing a~~
11 ~~right of action for any person to enforce this subparagraph or~~
12 ~~challenge a local government's implementation of this~~
13 ~~subparagraph.~~

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

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

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

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

25 ~~c. The public service tax on prepaid calling~~
26 ~~arrangements.~~

27 ~~d. Franchise fees on dealers of communications~~
28 ~~services which use the public roads or rights-of-way, up to~~
29 ~~the limit set forth in s. 337.401. For purposes of calculating~~
30 ~~rates under this section, it is the legislative intent that~~
31 ~~charter counties be treated as having had the same authority~~

1 ~~as municipalities to impose franchise fees on recurring local~~
2 ~~telecommunication service revenues prior to July 1, 2000.~~
3 ~~However, the Legislature recognizes that the authority of~~
4 ~~charter counties to impose such fees is in dispute, and the~~
5 ~~treatment provided in this section is not an expression of~~
6 ~~legislative intent that charter counties actually do or do not~~
7 ~~possess such authority.~~

8 ~~e. Actual permit fees relating to placing or~~
9 ~~maintaining facilities in or on public roads or rights-of-way,~~
10 ~~collected from providers of long distance, cable, and mobile~~
11 ~~communications services for the fiscal year ending September~~
12 ~~30, 1999; however, if a municipality or charter county elects~~
13 ~~the option to charge permit fees pursuant to s.~~
14 ~~337.401(3)(c)1.a., such fees shall not be included as a~~
15 ~~replaced revenue source.~~

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

19 ~~(2)(3)~~ For any county or school board that levies a
20 discretionary surtax under s. 212.055, the rate of such tax on
21 communications services as authorized by s. 202.19(5) shall be
22 as follows:

23

24 County	.5%	1%	1.5%
25	Discretionary	Discretionary	Discretionary
26	surtax	surtax	surtax
27	conversion	conversion	conversion
28	rates	rates	rates
29			
30 Alachua	0.3%	0.6%	0.8%
31 Baker	0.3%	0.5%	0.8%

1	Bay	0.3%	0.5%	0.8%
2	Bradford	0.3%	0.6%	0.8%
3	Brevard	0.3%	0.6%	0.9%
4	Broward	0.3%	0.5%	0.8%
5	Calhoun	0.3%	0.5%	0.8%
6	Charlotte	0.3%	0.6%	0.9%
7	Citrus	0.3%	0.6%	0.9%
8	Clay	0.3%	0.6%	0.8%
9	Collier	0.4%	0.7%	1.0%
10	Columbia	0.3%	0.6%	0.9%
11	Dade	0.3%	0.5%	0.8%
12	Desoto	0.3%	0.6%	0.8%
13	Dixie	0.3%	0.5%	0.8%
14	Duval	0.3%	0.6%	0.8%
15	Escambia	0.3%	0.6%	0.9%
16	Flagler	0.4%	0.7%	1.0%
17	Franklin	0.3%	0.6%	0.9%
18	Gadsden	0.3%	0.5%	0.8%
19	Gilchrist	0.3%	0.5%	0.7%
20	Glades	0.3%	0.6%	0.8%
21	Gulf	0.3%	0.5%	0.8%
22	Hamilton	0.3%	0.6%	0.8%
23	Hardee	0.3%	0.5%	0.8%
24	Hendry	0.3%	0.6%	0.9%
25	Hernando	0.3%	0.6%	0.9%
26	Highlands	0.3%	0.6%	0.9%
27	Hillsborough	0.3%	0.6%	0.8%
28	Holmes	0.3%	0.6%	0.8%
29	Indian River	0.3%	0.6%	0.9%
30	Jackson	0.3%	0.5%	0.7%
31	Jefferson	0.3%	0.5%	0.8%

1	Lafayette	0.3%	0.5%	0.7%
2	Lake	0.3%	0.6%	0.9%
3	Lee	0.3%	0.6%	0.9%
4	Leon	0.3%	0.6%	0.8%
5	Levy	0.3%	0.5%	0.8%
6	Liberty	0.3%	0.6%	0.8%
7	Madison	0.3%	0.5%	0.8%
8	Manatee	0.3%	0.6%	0.8%
9	Marion	0.3%	0.5%	0.8%
10	Martin	0.3%	0.6%	0.8%
11	Monroe	0.3%	0.6%	0.9%
12	Nassau	0.3%	0.6%	0.8%
13	Okaloosa	0.3%	0.6%	0.8%
14	Okeechobee	0.3%	0.6%	0.9%
15	Orange	0.3%	0.5%	0.8%
16	Osceola	0.3%	0.5%	0.8%
17	Palm Beach	0.3%	0.6%	0.8%
18	Pasco	0.3%	0.6%	0.9%
19	Pinellas	0.3%	0.6%	0.9%
20	Polk	0.3%	0.6%	0.8%
21	Putnam	0.3%	0.6%	0.8%
22	St. Johns	0.3%	0.6%	0.8%
23	St. Lucie	0.3%	0.6%	0.8%
24	Santa Rosa	0.3%	0.6%	0.9%
25	Sarasota	0.3%	0.6%	0.9%
26	Seminole	0.3%	0.6%	0.8%
27	Sumter	0.3%	0.5%	0.8%
28	Suwannee	0.3%	0.6%	0.8%
29	Taylor	0.3%	0.6%	0.9%
30	Union	0.3%	0.5%	0.8%
31	Volusia	0.3%	0.6%	0.8%

1	Wakulla	0.3%	0.6%	0.9%
2	Walton	0.3%	0.6%	0.9%
3	Washington	0.3%	0.5%	0.8%

4
5 The discretionary surtax conversion rate with respect to
6 communications services reflected on bills dated on or after
7 October 1, 2001, shall take effect without any further action
8 by a county or school board that has levied a surtax on or
9 before October 1, 2001. For a county or school board that
10 levies a surtax subsequent to October 1, 2001, the
11 discretionary surtax conversion rate with respect to
12 communications services shall take effect upon the effective
13 date of the surtax as provided in s. 212.054. The
14 discretionary sales surtax rate on communications services for
15 a county or school board levying a combined rate which is not
16 listed in the table provided by this subsection shall be
17 calculated by averaging or adding the appropriate rates from
18 the table and rounding up to the nearest tenth of a percent.

19 Section 5. Section 202.21, Florida Statutes, is
20 amended to read:

21 202.21 Effective dates; procedures for informing
22 dealers of communications services of tax levies and rate
23 changes.--Any adoption, repeal, or change in the rate of a
24 local communications services tax imposed under s. 202.19 is
25 effective with respect to taxable services included on bills
26 that are dated on or after the January 1 subsequent to such
27 adoption, repeal, or change. A municipality or county
28 adopting, repealing, or changing the rate of such tax must
29 notify the department of the adoption, repeal, or change by
30 September 1 immediately preceding such January 1. Notification
31 must be furnished on a form prescribed by the department and

1 must specify the rate of tax; the effective date of the
2 adoption, repeal, or change thereof; and the name, mailing
3 address, and telephone number of a person designated by the
4 municipality or county to respond to inquiries concerning the
5 tax. The department shall provide notice of such adoption,
6 repeal, or change to all affected dealers of communications
7 services at least 90 days before the effective date of the
8 tax. ~~Any local government that adjusts the rate of its local~~
9 ~~communications services tax by emergency ordinance or~~
10 ~~resolution pursuant to s. 202.20(2) shall notify the~~
11 ~~department of the new tax rate immediately upon its adoption.~~
12 ~~The department shall provide written notice of the adoption of~~
13 ~~the new rate to all affected dealers within 30 days after~~
14 ~~receiving such notice.~~In any notice to providers or
15 publication of local tax rates for purposes of this chapter,
16 the department shall express the rate for a municipality or
17 charter county as the sum of the tax rates levied within such
18 jurisdiction pursuant to s. 202.19(2)(a) and (5), and shall
19 express the rate for any other county as the sum of the tax
20 rates levied pursuant to s. 202.19(2)(b) and (5). The
21 department is not liable for any loss of or decrease in
22 revenue by reason of any error, omission, or untimely action
23 that results in the nonpayment of a tax imposed under s.
24 202.19.

25 Section 6. Paragraph (a) of subsection (2) of section
26 202.24, Florida Statutes, is amended to read:

27 202.24 Limitations on local taxes and fees imposed on
28 dealers of communications services.--

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

31

1 1. Levying on or collecting from dealers or purchasers
2 of communications services any tax, charge, fee, or other
3 imposition on or with respect to the provision or purchase of
4 communications services, including, but not limited to,
5 application fees, transfer fees, siting fees, renewal fees, or
6 claims for related costs.

7 2. Requiring any dealer of communications services to
8 enter into or extend the term of a franchise or other
9 agreement that requires the payment of a tax, charge, fee, or
10 other imposition.

11 3. Adopting or enforcing any provision of any
12 ordinance or agreement to the extent that such provision
13 obligates a dealer of communications services to charge,
14 collect, or pay to the public body a tax, charge, fee, or
15 other imposition.

16
17 Each municipality and county retains authority to negotiate
18 all terms and conditions of a cable service franchise allowed
19 by federal and state law except those terms and conditions
20 related to franchise fees and the definition of gross revenues
21 or other definitions or methodologies related to the payment
22 or assessment of franchise fees on providers of cable
23 services.

24 Section 7. The amendments to sections 202.19(3)(a) and
25 202.24(2)(a), Florida Statutes, contained in this act are
26 remedial in nature and intended to clarify the law in effect
27 on the effective date of this act.

28 Section 8. This act shall take effect July 1, 2004.
29
30
31