

By the Committee on Comprehensive Planning; and Senator Haridopolos

316-2612-04

1 A bill to be entitled
2 An act relating to communications services
3 taxes; amending s. 202.16, F.S.; providing
4 requirements for dealers making certain sales
5 for resale; providing procedures and
6 limitations; providing a definition; providing
7 responsibilities of the Department of Revenue;
8 amending s. 202.19, F.S.; clarifying the
9 inclusion of certain fees and costs in the tax
10 rate; amending s. 202.20, F.S.; authorizing the
11 Department of Revenue or a dealer to make an
12 adjustment in the event of a reallocation of
13 revenue away from local government; repealing
14 s. 202.20(2)(a), F.S., relating to obsolete tax
15 rate provisions; amending s. 202.21, F.S., to
16 conform; specifying certain revisions to law as
17 remedial and clarifying; granting no right to a
18 refund of any fees or charges paid prior to a
19 certain date; providing an exception; providing
20 an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:
23

24 Section 1. Effective December 31, 2004, subsection (2)
25 of section 202.16, Florida Statutes, is amended to read:
26 202.16 Payment.--The taxes imposed or administered
27 under this chapter and chapter 203 shall be collected from all
28 dealers of taxable communications services on the sale at
29 retail in this state of communications services taxable under
30 this chapter and chapter 203. The full amount of the taxes on
31 a credit sale, installment sale, or sale made on any kind of

1 deferred payment plan is due at the moment of the transaction
2 in the same manner as a cash sale.

3 (2)(a) A sale of communications services that are used
4 as a component part of or integrated into a communications
5 service or prepaid calling arrangement for resale, including,
6 but not limited to, carrier-access charges, interconnection
7 charges paid by providers of mobile communication services or
8 other communication services, charges paid by cable service
9 providers for the transmission of video or other programming
10 by another dealer of communications services, charges for the
11 sale of unbundled network elements, and any other intercompany
12 charges for the use of facilities for providing communications
13 services for resale, must be made in compliance with the rules
14 of the department. Any person who makes a sale for resale
15 which is not in compliance with these rules is liable for any
16 tax, penalty, and interest due for failing to comply, to be
17 calculated pursuant to s. 202.28(2)(a).

18 (b) Any dealer who makes a sale for resale shall
19 document the exempt nature of the transaction, as established
20 by rules adopted by the department, by retaining a copy of the
21 purchaser's initial or annual resale certificate issued
22 pursuant to s. 202.17(6). In lieu of maintaining a copy of the
23 certificate, a dealer may document, prior to the time of sale,
24 an authorization number provided telephonically or
25 electronically by the department, or by such other means
26 established by rule of the department. The dealer may rely on
27 an initial or annual resale certificate issued pursuant to s.
28 202.17(6), valid at the time of receipt from the purchaser,
29 without seeking additional annual resale certificates from
30 such purchaser, if the dealer makes recurring sales to such
31 purchaser in the normal course of business on a continual

1 basis. For purposes of this paragraph, the term "recurring
2 sales to a purchaser in the normal course of business" means a
3 sale in which the dealer extends credit to the purchaser and
4 records the debt as an account receivable, or in which the
5 dealer sells to a purchaser who has an established cash
6 account, similar to an open credit account. For purposes of
7 this paragraph, purchases are made from a selling dealer on a
8 continual basis if the selling dealer makes, in the normal
9 course of business, sales to the purchaser no less frequently
10 than once in every 12-month period. A dealer may, through the
11 informal protest provided for in s. 213.21 and the rules of
12 the Department of Revenue, provide the department with
13 evidence of the exempt status of a sale. Exemption
14 certificates executed by entities that were exempt at the time
15 of sale, resale certificates provided by purchasers who were
16 active dealers at the time of sale, and verification by the
17 department of a purchaser's active dealer status at the time
18 of sale in lieu of a resale certificate shall be accepted by
19 the department when submitted during the protest period, but
20 may not be accepted in any proceeding under chapter 120 or any
21 circuit court action instituted under chapter 72.

22 Section 2. Paragraph (a) of subsection (3) of section
23 202.19, Florida Statutes, is amended to read:

24 202.19 Authorization to impose local communications
25 services tax.--

26 (3)(a) The tax authorized under this section includes
27 and is in lieu of any fee or other consideration, including,
28 but not limited to, application fees, transfer fees, renewal
29 fees, or claims for related costs,to which the municipality
30 or county is otherwise entitled for granting permission to
31 dealers of communications services, including, but not limited

1 to, providers of cable television services, as authorized in
2 47 U.S.C. s. 542, to use or occupy its roads or rights-of-way
3 for the placement, construction, and maintenance of poles,
4 wires, and other fixtures used in the provision of
5 communications services.

6 Section 3. Subsection (2) of section 202.20, Florida
7 Statutes, is amended to read:

8 202.20 Local communications services tax conversion
9 rates.--

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

28 2. If complete data are not available at the time of
29 determining whether the revenues received by a local
30 government from the local communications services tax imposed
31 under subsection (1) are less than the revenues received from

1 the replaced revenue sources for the corresponding 2000-2001
2 period, as set forth in subparagraph 1., the local government
3 shall use the best data available for the corresponding
4 2000-2001 period in making such determination.

5 3. The adjustment permitted under subparagraph 1. may
6 be made by emergency ordinance or resolution and may be made
7 notwithstanding the maximum rate established under s.

8 202.19(2) and notwithstanding any schedules or timeframes or
9 any other limitations contained in this chapter. The authority
10 to make such adjustment may be exercised only in the event of
11 a reallocation of revenue away from the local government by
12 the Department of Revenue or a dealer.The emergency ordinance

13 or resolution shall specify an effective date for the adjusted
14 rate, which shall be no less than 60 days after the date of
15 adoption of the ordinance or resolution and shall be effective
16 with respect to taxable services included on bills that are
17 dated on the first day of a month subsequent to the expiration
18 of the 60-day period. At the end of 1 year following the
19 effective date of such adjusted rate, the local governing
20 authority shall, as soon as is consistent with s. 202.21,
21 reduce the rate by that portion of the emergency rate which
22 was necessary to recoup the amount of revenues not received
23 prior to the implementation of the emergency rate.

24 4. If, for the period October 1, 2001, through
25 September 30, 2002, the revenues received by a local
26 government from the local communications services tax
27 conversion rate established under subsection (1), adjusted
28 upward for the difference in rates between paragraphs (1)(a)
29 and (b) or any other rate adjustments or base changes, are
30 above the threshold of 10 percent more than the revenues
31 received from the replaced revenue sources for the

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

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

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

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

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

30 c. The public service tax on prepaid calling
31 arrangements.

1 d. Franchise fees on dealers of communications
2 services which use the public roads or rights-of-way, up to
3 the limit set forth in s. 337.401. For purposes of calculating
4 rates under this section, it is the legislative intent that
5 charter counties be treated as having had the same authority
6 as municipalities to impose franchise fees on recurring local
7 telecommunication service revenues prior to July 1, 2000.
8 However, the Legislature recognizes that the authority of
9 charter counties to impose such fees is in dispute, and the
10 treatment provided in this section is not an expression of
11 legislative intent that charter counties actually do or do not
12 possess such authority.

13 e. Actual permit fees relating to placing or
14 maintaining facilities in or on public roads or rights-of-way,
15 collected from providers of long-distance, cable, and mobile
16 communications services for the fiscal year ending September
17 30, 1999; however, if a municipality or charter county elects
18 the option to charge permit fees pursuant to s.
19 337.401(3)(c)1.a., such fees shall not be included as a
20 replaced revenue source.

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

24 Section 4. Effective July 1, 2007, paragraph (a) of
25 subsection (2) of section 202.20, Florida Statutes, is
26 repealed.

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

29 202.21 Effective dates; procedures for informing
30 dealers of communications services of tax levies and rate
31 changes.--Any adoption, repeal, or change in the rate of a

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

3 Section 6. The amendments to section 202.19(3)(a),
4 Florida Statutes, contained in this act are remedial in nature
5 and intended to clarify the law in effect on October 1, 2001,
6 but do not grant any right to a refund of any fees or charges
7 paid prior to July 1, 2004, unless the payment was made under
8 written protest as to the authority of any local government to
9 impose such fees or costs on a dealer.

10 Section 7. Except as otherwise expressly provided in
11 this act, this act shall take effect July 1, 2004.

12
13 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
14 COMMITTEE SUBSTITUTE FOR
15 Senate Bill 2322

16 This CS differs from the bill as filed in that it:

- 17 - Excludes section 1, which proposed to delete intent
18 provisions in s. 202.13, F.S.;
- 19 - Includes an effective date of December 31, 2004, to the
20 proposed changes to s. 202.16(2), F.S.;
- 21 - Excludes proposed changes to s. 202.19(2)(c), F.S., which
22 addressed emergency rates;
- 23 - Restores proposed deleted language in s. 202.20(2), F.S.,
24 which would have eliminated the emergency rate authority
25 currently granted to local jurisdictions, amends it to
26 limit its application, and repeals it effective July 1,
27 2007; and
- 28 - Excludes section 6, which proposed changes to s.
29 202.24(2)(c), F.S., to specify the types of fees each
30 public body is prohibited from levying on the sale or
31 purchase of communications services.