

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; amending
20 s. 365.171, F.S.; continuing the authorization
21 for certain counties to expend moneys derived
22 from the "911" fee for nonemergency
23 telecommunications; deleting the limitation
24 imposed under a pilot project; providing an
25 effective date.

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27 Be It Enacted by the Legislature of the State of Florida:
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29 Section 1. Effective December 31, 2004, subsection (2)
30 of section 202.16, Florida Statutes, is amended to read:
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1 202.16 Payment.--The taxes imposed or administered
2 under this chapter and chapter 203 shall be collected from all
3 dealers of taxable communications services on the sale at
4 retail in this state of communications services taxable under
5 this chapter and chapter 203. The full amount of the taxes on
6 a credit sale, installment sale, or sale made on any kind of
7 deferred payment plan is due at the moment of the transaction
8 in the same manner as a cash sale.

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

24 (b) Any dealer who makes a sale for resale shall
25 document the exempt nature of the transaction, as established
26 by rules adopted by the department, by retaining a copy of the
27 purchaser's initial or annual resale certificate issued
28 pursuant to s. 202.17(6). In lieu of maintaining a copy of the
29 certificate, a dealer may document, prior to the time of sale,
30 an authorization number provided telephonically or
31 electronically by the department, or by such other means

1 established by rule of the department. The dealer may rely on
2 an initial or annual resale certificate issued pursuant to s.
3 202.17(6), valid at the time of receipt from the purchaser,
4 without seeking additional annual resale certificates from
5 such purchaser, if the dealer makes recurring sales to such
6 purchaser in the normal course of business on a continual
7 basis. For purposes of this paragraph, the term "recurring
8 sales to a purchaser in the normal course of business" means a
9 sale in which the dealer extends credit to the purchaser and
10 records the debt as an account receivable, or in which the
11 dealer sells to a purchaser who has an established cash
12 account, similar to an open credit account. For purposes of
13 this paragraph, purchases are made from a selling dealer on a
14 continual basis if the selling dealer makes, in the normal
15 course of business, sales to the purchaser no less frequently
16 than once in every 12-month period. A dealer may, through the
17 informal protest provided for in s. 213.21 and the rules of
18 the Department of Revenue, provide the department with
19 evidence of the exempt status of a sale. Exemption
20 certificates executed by entities that were exempt at the time
21 of sale, resale certificates provided by purchasers who were
22 active dealers at the time of sale, and verification by the
23 department of a purchaser's active dealer status at the time
24 of sale in lieu of a resale certificate shall be accepted by
25 the department when submitted during the protest period, but
26 may not be accepted in any proceeding under chapter 120 or any
27 circuit court action instituted under chapter 72.

28 Section 2. Paragraph (a) of subsection (3) of section
29 202.19, Florida Statutes, is amended to read:

30 202.19 Authorization to impose local communications
31 services tax.--

1 (3)(a) The tax authorized under this section includes
2 and is in lieu of any fee or other consideration, including,
3 but not limited to, application fees, transfer fees, renewal
4 fees, or claims for related costs, to which the municipality
5 or county is otherwise entitled for granting permission to
6 dealers of communications services, including, but not limited
7 to, providers of cable television services, as authorized in
8 47 U.S.C. s. 542, to use or occupy its roads or rights-of-way
9 for the placement, construction, and maintenance of poles,
10 wires, and other fixtures used in the provision of
11 communications services.

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

14 202.20 Local communications services tax conversion
15 rates.--

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

1 and by an amount necessary to generate the expected amount of
2 revenue on an ongoing basis.

3 2. If complete data are not available at the time of
4 determining whether the revenues received by a local
5 government from the local communications services tax imposed
6 under subsection (1) are less than the revenues received from
7 the replaced revenue sources for the corresponding 2000-2001
8 period, as set forth in subparagraph 1., the local government
9 shall use the best data available for the corresponding
10 2000-2001 period in making such determination.

11 3. The adjustment permitted under subparagraph 1. may
12 be made by emergency ordinance or resolution and may be made
13 notwithstanding the maximum rate established under s.
14 202.19(2) and notwithstanding any schedules or timeframes or
15 any other limitations contained in this chapter. The authority
16 to make such adjustment may be exercised only in the event of
17 a reallocation of revenue away from the local government by
18 the Department of Revenue or a dealer. The emergency ordinance
19 or resolution shall specify an effective date for the adjusted
20 rate, which shall be no less than 60 days after the date of
21 adoption of the ordinance or resolution and shall be effective
22 with respect to taxable services included on bills that are
23 dated on the first day of a month subsequent to the expiration
24 of the 60-day period. At the end of 1 year following the
25 effective date of such adjusted rate, the local governing
26 authority shall, as soon as is consistent with s. 202.21,
27 reduce the rate by that portion of the emergency rate which
28 was necessary to recoup the amount of revenues not received
29 prior to the implementation of the emergency rate.

30 4. If, for the period October 1, 2001, through
31 September 30, 2002, the revenues received by a local

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

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

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

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

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

5 c. The public service tax on prepaid calling
6 arrangements.

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

19 e. Actual permit fees relating to placing or
20 maintaining facilities in or on public roads or rights-of-way,
21 collected from providers of long-distance, cable, and mobile
22 communications services for the fiscal year ending September
23 30, 1999; however, if a municipality or charter county elects
24 the option to charge permit fees pursuant to s.
25 337.401(3)(c)1.a., such fees shall not be included as a
26 replaced revenue source.

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

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

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

6 202.21 Effective dates; procedures for informing
7 dealers of communications services of tax levies and rate
8 changes.--Any adoption, repeal, or change in the rate of a
9 local communications services tax imposed under s. 202.19 is
10 effective with respect to taxable services included on bills
11 that are dated on or after the January 1 subsequent to such
12 adoption, repeal, or change. A municipality or county
13 adopting, repealing, or changing the rate of such tax must
14 notify the department of the adoption, repeal, or change by
15 September 1 immediately preceding such January 1. Notification
16 must be furnished on a form prescribed by the department and
17 must specify the rate of tax; the effective date of the
18 adoption, repeal, or change thereof; and the name, mailing
19 address, and telephone number of a person designated by the
20 municipality or county to respond to inquiries concerning the
21 tax. The department shall provide notice of such adoption,
22 repeal, or change to all affected dealers of communications
23 services at least 90 days before the effective date of the
24 tax. ~~Any local government that adjusts the rate of its local~~
25 ~~communications services tax by emergency ordinance or~~
26 ~~resolution pursuant to s. 202.20(2) shall notify the~~
27 ~~department of the new tax rate immediately upon its adoption.~~
28 ~~The department shall provide written notice of the adoption of~~
29 ~~the new rate to all affected dealers within 30 days after~~
30 ~~receiving such notice.~~ In any notice to providers or
31 publication of local tax rates for purposes of this chapter,

1 the department shall express the rate for a municipality or
 2 charter county as the sum of the tax rates levied within such
 3 jurisdiction pursuant to s. 202.19(2)(a) and (5), and shall
 4 express the rate for any other county as the sum of the tax
 5 rates levied pursuant to s. 202.19(2)(b) and (5). The
 6 department is not liable for any loss of or decrease in
 7 revenue by reason of any error, omission, or untimely action
 8 that results in the nonpayment of a tax imposed under s.
 9 202.19.

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

17 Section 7. Paragraph (a) of subsection (13) of section
 18 365.171, Florida Statutes, is amended to read:

19 365.171 Emergency telephone number "911."--

20 (13) "911" FEE.--

21 (a) Following approval by referendum as set forth in
 22 paragraph (b), or following approval by a majority vote of its
 23 board of county commissioners, a county may impose a "911" fee
 24 to be paid by the local exchange subscribers within its
 25 boundaries served by the "911" service. Proceeds from the
 26 "911" fee shall be used only for "911" expenditures as set
 27 forth in subparagraph 6. The manner of imposing and
 28 collecting said payment shall be as follows:

29 1. At the request of the county subscribing to "911"
 30 service, the telephone company shall, insofar as is
 31 practicable, bill the "911" fee to the local exchange

1 subscribers served by the "911" service, on an individual
2 access line basis, at a rate not to exceed 50 cents per month
3 per line (up to a maximum of 25 access lines per account bill
4 rendered). However, the fee may not be assessed on any pay
5 telephone in this state. A county collecting the fee for the
6 first time may collect the fee for no longer than 36 months
7 without initiating the acquisition of its "911" equipment.

8 2. Fees collected by the telephone company pursuant to
9 subparagraph 1. shall be returned to the county, less the
10 costs of administration retained pursuant to paragraph (c).
11 The county shall provide a minimum of 90 days' written notice
12 to the telephone company prior to the collection of any "911"
13 fees.

14 3. Any county that currently has an operational "911"
15 system or that is actively pursuing the implementation of a
16 "911" system shall establish a fund to be used exclusively for
17 receipt and expenditure of "911" fee revenues collected
18 pursuant to this section. All fees placed in said fund, and
19 any interest accrued thereupon, shall be used solely for "911"
20 costs described in subparagraph 6. The money collected and
21 interest earned in this fund shall be appropriated for "911"
22 purposes by the county commissioners and incorporated into the
23 annual county budget. Such fund shall be included within the
24 financial audit performed in accordance with s. 218.39. A
25 report of the audit shall be forwarded to the office within 60
26 days of its completion. A county may carry forward on an
27 annual basis unspent moneys in the fund for expenditures
28 allowed by this section, or it may reduce its fee. However, in
29 no event shall a county carry forward more than 10 percent of
30 the "911" fee billed for the prior year. The amount of moneys
31 carried forward each year may be accumulated in order to allow

1 for capital improvements described in this subsection. The
2 carryover shall be documented by resolution of the board of
3 county commissioners expressing the purpose of the carryover
4 or by an adopted capital improvement program identifying
5 projected expansion or replacement expenditures for "911"
6 equipment and service features, or both. In no event shall the
7 "911" fee carryover surplus moneys be used for any purpose
8 other than for the "911" equipment, service features, and
9 installation charges authorized in subparagraph 6. Nothing in
10 this section shall prohibit a county from using other sources
11 of revenue for improvements, replacements, or expansions of
12 its "911" system. A county may increase its fee for purposes
13 authorized in this section. However, in no case shall the fee
14 exceed 50 cents per month per line. All current "911" fees
15 shall be reported to the office within 30 days of the start of
16 each county's fiscal period. Any fee adjustment made by a
17 county shall be reported to the office. A county shall give
18 the telephone company a 90-day written notice of such fee
19 adjustment.

20 4. The telephone company shall have no obligation to
21 take any legal action to enforce collection of the "911" fee.
22 The telephone company shall provide quarterly to the county a
23 list of the names, addresses, and telephone numbers of any and
24 all subscribers who have identified to the telephone company
25 their refusal to pay the "911" fee.

26 5. The county subscribing to "911" service shall
27 remain liable to the telephone company for any "911" service,
28 equipment, operation, or maintenance charge owed by the county
29 to the telephone company.

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1 As used in this paragraph, "telephone company" means an
2 exchange telephone service provider of "911" service or
3 equipment to any county within its certificated area.

4 6. It is the intent of the Legislature that the "911"
5 fee authorized by this section to be imposed by counties will
6 not necessarily provide the total funding required for
7 establishing or providing the "911" service. For purposes of
8 this section, "911" service includes the functions of database
9 management, call taking, location verification, and call
10 transfer. The following costs directly attributable to the
11 establishment and/or provision of "911" service are eligible
12 for expenditure of moneys derived from imposition of the "911"
13 fee authorized by this section: the acquisition,
14 implementation, and maintenance of Public Safety Answering
15 Point (PSAP) equipment and "911" service features, as defined
16 in the Florida Public Service Commission's lawfully approved
17 "911" and related tariffs and/or the acquisition,
18 installation, and maintenance of other "911" equipment,
19 including call answering equipment, call transfer equipment,
20 ANI controllers, ALI controllers, ANI displays, ALI displays,
21 station instruments, "911" telecommunications systems,
22 teleprinters, logging recorders, instant playback recorders,
23 telephone devices for the deaf (TDD) used in the "911" system,
24 PSAP backup power systems, consoles, automatic call
25 distributors, and interfaces (hardware and software) for
26 computer-aided dispatch (CAD) systems; salary and associated
27 expenses for "911" call takers for that portion of their time
28 spent taking and transferring "911" calls; salary and
29 associated expenses for a county to employ a full-time
30 equivalent "911" coordinator position and a full-time
31 equivalent staff assistant position per county for the portion

1 of their time spent administrating the "911" system; training
2 costs for PSAP call takers in the proper methods and
3 techniques used in taking and transferring "911" calls;
4 expenses required to develop and maintain all information (ALI
5 and ANI databases and other information source repositories)
6 necessary to properly inform call takers as to location
7 address, type of emergency, and other information directly
8 relevant to the "911" call-taking and transferring function;
9 and, in a county defined in s. 125.011(1), such expenses
10 related to a nonemergency "311" system, or similar
11 nonemergency system, which improves the overall efficiency of
12 an existing "911" system or reduces "911" emergency response
13 time for a ~~2-year~~ pilot project that ends June 30, 2009 ~~2003~~.
14 However, no wireless telephone service provider shall be
15 required to participate in this pilot project or to otherwise
16 implement a nonemergency "311" system or similar nonemergency
17 system. The "911" fee revenues shall not be used to pay for
18 any item not listed, including, but not limited to, any
19 capital or operational costs for emergency responses which
20 occur after the call transfer to the responding public safety
21 entity and the costs for constructing buildings, leasing
22 buildings, maintaining buildings, or renovating buildings,
23 except for those building modifications necessary to maintain
24 the security and environmental integrity of the PSAP and "911"
25 equipment rooms.

26 7. It is the goal of the Legislature that enhanced
27 "911" service be available throughout the state. Expenditure
28 by counties of the "911" fees authorized by this section
29 should support this goal to the greatest extent feasible
30 within the context of local service needs and fiscal
31 capability. Nothing in this section shall be construed to

1 | prohibit two or more counties from establishing a combined
2 | emergency "911" telephone service by interlocal agreement and
3 | utilizing the "911" fees authorized by this section for such
4 | combined "911" service.

5 | Section 8. Except as otherwise expressly provided in
6 | this act, this act shall take effect July 1, 2004.

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