

1 and clarify certain provisions of law but do
2 not grant rights to a refund of certain fees or
3 charges under certain circumstances; providing
4 effective dates.
5

6 Be It Enacted by the Legislature of the State of Florida:
7

8 Section 1. Effective upon this act becoming a law, and
9 operating retroactively to December 31, 2004, subsection (2)
10 of section 202.16, Florida Statutes, is amended to read:

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

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

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

3 (b)1. 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.

27 2. A dealer may, through the informal protest process
28 provided for in s. 213.21 and the rules of the department,
29 provide the department with evidence of the exempt status of a
30 sale. Exemption certificates executed by entities that were
31 exempt at the time of sale, resale certificates provided by

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

8 Section 2. Effective January 1, 2006, the Department
9 of Revenue shall establish a toll-free telephone number for
10 the verification of valid registration numbers and resale
11 certificates. The system must be adequate to guarantee a low
12 busy rate, must respond to keypad inquiries, and must provide
13 data that is updated daily.

14 Section 3. The Department of Revenue shall establish a
15 system, effective January 1, 2006, for receiving information
16 from dealers regarding certificate numbers of those who are
17 seeking to make purchases for resale. The department must
18 provide such dealers, free of charge, with verification of
19 numbers that are cancelled or invalid.

20 Section 4. Paragraph (a) of subsection (3) of section
21 202.19, Florida Statutes, is amended to read:

22 202.19 Authorization to impose local communications
23 services tax.--

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

1 | for the placement, construction, and maintenance of poles,
2 | wires, and other fixtures used in the provision of
3 | communications services.

4 | Section 5. Paragraph (a) of subsection (2) of section
5 | 202.20, Florida Statutes, is amended to read:

6 | 202.20 Local communications services tax conversion
7 | rates.--

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

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

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 authority
8 of a local government to make such adjustment may be exercised
9 only if the department or a dealer reallocates revenue away
10 from the local government. The emergency ordinance or
11 resolution shall specify an effective date for the adjusted
12 rate, which shall be no less than 60 days after the date of
13 adoption of the ordinance or resolution and shall be effective
14 with respect to taxable services included on bills that are
15 dated on the first day of a month subsequent to the expiration
16 of the 60-day period. At the end of 1 year following the
17 effective date of such adjusted rate, the local governing
18 authority shall, as soon as is consistent with s. 202.21,
19 reduce the rate by that portion of the emergency rate which
20 was necessary to recoup the amount of revenues not received
21 prior to the implementation of the emergency rate.

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

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

17 Section 6. Effective July 1, 2007, subsection (2) of
18 section 202.20, Florida Statutes, as amended by this act, is
19 amended to read:

20 202.20 Local communications services tax conversion
21 rates.--

22 ~~(2)(a)1. With respect to any local taxing~~
23 ~~jurisdiction, if, for the periods ending December 31, 2001;~~
24 ~~March 31, 2002; June 30, 2002; or September 30, 2002, the~~
25 ~~revenues received by that local government from the local~~
26 ~~communications services tax imposed under subsection (1) are~~
27 ~~less than the revenues received from the replaced revenue~~
28 ~~sources for the corresponding 2000-2001 period; plus~~
29 ~~reasonably anticipated growth in such revenues over the~~
30 ~~preceding 1 year period, based on the average growth of such~~
31 ~~revenues over the immediately preceding 5 year period; plus an~~

1 ~~amount representing the revenues from the replaced revenue~~
2 ~~sources for the 1 month period that the local taxing~~
3 ~~jurisdiction was required to forego, the governing authority~~
4 ~~may adjust the rate of the local communications services tax~~
5 ~~upward to the extent necessary to generate the entire~~
6 ~~shortfall in revenues within 1 year after the rate adjustment~~
7 ~~and by an amount necessary to generate the expected amount of~~
8 ~~revenue on an ongoing basis.~~

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

17 ~~3. The adjustment permitted under subparagraph 1. may~~
18 ~~be made by emergency ordinance or resolution and may be made~~
19 ~~notwithstanding the maximum rate established under s.~~
20 ~~202.19(2) and notwithstanding any schedules or timeframes or~~
21 ~~any other limitations contained in this chapter. The authority~~
22 ~~of a local government to make such adjustment may be exercised~~
23 ~~only if the department or a dealer reallocates revenue away~~
24 ~~from the local government. The emergency ordinance or~~
25 ~~resolution shall specify an effective date for the adjusted~~
26 ~~rate, which shall be no less than 60 days after the date of~~
27 ~~adoption of the ordinance or resolution and shall be effective~~
28 ~~with respect to taxable services included on bills that are~~
29 ~~dated on the first day of a month subsequent to the expiration~~
30 ~~of the 60 day period. At the end of 1 year following the~~
31 ~~effective date of such adjusted rate, the local governing~~

1 ~~authority shall, as soon as is consistent with s. 202.21,~~
2 ~~reduce the rate by that portion of the emergency rate which~~
3 ~~was necessary to recoup the amount of revenues not received~~
4 ~~prior to the implementation of the emergency rate.~~

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

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

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

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

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

13 ~~3.e.~~ The public service tax on prepaid calling
14 arrangements.

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

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

27 ~~5.e.~~ Actual permit fees relating to placing or
28 maintaining facilities in or on public roads or rights-of-way,
29 collected from providers of long-distance, cable, and mobile
30 communications services for the fiscal year ending September
31 30, 1999; however, if a municipality or charter county elects

1 | the option to charge permit fees pursuant to s.

2 | 337.401(3)(c)1.a., such fees shall not be included as a
3 | replaced revenue source.

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

7 | Section 7. Effective July 1, 2007, section 202.21,
8 | Florida Statutes, is amended to read:

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

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

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

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

22
23 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
24 COMMITTEE SUBSTITUTE FOR
25 Senate Bill 2066

26 The committee substitute deletes an exemption for the sales of
27 communications services if the services are purchased, used,
28 or sold by an Internet access provider to provide access to
29 the Internet. It deletes definitions of "Internet," "Internet
30 access service," and "Internet access provider." It also
31 requires the Department of Revenue to establish a toll-free
telephone number for verifying registration numbers and resale
certificates and to create an automated system to provide
authorization numbers for sales for resale by January 1, 2006.