

CHAMBER ACTION

1 The Utilities & Telecommunications Committee recommends the
2 following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to the communications services tax;
8 amending s. 202.16, F.S.; requiring dealers to document
9 exempt sales for resale; providing requirements; providing
10 a definition; providing construction; providing for dealer
11 provision of evidence of the exempt status of certain
12 sales through an informal protest process; requiring the
13 Department of Revenue to accept certain evidence during
14 the protest period; providing limitations; providing for
15 retroactive application; requiring the department to
16 establish a toll-free number for certain registration and
17 resale certificate verification purposes; providing
18 requirements; requiring the department to establish a
19 system for receiving certain information relating to
20 certificate numbers of dealers making purchases for
21 resale; providing requirements; amending s. 202.19, F.S.;
22 clarifying a characterization of the local communications
23 services tax as including certain fees and being in lieu

24 | of such fees; authorizing municipalities or counties to
 25 | use certain revenues distributed to a local government for
 26 | certain purposes; amending s. 202.20, F.S.; limiting local
 27 | government authority to make certain rate adjustments in
 28 | the tax under certain circumstances; deleting obsolete
 29 | provisions relating to making certain adjustments in the
 30 | tax for certain periods; amending s. 202.21, F.S.;
 31 | deleting provisions relating to local government
 32 | adjustments of the tax by emergency ordinance or
 33 | resolution to conform; specifying that certain amendments
 34 | are remedial in nature and clarify certain provisions of
 35 | law but do not grant rights to refund of certain fees or
 36 | charges under certain circumstances; providing for
 37 | nonapplication to certain emergency rates; providing
 38 | effective dates.

39

40 | Be It Enacted by the Legislature of the State of Florida:

41

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

45 | 202.16 Payment.--The taxes imposed or administered under
 46 | this chapter and chapter 203 shall be collected from all dealers
 47 | of taxable communications services on the sale at retail in this
 48 | state of communications services taxable under this chapter and
 49 | chapter 203. The full amount of the taxes on a credit sale,
 50 | installment sale, or sale made on any kind of deferred payment

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51 plan is due at the moment of the transaction in the same manner
52 as a cash sale.

53 (2)(a) A sale of communications services that are used as
54 a component part of or integrated into a communications service
55 or prepaid calling arrangement for resale, including, but not
56 limited to, carrier-access charges, interconnection charges paid
57 by providers of mobile communication services or other
58 communication services, charges paid by cable service providers
59 for the transmission of video or other programming by another
60 dealer of communications services, charges for the sale of
61 unbundled network elements, and any other intercompany charges
62 for the use of facilities for providing communications services
63 for resale, must be made in compliance with the rules of the
64 department. Any person who makes a sale for resale which is not
65 in compliance with these rules is liable for any tax, penalty,
66 and interest due for failing to comply, to be calculated
67 pursuant to s. 202.28(2)(a).

68 (b)1. Any dealer who makes a sale for resale shall
69 document the exempt nature of the transaction, as established by
70 rules adopted by the department, by retaining a copy of the
71 purchaser's initial or annual resale certificate issued pursuant
72 to s. 202.17(6). In lieu of maintaining a copy of the
73 certificate, a dealer may document, prior to the time of sale,
74 an authorization number, provided telephonically or
75 electronically by the department, or by such other means
76 established by rule of the department. The dealer may rely on an
77 initial or annual resale certificate issued pursuant to s.
78 202.17(6), valid at the time of receipt from the purchaser,

79 without seeking additional annual resale certificates from such
 80 purchaser, if the dealer makes recurring sales to the purchaser
 81 in the normal course of business on a continual basis. For
 82 purposes of this paragraph, the term "recurring sales to a
 83 purchaser in the normal course of business" means a sale in
 84 which the dealer extends credit to the purchaser and records the
 85 debt as an account receivable, or in which the dealer sells to a
 86 purchaser who has an established cash account, similar to an
 87 open credit account. For purposes of this paragraph, purchases
 88 are made from a selling dealer on a continual basis if the
 89 selling dealer makes, in the normal course of business, sales to
 90 the purchaser no less frequently than once in every 12-month
 91 period.

92 2. A dealer may, through the informal protest process
 93 provided for in s. 213.21 and the rules of the department,
 94 provide the department with evidence of the exempt status of a
 95 sale. Exemption certificates executed by entities that were
 96 exempt at the time of sale, resale certificates provided by
 97 purchasers who were active dealers at the time of sale, and
 98 verification by the department of a purchaser's active dealer
 99 status at the time of sale in lieu of a resale certificate shall
 100 be accepted by the department when submitted during the protest
 101 period but may not be accepted in any proceeding under chapter
 102 120 or any circuit court action instituted under chapter 72.

103 Section 2. Effective January 1, 2006, the Department of
 104 Revenue shall establish:

105 (1) A toll-free number for the verification of valid
 106 registration numbers and resale certificates under s.

107 | 202.16(2)(b), Florida Statutes. The system must be adequate to
 108 | guarantee a low busy rate, must respond to keypad inquiries, and
 109 | must provide data that is updated daily.

110 | (2) A system for receiving information from dealers
 111 | regarding certificate numbers under s. 202.16(2)(b), Florida
 112 | Statutes, of dealers who are seeking to make purchases for
 113 | resale. The department shall provide such dealers, free of
 114 | charge, with verification of those numbers that are canceled or
 115 | invalid.

116 | Section 3. Paragraph (a) of subsection (3) and subsection
 117 | (9) of section 202.19, Florida Statutes, are amended to read:

118 | 202.19 Authorization to impose local communications
 119 | services tax.--

120 | (3)(a) The tax authorized under this section includes and
 121 | is in lieu of any fee or other consideration, including, but not
 122 | limited to, application fees, transfer fees, renewal fees, or
 123 | claims for related costs, to which the municipality or county is
 124 | otherwise entitled for granting permission to dealers of
 125 | communications services, including, but not limited to,
 126 | providers of cable television services, as authorized in 47
 127 | U.S.C. s. 542, to use or occupy its roads or rights-of-way for
 128 | the placement, construction, and maintenance of poles, wires,
 129 | and other fixtures used in the provision of communications
 130 | services.

131 | (9) The revenues raised by any tax imposed under
 132 | subsection (1) or s. 202.20(1), or distributed to a local
 133 | government pursuant to s. 202.18, may be used by a municipality
 134 | or county for any public purpose, including, but not limited to,

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135 | pledging such revenues for the repayment of current or future
 136 | bonded indebtedness. Revenues raised by a tax imposed under
 137 | subsection (5) shall be used for the same purposes as the
 138 | underlying discretionary sales surtax imposed by the county or
 139 | school board under s. 212.055.

140 | Section 4. Paragraph (a) of subsection (2) of section
 141 | 202.20, Florida Statutes, is amended to read:

142 | 202.20 Local communications services tax conversion
 143 | rates.--

144 | (2)(a)1. With respect to any local taxing jurisdiction,
 145 | if, for the periods ending December 31, 2001; March 31, 2002;
 146 | June 30, 2002; or September 30, 2002, the revenues received by
 147 | that local government from the local communications services tax
 148 | imposed under subsection (1) are less than the revenues received
 149 | from the replaced revenue sources for the corresponding 2000-
 150 | 2001 period; plus reasonably anticipated growth in such revenues
 151 | over the preceding 1-year period, based on the average growth of
 152 | such revenues over the immediately preceding 5-year period; plus
 153 | an amount representing the revenues from the replaced revenue
 154 | sources for the 1-month period that the local taxing
 155 | jurisdiction was required to forego, the governing authority may
 156 | adjust the rate of the local communications services tax upward
 157 | to the extent necessary to generate the entire shortfall in
 158 | revenues within 1 year after the rate adjustment and by an
 159 | amount necessary to generate the expected amount of revenue on
 160 | an ongoing basis.

161 | 2. If complete data are not available at the time of
 162 | determining whether the revenues received by a local government

163 | from the local communications services tax imposed under
 164 | subsection (1) are less than the revenues received from the
 165 | replaced revenue sources for the corresponding 2000-2001 period,
 166 | as set forth in subparagraph 1., the local government shall use
 167 | the best data available for the corresponding 2000-2001 period
 168 | in making such determination.

169 | 3. The adjustment permitted under subparagraph 1. may be
 170 | made by emergency ordinance or resolution and may be made
 171 | notwithstanding the maximum rate established under s. 202.19(2)
 172 | and notwithstanding any schedules or timeframes or any other
 173 | limitations contained in this chapter. The authority of a local
 174 | government to make such adjustment may be exercised only if the
 175 | department or a dealer reallocates revenue away from the local
 176 | government. The emergency ordinance or resolution shall specify
 177 | an effective date for the adjusted rate, which shall be no less
 178 | than 60 days after the date of adoption of the ordinance or
 179 | resolution and shall be effective with respect to taxable
 180 | services included on bills that are dated on the first day of a
 181 | month subsequent to the expiration of the 60-day period. At the
 182 | end of 1 year following the effective date of such adjusted
 183 | rate, the local governing authority shall, as soon as is
 184 | consistent with s. 202.21, reduce the rate by that portion of
 185 | the emergency rate which was necessary to recoup the amount of
 186 | revenues not received prior to the implementation of the
 187 | emergency rate.

188 | 4. If, for the period October 1, 2001, through September
 189 | 30, 2002, the revenues received by a local government from the
 190 | local communications services tax conversion rate established

191 | under subsection (1), adjusted upward for the difference in
 192 | rates between paragraphs (1)(a) and (b) or any other rate
 193 | adjustments or base changes, are above the threshold of 10
 194 | percent more than the revenues received from the replaced
 195 | revenue sources for the corresponding 2000-2001 period plus
 196 | reasonably anticipated growth in such revenues over the
 197 | preceding 1-year period, based on the average growth of such
 198 | revenues over the immediately preceding 5-year period, the
 199 | governing authority must adjust the rate of the local
 200 | communications services tax to the extent necessary to reduce
 201 | revenues to the threshold by emergency ordinance or resolution
 202 | within the timeframes established in subparagraph 3. The
 203 | foregoing rate adjustment requirement shall not apply to a local
 204 | government that adopts a local communications services tax rate
 205 | by resolution or ordinance. If complete data are not available
 206 | at the time of determining whether the revenues exceed the
 207 | threshold, the local government shall use the best data
 208 | available for the corresponding 2000-2001 period in making such
 209 | determination. This subparagraph shall not be construed as
 210 | establishing a right of action for any person to enforce this
 211 | subparagraph or challenge a local government's implementation of
 212 | this subparagraph.

213 | Section 5. Effective July 1, 2007, subsection (2) of
 214 | section 202.20, Florida Statutes, as amended by this act, is
 215 | amended to read:

216 | 202.20 Local communications services tax conversion
 217 | rates.--

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218 ~~(2)(a)1. With respect to any local taxing jurisdiction,~~
219 ~~if, for the periods ending December 31, 2001; March 31, 2002;~~
220 ~~June 30, 2002; or September 30, 2002, the revenues received by~~
221 ~~that local government from the local communications services tax~~
222 ~~imposed under subsection (1) are less than the revenues received~~
223 ~~from the replaced revenue sources for the corresponding 2000-~~
224 ~~2001 period; plus reasonably anticipated growth in such revenues~~
225 ~~over the preceding 1-year period, based on the average growth of~~
226 ~~such revenues over the immediately preceding 5-year period; plus~~
227 ~~an amount representing the revenues from the replaced revenue~~
228 ~~sources for the 1-month period that the local taxing~~
229 ~~jurisdiction was required to forego, the governing authority may~~
230 ~~adjust the rate of the local communications services tax upward~~
231 ~~to the extent necessary to generate the entire shortfall in~~
232 ~~revenues within 1 year after the rate adjustment and by an~~
233 ~~amount necessary to generate the expected amount of revenue on~~
234 ~~an ongoing basis.~~

235 ~~2. If complete data are not available at the time of~~
236 ~~determining whether the revenues received by a local government~~
237 ~~from the local communications services tax imposed under~~
238 ~~subsection (1) are less than the revenues received from the~~
239 ~~replaced revenue sources for the corresponding 2000-2001 period,~~
240 ~~as set forth in subparagraph 1., the local government shall use~~
241 ~~the best data available for the corresponding 2000-2001 period~~
242 ~~in making such determination.~~

243 ~~3. The adjustment permitted under subparagraph 1. may be~~
244 ~~made by emergency ordinance or resolution and may be made~~
245 ~~notwithstanding the maximum rate established under s. 202.19(2)~~

246 ~~and notwithstanding any schedules or timeframes or any other~~
 247 ~~limitations contained in this chapter. The authority of a local~~
 248 ~~government to make such adjustment may be exercised only if the~~
 249 ~~department or a dealer reallocates revenue away from the local~~
 250 ~~government. The emergency ordinance or resolution shall specify~~
 251 ~~an effective date for the adjusted rate, which shall be no less~~
 252 ~~than 60 days after the date of adoption of the ordinance or~~
 253 ~~resolution and shall be effective with respect to taxable~~
 254 ~~services included on bills that are dated on the first day of a~~
 255 ~~month subsequent to the expiration of the 60-day period. At the~~
 256 ~~end of 1 year following the effective date of such adjusted~~
 257 ~~rate, the local governing authority shall, as soon as is~~
 258 ~~consistent with s. 202.21, reduce the rate by that portion of~~
 259 ~~the emergency rate which was necessary to recoup the amount of~~
 260 ~~revenues not received prior to the implementation of the~~
 261 ~~emergency rate.~~

262 ~~4. If, for the period October 1, 2001, through September~~
 263 ~~30, 2002, the revenues received by a local government from the~~
 264 ~~local communications services tax conversion rate established~~
 265 ~~under subsection (1), adjusted upward for the difference in~~
 266 ~~rates between paragraphs (1)(a) and (b) or any other rate~~
 267 ~~adjustments or base changes, are above the threshold of 10~~
 268 ~~percent more than the revenues received from the replaced~~
 269 ~~revenue sources for the corresponding 2000-2001 period plus~~
 270 ~~reasonably anticipated growth in such revenues over the~~
 271 ~~preceding 1-year period, based on the average growth of such~~
 272 ~~revenues over the immediately preceding 5-year period, the~~
 273 ~~governing authority must adjust the rate of the local~~

274 ~~communications services tax to the extent necessary to reduce~~
 275 ~~revenues to the threshold by emergency ordinance or resolution~~
 276 ~~within the timeframes established in subparagraph 3. The~~
 277 ~~foregoing rate adjustment requirement shall not apply to a local~~
 278 ~~government that adopts a local communications services tax rate~~
 279 ~~by resolution or ordinance. If complete data are not available~~
 280 ~~at the time of determining whether the revenues exceed the~~
 281 ~~threshold, the local government shall use the best data~~
 282 ~~available for the corresponding 2000-2001 period in making such~~
 283 ~~determination. This subparagraph shall not be construed as~~
 284 ~~establishing a right of action for any person to enforce this~~
 285 ~~subparagraph or challenge a local government's implementation of~~
 286 ~~this subparagraph.~~

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

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

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

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

298 ~~3.e.~~ The public service tax on prepaid calling
 299 arrangements.

300 ~~4.d.~~ Franchise fees on dealers of communications services
 301 which use the public roads or rights-of-way, up to the limit set

302 | forth in s. 337.401. For purposes of calculating rates under
 303 | this section, it is the legislative intent that charter counties
 304 | be treated as having had the same authority as municipalities to
 305 | impose franchise fees on recurring local telecommunication
 306 | service revenues prior to July 1, 2000. However, the Legislature
 307 | recognizes that the authority of charter counties to impose such
 308 | fees is in dispute, and the treatment provided in this section
 309 | is not an expression of legislative intent that charter counties
 310 | actually do or do not possess such authority.

311 | 5.e. Actual permit fees relating to placing or maintaining
 312 | facilities in or on public roads or rights-of-way, collected
 313 | from providers of long-distance, cable, and mobile
 314 | communications services for the fiscal year ending September 30,
 315 | 1999; however, if a municipality or charter county elects the
 316 | option to charge permit fees pursuant to s. 337.401(3)(c)1.a.,
 317 | such fees shall not be included as a replaced revenue source.

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

321 | Section 6. Effective July 1, 2007, section 202.21, Florida
 322 | Statutes, is amended to read:

323 | 202.21 Effective dates; procedures for informing dealers
 324 | of communications services of tax levies and rate changes.--Any
 325 | adoption, repeal, or change in the rate of a local
 326 | communications services tax imposed under s. 202.19 is effective
 327 | with respect to taxable services included on bills that are
 328 | dated on or after the January 1 subsequent to such adoption,
 329 | repeal, or change. A municipality or county adopting, repealing,

330 or changing the rate of such tax must notify the department of
 331 the adoption, repeal, or change by September 1 immediately
 332 preceding such January 1. Notification must be furnished on a
 333 form prescribed by the department and must specify the rate of
 334 tax; the effective date of the adoption, repeal, or change
 335 thereof; and the name, mailing address, and telephone number of
 336 a person designated by the municipality or county to respond to
 337 inquiries concerning the tax. The department shall provide
 338 notice of such adoption, repeal, or change to all affected
 339 dealers of communications services at least 90 days before the
 340 effective date of the tax. ~~Any local government that adjusts the~~
 341 ~~rate of its local communications services tax by emergency~~
 342 ~~ordinance or resolution pursuant to s. 202.20(2) shall notify~~
 343 ~~the department of the new tax rate immediately upon its~~
 344 ~~adoption. The department shall provide written notice of the~~
 345 ~~adoption of the new rate to all affected dealers within 30 days~~
 346 ~~after receiving such notice.~~ In any notice to providers or
 347 publication of local tax rates for purposes of this chapter, the
 348 department shall express the rate for a municipality or charter
 349 county as the sum of the tax rates levied within such
 350 jurisdiction pursuant to s. 202.19(2)(a) and (5), and shall
 351 express the rate for any other county as the sum of the tax
 352 rates levied pursuant to s. 202.19(2)(b) and (5). The department
 353 is not liable for any loss of or decrease in revenue by reason
 354 of any error, omission, or untimely action that results in the
 355 nonpayment of a tax imposed under s. 202.19.

356 Section 7. The amendments to s. 202.19(3)(a), Florida
 357 Statutes, contained in this act are remedial in nature and

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358 | intended to clarify the law in effect on October 1, 2001, but do
359 | not grant any right to a refund of any fees or charges paid
360 | prior to July 1, 2005, unless the payment was made under written
361 | protest as to the authority of any local government to impose
362 | such fees or costs on a dealer.

363 | Section 8. The amendments to provisions of law made by
364 | this act do not apply to emergency rates adopted pursuant to s.
365 | 202.20, Florida Statutes, prior to the effective dates of this
366 | act.

367 | Section 9. Except as otherwise provided herein, this act
368 | shall take effect upon becoming a law.