

1 A bill to be entitled

2 An act relating to the communications services tax;
3 amending s. 202.16, F.S.; requiring dealers to document
4 exempt sales for resale; providing requirements; providing
5 a definition; providing construction; providing for dealer
6 provision of evidence of the exempt status of certain
7 sales through an informal protest process; requiring the
8 Department of Revenue to accept certain evidence during
9 the protest period; providing limitations; providing for
10 retroactive application; requiring the department to
11 establish a toll-free number for certain registration and
12 resale certificate verification purposes; providing
13 requirements; requiring the department to establish a
14 system for receiving certain information relating to
15 certificate numbers of dealers making purchases for
16 resale; providing requirements; amending s. 202.19, F.S.;
17 clarifying a characterization of the local communications
18 services tax as including certain fees and being in lieu
19 of such fees; authorizing municipalities or counties to
20 use certain revenues distributed to a local government for
21 certain purposes; amending s. 202.20, F.S.; limiting local
22 government authority to make certain rate adjustments in
23 the tax under certain circumstances; deleting obsolete
24 provisions relating to making certain adjustments in the
25 tax for certain periods; amending s. 202.21, F.S.;
26 deleting provisions relating to local government
27 adjustments of the tax by emergency ordinance or
28 resolution to conform; specifying that certain amendments

Page 1 of 13

29 are remedial in nature and clarify certain provisions of
30 law but do not grant rights to refund of certain fees or
31 charges under certain circumstances; providing for
32 nonapplication to certain emergency rates; providing
33 effective dates.

34

35 Be It Enacted by the Legislature of the State of Florida:

36

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

40 202.16 Payment.--The taxes imposed or administered under
41 this chapter and chapter 203 shall be collected from all dealers
42 of taxable communications services on the sale at retail in this
43 state of communications services taxable under this chapter and
44 chapter 203. The full amount of the taxes on a credit sale,
45 installment sale, or sale made on any kind of deferred payment
46 plan is due at the moment of the transaction in the same manner
47 as a cash sale.

48 (2) (a) A sale of communications services that are used as
49 a component part of or integrated into a communications service
50 or prepaid calling arrangement for resale, including, but not
51 limited to, carrier-access charges, interconnection charges paid
52 by providers of mobile communication services or other
53 communication services, charges paid by cable service providers
54 for the transmission of video or other programming by another
55 dealer of communications services, charges for the sale of
56 unbundled network elements, and any other intercompany charges

57 | for the use of facilities for providing communications services
58 | for resale, must be made in compliance with the rules of the
59 | department. Any person who makes a sale for resale which is not
60 | in compliance with these rules is liable for any tax, penalty,
61 | and interest due for failing to comply, to be calculated
62 | pursuant to s. 202.28(2)(a).

63 | (b)1. Any dealer who makes a sale for resale shall
64 | document the exempt nature of the transaction, as established by
65 | rules adopted by the department, by retaining a copy of the
66 | purchaser's initial or annual resale certificate issued pursuant
67 | to s. 202.17(6). In lieu of maintaining a copy of the
68 | certificate, a dealer may document, prior to the time of sale,
69 | an authorization number, provided telephonically or
70 | electronically by the department, or by such other means
71 | established by rule of the department. The dealer may rely on an
72 | initial or annual resale certificate issued pursuant to s.
73 | 202.17(6), valid at the time of receipt from the purchaser,
74 | without seeking additional annual resale certificates from such
75 | purchaser, if the dealer makes recurring sales to the purchaser
76 | in the normal course of business on a continual basis. For
77 | purposes of this paragraph, the term "recurring sales to a
78 | purchaser in the normal course of business" means a sale in
79 | which the dealer extends credit to the purchaser and records the
80 | debt as an account receivable, or in which the dealer sells to a
81 | purchaser who has an established cash account, similar to an
82 | open credit account. For purposes of this paragraph, purchases
83 | are made from a selling dealer on a continual basis if the
84 | selling dealer makes, in the normal course of business, sales to

85 the purchaser no less frequently than once in every 12-month
86 period.

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

98 Section 2. Effective January 1, 2006, the Department of
99 Revenue shall establish:

100 (1) A toll-free number for the verification of valid
101 registration numbers and resale certificates under s.
102 202.16(2)(b), Florida Statutes. The system must be adequate to
103 guarantee a low busy rate, must respond to keypad inquiries, and
104 must provide data that is updated daily.

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

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

113 | 202.19 Authorization to impose local communications
114 | services tax.--

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

126 | (9) The revenues raised by any tax imposed under
127 | subsection (1) or s. 202.20(1), or distributed to a local
128 | government pursuant to s. 202.18, may be used by a municipality
129 | or county for any public purpose, including, but not limited to,
130 | pledging such revenues for the repayment of current or future
131 | bonded indebtedness. Revenues raised by a tax imposed under
132 | subsection (5) shall be used for the same purposes as the
133 | underlying discretionary sales surtax imposed by the county or
134 | school board under s. 212.055.

135 | Section 4. Paragraph (a) of subsection (2) of section
136 | 202.20, Florida Statutes, is amended to read:

137 | 202.20 Local communications services tax conversion
138 | rates.--

139 | (2) (a) 1. With respect to any local taxing jurisdiction,
140 | if, for the periods ending December 31, 2001; March 31, 2002;

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

156 2. If complete data are not available at the time of
157 determining whether the revenues received by a local government
158 from the local communications services tax imposed under
159 subsection (1) are less than the revenues received from the
160 replaced revenue sources for the corresponding 2000-2001 period,
161 as set forth in subparagraph 1., the local government shall use
162 the best data available for the corresponding 2000-2001 period
163 in making such determination.

164 3. The adjustment permitted under subparagraph 1. may be
165 made by emergency ordinance or resolution and may be made
166 notwithstanding the maximum rate established under s. 202.19(2)
167 and notwithstanding any schedules or timeframes or any other
168 limitations contained in this chapter. The authority of a local

169 government to make such adjustment may be exercised only if the
170 department or a dealer reallocates revenue away from the local
171 government. The emergency ordinance or resolution shall specify
172 an effective date for the adjusted rate, which shall be no less
173 than 60 days after the date of adoption of the ordinance or
174 resolution and shall be effective with respect to taxable
175 services included on bills that are dated on the first day of a
176 month subsequent to the expiration of the 60-day period. At the
177 end of 1 year following the effective date of such adjusted
178 rate, the local governing authority shall, as soon as is
179 consistent with s. 202.21, reduce the rate by that portion of
180 the emergency rate which was necessary to recoup the amount of
181 revenues not received prior to the implementation of the
182 emergency rate.

183 4. If, for the period October 1, 2001, through September
184 30, 2002, the revenues received by a local government from the
185 local communications services tax conversion rate established
186 under subsection (1), adjusted upward for the difference in
187 rates between paragraphs (1)(a) and (b) or any other rate
188 adjustments or base changes, are above the threshold of 10
189 percent more than the revenues received from the replaced
190 revenue sources for the corresponding 2000-2001 period plus
191 reasonably anticipated growth in such revenues over the
192 preceding 1-year period, based on the average growth of such
193 revenues over the immediately preceding 5-year period, the
194 governing authority must adjust the rate of the local
195 communications services tax to the extent necessary to reduce
196 revenues to the threshold by emergency ordinance or resolution

197 within the timeframes established in subparagraph 3. The
198 foregoing rate adjustment requirement shall not apply to a local
199 government that adopts a local communications services tax rate
200 by resolution or ordinance. If complete data are not available
201 at the time of determining whether the revenues exceed the
202 threshold, the local government shall use the best data
203 available for the corresponding 2000-2001 period in making such
204 determination. This subparagraph shall not be construed as
205 establishing a right of action for any person to enforce this
206 subparagraph or challenge a local government's implementation of
207 this subparagraph.

208 Section 5. Effective July 1, 2007, subsection (2) of
209 section 202.20, Florida Statutes, as amended by this act, is
210 amended to read:

211 202.20 Local communications services tax conversion
212 rates.--

213 ~~(2)(a)1. With respect to any local taxing jurisdiction,~~
214 ~~if, for the periods ending December 31, 2001; March 31, 2002;~~
215 ~~June 30, 2002; or September 30, 2002, the revenues received by~~
216 ~~that local government from the local communications services tax~~
217 ~~imposed under subsection (1) are less than the revenues received~~
218 ~~from the replaced revenue sources for the corresponding 2000-~~
219 ~~2001 period; plus reasonably anticipated growth in such revenues~~
220 ~~over the preceding 1 year period, based on the average growth of~~
221 ~~such revenues over the immediately preceding 5 year period; plus~~
222 ~~an amount representing the revenues from the replaced revenue~~
223 ~~sources for the 1 month period that the local taxing~~
224 ~~jurisdiction was required to forego, the governing authority may~~

225 ~~adjust the rate of the local communications services tax upward~~
 226 ~~to the extent necessary to generate the entire shortfall in~~
 227 ~~revenues within 1 year after the rate adjustment and by an~~
 228 ~~amount necessary to generate the expected amount of revenue on~~
 229 ~~an ongoing basis.~~

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

238 ~~3. The adjustment permitted under subparagraph 1. may be~~
 239 ~~made by emergency ordinance or resolution and may be made~~
 240 ~~notwithstanding the maximum rate established under s. 202.19(2)~~
 241 ~~and notwithstanding any schedules or timeframes or any other~~
 242 ~~limitations contained in this chapter. The authority of a local~~
 243 ~~government to make such adjustment may be exercised only if the~~
 244 ~~department or a dealer reallocates revenue away from the local~~
 245 ~~government. The emergency ordinance or resolution shall specify~~
 246 ~~an effective date for the adjusted rate, which shall be no less~~
 247 ~~than 60 days after the date of adoption of the ordinance or~~
 248 ~~resolution and shall be effective with respect to taxable~~
 249 ~~services included on bills that are dated on the first day of a~~
 250 ~~month subsequent to the expiration of the 60 day period. At the~~
 251 ~~end of 1 year following the effective date of such adjusted~~
 252 ~~rate, the local governing authority shall, as soon as is~~

253 ~~consistent with s. 202.21, reduce the rate by that portion of~~
254 ~~the emergency rate which was necessary to recoup the amount of~~
255 ~~revenues not received prior to the implementation of the~~
256 ~~emergency rate.~~

257 ~~4. If, for the period October 1, 2001, through September~~
258 ~~30, 2002, the revenues received by a local government from the~~
259 ~~local communications services tax conversion rate established~~
260 ~~under subsection (1), adjusted upward for the difference in~~
261 ~~rates between paragraphs (1)(a) and (b) or any other rate~~
262 ~~adjustments or base changes, are above the threshold of 10~~
263 ~~percent more than the revenues received from the replaced~~
264 ~~revenue sources for the corresponding 2000-2001 period plus~~
265 ~~reasonably anticipated growth in such revenues over the~~
266 ~~preceding 1-year period, based on the average growth of such~~
267 ~~revenues over the immediately preceding 5-year period, the~~
268 ~~governing authority must adjust the rate of the local~~
269 ~~communications services tax to the extent necessary to reduce~~
270 ~~revenues to the threshold by emergency ordinance or resolution~~
271 ~~within the timeframes established in subparagraph 3. The~~
272 ~~foregoing rate adjustment requirement shall not apply to a local~~
273 ~~government that adopts a local communications services tax rate~~
274 ~~by resolution or ordinance. If complete data are not available~~
275 ~~at the time of determining whether the revenues exceed the~~
276 ~~threshold, the local government shall use the best data~~
277 ~~available for the corresponding 2000-2001 period in making such~~
278 ~~determination. This subparagraph shall not be construed as~~
279 ~~establishing a right of action for any person to enforce this~~

280 ~~subparagraph or challenge a local government's implementation of~~
 281 ~~this subparagraph.~~

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

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

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

291 2.b. Franchise fees on cable service providers as
 292 authorized by 47 U.S.C. s. 542.

293 3.e. The public service tax on prepaid calling
 294 arrangements.

295 4.d. Franchise fees on dealers of communications services
 296 which use the public roads or rights-of-way, up to the limit set
 297 forth in s. 337.401. For purposes of calculating rates under
 298 this section, it is the legislative intent that charter counties
 299 be treated as having had the same authority as municipalities to
 300 impose franchise fees on recurring local telecommunication
 301 service revenues prior to July 1, 2000. However, the Legislature
 302 recognizes that the authority of charter counties to impose such
 303 fees is in dispute, and the treatment provided in this section
 304 is not an expression of legislative intent that charter counties
 305 actually do or do not possess such authority.

306 5.e. Actual permit fees relating to placing or maintaining
 307 facilities in or on public roads or rights-of-way, collected

308 from providers of long-distance, cable, and mobile
309 communications services for the fiscal year ending September 30,
310 1999; however, if a municipality or charter county elects the
311 option to charge permit fees pursuant to s. 337.401(3)(c)1.a.,
312 such fees shall not be included as a replaced revenue source.

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

316 Section 6. Effective July 1, 2007, section 202.21, Florida
317 Statutes, is amended to read:

318 202.21 Effective dates; procedures for informing dealers
319 of communications services of tax levies and rate changes.--Any
320 adoption, repeal, or change in the rate of a local
321 communications services tax imposed under s. 202.19 is effective
322 with respect to taxable services included on bills that are
323 dated on or after the January 1 subsequent to such adoption,
324 repeal, or change. A municipality or county adopting, repealing,
325 or changing the rate of such tax must notify the department of
326 the adoption, repeal, or change by September 1 immediately
327 preceding such January 1. Notification must be furnished on a
328 form prescribed by the department and must specify the rate of
329 tax; the effective date of the adoption, repeal, or change
330 thereof; and the name, mailing address, and telephone number of
331 a person designated by the municipality or county to respond to
332 inquiries concerning the tax. The department shall provide
333 notice of such adoption, repeal, or change to all affected
334 dealers of communications services at least 90 days before the
335 effective date of the tax. ~~Any local government that adjusts the~~

336 ~~rate of its local communications services tax by emergency~~
337 ~~ordinance or resolution pursuant to s. 202.20(2) shall notify~~
338 ~~the department of the new tax rate immediately upon its~~
339 ~~adoption. The department shall provide written notice of the~~
340 ~~adoption of the new rate to all affected dealers within 30 days~~
341 ~~after receiving such notice. In any notice to providers or~~
342 ~~publication of local tax rates for purposes of this chapter, the~~
343 ~~department shall express the rate for a municipality or charter~~
344 ~~county as the sum of the tax rates levied within such~~
345 ~~jurisdiction pursuant to s. 202.19(2)(a) and (5), and shall~~
346 ~~express the rate for any other county as the sum of the tax~~
347 ~~rates levied pursuant to s. 202.19(2)(b) and (5). The department~~
348 ~~is not liable for any loss of or decrease in revenue by reason~~
349 ~~of any error, omission, or untimely action that results in the~~
350 ~~nonpayment of a tax imposed under s. 202.19.~~

351 Section 7. The amendments to s. 202.19(3)(a), Florida
352 Statutes, contained in this act are remedial in nature and
353 intended to clarify the law in effect on October 1, 2001, but do
354 not grant any right to a refund of any fees or charges paid
355 prior to July 1, 2005, unless the payment was made under written
356 protest as to the authority of any local government to impose
357 such fees or costs on a dealer.

358 Section 8. The amendments to provisions of law made by
359 this act do not apply to emergency rates adopted pursuant to s.
360 202.20, Florida Statutes, prior to the effective dates of this
361 act.

362 Section 9. Except as otherwise provided herein, this act
363 shall take effect upon becoming a law.