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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/30/2012	.	
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The Committee on Communications, Energy, and Public Utilities (Bogdanoff) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Subsection (1) of section 202.105, Florida Statutes, is amended to read:

202.105 Legislative findings and intent.—

(1) It is declared to be a specific legislative finding that the creation of this chapter fulfills important state interests by reforming the tax laws to provide a fair, efficient, and uniform method for taxing communications services sold in this state. This chapter is essential to the continued



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13 economic vitality of this increasingly important industry  
14 because it restructures state and local taxes and fees to  
15 account for the impact of federal legislation, industry  
16 deregulation, and the multitude of convergence of service  
17 offerings that is now taking place among providers offering  
18 functionally equivalent communications services in today's  
19 marketplace. This chapter promotes the increased competition  
20 that accompanies deregulation by embracing a competitively  
21 neutral tax policy that will free consumers to choose a provider  
22 based on tax-neutral considerations. This chapter further spurs  
23 new competition by simplifying an extremely complicated state  
24 and local tax and fee system. Simplification will lower the cost  
25 of collecting taxes and fees, increase service availability, and  
26 place downward pressure on price. Newfound administrative  
27 efficiency is demonstrated by a reduction in the number of  
28 returns that a provider must file each month. By restructuring  
29 separate taxes and fees into a revenue-neutral communications  
30 services tax centrally administered by the department, this  
31 chapter will ensure that the growth of the industry is  
32 unimpaired by excessive governmental regulation. The tax imposed  
33 pursuant to this chapter is a replacement for taxes and fees  
34 previously imposed and is not a new tax. The taxes imposed and  
35 administered pursuant to this chapter are of general application  
36 and are imposed in a uniform, consistent, and nondiscriminatory  
37 manner.

38 Section 2. Section 202.11, Florida Statutes, is amended to  
39 read:

40 202.11 Definitions.—As used in this chapter:

41 ~~(1) "Cable service" means the transmission of video, audio,~~



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42 ~~or other programming service to purchasers, and the purchaser~~  
43 ~~interaction, if any, required for the selection or use of any~~  
44 ~~such programming service, regardless of whether the programming~~  
45 ~~is transmitted over facilities owned or operated by the cable~~  
46 ~~service provider or over facilities owned or operated by one or~~  
47 ~~more other dealers of communications services. The term includes~~  
48 ~~point-to-point and point-to-multipoint distribution services by~~  
49 ~~which programming is transmitted or broadcast by microwave or~~  
50 ~~other equipment directly to the purchaser's premises, but does~~  
51 ~~not include direct-to-home satellite service. The term includes~~  
52 ~~basic, extended, premium, pay-per-view, digital, and music~~  
53 ~~services.~~

54 (1) ~~(2)~~ "Communications services" means the transmission,  
55 conveyance, or routing of voice, data, audio, video, or any  
56 other information or signals, including video ~~cable~~ services, to  
57 a point, or between or among points, by or through any  
58 electronic, radio, satellite, cable, optical, microwave, or  
59 other medium or method now in existence or hereafter devised,  
60 regardless of the protocol used for such transmission or  
61 conveyance. The term includes such transmission, conveyance, or  
62 routing in which computer processing applications are used to  
63 act on the form, code, or protocol of the content for purposes  
64 of transmission, conveyance, or routing without regard to  
65 whether such service is referred to as voice-over-Internet-  
66 protocol services or is classified by the Federal Communications  
67 Commission as enhanced or value-added. The term does not  
68 include:

69 (a) Information services.

70 (b) Installation or maintenance of wiring or equipment on a



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71 customer's premises.

72 (c) The sale or rental of tangible personal property.

73 (d) The sale of advertising, including, but not limited to,  
74 directory advertising.

75 (e) Bad check charges.

76 (f) Late payment charges.

77 (g) Billing and collection services.

78 (h) Internet access service, electronic mail service,  
79 electronic bulletin board service, or similar online computer  
80 services.

81 (i) Digital goods.

82 (j) Digital services.

83 (2)~~(3)~~ "Dealer" means a person registered with the  
84 department as a provider of communications services in this  
85 state.

86 (3)~~(4)~~ "Department" means the Department of Revenue.

87 (4) "Digital good" means any downloaded good or product  
88 that is delivered or transferred by means other than tangible  
89 storage media, including downloaded games, software, music, or  
90 other digital content. The term does not include video service.

91 (5) "Digital service" means any service, other than video  
92 service, which is provided electronically, including remotely  
93 provided access to or use of software or another digital good,  
94 and also includes the following services, if they are provided  
95 remotely: monitoring, security, distance learning, energy  
96 management, medical diagnostic, mechanical diagnostic, and  
97 vehicle tracking services. If a digital service is bundled for  
98 sale with the transmission, conveyance, or routing of any  
99 information or signals, the bundled service is a digital service



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100 unless the tax imposed under this chapter and chapter 203 has  
101 not been paid with respect to such transmission, conveyance, or  
102 routing.

103 (6)~~(5)~~ "Direct-to-home satellite service" has the meaning  
104 ascribed in the Communications Act of 1934, 47 U.S.C. s. 303(v).

105 (7)~~(6)~~ "Information service" means the offering of a  
106 capability for generating, acquiring, storing, transforming,  
107 processing, retrieving, using, or making available information  
108 via communications services, including, but not limited to,  
109 electronic publishing, web-hosting service, and end-user 900  
110 number service. The term does not include ~~any video, audio, or~~  
111 ~~other programming service that uses point-to-multipoint~~  
112 ~~distribution by which programming is delivered, transmitted, or~~  
113 ~~broadcast by any means, including any interaction that may be~~  
114 ~~necessary for selecting and using the service, regardless of~~  
115 ~~whether the programming is delivered, transmitted, or broadcast~~  
116 ~~over facilities owned or operated by the seller or another, or~~  
117 ~~whether denominated as cable service or as basic, extended,~~  
118 ~~premium, pay-per-view, digital, music, or two-way cable service.~~

119 (8) "Internet access service" has the same meaning as  
120 ascribed to the term "Internet access" by s. 1105(5) of the  
121 Internet Tax Freedom Act, 47 U.S.C. s. 151 note, as amended by  
122 Pub. L. No. 110-108.

123 (9)~~(7)~~ "Mobile communications service" means ~~commercial~~  
124 mobile ~~radio~~ service, as defined in 47 C.F.R. s. 20.3 as in  
125 effect on June 1, 1999. The term does not include air-ground  
126 radiotelephone service as defined in 47 C.F.R. s. 22.99 as in  
127 effect on June 1, 1999.

128 (10)~~(8)~~ "Person" has the meaning ascribed in s. 212.02.



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129        ~~(11)-(9)~~ "Prepaid calling arrangement" means the separately  
130        stated retail sale ~~by advance payment~~ of communications services  
131        that must be paid for in advance; that may be used to place or  
132        receive consist exclusively of telephone calls originated; that  
133        are enabled by using an access number, authorization code, or  
134        other means that may be manually, electronically, or otherwise  
135        entered; ~~7~~ and that are sold in predetermined units or dollars of  
136        which the number declines on a predetermined basis ~~with use~~ in a  
137        known amount.

138        ~~(12)-(10)~~ "Purchaser" means the person paying for or  
139        obligated to pay for communications services.

140        ~~(13)-(11)~~ "Retail sale" means the sale of communications  
141        services for any purpose other than for resale or for use as a  
142        component part of or for integration into communications  
143        services to be resold in the ordinary course of business.  
144        However, any sale for resale must comply with s. 202.16(2) and  
145        the rules adopted thereunder.

146        ~~(14)-(12)~~ "Sale" means the provision of communications  
147        services for a consideration.

148        ~~(15)-(13)~~ "Sales price" means the total amount charged in  
149        money or other consideration by a dealer for the sale of the  
150        right or privilege of using communications services in this  
151        state, including any property or other service, not described in  
152        paragraph (a), which is services that are part of the sale and  
153        for which the charge is not separately itemized on a customer's  
154        bill or separately allocated under subparagraph (b)8. The sales  
155        price of communications services may ~~shall~~ not be reduced by any  
156        separately identified components of the charge which ~~that~~  
157        constitute expenses of the dealer, including, but not limited



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158 to, sales taxes on goods or services purchased by the dealer,  
159 property taxes, taxes measured by net income, and universal-  
160 service fund fees.

161 (a) The sales price of communications services includes  
162 ~~shall include~~, whether or not separately stated, charges for any  
163 of the following:

164 1. The connection, movement, change, or termination of  
165 communications services.

166 2. The detailed billing of communications services.

167 3. The sale of directory listings in connection with a  
168 communications service.

169 4. Central office and custom calling features.

170 5. Voice mail and other messaging service.

171 6. Directory assistance.

172 7. The service of sending or receiving a document commonly  
173 referred to as a facsimile or "fax," except when performed  
174 during the course of providing professional or advertising  
175 services.

176 (b) The sales price of communications services does not  
177 include charges for any of the following:

178 1. An ~~Any~~ excise tax, sales tax, or similar tax levied by  
179 the United States or any state or local government on the  
180 purchase, sale, use, or consumption of any communications  
181 service, including, but not limited to, a ~~any~~ tax imposed under  
182 this chapter or chapter 203 which is permitted or required to be  
183 added to the sales price of such service, if the tax is stated  
184 separately.

185 2. A ~~Any~~ fee or assessment levied by the United States or  
186 any state or local government, including, but not limited to,



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187 regulatory fees and emergency telephone surcharges, which must  
188 ~~is required to~~ be added to the price of the such service if the  
189 fee or assessment is separately stated.

190 3. Communications services paid for by inserting coins into  
191 coin-operated communications devices available to the public.

192 4. The sale or recharge of a prepaid calling arrangement.

193 5. The provision of air-to-ground communications services,  
194 defined as a radio service provided to a purchaser ~~purchasers~~  
195 while on board an aircraft.

196 6. A dealer's internal use of communications services in  
197 connection with its business of providing communications  
198 services.

199 7. Charges for property or other services that are not part  
200 of the sale of communications services, if such charges are  
201 stated separately from the charges for communications services.

202 8. ~~To the extent required by federal law,~~ Charges for goods  
203 and services that are exempt from tax under this chapter,  
204 including Internet access services but excluding any item  
205 described in paragraph (a), that ~~which~~ are not separately  
206 itemized on a customer's bill, but that ~~which~~ can be reasonably  
207 identified from the selling dealer's books and records kept in  
208 the regular course of business. The dealer may support the  
209 allocation of charges with books and records kept in the regular  
210 course of business covering the dealer's entire service area,  
211 including territories outside this state.

212 ~~(16)-(14)~~ "Service address" means:

213 (a) Except as otherwise provided in this section:

214 1. The location of the communications equipment from which  
215 communications services originate or at which communications





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216 services are received by the customer;

217 2. In the case of a communications service paid through a  
218 credit or payment mechanism that does not relate to a service  
219 address, such as a bank, travel, debit, or credit card, and in  
220 the case of third-number and calling-card calls, the term  
221 "service address" means the address of the central office, as  
222 determined by the area code and the first three digits of the  
223 seven-digit originating telephone number; or

224 3. If the location of the equipment described in  
225 subparagraph 1. is not known and subparagraph 2. is  
226 inapplicable, the term "service address" means the location of  
227 the customer's primary use of the communications service. For  
228 purposes of this subparagraph, the location of the customer's  
229 primary use of a communications service is the residential  
230 street address or the business street address of the customer.

231 (b) In the case of video ~~cable~~ services and direct-to-home  
232 satellite services, the location where the customer receives the  
233 services in this state.

234 (c) In the case of mobile communications services, the  
235 customer's place of primary use.

236 ~~(17)-(15)~~ "Unbundled network element" means a network  
237 element, as defined in 47 U.S.C. s. 153(29), to which access is  
238 provided on an unbundled basis pursuant to 47 U.S.C. s.  
239 251(c)(3).

240 ~~(18)-(16)~~ "Private communications service" means a  
241 communications service that entitles the subscriber or user to  
242 exclusive or priority use of a communications channel or group  
243 of channels between or among channel termination points,  
244 regardless of the manner in which such channel or channels are



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245 connected, and includes switching capacity, extension lines,  
246 stations, and any other associated services that ~~which~~ are  
247 provided in connection with the use of such channel or channels.

248 ~~(19)-(17)~~ (a) "Customer" means:

249 1. The person or entity that contracts with the home  
250 service provider for mobile communications services; or

251 2. If the end user of mobile communications services is not  
252 the contracting party, the end user of the mobile communications  
253 service. This subparagraph ~~only~~ applies only for the purpose of  
254 determining the place of primary use.

255 (b) The term ~~"Customer"~~ does not include:

256 1. A reseller of mobile communications services; or

257 2. A serving carrier under an agreement to serve the  
258 customer outside the home service provider's licensed service  
259 area.

260 ~~(20)-(18)~~ "Enhanced zip code" means a United States postal  
261 zip code of 9 or more digits.

262 ~~(21)-(19)~~ "Home service provider" means the facilities-based  
263 carrier or reseller with which the customer contracts for the  
264 provision of mobile communications services.

265 ~~(22)-(20)~~ "Licensed service area" means the geographic area  
266 in which the home service provider is authorized by law or  
267 contract to provide mobile communications service to the  
268 customer.

269 ~~(23)-(21)~~ "Place of primary use" means the street address  
270 representative of where the customer's use of the mobile  
271 communications service primarily occurs, which must be:

272 (a) The residential street address or the primary business  
273 street address of the customer; and



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274 (b) Within the licensed service area of the home service  
275 provider.

276 ~~(24)~~(22)(a) "Reseller" means a provider who purchases  
277 communications services from another communications service  
278 provider and then resells, uses as a component part of, or  
279 integrates the purchased services into a mobile communications  
280 service.

281 (b) The term "Reseller" does not include a serving carrier  
282 with which a home service provider arranges for the services to  
283 its customers outside the home service provider's licensed  
284 service area.

285 ~~(25)~~(23) "Serving carrier" means a facilities-based carrier  
286 providing mobile communications service to a customer outside a  
287 home service provider's or reseller's licensed service area.

288 ~~(26)~~(24) "Video service" means the transmission of video,  
289 audio, or other programming service to a purchaser, and the  
290 purchaser interaction, if any, required for the selection or use  
291 of a programming service, regardless of whether the programming  
292 is transmitted over facilities owned or operated by the video  
293 service provider or over facilities owned or operated by another  
294 dealer of communications services. The term includes point-to-  
295 point and point-to-multipoint distribution services through  
296 which programming is transmitted or broadcast by microwave or  
297 other equipment directly to the purchaser's premises, but does  
298 not include direct-to-home satellite service. The term includes  
299 basic, extended, premium, pay-per-view, digital video, two-way  
300 cable, and music services ~~has the same meaning as that provided~~  
301 ~~in s. 610.103.~~

302 Section 3. Subsection (1) of section 202.125, Florida



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303 Statutes, is amended to read:

304       202.125 Sales of communications services; specified  
305 exemptions.—

306       (1) The separately stated sales price of communications  
307 services sold to residential households is exempt from the tax  
308 imposed by s. 202.12 and s. 203.01(1)(b)3. This exemption does  
309 not apply to any residence that constitutes all or part of a  
310 transient public lodging establishment as defined in chapter  
311 509, any mobile communications service, any video ~~cable~~ service,  
312 or any direct-to-home satellite service.

313       Section 4. Paragraph (a) of subsection (2) of section  
314 202.16, Florida Statutes, is amended to read:

315       202.16 Payment.—The taxes imposed or administered under  
316 this chapter and chapter 203 shall be collected from all dealers  
317 of taxable communications services on the sale at retail in this  
318 state of communications services taxable under this chapter and  
319 chapter 203. The full amount of the taxes on a credit sale,  
320 installment sale, or sale made on any kind of deferred payment  
321 plan is due at the moment of the transaction in the same manner  
322 as a cash sale.

323       (2)(a) A sale of communications services that are used as a  
324 component part of or integrated into a communications service or  
325 prepaid calling arrangement for resale, including, but not  
326 limited to, carrier-access charges, interconnection charges paid  
327 by providers of mobile communication services or other  
328 communication services, charges paid by a video ~~cable~~ service  
329 provider providers for the purchase of video programming or the  
330 transmission of video or other programming by another dealer of  
331 communications services, charges for the sale of unbundled



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332 network elements, and any other intercompany charges for the use  
333 of facilities for providing communications services for resale,  
334 must be made in compliance with the rules of the department. A  
335 ~~Any~~ person who makes a sale for resale which is not in  
336 compliance with these rules is liable for any tax, penalty, and  
337 interest due for failing to comply, to be calculated pursuant to  
338 s. 202.28(2) (a).

339 Section 5. Paragraph (c) of subsection (3) of section  
340 202.18, Florida Statutes, is amended to read:

341 202.18 Allocation and disposition of tax proceeds.—The  
342 proceeds of the communications services taxes remitted under  
343 this chapter shall be treated as follows:

344 (3)

345 (c)1. Except as otherwise provided in this paragraph,  
346 proceeds of the taxes levied pursuant to s. 202.19, less amounts  
347 deducted for costs of administration in accordance with  
348 paragraph (b), shall be distributed monthly to the appropriate  
349 jurisdictions. The proceeds of taxes imposed pursuant to s.  
350 202.19(5) shall be distributed in the same manner as  
351 discretionary surtaxes are distributed, in accordance with ss.  
352 212.054 and 212.055.

353 2. The department shall make any adjustments to the  
354 distributions pursuant to this section which are necessary to  
355 reflect the proper amounts due to individual jurisdictions or  
356 trust funds. In the event that the department adjusts amounts  
357 due to reflect a correction in the situsing of a customer, such  
358 adjustment shall be limited to the amount of tax actually  
359 collected from such customer by the dealer of communication  
360 services.



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361           3.a. ~~Notwithstanding the time period specified in s.~~  
362 ~~202.22(5)~~, Adjustments in distributions which are necessary to  
363 correct misallocations between jurisdictions shall be governed  
364 by this subparagraph. If the department determines that  
365 misallocations between jurisdictions occurred, it shall provide  
366 written notice of such determination to all affected  
367 jurisdictions. The notice shall include the amount of the  
368 misallocations, the basis upon which the determination was made,  
369 data supporting the determination, and the identity of each  
370 affected jurisdiction. The notice shall also inform all affected  
371 jurisdictions of their authority to enter into a written  
372 agreement establishing a method of adjustment as described in  
373 sub-subparagraph c.

374           b. An adjustment affecting a distribution to a jurisdiction  
375 which is less than 90 percent of the average monthly  
376 distribution to that jurisdiction for the 6 months immediately  
377 preceding the department's determination, as reported by all  
378 communications services dealers, shall be made in the month  
379 immediately following the department's determination that  
380 misallocations occurred.

381           c. If an adjustment affecting a distribution to a  
382 jurisdiction equals or exceeds 90 percent of the average monthly  
383 distribution to that jurisdiction for the 6 months immediately  
384 preceding the department's determination, as reported by all  
385 communications services dealers, the affected jurisdictions may  
386 enter into a written agreement establishing a method of  
387 adjustment. If the agreement establishing a method of adjustment  
388 provides for payments of local communications services tax  
389 monthly distributions, the amount of any such payment agreed to



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390 may not exceed the local communications services tax monthly  
391 distributions available to the jurisdiction that was allocated  
392 amounts in excess of those to which it was entitled. If affected  
393 jurisdictions execute a written agreement specifying a method of  
394 adjustment, a copy of the written agreement shall be provided to  
395 the department no later than the first day of the month  
396 following 90 days after the date the department transmits notice  
397 of the misallocation. If the department does not receive a copy  
398 of the written agreement within the specified time period, an  
399 adjustment affecting a distribution to a jurisdiction made  
400 pursuant to this sub-subparagraph shall be prorated over a time  
401 period that equals the time period over which the misallocations  
402 occurred.

403 Section 6. Subsections (1) and (3) of section 202.195,  
404 Florida Statutes, are amended to read:

405 202.195 Proprietary confidential business information;  
406 public records exemption.—

407 (1) Proprietary confidential business information obtained  
408 from a telecommunications company or from a franchised or  
409 certificated video service provider ~~cable company~~ for the  
410 purposes of ~~imposing fees for occupying the public rights-of-~~  
411 ~~way,~~ assessing the local communications services tax pursuant to  
412 s. 202.19, or occupying or regulating the public rights-of-way,  
413 held by a local governmental entity, is confidential and exempt  
414 from s. 119.07(1) and s. 24(a), Art. I of the State  
415 Constitution. Such proprietary confidential business information  
416 held by a local governmental entity may be used only for the  
417 purposes of ~~imposing such fees,~~ assessing such tax, or  
418 regulating such rights-of-way, and may not be used for any other



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419 purposes, including, but not limited to, commercial or  
420 competitive purposes.

421 (3) ~~Nothing in~~ This exemption does not expand ~~expands~~ the  
422 information or documentation that a local governmental entity  
423 may properly request under applicable law pursuant to ~~the~~  
424 ~~imposition of fees for~~ occupying the rights-of-way, the local  
425 communication services tax, or the regulation of its public  
426 rights-of-way.

427 Section 7. Paragraph (b) of subsection (2) of section  
428 202.20, Florida Statutes, is amended to read:

429 202.20 Local communications services tax conversion rates.-

430 (2)

431 (b) Except as otherwise provided in this subsection, the  
432 term "replaced revenue sources," as used in this section, means  
433 the following taxes, charges, fees, or other impositions to the  
434 extent that the respective local taxing jurisdictions were  
435 authorized to impose them prior to July 1, 2000.

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

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

440 b. Franchise fees on video ~~cable~~ service providers as  
441 authorized by 47 U.S.C. s. 542.

442 c. The public service tax on prepaid calling arrangements.

443 d. Franchise fees on dealers of communications services  
444 which use the public roads or rights-of-way, up to the limit set  
445 forth in s. 337.401. For purposes of calculating rates under  
446 this section, it is the legislative intent that charter counties  
447 be treated as having had the same authority as municipalities to





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448 impose franchise fees on recurring local telecommunication  
449 service revenues before ~~prior to~~ July 1, 2000. However, the  
450 Legislature recognizes that the authority of charter counties to  
451 impose such fees is in dispute, and the treatment provided in  
452 this section is not an expression of legislative intent that  
453 charter counties actually do or do not possess such authority.

454 e. Actual permit fees relating to placing or maintaining  
455 facilities in or on public roads or rights-of-way, collected  
456 from providers of long-distance, cable, and mobile  
457 communications services for the fiscal year ending September 30,  
458 1999; however, if a municipality or charter county elects the  
459 option to charge permit fees pursuant to s. 337.401(3)(c)1.a.,  
460 such fees may ~~shall~~ not be included as a replaced revenue  
461 source.

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

465 Section 8. Subsections (5) and (6) of section 202.22,  
466 Florida Statutes, are amended to read:

467 202.22 Determination of local tax situs.—

468 (5) If a dealer of communications services does not use one  
469 or more of the methods specified in subsection (1) for  
470 determining the local taxing jurisdiction in which one or more  
471 service addresses are a service address is located and:

472 (a) The dealer's failure to use one or more of such methods  
473 results in a net aggregate underpayment of all taxes levied  
474 pursuant to s. 202.19 with respect to one or more tax periods  
475 that are being examined by the department; and

476 (b) The department has determined the misallocations



477 between jurisdictions for all taxes levied pursuant to s. 202.19  
478 and collected by the dealer with respect to any tax period being  
479 examined by the department,

480  
481 the dealer of communications services may be held liable to the  
482 department for the net aggregate underpayment of any tax, and  
483 for including interest and penalties attributable to the net  
484 aggregate underpayment of tax, which is due as a result of  
485 assigning one or more the service addresses address to an  
486 incorrect local taxing jurisdiction. However, the dealer of  
487 communications services is not liable for any tax, interest, or  
488 penalty under this subsection unless the department has  
489 determined the net aggregate underpayment of tax for any tax  
490 period that is being examined, taking into account all  
491 underpayments and overpayments for such period or periods to the  
492 extent that such amount was collected and remitted by the dealer  
493 of communications services with respect to a tax imposed by  
494 another local taxing jurisdiction. Upon determining that an  
495 amount was collected and remitted by a dealer of communications  
496 services with respect to a tax imposed by another local taxing  
497 jurisdiction, the department shall adjust the respective amounts  
498 of the proceeds paid to each such taxing jurisdiction under s.  
499 202.18 in the month immediately following such determination.

500 (6) (a) Pursuant to rules adopted by the department, each  
501 dealer of communications services must notify the department of  
502 the methods it intends to employ for determining the local  
503 taxing jurisdiction in which service addresses are located.

504 (b) Notwithstanding s. 202.28, if a dealer of  
505 communications services:



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506           1. Employs a method of assigning service addresses other  
507 than as set forth in paragraph (1)(a), paragraph (1)(b), or  
508 paragraph (1)(c), the deduction allowed to the dealer of  
509 communications services as compensation under s. 202.28 shall be  
510 0.25 percent of that portion of the tax due and accounted for  
511 and remitted to the department which is attributable to such  
512 method of assigning service addresses other than as set forth in  
513 paragraph (1)(a), paragraph (1)(b), or paragraph (1)(c).

514           2. Employs a method of assigning service addresses as set  
515 forth in paragraph (1)(a), paragraph (1)(b), or paragraph  
516 (1)(c), the department may not deny the deduction allowed to the  
517 dealer of communications services as compensation allowed under  
518 s. 202.28 because the dealer assigned one or more service  
519 addresses to an incorrect local taxing jurisdiction.

520           Section 9. Subsection (3) is added to section 202.231,  
521 Florida Statutes, to read:

522           202.231 Provision of information to local taxing  
523 jurisdictions.—

524           (3) The gross taxable sales and net tax information  
525 contained in the monthly reports required by this section shall  
526 be aggregated on a jurisdiction-by-jurisdiction basis, and the  
527 aggregate jurisdiction-by-jurisdiction information shall be made  
528 available by the department to the public through the  
529 department's website for each fiscal year this chapter has been  
530 in effect.

531           Section 10. Paragraphs (a) and (c) of subsection (2) of  
532 section 202.24, Florida Statutes, are amended to read:

533           202.24 Limitations on local taxes and fees imposed on  
534 dealers of communications services.—



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535 (2) (a) Except as provided in paragraph (c), each public  
536 body is prohibited from:

537 1. Levying on or collecting from dealers or purchasers of  
538 communications services any tax, charge, fee, or other  
539 imposition on or with respect to the provision or purchase of  
540 communications services.

541 2. Requiring any dealer of communications services to enter  
542 into or extend the term of a franchise or other agreement that  
543 requires the payment of a tax, charge, fee, or other imposition.

544 3. Adopting or enforcing any provision of any ordinance or  
545 agreement to the extent that such provision obligates a dealer  
546 of communications services to charge, collect, or pay to the  
547 public body a tax, charge, fee, or other imposition.

548  
549 Municipalities and counties may not negotiate those terms and  
550 conditions related to franchise fees or the definition of gross  
551 revenues or other definitions or methodologies related to the  
552 payment or assessment of franchise fees on providers of ~~cable or~~  
553 video services.

554 (c) This subsection does not apply to:

555 1. Local communications services taxes levied under this  
556 chapter.

557 2. Ad valorem taxes levied pursuant to chapter 200.

558 3. Business taxes levied under chapter 205.

559 4. "911" service charges levied under chapter 365.

560 5. Amounts charged for the rental or other use of property  
561 owned by a public body which is not in the public rights-of-way  
562 to a dealer of communications services for any purpose,  
563 including, but not limited to, the placement or attachment of



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564 equipment used in the provision of communications services.

565 6. Permit fees of general applicability which are not  
566 related to placing or maintaining facilities in or on public  
567 roads or rights-of-way.

568 7. Permit fees related to placing or maintaining facilities  
569 in or on public roads or rights-of-way pursuant to s. 337.401.

570 8. Any in-kind requirements, institutional networks, or  
571 contributions for, or in support of, the use or construction of  
572 public, educational, or governmental access facilities allowed  
573 under federal law and imposed on providers of ~~cable or~~ video  
574 service pursuant to any existing ordinance or an existing  
575 franchise agreement granted by each municipality or county,  
576 under which ordinance or franchise agreement service is provided  
577 before ~~prior to~~ July 1, 2007, or as permitted under chapter 610.  
578 ~~Nothing in~~ This subparagraph does not ~~shall~~ prohibit ~~the ability~~  
579 ~~of~~ providers of ~~cable or~~ video service from recovering the ~~to~~  
580 ~~recover such~~ expenses as allowed under federal law.

581 9. Special assessments and impact fees.

582 10. Pole attachment fees that are charged by a local  
583 government for attachments to utility poles owned by the local  
584 government.

585 11. Utility service fees or other similar user fees for  
586 utility services.

587 12. Any other generally applicable tax, fee, charge, or  
588 imposition authorized by general law on July 1, 2000, which is  
589 not specifically prohibited by this subsection or included as a  
590 replaced revenue source in s. 202.20.

591 Section 11. Paragraph (j) of subsection (3) of section  
592 202.26, Florida Statutes, is amended to read:



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593 202.26 Department powers.—

594 (3) To administer the tax imposed by this chapter, the  
595 department may adopt rules relating to:

596 (j) The types of books and records kept in the regular  
597 course of business which must be available during an audit of a  
598 dealer's books and records when the dealer has made an  
599 allocation or attribution pursuant to the definition of sales  
600 prices in s. 202.11(15)(b)8. ~~202.11(13)(b)8.~~ and examples of  
601 methods for determining the reasonableness thereof. Books and  
602 records kept in the regular course of business include, but are  
603 not limited to, general ledgers, price lists, cost records,  
604 customer billings, billing system reports, tariffs, and other  
605 regulatory filings and rules of regulatory authorities. The ~~Such~~  
606 records may be required to be made available to the department  
607 in an electronic format when so kept by the dealer. The dealer  
608 may support the allocation of charges with books and records  
609 kept in the regular course of business covering the dealer's  
610 entire service area, including territories outside this state.  
611 During an audit, the department may reasonably require  
612 production of any additional books and records found necessary  
613 to assist in its determination.

614 Section 12. Paragraph (a) of subsection (1) of section  
615 203.01, Florida Statutes, is amended to read:

616 203.01 Tax on gross receipts for utility and communications  
617 services.—

618 (1)(a)1. A tax is imposed on gross receipts from utility  
619 services that are delivered to a retail consumer in this state.  
620 The ~~Such~~ tax shall be levied as provided in paragraphs (b)-(j).

621 2. A tax is levied on communications services as defined in



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622 s. 202.11(1) ~~202.11(2)~~. The ~~Such~~ tax shall be applied to the  
623 same services and transactions as are subject to taxation under  
624 chapter 202, and to communications services that are subject to  
625 the exemption provided in s. 202.125(1). The ~~Such~~ tax shall be  
626 applied to the sales price of communications services when sold  
627 at retail, as the ~~such~~ terms are defined in s. 202.11, shall be  
628 due and payable at the same time as the taxes imposed pursuant  
629 to chapter 202, and shall be administered and collected pursuant  
630 to the provisions of chapter 202.

631 Section 13. Paragraph (e) of subsection (1) of section  
632 212.05, Florida Statutes, is amended to read:

633 212.05 Sales, storage, use tax.—It is hereby declared to be  
634 the legislative intent that every person is exercising a taxable  
635 privilege who engages in the business of selling tangible  
636 personal property at retail in this state, including the  
637 business of making mail order sales, or who rents or furnishes  
638 any of the things or services taxable under this chapter, or who  
639 stores for use or consumption in this state any item or article  
640 of tangible personal property as defined herein and who leases  
641 or rents such property within the state.

642 (1) For the exercise of such privilege, a tax is levied on  
643 each taxable transaction or incident, which tax is due and  
644 payable as follows:

645 (e)1. At the rate of 6 percent on charges for:

646 a. Prepaid calling arrangements. The tax on charges for  
647 prepaid calling arrangements shall be collected at the time of  
648 sale and remitted by the selling dealer.

649 (I) "Prepaid calling arrangement" means the separately  
650 stated retail sale ~~by advance payment~~ of communications services



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651 that must be paid for in advance; that may be used to place or  
652 receive consist exclusively of telephone calls; that are enabled  
653 originated by using an access number, authorization code, or  
654 other means that may be manually, electronically, or otherwise  
655 entered; and that are sold in predetermined units or dollars  
656 whose number declines on a predetermined basis ~~with use~~ in a  
657 known amount.

658 (II) If the sale or recharge of the prepaid calling  
659 arrangement does not take place at the dealer's place of  
660 business, it shall be deemed to take place at the customer's  
661 shipping address or, if no item is shipped, at the customer's  
662 address or the location associated with the customer's mobile  
663 telephone number.

664 (III) The sale or recharge of a prepaid calling arrangement  
665 shall be treated as a sale of tangible personal property for  
666 purposes of this chapter, whether or not a tangible item  
667 evidencing such arrangement is furnished to the purchaser, and  
668 such sale within this state subjects the selling dealer to the  
669 jurisdiction of this state for purposes of this subsection.

670 b. The installation of telecommunication and telegraphic  
671 equipment.

672 c. Electrical power or energy, except that the tax rate for  
673 charges for electrical power or energy is 7 percent.

674 2. The provisions of s. 212.17(3), regarding credit for tax  
675 paid on charges subsequently found to be worthless, shall be  
676 equally applicable to any tax paid under the provisions of this  
677 section on charges for prepaid calling arrangements,  
678 telecommunication or telegraph services, or electric power  
679 subsequently found to be uncollectible. The word "charges" in





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680 this paragraph does not include any excise or similar tax levied  
681 by the Federal Government, any political subdivision of the  
682 state, or any municipality upon the purchase, sale, or recharge  
683 of prepaid calling arrangements or upon the purchase or sale of  
684 telecommunication, television system program, or telegraph  
685 service or electric power, which tax is collected by the seller  
686 from the purchaser.

687 Section 14. Paragraph (a) of subsection (1) of section  
688 610.118, Florida Statutes, is amended to read:

689 610.118 Impairment; court-ordered operations.—

690 (1) If an incumbent cable or video service provider is  
691 required to operate under its existing franchise and is legally  
692 prevented by a lawfully issued order of a court of competent  
693 jurisdiction from exercising its right to terminate its existing  
694 franchise pursuant to the terms of s. 610.105, any  
695 certificateholder providing cable service or video service in  
696 whole or in part within the service area that is the subject of  
697 the incumbent cable or video service provider's franchise shall,  
698 for as long as the court order remains in effect, comply with  
699 the following franchise terms and conditions as applicable to  
700 the incumbent cable or video service provider in the service  
701 area:

702 (a) The certificateholder shall pay to the municipality or  
703 county:

704 1. Any prospective lump-sum or recurring per-subscriber  
705 funding obligations to support public, educational, and  
706 governmental access channels or other prospective franchise-  
707 required monetary grants related to public, educational, or  
708 governmental access facilities equipment and capital costs.



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709 Prospective lump-sum payments shall be made on an equivalent  
710 per-subscriber basis calculated as follows: the amount of the  
711 prospective funding obligations divided by the number of  
712 subscribers being served by the incumbent cable service provider  
713 at the time of payment, divided by the number of months  
714 remaining in the incumbent cable or video service provider's  
715 franchise equals the monthly per subscriber amount to be paid by  
716 the certificateholder until the expiration or termination of the  
717 incumbent cable or video service provider's franchise; and

718       2. If the incumbent cable or video service provider is  
719 required to make payments for the funding of an institutional  
720 network, the certificateholder shall pay an amount equal to the  
721 incumbent's funding obligations but not to exceed 1 percent of  
722 the sales price, as defined in s. 202.11(15) ~~202.11(13)~~, for the  
723 taxable monthly retail sales of cable or video programming  
724 services the certificateholder received from subscribers in the  
725 affected municipality or county. All definitions and exemptions  
726 under chapter 202 apply in the determination of taxable monthly  
727 retail sales of cable or video programming services.

728       Section 15. Section 624.105, Florida Statutes, is amended  
729 to read:

730       624.105 Waiver of customer liability.—Any regulated company  
731 as defined in s. 350.111, any electric utility as defined in s.  
732 366.02(2), any utility as defined in s. 367.021(12) or s.  
733 367.022(2) and (7), and any provider of communications services  
734 as defined in s. 202.11(1) ~~202.11(2)~~ may charge for and include  
735 an optional waiver of liability provision in their customer  
736 contracts under which the entity agrees to waive all or a  
737 portion of the customer's liability for service from the entity



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738 for a defined period in the event of the customer's call to  
739 active military service, death, disability, involuntary  
740 unemployment, qualification for family leave, or similar  
741 qualifying event or condition. Such provisions may not be  
742 effective in the customer's contract with the entity unless  
743 affirmatively elected by the customer. No such provision shall  
744 constitute insurance so long as the provision is a contract  
745 between the entity and its customer.

746 Section 16. The following changes made in this act are  
747 intended to be remedial in nature and apply retroactively, but  
748 do not provide a basis for an assessment of any tax not paid or  
749 create a right to a refund or credit of any tax paid before the  
750 general effective date of this act:

751 (1) The changes made in section 2 of this act to  
752 subsections renumbered as subsections (9), (11), and (15) of s.  
753 202.11, Florida Statutes;

754 (2) The changes made in section 8 of this act to s. 202.22,  
755 Florida Statutes; and

756 (3) The changes made in section 13 of this act to paragraph  
757 (e) of subsection (1) of s. 212.05, Florida Statutes.

758 Section 17. This act shall take effect July 1, 2012.

759  
760 ===== T I T L E A M E N D M E N T =====

761 And the title is amended as follows:

762 Delete everything before the enacting clause  
763 and insert:

764 A bill to be entitled  
765 An act relating to communications services taxes;  
766 amending s. 202.105, F.S.; revising legislative



767 intent; amending s. 202.11, F.S.; modifying  
768 definitions; removing the definition of the term  
769 "cable service"; adding definitions for the terms  
770 "digital good," "digital service," "Internet access  
771 service," and "video service"; amending ss. 202.125,  
772 202.16, 202.20, and 202.24, F.S.; conforming  
773 provisions to changes in terminology; amending s.  
774 202.18, F.S.; removing a cross-reference to conform;  
775 amending s. 202.195, F.S.; clarifying provisions  
776 exempting from the public records law certain  
777 proprietary confidential business information held by  
778 a local governmental entity for the purpose of  
779 assessing the local communications services tax;  
780 amending s. 202.22, F.S.; revising provisions relating  
781 to a communications services dealer's liability for  
782 tax underpayments that result from the incorrect  
783 assignment of service addresses to local taxing  
784 jurisdictions and providing requirements and  
785 conditions with respect thereto; prohibiting the  
786 Department of Revenue from denying a dealer of  
787 communications services a deduction of a specified  
788 amount as a collection allowance under certain  
789 circumstances; amending s. 202.231, F.S.; requiring  
790 the Department of Revenue to aggregate monthly and  
791 make available to the public on a jurisdiction-by-  
792 jurisdiction basis certain sales and net tax  
793 information; amending s. 202.26, F.S.; conforming a  
794 cross-reference; amending s. 212.05, F.S.; revising  
795 the definition of the term "prepaid calling



796 arrangement"; amending ss. 203.01, 610.118, and  
797 624.105, F.S.; conforming cross-references; providing  
798 for certain retroactive effect; providing an effective  
799 date.