

By the Committee on Communications, Energy, and Public Utilities; and Senator Bogdanoff

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1 A bill to be entitled
2 An act relating to communications services taxes;
3 amending s. 202.105, F.S.; revising legislative
4 intent; amending s. 202.11, F.S.; modifying
5 definitions; removing the definition of the term
6 "cable service"; adding definitions for the terms
7 "digital good," "digital service," "Internet access
8 service," and "video service"; amending ss. 202.125,
9 202.16, 202.20, and 202.24, F.S.; conforming
10 provisions to changes in terminology; amending s.
11 202.18, F.S.; removing a cross-reference to conform;
12 amending s. 202.195, F.S.; clarifying provisions
13 exempting from the public records law certain
14 proprietary confidential business information held by
15 a local governmental entity for the purpose of
16 assessing the local communications services tax;
17 amending s. 202.22, F.S.; revising provisions relating
18 to a communications services dealer's liability for
19 tax underpayments that result from the incorrect
20 assignment of service addresses to local taxing
21 jurisdictions and providing requirements and
22 conditions with respect thereto; prohibiting the
23 Department of Revenue from denying a dealer of
24 communications services a deduction of a specified
25 amount as a collection allowance under certain
26 circumstances; amending s. 202.231, F.S.; requiring
27 the Department of Revenue to aggregate monthly and
28 make available to the public on a jurisdiction-by-
29 jurisdiction basis certain sales and net tax

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30 information; amending s. 202.26, F.S.; conforming a
31 cross-reference; amending s. 212.05, F.S.; revising
32 the definition of the term "prepaid calling
33 arrangement"; amending ss. 203.01, 610.118, and
34 624.105, F.S.; conforming cross-references; providing
35 for certain retroactive effect; providing an effective
36 date.

37
38 Be It Enacted by the Legislature of the State of Florida:

39
40 Section 1. Subsection (1) of section 202.105, Florida
41 Statutes, is amended to read:

42 202.105 Legislative findings and intent.—

43 (1) It is declared to be a specific legislative finding
44 that the creation of this chapter fulfills important state
45 interests by reforming the tax laws to provide a fair,
46 efficient, and uniform method for taxing communications services
47 sold in this state. This chapter is essential to the continued
48 economic vitality of this increasingly important industry
49 because it restructures state and local taxes and fees to
50 account for the impact of federal legislation, industry
51 deregulation, and the multitude of convergence of service
52 offerings that is now taking place among providers offering
53 functionally equivalent communications services in today's
54 marketplace. This chapter promotes the increased competition
55 that accompanies deregulation by embracing a competitively
56 neutral tax policy that will free consumers to choose a provider
57 based on tax-neutral considerations. This chapter further spurs
58 new competition by simplifying an extremely complicated state

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59 and local tax and fee system. Simplification will lower the cost
60 of collecting taxes and fees, increase service availability, and
61 place downward pressure on price. Newfound administrative
62 efficiency is demonstrated by a reduction in the number of
63 returns that a provider must file each month. By restructuring
64 separate taxes and fees into a revenue-neutral communications
65 services tax centrally administered by the department, this
66 chapter will ensure that the growth of the industry is
67 unimpaired by excessive governmental regulation. The tax imposed
68 pursuant to this chapter is a replacement for taxes and fees
69 previously imposed and is not a new tax. The taxes imposed and
70 administered pursuant to this chapter are of general application
71 and are imposed in a uniform, consistent, and nondiscriminatory
72 manner.

73 Section 2. Section 202.11, Florida Statutes, is amended to
74 read:

75 202.11 Definitions.—As used in this chapter:

76 ~~(1) "Cable service" means the transmission of video, audio,~~
77 ~~or other programming service to purchasers, and the purchaser~~
78 ~~interaction, if any, required for the selection or use of any~~
79 ~~such programming service, regardless of whether the programming~~
80 ~~is transmitted over facilities owned or operated by the cable~~
81 ~~service provider or over facilities owned or operated by one or~~
82 ~~more other dealers of communications services. The term includes~~
83 ~~point-to-point and point-to-multipoint distribution services by~~
84 ~~which programming is transmitted or broadcast by microwave or~~
85 ~~other equipment directly to the purchaser's premises, but does~~
86 ~~not include direct-to-home satellite service. The term includes~~
87 ~~basic, extended, premium, pay per view, digital, and music~~

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88 ~~services.~~

89 (1)~~(2)~~ "Communications services" means the transmission,
90 conveyance, or routing of voice, data, audio, video, or any
91 other information or signals, including video ~~cable~~ services, to
92 a point, or between or among points, by or through any
93 electronic, radio, satellite, cable, optical, microwave, or
94 other medium or method now in existence or hereafter devised,
95 regardless of the protocol used for such transmission or
96 conveyance. The term includes such transmission, conveyance, or
97 routing in which computer processing applications are used to
98 act on the form, code, or protocol of the content for purposes
99 of transmission, conveyance, or routing without regard to
100 whether such service is referred to as voice-over-Internet-
101 protocol services or is classified by the Federal Communications
102 Commission as enhanced or value-added. The term does not
103 include:

104 (a) Information services.

105 (b) Installation or maintenance of wiring or equipment on a
106 customer's premises.

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

108 (d) The sale of advertising, including, but not limited to,
109 directory advertising.

110 (e) Bad check charges.

111 (f) Late payment charges.

112 (g) Billing and collection services.

113 (h) Internet access service, electronic mail service,
114 electronic bulletin board service, or similar online computer
115 services.

116 (i) Digital goods.

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117 (j) Digital services.

118 (2)-(3) "Dealer" means a person registered with the
119 department as a provider of communications services in this
120 state.

121 (3)-(4) "Department" means the Department of Revenue.

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

126 (5) "Digital service" means any service, other than video
127 service, which is provided electronically, including remotely
128 provided access to or use of software or another digital good,
129 and also includes the following services, if they are provided
130 remotely: monitoring, security, distance learning, energy
131 management, medical diagnostic, mechanical diagnostic, and
132 vehicle tracking services. If a digital service is bundled for
133 sale with the transmission, conveyance, or routing of any
134 information or signals, the bundled service is a digital service
135 unless the tax imposed under this chapter and chapter 203 has
136 not been paid with respect to such transmission, conveyance, or
137 routing.

138 (6)-(5) "Direct-to-home satellite service" has the meaning
139 ascribed in the Communications Act of 1934, 47 U.S.C. s. 303(v).

140 (7)-(6) "Information service" means the offering of a
141 capability for generating, acquiring, storing, transforming,
142 processing, retrieving, using, or making available information
143 via communications services, including, but not limited to,
144 electronic publishing, web-hosting service, and end-user 900
145 number service. The term does not include ~~any video, audio, or~~

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146 ~~other programming service that uses point-to-multipoint~~
147 ~~distribution by which programming is delivered, transmitted, or~~
148 ~~broadcast by any means, including any interaction that may be~~
149 ~~necessary for selecting and using the service, regardless of~~
150 ~~whether the programming is delivered, transmitted, or broadcast~~
151 ~~over facilities owned or operated by the seller or another, or~~
152 ~~whether denominated as cable service or as basic, extended,~~
153 ~~premium, pay-per-view, digital, music, or two-way cable service.~~

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

158 (9)~~(7)~~ "Mobile communications service" means ~~commercial~~
159 ~~mobile radio~~ service, as defined in 47 C.F.R. s. 20.3 as in
160 effect on June 1, 1999. The term does not include air-ground
161 radiotelephone service as defined in 47 C.F.R. s. 22.99 as in
162 effect on June 1, 1999.

163 (10)~~(8)~~ "Person" has the meaning ascribed in s. 212.02.

164 (11)~~(9)~~ "Prepaid calling arrangement" means the separately
165 stated retail sale ~~by advance payment~~ of communications services
166 that must be paid for in advance; that may be used to place or
167 receive consist exclusively of telephone calls originated; that
168 are enabled by using an access number, authorization code, or
169 other means that may be manually, electronically, or otherwise
170 entered;~~7~~ and that are sold in predetermined units or dollars of
171 which the number declines on a predetermined basis ~~with use~~ in a
172 known amount.

173 (12)~~(10)~~ "Purchaser" means the person paying for or
174 obligated to pay for communications services.

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175 (13)~~(11)~~ "Retail sale" means the sale of communications
176 services for any purpose other than for resale or for use as a
177 component part of or for integration into communications
178 services to be resold in the ordinary course of business.
179 However, any sale for resale must comply with s. 202.16(2) and
180 the rules adopted thereunder.

181 (14)~~(12)~~ "Sale" means the provision of communications
182 services for a consideration.

183 (15)~~(13)~~ "Sales price" means the total amount charged in
184 money or other consideration by a dealer for the sale of the
185 right or privilege of using communications services in this
186 state, including any property or other service, not described in
187 paragraph (a), which is services that are part of the sale and
188 for which the charge is not separately itemized on a customer's
189 bill or separately allocated under subparagraph (b)8. The sales
190 price of communications services may ~~shall~~ not be reduced by any
191 separately identified components of the charge which ~~that~~
192 constitute expenses of the dealer, including, but not limited
193 to, sales taxes on goods or services purchased by the dealer,
194 property taxes, taxes measured by net income, and universal-
195 service fund fees.

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

- 199 1. The connection, movement, change, or termination of
200 communications services.
- 201 2. The detailed billing of communications services.
- 202 3. The sale of directory listings in connection with a
203 communications service.

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- 204 4. Central office and custom calling features.
- 205 5. Voice mail and other messaging service.
- 206 6. Directory assistance.
- 207 7. The service of sending or receiving a document commonly
- 208 referred to as a facsimile or "fax," except when performed
- 209 during the course of providing professional or advertising
- 210 services.
- 211 (b) The sales price of communications services does not
- 212 include charges for any of the following:
- 213 1. An ~~Any~~ excise tax, sales tax, or similar tax levied by
- 214 the United States or any state or local government on the
- 215 purchase, sale, use, or consumption of any communications
- 216 service, including, but not limited to, a ~~any~~ tax imposed under
- 217 this chapter or chapter 203 which is permitted or required to be
- 218 added to the sales price of such service, if the tax is stated
- 219 separately.
- 220 2. A ~~Any~~ fee or assessment levied by the United States or
- 221 any state or local government, including, but not limited to,
- 222 regulatory fees and emergency telephone surcharges, which must
- 223 ~~is required to~~ be added to the price of the ~~such~~ service if the
- 224 fee or assessment is separately stated.
- 225 3. Communications services paid for by inserting coins into
- 226 coin-operated communications devices available to the public.
- 227 4. The sale or recharge of a prepaid calling arrangement.
- 228 5. The provision of air-to-ground communications services,
- 229 defined as a radio service provided to a purchaser ~~purchasers~~
- 230 while on board an aircraft.
- 231 6. A dealer's internal use of communications services in
- 232 connection with its business of providing communications

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233 services.

234 7. Charges for property or other services that are not part
235 of the sale of communications services, if such charges are
236 stated separately from the charges for communications services.

237 8. ~~To the extent required by federal law,~~ Charges for goods
238 and services that are exempt from tax under this chapter,
239 including Internet access services but excluding any item
240 described in paragraph (a), that ~~which~~ are not separately
241 itemized on a customer's bill, but that ~~which~~ can be reasonably
242 identified from the selling dealer's books and records kept in
243 the regular course of business. The dealer may support the
244 allocation of charges with books and records kept in the regular
245 course of business covering the dealer's entire service area,
246 including territories outside this state.

247 ~~(16)-(14)~~ "Service address" means:

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

249 1. The location of the communications equipment from which
250 communications services originate or at which communications
251 services are received by the customer;

252 2. In the case of a communications service paid through a
253 credit or payment mechanism that does not relate to a service
254 address, such as a bank, travel, debit, or credit card, and in
255 the case of third-number and calling-card calls, the term
256 "service address" means the address of the central office, as
257 determined by the area code and the first three digits of the
258 seven-digit originating telephone number; or

259 3. If the location of the equipment described in
260 subparagraph 1. is not known and subparagraph 2. is
261 inapplicable, the term "service address" means the location of

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262 the customer's primary use of the communications service. For
263 purposes of this subparagraph, the location of the customer's
264 primary use of a communications service is the residential
265 street address or the business street address of the customer.

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

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

271 (17) ~~(15)~~ "Unbundled network element" means a network
272 element, as defined in 47 U.S.C. s. 153(29), to which access is
273 provided on an unbundled basis pursuant to 47 U.S.C. s.
274 251(c)(3).

275 (18) ~~(16)~~ "Private communications service" means a
276 communications service that entitles the subscriber or user to
277 exclusive or priority use of a communications channel or group
278 of channels between or among channel termination points,
279 regardless of the manner in which such channel or channels are
280 connected, and includes switching capacity, extension lines,
281 stations, and any other associated services that ~~which~~ are
282 provided in connection with the use of such channel or channels.

283 (19) ~~(17)~~ (a) "Customer" means:

- 284 1. The person or entity that contracts with the home
285 service provider for mobile communications services; or
- 286 2. If the end user of mobile communications services is not
287 the contracting party, the end user of the mobile communications
288 service. This subparagraph ~~only~~ applies only for the purpose of
289 determining the place of primary use.

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

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291 1. A reseller of mobile communications services; or
292 2. A serving carrier under an agreement to serve the
293 customer outside the home service provider's licensed service
294 area.

295 (20)~~(18)~~ "Enhanced zip code" means a United States postal
296 zip code of 9 or more digits.

297 (21)~~(19)~~ "Home service provider" means the facilities-based
298 carrier or reseller with which the customer contracts for the
299 provision of mobile communications services.

300 (22)~~(20)~~ "Licensed service area" means the geographic area
301 in which the home service provider is authorized by law or
302 contract to provide mobile communications service to the
303 customer.

304 (23)~~(21)~~ "Place of primary use" means the street address
305 representative of where the customer's use of the mobile
306 communications service primarily occurs, which must be:

307 (a) The residential street address or the primary business
308 street address of the customer; and

309 (b) Within the licensed service area of the home service
310 provider.

311 (24)~~(22)~~ (a) "Reseller" means a provider who purchases
312 communications services from another communications service
313 provider and then resells, uses as a component part of, or
314 integrates the purchased services into a mobile communications
315 service.

316 (b) The term ~~"Reseller"~~ does not include a serving carrier
317 with which a home service provider arranges for the services to
318 its customers outside the home service provider's licensed
319 service area.

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320 ~~(25)-(23)~~ "Serving carrier" means a facilities-based carrier
321 providing mobile communications service to a customer outside a
322 home service provider's or reseller's licensed service area.

323 ~~(26)-(24)~~ "Video service" means the transmission of video,
324 audio, or other programming service to a purchaser, and the
325 purchaser interaction, if any, required for the selection or use
326 of a programming service, regardless of whether the programming
327 is transmitted over facilities owned or operated by the video
328 service provider or over facilities owned or operated by another
329 dealer of communications services. The term includes point-to-
330 point and point-to-multipoint distribution services through
331 which programming is transmitted or broadcast by microwave or
332 other equipment directly to the purchaser's premises, but does
333 not include direct-to-home satellite service. The term includes
334 basic, extended, premium, pay-per-view, digital video, two-way
335 cable, and music services ~~has the same meaning as that provided~~
336 ~~in s. 610.103.~~

337 Section 3. Subsection (1) of section 202.125, Florida
338 Statutes, is amended to read:

339 202.125 Sales of communications services; specified
340 exemptions.-

341 (1) The separately stated sales price of communications
342 services sold to residential households is exempt from the tax
343 imposed by s. 202.12 and s. 203.01(1)(b)3. This exemption does
344 not apply to any residence that constitutes all or part of a
345 transient public lodging establishment as defined in chapter
346 509, any mobile communications service, any video ~~cable~~ service,
347 or any direct-to-home satellite service.

348 Section 4. Paragraph (a) of subsection (2) of section

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349 202.16, Florida Statutes, is amended to read:

350 202.16 Payment.—The taxes imposed or administered under
351 this chapter and chapter 203 shall be collected from all dealers
352 of taxable communications services on the sale at retail in this
353 state of communications services taxable under this chapter and
354 chapter 203. The full amount of the taxes on a credit sale,
355 installment sale, or sale made on any kind of deferred payment
356 plan is due at the moment of the transaction in the same manner
357 as a cash sale.

358 (2) (a) A sale of communications services that are used as a
359 component part of or integrated into a communications service or
360 prepaid calling arrangement for resale, including, but not
361 limited to, carrier-access charges, interconnection charges paid
362 by providers of mobile communication services or other
363 communication services, charges paid by a video cable service
364 provider providers for the purchase of video programming or the
365 transmission of video or other programming by another dealer of
366 communications services, charges for the sale of unbundled
367 network elements, and any other intercompany charges for the use
368 of facilities for providing communications services for resale,
369 must be made in compliance with the rules of the department. A
370 Any person who makes a sale for resale which is not in
371 compliance with these rules is liable for any tax, penalty, and
372 interest due for failing to comply, to be calculated pursuant to
373 s. 202.28(2) (a).

374 Section 5. Paragraph (c) of subsection (3) of section
375 202.18, Florida Statutes, is amended to read:

376 202.18 Allocation and disposition of tax proceeds.—The
377 proceeds of the communications services taxes remitted under

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378 this chapter shall be treated as follows:

379 (3)

380 (c)1. Except as otherwise provided in this paragraph,
381 proceeds of the taxes levied pursuant to s. 202.19, less amounts
382 deducted for costs of administration in accordance with
383 paragraph (b), shall be distributed monthly to the appropriate
384 jurisdictions. The proceeds of taxes imposed pursuant to s.
385 202.19(5) shall be distributed in the same manner as
386 discretionary surtaxes are distributed, in accordance with ss.
387 212.054 and 212.055.

388 2. The department shall make any adjustments to the
389 distributions pursuant to this section which are necessary to
390 reflect the proper amounts due to individual jurisdictions or
391 trust funds. In the event that the department adjusts amounts
392 due to reflect a correction in the situsing of a customer, such
393 adjustment shall be limited to the amount of tax actually
394 collected from such customer by the dealer of communication
395 services.

396 3.a. ~~Notwithstanding the time period specified in s.~~
397 ~~202.22(5),~~ Adjustments in distributions which are necessary to
398 correct misallocations between jurisdictions shall be governed
399 by this subparagraph. If the department determines that
400 misallocations between jurisdictions occurred, it shall provide
401 written notice of such determination to all affected
402 jurisdictions. The notice shall include the amount of the
403 misallocations, the basis upon which the determination was made,
404 data supporting the determination, and the identity of each
405 affected jurisdiction. The notice shall also inform all affected
406 jurisdictions of their authority to enter into a written

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407 agreement establishing a method of adjustment as described in
408 sub-subparagraph c.

409 b. An adjustment affecting a distribution to a jurisdiction
410 which is less than 90 percent of the average monthly
411 distribution to that jurisdiction for the 6 months immediately
412 preceding the department's determination, as reported by all
413 communications services dealers, shall be made in the month
414 immediately following the department's determination that
415 misallocations occurred.

416 c. If an adjustment affecting a distribution to a
417 jurisdiction equals or exceeds 90 percent of the average monthly
418 distribution to that jurisdiction for the 6 months immediately
419 preceding the department's determination, as reported by all
420 communications services dealers, the affected jurisdictions may
421 enter into a written agreement establishing a method of
422 adjustment. If the agreement establishing a method of adjustment
423 provides for payments of local communications services tax
424 monthly distributions, the amount of any such payment agreed to
425 may not exceed the local communications services tax monthly
426 distributions available to the jurisdiction that was allocated
427 amounts in excess of those to which it was entitled. If affected
428 jurisdictions execute a written agreement specifying a method of
429 adjustment, a copy of the written agreement shall be provided to
430 the department no later than the first day of the month
431 following 90 days after the date the department transmits notice
432 of the misallocation. If the department does not receive a copy
433 of the written agreement within the specified time period, an
434 adjustment affecting a distribution to a jurisdiction made
435 pursuant to this sub-subparagraph shall be prorated over a time

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436 period that equals the time period over which the misallocations
437 occurred.

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

440 202.195 Proprietary confidential business information;
441 public records exemption.—

442 (1) Proprietary confidential business information obtained
443 from a telecommunications company or from a franchised or
444 certificated video service provider ~~cable company~~ for the
445 purposes of ~~imposing fees for occupying the public rights-of-~~
446 ~~way,~~ assessing the local communications services tax pursuant to
447 s. 202.19, or occupying or regulating the public rights-of-way,
448 held by a local governmental entity, is confidential and exempt
449 from s. 119.07(1) and s. 24(a), Art. I of the State
450 Constitution. Such proprietary confidential business information
451 held by a local governmental entity may be used only for the
452 purposes of ~~imposing such fees,~~ assessing such tax, or
453 regulating such rights-of-way, and may not be used for any other
454 purposes, including, but not limited to, commercial or
455 competitive purposes.

456 (3) ~~Nothing in~~ This exemption does not expand ~~expands~~ the
457 information or documentation that a local governmental entity
458 may properly request under applicable law pursuant to ~~the~~
459 ~~imposition of fees for~~ occupying the rights-of-way, the local
460 communication services tax, or the regulation of its public
461 rights-of-way.

462 Section 7. Paragraph (b) of subsection (2) of section
463 202.20, Florida Statutes, is amended to read:

464 202.20 Local communications services tax conversion rates.—

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465 (2)

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

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

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

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

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

478 d. Franchise fees on dealers of communications services
479 which use the public roads or rights-of-way, up to the limit set
480 forth in s. 337.401. For purposes of calculating rates under
481 this section, it is the legislative intent that charter counties
482 be treated as having had the same authority as municipalities to
483 impose franchise fees on recurring local telecommunication
484 service revenues before ~~prior to~~ July 1, 2000. However, the
485 Legislature recognizes that the authority of charter counties to
486 impose such fees is in dispute, and the treatment provided in
487 this section is not an expression of legislative intent that
488 charter counties actually do or do not possess such authority.

489 e. Actual permit fees relating to placing or maintaining
490 facilities in or on public roads or rights-of-way, collected
491 from providers of long-distance, cable, and mobile
492 communications services for the fiscal year ending September 30,
493 1999; however, if a municipality or charter county elects the

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494 option to charge permit fees pursuant to s. 337.401(3)(c)1.a.,
495 such fees may ~~shall~~ not be included as a replaced revenue
496 source.

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

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

502 202.22 Determination of local tax situs.—

503 (5) If a dealer of communications services does not use one
504 or more of the methods specified in subsection (1) for
505 determining the local taxing jurisdiction in which one or more
506 service addresses are ~~a service address is~~ located and:

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

511 (b) The department has determined the misallocations
512 between jurisdictions for all taxes levied pursuant to s. 202.19
513 and collected by the dealer with respect to any tax period being
514 examined by the department,

515
516 the dealer of communications services may be held liable to the
517 department for the net aggregate underpayment of any tax, and
518 for including interest and penalties attributable to the net
519 aggregate underpayment of tax, which is due as a result of
520 assigning one or more ~~the~~ service addresses ~~address~~ to an
521 incorrect local taxing jurisdiction. However, the dealer of
522 communications services is not liable for any tax, interest, or

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523 penalty under this subsection unless the department has
524 determined the net aggregate underpayment of tax for any tax
525 period that is being examined, taking into account all
526 underpayments and overpayments for such period or periods ~~to the~~
527 ~~extent that such amount was collected and remitted by the dealer~~
528 ~~of communications services with respect to a tax imposed by~~
529 ~~another local taxing jurisdiction. Upon determining that an~~
530 ~~amount was collected and remitted by a dealer of communications~~
531 ~~services with respect to a tax imposed by another local taxing~~
532 ~~jurisdiction, the department shall adjust the respective amounts~~
533 ~~of the proceeds paid to each such taxing jurisdiction under s.~~
534 ~~202.18 in the month immediately following such determination.~~

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

539 (b) Notwithstanding s. 202.28, if a dealer of
540 communications services:

541 1. Employs a method of assigning service addresses other
542 than as set forth in paragraph (1) (a), paragraph (1) (b), or
543 paragraph (1) (c), the deduction allowed to the dealer of
544 communications services as compensation under s. 202.28 shall be
545 0.25 percent of that portion of the tax due and accounted for
546 and remitted to the department which is attributable to such
547 method of assigning service addresses other than as set forth in
548 paragraph (1) (a), paragraph (1) (b), or paragraph (1) (c).

549 2. Employs a method of assigning service addresses as set
550 forth in paragraph (1) (a), paragraph (1) (b), or paragraph
551 (1) (c), the department may not deny the deduction allowed to the

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552 dealer of communications services as compensation allowed under
553 s. 202.28 because the dealer assigned one or more service
554 addresses to an incorrect local taxing jurisdiction.

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

557 202.231 Provision of information to local taxing
558 jurisdictions.—

559 (3) The gross taxable sales and net tax information
560 contained in the monthly reports required by this section shall
561 be aggregated on a jurisdiction-by-jurisdiction basis, and the
562 aggregate jurisdiction-by-jurisdiction information shall be made
563 available by the department to the public through the
564 department's website for each fiscal year this chapter has been
565 in effect.

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

568 202.24 Limitations on local taxes and fees imposed on
569 dealers of communications services.—

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

572 1. Levying on or collecting from dealers or purchasers of
573 communications services any tax, charge, fee, or other
574 imposition on or with respect to the provision or purchase of
575 communications services.

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

579 3. Adopting or enforcing any provision of any ordinance or
580 agreement to the extent that such provision obligates a dealer

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581 of communications services to charge, collect, or pay to the
582 public body a tax, charge, fee, or other imposition.

583

584 Municipalities and counties may not negotiate those terms and
585 conditions related to franchise fees or the definition of gross
586 revenues or other definitions or methodologies related to the
587 payment or assessment of franchise fees on providers of ~~cable~~ or
588 video services.

589 (c) This subsection does not apply to:

590 1. Local communications services taxes levied under this
591 chapter.

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

593 3. Business taxes levied under chapter 205.

594 4. "911" service charges levied under chapter 365.

595 5. Amounts charged for the rental or other use of property
596 owned by a public body which is not in the public rights-of-way
597 to a dealer of communications services for any purpose,
598 including, but not limited to, the placement or attachment of
599 equipment used in the provision of communications services.

600 6. Permit fees of general applicability which are not
601 related to placing or maintaining facilities in or on public
602 roads or rights-of-way.

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

605 8. Any in-kind requirements, institutional networks, or
606 contributions for, or in support of, the use or construction of
607 public, educational, or governmental access facilities allowed
608 under federal law and imposed on providers of ~~cable~~ or video
609 service pursuant to any existing ordinance or an existing

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610 franchise agreement granted by each municipality or county,
 611 under which ordinance or franchise agreement service is provided
 612 before ~~prior to~~ July 1, 2007, or as permitted under chapter 610.
 613 ~~Nothing in~~ This subparagraph does not shall prohibit ~~the ability~~
 614 ~~of providers of cable or video service~~ from recovering the ~~to~~
 615 ~~recover such~~ expenses as allowed under federal law.

616 9. Special assessments and impact fees.

617 10. Pole attachment fees that are charged by a local
 618 government for attachments to utility poles owned by the local
 619 government.

620 11. Utility service fees or other similar user fees for
 621 utility services.

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

626 Section 11. Paragraph (j) of subsection (3) of section
 627 202.26, Florida Statutes, is amended to read:

628 202.26 Department powers.—

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

631 (j) The types of books and records kept in the regular
 632 course of business which must be available during an audit of a
 633 dealer's books and records when the dealer has made an
 634 allocation or attribution pursuant to the definition of sales
 635 prices in s. 202.11(15)(b)8. ~~202.11(13)(b)8.~~ and examples of
 636 methods for determining the reasonableness thereof. Books and
 637 records kept in the regular course of business include, but are
 638 not limited to, general ledgers, price lists, cost records,

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639 customer billings, billing system reports, tariffs, and other
640 regulatory filings and rules of regulatory authorities. The ~~Such~~
641 records may be required to be made available to the department
642 in an electronic format when so kept by the dealer. The dealer
643 may support the allocation of charges with books and records
644 kept in the regular course of business covering the dealer's
645 entire service area, including territories outside this state.
646 During an audit, the department may reasonably require
647 production of any additional books and records found necessary
648 to assist in its determination.

649 Section 12. Paragraph (a) of subsection (1) of section
650 203.01, Florida Statutes, is amended to read:

651 203.01 Tax on gross receipts for utility and communications
652 services.—

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

656 2. A tax is levied on communications services as defined in
657 s. 202.11(1) ~~202.11(2)~~. The ~~Such~~ tax shall be applied to the
658 same services and transactions as are subject to taxation under
659 chapter 202, and to communications services that are subject to
660 the exemption provided in s. 202.125(1). The ~~Such~~ tax shall be
661 applied to the sales price of communications services when sold
662 at retail, as the ~~such~~ terms are defined in s. 202.11, shall be
663 due and payable at the same time as the taxes imposed pursuant
664 to chapter 202, and shall be administered and collected pursuant
665 to the provisions of chapter 202.

666 Section 13. Paragraph (e) of subsection (1) of section
667 212.05, Florida Statutes, is amended to read:

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668 212.05 Sales, storage, use tax.—It is hereby declared to be
669 the legislative intent that every person is exercising a taxable
670 privilege who engages in the business of selling tangible
671 personal property at retail in this state, including the
672 business of making mail order sales, or who rents or furnishes
673 any of the things or services taxable under this chapter, or who
674 stores for use or consumption in this state any item or article
675 of tangible personal property as defined herein and who leases
676 or rents such property within the state.

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

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

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

684 (I) "Prepaid calling arrangement" means the separately
685 stated retail sale ~~by advance payment~~ of communications services
686 that must be paid for in advance; that may be used to place or
687 receive ~~consist exclusively of~~ telephone calls; that are enabled
688 ~~originated~~ by using an access number, authorization code, or
689 other means that may be manually, electronically, or otherwise
690 entered; and that are sold in predetermined units or dollars
691 whose number declines on a predetermined basis ~~with use~~ in a
692 known amount.

693 (II) If the sale or recharge of the prepaid calling
694 arrangement does not take place at the dealer's place of
695 business, it shall be deemed to take place at the customer's
696 shipping address or, if no item is shipped, at the customer's

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697 address or the location associated with the customer's mobile
698 telephone number.

699 (III) The sale or recharge of a prepaid calling arrangement
700 shall be treated as a sale of tangible personal property for
701 purposes of this chapter, whether or not a tangible item
702 evidencing such arrangement is furnished to the purchaser, and
703 such sale within this state subjects the selling dealer to the
704 jurisdiction of this state for purposes of this subsection.

705 b. The installation of telecommunication and telegraphic
706 equipment.

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

709 2. The provisions of s. 212.17(3), regarding credit for tax
710 paid on charges subsequently found to be worthless, shall be
711 equally applicable to any tax paid under the provisions of this
712 section on charges for prepaid calling arrangements,
713 telecommunication or telegraph services, or electric power
714 subsequently found to be uncollectible. The word "charges" in
715 this paragraph does not include any excise or similar tax levied
716 by the Federal Government, any political subdivision of the
717 state, or any municipality upon the purchase, sale, or recharge
718 of prepaid calling arrangements or upon the purchase or sale of
719 telecommunication, television system program, or telegraph
720 service or electric power, which tax is collected by the seller
721 from the purchaser.

722 Section 14. Paragraph (a) of subsection (1) of section
723 610.118, Florida Statutes, is amended to read:

724 610.118 Impairment; court-ordered operations.—

725 (1) If an incumbent cable or video service provider is

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726 required to operate under its existing franchise and is legally
727 prevented by a lawfully issued order of a court of competent
728 jurisdiction from exercising its right to terminate its existing
729 franchise pursuant to the terms of s. 610.105, any
730 certificateholder providing cable service or video service in
731 whole or in part within the service area that is the subject of
732 the incumbent cable or video service provider's franchise shall,
733 for as long as the court order remains in effect, comply with
734 the following franchise terms and conditions as applicable to
735 the incumbent cable or video service provider in the service
736 area:

737 (a) The certificateholder shall pay to the municipality or
738 county:

739 1. Any prospective lump-sum or recurring per-subscriber
740 funding obligations to support public, educational, and
741 governmental access channels or other prospective franchise-
742 required monetary grants related to public, educational, or
743 governmental access facilities equipment and capital costs.
744 Prospective lump-sum payments shall be made on an equivalent
745 per-subscriber basis calculated as follows: the amount of the
746 prospective funding obligations divided by the number of
747 subscribers being served by the incumbent cable service provider
748 at the time of payment, divided by the number of months
749 remaining in the incumbent cable or video service provider's
750 franchise equals the monthly per subscriber amount to be paid by
751 the certificateholder until the expiration or termination of the
752 incumbent cable or video service provider's franchise; and

753 2. If the incumbent cable or video service provider is
754 required to make payments for the funding of an institutional

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755 network, the certificateholder shall pay an amount equal to the
756 incumbent's funding obligations but not to exceed 1 percent of
757 the sales price, as defined in s. 202.11(15) ~~202.11(13)~~, for the
758 taxable monthly retail sales of cable or video programming
759 services the certificateholder received from subscribers in the
760 affected municipality or county. All definitions and exemptions
761 under chapter 202 apply in the determination of taxable monthly
762 retail sales of cable or video programming services.

763 Section 15. Section 624.105, Florida Statutes, is amended
764 to read:

765 624.105 Waiver of customer liability.—Any regulated company
766 as defined in s. 350.111, any electric utility as defined in s.
767 366.02(2), any utility as defined in s. 367.021(12) or s.
768 367.022(2) and (7), and any provider of communications services
769 as defined in s. 202.11(1) ~~202.11(2)~~ may charge for and include
770 an optional waiver of liability provision in their customer
771 contracts under which the entity agrees to waive all or a
772 portion of the customer's liability for service from the entity
773 for a defined period in the event of the customer's call to
774 active military service, death, disability, involuntary
775 unemployment, qualification for family leave, or similar
776 qualifying event or condition. Such provisions may not be
777 effective in the customer's contract with the entity unless
778 affirmatively elected by the customer. No such provision shall
779 constitute insurance so long as the provision is a contract
780 between the entity and its customer.

781 Section 16. The following changes made in this act are
782 intended to be remedial in nature and apply retroactively, but
783 do not provide a basis for an assessment of any tax not paid or

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784 create a right to a refund or credit of any tax paid before the
785 general effective date of this act:

786 (1) The changes made in section 2 of this act to
787 subsections renumbered as subsections (9), (11), and (15) of s.
788 202.11, Florida Statutes;

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

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

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