

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 definitions of the terms
6 "cable service" and "enhanced zip code"; adding
7 definitions for the terms "digital good," "digital
8 service," "Internet access service," and "video
9 service"; amending ss. 202.125, 202.16, 202.20, and
10 202.24, F.S.; conforming provisions to changes in
11 terminology; amending s. 202.18, F.S.; removing a
12 cross-reference to conform; amending s. 202.195, F.S.;
13 clarifying provisions exempting from the public
14 records law certain proprietary confidential business
15 information held by a local governmental entity for
16 the purpose of assessing the local communications
17 services tax; amending s. 202.22, F.S.; providing an
18 exception to the provision holding a dealer of
19 communications services harmless from liability when
20 the dealer fails to correct a customer's local taxing
21 jurisdiction following notice by the Department of
22 Revenue; eliminating provisions requiring that the
23 department provide a database for determining the
24 local taxing jurisdiction in which a service address
25 is located; amending s. 202.23, F.S.; removing a
26 provision relating to assigning a purchaser to a local
27 taxing jurisdiction, to conform to changes made by the
28 act; amending s. 202.231, F.S.; requiring the

29 Department of Revenue to aggregate monthly and make
 30 available to the public on a jurisdiction-by-
 31 jurisdiction basis certain sales and net tax
 32 information; amending s. 202.26, F.S.; conforming
 33 cross-references; eliminating a requirement that the
 34 department adopt a rule governing certain databases;
 35 amending s. 202.28, F.S.; deleting provisions imposing
 36 a penalty against a dealer of communications services
 37 which incorrectly assigns a service address, to
 38 conform to changes made by the act; amending s.
 39 212.05, F.S.; revising the definition of the term
 40 "prepaid calling arrangement"; amending ss. 203.01,
 41 610.118, and 624.105, F.S.; conforming cross-
 42 references; providing for certain retroactive effect;
 43 providing an effective date.

44
 45 Be It Enacted by the Legislature of the State of Florida:

46
 47 Section 1. Subsection (1) of section 202.105, Florida
 48 Statutes, is amended to read:

49 202.105 Legislative findings and intent.—

50 (1) It is declared to be a specific legislative finding
 51 that the creation of this chapter fulfills important state
 52 interests by reforming the tax laws to provide a fair,
 53 efficient, and uniform method for taxing communications services
 54 sold in this state. This chapter is essential to the continued
 55 economic vitality of this increasingly important industry
 56 because it restructures state and local taxes and fees to

HB 809

2012

57 | account for the impact of federal legislation, industry
58 | deregulation, and the multitude of ~~convergence of service~~
59 | ~~offerings that is now taking place among~~ providers offering
60 | functionally equivalent communications services in today's
61 | marketplace. This chapter promotes the increased competition
62 | that accompanies deregulation by embracing a competitively
63 | neutral tax policy that will free consumers to choose a provider
64 | based on tax-neutral considerations. This chapter further spurs
65 | new competition by simplifying an extremely complicated state
66 | and local tax and fee system. Simplification will lower the cost
67 | of collecting taxes and fees, increase service availability, and
68 | place downward pressure on price. Newfound administrative
69 | efficiency is demonstrated by a reduction in the number of
70 | returns that a provider must file each month. By restructuring
71 | separate taxes and fees into a revenue-neutral communications
72 | services tax centrally administered by the department, this
73 | chapter will ensure that the growth of the industry is
74 | unimpaired by excessive governmental regulation. The tax imposed
75 | pursuant to this chapter is a replacement for taxes and fees
76 | previously imposed and is not a new tax. The taxes imposed and
77 | administered pursuant to this chapter are of general application
78 | and are imposed in a uniform, consistent, and nondiscriminatory
79 | manner.

80 | Section 2. Section 202.11, Florida Statutes, is amended to
81 | read:

82 | 202.11 Definitions.—As used in this chapter:

83 | ~~(1) "Cable service" means the transmission of video,~~
84 | ~~audio, or other programming service to purchasers, and the~~

85 ~~purchaser interaction, if any, required for the selection or use~~
 86 ~~of any such programming service, regardless of whether the~~
 87 ~~programming is transmitted over facilities owned or operated by~~
 88 ~~the cable service provider or over facilities owned or operated~~
 89 ~~by one or more other dealers of communications services. The~~
 90 ~~term includes point-to-point and point-to-multipoint~~
 91 ~~distribution services by which programming is transmitted or~~
 92 ~~broadcast by microwave or other equipment directly to the~~
 93 ~~purchaser's premises, but does not include direct-to-home~~
 94 ~~satellite service. The term includes basic, extended, premium,~~
 95 ~~pay-per-view, digital, and music services.~~

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

- 111 (a) Information services.
- 112 (b) Installation or maintenance of wiring or equipment on

113 a customer's premises.

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

115 (d) The sale of advertising, including, but not limited
116 to, directory advertising.

117 (e) Bad check charges.

118 (f) Late payment charges.

119 (g) Billing and collection services.

120 (h) Internet access service, electronic mail service,
121 electronic bulletin board service, or similar online computer
122 services.

123 (i) Digital goods.

124 (j) Digital services.

125 ~~(2)-(3)~~ "Dealer" means a person registered with the
126 department as a provider of communications services in this
127 state.

128 ~~(3)-(4)~~ "Department" means the Department of Revenue.

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

133 (5) "Digital service" means any service, other than video
134 service, which is provided electronically, including remotely
135 provided access to or use of software or another digital good,
136 and also includes the following services, if they are provided
137 remotely: monitoring, security, distance learning, energy
138 management, medical diagnostic, mechanical diagnostic, and
139 vehicle tracking services. If a digital service is bundled for
140 sale with the transmission, conveyance, or routing of any

141 information or signals, the bundled service is a digital service
 142 unless the tax imposed under this chapter and chapter 203 has
 143 not been paid with respect to such transmission, conveyance, or
 144 routing.

145 (6)~~(5)~~ "Direct-to-home satellite service" has the meaning
 146 ascribed in the Communications Act of 1934, 47 U.S.C. s. 303(v).

147 (7)~~(6)~~ "Information service" means the offering of a
 148 capability for generating, acquiring, storing, transforming,
 149 processing, retrieving, using, or making available information
 150 via communications services, including, but not limited to,
 151 electronic publishing, web-hosting service, and end-user 900
 152 number service. The term does not include ~~any video, audio, or~~
 153 ~~other programming service that uses point-to-multipoint~~
 154 ~~distribution by which programming is delivered, transmitted, or~~
 155 ~~broadcast by any means, including any interaction that may be~~
 156 ~~necessary for selecting and using the service, regardless of~~
 157 ~~whether the programming is delivered, transmitted, or broadcast~~
 158 ~~over facilities owned or operated by the seller or another, or~~
 159 ~~whether denominated as cable service or as basic, extended,~~
 160 ~~premium, pay per view, digital, music, or two-way cable service.~~

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

165 (9)~~(7)~~ "Mobile communications service" means ~~commercial~~
 166 mobile ~~radio~~ service, as defined in 47 C.F.R. s. 20.3 as in
 167 effect on June 1, 1999. The term does not include air-ground
 168 radiotelephone service as defined in 47 C.F.R. s. 22.99 as in

HB 809

2012

169 effect on June 1, 1999.

170 ~~(10)-(8)~~ "Person" has the meaning ascribed in s. 212.02.

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

180 ~~(12)-(10)~~ "Purchaser" means the person paying for or
181 obligated to pay for communications services.

182 ~~(13)-(11)~~ "Retail sale" means the sale of communications
183 services for any purpose other than for resale or for use as a
184 component part of or for integration into communications
185 services to be resold in the ordinary course of business.
186 However, any sale for resale must comply with s. 202.16(2) and
187 the rules adopted thereunder.

188 ~~(14)-(12)~~ "Sale" means the provision of communications
189 services for a consideration.

190 ~~(15)-(13)~~ "Sales price" means the total amount charged in
191 money or other consideration by a dealer for the sale of the
192 right or privilege of using communications services in this
193 state, including any property or other service, not described in
194 paragraph (a), which is services that are part of the sale and
195 for which the charge is not separately itemized on a customer's
196 bill or separately allocated under subparagraph (b)8. The sales

HB 809

2012

197 price of communications services may ~~shall~~ not be reduced by any
 198 separately identified components of the charge which ~~that~~
 199 constitute expenses of the dealer, including, but not limited
 200 to, sales taxes on goods or services purchased by the dealer,
 201 property taxes, taxes measured by net income, and universal-
 202 service fund fees.

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

- 206 1. The connection, movement, change, or termination of
 207 communications services.
- 208 2. The detailed billing of communications services.
- 209 3. The sale of directory listings in connection with a
 210 communications service.
- 211 4. Central office and custom calling features.
- 212 5. Voice mail and other messaging service.
- 213 6. Directory assistance.
- 214 7. The service of sending or receiving a document commonly
 215 referred to as a facsimile or "fax," except when performed
 216 during the course of providing professional or advertising
 217 services.

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

- 220 1. An ~~Any~~ excise tax, sales tax, or similar tax levied by
 221 the United States or any state or local government on the
 222 purchase, sale, use, or consumption of any communications
 223 service, including, but not limited to, a ~~any~~ tax imposed under
 224 this chapter or chapter 203 which is permitted or required to be

225 added to the sales price of such service, if the tax is stated
 226 separately.

227 2. A ~~Any~~ fee or assessment levied by the United States or
 228 any state or local government, including, but not limited to,
 229 regulatory fees and emergency telephone surcharges, which must
 230 ~~is required to~~ be added to the price of the ~~such~~ service if the
 231 fee or assessment is separately stated.

232 3. Communications services paid for by inserting coins
 233 into coin-operated communications devices available to the
 234 public.

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

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

239 6. A dealer's internal use of communications services in
 240 connection with its business of providing communications
 241 services.

242 7. Charges for property or other services that are not
 243 part of the sale of communications services, if such charges are
 244 stated separately from the charges for communications services.

245 8. ~~To the extent required by federal law,~~ Charges for
 246 goods and services that are exempt from tax under this chapter,
 247 including Internet access services but excluding any item
 248 described in paragraph (a), that ~~which~~ are not separately
 249 itemized on a customer's bill, but that ~~which~~ can be reasonably
 250 identified from the selling dealer's books and records kept in
 251 the regular course of business. The dealer may support the
 252 allocation of charges with books and records kept in the regular

HB 809

2012

253 course of business covering the dealer's entire service area,
254 including territories outside this state.

255 (16)~~(14)~~ "Service address" means:

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

257 1. The location of the communications equipment from which
258 communications services originate or at which communications
259 services are received by the customer;

260 2. In the case of a communications service paid through a
261 credit or payment mechanism that does not relate to a service
262 address, such as a bank, travel, debit, or credit card, and in
263 the case of third-number and calling-card calls, the term
264 "service address" means the address of the central office, as
265 determined by the area code and the first three digits of the
266 seven-digit originating telephone number; or

267 3. If the location of the equipment described in
268 subparagraph 1. is not known and subparagraph 2. is
269 inapplicable, the term "service address" means the location of
270 the customer's primary use of the communications service. For
271 purposes of this subparagraph, the location of the customer's
272 primary use of a communications service is the residential
273 street address or the business street address of the customer.

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

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

279 (17)~~(15)~~ "Unbundled network element" means a network
280 element, as defined in 47 U.S.C. s. 153(29), to which access is

281 provided on an unbundled basis pursuant to 47 U.S.C. s.
 282 251(c) (3) .

283 (18)~~(16)~~ "Private communications service" means a
 284 communications service that entitles the subscriber or user to
 285 exclusive or priority use of a communications channel or group
 286 of channels between or among channel termination points,
 287 regardless of the manner in which such channel or channels are
 288 connected, and includes switching capacity, extension lines,
 289 stations, and any other associated services that ~~which~~ are
 290 provided in connection with the use of such channel or channels.

291 (19)~~(17)~~ (a) "Customer" means:

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

294 2. If the end user of mobile communications services is
 295 not the contracting party, the end user of the mobile
 296 communications service. This subparagraph only applies for the
 297 purpose of determining the place of primary use.

298 (b) "Customer" does not include:

299 1. A reseller of mobile communications services; or

300 2. A serving carrier under an agreement to serve the
 301 customer outside the home service provider's licensed service
 302 area.

303 ~~(18) "Enhanced zip code" means a United States postal zip
 304 code of 9 or more digits.~~

305 (20)~~(19)~~ "Home service provider" means the facilities-
 306 based carrier or reseller with which the customer contracts for
 307 the provision of mobile communications services.

308 (21)~~(20)~~ "Licensed service area" means the geographic area

HB 809

2012

309 in which the home service provider is authorized by law or
310 contract to provide mobile communications service to the
311 customer.

312 ~~(22)-(21)~~ "Place of primary use" means the street address
313 representative of where the customer's use of the mobile
314 communications service primarily occurs, which must be:

315 (a) The residential street address or the primary business
316 street address of the customer; and

317 (b) Within the licensed service area of the home service
318 provider.

319 ~~(23)-(22)~~ (a) "Reseller" means a provider who purchases
320 communications services from another communications service
321 provider and then resells, uses as a component part of, or
322 integrates the purchased services into a mobile communications
323 service.

324 (b) The term "Reseller" does not include a serving carrier
325 with which a home service provider arranges for the services to
326 its customers outside the home service provider's licensed
327 service area.

328 ~~(24)-(23)~~ "Serving carrier" means a facilities-based
329 carrier providing mobile communications service to a customer
330 outside a home service provider's or reseller's licensed service
331 area.

332 ~~(25)-(24)~~ "Video service" means the transmission of video,
333 audio, or other programming service to a purchaser, and the
334 purchaser interaction, if any, required for the selection or use
335 of a programming service, regardless of whether the programming
336 is transmitted over facilities owned or operated by the video

HB 809

2012

337 service provider or over facilities owned or operated by another
338 dealer of communications services. The term includes point-to-
339 point and point-to-multipoint distribution services through
340 which programming is transmitted or broadcast by microwave or
341 other equipment directly to the purchaser's premises, but does
342 not include direct-to-home satellite service. The term includes
343 basic, extended, premium, pay-per-view, digital video, two-way
344 cable, and music services ~~has the same meaning as that provided~~
345 ~~in s. 610.103.~~

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

348 202.125 Sales of communications services; specified
349 exemptions.-

350 (1) The separately stated sales price of communications
351 services sold to residential households is exempt from the tax
352 imposed by s. 202.12 and s. 203.01(1)(b)3. This exemption does
353 not apply to any residence that constitutes all or part of a
354 transient public lodging establishment as defined in chapter
355 509, any mobile communications service, any video ~~cable~~ service,
356 or any direct-to-home satellite service.

357 Section 4. Paragraph (a) of subsection (2) of section
358 202.16, Florida Statutes, is amended to read:

359 202.16 Payment.-The taxes imposed or administered under
360 this chapter and chapter 203 shall be collected from all dealers
361 of taxable communications services on the sale at retail in this
362 state of communications services taxable under this chapter and
363 chapter 203. The full amount of the taxes on a credit sale,
364 installment sale, or sale made on any kind of deferred payment

HB 809

2012

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

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

383 Section 5. Paragraph (c) of subsection (3) of section
 384 202.18, Florida Statutes, is amended to read:

385 202.18 Allocation and disposition of tax proceeds.—The
 386 proceeds of the communications services taxes remitted under
 387 this chapter shall be treated as follows:

388 (3)

389 (c)1. Except as otherwise provided in this paragraph,
 390 proceeds of the taxes levied pursuant to s. 202.19, less amounts
 391 deducted for costs of administration in accordance with
 392 paragraph (b), shall be distributed monthly to the appropriate

HB 809

2012

393 | jurisdictions. The proceeds of taxes imposed pursuant to s.
394 | 202.19(5) shall be distributed in the same manner as
395 | discretionary surtaxes are distributed, in accordance with ss.
396 | 212.054 and 212.055.

397 | 2. The department shall make any adjustments to the
398 | distributions pursuant to this section which are necessary to
399 | reflect the proper amounts due to individual jurisdictions or
400 | trust funds. In the event that the department adjusts amounts
401 | due to reflect a correction in the situsing of a customer, such
402 | adjustment shall be limited to the amount of tax actually
403 | collected from such customer by the dealer of communication
404 | services.

405 | 3.a. ~~Notwithstanding the time period specified in s.~~
406 | ~~202.22(5),~~ Adjustments in distributions which are necessary to
407 | correct misallocations between jurisdictions shall be governed
408 | by this subparagraph. If the department determines that
409 | misallocations between jurisdictions occurred, it shall provide
410 | written notice of such determination to all affected
411 | jurisdictions. The notice shall include the amount of the
412 | misallocations, the basis upon which the determination was made,
413 | data supporting the determination, and the identity of each
414 | affected jurisdiction. The notice shall also inform all affected
415 | jurisdictions of their authority to enter into a written
416 | agreement establishing a method of adjustment as described in
417 | sub-subparagraph c.

418 | b. An adjustment affecting a distribution to a
419 | jurisdiction which is less than 90 percent of the average
420 | monthly distribution to that jurisdiction for the 6 months

HB 809

2012

421 immediately preceding the department's determination, as
422 reported by all communications services dealers, shall be made
423 in the month immediately following the department's
424 determination that misallocations occurred.

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

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

HB 809

2012

449 202.195 Proprietary confidential business information;
450 public records exemption.—

451 (1) Proprietary confidential business information obtained
452 from a telecommunications company or from a franchised or
453 certificated video service provider ~~eable company~~ for the
454 purposes of ~~imposing fees for occupying the public rights-of-~~
455 ~~way,~~ assessing the local communications services tax pursuant to
456 s. 202.19, or occupying or regulating the public rights-of-way,
457 held by a local governmental entity, is confidential and exempt
458 from s. 119.07(1) and s. 24(a), Art. I of the State
459 Constitution. Such proprietary confidential business information
460 held by a local governmental entity may be used only for the
461 purposes of ~~imposing such fees,~~ assessing such tax, or
462 regulating such rights-of-way, and may not be used for any other
463 purposes, including, but not limited to, commercial or
464 competitive purposes.

465 (3) ~~Nothing in~~ This exemption does not expand ~~expands~~ the
466 information or documentation that a local governmental entity
467 may properly request under applicable law pursuant to ~~the~~
468 ~~imposition of fees for~~ occupying the rights-of-way, the local
469 communication services tax, or the regulation of its public
470 rights-of-way.

471 Section 7. Paragraph (b) of subsection (2) of section
472 202.20, Florida Statutes, is amended to read:

473 202.20 Local communications services tax conversion
474 rates.—

475 (2)

476 (b) Except as otherwise provided in this subsection, the

477 term "replaced revenue sources," as used in this section, means
 478 the following taxes, charges, fees, or other impositions to the
 479 extent that the respective local taxing jurisdictions were
 480 authorized to impose them prior to July 1, 2000.

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

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

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

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

488 d. Franchise fees on dealers of communications services
 489 which use the public roads or rights-of-way, up to the limit set
 490 forth in s. 337.401. For purposes of calculating rates under
 491 this section, it is the legislative intent that charter counties
 492 be treated as having had the same authority as municipalities to
 493 impose franchise fees on recurring local telecommunication
 494 service revenues before ~~prior to~~ July 1, 2000. However, the
 495 Legislature recognizes that the authority of charter counties to
 496 impose such fees is in dispute, and the treatment provided in
 497 this section is not an expression of legislative intent that
 498 charter counties actually do or do not possess such authority.

499 e. Actual permit fees relating to placing or maintaining
 500 facilities in or on public roads or rights-of-way, collected
 501 from providers of long-distance, cable, and mobile
 502 communications services for the fiscal year ending September 30,
 503 1999; however, if a municipality or charter county elects the
 504 option to charge permit fees pursuant to s. 337.401(3)(c)1.a.,

HB 809

2012

505 such fees may ~~shall~~ not be included as a replaced revenue
 506 source.

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

510 Section 8. Section 202.22, Florida Statutes, is amended to
 511 read:

512 202.22 Determination of local tax situs.—

513 ~~(1)~~ A dealer of communications services who is obligated
 514 to collect and remit a local communications services tax imposed
 515 under s. 202.19 shall be held harmless from any liability,
 516 including tax, interest, and penalties, which would otherwise be
 517 due solely as a result of an assignment of a service address to
 518 an incorrect local taxing jurisdiction, unless the liability
 519 arises from tax that is due with respect to taxable services
 520 that are included on bills to a customer which are dated on or
 521 after the first day of the 4th month after the dealer is
 522 notified by the department that the customer has been
 523 incorrectly assigned. ~~if the dealer of communications services~~
 524 ~~exercises due diligence in applying one or more of the following~~
 525 ~~methods for determining the local taxing jurisdiction in which a~~
 526 ~~service address is located:~~

527 ~~(a) Employing an electronic database provided by the~~
 528 ~~department under subsection (2).~~

529 ~~(b) Employing a database developed by the dealer or~~
 530 ~~supplied by a vendor which has been certified by the department~~
 531 ~~under subsection (3).~~

532 ~~(c)1. Employing enhanced zip codes to assign each street~~

HB 809

2012

533 ~~address, address range, post office box, or post office box~~
534 ~~range in the dealer's service area to a specific local taxing~~
535 ~~jurisdiction.~~

536 ~~2. If an enhanced zip code overlaps boundaries of~~
537 ~~municipalities or counties, or if an enhanced zip code cannot be~~
538 ~~assigned to the service address because the service address is~~
539 ~~in a rural area or a location without postal delivery, the~~
540 ~~dealer of communications services or its database vendor shall~~
541 ~~assign the affected service addresses to one specific local~~
542 ~~taxing jurisdiction within such zip code based on a reasonable~~
543 ~~methodology. A methodology satisfies this subparagraph if the~~
544 ~~information used to assign service addresses is obtained by the~~
545 ~~dealer or its database vendor from:~~

546 ~~a. A database provided by the department;~~

547 ~~b. A database certified by the department under subsection~~
548 ~~(3);~~

549 ~~c. Responsible representatives of the relevant local~~
550 ~~taxing jurisdictions; or~~

551 ~~d. The United States Census Bureau or the United States~~
552 ~~Postal Service.~~

553 ~~(d) Employing a database of street addresses or other~~
554 ~~assignments that does not meet the requirements of paragraphs~~
555 ~~(a)–(c), but meets the criteria set forth in paragraph (3) (a) at~~
556 ~~the time of audit by the department.~~

557 ~~(2) (a) The department shall, subject to legislative~~
558 ~~appropriation, create as soon as practical and feasible, and~~
559 ~~thereafter maintain, an electronic database that gives due and~~
560 ~~proper regard to any format that is approved by the American~~

HB 809

2012

561 ~~National Standards Institute's Accredited Standards Committee~~
562 ~~X12 and that designates for each street address, address range,~~
563 ~~post office box, or post office box range in the state,~~
564 ~~including any multiple postal street addresses applicable to one~~
565 ~~street location, the local taxing jurisdiction in which the~~
566 ~~street address, address range, post office box, or post office~~
567 ~~box range is located and the appropriate code for each such~~
568 ~~local taxing jurisdiction, identified by one nationwide standard~~
569 ~~numeric code. The nationwide standard numeric code must contain~~
570 ~~the same number of numeric digits, and each digit, or~~
571 ~~combination of digits, must refer to the same level of taxing~~
572 ~~jurisdiction throughout the United States using a format similar~~
573 ~~to FIPS 55-3 or other appropriate standard approved by the~~
574 ~~Federation of Tax Administrators and the Multistate Tax~~
575 ~~Commission. Each address or address range or post office box or~~
576 ~~post office box range must be provided in standard postal~~
577 ~~format, including the street number, street number range, street~~
578 ~~name, post office box number, post office box range, and zip~~
579 ~~code. The department shall provide notice of the availability of~~
580 ~~the database, and any subsequent revision thereof, by~~
581 ~~publication in the Florida Administrative Weekly.~~

582 ~~(b)1. Each local taxing jurisdiction shall furnish to the~~
583 ~~department all information needed to create and update the~~
584 ~~electronic database, including changes in service addresses,~~
585 ~~annexations, incorporations, reorganizations, and any other~~
586 ~~changes in jurisdictional boundaries. The information furnished~~
587 ~~to the department must specify an effective date, which must be~~
588 ~~the next ensuing January 1 or July 1, and such information must~~

589 ~~be furnished to the department at least 120 days prior to the~~
 590 ~~effective date. However, the requirement that counties submit~~
 591 ~~information pursuant to this paragraph shall be subject to~~
 592 ~~appropriation.~~

593 ~~2. The department shall update the electronic database in~~
 594 ~~accordance with the information furnished by local taxing~~
 595 ~~jurisdictions under subparagraph 1. Each update must specify the~~
 596 ~~effective date as the next ensuing January 1 or July 1 and must~~
 597 ~~be posted by the department on a website not less than 90 days~~
 598 ~~prior to the effective date. A substantially affected person may~~
 599 ~~provide notice to the database administrator of an objection to~~
 600 ~~information contained in the electronic database. If an~~
 601 ~~objection is supported by competent evidence, the department~~
 602 ~~shall forward the evidence to the affected local taxing~~
 603 ~~jurisdictions and update the electronic database in accordance~~
 604 ~~with the determination furnished by local taxing jurisdictions~~
 605 ~~to the department. The department shall also furnish the update~~
 606 ~~on magnetic or electronic media to any dealer of communications~~
 607 ~~services or vendor who requests the update on such media.~~
 608 ~~However, the department may collect a fee from the dealer of~~
 609 ~~communications services which does not exceed the actual cost of~~
 610 ~~furnishing the update on magnetic or electronic media.~~
 611 ~~Information contained in the electronic database is conclusive~~
 612 ~~for purposes of this chapter. The electronic database is not an~~
 613 ~~order, a rule, or a policy of general applicability.~~

614 ~~3. Each update must identify the additions, deletions, and~~
 615 ~~other changes to the preceding version of the database.~~

616 ~~(3) For purposes of this section, a database must be~~

617 ~~certified by the department pursuant to rules that implement the~~
618 ~~following criteria and procedures:~~

619 ~~(a) The database must assign street addresses, address~~
620 ~~ranges, post office boxes, or post office box ranges to the~~
621 ~~proper jurisdiction with an overall accuracy rate of 95 percent~~
622 ~~at a 95 percent level of confidence, as determined through a~~
623 ~~statistically reliable sample. The accuracy must be measured~~
624 ~~based on the entire geographic area within the state covered by~~
625 ~~such database.~~

626 ~~(b) Upon receipt of an application for certification or~~
627 ~~recertification of a database, the provisions of s. 120.60 shall~~
628 ~~apply, except that the department shall examine the application~~
629 ~~and, within 90 days after receipt, notify the applicant of any~~
630 ~~apparent errors or omissions and request any additional~~
631 ~~information determined necessary. The applicant shall designate~~
632 ~~an individual responsible for providing access to all records,~~
633 ~~facilities, and processes the department determines are~~
634 ~~reasonably necessary to review, inspect, or test to make a~~
635 ~~determination regarding the application. Such access must be~~
636 ~~provided within 10 working days after notification.~~

637 ~~(c) The application must be in the form prescribed by rule~~
638 ~~and must include the applicant's name, federal employer~~
639 ~~identification number, mailing address, business address, and~~
640 ~~any other information required by the department. The~~
641 ~~application may request that the applicant identify the~~
642 ~~applicant's proposal for testing the database.~~

643 ~~(d) Each application for certification must be approved or~~
644 ~~denied upon written notice within 180 days after receipt of a~~

645 ~~completed application. The notice must specify the grounds for~~
646 ~~denial, inform the applicant of any remedy that is available,~~
647 ~~and indicate the procedure that must be followed. Filing of a~~
648 ~~petition under chapter 120 does not preclude the department from~~
649 ~~certifying the database upon a demonstration that the~~
650 ~~deficiencies have been corrected.~~

651 ~~(e) Certification or recertification of a database under~~
652 ~~this subsection is effective from the date of the department's~~
653 ~~notice approving the application until the expiration of 3 or 4~~
654 ~~years following such date, as set forth in the notice, except as~~
655 ~~provided in paragraph (f).~~

656 ~~(f) An application for recertification of a database must~~
657 ~~be received by the department not more than 3 years after the~~
658 ~~date of any prior certification. The application and procedures~~
659 ~~relating thereto shall be governed by this subsection, except as~~
660 ~~otherwise provided in this paragraph. When an application for~~
661 ~~recertification has been timely submitted, the existing~~
662 ~~certification shall not expire but shall remain effective until~~
663 ~~the application has received final action by the department, or~~
664 ~~if the application is denied, until the denial is no longer~~
665 ~~subject to administrative or judicial review or such later date~~
666 ~~as may be fixed by order of the reviewing court.~~

667 ~~(g) Notwithstanding any provision of law to the contrary,~~
668 ~~if a dealer submits an application for certification on or~~
669 ~~before the later of October 1, 2001, or the date that is 30 days~~
670 ~~after the date on which the applicable department rule becomes~~
671 ~~effective, the 180-day time limit set forth in paragraph (d)~~
672 ~~does not apply. During the time the application is under~~

HB 809

2012

673 ~~consideration by the department or, if the application is~~
674 ~~denied, until the denial is no longer subject to administrative~~
675 ~~or judicial review or until a later date fixed by order of the~~
676 ~~reviewing court:~~

677 ~~1. For purposes of computing the amount of the deduction~~
678 ~~to which such dealer is entitled under s. 202.28, the dealer~~
679 ~~shall be deemed to have used a certified database pursuant to~~
680 ~~paragraph (1) (b).~~

681 ~~2. In the event that such application is approved, such~~
682 ~~approval shall be deemed to have been effective on the date of~~
683 ~~the application or October 1, 2001, whichever is later.~~

684 ~~(4) (a) As used in this section, "due diligence" means the~~
685 ~~care and attention that is expected from, and ordinarily~~
686 ~~exercised by, a reasonable and prudent person under the~~
687 ~~circumstances.~~

688 ~~(b) Notwithstanding any law to the contrary, a dealer of~~
689 ~~communications services is exercising due diligence in applying~~
690 ~~one or more of the methods set forth in subsection (1) if the~~
691 ~~dealer:~~

692 ~~1. Expends reasonable resources to accurately and reliably~~
693 ~~implement such method. However, the employment of enhanced zip~~
694 ~~codes pursuant to paragraph (1) (c) satisfies the requirements of~~
695 ~~this subparagraph; and~~

696 ~~2. Maintains adequate internal controls in assigning~~
697 ~~street addresses, address ranges, post offices boxes, and post~~
698 ~~office box ranges to taxing jurisdictions. Internal controls are~~
699 ~~adequate if the dealer of communications services:~~

700 ~~a. Maintains and follows procedures to obtain and~~

HB 809

2012

701 ~~implement periodic and consistent updates to the database at~~
702 ~~least once every 6 months; and~~

703 ~~b. Corrects errors in the assignments of service addresses~~
704 ~~to local taxing jurisdictions within 120 days after the dealer~~
705 ~~discovers such errors.~~

706 ~~(5) If a dealer of communications services does not use~~
707 ~~one or more of the methods specified in subsection (1) for~~
708 ~~determining the local taxing jurisdiction in which a service~~
709 ~~address is located, the dealer of communications services may be~~
710 ~~held liable to the department for any tax, including interest~~
711 ~~and penalties, which is due as a result of assigning the service~~
712 ~~address to an incorrect local taxing jurisdiction. However, the~~
713 ~~dealer of communications services is not liable for any tax,~~
714 ~~interest, or penalty to the extent that such amount was~~
715 ~~collected and remitted by the dealer of communications services~~
716 ~~with respect to a tax imposed by another local taxing~~
717 ~~jurisdiction. Upon determining that an amount was collected and~~
718 ~~remitted by a dealer of communications services with respect to~~
719 ~~a tax imposed by another local taxing jurisdiction, the~~
720 ~~department shall adjust the respective amounts of the proceeds~~
721 ~~paid to each such taxing jurisdiction under s. 202.18 in the~~
722 ~~month immediately following such determination.~~

723 ~~(6) (a) Pursuant to rules adopted by the department, each~~
724 ~~dealer of communications services must notify the department of~~
725 ~~the methods it intends to employ for determining the local~~
726 ~~taxing jurisdiction in which service addresses are located.~~

727 ~~(b) Notwithstanding s. 202.28, if a dealer of~~
728 ~~communications services employs a method of assigning service~~

729 ~~addresses other than as set forth in paragraph (1) (a), paragraph~~
 730 ~~(1) (b), or paragraph (1) (c), the deduction allowed to the dealer~~
 731 ~~of communications services as compensation under s. 202.28 shall~~
 732 ~~be 0.25 percent of that portion of the tax due and accounted for~~
 733 ~~and remitted to the department which is attributable to such~~
 734 ~~method of assigning service addresses other than as set forth in~~
 735 ~~paragraph (1) (a), paragraph (1) (b), or paragraph (1) (c).~~

736 ~~(7) As used in this section, "enhanced zip code" means a~~
 737 ~~United States postal zip code of 9 or more digits.~~

738 ~~(8) All local communications services taxes collected by a~~
 739 ~~dealer are subject to the provisions of s. 213.756. The hold~~
 740 ~~harmless protection provided by subsection (1) does not entitle~~
 741 ~~a dealer to retain or take credits for taxes collected from any~~
 742 ~~customers that are assigned to an incorrect local taxing~~
 743 ~~jurisdiction in excess of the taxes due to the correct local~~
 744 ~~taxing jurisdiction for that customer. Dealers are entitled to~~
 745 ~~refunds of or credits for such excess collections only upon~~
 746 ~~making refunds or providing credits to the customer.~~

747 Section 9. Subsections (2) and (5) of section 202.23,
 748 Florida Statutes, are amended to read:

749 202.23 Procedure on purchaser's request for refund or
 750 credit of communications services taxes.—

751 (2) This section provides the sole and exclusive procedure
 752 and remedy for a purchaser who claims that a dealer has
 753 collected communications services taxes imposed or administered
 754 under this chapter which were not due. An action that arises as
 755 a result of the claimed collection of taxes that were not due
 756 may not be commenced or maintained by or on behalf of a

HB 809

2012

757 purchaser against a dealer, a municipality, a county, or the
758 state unless the purchaser pleads and proves that the purchaser
759 has exhausted the procedures in subsection (1) and that the
760 defendant has failed to comply with subsection (1). However, a
761 dealer who does not make a determination ~~no determination by a~~
762 ~~dealer~~ under paragraph (1)(c) shall be deemed ~~a failure~~ to
763 comply with subsection (1) if the dealer has complied with the
764 obligations imposed on the dealer by paragraphs (1)(d), (e), and
765 (f). In any such action, it is a complete defense if that the
766 dealer, a municipality, a county, or the state has refunded the
767 taxes claimed or credited the purchaser's account. ~~In such an~~
768 ~~action against a dealer, it is also a complete defense that, in~~
769 ~~collecting the tax, the dealer used one or more of the methods~~
770 ~~set forth in s. 202.22 for assigning the purchaser to a local~~
771 ~~taxing jurisdiction.~~ An ~~Such~~ action is barred unless it is
772 commenced within 180 days following the date of the dealer's
773 written response under paragraph (1)(f), or within 1 year
774 following submission of the purchaser's request to the dealer if
775 the dealer failed to issue a timely written response. The relief
776 available to a purchaser as a result of collection of
777 communications services taxes that were not due is limited to a
778 refund of or credit for such taxes.

779 (5) A dealer who has collected and remitted amounts that
780 were not due, as determined by the department under paragraph
781 (1)(e), who has issued a refund or credit to the purchaser for
782 such amounts, and who takes a credit or receives a refund from
783 the department for such amounts as provided in subsection (3) is
784 not subject to assessment for any of the tax that was refunded

785 or credited or for any interest or penalty with respect to the
 786 tax. In addition, a dealer who modifies his or her tax
 787 compliance practices to conform to a department determination
 788 under paragraph (1)(e) is not subject to assessment as a result
 789 of such modification, absent a subsequent change in law ~~or~~
 790 ~~update to a database pursuant to s. 202.22.~~

791 Section 10. Subsection (3) is added to section 202.231,
 792 Florida Statutes, to read:

793 202.231 Provision of information to local taxing
 794 jurisdictions.—

795 (3) The gross taxable sales and net tax information
 796 contained in the monthly reports required by this section shall
 797 be aggregated on a jurisdiction-by-jurisdiction basis, and the
 798 aggregate jurisdiction-by-jurisdiction information shall be made
 799 available by the department to the public through the
 800 department's website for each fiscal year this chapter has been
 801 in effect.

802 Section 11. Paragraphs (a) and (c) of subsection (2) of
 803 section 202.24, Florida Statutes, are amended to read:

804 202.24 Limitations on local taxes and fees imposed on
 805 dealers of communications services.—

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

808 1. Levying on or collecting from dealers or purchasers of
 809 communications services any tax, charge, fee, or other
 810 imposition on or with respect to the provision or purchase of
 811 communications services.

812 2. Requiring any dealer of communications services to

813 enter into or extend the term of a franchise or other agreement
 814 that requires the payment of a tax, charge, fee, or other
 815 imposition.

816 3. Adopting or enforcing any provision of any ordinance or
 817 agreement to the extent that such provision obligates a dealer
 818 of communications services to charge, collect, or pay to the
 819 public body a tax, charge, fee, or other imposition.

820
 821 Municipalities and counties may not negotiate those terms and
 822 conditions related to franchise fees or the definition of gross
 823 revenues or other definitions or methodologies related to the
 824 payment or assessment of franchise fees on providers of ~~cable or~~
 825 video services.

826 (c) This subsection does not apply to:

827 1. Local communications services taxes levied under this
 828 chapter.

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

830 3. Business taxes levied under chapter 205.

831 4. "911" service charges levied under chapter 365.

832 5. Amounts charged for the rental or other use of property
 833 owned by a public body which is not in the public rights-of-way
 834 to a dealer of communications services for any purpose,
 835 including, but not limited to, the placement or attachment of
 836 equipment used in the provision of communications services.

837 6. Permit fees of general applicability which are not
 838 related to placing or maintaining facilities in or on public
 839 roads or rights-of-way.

840 7. Permit fees related to placing or maintaining

841 facilities in or on public roads or rights-of-way pursuant to s.
 842 337.401.

843 8. Any in-kind requirements, institutional networks, or
 844 contributions for, or in support of, the use or construction of
 845 public, educational, or governmental access facilities allowed
 846 under federal law and imposed on providers of ~~cable or~~ video
 847 service pursuant to any existing ordinance or an existing
 848 franchise agreement granted by each municipality or county,
 849 under which ordinance or franchise agreement service is provided
 850 before ~~prior to~~ July 1, 2007, or as permitted under chapter 610.
 851 ~~Nothing in~~ This subparagraph does not shall prohibit ~~the ability~~
 852 ~~of~~ providers of ~~cable or~~ video service from recovering the ~~to~~
 853 ~~recover such~~ expenses as allowed under federal law.

854 9. Special assessments and impact fees.

855 10. Pole attachment fees that are charged by a local
 856 government for attachments to utility poles owned by the local
 857 government.

858 11. Utility service fees or other similar user fees for
 859 utility services.

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

864 Section 12. Paragraphs (f), (g), (h), (i), and (j) of
 865 subsection (3) of section 202.26, Florida Statutes, are amended
 866 to read:

867 202.26 Department powers.—

868 (3) To administer the tax imposed by this chapter, the

869 department may adopt rules relating to:

870 (f) The records and methods necessary for a dealer to
 871 demonstrate the exercise of due diligence as defined by s.
 872 202.22 ~~202.22(4)(b)~~.

873 ~~(g) The creation of the database described in s. 202.22(2)~~
 874 ~~and the certification and recertification of the databases as~~
 875 ~~described in s. 202.22(3).~~

876 (g) ~~(h)~~ The registration of dealers.

877 (h) ~~(i)~~ The review of applications for, and the issuance
 878 of, direct-pay permits, and the returns required to be filed by
 879 holders thereof.

880 (i) ~~(j)~~ The types of books and records kept in the regular
 881 course of business which must be available during an audit of a
 882 dealer's books and records when the dealer has made an
 883 allocation or attribution pursuant to the definition of sales
 884 prices in s. 202.11(15)(b)8. ~~202.11(13)(b)8.~~ and examples of
 885 methods for determining the reasonableness thereof. Books and
 886 records kept in the regular course of business include, but are
 887 not limited to, general ledgers, price lists, cost records,
 888 customer billings, billing system reports, tariffs, and other
 889 regulatory filings and rules of regulatory authorities. The ~~Such~~
 890 records may be required to be made available to the department
 891 in an electronic format when so kept by the dealer. The dealer
 892 may support the allocation of charges with books and records
 893 kept in the regular course of business covering the dealer's
 894 entire service area, including territories outside this state.
 895 During an audit, the department may reasonably require
 896 production of any additional books and records found necessary

897 to assist in its determination.

898 Section 13. Paragraph (e) of subsection (2) of section
899 202.28, Florida Statutes, is amended to read:

900 202.28 Credit for collecting tax; penalties.—

901 (2)

902 ~~(e) If a dealer of communications services does not use~~
903 ~~one or more of the methods specified in s. 202.22(1) for~~
904 ~~assigning service addresses to local jurisdictions and assigns~~
905 ~~one or more service addresses to an incorrect local jurisdiction~~
906 ~~in collecting and remitting local communications services taxes~~
907 ~~imposed under s. 202.19, the dealer shall be subject to a~~
908 ~~specific penalty of 10 percent of any tax collected but reported~~
909 ~~to the incorrect jurisdiction as a result of incorrect~~
910 ~~assignment, except that the penalty imposed under this paragraph~~
911 ~~with respect to a single return may not exceed \$10,000.~~

912 Section 14. Paragraph (a) of subsection (1) of section
913 203.01, Florida Statutes, is amended to read:

914 203.01 Tax on gross receipts for utility and
915 communications services.—

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

919 2. A tax is levied on communications services as defined
920 in s. 202.11(1) ~~202.11(2)~~. The ~~Such~~ tax shall be applied to the
921 same services and transactions as are subject to taxation under
922 chapter 202, and to communications services that are subject to
923 the exemption provided in s. 202.125(1). The ~~Such~~ tax shall be
924 applied to the sales price of communications services when sold

HB 809

2012

925 at retail, as the ~~such~~ terms are defined in s. 202.11, shall be
 926 due and payable at the same time as the taxes imposed pursuant
 927 to chapter 202, and shall be administered and collected pursuant
 928 to the provisions of chapter 202.

929 Section 15. Paragraph (e) of subsection (1) of section
 930 212.05, Florida Statutes, is amended to read:

931 212.05 Sales, storage, use tax.—It is hereby declared to
 932 be the legislative intent that every person is exercising a
 933 taxable privilege who engages in the business of selling
 934 tangible personal property at retail in this state, including
 935 the business of making mail order sales, or who rents or
 936 furnishes any of the things or services taxable under this
 937 chapter, or who stores for use or consumption in this state any
 938 item or article of tangible personal property as defined herein
 939 and who leases or rents such property within the state.

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

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

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

947 (I) "Prepaid calling arrangement" means the separately
 948 stated retail sale ~~by advance payment~~ of communications services
 949 that must be paid for in advance; that may be used to place or
 950 receive ~~consist exclusively of~~ telephone calls; that are enabled
 951 ~~originated~~ by using an access number, authorization code, or
 952 other means that may be manually, electronically, or otherwise

953 entered; and that are sold in predetermined units or dollars
 954 whose number declines on a predetermined basis ~~with use~~ in a
 955 known amount.

956 (II) If the sale or recharge of the prepaid calling
 957 arrangement does not take place at the dealer's place of
 958 business, it shall be deemed to take place at the customer's
 959 shipping address or, if no item is shipped, at the customer's
 960 address or the location associated with the customer's mobile
 961 telephone number.

962 (III) The sale or recharge of a prepaid calling
 963 arrangement shall be treated as a sale of tangible personal
 964 property for purposes of this chapter, whether or not a tangible
 965 item evidencing such arrangement is furnished to the purchaser,
 966 and such sale within this state subjects the selling dealer to
 967 the jurisdiction of this state for purposes of this subsection.

968 b. The installation of telecommunication and telegraphic
 969 equipment.

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

972 2. The provisions of s. 212.17(3), regarding credit for
 973 tax paid on charges subsequently found to be worthless, shall be
 974 equally applicable to any tax paid under the provisions of this
 975 section on charges for prepaid calling arrangements,
 976 telecommunication or telegraph services, or electric power
 977 subsequently found to be uncollectible. The word "charges" in
 978 this paragraph does not include any excise or similar tax levied
 979 by the Federal Government, any political subdivision of the
 980 state, or any municipality upon the purchase, sale, or recharge

HB 809

2012

981 of prepaid calling arrangements or upon the purchase or sale of
 982 telecommunication, television system program, or telegraph
 983 service or electric power, which tax is collected by the seller
 984 from the purchaser.

985 Section 16. Paragraph (a) of subsection (1) of section
 986 610.118, Florida Statutes, is amended to read:

987 610.118 Impairment; court-ordered operations.—

988 (1) If an incumbent cable or video service provider is
 989 required to operate under its existing franchise and is legally
 990 prevented by a lawfully issued order of a court of competent
 991 jurisdiction from exercising its right to terminate its existing
 992 franchise pursuant to the terms of s. 610.105, any
 993 certificateholder providing cable service or video service in
 994 whole or in part within the service area that is the subject of
 995 the incumbent cable or video service provider's franchise shall,
 996 for as long as the court order remains in effect, comply with
 997 the following franchise terms and conditions as applicable to
 998 the incumbent cable or video service provider in the service
 999 area:

1000 (a) The certificateholder shall pay to the municipality or
 1001 county:

1002 1. Any prospective lump-sum or recurring per-subscriber
 1003 funding obligations to support public, educational, and
 1004 governmental access channels or other prospective franchise-
 1005 required monetary grants related to public, educational, or
 1006 governmental access facilities equipment and capital costs.
 1007 Prospective lump-sum payments shall be made on an equivalent
 1008 per-subscriber basis calculated as follows: the amount of the

HB 809

2012

1009 prospective funding obligations divided by the number of
 1010 subscribers being served by the incumbent cable service provider
 1011 at the time of payment, divided by the number of months
 1012 remaining in the incumbent cable or video service provider's
 1013 franchise equals the monthly per subscriber amount to be paid by
 1014 the certificateholder until the expiration or termination of the
 1015 incumbent cable or video service provider's franchise; and

1016 2. If the incumbent cable or video service provider is
 1017 required to make payments for the funding of an institutional
 1018 network, the certificateholder shall pay an amount equal to the
 1019 incumbent's funding obligations but not to exceed 1 percent of
 1020 the sales price, as defined in s. 202.11(15) ~~202.11(13)~~, for the
 1021 taxable monthly retail sales of cable or video programming
 1022 services the certificateholder received from subscribers in the
 1023 affected municipality or county. All definitions and exemptions
 1024 under chapter 202 apply in the determination of taxable monthly
 1025 retail sales of cable or video programming services.

1026 Section 17. Section 624.105, Florida Statutes, is amended
 1027 to read:

1028 624.105 Waiver of customer liability.—Any regulated
 1029 company as defined in s. 350.111, any electric utility as
 1030 defined in s. 366.02(2), any utility as defined in s.
 1031 367.021(12) or s. 367.022(2) and (7), and any provider of
 1032 communications services as defined in s. 202.11(1) ~~202.11(2)~~ may
 1033 charge for and include an optional waiver of liability provision
 1034 in their customer contracts under which the entity agrees to
 1035 waive all or a portion of the customer's liability for service
 1036 from the entity for a defined period in the event of the

HB 809

2012

1037 customer's call to active military service, death, disability,
1038 involuntary unemployment, qualification for family leave, or
1039 similar qualifying event or condition. Such provisions may not
1040 be effective in the customer's contract with the entity unless
1041 affirmatively elected by the customer. No such provision shall
1042 constitute insurance so long as the provision is a contract
1043 between the entity and its customer.

1044 Section 18. The following changes made in this act are
1045 intended to be remedial in nature and apply retroactively, but
1046 do not provide a basis for an assessment of any tax not paid or
1047 create a right to a refund or credit of any tax paid before the
1048 general effective date of this act:

1049 (1) The changes made in section 2 of this act to
1050 subsections renumbered as subsections (9), (11), and (15) of s.
1051 202.11, Florida Statutes;

1052 (2) The changes made in section 7 of this act to s.
1053 202.22, Florida Statutes; and

1054 (3) The changes made in section 14 of this act to
1055 paragraph (e) of subsection (1) of s. 212.05, Florida Statutes.

1056 Section 19. This act shall take effect July 1, 2012.