

By Senator Richter

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1 A bill to be entitled
2 An act relating to the communications services tax;
3 providing legislative findings and intent; amending s.
4 202.11, F.S.; deleting the definition of the term
5 "enhanced zip code" and revising the definition of the
6 term "video service"; amending s. 202.12, F.S.;
7 revising the communications services tax rate on sales
8 of communications services; deleting provisions that
9 impose a communications services tax on the retail
10 sale of direct-to-home satellite services and require
11 the collection and remittance of the gross receipts
12 tax on the same transaction; conforming a cross-
13 reference; amending s. 202.125, F.S.; deleting an
14 exemption from the communications services tax and
15 gross receipts tax for the separately stated sales
16 price of communications services sold to residential
17 households and the exception to such exemption for
18 transient public lodging establishments, mobile
19 communications services, video services, or direct-to-
20 home satellite services; conforming cross-references;
21 amending ss. 202.13 and 202.151, F.S.; conforming
22 cross-references; amending s. 202.155, F.S.; providing
23 for the future repeal of such section relating to
24 special rules for establishing a customer's place of
25 primary use of mobile communications services;
26 conforming a cross-reference; amending s. 202.16,
27 F.S.; conforming a cross-reference; amending s.
28 202.18, F.S.; revising the allocation and disposition
29 formula applicable to proceeds of the communications

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30 services tax and certain proceeds of the gross
31 receipts tax; requiring a local government to reduce
32 its ad valorem tax mileage rate to offset certain
33 increases in communications services tax revenues;
34 authorizing a local government to elect not to offset
35 such revenues by adoption of a resolution in a
36 specified manner; providing responsibilities and
37 duties for local governments and the Department of
38 Revenue relating to such resolutions; conforming
39 provisions to changes made by the act; repealing s.
40 202.19, F.S., relating to the authorization to impose
41 the local communications services tax; amending ss.
42 202.193 and 202.195, F.S.; conforming cross-
43 references; repealing ss. 202.20, 202.21, and 202.22,
44 F.S., relating to the local communications services
45 tax conversion rates, the effective dates and
46 procedures for informing dealers of communications
47 services of tax levies and rate changes, and the
48 determination of the local tax situs for imposition of
49 the tax, respectively; amending s. 202.23, F.S.;
50 conforming cross-references; amending s. 202.231,
51 F.S.; providing for the future repeal of such section
52 relating to providing information to local taxing
53 jurisdictions concerning the local communications
54 services tax; amending s. 202.24, F.S.; conforming
55 cross-references; defining the term "replaced revenue
56 sources"; amending s. 202.26, F.S.; revising the
57 Department of Revenue's authority to adopt rules
58 relating to a dealer's exercise of due diligence with

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59 respect to certain records and methods necessary for
60 the collection of the local communications services
61 tax; conforming cross-references; amending ss. 202.27,
62 202.28, 202.29, and 202.35, F.S.; conforming cross-
63 references; repealing ss. 202.37, 202.38, 202.381, and
64 203.001, F.S., relating to special rules for
65 administration of the local communications services
66 tax, special rules for bad debts and adjustments under
67 specified previously existing taxes, the transition
68 from previously existing taxes, and the combined rate
69 for communications services and the gross receipts tax
70 on utility services, respectively; amending s. 203.01,
71 F.S.; conforming cross-references; revising the tax
72 rate levied on communications services; amending ss.
73 218.67, 288.1045, 288.106, and 213.053, F.S.;
74 conforming cross-references; amending s. 337.401,
75 F.S.; deleting the authority for municipalities,
76 charter counties, and noncharter counties to collect
77 permit fees from providers of communications services
78 that use or occupy municipal or county roads or
79 rights-of-way and deleting the procedures,
80 requirements, and limitations with respect thereto;
81 conforming cross-references; providing application
82 relating to the replacement of taxes or fees repealed
83 by this act with respect to the impairment of bonded
84 indebtedness secured by such taxes or fees; providing
85 application relating to the imposition of taxes on
86 billing statements for communications services;
87 providing an effective date.

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

Section 1. Legislative findings and intent.—

(1) The Legislature finds that:

(a) Florida has one of the highest rates of taxation on communications services in the nation;

(b) Communications services are heavily used and relied on by consumers and businesses in today's information age; and

(c) The current administration of Florida's communications services tax is overly burdensome on both the Department of Revenue and dealers of communications services and is confusing to consumers.

(2) The Legislature intends to:

(a) Move to a unified tax on communications services in order to address many of the concerns expressed in subsection

(1).

(b) Work towards future reductions in the overall rate of taxation while also preserving the significant funding source that this tax provides to state and local governments.

(c) Ensure that Florida's local governments in the aggregate are treated in a revenue-neutral manner.

Section 2. Subsections (19) through (23) of section 202.11, Florida Statutes, are renumbered as subsections (18) through (22), respectively, and present subsections (18) and (24) of that section are amended to read:

202.11 Definitions.—As used in this chapter, the term:

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

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117 (23)~~(24)~~ "Video service" means the transmission of video,
118 audio, or other programming service to a purchaser, and the
119 purchaser interaction, if any, required for the selection or use
120 of a programming service, regardless of whether the programming
121 is transmitted over facilities owned or operated by the video
122 service provider or over facilities owned or operated by another
123 dealer of communications services. The term includes point-to-
124 point and point-to-multipoint distribution services through
125 which programming is transmitted or broadcast by microwave or
126 other equipment directly to the purchaser's premises, including
127 ~~but does not include~~ direct-to-home satellite service. The term
128 includes basic, extended, premium, pay-per-view, digital video,
129 two-way cable, and music services.

130 Section 3. Subsection (1) of section 202.12, Florida
131 Statutes, is amended to read:

132 202.12 Sales of communications services.—The Legislature
133 finds that every person who engages in the business of selling
134 communications services at retail in this state is exercising a
135 taxable privilege. It is the intent of the Legislature that the
136 tax imposed by chapter 203 be administered as provided in this
137 chapter.

138 (1) For the exercise of such privilege, a tax is levied on
139 each taxable transaction, and the tax is due and payable as
140 follows:

141 (a) Except as otherwise provided in this subsection, at a
142 rate of 10.65 ~~6.65~~ percent applied to the sales price of the
143 communications service which:

- 144 1. Originates and terminates in this state, or
- 145 2. Originates or terminates in this state and is charged to

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146 a service address in this state,
147
148 when sold at retail, computed on each taxable sale for the
149 purpose of remitting the tax due. The gross receipts tax imposed
150 by chapter 203 shall be collected on the same taxable
151 transactions and remitted with the tax imposed by this
152 paragraph. If no tax is imposed by this paragraph ~~by reason of~~
153 ~~s. 202.125(1)~~, the tax imposed by chapter 203 shall nevertheless
154 be collected and remitted in the manner and at the time
155 prescribed for tax collections and remittances under this
156 chapter.

157 ~~(b) At the rate of 10.8 percent on the retail sales price~~
158 ~~of any direct-to-home satellite service received in this state.~~
159 ~~The proceeds of the tax imposed under this paragraph shall be~~
160 ~~accounted for and distributed in accordance with s. 202.18(2).~~
161 ~~The gross receipts tax imposed by chapter 203 shall be collected~~
162 ~~on the same taxable transactions and remitted with the tax~~
163 ~~imposed by this paragraph.~~

164 (b)(e) At the rate set forth in paragraph (a) on the sales
165 price of private communications services provided within this
166 state, which shall be determined in accordance with the
167 following provisions:

- 168 1. Any charge with respect to a channel termination point
169 located within this state;
- 170 2. Any charge for the use of a channel between two channel
171 termination points located in this state; and
- 172 3. Where channel termination points are located both within
173 and outside of this state:
- 174 a. If any segment between two such channel termination

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175 points is separately billed, 50 percent of such charge; and

176 b. If any segment of the circuit is not separately billed,
177 an amount equal to the total charge for such circuit multiplied
178 by a fraction, the numerator of which is the number of channel
179 termination points within this state and the denominator of
180 which is the total number of channel termination points of the
181 circuit.

182
183 The gross receipts tax imposed by chapter 203 shall be collected
184 on the same taxable transactions and remitted with the tax
185 imposed by this paragraph.

186 (c)~~(d)~~ At the rate set forth in paragraph (a) applied to
187 the sales price of all mobile communications services deemed to
188 be provided to a customer by a home service provider pursuant to
189 s. 117(a) of the Mobile Telecommunications Sourcing Act, Pub. L.
190 No. 106-252, if such customer's service address is located
191 within this state.

192 Section 4. Section 202.125, Florida Statutes, is amended to
193 read:

194 202.125 Sales of communications services; specified
195 exemptions.—

196 ~~(1) The separately stated sales price of communications
197 services sold to residential households is exempt from the tax
198 imposed by s. 202.12 and s. 203.01(1)(b)3. This exemption does
199 not apply to any residence that constitutes all or part of a
200 transient public lodging establishment as defined in chapter
201 509, any mobile communications service, any video service, or
202 any direct-to-home satellite service.~~

203 (1)~~(2)~~ The sale of communications services provided to the

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204 Federal Government, any agency or instrumentality of the Federal
205 Government, or any entity that is exempt from state taxes under
206 federal law is exempt from the taxes imposed or administered
207 pursuant to s. 202.12 ~~ss. 202.12 and 202.19~~.

208 (2) ~~(3)~~ The sale of communications services to the state or
209 any county, municipality, or political subdivision of the state
210 when payment is made directly to the dealer by the governmental
211 entity is exempt from the taxes imposed or administered pursuant
212 to s. 202.12 ~~ss. 202.12 and 202.19~~. This exemption does not
213 inure to any transaction otherwise taxable under this chapter
214 when payment is made by a government employee by any means,
215 including, but not limited to, cash, check, or credit card even
216 when that employee is subsequently reimbursed by the
217 governmental entity.

218 (3) ~~(4)~~ The sale of communications services to a home for
219 the aged, religious institution or educational institution that
220 is exempt from federal income tax under s. 501(c)(3) of the
221 Internal Revenue Code, or by a religious institution that is
222 exempt from federal income tax under s. 501(c)(3) of the
223 Internal Revenue Code having an established physical place for
224 worship at which nonprofit religious services and activities are
225 regularly conducted and carried on, is exempt from the taxes
226 imposed or administered pursuant to s. 202.12 ~~ss. 202.12 and~~
227 ~~202.19~~. As used in this subsection, the term:

228 (a) "Religious institution" means an organization owning
229 and operating an established physical place for worship at which
230 nonprofit religious services and activities are regularly
231 conducted. The term also includes:

232 1. Any nonprofit corporation the sole purpose of which is

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233 to provide free transportation services to religious institution
234 members, their families, and other religious institution
235 attendees.

236 2. Any nonprofit state, district, or other governing or
237 administrative office the function of which is to assist or
238 regulate the customary activities of religious institutions.

239 3. Any nonprofit corporation that owns and operates a
240 television station in this state of which at least 90 percent of
241 the programming consists of programs of a religious nature and
242 the financial support for which, exclusive of receipts for
243 broadcasting from other nonprofit organizations, is
244 predominantly from contributions from the public.

245 4. Any nonprofit corporation the primary activity of which
246 is making and distributing audio recordings of religious
247 scriptures and teachings to blind or visually impaired persons
248 at no charge.

249 5. Any nonprofit corporation the sole or primary purpose of
250 which is to provide, upon invitation, nonprofit religious
251 services, evangelistic services, religious education,
252 administrative assistance, or missionary assistance for a
253 religious institution, or established physical place of worship
254 at which nonprofit religious services and activities are
255 regularly conducted.

256 (b) "Educational institution" includes:

257 1. Any state tax-supported, parochial, religious
258 institution, and nonprofit private school, college, or
259 university that conducts regular classes and courses of study
260 required for accreditation by or membership in the Southern
261 Association of Colleges and Schools, the Florida Council of

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262 Independent Schools, or the Florida Association of Christian
263 Colleges and Schools, Inc.

264 2. Any nonprofit private school that conducts regular
265 classes and courses of study which are accepted for continuing
266 education credit by a board of the Division of Medical Quality
267 Assurance of the Department of Health.

268 3. Any nonprofit library.

269 4. Any nonprofit art gallery.

270 5. Any nonprofit performing arts center that provides
271 educational programs to school children, which programs involve
272 performances or other educational activities at the performing
273 arts center and serve a minimum of 50,000 school children a
274 year.

275 6. Any nonprofit museum that is open to the public.

276 (c) "Home for the aged" includes any nonprofit corporation:

277 1. In which at least 75 percent of the occupants are 62
278 years of age or older or totally and permanently disabled; which
279 qualifies for an ad valorem property tax exemption under s.
280 196.196, s. 196.197, or s. 196.1975; and which is exempt from
281 the sales tax imposed under chapter 212.

282 2. Licensed as a nursing home under chapter 400 or an
283 assisted living facility under chapter 429 and which is exempt
284 from the sales tax imposed under chapter 212.

285 Section 5. Subsection (3) of section 202.13, Florida
286 Statutes, is amended to read:

287 202.13 Intent.—

288 (3) The tax on dealers of communications services
289 authorized under this chapter, ~~including the tax imposed by~~
290 ~~local governments under ss. 202.19 and 202.20,~~ shall supersede

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291 the authority of local governments to levy franchise fees as set
292 out in 47 U.S.C. s. 542 without regard to the fact that this is
293 a tax of general applicability on all providers of
294 communications services.

295 Section 6. Section 202.151, Florida Statutes, is amended to
296 read:

297 202.151 Use tax imposed on certain purchasers of
298 communications services.—Any person who purchases communications
299 services that are otherwise taxable under s. 202.12 ~~ss. 202.12~~
300 ~~and 202.19~~ at retail from a seller in another state, territory,
301 the District of Columbia, or any foreign country shall report
302 and remit to the department the taxes imposed by or administered
303 under this chapter on the communications services purchased and
304 used, the same as if such communications services had been
305 purchased at retail from a dealer in this state. This section
306 does not apply if the out-of-state seller registers as a dealer
307 in this state and collects from the purchaser the taxes imposed
308 by or administered under this chapter. The department may adopt
309 rules governing the reporting and remitting of communications
310 services taxes by purchasers who purchase from out-of-state
311 sellers who do not collect the taxes imposed by or administered
312 under this chapter.

313 Section 7. Paragraph (b) of subsection (3) of section
314 202.155, Florida Statutes, is amended, and subsection (5) is
315 added to that section, to read:

316 202.155 Special rules for mobile communications services.—

317 (3)

318 (b) The department shall provide notice to the home service
319 provider of its intent to redetermine the assignment of a taxing

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320 jurisdiction by a home service provider under former s. 202.22.
321 If a final order is entered ruling that the jurisdiction
322 assigned by the home service provider is incorrect, the
323 department shall notify the home service provider of the proper
324 jurisdictional assignment. The home service provider shall begin
325 using the correct jurisdictional assignment within 120 days.

326 (5) This section is repealed effective October 1, 2016.

327 Section 8. Paragraph (c) of subsection (3) of section
328 202.16, Florida Statutes, is amended to read:

329 202.16 Payment.—The taxes imposed or administered under
330 this chapter and chapter 203 shall be collected from all dealers
331 of taxable communications services on the sale at retail in this
332 state of communications services taxable under this chapter and
333 chapter 203. The full amount of the taxes on a credit sale,
334 installment sale, or sale made on any kind of deferred payment
335 plan is due at the moment of the transaction in the same manner
336 as a cash sale.

337 (3)

338 (c) A dealer may apply the rounding algorithm to the taxes
339 imposed pursuant to ss. 202.12 and 203.01 in one of the
340 following ways:

341 1. Apply the rounding algorithm to the combined taxes
342 imposed pursuant to ss. 202.12 and 203.01.

343 2. Apply the rounding algorithm to the communications
344 services taxes imposed pursuant to s. 202.12(1), and apply the
345 rounding algorithm separately to the combined gross receipts
346 taxes imposed pursuant to s. 203.01(1)(b)2. and 3.

347 3. Apply the rounding algorithm to the combined taxes
348 imposed pursuant to ss. 202.12(1)(a) and 203.01(1)(b)3., as

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349 allowed by s. 202.12001 ~~ss. 202.12001 and 203.001~~, and apply the
350 rounding algorithm separately to the gross receipts tax imposed
351 pursuant to s. 203.01(1)(b)2.

352 Section 9. Section 202.18, Florida Statutes, is amended to
353 read:

354 202.18 Allocation and disposition of tax proceeds.—The
355 proceeds of the communications services taxes remitted under
356 this chapter shall be treated as follows:

357 (1) The proceeds of the taxes remitted under s.
358 202.12(1)(a) shall be divided as follows:

359 (a) The portion of such proceeds which constitutes gross
360 receipts taxes, imposed at the rate prescribed in chapter 203,
361 shall be deposited as provided by law and in accordance with s.
362 9, Art. XII of the State Constitution.

363 (b) An amount equal to 55 percent of the remaining portion
364 shall be distributed according to s. 212.20(6).

365 ~~(2) The proceeds of the taxes remitted under s.~~
366 ~~202.12(1)(b) shall be divided as follows:~~

367 ~~(a) The portion of such proceeds which constitutes gross~~
368 ~~receipts taxes, imposed at the rate prescribed in chapter 203,~~
369 ~~shall be deposited as provided by law and in accordance with s.~~
370 ~~9, Art. XII of the State Constitution.~~

371 ~~(b) Sixty three percent of the remainder shall be allocated~~
372 ~~to the state and distributed pursuant to s. 212.20(6), except~~
373 ~~that the proceeds allocated pursuant to s. 212.20(6)(d)2. shall~~
374 ~~be prorated to the participating counties in the same proportion~~
375 ~~as that month's collection of the taxes and fees imposed~~
376 ~~pursuant to chapter 212 and paragraph (1)(b).~~

377 ~~(c)1. During each calendar year, the remaining portion of~~

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378 ~~such proceeds shall be transferred to the Local Government Half-~~
379 ~~cent Sales Tax Clearing Trust Fund. Seventy percent of such~~
380 ~~proceeds shall be allocated in the same proportion as the~~
381 ~~allocation of total receipts of the half-cent sales tax under s.~~
382 ~~218.61 and the emergency distribution under s. 218.65 in the~~
383 ~~prior state fiscal year. Thirty percent of such proceeds shall~~
384 ~~be distributed pursuant to s. 218.67.~~

385 ~~2. The proportion of the proceeds allocated based on the~~
386 ~~emergency distribution under s. 218.65 shall be distributed~~
387 ~~pursuant to s. 218.65.~~

388 ~~3. In each calendar year, the proportion of the proceeds~~
389 ~~allocated based on the half-cent sales tax under s. 218.61 shall~~
390 ~~be allocated to each county in the same proportion as the~~
391 ~~county's percentage of total sales tax allocation for the prior~~
392 ~~state fiscal year and distributed pursuant to s. 218.62.~~

393 ~~4. The department shall distribute the appropriate amount~~
394 ~~to each municipality and county each month at the same time that~~
395 ~~local communications services taxes are distributed pursuant to~~
396 ~~subsection (3).~~

397 ~~(c)(3)(a)~~ Notwithstanding any law to the contrary, an
398 amount equal to 45 percent of the remaining proceeds of the each
399 local communications services tax levied by the state a
400 municipality or county pursuant to s. 202.12 s. 202.19(1) or s.
401 202.20(1), less the department's costs of administration, shall
402 be transferred to the Local Communications Services Tax Clearing
403 Trust Fund and held there to be distributed to such municipality
404 or county. However, the proceeds of any communications services
405 tax imposed pursuant to s. 202.19(5) shall be deposited and
406 disbursed in accordance with ss. 212.054 and 212.055.

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407 (2) If, in fiscal year 2013-2014, a local government
408 receives 110 percent or more of its fiscal year 2012-2013 local
409 communications services tax revenues, such local government must
410 reduce its fiscal year 2013-2014 ad valorem tax mileage rate by
411 an amount to offset the increase in communications services tax
412 revenues. However, a local government may elect not to offset
413 such revenues by adopting a resolution by a majority vote at a
414 duly noticed, public hearing. A copy of all such resolutions
415 must be forwarded to the executive director of the department no
416 later than December 1, 2014, and the department must compile all
417 such resolutions and prepare a report for the Legislature and
418 Governor by January 1, 2015, that also includes a summary of any
419 other issues related to implementation of this act ~~For purposes~~
420 ~~of this section, the proceeds of any tax levied by a~~
421 ~~municipality, county, or school board under s. 202.19(1) or s.~~
422 ~~202.20(1) are all funds collected and received by the department~~
423 ~~pursuant to a specific levy authorized by such sections,~~
424 ~~including any interest and penalties attributable to the tax~~
425 ~~levy.~~

426 ~~(b) The amount deducted for the costs of administration may~~
427 ~~not exceed 1 percent of the total revenue generated for all~~
428 ~~municipalities, counties, and school boards levying a tax~~
429 ~~pursuant to s. 202.19. The amount deducted for the costs of~~
430 ~~administration shall be used only for those costs that are~~
431 ~~attributable to the taxes imposed pursuant to s. 202.19. The~~
432 ~~total cost of administration shall be prorated among those~~
433 ~~jurisdictions levying the tax on the basis of the amount~~
434 ~~collected for a particular jurisdiction to the total amount~~
435 ~~collected for all such jurisdictions.~~

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436 ~~(c)1. Except as otherwise provided in this paragraph,~~
437 ~~proceeds of the taxes levied pursuant to s. 202.19, less amounts~~
438 ~~deducted for costs of administration in accordance with~~
439 ~~paragraph (b), shall be distributed monthly to the appropriate~~
440 ~~jurisdictions. The proceeds of taxes imposed pursuant to s.~~
441 ~~202.19(5) shall be distributed in the same manner as~~
442 ~~discretionary surtaxes are distributed, in accordance with ss.~~
443 ~~212.054 and 212.055.~~

444 ~~2. The department shall make any adjustments to the~~
445 ~~distributions pursuant to this section which are necessary to~~
446 ~~reflect the proper amounts due to individual jurisdictions or~~
447 ~~trust funds. In the event that the department adjusts amounts~~
448 ~~due to reflect a correction in the situsing of a customer, such~~
449 ~~adjustment shall be limited to the amount of tax actually~~
450 ~~collected from such customer by the dealer of communication~~
451 ~~services.~~

452 ~~3.a. Adjustments in distributions which are necessary to~~
453 ~~correct misallocations between jurisdictions shall be governed~~
454 ~~by this subparagraph. If the department determines that~~
455 ~~misallocations between jurisdictions occurred, it shall provide~~
456 ~~written notice of such determination to all affected~~
457 ~~jurisdictions. The notice shall include the amount of the~~
458 ~~misallocations, the basis upon which the determination was made,~~
459 ~~data supporting the determination, and the identity of each~~
460 ~~affected jurisdiction. The notice shall also inform all affected~~
461 ~~jurisdictions of their authority to enter into a written~~
462 ~~agreement establishing a method of adjustment as described in~~
463 ~~sub-subparagraph c.~~

464 ~~b. An adjustment affecting a distribution to a jurisdiction~~

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465 ~~which is less than 90 percent of the average monthly~~
466 ~~distribution to that jurisdiction for the 6 months immediately~~
467 ~~preceding the department's determination, as reported by all~~
468 ~~communications services dealers, shall be made in the month~~
469 ~~immediately following the department's determination that~~
470 ~~misallocations occurred.~~

471 ~~e. If an adjustment affecting a distribution to a~~
472 ~~jurisdiction equals or exceeds 90 percent of the average monthly~~
473 ~~distribution to that jurisdiction for the 6 months immediately~~
474 ~~preceding the department's determination, as reported by all~~
475 ~~communications services dealers, the affected jurisdictions may~~
476 ~~enter into a written agreement establishing a method of~~
477 ~~adjustment. If the agreement establishing a method of adjustment~~
478 ~~provides for payments of local communications services tax~~
479 ~~monthly distributions, the amount of any such payment agreed to~~
480 ~~may not exceed the local communications services tax monthly~~
481 ~~distributions available to the jurisdiction that was allocated~~
482 ~~amounts in excess of those to which it was entitled. If affected~~
483 ~~jurisdictions execute a written agreement specifying a method of~~
484 ~~adjustment, a copy of the written agreement shall be provided to~~
485 ~~the department no later than the first day of the month~~
486 ~~following 90 days after the date the department transmits notice~~
487 ~~of the misallocation. If the department does not receive a copy~~
488 ~~of the written agreement within the specified time period, an~~
489 ~~adjustment affecting a distribution to a jurisdiction made~~
490 ~~pursuant to this sub-subparagraph shall be prorated over a time~~
491 ~~period that equals the time period over which the misallocations~~
492 ~~occurred.~~

493 Section 10. Section 202.19, Florida Statutes, is repealed.

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494 Section 11. Subsection (1) of section 202.193, Florida
495 Statutes, is amended to read:

496 202.193 Local Communications Services Tax Clearing Trust
497 Fund.—

498 (1) The Local Communications Services Tax Clearing Trust
499 Fund is created within the Department of Revenue. Proceeds from
500 the local communications services tax levied pursuant to s.
501 202.12 ~~s. 202.19~~ shall be deposited in the trust fund for
502 distribution to municipalities and counties as provided in s.
503 202.18. Moneys deposited in the trust fund are exempt from the
504 service charges imposed under s. 215.20.

505 Section 12. Subsection (1) of section 202.195, Florida
506 Statutes, is amended to read:

507 202.195 Proprietary confidential business information;
508 public records exemption.—

509 (1) Proprietary confidential business information obtained
510 from a telecommunications company or franchised cable company
511 for the purposes of imposing fees for occupying the public
512 rights-of-way, assessing the local communications services tax
513 pursuant to s. 202.12 ~~s. 202.19~~, or regulating the public
514 rights-of-way, held by a local governmental entity, is
515 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
516 of the State Constitution. Such proprietary confidential
517 business information held by a local governmental entity may be
518 used only for the purposes of imposing such fees, assessing such
519 tax, or regulating such rights-of-way, and may not be used for
520 any other purposes, including, but not limited to, commercial or
521 competitive purposes.

522 Section 13. Section 202.20, Florida Statutes, is repealed.

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523 Section 14. Section 202.21, Florida Statutes, is repealed.

524 Section 15. Section 202.22, Florida Statutes, is repealed.

525 Section 16. Subsections (2) and (5) of section 202.23,
526 Florida Statutes, are amended to read:

527 202.23 Procedure on purchaser's request for refund or
528 credit of communications services taxes.—

529 (2) This section provides the sole and exclusive procedure
530 and remedy for a purchaser who claims that a dealer has
531 collected communications services taxes imposed or administered
532 under this chapter which were not due. An action that arises as
533 a result of the claimed collection of taxes that were not due
534 may not be commenced or maintained by or on behalf of a
535 purchaser against a dealer, a municipality, a county, or the
536 state unless the purchaser pleads and proves that the purchaser
537 has exhausted the procedures in subsection (1) and that the
538 defendant has failed to comply with subsection (1). However, no
539 determination by a dealer under paragraph (1)(c) shall be deemed
540 a failure to comply with subsection (1) if the dealer has
541 complied with the obligations imposed on the dealer by
542 paragraphs (1)(d), (e), and (f). In any such action, it is a
543 complete defense that the dealer, a municipality, a county, or
544 the state has refunded the taxes claimed or credited the
545 purchaser's account. In such an action against a dealer, it is
546 also a complete defense that, in collecting the tax, the dealer
547 used one or more of the methods set forth in former s. 202.22
548 for assigning the purchaser to a local taxing jurisdiction. Such
549 action is barred unless it is commenced within 180 days
550 following the date of the dealer's written response under
551 paragraph (1)(f), or within 1 year following submission of the

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552 purchaser's request to the dealer if the dealer failed to issue
553 a timely written response. The relief available to a purchaser
554 as a result of collection of communications services taxes that
555 were not due is limited to a refund of or credit for such taxes.

556 (5) A dealer who has collected and remitted amounts that
557 were not due, as determined by the department under paragraph
558 (1) (e), who has issued a refund or credit to the purchaser for
559 such amounts, and who takes a credit or receives a refund from
560 the department for such amounts as provided in subsection (3) is
561 not subject to assessment for any of the tax that was refunded
562 or credited or for any interest or penalty with respect to the
563 tax. In addition, a dealer who modifies his or her tax
564 compliance practices to conform to a department determination
565 under paragraph (1) (e) is not subject to assessment as a result
566 of such modification, absent a subsequent change in law or
567 update to a database pursuant to former s. 202.22.

568 Section 17. Subsection (4) is added to section 202.231,
569 Florida Statutes, to read:

570 202.231 Provision of information to local taxing
571 jurisdictions.—

572 (4) This section is repealed effective October 1, 2016.

573 Section 18. Paragraph (c) of subsection (2) of section
574 202.24, Florida Statutes, is amended, and subsection (4) is
575 added to that section, to read:

576 202.24 Limitations on local taxes and fees imposed on
577 dealers of communications services.—

578 (2)

579 (c) This subsection does not apply to:

580 ~~1. Local communications services taxes levied under this~~

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581 ~~chapter.~~

582 1.2. Ad valorem taxes levied pursuant to chapter 200.

583 2.3. Business taxes levied under chapter 205.

584 3.4. "911" service charges levied under chapter 365.

585 4.5. Amounts charged for the rental or other use of
586 property owned by a public body which is not in the public
587 rights-of-way to a dealer of communications services for any
588 purpose, including, but not limited to, the placement or
589 attachment of equipment used in the provision of communications
590 services.

591 5.6. Permit fees of general applicability which are not
592 related to placing or maintaining facilities in or on public
593 roads or rights-of-way.

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

596 6.8. Any in-kind requirements, institutional networks, or
597 contributions for, or in support of, the use or construction of
598 public, educational, or governmental access facilities allowed
599 under federal law and imposed on providers of video service
600 pursuant to any existing ordinance or an existing franchise
601 agreement granted by each municipality or county, under which
602 ordinance or franchise agreement service is provided before July
603 1, 2007, or as permitted under chapter 610. This subparagraph
604 does not prohibit providers of video service from recovering the
605 expenses as allowed under federal law.

606 7.9. Special assessments and impact fees.

607 8.10. Pole attachment fees that are charged by a local
608 government for attachments to utility poles owned by the local
609 government.

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610 ~~9.11.~~ Utility service fees or other similar user fees for
611 utility services.

612 ~~10.12.~~ Any other generally applicable tax, fee, charge, or
613 imposition authorized by general law on July 1, 2000, which is
614 not specifically prohibited by this subsection or included as a
615 replaced revenue source ~~in s. 202.20.~~

616 (4) As used in this section, the term "replaced revenue
617 source" means the following taxes, charges, fees, or other
618 impositions to the extent that the respective local taxing
619 jurisdictions were authorized to impose them before July 1,
620 2000.

621 (a) With respect to municipalities and charter counties and
622 the taxes authorized by former s. 202.19(1):

623 1. The public service tax on telecommunications authorized
624 by former s. 166.231(9).

625 2. Franchise fees on cable service providers as authorized
626 by 47 U.S.C. s. 542.

627 3. The public service tax on prepaid calling arrangements.

628 4. Franchise fees on dealers of communications services
629 which use the public roads or rights-of-way, up to the limit set
630 forth in s. 337.401. For purposes of calculating rates under
631 this section, it is the legislative intent that charter counties
632 be treated as having had the same authority as municipalities to
633 impose franchise fees on recurring local telecommunication
634 service revenues prior to July 1, 2000. However, the Legislature
635 recognizes that the authority of charter counties to impose such
636 fees is in dispute, and the treatment provided in this section
637 is not an expression of legislative intent that charter counties
638 actually do or do not possess such authority.

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639 5. Actual permit fees relating to placing or maintaining
640 facilities in or on public roads or rights-of-way, collected
641 from providers of long-distance, cable, and mobile
642 communications services.

643 (b) With respect to all other counties and the taxes
644 authorized in former s. 202.19(1), franchise fees on cable
645 service providers as authorized by 47 U.S.C. s. 542.

646 Section 19. Paragraphs (f) and (g) of subsection (3) of
647 section 202.26, Florida Statutes, are amended to read:

648 202.26 Department powers.—

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

651 (f) ~~The records and methods necessary for~~ A dealer to
652 demonstrate the exercise of due diligence as defined by former
653 s. 202.22(4) (b).

654 (g) The creation of the database described in former s.
655 202.22(2) and the certification and recertification of the
656 databases as described in former s. 202.22(3).

657 Section 20. Subsection (6) of section 202.27, Florida
658 Statutes, is amended to read:

659 202.27 Return filing; rules for self-accrual.—

660 (6) In addition to the contact person identified on the
661 return, each dealer of communications services obligated to
662 collect and remit local communications services tax imposed
663 under former s. 202.19 may at any time, and shall within 10 days
664 after a request, designate a managerial representative to whom
665 the department shall direct any inquiry regarding the
666 completeness or accuracy of the dealer's return when the
667 response provided by the contact person identified on the return

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668 has been inadequate. When the representative designated under
669 this subsection is contacted by the department, the dealer shall
670 respond to the department within 30 days.

671 Section 21. Subsection (1) and paragraphs (d) and (e) of
672 subsection (2) of section 202.28, Florida Statutes, are amended
673 to read:

674 202.28 Credit for collecting tax; penalties.—

675 (1) Except as otherwise provided in former s. 202.22, for
676 the purpose of compensating persons providing communications
677 services for the keeping of prescribed records, the filing of
678 timely tax returns, and the proper accounting and remitting of
679 taxes, persons collecting taxes imposed under this chapter and
680 under s. 203.01(1)(a)2. shall be allowed to deduct 0.75 percent
681 of the amount of the tax due and accounted for and remitted to
682 the department.

683 (a) The collection allowance may not be granted, nor may
684 any deduction be permitted, if the required tax return or tax is
685 delinquent at the time of payment.

686 (b) The department may deny the collection allowance if a
687 taxpayer files an incomplete return.

688 1. For the purposes of this chapter, a return is incomplete
689 if it is lacking such uniformity, completeness, and arrangement
690 that the physical handling, verification, review of the return,
691 or determination of other taxes and fees reported on the return
692 can not be readily accomplished.

693 2. The department shall adopt rules requiring the
694 information that it considers necessary to ensure that the taxes
695 levied or administered under this chapter are properly
696 collected, reviewed, compiled, reported, and enforced,

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697 including, but not limited to, rules requiring the reporting of
698 the amount of gross sales; the amount of taxable sales; the
699 amount of tax collected or due; the amount of lawful refunds,
700 deductions, or credits claimed; the amount claimed as the
701 dealer's collection allowance; the amount of penalty and
702 interest; and the amount due with the return.

703 (c) The collection allowance and other credits or
704 deductions provided in this chapter shall be applied to the
705 taxes reported for the jurisdiction previously credited with the
706 tax paid.

707 (2)

708 (d) If a dealer fails to separately report and identify
709 local communications services taxes on the appropriate return
710 schedule, the dealer shall be subject to a penalty of \$5,000 per
711 return. If the department is unable to obtain appropriate return
712 schedules, any penalty imposed by this paragraph shall be
713 allocated in the same manner as provided in s. 202.18(1)(c) ~~s.~~
714 ~~202.18(2)~~.

715 (e) If a dealer of communications services does not use one
716 or more of the methods specified in former s. 202.22(1) for
717 assigning service addresses to local jurisdictions and assigns
718 one or more service addresses to an incorrect local jurisdiction
719 in collecting and remitting local communications services taxes
720 imposed under former s. 202.19, the dealer shall be subject to a
721 specific penalty of 10 percent of any tax collected but reported
722 to the incorrect jurisdiction as a result of incorrect
723 assignment, except that the penalty imposed under this paragraph
724 with respect to a single return may not exceed \$10,000.

725 Section 22. Paragraph (a) of subsection (4) of section

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726 202.29, Florida Statutes, is amended to read:

727 202.29 Bad debts.—

728 (4) (a) A dealer may report the credit for bad debt allowed
729 under this section by netting such credit against the tax due to
730 the state pursuant to s. 202.12 ~~or to a local jurisdiction~~
731 ~~pursuant to s. 202.19~~, but such netting may not reduce the
732 amount due to the state or to any local jurisdiction below zero.

733 Section 23. Subsection (4) of section 202.35, Florida
734 Statutes, is amended to read:

735 202.35 Powers of department in dealing with delinquents;
736 tax to be separately stated.—

737 (4) Each dealer who makes retail sales of communications
738 services shall add the amount of the taxes imposed or
739 administered under this chapter to the price of the services
740 sold by him or her and shall state the taxes separately from the
741 price of the services on all invoices. The combined amount of
742 taxes due under ss. 202.12 and 203.01 shall be stated and
743 identified as the Florida communications services tax, ~~and the~~
744 ~~combined amount of taxes due under s. 202.19 shall be stated and~~
745 ~~identified as the local communications services tax.~~

746 Section 24. Section 202.37, Florida Statutes, is repealed.

747 Section 25. Section 202.38, Florida Statutes, is repealed.

748 Section 26. Section 202.381, Florida Statutes, is repealed.

749 Section 27. Section 203.001, Florida Statutes, is repealed.

750 Section 28. Paragraphs (a) and (b) of subsection (1) of
751 section 203.01, Florida Statutes, are amended to read:

752 203.01 Tax on gross receipts for utility and communications
753 services.—

754 (1) (a) 1. A tax is imposed on gross receipts from utility

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755 services that are delivered to a retail consumer in this state.
756 The tax shall be levied as provided in paragraphs (b)-(j).

757 2. A tax is levied on communications services as defined in
758 s. 202.11(1). The tax shall be applied to the same services and
759 transactions as are subject to taxation under chapter 202, ~~and~~
760 ~~to communications services that are subject to the exemption~~
761 ~~provided in s. 202.125(1)~~. The tax shall be applied to the sales
762 price of communications services when sold at retail, as the
763 terms are defined in s. 202.11, shall be due and payable at the
764 same time as the taxes imposed pursuant to chapter 202, and
765 shall be administered and collected pursuant to the provisions
766 of chapter 202.

767 (b)1. The rate applied to utility services shall be 2.5
768 percent.

769 2. The rate applied to communications services shall be
770 2.52 ~~2.37~~ percent.

771 ~~3. There shall be an additional rate of 0.15 percent~~
772 ~~applied to communication services subject to the tax levied~~
773 ~~pursuant to s. 202.12(1)(a), (c), and (d). The exemption~~
774 ~~provided in s. 202.125(1) applies to the tax levied pursuant to~~
775 ~~this subparagraph.~~

776 Section 29. Subsection (2) of section 218.67, Florida
777 Statutes, is amended to read:

778 218.67 Distribution for fiscally constrained counties.—

779 (2) Each fiscally constrained county government that
780 participates in the local government half-cent sales tax shall
781 be eligible to receive an additional distribution from the Local
782 Government Half-cent Sales Tax Clearing Trust Fund, ~~as provided~~
783 ~~in s. 202.18(2)(c)1.~~, in addition to its regular monthly

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784 distribution provided under this part and any emergency or
785 supplemental distribution under s. 218.65.

786 Section 30. Paragraph (f) of subsection (2) of section
787 288.1045, Florida Statutes, is amended to read:

788 288.1045 Qualified defense contractor and space flight
789 business tax refund program.—

790 (2) GRANTING OF A TAX REFUND; ELIGIBLE AMOUNTS.—

791 (f) After entering into a tax refund agreement pursuant to
792 subsection (4), a qualified applicant may:

793 1. Receive refunds from the account for corporate income
794 taxes due and paid pursuant to chapter 220 by that business
795 beginning with the first taxable year of the business which
796 begins after entering into the agreement.

797 2. Receive refunds from the account for the following taxes
798 due and paid by that business after entering into the agreement:

799 a. Taxes on sales, use, and other transactions paid
800 pursuant to chapter 212.

801 b. Intangible personal property taxes paid pursuant to
802 chapter 199.

803 c. Excise taxes paid on documents pursuant to chapter 201.

804 d. Ad valorem taxes paid, as defined in s. 220.03(1)(a) on
805 June 1, 1996.

806 e. State communications services taxes administered under
807 chapter 202. This provision does not apply to the gross receipts
808 tax imposed under chapter 203 and administered under chapter 202
809 ~~or the local communications services tax authorized under s.~~
810 ~~202.19.~~

811

812 However, a qualified applicant may not receive a tax refund

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813 pursuant to this section for any amount of credit, refund, or
814 exemption granted such contractor for any of such taxes. If a
815 refund for such taxes is provided by the department, which taxes
816 are subsequently adjusted by the application of any credit,
817 refund, or exemption granted to the qualified applicant other
818 than that provided in this section, the qualified applicant
819 shall reimburse the Economic Development Trust Fund for the
820 amount of such credit, refund, or exemption. A qualified
821 applicant must notify and tender payment to the department
822 within 20 days after receiving a credit, refund, or exemption,
823 other than that provided in this section.

824 Section 31. Paragraph (d) of subsection (3) of section
825 288.106, Florida Statutes, is amended to read:

826 288.106 Tax refund program for qualified target industry
827 businesses.—

828 (3) TAX REFUND; ELIGIBLE AMOUNTS.—

829 (d) After entering into a tax refund agreement under
830 subsection (5), a qualified target industry business may:

831 1. Receive refunds from the account for the following taxes
832 due and paid by that business beginning with the first taxable
833 year of the business that begins after entering into the
834 agreement:

835 a. Corporate income taxes under chapter 220.

836 b. Insurance premium tax under s. 624.509.

837 2. Receive refunds from the account for the following taxes
838 due and paid by that business after entering into the agreement:

839 a. Taxes on sales, use, and other transactions under
840 chapter 212.

841 b. Intangible personal property taxes under chapter 199.

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842 c. Excise taxes on documents under chapter 201.
843 d. Ad valorem taxes paid, as defined in s. 220.03(1).
844 e. State communications services taxes administered under
845 chapter 202. This provision does not apply to the gross receipts
846 tax imposed under chapter 203 and administered under chapter 202
847 ~~or the local communications services tax authorized under s.~~
848 ~~202.19.~~

849 Section 32. Paragraph (t) of subsection (8) of section
850 213.053, Florida Statutes, is amended to read:

851 213.053 Confidentiality and information sharing.—

852 (8) Notwithstanding any other provision of this section,
853 the department may provide:

854 (t) Information relative to chapter 202 to each local
855 government that imposes a tax pursuant to former s. 202.19 in
856 the conduct of its official duties as specified in chapter 202.
857 Information provided under this paragraph may include, but is
858 not limited to, any reports required pursuant to s. 202.231,
859 audit files, notices of intent to audit, tax returns, and other
860 confidential tax information in the department's possession
861 relating to chapter 202. A person or an entity designated by the
862 local government in writing to the department as requiring
863 access to confidential taxpayer information shall have
864 reasonable access to information provided pursuant to this
865 paragraph. Such person or entity may disclose such information
866 to other persons or entities with direct responsibility for
867 budget preparation, auditing, revenue or financial
868 administration, or legal counsel. Such information shall only be
869 used for purposes related to budget preparation, auditing, and
870 revenue and financial administration. Any confidential and

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871 exempt information furnished to a local government, or to any
872 person or entity designated by the local government as
873 authorized by this paragraph may not be further disclosed by the
874 recipient except as provided by this paragraph.

875

876 Disclosure of information under this subsection shall be
877 pursuant to a written agreement between the executive director
878 and the agency. Such agencies, governmental or nongovernmental,
879 shall be bound by the same requirements of confidentiality as
880 the Department of Revenue. Breach of confidentiality is a
881 misdemeanor of the first degree, punishable as provided by s.
882 775.082 or s. 775.083.

883 Section 33. Paragraphs (c) through (k) of subsection (3)
884 and subsections (5) and (6) of section 337.401, Florida
885 Statutes, are amended to read:

886 337.401 Use of right-of-way for utilities subject to
887 regulation; permit; fees.—

888 (3)

889 ~~(c)1. It is the intention of the state to treat all~~
890 ~~providers of communications services that use or occupy~~
891 ~~municipal or charter county roads or rights of way for the~~
892 ~~provision of communications services in a nondiscriminatory and~~
893 ~~competitively neutral manner with respect to the payment of~~
894 ~~permit fees. Certain providers of communications services have~~
895 ~~been granted by general law the authority to offset permit fees~~
896 ~~against franchise or other fees while other providers of~~
897 ~~communications services have not been granted this authority. In~~
898 ~~order to treat all providers of communications services in a~~
899 ~~nondiscriminatory and competitively neutral manner with respect~~

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900 ~~to the payment of permit fees, each municipality and charter~~
901 ~~county shall make an election under either sub-subparagraph a.~~
902 ~~or sub-subparagraph b. and must inform the Department of Revenue~~
903 ~~of the election by certified mail by July 16, 2001. Such~~
904 ~~election shall take effect October 1, 2001.~~

905 ~~a.(I) The municipality or charter county may require and~~
906 ~~collect permit fees from any providers of communications~~
907 ~~services that use or occupy municipal or county roads or rights-~~
908 ~~of-way. All fees permitted under this sub-subparagraph must be~~
909 ~~reasonable and commensurate with the direct and actual cost of~~
910 ~~the regulatory activity, including issuing and processing~~
911 ~~permits, plan reviews, physical inspection, and direct~~
912 ~~administrative costs; must be demonstrable; and must be~~
913 ~~equitable among users of the roads or rights-of-way. A fee~~
914 ~~permitted under this sub-subparagraph may not: be offset against~~
915 ~~the tax imposed under chapter 202; include the costs of roads or~~
916 ~~rights-of-way acquisition or roads or rights-of-way rental;~~
917 ~~include any general administrative, management, or maintenance~~
918 ~~costs of the roads or rights-of-way; or be based on a percentage~~
919 ~~of the value or costs associated with the work to be performed~~
920 ~~on the roads or rights-of-way. In an action to recover amounts~~
921 ~~due for a fee not permitted under this sub-subparagraph, the~~
922 ~~prevailing party may recover court costs and attorney's fees at~~
923 ~~trial and on appeal. In addition to the limitations set forth in~~
924 ~~this section, a fee levied by a municipality or charter county~~
925 ~~under this sub-subparagraph may not exceed \$100. However, permit~~
926 ~~fees may not be imposed with respect to permits that may be~~
927 ~~required for service drop lines not required to be noticed under~~
928 ~~s. 556.108(5)(a)2. or for any activity that does not require the~~

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929 ~~physical disturbance of the roads or rights of way or does not~~
930 ~~impair access to or full use of the roads or rights of way.~~

931 ~~(II) To ensure competitive neutrality among providers of~~
932 ~~communications services, for any municipality or charter county~~
933 ~~that elects to exercise its authority to require and collect~~
934 ~~permit fees under this sub-subparagraph, the rate of the local~~
935 ~~communications services tax imposed by such jurisdiction, as~~
936 ~~computed under s. 202.20, shall automatically be reduced by a~~
937 ~~rate of 0.12 percent.~~

938 ~~b. Alternatively, the municipality or charter county may~~
939 ~~elect not to require and collect permit fees from any provider~~
940 ~~of communications services that uses or occupies municipal or~~
941 ~~charter county roads or rights of way for the provision of~~
942 ~~communications services; however, each municipality or charter~~
943 ~~county that elects to operate under this sub-subparagraph~~
944 ~~retains all authority to establish rules and regulations for~~
945 ~~providers of communications services to use or occupy roads or~~
946 ~~rights of way as provided in this section. If a municipality or~~
947 ~~charter county elects to operate under this sub-subparagraph,~~
948 ~~the total rate for the local communications services tax as~~
949 ~~computed under s. 202.20 for that municipality or charter county~~
950 ~~may be increased by ordinance or resolution by an amount not to~~
951 ~~exceed a rate of 0.12 percent. If a municipality or charter~~
952 ~~county elects to increase its rate effective October 1, 2001,~~
953 ~~the municipality or charter county shall inform the department~~
954 ~~of such increased rate by certified mail postmarked on or before~~
955 ~~July 16, 2001.~~

956 ~~e. A municipality or charter county that does not make an~~
957 ~~election as provided for in this subparagraph shall be presumed~~

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958 ~~to have elected to operate under the provisions of sub-~~
959 ~~subparagraph b.~~

960 ~~2. Each noncharter county shall make an election under~~
961 ~~either sub-subparagraph a. or sub-subparagraph b. and shall~~
962 ~~inform the Department of Revenue of the election by certified~~
963 ~~mail by July 16, 2001. Such election shall take effect October~~
964 ~~1, 2001.~~

965 ~~a. The noncharter county may elect to require and collect~~
966 ~~permit fees from any providers of communications services that~~
967 ~~use or occupy noncharter county roads or rights-of-way. All fees~~
968 ~~permitted under this sub-subparagraph must be reasonable and~~
969 ~~commensurate with the direct and actual cost of the regulatory~~
970 ~~activity, including issuing and processing permits, plan~~
971 ~~reviews, physical inspection, and direct administrative costs;~~
972 ~~must be demonstrable; and must be equitable among users of the~~
973 ~~roads or rights-of-way. A fee permitted under this sub-~~
974 ~~subparagraph may not: be offset against the tax imposed under~~
975 ~~chapter 202; include the costs of roads or rights-of-way~~
976 ~~acquisition or roads or rights-of-way rental; include any~~
977 ~~general administrative, management, or maintenance costs of the~~
978 ~~roads or rights-of-way; or be based on a percentage of the value~~
979 ~~or costs associated with the work to be performed on the roads~~
980 ~~or rights-of-way. In an action to recover amounts due for a fee~~
981 ~~not permitted under this sub-subparagraph, the prevailing party~~
982 ~~may recover court costs and attorney's fees at trial and on~~
983 ~~appeal. In addition to the limitations set forth in this~~
984 ~~section, a fee levied by a noncharter county under this sub-~~
985 ~~subparagraph may not exceed \$100. However, permit fees may not~~
986 ~~be imposed with respect to permits that may be required for~~

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987 ~~service drop lines not required to be noticed under s.~~
988 ~~556.108(5)(a)2. or for any activity that does not require the~~
989 ~~physical disturbance of the roads or rights-of-way or does not~~
990 ~~impair access to or full use of the roads or rights-of-way.~~

991 ~~b. Alternatively, the noncharter county may elect not to~~
992 ~~require and collect permit fees from any provider of~~
993 ~~communications services that uses or occupies noncharter county~~
994 ~~roads or rights-of-way for the provision of communications~~
995 ~~services; however, each noncharter county that elects to operate~~
996 ~~under this sub-subparagraph shall retain all authority to~~
997 ~~establish rules and regulations for providers of communications~~
998 ~~services to use or occupy roads or rights-of-way as provided in~~
999 ~~this section. If a noncharter county elects to operate under~~
1000 ~~this sub-subparagraph, the total rate for the local~~
1001 ~~communications services tax as computed under s. 202.20 for that~~
1002 ~~noncharter county may be increased by ordinance or resolution by~~
1003 ~~an amount not to exceed a rate of 0.24 percent, to replace the~~
1004 ~~revenue the noncharter county would otherwise have received from~~
1005 ~~permit fees for providers of communications services. If a~~
1006 ~~noncharter county elects to increase its rate effective October~~
1007 ~~1, 2001, the noncharter county shall inform the department of~~
1008 ~~such increased rate by certified mail postmarked on or before~~
1009 ~~July 16, 2001.~~

1010 ~~e. A noncharter county that does not make an election as~~
1011 ~~provided for in this subparagraph shall be presumed to have~~
1012 ~~elected to operate under the provisions of sub-subparagraph b.~~

1013 ~~3. Except as provided in this paragraph, municipalities and~~
1014 ~~counties retain all existing authority to require and collect~~
1015 ~~permit fees from users or occupants of municipal or county roads~~

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1016 ~~or rights-of-way and to set appropriate permit fee amounts.~~

1017 (c) ~~(d)~~ After January 1, 2001, In addition to any other
1018 notice requirements, a municipality must provide to the
1019 Secretary of State, at least 10 days prior to consideration on
1020 first reading, notice of a proposed ordinance governing a
1021 telecommunications company placing or maintaining
1022 telecommunications facilities in its roads or rights-of-way.

1023 ~~After January 1, 2001,~~ In addition to any other notice
1024 requirements, a county must provide to the Secretary of State,
1025 at least 15 days prior to consideration at a public hearing,
1026 notice of a proposed ordinance governing a telecommunications
1027 company placing or maintaining telecommunications facilities in
1028 its roads or rights-of-way. The notice required by this
1029 paragraph must be published by the Secretary of State on a
1030 designated Internet website. The failure of a municipality or
1031 county to provide such notice does not render the ordinance
1032 invalid.

1033 (d) ~~(e)~~ The authority of municipalities and counties to
1034 require franchise fees from providers of communications
1035 services, with respect to the provision of communications
1036 services, is specifically preempted by the state because of
1037 unique circumstances applicable to providers of communications
1038 services when compared to other utilities occupying municipal or
1039 county roads or rights-of-way. Providers of communications
1040 services may provide similar services in a manner that requires
1041 the placement of facilities in municipal or county roads or
1042 rights-of-way or in a manner that does not require the placement
1043 of facilities in such roads or rights-of-way. Although similar
1044 communications services may be provided by different means, the

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1045 state desires to treat providers of communications services in a
1046 nondiscriminatory manner and to have the taxes, franchise fees,
1047 and other fees paid by providers of communications services be
1048 competitively neutral. Municipalities and counties retain all
1049 existing authority, if any, to collect franchise fees from users
1050 or occupants of municipal or county roads or rights-of-way other
1051 than providers of communications services, and the provisions of
1052 this subsection shall have no effect upon this authority. The
1053 provisions of this subsection do not restrict the authority, if
1054 any, of municipalities or counties or other governmental
1055 entities to receive reasonable rental fees based on fair market
1056 value for the use of public lands and buildings on property
1057 outside the public roads or rights-of-way for the placement of
1058 communications antennas and towers.

1059 (e) ~~(f)~~ Except as expressly allowed or authorized by general
1060 law ~~and except for the rights-of-way permit fees subject to~~
1061 ~~paragraph (e)~~, a municipality or county may not levy on a
1062 provider of communications services a tax, fee, or other charge
1063 or imposition for operating as a provider of communications
1064 services within the jurisdiction of the municipality or county
1065 which is in any way related to using its roads or rights-of-way.
1066 A municipality or county may not require or solicit in-kind
1067 compensation, except as otherwise provided in s. 202.24(2)(c)6.
1068 ~~s. 202.24(2)(e)8.~~ or s. 610.109. Nothing in this paragraph shall
1069 impair any ordinance or agreement in effect on May 22, 1998, or
1070 any voluntary agreement entered into subsequent to that date,
1071 which provides for or allows in-kind compensation by a
1072 telecommunications company.

1073 (f) ~~(g)~~ A municipality or county may not use its authority

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1074 over the placement of facilities in its roads and rights-of-way
1075 as a basis for asserting or exercising regulatory control over a
1076 provider of communications services regarding matters within the
1077 exclusive jurisdiction of the Florida Public Service Commission
1078 or the Federal Communications Commission, including, but not
1079 limited to, the operations, systems, qualifications, services,
1080 service quality, service territory, and prices of a provider of
1081 communications services.

1082 (g) ~~(h)~~ A provider of communications services that has
1083 obtained permission to occupy the roads or rights-of-way of an
1084 incorporated municipality pursuant to s. 362.01 or that is
1085 otherwise lawfully occupying the roads or rights-of-way of a
1086 municipality shall not be required to obtain consent to continue
1087 such lawful occupation of those roads or rights-of-way; however,
1088 nothing in this paragraph shall be interpreted to limit the
1089 power of a municipality to adopt or enforce reasonable rules or
1090 regulations as provided in this section.

1091 (h) ~~(i)~~ Except as expressly provided in this section, this
1092 section does not modify ~~the authority of municipalities and~~
1093 ~~counties to levy the tax authorized in chapter 202 or the duties~~
1094 of providers of communications services under ss. 337.402-
1095 337.404. This section does not apply to building permits, pole
1096 attachments, or private roads, private easements, and private
1097 rights-of-way.

1098 ~~(j) Pursuant to this paragraph, any county or municipality~~
1099 ~~may by ordinance change either its election made on or before~~
1100 ~~July 16, 2001, under paragraph (c) or an election made under~~
1101 ~~this paragraph.~~

1102 ~~1.a. If a municipality or charter county changes its~~

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1103 ~~election under this paragraph in order to exercise its authority~~
1104 ~~to require and collect permit fees in accordance with this~~
1105 ~~subsection, the rate of the local communications services tax~~
1106 ~~imposed by such jurisdiction pursuant to ss. 202.19 and 202.20~~
1107 ~~shall automatically be reduced by the sum of 0.12 percent plus~~
1108 ~~the percentage, if any, by which such rate was increased~~
1109 ~~pursuant to sub-subparagraph (c)1.b.~~

1110 ~~b. If a municipality or charter county changes its election~~
1111 ~~under this paragraph in order to discontinue requiring and~~
1112 ~~collecting permit fees, the rate of the local communications~~
1113 ~~services tax imposed by such jurisdiction pursuant to ss. 202.19~~
1114 ~~and 202.20 may be increased by ordinance or resolution by an~~
1115 ~~amount not to exceed 0.24 percent.~~

1116 ~~2.a. If a noncharter county changes its election under this~~
1117 ~~paragraph in order to exercise its authority to require and~~
1118 ~~collect permit fees in accordance with this subsection, the rate~~
1119 ~~of the local communications services tax imposed by such~~
1120 ~~jurisdiction pursuant to ss. 202.19 and 202.20 shall~~
1121 ~~automatically be reduced by the percentage, if any, by which~~
1122 ~~such rate was increased pursuant to sub-subparagraph (c)2.b.~~

1123 ~~b. If a noncharter county changes its election under this~~
1124 ~~paragraph in order to discontinue requiring and collecting~~
1125 ~~permit fees, the rate of the local communications services tax~~
1126 ~~imposed by such jurisdiction pursuant to ss. 202.19 and 202.20~~
1127 ~~may be increased by ordinance or resolution by an amount not to~~
1128 ~~exceed 0.24 percent.~~

1129 ~~3.a. Any change of election pursuant to this paragraph and~~
1130 ~~any tax rate change resulting from such change of election shall~~
1131 ~~be subject to the notice requirements of s. 202.21; however, no~~

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1132 ~~such change of election shall become effective prior to January~~
1133 ~~1, 2003.~~

1134 ~~b. Any county or municipality changing its election under~~
1135 ~~this paragraph in order to exercise its authority to require and~~
1136 ~~collect permit fees shall, in addition to complying with the~~
1137 ~~notice requirements under s. 202.21, provide to all dealers~~
1138 ~~providing communications services in such jurisdiction written~~
1139 ~~notice of such change of election by September 1 immediately~~
1140 ~~preceding the January 1 on which such change of election becomes~~
1141 ~~effective. For purposes of this sub-subparagraph, dealers~~
1142 ~~providing communications services in such jurisdiction shall~~
1143 ~~include every dealer reporting tax to such jurisdiction pursuant~~
1144 ~~to s. 202.37 on the return required under s. 202.27 to be filed~~
1145 ~~on or before the 20th day of May immediately preceding the~~
1146 ~~January 1 on which such change of election becomes effective.~~

1147 ~~(k) Notwithstanding the provisions of s. 202.19, when a~~
1148 ~~local communications services tax rate is changed as a result of~~
1149 ~~an election made or changed under this subsection, such rate~~
1150 ~~shall not be rounded to tenths.~~

1151 (5) This section, except subsections (1) and (2) and
1152 paragraph (3) (f) ~~(g)~~, does not apply to the provision of pay
1153 telephone service on public, municipal, or county roads or
1154 rights-of-way.

1155 (6) (a) As used in this subsection, the following
1156 definitions apply:

1157 1. A "pass-through provider" is any person who places or
1158 maintains a communications facility in the roads or rights-of-
1159 way of a municipality or county ~~that levies a tax pursuant to~~
1160 ~~chapter 202 and who does not remit taxes imposed by that~~

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1161 ~~municipality or county~~ pursuant to chapter 202.

1162 2. A "communications facility" is a facility that may be
1163 used to provide communications services. Multiple cables,
1164 conduits, strands, or fibers located within the same conduit
1165 shall be considered one communications facility for purposes of
1166 this subsection.

1167 (b) A municipality ~~that levies a tax pursuant to chapter~~
1168 ~~202~~ may charge a pass-through provider not subject to tax under
1169 chapter 202 that places or maintains a communications facility
1170 in the municipality's roads or rights-of-way an annual amount
1171 not to exceed \$500 per linear mile or portion thereof. A
1172 municipality's roads or rights-of-way do not include roads or
1173 rights-of-way that extend in or through the municipality but are
1174 state, county, or another authority's roads or rights-of-way.

1175 (c) A county ~~that levies a tax pursuant to chapter 202~~ may
1176 charge a pass-through provider not subject to tax under chapter
1177 202 that places or maintains a communications facility in the
1178 county's roads or rights-of-way, including county roads or
1179 rights-of-way within a municipality in the county, an annual
1180 amount not to exceed \$500 per linear mile or portion thereof.
1181 However, a county shall not impose a charge for any linear
1182 miles, or portions thereof, of county roads or rights-of-way
1183 where a ~~communications facility is placed that extend through~~
1184 ~~any municipality within the county to which the pass-through~~
1185 ~~provider remits payment to a municipality a tax imposed pursuant~~
1186 ~~to chapter 202~~. A county's roads or rights-of-way do not include
1187 roads or rights-of-way that extend in or through the county but
1188 are state, municipal, or another authority's roads or rights-of-
1189 way.

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1190 (d) The amounts charged pursuant to this subsection shall
1191 be based on the linear miles of roads or rights-of-way where a
1192 communications facility is placed, not based on a summation of
1193 the lengths of individual cables, conduits, strands, or fibers.
1194 The amounts referenced in this subsection may be charged only
1195 once annually and only to one person annually for any
1196 communications facility. A municipality or county shall
1197 discontinue charging such amounts to a person that has ceased to
1198 be a pass-through provider. Any annual amounts charged shall be
1199 reduced for a prorated portion of any 12-month period during
1200 which the person remits taxes imposed ~~by the municipality or~~
1201 ~~county~~ pursuant to chapter 202. Any excess amounts paid to a
1202 municipality or county under this section shall be refunded to
1203 the person upon written notice of the excess to the municipality
1204 or county.

1205 (e) ~~This subsection does not alter any provision of this~~
1206 ~~section or s. 202.24 relating to taxes, fees, or other charges~~
1207 ~~or impositions by a municipality or county on a dealer of~~
1208 ~~communications services or authorize that any charges be~~
1209 ~~assessed on a dealer of communications services, except as~~
1210 ~~specifically set forth herein.~~ A municipality or county may not
1211 charge a pass-through provider any amounts other than the
1212 charges under this subsection as a condition to the placement or
1213 maintenance of a communications facility in the roads or rights-
1214 of-way of a municipality or county by a pass-through provider,
1215 except that a municipality or county may impose permit fees on a
1216 pass-through provider consistent with this section paragraph
1217 ~~(3)(c) if the municipality or county elects to exercise its~~
1218 ~~authority to collect permit fees under paragraph (3)(c).~~

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1219 (f) The charges under this subsection do not apply to
1220 communications facilities placed in a municipality's or county's
1221 rights-of-way prior to the effective date of this subsection
1222 with permission from the municipality or county, if any was
1223 required, except to the extent the facilities of a pass-through
1224 provider were subject to per linear foot or mile charges in
1225 effect as of October 1, 2001, in which case the municipality or
1226 county may only impose on a pass-through provider charges
1227 consistent with paragraph (b) or paragraph (c) for such
1228 facilities. Notwithstanding the foregoing, this subsection does
1229 not impair any written agreement between a pass-through provider
1230 and a municipality or county imposing per linear foot or mile
1231 charges for communications facilities placed in municipal or
1232 county roads or rights-of-way that is in effect prior to the
1233 effective date of this subsection. Upon the termination or
1234 expiration of any such written agreement, any charges imposed
1235 shall be consistent with this section ~~paragraph (b) or paragraph~~
1236 ~~(c). Notwithstanding the foregoing, until October 1, 2005, this~~
1237 ~~subsection shall not affect a municipality or county continuing~~
1238 ~~to impose charges in excess of the charges authorized in this~~
1239 ~~subsection on facilities of a pass-through provider that is not~~
1240 ~~a dealer of communications services in the state under chapter~~
1241 ~~202, but only to the extent such charges were imposed by~~
1242 ~~municipal or county ordinance or resolution adopted prior to~~
1243 ~~February 1, 2002. Effective October 1, 2005, any charges imposed~~
1244 ~~shall be consistent with paragraph (b) or paragraph (c).~~

1245 (g) The charges authorized in this subsection shall not be
1246 applied with respect to any communications facility that is used
1247 exclusively for the internal communications of an electric

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1248 utility or other person in the business of transmitting or
1249 distributing electric energy.

1250 Section 34. Revenue received by a taxing authority under
1251 this act shall be deemed to replace any taxes or fees previously
1252 imposed but repealed by this act without any further action on
1253 the part of such taxing authority. If the repeal under this act
1254 of a taxing authority's authority to levy taxes or fees impairs
1255 security pledged to retire the authority's bonded indebtedness
1256 secured by such taxes or fees, then to the extent of any such
1257 impairment, a like sum of revenue received by the authority
1258 under this act shall be deemed as a matter of law to replace
1259 said taxes and fees as security for the bonded indebtedness.

1260 Section 35. The taxes imposed by ss. 202.12 and 203.01,
1261 Florida Statutes, on communications services shall be applied in
1262 accordance with chapter 202, Florida Statutes, as amended by
1263 this act, to communications services reflected on bills dated on
1264 or after October 1, 2013.

1265 Section 36. This act shall take effect October 1, 2013.