

By Senator Artiles

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1                   A bill to be entitled  
2       An act relating to taxation of Internet video service;  
3       amending s. 202.11, F.S.; redefining the term  
4       "communications services" to exclude Internet video  
5       service; defining the term "Internet video service";  
6       redefining the term "video service" to exclude  
7       Internet video service; amending s. 202.24, F.S.;  
8       prohibiting, except under certain circumstances,  
9       public bodies from levying on or collecting from  
10      sellers or purchasers of Internet video services any  
11      tax, charge, fee, or other imposition on or with  
12      respect to the provision or purchase of Internet video  
13      services; amending ss. 202.26, 212.05, and 610.118,  
14      F.S.; conforming cross-references; providing an  
15      effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

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19       Section 1. Paragraph (i) is added to subsection (1) of  
20      section 202.11, Florida Statutes, present subsections (7)  
21      through (24) of that section are redesignated as subsections (8)  
22      through (25), respectively, a new subsection (7) is added to  
23      that section, and present subsection (24) of that section is  
24      amended, to read:

25       202.11 Definitions.—As used in this chapter, the term:

26       (1) "Communications services" means the transmission,  
27      conveyance, or routing of voice, data, audio, video, or any  
28      other information or signals, including video services, to a  
29      point, or between or among points, by or through any electronic,

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30 radio, satellite, cable, optical, microwave, or other medium or  
31 method now in existence or hereafter devised, regardless of the  
32 protocol used for such transmission or conveyance. The term  
33 includes such transmission, conveyance, or routing in which  
34 computer processing applications are used to act on the form,  
35 code, or protocol of the content for purposes of transmission,  
36 conveyance, or routing without regard to whether such service is  
37 referred to as voice-over-Internet-protocol services or is  
38 classified by the Federal Communications Commission as enhanced  
39 or value-added. The term does not include:

40 (i) Internet video service.

41 (7) "Internet video service" means a subscription video  
42 programming service received by the end user customer by means  
43 of a wired or wireless Internet connection.

44 (25)-(24) "Video service" means the transmission of video,  
45 audio, or other programming service to a purchaser, and the  
46 purchaser interaction, if any, required for the selection or use  
47 of a programming service, regardless of whether the programming  
48 is transmitted over facilities owned or operated by the video  
49 service provider or over facilities owned or operated by another  
50 dealer of communications services. The term includes point-to-  
51 point and point-to-multipoint distribution services through  
52 which programming is transmitted or broadcast by microwave or  
53 other equipment directly to the purchaser's premises, but does  
54 not include direct-to-home satellite service or Internet video  
55 service. The term includes basic, extended, premium, pay-per-  
56 view, digital video, two-way cable, and music services.

57 Section 2. Paragraph (a) of subsection (2) of section  
58 202.24, Florida Statutes, is amended to read:

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59           202.24 Limitations on local taxes and fees imposed on  
60 dealers of communications services.—

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

63           1. Levying on or collecting from dealers or purchasers of  
64 communications services any tax, charge, fee, or other  
65 imposition on or with respect to the provision or purchase of  
66 communications services.

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

70           3. Adopting or enforcing any provision of any ordinance or  
71 agreement to the extent that such provision obligates a dealer  
72 of communications services to charge, collect, or pay to the  
73 public body a tax, charge, fee, or other imposition.

74           4. Levying on or collecting from sellers or purchasers of  
75 Internet video service any tax, charge, fee, or other imposition  
76 on or with respect to the provision or purchase of Internet  
77 video service.

78  
79 Municipalities and counties may not negotiate those terms and  
80 conditions related to franchise fees or the definition of gross  
81 revenues or other definitions or methodologies related to the  
82 payment or assessment of franchise fees on providers of video  
83 services.

84           Section 3. Paragraph (j) of subsection (3) of section  
85 202.26, Florida Statutes, is amended to read:

86           202.26 Department powers.—

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

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88 department may adopt rules relating to:

89 (j) The types of books and records kept in the regular  
90 course of business which must be available during an audit of a  
91 dealer's books and records when the dealer has made an  
92 allocation or attribution pursuant to the definition of sales  
93 prices in s. 202.11(14)(b)8. ~~s. 202.11(13)(b)8.~~ and examples of  
94 methods for determining the reasonableness thereof. Books and  
95 records kept in the regular course of business include, but are  
96 not limited to, general ledgers, price lists, cost records,  
97 customer billings, billing system reports, tariffs, and other  
98 regulatory filings and rules of regulatory authorities. Such  
99 records may be required to be made available to the department  
100 in an electronic format when so kept by the dealer. The dealer  
101 may support the allocation of charges with books and records  
102 kept in the regular course of business covering the dealer's  
103 entire service area, including territories outside this state.  
104 During an audit, the department may reasonably require  
105 production of any additional books and records found necessary  
106 to assist in its determination.

107 Section 4. Paragraph (e) of subsection (1) of section  
108 212.05, Florida Statutes, is amended to read:

109 212.05 Sales, storage, use tax.—It is hereby declared to be  
110 the legislative intent that every person is exercising a taxable  
111 privilege who engages in the business of selling tangible  
112 personal property at retail in this state, including the  
113 business of making mail order sales, or who rents or furnishes  
114 any of the things or services taxable under this chapter, or who  
115 stores for use or consumption in this state any item or article  
116 of tangible personal property as defined herein and who leases

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117 or rents such property within the state.

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

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

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

125 (I) "Prepaid calling arrangement" has the same meaning as  
126 provided in s. 202.11.

127 (II) If the sale or recharge of the prepaid calling  
128 arrangement does not take place at the dealer's place of  
129 business, it shall be deemed to have taken place at the  
130 customer's shipping address or, if no item is shipped, at the  
131 customer's address or the location associated with the  
132 customer's mobile telephone number.

133 (III) The sale or recharge of a prepaid calling arrangement  
134 shall be treated as a sale of tangible personal property for  
135 purposes of this chapter, regardless of whether a tangible item  
136 evidencing such arrangement is furnished to the purchaser, and  
137 such sale within this state subjects the selling dealer to the  
138 jurisdiction of this state for purposes of this subsection.

139 (IV) No additional tax under this chapter or chapter 202 is  
140 due or payable if a purchaser of a prepaid calling arrangement  
141 who has paid tax under this chapter on the sale or recharge of  
142 such arrangement applies one or more units of the prepaid  
143 calling arrangement to obtain communications services as  
144 described in s. 202.11(10)(b)3. ~~s. 202.11(9)(b)3.~~, other  
145 services that are not communications services, or products.

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146           b. The installation of telecommunication and telegraphic  
147 equipment.

148           c. Electrical power or energy, except that the tax rate for  
149 charges for electrical power or energy is 4.35 percent. Charges  
150 for electrical power and energy do not include taxes imposed  
151 under ss. 166.231 and 203.01(1)(a)3.

152           2. Section 212.17(3), regarding credit for tax paid on  
153 charges subsequently found to be worthless, is equally  
154 applicable to any tax paid under this section on charges for  
155 prepaid calling arrangements, telecommunication or telegraph  
156 services, or electric power subsequently found to be  
157 uncollectible. As used in this paragraph, the term "charges"  
158 does not include any excise or similar tax levied by the Federal  
159 Government, a political subdivision of this state, or a  
160 municipality upon the purchase, sale, or recharge of prepaid  
161 calling arrangements or upon the purchase or sale of  
162 telecommunication, television system program, or telegraph  
163 service or electric power, which tax is collected by the seller  
164 from the purchaser.

165           Section 5. Paragraph (a) of subsection (1) of section  
166 610.118, Florida Statutes, is amended to read:

167           610.118 Impairment; court-ordered operations.—

168           (1) If an incumbent cable or video service provider is  
169 required to operate under its existing franchise and is legally  
170 prevented by a lawfully issued order of a court of competent  
171 jurisdiction from exercising its right to terminate its existing  
172 franchise pursuant to the terms of s. 610.105, any  
173 certificateholder providing cable service or video service in  
174 whole or in part within the service area that is the subject of

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175 the incumbent cable or video service provider's franchise shall,  
176 for as long as the court order remains in effect, comply with  
177 the following franchise terms and conditions as applicable to  
178 the incumbent cable or video service provider in the service  
179 area:

180 (a) The certificateholder shall pay to the municipality or  
181 county:

182 1. Any prospective lump-sum or recurring per-subscriber  
183 funding obligations to support public, educational, and  
184 governmental access channels or other prospective franchise-  
185 required monetary grants related to public, educational, or  
186 governmental access facilities equipment and capital costs.  
187 Prospective lump-sum payments shall be made on an equivalent  
188 per-subscriber basis calculated as follows: the amount of the  
189 prospective funding obligations divided by the number of  
190 subscribers being served by the incumbent cable service provider  
191 at the time of payment, divided by the number of months  
192 remaining in the incumbent cable or video service provider's  
193 franchise equals the monthly per subscriber amount to be paid by  
194 the certificateholder until the expiration or termination of the  
195 incumbent cable or video service provider's franchise; and

196 2. If the incumbent cable or video service provider is  
197 required to make payments for the funding of an institutional  
198 network, the certificateholder shall pay an amount equal to the  
199 incumbent's funding obligations but not to exceed 1 percent of  
200 the sales price, as defined in s. 202.11 ~~s. 202.11(13)~~, for the  
201 taxable monthly retail sales of cable or video programming  
202 services the certificateholder received from subscribers in the  
203 affected municipality or county. All definitions and exemptions

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204 under chapter 202 apply in the determination of taxable monthly  
205 retail sales of cable or video programming services.

206 Section 6. This act shall take effect July 1, 2017.