

By Senator Brandes

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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.; revising the definition of
4 the term "communications services" to exclude Internet
5 video service; defining the term "Internet video
6 service"; revising the definition of the term "video
7 service" to exclude Internet video service; amending
8 s. 202.24, F.S.; prohibiting, except for specified
9 exceptions, public bodies from levying on or
10 collecting from sellers or purchasers of Internet
11 video services any tax, charge, fee, or other
12 imposition on or with respect to the provision or
13 purchase of Internet video services; amending ss.
14 202.26, 212.05, and 610.118, F.S.; conforming cross-
15 references; providing an effective date.

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

18
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, 2018.