

1 A bill to be entitled
2 An act relating to communications services; amending
3 s. 202.12, F.S.; reducing the communications services
4 tax rate levied on sales of communications services;
5 amending s. 337.401, F.S.; revising the authority for
6 municipalities and counties to impose permit fees on
7 providers of communications services that use or
8 occupy municipal or county roads or rights-of-way;
9 deleting the procedures, requirements, and limitations
10 with respect to such fees; conforming provisions to
11 changes made by the act; providing applicability;
12 providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Paragraphs (a) and (b) of subsection (1) of
17 section 202.12, Florida Statutes, are amended to read:

18 202.12 Sales of communications services.—The Legislature
19 finds that every person who engages in the business of selling
20 communications services at retail in this state is exercising a
21 taxable privilege. It is the intent of the Legislature that the
22 tax imposed by chapter 203 be administered as provided in this
23 chapter.

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

26 (a) Except as otherwise provided in this subsection, at
 27 the rate of 3.92 ~~4.92~~ percent applied to the sales price of the
 28 communications service that:

- 29 1. Originates and terminates in this state, or
- 30 2. Originates or terminates in this state and is charged
 31 to a service address in this state,

32
 33 when sold at retail, computed on each taxable sale for the
 34 purpose of remitting the tax due. The gross receipts tax imposed
 35 by chapter 203 shall be collected on the same taxable
 36 transactions and remitted with the tax imposed by this
 37 paragraph. If no tax is imposed by this paragraph due to the
 38 exemption provided under s. 202.125(1), the tax imposed by
 39 chapter 203 shall nevertheless be collected and remitted in the
 40 manner and at the time prescribed for tax collections and
 41 remittances under this chapter.

42 (b) At the rate of 8.07 ~~9.07~~ percent applied to the retail
 43 sales price of any direct-to-home satellite service received in
 44 this state. The proceeds of the tax imposed under this paragraph
 45 shall be accounted for and distributed in accordance with s.
 46 202.18(2). The gross receipts tax imposed by chapter 203 shall
 47 be collected on the same taxable transactions and remitted with
 48 the tax imposed by this paragraph.

49 Section 2. Paragraphs (c), (d), (j), and (k) of subsection
 50 (3), subsection (5), and paragraphs (e) and (f) of subsection

51 (6) of section 337.401, Florida Statutes, are amended to read:

52 337.401 Use of right-of-way for utilities subject to
 53 regulation; permit; fees.—

54 (3)

55 (c)~~1~~. A municipality or county that elected to impose
 56 permit fees on or before January 1, 2019, on providers of
 57 communications services pursuant to former paragraphs (c) or (j)
 58 of this subsection Florida Statutes 2018, may continue to impose
 59 such fees. However, a municipality or county that did not impose
 60 permit fees as of January 1, 2019, may not impose such fees. ~~It~~
 61 ~~is the intention of the state to treat all providers of~~
 62 ~~communications services that use or occupy municipal or charter~~
 63 ~~county roads or rights-of-way for the provision of~~
 64 ~~communications services in a nondiscriminatory and competitively~~
 65 ~~neutral manner with respect to the payment of permit fees.~~
 66 ~~Certain providers of communications services have been granted~~
 67 ~~by general law the authority to offset permit fees against~~
 68 ~~franchise or other fees while other providers of communications~~
 69 ~~services have not been granted this authority. In order to treat~~
 70 ~~all providers of communications services in a nondiscriminatory~~
 71 ~~and competitively neutral manner with respect to the payment of~~
 72 ~~permit fees, each municipality and charter county shall make an~~
 73 ~~election under either sub-subparagraph a. or sub-subparagraph b.~~
 74 ~~and must inform the Department of Revenue of the election by~~
 75 ~~certified mail by July 16, 2001. Such election shall take effect~~

76 ~~October 1, 2001.~~

77 ~~a.(I) The municipality or charter county may require and~~

78 ~~collect permit fees from any providers of communications~~

79 ~~services that use or occupy municipal or county roads or rights-~~

80 ~~of-way.~~ All fees permitted under this paragraph ~~sub-subparagraph~~

81 must be reasonable and commensurate with the direct and actual

82 cost of the regulatory activity, including issuing and

83 processing permits, plan reviews, physical inspection, and

84 direct administrative costs; must be demonstrable; and must be

85 equitable among users of the roads or rights-of-way. A fee

86 permitted under this paragraph ~~sub-subparagraph~~ may not: be

87 offset against the tax imposed under chapter 202; include the

88 costs of roads or rights-of-way acquisition or roads or rights-

89 of-way rental; include any general administrative, management,

90 or maintenance costs of the roads or rights-of-way; or be based

91 on a percentage of the value or costs associated with the work

92 to be performed on the roads or rights-of-way. In an action to

93 recover amounts due for a fee not permitted under this paragraph

94 ~~sub-subparagraph~~, the prevailing party may recover court costs

95 and attorney ~~attorney's~~ fees at trial and on appeal. In addition

96 to the limitations set forth in this section, a fee levied by a

97 municipality or ~~charter~~ county under this paragraph ~~sub-~~

98 ~~subparagraph~~ may not exceed \$100. However, permit fees may not

99 be imposed with respect to permits that may be required for

100 service drop lines not required to be noticed under s.

101 556.108(5)(a)2. or for any activity that does not require the
102 physical disturbance of the roads or rights-of-way or does not
103 impair access to or full use of the roads or rights-of-way.

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

111 ~~b. Alternatively, the municipality or charter county may~~
112 ~~elect not to require and collect permit fees from any provider~~
113 ~~of communications services that uses or occupies municipal or~~
114 ~~charter county roads or rights-of-way for the provision of~~
115 ~~communications services; however, each municipality or charter~~
116 ~~county that elects to operate under this sub-subparagraph~~
117 ~~retains all authority to establish rules and regulations for~~
118 ~~providers of communications services to use or occupy roads or~~
119 ~~rights-of-way as provided in this section. If a municipality or~~
120 ~~charter county elects to operate under this sub-subparagraph,~~
121 ~~the total rate for the local communications services tax as~~
122 ~~computed under s. 202.20 for that municipality or charter county~~
123 ~~may be increased by ordinance or resolution by an amount not to~~
124 ~~exceed a rate of 0.12 percent. If a municipality or charter~~
125 ~~county elects to increase its rate effective October 1, 2001,~~

126 ~~the municipality or charter county shall inform the department~~
127 ~~of such increased rate by certified mail postmarked on or before~~
128 ~~July 16, 2001.~~

129 ~~e. A municipality or charter county that does not make an~~
130 ~~election as provided for in this subparagraph shall be presumed~~
131 ~~to have elected to operate under the provisions of sub-~~
132 ~~subparagraph b.~~

133 ~~2. Each noncharter county shall make an election under~~
134 ~~either sub-subparagraph a. or sub-subparagraph b. and shall~~
135 ~~inform the Department of Revenue of the election by certified~~
136 ~~mail by July 16, 2001. Such election shall take effect October~~
137 ~~1, 2001.~~

138 ~~a. The noncharter county may elect to require and collect~~
139 ~~permit fees from any providers of communications services that~~
140 ~~use or occupy noncharter county roads or rights-of-way. All fees~~
141 ~~permitted under this sub-subparagraph must be reasonable and~~
142 ~~commensurate with the direct and actual cost of the regulatory~~
143 ~~activity, including issuing and processing permits, plan~~
144 ~~reviews, physical inspection, and direct administrative costs;~~
145 ~~must be demonstrable; and must be equitable among users of the~~
146 ~~roads or rights-of-way. A fee permitted under this sub-~~
147 ~~subparagraph may not: be offset against the tax imposed under~~
148 ~~chapter 202; include the costs of roads or rights-of-way~~
149 ~~acquisition or roads or rights-of-way rental; include any~~
150 ~~general administrative, management, or maintenance costs of the~~

151 ~~roads or rights-of-way; or be based on a percentage of the value~~
152 ~~or costs associated with the work to be performed on the roads~~
153 ~~or rights-of-way. In an action to recover amounts due for a fee~~
154 ~~not permitted under this sub-subparagraph, the prevailing party~~
155 ~~may recover court costs and attorney's fees at trial and on~~
156 ~~appeal. In addition to the limitations set forth in this~~
157 ~~section, a fee levied by a noncharter county under this sub-~~
158 ~~subparagraph may not exceed \$100. However, permit fees may not~~
159 ~~be imposed with respect to permits that may be required for~~
160 ~~service drop lines not required to be noticed under s.~~
161 ~~556.108(5)(a)2. or for any activity that does not require the~~
162 ~~physical disturbance of the roads or rights-of-way or does not~~
163 ~~impair access to or full use of the roads or rights-of-way.~~
164 ~~b. Alternatively, the noncharter county may elect not to~~
165 ~~require and collect permit fees from any provider of~~
166 ~~communications services that uses or occupies noncharter county~~
167 ~~roads or rights-of-way for the provision of communications~~
168 ~~services; however, each noncharter county that elects to operate~~
169 ~~under this sub-subparagraph shall retain all authority to~~
170 ~~establish rules and regulations for providers of communications~~
171 ~~services to use or occupy roads or rights-of-way as provided in~~
172 ~~this section. If a noncharter county elects to operate under~~
173 ~~this sub-subparagraph, the total rate for the local~~
174 ~~communications services tax as computed under s. 202.20 for that~~
175 ~~noncharter county may be increased by ordinance or resolution by~~

176 ~~an amount not to exceed a rate of 0.24 percent, to replace the~~
177 ~~revenue the noncharter county would otherwise have received from~~
178 ~~permit fees for providers of communications services. If a~~
179 ~~noncharter county elects to increase its rate effective October~~
180 ~~1, 2001, the noncharter county shall inform the department of~~
181 ~~such increased rate by certified mail postmarked on or before~~
182 ~~July 16, 2001.~~

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

186 ~~3. Except as provided in this paragraph, municipalities~~
187 ~~and counties retain all existing authority to require and~~
188 ~~collect permit fees from users or occupants of municipal or~~
189 ~~county roads or rights-of-way and to set appropriate permit fee~~
190 ~~amounts.~~

191 ~~(d) After January 1, 2001,~~ In addition to any other notice
192 requirements, a municipality must provide to the Secretary of
193 State, at least 10 days before ~~prior to~~ consideration on first
194 reading, notice of a proposed ordinance governing a
195 telecommunications company placing or maintaining
196 telecommunications facilities in its roads or rights-of-way.

197 ~~After January 1, 2001,~~ In addition to any other notice
198 requirements, a county must provide to the Secretary of State,
199 at least 15 days before ~~prior to~~ consideration at a public
200 hearing, notice of a proposed ordinance governing a

201 telecommunications company placing or maintaining
202 telecommunications facilities in its roads or rights-of-way. The
203 notice required by this paragraph must be published by the
204 Secretary of State on a designated Internet website. The failure
205 of a municipality or county to provide such notice does not
206 render the ordinance invalid.

207 ~~(j) Pursuant to this paragraph, any county or municipality~~
208 ~~may by ordinance change either its election made on or before~~
209 ~~July 16, 2001, under paragraph (c) or an election made under~~
210 ~~this paragraph.~~

211 ~~1.a. If a municipality or charter county changes its~~
212 ~~election under this paragraph in order to exercise its authority~~
213 ~~to require and collect permit fees in accordance with this~~
214 ~~subsection, the rate of the local communications services tax~~
215 ~~imposed by such jurisdiction pursuant to ss. 202.19 and 202.20~~
216 ~~shall automatically be reduced by the sum of 0.12 percent plus~~
217 ~~the percentage, if any, by which such rate was increased~~
218 ~~pursuant to sub-subparagraph (c)1.b.~~

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

225 ~~2.a. If a noncharter county changes its election under~~

226 ~~this paragraph in order to exercise its authority to require and~~
227 ~~collect permit fees in accordance with this subsection, the rate~~
228 ~~of the local communications services tax imposed by such~~
229 ~~jurisdiction pursuant to ss. 202.19 and 202.20 shall~~
230 ~~automatically be reduced by the percentage, if any, by which~~
231 ~~such rate was increased pursuant to sub-subparagraph (c)2.b.~~

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

238 ~~3.a. Any change of election pursuant to this paragraph and~~
239 ~~any tax rate change resulting from such change of election shall~~
240 ~~be subject to the notice requirements of s. 202.21; however, no~~
241 ~~such change of election shall become effective prior to January~~
242 ~~1, 2003.~~

243 ~~b. Any county or municipality changing its election under~~
244 ~~this paragraph in order to exercise its authority to require and~~
245 ~~collect permit fees shall, in addition to complying with the~~
246 ~~notice requirements under s. 202.21, provide to all dealers~~
247 ~~providing communications services in such jurisdiction written~~
248 ~~notice of such change of election by September 1 immediately~~
249 ~~preceding the January 1 on which such change of election becomes~~
250 ~~effective. For purposes of this sub-subparagraph, dealers~~

251 ~~providing communications services in such jurisdiction shall~~
252 ~~include every dealer reporting tax to such jurisdiction pursuant~~
253 ~~to s. 202.37 on the return required under s. 202.27 to be filed~~
254 ~~on or before the 20th day of May immediately preceding the~~
255 ~~January 1 on which such change of election becomes effective.~~

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

260 (5) This section, except subsections (1) and (2) and
261 paragraph (3)(g), does not apply to the provision of pay
262 telephone service on public, municipal, or county roads or
263 rights-of-way.

264 (6)

265 (e) This subsection does not alter any provision of this
266 section or s. 202.24 relating to taxes, fees, or other charges
267 or impositions by a municipality or county on a dealer of
268 communications services or authorize that any charges be
269 assessed on a dealer of communications services, except as
270 specifically set forth herein. A municipality or county may not
271 charge a pass-through provider any amounts other than the
272 charges under this subsection as a condition to the placement or
273 maintenance of a communications facility in the roads or rights-
274 of-way of a municipality or county by a pass-through provider,
275 except that a municipality or county may impose permit fees on a

276 | pass-through provider consistent with paragraph (3)(c) ~~if the~~
277 | ~~municipality or county elects to exercise its authority to~~
278 | ~~collect permit fees under paragraph (3)(c).~~

279 | (f) The charges under this subsection do not apply to
280 | communications facilities placed in a municipality's or county's
281 | rights-of-way before ~~prior to~~ the effective date of this
282 | subsection with permission from the municipality or county, if
283 | any was required, except to the extent the facilities of a pass-
284 | through provider were subject to per linear foot or mile charges
285 | in effect as of October 1, 2001, in which case the municipality
286 | or county may only impose on a pass-through provider charges
287 | consistent with paragraph (b) or paragraph (c) for such
288 | facilities. Notwithstanding the foregoing, this subsection does
289 | not impair any written agreement between a pass-through provider
290 | and a municipality or county imposing per linear foot or mile
291 | charges for communications facilities placed in municipal or
292 | county roads or rights-of-way that is in effect prior to the
293 | effective date of this subsection. Upon the termination or
294 | expiration of any such written agreement, any charges imposed
295 | shall be consistent with this section ~~paragraph (b) or paragraph~~
296 | ~~(c). Notwithstanding the foregoing, until October 1, 2005, this~~
297 | ~~subsection shall not affect a municipality or county continuing~~
298 | ~~to impose charges in excess of the charges authorized in this~~
299 | ~~subsection on facilities of a pass-through provider that is not~~
300 | ~~a dealer of communications services in the state under chapter~~

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301 ~~202, but only to the extent such charges were imposed by~~
302 ~~municipal or county ordinance or resolution adopted prior to~~
303 ~~February 1, 2002. Effective October 1, 2005, any charges imposed~~
304 ~~shall be consistent with paragraph (b) or paragraph (c).~~

305 Section 3. The taxes imposed by ss. 202.12 and 203.01,
306 Florida Statutes, as amended by this act, on communications
307 services shall be applied to communications services reflected
308 on bills dated on or after October 1, 2020.

309 Section 4. This act shall take effect July 1, 2019.