# CHAPTER 2000-260

## Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill No. 1338

An act relating to communications services; creating ch. 202, F.S., the Communications Services Tax Simplification Law; providing definitions; providing for taxation of the sale of communications services, effective October 1, 2001; providing for imposition of the tax on the sales price of communications services, the cost of operating a substitute communications system, and the sales price of direct-to-home satellite service; providing for computation of tax rates by the Revenue Estimating Conference and for approval by the Legislature; providing for collection and remittance of the taxes on communications services imposed by chapters 202 and 203, F.S., on a combined basis; providing a limitation on such taxes on certain interstate communications services; requiring the purchaser to obtain a direct-pay permit; providing exemptions for certain sales to residential households, to governmental entities, and to certain religious or educational organizations; providing legislative intent with respect to future findings of invalidity, exemptions, and local government franchise fees; providing for credits for taxes paid in other jurisdictions; providing special provisions for users of substitute communications systems; providing for payment and collection of the taxes on communications; providing for sales for resale; providing requirements for registration of dealers of communications services; providing penalties; providing for fees; providing for annual resale certificates; providing procedures for revocation of registration; providing for disposition of the proceeds of the taxes on communications services; authorizing counties and municipalities to levy a discretionary local communications services tax; providing intent regarding tax rates; providing for imposition of a discretionary sales surtax levied by a county or school board under s. 212.055, F.S., as a local communications services tax; providing for application of local taxes to substitute communications systems; providing a limitation on local taxes on certain interstate communications services; requiring the purchaser to obtain a direct-pay permit; providing for use of tax revenues; providing for credit against local taxes for fees required under a franchise agreement; providing for computation by the Revenue Estimating Conference of the initial and maximum rates for local taxes and providing for approval by the Legislature; providing for effectiveness of the initial rates and for increase by emergency ordinance under certain conditions; requiring providers of communications services and local taxing jurisdictions to furnish information; providing for determination by the Revenue Estimating Conference of a rate conversion factor for counties and school boards that levy a discretionary sales surtax and providing for approval by the Legislature; providing for certain automatic rate reductions; providing for effective dates and notification with respect to adoption, repeal, or rate changes of local taxes; providing procedures and requirements for determination of the local taxing jurisdiction in which a service

address is located; providing for creation of an electronic database by the Department of Revenue; providing for certification of databases by the department; providing effect on dealers who do not use the specified methods for such determination; providing procedures and requirements for refunds or credits of communications services taxes; specifying that the authority of public bodies to require taxes or other impositions from dealers of communications services for occupying roads and rights-of-way is preempted by the state; prohibiting public bodies from levying specified taxes and other charges; providing for jurisdiction for suits against dealers; providing for dealers not qualified to do business in this state; specifying powers of the department; providing for rules; providing requirements for the filing of returns and payment of taxes; providing penalties; providing for rules for self-accrual; providing for a dealer's credit; providing penalties for failure to file returns or for filing false or fraudulent returns; providing for credits or refunds for bad debts; requiring certain dealers to remit taxes by electronic funds transfer and make returns through an electronic data interchange; providing for payment of taxes upon sale or quitting of business; providing for notice to certain persons regarding a dealer's delinquency and providing such persons' duties; providing a penalty; providing for cooperation of state and local agencies; providing that taxes collected become government funds; providing penalties for the theft of government funds; providing department powers regarding warrants, tax executions, and writs of garnishment; providing recordkeeping requirements for dealers; providing a penalty; authorizing sampling by the department; providing for examination of records; providing for audits; providing for assessment of interest and penalties; providing powers of the department to assess from estimates; requiring that taxes be separately stated; prohibiting certain advertising or refunds by dealers; providing a penalty; providing department powers with respect to hearings, cash deposits or bonds, and subpoenas; providing for venue; providing special rules for the administration of local taxes; providing for an advisory committee to advise the executive director of the department regarding implementation of communications services taxes; amending s. 72.011, F.S.; authorizing taxpayers to contest assessments or denials of refund under ch. 202, F.S., in circuit court or pursuant to the Administrative Procedure Act; amending s. 213.05, F.S.; including ch. 202, F.S., within the revenue laws for which the department has responsibility; amending s. 212.20, F.S.; providing for distribution of portions of the communications services tax; amending s. 166.231, F.S.; providing that the exemption from the municipal public service tax for telecommunications services for resale includes resale by way of a prepaid calling arrangement; providing that taxes not collected thereon prior to July 1, 2000, need not be paid; repealing s. 166.231(9), F.S., which provides for levy of the municipal public service tax on telecommunication services, effective October 1, 2001; conforming language; amending s. 166.233, F.S.; conforming language; amending s. 203.01, F.S.; providing that the exemption from the gross receipts tax for telecommunication services for resale includes resale by way

of a prepaid calling arrangement; providing for a gross receipts tax on communications services, effective October 1, 2001, to be applied pursuant to ch. 202, F.S.; providing for computation of the tax rate by the Revenue Estimating Conference and for approval by the Legislature; amending s. 203.012, F.S.; removing and revising definitions relating to the gross receipts tax, to conform; repealing s. 203.013, F.S., which provides for payment of the gross receipts tax on interstate private communications services, and ss. 203.60, 203.61, 203.62, and 203.63, F.S., which provide for payment of the gross receipts tax on other interstate and international telecommunication services, to conform; amending s. 212.05, F.S.; providing that the sale or recharge of a prepaid calling arrangement shall be treated as a sale of tangible personal property under ch. 212, F.S.; providing that the sale of telecommunication services to a person who furnishes such services pursuant to such an arrangement is a sale for resale; providing that taxes not collected thereon prior to July 1, 2000, need not be paid; removing the imposition of tax under ch. 212, F.S., on telecommunication service, telegraph messages, long distance telephone calls, and television system program service, effective October 1, 2001; amending s. 212.054, F.S.; providing that charges for prepaid calling arrangements are subject to discretionary sales surtaxes; conforming language; amending s. 337.401, F.S.; providing requirements with respect to the authority of counties and municipalities to regulate the placement of telecommunications facilities in the public roads or rights-of-way; requiring certain notice to the Secretary of State; revising such requirements, effective October 1, 2001, and providing for application to providers of communications services; requiring municipalities and charter counties and noncharter counties to choose whether or not to impose permit fees on such providers and providing requirements with respect to such fees; providing effect of such choice on the rate of the local communications services tax under ch. 202, F.S., for the local government; providing that the authority of municipalities and counties to require franchise fees from such providers is preempted by the state; authorizing municipalities and counties to request certain in-kind requirements, institutional networks, and contributions from cable service providers; providing for a legislative study with respect to state policy regarding such in-kind requirements and contributions; amending s. 212.031, F.S.; revising the exemption from the tax on the lease or rental of or license in real property for streets or rights-of-way and improvements located thereon used by a utility or cable television company; including such exemption within provisions relating to leases involving multiple use of property; providing status of revenues received under the act with respect to taxes or fees previously imposed and bonded indebtedness; providing appropriations and authorizing positions; repealing the following, effective June 30, 2001: ss. 202.10, 202.11, 202.20, 202.26, and 202.37, F.S., and ss. 3-11, 13-17, and 19-28 of the act, which constitute the creation of ch. 202, F.S., effective October 1, 2001, to provide for the taxation of the sale of communications services; ss. 33-35 of the act, which amend ss. 72.011, 213.05, and 212.20, F.S.,

to provide related administrative provisions effective October 1, 2001; ss. 38 and 39 of the act, which repeal s. 166.231(9), F.S., and amend ss. 166.231 and 166.233, F.S., to remove levy of the municipal public service tax on telecommunication services effective October 1, 2001; ss. 41-43 of the act, which amend ss. 203.01 and 203.012, F.S., and repeal ss. 203.013 and 203.60-203.63, F.S., to provide for a gross receipts tax on communications services, effective October 1, 2001, to be applied pursuant to ch. 202, F.S.; ss. 48 and 49 of the act, which amend ss. 212.05 and 212.054, F.S., to remove the imposition of tax under ch. 212, F.S., on telecommunication service effective October 1, 2001; s. 51 of the act, which amends s. 337.401, F.S., relating to the authority of counties and municipalities to regulate the placement of telecommunications facilities in roads and rights-of-way and to impose permit fees and franchise fees, effective October 1, 2001; and ss. 54 and 55 of the act, which provide for application of amendments made by the act; abolishing, on June 30, 2001, an advisory committee appointed pursuant to the act; amending s. 337.401, F.S., effective June 30, 2001, to remove amendments made by the act which take effect January 1, 2001; providing effective dates.

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

Section 1. Section 202.10, Florida Statutes, is created to read:

202.10 Short title.—This chapter may be cited as the "Communications Services Tax Simplification Law."

Section 2. Section 202.11, Florida Statutes, is created to read:

202.11 Definitions.—As used in this chapter:

(1) "Actual cost of operating a substitute communications system" includes, but is not limited to, depreciation, interest, maintenance, repair, and other expenses directly attributable to the operation of such system. For purposes of this chapter, the depreciation expense included in actual cost is the depreciation expense claimed for federal income tax purposes. The total amount of any payment required by a lease or rental contract or agreement must be included within the actual cost of operating the substitute communications system.

(2) "Cable service" means the transmission of video, audio, or other programming service to purchasers, and the purchaser interaction, if any, required for the selection or use of any such programming service, regardless of whether the programming is transmitted over facilities owned or operated by the cable service provider or over facilities owned or operated by one or more other dealers of communications services. The term includes point-to-multipoint distribution services by which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises, but does not include direct-to-home satellite service. The term includes basic, extended, premium, pay-per-view, digital, and music services.

(3) "Communications services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term does not include:

(a) Information services.

(b) Installation or maintenance of wiring or equipment on a customer's premises.

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

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

(e) Bad check charges.

(f) Late payment charges.

(g) Billing and collection services.

(h) Internet access service, electronic mail service, electronic bulletin board service, or similar on-line computer services.

(4) "Dealer" means a person registered with the department as a provider of communications services in this state.

(5) "Department" means the Department of Revenue.

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

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

(8) "Mobile communications service" means any one-way or two-way radio communications service, whether identified by the dealer as local, toll, long distance, or otherwise, and which is carried between mobile stations or receivers and land stations, or by mobile stations communicating among themselves, and includes, but is not limited to, cellular communications

services, personal communications services, paging services, specialized mobile radio services, and any other form of mobile one-way or two-way communications service.

(9) "Person" has the meaning ascribed in s. 212.02.

(10) "Prepaid calling arrangement" means the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered, and that are sold in predetermined units or dollars of which the number declines with use in a known amount.

(11) "Purchaser" means the person paying for or obligated to pay for communications services.

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

(13) "Sale" means the provision of communications services for a consideration.

(14) "Sales price" means the total amount charged in money or other consideration by a dealer for the sale of communications services in this state, including any property or other services that are part of the sale.

(a) The sales price of communications services shall also include, whether or not separately stated, charges for any of the following:

1. Separately identified components of the charge or expenses of the dealer, including, but not limited to, sales taxes on goods or services purchased by the dealer, property taxes, taxes measured by net income, and federal universal-service fund fees.

2. The connection, movement, change, or termination of communications services.

3. The detailed billing of communications services.

4. The sale of directory listings in connection with a communications service.

5. Central office and custom calling features.

6. Voice mail and other messaging service.

7. Directory assistance.

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

1. Any excise tax, sales tax, or similar tax levied by the United States or any state or local government on the purchase, sale, use, or consumption of any communications service, including, but not limited to, any tax imposed under this chapter or chapter 203 which is permitted or required to be added to the sales price of such service, if the tax is stated separately.

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

3. Local telephone service paid for by inserting coins into coin-operated communications devices available to the public.

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

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

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

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

(15) "Service address" means:

(a) In the case of cable services and direct-to-home satellite services, the location where the customer receives the services in this state.

(b) In the case of all other communications services, the location of the communications equipment from which communications services originate or at which communications services are received by the customer. If the location of such equipment cannot be determined as part of the billing process, as in the case of mobile communications services, paging systems, maritime systems, third-number and calling-card calls, and similar services, the term means the location determined by the dealer based on the customer's telephone number, the customer's mailing address to which bills are sent by the dealer, or another street address provided by the customer. However, such address must be within the licensed service area of the dealer. In the case of a communications service paid through a credit or payment mechanism that does not relate to a service address, such as a bank, travel, debit, or credit card, the service address is the address of the central office, as determined by the area code and the first three digits of the seven-digit originating telephone number.

(16) "Substitute communications system" means any telephone system, or other system capable of providing communications services, which a person purchases, installs, rents, or leases for his or her own use to provide himself or herself with services used as a substitute for communications services provided by a dealer of communications services.

(17) "Unbundled network element" means a network element, as defined in 47 U.S.C. s. 153(29), to which access is provided on an unbundled basis pursuant to 47 U.S.C. s. 251(c)(3).

Section 3. Effective October 1, 2001, section 202.12, Florida Statutes, is created to read:

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

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

(a) At the rate calculated pursuant to section 30 of this act applied to the sales price of the communications service, except for direct-to-home satellite service, which:

1. Originates and terminates in this state, or

2. Originates or terminates in this state and is charged to a service address in this state,

when sold at retail, computed on each taxable sale for the purpose of remitting the tax due. The gross receipts tax imposed by chapter 203 shall be collected on the same taxable transactions and remitted with the tax imposed by this paragraph. If no tax is imposed by this paragraph by reason of s. 202.125(1), the tax imposed by chapter 203 shall nevertheless be collected and remitted in the manner and at the time prescribed for tax collections and remittances under this chapter.

(b) At the rate set forth in paragraph (a) on the actual cost of operating a substitute communications system, to be paid in accordance with s. 202.15. This paragraph does not apply to the use by any dealer of his or her own communications system to conduct a business of providing communications services or any communications system operated by a county, a municipality, the state, or any political subdivision of the state. The gross receipts tax imposed by chapter 203 shall be applied to the same costs, and remitted with the tax imposed by this paragraph.

(c) At a rate to be computed by the Revenue Estimating Conference and approved by the Legislature on the retail sales price of any direct-to-home satellite service received in this state. The rate computed by the Revenue Estimating Conference shall be the sum of:

1. The rate set forth in paragraph (a); and

2. The weighted average, based on the aggregate population in the respective taxing jurisdictions, of the rate computed under s. 202.20(2)(a)1. for municipalities and charter counties and the rate computed under such subparagraph for all other counties.

The proceeds of the tax imposed under this paragraph shall be accounted for and distributed in accordance with s. 202.18(2). The gross recepts tax imposed by chapter 203 shall be collected on the same taxable transactions and remitted with the tax imposed by this paragraph.

(2) A dealer of taxable communications services shall bill, collect, and remit the taxes on communications services imposed pursuant to chapter 203 and this section at a combined rate that is the sum of the rate of tax on communications services prescribed in chapter 203 and the applicable rate of tax prescribed in this section. Each dealer subject to the tax provided in paragraph (1)(b) shall also remit the taxes imposed pursuant to chapter 203 and this section on a combined basis. However, a dealer shall, in reporting each remittance to the department, identify the portion thereof which consists of taxes remitted pursuant to chapter 203. Return forms prescribed by the department shall facilitate such reporting.

(3) Notwithstanding any law to the contrary, the combined amount of taxes imposed under this section and s. 203.01(1)(a)2. shall not exceed $100,000 per calendar year on charges to any person for interstate communications services that originate outside this state and terminate within this state. This subsection applies only to holders of a direct-pay permit issued under this subsection. A refund may not be given for taxes paid before receiving a direct-pay permit. Upon application, the department may issue a direct-pay permit to the purchaser of communications services authorizing such purchaser to pay tax on such services directly to the department if the majority of such services used by such person are for communications originating outside of this state and terminating in this state. Any dealer of communications services furnishing communications services to the holder of a valid direct-pay permit is relieved of the obligation to collect and remit the taxes imposed under this section and s. 203.01(1)(a)2. on such services. Tax payments and returns pursuant to a direct-pay permit shall be monthly. As used in this subsection, "person" means a single legal entity and does not mean a group or combination of affiliated entities or entities controlled by one person or group of persons.

Section 4. Effective October 1, 2001, section 202.125, Florida Statutes, is created to read:

202.125 Sales of communications services; specified exemptions.—

(1) The separately stated sales price of communications services sold to residential households is exempt from the tax imposed by s. 202.12. This exemption shall not apply to any residence that constitutes all or part of a public lodging establishment as defined in chapter 509, any mobile communications service, any cable service, or any direct-to-home satellite service.

(2) The sale of communications services provided to the Federal Government, any agency or instrumentality of the Federal Government, or any entity that is exempt from state taxes under federal law is exempt from the taxes imposed or administered pursuant to ss. 202.12 and 202.19.

(3) The sale of communications services to the state or any county, municipality, or political subdivision of the state when payment is made di-

rectly to the dealer by the governmental entity is exempt from the taxes imposed or administered pursuant to ss. 202.12 and 202.19. This exemption does not inure to any transaction otherwise taxable under this chapter when payment is made by a government employee by any means, including, but not limited to, cash, check, or credit card even when that employee is subsequently reimbursed by the governmental entity.

(4) The sale of communications services to a religious or educational organization that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code is exempt from the taxes imposed or administered pursuant to ss. 202.12 and 202.19.

Section 5. Effective October 1, 2001, section 202.13, Florida Statutes, is created to read:

202.13 Intent.—

(1) If the operation or imposition of the taxes imposed or administered under this chapter is declared invalid, ineffective, inapplicable, unconstitutional, or void for any reason, chapters 166, 203, 212, and 337, as such chapters existed before January 1, 2000, shall fully apply to the sale, use, or consumption of communications services. If any exemption from the tax is declared invalid, ineffective, inapplicable, unconstitutional, or void for any reason, such declaration shall not affect the taxes imposed or administered under this chapter, but such sale, use, or consumption shall be subject to the taxes imposed under this chapter to the same extent as if such exemption never existed.

(2) It is the intent of the Legislature to exempt from the taxes imposed or administered pursuant to this chapter only the communications services set forth in this chapter as exempt from such taxes, to the extent that such exemptions are in accordance with the constitutions of this state and of the United States.

(3) The tax on dealers of communications services authorized under this chapter, including the tax imposed by local governments under ss. 202.19 and 202.20, shall supersede the authority of local governments to levy franchise fees as set out in 47 U.S.C. s. 542 without regard to the fact that this is a tax of general applicability on all providers of communications services.

Section 6. Effective October 1, 2001, section 202.14, Florida Statutes, is created to read:

202.14 Credit against tax imposed.—To prevent actual multistate taxation of communications services subject to tax under this chapter, any taxpayer, upon proof that such taxpayer has paid a tax legally imposed by another state or local jurisdiction in such other state with respect to such services, shall be allowed a credit against the taxes imposed under this chapter to the extent of the amount of tax paid in the other state or local jurisdiction.

Section 7. Effective October 1, 2001, section 202.15, Florida Statutes, is created to read:

202.15 Special rule for users of substitute communications systems.—Any person who purchases, installs, rents, or leases a substitute communications system must register with the department and pay the taxes imposed or administered pursuant to s. 202.12 annually pursuant to rules prescribed by the department.

Section 8. Effective October 1, 2001, section 202.16, Florida Statutes, is created to read:

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

(1)(a) Except as otherwise provided in ss. 202.12(1)(b) and 202.15, the taxes collected under this chapter and chapter 203, including any penalties or interest attributable to the nonpayment of such taxes or for noncompliance with this chapter or chapter 203, shall be paid by the purchaser of the communications service and shall be collected from such person by the dealer of communications services.

(b) Each dealer of communications services selling communications services in this state shall collect the taxes imposed under this chapter and chapter 203 from the purchaser of such services, and such taxes must be stated separately from all other charges on the bill or invoice.

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

(3) Notwithstanding the rate of tax on the sale of communications services imposed pursuant to this chapter and chapter 203, the department shall prescribe by rule the tax amounts and brackets applicable to each taxable sale such that the tax collected results in a tax rate no less than the tax rate imposed pursuant to this chapter and chapter 203.

(4) Each purchaser of a communications service is liable for the taxes imposed under this chapter and chapter 203. The purchaser's liability is not extinguished until the tax has been paid to the department, except that proof of payment of the tax to a dealer of communications services engaged

in business in this state is sufficient to relieve the purchaser from further liability for the tax.

Section 9. Effective October 1, 2001, section 202.17, Florida Statutes, is created to read:

202.17 Registration.—

(1) Each person seeking to engage in business as a dealer of communications services must file with the department an application for a certificate of registration.

(2) A person may not engage in the business of providing communications services without first obtaining a certificate of registration. The failure or refusal to submit an application by any person required to register, as required by this section, is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who fails or refuses to register shall pay an initial registration fee of $100 in lieu of the $5 registration fee prescribed under subsection (4). However, this fee increase may be waived by the department if the failure is due to reasonable cause.

(3)(a) An application for a certificate of registration must be completed by the dealer of communications services before engaging in business. The application for a certificate of registration must contain the information required by rule of the department.

(b) The department, upon receipt of a completed application, shall grant to the applicant a certificate of registration.

(4) Each application required by paragraph (3)(a) must be accompanied by a registration fee of $5, to be deposited in the General Revenue Fund, and must set forth:

(a) The name under which the person will transact business within this state.

(b) The street address of his or her principal office or place of business within this state and of the location where records are available for inspection.

(c) The name and complete residence address of the owner or the names and residence addresses of the partners, if the applicant is a partnership, or of the principal officers, if the applicant is a corporation or association. If the applicant is a corporation organized under the laws of another state, territory, or country, he or she must also file with the application a certified copy of the certificate or license issued by the Department of State showing that the corporation is authorized to transact business in this state.

(d) Any other data required by the department.

(5) Certificates of registration issued by the department are not assignable.

(6) In addition to the certificate of registration, the department shall provide to each newly registered dealer an annual resale certificate that is valid for the remaining portion of the year. The department shall provide to each active dealer an annual resale certificate. As used in this section, "active dealer" means a person who is registered with the department and who is required to file a return at least once during each applicable reporting period.

(7) A certificate of registration issued by the department may be revoked by the department or its designated agent when a dealer fails to comply with this chapter or chapter 203. Before revoking a dealer's certificate of registration, the department must schedule an informal conference at which the dealer may present evidence regarding the department's intended revocation or enter into a compliance agreement with the department. The department must notify the dealer of its intended action and of the time, place, and date of the scheduled informal conference by written notification sent by United States mail to the dealer's last known address of record furnished by the dealer on a form prescribed by the department. The dealer must attend the informal conference and present evidence refuting the department's intended revocation or enter into a compliance agreement with the department which resolves the dealer's failure to comply with this chapter or chapter 203. The department shall issue an administrative complaint under s. 120.60 if the dealer fails to attend the department's informal conference, fails to enter into a compliance agreement with the department resolving the dealer's noncompliance with this chapter, or fails to comply with the executed compliance agreement.

Section 10. Effective October 1, 2001, section 202.18, Florida Statutes, is created to read:

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

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

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

(b) The remaining portion shall be distributed according to s. 212.20(6).

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

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

(b) The portion of such proceeds which is derived from the rate component specified in s. 202.12(1)(c)1. shall be allocated to the state and distributed pursuant to s. 212.20(6).

(c) The remaining portion of such proceeds shall be allocated to the municipalities and counties in proportion to the allocation of receipts from the half-cent sales tax under s. 218.61 and the emergency distribution of such tax under s. 218.65. The department shall distribute the appropriate amount to each municipality and county each month at the same time that local communications services taxes are distributed pursuant to subsection (3).

(3)(a) Notwithstanding any law to the contrary, the proceeds of each local communications services tax levied by a municipality or county pursuant to s. 202.19, less the department's costs of administration, shall be transferred to the Local Communications Services Tax Clearing Trust Fund and held there to be distributed to such municipality or county. However, the proceeds of any communications services tax imposed pursuant to s. 202.19(5) shall be deposited and disbursed in accordance with ss. 212.054 and 212.055. For purposes of this section, the proceeds of any tax levied by a municipality, county, or school board under s. 202.19 are all funds collected and received by the department pursuant to a specific levy authorized by such section, including any interest and penalties attributable to the tax levy.

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

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

2. The department shall make any adjustments to the distributions pursuant to this paragraph which are necessary to reflect the proper amounts due to individual jurisdictions.

Section 11. Effective October 1, 2001, section 202.19, Florida Statutes, is created to read:

202.19 Authorization to impose local communications services tax.—

(1) The governing authority of each county and municipality may, by ordinance, levy a discretionary communications services tax.

(2) The rate of such tax shall be as follows:

(a) For municipalities and charter counties, the rate shall be up to the maximum rate determined for municipalities and charter counties in accordance with s. 202.20(2).

(b) For all other counties, the rate shall be up to the maximum rate determined for other counties in accordance with s. 202.20(2).

The rate imposed by any municipality or county shall be expressed in increments of one-tenth of a percent and rounded up to the nearest one-tenth percent.

(3)(a) The maximum rates established under subsection (2) reflect the rates for communications services taxes imposed under this chapter which are necessary for each municipality or county to raise the maximum amount of revenues which it was authorized to raise prior to July 1, 2000, through the imposition of taxes, charges, and fees, but that it is prohibited from imposing under s. 202.24, other than the discretionary surtax authorized under s. 212.055. It is the legislative intent that the maximum rates for charter counties be calculated by treating them as having had the same authority as municipalities to impose franchise fees on recurring local telecommunication service revenues prior to July 1, 2000. However, the Legislature recognizes that the authority of charter counties to impose such fees is in dispute, and the treatment provided in this section is not an expression of legislative intent that charter counties actually do or do not possess such authority.

(b) The tax authorized under this section includes any fee or other consideration to which the municipality or county is otherwise entitled for granting permission to dealers of communications services or providers of cable television services, as authorized in 47 U.S.C. s. 542, to use or occupy its roads or rights-of-way for the placement, construction, and maintenance of poles, wires, and other fixtures used in the provision of communications services.

(c) This subsection does not supersede or impair the right, if any, of a municipality or county to require the payment of consideration or to require the payment of regulatory fees or assessments by persons using or occupying its roads or rights-of-way in a capacity other than that of a dealer of communications services.

(4)(a) Except as otherwise provided in this section, the tax imposed by any municipality shall be on all communications services subject to tax under s. 202.12 which:

1. Originate or terminate in this state; and

2. Are charged to a service address in the municipality.

(b) The tax imposed by any county under subsection (1) shall be on all communications services subject to tax under s. 202.12 which:

1. Originate or terminate in this state; and

2. Are charged to a service address in the unincorporated area of the county.

(5) In addition to the communications services taxes authorized by subsection (1), a discretionary sales surtax that a county or school board has

levied under s. 212.055 is imposed as a local communications services tax under this section, and the rate shall be determined in accordance with s. 202.20(5). Each such tax rate shall be applied, in addition to the other tax rates applied under this chapter, to communications services subject to tax under s. 202.12 which:

(a) Originate or terminate in this state; and

(b) Are charged to a service address in the county.

(6) Notwithstanding any other provision of this section, a tax imposed under this section does not apply to any direct-to-home satellite service.

(7) Any tax imposed by a municipality, school board, or county under this section also applies to the actual cost of operating a substitute communications system, to be paid in accordance with s. 202.15. This subsection does not apply to the use by any provider of its own communications system to conduct a business of providing communications services or to the use of any communications system operated by a county, a municipality, the state, or any political subdivision of the state.

(8) Notwithstanding any law to the contrary, a tax imposed under this section shall not exceed $25,000 per calendar year on communications services charges billed to a service address located in a municipality or county imposing a local communications services tax for interstate communications services that originate outside this state and terminate within this state. This subsection applies only to holders of a direct-pay permit issued under this subsection. A refund may not be given for taxes paid before receiving a direct-pay permit. Upon application, the department may issue a direct-pay permit to the purchaser of communications services authorizing such purchaser to pay tax on such services directly to the department if the majority of such services used by such person are for communications originating outside of this state and terminating in this state. Any dealer of communications services furnishing communications services to the holder of a valid direct-pay permit is relieved of the obligation to collect and remit the tax on such services. Tax payments and returns pursuant to a direct-pay permit shall be monthly. As used in this subsection, “person” means a single legal entity and does not mean a group or combination of affiliated entities or entities controlled by one person or group of persons.

(9) A municipality or county that imposes a tax under subsection (1) may use the revenues raised by such tax for any public purpose, including, but not limited to, pledging such revenues for the repayment of current or future bonded indebtedness. Revenues raised by a tax imposed under subsection (5) shall be used for the same purposes as the underlying discretionary sales surtax imposed by the county or school board under s. 212.055.

(10) Notwithstanding any provision of law to the contrary, the exemption set forth in s. 202.125(1) shall not apply to a tax imposed by a municipality, school board, or county pursuant to subsection (4) or subsection (5).

(11) To the extent that a provider of communications services is required to pay a tax, charge, or other fee under any franchise agreement or ordi-

nance with respect to the services or revenues that are also subject to the tax imposed by this section, such provider is entitled to a credit against the amount payable to the state pursuant to this section in the amount of such tax, charge, or fee with respect to such services or revenues.

Section 12. Section 202.20, Florida Statutes, is created to read:

202.20 Local communications services tax rates.—

(1)(a) On or before December 31, 2000, the Revenue Estimating Conference shall compute for each municipality and county the rate of local communications services tax which would be required to be levied under s. 202.19(1) in order for such local taxing jurisdiction to raise in calendar year 1999, through the imposition of a local communications services tax, revenues equal to the sum of:

1. The amount of revenues estimated to have been received in calendar year 1999 based on the revenues that were actually received from the replaced revenue sources in the fiscal year ending September 30, 1999, adjusted to reflect the growth reasonably estimated to have occurred in the final quarter of calendar year 1999; and

2. An amount representing the revenues the jurisdiction would have received from the replaced revenue sources during the month immediately preceding the month in which local taxing jurisdictions receive their first distributions of revenues under this chapter.

In computing the amounts in subparagraphs 1. and 2., the Revenue Estimating Conference shall consider, to the maximum extent practicable, changes in local replaced revenues, other than changes due to normal growth, and shall adjust the amounts in subparagraphs 1. and 2. accordingly.

(b) The rates computed by the Revenue Estimating Conference shall be presented to the Legislature for review and approval during the 2001 Regular Session. The rates approved by the Legislature under this subsection shall be effective in the respective local taxing jurisdictions on October 1, 2001, without any action being taken by the governing authority or voters of such local taxing jurisdictions. The rate computed and approved pursuant to this subsection shall be reduced on October 1, 2002, by that portion of the rate which was necessary to recoup the 1 month of foregone revenues addressed in subparagraph (a)2.

(c) With respect to any local taxing jurisdiction, if, for the periods ending December 31, 2001, March 31, 2002, June 30, 2002, or September 30, 2002, the revenues received by that local government from the local communications services tax imposed under s. 202.19(1) are less than the revenues received from the replaced revenue sources for the corresponding 2000-2001 period; plus reasonably anticipated growth in such revenues over the preceding 1-year period, based on the average growth of such revenues over the immediately preceding 5-year period; plus an amount representing the revenues from the replaced revenue sources for the 1-month period that the local taxing jurisdiction was required to forego, the governing authority may

adjust the rate of the local communications services tax upward to the extent necessary to generate the entire shortfall in revenues within 1 year after the rate adjustment and by an amount necessary to generate the expected amount of revenue on an ongoing basis. The adjustment may be made by emergency ordinance and may be made notwithstanding the maximum rate established under subsection (2) and notwithstanding any schedules or timeframes or any other limitations contained in this chapter. The emergency ordinance shall specify an effective date for the adjusted rate, which shall be no less than 90 days after the date of adoption of the ordinance. At the end of that year, the local governing authority shall, as soon as is consistent with s. 202.21, reduce the rate by that portion of the emergency rate which was necessary to recoup the amount of revenues not received prior to the implementation of the emergency rate.

(2)(a) On or before December 31, 2000, the Revenue Estimating Conference shall compute, in accordance with this paragraph, the maximum rates at which local taxing jurisdictions shall be permitted to impose local communications services taxes under s. 202.19(1).

1. A single maximum rate shall apply to all municipalities and charter counties and another single maximum rate shall apply to all other counties.

2. Each respective maximum rate, when applied to the services taxed pursuant to this chapter, shall be calculated to produce the revenues which could have been generated from the replaced revenue sources, assuming that all local taxing jurisdictions had imposed every replaced revenue source in the manner and at the rate that would have produced the greatest amount of revenues.

(b) The rates computed by the Revenue Estimating Conference shall be presented to the Legislature for review and approval during the 2001 Regular Session. The rates approved by the Legislature pursuant to this subsection shall be the maximum rates for purposes of s. 202.19(1).

(3)(a) Each person who provides communications services shall include as part of the August 2000 return due pursuant to chapter 212 on or before September 20, 2000, the information set forth in this paragraph, in a format prescribed by the department. Returns shall contain data for calendar year 1999 that may include, but are not limited to, remittances of replaced revenue sources for each local taxing jurisdiction and an estimate of the revenue from communications services that will be taxable pursuant to this chapter for each local taxing jurisdiction. Such data may also include, on an aggregated statewide basis, each person's statewide sales taxable under chapter 203, taxable sales under s. 212.05(1)(e), and estimates for sales exempt under s. 212.08(7)(j) and exempt sales to governmental and other exempt entities under chapter 212.

(b) All information furnished to the department under this subsection shall be available to all local taxing jurisdictions. Such taxpayer information shall remain subject to s. 213.053. Such data may not be disclosed or used by local taxing jurisdictions for any purpose other than to review the validity of data and the calculations made pursuant to this subsection.

(c) For each replaced revenue source, each county and each municipality shall provide the following data to the Department of Revenue on or before September 30, 2000:

1. The rate of the levy for calendar year 1999.

2. The amount of revenues received during fiscal year 1998-1999 and, if known, the 1999 calendar year.

3. A description of the revenue base or taxable services.

4. The name and federal employer identification number of each taxpayer.

5. For the purpose of assisting the Revenue Estimating Conference in the computations required by this section, any other relevant information, including, but not limited to, changes in the rate of replaced revenues or imposition of additional replaced revenues subsequent to September 30, 1999.

(d) The department shall provide technical assistance to the Revenue Estimating Conference and compile and analyze the information submitted pursuant to this subsection in the manner requested by the Revenue Estimating Conference.

(4) Except as otherwise provided in this subsection, "replaced revenue sources," as used in this section, means the following taxes, charges, fees, or other impositions to the extent that the respective local taxing jurisdictions were authorized to impose them prior to July 1, 2000.

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

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

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

3. The public service tax on prepaid calling arrangements.

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

5. Actual permit fees relating to placing or maintaining facilities in or on public roads or rights-of-way, collected from providers of long distance,

cable, and mobile communications services for the fiscal year ending September 30, 1999; however, if a municipality or charter county elects the option to charge permit fees pursuant to s. 337.401(3)(c)1.a., such fees shall not be included as a replaced revenue source.

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

(5) For any county or school board that levies a discretionary surtax under s. 212.055, the rate of such tax shall be multiplied by a factor to determine the applicable rate of tax under s. 202.19(5). The Revenue Estimating Conference shall compute the factor on or before December 31, 2000. The factor shall be calculated such that any rate applied under s. 202.19(5) will produce substantially the same tax revenues as the corresponding rate levied on telecommunication services under s. 212.055 during the year ending September 30, 1999. The factor shall be calculated to three decimal places, and the tax rates calculated by applying the factor for purposes of s. 202.19(5) shall be rounded up to the nearest one-tenth percent. The factor shall be presented to the Legislature for review and approval during the 2001 Regular Session.

(6) For purposes of calculating the appropriate value of the replaced revenue under subparagraph (4)(a)2. and paragraph (4)(b), and in conjunction with the study required by this act, the Revenue Estimating Conference may include in its computation any adjustment necessary to include the value of any in-kind requirements, institutional networks, and contributions for, or in support of, the use or construction of public, educational, or governmental access facilities allowed under federal law.

(7)(a) The provisions of this subsection shall apply only with respect to the initial tax rate of a local taxing jurisdiction which on October 1, 2001, is entitled to receive from any dealer of communications services fees in excess of the applicable limitation set forth in s. 337.401, as such section existed prior to the effective date of this section, pursuant to an agreement with such dealer of communications services in effect on such date.

(b) Immediately upon the expiration of an agreement described in paragraph (a), the rate determined under subsection (1), as it applies to such local taxing jurisdiction, shall automatically be reduced by the portion of such rate representing the difference between the fees actually received by the taxing jurisdiction pursuant to the agreement described in paragraph (a) for the fiscal year ending September 30, 1999, and the fees that such jurisdiction would have received for such period under the applicable limitation set forth in s. 337.401, as such section existed prior to the effective date of this section.

Section 13. Effective October 1, 2001, section 202.21, Florida Statutes, is created to read:

202.21 Effective dates; procedures for informing dealers of communications services of tax levies and rate changes.—Any adoption, repeal, or change in the rate of a local communications services tax imposed under s.

202.19 is effective with respect to taxable services included on bills that are dated on or after the January 1 subsequent to such adoption, repeal, or change. A municipality or county adopting, repealing, or changing the rate of such tax must notify the department of the adoption, repeal, or change by September 1 immediately preceding such January 1. Notification must be furnished on a form prescribed by the department and must specify the rate of tax; the effective date of the adoption, repeal, or change thereof; and the name, mailing address, and telephone number of a person designated by the municipality or county to respond to inquiries concerning the tax. The department shall provide notice of such adoption, repeal, or change to all affected dealers of communications services at least 90 days before the effective date of the tax. Any local government that adjusts the rate of its local communications services tax by emergency ordinance pursuant to s. 202.20(1)(c) shall notify the department of the new tax rate immediately upon its adoption. The department shall provide written notice of the adoption of the new rate to all affected dealers within 30 days after receiving such notice. In any notice to providers or publication of local tax rates for purposes of this chapter, the department shall express the rate for a municipality or charter county as the sum of the tax rates levied within such jurisdiction pursuant to s. 202.19(2)(a) and (5), and shall express the rate for any other county as the sum of the tax rates levied pursuant to s. 202.19(2)(b) and (5). The department is not liable for any loss of or decrease in revenue by reason of any error, omission, or untimely action that results in the nonpayment of a tax imposed under s. 202.19.

Section 14. Effective October 1, 2001, section 202.22, Florida Statutes, is created to read:

202.22 Determination of local tax situs.—

(1) A dealer of communications services who is obligated to collect and remit a local communications services tax imposed under s. 202.19 shall be held harmless from any liability, including tax, interest, and penalties, which would otherwise be due solely as a result of an assignment of a service address to an incorrect local taxing jurisdiction, if the dealer of communications services exercises due diligence in applying one or more of the following methods for determining the local taxing jurisdiction in which a service address is located:

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

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

(c) Employing enhanced zip codes to assign each street address, address range, post office box, or post office box range in the dealer's service area to a specific local taxing jurisdiction. If an enhanced zip code overlaps boundaries of municipalities or counties, or if an enhanced zip code cannot be assigned to the service address because the service address is in a rural area or a location without postal delivery, the dealer of communications services or its database vendor shall assign the affected service addresses to one specific local taxing jurisdiction within such zip code based on a reasonable

methodology. A methodology satisfies this paragraph if the information used to assign service addresses is obtained by the dealer or its database vendor from:

1. A database provided by the department;

2. A database certified by the department under subsection (3);

3. Responsible representatives of the relevant local taxing jurisdictions; or

4. The United States Census Bureau or the United States Postal Service.

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

(2)(a) The department shall, subject to legislative appropriation, create as soon as practical and feasible, and thereafter maintain, an electronic database that gives due and proper regard to any format that is approved by the American National Standards Institute's Accredited Standards Committee X12 and that designates for each street address, address range, post office box, or post office box range in the state, including any multiple postal street addresses applicable to one street location, the local taxing jurisdiction in which the street address, address range, post office box, or post office box range is located and the appropriate code for each such local taxing jurisdiction, identified by one nationwide standard numeric code. The nationwide standard numeric code must contain the same number of numeric digits, and each digit, or combination of digits, must refer to the same level of taxing jurisdiction throughout the United States using a format similar to FIPS 55-3 or other appropriate standard approved by the Federation of Tax Administrators and the Multistate Tax Commission. Each address or address range or post office box or post office box range must be provided in standard postal format, including the street number, street number range, street name, post office box number, post office box range, and zip code. The department shall provide notice of the availability of the database, and any subsequent revision thereof, by publication in the Florida Administrative Weekly.

(b)1. Each local taxing jurisdiction shall furnish to the department all information needed to create and update the electronic database, including changes in service addresses, annexations, incorporations, reorganizations, and any other changes in jurisdictional boundaries. The information furnished to the department must specify an effective date, which must be the next ensuing January 1 or July 1, and such information must be furnished to the department at least 120 days prior to the effective date. However, the requirement that counties submit information pursuant to this paragraph shall be subject to appropriation.

2. The department shall update the electronic database in accordance with the information furnished by local taxing jurisdictions under subparagraph 1. Each update must specify the effective date as the next ensuing January 1 or July 1 and must be posted by the department on a website not

less than 90 days prior to the effective date. The department shall also furnish the update on magnetic or electronic media to any dealer of communications services or vendor who requests the update on such media. However, the department may collect a fee from the dealer of communications services which does not exceed the actual cost of furnishing the update on magnetic or electronic media.

3. Each update must identify the additions, deletions, and other changes to the preceding version of the database. Each dealer of communications services shall collect and remit local communications services taxes imposed under this chapter only for those service addresses that are contained in the database and for which all of the elements required by this subsection are included in the database.

(3) For purposes of this section, a database must be certified by the department pursuant to rules that implement the following criteria and procedures:

(a) The database must assign street addresses, address ranges, post office boxes, or post office box ranges to the proper jurisdiction with an overall accuracy rate of 95 percent at a 95 percent level of confidence, as determined through a statistically reliable sample. The accuracy must be measured based on the entire state or, if the service area of the dealer does not encompass the entire state, based on the dealer's entire service area.

(b) Upon receipt of an application for certification or recertification of a database, the department shall examine the application and, within 90 days after receipt, notify the applicant of any apparent errors or omissions and request any additional information, conduct any inspection, or perform any testing determined necessary. The applicant shall designate an individual responsible for providing access to all records, facilities, and processes the department determines are reasonably necessary to review and make a determination regarding the application. Such access must be provided within 10 working days after notification.

(c) The application must be in the form prescribed by rule and must include the applicant's name, federal employer identification number, mailing address, business address, and any other information required by the department. The application must identify, among other elements required by the department, the applicant's proposal for testing the database.

(d) Each application for certification must be approved or denied upon written notice within 180 days after receipt of a completed application. The notice must specify the grounds for denial, inform the applicant of any remedy that is available, and indicate the procedure that must be followed. Filing of a petition under chapter 120 does not preclude the department from certifying the database upon a demonstration that the deficiencies have been corrected.

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

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

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

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

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

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

a. Maintains and follows procedures to obtain and implement periodic and consistent updates to the database; and

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

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

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

(b) Notwithstanding s. 202.28, if a dealer of communications services employs a method of assigning service addresses other than as set forth in paragraph (1)(a), (b), or (c), the deduction allowed to the dealer of communications services as compensation under s. 202.28 shall be 0.25 percent of the tax due and accounted for and remitted to the department.

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

Section 15. Effective October 1, 2001, section 202.23, Florida Statutes, is created to read:

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

(1) Notwithstanding any other law, a purchaser seeking a refund of or credit for a tax collected by a dealer under this chapter must, within 3 years following collection of the tax from the purchaser, submit a written request for the refund or credit to the dealer in accordance with this section. A request shall not be granted unless the amount claimed was collected from the purchaser and was not due to the state or to any local taxing jurisdiction.

(a) A request for a refund or credit may be submitted under this section if:

1. The dealer charged and collected the tax with respect to a transaction or charge that was not subject to the communications services taxes imposed by this chapter or chapter 203, or applied a tax rate in excess of the lawful rate.

2. The purchaser or the transaction was exempt or immune from such taxes.

3. The purchaser was assigned to the incorrect local taxing jurisdiction for purposes of the taxes authorized in s. 202.19.

4. The purchaser paid the tax in error.

(b) A purchaser's request for a refund or credit must be signed by the purchaser and is complete for purposes of this section and the limitation period if it states the purchaser's name, mailing address, account number, the tax amounts claimed, the specific months during which those amounts were collected, and the reason for the purchaser's claim that such amounts were not due to the state or to any local taxing jurisdiction. If the reason for the request is an exemption or immunity or a claim that the purchaser was assigned to the incorrect local taxing jurisdiction for purposes of a tax imposed under s. 202.19, a completed request must also include any additional information the department prescribes by rule to facilitate verification of the purchaser's eligibility for exemption or immunity or to facilitate verification of the purchaser's service address. Upon receipt of a completed request, the dealer shall ascertain whether it collected the tax claimed from the purchaser and whether the request is timely.

(c) Within 30 days following receipt of a completed request, the dealer shall determine whether any portion of the tax was collected solely as the result of an error of the dealer or the purchaser or solely as the result of a combination of errors of the dealer and the purchaser. The dealer shall refund any such amount or credit the purchaser's account for such amount within 45 days following such determination.

(d) With respect to all amounts timely claimed which the dealer collected from the purchaser and which the dealer has not determined to be subject to refund or credit pursuant to paragraph (c), the dealer shall, within 30 days following receipt of the purchaser's completed request for refund or credit, provide a copy of the request to the department. If the reason for the purchaser's request is described in subparagraph (a)1. or 3., the dealer shall contemporaneously furnish to the department an identification of the charges included in the taxable measure and the tax rates applied to the charges, or a written identification of each local jurisdiction to which the purchaser was assigned and the amounts collected from the purchaser and reported for each such jurisdiction, as the case may be. If a purchaser's request submitted to the department under this section sets forth another reason for claiming a refund or credit, the dealer shall furnish to the department information to facilitate the department's evaluation of the request.

(e) Within 90 days following receipt of the purchaser's request from the dealer, the department shall determine whether the tax was correctly applied and notify the dealer in writing of its determination. If the department determines that the tax was incorrectly applied, its notification to the dealer must inform the dealer how the tax should have been applied, including, in the case of an incorrect assignment of the purchaser to a local taxing jurisdiction, an identification of the correct local taxing jurisdiction and the applicable rates of tax levied by the local jurisdiction. The department's notification must also inform the dealer of any portion of the amount claimed which was not due to the state or to any local taxing jurisdiction and approve the refund or credit of such amount to the purchaser. Within 45 days following receipt of notification from the department, the dealer shall issue a refund or credit the purchaser's account for any such amount. The dealer's obligation to issue a refund or credit the purchaser's account is limited to amounts approved in accordance with this section.

(f) The dealer shall issue a written response advising the purchaser of the disposition of the purchaser's request. The response must specify any portion of the tax claimed which is being refunded or credited to the purchaser's account and the reason for denial of any portion of the request. The request may be denied if the request was untimely or incomplete, the dealer did not collect the tax claimed, the purchaser previously received a refund of or credit for the same tax, the tax collected was due, or the department failed to furnish the notification required by paragraph (e). With respect to any portion of the request which is granted, the response must be issued at the time of the refund or credit to the purchaser's account. With respect to any portion of the request which is denied, the response must be issued within 45 days following the dealer's receipt of the request if the request was not submitted to the department pursuant to paragraph (d), within 45 days following the dealer's receipt of the department's notification pursuant to

paragraph (e) if the denial is based on the department's notification, or within 135 days following submission of the request to the department if the dealer has not received the department's notification.

(g) The dealer may deduct from any refund or credit under this section any amount owed by the purchaser to the dealer which is delinquent.

(2) This section provides the sole and exclusive procedure and remedy for a purchaser who claims that a dealer has collected communications services taxes imposed or administered under this chapter which were not due. An action that arises as a result of the claimed collection of taxes that were not due may not be commenced or maintained by or on behalf of a purchaser against a dealer, a municipality, a county, or the state unless the purchaser pleads and proves that the purchaser has exhausted the procedures in subsection (1) and that the defendant has failed to comply with subsection (1). However, no determination by a dealer under paragraph (1)(c) shall be deemed a failure to comply with subsection (1) if the dealer has complied with the obligations imposed on the dealer by paragraphs (1)(d), (e), and (f). In any such action, it is a complete defense that the dealer, a municipality, a county, or the state has refunded the taxes claimed or credited the purchaser's account. In such an action against a dealer, it is also a complete defense that, in collecting the tax, the dealer used one or more of the methods set forth in s. 202.22 for assigning the purchaser to a local taxing jurisdiction. Such action is barred unless it is commenced within 180 days following the date of the dealer's written response under paragraph (1)(f), or within 1 year following submission of the purchaser's request to the dealer if the dealer failed to issue a timely written response. The relief available to a purchaser as a result of collection of communications services taxes that were not due is limited to a refund of or credit for such taxes.

(3) A dealer who remitted a tax amount to the department for which the dealer subsequently issued a refund or credit to the purchaser pursuant to this section, and a dealer who has otherwise remitted to the department a tax amount with respect to communications services which was not due under this chapter or chapter 203, is entitled to a refund or credit of such amount from the department. The dealer may apply for a refund within the period prescribed in s. 215.26, or may take a credit against a tax remittance otherwise required under this chapter within 3 years after the date that the amount for which credit is claimed was remitted to the department, or within 60 days following such provider's issuance of a refund or credit to the purchaser for such amount, whichever occurs later. In addition, s. 213.34 applies to the offset of overpayments against deficiencies in audits of dealers and purchasers.

(4) A dealer who takes a credit on a subsequent return, as provided in subsection (3), for a tax imposed pursuant to s. 202.19 which has been collected and remitted by the dealer must indicate such credit in the portion of the return applicable to the local taxing jurisdiction for which the tax was originally reported.

(5) A dealer who has collected and remitted amounts that were not due, as determined by the department under paragraph (1)(e), who has issued a

refund or credit to the purchaser for such amounts, and who takes a credit or receives a refund from the department for such amounts as provided in subsection (3) is not subject to assessment for any of the tax that was refunded or credited or for any interest or penalty with respect to the tax. In addition, a dealer who modifies his or her tax compliance practices to conform to a department determination under paragraph (1)(e) is not subject to assessment as a result of such modification, absent a subsequent change in law or update to a database pursuant to s. 202.22.

(6) A purchaser who seeks a refund of communications services taxes that the purchaser paid directly to the department must apply to the department for such refund in accordance with s. 215.26 and may not apply to the dealer.

(7) The rights to a refund or credit provided in this section for purchasers and dealers may be assigned.

Section 16. Effective October 1, 2001, section 202.24, Florida Statutes, is created to read:

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

(1) The authority of a public body to require taxes, fees, charges, or other impositions from dealers of communications services for occupying its roads and rights-of-way is specifically preempted by the state because of unique circumstances applicable to communications services dealers. Communications services may be provided by certain dealers of communications services in a manner that requires the use of public roads or rights-of-way while similar communications services may be provided by other dealers of communications services in a manner that does not require the use of public roads or rights-of-way. Although similar communications services may be provided by different means, the state seeks to treat dealers of communications services in a nondiscriminatory and competitively neutral manner.

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

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

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

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

Each municipality and county retains authority to negotiate all terms and conditions of a cable service franchise allowed by federal and state law

except those terms and conditions related to franchise fees and the definition of gross revenues or other definitions or methodologies related to the payment or assessment of franchise fees on providers of cable services.

(b) For purposes of this subsection, a tax, charge, fee, or other imposition includes any amount or in-kind payment of property or services which is required by ordinance or agreement to be paid or furnished to a public body by or through a dealer of communications services in its capacity as a dealer of communications services, regardless of whether such amount or in-kind payment of property or services is:

1. Designated as a sales tax, excise tax, subscriber charge, franchise fee, user fee, privilege fee, occupancy fee, rental fee, license fee, pole fee, tower fee, base-station fee, or other tax or fee;

2. Measured by the amounts charged or received for services, regardless of whether such amount is permitted or required to be separately stated on the customer's bill, by the type or amount of equipment or facilities deployed, or by other means; or

3. Intended as compensation for the use of public roads or rights-of-way, for the right to conduct business, or for other purposes.

(c) This subsection does not apply to:

1. Local communications services taxes levied under this chapter.

2. Ad valorem taxes levied pursuant to chapter 200.

3. Occupational license taxes levied under chapter 205.

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

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

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

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

8. Any in-kind requirements, institutional networks, or contributions for, or in support of, the use or construction of public, educational, or governmental access facilities allowed under federal law and imposed on providers of cable service pursuant to any ordinance or agreement. Nothing in this subparagraph shall prohibit the ability of providers of cable service to recover such expenses as allowed under federal law. This subparagraph shall be reviewed by the Legislature during the 2001 legislative session in conjunction with the study required by this act.

9. Special assessments and impact fees.

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

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

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

(3) As used in this section, "public body" has the meaning ascribed in s. 1.01(8), and includes, without limitation, every division, agency, and instrumentality thereof; however, the term does not include the state or any branch of state government.

Section 17. Effective October 1, 2001, section 202.25, Florida Statutes, is created to read:

202.25 Jurisdiction; dealers not qualified to do business in this state.—

(1) All suits brought by the department against any dealer for any violation of this chapter for the purpose of collecting any tax due from the dealer, including garnishment proceedings, regardless of the amount, must be brought in the circuit court of this state having jurisdiction of the subject matter.

(2) Each dealer who is not qualified to do business in this state shall designate with the department an agent within this state for service of process to enforce this chapter. If a dealer fails to designate such an agent, the Secretary of State or any agent or employee of the dealer within this state constitutes the agent for the service of such process.

Section 18. Section 202.26, Florida Statutes, is created to read:

202.26 Department powers.—

(1) The department shall administer and enforce the assessment and collection of the taxes, interest, and penalties collected under or imposed by this chapter.

(2) The provisions of chapter 213 shall, as far as lawful and practicable, be applicable to the taxes imposed and administered under this chapter and to the collection thereof as if fully set out in this chapter. However, no provision of chapter 213 shall apply if it conflicts with any provision of this chapter.

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

(a) The filing of returns and remittance of tax, including provisions concerning electronic funds transfer and electronic data interchange.

(b) The determination of customer service addresses.

(c) The interpretation or definition of any exemptions or exclusions from taxation granted by law.

(d) Procedures for handling sales for resale and for determining the taxable status of discounts and rebates.

(e) Methods for granting self-accrual authority to taxpayers.

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

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

(h) The registration of dealers.

(i) The information that is necessary and the methods, forms, and deadlines for providing the information collected pursuant to s. 202.20(3).

(j) The review of applications for, and the issuance of, direct-pay permits, and the returns required to be filed by holders thereof.

(4) The executive director of the department is authorized, and all conditions are deemed met, to adopt emergency rules under ss. 120.536(1) and 120.54(4) to implement this chapter. Notwithstanding any other provision of law, such emergency rules shall remain effective for 6 months after the date of adoption and may be renewed during the pendency of procedures to adopt rules addressing the subject of the emergency rules.

Section 19. Effective October 1, 2001, section 202.27, Florida Statutes, is created to read:

202.27 Return filing; rules for self-accrual.—

(1) For the purpose of ascertaining the amount of tax payable under this chapter and chapter 203, every dealer has the duty to file a return and remit the taxes to the department, on or before the 20th day of the month, upon forms prepared and furnished by the department or in a format prescribed by it. The department shall, by rule, prescribe the information to be furnished by taxpayers on such returns.

(2) The department may require:

(a) A quarterly return and payment when the tax remitted by the dealer for the preceding four calendar quarters did not exceed $1,000.

(b) A semiannual return and payment when the tax remitted by the dealer for the preceding four calendar quarters did not exceed $500.

(c) An annual return and payment when the tax remitted by the dealer for the preceding four calendar quarters did not exceed $100.

(d) A quarterly return and monthly payment when the tax remitted by the dealer for the preceding four calendar quarters exceeded $1,000 but did not exceed $12,000.

(3) The department shall accept returns, except those required to be initiated through an electronic data interchange, as timely if postmarked on or before the 20th day of the month; if the 20th day falls on a Saturday, Sunday, or federal or state legal holiday, returns are timely if postmarked on the next succeeding workday. Any dealer who makes sales of any nature in two or more locations for which returns are required to be filed with the department and who maintains records for such locations in a central office or place may, on each reporting date, file one return for all such places of business in lieu of separate returns for each location; however, the return must clearly indicate the amounts collected within each location. Each dealer shall file a return for each tax period even though no tax is due for such period.

(4) Whenever returns are required to be made to the department, the full amount of the taxes required to be paid as shown by the return must be paid and accompany the return, and the failure to remit the full amount of taxes at the time of making the return shall cause the taxes to become delinquent. All taxes and all interest and penalties imposed or administered under this chapter must be remitted to the department at Tallahassee or at another office designated by the department, in the form required by the department.

(5) The department may require all returns of taxes under this chapter to be accompanied by a written statement, by the person or by an officer of any firm or corporation required to pay such taxes, setting forth the facts that the department requires in order to ascertain the amount of taxes that are due and payable with the return. The filing of a return that is not accompanied by payment is prima facie evidence of the wrongful conversion of the money due. Any person or any duly authorized corporation officer or agent, or members of any firm or incorporated society or organization, who refuses to make a return and pay the taxes due, as required by the department and in the manner and in the form that the department requires, or to state in writing that the return is correct to the best of his or her knowledge and belief, as required by the department, is subject to a penalty of 6 percent per annum of the amount due and commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The signing of a written return has the same legal effect as if made under oath without the necessity of appending an oath thereto.

(6) The department may provide by rule for self-accrual of the communications services tax when:

(a) Authorized by law for holders of direct-pay permits; or

(b) The taxable status of sales of communications services will be known only upon use.

Section 20. Effective October 1, 2001, section 202.28, Florida Statutes, is created to read:

202.28 Credit for collecting tax; penalties.—

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

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

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

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

2. The department shall adopt rules requiring the information that it considers necessary to ensure that the taxes levied or administered under this chapter are properly collected, reviewed, compiled, reported, and enforced, including, but not limited to, rules requiring the reporting of the amount of gross sales; the amount of taxable sales; the amount of tax collected or due; the amount of lawful refunds, deductions, or credits claimed; the amount claimed as the dealer's collection allowance; the amount of penalty and interest; and the amount due with the return.

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

(2)(a) Any person who is required to make a return or pay the taxes imposed by this chapter who fails to timely file such return or fails to pay the taxes due within the time required, in addition to all other penalties provided by law, is subject to a specific penalty in the amount of 10 percent of any unpaid tax if the failure is for not more than 30 days, and an additional 10 percent of any unpaid tax for each additional 30 days, or fraction thereof, during which the failure continues, not to exceed a total penalty of 50 percent, in the aggregate, of any unpaid tax.

(b) Any person who knowingly and with a willful intent to evade any tax imposed under this chapter fails to file six consecutive returns as required by law commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Any person who makes a false or fraudulent return with a willful intent to evade payment of any tax or fee imposed under this chapter is liable, in addition to the other penalties provided by law, for a specific penalty of 100 percent of the tax bill or fee, and:

1. If the total amount of unreported taxes or fees is less than $300:

a. Such person commits, for the first offense, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

b. Such person commits, for the second offense, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

c. Such person commits, for the third and subsequent offenses, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the total amount of unreported taxes or fees is $300 or more but less than $20,000, such person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. If the total amount of unreported taxes or fees is $20,000 or more but less than $100,000, such person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. If the total amount of unreported taxes or fees is $100,000 or more, such person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 21. Effective October 1, 2001, section 202.29, Florida Statutes, is created to read:

202.29 Bad debts.—

(1) A dealer who has paid the tax imposed by this chapter may take a credit or obtain a refund for tax paid by the dealer on unpaid balances due on worthless accounts within 12 months following the last day of the calendar year for which the bad debt was charged off on the taxpayer's federal income tax return.

(2) If any accounts for which a credit or refund has been received are then in whole or in part paid to the dealer, the amount paid must be included in the first return filed after such receipt and the tax paid accordingly.

(3) Bad debts associated with accounts receivable which have been assigned or sold with recourse are eligible upon reassignment for inclusion by the dealer in the credit or refund authorized by this section.

Section 22. Effective October 1, 2001, section 202.30, Florida Statutes, is created to read:

202.30 Payment of taxes by electronic funds transfer; filing of returns by electronic data interchange.—

(1) A dealer of communications services is required to remit taxes by electronic funds transfer, in the manner prescribed by the department, when the amount of tax paid by the dealer under this chapter, chapter 203, or chapter 212 in the previous state fiscal year was $50,000 or more.

(2)(a) A dealer who is required to remit taxes by electronic funds transfer shall make a return in a manner that is initiated through an electronic data

interchange. The department shall prescribe the acceptable method of transfer; the method, form, and content of the electronic data interchange, giving due regard to developing uniform standards for formats as adopted by the American National Standards Institute; the circumstances under which an electronic data interchange will serve as a substitute for the filing of another form of return; and the means, if any, by which taxpayers will be provided with acknowledgments. The department must accept such returns as timely if initiated and accepted on or before the 20th day of the month. If the 20th day falls on a Saturday, Sunday, or federal or state legal holiday, returns are timely if initiated and accepted on the next succeeding workday.

(b) The department may waive the requirement to make a return through an electronic data interchange when problems arise with respect to the taxpayer's computer capabilities, data systems changes, or operating procedures. To obtain a waiver, the taxpayer must prove to the department that such problems exist.

(3)(a) The department shall design, prepare, print, and furnish to all dealers, except dealers filing through electronic data interchange, or make available or prescribe to the dealers all necessary forms for filing returns and instructions to ensure a full collection from dealers and an accounting for the taxes due, but failure of any dealer to secure such forms does not relieve the dealer of the obligation to pay the tax at the time and in the manner required.

(b) The department shall prescribe the format and instructions necessary for filing returns in a manner that is initiated through an electronic data interchange to ensure a full collection from dealers and an accounting for the taxes due. The failure of any dealer to use such format does not relieve the dealer of the obligation to pay the tax at the time and in the manner required.

Section 23. Effective October 1, 2001, section 202.31, Florida Statutes, is created to read:

202.31 Sale of business; liability for tax; procedures; penalty for violations.—

(1) If any dealer of communications services who is liable for any tax, interest, or penalty under this chapter sells his or her business or substantially all of his or her assets, the dealer shall make a final return and payment within 15 days thereafter. The dealer's successors or assigns shall withhold a sufficient portion of the purchase money to safely cover the amount of such taxes, interest, and penalties due and unpaid until the former owner produces a receipt from the department showing that they have been paid or a certificate stating that no taxes, interest, or penalties are due. If the purchaser of a business or the purchaser of substantially all of the assets of a business fails to withhold a sufficient amount of the purchase money as required by this subsection, he or she is personally liable for the payment of the taxes, interest, and penalties accruing and unpaid on account of the operation of the business by any former owners or assigns. Any receipt or certificate from the department does not, without an audit of the selling dealer's books and records by the department, guarantee that

there is not a tax deficiency owed the state from operation of the seller's business. To secure protection from the transferee's liability under this section, the seller or purchaser may request an audit of the seller's books and records. The department may contract with private auditors pursuant to s. 213.28 to perform the audit. The department may charge the cost of the audit to the person requesting the audit.

(2) If any dealer who is liable for any tax, interest, or penalty quits the business without the benefit of a purchaser and there are no successors or assigns, he or she shall make a final return and payment within 15 days. Any person who fails to file such final return and make payment is prohibited from engaging in any business in this state until the person has filed such final return and paid any moneys due. The Department of Legal Affairs may seek an injunction, at the request of the department, to prevent any activity in the performance of further business activity until such tax is paid. A temporary injunction enjoining further business activity may be granted by a court without notice.

(3) If a dealer is delinquent in the payment of the taxes imposed or administered by this chapter, the department may give notice of the amount of such delinquency by registered mail to all persons having in their possession or under their control any credits or other personal property belonging to such dealer or owing any debts to such dealer at the time of receipt by them of such notice. All persons so notified shall within 5 days after receipt of the notice advise the department of all such credits, other personal property, or debts in their possession, under their control, or owing by them. After receiving the notice, the persons so notified may not transfer or make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the department consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever occurs first, except that the credits, other personal property, or debts that exceed the delinquent amount stipulated in the notice are not subject to the provisions of this section, wherever held, if such dealer does not have a prior history of tax delinquencies under this chapter. All persons notified must, within 5 days, advise the department of any credits or other personal property belonging to such dealer or any debts incurred and owing to such dealer which subsequently come into their possession or under their control during the time prescribed by the notice or until the department consents to a transfer or disposition, whichever occurs first. If the notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice is ineffective unless it is delivered or mailed to the office of the bank at which the deposit is carried or at which the credits or personal property are held. If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld, he or she is liable to the state for any indebtedness due under this chapter from the person with respect to whose obligation the notice was given to the extent of the value of the property or the amount of the debts thus transferred or paid if, solely by reason of such transfer or disposition, the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was

given. All such credits or other personal property or debts are subject to garnishment by the department for satisfaction of the delinquent taxes due.

(4) After notice by the department of a transferee's liability under this section, the dealer shall have 60 days within which to file an action as provided in chapter 72.

(5) Any violation of this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 24. Effective October 1, 2001, section 202.32, Florida Statutes, is created to read:

202.32 State and local agencies to cooperate in administration of law.—The department may request from any state, county, municipal, or local governmental agency any information that the department considers necessary in administering this chapter, and such agency shall furnish such information.

Section 25. Effective October 1, 2001, section 202.33, Florida Statutes, is created to read:

202.33 Taxes declared to be government funds; penalties for failure to remit taxes; warrants.—

(1) The taxes collected under this chapter become government funds from the moment of collection by the dealer.

(2) Any person who, with intent to unlawfully deprive or defraud the state or a local government of its moneys or the use or benefit thereof, fails to remit taxes collected under this chapter is guilty of the theft of government funds, punishable as follows:

(a) If the total amount of stolen revenue is less than $300, the offense is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. For a second offense, the offender is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For a third or subsequent offense, the offender is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the total amount of stolen revenue is $300 or more, but less than $20,000, the offense is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the total amount of stolen revenue is $20,000 or more, but less than $100,000, the offense is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If the total amount of stolen revenue is $100,000 or more, the offense is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) All taxes collected under this chapter must be remitted to the department. In addition to criminal sanctions, the department shall, when any tax

becomes delinquent or is otherwise in jeopardy under this chapter, issue a warrant for the full amount of the tax due or estimated to be due, with the interest, penalties, and cost of collection, directed to the sheriffs of the state, and mail the warrant to the clerk of the circuit court of the county where any property of the taxpayer is located. Upon receipt of the warrant, the clerk of the circuit court shall record it, and thereupon the amount of the warrant becomes a lien on any real or personal property of the taxpayer in the same manner as a recorded judgment. The department may issue a tax execution to enforce the collection of taxes imposed by this chapter and deliver it to any sheriff. The sheriff shall thereupon proceed in the same manner as prescribed by law for executions and shall be entitled to the same fees for his or her services in executing the warrant to be collected. The department may also have a writ of garnishment with respect to any indebtedness due to the delinquent dealer by a third person in any goods, money, chattels, or effects of the delinquent dealer in the hands, possession, or control of the third person. Upon payment of the execution, warrant, judgment, or garnishment, the department shall satisfy the lien of record within 30 days. If there is jeopardy to the revenue and jeopardy is asserted in or with an assessment, the department shall proceed in the manner specified for jeopardy assessments in s. 213.732.

Section 26. Effective October 1, 2001, section 202.34, Florida Statutes, is created to read:

202.34 Records required to be kept; power to inspect; audit procedure.—

(1)(a) Each dealer shall secure, maintain, and keep as long as required by s. 213.35 a complete record of communications services sold at retail by the dealer, together with invoices, records of gross receipts from such sales, and other pertinent records and papers required by the department for the reasonable administration of this chapter. All such records that are located or maintained in this state must be made available for inspection by the department at all reasonable hours at the dealer's office or other place of business located in this state. Any dealer who maintains such books and records outside this state must make such books and records available for inspection by the department wherever the dealer's general records are kept. Any dealer subject to the provisions of this chapter who violates this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If, however, any subsequent offense involves intentional destruction of such records with an intent to evade payment of or deprive the government of any tax revenues, such subsequent offense constitutes a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(b) For the purpose of this subsection, if a dealer does not have adequate records of its sales of communications services, the department may, upon the basis of a test or sampling of the dealer's available records or other information relating to the sales made by such dealer for a representative period, determine the proper basis for assessing tax. This subsection does not affect the duty of the dealer to collect, or the liability of any consumer to pay, any tax imposed or administered under this chapter.

(c) If the records of a dealer are adequate but voluminous, the department may reasonably sample such records and project the audit findings derived therefrom over the entire audit period to determine the proper basis for assessing tax. In order to conduct such a sample, the department must first make a good faith effort to reach an agreement with the dealer which provides for the means and methods to be used in the sampling process. If an agreement is not reached, the dealer is entitled to a review by the executive director or the executive director's designee of the sampling method to be used by the auditor.

(2) For the purpose of enforcement of this chapter, each dealer shall allow the department to examine its books and records at all reasonable hours; and, if the dealer refuses, the department may petition the circuit court to order the dealer to permit such examination, subject to the right of removal of the cause to the judicial circuit wherein such person's business is located or wherein such person's books and records are kept.

(3) Each person who sells or purchases communications services shall permit the department to examine his or her books and records at all reasonable hours. The person shall also maintain books and records as long as required by s. 213.35 in order to disclose the sales and purchases of all services sold, to whom sold, and the amount sold, in the form and manner that the department requires, so that the department can determine the volume of services sold or purchased, as defined by this chapter, and the dates and amounts of such sales and purchases. The department may petition the circuit court to require any person who refuses to keep such records to permit such inspection, subject to the right of removal of the cause to the judicial circuit wherein such person's business is located or wherein such person's books and records are kept.

(4)(a) The department shall send written notification, at least 60 days prior to the date an auditor is scheduled to begin an audit, informing the person of the audit. The department is not required to give 60 days' prior notification of a forthcoming audit whenever the person requests an emergency audit.

(b) The written notification must specify:

1. The approximate date on which the auditor is scheduled to begin the audit.

2. A reminder that all of the records, receipts, invoices, resale certificates, and related documentation of the person must be made available to the auditor.

3. Any other requests or suggestions that the department considers necessary.

(c) Only records, receipts, invoices, resale certificates, and related documentation that are available to the auditor when the audit begins are acceptable for the purposes of the audit. A resale certificate containing a date prior to the date the audit commences constitutes acceptable documentation of the specific transactions that occurred in the past.

(d) The provisions of this chapter concerning fraudulent or improper records, receipts, invoices, resale certificates, and related documentation apply with respect to any audit.

(e) The requirement in paragraph (a) of 60 days' written notification does not apply in cases of distress or jeopardy as provided in s. 202.33 or s. 202.36.

Section 27. Effective October 1, 2001, section 202.35, Florida Statutes, is created to read:

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

(1) If any dealer or other person fails to remit the tax, or any portion thereof, on or before the day when the tax is required by law to be paid, there will be added to the amount due interest at the rate calculated pursuant to s. 213.235 of the amount due from the date due until paid. Interest on the delinquent tax is to be calculated beginning on the 21st day of the month following the month for which the tax is due, except as otherwise provided in this chapter.

(2) All penalties and interest imposed by this chapter are payable to and collectible by the department in the same manner as if they were a part of the tax collected under this chapter. The department may settle or compromise any such interest or penalties pursuant to s. 213.21.

(3) If a dealer or other person fails or refuses to make his or her records available for inspection so that an audit or examination of his or her books and records cannot be made, fails or refuses to register as a dealer, fails to make a report and pay the tax as provided by this chapter, makes a grossly incorrect report, or makes a report that is false or fraudulent, the department shall make an assessment from an estimate based upon the best information then available to it for the taxable period of retail sales of the dealer, together with any accrued interest and penalties. The department shall then proceed to collect the taxes, interest, and penalties on the basis of such assessment, which shall be considered prima facie correct; and the burden to show the contrary rests upon the dealer or other person.

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

(5) A dealer may not advertise or hold out to the public, in any manner, directly or indirectly, that he or she will absorb all or any part of the tax; that he or she will relieve the purchaser of the payment of all or any part of the tax; that the tax will not be added to the selling price of the property or services sold or released; or, when added, that it or any part thereof will

be refunded either directly or indirectly by any method. A person who violates this subsection with respect to advertising or refund is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A second or subsequent offense constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) Whenever in the construction, administration, or enforcement of this chapter there is any question respecting a duplication of the tax, the sale to the end consumer or last retail sale is the sale to be taxed, and, insofar as is practicable, there is to be no duplication or pyramiding of the tax.

Section 28. Effective October 1, 2001, section 202.36, Florida Statutes, is created to read:

202.36 Departmental powers; hearings; distress warrants; bonds; subpoenas and subpoenas duces tecum.—

(1) Any person required to pay a tax imposed or administered under this chapter or to make a return who renders a return or makes a payment of a tax with intent to deceive or defraud the government and prevent the government from collecting the amount of taxes imposed or administered by this chapter, or who otherwise fails to comply with this chapter for the taxable period for which any return is made, any tax is paid, or any report is made to the department, may be required by the department to show cause at a time and place to be set by the department, after 10 days' notice in writing requiring the production of such books, records, or papers relating to the business of such person for such tax period as the department requires. The department may require such person or his or her employees to give testimony under oath and answer interrogatories respecting the sale of communications services within this state, the failure to make a true report thereof, or failure to pay the true amount of the tax required to be paid under this chapter. If such person fails to produce such books, records, or papers or to appear and answer questions within the scope of investigation relating to matters concerning taxes to be imposed or administered under this chapter, or fails to allow his or her agents or employees to give testimony, the department may estimate any unpaid deficiencies in taxes to be assessed against such person based on whatever information is available to it and may issue a distress warrant for the collection of such taxes, interest, or penalties estimated by the department to be due and payable; and such assessment shall be deemed prima facie correct. In such cases, the warrant shall be issued to the sheriff of any county in the state where such person owns or possesses any property; and the sheriff shall seize such property as is required to satisfy any such taxes, interest, or penalties and sell such property under the distress warrant in the same manner as property is permitted to be seized and sold under distress warrants issued to secure the payment of delinquent taxes. The department shall also have the right to writ of garnishment to subject any indebtedness due to the delinquent dealer by a third person in any goods, money, chattels, or effects of the delinquent dealer in the hands, possession, or control of the third person in the manner provided by law. The person whose tax return or report is being investigated may by written request to the department require that the hearing be set at a place within the judicial circuit wherein the person's

business is located or wherein such person's books and records are kept. If there is jeopardy to the revenue and jeopardy is asserted in or with an assessment, the department shall proceed in the manner specified for jeopardy assessment in s. 213.732.

(2) Whenever it is necessary to ensure compliance with this chapter, the department shall require a cash deposit, bond, or other security as a condition to a person's obtaining or retaining a dealer's certificate of registration under this chapter. The bond must be in such form and amount as the department deems appropriate under the particular circumstances. Any person who fails to produce such cash deposit, bond, or other security may not obtain or retain a dealer's certificate of registration under this chapter. The Department of Legal Affairs may seek an injunction, when requested by the department, to prevent such person from doing business subject to the provisions of this chapter until the cash deposit, bond, or other security is posted with the department. Any security required to be deposited may be sold by the department at public sale if it becomes necessary to do so in order to recover any tax, interest, or penalty due. Notice of such sale may be served personally or by mail upon the person who deposited the security. Mailing the notice to the last known address appearing on the records of the department constitutes adequate service. Any proceeds of the sale exceeding the amount due under this chapter must be returned to the person who deposited the security.

(3) The department or any person authorized by it in writing is authorized to make and sign assessments, tax warrants, assignments of tax warrants, and satisfaction of tax warrants.

(4)(a) The department may issue subpoenas or subpoenas duces tecum compelling the attendance and testimony of witnesses and the production of books, records, written materials, and electronically recorded information. Subpoenas must be issued with the written and signed approval of the executive director or his or her designee on written and sworn application by any employee of the department. The application must set forth the reason for the application, the name of the person subpoenaed, the time and place of appearance of the witness, and a description of any books, records, or electronically recorded information to be produced, together with a statement by the applicant that the department has unsuccessfully attempted other reasonable means of securing information and that the testimony of the witness or the written or electronically recorded materials sought in the subpoena are necessary for the collection of taxes, penalty, or interest or the enforcement of the taxes levied or administered under this chapter. A subpoena shall be served in the manner provided by law and by the Florida Rules of Civil Procedure and shall be returnable only during regular business hours and at least 20 calendar days after the date of service of the subpoena. Any subpoena to which this subsection applies must identify the taxpayer to whom the subpoena relates and to whom the records pertain and must provide other information to enable the person subpoenaed to locate the records required under the subpoena. The department shall give notice to the taxpayer to whom the subpoena relates within 3 days after the day on which the service of the subpoena is made. Within 14 days after service of the subpoena, the person to whom the subpoena is directed may serve

written objection to the inspection or copying of any of the designated materials. If objection is made, the department may not inspect or copy the materials, except pursuant to an order of the circuit court. If an objection is made, the department may petition any circuit court for an order to comply with the subpoena. The subpoena must contain a written notice of the right to object to the subpoena. Every subpoena served upon the witness or custodian of records must be accompanied by a copy of the provisions of this subsection. If a person refuses to obey a subpoena or subpoena duces tecum, the department may apply to any circuit court of this state to enforce compliance with the subpoena. Witnesses are entitled to be paid a mileage allowance and witness fees as authorized for witnesses in civil cases.

(b)1. If any subpoena is served on any person who is a third-party recordkeeper and the subpoena requires the production of any portion of the records made or kept of the business transactions or affairs of any person other than the person subpoenaed, notice of the subpoena must be given to any person to whom the records pertain and to the taxpayer to whom the subpoena relates. Such notice must be given within 3 days after the day on which the service on the third-party recordkeeper is made, if the department can at that time identify the person to whom the records pertain. If the person to whom the records pertain cannot be identified at the time of issuance of the subpoena, the third-party recordkeeper shall immediately inform the department of such person's identity, and the department shall give notice to that person within 3 days thereafter. The notice must be accompanied by a copy of the subpoena that has been served and must contain directions for staying compliance with the subpoena under subparagraph (c)2.

2. The notice is sufficient if, on or before the third day, the notice is delivered in hand to the person entitled to notice or is mailed by certified or registered mail to the last known mailing address of the person, or, in the absence of a last known address, is left with the person subpoenaed.

3. As used in this subsection, "third-party recordkeeper" means:

a. Any mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan association or similar association under federal or state law; a bank as defined in s. 581 of the Internal Revenue Code; or any credit union within the meaning of s. 501(c)(14)(A) of the Internal Revenue Code.

b. Any consumer reporting agency as defined under s. 603(f) of the Fair Credit Reporting Act, 15 U.S.C. s. 1681a(f).

c. Any person extending credit through the use of credit cards or similar devices.

d. Any broker as defined in s. 3(a)(4) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78c(a)(4).

e. Any attorney.

f. Any accountant.

g. Any barter exchange as defined in s. 6045(c)(3) of the Internal Revenue Code.

h. Any regulated investment company as defined in s. 851 of the Internal Revenue Code.

4. This paragraph does not apply to a subpoena served on the person with respect to whose liability the subpoena is issued or an officer or employee of the person; to a subpoena to determine whether or not records of the business transactions or affairs of an identified person have been made or kept; or to a subpoena described in paragraph (f).

(c)1. Notwithstanding any other law, a person who is entitled to notice of a subpoena under paragraph (b) and the taxpayer to whom the subpoena relates have the right to intervene in any proceeding with respect to the enforcement of the subpoena under paragraph (a).

2. Notwithstanding any other law, a person who is entitled to notice of a subpoena under paragraph (b) and the taxpayer to whom the subpoena relates have the right to stay compliance with the subpoena if, not later than the 14th day after the day the notice is given in the manner provided in subparagraph (b)2.:

a. Notice of intent to stay the subpoena is given in writing to the person subpoenaed;

b. A copy of the notice of intent to stay the subpoena is mailed by registered or certified mail to the person and to the department; and

c. Suit is filed against the department in the circuit court to stay compliance with the subpoena.

(d) An examination of any records required to be produced under a subpoena as to which notice is required under paragraph (b) may not be made:

1. Before the expiration of the 14-day period allowed for the notice of intent to stay under subparagraph (c)2.; or

2. When the requirements of subparagraph (c)2. have been met, except in accordance with an order issued by the circuit court authorizing examination of the records or with the consent of the person staying compliance.

(e) Any subpoena issued under paragraph (a) which does not identify the person with respect to whose liability the subpoena is issued may be served only after a proceeding in any circuit court in which the department establishes that:

1. The subpoena relates to the investigation of a particular person or ascertainable group or class of persons.

2. There is reasonable basis for believing that the person or group or class of persons may fail or may have failed to comply with any provision of state law.

3. The information sought to be obtained from the examination of the records and the identity of the person or persons with respect to whose liability the subpoena is issued is not readily available from other sources.

(f) In the case of a subpoena issued under paragraph (a), the provisions of subparagraph (b)1. and paragraph (c) do not apply if, upon petition by the department, a circuit court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe that the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, may prevent the communication of information from other persons through intimidation, bribery, or collusion, or may result in flight to avoid prosecution, testifying, or production of records.

(g)1. Any circuit court has jurisdiction to hear and determine proceedings brought under paragraph (e) or paragraph (f). The determinations required to be made under paragraphs (e) and (f) shall be ex parte and shall be made solely upon the petition and supporting affidavits. An order denying the petition shall be deemed a final order that may be appealed.

2. Except for cases that the court considers of great importance, any proceeding brought for the enforcement of any subpoena or any proceeding under this subsection, and any appeal therefrom, takes precedence on the docket over all cases and shall be assigned for hearing and decided at the earliest practicable date.

(h) The department shall by rule establish the rates and conditions for payments to reimburse reasonably necessary costs directly incurred by third-party recordkeepers in searching for, reproducing, or transporting books, papers, records, or other data required to be produced by subpoena upon request of the department. The reimbursement shall be in addition to any mileage allowance and fees paid under paragraph (a).

(i)1. Except as provided in subparagraph 2., an action initiated in circuit court under this subsection must be filed in the circuit court in the county where:

a. The taxpayer to whom the subpoena relates resides or maintains his or her principal commercial domicile in this state;

b. The person subpoenaed resides or maintains his or her principal commercial domicile in this state; or

c. The person to whom the records pertain resides or maintains his or her principal commercial domicile in this state.

2. Venue in an action initiated in circuit court under this subsection by a person who is not a resident of this state or does not maintain a commercial domicile in this state rests in Leon County.

3. Venue in an action initiated in circuit court pursuant to paragraph (e) rests in the Second Judicial Circuit Court in and for Leon County.

Section 29. Section 202.37, Florida Statutes, is created to read:

202.37 Special rules for administration of local communications services tax.—

(1)(a) Except as otherwise provided in this section, all statutory provisions and administrative rules applicable to the communications services tax imposed by s. 202.12 apply to any local communications services tax imposed under s. 202.19, and the department shall administer, collect, and enforce all taxes imposed under s. 202.19, including interest and penalties attributable thereto, in accordance with the same procedures used in the administration, collection, and enforcement of the communications services tax imposed by s. 202.12.

(b) The department may contract with one or more private entities to assist it in fulfilling its obligation of administering the local communications services taxes imposed under this chapter, including, but not limited to, the compilation, maintenance, and publication of data pursuant to ss. 202.21 and 202.22.

(2) Each dealer of communications services obligated to collect and remit one or more local communications services taxes imposed under s. 202.19 shall separately report and identify each such tax to the department, by jurisdiction, on a form prescribed by the department, and shall pay such taxes to the department. However, taxes imposed under s. 202.19(5) shall be added to and included in the amounts reported to the department as taxes imposed under s. 202.19(1). A dealer of communications services may include in a single payment to the department:

(a) The total amount of all local communications services taxes imposed pursuant to s. 202.19; and

(b) The amount of communications services tax imposed by ss. 202.12 and 203.01.

Section 30. The Revenue Estimating Conference shall compute the rate of communications services tax which would be required to be levied under s. 202.12(1)(a), Florida Statutes, to raise, through the imposition of a communications services tax, revenues equal to the taxes estimated to be actually collected under chapter 212, Florida Statutes, on communications services. The rates computed by the Revenue Estimating Conference shall be presented to the Legislature for review and approval during the 2001 Regular Session.

Section 31. The Revenue Estimating Conference shall compute the rate of the tax on the sales price of direct-to-home satellite services pursuant to s. 202.12(1)(c), Florida Statutes, on or before December 31, 2000, and such rate shall be presented to the Legislature for review and approval during the 2001 Regular Session.

Section 32. (1) The executive director of the Department of Revenue shall appoint members to an advisory committee by August 1, 2000. Each member shall serve at the discretion of the executive director. The committee shall include consumer, county, municipal, state, and communications

services dealer representatives, along with other interested parties the executive director deems appropriate. During the period of implementation of the Communications Services Tax Simplification Law, the committee shall advise the executive director regarding the department's transition strategy, development of necessary business processes, rule adoption processes, and processes for identifying issues for further legislative consideration.

(2) This section shall take effect upon this act becoming a law.

Section 33. Effective October 1, 2001, paragraph (a) of subsection (1) of section 72.011, Florida Statutes, is amended to read:

72.011 Jurisdiction of circuit courts in specific tax matters; administrative hearings and appeals; time for commencing action; parties; deposits.—

(1)(a) A taxpayer may contest the legality of any assessment or denial of refund of tax, fee, surcharge, permit, interest, or penalty provided for under s. 125.0104, s. 125.0108, chapter 198, chapter 199, chapter 201, chapter 202, chapter 203, chapter 206, chapter 207, chapter 210, chapter 211, chapter 212, chapter 213, chapter 220, chapter 221, s. 370.07(3), chapter 376, s. 403.717, s. 403.718, s. 403.7185, s. 403.7195, s. 538.09, s. 538.25, chapter 550, chapter 561, chapter 562, chapter 563, chapter 564, chapter 565, chapter 624, or s. 681.117 by filing an action in circuit court; or, alternatively, the taxpayer may file a petition under the applicable provisions of chapter 120. However, once an action has been initiated under s. 120.56, s. 120.565, s. 120.569, s. 120.57, or s. 120.80(14)(b), no action relating to the same subject matter may be filed by the taxpayer in circuit court, and judicial review shall be exclusively limited to appellate review pursuant to s. 120.68; and once an action has been initiated in circuit court, no action may be brought under chapter 120.

Section 34. Effective October 1, 2001, section 213.05, Florida Statutes, is amended to read:

213.05 Department of Revenue; control and administration of revenue laws.—The Department of Revenue shall have only those responsibilities for ad valorem taxation specified to the department in chapter 192, taxation, general provisions; chapter 193, assessments; chapter 194, administrative and judicial review of property taxes; chapter 195, property assessment administration and finance; chapter 196, exemption; chapter 197, tax collections, sales, and liens; chapter 199, intangible personal property taxes; and chapter 200, determination of millage. The Department of Revenue shall have the responsibility of regulating, controlling, and administering all revenue laws and performing all duties as provided in s. 125.0104, the Local Option Tourist Development Act; s. 125.0108, tourist impact tax; chapter 198, estate taxes; chapter 201, excise tax on documents; chapter 202, communications services tax; chapter 203, gross receipts taxes; chapter 206, motor and other fuel taxes; chapter 211, tax on production of oil and gas and severance of solid minerals; chapter 212, tax on sales, use, and other transactions; chapter 220, income tax code; chapter 221, emergency excise tax; ss. 336.021 and 336.025, taxes on motor fuel and special fuel; s. 370.07(3), Apalachicola Bay oyster surcharge; s. 376.11, pollutant spill prevention and control; s. 403.718, waste tire fees; s. 403.7185, lead-acid battery fees; s.

403.7195, waste newsprint disposal fees; s. 538.09, registration of second-hand dealers; s. 538.25, registration of secondary metals recyclers; s. 624.4621, group self-insurer's fund premium tax; s. 624.5091, retaliatory tax; s. 624.475, commercial self-insurance fund premium tax; ss. 624.509-624.511, insurance code: administration and general provisions; s. 624.515, State Fire Marshal regulatory assessment; s. 627.357, medical malpractice self-insurance premium tax; s. 629.5011, reciprocal insurers premium tax; and s. 681.117, motor vehicle warranty enforcement.

Section 35. Effective October 1, 2001, subsection (6) of section 212.20, Florida Statutes, is amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.—

(6) Distribution of all proceeds under this chapter and s. 202.18(1)(b) and (2)(b) shall be as follows:

(a) Proceeds from the convention development taxes authorized under s. 212.0305 shall be reallocated to the Convention Development Tax Clearing Trust Fund.

(b) Proceeds from discretionary sales surtaxes imposed pursuant to ss. 212.054 and 212.055 shall be reallocated to the Discretionary Sales Surtax Clearing Trust Fund.

(c) Proceeds from the tax imposed pursuant to s. 212.06(5)(a)2. shall be reallocated to the Mail Order Sales Tax Clearing Trust Fund.

(d) Proceeds from the fee imposed pursuant to s. 212.18(5) shall be deposited in the Solid Waste Management Clearing Trust Fund, which is hereby created to be used by the department, and shall be subsequently transferred to the State Treasurer to be deposited into the Solid Waste Management Trust Fund.

(e) Proceeds from the fees imposed under ss. 212.05(1)(i)3. and 212.18(3) shall remain with the General Revenue Fund.

(f) The proceeds of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be distributed as follows:

1. In any fiscal year, the greater of $500 million, minus an amount equal to 4.6 percent of the proceeds of the taxes collected pursuant to chapter 201, or 5 percent of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in monthly installments into the General Revenue Fund.

2. Two-tenths of one percent shall be transferred to the Solid Waste Management Trust Fund.

3. After the distribution under subparagraphs 1. and 2., 9.653 percent of the amount remitted by a sales tax dealer located within a participating

county pursuant to s. 218.61 shall be transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund.

4. After the distribution under subparagraphs 1., 2., and 3., 0.054 percent shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and distributed pursuant to s. 218.65.

5. Of the remaining proceeds:

a. Beginning July 1, 1992, $166,667 shall be distributed monthly by the department to each applicant that has been certified as a "facility for a new professional sports franchise" or a "facility for a retained professional sports franchise" pursuant to s. 288.1162 and $41,667 shall be distributed monthly by the department to each applicant that has been certified as a "new spring training franchise facility" pursuant to s. 288.1162. Distributions shall begin 60 days following such certification and shall continue for 30 years. Nothing contained herein shall be construed to allow an applicant certified pursuant to s. 288.1162 to receive more in distributions than actually expended by the applicant for the public purposes provided for in s. 288.1162(7). However, a certified applicant shall receive distributions up to the maximum amount allowable and undistributed under this section for additional renovations and improvements to the facility for the franchise without additional certification.

b. Beginning 30 days after notice by the Office of Tourism, Trade, and Economic Development to the Department of Revenue that an applicant has been certified as the professional golf hall of fame pursuant to s. 288.1168 and is open to the public, $166,667 shall be distributed monthly, for up to 300 months, to the applicant.

c. Beginning 30 days after notice by the Department of Commerce to the Department of Revenue that the applicant has been certified as the International Game Fish Association World Center facility pursuant to s. 288.1169, and the facility is open to the public, $83,333 shall be distributed monthly, for up to 180 months, to the applicant. This distribution is subject to reduction pursuant to s. 288.1169.

6. All other proceeds shall remain with the General Revenue Fund.

Section 36. Paragraphs (e) and (f) of subsection (9) of section 166.231, Florida Statutes, are amended to read:

166.231 Municipalities; public service tax.—

(9) A municipality may levy a tax on the purchase of telecommunication services as defined in s. 203.012 as follows:

(e) Purchases of local telephone service or other telecommunications service for use in the conduct of a telecommunications service for hire or otherwise for resale, including resale of telecommunication services paid by using a prepaid calling arrangement as defined in s. 212.05(1)(e)1.a., are exempt from the tax imposed by this subsection.

(f) A seller of services which are subject to the tax imposed by a municipality under this subsection shall file a return with the municipality each month. The form of the return shall be determined by the seller, and the return shall be deemed sufficient if it identifies the name and address of the seller, the period of the return, the amount collected from the sale of taxable services, any collection allowance taken, the amount of tax remitted with the return, and the name and telephone number of a person authorized by the seller to respond to inquiries from municipalities concerning the seller's administration of the tax. A municipality may not require any return or payment of public service tax other than on a date returns and payments of tax are required under chapter 212. However, a municipality may grant an extension of the due date for a return or payment upon written request from the seller. The deduction authorized by paragraph (b) shall not be allowed in the event of an untimely return, unless the seller has in writing requested and been granted an extension of time for filing such return. Extensions of time shall be granted if reasonable cause is shown, whether requested before or after the due date of the return. Notwithstanding any other provision of law, the public service tax shall not be collected at point of sale on prepaid calling arrangements.

Section 37. Effective July 1, 2000, all taxes that have been collected pursuant to s. 166.231(9)(f), Florida Statutes, at the point of sale on prepaid calling arrangements prior to July 1, 2000, must be remitted, and taxes that have been collected at the point of sale on prepaid calling arrangements and remitted before July 1, 2000, are not subject to refund. Any taxes that were not collected pursuant to s. 166.231(9)(f), Florida Statutes, prior to July 1, 2000, at the point of sale on prepaid calling arrangements need not be paid and are forgiven.

Section 38. Effective October 1, 2001, and applicable to communications services reflected on bills dated on or after that date, subsection (9) of section 166.231, Florida Statutes, as amended by this act, is repealed, and subsections (2), (5), (7), and (10) of said section are amended to read:

166.231 Municipalities; public service tax.—

(2) Services competitive with those enumerated in subsection (1) ~~or subsection (9)~~, as defined by ordinance, shall be taxed on a comparable base at the same rates. However, fuel oil shall be taxed at a rate not to exceed 4 cents per gallon. However, for municipalities levying less than the maximum rate allowable in subsection (1), the maximum tax on fuel oil shall bear the same proportion to 4 cents which the tax rate levied under subsection (1) bears to the maximum rate allowable in subsection (1).

(5) Purchases by the United States Government, this state, and all counties, school districts, and municipalities of the state, and by public bodies exempted by law or court order, are exempt from the tax authorized by this section. A municipality may exempt from the tax imposed by this section the purchase of taxable items by any other public body as defined in s. 1.01, or by a nonprofit corporation or cooperative association organized under chapter 617 which provides water utility services to no more than 13,500 equivalent residential units, ownership of which will revert to a political subdivision upon retirement of all outstanding indebtedness, and shall exempt

purchases by any recognized church in this state for use exclusively for church purposes~~, and shall exempt from the tax authorized by subsection (9) purchases made by any religious institution that possesses a consumer certificate of exemption issued under chapter 212~~.

(7) The tax authorized hereunder shall be collected by the seller of the taxable item from the purchaser at the time of the payment for such service. The seller shall remit the taxes collected to the municipality in the manner prescribed by ordinance~~, except that remittance of taxes by sellers of telecommunication services shall be governed by paragraph (9)(f)~~. Except as otherwise provided in ss. 166.233 and 166.234, the seller shall be liable for taxes that are due and not remitted to the municipality. This shall not bar the seller from recovering such taxes from purchasers; however, the universities in the State University System shall not be deemed a seller of any item otherwise taxable hereunder when such item is provided to university residences incidental to the provision of educational services.

(10) A purchaser who claims an exemption under subsection (4) or~~,~~ subsection (5)~~, or paragraph (9)(e)~~ shall certify to the seller that he or she qualifies for the exemption, which certification may encompass all purchases after a specified date or other multiple purchases. ~~For purchases made under paragraph (9)(e) which are exempted, upon the presentation of a certificate, from the tax imposed by chapter 212, the certification required by this subsection may be satisfied by presentation of a certificate that satisfies the requirements of chapter 212.~~ A seller accepting the certification required by this subsection is relieved of the obligation to collect and remit tax; however, a governmental body that is exempt from the tax authorized by this section shall not be required to furnish such certification, and a seller is not required to collect tax from such an exempt governmental body.

Section 39. Effective October 1, 2001, paragraph (c) of subsection (1) and subsection (2) of section 166.233, Florida Statutes, are amended to read:

166.233 Public service tax; effective dates; procedures for informing sellers of tax levies and related information.—

(1) As used in this section and ss. 166.231, 166.232, and 166.234:

(c) "Levy" means and includes the imposition of a tax under s. 166.231 or s. 166.232 and~~,~~ all changes in the rate of a tax imposed under either of those sections~~, and all changes of election under s. 166.231(9)(a)~~.

(2)(a) A tax levy must be adopted by ordinance, and the effective date of every levy or repeal thereof must be a subsequent January 1, April 1, July 1, or October 1. A municipality shall notify the department of the adoption or repeal of a levy at least 120 days before the effective date thereof. Such notification must be furnished on a form prescribed by the department and must specify the services taxed under the authority of s. 166.231 or s. 166.232, ~~including any election under s. 166.231(9)(a),~~ the rate of tax applied to each service, the effective date of the levy or repeal thereof, and the name, mailing address, and telephone number of a person designated by the municipality to respond to inquiries concerning the tax. The department shall maintain this information for the purpose of responding to inquiries with

respect thereto, and any person may, in writing, request such information from the department. For purposes of this section, a response to such a person is timely if in writing and dated no later than 20 days after the receipt of the request. The department shall charge such persons a fee to recover the actual cost of maintaining and furnishing such information. The department has no liability for any loss of or decrease in revenue by reason of any error, omission, or untimely action that results in the nonpayment of the tax imposed under s. 166.231 or s. 166.232. The provisions of this paragraph which prescribe effective dates and require municipalities to furnish notifications to the department do not apply to taxes levied on service~~, other than telecommunication service,~~ provided by the municipality levying the tax or by a separate utility authority, board, or commission of the municipality.

(b) The department may contract with a private entity to maintain and furnish the information described in paragraph (a); however, the department shall establish the fee charged to persons requesting that information.

Section 40. Subsections (3) and (4) of section 203.01, Florida Statutes, are amended to read:

203.01 Tax on gross receipts for utility services.—

(3) The term "gross receipts" as used herein does not include gross receipts of any person derived from:

(a) The sale of natural gas to a public or private utility, including a municipal corporation or rural electric cooperative association, either for resale or for use as fuel in the generation of electricity;

(b) The sale of electricity to a public or private utility, including a municipal corporation or rural electric cooperative association, for resale within the state, or as part of an electrical interchange agreement or contract between such utilities for the purpose of transferring more economically generated power; or

(c) The sale of telecommunication services for resale of telecommunication services wholly or partially within this state, which includes, for purposes of this subsection, the sale of telecommunication services to a person reselling such telecommunication services by way of a prepaid calling arrangement as defined in s. 212.05(1)(e)1.a.;

provided the person deriving gross receipts from such sale demonstrates that a resale in fact occurred and complies with the following requirements: A resale in this state must be in strict compliance with the rules and regulations of the Department of Revenue; and any person making a sale for resale in this state which is not in strict compliance with the rules and regulations of the Department of Revenue shall be liable for and pay the tax. Any person making a sale for resale in this state may, through an informal protest provided for in s. 213.21 and the rules of the Department of Revenue, provide the department with evidence of the exempt status of a sale. The department shall adopt rules which provide that valid proof and documentation of the

resale in this state by a person making the sale for resale in this state will be accepted by the department when submitted during the protest period but will not be accepted when submitted in any proceeding under chapter 120 or any circuit court action instituted under chapter 72.

(4) Gross receipts subject to the tax imposed by this section shall not include receipts from sales or leases of telecommunications service for use in the conduct of a telecommunications service for hire or otherwise for resale, including resale of telecommunication services paid by using a prepaid calling arrangement as defined in s. 212.05(1)(e)1.a.

Section 41. Effective October 1, 2001, and applicable to communications services reflected on bills dated on or after that date, section 203.01, Florida Statutes, as amended by this act, is amended to read:

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

(1)(a)1. Every person that receives payment for any utility service shall report by the last day of each month to the Department of Revenue, under oath of the secretary or some other officer of such person, the total amount of gross receipts derived from business done within this state, or between points within this state, for the preceding month and, at the same time, shall pay into the State Treasury an amount equal to a percentage of such gross receipts at the rate set forth in paragraph (b). Such collections shall be certified by the Comptroller upon the request of the State Board of Education.

2. A tax is levied on communications services as defined in s. 202.11(3). Such tax shall be applied to the same services and transactions as are subject to taxation under chapter 202, and to communications services that are subject to the exemption provided in s. 202.125(1). Such tax shall be applied to the sales price of communications services when sold at retail and to the actual cost of operating substitute communications systems, as such terms are defined in s. 202.11, shall be due and payable at the same time as the taxes imposed pursuant to chapter 202, and shall be administered and collected pursuant to the provisions of chapter 202.

(b) ~~Beginning July 1, 1992, and thereafter,~~ The rate applied to utility services shall be 2.5 percent. The rate applied to communications services shall be the rate calculated pursuant to section 44 of this act.

~~(c) Any person who purchases, installs, rents, or leases a telephone system or telecommunication system for his or her own use to provide that person with telephone service or telecommunication service which is a substitute for any telephone company switched service or a substitute for any dedicated facility by which a telephone company provides a communication path shall register with the Department of Revenue and pay into the State Treasury a yearly amount equal to a percentage of the actual cost of operating such system at the rate set forth in paragraph (b). "Actual cost" includes, but is not limited to, depreciation, interest, maintenance, repair, and other expenses directly attributable to the operation of such system. For purposes of this paragraph, the depreciation expense to be included in actual cost shall be the depreciation expense claimed for federal income tax purposes.~~

~~The total amount of any payment required by a lease or rental contract or agreement shall be included within the actual cost. The provisions of this paragraph do not apply to the use by any local telephone company or any telecommunication carrier of its own telephone system or telecommunication system to conduct a telecommunication service for hire or to the use of any radio system operated by any county or municipality or by the state or any political subdivision thereof. If a system described in this paragraph is located in more than one state, the actual cost of such system for purposes of this paragraph shall be the actual cost of the system's equipment located in Florida. The term "telecommunications carrier" specifically includes cellular telephone carriers and other radio common carriers.~~

(c)~~(d)~~ Electricity produced by cogeneration or by small power producers which is transmitted and distributed by a public utility between two locations of a customer of the utility pursuant to s. 366.051 is subject to the tax imposed by this section. The tax shall be applied to the cost price of such electricity as provided in s. 212.02(4) and shall be paid each month by the producer of such electricity.

(d)~~(e)~~ Electricity produced by cogeneration or by small power producers during the 12-month period ending June 30 of each year which is in excess of nontaxable electricity produced during the 12-month period ending June 30, 1990, is subject to the tax imposed by this section. The tax shall be applied to the cost price of such electricity as provided in s. 212.02(4) and shall be paid each month, beginning with the month in which total production exceeds the production of nontaxable electricity for the 12-month period ending June 30, 1990. For purposes of this paragraph, "nontaxable electricity" means electricity produced by cogeneration or by small power producers which is not subject to tax under paragraph (c) ~~(d)~~. Taxes paid pursuant to paragraph (c) ~~(d)~~ may be credited against taxes due under this paragraph. Electricity generated as part of an industrial manufacturing process which manufactures products from phosphate rock, raw wood fiber, paper, citrus or any agricultural product shall not be subject to the tax imposed by this paragraph. "Industrial manufacturing process" means the entire process conducted at the location where the process takes place.

(e)~~(f)~~ Any person other than a cogenerator or small power producer described in paragraph (d) ~~(e)~~ who produces for his or her own use electrical energy which is a substitute for electrical energy produced by an electric utility as defined in s. 366.02 is subject to the tax imposed by this section. The tax shall be applied to the cost price of such electrical energy as provided in s. 212.02(4) and shall be paid each month. The provisions of this paragraph do not apply to any electrical energy produced and used by an electric utility.

(2)(a) In addition to any other penalty provided by law, any person who fails to timely report and pay any tax imposed on gross receipts from utility services under this chapter shall pay a penalty equal to 10 percent of any unpaid tax, if the failure is for less than 31 days, plus an additional 10 percent of any unpaid tax for each additional 30 days or fraction thereof. However, such penalty may not be less than $10 or exceed a total of 50 percent in the aggregate of any unpaid tax.

(b) In addition to any other penalty provided by law, any person who falsely or fraudulently reports or unlawfully attempts to evade paying any tax imposed on gross receipts from utility services under this chapter shall pay a penalty equal to 100 percent of any tax due and is guilty of a misdemeanor of the second degree, punishable as provided under s. 775.082 or s. 775.083.

(3) The term "gross receipts" as used herein does not include gross receipts of any person derived from:

(a) The sale of natural gas to a public or private utility, including a municipal corporation or rural electric cooperative association, either for resale or for use as fuel in the generation of electricity; or

(b) The sale of electricity to a public or private utility, including a municipal corporation or rural electric cooperative association, for resale within the state, or as part of an electrical interchange agreement or contract between such utilities for the purpose of transferring more economically generated power; ~~or~~

~~(c) The sale of telecommunication services for resale of telecommunication services wholly or partially within this state, which includes, for purposes of this subsection, the sale of telecommunication services to a person reselling such telecommunication services by way of a prepaid calling arrangement as defined in s. 212.05(1)(e)1.a.;~~

provided the person deriving gross receipts from such sale demonstrates that a resale in fact occurred and complies with the following requirements: A resale in this state must be in strict compliance with the rules and regulations of the Department of Revenue; and any person making a sale for resale in this state which is not in strict compliance with the rules and regulations of the Department of Revenue shall be liable for and pay the tax. Any person making a sale for resale in this state may, through an informal protest provided for in s. 213.21 and the rules of the Department of Revenue, provide the department with evidence of the exempt status of a sale. The department shall adopt rules which provide that valid proof and documentation of the resale in this state by a person making the sale for resale in this state will be accepted by the department when submitted during the protest period but will not be accepted when submitted in any proceeding under chapter 120 or any circuit court action instituted under chapter 72.

~~(4) Gross receipts subject to the tax imposed by this section shall not include receipts from sales or leases of telecommunications service for use in the conduct of a telecommunications service for hire or otherwise for resale, including resale of telecommunication services paid by using a prepaid calling arrangement as defined in s. 212.05(1)(e)1.a.~~

(4)~~(5)~~ The tax imposed pursuant to this chapter ~~part~~ relating to the provision of any utility services at the option of the person supplying the taxable services may be separately stated as Florida gross receipts tax on the total amount of any bill, invoice, or other tangible evidence of the provision of such taxable services and may be added as a component part of the

total charge. Whenever a provider of taxable services elects to separately state such tax as a component of the charge for the provision of such taxable services, every person, including all governmental units, shall remit the tax to the person who provides such taxable services as a part of the total bill, and the tax is a component part of the debt of the purchaser to the person who provides such taxable services until paid and, if unpaid, is recoverable at law in the same manner as any other part of the charge for such taxable services. For a utility, the decision to separately state any increase in the rate of tax imposed by this chapter ~~part~~ which is effective after December 31, 1989, and the ability to recover the increased charge from the customer shall not be subject to regulatory approval.

(5)~~(6)~~ The tax is imposed upon every person for the privilege of conducting a utility or communications services business, and each provider of the taxable services remains fully and completely liable for the tax, even if the tax is separately stated as a line item or component of the total bill.

(6)~~(7)~~ Any person who provides such services and who fails, neglects, or refuses to remit the tax imposed in this chapter ~~part~~, either by himself or herself, or through agents or employees, is liable for the tax and is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7)~~(8)~~ Gross receipts subject to the tax imposed by this section for the provision of electricity shall include receipts from monthly customer charges or monthly customer facility charges.

~~(9)(a) If the sale of a taxable telecommunication service also involves the sale of commercial or cable television service exempt under the provision of s. 203.012(2)(b)2., the tax shall be applied to the value of the taxable service when it is sold separately.~~

~~(b) If the company does not offer this service separately, the consideration paid shall be separately identified and stated with respect to the taxable and exempt portions of the transaction as a condition of the exemption.~~

~~(c) The amounts identified as taxable in paragraph (b) shall not be less than the statewide average tariff rates set forth by the local exchange telecommunications companies in the tariffs filed with the Public Service Commission on January 1, 1995, and on January 1 of each year thereafter for the equivalent services subject to the provisions of this section. The Public Service Commission shall publish the statewide average tariff rates for commonly used services annually, beginning on January 1, 1996.~~

(8)~~(10)~~ Notwithstanding the provisions of subsection (4) ~~(5)~~ and s. 212.07(2), sums that were charged or billed as taxes under this section and chapter 212 and that were remitted to the state in full as taxes shall not be subject to refund by the state or by the utility or other person that ~~which~~ remitted the sums, when the amount remitted was not in excess of the amount of tax imposed by chapter 212 and this section.

Section 42. Effective October 1, 2001, section 203.012, Florida Statutes, is amended to read:

203.012 Definitions.—As used in this chapter:

~~(1) The term "access charge" or "right of access" means any charge to any person for the right to use or for the use of a telephone system which includes equipment, facilities, or services to originate or terminate any of the services defined in subsection (4), subsection (5), subsection (6), or subsection (7) and which specifically includes customer access line charges, which includes the gross amount paid by subscribers and users in this state for access into the intrastate or interstate interexchange network as authorized by the Federal Communications Commission or the Florida Public Service Commission.~~

~~(2)(a) Gross receipts from telecommunication services include the gross receipts for all telecommunication services of whatever nature, including, but not limited to, access charges and charges for right of access; residential and business 1-party, 2-party, and 4-party rotary charges; centrex charges; directory assistance charges; public telephone charges; touch-tone charges; emergency number charges; private branch exchange message charges; public announcement service charges; dial-it charges; local area data transport charges; key lines charges; private branch exchange trunk-flat rate charges; and directory listing charges other than yellow-page classified listing charges.~~

~~(b) Gross receipts for telecommunication services do not include:~~

~~1. Charges for customer premises equipment, including such equipment that is leased or rented by the customer from any source;~~

~~2. Charges made to the public for commercial or cable television, unless it is used for two-way communication; however, if such two-way communication service is separately billed, only the charges made for two-way communication service will be subject to tax hereunder;~~

~~3. Charges made by hotels and motels, which are required under the provisions of s. 212.03 to collect transient rentals tax from tenants and lessees, for local telephone service or toll telephone service, when such charge occurs incidental to the right of occupancy in such hotel or motel;~~

~~4. Connection and disconnection charges; move or change charges; suspension of service charges; and service order, number change, and restoration charges; or~~

~~5. Charges for services or items of equipment supplied by providers of the telecommunication services described in paragraph (5)(b), such as maintenance charges, equipment sales, or rental which are incidental to the provision of such telecommunication services, provided such charges are separately stated, itemized, or described on the bill, invoice, or other tangible evidence of the provision of such service.~~

~~(3) The term "local telephone service" means:~~

~~(a) The access to a local telephone system, and the privilege of telephonic-quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system; or~~

~~(b) Any facility or service provided in connection with a service described in paragraph (a).~~

~~The term "local telephone service" does not include any service which is a toll telephone service; private communication service; cellular mobile telephone or telecommunication service; specialized mobile radio, or pagers and paging, service, including but not limited to "beepers" and any other form of mobile and portable one-way or two-way communication; or teletypewriter service.~~

~~(4) The term "private communication service" means:~~

~~(a) A communication service furnished to a subscriber or user that entitles the subscriber or user to exclusive or priority use of a communication channel or groups of channels, or to the use of an intercommunication system for the subscriber's stations, regardless of whether such channel, groups of channels, or intercommunication system may be connected through switching with a service described in subsection (3), subsection (6), or subsection (7);~~

~~(b) Switching capacity, extension lines, and stations, or other associated services which are provided in connection with, and which are necessary or unique to the use of, channels or systems described in paragraph (a); or~~

~~(c) The channel mileage which connects a telephone station located outside a local telephone system area with a central office in such local telephone system.~~

~~(5) The term "telecommunication service" means:~~

~~(a) Local telephone service, toll telephone service, telegram or telegraph service, teletypewriter service, or private communication service; or~~

~~(b) Cellular mobile telephone or telecommunication service; or specialized mobile radio, and pagers and paging, service, including but not limited to "beepers" and any other form of mobile and portable one-way or two-way communication; but does not include services or equipment incidental to telecommunication services enumerated in this paragraph such as maintenance of customer premises equipment, whether owned by the customer or not, or equipment sales or rental for which charges are separately stated, itemized, or described on the bill, invoice, or other tangible evidence of the provision of such service.~~

~~The term "telecommunication service" does not include any Internet access service, electronic mail service, electronic bulletin board service, or similar on-line computer service.~~

~~(6) The term "teletypewriter service" means the access from a teletypewriter, telephone, or other data station of which such station is a part, and the privilege of intercommunication by such station with substantially all persons having teletypewriter, telephone, or other data stations constituting a part of the same teletypewriter system, to which the subscriber or user is entitled upon payment of a charge or charges, whether such charge or charges are determined as a flat periodic amount, on the basis of distance and elapsed transmission time, or some other method. The term "teletypewriter service" does not include local telephone service or toll telephone service.~~

~~(7) The term "toll telephone service" means:~~

~~(a) A telephonic-quality communication for which there is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication; or~~

~~(b) A service which entitles the subscriber or user, upon the payment of a periodic charge which is determined as a flat amount or upon the basis of total elapsed transmission time, to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radio telephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located.~~

~~The term "toll telephone service" includes interstate and intrastate wide-area telephone service charges.~~

~~(8) The term "interstate," as applied to telecommunication services, means originating in this state but not terminating in this state, or terminating in this state but not originating in this state.~~

(1)~~(9) The term~~ "Utility service" means electricity for light, heat, or power; and natural or manufactured gas for light, heat, or power~~; or telecommunication services~~.

(2)~~(10) The term~~ "Person" means any person as defined in s. 212.02.

Section 43. Effective October 1, 2001, sections 203.013, 203.60, 203.61, 203.62, and 203.63, Florida Statutes, are repealed.

Section 44. The Revenue Estimating Conference shall compute the rate of communications services tax which would be required to be levied under chapter 203, Florida Statutes, as amended by this act, to raise, through the imposition of a tax on communications services as defined in chapter 202, Florida Statutes, revenues equal to the taxes estimated to be actually collected under chapter 203, Florida Statutes, on communications services. The rates computed by the Revenue Estimating Conference shall be presented to the Legislature for review and approval during the 2001 Regular Session.

Section 45. Paragraph (e) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

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

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

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

a. All telegraph messages and long-distance telephone calls beginning and terminating in this state, telecommunication service as defined in s. 203.012, and those services described in s. 203.012(2)(a), except that the tax rate for charges for telecommunication service other than charges for prepaid calling arrangements is 7 percent. The tax on charges for prepaid calling arrangements ~~calls made with a prepaid telephone calling card~~ shall be collected at the time of sale and remitted by the selling dealer ~~selling or recharging a prepaid telephone card~~.

(I) "Prepaid calling arrangement" means the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered, and that are sold in predetermined units or dollars of which the number declines with use in a known amount. ~~A prepaid telephone card or authorization number means the right to exclusively make telephone calls that must be paid for in advance and that enable the origination of calls using an access number, prepaid mobile account, or authorization code, whether manually or electronically dialed.~~

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

(III) The sale or recharge of a prepaid calling arrangement shall be treated as a sale of tangible personal property for purposes of this chapter, whether or not a tangible item evidencing such arrangement is furnished to the purchaser, and such sale within this state ~~phone card constitutes property in this state and~~ subjects the selling dealer to the jurisdiction of this state for purposes of this subsection. Notwithstanding any other provision of this sub-sub-subparagraph, the sale of telecommunication services to a person who furnishes telecommunication services pursuant to a prepaid calling arrangement is deemed a sale for resale, and a dealer selling telecommunication services to such a person shall accept a resale certificate in lieu of the tax, in accordance with rules of the department.

b. Any television system program service.

c. The installation of telecommunication and telegraphic equipment.

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

2. For purposes of this chapter, "television system program service" means the transmitting, by any means, of any audio or video signal to a subscriber for other than retransmission, or the installing, connecting, reconnecting, disconnecting, moving, or changing of any equipment related to such service. For purposes of this chapter, the term "telecommunication service" does not include local service provided through a pay telephone. The provisions of s. 212.17(3), regarding credit for tax paid on charges subsequently found to be worthless, shall be equally applicable to any tax paid under the provisions of this section on charges for prepaid calling arrangements, telecommunication or telegraph services, or electric power subsequently found to be uncollectible. The word "charges" in this paragraph does not include any excise or similar tax levied by the Federal Government, any political subdivision of the state, or any municipality upon the purchase, ~~or~~ sale, or recharge of prepaid calling arrangements or upon the purchase or sale of telecommunication, television system program, or telegraph service or electric power, which tax is collected by the seller from the purchaser.

3. Telegraph messages and telecommunication services which originate or terminate in this state, other than interstate private communication services, and are billed to a customer, telephone number, or device located within this state are taxable under this paragraph. Interstate private communication services are taxable under this paragraph as follows:

a. One hundred percent of the charge imposed at each channel termination point within this state;

b. One hundred percent of the charge imposed for the total channel mileage between each channel termination point within this state; and

c. The portion of the interstate interoffice channel mileage charge as determined by multiplying said charge times a fraction, the numerator of which is the air miles between the last channel termination point in this state and the vertical and horizontal coordinates, 7856 and 1756, respectively, and the denominator of which is the air miles between the last channel termination point in this state and the first channel termination point outside this state. The denominator of this fraction shall be adjusted, if necessary, by adding the numerator of said fraction to similarly determined air miles in the state in which the other channel termination point is located, so that the summation of the apportionment factor for this state and the apportionment factor for the other state is not greater than one, to ensure that no more than 100 percent of the interstate interoffice channel mileage charge can be taxed by this state and another state.

4. The tax imposed pursuant to this paragraph shall not exceed $50,000 per calendar year on charges to any person for interstate telecommunications services defined in s. 203.012(4) and (7)(b), if the majority of such services used by such person are for communications originating outside of this state and terminating in this state. This exemption shall only be

granted to holders of a direct pay permit issued pursuant to this subparagraph. No refunds shall be given for taxes paid prior to receiving a direct pay permit. Upon application, the department may issue a direct pay permit to the purchaser of telecommunications services authorizing such purchaser to pay tax on such services directly to the department. Any vendor furnishing telecommunications services to the holder of a valid direct pay permit shall be relieved of the obligation to collect and remit the tax on such service. Tax payments and returns pursuant to a direct pay permit shall be monthly. For purposes of this subparagraph, the term "person" shall be limited to a single legal entity and shall not be construed as meaning a group or combination of affiliated entities or entities controlled by one person or group of persons.

5. If the sale of a television system program service, as defined in this paragraph, also involves the sale of an item exempt under s. 212.08(7)(j), the tax shall be applied to the value of the taxable service when it is sold separately. If the company does not offer this service separately, the consideration paid shall be separately identified and stated with respect to the taxable and exempt portions of the transaction as a condition of the exemption, except that the amount identified as taxable shall not be less than the cost of the service.

Section 46. Effective July 1, 2000, all taxes that have been collected pursuant to s. 212.05(1)(e), Florida Statutes, at the point of sale on prepaid calling arrangements before July 1, 2000, must be remitted, and taxes that have been collected at the point of sale on prepaid calling arrangements and remitted before July 1, 2000, are not subject to refund. Any taxes that were not collected pursuant to s. 212.05(1)(e) before July 1, 2000, at point of sale on prepaid calling arrangements need not be paid and are forgiven.

Section 47. Paragraph (b) of subsection (2) of section 212.054, Florida Statutes, is amended to read:

212.054 Discretionary sales surtax; limitations, administration, and collection.—

(2)

(b) However:

1. The ~~tax on any~~ sales amount above $5,000 on any item of tangible personal property and on long-distance telephone service shall not be subject to the surtax. However, charges for prepaid calling arrangements, as defined in s. 212.05(1)(e)1.a., shall be subject to the surtax. For purposes of administering the $5,000 limitation on an item of tangible personal property, if two or more taxable items of tangible personal property are sold to the same purchaser at the same time and, under generally accepted business practice or industry standards or usage, are normally sold in bulk or are items that, when assembled, comprise a working unit or part of a working unit, such items must be considered a single item for purposes of the $5,000 limitation when supported by a charge ticket, sales slip, invoice, or other tangible evidence of a single sale or rental. The limitation provided in this subparagraph does not apply to the sale of any other service.

2. In the case of utility, telecommunication, or television system program services billed on or after the effective date of any such surtax, the entire amount of the charge ~~tax~~ for utility, telecommunication, or television system program services shall be subject to the surtax. In the case of utility, telecommunication, or television system program services billed after the last day the surtax is in effect, the entire amount of the charge ~~tax~~ on said items shall not be subject to the surtax.

3. In the case of written contracts which are signed prior to the effective date of any such surtax for the construction of improvements to real property or for remodeling of existing structures, the surtax shall be paid by the contractor responsible for the performance of the contract. However, the contractor may apply for one refund of any such surtax paid on materials necessary for the completion of the contract. Any application for refund shall be made no later than 15 months following initial imposition of the surtax in that county. The application for refund shall be in the manner prescribed by the department by rule. A complete application shall include proof of the written contract and of payment of the surtax. The application shall contain a sworn statement, signed by the applicant or its representative, attesting to the validity of the application. The department shall, within 30 days after approval of a complete application, certify to the county information necessary for issuance of a refund to the applicant. Counties are hereby authorized to issue refunds for this purpose and shall set aside from the proceeds of the surtax a sum sufficient to pay any refund lawfully due. Any person who fraudulently obtains or attempts to obtain a refund pursuant to this subparagraph, in addition to being liable for repayment of any refund fraudulently obtained plus a mandatory penalty of 100 percent of the refund, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. In the case of any vessel, railroad, or motor vehicle common carrier entitled to partial exemption from tax imposed under this chapter pursuant to s. 212.08(4), (8), or (9), the basis for imposition of surtax shall be the same as provided in s. 212.08 and the ratio shall be applied each month to total purchases in this state of property qualified for proration which is delivered or sold in the taxing county to establish the portion used and consumed in intracounty movement and subject to surtax.

Section 48. Effective October 1, 2001, and applicable to communications services reflected on bills dated on or after that date, paragraph (e) of subsection (1) of section 212.05, Florida Statutes, as amended by this act, is amended to read:

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

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

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

a. Prepaid calling arrangements. ~~All telegraph messages and long-distance telephone calls beginning and terminating in this state, telecommunication service as defined in s. 203.012, and those services described in s. 203.012(2)(a), except that the tax rate for charges for telecommunication service other than charges for prepaid calling arrangements is 7 percent.~~ The tax on charges for prepaid calling arrangements shall be collected at the time of sale and remitted by the selling dealer.

(I) "Prepaid calling arrangement" means the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount.

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

(III) The sale or recharge of a prepaid calling arrangement shall be treated as a sale of tangible personal property for purposes of this chapter, whether or not a tangible item evidencing such arrangement is furnished to the purchaser, and such sale within this state subjects the selling dealer to the jurisdiction of this state for purposes of this subsection. ~~Notwithstanding any other provision of this sub-sub-subparagraph, the sale of telecommunication services to a person who furnishes telecommunication services pursuant to a prepaid calling arrangement is deemed a sale for resale, and a dealer selling telecommunication services to such a person shall accept a resale certificate in lieu of the tax, in accordance with rules of the department.~~

~~b. Any television system program service.~~

b.~~c.~~ The installation of telecommunication and telegraphic equipment.

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

2. ~~For purposes of this chapter, "television system program service" means the transmitting, by any means, of any audio or video signal to a subscriber for other than retransmission, or the installing, connecting, reconnecting, disconnecting, moving, or changing of any equipment related to such service. For purposes of this chapter, the term "telecommunication service" does not include local service provided through a pay telephone.~~ The provisions of s. 212.17(3), regarding credit for tax paid on charges subsequently found to be worthless, shall be equally applicable to any tax paid under the provisions of this section on charges for prepaid calling arrangements, telecommunication or telegraph services, or electric power subsequently found to be uncollectible. The word "charges" in this paragraph does

not include any excise or similar tax levied by the Federal Government, any political subdivision of the state, or any municipality upon the purchase, sale, or recharge of prepaid calling arrangements or upon the purchase or sale of telecommunication, television system program, or telegraph service or electric power, which tax is collected by the seller from the purchaser.

~~3. Telegraph messages and telecommunication services which originate or terminate in this state, other than interstate private communication services, and are billed to a customer, telephone number, or device located within this state are taxable under this paragraph. Interstate private communication services are taxable under this paragraph as follows:~~

~~a. One hundred percent of the charge imposed at each channel termination point within this state;~~

~~b. One hundred percent of the charge imposed for the total channel mileage between each channel termination point within this state; and~~

~~c. The portion of the interstate interoffice channel mileage charge as determined by multiplying said charge times a fraction, the numerator of which is the air miles between the last channel termination point in this state and the vertical and horizontal coordinates, 7856 and 1756, respectively, and the denominator of which is the air miles between the last channel termination point in this state and the first channel termination point outside this state. The denominator of this fraction shall be adjusted, if necessary, by adding the numerator of said fraction to similarly determined air miles in the state in which the other channel termination point is located, so that the summation of the apportionment factor for this state and the apportionment factor for the other state is not greater than one, to ensure that no more than 100 percent of the interstate interoffice channel mileage charge can be taxed by this state and another state.~~

~~4. The tax imposed pursuant to this paragraph shall not exceed $50,000 per calendar year on charges to any person for interstate telecommunications services defined in s. 203.012(4) and (7)(b), if the majority of such services used by such person are for communications originating outside of this state and terminating in this state. This exemption shall only be granted to holders of a direct pay permit issued pursuant to this subparagraph. No refunds shall be given for taxes paid prior to receiving a direct pay permit. Upon application, the department may issue a direct pay permit to the purchaser of telecommunications services authorizing such purchaser to pay tax on such services directly to the department. Any vendor furnishing telecommunications services to the holder of a valid direct pay permit shall be relieved of the obligation to collect and remit the tax on such service. Tax payments and returns pursuant to a direct pay permit shall be monthly. For purposes of this subparagraph, the term "person" shall be limited to a single legal entity and shall not be construed as meaning a group or combination of affiliated entities or entities controlled by one person or group of persons.~~

~~5. If the sale of a television system program service, as defined in this paragraph, also involves the sale of an item exempt under s. 212.08(7)(j), the tax shall be applied to the value of the taxable service when it is sold~~

~~separately. If the company does not offer this service separately, the consideration paid shall be separately identified and stated with respect to the taxable and exempt portions of the transaction as a condition of the exemption, except that the amount identified as taxable shall not be less than the cost of the service.~~

Section 49. Effective October 1, 2001, and applicable to communications services reflected on bills dated on or after such date, paragraph (b) of subsection (2) and paragraph (c) of subsection (3) of section 212.054, Florida Statutes, as amended by this act, are amended to read:

212.054 Discretionary sales surtax; limitations, administration, and collection.—

(2)

(b) However:

1. The sales amount above $5,000 on any item of tangible personal property ~~and on long-distance telephone service~~ shall not be subject to the surtax. However, charges for prepaid calling arrangements, as defined in s. 212.05(1)(e)1.a., shall be subject to the surtax. For purposes of administering the $5,000 limitation on an item of tangible personal property, if two or more taxable items of tangible personal property are sold to the same purchaser at the same time and, under generally accepted business practice or industry standards or usage, are normally sold in bulk or are items that, when assembled, comprise a working unit or part of a working unit, such items must be considered a single item for purposes of the $5,000 limitation when supported by a charge ticket, sales slip, invoice, or other tangible evidence of a single sale or rental. ~~The limitation provided in this subparagraph does not apply to the sale of any other service.~~

2. In the case of utility~~, telecommunication, or television system program~~ services billed on or after the effective date of any such surtax, the entire amount of the charge for utility~~, telecommunication, or television system program~~ services shall be subject to the surtax. In the case of utility~~, telecommunication, or television system program~~ services billed after the last day the surtax is in effect, the entire amount of the charge on said items shall not be subject to the surtax. <u>"Utility service," as used in this section, does not include any communications services as defined in chapter 202.</u>

3. In the case of written contracts which are signed prior to the effective date of any such surtax for the construction of improvements to real property or for remodeling of existing structures, the surtax shall be paid by the contractor responsible for the performance of the contract. However, the contractor may apply for one refund of any such surtax paid on materials necessary for the completion of the contract. Any application for refund shall be made no later than 15 months following initial imposition of the surtax in that county. The application for refund shall be in the manner prescribed by the department by rule. A complete application shall include proof of the written contract and of payment of the surtax. The application shall contain a sworn statement, signed by the applicant or its representative, attesting to the validity of the application. The department shall, within 30 days after

approval of a complete application, certify to the county information necessary for issuance of a refund to the applicant. Counties are hereby authorized to issue refunds for this purpose and shall set aside from the proceeds of the surtax a sum sufficient to pay any refund lawfully due. Any person who fraudulently obtains or attempts to obtain a refund pursuant to this subparagraph, in addition to being liable for repayment of any refund fraudulently obtained plus a mandatory penalty of 100 percent of the refund, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. In the case of any vessel, railroad, or motor vehicle common carrier entitled to partial exemption from tax imposed under this chapter pursuant to s. 212.08(4), (8), or (9), the basis for imposition of surtax shall be the same as provided in s. 212.08 and the ratio shall be applied each month to total purchases in this state of property qualified for proration which is delivered or sold in the taxing county to establish the portion used and consumed in intracounty movement and subject to surtax.

(3) For the purpose of this section, a transaction shall be deemed to have occurred in a county imposing the surtax when:

(c) The consumer of utility ~~or television system program~~ services is located in the county~~, or the telecommunication services are provided to a location within the county~~.

Section 50. Effective January 1, 2001, section 337.401, Florida Statutes, is amended to read:

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

(1) The department and local governmental entities, referred to in ss. 337.401-337.404 as the "authority," that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining along, across, or on any road or publicly owned rail corridors under their respective jurisdictions any electric transmission, telephone, or telegraph lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures hereinafter referred to as the "utility."

(2) The authority may grant to any person who is a resident of this state, or to any corporation which is organized under the laws of this state or licensed to do business within this state, the use of a right-of-way for the utility in accordance with such rules or regulations as the authority may adopt. No utility shall be installed, located, or relocated unless authorized by a written permit issued by the authority. The permit shall require the permitholder to be responsible for any damage resulting from the issuance of such permit. The authority may initiate injunctive proceedings as provided in s. 120.69 to enforce provisions of this subsection or any rule or order issued or entered into pursuant thereto.

(3)(a) Because federal and state law require the nondiscriminatory treatment of providers of telecommunications services and because of the desire to promote competition among providers of telecommunications services, it is the intent of the Legislature that municipalities and counties treat telecommunications companies in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of telecommunications facilities in the public roads or rights-of-way. Rules or regulations imposed by a municipality or county relating to telecommunications companies placing or maintaining telecommunications facilities in its roads or rights-of-way must be generally applicable to all telecommunications companies and, notwithstanding any other law, may not require a telecommunications company to apply for or enter into an individual license, franchise, or other agreement with the municipality or county as a condition of placing or maintaining telecommunications facilities in its roads or rights-of-way. In addition to other reasonable rules or regulations that a municipality or county may adopt relating to the placement or maintenance of telecommunications facilities in its roads or rights-of-way under this subsection, a municipality or county may require a telecommunications company that places or seeks to place facilities in its roads or rights-of-way to register with the municipality or county and to provide the name of the registrant; the name, address, and telephone number of a contact person for the registrant; the number of the registrant's current certificate of authorization issued by the Florida Public Service Commission or the Federal Communications Commission; and proof of insurance or self-insuring status adequate to defend and cover claims.

(b) Each municipality and county retains the authority to regulate and manage municipal and county roads or rights-of-way in exercising its police power. Any rules or regulations adopted by a municipality or county which govern the occupation of its roads or rights-of-way by telecommunications companies must be related to the placement or maintenance of facilities in such roads or rights-of-way, must be reasonable and nondiscriminatory, and may include only those matters necessary to manage the roads or rights-of-way of the municipality or county.

(c)1. It is the intention of the state to treat all providers of communications services that use or occupy municipal or charter county roads or rights-of-way for the provision of communications services in a nondiscriminatory and competitively neutral manner with respect to the payment of permit fees. Certain providers of communications services have been granted by general law the authority to offset permit fees against franchise or other fees while other providers of communications services have not been granted this authority. In order to treat all providers of communications services in a nondiscriminatory and competitively neutral manner with respect to the payment of permit fees, each municipality and charter county shall make an election under either sub-subparagraph a. or sub-subparagraph b. and must inform the Department of Revenue of the election by certified mail by July 1, 2001. Such election shall take effect October 1, 2001.

a.(I) The municipality or charter county may require and collect permit fees from any providers of communications services that use or occupy municipal or county roads or rights-of-way. All fees permitted under this sub-

subparagraph must be reasonable and commensurate with the direct and actual cost of the regulatory activity, including issuing and processing permits, plan reviews, physical inspection, and direct administrative costs; must be demonstrable; and must be equitable among users of the roads or rights-of-way. A fee permitted under this sub-subparagraph may not: be offset against the tax imposed under chapter 202; include the costs of roads or rights-of-way acquisition or roads or rights-of-way rental; include any general administrative, management, or maintenance costs of the roads or rights-of-way; or be based on a percentage of the value or costs associated with the work to be performed on the roads or rights-of-way. In an action to recover amounts due for a fee not permitted under this sub-subparagraph, the prevailing party may recover court costs and attorney's fees at trial and on appeal. In addition to the limitations set forth in this section, a fee levied by a municipality or charter county under this sub-subparagraph may not exceed $100. However, permit fees may not be imposed with respect to permits that may be required for service drop lines not required to be noticed under s. 556.108(5)(b) or for any activity that does not require the physical disturbance of the roads or rights-of-way or does not impair access to or full use of the roads or rights-of-way.

(II) To ensure competitive neutrality among providers of communications services, for any municipality or charter county that elects to exercise its authority to require and collect permit fees under this sub-subparagraph, the rate of the local communications services tax imposed by such jurisdiction, as computed under s. 202.20(1) and (2), shall automatically be reduced by a rate of 0.12 percent.

b. Alternatively, the municipality or charter county may elect not to require and collect permit fees from any provider of communications services that uses or occupies municipal or charter county roads or rights-of-way for the provision of communications services; however, each municipality or charter county that elects to operate under this sub-subparagraph retains all authority to establish rules and regulations for providers of communications services to use or occupy roads or rights-of-way as provided in this section. If a municipality or charter county elects to operate under this sub-subparagraph, the total rate for the local communications services tax as computed under s. 202.20(1) and (2) for that municipality or charter county may be increased by ordinance by an amount not to exceed a rate of 0.12 percent.

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

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

a. The noncharter county may elect to require and collect permit fees from any providers of communications services that use or occupy noncharter county roads or rights-of-way. All fees permitted under this sub-subparagraph must be reasonable and commensurate with the direct and

actual cost of the regulatory activity, including issuing and processing permits, plan reviews, physical inspection, and direct administrative costs; must be demonstrable; and must be equitable among users of the roads or rights-of-way. A fee permitted under this sub-subparagraph may not: be offset against the tax imposed under chapter 202; include the costs of roads or rights-of-way acquisition or roads or rights-of-way rental; include any general administrative, management, or maintenance costs of the roads or rights-of-way; or be based on a percentage of the value or costs associated with the work to be performed on the roads or rights-of-way. In an action to recover amounts due for a fee not permitted under this sub-subparagraph, the prevailing party may recover court costs and attorney's fees at trial and on appeal. In addition to the limitations set forth in this section, a fee levied by a noncharter county under this sub-subparagraph may not exceed $100. However, permit fees may not be imposed with respect to permits that may be required for service drop lines not required to be noticed under s. 556.108(5)(b) or for any activity that does not require the physical disturbance of the roads or rights-of-way or does not impair access to or full use of the roads or rights-of-way.

b. Alternatively, the noncharter county may elect not to require and collect permit fees from any provider of communications services that uses or occupies noncharter county roads or rights-of-way for the provision of communications services; however, each noncharter county that elects to operate under this sub-subparagraph shall retain all authority to establish rules and regulations for providers of communications services to use or occupy roads or rights-of-way as provided in this section. If a noncharter county elects to operate under this sub-subparagraph, the total rate for the local communications services tax as computed under s. 202.20(1) and (2) for that noncharter county may be increased by ordinance by an amount not to exceed a rate of 0.24 percent, to replace the revenue the noncharter county would otherwise have received from permit fees for providers of communications services.

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

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

(d) After January 1, 2001, in addition to any other notice requirements, a municipality must provide to the Secretary of State, at least 10 days prior to consideration on first reading, notice of a proposed ordinance governing a telecommunications company placing or maintaining telecommunications facilities in its roads or rights-of-way. After January 1, 2001, in addition to any other notice requirements, a county must provide to the Secretary of State, at least 15 days prior to consideration at a public hearing, notice of a proposed ordinance governing a telecommunications company placing or maintaining telecommunications facilities in its roads or rights-of-way. The notice required by this paragraph must be published by the Secretary of

State on a designated Internet website. The failure of a municipality or county to provide such notice does not render the ordinance invalid.

(e) If any municipality requires any telecommunications company to pay a fee or other consideration as a condition for granting permission to occupy municipal streets and rights-of-way for poles, wires, and other fixtures, such fee or consideration may not exceed 1 percent of the gross receipts on recurring local service revenues for services provided within the corporate limits of the municipality by such telecommunications company. Included within such 1-percent maximum fee or consideration are all taxes, licenses, fees, in-kind contributions accepted pursuant to paragraph (g) ~~subsection (5)~~, and other impositions except ad valorem taxes and amounts for assessments for special benefits, such as sidewalks, street pavings, and similar improvements, and occupational license taxes levied or imposed by a municipality upon the telecommunications company. This paragraph ~~subsection~~ shall not impair any franchise in existence on July 1, 1985.

~~(f)~~(4) A municipality may require ~~by ordinance enter into an agreement with~~ any person providing telecommunication services defined in s. 203.012(7) as a condition for granting permission to occupy or use any city street, alley, viaduct, elevated roadway, bridge, or other public way to pay~~. The agreement shall permit the telecommunication service provider to construct, operate, maintain, repair, rebuild, or replace a telecommunications route within a municipal right-of-way. The agreement shall provide for~~ a fee or other consideration payable annually based on actual linear feet of any cable, fiber optic, or other pathway that makes physical use of the municipal right-of-way. In no event shall the fee or other consideration imposed pursuant to this paragraph ~~subsection~~ be less than $500 per linear mile of any cable, fiber optic, or other pathway that makes physical use of the municipal right-of-way. Any fee or other consideration imposed by this paragraph ~~subsection~~ in excess of $500 shall be applied in a nondiscriminatory manner and shall not exceed the sum of:

1.~~(a)~~ Costs directly related to the inconvenience or impairment solely caused by the disturbance of the municipal right-of-way; ~~and~~

2.~~(b)~~ The reasonable cost of the regulatory activity of the municipality; and~~.~~

3.~~(c)~~ The proportionate share of cost of land for such street, alley, or other public way attributable to utilization of the right-of-way by a telecommunication service provider.

Furthermore, no telecommunication service provider shall be required to pay more than one such fee or other consideration annually for the construction, maintenance, operation, repair, rebuilding, or replacement of a parallel telecommunications route owned by it, or by a subsidiary under its direct control, which makes use of the right-of-way of any municipality enacting an ordinance pursuant to this paragraph ~~subsection~~. The fee or other consideration imposed pursuant to this paragraph ~~subsection~~ shall not apply in any manner to any telecommunication service provider who provides telecommunication services as defined in s. 203.012(3) for any services provided

by such service provider. Any agreement entered into pursuant to the authority of this paragraph ~~subsection~~ prior to June 3, 1988, and the fees or fee schedule in effect on that date shall remain in full force and effect until such agreement expires. Any ordinance enacted pursuant to this paragraph ~~subsection~~ prior to June 3, 1988, and the fees or fee schedule in effect on that date shall remain in full force and effect unless the ordinance is repealed by the municipality. Notwithstanding the language contained herein a municipality may reenact any ordinance which has an automatic expiration date provided the ordinance does not increase the fees in effect in said ordinance in violation of this section.

(g)~~(5)~~ Except as expressly allowed or authorized by general law and except for the rights-of-way permit fees subject to paragraph (e) ~~subsection (3)~~, a municipality may not levy on a telecommunications company a tax, fee, or other charge for operating as a telecommunications company within the jurisdiction of the municipality or which is in any way related to using its roads or rights-of-way. A municipality may not allow a telecommunications company to pay a fee or provide compensation in excess of the limits prescribed in this section. A municipality may not require or solicit in-kind compensation in lieu of any fees imposed pursuant to this section. Nothing in this paragraph ~~subsection~~ shall impair any ordinance or agreement in effect on May 22, 1998, ~~the effective date of this act~~ which provides for or allows in-kind compensation by a telecommunications company.

(h)~~(6)~~ A local governmental entity may not use its authority over the placement of facilities in its roads and rights-of-way as a basis for asserting or exercising regulatory control over a telecommunications company regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or the Federal Communications Commission, including, but not limited to, the operations, systems, qualifications, services, service quality, service territory, and prices of a telecommunications company.

(i)~~(7)~~ A telecommunications company that has obtained permission to occupy the roads and rights-of-way of an incorporated municipality pursuant to s. 362.01 ~~city or town~~ or that is otherwise lawfully occupying the roads or rights-of-way of a municipality on the effective date of this act shall not be required to obtain ~~additional~~ consent to continue such lawful occupation of those roads or rights-of-way; however, nothing in this paragraph ~~subsection~~ shall be interpreted to limit the power of a municipality to impose a fee or adopt or enforce reasonable rules or regulations as provided in this section.

(j)~~(8)~~ Except as expressly provided in this section, this section does not modify the authority of local governmental entities to levy the tax authorized in s. 166.231 or the duties of telecommunications companies under ss. 337.402-337.404. This section does not apply to building permits, pole attachments, or private roads, private easements, and private rights-of-way. Except as expressly provided in this section, this section does not limit or expand whatever powers counties may have relating to roads and rights-of-way. Nothing in this section shall limit or expand whatever authority a local government may have to impose any fee pursuant to 47 U.S.C. ss. 542 and 573.

(k)~~(9)~~ As used in this section, "telecommunications company" has the same meaning as defined in s. 364.02.

(4)~~(10)~~ This section, except subsections (1) and~~,~~ (2)~~,~~ and paragraph (3)(h) ~~(6)~~, does not apply to the provision of pay telephone service on public or municipal roads or rights-of-way.

Section 51. Effective October 1, 2001, section 337.401, Florida Statutes, as amended by this act, is amended to read:

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

(1) The department and local governmental entities, referred to in ss. 337.401-337.404 as the "authority," that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining along, across, or on any road or publicly owned rail corridors under their respective jurisdictions any electric transmission, telephone, ~~or~~ telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures hereinafter referred to as the "utility."

(2) The authority may grant to any person who is a resident of this state, or to any corporation which is organized under the laws of this state or licensed to do business within this state, the use of a right-of-way for the utility in accordance with such rules or regulations as the authority may adopt. No utility shall be installed, located, or relocated unless authorized by a written permit issued by the authority. The permit shall require the permitholder to be responsible for any damage resulting from the issuance of such permit. The authority may initiate injunctive proceedings as provided in s. 120.69 to enforce provisions of this subsection or any rule or order issued or entered into pursuant thereto.

(3)(a) Because of the unique circumstances applicable to providers of communications services, including, but not limited to, the circumstances described in paragraph (e) and the fact that federal and state law require the nondiscriminatory treatment of providers of telecommunications services, and because of the desire to promote competition among providers of communications ~~telecommunications~~ services, it is the intent of the Legislature that municipalities and counties treat providers of communications services ~~telecommunications companies~~ in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications ~~telecommunications~~ facilities in the public roads or rights-of-way. Rules or regulations imposed by a municipality or county relating to providers of communications services ~~telecommunications companies~~ placing or maintaining communications ~~telecommunications~~ facilities in its roads or rights-of-way must be generally applicable to all providers of communications services ~~telecommunications companies~~ and, notwithstanding any other law, may not require a provider of communications services, except as otherwise provided in paragraph (f), ~~telecommunications company~~ to apply for or enter into an individual license, franchise, or other agreement with the municipality or county as a condition

of placing or maintaining communications ~~telecommunications~~ facilities in its roads or rights-of-way. In addition to other reasonable rules or regulations that a municipality or county may adopt relating to the placement or maintenance of communications ~~telecommunications~~ facilities in its roads or rights-of-way under this subsection, a municipality or county may require a provider of communications services ~~telecommunications company~~ that places or seeks to place facilities in its roads or rights-of-way to register with the municipality or county and to provide the name of the registrant; the name, address, and telephone number of a contact person for the registrant; the number of the registrant's current certificate of authorization issued by the Florida Public Service Commission or the Federal Communications Commission; and proof of insurance or self-insuring status adequate to defend and cover claims.

(b) Each municipality and county retains the authority to regulate and manage municipal and county roads or rights-of-way in exercising its police power. Any rules or regulations adopted by a municipality or county which govern the occupation of its roads or rights-of-way by providers of communications services ~~telecommunications companies~~ must be related to the placement or maintenance of facilities in such roads or rights-of-way, must be reasonable and nondiscriminatory, and may include only those matters necessary to manage the roads or rights-of-way of the municipality or county.

(c)1. It is the intention of the state to treat all providers of communications services that use or occupy municipal or charter county roads or rights-of-way for the provision of communications services in a nondiscriminatory and competitively neutral manner with respect to the payment of permit fees. Certain providers of communications services have been granted by general law the authority to offset permit fees against franchise or other fees while other providers of communications services have not been granted this authority. In order to treat all providers of communications services in a nondiscriminatory and competitively neutral manner with respect to the payment of permit fees, each municipality and charter county shall make an election under either sub-subparagraph a. or sub-subparagraph b. and must inform the Department of Revenue of the election by certified mail by July 1, 2001 ~~October 1, 2001~~. Such election shall take effect October 1, 2001 ~~January 1, 2002~~.

a.(I) The municipality or charter county may require and collect permit fees from any providers of communications services that use or occupy municipal or county roads or rights-of-way. All fees permitted under this sub-subparagraph must be reasonable and commensurate with the direct and actual cost of the regulatory activity, including issuing and processing permits, plan reviews, physical inspection, and direct administrative costs; must be demonstrable; and must be equitable among users of the roads or rights-of-way. A fee permitted under this sub-subparagraph may not: be offset against the tax imposed under chapter 202; include the costs of roads or rights-of-way acquisition or roads or rights-of-way rental; include any general administrative, management, or maintenance costs of the roads or rights-of-way; or be based on a percentage of the value or costs associated with the work to be performed on the roads or rights-of-way. In an action to recover amounts due for a fee not permitted under this sub-subparagraph,

the prevailing party may recover court costs and attorney's fees at trial and on appeal. In addition to the limitations set forth in this section, a fee levied by a municipality or charter county under this sub-subparagraph may not exceed $100. However, permit fees may not be imposed with respect to permits that may be required for service drop lines not required to be noticed under s. 556.108(5)(b) or for any activity that does not require the physical disturbance of the roads or rights-of-way or does not impair access to or full use of the roads or rights-of-way.

(II) To ensure competitive neutrality among providers of communications services, for any municipality or charter county that elects to exercise its authority to require and collect permit fees under this sub-subparagraph, the rate of the local communications services tax imposed by such jurisdiction, as computed under s. 202.20(1) and (2), shall automatically be reduced by a rate of 0.12 percent.

b. Alternatively, the municipality or charter county may elect not to require and collect permit fees from any provider of communications services that uses or occupies municipal or charter county roads or rights-of-way for the provision of communications services; however, each municipality or charter county that elects to operate under this sub-subparagraph retains all authority to establish rules and regulations for providers of communications services to use or occupy roads or rights-of-way as provided in this section. If a municipality or charter county elects to operate under this sub-subparagraph, the total rate for the local communications services tax as computed under s. 202.20(1) and (2) for that municipality or charter county may be increased by ordinance by an amount not to exceed a rate of 0.12 percent.

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

2. Each noncharter county shall make an election under either sub-subparagraph a. or sub-subparagraph b. and shall inform the Department of Revenue of the election by certified mail by July 1, 2001 ~~October 1, 2001~~. Such election shall take effect October 1, 2001 ~~January 1, 2002~~.

a. The noncharter county may elect to require and collect permit fees from any providers of communications services that use or occupy noncharter county roads or rights-of-way. All fees permitted under this sub-subparagraph must be reasonable and commensurate with the direct and actual cost of the regulatory activity, including issuing and processing permits, plan reviews, physical inspection, and direct administrative costs; must be demonstrable; and must be equitable among users of the roads or rights-of-way. A fee permitted under this sub-subparagraph may not: be offset against the tax imposed under chapter 202; include the costs of roads or rights-of-way acquisition or roads or rights-of-way rental; include any general administrative, management, or maintenance costs of the roads or rights-of-way; or be based on a percentage of the value or costs associated with the work to be performed on the roads or rights-of-way. In an action to recover amounts due for a fee not permitted under this sub-subparagraph,

the prevailing party may recover court costs and attorney's fees at trial and on appeal. In addition to the limitations set forth in this section, a fee levied by a noncharter county under this sub-subparagraph may not exceed $100. However, permit fees may not be imposed with respect to permits that may be required for service drop lines not required to be noticed under s. 556.108(5)(b) or for any activity that does not require the physical disturbance of the roads or rights-of-way or does not impair access to or full use of the roads or rights-of-way.

b. Alternatively, the noncharter county may elect not to require and collect permit fees from any provider of communications services that uses or occupies noncharter county roads or rights-of-way for the provision of communications services; however, each noncharter county that elects to operate under this sub-subparagraph shall retain all authority to establish rules and regulations for providers of communications services to use or occupy roads or rights-of-way as provided in this section. If a noncharter county elects to operate under this sub-subparagraph, the total rate for the local communications services tax as computed under s. 202.20(1) and (2) for that noncharter county may be increased by ordinance by an amount not to exceed a rate of 0.24 percent, to replace the revenue the noncharter county would otherwise have received from permit fees for providers of communications services.

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

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

(d) After January 1, 2001, in addition to any other notice requirements, a municipality must provide to the Secretary of State, at least 10 days prior to consideration on first reading, notice of a proposed ordinance governing a provider of communications services ~~telecommunications company~~ placing or maintaining communications ~~telecommunications~~ facilities in its roads or rights-of-way. After January 1, 2001, in addition to any other notice requirements, a county must provide to the Secretary of State, at least 15 days prior to consideration at a public hearing, notice of a proposed ordinance governing a provider of communications services ~~telecommunications company~~ placing or maintaining communications ~~telecommunications~~ facilities in its roads or rights-of-way. The notice required by this paragraph must be published by the Secretary of State on a designated Internet website. The failure of a municipality or county to provide such notice does not render the ordinance invalid.

(e) The authority of municipalities and counties to require franchise fees from providers of communications services, with respect to the provision of communications services, is specifically preempted by the state, except as otherwise provided in paragraph (f), because of unique circumstances applicable to providers of communications services when compared to other utili-

ties occupying municipal or county roads or rights-of-way. Providers of communications services may provide similar services in a manner that requires the placement of facilities in municipal or county roads or rights-of-way or in a manner that does not require the placement of facilities in such roads or rights-of-way. Although similar communications services may be provided by different means, the state desires to treat providers of communications services in a nondiscriminatory manner and to have the taxes, franchise fees, and other fees paid by providers of communications services be competitively neutral. Municipalities and counties retain all existing authority, if any, to collect franchise fees from users or occupants of municipal or county roads or rights-of-way other than providers of communications services, and the provisions of this subsection shall have no effect upon this authority. The provisions of this subsection do not restrict the authority, if any, of municipalities or counties or other governmental entities to receive reasonable rental fees based on fair market value for the use of public lands and buildings on property outside the public roads or rights-of-way for the placement of communications antennas and towers.

(f) A municipality or county may request and negotiate for in-kind requirements, institutional networks, and contributions for, or in support of, the use or construction of public, educational, or governmental access facilities allowed under federal law from providers of cable service, and nothing in this section shall impair any ordinance or agreement in effect on July 1, 2000, which provides for or allows for such requirements, networks, or contributions, including the ability of providers of cable service to recover any such expenses pursuant to federal law. This subsection shall be reviewed by the Legislature during the 2001 legislative session in conjunction with the study required by this act.

(g) Each municipality and county retains authority to negotiate all terms and conditions of a cable service franchise allowed by federal and state law except those terms and conditions related to franchise fees and the definition of gross revenues or other definitions or methodologies related to the payment or assessment of franchise fees on providers of cable services.

~~(e) If any municipality requires any telecommunications company to pay a fee or other consideration as a condition for granting permission to occupy municipal streets and rights-of-way for poles, wires, and other fixtures, such fee or consideration may not exceed 1 percent of the gross receipts on recurring local service revenues for services provided within the corporate limits of the municipality by such telecommunications company. Included within such 1-percent maximum fee or consideration are all taxes, licenses, fees, in-kind contributions accepted pursuant to paragraph (g), and other impositions except ad valorem taxes and amounts for assessments for special benefits, such as sidewalks, street pavings, and similar improvements, and occupational license taxes levied or imposed by a municipality upon the telecommunications company. This paragraph shall not impair any franchise in existence on July 1, 1985.~~

~~(f) A municipality may require any person providing telecommunication services defined in s. 203.012(7) as a condition for granting permission to occupy or use any city street, alley, viaduct, elevated roadway, bridge, or~~

~~other public way to pay a fee or other consideration payable annually based on actual linear feet of any cable, fiber optic, or other pathway that makes physical use of the municipal right-of-way. In no event shall the fee or other consideration imposed pursuant to this paragraph be less than $500 per linear mile of any cable, fiber optic, or other pathway that makes physical use of the municipal right-of-way. Any fee or other consideration imposed by this paragraph in excess of $500 shall be applied in a nondiscriminatory manner and shall not exceed the sum of:~~

~~1. Costs directly related to the inconvenience or impairment solely caused by the disturbance of the municipal right-of-way;~~

~~2. The reasonable cost of the regulatory activity of the municipality; and~~

~~3. The proportionate share of cost of land for such street, alley, or other public way attributable to utilization of the right-of-way by a telecommunication service provider.~~

~~Furthermore, no telecommunication service provider shall be required to pay more than one such fee or other consideration annually for the construction, maintenance, operation, repair, rebuilding, or replacement of a parallel telecommunications route owned by it, or by a subsidiary under its direct control, which makes use of the right-of-way of any municipality enacting an ordinance pursuant to this paragraph. The fee or other consideration imposed pursuant to this paragraph shall not apply in any manner to any telecommunication service provider who provides telecommunication services as defined in s. 203.012(3) for any services provided by such service provider. Any agreement entered into pursuant to the authority of this paragraph prior to June 3, 1988, and the fees or fee schedule in effect on that date shall remain in full force and effect until such agreement expires. Any ordinance enacted pursuant to this paragraph prior to June 3, 1988, and the fees or fee schedule in effect on that date shall remain in full force and effect unless the ordinance is repealed by the municipality. Notwithstanding the language contained herein a municipality may reenact any ordinance which has an automatic expiration date provided the ordinance does not increase the fees in effect in said ordinance in violation of this section.~~

(h)~~(g)~~ Except as expressly allowed or authorized by general law and except for the rights-of-way permit fees subject to paragraph (c) ~~(e)~~, a municipality or county may not levy on a provider of communications services ~~telecommunications company~~ a tax, fee, or other charge or imposition for operating as a provider of communications services ~~telecommunications company~~ within the jurisdiction of the municipality or county which is in any way related to using its roads or rights-of-way. ~~A municipality may not allow a telecommunications company to pay a fee or provide compensation in excess of the limits prescribed in this section.~~ A municipality or county may not require or solicit in-kind compensation, except as otherwise provided in paragraph (f) ~~in lieu of any fees imposed pursuant to this section~~. Nothing in this paragraph shall impair any ordinance or agreement in effect on May 22, 1998, or any voluntary agreement entered into subsequent to that date, which provides for or allows in-kind compensation by a telecommunications company.

(i)(h) A municipality or county ~~local governmental entity~~ may not use its authority over the placement of facilities in its roads and rights-of-way as a basis for asserting or exercising regulatory control over a provider of communications services ~~telecommunications company~~ regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or the Federal Communications Commission, including, but not limited to, the operations, systems, qualifications, services, service quality, service territory, and prices of a provider of communications services ~~telecommunications company~~.

(j)(i) A provider of communications services ~~telecommunications company~~ that has obtained permission to occupy the roads or ~~and~~ rights-of-way of an incorporated municipality pursuant to s. 362.01 or that is otherwise lawfully occupying the roads or rights-of-way of a municipality ~~on the effective date of this act~~ shall not be required to obtain consent to continue such lawful occupation of those roads or rights-of-way; however, nothing in this paragraph shall be interpreted to limit the power of a municipality to ~~impose a fee or~~ adopt or enforce reasonable rules or regulations as provided in this section.

(k)(j) Except as expressly provided in this section, this section does not modify the authority of municipalities and counties ~~local governmental entities~~ to levy the tax authorized in chapter 202 ~~s. 166.231~~ or the duties of providers of communications services ~~telecommunications companies~~ under ss. 337.402-337.404. This section does not apply to building permits, pole attachments, or private roads, private easements, and private rights-of-way. ~~Except as expressly provided in this section, this section does not limit or expand whatever powers counties may have relating to roads and rights-of-way. Nothing in this section shall limit or expand whatever authority a local government may have to impose any fee pursuant to 47 U.S.C. ss. 542 and 573.~~

(4)(k) As used in this section, "communications services" and "cable services" have ~~"telecommunications company" has~~ the same meanings ascribed in chapter 202 ~~meaning as defined in s. 364.02~~.

(5)(4) This section, except subsections (1) and (2) and paragraph (3)(i)(h), does not apply to the provision of pay telephone service on public, ~~or~~ municipal, or county roads or rights-of-way.

Section 52. The Legislature finds that it may be necessary to adopt a state policy regarding in-kind requirements, institutional networks, and contributions for, or in support of, the use or construction of public, educational, or governmental access facilities allowed under federal law currently imposed only on providers of cable service, especially in light of the in-kind requirements for providers of telecommunications services under s. 337.401(5), Florida Statutes, 1999. Given the development of alternative choices in the delivery of multichannel video programming, including programming by providers of wireless, satellite, Internet, and other video delivery systems, and the potential competitive inequities which may be associated with such requirements, networks, and contributions, the appropriate committees of the Legislature shall study and evaluate, during the 2001

legislative session, an appropriate state policy regarding these issues, including the option of calculating the present and future value of such requirements, networks, and contributions available to local governments in excess of the limitations imposed on franchise fees under 47 U.S.C. s. 542(b) as a part of the computation of replacement revenues under s. 202.20, Florida Statutes, in setting the local communications services tax rate.

Section 53. Subsection (1) of section 212.031, Florida Statutes, is amended to read:

212.031 Lease or rental of or license in real property.—

(1)(a) It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property unless such property is:

1. Assessed as agricultural property under s. 193.461.

2. Used exclusively as dwelling units.

3. Property subject to tax on parking, docking, or storage spaces under s. 212.03(6).

4. Recreational property or the common elements of a condominium when subject to a lease between the developer or owner thereof and the condominium association in its own right or as agent for the owners of individual condominium units or the owners of individual condominium units. However, only the lease payments on such property shall be exempt from the tax imposed by this chapter, and any other use made by the owner or the condominium association shall be fully taxable under this chapter.

5. A public or private street or right-of-way and poles, conduits, fixtures, and similar improvements located on such streets or rights-of-way, occupied or used by a utility or franchised cable television company for utility or communications or television purposes. For purposes of this subparagraph, the term "utility" means any person providing utility services as defined in s. 203.012. This exception also applies to property, ~~excluding buildings,~~ wherever located, on which the following are placed: towers, antennas, cables, ~~adjacent~~ accessory structures, or ~~adjacent accessory~~ equipment, not including switching equipment, used in the provision of ~~cellular, enhanced specialized~~ mobile ~~radio, or personal~~ communications services as defined in s. 202.11 ~~are placed~~. For purposes of this chapter, towers used in the provision of mobile communications services, as defined in s. 202.11, are considered to be fixtures.

6. A public street or road which is used for transportation purposes.

7. Property used at an airport exclusively for the purpose of aircraft landing or aircraft taxiing or property used by an airline for the purpose of loading or unloading passengers or property onto or from aircraft or for fueling aircraft.

8.a. Property used at a port authority, as defined in s. 315.02(2), exclusively for the purpose of oceangoing vessels or tugs docking, or such vessels mooring on property used by a port authority for the purpose of loading or unloading passengers or cargo onto or from such a vessel, or property used at a port authority for fueling such vessels, or to the extent that the amount paid for the use of any property at the port is based on the charge for the amount of tonnage actually imported or exported through the port by a tenant.

b. The amount charged for the use of any property at the port in excess of the amount charged for tonnage actually imported or exported shall remain subject to tax except as provided in sub-subparagraph a.

9. Property used as an integral part of the performance of qualified production services. As used in this subparagraph, the term "qualified production services" means any activity or service performed directly in connection with the production of a qualified motion picture, as defined in s. 212.06(1)(b), and includes:

a. Photography, sound and recording, casting, location managing and scouting, shooting, creation of special and optical effects, animation, adaptation (language, media, electronic, or otherwise), technological modifications, computer graphics, set and stage support (such as electricians, lighting designers and operators, greensmen, prop managers and assistants, and grips), wardrobe (design, preparation, and management), hair and makeup (design, production, and application), performing (such as acting, dancing, and playing), designing and executing stunts, coaching, consulting, writing, scoring, composing, choreographing, script supervising, directing, producing, transmitting dailies, dubbing, mixing, editing, cutting, looping, printing, processing, duplicating, storing, and distributing;

b. The design, planning, engineering, construction, alteration, repair, and maintenance of real or personal property including stages, sets, props, models, paintings, and facilities principally required for the performance of those services listed in sub-subparagraph a.; and

c. Property management services directly related to property used in connection with the services described in sub-subparagraphs a. and b.

10. Leased, subleased, licensed, or rented to a person providing food and drink concessionaire services within the premises of a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, recreational facility, or any business operated under a permit issued pursuant to chapter 550. A person providing retail concessionaire services involving the sale of food and drink or other tangible personal property within the premises of an airport shall be subject to tax on the rental of real property used for that purpose, but shall not be subject to the tax on any license to use the property. For purposes of this subparagraph, the term "sale" shall not include the leasing of tangible personal property.

11. Property occupied pursuant to an instrument calling for payments which the department has declared, in a Technical Assistance Advisement

issued on or before March 15, 1993, to be nontaxable pursuant to rule 12A-1.070(19)(c), Florida Administrative Code; provided that this subparagraph shall only apply to property occupied by the same person before and after the execution of the subject instrument and only to those payments made pursuant to such instrument, exclusive of renewals and extensions thereof occurring after March 15, 1993.

(b) When a lease involves multiple use of real property wherein a part of the real property is subject to the tax herein, and a part of the property would be excluded from the tax under subparagraph (a)1., subparagraph (a)2., ~~or~~ subparagraph (a)3., or subparagraph (a)5., the department shall determine, from the lease or license and such other information as may be available, that portion of the total rental charge which is exempt from the tax imposed by this section. The portion of the premises leased or rented by a for-profit entity providing a residential facility for the aged will be exempt on the basis of a pro rata portion calculated by combining the square footage of the areas used for residential units by the aged and for the care of such residents and dividing the resultant sum by the total square footage of the rented premises. For purposes of this section, the term "residential facility for the aged" means a facility that is licensed or certified in whole or in part under chapter 400 or chapter 651; or that provides residences to the elderly and is financed by a mortgage or loan made or insured by the United States Department of Housing and Urban Development under s. 202, s. 202 with a s. 8 subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of the National Housing Act; or other such similar facility that provides residences primarily for the elderly.

(c) For the exercise of such privilege, a ~~as~~ tax is levied in an amount equal to 6 percent of and on the total rent or license fee charged for such real property by the person charging or collecting the rental or license fee. The total rent or license fee charged for such real property shall include payments for the granting of a privilege to use or occupy real property for any purpose and shall include base rent, percentage rents, or similar charges. Such charges shall be included in the total rent or license fee subject to tax under this section whether or not they can be attributed to the ability of the lessor's or licensor's property as used or operated to attract customers. Payments for intrinsically valuable personal property such as franchises, trademarks, service marks, logos, or patents are not subject to tax under this section. In the case of a contractual arrangement that provides for both payments taxable as total rent or license fee and payments not subject to tax, the tax shall be based on a reasonable allocation of such payments and shall not apply to that portion which is for the nontaxable payments.

(d) When the rental or license fee of any such real property is paid by way of property, goods, wares, merchandise, services, or other thing of value, the tax shall be at the rate of 6 percent of the value of the property, goods, wares, merchandise, services, or other thing of value.

Section 54. Revenue received by a taxing authority under this act shall be deemed to replace any taxes or fees previously imposed but repealed by this act without any further action on the part of such taxing authority. If the repeal under this act of a taxing authority's authority to levy taxes or

fees impairs security pledged to retire the authority's bonded indebtedness secured by such taxes or fees, then to the extent of any such impairment, a like sum of revenue received by the authority under this act shall be deemed as a matter of law to replace said taxes and fees as security for the bonded indebtedness.

Section 55. The taxes imposed by ss. 203.01, 202.12, and 202.19, Florida Statutes, on communications services shall be applied in accordance with chapter 202, Florida Statutes, as created by this act, to communications services reflected on bills dated on or after October 1, 2001.

Section 56. Effective upon this act becoming a law, the sum of $201,587 is appropriated from the General Revenue Fund to the Department of Revenue in fiscal year 1999-2000 to implement the provisions of this act.

Section 57. The sum of $3,583,441 is appropriated in fiscal year 2000-2001 from the General Revenue Fund to the Department of Revenue and 32 full-time equivalent positions are authorized to implement the provisions of this act.

Section 58. Effective June 30, 2001:

(1) Sections 202.10, 202.11, 202.20, 202.26, and 202.37, Florida Statutes, as created by this act, are repealed.

(2) Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 38, 39, 41, 42, 43, 48, 49, 51, 54, and 55 of this act are repealed.

(3) The advisory committee appointed pursuant to section 32 of this act is abolished.

Section 59. Effective June 30, 2001, section 337.401, Florida Statutes, as amended by this act, is amended to read:

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

(1) The department and local governmental entities, referred to in ss. 337.401-337.404 as the "authority," that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining along, across, or on any road or publicly owned rail corridors under their respective jurisdictions any electric transmission, telephone, or telegraph lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures hereinafter referred to as the "utility."

(2) The authority may grant to any person who is a resident of this state, or to any corporation which is organized under the laws of this state or licensed to do business within this state, the use of a right-of-way for the utility in accordance with such rules or regulations as the authority may adopt. No utility shall be installed, located, or relocated unless authorized

by a written permit issued by the authority. The permit shall require the permitholder to be responsible for any damage resulting from the issuance of such permit. The authority may initiate injunctive proceedings as provided in s. 120.69 to enforce provisions of this subsection or any rule or order issued or entered into pursuant thereto.

~~(3)(a) Because federal and state law require the nondiscriminatory treatment of providers of telecommunications services and because of the desire to promote competition among providers of telecommunications services, it is the intent of the Legislature that municipalities and counties treat telecommunications companies in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of telecommunications facilities in the public roads or rights-of-way. Rules or regulations imposed by a municipality or county relating to telecommunications companies placing or maintaining telecommunications facilities in its roads or rights-of-way must be generally applicable to all telecommunications companies and, notwithstanding any other law, may not require a telecommunications company to apply for or enter into an individual license, franchise, or other agreement with the municipality or county as a condition of placing or maintaining telecommunications facilities in its roads or rights-of-way. In addition to other reasonable rules or regulations that a municipality or county may adopt relating to the placement or maintenance of telecommunications facilities in its roads or rights-of-way under this subsection, a municipality or county may require a telecommunications company that places or seeks to place facilities in its roads or rights-of-way to register with the municipality or county and to provide the name of the registrant; the name, address, and telephone number of a contact person for the registrant; the number of the registrant's current certificate of authorization issued by the Florida Public Service Commission or the Federal Communications Commission; and proof of insurance or self-insuring status adequate to defend and cover claims.~~

~~(b) Each municipality and county retains the authority to regulate and manage municipal and county roads or rights-of-way in exercising its police power. Any rules or regulations adopted by a municipality or county which govern the occupation of its roads or rights-of-way by telecommunications companies must be related to the placement or maintenance of facilities in such roads or rights-of-way, must be reasonable and nondiscriminatory, and may include only those matters necessary to manage the roads or rights-of-way of the municipality or county.~~

~~(c)1. It is the intention of the state to treat all providers of communications services that use or occupy municipal or charter county roads or rights-of-way for the provision of communications services in a nondiscriminatory and competitively neutral manner with respect to the payment of permit fees. Certain providers of communications services have been granted by general law the authority to offset permit fees against franchise or other fees while other providers of communications services have not been granted this authority. In order to treat all providers of communications services in a nondiscriminatory and competitively neutral manner with respect to the payment of permit fees, each municipality and charter county shall make an election under either sub-subparagraph a. or sub-subparagraph b. and must~~

~~inform the Department of Revenue of the election by certified mail by October 1, 2001. Such election take effect January 1, 2002.~~

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

~~(II) To ensure competitive neutrality among providers of communications services, for any municipality or charter county that elects to exercise its authority to require and collect permit fees under this sub-subparagraph, the rate of the local communications services tax imposed by such jurisdiction, as computed under s. 202.20(1) and (2), shall automatically be reduced by a rate of 0.12 percent.~~

~~b. Alternatively, the municipality or charter county may elect not to require and collect permit fees from any provider of communications services that uses or occupies municipal or charter county roads or rights-of-way for the provision of communications services; however, each municipality or charter county that elects to operate under this sub-subparagraph retains all authority to establish rules and regulations for providers of communications services to use or occupy roads or rights-of-way as provided in this section. If a municipality or charter county elects to operate under this sub-subparagraph, the total rate for the local communications services tax as computed under s. 202.20(1) and (2) for that municipality or charter county may be increased by ordinance by an amount not to exceed a rate of 0.12 percent.~~

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

~~2. Each noncharter county shall make an election under either sub-subparagraph a. or sub-subparagraph b. and shall inform the Department~~

~~of Revenue of the election by certified mail by October 1, 2001. Such election shall take effect January 1, 2002.~~

~~a. The noncharter county may elect to require and collect permit fees from any providers of communications services that use or occupy noncharter county roads or rights-of-way. All fees permitted under this sub-subparagraph must be reasonable and commensurate with the direct and actual cost of the regulatory activity, including issuing and processing permits, plan reviews, physical inspection, and direct administrative costs; must be demonstrable; and must be equitable among users of the roads or rights-of-way. A fee permitted under this sub-subparagraph may not: be offset against the tax imposed under chapter 202; include the costs of roads or rights-of-way acquisition or roads or rights-of-way rental; include any general administrative, management, or maintenance costs of the roads or rights-of-way; or be based on a percentage of the value or costs associated with the work to be performed on the roads or rights-of-way. In an action to recover amounts due for a fee not permitted under this sub-subparagraph, the prevailing party may recover court costs and attorney's fees at trial and on appeal. In addition to the limitations set forth in this section, a fee levied by a noncharter county under this sub-subparagraph may not exceed $100. However, permit fees may not be imposed with respect to permits that may be required for service drop lines not required to be noticed under s. 556.108(5)(b) or for any activity that does not require the physical disturbance of the roads or rights-of-way or does not impair access to or full use of the roads or rights-of-way.~~

~~b. Alternatively, the noncharter county may elect not to require and collect permit fees from any provider of communications services that uses or occupies noncharter county roads or rights-of-way for the provision of communications services; however, each noncharter county that elects to operate under this sub-subparagraph shall retain all authority to establish rules and regulations for providers of communications services to use or occupy roads or rights-of-way as provided in this section. If a noncharter county elects to operate under this sub-subparagraph, the total rate for the local communications services tax as computed under s. 202.20(1) and (2) for that noncharter county may be increased by ordinance by an amount not to exceed a rate of 0.24 percent, to replace the revenue the noncharter county would otherwise have received from permit fees for providers of communications services.~~

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

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

~~(d) After January 1, 2001, in addition to any other notice requirements, a municipality must provide to the Secretary of State, at least 10 days prior to consideration on first reading, notice of a proposed ordinance governing~~

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

~~(e)~~ If any municipality requires any telecommunications company to pay a fee or other consideration as a condition for granting permission to occupy municipal streets and rights-of-way for poles, wires, and other fixtures, such fee or consideration may not exceed 1 percent of the gross receipts on recurring local service revenues for services provided within the corporate limits of the municipality by such telecommunications company. Included within such 1-percent maximum fee or consideration are all taxes, licenses, fees, in-kind contributions accepted pursuant to subsection (5) ~~paragraph (g)~~, and other impositions except ad valorem taxes and amounts for assessments for special benefits, such as sidewalks, street pavings, and similar improvements, and occupational license taxes levied or imposed by a municipality upon the telecommunications company. This subsection ~~paragraph~~ shall not impair any franchise in existence on July 1, 1985.

(4)~~(f)~~ A municipality may by ordinance enter into an agreement with ~~require~~ any person providing telecommunication services defined in s. 203.012(7) as a condition for granting permission to occupy or use any city street, alley, viaduct, elevated roadway, bridge, or other public way. The agreement shall permit the telecommunication service provider to construct, operate, maintain, repair, rebuild, or replace a telecommunications route within a municipal right-of-way. The agreement shall provide for ~~to pay~~ a fee or other consideration payable annually based on actual linear feet of any cable, fiber optic, or other pathway that makes physical use of the municipal right-of-way. In no event shall the fee or other consideration imposed pursuant to this subsection ~~paragraph~~ be less than $500 per linear mile of any cable, fiber optic, or other pathway that makes physical use of the municipal right-of-way. Any fee or other consideration imposed by this subsection ~~paragraph~~ in excess of $500 shall be applied in a nondiscriminatory manner and shall not exceed the sum of:

(a)~~1.~~ Costs directly related to the inconvenience or impairment solely caused by the disturbance of the municipal right-of-way; and

(b)~~2.~~ The reasonable cost of the regulatory activity of the municipality.~~;~~ ~~and~~

(c)~~3.~~ The proportionate share of cost of land for such street, alley, or other public way attributable to utilization of the right-of-way by a telecommunication service provider.

Furthermore, no telecommunication service provider shall be required to pay more than one such fee or other consideration annually for the construction, maintenance, operation, repair, rebuilding, or replacement of a parallel

telecommunications route owned by it, or by a subsidiary under its direct control, which makes use of the right-of-way of any municipality enacting an ordinance pursuant to this subsection ~~paragraph~~. The fee or other consideration imposed pursuant to this subsection ~~paragraph~~ shall not apply in any manner to any telecommunication service provider who provides telecommunication services as defined in s. 203.012(3) for any services provided by such service provider. Any agreement entered into pursuant to the authority of this subsection ~~paragraph~~ prior to June 3, 1988, and the fees or fee schedule in effect on that date shall remain in full force and effect until such agreement expires. Any ordinance enacted pursuant to this subsection ~~paragraph~~ prior to June 3, 1988, and the fees or fee schedule in effect on that date shall remain in full force and effect unless the ordinance is repealed by the municipality. Notwithstanding the language contained herein a municipality may reenact any ordinance which has an automatic expiration date provided the ordinance does not increase the fees in effect in said ordinance in violation of this section.

(5)~~(g)~~ Except as expressly allowed or authorized by general law and except for the rights-of-way permit fees subject to subsection (3) ~~paragraph (e)~~, a municipality may not levy on a telecommunications company a tax, fee, or other charge for operating as a telecommunications company within the jurisdiction of the municipality or which is in any way related to using ~~its~~ roads or rights-of-way. A municipality may not allow a telecommunications company to pay a fee or provide compensation in excess of the limits prescribed in this section. A municipality may not require or solicit in-kind compensation in lieu of any fees imposed pursuant to this section. Nothing in this subsection ~~paragraph~~ shall impair any ordinance or agreement in effect on the effective date of this act ~~May 22, 1998,~~ which provides for or allows in-kind compensation by a telecommunications company.

(6)~~(h)~~ A local governmental entity may not use its authority over the placement of facilities in its roads and rights-of-way as a basis for asserting or exercising regulatory control over a telecommunications company regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or the Federal Communications Commission, including, but not limited to, the operations, systems, qualifications, services, service quality, service territory, and prices of a telecommunications company.

(7)~~(i)~~ A telecommunications company that has obtained permission to occupy the roads and rights-of-way of an incorporated city or town ~~municipality pursuant to s. 362.01~~ or that is otherwise lawfully occupying the roads or rights-of-way of a municipality on the effective date of this act shall not be required to obtain additional consent to continue such lawful occupation of those roads or rights-of-way; however, nothing in this subsection ~~paragraph~~ shall be interpreted to limit the power of a municipality to impose a fee or adopt or enforce reasonable rules or regulations as provided in this section.

(8)~~(j)~~ Except as expressly provided in this section, this section does not modify the authority of local governmental entities to levy the tax authorized in s. 166.231 or the duties of telecommunications companies under ss. 337.402-337.404. This section does not apply to building permits, pole attachments, or private roads, private easements, and private rights-of-way.

Except as expressly provided in this section, this section does not limit or expand whatever powers counties may have relating to roads and rights-of-way. Nothing in this section shall limit or expand whatever authority a local government may have to impose any fee pursuant to 47 U.S.C. ss. 542 and 573.

(9)~~(k)~~ As used in this section, "telecommunications company" has the same meaning as defined in s. 364.02.

(10)~~(4)~~ This section, except subsections (1), ~~and~~ (2), and (6) ~~paragraph (3)(h)~~, does not apply to the provision of pay telephone service on public or municipal roads or rights-of-way.

Section 60. Except as otherwise provided herein, this act shall take effect July 1, 2000.

Approved by the Governor June 14, 2000.

Filed in Office Secretary of State June 14, 2000.