

Fla. Stat. § 365.172

Current through Chapter 1 of the 2024 session and through the 2023 C special session.

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§ 365.172. Emergency communications .

(1) Short title. This section may be cited as the “Emergency Communications Act.”

(2) Legislative intent. It is the intent of the Legislature to:

- (a)** Establish and implement a comprehensive statewide emergency communications and response capability using modern technologies and methods.
- (b)** Provide funds to counties to pay certain costs associated with their public safety emergency response capabilities and costs incurred to purchase, upgrade, and maintain 911 systems, computer-aided dispatch, and systems to create interoperable radio communications systems.
- (c)** Levy a reasonable fee on users of voice communications services, unless otherwise provided in this section, to accomplish these purposes.
- (d)** Provide for an Emergency Communications Board to administer the fee, with oversight by the office, in a manner that is competitively and technologically neutral as to all communications services providers.
- (e)** Ensure that the fee established for emergency communications systems is used exclusively by counties for costs associated with developing and maintaining emergency communications systems and networks in a manner that is competitively and technologically neutral as to all communications services providers.

It is further the intent of the Legislature that the fee authorized or imposed by this section not necessarily provide the total funding required for establishing or providing emergency communications systems and services.

(3) Definitions. Only as used in this section and ss. 365.171, 365.173, 365.174, and 365.177, the term:

- (a)** “Authorized expenditures” means expenditures of the fee, as specified in subsection (10).
- (b)** “Automatic location identification” means the capability of the E911 service which enables the automatic display of information that defines the approximate geographic location of the wireless telephone, or the location of the address of the wireline telephone, used to place a 911 call.

- (c) “Automatic number identification” means the capability of the E911 service which enables the automatic display of the service number used to place a 911 call.
- (d) “Board” or “Emergency Communications Board” means the board established in subsection (5).
- (e) “Building permit review” means a review for compliance with building construction standards adopted by the local government under chapter 553 and does not include a review for compliance with land development regulations.
- (f) “Colocation” means the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent antennae. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the antennae.
- (g) “Computer-Aided Dispatch” or “CAD” means a computerized system within a public safety answering point for entering, tracking, dispatching, and resolving requests for public safety services.
- (h) “Designed service” means the configuration and manner of deployment of service the wireless provider has designed for an area as part of its network.
- (i) “Enhanced 911” or “E911” means an enhanced 911 system or enhanced 911 service that is an emergency telephone system or service that provides a subscriber with 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated, or as otherwise provided in the state plan under s. 365.171, and that provides for automatic number identification and automatic location-identification features. The 911 service provided by a wireless provider means E911 as defined in the order.
- (j) “Existing structure” means a structure that exists at the time an application for permission to place antennae on a structure is filed with a local government. The term includes any structure that can structurally support the attachment of antennae in compliance with applicable codes.
- (k) “Fee” or “public safety emergency communications systems fee” means the fee authorized and imposed under subsections (8) and (9).
- (l) “Fund” means the Emergency Communications Trust Fund established in s. 365.173 and maintained under this section for the purpose of recovering the costs associated with providing emergency communications services, including the costs of implementing the order. The fund shall be segregated into wireless, prepaid wireless, and nonwireless categories.
- (m) “Historic building, structure, site, object, or district” means any building, structure, site, object, or district that has been officially designated as a historic building, historic structure, historic site, historic object, or historic district through a federal, state, or local designation program.
- (n) “Land development regulations” means any ordinance enacted by a local government for the regulation of any aspect of development, including an ordinance governing zoning, subdivisions, landscaping, tree protection, or signs, the local government’s comprehensive plan, or any other ordinance concerning any aspect of the development of land. The term does

not include any building construction standard adopted under and in compliance with chapter 553.

(o) “Local exchange carrier” means a “competitive local exchange telecommunications company” or a “local exchange telecommunications company” as defined in s. 364.02.

(p) “Local government” means any municipality, county, or political subdivision or agency of a municipality, county, or political subdivision.

(q) “Medium county” means any county that has a population of 75,000 or more but less than 750,000.

(r) “Mobile telephone number” or “MTN” means the telephone number assigned to a wireless telephone at the time of initial activation.

(s) “Next Generation 911” or “NG911” means an Internet Protocol(IP)-based system composed of managed Emergency Services IP Networks (ESInet), functional elements (applications), and databases that replicate traditional E911 features and functions and provide additional capabilities. The NG911 system is designed to provide access to emergency services from all connected communications sources and provide multimedia data capabilities for PSAPs and other emergency service organizations.

(t) “Nonwireless category” means the revenues to the fund received from voice communications services providers other than wireless providers.

(u) “Office” means the Division of Telecommunications within the Department of Management Services, as designated by the secretary of the department.

(v) “Order” means:

1. The following orders and rules of the Federal Communications Commission issued in FCC Docket No. 94-102:

- a. Order adopted on June 12, 1996, with an effective date of October 1, 1996, the amendments to s. 20.03 and the creation of s. 20.18 of Title 47 of the Code of Federal Regulations adopted by the Federal Communications Commission pursuant to such order.

- b. Memorandum and Order No. FCC 97-402 adopted on December 23, 1997.

- c. Order No. FCC DA 98-2323 adopted on November 13, 1998.

- d. Order No. FCC 98-345 adopted December 31, 1998.

2. Orders and rules subsequently adopted by the Federal Communications Commission relating to the provision of 911 services, including Order Number FCC-05-116, adopted May 19, 2005.

(w) “Prepaid wireless category” means all revenues in the fund received through the Department of Revenue from the fee authorized and imposed under subsection (9).

(x) “Prepaid wireless service” means a right to access wireless service that allows a caller to contact and interact with 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars, which units or dollars expire on a

predetermined schedule or are decremented on a predetermined basis in exchange for the right to access wireless service.

(y) “Public agency” means the state and any municipality, county, municipal corporation, or other governmental entity, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

(z) “Public safety agency” means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

(aa) “Public safety answering point,” “PSAP,” or “answering point” means the public safety agency that receives incoming 911 requests for assistance and dispatches appropriate public safety agencies to respond to the requests in accordance with the state E911 plan.

(bb) “Rural county” means any county that has a population of fewer than 75,000.

(cc) “Service identifier” means the service number, access line, or other unique identifier assigned to a subscriber and established by the Federal Communications Commission for purposes of routing calls whereby the subscriber has access to the E911 system.

(dd) “Tower” means any structure designed primarily to support a wireless provider’s antennae.

(ee) “Voice communications services” means two-way voice service, through the use of any technology, which actually provides access to 911 services, and includes communications services, as defined in s. 202.11, which actually provide access to 911 services and which are required to be included in the provision of 911 services pursuant to orders and rules adopted by the Federal Communications Commission. The term includes voice-over-Internet-protocol service. For the purposes of this section, the term “voice-over-Internet-protocol service” or “VoIP service” means interconnected VoIP services having the following characteristics:

1. The service enables real-time, two-way voice communications;
2. The service requires a broadband connection from the user’s locations;
3. The service requires IP-compatible customer premises equipment; and
4. The service offering allows users generally to receive calls that originate on the public switched telephone network and to terminate calls on the public switched telephone network.

(ff) “Voice communications services provider” or “provider” means any person or entity providing voice communications services, except that the term does not include any person or entity that resells voice communications services and was assessed the fee authorized and imposed under subsection (8) by its resale supplier.

(gg) “Wireless 911 system” or “wireless 911 service” means an emergency telephone system or service that provides a subscriber with the ability to reach an answering point by accessing the digits 911.

(hh) “Wireless category” means the revenues to the fund received from a wireless provider from the fee authorized and imposed under subsection (8).

(ii) “Wireless communications facility” means any equipment or facility used to provide service and may include, but is not limited to, antennae, towers, equipment enclosures, cabling, antenna brackets, and other such equipment. Placing a wireless communications facility on an existing structure does not cause the existing structure to become a wireless communications facility.

(jj) “Wireless provider” means a person who provides wireless service and:

1. Is subject to the requirements of the order; or
2. Elects to provide wireless 911 service, E911 service, or NG911 service in this state.

(kk) “Wireless service” means “commercial mobile radio service” as provided under ss. 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. ss. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, August 10, 1993, 107 Stat. 312. The term includes service provided by any wireless real-time two-way wire communication device, including radio-telephone communications used in cellular telephone service; personal communications service; or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line. The term does not include wireless providers that offer mainly dispatch service in a more localized, noncellular configuration; providers offering only data, one-way, or stored-voice services on an interconnected basis; providers of air-to-ground services; or public coast stations.

(4) Powers and duties of the office. The office shall oversee the administration of the fee authorized and imposed under subsections (8) and (9).

(5) The Emergency Communications Board. -

(a) The Emergency Communications Board is established, with oversight by the office, to:

1. Promote interoperability between public safety answering points by providing guidance and direction to counties and state agencies that operate 911 centers for the deployment of emergency communications infrastructure and the handling of emergency communications information, such as voice, text, data, and images, from receipt at a PSAP to dispatching to responders.
2. Establish and administer allocations from the fund dedicated to investing in public safety communications and technology for 911.
3. Provide technical assistance and guidance to rural counties as needed.

(b) Public safety funding under paragraph (a) must focus on, but need not be limited to:

1. Next Generation 911.
2. Emergency Services IP Network (ESInet).
3. Computer-Aided Dispatch.
4. PSAP technology to interface with:
 - a. Land Mobile Radio (LMR).
 - b. Smart city technology data.

c. In-building coverage.

5. Emergency communications broadband networks.

6. Cybersecurity

. In order to advise and assist the office in implementing the purposes of this section, the board, which has the power of a body corporate, has the powers enumerated in subsection (6).

(c) The board shall consist of nine members, one of whom must be the system director designated under s. 365.171(5), or his or her designee, who shall serve as the chair of the board. The remaining eight members of the board shall be appointed by the Governor. All members must be residents of this state. The board must be composed of four county 911 coordinators, with consideration given to rural, medium, and large counties, and four members from fields that include, but are not limited to, law enforcement, fire response, emergency medical services, public safety dispatch, and telecommunications. The Florida Sheriffs Association, the Florida Police Chiefs Association, and the Florida Association of Counties, in consultation with the county 911 coordinators, may provide recommendations to the Governor for the appointment of the board members.

(d) The system director, designated under s. 365.171(5), or his or her designee, must be a permanent member of the board. Each of the remaining eight members of the board shall be appointed to a 4-year term and may not be appointed to more than two successive terms. However, for the purpose of staggering terms, three of the original board members shall be appointed to terms of 4 years, three shall be appointed to terms of 3 years, and two shall be appointed to terms of 2 years, as designated by the Governor. A vacancy on the board shall be filled in the same manner as the original appointment. Current 911 coordinators serving on the board must complete their terms while other positions must be filled immediately.

(e) The board shall advocate and develop policy recommendations for ensuring interoperability of and connectivity between public safety communications systems within the state, including, but not limited to, recommendations related to the following:

1. Call routing accuracy and timeliness of response.
2. Improved interagency communication and situational awareness.
3. Improved interagency system connectivity.
4. Improved response times.
5. Maximized use of emerging technologies.
6. Improved lifecycle management of the systems, equipment, and services that enable responders and public safety officials to share information securely.
7. Governance, policy, and procedure across public safety agencies.
8. Establishment of resilient and secure emergency communications systems to reduce cybersecurity threats and vulnerabilities.

(f) The board shall administer the fee imposed under subsections (8) and (9), including receiving revenues derived from the fee; distributing portions of the revenues to counties and the office; accounting for receipts, distributions, and income derived by the funds maintained

in the fund; and providing annual reports for review and submission to the Governor and the Legislature on amounts collected and expended, the purposes for which expenditures have been made, and the status of emergency communications services in this state.

(g) The board may create subcommittees to advise the board, as needed.

(6) Authority of the board; annual report.

(a) The board shall:

1. Administer the public safety emergency communications systems fee.
2. Implement, maintain, and oversee the fund.
3. Review and oversee the disbursement of the revenues deposited into the fund as provided in s. 365.173.
 - a. The board may establish a schedule for implementing NG911 systems, public safety radio communications systems, and other public safety communications improvements and prioritize disbursements of revenues from the fund to rural counties as provided in s. 365.173(2)(f) pursuant to the schedule, in order to implement 911 services in the most efficient and cost-effective manner.
 - b. For grants made available under s. 365.173(2)(g), the board shall provide 90 days' written notice to all counties and publish electronically an approved application process. Applications must be prioritized based on the availability of grant funds, current system life expectancy, and system replacement needs. The board shall take all actions within its authority to ensure that county recipients of such funds use these funds only for the purpose for which they have been provided and may take any actions within its authority to secure county repayment of revenues upon a determination that the funds were not used for the purpose for which the funds were disbursed.
4. Review documentation submitted by wireless providers which reflects current and projected funds derived from the fee.
5. Implement changes to the allocation percentages or adjust the fee pursuant to s. 365.173.
6. Meet in the most efficient and cost-effective manner, including telephonically when practical, for business to be conducted. The office shall administer the disbursement of funds to counties and provide a monthly report of such disbursements to the board.
7. Hire and retain employees, which may include an independent executive director who shall possess experience in the area of telecommunications and emergency 911 issues, for the purposes of performing the technical and administrative functions for the board.
8. Make and enter into contracts, pursuant to chapter 287, and execute other instruments necessary or convenient for the exercise of the powers and functions of the board.
9. Sue and be sued, and appear and defend in all actions and proceedings, in its corporate name to the same extent as a natural person.
10. Adopt, use, and alter a common corporate seal.
11. Elect or appoint the officers and agents that are required by the affairs of the board.

12. The board may adopt rules under ss. 120.536(1) and 120.54 to implement this section and ss. 365.173 and 365.174.

13. Provide coordination, support, and technical assistance to counties to promote the deployment of advanced public safety emergency communications systems in the state.

14. Provide coordination and support for educational opportunities related to 911 issues for the public safety emergency communications community in this state.

15. Act as an advocate for issues related to public safety emergency communications system functions, features, and operations to improve the delivery of public safety emergency communications services to the residents of and visitors to this state.

16. Coordinate input from this state at national forums and associations, to ensure that policies related to public safety emergency communications systems and services are consistent with the policies of the public safety emergency communications community in this state.

17. Work cooperatively with the system director established in s. 365.171(5) to enhance the state of public safety emergency communications services in this state and to provide unified leadership for all public safety emergency communications issues through planning and coordination.

18. Do all acts and things necessary or convenient to carry out the powers granted in this section in a manner that is competitively and technologically neutral as to all voice communications services providers, including, but not limited to, consideration of emerging technology and related cost savings, while taking into account embedded costs in current systems.

19. Have the authority to secure the services of an independent, private attorney via invitation to bid, request for proposals, invitation to negotiate, or professional contracts for legal services already established at the Division of Purchasing of the Department of Management Services.

(b) Board members shall serve without compensation; however, members are entitled to per diem and travel expenses as provided in s. 112.061.

(c) By February 28 of each year, the board shall prepare a report for submission by the office to the Governor, the President of the Senate, and the Speaker of the House of Representatives which addresses for the immediately preceding state fiscal year and county fiscal year:

1. The annual receipts, including the total amount of fee revenues collected by each provider, the total disbursements of money in the fund, and the amount of moneys on deposit in the fund.
2. Whether the amount of the fee and the allocation percentages set forth in s. 365.173 have been or should be adjusted to comply with the provisions of this chapter, and the reasons for making or not making a recommended adjustment to the fee.
3. Any other issues related to providing emergency communications services.
4. The status of emergency communications services in this state.

(7) Request for proposals for independent accounting firm.

(a) The board shall issue a request for proposals as provided in chapter 287 for the purpose of retaining an independent accounting firm. The independent accounting firm shall perform all material administrative and accounting tasks and functions required for administering the fee. The request for proposals must include, but need not be limited to:

1. A description of the scope and general requirements of the services requested.
2. A description of the specific accounting and reporting services required for administering the fund, including processing checks and distributing funds as directed by the board under s. 365.173.
3. A description of information to be provided by the proposer, including the proposer's background and qualifications and the proposed cost of the services to be provided.

(b) The board shall establish a committee to review requests for proposals which must include the statewide emergency communications systems director designated under s. 365.171(5), or his or her designee, and two members of the board. The review committee shall review the proposals received by the board and recommend an independent accounting firm to the board for final selection. By agreeing to serve on the review committee, each member of the review committee shall verify that he or she does not have any interest or employment, directly or indirectly, with potential proposers which conflicts in any manner or degree with his or her performance on the committee.

(c) The board may secure the services of an independent accounting firm via invitation to bid, request for proposals, invitation to negotiate, or professional contracts already established at the Division of Purchasing, Department of Management Services, for certified public accounting firms, or the board may hire and retain professional accounting staff to accomplish these functions.

(8) public safety emergency communications systems fee.

(a) Each voice communications services provider shall collect the fee described in this subsection, except that the fee for prepaid wireless service shall be collected in the manner set forth in subsection (9). Each provider, as part of its monthly billing process, shall bill the fee as follows. The fee may not be assessed on any pay telephone in the state.

1. Each voice communications service provider other than a wireless provider shall bill the fee to a subscriber based on the number of access lines having access to the 911 system, on a service-identifier basis, up to a maximum of 25 access lines per account bill rendered.
2. Each voice communications service provider other than a wireless provider shall bill the fee to a subscriber on a basis of five service-identified access lines for each digital transmission link, including primary rate interface service or equivalent Digital-Signal-1-level service, which can be channelized and split into 23 or 24 voice-grade or data-grade channels for communications, up to a maximum of 25 access lines per account bill rendered.
3. Except in the case of prepaid wireless service, each wireless provider shall bill the fee to a subscriber on a per-service-identifier basis for service identifiers whose primary place of use is within this state. The fee may not be assessed on or collected from a provider with respect to an end user's service if that end user's service is a prepaid wireless service sold before January 1, 2015.

4. Except in the case of prepaid wireless service, each voice communications services provider not addressed under subparagraphs 1., 2., and 3. shall bill the fee on a per-service-identifier basis for service identifiers whose primary place of use is within the state up to a maximum of 25 service identifiers for each account bill rendered.

The provider may list the fee as a separate entry on each bill, in which case the fee must be identified as a fee for 911 services. A provider shall remit the fee to the board only if the fee is paid by the subscriber. If a provider receives a partial payment for a monthly bill from a subscriber, the amount received shall first be applied to the payment due the provider for providing voice communications service.

(b) A provider is not obligated to take any legal action to enforce collection of the fees for which any subscriber is billed. A county subscribing to 911 service remains liable to the provider delivering the 911 service or equipment for any 911 service, equipment, operation, or maintenance charge owed by the county to the provider.

(c) For purposes of this subsection, the state and local governments are not subscribers.

(d) Each provider may retain 1 percent of the amount of the fees collected as reimbursement for the administrative costs incurred by the provider to bill, collect, and remit the fee. The remainder shall be delivered to the board and deposited by the board into the fund. The board shall distribute the remainder pursuant to s. 365.173.

(e) Voice communications services providers billing the fee to subscribers shall deliver revenues from the fee to the board within 60 days after the end of the month in which the fee was billed, together with a monthly report of the number of service identifiers in each county. Each wireless provider and other applicable provider identified in subparagraph (a)4. shall report the number of service identifiers for subscribers whose place of primary use is in each county. All provider subscriber information provided to the board is subject to s. 365.174. If a provider chooses to remit any fee amounts to the board before they are paid by the subscribers, a provider may apply to the board for a refund of, or may take a credit for, any such fees remitted to the board which are not collected by the provider within 6 months following the month in which the fees are charged off for federal income tax purposes as bad debt.

(f) The rate of the fee may not exceed 50 cents per month for each service identifier. Effective January 1, 2015, the fee shall be 40 cents per month for each service identifier. The fee shall apply uniformly and be imposed throughout the state.

(g) The board may adjust the allocation percentages for distribution of the fund as provided in s. 365.173. Any adjustment in the rate must be approved by a two-thirds vote of the total number of board members. When setting the percentages or contemplating any adjustments to the fee, the board shall consider the following:

1. The appropriate level of funding needed to fund the rural grant program provided for in s. 365.173(2)(f); and
2. The need to fund statewide, regional, and county grants in accordance with subparagraph (6)(a)3.b. and s. 365.173(2)(g).

(h) The board may adjust the allocation percentages or adjust the amount of the fee as provided in paragraph (g) if necessary to ensure full cost recovery or prevent over recovery of costs incurred in the provision of 911 service, including costs incurred or projected to be

incurred. Any new allocation percentages or reduced or increased fee may not be adjusted for 1 year. In no event shall the fee exceed 50 cents per month for each service identifier. The fee, and any board adjustment of the fee, shall be uniform throughout the state. No less than 90 days before the effective date of any adjustment to the fee, the board shall provide written notice of the adjusted fee amount and effective date to each voice communications services provider from which the board is then receiving the fee.

(i) It is the intent of the Legislature that all revenue from the fee be used as specified in s. 365.173(2)(a)-(h).

(j) State and local taxes do not apply to the fee. The amount of the fee collected by a provider may not be included in the base for imposition of any tax, fee, surcharge, or other charge imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(k) A local government may not levy the fee or any additional fee on providers or subscribers for the provision of 911 service.

(l) For purposes of this section, the definitions contained in s. 202.11 and the provisions of s. 202.155 apply in the same manner and to the same extent as the definitions and provisions apply to the taxes levied under chapter 202 on mobile communications services.

(9) Prepaid wireless public safety emergency communications systems fee.

(a) Effective January 1, 2015, a prepaid wireless fee is imposed per retail transaction at the rate established in paragraph (8)(f). In order to allow sellers of all sizes and technological capabilities adequate time to comply with this subsection, a seller of prepaid wireless service operating in this state before the prepaid wireless fee is imposed shall retain 100 percent of the fee collected under this paragraph for the first 2 months to offset the cost of setup.

(b) Effective March 1, 2015, the prepaid wireless fee imposed under paragraph (a) shall be subject to remittance in accordance with paragraph (g). In no event shall the fee exceed 50 cents for each retail transaction. At least 90 days before the effective date of any adjustment to the fee under paragraph (8)(g), the Department of Revenue shall provide written notice of the adjusted fee amount and its effective date to each seller from which the department is then receiving the fee. At least 120 days before the effective date of any adjustment to the fee imposed under this subsection, the board shall provide notice to the Department of Revenue of the adjusted fee amount and effective date of the adjustment.

(c) The prepaid wireless fee shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless fee shall be separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller or otherwise disclosed to the consumer.

(d) For purposes of paragraph (c), a retail transaction that takes place in person by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state. Such transaction is deemed to have occurred in the county of the business location. When a retail transaction does not take place at the seller's business location, the transaction shall be treated as taking place at the consumer's shipping address or, if no item is shipped, at the consumer's address or the location associated with the consumer's mobile telephone number. Such transaction is deemed to have occurred in the county of the consumer's shipping address when items are shipped to the consumer or, when no items are

shipped, the county of the consumer's address or the location associated with the consumer's mobile telephone number. A transaction for which the specific Florida county cannot be determined shall be treated as nonspecific.

(e) If a prepaid wireless device is sold for a single, nonitemized price with a prepaid wireless service of 10 minutes or less or \$5 or less, the seller may elect not to apply the prepaid wireless fee to the transaction.

(f) The amount of the prepaid wireless fee that is collected by a seller from a consumer and that is separately stated on an invoice, receipt, or similar document provided to the consumer by the seller, may not be included in the base for imposition of any tax, fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(g) Beginning April 1, 2015, each seller shall file a return and remit the prepaid wireless fees collected in the previous month to the Department of Revenue on or before the 20th day of the month. If the 20th day falls on a Saturday, Sunday, or legal holiday, payments accompanied by returns are due on the next succeeding day that is not a Saturday, Sunday, or legal holiday observed by federal or state agencies as defined in chapter 683 and s. 7503 of the Internal Revenue Code of 1986, as amended. A seller may remit the prepaid wireless fee by electronic funds transfer and file a fee return with the Department of Revenue that is initiated through an electronic data interchange.

1. When a seller is authorized by the Department of Revenue pursuant to s. 212.11(1)(c) or (d) to file a sales and use tax return on a quarterly, semiannual, or annual reporting basis, the seller may file a return and remit the prepaid wireless fees on or before the 20th day of the month following the authorized reporting period for sales and use tax.
2. A seller collecting less than \$50 per month of prepaid wireless fees may file a quarterly return for the calendar quarters ending in March, June, September, and December. The seller must file a return and remit the prepaid wireless fees collected during each calendar quarter on or before the 20th day of the month following that calendar quarter.
3. A seller must provide the following information on each prepaid wireless fee return filed with the Department of Revenue:
 - a. The seller's name, federal identification number, taxpayer identification number issued by the Department of Revenue, business location address and mailing address, and county of the business location in accordance with paragraph (d);
 - b. The reporting period;
 - c. The number of prepaid wireless services sold during the reporting period;
 - d. The amount of prepaid wireless fees collected and the amount of any adjustments to the fees collected;
 - e. The amount of any retailer collection allowance deducted from the amount of prepaid wireless fees collected; and
 - f. The amount to be remitted to the Department of Revenue.

4. A seller who operates two or more business locations for which returns are required to be filed with the Department of Revenue may file a consolidated return reporting and remitting the prepaid wireless fee for all business locations. Such sellers must report the prepaid wireless fees collected in each county, in accordance with paragraph (d), on a reporting schedule filed with the fee return.
 5. A return is not required for a reporting period when no prepaid wireless fee is to be remitted for that period.
 6. Except as provided in this section, the Department of Revenue shall administer, collect, and enforce the fee under this subsection pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under chapter 212. The provisions of chapter 212 regarding authority to audit and make assessments, keeping of books and records, and interest and penalties on delinquent fees shall apply. The provisions of estimated tax liability in s. 212.11(1)(a) do not apply to the prepaid wireless fee.
- (h)** A seller of prepaid wireless services in this state must register with the Department of Revenue for each place of business as required by s. 212.18(3) and the Department of Revenue's administrative rule regarding registration as a sales and use tax dealer. A separate application is required for each place of business. A valid certificate of registration issued by the Department of Revenue to a seller for sales and use tax purposes is sufficient for purposes of the registration requirement of this subsection. There is no fee for registration for remittance of the prepaid wireless fee.
- (i)** The Department of Revenue shall deposit the funds remitted under this subsection into the Audit and Warrant Clearing Trust Fund established in s. 215.199 and retain up to 3.2 percent of the funds remitted under this subsection to reimburse its direct costs of administering the collection and remittance of prepaid wireless fees. Thereafter, the Department of Revenue shall transfer all remaining funds remitted under this subsection to the Emergency Communications Trust Fund monthly for use as provided in s. 365.173.
- (j)** Beginning March 1, 2015, a seller may retain 5 percent of the prepaid wireless fees that are collected by the seller from consumers as a retailer collection allowance.
- (k)** A provider or seller of prepaid wireless service is not liable for damages to any person resulting from or incurred in connection with providing or failing to provide emergency communications and 911 service or for identifying or failing to identify the telephone number, address, location, or name associated with any person or device that is accessing or attempting to access emergency communications and 911 service.
- (l)** A provider or seller of prepaid wireless service is not liable for damages to any person resulting from or incurred in connection with providing any lawful assistance to any investigative or law enforcement officer of the United States, any state, or any political subdivision of any state in connection with any lawful investigation or other law enforcement activity by such law enforcement officer.
- (m)** The limitations of liability under this subsection for providers and sellers are in addition to any other limitation of liability provided for under this section.

- (n) A local government may not levy the fee or any additional fee on providers or sellers of prepaid wireless service for the provision of 911 service.
- (o) For purposes of this section, the state and local governments are not consumers.
- (p) For purposes of this subsection, the term:
 1. “Consumer” means a person who purchases prepaid wireless service in a retail sale.
 2. “Prepaid wireless fee” means the fee that is required to be collected by a seller from a consumer as provided in this subsection.
 3. “Provider” means a person that provides prepaid wireless service pursuant to a license issued by the Federal Communications Commission.
 4. “Retail transaction” means the purchase by a consumer from a seller of prepaid wireless service that may be applied to a single service identifier for use by the consumer. If a consumer makes a purchase of multiple prepaid wireless services in a single transaction, each individual prepaid wireless service shall be considered a separate retail transaction for purposes of calculating the prepaid wireless fee.
 5. “Seller” means a person who makes retail sales of prepaid wireless services to a consumer.

(10) Authorized expenditures of public safety emergency communications systems fee.

- (a) For purposes of this section, emergency communications and 911 service includes the functions relating to the receipt and transfer of requests for emergency assistance, database management, call taking, and location verification. Department of Health certification and recertification and training costs for public safety telecommunications, including dispatching, are functions of public safety emergency communications services.
- (b) All costs directly attributable to the establishment or provision of emergency communications equipment and services related to a primary or secondary public safety answering point are eligible for expenditure of moneys derived from imposition of the fee authorized by subsections (8) and (9). These costs include the acquisition, implementation, and maintenance of Public Safety Answering Point (PSAP) equipment and 911 service features, as defined in the providers’ published schedules or the acquisition, installation, and maintenance of other equipment, including: circuits; call answering equipment; call transfer equipment; ANI or ALI controllers; ANI or ALI displays; station instruments; Ng911 telecommunications systems; Emergency Services IP Networks (ESInets); visual call information and storage devices; recording equipment; telephone devices and other equipment for the hearing impaired used in the 911 system; PSAP backup power systems; consoles; automatic call distributors; interfaces, including hardware and software, for computer-aided dispatch (CAD) systems, public safety Land Mobile Radio(LMR) systems and radio consoles that provide two-way radio communication with responders, and in-building coverage; GIS system and software equipment and information displays; network clocks; cybersecurity, including hardware, software, and services; salary and associated expenses for 911 call takers and emergency dispatchers, salary, and associated expenses for a county to employ a full-time equivalent 911 coordinator position and a full-time equivalent mapping or geographical data position, and technical system maintenance, database, and administration personnel for the portion of their time spent administrating the emergency communications system; emergency medical, fire,

and law enforcement prearrival instruction software; charts and training costs; training costs for PSAP call takers, dispatchers, supervisors, and managers in the proper methods and techniques used in taking and transferring 911 calls; costs to train and educate PSAP employees and the public regarding 911 and radio service or Ng911 equipment, including fees collected by the Department of Health for the certification and recertification of 911 public safety telecommunicators as required under s. 401.465; and expenses required to develop and maintain all information, including ALI and ANI databases, call-takers access to smart city technology data, emergency communications broadband network information, and other information directly relevant to the processing of a request for emergency assistance. Changes, modifications, or upgrades to the emergency communications systems or services must be made in cooperation and coordination with the head of each public safety agency, or their designee, served by the primary PSAP in each county.

(c) The moneys may not be used to pay for any item not listed in this subsection, including, but not limited to, any capital or operational costs related to responders dispatched to the emergency, and costs for utilities, constructing, leasing, maintaining, or renovating buildings, except for those building modifications necessary to maintain the security and environmental integrity of the PSAP and emergency communications equipment rooms.

(11) Liability of counties. A county subscribing to 911 service remains liable to the local exchange carrier for any 911 service, equipment, operation, or maintenance charge owed by the county to the local exchange carrier. As used in this subsection, the term “local exchange carrier” means a local exchange telecommunications service provider of 911 service or equipment to any county within its certificated area.

(12) Indemnification and limitation of liability. A local government may indemnify local exchange carriers against liability in accordance with the published schedules of the company. Notwithstanding an indemnification agreement, a local exchange carrier, voice communications services provider, or other service provider that provides 911, e911, or NG911 service on a retail or wholesale basis is not liable for damages resulting from or in connection with 911, e911, or NG911 service, or for identification of the telephone number, or address, or name associated with any person accessing 911, e911, or NG911 service, unless the carrier or provider acted with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of a person when providing such services. A carrier or provider is not liable for damages to any person resulting from or in connection with the carrier’s or provider’s provision of any lawful assistance to any investigative or law enforcement officer of the United States, this state, or a political subdivision thereof, or of any other state or political subdivision thereof, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer. For purposes of this subsection, the term “911, e911, or NG911 service” means a telecommunications service, voice or nonvoice communications service, or other wireline or wireless service, including, but not limited to, a service using Internet protocol, which provides, in whole or in part, any of the following functions: providing members of the public with the ability to reach an answering point by using the digits 9-1-1; directing 911 calls to answering points by selective routing; providing for automatic number identification and automatic location-identification features; or providing wireless E911 services as defined in the order.

(13) Facilitating emergency communications service implementation. To balance the public need for reliable emergency communications services through reliable wireless systems and the

public interest served by governmental zoning and land development regulations and notwithstanding any other law or local ordinance to the contrary, the following standards shall apply to a local government's actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility. This subsection may not, however, be construed to waive or alter the provisions of s. 286.011 or s. 286.0115. For the purposes of this subsection only, "local government" shall mean any municipality or county and any agency of a municipality or county only. The term "local government" does not, however, include any airport, as defined by s. 330.27(2), even if it is owned or controlled by or through a municipality, county, or agency of a municipality or county. Further, notwithstanding anything in this section to the contrary, this subsection does not apply to or control a local government's actions as a property or structure owner in the use of any property or structure owned by such entity for the placement, construction, or modification of wireless communications facilities. In the use of property or structures owned by the local government, however, a local government may not use its regulatory authority so as to avoid compliance with, or in a manner that does not advance, the provisions of this subsection.

(a) Colocation among wireless providers is encouraged by the state.

1.

a. Colocations on towers, including nonconforming towers, that meet the requirements in sub-sub-paragraphs (I), (II), and (III), are subject to only building permit review, which may include a review for compliance with this subparagraph. Such colocations are not subject to any design or placement requirements of the local government's land development regulations in effect at the time of the colocation that are more restrictive than those in effect at the time of the initial antennae placement approval, to any other portion of the land development regulations, or to public hearing review. This sub-subparagraph may not preclude a public hearing for any appeal of the decision on the colocation application.

(I) The colocation does not increase the height of the tower to which the antennae are to be attached, measured to the highest point of any part of the tower or any existing antenna attached to the tower;

(II) The colocation does not increase the ground space area, commonly known as the compound, approved in the site plan for equipment enclosures and ancillary facilities; and

(III) The colocation consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable regulations, restrictions, or conditions, if any, applied to the initial antennae placed on the tower and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the tower supporting the antennae. Such regulations may include the design and aesthetic requirements, but not procedural requirements, other than those authorized by this section, of the local government's land development regulations in effect at the time the initial antennae placement was approved.

b. Except for a historic building, structure, site, object, or district, or a tower included in sub-subparagraph a., colocations on all other existing structures that meet the

requirements in sub-sub-subparagraphs (I)-(IV) shall be subject to no more than building permit review, and an administrative review for compliance with this subparagraph. Such colocations are not subject to any portion of the local government's land development regulations not addressed herein, or to public hearing review. This sub-subparagraph may not preclude a public hearing for any appeal of the decision on the colocation application.

(I) The colocation does not increase the height of the existing structure to which the antennae are to be attached, measured to the highest point of any part of the structure or any existing antenna attached to the structure;

(II) The colocation does not increase the ground space area, otherwise known as the compound, if any, approved in the site plan for equipment enclosures and ancillary facilities;

(III) The colocation consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with any applicable structural or aesthetic design requirements and any requirements for location on the structure, but not prohibitions or restrictions on the placement of additional colocations on the existing structure or procedural requirements, other than those authorized by this section, of the local government's land development regulations in effect at the time of the colocation application; and

(IV) The colocation consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable restrictions or conditions, if any, that do not conflict with sub-sub-subparagraph (III) and were applied to the initial antennae placed on the structure and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the structure supporting the antennae.

c. Regulations, restrictions, conditions, or permits of the local government, acting in its regulatory capacity, that limit the number of colocations or require review processes inconsistent with this subsection do not apply to colocations addressed in this subparagraph.

d. If only a portion of the colocation does not meet the requirements of this subparagraph, such as an increase in the height of the proposed antennae over the existing structure height or a proposal to expand the ground space approved in the site plan for the equipment enclosure, where all other portions of the colocation meet the requirements of this subparagraph, that portion of the colocation only may be reviewed under the local government's regulations applicable to an initial placement of that portion of the facility, including, but not limited to, its land development regulations, and within the review timeframes of subparagraph (d)2., and the rest of the colocation shall be reviewed in accordance with this subparagraph. A colocation proposal under this subparagraph that increases the ground space area, otherwise known as the compound, approved in the original site plan for equipment enclosures and ancillary facilities by no more than a cumulative amount of 400 square feet or 50 percent of the original compound size, whichever is greater, shall, however, require no more than administrative review for compliance with the local government's regulations,

including, but not limited to, land development regulations review, and building permit review, with no public hearing review. This sub-subparagraph does not preclude a public hearing for any appeal of the decision on the colocation application.

2. If a colocation does not meet the requirements of subparagraph 1., the local government may review the application under the local government's regulations, including, but not limited to, land development regulations, applicable to the placement of initial antennae and their accompanying equipment enclosure and ancillary facilities.
3. If a colocation meets the requirements of subparagraph 1., the colocation may not be considered a modification to an existing structure or an impermissible modification of a nonconforming structure.
4. The owner of the existing tower on which the proposed antennae are to be colocated shall remain responsible for compliance with any applicable condition or requirement of a permit or agreement, or any applicable condition or requirement of the land development regulations to which the existing tower had to comply at the time the tower was permitted, including any aesthetic requirements, provided the condition or requirement is not inconsistent with this paragraph.
5. An existing tower, including a nonconforming tower, may be structurally modified in order to permit colocation or may be replaced through no more than administrative review and building permit review, and is not subject to public hearing review, if the overall height of the tower is not increased and, if a replacement, the replacement tower is a monopole tower or, if the existing tower is a camouflaged tower, the replacement tower is a like-camouflaged tower. This subparagraph may not preclude a public hearing for any appeal of the decision on the application.

(b)

1. A local government's land development and construction regulations for wireless communications facilities and the local government's review of an application for the placement, construction, or modification of a wireless communications facility shall only address land development or zoning issues. In such local government regulations or review, the local government may not require information on or evaluate a wireless provider's business decisions about its service, customer demand for its service, or quality of its service to or from a particular area or site, unless the wireless provider voluntarily offers this information to the local government. In such local government regulations or review, a local government may not require information on or evaluate the wireless provider's designed service unless the information or materials are directly related to an identified land development or zoning issue or unless the wireless provider voluntarily offers the information. Information or materials directly related to an identified land development or zoning issue may include, but are not limited to, evidence that no existing structure can reasonably be used for the antennae placement instead of the construction of a new tower, that residential areas cannot be served from outside the residential area, as addressed in subparagraph 3., or that the proposed height of a new tower or initial antennae placement or a proposed height increase of a modified tower, replacement tower, or colocation is necessary to provide the provider's designed service. Nothing in this paragraph shall limit the local government from reviewing any applicable land

development or zoning issue addressed in its adopted regulations that does not conflict with this section, including, but not limited to, aesthetics, landscaping, land use-based location priorities, structural design, and setbacks.

2. Any setback or distance separation required of a tower may not exceed the minimum distance necessary, as determined by the local government, to satisfy the structural safety or aesthetic concerns that are to be protected by the setback or distance separation.

3. A local government may exclude the placement of wireless communications facilities in a residential area or residential zoning district but only in a manner that does not constitute an actual or effective prohibition of the provider's service in that residential area or zoning district. If a wireless provider demonstrates to the satisfaction of the local government that the provider cannot reasonably provide its service to the residential area or zone from outside the residential area or zone, the municipality or county and provider shall cooperate to determine an appropriate location for a wireless communications facility of an appropriate design within the residential area or zone. The local government may require that the wireless provider reimburse the reasonable costs incurred by the local government for this cooperative determination. An application for such cooperative determination may not be considered an application under paragraph (d).

4. A local government may impose a reasonable fee on applications to place, construct, or modify a wireless communications facility only if a similar fee is imposed on applicants seeking other similar types of zoning, land use, or building permit review. A local government may impose fees for the review of applications for wireless communications facilities by consultants or experts who conduct code compliance review for the local government but any fee is limited to specifically identified reasonable expenses incurred in the review. A local government may impose reasonable surety requirements to ensure the removal of wireless communications facilities that are no longer being used.

5. A local government may impose design requirements, such as requirements for designing towers to support colocation or aesthetic requirements, except as otherwise limited in this section, but may not impose or require information on compliance with building code type standards for the construction or modification of wireless communications facilities beyond those adopted by the local government under chapter 553 and that apply to all similar types of construction.

(c) Local governments may not require wireless providers to provide evidence of a wireless communications facility's compliance with federal regulations, except evidence of compliance with applicable Federal Aviation Administration requirements under 14 C.F.R. part 77, as amended, and evidence of proper Federal Communications Commission licensure, or other evidence of Federal Communications Commission authorized spectrum use, but may request the Federal Communications Commission to provide information as to a wireless provider's compliance with federal regulations, as authorized by federal law.

(d)

1. A local government shall grant or deny each properly completed application for a colocation under subparagraph (a)1. based on the application's compliance with the local government's applicable regulations, as provided for in subparagraph (a)1. and consistent with this subsection, and within the normal timeframe for a similar building permit review

but in no case later than 45 business days after the date the application is determined to be properly completed in accordance with this paragraph.

2. A local government shall grant or deny each properly completed application for any other wireless communications facility based on the application's compliance with the local government's applicable regulations, including but not limited to land development regulations, consistent with this subsection and within the normal timeframe for a similar type review but in no case later than 90 business days after the date the application is determined to be properly completed in accordance with this paragraph.

3.

a. An application is deemed submitted or resubmitted on the date the application is received by the local government. If the local government does not notify the applicant in writing that the application is not completed in compliance with the local government's regulations within 20 business days after the date the application is initially submitted or additional information resubmitted, the application is deemed, for administrative purposes only, to be properly completed and properly submitted. However, the determination may not be deemed as an approval of the application. If the application is not completed in compliance with the local government's regulations, the local government shall so notify the applicant in writing and the notification must indicate with specificity any deficiencies in the required documents or deficiencies in the content of the required documents which, if cured, make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the local government shall notify the applicant, in writing, within the normal timeframes of review, but in no case longer than 20 business days after the additional information is submitted, of any remaining deficiencies that must be cured. Deficiencies in document type or content not specified by the local government do not make the application incomplete. Notwithstanding this sub-subparagraph, if a specified deficiency is not properly cured when the applicant resubmits its application to comply with the notice of deficiencies, the local government may continue to request the information until such time as the specified deficiency is cured. The local government may establish reasonable timeframes within which the required information to cure the application deficiency is to be provided or the application will be considered withdrawn or closed.

b. If the local government fails to grant or deny a properly completed application for a wireless communications facility within the timeframes set forth in this paragraph, the application shall be deemed automatically approved and the applicant may proceed with placement of the facilities without interference or penalty. The timeframes specified in subparagraph 2. may be extended only to the extent that the application has not been granted or denied because the local government's procedures generally applicable to all other similar types of applications require action by the governing body and such action has not taken place within the timeframes specified in subparagraph 2. Under such circumstances, the local government must act to either grant or deny the application at its next regularly scheduled meeting or, otherwise, the application is deemed to be automatically approved.

c. To be effective, a waiver of the timeframes set forth in this paragraph must be voluntarily agreed to by the applicant and the local government. A local government

may request, but not require, a waiver of the timeframes by the applicant, except that, with respect to a specific application, a one-time waiver may be required in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the local government.

(e) The replacement of or modification to a wireless communications facility, except a tower, that results in a wireless communications facility not readily discernibly different in size, type, and appearance when viewed from ground level from surrounding properties, and the replacement or modification of equipment that is not visible from surrounding properties, all as reasonably determined by the local government, are subject to no more than applicable building permit review.

(f) Any other law to the contrary notwithstanding, the Department of Management Services shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to state government-owned property not acquired for transportation purposes, and the Department of Transportation shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to property acquired for state rights-of-way. On property acquired for transportation purposes, leases shall be granted in accordance with s. 337.251. On other state government-owned property, leases shall be granted on a space available, first-come, first-served basis. Payments required by state government under a lease must be reasonable and must reflect the market rate for the use of the state government-owned property. The Department of Management Services and the Department of Transportation are authorized to adopt rules for the terms and conditions and granting of any such leases.

(g) If any person adversely affected by any action, or failure to act, or regulation, or requirement of a local government in the review or regulation of the wireless communication facilities files an appeal or brings an appropriate action in a court or venue of competent jurisdiction, following the exhaustion of all administrative remedies, the matter shall be considered on an expedited basis.

(14) Misuse of 911, e911, or ng911 system; penalty. 911, e911, and NG911 service must be used solely for emergency communications by the public. Any person who accesses the number 911 for the purpose of making a false alarm or complaint or reporting false information that could result in the emergency response of any public safety agency; any person who knowingly uses or attempts to use such service for a purpose other than obtaining public safety assistance; or any person who knowingly uses or attempts to use such service in an effort to avoid any charge for service, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. After being convicted of unauthorized use of such service four times, a person who continues to engage in such unauthorized use commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, if the value of the service or the service charge obtained in a manner prohibited by this subsection exceeds \$100, the person committing the offense commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(15) Text-to-911 service. Each county shall develop a countywide implementation plan addressing text-to-911 services and, by January 1, 2022, enact a system to allow text-to-911 services.

(16) State law not preempted. This section and ss. 365.173 and 365.174 do not alter any state law that otherwise regulates voice communications services providers.

History

S. 1, ch. 99-367; s. 2, ch. 2001-133; s. 7, ch. 2002-48; s. 19, ch. 2003-32; s. 1, ch. 2003-182; s. 4, ch. 2005-171; s. 2, ch. 2007-78, eff. May 24, 2007; s. 68, ch. 2010-5, eff. June 29, 2010; s. 1, ch. 2010-50, eff. July 1, 2010; s. 1, ch. 2010-188, eff. July 1, 2010; s. 2, ch. 2012-177, eff. July 1, 2012; s. 1, ch. 2014-196, effective July 1, 2014; s. 30, ch. 2015-2, effective June 30, 2015; s. 23, ch. 2019-118, effective July 1, 2019; s. 1, ch. 2019-146, effective July 1, 2019; s. 73, ch. 2020-2, effective May 18, 2020; s. 9, ch. 2020-161, effective July 1, 2020; s. 1, ch. 2023-55, effective July 1, 2023.

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