

Energy, Communications & Cybersecurity Subcommittee

Tuesday, March 7, 2023
12:45 pm – 3:45 pm
Reed Hall (102 HOB)

Meeting Packet

Paul Renner
Speaker

Mike Giallombardo
Chair

The Florida House of Representatives

Commerce Committee

Energy, Communications & Cybersecurity Subcommittee

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Meeting Agenda

Tuesday, March 7, 2023
12:45 pm – 3:45 pm
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I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 529 Natural Gas Fuel Taxes by Mooney
- HB 669 Resiliency Energy Environment Florida Programs by Fine
- HB 745 Emergency Communications by McFarland
- HB 7001 OGSR/Nationwide Public Safety Broadband Network by Ethics, Elections & Open Government Subcommittee, Yarkosky

V. Closing Remarks

VI. Adjournment

HB 529

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 529 Natural Gas Fuel Taxes
SPONSOR(S): Mooney and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 322

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee		Walsh	Keating
2) Ways & Means Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

Prior to 2014, owners or operators of Florida-licensed motor vehicles powered by natural gas fuels were required to pay an annual decal fee for each such vehicle. In 2013, the Legislature passed a bill to "help reduce transportation costs in this state and encourage freight mobility investments that contribute to the economic growth of the state." To accomplish these goals, the bill created a 5-year rebate program for certain costs involved in the conversion, purchase, or lease of natural gas fuel fleet vehicles, eliminated the annual decal fees for natural gas vehicles, and created a new tax structure whereby natural gas fuels would be taxed on a per unit basis beginning January 1, 2019. In 2018, the legislature delayed the start date of this new tax structure by an additional 5 years to January 1, 2024. Accordingly, natural gas fuels have not been subject to state fuel taxes since January 1, 2014.

The bill provides for a 2-year delay of the imposition of natural gas fuel taxes that would otherwise go into effect January 1, 2024. The bill changes the effective date of the imposition of these taxes to January 1, 2026. To conform to the delayed imposition of these taxes, the bill:

- Extends by 2 years (from December 31, 2023, to December 31, 2025) the expiration of the current flat penalty scheme that applies to any person who acts as a natural gas retailer without a valid natural gas fuel retailer license, and delays by 2 years (from January 1, 2024, to January 1, 2026) the effective date of a new penalty scheme that is based on a percentage of the tax assessed during the period of unlicensed operations.
- Delays by 2 years (from February 2024 to February 2026) the date by which natural gas fuel retailers must file monthly reports with DOR for the purpose of determining the amount of natural gas fuel taxes imposed.

The bill delays by 2 years the imposition of natural gas fuel taxes until January 1, 2026, resulting in delayed collection of revenues from the taxes.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Taxation of Natural Gas Fuel

Pre-2014

Prior to 2014, natural gas fuels such as compressed natural gas (CNG) and liquid petroleum gas (LPG) were defined in Florida law as "alternative fuels" when used to fuel motor vehicles.[1] In lieu of the excise tax imposed on diesel fuel under the law, owners or operators of Florida-licensed motor vehicles powered by alternative fuels were required to pay an annual decal fee for each such vehicle.[2] These annual fees ranged from $199.10 to $380.10 per vehicle, depending on the vehicle's size and weight.[3] The sale of alternative fuels also was subject to sales tax imposed under ch. 212, F.S.[4]

With certain exceptions, Florida law prohibited a person from acting as a retailer of alternative fuel unless that person held a valid license as a retailer of alternative fuel issued by the Department of Revenue (DOR).[5] Any person acting as such without a license was subject to a penalty of 25 percent of the tax assessed on total purchases during the unlicensed period.[6] Every person who operated as a retailer of alternative fuel, with certain exceptions, was required to report monthly to DOR and pay tax on all fuel purchases.[7]

Revenues from the annual decal fees were deposited into the State Alternative Fuel User Fee Clearing Trust Fund.[8] After deducting a specified service charge, the proceeds in the trust fund were distributed as follows:

- One-half of the proceeds to the State Transportation Trust Fund (STTF).
- 50 percent of the remainder to the State Board of Administration for distribution in accordance with the Florida Constitution.
- 25 percent of the remainder to the Revenue Sharing Trust Fund for Municipalities.
- 25 percent of the remainder to the counties for specified public transportation purposes, distributed as provided by law.

Current Law

In 2013, the Legislature passed CS/CS/HB 579 to ""help reduce transportation costs in this state and encourage freight mobility investments that contribute to the economic growth of the state."[9] To accomplish these goals, the bill created a 5-year rebate program for natural gas fuel fleet vehicles and exempted natural gas fuels from state fuel taxes for 5 years. The Natural Gas Fuel Fleet Vehicle Rebate program provided $6 million per fiscal year, from FY 2013-14 through FY 2017-18, to fund rebates for the purchase, conversion, or lease of natural gas fuel fleet vehicles. Further, effective January 1, 2014, the bill eliminated the annual decal fee for natural gas vehicles. The 2013 bill replaced it with a new tax structure that creates a "per motor fuel equivalent gallon" tax rate to become

[1] S. 206.86(4), F.S. (2012).
[2] S. 206.877, F.S. (2012). The excise tax imposed on diesel fuel was applied to the purchase of alternative fuels by operators of vehicles licensed in other states.
[3] *See Use of Natural Gas Fuels to Operate Motor Vehicles is Increasing in Florida,* Office of Program Policy Analysis & Government Accountability, Report No. 17-10 (Oct. 2017), at p. 4.
[4] *Id.*
[5] S. 206.89, F.S. (2012).
[6] *Id.*
[7] *Id.*
[8] S. 206.879, F.S. (2012).
[9] Ch. 2013-198, Laws of Fla.

effective January 1, 2019. [10] In 2018, the legislature delayed the effective date of these taxes to January 1, 2024.

Pursuant to the current structure, the following taxes will be imposed on natural gas fuel[11] effective January 1, 2024:[12]

- An excise tax of 4 cents upon each motor fuel equivalent gallon[13] of natural gas fuel.
- An additional tax of 1 cent upon each motor fuel equivalent gallon of natural gas fuel, which is designated as the "ninth-cent fuel tax."
- An additional tax of 1 cent on each motor fuel equivalent gallon of natural gas fuel by each county, which is designated as the "local option fuel tax."
- An additional tax on each motor fuel equivalent gallon of natural gas fuel, designated as the "State Comprehensive Enhanced Transportation System (SCETS) Tax." The tax rate must be determined by DOR each calendar year, rounded to the nearest tenth of a cent, for the following 12-month period beginning January 1. The rate is calculated by adjusting the "initially established tax rate of 5.8 cents per gallon" by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30.
- An additional tax on each motor fuel equivalent gallon of natural gas fuel "for the privilege of selling natural gas fuel," designated as the "fuel sales tax." The tax rate must be determined by DOR each calendar year, rounded to the nearest tenth, for the following 12-month period beginning January 1. The rate is calculated by adjusting the "initially established tax rate of 9.2 cents per gallon" by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30.

In sum, prior to any of the required annual index-based adjustments by DOR, natural gas fuel will be taxed at a rate of at least $0.21 cents per motor fuel equivalent gallon beginning January 1, 2024.[14]

Revenues from the natural gas fuel tax will be deposited into the State Alternative Fuel User Fee Clearing Trust Fund to be distributed as follows:[15]

- The revenues from the SCETS tax and fuel sales tax will be transferred to the STTF.
- The revenues from the excise tax will be distributed as follows:
    - 50% will be transferred to the State Board of Administration for distribution in accordance with the Florida Constitution.
    - 25% will be transferred to the Revenue Sharing Trust Fund for Municipalities.
    - 25% will be distributed to the counties for specified public transportation purposes, distributed as provided by law.
- The revenues from the ninth-cent fuel tax and the local option sales tax will be deposited into the Local Alternative Fuel User Fee Clearing Trust Fund and returned monthly to the appropriate counties.

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[10] *Id.* The provisions of the bill related to taxation of natural gas fuel are codified as Part V of Ch. 206, F.S., consisting of Ss. 206.9951 – 206.998, entitled "NATURAL GAS FUEL."

[11] "Natural gas fuel" is defined as "any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in a motor vehicle as defined in s. 206.01(23). This term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas. This term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation." S. 206.9951(2), F.S.

[12] S. 206.9955, F.S.

[13] "Motor fuel equivalent gallon" is defined as "the volume of natural gas fuel it takes to equal the energy content of 1 gallon of motor fuel." s. 206.9951(1), F.S. The conversion rates for various types of natural gas fuels is provided in s. 206.9955, F.S.

[14] The law is unclear as to whether the index-based adjustments were to begin with the effective date of the law (January 1, 2014) or the effective date of the new tax rates (January 1, 2024).

[15] S. 206.997, F.S.

The law provides that until December 31, 2023, any person acting as a natural gas retailer without a valid license to do so must pay a penalty of $200 for each month of operation without a license. Effective January 1, 2024, the penalty becomes 25 percent of the tax assessed on total purchases made during the unlicensed period.[16] In addition, the law requires natural gas fuel retailers to submit an electronic, monthly report to DOR, beginning February 2024 and monthly thereafter, showing information on inventory, purchases, nontaxable disposals, table uses, and taxable sales in gallons of natural gas fuel for the preceding month, with certain exceptions and a specified deduction for services rendered and expenses incurred in complying with the reporting requirements.[17]

State Gasoline and Diesel Taxes

Motor Fuel[18]

Florida law provides for the following taxes on motor fuel:[19]

- An excise or license tax of 2 cents per net gallon of motor fuel, designated as the "constitutional fuel tax."
- An additional 1 cent per net gallon, designated as the "county fuel tax."
- An additional 1 cent per net gallon, designated as the "municipal fuel tax."
- An additional tax of 1 cent per net gallon may be imposed by each county, designated as the "ninth-cent fuel tax."
- An additional tax of between 1 and 11 cents per net gallon may be imposed by each county, designated as the "local option fuel tax."
- An additional tax per net gallon of motor fuel is imposed by each county, designated as the SCETS Tax, at a rate calculated by applying specified index-based adjustments to a rate specified in the law.
- An additional tax per net gallon is imposed "on the privilege of selling motor fuel", designated as the "fuel sales tax," at a rate calculated by applying specified index-based adjustments to an initial rate established in the law.
- An additional 0.125 cents per net gallon for defraying expenses incident to inspecting, testing, and analyzing motor fuel in this state.

Beginning January 1, 2023, the state tax rate on motor fuel is 20.2 cents per gallon, the SCETS tax rate on motor fuel is 8.6 cents, and the fuel sales tax rate on motor fuel is 15.1 cents. The local option rate varies by county, and the total state and county rates on motor fuel varies from 35.2 cents to 41.3 cents per gallon.[20]

Diesel Fuel[21]

Florida law provides for the following taxes on diesel fuel:[22]

- An excise tax of 4 cents per net gallon of diesel fuel.
- An additional 1 cent per net gallon is imposed by each county, designated as the "ninth-cent fuel tax."

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[16] S. 206.9952(3), F.S.
[17] S. 206.996, F.S.
[18] "Motor fuel" is defined as "all gasoline products or any product blended with gasoline or any fuel placed in the storage supply tank of a gasoline-powered motor vehicle." S. 206.01(9), F.S.
[19] S. 206.41(1), F.S,
[20] Florida Department of Revenue, Tax Information Publication No. 22B05-06, *Fuel Tax Rates Adjusted Beginning January 1, 2023*, (Nov. 17, 2022), available at: https://floridarevenue.com/taxes/tips/Pages/default.aspx.
[21] "Diesel fuel" is defined as "all petroleum distillates commonly known as diesel #2, biodiesel, or any other product blended with diesel or any product placed into the storage supply tank of a diesel-powered motor vehicle." s. 206.86(1), F.S.
[22] S. 206.87(1), F.S.

- An additional 6 cents per net gallon is imposed by each county, designated as the "local option fuel tax."
- An additional tax per net gallon is imposed in each county, designated as the SCETS Tax, at a rate equal to the maximum SCETS Tax rate for motor fuel.
- An additional tax per net gallon "on the privilege of selling diesel fuel," designated as the "fuel sales tax," at a rate calculated by applying specified index-based adjustments to an initial rate established in the law.

Beginning January 1, 2023, the state tax rate on diesel fuel is 20.2 cents per gallon and the county tax rate (ninth cent, SCETS, and local option rates) is 15.9 cents statewide. The total state and county rates on diesel fuel is 36.1 cents per gallon.[23]

Effect of Proposed Changes

The bill provides for a 2-year delay of the imposition of natural gas fuel taxes that would otherwise go into effect January 1, 2024. The bill changes the effective date of the imposition of these taxes to January 1, 2026. Thus, state fuel taxes will not apply to natural gas fuels for an additional 2 years.

To conform to the delayed imposition of these taxes, the bill:

- Extends by 2 years (from December 31, 2023, to December 31, 2025) the expiration of the current flat penalty scheme that applies to any person who acts as a natural gas retailer without a valid natural gas fuel retailer license, and delays by 2 years (from January 1, 2024, to January 1, 2026) the effective date of a new penalty scheme that is based on a percentage of the tax assessed during the period of unlicensed operations.
- Delays by 2 years (from February 2024 to February 2026) the date by which natural gas fuel retailers must file monthly reports with DOR for the purpose of determining the amount of natural gas fuel taxes imposed.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1. Amends s. 206.9952, F.S., relating to licensing of natural gas fuel retailers.

Section 2. Amends s. 206.9955, F.S., relating to the levy of natural gas fuel tax.

Section 3. Amends s. 206.996, F.S., relating to monthly reports by natural gas fuel retailers.

Section 4. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   On February 3, 2023, the Revenue Estimating Conference adopted a negative fiscal impact of $200,000 to state revenues for fiscal year (FY) 2023-2024, $700,000 for FY 2024-2025, and $500,000 for FY 2025-2026. [24]

2. Expenditures:

[23] *Supra* note 20.

[24] Office of Economic and Demographic Research, Revenue Estimating Conference, *02/03/2023 Revenue Impact Results*, p. 39, available at http://edr.state.fl.us/content/conferences/revenueimpact/index.cfm.

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On February 3, 2023, the Revenue Estimating Conference adopted a negative fiscal impact of $100,000 to local revenues for FY 2023-2024, $200,000 for FY 2024-2025, and $100,000 for FY 2025-2026.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners or operators of natural gas vehicles will achieve cost savings, because the bill delays by 2 years the imposition of natural gas fuel taxes until January 1, 2026.[25]

D. FISCAL COMMENTS:

Current law provides that the SCETS tax rate and the fuel sales tax rate for natural gas fuels must be calculated annually by DOR through index-based adjustments to an initial rate established in the law. The law is not clear as to when those index-based adjustments must begin and could be interpreted to require such adjustments either from the time the law became effective or from the time the taxes become effective. An estimate of the bill's fiscal impact will depend upon the interpretation of these provisions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Current law provides that the SCETS tax rate and the fuel sales tax rate for natural gas fuels must be calculated annually by DOR through index-based adjustments to an initial rate established in the law. The law is not clear as to when these index-based adjustments must begin and could be interpreted to require such adjustments either from the time the law became effective or from the time the taxes become effective. The bill does not amend these provisions of the law. To ensure that the intended tax rate becomes effective at the intended time, this ambiguity could be clarified.

[25] *Id.*

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to natural gas fuel taxes; amending s. 206.9952, F.S.; extending the expiration date for levying penalties on natural gas retailers that do not have licenses; conforming provisions to changes made by the act; amending s. 206.9955, F.S.; delaying the effective date of certain taxes on natural gas fuel; amending s. 206.996, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Subsections (3) and (8) of section 206.9952, Florida Statutes, are amended to read:

206.9952 Application for license as a natural gas fuel retailer.—

(3)(a) Any person who acts as a natural gas retailer and does not hold a valid natural gas fuel retailer license shall pay a penalty of $200 for each month of operation without a license. This paragraph expires December 31, 2025 ~~2023~~.

(b) Effective January 1, 2026 ~~2024~~, any person who acts as a natural gas fuel retailer and does not hold a valid natural gas fuel retailer license shall pay a penalty of 25 percent of the tax assessed on the total purchases made during the unlicensed period.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(8) With the exception of a state or federal agency or a political subdivision licensed under this chapter, each person, as defined in this part, who operates as a natural gas fuel retailer shall report monthly to the department and pay a tax on all natural gas fuel purchases beginning January 1, 2026 ~~2024~~.

Section 2. Section 206.9955, Florida Statutes, is amended to read:

206.9955 Levy of natural gas fuel tax.—

(1) The motor fuel equivalent gallon means the following for:

(a) Compressed natural gas gallon: 5.66 pounds, or per each 126.67 cubic feet.

(b) Liquefied natural gas gallon: 6.06 pounds.

(c) Liquefied petroleum gas gallon: 1.35 gallons.

(2) Effective January 1, 2026 ~~2024~~, the following taxes shall be imposed:

(a) An excise tax of 4 cents upon each motor fuel equivalent gallon of natural gas fuel.

(b) An additional tax of 1 cent upon each motor fuel equivalent gallon of natural gas fuel, which is designated as the "ninth-cent fuel tax."

(c) An additional tax of 1 cent on each motor fuel equivalent gallon of natural gas fuel by each county, which is designated as the "local option fuel tax."

(d) An additional tax on each motor fuel equivalent gallon

of natural gas fuel, which is designated as the "State Comprehensive Enhanced Transportation System Tax," at a rate determined pursuant to this paragraph. Before January 1, 2026 ~~2024~~, and each year thereafter, the department shall determine the tax rate applicable to the sale of natural gas fuel for the following 12-month period beginning January 1, rounded to the nearest tenth of a cent, by adjusting the tax rate of 5.8 cents per gallon by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 2013.

(e)1. An additional tax is imposed on each motor fuel equivalent gallon of natural gas fuel for the privilege of selling natural gas fuel. Before January 1, 2026 ~~2024~~, and each year thereafter, the department shall determine the tax rate applicable to the sale of natural gas fuel, rounded to the nearest tenth of a cent, for the following 12-month period beginning January 1, by adjusting the tax rate of 9.2 cents per gallon by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 2013.

2. The department is authorized to adopt rules and publish

forms to administer this paragraph.

(3) Unless otherwise provided by this chapter, the taxes specified in subsection (2) are imposed on natural gas fuel when it is placed into the fuel supply tank of a motor vehicle as defined in s. 206.01(23). The person liable for payment of the taxes imposed by this section is the person selling or supplying the natural gas fuel to the end user, for use in the fuel supply tank of a motor vehicle as defined in s. 206.01(23).

Section 3. Subsection (1) of section 206.996, Florida Statutes, is amended to read:

206.996 Monthly reports by natural gas fuel retailers; deductions.—

(1) For the purpose of determining the amount of taxes imposed by s. 206.9955, each natural gas fuel retailer shall file beginning with February 2026 ~~2024~~, and each month thereafter, no later than the 20th day of each month, monthly reports electronically with the department showing information on inventory, purchases, nontaxable disposals, taxable uses, and taxable sales in gallons of natural gas fuel for the preceding month. However, if the 20th day of the month falls on a Saturday, Sunday, or federal or state legal holiday, a return must be accepted if it is electronically filed on the next succeeding business day. The reports must include, or be verified by, a written declaration stating that such report is made under the penalties of perjury. The natural gas fuel

retailer shall deduct from the amount of taxes shown by the report to be payable an amount equivalent to 0.67 percent of the taxes on natural gas fuel imposed by s. 206.9955(2)(a) and (e), which deduction is allowed to the natural gas fuel retailer to compensate it for services rendered and expenses incurred in complying with the requirements of this part. This allowance is not deductible unless payment of applicable taxes is made on or before the 20th day of the month. This subsection may not be construed as authorizing a deduction from the constitutional fuel tax or the fuel sales tax.

Section 4. This act shall take effect July 1, 2023.

HB 669

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 669 Resiliency Energy Environment Florida Programs
SPONSOR(S): Fine
TIED BILLS: **IDEN./SIM. BILLS:** SB 950

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee		Keating	Keating
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Ways & Means Committee			
4) Commerce Committee			

SUMMARY ANALYSIS

In 2010, the Legislature provided specific authority for local governments to create Property Assessed Clean Energy (PACE) programs to provide up-front financing for certain qualifying improvements. Under these programs, property owners may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government. "Qualifying improvements" include energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements to existing facilities. Property owners finance qualifying improvements through a non-ad valorem assessment on their property. Local governments determine whether to offer a residential or commercial PACE program, whether to administer the program directly or through a for-profit or not-for-profit administrator, or any combination thereof.

The bill makes several changes to Florida's PACE law, including:

- Using the term "Resiliency Energy Environmental Florida (REEF) program" to refer to the programs used in Florida to provide PACE financing for qualifying improvements;
- Authorizing the use of PACE financing for refinancing and for improvements on new construction;
- Modifying eligibility requirements;
- Allowing the total of the mortgage-related debt and the amount of any PACE assessments on a property to reach 100 percent of the property's fair market value;
- Requiring certain disclosures to be made to residential property owners prior to or at the time of signing a PACE financing agreement;
- Requiring certain disclosures to be made verbally, by telephone, prior to issuance of a notice to proceed;
- Establishing a maximum term for PACE assessments;
- Prohibiting the use of certain financing tools through PACE;
- Establishing provisions governing PACE program administrators' enrollment and oversight of contractors that install qualifying improvements on residential real property;
- Prohibiting the use of certain terms in PACE marketing; and
- Requiring an annual report from PACE program administrators.

The bill does not have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Property Assessed Clean Energy (PACE) Programs

Generally, Property Assessed Clean Energy (PACE) laws enable local governments to establish programs to provide financing for certain qualifying improvements on real property which reduce energy consumption and increase energy efficiency. PACE allows individual property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects. The local government issues revenue bonds and uses the proceeds to provide initial project funding, which bonds are repaid by non-ad valorem assessments on participating property owners' tax bills.[1] PACE programs are active in 30 states plus Washington D.C., but only California, Florida, and Missouri offer residential PACE programs.[2]

PACE in Florida

In 2010, the Legislature provided specific authority for local governments to create PACE programs.[3] The law[4] provides supplemental authority to local governments[5] concerning qualified improvements to residential and non-residential real property. The law provides that if a local government authorizes a PACE program, property owners may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government.[6] "Qualifying improvements" include energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements to existing facilities.[7]

At least 30 days before entering into the financing agreement, the property owner must provide notice to any mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment required to repay the amount.[8] The law provides that an acceleration clause for "payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement … is not enforceable."[9] However, the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to pay annually the qualifying improvement assessment.

The law authorizes a local government to provide and finance qualifying improvements, levy a non-ad valorem assessment to fund a qualifying improvement, incur debt to provide financing for qualifying improvements, and collect costs incurred from financing qualifying improvements through a non-ad valorem assessment. These non-ad valorem assessments are senior to existing mortgage debt,[10] so if the homeowner defaults on their mortgage or goes into foreclosure, the delinquent PACE assessment payments may be recovered before the mortgage. Current law also specifies that a PACE program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.

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[1] For more information, *see* http://www.pacenation.org and http://floridapace.gov/ (last visited Mar. 5, 2023).
[2] California offers residential PACE financing for improvements related to electric vehicle charging, infrastructure, energy efficiency, renewable energy, seismic strengthening and water efficiency. Missouri offers PACE financing for improvements related to energy efficiency and renewable energy. Additionally, Maine offers residential programs without holding a lien against properties. *See* PACE Nation, *PACE Programs* https://www.pacenation.org/pace-programs/ (last visited Mar. 5, 2023).
[3] Ch. 2010-139, Laws of Fla.
[4] S. 163.08, F.S.
[5] Section 163.08(2)(a), F.S., defines the term "local government" to mean a county, a municipality, a dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7) (the Florida Interlocal Cooperation Act)."
[6] S. 163.08(4), F.S.
[7] S. 163.08(2)(b), F.S.
[8] S. 163.08(13), F.S.
[9] S. 163.08(15), F.S.
[10] *See* ss. 125.01(1)(r), 170.01 and 170.09, F.S.

In 2012, the Legislature expanded the definition of "local government" to allow a partnership of local governments formed pursuant to the Florida Interlocal Cooperation Act[11] to enter into a financing agreement wherein the partnership, as a separate legal entity, imposes the PACE assessment.[12]

Before entering into a financing agreement, the local government must reasonably determine that:

- All property taxes and other assessments on the property are paid and have not been delinquent for the preceding 3 years (or the property owner's period of ownership, if less than 3 years);
- There are no involuntary liens on the property, including, but not limited to, construction liens;
- No notices of default or other evidence of property-based debt delinquency have been recorded during the preceding 3 years (or the property owner's period of ownership, if less than 3 years); and
- The property owner is current on all mortgage debt on the property.[13]

The total assessment cannot be for an amount greater than 20 percent of the just value of the property as determined by the county property appraiser, unless consent is obtained from the mortgage holders.[14] Consideration of the property owner's ability to repay the assessment is not required.

In Florida, local governments typically have multiple non-exclusive agreements with a number of PACE providers. Generally, PACE providers are private companies that administer the local government's PACE program on behalf of the local government and provide funding from private sources. PACE providers generally act as the program administrator for special districts created pursuant to an interlocal agreement between two or more Florida local governments. Once the PACE district is created, additional counties or municipalities may join the special district as members, authorizing the PACE provider for the special district to administer PACE programs on behalf of the newly joined members.[15] PACE providers generally maintain a list of approved contractors authorized to provide qualifying improvements.[16]

For example, Broward County authorizes the following PACE providers:[17]

- Counterpointe Energy Solutions administers a commercial PACE program for the Florida PACE Funding District.
- Berkadia administers a commercial PACE program the Florida Renewable Energy District.
- CleanFund administers a commercial PACE program for the Florida Renewable Energy District.
- Dividend Finance administers the "Dividend" Program for the Florida Renewable Energy District.
- FortiFi Financial administers a residential PACE program for the Florida PACE Funding Agency District.
- Greenworks Lending administers a commercial PACE program for the Florida Resiliency and Energy District.
- Lever Energy Capital administers a commercial PACE program for the Florida Resiliency and Energy District.
- Home Run Financing administers a residential PACE Program for the Florida PACE Funding Agency District.

[11] S. 163.01(7), F.S.
[12] Ch. 2012-117, Laws of Fla.
[13] S. 163.08(9), F.S.
[14] S. 163.08(12)(a), F.S.
[15] *See, e.g.,* Green Corridor Property Assessed Clean Energy (PACE) District Town of Cutler Bay, Florida Financial Report for the Fiscal Year Ended Sept. 30, 2020, at 13, https://flauditor.gov/pages/specialdistricts_efile%20rpts/2020%20green%20corridor%20property%20assessment%20clean%20energy%20(pace)%20district.pdf (last visited Mar. 5, 2023).
[16] *See, e.g.,* Sarasota County, *PACE*, https://www.scgov.net/government/uf-ifas-extension-and-sustainability/pace (last visited Mar.5, 2023).
[17] Broward County, *Property Assessed Clean Energy (PACE)* https://www.broward.org/Sustainability/Documents/PACEProviderList_2022.pdf (last visited Mar. 5, 2023).

- Rahill administers a commercial PACE program for the Florida Resiliency and Energy District.
- Renew Financial administers PACE programs under the "RenewPACE" Program (residential and commercial) for the Florida Green Finance Authority.
- Structured Finance Associates administers a commercial PACE program for the Florida Resiliency and Energy District.
- Twain Financial Partners administers a commercial PACE program for the Florida Renewable Energy District.

Local governments may choose whether to offer a residential or commercial PACE program, whether to administer the program directly or through a third-party PACE provider, or any combination thereof.

PACE financing interest rates vary but are typically higher than traditional financing.[18] Interest rates and fees for a project are set by the PACE provider when the agreement is finalized with the property owner.[19]

Federal Housing Finance Agency and Super-Priority Liens

In 2010, and again in 2014,[20] the Federal Housing Finance Agency (FHFA) directed mortgage underwriters Fannie Mae and Freddie Mac not to purchase mortgages of homes encumbered by a first-lien PACE loan due to its senior status above a mortgage. Under normal circumstances, real estate lien priority is established by the order in which the liens are filed.[21]

According to the FHFA, such super-priority liens increase the risk of losses to taxpayers. Fannie Mae and Freddie Mac support the housing finance market by purchasing, guaranteeing, and securitizing single-family mortgages. Therefore, mortgages supported by Fannie Mae and Freddie Mac must remain in first-lien position, meaning they have first priority in receiving the proceeds from the sale of a property in foreclosure. Although FHFA generally supports energy retrofit financing programs, FHFA acknowledges that such programs should be structured to ensure protection of the core financing for the home.[22]

This restriction has two potential implications for borrowers. First, a homeowner with a first-lien PACE loan may not refinance their existing mortgage with a Fannie Mae or Freddie Mac mortgage. Second, anyone wanting to buy a home that already has a first-lien PACE loan cannot use a Fannie Mae or Freddie Mac loan for the purchase. These restrictions may reduce the marketability of the house or require the homeowner to pay off the PACE loan before selling the house.[23]

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[18] The Balance, *How PACE Loans Work, https://www.thebalancemoney.com/pace-loans-financing-for-upgrades-4124071* (last visited Mar. 5, 2023).
[19] *See* PACE Broward, *Frequently Asked Questions*, https://www.broward.org/Climate/Documents/PACE%20Broward%20FAQ%20Sheet_Update6_09272021.pdf (last visited Mar. 5, 2023).
[20] Federal Housing Finance Agency, *FHFA Statement on Certain Energy Retrofit Loan Programs* (July, 6, 2010), http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx (last visited Mar. 5, 2023). *See also* Federal Housing Financial Agency, *Statement of the Federal Housing Finance Agency on Certain Super Priority Liens* (December 22, 2014)("FHFA wants to make clear to homeowners, lenders, other financial institutions, state officials, and the public that Fannie Mae and Freddie Mac's policies prohibit the purchase of a mortgage where the property has a first-lien PACE loan attached to it") http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-the-Federal-Housing-Finance-Agency-on-Certain-Super-Priority-Liens.aspx (last visited Mar. 5, 2023).
[21] "Real estate liens generally are ordered so that prior liens are paid in foreclosure before liens filed later in time. For example, a mortgage loan used to buy the property takes priority over a later mortgage loan used to remodel the home. The earliest and thus highest priority mortgage loan is known as a first lien, while the subsequent mortgage loan is deemed a second lien. If the homeowner defaults on the second lien loan, the first lien mortgage holder retains the lien even if the second lien mortgage holder forecloses; however, the converse is not true. Tax assessments are an exception to this lien priority rule. Generally, unpaid property tax assessments have priority over other liens, regardless of the date the prior liens were recorded or when the tax assessments became delinquent. This makes the lien priority for PACE financing senior to liens for mortgage loans closed prior to the homeowner's acceptance of the PACE financing. In the case of default by the homeowner on the PACE assessment, local governments and investors in PACE bonds can expect to collect the balance owed on a PACE assessment before any recovery by a mortgage lender." Prentiss Cox, *Keeping PACE? The Case Against Property Assessed Clean Energy Financing Programs*, 83 U. Colo. L. Rev. 83, 94 (2011), https://scholarship.law.umn.edu/faculty_articles/549 (last visited Mar. 5, 2023).
[22] *FHFA Statement on Certain Energy Retrofit Loan Programs, supra*, note 20.
[23] *FHFA Statement on Certain Energy Retrofit Loan Programs*, *supra*, note 20.

Additionally, in December 2017, the United States Department of Housing and Urban Development announced that the Federal Housing Administration will no longer insure new mortgages on properties that include PACE assessments, citing concerns about the potential for increased losses to the Mutual Mortgage Insurance Fund resulting from the priority lien status given to such assessments.[24]

Some residential PACE programs are now operating with loan loss reserve funds, appropriate disclosures, or other protections meant to address FHFA's concerns.[25] For example, in 2013, California created a reserve fund to compensate first mortgage lenders in case of a foreclosure or a forced sale attributable to a PACE loan. Additionally, Oklahoma and Vermont have passed legislation to downgrade PACE from senior lien to junior lien, and there have been attempts by Congress to revise residential PACE programs at the federal level, including the 2014 PACE Assessment Protection Act.[26]

Consumer Protection

Consumer issues have surrounded the PACE programs from their inception.[27] These include the cost of funding, contractor sales techniques (notably, responding to a limited homeowner problem and marketing a full house retrofit), rolling the administrative fees for the local government into the PACE loan amount, product sales at above market interest rates, workmanship issues, inadequate disclosures, and indiscriminate lending regardless of ability to repay.[28] An administrator of residential PACE programs in California and Florida recently settled with the Federal Trade Commission and California to address complaints that the administrator recruited and authorized contractors, without adequate training or oversight, to sell its financing, leading to many consumers being deceived during the sales process and being unfairly subjected to liens on their homes without their express, informed consent.[29]

In response to these consumer issues, Congress amended the Truth in Lending Act in 2018 to direct the Consumer Financial Protection Bureau to implement federal regulations which provide more effective consumer protections relating to PACE loans, especially those related to the ability of a homeowner to repay the loan.[30]

The United States Department of Energy maintains "best practice guidelines" for residential PACE financing programs, which includes measures relating to:

- Establishing financial eligibility and verifying property ownership;
- Confirming property-based debt, tax assessments, and property valuation;
- Reviewing property owner income and debt obligations;
- Establishing consumer and lender protections;
- Establishing property owner education and disclosures;
- Providing a right to cancel the purchase;

[24] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020).
[25] Commercial PACE programs were not directly affected by FHFA's actions because Fannie Mae and Freddie Mac do not underwrite commercial mortgages.
[26] NCSL, *PACE Financing* https://www.ncsl.org/research/energy/pace-financing.aspx (last visited Mar. 7, 2021).
[27] "PACE loans, offered through home improvement contractors, often in door-to-door sales, and secured by a property tax lien, are collected through a property tax assessment that takes priority over any existing mortgage. PACE programs must be authorized by state and local governments, but are privately run with little or no government oversight. Over the last two years, there has been a sharp increase in homeowners seeking assistance from legal services and other organizations in relation to PACE loans. The goal of improving home energy efficiency is being overshadowed by the lack of adequate consumer protection for these loans. Weak PACE loan regulation enables contractors to saddle homeowners with debt they cannot afford and puts their homes at risk for foreclosure." National Consumer Law Center, *Advocates Applaud CFPB's Intention* to *Deal with PACE Loan Program Abuses* (Mar. 4, 2019), https://www.nclc.org/media-center/advocates-applaud-cfpbs-intention-to-deal-with-pace-loan-program-abuses.html (last visited Mar. 5, 2023).
[28] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020).
[29] Federal Trade Commission, *FTC, California Act to Stop Ygrene Energy Fund from Deceiving Consumers About PACE Financing, Placing Liens on Homes Without Consumers' Consent,* https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-california-act-stop-ygrene-energy-fund-deceiving-consumers-about-pace-financing-placing-liens (last visited Mar. 5, 2023).
[30] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020). *See also* Public Law 115–174 (2018), section 307; codified at 15 U.S.C. 1639c(b)(3)(C). and Bureau of Consumer Financial Protection, Advance Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy Financing, 84 FR 8479 (Mar. 8, 2019).

- Determining appropriate minimum equity requirements and appropriate maximum assessments;
- Providing equipment specifications and energy assessments;
- Defining the relationship between PACE assessments and mortgage financing;
- Providing for non-acceleration upon property owner default;
- Notifying mortgage holders of record; and
- Addressing the needs and potential vulnerabilities of low-income and elderly households.[31]

Some local governments in Florida have implemented more stringent consumer protections than those required by Florida law.[32]

Effect of the Bill

The bill makes several changes to Florida's PACE law.

Definitions

The bill creates and uses the term "Resiliency Energy Environmental Florida (REEF) program" to refer to the programs used in Florida to provide PACE financing for qualifying improvements and creates definitions for additional terms related to PACE financing, as follows:

- *Resiliency Energy Environment Florida (REEF) program* means a program established by a local government, alone or in partnership with other local governments or a program administrator, to finance qualifying improvements on nonresidential real property or residential real property.
- *Assessment financing agreement* means the financing agreement, under a REEF program, between a local government and a property owner for the acquisition or installation of qualifying improvements.
- *Non-ad valorem assessment* or *assessment* has the same meaning as the term "non-ad valorem assessment" as defined in s. 197.3632(1), F.S.
- *Residential real property* means a residential real property composed of four or fewer dwelling units which has been or will be improved by a qualifying improvement.
- *Nonresidential real property* means any property not defined as residential real property and which will be or has been improved by a qualifying improvement. The term includes multifamily residential property composed of five or more dwelling units.
- *Program administrator* means an entity, including, but not limited to, a for-profit or not-for-profit entity, with which a local government may contract to administer a REEF program.

[31] Department of Energy, *Best Practice Guidelines for Residential PACE Financing Programs* (Nov. 18, 2016), https://www.energy.gov/sites/prod/files/2016/11/f34/best-practice-guidelines-RPACE.pdf (last visited Mar. 5, 2023).
[32] *See, e.g.,* Palm Beach County, Ord. No. 2017-012, Section 6. Disclosure Requirements https://discover.pbcgov.org/resilience/PDF/PACE_ORDINANCE_2017-012%20-%20ADA%20Compliant.pdf (last visited Mar. 5, 2023).

Uses for PACE Financing

The bill expands the authorized uses of PACE financing. First, the bill specifies that PACE financing may be used as *refinance* tool. Second, the bill authorizes PACE financing to be used for all types of qualifying improvements on residential and nonresidential real property *under new construction*.

Eligibility Requirements for PACE Financing

The bill softens existing eligibility requirements as follows:

- Delinquency in payment of property taxes or other assessments on a property during the preceding 3 years do not preclude the use of PACE financing if the delinquency was not longer than 30 days.
- Involuntary liens on a property do not preclude the use of PACE financing if not greater than $1,000.
- Recorded notices of default or other evidence of property-based debt delinquency during the preceding 3 years do not preclude use of PACE financing if released during that time.

The bill requires that the local government or program administrator, before entering into a PACE financing agreement, must:

- Ask the property owner whether any other PACE assessments have already been recorded, or funded but not yet recorded, on the property.[33]
- For a residential property, reasonably determine that the property is not subject to an existing home equity conversion mortgage or reverse mortgage product.
- For a residential property, reasonably determine that the property was not gifted to the homeowner for free by a nonprofit entity "as may be disclosed by the property owner."

Ability to Repay

The bill requires that, prior to final approval of a PACE assessment on residential property, the program administrator must reasonably determine that the property owner has the ability to pay the estimated annual assessment. To make this determination, the program administrator must determine that the total estimated annual payment amount for all PACE assessments on the property does not exceed 10 percent of the property owner's annual household income. The bill provides that income may be confirmed using information from reputable third parties that provide reasonably reliable evidence of the property owner's household income and may not be confirmed solely by a property owner's statement.

Debt-to-Value Limitations on PACE Assessments

Under current law, the total amount of any PACE assessment may not exceed 20 percent of a property's just value, without consent of the holder or servicer of a mortgage secured by a property. The bill replaces the "just value" standard in current law[34] with a "fair market value" standard.

The bill provides that, for residential property, the combined mortgage-related debt and the total amount of any PACE assessments on the property may not exceed 100 percent of the property's fair market value, as determined by reputable third parties. However, this limit can be exceeded if a property owner fails to disclose whether other PACE assessments have already been recorded, or funded but no yet recorded, on the property.

Disclosures

[33] The bill provides that failure of a property owner to disclose this information does not invalidate a PACE financing agreement or any obligation thereunder, even if the total financed amount of the qualifying improvements causes the property's debt-to-value ratio to exceed the limit of 100 percent specified in the bill.
[34] Under current law, "just value" is the value of the property as determined by the county property appraiser.

The bill requires that the program administrator, before or at the same time that a residential property owner signs a PACE financing agreement, must provide a financing estimate and disclosure that includes the following:

- The total amount estimated to be funded, including the cost of the qualifying improvements, program fees, and capitalized interest, if any.
- The estimated annual assessment.
- The term of the assessment.
- The interest charged and estimated annual percentage rate.
- A description of the qualifying improvement.
- A disclosure that if the property owner sells or refinances the property, the property owner, as a condition of the sale or the refinance, may be required by a mortgage lender to pay off the full amount owed under each assessment financing agreement.
- A disclosure that the assessment will be collected along with the property owner's property taxes and will result in a lien on the property from the date the financing agreement is recorded.
- A disclosure that failure to pay the assessment may result in penalties and fees, along with the issuance of a tax certificate that could result in the property owner losing the property.

The bill provides that the program administrator, before a notice to proceed is issued on residential real property, must conduct an oral, recorded telephone call with the property owner or an authorized representative. The program administrator must ask the property owner if he or she would like to communicate primarily in a language other than English. On the telephone call, the program administrator must confirm all of the following with the property owner:

- That at least one property owner has access to a copy of the PACE financing agreement and financing estimates and disclosures.
- The qualifying improvements being financed.
- The total estimated annual costs that the property owner will have to pay under the financing agreement, including applicable fees.
- The total estimated average monthly equivalent amount of funds the residential real property owner would have to save in order to pay the annual costs of the assessment, including applicable fees.
- The estimated due date for the property owner's first property tax payment that includes the assessment.
- The term of the financing agreement.
- That payments for the financing agreement will cause the property owner's annual property tax bill to increase, and that payments will be made through an additional annual assessment on the property and either will be paid directly to the county tax collector's office as part of the total annual secured property tax bill or may be paid through the property owner's mortgage escrow account.
- That the property owner has disclosed whether the property has received, or the owner is seeking, additional assessments funded under this section and that the owner has disclosed all other PACE assessments which are or are about to be placed on the property.
- That the property will be subject to a lien during the term of the financing agreement and that the obligations under the agreement may be required to be paid in full before the residential real property owner sells or refinances the property.
- That any potential utility or insurance savings are not guaranteed and will not reduce the assessment or total assessment amount.
- That the program administrator does not provide tax advice, and the property owner should seek professional tax advice if he or she has questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the financing agreement.

A program administrator may not leave a voicemail to satisfy this requirement.

Terms of PACE Financing Agreements

The bill limits the term of a PACE financing agreement to the lesser of: (1) 30 years; or (2) the greater of either the weighted average estimated useful life of all qualifying improvements being financed or the estimated useful life of the qualifying improvements to which the greatest portion of funds is disbursed.

The bill prohibits a PACE financing agreement from including a negative amortization schedule,[35] a balloon payment, or prepayment fees other than nominal administrative costs.

PACE Contractors

The bill establishes terms for the enrollment and oversight of contractors by PACE program administrators. These provisions apply only with respect to PACE financing for residential real property.

Before enrolling a contractor to install qualifying improvements, the bill provides that program administrators must make a reasonable effort to review that the contractor maintains in good standing an appropriate license from the state, if applicable, as well as any other permit, license, or registration required for engaging in business in the jurisdiction in which he or she operates and that the contractor maintains all state-required bond and insurance coverage. Program administrators must also obtain the contractor's written agreement that the contractor will act in accordance with all applicable laws, including applicable advertising and marketing laws and regulations.

The bill further provides that program administrators must maintain a process to enroll new contractors which includes reasonable review of the following for each contractor: relevant work or project history; financial and reputational background checks; a criminal background check; and status on the Better Business Bureau online platform or another online platform that tracks contractor reviews.

The bill also provides that program administrators must maintain a process for monitoring enrolled contractors with regard to performance and compliance with program policies and shall implement policies for suspending and terminating enrolled contractors based on violations of program policies or unscrupulous behavior. Program administrators must maintain a policy for determining the conditions on which a contractor may reinstated to the program.

The bill authorizes program administrators to pay or reimburse contractors for any expense allowable under applicable state law and not otherwise prohibited under Florida's PACE law including, but not limited to, marketing, training, and promotions.

Before disbursing funds to a contractor for a qualifying improvement on residential real property, a program administrator must first confirm that the applicable work or service has been completed through any of the following: a written certification from the property owner; a recorded telephone call with the property owner; a review of geotagged and time-stamped photographs; a review of a final permit; or a site inspection through third-party means.

The bill prohibits a program administrator from disclosing to a contractor or to a third party engaged in soliciting a PACE financing agreement the maximum financing amount for which a residential property owner is eligible. Program administrators are also prohibited from providing a contractor with any payment, fee, or kickback in exchange for referring PACE financing business relating to a specific PACE financing agreement on residential property.

The bill prohibits PACE contractors from presenting a higher price for a qualifying improvement financed by a PACE assessment than the contractor would otherwise reasonably present if the qualifying improvement was not being financed through a PACE assessment.

PACE Marketing

The bill prohibits program administrators from representing that PACE financing is a government assistance program, that qualifying improvements are free or that PACE financing is a free program, or

[35] The bill provides that capitalized interest included in the original balance of the assessment financing agreement does not constitute negative amortization.

that the financing of a qualifying improvement under PACE does not require the property owner to repay the financial obligation. Program administrators are also prohibited from making any representation as to the tax deductibility of a PACE assessment.

Annual Report

The bill requires each program administrator to provide, at a reasonable time following the end of the prior calendar year, an annual report to the dependent special district as defined in s. 189.012 or a separate legal entity created pursuant to s. 163.01(7) which it has contracted with to administer a PACE program and shall include information and data related to the following:

- The total number of property owner complaints received which are associated with project funding in the report year.
- Of the total number of property owner complaints received which are associated with project funding in the report year:
    - The number and percentage of complaints that relate to PACE financing.
    - The number and percentage of complaints that relate to a contractor or the workmanship of a contractor and are not related to PACE financing.
    - The number and percentage of complaints that relate to both a contractor and the PACE financing.
    - The number and percentage of complaints received which were resolved and the number and percentage of complaints received which were not resolved.
- The percentage of property owner complaints received expressed as a total of all projects funded in the report year.

Other Provisions

The bill provides that a residential real property owner may cancel a PACE financing agreement within 3 business days after signing the agreement without any financial penalty from the program administrator for doing so.

The bill provides that a notice of lien for the full amount of the financing may be recorded in the public records of the county where the property is located. The lien shall not be enforceable in a manner that results in the acceleration of the remaining nondelinquent unpaid balance under the PACE financing agreement.

The bill provides that program administrators must use appropriate methodologies or technologies to identify and verify the identity of the residential real property owner who executes an assessment financing agreement.

The bill requires program administrators to develop and implement policies and procedures for responding to, tracking, and helping to resolve questions and property owner complaints as soon as reasonably practicable.

B. SECTION DIRECTORY:

Section 1. Amends s. 163.08, F.S., relating to supplemental authority for improvements to real property.

Section 2. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that a local government or program administrator does not already impose measures similar to those in the bill, the bill may impose costs on PACE program administrators.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Ability to Repay

To determine a property owner's ability to repay a PACE assessment, the bill requires a determination that the total annual payment for all PACE assessments on a property does not exceed 10 percent of the property owner's household income. This determination does not account for the property owner's household expenses and other debt obligations, thus may not provide an accurate evaluation of a property owner's ability to repay a PACE assessment while meeting those expenses and debt obligations.

Debt-to-Value

The bill allows a residential property owner, through the addition of PACE assessments to existing mortgage debt, to obligate the entire value of its property to secure debt, putting the property owner at greater risk of being "upside down," which would make refinancing or selling the property more difficult.

Disclosures

Under the bill, certain material disclosures may not occur until the time a PACE financing agreement is being signed. The bill does not specify the form (e.g., written, oral, electronic) in which disclosures required prior to or at the time of signing a PACE financing agreement must be provided and does not require acknowledgment of these disclosures.

Certain disclosures are required to be made only verbally, by phone, after a PACE financing agreement may have been signed. Some of these disclosures may be material to some property owners but may not come before the end of the 3-day cancellation period provided in the bill, such as the following:

- That any potential utility or insurance savings are not guaranteed and will not reduce the assessment or total assessment amount.
- That the program administrator does not provide tax advice, and the property owner should seek professional tax advice if he or she has questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the PACE financing agreement.
- The total estimated average monthly equivalent amount of funds the residential real property owner would have to save in order to pay the annual costs of the assessment, including applicable fees.

PACE Contractors and Marketing

The bill requires PACE program administrators to maintain a process for monitoring enrolled contractors with regard to performance and compliance with program policies and shall implement policies for suspending and terminating enrolled contractors based on violations of program policies or unscrupulous behavior. For this provision to be effective, local governments and/or PACE program administrators will need to adopt sufficient program policies and behavioral standards for contractors.

The bill imposes certain marketing prohibitions on PACE program administrators, but these prohibitions do not apply to contractors or other third-party marketers.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to Resiliency Energy Environment Florida programs; amending s. 163.08, F.S.; defining terms; providing that a property owner may apply to a Resiliency Energy Environment Florida (REEF) program for funding to finance a qualifying improvement and may enter into an assessment financing agreement with a local government; providing that REEF program costs may be collected as non-ad valorem assessments; authorizing a local government to enter into an agreement with a program administrator to administer a REEF program on the local government's behalf; revising and specifying public recording requirements for assessment financing agreements and notices of lien; revising requirements that apply to local governments or program administrators in determining eligibility for assessment financing; revising requirements for qualifying improvements; revising the calculation of non-ad valorem assessment limits; providing construction; specifying underwriting, financing estimate, disclosure, and confirmation requirements for program administrators relating to residential real property; authorizing a residential real property owner, under certain circumstances and within a certain timeframe, to cancel an assessment

financing agreement without financial penalty; specifying limitations on assessment financing agreement terms for residential real property; prohibiting certain financing terms for residential real property; specifying requirements for, and certain prohibited acts by, program administrators relating to assessment financing agreements and contractors for qualifying improvements to residential real property; specifying additional annual reporting requirements for program administrators; providing construction and applicability; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (16) of section 163.08, Florida Statutes, is renumbered as subsection (32), subsections (1), (2), (4), (6) through (10), and (12) through (14) are amended, and a new subsection (16) and subsections (17) through (31) are added to that section, to read:

163.08 Supplemental authority for improvements to real property.—

(1)(a) In chapter 2008-227, Laws of Florida, the Legislature amended the energy goal of the state comprehensive

plan to provide, in part, that the state shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. That act also declared it the public policy of the state to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security, and the reduction of greenhouse gases. In addition to establishing policies to promote the use of renewable energy, the Legislature provided for a schedule of increases in energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction. In chapter 2008-191, Laws of Florida, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments. In the 2008 general election, the voters of this state approved a constitutional amendment authorizing the Legislature, by general law, to prohibit consideration of any change or improvement made for the purpose of improving a property's resistance to wind damage or the installation of a renewable energy source device in the determination of the assessed value of residential real property.

(b) The Legislature finds that all energy-consuming-improved properties that are not using energy conservation strategies contribute to the burden affecting all improved

property resulting from fossil fuel energy production. Improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption. All improved properties not protected from wind damage by wind resistance qualifying improvements contribute to the burden affecting all improved property resulting from potential wind damage. Improved property that has been retrofitted with wind resistance qualifying improvements receives the special benefit of reducing the property's burden from potential wind damage. Further, the installation and operation of qualifying improvements not only benefit the affected properties for which the improvements are made, but also assist in fulfilling the goals of the state's energy and hurricane mitigation policies.

(c) In order to make qualifying improvements more affordable and assist property owners who wish to undertake such improvements, the Legislature finds that there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.

(d) ~~(c)~~ The Legislature determines that the actions authorized under this section, including, but not limited to, the financing of qualifying improvements through the execution of assessment financing agreements and the related imposition of voluntary assessments, are reasonable and necessary to serve and achieve a compelling state interest and are necessary for the

prosperity and welfare of the state and its property owners and inhabitants.

(2) As used in this section, the term:

(a) "Assessment financing agreement" means the financing agreement, under a REEF program, between a local government and a property owner for the acquisition or installation of qualifying improvements.

(b) ~~(a)~~ "Local government" means a county, a municipality, a dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7).

(c) "Non-ad valorem assessment" or "assessment" has the same meaning as the term "non-ad valorem assessment" as defined in s. 197.3632(1).

(d) "Nonresidential real property" means any property not defined as residential real property and which will be or has been improved by a qualifying improvement. The term includes multifamily residential property composed of five or more dwelling units.

(e) "Program administrator" means an entity, including, but not limited to, a for-profit or not-for-profit entity, with which a local government may contract to administer a REEF program.

(f) ~~(b)~~ "Qualifying improvement" includes any:

1. Energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a

more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; building modifications to increase the use of daylight; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; and installation of efficient lighting equipment.

2. Renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bioenergy, and wind energy.

3. Wind resistance improvement, which includes, but is not limited to:

a. Improving the strength of the roof deck attachment;

b. Creating a secondary water barrier to prevent water intrusion;

c. Installing wind-resistant shingles;

d. Installing gable-end bracing;

e. Reinforcing roof-to-wall connections;

f. Installing storm shutters; or

g. Installing opening protections.

(g) "Residential real property" means a residential real

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

property composed of four or fewer dwelling units which has been or will be improved by a qualifying improvement.

(h) "Resiliency Energy Environment Florida (REEF) program" means a program established by a local government, alone or in partnership with other local governments or a program administrator, to finance qualifying improvements on nonresidential real property or residential real property.

(4) Subject to local government ordinance or resolution, a property owner may apply to the REEF program ~~local government~~ for funding to finance a qualifying improvement and enter into an assessment ~~a~~ financing agreement with the local government. Costs incurred by the REEF program ~~local government~~ for such purpose may be collected as a non-ad valorem assessment. A non-ad valorem assessment shall be collected pursuant to s. 197.3632 and, notwithstanding s. 197.3632(8)(a), shall not be subject to discount for early payment. However, the notice and adoption requirements of s. 197.3632(4) do not apply if this section is used and complied with, and the intent resolution, publication of notice, and mailed notices to the property appraiser, tax collector, and Department of Revenue required by s. 197.3632(3)(a) may be provided on or before August 15 in conjunction with any non-ad valorem assessment authorized by this section, if the property appraiser, tax collector, and local government agree.

(6) A local government may enter into an agreement with a

program administrator to administer a REEF program on behalf of the local government ~~A qualifying improvement program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government~~.

(7) A local government may incur debt for the purpose of providing financing for qualifying ~~such~~ improvements, which debt is payable from revenues received from the improved property~~,~~ or from any other available revenue source authorized under this section or by other law.

(8) A local government may enter into an assessment ~~a~~ financing agreement to finance or refinance a qualifying improvement only with the record owner of the affected property. Any assessment financing agreement entered into pursuant to this section or a summary memorandum of such agreement shall be submitted for recording ~~recorded~~ in the public records of the county within which the property is located by the ~~sponsoring unit of~~ local government within 5 days after execution of the agreement. The recorded agreement shall provide constructive notice that the assessment to be levied on the property constitutes a lien of equal dignity to county taxes and assessments from the date of recordation. A notice of lien for the full amount of the financing may be recorded in the public records of the county where the property is located. Such lien shall not be enforceable in a manner that results in the

acceleration of the remaining nondelinquent unpaid balance under the assessment financing agreement.

(9) Before entering into an assessment ~~a~~ financing agreement, the local government, or the program administrator acting on its behalf, shall reasonably determine that all of the following conditions are met:

(a) All property taxes and any other assessments levied on the same bill as property taxes are current ~~paid~~ and have not been delinquent for more than 30 days for the preceding 3 years or the property owner's period of ownership, whichever is less.~~;~~

(b) ~~that~~ There are no involuntary liens greater than $1,000, including, but not limited to, construction liens on the property.~~;~~

(c) ~~that~~ No notices of default or other evidence of property-based debt delinquency have been recorded and not released during the preceding 3 years or the property owner's period of ownership, whichever is less.~~;~~

(d) The local government or program administrator has asked the property owner whether any other assessments under this section have been recorded or have been funded and not yet recorded on the property. The failure of a property owner to disclose information set forth in this paragraph does not invalidate an assessment financing agreement or any obligation thereunder, even if the total financed amount of the qualifying improvements exceeds the amount that would otherwise be

authorized under paragraph (12)(a).

(e) ~~and that~~ The property owner is current on all mortgage debt on the property.

(f) The residential property is not subject to an existing home equity conversion mortgage or reverse mortgage product. This paragraph does not apply to nonresidential real property.

(g) The property is not currently a residential property gifted to a homeowner for free by a nonprofit entity as may be disclosed by the property owner. The failure of a property owner to disclose information set forth in this paragraph does not invalidate an assessment financing agreement or any obligation thereunder. This paragraph does not apply to nonresidential real property.

(10) Before final funding may be provided, a qualifying improvement must ~~shall~~ be affixed or planned to be affixed to a nonresidential real property or residential real ~~building or facility that is part of the~~ property and constitutes ~~shall constitute~~ an improvement to that property ~~the building or facility or a fixture attached to the building or facility~~. An assessment financing agreement may ~~between a local government and a qualifying property owner may not~~ cover qualifying ~~wind-resistance~~ improvements on nonresidential real property under new construction or residential real property ~~in buildings or facilities~~ under new construction ~~or construction for which a certificate of occupancy or similar evidence of substantial~~

~~completion of new construction or improvement has not been issued~~.

(12)(a) Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by the property, the total amount of any non-ad valorem assessment for a property under this section may not exceed 20 percent of the fair market ~~just~~ value of the real property ~~as determined by the county property appraiser~~. The combined mortgage-related debt and total amount of any non-ad valorem assessments funded under this section for residential real property may not exceed 100 percent of the fair market value of the residential real property. However, the failure of a property owner to disclose information set forth in paragraph (9)(d) does not invalidate an assessment financing agreement or any obligation thereunder, even if the total financed amount of the qualifying improvements exceeds the amount that would otherwise be authorized under this paragraph. For purposes of this paragraph, fair market value may be determined using reputable third parties.

(b) Notwithstanding paragraph (a), a non-ad valorem assessment for a qualifying improvement defined in subparagraph (2)(f)1. ~~(2)(b)1.~~ or subparagraph (2)(f)2. which ~~(2)(b)2. that~~ is supported by an energy audit is not subject to the limits in this subsection if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the non-ad valorem assessment.

(13) At least 30 days before entering into an assessment ~~a~~ financing agreement, the property owner shall provide to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a notice of the owner's intent to enter into an assessment ~~a~~ financing agreement together with the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount. A verified copy or other proof of such notice shall be provided to the local government. A provision in any agreement between a mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into an assessment ~~a~~ financing agreement as provided for in this section is not enforceable. This subsection does not limit the authority of the holder or loan servicer to increase the required monthly escrow by an amount necessary to ~~annually~~ pay the annual ~~qualifying improvement~~ assessment.

(14) At or before the time a seller ~~purchaser~~ executes a contract for the sale ~~and purchase~~ of any property for which a non-ad valorem assessment has been levied under this section and has an unpaid balance due, the seller must ~~shall~~ give the prospective purchaser a written disclosure statement in the following form, which shall be set forth in the contract or in a separate writing:

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR WIND RESISTANCE.—The property being purchased is located within the jurisdiction of a local government that has placed an assessment on the property pursuant to s. 163.08, Florida Statutes. The assessment is for a qualifying improvement to the property relating to energy efficiency, renewable energy, or wind resistance, and is not based on the value of property. You are encouraged to contact the county property appraiser's office to learn more about this and other assessments that may be provided by law.

(16) Before final approval of an assessment financing agreement for a qualifying improvement on a residential real property, a program administrator shall reasonably determine that the property owner has the ability to pay the estimated annual assessment. To do so, the program administrator shall, at a minimum, use the underwriting requirements in subsection (9), confirm that the property owner is not in bankruptcy, and determine that the total estimated annual payment amount for all assessment financing agreements funded under this section on the property does not exceed 10 percent of the property owner's annual household income. Income may be confirmed using

information gathered from reputable third parties that provide reasonably reliable evidence of the property owner's household income. Income may not be confirmed solely by a property owner's statement. The failure of a property owner to disclose information set forth in paragraph (9)(d) does not invalidate an assessment financing agreement or any obligation thereunder, even if the total estimated annual payment amount exceeds the amount that would otherwise be authorized under this subsection.

(17) Before or contemporaneously with a property owner signing an assessment financing agreement on a residential real property, the program administrator shall provide a financing estimate and disclosure to the residential real property owner which includes all of the following:

(a) The total amount estimated to be funded, including the cost of the qualifying improvements, program fees, and capitalized interest, if any.

(b) The estimated annual assessment.

(c) The term of the assessment.

(d) The interest charged and estimated annual percentage rate.

(e) A description of the qualifying improvement.

(f) A disclosure that if the property owner sells or refinances the property, the property owner, as a condition of the sale or the refinance, may be required by a mortgage lender to pay off the full amount owed under each assessment financing

agreement.

(g) A disclosure that the assessment will be collected along with the property owner's property taxes and will result in a lien on the property from the date the assessment financing agreement is recorded.

(h) A disclosure that failure to pay the assessment may result in penalties and fees, along with the issuance of a tax certificate that could result in the property owner losing the real property.

(18) Before a notice to proceed is issued on residential real property, the program administrator shall conduct with the residential real property owner or an authorized representative an oral, recorded telephone call. The program administrator shall ask the residential real property owner if he or she would like to communicate primarily in a language other than English. A program administrator may not leave a voicemail on the residential real property owner's or authorized representative's telephone to satisfy this requirement. A program administrator, as part of such telephone call, shall confirm all of the following with the residential real property owner:

(a) That at least one residential real property owner has access to a copy of the assessment financing agreement and financing estimates and disclosures.

(b) The qualifying improvements being financed.

(c) The total estimated annual costs that the residential

real property owner will have to pay under the assessment financing agreement, including applicable fees.

(d) The total estimated average monthly equivalent amount of funds the residential real property owner would have to save in order to pay the annual costs of the assessment, including applicable fees.

(e) The estimated date the residential real property owner's first property tax payment that includes the assessment will be due.

(f) The term of the assessment financing agreement.

(g) That payments for the assessment financing agreement will cause the residential real property owner's annual property tax bill to increase, and that payments will be made through an additional annual assessment on the property and either will be paid directly to the county tax collector's office as part of the total annual secured property tax bill or may be paid through the residential real property owner's mortgage escrow account.

(h) That the residential real property owner has disclosed whether the property has received, or the owner is seeking, additional assessments funded under this section and that the owner has disclosed all other assessments funded under this section which are or are about to be placed on the property.

(i) That the property will be subject to a lien during the term of the assessment financing agreement and that the

obligations under the agreement may be required to be paid in full before the residential real property owner sells or refinances the property.

(j) That any potential utility or insurance savings are not guaranteed and will not reduce the assessment or total assessment amount.

(k) That the program administrator does not provide tax advice, and the residential real property owner should seek professional tax advice if he or she has questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the assessment financing agreement.

(19) A residential real property owner may cancel an assessment financing agreement within 3 business days after signing the assessment financing agreement without any financial penalty from the program administrator for doing so.

(20) The term of an assessment financing agreement on residential real property may not exceed the lesser of:

(a) Thirty years; or

(b) The greater of either the weighted average estimated useful life of all qualifying improvements being financed or the estimated useful life of the qualifying improvements to which the greatest portion of funds is disbursed.

(21) An assessment financing agreement authorized under this section on residential real property may not include any of the following financing terms:

(a) A negative amortization schedule. Capitalized interest included in the original balance of the assessment financing agreement does not constitute negative amortization.

(b) A balloon payment.

(c) Prepayment fees, other than nominal administrative costs.

(22) For residential real property, a program administrator:

(a) May not enroll a contractor who contracts with residential real property owners to install qualifying improvements unless:

1. The program administrator makes a reasonable effort to review that the contractor maintains in good standing an appropriate license from the state, if applicable, as well as any other permit, license, or registration required for engaging in business in the jurisdiction in which he or she operates and that the contractor maintains all state-required bond and insurance coverage; and

2. The program administrator obtains the contractor's written agreement that the contractor will act in accordance with all applicable laws, including applicable advertising and marketing laws and regulations.

(b) Shall maintain a process to enroll new contractors which includes reasonable review of the following for each contractor:

1. Relevant work or project history.

2. Financial and reputational background checks.

3. A criminal background check.

4. Status on the Better Business Bureau online platform or another online platform that tracks contractor reviews.

(c) A program administrator may pay or reimburse contractors for any expense allowable under applicable state law and not otherwise prohibited under this section, including, but not limited to, marketing, training, and promotions.

(23)(a) Before disbursing funds to a contractor for a qualifying improvement on residential real property, a program administrator must first confirm that the applicable work or service has been completed through any of the following:

1. A written certification from the property owner;

2. A recorded telephone call with the property owner;

3. A review of geotagged and time-stamped photographs;

4. A review of a final permit; or

5. A site inspection through third-party means.

(b) A program administrator may not disclose to a contractor or to a third party engaged in soliciting an assessment financing agreement the maximum financing amount for which a residential real property owner is eligible.

(24) A program administrator shall comply with the following marketing and communications guidelines when communicating with residential real property owners:

(a) A program administrator may not represent:

1. That the REEF program or assessment financing is a government assistance program;

2. That qualifying improvements are free or that assessment financing is a free program; or

3. That the financing of a qualifying improvement using the REEF program does not require the property owner to repay the financial obligation.

(b) A program administrator may not make any representation as to the tax deductibility of an assessment authorized under this section. A program administrator may encourage a property owner to seek the advice of a tax professional regarding tax matters related to assessments.

(25) A contractor may not present a higher price for a qualifying improvement on residential real property financed by an assessment financing agreement than the contractor would otherwise reasonably present if the qualifying improvement was not being financed through an assessment financing agreement.

(26) A program administrator shall use appropriate methodologies or technologies to identify and verify the identity of the residential real property owner who executes an assessment financing agreement.

(27) A program administrator may not provide a contractor with any payment, fee, or kickback in exchange for referring assessment financing business relating to a specific assessment

financing agreement on residential real property.

(28) A program administrator shall develop and implement policies and procedures for responding to, tracking, and helping to resolve questions and property owner complaints as soon as reasonably practicable.

(29) A program administrator shall maintain a process for monitoring enrolled contractors that contract with residential real property owners to install qualifying improvements with regard to performance and compliance with program policies and shall implement policies for suspending and terminating enrolled contractors based on violations of program policies or unscrupulous behavior. A program administrator shall maintain a policy for determining the conditions on which a contractor may be reinstated to the program.

(30) A program administrator shall provide, at a reasonable time following the end of the prior calendar year, an annual report to the dependent special district as defined in s. 189.012 or a separate legal entity created pursuant to s. 163.01(7) which it has contracted with to administer a REEF program and shall include information and data related to the following:

(a) The total number of property owner complaints received which are associated with project funding in the report year.

(b) Of the total number of property owner complaints received which are associated with project funding in the report

year:

1. The number and percentage of complaints that relate to the assessment financing.

2. The number and percentage of complaints that relate to a contractor or the workmanship of a contractor and are not related to assessment financing.

3. The number and percentage of complaints that relate to both a contractor and the assessment financing.

4. The number and percentage of complaints received pursuant to subparagraphs 1., 2., and 3. which were resolved and the number and percentage of complaints received pursuant to subparagraphs 1., 2., and 3. which were not resolved.

(c) The percentage of property owner complaints received pursuant to subparagraphs (b)1., 2., and 3. expressed as a total of all projects funded in the report year.

(31)(a) Subsections (16) through (30) do not apply to residential real property if the program administrator reasonably determines that:

1. The residential real property is owned by a business entity that owns more than four residential real properties; and

2. The business entity's managing member, partner, or beneficial owner does not reside in the residential real property.

(b) Subsections (16) through (30) apply to a program administrator only when administering a REEF program for

qualifying improvements on residential real property. Subsections (16) through (30) do not apply with respect to a local government, to residential property owned by a local government, or to nonresidential real property.

Section 2. This act shall take effect July 1, 2023.

HB 745

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 745 Emergency Communications
SPONSOR(S): McFarland
TIED BILLS: **IDEN./SIM. BILLS:** SB 1418

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee		Walsh	Keating
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Division of Telecommunications (Division) within the Department of Management Service (DMS) is the state entity responsible for developing, maintaining, and implementing a statewide E911 system plan. The secretary of DMS or his or her designee acts as the director of the system and is authorized to coordinate the activities of the system with state, county, local, and private agencies.

The system director also serves as chair of the state's E911 Board, an 11-member body that administers funds derived from fees imposed on each user of voice communications services in Florida.

To fund Florida's E911 system, voice communications services providers collect a fee from their customers on a service identifier basis (e.g., from each active phone line or number with access to the E911 system). All collected fees are deposited into the Emergency Communications Number E911 System Fund, which is segregated into three categories (wireless, prepaid wireless, and non-wireless) and distributed as provided by law to counties and wireless service providers.

The next progression in E911 systems is referred to as Next Generation 911 (NG-911). Funds distributed by the E911 Board support routine, ongoing service and maintenance costs of equipment and networks but do not cover all costs to upgrade systems and implement NG-911 technologies.

The bill modifies the powers, duties, and composition of the E911 Board, which is renamed as the Emergency Communications Board, and expands the list of items that may be funded with E911 fee disbursements. The bill modifies the statutory allocation of E911 fee revenues in the wireless category to more closely match the actual allocation approved by the E911 Board and eliminates the small remaining allocation to wireless service providers.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Since 1974, Florida law has designated the telephone number "911" as the state's emergency communications number to provide rapid direct access to public safety agencies.[1] In 1999, the concept of "Enhanced 911" or "E911" service was established in Florida law to describe 911 service provided to wireless telephone users.[2] Today, under the Emergency Communications Number E911 Act,[3] the term "E911," as used in Florida law, refers more broadly to an enhanced 911 system or service that provides any user of voice communications services[4] with 911 service. E911 service directs calls to appropriate public safety answering points (PSAPs)[5] by selective routing based on the geographical location from which a 911 call originated and provides for automatic number and location identification.[6]

The next progression in E911 systems is referred to as Next Generation 911 (NG-911). According to the E911 Board's 2021 Annual Report, NG-911 requires a total replacement of legacy 911 systems with Internet Protocol (IP) networks and core services. NG-911 includes IP-based 911 call routing systems, geographic information systems, and management information systems to be implemented statewide with interconnectivity among systems and across jurisdictional boundaries. An NG-911 call routing system is designed to handle voice, data, text and video on a standardized IP-based platform.[7]

Governance

The Division of Telecommunications (Division) within the Department of Management Service (DMS) is the state entity responsible for developing, maintaining, and implementing a statewide E911 system plan. The secretary of DMS or his or her designee acts as the director of the system and is authorized to coordinate the activities of the system with state, county, local, and private agencies. The system director must consult, cooperate, and coordinate with local law enforcement agencies.[8]

The system director also serves as chair of the state's E911 Board, an 11-member body that administers funds derived from fees imposed on each user of voice communications services with a Florida billing address (place of primary use). The remaining 10 members are appointed by the Governor. Five members must be county 911 coordinators, including one from a rural county, one from a medium county, one from a large county, and two at-large representatives recommended by the Florida Association of Counties in consultation with the county 911 coordinators. The other five members represent the telecommunications industry, including three representatives of local exchange companies and two representatives of the wireless industry. Members are appointed to staggered 4-year terms, subject to a limit of two successive terms.[9]

Funding

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[1] Ch. 74-357, L.O.F.
[2] *See* Ch. 99-367, L.O.F.
[3] Ch. 2007-78, L.O.F.
[4] S. 365.172, F.S., defines "voice communications services" as "two-way voice service, through the use of any technology, which actually provides access to E911 services, and includes communications services, as defined in s. 202.11, which actually provide access to E911 services and which are required to be included in the provision of E911 services pursuant to orders and rules adopted by the Federal Communications Commission. The term includes voice-over-Internet-protocol service. …"
[5] S. 365.172, F.S., defines a "public safety answering point" as "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."
[6] E911 service provided by a wireless provider is subject to orders and rules of the Federal Communications Commission. *See* s. 365.172(3)(h) and (t), F.S.
[7] Florida Department of Management Services, *2021 E911 Board Annual Report*, at p. 9-10, available at https://www.dms.myflorida.com/content/download/155677/1033501/E911BoardAnnualReportFor20202021final_2.28.2022.pdf (last visited March 3, 2023).
[8] S. 365.171(4) and (5), F.S.
[9] S. 365.172(5), F.S.

To fund Florida's E911 system, voice communications services providers (providers) collect a fee from their customers on a service identifier basis (e.g., from each active phone line or number with access to the E911 system). The fee is imposed upon local exchange service, prepaid and billed wireless service, and other voice communications services that have access to E911 service, such as Voice over Internet Protocol.[10] Sellers of prepaid wireless service (sellers) must collect this fee from customers with each retail transaction in the state.[11] The fee is currently set at a uniform statewide rate of 40 cents per month for each service identifier.[12] The E911 Board is authorized to adjust the fee as necessary to ensure full recovery of the costs incurred by counties and wireless service providers to provide E911 service and to prevent over-recovery of those costs, subject to a cap of 50 cents per month for each service identifier.[13,14]

All collected fees are deposited into the Emergency Communications Number E911 System Fund, which is segregated into three categories: wireless, prepaid wireless, and non-wireless.[15] Three percent of the funds in each category is distributed by the E911 Board to rural counties to provide facilities and network and service enhancements and assistance for their 911 or E911 systems and for grants to rural counties to upgrade and replace E911 systems. Further, the E911 Board may retain no more than one percent of the funds from each category to cover its administrative costs. For fiscal year (FY) 2020-2021, the E911 Board distributed the remaining 96% of funds to counties and wireless providers as follows:[16]

- Wireless Category
  - 94.75% to counties for authorized expenditures and costs to comply with FCC requirements for E911 service (funds allocated by county based on total number of service identifiers in each county)
  - An additional 1% to rural county grants
  - 0.25% to wireless service providers for reimbursement of actual costs to provide 911 or E911 service and costs to comply with FCC requirements for E911 service[17]

- Prepaid Wireless Category
  - 61% to counties for authorized expenditures (funds allocated by county based on total amount of fees reported and paid in each county)
  - 35% for statewide grants awarded by the E911 Board[18]

- Non-Wireless Category
  - 96% to counties for authorized expenditures (funds allocated by county based on total number of service identifiers in each county

The E911 Board's 2021 Annual Report states that, for FY 2020-2021, the allocation from the wireless category to wireless service providers was decreased from 8% down to 0.25% due to a decrease in the

[10] S. 365.172(8), F.S.
[11] S. 365,172(9), F.S. Collection is optional for prepaid wireless service sales of 10 minutes or less or $5 or less.
[12] S. 365.172(8), F.S. In counties that, before July 1, 2007, had adopted an ordinance or resolution establishing a fee less than 50 cents per month per line, the applicable rate may be higher than 40 cents per month, but any future changes must be consistent with the uniform statewide rate. Those counties are Duval (44 cents per month), Lee (44 cents per month), and Volusia (41 cents per month). Florida Department of Management Service, *supra* note 5, at 7.
[13] *Id.*
[14] The statutory fee cap of 50 cents per month has remained unchanged since its adoption in 1985. *See* Ch. 85-317, L.O.F.
[15] S. 365.172(3)(k), (8)(d), and (9)(i); s. 365.173(1)(c), F.S. Each provider may retain 1 percent of collected fees as reimburs ement for its administrative costs to bill, collect, and remit the fee. Each seller of prepaid wireless service may retain 5 percent of collected fees as a collection allowance. Fees collected from prepaid wireless service are remitted to the Department of Revenue, which may ret ain up to 3.2 percent of remitted fees to reimburse its direct costs to administer collection and remittance of the fees.
[16] S. 365.173 (2), F.S., specifies the allocation of these funds but authorizes the E911 Board to modify allocations if necessar y to ensure full cost recovery or prevent over-recovery of costs incurred in the provision of E911 service. The allocations presented above are based on the E911 Board's 2021 Annual Report, *supra* note 6.
[17] The E911 Board may use, as needed, undisbursed funds from the allotment to wireless service providers to provide grants to counties for purposes of upgrading E911 systems. S. 365.172(6)(a)3.b., F.S.
[18] Grants awarded with these funds are prioritized as follows: first, for counties to upgrade or replace E911 systems; next, for counties to develop and maintain statewide 911 routing, geographic, and management information systems; last, for counties to develop and maintain next-generation 911 services and equipment. S. 365.173(h), F.S.

need for reimbursements to those providers. As a result, the allocation to counties increased by 6.75%, and the remaining 1% was allocated to rural county grants.

Authorized expenditures include all costs directly attributable to the establishment or provision of E911 service and contracting for E911 services. Specifically, these costs include the acquisition, implementation, and maintenance of PSAP equipment and E911 service features, as defined in voice communications services providers' published schedules, or the acquisition, installation, and maintenance of other E911 equipment, including:

- Circuits
- Call answering equipment
- Call transfer equipment
- ANI or ALI controllers
- ANI or ALI displays
- Station instruments
- E911 telecommunications systems
- Visual call information and storage devices
- Recording equipment
- Telephone devices and other equipment for the hearing impaired used in the E911 system
- PSAP backup power systems
- Consoles
- Automatic call distributors, and interfaces, including hardware and software, for computer-aided dispatch (CAD) systems
- Integrated CAD systems for that portion of the systems used for E911 call taking
- GIS system and software equipment and information displays
- Network clocks
- Salary and associated expenses for E911 call takers for that portion of their time spent taking and transferring E911 calls, salary, and associated expenses for a county to employ a full-time equivalent E911 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 E911 system
- Emergency medical, fire, and law enforcement prearrival instruction software
- Charts and training costs
- Training costs for PSAP call takers, supervisors, and managers in the proper methods and techniques used in taking and transferring E911 calls
- Costs to train and educate PSAP employees regarding E911 service or E911 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
- Expenses required to develop and maintain all information, including ALI and ANI databases and other information source repositories, necessary to properly inform call takers as to location address, type of emergency, and other information directly relevant to the E911 call-taking and transferring function.
- Next-generation E911 network services, next-generation E911 database services, next-generation E911 equipment, and wireless E911 routing systems.

For FY 2020-2021, the E911 Board disbursed a total of $121.3 million. Of that amount, $104.8 million was disbursed to counties through regular monthly disbursements, $1.14 million was disbursed to wireless service providers, and $2 million was retained to cover the operation and administration of the E911 Board. The remaining $13.36 million was disbursed to counties as grants and supplemental disbursements.[19]

Status of Statewide E911, NG-911, and Text-to-911 Services

[19] Florida Department of Management Services, *supra* note 7, at 8.

All 67 counties in Florida maintain and upgrade non-wireless and wireless E911 systems. Funds distributed by the E911 Board support routine, ongoing service and maintenance costs of equipment and networks but do not cover all costs to upgrade systems and implement NG-911 technologies. In 2021, fee revenue, special disbursements, and grants funded 44 percent of counties' total expenses. [20]

An early step toward NG-911 is the provision of Text-to-911 service, which uses Short Message Service (SMS) to allows citizens who cannot hear or speak to gain access to 911 without the requirement of special equipment or subscription to relay services for the hearing and speech impaired. As of December 31, 2021, 85 percent of Florida counties (57 of 67), offered Text-to-911 service, with the remainder estimated to be completed in 2022.[21]

According to the E911 Board, some of the more progressive and financially capable counties in the state have already either started the NG-911 planning for their counties or have begun the transition to NG-911 ready systems and networks without grant or supplemental funding sources. Some counties are taking advantage of E911 State Grant opportunities to initiate the NG911 transition.

Effect of the Bill

The bill modifies the powers, duties, and composition of the E911 Board, which is renamed as the Emergency Communications Board (Board), and expands the list of items that may be funded with E911 fee disbursements. The bill modifies the statutory allocation of E911 fee revenues in the wireless category to more closely match the actual allocation approved by the Board and eliminates the small remaining allocation to wireless service providers.

The bill amends the short title of s. 365.172, F.S., to reflect a move away from using the term "E911" in statute, by renaming the section the "Emergency Communications Act" (Act). The bill further reflects this change by replacing or striking language referencing "E911" throughout ss. 365.171-365.174, F.S., s. 365.177, F.S., and s. 212.05965, F.S.

The bill modifies the legislative intent of the Act. Per the changes in the bill, it is the intent of the legislature that the Act:

- Establish and implement statewide emergency communications and response capabilities using modern technologies and methods;
- Provide funds to counties and state agencies that operate 911 centers for the costs of public safety and emergency response capabilities and costs incurred to purchase, upgrade, and maintain 911, computer aided dispatch, and interoperable radio communications systems;
- Levy a reasonable fee on users of voice communications services to accomplish these purposes;
- Provide for an Emergency Communications Board that is competitively and technologically neutral as to all communications services providers, not just voice communications services providers; and
- Ensure that the fee established by the Act for emergency communications systems is used exclusively by counties and state agencies that operate 911 centers.

The bill modifies the powers, duties, and composition of the newly renamed Emergency Communications Board. The bill states that the Board, with oversight by the Division of Telecommunications (Division), is established to:

- Administer governance for how emergency infrastructure and information are handled from receipt at a Public Safety Answering Point (PSAP) and routing to first responders;
- Create a financial model for the state government and local governments to use existing revenue sources to invest in public safety communication and technology for first responders; and

[20] *Id.*, at 9, 15.
[21] *Id.*

- Administer a financially stable model of public safety communications and technology that will benefit the state government, local government, residents, and visitors.

The bill specifies that the public safety funding administered by the board is not limited to, but must focus on:

- Next Generation 911 (NG911);[22]
- Emergency Services IP Network (ESInet);
- Computer Aided Dispatch (CAD);[23]
- Land Mobile Radio (LMR);
- Smart (Safe) City Technology;
- In-Building Coverage;
- Public Safety Broadband Networks; and
- Cyber Security.

The bill revises the structure of the Board, by reducing the number of Board members from eleven to seven, one of whom must be the system director. The bill states that the remaining six members of the Board must be representatives of the first responder community, appointed by the Governor. The bill updates how the Governor may initially appoint members, by staggering the terms for which the initial Board members may be appointed.

Under the bill, the Board is given the additional responsibility of ensuring the interoperability of and connectivity between public safety communication systems within the state, such as:

- Call routing accuracy and timeliness of response;
- Improved interagency communication and situational awareness;
- Improved interagency connectivity;
- Improved response times;
- Maximized use of emerging technologies;
- Improved lifecycle management of the emergency response systems, equipment, and services that enable public safety officials to share information securely;
- Policy and procedure across public safety agencies; and
- Resilient, and secure emergency communication systems to reduce cybersecurity threats and vulnerabilities.

The bill also provides that the Board may create subcommittees to advise the Board as needed, and the Board may establish a schedule for implementing NG11 systems, public radio communications systems, and other public safety radio communications improvements. Under the current law, the Board must establish a committee to review requests for proposals. The bill removes the requirement that one member of such committee is a member of the Board that is a county 911 coordinator and one member of such committee is a member of the Board who represents a voice communications services provider.

Per the bill, the Board is also responsible for administering the Public Safety Emergency Communications Systems Fee (formerly the "E911" fee), including receiving revenues, distributing portions of the revenues, accounting for the moneys maintained in the fund, and providing annual reports for review and submission to the Governor and the Legislature.

The bill states that before the Board distributes revenue from the fund, it must provide 90 days' written notice to all counties and publish electronically an approved application process. The bill provides

[22] The bill defines "Next Generation 911" or "NG911" as an Internet Protocol (IP) -based system comprised of:
- Managed Emergency Services IP networks (ESInets);
- Functional elements (applications); and
- Databases that replicate traditional E911 features and functions and provide additional capabilities.

The bill further clarifies that the NG911 system is "designed to provide access to emergency services from all connected communications sources and provide multimedia data capabilities for Public Safety Answering Points (PSAPs) and other emergency service organizations."

[23] The bill defines "Computer Aided Dispatch" or "CAD" as "a computerized system for entering, tracking, dispatching, and resolving requests for public safety services."

means by which county applications must be prioritized, which shall be based on the availability of funds, current system life expectancy, and system replacement needs. The board must, within its authority, ensure that county recipients of the funds use the funds only for the purpose under which the board provided. If the Board determines that the funds were not used for the purpose for which they were provided, the Board may, within its authority, secure county repayment of such funds.

The bill specifies that the Board must meet quarterly to review and authorize the schedule of fee allocation transfers and distributions to the counties and state agencies that operate 911 centers.

The bill strikes the following provisions under current law related to the Public Safety Emergency Communications Systems Fee:

- A provider is not obligated to take legal action to enforce the collection of the fee for which a subscriber is billed, and 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;
- A county that before July 1, 2007, had a adopted an ordinance or resolution establishing a fee of less than 50 cents per month per access line is an exception to the requirement that the fee of 40 cents per month be applied uniformly and throughout the state; and
- The requirement that when the Board sets percentages or contemplates any adjustments to the fee, that the Board consider revenues currently allocated for wireless service provider costs for implementing E911 service and projected costs for implementing E911 service, including recurring costs for Phase I and Phase II and the effect of new technologies.

For the purposes of the fees, the bill states that emergency communications and 911 service include the functions relating to the receipt and transfer of requests for emergency assistance, of database management, call taking, and location verification. The bill also updates the list of costs that are eligible for expenditure of moneys derived from imposition of the fee. These costs now include:

- NG911 telecommunications systems;
- Emergency Services IP Network ESInet;
- Public safety land mobile radio systems (LMR) and radios;
- In-building coverage;
- Cybersecurity, including hardware, software, and services;
- Salary associated with expenses for all 911 call takers and emergency dispatchers;
- Costs to train and educate employees regarding 911 radio service or NG911 equipment; and
- Smart City Technologies, public safety broadband networks, and other information directly relevant to the public safety emergency communications systems and equipment.

The bill further clarifies that money from the fee may not be used for costs for utilities.

The bill modifies the statutory allocation of fee revenues in the wireless category by providing that:

- Ninety-five, instead of seventy-six, percent of the funds shall be distributed each month to counties, based on the total number of service identifiers in each county;
- An additional one percent of the funds shall be used to make monthly distributions to rural counties for certain purposes; and
- The Board will no longer transfer twenty percent of the funds to wireless providers for the cost of operating 911 or E911 services.

Lastly, the bill provides that the Division shall develop a new plan by December 30, 2023, to upgrade 911 public safety answering points within the state to allow the transfer of an emergency call from one local, multijurisdictional, or regional E911 system to another local, multijurisdictional, or regional E911 system in the state.

The bill provides and effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1. Amends s. 365.172, F.S., relating to emergency communications.

Section 2. Amends s. 365.173, F.S., relating to Emergency Communications Fund.

Section 3. Amends s. 365.177, F.S., relating to transfers of E911 calls between systems.

Section 4. Amends s. 212.05965, F.S., relating to taxation of marketplace sales.

Section 5. Amends s. 365.171, F.S., relating to emergency communications state plan.

Section 6. Amends s. 365.174, F.S., relating to proprietary confidential business information.

Section 7. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The may increase revenues to state agencies that operate 911 call centers.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may increase revenues to local governments by increasing the allocation of funds from the wireless category to counties.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill indicates that the Board is established to "[a]dminister governance for how emergency infrastructure and information, such as voice, text, data, and images, are handled from receipt at a PSAP and routing to first responders". This language is ambiguous as to whether the Board is supposed to adopt policies, enforce them, or both.

The bill also states that the Board is established to "[a]dminister a financially sustainable model dedicated to public safety communications and technology . . ." The bill does not indicate what type of model is contemplated.

The bill uses the term "Smart (Safe) City Technology" but this term is not defined.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to emergency communications; amending s. 365.172, F.S.; revising short title; revising legislative intent; revising and providing definitions; renaming the E911 Board as the Emergency Communications Board; providing the purpose of the board; revising the composition of the board; establishing board responsibilities; requiring the board to administer fees; authorizing the board to create subcommittees; authorizing the board to establish schedules for implementing certain wireless systems and improvements; establishing notice and publication requirements before distribution of revenues; providing for priority of county applications for funds; requiring board oversight of such funds; eliminating certain authority of the board; providing for the board's authority to implement changes to the allocation percentages or to adjust the fee; revising the frequency of board meetings and the business to be conducted at such meetings; revising the composition of a committee that reviews requests for proposals from the board regarding independent accounting firm selection; revising provisions relating to the public safety emergency communications systems fee; eliminating the

obligation of a provider to take legal action to enforce fee collection and county liability to the provider; requiring uniform application and imposition of the fee; revising the factors that the board considers when setting percentages or contemplating adjustments to the fee; updating provisions relating to the prepaid wireless public safety emergency communications systems fee; revising emergency communications and 911 service functions; revising the types of emergency communications equipment and services that are eligible for expenditure of moneys derived from the fee; amending s. 365.173, F.S.; renaming the Communications Number E911 System Fund as the Emergency Communications Fund; revising the percent distribution of the fund; removing the percent distribution of wireless providers; adding a specified percent distribution to rural counties; amending s. 365.177, F.S.; extending the date by which the Division of Telecommunications within the Department of Management Services must develop a plan to upgrade 911 public safety answering points; amending ss. 212.05965, 365.171, and 365.174, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 365.172, Florida Statutes, is amended to read:

365.172 Emergency communications. ~~number "E911."~~

(1) SHORT TITLE.—This section may be cited as the "Emergency Communications ~~Number E911~~ 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. ~~telecommunications number system that will provide users of voice communications services within the state rapid direct access to public safety agencies by accessing the telephone number "911."~~

(b) Provide funds to counties and state agencies that operate 911 centers 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 ~~E911 or 911 systems, to contract for E911 services, and to reimburse wireless telephone service providers for costs incurred to provide 911 or E911 services~~.

(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 ~~E911 board~~ to administer the fee, with oversight by the office, in a manner that is competitively and technologically neutral as to all ~~voice~~ communications services providers.

(e) Ensure that the fee established for emergency communications systems is used exclusively ~~for recovery by wireless providers and~~ by counties and state agencies that operate 911 centers for costs associated with developing and maintaining emergency communications ~~E911~~ systems and networks in a manner that is competitively and technologically neutral as to all ~~voice~~ 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 ~~E911 service~~.

(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" ~~"E911 Board"~~ means the board ~~of directors of the E911 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) "Collocation" 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 for entering, tracking, dispatching, and resolving requests for public safety services.

(h) ~~(g)~~ "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) ~~(h)~~ "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. E911 service provided by a wireless provider means E911 as defined in the order.

(j) ~~(i)~~ "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) ~~(j)~~ "Fee" or "public safety emergency communications systems fee" means the ~~E911~~ fee authorized and imposed under subsections (8) and (9).

(l) ~~(k)~~ "Fund" means the Emergency Communications ~~Number E911 System~~ Fund established in s. 365.173 and maintained under this section for the purpose of recovering the costs associated with providing emergency communications ~~911 service or E911 service~~, including the costs of implementing the order. The fund shall be segregated into wireless, prepaid wireless, and nonwireless categories.

(m) ~~(l)~~ "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) ~~(m)~~ "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) ~~(n)~~ "Local exchange carrier" means a "competitive local exchange telecommunications company" or a "local exchange telecommunications company" as defined in s. 364.02.

(p) ~~(o)~~ "Local government" means any municipality, county, or political subdivision or agency of a municipality, county, or political subdivision.

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

(r) ~~(q)~~ "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 comprised of managed Emergency Services IP networks (ESInets), functional elements (applications), and databases that replicate traditional E911 features and functions and provides additional capabilities. The NG911 system is designed to provide access to emergency services from all connected communications sources and provide multimedia data capabilities for Public Safety Answering Points (PSAPs) and other emergency service organizations.

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

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

(v) ~~(t)~~ "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) ~~(u)~~ "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) ~~(v)~~ "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) ~~(w)~~ "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) ~~(x)~~ "Public safety agency" means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

(aa) ~~(y)~~ "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) ~~(z)~~ "Rural county" means any county that has a population of fewer than 75,000.

(cc) ~~(aa)~~ "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) ~~(bb)~~ "Tower" means any structure designed primarily to support a wireless provider's antennae.

(ee) ~~(cc)~~ "Voice communications services" means two-way voice service, through the use of any technology, which actually provides access to 911 ~~E911~~ services, and includes communications services, as defined in s. 202.11, which actually provide access to 911 ~~E911~~ services and which are required to be included in the provision of 911 ~~E911~~ 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) ~~(dd)~~ "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) ~~(ee)~~ "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) ~~(ff)~~ "Wireless category" means the revenues to the fund received from a wireless provider from the fee authorized and imposed under subsection (8).

(ii) ~~(gg)~~ "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) ~~(hh)~~ "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, ~~or~~ E911 service, or NG911 service in this state.

(kk) ~~(ii)~~ "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 ~~E911~~ BOARD.—

(a) The Emergency Communications ~~E911~~ Board is established ~~to administer~~, with oversight by the office, to:

1. Administer governance for how emergency infrastructure and information, such as voice, text, data, and images, are handled from receipt at a PSAP and routing to first responders;

2. Establish a financial model for the state and local governments to use existing revenue sources to invest in public safety communication and technology for first responders; and

3. Administer a financially sustainable model dedicated to public safety communications and technology that will benefit the state and local governments and all state residents and visitors.

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

1. Next Generation 911.

2. Emergency Services IP Network (ESInet).

3. Computer Aided Dispatch (CAD).

4. Land Mobile Radio (LMR).

5. Smart (Safe) City Technology.

6. In-Building Coverage.

7. Public Safety Broadband Networks.

8. Cyber Security.

~~, with oversight by the office, the fee imposed under subsections (8) and (9), including receiving revenues derived from the fee; distributing portions of the revenues to wireless providers, counties, and the office; accounting for receipts, distributions, and income derived by the funds maintained in the fund; and providing annual reports to the Governor and the Legislature for submission by the office on amounts collected and expended, the purposes for which expenditures have been made, and the status of E911 service in this state.~~ 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)~~(b)~~ The board shall consist of 7 ~~11~~ 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 6 ~~10~~ members of the board shall be appointed by the Governor and must be composed of representatives from the first responder community ~~5 county 911 coordinators, consisting of a representative from a rural county, a representative from a medium county, a representative from a large county, and 2 at-large representatives recommended by the Florida Association of Counties in consultation with the county 911 coordinators; 3 local exchange carrier member representatives, one of whom must be a representative of the~~

~~local exchange carrier having the greatest number of access lines in the state and one of whom must be a representative of a certificated competitive local exchange telecommunications company; and 2 member representatives from the wireless telecommunications industry, with consideration given to wireless providers that are not affiliated with local exchange carriers. Not more than one member may be appointed to represent any single provider on the board~~.

(d) ~~(c)~~ 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 6 ~~10~~ 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, two of the original board members shall be appointed to terms of 4 years, two shall be appointed to terms of 3 years, and two ~~four~~ 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.

(e) The board shall be responsible for ensuring interoperability of and connectivity between public safety communication systems within the state, including, but not limited to, the following:

1. Call routing accuracy and timeliness of response.

2. Improved interagency communication and situational awareness.

3. Improved interagency system connectivity.

3. Improved response times.

4. Maximized use of emerging technologies.

5. Improved lifecycle management of the systems, equipment, and services that enable responders and public safety officials to share information securely.

6. Developed governance, policy, and procedure across public safety agencies.

7. Established resilient and secure emergency communication 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, state agencies that operate 911 centers, 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 ~~E911~~ 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 wireless NG911 systems, public safety radio communications systems, and other public safety communications improvements ~~E911 service by service area,~~ and prioritize disbursements of revenues from the fund to ~~providers and~~ rural counties as provided in s. 365.173(2)(f) ~~s. 365.173(2)(e) and (g)~~ pursuant to the schedule, in order to implement 911 ~~E911~~ services in the most efficient and cost-effective manner.

b. Before the distribution of revenues from the fund, the board shall provide 90 days' written notice to all counties and publish electronically an approved application process. County applications shall be prioritized based on the availability of 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 under 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 dispersed.

~~b. Revenues in the fund which have not been disbursed~~

~~because sworn invoices as required by s. 365.173(2)(c) have not been submitted to the board may be used by the board as needed to provide grants to counties for the purpose of upgrading E911 systems. The counties must use the funds only for capital expenditures or remotely provided hosted 911 answering point call-taking equipment and network services directly attributable to establishing and provisioning E911 services, which may include next-generation deployment. Prior to the distribution of grants, the board shall provide 90 days' written notice to all counties and publish electronically an approved application process. County grant applications shall be prioritized based on the availability of funds, current system life expectancy, system replacement needs, and Phase II compliance per the Federal Communications Commission. No grants will be available to any county for next-generation deployment until all counties are Phase II complete. The board shall take all actions within its authority to ensure that county recipients of such grants use these funds only for the purpose under which they have been provided and may take any actions within its authority to secure county repayment of grant revenues upon determination that the funds were not used for the purpose under which they were provided.~~

~~c. When determining the funding provided in a state 911 grant application request, the board shall take into account information on the amount of carryforward funds retained by the~~

~~counties. The information will be based on the amount of county carryforward funds reported in the financial audit required in s. 365.173(2)(d). E911 State Grant Program funding requests will be limited by any county carryforward funds in excess of the allowable 30 percent amount of fee revenue calculated on a 2-year basis.~~

~~d. The board shall reimburse all costs of a wireless provider in accordance with s. 365.173(2)(c) before taking any action to transfer additional funds.~~

~~e. After taking the action required in sub-subparagraphs a.-d., the board may review and, with all members participating in the vote, adjust the percentage allocations or adjust the amount of the fee as provided under paragraph (8)(g), and, if the board determines that the revenues in the wireless category exceed the amount needed to reimburse wireless providers for the cost to implement E911 services, the board may transfer revenue to the counties from the existing funds within the wireless category. The board shall disburse the funds equitably to all counties using a timeframe and distribution methodology established by the board.~~

4. Review documentation submitted by wireless providers which reflects current and projected funds derived from the fee. ~~, and the expenses incurred and expected to be incurred in order to comply with the E911 service requirements contained in the order for the purposes of:~~

~~a. Ensuring that wireless providers receive fair and equitable distributions of funds from the fund.~~

~~b. Ensuring that wireless providers are not provided disbursements from the fund which exceed the costs of providing E911 service, including the costs of complying with the order.~~

~~c. Ascertaining the projected costs of compliance with the requirements of the order and projected collections of the fee.~~

~~d. Implementing changes to the allocation percentages or adjusting the fee under paragraph (8)(h).~~

5. Implement changes to the allocation percentages or adjust the fee pursuant to s. 365.173.

6.~~5.~~ Meet quarterly ~~monthly~~ in the most efficient and cost-effective manner, including telephonically when practical, for the business to be conducted, to review and authorize the schedule of fee allocation transfer and distribution to the counties and state agencies that operate 911 centers ~~approve or reject, in whole or in part, applications submitted by wireless providers for recovery of moneys deposited into the wireless category, and to authorize the transfer of, and distribute, the fee allocation to the counties~~.

7.~~6.~~ 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.~~7.~~ 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.~~8.~~ 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.~~9.~~ Adopt, use, and alter a common corporate seal.

11.~~10.~~ Elect or appoint the officers and agents that are required by the affairs of the board.

12.~~11.~~ 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.~~12.~~ Provide coordination, support, and technical assistance to counties to promote the deployment of advanced public safety emergency communications ~~911 and E911~~ systems in the state.

14.~~13.~~ Provide coordination and support for educational opportunities related to 911 ~~E911~~ issues for the public safety emergency communications ~~E911~~ community in this state.

15.~~14.~~ Act as an advocate for issues related to public safety emergency communications ~~E911~~ system functions, features, and operations to improve the delivery of public safety emergency communications ~~E911~~ services to the residents of and visitors to this state.

16.~~15.~~ Coordinate input from this state at national forums and associations, to ensure that policies related to public

safety emergency communications ~~E911~~ systems and services are consistent with the policies of the public safety emergency communications ~~E911~~ community in this state.

17.~~16.~~ Work cooperatively with the system director established in s. 365.171(5) to enhance the state of public safety emergency communications ~~E911~~ services in this state and to provide unified leadership for all public safety emergency communications ~~E911~~ issues through planning and coordination.

18.~~17.~~ 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.~~18.~~ 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, ~~including the amount of fund-reimbursed expenses incurred by each wireless provider to comply with the order,~~ 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 ~~requirements of the order or other~~ 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 ~~E911~~ services.

4. The status of public safety emergency communications ~~E911~~ 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 ~~E911 system~~ director designated under s. 365.171(5), or his or her designee, and two members of the board~~, one of whom is a county 911 coordinator and one of whom represents a voice communications services provider~~. 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 ~~E911~~ 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 shall 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 ~~E911~~ 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 ~~shall~~ 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 ~~E911~~ 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.~~

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

(c) ~~(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.

(d) ~~(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.

(e) ~~(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~~, except for those counties that, before July 1, 2007, had adopted an ordinance or resolution establishing a fee less than 50 cents per month per access line. In those counties the fee established by ordinance may be changed only to the uniform statewide rate no sooner than 30 days after notification is made by the county's board of county commissioners to the board~~.

(f) ~~(g)~~ The board may adjust the allocation percentages for distribution of the fund as provided in s. 365.173. ~~No sooner than June 1, 2015, the board may adjust the rate of the fee under paragraph (f) based on the criteria in this paragraph and paragraph (h).~~ Any adjustment in the rate must be approved by a two-thirds vote of the total number of ~~E911~~ board members. When setting the percentages or contemplating any adjustments to the fee, the board shall consider the following:

~~1. The revenues currently allocated for wireless service provider costs for implementing E911 service and projected costs for implementing E911 service, including recurring costs for Phase I and Phase II and the effect of new technologies;~~

1. ~~2.~~ The appropriate level of funding needed to fund the rural grant program provided for in s. 365.173(2)(f) ~~s. 365.173(2)(g)~~; and

2.~~3.~~ The need to fund statewide, regional, and county grants in accordance with sub-subparagraph (6)(a)3.b. and s. 365.173(2)(g) ~~s. 365.173(2)(h)~~.

(g)~~(h)~~ The board may adjust the allocation percentages or adjust the amount of the fee as provided in paragraph (f) ~~(g)~~ if necessary to ensure full cost recovery or prevent over recovery ~~overrecovery~~ of costs incurred in the provision of 911 ~~E911~~ service, including costs incurred or projected to be incurred ~~to comply with the order~~. 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~~, except for the counties identified in paragraph (f)~~. 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.

(h)~~(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) ~~s. 365.173(2)(a)-(i)~~.

(i)~~(j)~~ State and local taxes do not apply to the fee. The amount of the ~~E911~~ 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.

(j) ~~(k)~~ A local government may not levy the fee or any additional fee on providers or subscribers for the provision of 911 ~~E911~~ service.

(k) ~~(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 ~~E911~~ FEE.—

~~(a) Effective January 1, 2015, a prepaid wireless E911 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 E911 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~~.

(a) ~~(b)~~ Effective July 1, 2023 ~~March 1, 2015~~, the prepaid wireless ~~E911~~ fee ~~imposed under paragraph (a)~~ shall be subject to remittance in accordance with paragraph (f) ~~(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)(f) ~~(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.

(b) ~~(c)~~ The prepaid wireless ~~E911~~ 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 ~~E911~~ 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.

(c) ~~(d)~~ For purposes of paragraph (b) ~~(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.

(d) ~~(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 ~~E911~~ fee to the transaction.

(e) ~~(f)~~ The amount of the prepaid wireless ~~E911~~ 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.

(f) ~~(g)~~ Beginning July 1, 2023 ~~April 1, 2015~~, each seller shall file a return and remit the prepaid wireless ~~E911~~ 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 ~~E911~~ 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 E911 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 ~~E911~~ 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 ~~E911~~ 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 ~~E911~~ 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 (c) ~~(d)~~;

b. The reporting period;

c. The number of prepaid wireless services sold during the reporting period;

d. The amount of prepaid wireless ~~E911~~ 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 ~~E911~~ 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 ~~E911~~ fee for all business locations. Such sellers must report the prepaid wireless E911 fees collected in each county, in accordance with paragraph (c) ~~(d)~~, on a reporting schedule filed with the fee return.

5. A return is not required for a reporting period when no prepaid wireless ~~E911~~ 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 ~~E911~~ fee.

(g) ~~(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 ~~E911~~ fee.

(h) ~~(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 ~~E911~~ fees. Thereafter, the Department of Revenue shall transfer all remaining funds remitted under this subsection to the Emergency Communications ~~Number E911 System~~ Fund monthly for use as provided in s. 365.173.

(i) ~~(j)~~ Beginning March 1, 2015, a seller may retain 5 percent of the prepaid wireless ~~E911~~ fees that are collected by the seller from consumers as a retailer collection allowance.

(j) ~~(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 ~~or E911~~ 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 ~~or E911~~ service.

(k)~~(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.

(l)~~(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.

(m)~~(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 E911 service.

(n)~~(o)~~ For purposes of this section, the state and local governments are not consumers.

(o)~~(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 ~~E911~~ 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 ~~E911~~ 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 ~~E911~~ FEE.—

(a) For purposes of this section, emergency communications and 911 ~~E911~~ service includes the functions relating to the receipt and transfer of requests for emergency assistance, of database management, call taking, and location verification~~, and call transfer~~. Department of Health certification and recertification and training costs for ~~911~~ public safety telecommunications, including dispatching, are functions of public safety emergency telecommunications ~~911~~ services.

(b) All costs directly attributable to the establishment or provision of emergency communications equipment ~~E911 service~~

and ~~contracting for E911~~ services 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 ~~E911 service~~ features, as defined in the providers' published schedules or the acquisition, installation, and maintenance of other ~~E911~~ equipment, including: circuits; call answering equipment; call transfer equipment; ANI or ALI controllers; ANI or ALI displays; station instruments; NG911 ~~E911~~ telecommunications systems; Emergency Services IP Network ESInet; visual call information and storage devices; recording equipment; telephone devices and other equipment for the hearing impaired used in the E911 system; PSAP backup power systems; consoles; automatic call distributors, and interfaces, including hardware and software, for computer-aided dispatch (CAD) systems; public safety land mobile radio systems (LMR) and radios ~~integrated CAD systems for that portion of the systems used for E911 call taking~~; GIS system and software equipment and information displays; network clocks; In-building coverage; cybersecurity, including hardware, software, and services; salary and associated expenses for 911 ~~E911~~ call takers and emergency dispatchers ~~for that portion of their time spent taking and transferring E911 calls~~, salary, and associated expenses for a county to employ a full-time equivalent 911 ~~E911~~ 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 ~~E911~~ 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 ~~E911~~ calls; costs to train and educate PSAP employees regarding 911 and radio ~~E911~~ service or NG911 ~~E911~~ 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 and other information source repositories, necessary to properly inform call takers as to location address, type of emergency, Smart City Technologies, public safety broadband networks, and other information directly relevant to the public safety emergency communications ~~E911 call-taking and transferring function. Moneys derived from the fee may also be used for next-generation E911 network services, next-generation E911 database services, next-generation E911 equipment, and wireless E911 routing~~ systems and equipment.

(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 for emergency responses which occur~~

~~after the call transfer to the responding public safety entity~~ ~~and the~~ 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 ~~E911~~ 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, ~~or~~ E911, or NG911 service on a retail or wholesale basis is not liable for damages resulting from or in connection with 911, ~~or~~ E911, or NG911 service, or for identification of the telephone number, or address, or name associated with any person accessing 911, ~~or~~ 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, ~~or~~ 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 ~~E911~~ SERVICE IMPLEMENTATION.—To balance the public need for reliable emergency communications ~~E911~~ 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 shall 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) Collocation among wireless providers is encouraged by the state.

1.a. Collocations on towers, including nonconforming towers, that meet the requirements in sub-sub-subparagraphs (I), (II), and (III), are subject to only building permit review,

which may include a review for compliance with this subparagraph. Such collocations are not subject to any design or placement requirements of the local government's land development regulations in effect at the time of the collocation 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 shall not preclude a public hearing for any appeal of the decision on the collocation application.

(I) The collocation 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 collocation 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 collocation 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., collocations 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 collocations 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 shall not preclude a public hearing for any appeal of the decision on the collocation application.

(I) The collocation 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 collocation 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 collocation 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 collocations 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 collocation application; and

(IV) The collocation 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 collocations or require review processes inconsistent with this subsection shall not apply to collocations addressed in this subparagraph.

d. If only a portion of the collocation 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 collocation meet the requirements of this subparagraph, that portion of the collocation 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 collocation shall be reviewed in accordance with this subparagraph. A collocation 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 shall not preclude a public hearing for any appeal of the decision on the collocation application.

2. If a collocation 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 collocation meets the requirements of subparagraph 1., the collocation shall 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 collocated 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 collocation 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 shall 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 collocation 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 ~~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 shall 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 collocation or aesthetic requirements, except as otherwise limited in this section, but shall 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 collocation 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 shall 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, ~~OR~~ E911, OR NG911 SYSTEM; PENALTY.—911, ~~and~~ 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.

Section 2. Section 365.173, Florida Statutes, is amended to read:

365.173 Emergency Communications ~~Number E911 System~~ Fund.—

(1) REVENUES.—

(a) Revenues derived from the fee levied on subscribers under s. 365.172(8) must be paid by the board into the State Treasury on or before the 15th day of each month. Such moneys must be accounted for in a special fund to be designated as the Emergency Communications ~~Number E911 System~~ Fund, a fund created in the Division of Telecommunications, or other office as designated by the Secretary of Management Services.

(b) Revenues derived from the fee levied on prepaid wireless service under s. 365.172(9), less the costs of administering collection of the fee, must be transferred by the Department of Revenue to the Emergency Communications ~~Number~~

~~E911 System~~ Fund on or before the 25th day of each month following the month of receipt.

(c) For accounting purposes, the Emergency Communications ~~Number E911 System~~ Fund must be segregated into three separate categories:

1. The wireless category;

2. The nonwireless category; and

3. The prepaid wireless category.

(d) All moneys must be invested by the Chief Financial Officer pursuant to s. 17.61. All moneys in such fund are to be expended by the office for the purposes provided in this section and s. 365.172. These funds are not subject to s. 215.20.

(2) DISTRIBUTION AND USE OF FUNDS.—As determined by the board pursuant to s. 365.172(8)(f) ~~s. 365.172(8)(g)~~, and subject to any modifications approved by the board pursuant to s. 365.172(6)(a)3. or (8)(g) ~~s. 365.172(6)(a)3. or (8)(h)~~, the moneys in the fund shall be distributed and used only as follows:

(a) Ninety-five ~~Seventy-six~~ percent of the moneys in the wireless category shall be distributed each month to counties, based on the total number of service identifiers in each county, and shall be used exclusively for payment of:

1. Authorized expenditures, as specified in s. 365.172(10).

2. Costs to comply with the requirements for emergency

communications ~~E911~~ service contained in the order and any future rules related to the order.

(b) Ninety-six percent of the moneys in the nonwireless category shall be distributed each month to counties based on the total number of service identifiers in each county and shall be used exclusively for payment of authorized expenditures, as specified in s. 365.172(10).

(c) Sixty-one percent of the moneys in the prepaid wireless category shall be distributed each month to counties based on the total amount of fees reported and paid in each county and shall be used exclusively for payment of authorized expenditures, as specified in s. 365.172(10). The moneys from prepaid wireless ~~E911~~ fees identified as nonspecific in accordance with s. 365.172(9) shall be distributed as determined by the Emergency Communications ~~E911~~ Board.

(d) Any county that receives funds under paragraphs (a), (b), and (c) shall establish a fund to be used exclusively for the receipt and expenditure of the revenues collected under paragraphs (a), (b), and (c). All fees placed in the fund and any interest accrued shall be used solely for costs described in subparagraphs (a)1. and 2. and may not be reduced, withheld, or allocated for other purposes. The money collected and interest earned in this fund shall be appropriated for these purposes by the county commissioners and incorporated into the annual county budget. The fund shall be included within the financial audit

performed in accordance with s. 218.39. The financial audit shall assure that all emergency communications ~~E911~~ fee revenues, interest, and emergency communications ~~E911~~ grant funding are used for payment of authorized expenditures, as specified in s. 365.172(10) and as specified in the Emergency Communications ~~E911~~ Board grant and special disbursement programs. The county is responsible for all expenditures of revenues distributed from the county emergency communications ~~E911~~ fund and shall submit the financial audit reports to the board for review. A county may carry forward up to 30 percent of the total funds disbursed to the county by the board during a county fiscal year for expenditures for capital outlay, capital improvements, equipment replacement, or implementation of a hosted system if such expenditures are made for the purposes specified in subparagraphs (a)1. and 2.; however, the 30-percent limitation does not apply to funds disbursed to a county under s. 365.172(6)(a)3., and a county may carry forward any percentage of the funds, except that any grant provided shall continue to be subject to any condition imposed by the board. In order to prevent an excess recovery of costs incurred in providing emergency communication ~~E911~~ service, a county that receives funds greater than the permissible emergency communication ~~E911~~ costs described in s. 365.172(10), including the 30-percent carryforward allowance, must return the excess funds to the ~~E911~~ board to be allocated under s. 365.172(6)(a).

~~(c) Twenty percent of the moneys in the wireless category shall be distributed to wireless providers in response to sworn invoices submitted to the board by wireless providers to reimburse such wireless providers for the actual costs incurred to provide 911 or E911 service, including the costs of complying with the order. Such costs include costs and expenses incurred by wireless providers to design, purchase, lease, program, install, test, upgrade, operate, and maintain all necessary data, hardware, and software required to provide E911 service. Each wireless provider shall submit to the board, by August 1 of each year, a detailed estimate of the capital and operating expenses for which it anticipates that it will seek reimbursement under this paragraph during the ensuing state fiscal year. In order to be eligible for recovery during any ensuing state fiscal year, a wireless provider must submit all sworn invoices for allowable purchases made within the previous calendar year no later than March 31 of the fiscal year. By September 15 of each year, the board shall submit to the Legislature its legislative budget request for funds to be allocated to wireless providers under this paragraph during the ensuing state fiscal year. The budget request shall be based on the information submitted by the wireless providers and estimated surcharge revenues. Distributions of moneys in the fund by the board to wireless providers must be fair and nondiscriminatory. If the total amount of moneys requested by~~

~~wireless providers pursuant to invoices submitted to the board and approved for payment exceeds the amount in the fund in any month, wireless providers that have invoices approved for payment shall receive a pro rata share of moneys in the fund and the balance of the payments shall be carried over to the following month or months until all of the approved payments are made. The board may adopt rules necessary to address the manner in which pro rata distributions are made when the total amount of funds requested by wireless providers pursuant to invoices submitted to the board exceeds the total amount of moneys on deposit in the fund.~~

(e) ~~(f)~~ One percent of the moneys in each category of the fund shall be retained by the board to be applied to costs and expenses incurred for the purposes of managing, administering, and overseeing the receipts and disbursements from the fund and other activities as defined in s. 365.172(6). Any funds retained for such purposes in a calendar year which are not applied to such costs and expenses by March 31 of the following year shall be redistributed as determined by the board.

(f) ~~(g)~~ Three percent of the moneys in each category of the fund and an additional 1 percent of the moneys collected in the wireless category shall be used to make monthly distributions to rural counties for the purpose of providing facilities and network and service enhancements and assistance for the emergency communications ~~911 or E911~~ systems operated by rural

counties and for the provision of grants by the office to rural counties for upgrading and replacing emergency communications ~~E911~~ systems.

(g)~~(h)~~ Thirty-five percent of the moneys in the prepaid wireless category shall be retained by the board to provide state emergency communications ~~E911~~ grants to be awarded in accordance with the following order of priority:

1. For all large, medium, and rural counties to upgrade or replace emergency communications ~~E911~~ systems.

2. For all large, medium, and rural counties to develop and maintain statewide 911 routing, geographic, and management information systems.

3. For all large, medium, and rural counties to develop and maintain next-generation 911 services and equipment.

(h)~~(i)~~ If the wireless category has funds remaining in it on December 31 after disbursements have been made during the calendar year immediately prior to December 31, the board may disburse the excess funds in the wireless category in accordance with s. 365.172(6)(a)3.b.

(3) The Legislature recognizes that the fee authorized under s. 365.172 may not necessarily provide the total funding required for establishing or providing the emergency communications ~~E911~~ service. It is the intent of the Legislature that all revenue from the fee be used as specified in subsection (2).

Section 3. Subsection (1) of section 365.177, Florida Statutes, is amended to read:

365.177 Transfer of E911 calls between systems.—

(1) The office shall develop a plan by December 30, 2023 ~~February 1, 2020~~, to upgrade 911 public safety answering points within the state to allow the transfer of an emergency call from one local, multijurisdictional, or regional E911 system to another local, multijurisdictional, or regional E911 system in the state. Such transfer should include voice, text message, image, video, caller identification information, location information, and additional standards-based 911 call information.

Section 4. Subsection (10) of section 212.05965, Florida Statutes, is amended to read:

212.05965 Taxation of marketplace sales.—

(10) Notwithstanding any other law, the marketplace provider is also responsible for collecting and remitting any prepaid wireless public safety emergency communications systems ~~E911~~ fee under s. 365.172, waste tire fee under s. 403.718, and lead-acid battery fee under s. 403.7185 at the time of sale for taxable retail sales made through its marketplace.

Section 5. Section 365.171, Florida Statutes, is amended to read:

365.171 Emergency communications ~~number E911~~ state plan.—

(1) SHORT TITLE.—This section may be cited as the "Florida

Emergency Communications ~~Number E911~~ State Plan Act."

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature that the communications number "911" be the designated emergency communications number. A public safety agency may not advertise or otherwise promote the use of any communications number for emergency response services other than "911." It is further the intent of the Legislature to implement and continually update a cohesive statewide emergency communications ~~number "E911"~~ plan for enhanced 911 services which will provide citizens with rapid direct access to public safety agencies by accessing "911" with the objective of reducing the response time to situations requiring law enforcement, fire, medical, rescue, and other emergency services.

(3) DEFINITIONS.—As used in this section, the term:

(a) "Office" means the Division of Telecommunications within the Department of Management Services, as designated by the secretary of the department.

(b) "Local government" means any city, county, or political subdivision of the state and its agencies.

(c) "Public agency" means the state and any city, county, city and county, municipal corporation, chartered organization, 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.

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

(4) STATE PLAN.—The office shall develop, maintain, and implement appropriate modifications for a statewide emergency communications ~~E911 system~~ plan. The plan shall provide for:

(a) The public agency emergency communications requirements for each entity of local government in the state.

(b) A system to meet specific local government requirements. Such system shall include law enforcement, firefighting, and emergency medical services and may include other emergency services such as poison control, suicide prevention, and emergency management services.

(c) Identification of the mutual aid agreements necessary to obtain an effective emergency communications systems ~~E911 system~~.

(d) A funding provision that identifies the cost necessary to implement the emergency communications ~~E911~~ system.

The office shall be responsible for the implementation and coordination of such plan. The office shall adopt any necessary rules and schedules related to public agencies for implementing and coordinating the plan, pursuant to chapter 120.

(5) SYSTEM DIRECTOR.—The secretary of the department or

his or her designee is designated as the director of the statewide emergency communications ~~number E911~~ system and, for the purpose of carrying out the provisions of this section, is authorized to coordinate the activities of the system with state, county, local, and private agencies. The director in implementing the system shall consult, cooperate, and coordinate with local law enforcement agencies.

(6) REGIONAL SYSTEMS.—This section does not prohibit or discourage the formation of multijurisdictional or regional systems; and any system established pursuant to this section may include the jurisdiction, or any portion thereof, of more than one public agency. It is the intent of the Legislature that emergency communications services ~~E911 service~~ be available throughout the state. Expenditure by counties of the ~~E911~~ fee authorized and imposed under s. 365.172 should support this intent to the greatest extent feasible within the context of local service needs and fiscal capability. This section does not prohibit two or more counties from establishing a combined emergency ~~E911~~ communications service by an interlocal agreement and using the fees authorized and imposed by s. 365.172 for such combined ~~E911~~ service.

(7) TELECOMMUNICATIONS INDUSTRY COORDINATION.—The office shall coordinate with the Florida Public Service Commission which shall encourage the Florida telecommunications industry to activate facility modification plans for timely emergency

communications services ~~E911~~ implementation.

(8) COIN TELEPHONES.—The Florida Public Service Commission shall establish rules to be followed by the telecommunications companies in this state designed toward encouraging the provision of coin-free dialing of "911" calls wherever economically practicable and in the public interest.

(9) SYSTEM APPROVAL.—No emergency communications number E911 system shall be established and no present system shall be expanded without prior approval of the office.

(10) COMPLIANCE.—All public agencies shall assist the office in their efforts to carry out the intent of this section, and such agencies shall comply with the developed plan.

(11) FEDERAL ASSISTANCE.—The secretary of the department or his or her designee may apply for and accept federal funding assistance in the development and implementation of a statewide emergency communications ~~number E911~~ system.

(12) CONFIDENTIALITY OF RECORDS.—

(a) Any record, recording, or information, or portions thereof, obtained by a public agency or a public safety agency for the purpose of providing services in an emergency and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications ~~E911~~ system is confidential and exempt from the provisions of s. 119.07(1) and

s. 24(a), Art. I of the State Constitution, except that such record or information may be disclosed to a public safety agency. The exemption applies only to the name, address, telephone number or personal information about, or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services. A telecommunications company or commercial mobile radio service provider shall not be liable for damages to any person resulting from or in connection with such telephone company's or commercial mobile radio service provider's provision of any lawful assistance to any investigative or law enforcement officer of the State of Florida or political subdivisions thereof, of the United States, 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 unless the telecommunications company or commercial mobile radio service provider acted in a wanton and willful manner.

(b) Notwithstanding paragraph (a), a 911 public safety telecommunicator, as defined in s. 401.465, may contact any private person or entity that owns an automated external defibrillator who has notified the local emergency medical services medical director or public safety answering point of such ownership if a confirmed coronary emergency call is taking

place and the location of the coronary emergency is within a reasonable distance from the location of the defibrillator, and may provide the location of the coronary emergency to that person or entity.

Section 6. Paragraph (b) of subsection (2) of section 365.174, Florida Statutes, is amended to read:

365.174 Proprietary confidential business information.—

(2)

(b) The Department of Revenue may provide information relative to s. 365.172(9) to the Secretary of Management Services, or his or her authorized agent, or to the Emergency Communications ~~E911~~ Board established in s. 365.172(5) for use in the conduct of the official business of the Department of Management Services or the Emergency Communications ~~E911~~ Board.

Section 7. This act shall take effect July 1, 2023.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7001 PCB EEG 23-01 OGSR/Nationwide Public Safety Broadband Network
SPONSOR(S): Ethics, Elections & Open Government Subcommittee, Yarkosky
TIED BILLS: **IDEN./SIM. BILLS:** SB 7006

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ethics, Elections & Open Government Subcommittee	18 Y, 0 N	Villa	Toliver
1) Energy, Communications & Cybersecurity Subcommittee		Mortellaro	Keating
2) State Affairs Committee			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact an exemption, it automatically repeals on October 2nd of the fifth year after enactment.

In 2012, Congress created the Nationwide Public Safety Broadband Network (FirstNet) overseen by a newly created First Responder Network Authority (FirstNet Authority), an independent agency established within the U.S. Department of Commerce. FirstNet was one of the recommendations of the National Commission on Terrorist Attacks for the United States (also known as the 9/11 Commission) to prevent incidents of communication disruption that occurred between first responders during the 9/11 terrorist attacks. In 2017, the U.S. Department of Commerce announced that the FirstNet Authority had entered into a 25-year public-private partnership with AT&T to build the first nationwide wireless broadband network dedicated to America's first responders. Today, FirstNet is operational and delivers specialized features to first responders – such as priority access, preemption, more network capacity, and a resilient, hardened connection.

The law provides a public record exemption for information held by an agency relating to FirstNet if released information would reveal:

- The design, development, construction, deployment, and operation of network facilities;
- Network coverage, including geographical maps indicating actual or proposed locations of network infrastructure or facilities;
- The features, functions, and capabilities of network infrastructure and facilities;
- The features, functions, and capabilities of network services provided to first responders and other network users;
- The design, features, functions, and capabilities of network devices provided to first responders and other network users; or
- Security, including cybersecurity, of the design, construction, and operation of the network and associated services and products.

The bill saves from repeal this public record exemption, which will repeal on October 2, 2023, if this bill does not become law.

The bill does not appear to have a fiscal impact on state government or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[2]

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[3]

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[4] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

Nationwide Public Safety Broadband Network

Following the 9/11 terrorist attacks, Congress created the National Commission on Terrorist Attacks upon the United States (9/11 Commission) and tasked that body with investigating and reporting to the President and Congress its findings, conclusions, and recommendations of corrective measures that can be taken to prevent acts of terrorism.[5] One of the 9/11 Commission's recommendations to prevent the incidents of communication disruption that occurred between first responders during the terrorist attacks was to "support pending legislation which provides for the expedited and increased assignment of radio spectrum for public safety purposes."[6] In 2012, Congress created the Nationwide Public Safety Broadband Network (FirstNet) overseen by a newly-created First Responder Network Authority (FirstNet Authority), an independent agency established within the U.S. Department of Commerce.[7] In 2017, the U.S. Department of Commerce announced that the FirstNet Authority had entered into a 25-year public-private partnership with AT&T to "build the first nationwide wireless broadband network dedicated to America's first responders."[8]

FirstNet's enabling legislation requires each Governor to determine whether to:

- Participate in the deployment of FirstNet as proposed by the FirstNet Authority's state plan; or
- Conduct its own deployment of a radio access network that is interoperable with FirstNet.[9]

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[1] Section 119.15, F.S.
[2] Section 119.15(3), F.S.
[3] Section 119.15(6)(b), F.S.
[4] Article I, s. 24(c), FLA. CONST.
[5] Intelligence Authorization Act, Pub. Law No. 107-306 (2002).
[6] 9/11 Commission, The 9/11 Commission Report 396-397 (2004), available at https://govinfo.library.unt.edu/911/report/911Report.pdf (last visited January 17, 2023).
[7] Middle Class Tax Relief and Job Creation Act of 2012, Pub. Law No. 112-96 (2012).
[8] FirstNet Partners with AT&T to Build $46.5 Billion Wireless Broadband Network for America's First Responders, U.S. Department of Commerce, available at https://2017-2021.commerce.gov/news/press-releases/2017/03/firstnet-partners-att-build-465-billion.
[9] 47 U.S.C. s. 1442(e)(2).

All 50 states, five U.S. territories, and Washington, D.C., have opted to participate in FirstNet, meaning each has accepted the individual state plan proposed by the FirstNet Authority detailing how FirstNet will be deployed in their state/territory.[10] Today, FirstNet is operational and delivers specialized features to first responders that are not available to others on wireless networks today, such as priority access, preemption, more network capacity, and a resilient, hardened connection.[11]

Public Record Exemption under Review

In 2018, the Legislature created a public record exemption for specified information held by an agency[12] relating to FirstNet. The information is kept confidential and exempt[13] from public records requirements if release of the information would reveal any of the following:

- The design, development, construction, deployment, and operation of network facilities;
- Network coverage, including geographical maps indicating actual or proposed locations of network infrastructure or facilities;
- The features, functions, and capabilities of network infrastructure and facilities;
- The features, functions, and capabilities of network services provided to first responders[14] and other network users;
- The design, features, functions, and capabilities of network devices provided to first responders and other network users; or
- Security, including cybersecurity, of the design, construction, and operation of the network and associated services and products.[15]

The 2018 public necessity statement[16] for the exemption provides that:

> [The exempt] information contains security information and proprietary business information of communications services providers. The disclosure of sensitive information relating to the Nationwide Public Safety Broadband Network could result in identification of vulnerabilities in such network and allow a security breach that could damage the network or disrupt the network's safe and reliable operation, adversely impacting the public health and safety of the state. Disclosure of such information would adversely affect the business interests and compromise the network security of such providers and their networks.[17]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2023, unless reenacted by the Legislature.

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[10] FirstNet Authority, The Network, https://www.firstnet.gov/network (last visited January 9, 2023).

[11] FirstNet Authority, Top 10 Frequently Asked Questions, https://www.firstnet.gov/system/tdf/Top%2010%20FAQs%202022.pdf?file=1&type=node&id=679&force=0 (last visited January 9, 2023).

[12] "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. Section 119.011(2), F.S.

[13] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See WFTV, Inc. v. Sch. Bd. of Seminole, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); City of Rivera Beach v. Barfield, 642 So.2d 1135 (Fla. 4th DCA 1994); Williams v. City of Minneola, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att'y Gen. Fla. 04-09 (2004).

[14] "First responder" means a law enforcement officer as defined in s. 943.10, F.S., a firefighter as defined in s. 633.102, F.S., or an emergency medical technician or paramedic as defined in s. 401.23, F.S., employed by state or local government. A volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is also considered a first responder of the state or local government. Section 112.1815(1), F.S.

[15] Section 119.071(3)(d), F.S.

[16] Article I, s. 24(c), FLA. CONST., requires each public record exemption state with specificity the public necessity justifying the exemption.

[17] Chapter 2018-60, L.O.F.

During the 2022 interim, subcommittee staff sent questionnaires to Florida Sheriffs and Police departments. The respondents indicated they had not had any issues interpreting or applying the exemption and that they were unaware of the existence of any litigation concerning the exemption. Further, the respondents indicated they had not received any complaints concerning the exemption. As such, the vast majority of respondents recommended the exemption be reenacted as is.[18]

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the public record exemption for certain information relating to FirstNet that is held by an agency.

B. SECTION DIRECTORY:

Section 1: amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2: provides an effective date of October 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties and municipalities have

[18] Open Government Sunset Review Questionnaire, Nationwide Public Safety Broadband Network, responses on file with the Ethics, Elections & Open Government Subcommittee.

to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties and municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides an exemption from public record requirements for certain information relating to the Nationwide Public Safety Broadband Network held by an agency; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (d) of subsection (3) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(3) SECURITY AND FIRESAFETY.—

(d)~~1.~~ Information relating to the Nationwide Public Safety Broadband Network established pursuant to 47 U.S.C. ss. 1401 et seq., held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if release of such information would reveal:

1.~~a.~~ The design, development, construction, deployment, and operation of network facilities;

2.~~b.~~ Network coverage, including geographical maps indicating actual or proposed locations of network

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

infrastructure or facilities;

3.~~c.~~ The features, functions, and capabilities of network infrastructure and facilities;

4.~~d.~~ The features, functions, and capabilities of network services provided to first responders, as defined in s. 112.1815, and other network users;

5.~~e.~~ The design, features, functions, and capabilities of network devices provided to first responders and other network users; or

6.~~f.~~ Security, including cybersecurity, of the design, construction, and operation of the network and associated services and products.

~~2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2023.