

# **2017**

## **Oregon Department of Revenue**

### **Emergency Communications (9-1-1) Tax**

#### **Implementation of HB 4055 (2014 Regular Session)**

**Executive Summary  
February 2017**



[www.oregon.gov/dor](http://www.oregon.gov/dor)



# Executive summary

---

The 2014 Legislature passed HB 4055 (Chapter 59, Oregon Laws 2014) that introduced changes to the Emergency Communications Tax program administered by the Department of Revenue. The bill required the department to report to the Legislature regarding the collection of taxes at point of sale of prepaid wireless services; the effectiveness of the relevant statutes, as enforced by the department, in collecting tax from consumers and subscribers with access to emergency reporting systems; and include an estimate of the amount of revenue received on or after October 1, 2015 that is attributable to provisions in HB 4055.

HB 4055 clarified that the tax applied to prepaid wireless services in addition to subscription services. Prior to HB 4055, the statute did not clearly prescribe a formula for calculating tax on prepaid wireless services. HB 4055 clarified the tax applicability which has resulted in increased voluntary compliance.

There are approximately 150 retailers of prepaid wireless service filing and paying the tax for prepaid wireless transactions. The number of telecommunications providers has remained relatively consistent at approximately 170, bringing the total number of tax filers to just over 300 each quarter.

Tax receipts have increased from \$9.8 million in first quarter 2014 to \$10.7 million in third quarter 2016. There are noticeable increases in revenue at first quarter 2015 and fourth quarter 2015, where two law changes went into effect. Nearly 15 percent of the total tax receipts in third quarter 2016 are attributable to prepaid wireless service transactions. The department can't identify the specific amount of increased revenue resulting from the legislation because some providers were already reporting tax for prepaid wireless devices prior to HB 4055 passing.

The tax return data indicates a slight decrease in traditional landline and subscription wireless accesses, while prepaid wireless continues to increase. Industry research indicates usage of prepaid wireless service continues to increase faster than traditional subscription wireless service.

We believe most large telecommunications providers are compliant with the tax collection and reporting requirements, based on comparison to the Public Utility Commission's regulatory data. We believe that many large brick and mortar retailers and about 20 online retailers are filing tax returns. We continue to pursue enforcement activities of the remaining providers and brick and mortar retailers not complying with the filing requirements. We are also working to identify and obtain compliance from retailers with an online presence, which is the most challenging compliance issue to address.

This program has a few areas that make it challenging to administer. The first is that there is no common or central place to identify who is selling prepaid wireless services. The second area is enforcing that the tax be collected and remitted by online retailers who do not have a physical presence in Oregon. The third relates to confusion by taxpayers about when and if they are entitled to claim the 2-percent reimbursement for the cost to collect the tax at the point of sale. Finally, there is an inconsistency in the way interest is calculated on refunds for this tax program compared to other tax programs the department administers.

Actual revenue collections are on track to exceed revenue projections for the 2015–17 biennium. Based on initial analysis, it does appear that compliance is improving, but we know there is room for further improvement. As we continue to work through filing enforcement leads and audits, we'll know more about the impact of the legislative changes.



# **2017**

## **Oregon Department of Revenue**

### **Emergency Communications (9-1-1) Tax**

**Implementation of HB 4055  
(2014 Regular Session)**

**February 2017**



[www.oregon.gov/dor](http://www.oregon.gov/dor)



# Table of Contents

Executive summary .....	iii
Report begins on .....	4
Appendix 1 - House Bill 4055 .....	11

# Implementation of HB 4055—Emergency Communications (9-1-1) Tax

---

## Introduction

The 2014 Legislature passed HB 4055 (Chapter 59, Oregon Laws 2014) that introduced changes to the Emergency Communications Tax program administered by the Department of Revenue. The changes clarified that the tax applies to interconnected Voice over Internet Protocol (VoIP) and prepaid wireless services; prescribed a means for providers to temporarily report and remit tax on prepaid wireless services using one of two tax calculation methods; and required retailers, or sellers, to begin collecting the tax at the point prepaid wireless services are sold.

The bill also required the department to report to the Legislature (section 13b, Chapter 59, Oregon Laws 2014) regarding the collection of taxes at point of sale of prepaid wireless services; the effectiveness of the relevant statutes, as enforced by the department, in collecting tax from consumers and subscribers with access to emergency reporting systems; and include an estimate of the amount of revenue received on or after October 1, 2015 that is attributable to provisions in HB 4055. This report describes taxes on prepaid wireless services collected at point of sale, quarterly tax revenue collected from first quarter 2014 to third quarter 2016, and the department's enforcement efforts. However, the department can't state the specific amount of increased revenue resulting from the legislation because some providers were already reporting tax for prepaid wireless devices prior to HB 4055 passing.

The Legislative Revenue Office forecast HB 4055 would generate an additional \$620,000 in the 2013–15 biennium and \$2.43 million in the 2015–17 biennium. The Emergency Communications Tax program collected a total \$78.6 million in the 2013–15 biennium and is projected to collect \$83.9 million in the 2015–17 biennium. If the pace of current collections continues, the biennium total may exceed projections. Specific receipts identified by type of service are discussed below in the Revenue collected section.

## Background

The Emergency Communications Tax is imposed on each consumer or subscriber of a telecommunications service or VoIP service with access to the emergency communications system. The tax was adopted by the 1981 Legislature. It's been in place since 1982, but has been modified several times since its inception. Subscriber telecommunications service and VoIP service have been taxed at \$0.75 per access line each month, since 1995. The tax is collected by telecommunications providers, is held in trust, and reported and remitted the last day of the month following each calendar quarter.

Enacted by the 2014 Legislature, HB 4055 clarified that the tax applied to prepaid wireless services in addition to subscription services. A temporary reporting period was implemented from January through September 2015, for prepaid wireless transactions. Prepaid wireless service providers had the option to calculate tax based on the number of accounts with a balance equal to or greater than \$0.75 on the last day of each month in the quarter, or divide their total prepaid wireless revenue by \$50 and multiply that number by \$0.75.

Following the temporary reporting period, the bill required retailers of prepaid wireless ser-



vices to begin collecting the Emergency Communications Tax at the point of sale on all prepaid wireless services purchased on or after October 1, 2015. The permanent tax rate for prepaid wireless services is \$0.75 per transaction, regardless of the value or frequency of purchase. Retailers collecting the tax at point of sale may retain 2 percent of the tax collected to reimburse expenses they incurred to collect the tax. Providers are only allowed to retain 2 percent of the tax they collect at the point of sale; subscription or postpaid services do not receive reimbursement.

## Revenue collected at point of sale

Prior to HB 4055, some providers of wireless communication service reported and remitted tax on prepaid wireless services. However, the statute did not clearly prescribe a formula for calculating tax on prepaid wireless services. That contributed to some providers failing to report and remit tax, as they interpreted the law to only require tax be collected on subscription or postpaid services. HB 4055 clarified the tax applicability which has resulted in increased voluntary compliance.

1996–2015	January 1, 2015–September 30, 2015	October 1, 2015–present	
Provider Collected	Provider Collected	Provider Collected	Retailer (seller) Collected
<ul style="list-style-type: none"> <li>• \$0.75 tax imposed monthly on each subscriber of telecommunications services with access to 9-1-1 system.               <ul style="list-style-type: none"> <li>– Landline.</li> <li>– Wireless (no tax calculation prescribed for prepaid services).</li> <li>– Radio common carrier.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• \$0.75 tax imposed monthly on each subscriber of telecommunications services with access to 9-1-1 system.               <ul style="list-style-type: none"> <li>– Landline.</li> <li>– Wireless.</li> <li>– Radio common carrier.</li> </ul> </li> <li>• Tax imposed on provider of prepaid wireless either \$0.75 per month for each account balance equal to or greater than tax rate on last day of the month, or result of dividing total prepaid wireless revenue by \$50 and multiplying by \$0.75.</li> </ul>	<ul style="list-style-type: none"> <li>• \$0.75 tax imposed monthly on each subscriber of telecommunications services with access to 9-1-1 system.               <ul style="list-style-type: none"> <li>– Landline.</li> <li>– Wireless.</li> <li>– Radio common carrier.</li> <li>– VoIP specifically named.</li> </ul> </li> <li>• \$0.75 per transaction tax imposed on each consumer purchase of prepaid wireless services with access to 9-1-1 system.</li> </ul>	<ul style="list-style-type: none"> <li>• \$0.75 per transaction tax imposed on each consumer purchase of prepaid wireless services with access to 9-1-1 system.</li> </ul>

The responsibility for reporting and remitting tax on prepaid wireless products has shifted from the telecommunications provider to the retailer of prepaid wireless services due to the legislation. There are approximately 150 retailers of prepaid wireless service filing and paying the tax for prepaid wireless transactions. The number of retailers does not represent the number of stores, because one return is filed per entity regardless of the number of retail locations. The number of telecommunications providers has remained relatively consistent at approximately 170, bringing the total number of tax filers to just over 300 each quarter.

## Estimated total revenue

### Tax receipts

For purposes of this report, we looked at reported tax on emergency communication subscription or postpaid access lines, and prepaid wireless services transactions from first quarter 2014 through third quarter 2016. This range of reporting periods covers four quarters prior to the law changes, the three quarters of temporary reporting of prepaid wireless transactions, and four quarters after the permanent law change went into effect.

Tax receipts shown in Figure 1 have increased from \$9.8 million in first quarter 2014 to \$10.7 million in third quarter 2016. There are noticeable increases in revenue at 2015 Q1 and 2015 Q4, where two law changes went into effect. The department can't identify the specific amount of increased revenue resulting from the legislation because some providers were already reporting tax for prepaid wireless devices prior to HB 4055 passing. The tax calculation on prepaid wireless transactions prescribed by HB 4055 simply changed the method of reporting tax for those providers that were compliant prior to the law change. Tax reported by those providers is not considered new revenue. In addition, some taxpayers filing for the first time following the law change are truly new providers, not new taxpayers due to the law change.

**Figure 1: Emergency Communications Tax receipts**

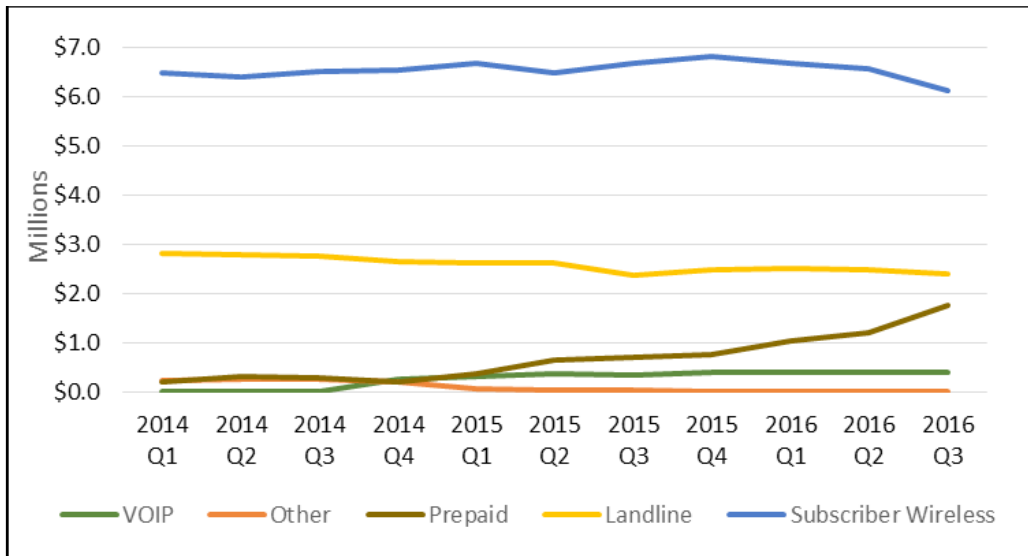


Figure 2 represents an estimate of the amount of tax revenue attributable to each type of communications service as reported on quarterly tax returns. The tax return data indicates a slight decrease in traditional landline and subscription wireless accesses, while prepaid wireless continues to increase. Industry research indicates usage of prepaid wireless service continues to increase faster than traditional subscription wireless service<sup>1,2</sup>. Prepaid wireless transactions have increased an average of 20 percent each quarter since October 1, 2015. Nearly 15 percent of the total tax receipts in 2016 Q3 are attributable to prepaid wireless service transactions. For the first five of eight quarters in the 2015–17 biennium, the tax revenue collected from prepaid wireless transactions totals \$5.4 million.

1 FierceWireless reported in May 2016 major carriers are experiencing increasing average revenue per user from prepaid wireless sales while post-paid (subscription) is decreasing. <http://www.fiercewireless.com/wireless/t-mobile-and-at-t-are-killing-gap-between-prepaid-and-postpaid>.

2 ShareTracker reports 114 percent increase from 2014 to 2015 for prepaid service. <http://sharetracker.net/prepaid-net-adds-in-the-wireless-tele-com-industry-trend-up/>.

**Figure 2: Emergency Communications Tax estimated attribution of receipts by service type**



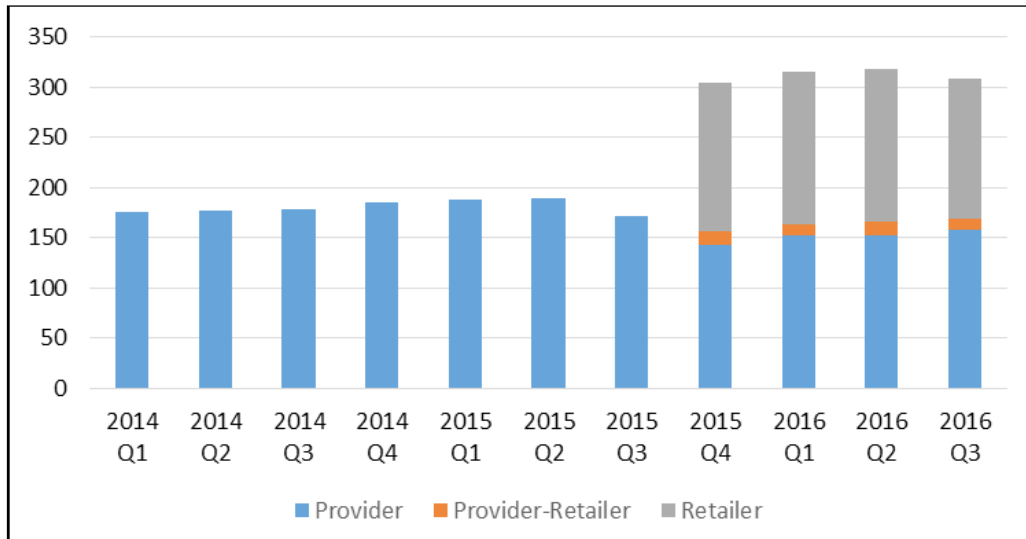
## Effectiveness of statute

Based on early analysis, we believe most large telecommunications providers are compliant with the tax collection and reporting requirements, based on comparison to the Public Utility Commission’s (PUC) regulatory data they’ve shared with us. The PUC data includes number of subscription or postpaid access lines for landlines and wireless services. Although, providers are not required to report prepaid wireless services or VoIP access to PUC.

We believe that many large brick and mortar retailers and about 20 online retailers (who represent the largest market share of prepaid wireless services) are filing tax returns. However, we are just now getting enough data from those retailers’ tax returns to perform compliance investigations so we can better understand if they are filing and paying accurately. We continue to pursue enforcement activities of the remaining providers and brick and mortar retailers not complying with the filing requirements. We are also working to identify and obtain compliance from retailers with an online presence, which is the most challenging compliance issue to address.

While the tax receipts have continued to grow at a somewhat steady rate, the number of taxpayers has nearly doubled. Prior to HB 4055, there were nearly 170 telecommunication providers collecting and reporting Emergency Communications Tax in Oregon. A slight increase in the number of taxpayers occurred at the implementation of the temporary period with providers reporting tax on prepaid wireless services. Beginning in October 2015, the number of taxpayers increased significantly, growing to over 300 taxpayers as shown in Figure 3. We initially estimated a much larger increase in the number of taxpayers due to the number of retail locations selling prepaid wireless services. However, return filing is taxpayer identification based instead of location based, so in most cases one return represents tax collected by all retail locations for that entity.

**Figure 3: Emergency Communications Tax  
number of taxpayers by type**



### Filing enforcement and audit activity

**Stop filers**—Approximately 25 taxpayers who filed a fourth quarter 2015 return, failed to file a return for first quarter 2016. We sent letters to these taxpayers requesting they file a return and we subsequently received returns and tax payment from 20. Total tax from these returns was \$135,000. Failure-to-file assessments and billings have been sent to the remaining taxpayers as well as to a handful of taxpayers that started filing in later quarters, but failed to fulfill the filing obligation for prior quarters.

**Nonfilers**—We have identified approximately 300 additional providers and retailers not filing returns that we believe are subject to Oregon’s Emergency Communications Tax. We’ve sent letters requesting each entity file tax returns. As we receive responses, we’re able to determine if the entity has an obligation to collect, report, and remit the tax. Those not subject to the tax are removed from the list. As of December 1, 2016, we have received 84 returns for various quarters with payments totaling \$277,000. Additionally, we have received 10 payments totaling \$3,400 due to our failure-to-file assessments.

In 2015, we asked prepaid wireless providers to send us a list of the third-party retailers or retailers of providers’ prepaid wireless services. We didn’t receive any responses to those requests. Subsequently, one provider responded to a second request and early indications show over 70 percent of retailers are compliant. The remaining retailers were sent letters asking they file returns. The next step is to issue failure-to-file assessments if they don’t file.

**Audits**—We have completed two multi-period audits of telecommunications providers resulting in a small adjustment and billing. Additionally, we adjusted some single-period returns filed by providers and retailers, resulting in an additional \$46,000 of tax payments. Compliance work continues so we can be as thorough as we can in understanding the levels of compliance with this tax program.

## Delinquent tax

Tax collected by the providers and retailers is generally remitted at the time it is reported. As of December 1, 2016, we are actively pursuing collections actions on \$91,000 of outstanding accounts receivable for the Emergency Communications Tax. This \$91,000 is self-assessed tax and is based solely on returns filed by providers or retailers. It doesn't include assessments to providers and retailers who have failed to file returns.

Failure-to-file assessments are a best estimate of what our records and research show a person may owe for the tax program. We aren't reporting an exact accounts receivable amount for failure-to-file assessments because they are merely estimated. These estimates may be adjusted when a taxpayer files a return, provides information sufficient to determine they are not subject to the tax, or successfully appeals the failure-to-file assessment.

## Administrative challenges

This program has a few areas that make it challenging to administer. The first is that there is no common or central place to identify who is selling prepaid wireless services. The second area is enforcing that the tax be collected and remitted by online retailers who do not have a physical presence in Oregon. The third relates to confusion by taxpayers about when and if they are entitled to claim the 2-percent reimbursement for the cost to collect the tax at the point of sale. Finally, there is an inconsistency in the way interest is calculated on refunds for this tax program compared to other tax programs the department administers.

No registration/license requirement—It is difficult to identify retailers of prepaid wireless services as there is no registration or license requirement for those retailers. Nor is there any public data source identifying retailers who offer prepaid wireless services. We have relied on internet searches, limited information received from wireless service providers, and collateral audits to identify retailers of prepaid wireless services, including online retailers. The PUC regulatory data of telecommunications providers is helpful for comparison to reported subscription or postpaid lines, but does not include any information about prepaid wireless transactions or providers.

Online retailers—Our cigarette and tobacco inspectors are looking for brick and mortar retailers who sell prepaid wireless while they perform retail site inspections for tobacco tax purposes. Online retailers who do not maintain physical locations in Oregon are more difficult to identify. These internet retailers often do not have enough connection, or nexus, with Oregon and it is highly difficult to enforce compliance with Oregon tax laws. To combat the state's inability to enforce our tax laws in an out-of-state jurisdiction, the 2014 Legislature provided that Oregon purchasers of prepaid wireless services who do not have the tax collected by the retailer at the point of sale must file and pay the tax directly to the department. As of the drafting of this report, no one has filed such a return.

Two-percent reimbursement for costs to collect—Several taxpayers who previously reported subscription based services prior to October 2015, began reporting as prepaid wireless transactions and retained the two-percent reimbursement for expenses incurred while collecting the tax at point of sale. We are contacting these taxpayers and adjusting their returns if we determine they are not entitled to the two-percent reimbursement. It is too early to tell if this will be an ongoing practice, but it does highlight a perceived disparity between retailers collecting the tax at the point of sale and providers collecting tax through monthly subscriber billing.

Interest on refunds—With the two-percent reimbursement beginning in October 2015, we discovered the different treatment of interest on overpayments. We issued refunds to taxpayers who didn't claim the two-percent reimbursement but qualified for it, resulting in an overpayment of tax. Current law requires we pay interest from the date payment is received for overpayments of the Emergency Communications Tax, until the refund is made. For most other programs we administer, interest on overpayments begins 45 days following a due date of the return or 45 days following the date payment is received, whichever is later. The House Interim Committee on Revenue was informed of this difference between the programs during interim legislative days in September 2016.

## **Conclusion**

Actual revenue collections are on track to exceed revenue projections for the 2015–17 biennium. Based on initial analysis, it does appear that compliance is improving, but we know there is room for further improvement. As we continue to work through filing enforcement leads and audits, we'll know more about the impact of the legislative changes.

# Appendix 1

## House Bill 4055

77th OREGON LEGISLATIVE ASSEMBLY--2014 Regular Session

### Enrolled

## House Bill 4055

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Rules)

CHAPTER .....

AN ACT

Relating to the 9-1-1 emergency reporting system; creating new provisions; amending ORS 403.105, 403.110, 403.200, 403.210, 403.215, 403.220, 403.225, 403.230 and 403.240 and section 4, chapter 5, Oregon Laws 2002 (first special session); and prescribing an effective date.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 403.105 is amended to read:

403.105. As used in ORS 305.823 and 403.105 to 403.250, unless the context requires otherwise:

- (1) "Account" means the Emergency Communications Account.
- (2) "Automatic location identification" means a component or capability of enhanced 9-1-1 telephone service that provides automatic display in the designated public safety answering point of geographic information about the location of the instrument used to originate an incoming 9-1-1 call.
- (3) "Automatic number identification" means a component or capability of enhanced 9-1-1 telephone service that provides automatic display in the designated public safety answering point of a telephone number associated with the access line from which an incoming 9-1-1 call originates.
- (4) "Call-back number" means a telephone number used by a primary public safety answering point to contact the location from which an incoming 9-1-1 call originates.
- (5) "Central office" means a utility that houses the switching and trunking equipment serving telephones in a defined area.
- (6) "Department" means the Department of Revenue.
- (7) "Emergency call" means a telephone request that results from a situation in which prompt service is essential to preserve human life or property.
- (8) "Emergency response location identifier" means a component or capability of enhanced 9-1-1 telephone service that identifies a specific emergency response location.
- (9) "Enhanced 9-1-1 telephone service" means 9-1-1 telephone service consisting of a network, database and on-premises equipment that provides automatic display in the designated public safety answering point of a telephone number and geographic information about the location of the instrument used to originate an incoming 9-1-1 call when the call is received.
- (10) "Exchange access services" means:
  - (a) Telephone exchange access lines or channels that provide local access by a subscriber in this state to the local telecommunications network to effect the transfer of information; and
  - (b) Unless a separate tariff rate is charged therefor, any facility or service provided in connection with the services described in paragraph (a) of this subsection.

(11) "Governing body" means the board of county commissioners of a county, city council of a city, other governing body of a city or county, board of directors of a special district or a 9-1-1 jurisdiction.

(12) "Key telephone system" means a type of multiline telephone system designed to provide exchange access services through shared exchange access lines or channels that typically appears to offer direct line termination on a particular instrument.

(13) "Local government" has the meaning given that term in ORS 190.710.

(14) "Multiline telephone system" means a communications system, including network, premises-based, PBX, hybrid and key telephone systems, that offers two or more telephone exchange access lines and consists of a common control unit, instruments, control hardware and software and adjunct systems installed at a subscriber's premises to support the 9-1-1 emergency reporting system.

**(15) "Prepaid wireless telecommunications service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services including content, ancillary services and the download of digital products delivered electronically that must be paid for in advance, and that is sold in predetermined units or dollars.**

[(15)] (16) "Provider" means a utility or other vendor or supplier of telecommunications service or equipment that provides telecommunications with access to the 9-1-1 emergency reporting system through local exchange service, cellular service or other wired or wireless means.

[(16)] (17) "Public or private safety agency" means any unit of state or local government, a special-purpose district or a private firm that provides or has authority to provide fire-fighting, police, ambulance or emergency medical services.

[(17)] (18) "Public safety answering point" means a 24-hour communications facility established as an answering location for 9-1-1 calls originating within a given service area. A "primary public safety answering point" receives all calls directly from the public. A "secondary public safety answering point" only receives calls from a primary public safety answering point on a transfer or relay basis.

[(18)] (19) "Subscriber" means a person who has telecommunication access to the 9-1-1 emergency reporting system through local exchange service, cellular service or other wired or wireless means.

[(19)] (20) "TTY" means a telephone-typewriter used by an individual with a hearing or speech impairment to communicate with another device or individual.

[(20)] (21) "Utility" means a utility, as defined in ORS 759.005, a telecommunications carrier, as defined in ORS 133.721, a municipality or any provider of exchange access services.

[(21)] (22) "Vendor" means a person providing telephone customer premises equipment or equipment specific to the operation of enhanced 9-1-1 telephone service.

**(23) "Wireless telecommunications service" means commercial mobile radio service, as defined in 47 C.F.R. 20.3.**

[(22)] (24) "9-1-1 emergency reporting system" means a telephone service that provides the users of a public telephone system the ability to reach a primary public safety answering point by calling 9-1-1.

[(23)] (25) "9-1-1 jurisdiction" means:

(a) An entity created under ORS chapter 190;

(b) A county service district established under ORS chapter 451 to provide an emergency communications system;

(c) An emergency communications district created under ORS 403.300 to 403.380; or

(d) A group of public or private safety agencies who have agreed in writing to jointly plan the installation, maintenance, operation or improvement of a 9-1-1 emergency reporting system.

[(24)] (26) "9-1-1 service area" means the geographical area that contains the entire central office serving area from which the primary public safety answering point will have the capability to answer calls placed to 9-1-1.

**SECTION 1a.** ORS 403.105, as amended by section 1 of this 2014 Act, is amended to read:



403.105. As used in ORS 305.823 and 403.105 to 403.250, unless the context requires otherwise:

(1) "Account" means the Emergency Communications Account.

(2) "Automatic location identification" means a component or capability of enhanced 9-1-1 telephone service that provides automatic display in the designated public safety answering point of geographic information about the location of the instrument used to originate an incoming 9-1-1 call.

(3) "Automatic number identification" means a component or capability of enhanced 9-1-1 telephone service that provides automatic display in the designated public safety answering point of a telephone number associated with the access line from which an incoming 9-1-1 call originates.

(4) "Call-back number" means a telephone number used by a primary public safety answering point to contact the location from which an incoming 9-1-1 call originates.

(5) "Central office" means a utility that houses the switching and trunking equipment serving telephones in a defined area.

**(6) "Consumer" means a person that purchases prepaid wireless telecommunications service in a retail transaction.**

[(6)] (7) "Department" means the Department of Revenue.

[(7)] (8) "Emergency call" means a telephone request that results from a situation in which prompt service is essential to preserve human life or property.

[(8)] (9) "Emergency response location identifier" means a component or capability of enhanced 9-1-1 telephone service that identifies a specific emergency response location.

[(9)] (10) "Enhanced 9-1-1 telephone service" means 9-1-1 telephone service consisting of a network, database and on-premises equipment that provides automatic display in the designated public safety answering point of a telephone number and geographic information about the location of the instrument used to originate an incoming 9-1-1 call when the call is received.

[(10)] (11) "Exchange access services" means:

(a) Telephone exchange access lines or channels that provide local access by a **consumer or** subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) Unless a separate tariff rate is charged therefor, any facility or service provided in connection with the services described in paragraph (a) of this subsection.

[(11)] (12) "Governing body" means the board of county commissioners of a county, city council of a city, other governing body of a city or county, board of directors of a special district or a 9-1-1 jurisdiction.

**(13) "Interconnected Voice over Internet Protocol service" has the meaning given that term in 47 C.F.R. 9.3, as amended on July 9, 2009. The Department of Revenue may by rule adjust this definition to conform to subsequent amendments to 47 C.F.R. 9.3.**

[(12)] (14) "Key telephone system" means a type of multiline telephone system designed to provide exchange access services through shared exchange access lines or channels that typically appears to offer direct line termination on a particular instrument.

[(13)] (15) "Local government" has the meaning given that term in ORS 190.710.

[(14)] (16) "Multiline telephone system" means a communications system, including network, premises-based, PBX, hybrid and key telephone systems, that offers two or more telephone exchange access lines and consists of a common control unit, instruments, control hardware and software and adjunct systems installed at a subscriber's premises to support the 9-1-1 emergency reporting system.

[(15)] (17) "Prepaid wireless telecommunications service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services including content, ancillary services and the download of digital products delivered electronically that must be paid for in advance, and that is sold in predetermined units or dollars.

[(16)] (18) "Provider" means a utility or other vendor or supplier of telecommunications service or equipment that provides telecommunications with access to the 9-1-1 emergency reporting system through local exchange service, cellular service or other wired or wireless means.

[(17)] (19) “Public or private safety agency” means any unit of state or local government, a special-purpose district or a private firm that provides or has authority to provide fire-fighting, police, ambulance or emergency medical services.

[(18)] (20) “Public safety answering point” means a 24-hour communications facility established as an answering location for 9-1-1 calls originating within a given service area. A “primary public safety answering point” receives all calls directly from the public. A “secondary public safety answering point” only receives calls from a primary public safety answering point on a transfer or relay basis.

(21) “Retail transaction” means each individual purchase, associated with an individual access number or capable of being associated with an individual access number, of prepaid wireless telecommunications service from a seller for any purpose other than resale.

(22) “Seller” means a person that sells prepaid wireless telecommunications service or access to prepaid wireless telecommunications service to a consumer.

[(19)] (23) “Subscriber” means a person [who] that has telecommunication access to the 9-1-1 emergency reporting system through local exchange service, cellular service or other wired or wireless means. “Subscriber” does not include a person that uses prepaid wireless telecommunications service.

[(20)] (24) “TTY” means a telephone-typewriter used by an individual with a hearing or speech impairment to communicate with another device or individual.

[(21)] (25) “Utility” means a utility, as defined in ORS 759.005, a telecommunications carrier, as defined in ORS 133.721, a municipality or any provider of exchange access services.

[(22)] (26) “Vendor” means a person providing telephone customer premises equipment or equipment specific to the operation of enhanced 9-1-1 telephone service.

[(23)] (27) “Wireless telecommunications service” means commercial mobile radio service, as defined in 47 C.F.R. 20.3.

[(24)] (28) “9-1-1 emergency reporting system” means a telephone service that provides the users of a public telephone system the ability to reach a primary public safety answering point by calling 9-1-1.

[(25)] (29) “9-1-1 jurisdiction” means:

(a) An entity created under ORS chapter 190;

(b) A county service district established under ORS chapter 451 to provide an emergency communications system;

(c) An emergency communications district created under ORS 403.300 to 403.380; or

(d) A group of public or private safety agencies who have agreed in writing to jointly plan the installation, maintenance, operation or improvement of a 9-1-1 emergency reporting system.

[(26)] (30) “9-1-1 service area” means the geographical area that contains the entire central office serving area from which the primary public safety answering point will have the capability to answer calls placed to 9-1-1.

**SECTION 2.** ORS 403.110 is amended to read:

403.110. (1) A provider or a 9-1-1 jurisdiction or the employees or agents of a provider or a 9-1-1 jurisdiction may be held civilly liable for the installation, performance, provision or maintenance of a 9-1-1 emergency reporting system or enhanced 9-1-1 telephone service if the provider or the 9-1-1 jurisdiction or the employees or agents of the provider or the 9-1-1 jurisdiction act with willful or wanton conduct. This section does not affect any liability a 9-1-1 jurisdiction may have for operator or operator-supervisor negligence in receiving calls from the public and dispatching emergency services to the public.

(2) A provider or seller is not liable for damages that result from providing or failing to provide access to the 9-1-1 emergency reporting system or from identifying or failing to identify the telephone number, address, location or name associated with any person or device accessing or attempting to access the 9-1-1 emergency reporting system.

**SECTION 2a.** The amendments to ORS 403.105 and 403.110 by sections 1a and 2 apply to telecommunications service or interconnected Voice over Internet Protocol service, as defined in ORS 403.105, provided on or after October 1, 2015.

**SECTION 3.** ORS 403.200 is amended to read:

403.200. (1) There is imposed on each paying retail subscriber who has telecommunication services with access to the 9-1-1 emergency reporting system a tax equal to 75 cents per month. The tax must be applied on a telecommunications circuit designated for a particular subscriber. One subscriber line must be counted for each circuit that is capable of generating usage on the line side of the switched network regardless of the quantity or ownership of customer premises equipment connected to each circuit. For providers of central office based services, the tax must be applied to each line that has unrestricted connection to the switched network. Those central office based service lines that have restricted connection to the switched network must be charged based on software design in the central office that restricts the number of station calls to and from the network. For cellular, wireless or other radio common carriers, the tax applies on a per instrument basis and only if the subscriber's place of primary use, as defined and determined under 4 U.S.C. 116 to 126, is within this state.

(2) The subscriber is liable for the tax imposed by this section.

(3) The amounts of tax collected by the provider are considered as payment by the subscriber for that amount of tax.

(4) Any return made by the provider collecting the tax must be accepted by the Department of Revenue as evidence of payments by the subscriber of amounts of tax so indicated upon the return.

**(5) The tax imposed under subsection (1) of this section does not apply to prepaid wireless telecommunications service provided on or after January 1, 2015.**

**SECTION 3a.** ORS 403.200, as amended by section 3 of this 2014 Act, is amended to read:

403.200. (1) There is imposed on each **consumer or** paying retail subscriber who has [*telecommunication services*] **telecommunications service or interconnected Voice over Internet Protocol service**, with access to the 9-1-1 emergency reporting system a tax equal to 75 cents per month **or, for prepaid wireless telecommunications service, 75 cents per retail transaction**. The tax must be applied on a telecommunications circuit designated for a particular **consumer or** subscriber. One **consumer or** subscriber line must be counted for each circuit that is capable of generating usage on the line side of the switched network regardless of the quantity or ownership of customer premises equipment connected to each circuit. For providers of central office based services, the tax must be applied to each line that has unrestricted connection to the switched network. Those central office based service lines that have restricted connection to the switched network must be charged based on software design in the central office that restricts the number of station calls to and from the network. For cellular, wireless or other radio common carriers, the tax applies **to a subscriber** on a per instrument basis and only if the subscriber's place of primary use, as defined [*and determined*] under 4 U.S.C. [*116 to 126*] **124**, is within this state.

(2) The **consumer or** subscriber is liable for the tax imposed by this section.

(3) The amounts of tax collected by the provider **or seller** are considered as payment by the **consumer or** subscriber for that amount of tax.

(4) **The tax imposed under this section, as it applies to prepaid wireless telecommunications service, shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the tax shall be separately stated on an invoice, receipt or other similar document that the seller provides to the consumer, or shall be otherwise disclosed to the consumer.**

(5) For purposes of this section, a retail transaction:

(a) **Occurs in this state if it is made in person by a consumer at a business location of the seller;**

(b) **If not made in person by a consumer at a business location of the seller, occurs in this state if the consumer's shipping address, payment instrument billing address, or other address provided by the consumer for purposes of the transaction, is in this state; or**

**(c) If insufficient information exists to determine whether paragraph (a) or (b) of this subsection is accurate, occurs in this state if the consumer's prepaid wireless telephone number is associated with an Oregon location.**

[(4)] **(6)** Any return made by the provider **or seller** collecting the tax must be accepted by the Department of Revenue as evidence of payments by the **consumer or** subscriber of amounts of tax so indicated upon the return.

[(5) *The tax imposed under subsection (1) of this section does not apply to prepaid wireless telecommunications service provided on or after January 1, 2015.*]

**SECTION 4.** ORS 403.210 is amended to read:

403.210. Every provider **or seller** responsible for the collection of the tax imposed by ORS 403.200 to 403.230 shall keep records, render statements, make returns and comply with rules adopted by the Department of Revenue with respect to the tax. Whenever in the judgment of the department it is necessary, the department may require the provider, **seller, consumer** or subscriber, by notice served upon that person by first-class mail, to make returns, render statements or keep records sufficient to show whether there is tax liability under ORS 403.200 to 403.230.

**SECTION 5.** ORS 403.215 is amended to read:

403.215. (1) The provider **or seller** is responsible for collecting the tax under ORS 403.200 and shall file a return with the Department of Revenue on or before the last day of the month following the end of each calendar quarter, reporting the amount of tax due for access to the 9-1-1 emergency reporting system during the quarter. The department shall prescribe the form of the return required by this section and ORS 403.210. The rules of the department must require that returns be made under penalties for false swearing.

(2) When a return of the tax is required under ORS 403.210 or subsection (1) of this section, the provider **or seller** required to make the return shall remit the tax due to the department at the time fixed for filing the return.

(3) A provider **or seller** described in subsection (1) of this section may elect to pay the tax based on either of the following:

(a) The amount of tax actually collected during the quarter; or

(b) The net amount of tax billed during the quarter. The net amount billed equals the gross amount of tax billed less adjustments for uncollectible accounts, refunds, incorrect billings and other appropriate adjustments.

(4) Once a provider **or seller** has made an election under subsection (3) of this section, the provider **or seller** may not change the method of payment and reporting unless the provider **or seller** first obtains the permission of the department.

**SECTION 5a.** (1) **For the purpose of compensating sellers for expenses incurred in collecting the tax imposed under ORS 403.200, each seller is permitted to deduct and retain two percent of the amount of taxes that are collected by the seller from all retail transactions conducted by the seller in this state.**

**(2) Subsection (1) of this section applies to retail transactions made on or after October 1, 2015, and before January 1, 2022.**

**SECTION 6.** ORS 403.220 is amended to read:

403.220. (1) If the amount paid by the provider **or seller** to the Department of Revenue under ORS 403.215 exceeds the amount of tax payable, the department shall refund the amount of the excess with interest thereon at the rate established under ORS 305.220 for each month or fraction of a month from the date of payment of the excess until the date of the refund. The department may not make a refund to a provider **or seller** who fails to claim the refund within two years after the due date for filing of the return with respect to which the claim for refund relates.

(2) A **consumer or** subscriber's exclusive remedy in a dispute involving tax liability is to file a claim with the department.

**SECTION 7.** ORS 403.225 is amended to read:

403.225. (1) Every provider **or seller** required to collect the tax imposed by ORS 403.200 to 403.230 is deemed to hold the same in trust for the State of Oregon and for the payment thereof to the Department of Revenue in the manner and at the time provided by ORS 403.215.

(2) If the provider **or seller** required to collect the tax fails to remit any amount deemed to be held in trust for the State of Oregon or if the **consumer or** subscriber fails to pay the tax, the department may enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges accrued thereon. The warrant is issued and proceeded upon in the same manner and has the same force and effect as is prescribed with respect to warrants for the collection of delinquent income taxes.

**SECTION 8.** ORS 403.230 is amended to read:

403.230. (1) Unless the context requires otherwise, the provisions of ORS chapters 305, 314 and 316 as to the audit and examination of reports and returns, determination of deficiencies, assessments, claims for refunds, penalties, interest, jeopardy assessments, warrants, conferences and appeals to the Oregon Tax Court, and procedures relating thereto, apply to ORS 403.200 to 403.230 the same as if the tax were a tax imposed upon or measured by net income. The provisions apply to the **consumer or** subscriber liable for the tax and to the provider **or seller** required to collect the tax. As to any amount collected and required to be remitted to the Department of Revenue, the tax is considered a tax upon the provider **or seller** required to collect the tax and that provider **or seller** is considered a taxpayer.

(2) Notwithstanding ORS 314.835 and 314.840, the Department of Revenue may disclose information received under ORS 403.200 to 403.230 to the Public Utility Commission to carry out the provisions of chapter 290, Oregon Laws 1987.

(3) The Public Utility Commission may disclose information obtained pursuant to chapter 290, Oregon Laws 1987, to the Department of Revenue to administer the tax imposed under ORS 403.200 to 403.230.

**SECTION 8a.** The amendments to statutes by sections 3a to 5 and 6 to 8 apply to telecommunications service or interconnected Voice over Internet Protocol service, as defined in ORS 403.105, provided on or after October 1, 2015.

**SECTION 9.** Section 4, chapter 5, Oregon Laws 2002 (first special session), as amended by section 1, chapter 4, Oregon Laws 2002 (third special session), section 1, chapter 629, Oregon Laws 2007, and section 1, chapter 749, Oregon Laws 2013, is amended to read:

**Sec. 4.** Taxes imposed under ORS 403.200 apply to subscriber bills issued on or after January 1, 2002, and before January 1, 2022, and to retail transactions made on or after October 1, 2015, and before January 1, 2022.

**SECTION 10.** Sections 5a, 11 to 13 and 13b of this 2014 Act are added to and made a part of ORS 403.200 to 403.230.

**SECTION 11.** The Legislative Assembly finds and declares that:

(1) ORS 403.200 to 403.230, as those sections were amended and in effect prior to the effective date of this 2014 Act, imposed a tax under ORS 403.200 equally on all forms of wireless telecommunications service and on other types of telecommunications service;

(2) Sections 5a, 11a, 12 and 13 of this 2014 Act and the amendments to ORS 403.105, 403.110, 403.200, 403.210, 403.215, 403.220, 403.225, 403.230 and 403.240 and section 4, chapter 5, Oregon Laws 2002 (first special session), by sections 1 to 2, 3 to 5, 6 to 8, 9 and 14 of this 2014 Act do not have retroactive application to periods before the effective date of this 2014 Act; and

(3) The intent of the Legislative Assembly in enacting this 2014 Act is to facilitate administration of collection of taxes under ORS 403.200 to 403.230.

**SECTION 11a.** (1) There is imposed on each provider of prepaid wireless telecommunications service a transitional 9-1-1 tax for each customer of prepaid wireless telecommunications service equal to 75 cents per month for each customer with a mobile telephone number associated with an Oregon location.

(2) The amount of the tax to be paid by a provider subject to subsection (1) of this section shall be determined using one of the following two methods, as elected by the provider:

(a) The provider shall remit the tax specified in subsection (1) of this section for each customer whose account balance on the last day of the month is equal to or greater than the amount of the tax specified in subsection (1) of this section; or

(b) The provider shall divide its total earned monthly prepaid wireless telecommunications service revenue in Oregon for all customers by \$50 and multiply the quotient by the amount of the tax imposed under subsection (1) of this section.

(3) The provider shall remit all amounts owed under this section to the Department of Revenue on or before the last day of the month following the calendar quarter for which the amount has been determined.

(4) The department may adopt rules to implement the provisions of this section, including rules that define terms consistently with the provisions of this section.

(5) As used in this section, "provider" is limited to a provider of prepaid wireless telecommunications service.

**SECTION 11b.** Section 11a of this 2014 Act applies to providers of prepaid wireless telecommunications service provided on and after January 1, 2015, and before October 1, 2015.

**SECTION 12.** Any consumer subject to the tax imposed under ORS 403.200 and from whom the tax has not been collected shall, on or before the 20th day of the month following the close of the calendar year in which the tax is due, file with the Department of Revenue a report of the amount of tax due from the consumer in the preceding tax year in the detail and form as prescribed by the department, submitting with the report the amount of tax due.

**SECTION 13.** The Department of Revenue shall establish by rule policies and procedures for the administration of the provisions of ORS 403.200 to 403.230, including policies and procedures for the collection of the tax imposed under ORS 403.200 by providers required to collect the tax imposed on interconnected Voice over Internet Protocol service.

**SECTION 13a.** Sections 12 and 13 of this 2014 Act apply to telecommunications service or interconnected Voice over Internet Protocol service, as defined in ORS 403.105, provided on or after October 1, 2015.

**SECTION 13b.** On or before February 15, 2017, the Department of Revenue shall report to a committee of the Legislative Assembly related to revenue regarding the collection at retail transactions of the taxes imposed under ORS 403.200 to 403.230. The report shall detail the effectiveness of the provisions of ORS 403.200 to 403.230, as enforced by the department, in collecting the required tax from all consumers and subscribers with access to the 9-1-1 emergency reporting system. The department shall include in the report an estimate of the amount of revenue received by the department on or after October 1, 2015, that is attributable to the operation of sections 5a, 12 and 13 of this 2014 Act and the amendments to ORS 403.105, 403.110, 403.200, 403.210, 403.215, 403.220, 403.225, 403.230 and 403.240 and section 4, chapter 5, Oregon Laws 2002 (first special session), by sections 1 to 2, 3a to 5 and 6 to 8, 9 and 14 of this 2014 Act.

**SECTION 14.** ORS 403.240 is amended to read:

403.240. (1) The Office of Emergency Management shall distribute quarterly the entire amount of the moneys in the Emergency Communications Account. The office shall pay the following amounts from the account:

(a) Administrative costs incurred during the preceding calendar quarter by the Department of Revenue in carrying out ORS 403.200 to 403.230 in an amount that does not exceed [*one-half* of] one percent of the amount in the account on the date of distribution, or actual expenses incurred by the department, whichever is less.

(b) Administrative costs to be incurred during the calendar quarter by the Office of Emergency Management in carrying out its duties under ORS 305.823 and 403.105 to 403.250. The amount to be paid under this paragraph may not exceed four percent of the amount in the account on the date of distribution, and, on or before the next date of distribution, the office shall repay to the account

any amount received under this paragraph that exceeds the actual expenses incurred by the office in the quarter.

(2) The office may:

(a) Provide funding for the Oregon Emergency Response System in an amount that does not exceed 15 percent of the legislatively approved budget for the Oregon Emergency Response System subject to availability of funds within the limit for administrative costs in subsection (1)(b) of this section.

(b) Prescribe the manner in which funding is provided to the Oregon Emergency Response System under this subsection.

(3) The office shall use funds in the Enhanced 9-1-1 Subaccount to pay for costs incurred during the preceding calendar quarter for enhanced 9-1-1 telephone service established pursuant to ORS 403.115. The office may not disburse funds in the Enhanced 9-1-1 Subaccount to a 9-1-1 jurisdiction that does not have an approved final plan as required in section 7, chapter 743, Oregon Laws 1991. The office shall make payments for reimbursement only after a reimbursement request has been submitted to the office in the manner prescribed by the office. Reimbursement requests for recurring and nonrecurring charges necessary to enable the 9-1-1 jurisdiction to comply with ORS 403.115 must be submitted directly to the office. The costs reimbursable under this subsection are only those incurred for:

(a) Modification of central office switching and trunking equipment;

(b) Network development, operation and maintenance;

(c) Database development, operation and maintenance;

(d) On-premises equipment procurement, maintenance and replacement;

(e) Conversion of pay station telephones required by ORS 403.140;

(f) Collection of the tax imposed by ORS 403.200 to 403.230; and

(g) Addressing if the reimbursement request is consistent with rules adopted by the office.

(4) Subject to availability of funds, the office shall provide funding to 9-1-1 jurisdictions that have enhanced 9-1-1 telephone service operational prior to December 31, 1991, based on cost information provided in their final plan required in section 7, chapter 743, Oregon Laws 1991. The office shall approve final plans submitted that meet the minimum requirements set forth in ORS 403.115 (2) and (4). The office shall limit funding for costs incurred prior to the preceding calendar quarter to charges associated with database development, network and on-premises equipment that satisfies the requirements of ORS 403.115 (2) and (4). The office shall prescribe the manner in which funding is provided under this subsection.

(5) 9-1-1 jurisdictions may use funds distributed to the jurisdiction from any account described in ORS 403.235 to repay loans from the Special Public Works Fund if the loans were used for purposes that are allowable under ORS 403.105 to 403.250.

(6) The office shall retain amounts remaining in the Enhanced 9-1-1 Subaccount and may distribute the amounts in a subsequent quarter for those purposes set forth in subsections (3), (4) and (5) of this section.

(7) The office shall review reimbursement requests for modification of central office switching and trunking equipment, conversion of pay station telephones, and network development, operation and maintenance costs necessary to comply with ORS 403.115 for the appropriateness of the costs claimed. The office shall approve or disapprove the reimbursement requests.

(8) The office shall review reimbursement requests for database development, operation and maintenance, and on-premises equipment procurement, maintenance and replacement costs necessary to comply with ORS 403.115 for the appropriateness of the costs claimed.

(9) After all amounts under subsections (1) and (2) of this section and ORS 403.235 (2) have been paid, the office shall allocate the balance of the Emergency Communications Account to cities on a per capita basis and to counties on a per capita basis of each county's unincorporated area for distribution directly to 9-1-1 jurisdictions as directed by the city or county. However, each county must be credited a minimum of one percent of the balance of the account after the amounts under subsections (1) and (2) of this section and ORS 403.235 (2) have been paid.

(10) 9-1-1 jurisdictions shall submit an accounting report to the office annually. The report must be provided in the manner prescribed by the office and must include but not be limited to:

(a) Funds received and expended under subsection (9) of this section for the purposes of fulfilling the requirements of ORS 403.115;

(b) Local funds received and expended for the purposes of fulfilling the requirements of ORS 403.115; and

(c) Local funds received and expended for the purposes of providing emergency communications services.

**SECTION 15. The amendments to ORS 403.240 by section 14 of this 2014 Act apply to calendar quarters ending on or after the effective date of this 2014 Act.**

**SECTION 16. This 2014 Act takes effect on the 91st day after the date on which the 2014 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

**Passed by House February 21, 2014**

.....  
Ramona J. Line, Chief Clerk of House

.....  
Tina Kotek, Speaker of House

**Passed by Senate February 28, 2014**

.....  
Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2014

**Approved:**

.....M.,....., 2014

.....  
John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2014

.....  
Kate Brown, Secretary of State