

Montana Code Annotated 2017

TITLE 10. MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 4. STATE EMERGENCY TELEPHONE SYSTEM

Part 1. Emergency Telephone System Plans

Definitions

10-4-101. (Temporary) Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Allowable costs" means the actual costs associated with upgrading, purchasing, programming, installing, testing, operating, and maintaining data, hardware, and software necessary to comply with federal communications commission orders for the delivery of 9-1-1 calls and data as set forth in 47 CFR 20.18.

(2) "Basic 9-1-1 account" means the 9-1-1 emergency telecommunications account established in **10-4-301(1)(a)**.

(3) "Basic 9-1-1 service" means a telephone service meeting the standards established in **10-4-103** that automatically connects a person dialing the digits 9-1-1 to an established public safety answering point.

(4) "Basic 9-1-1 system" includes equipment for connecting and outswitching 9-1-1 calls within a telephone central office, trunking facilities from the central office to a public safety answering point, and equipment, as appropriate, that is used for transferring the call to another point, when appropriate, and that is capable of providing basic 9-1-1 service.

(5) "Commercial mobile radio service" means:

(a) a mobile service that is:

(i) provided for profit with the intent of receiving compensation or monetary gain;

(ii) an interconnected service; and

(iii) available to the public or to classes of eligible users so as to be effectively available to a substantial portion of the public; or

(b) a mobile service that is the functional equivalent of a mobile service described in subsection (5)(a).

(6) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(7) "Direct dispatch" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, provides for a decision as to the proper action to be taken and for dispatch of appropriate emergency service units.

(22) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from persons in a 9-1-1 service area and that may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

(23) "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays the information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

(24) "Subscriber" means an end user who receives telephone exchange access services or who contracts with a wireless provider for commercial mobile radio services.

(25) "Transfer" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers the request to an appropriate public safety agency or other provider of emergency services.

(26) "Wireless enhanced 9-1-1" means either phase I wireless enhanced 9-1-1 or phase II wireless enhanced 9-1-1.

(27) "Wireless enhanced 9-1-1 account" means the wireless enhanced 9-1-1 account established in **10-4-301**.

(28) "Wireless provider" means an entity, as defined in **35-1-113**, that is authorized by the federal communications commission to provide facilities-based commercial mobile radio service within this state.

10-4-101. (Effective July 1, 2018) Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "9-1-1 system" means telecommunications facilities, circuits, equipment, devices, software, and associated contracted services for the transmission of emergency communications. A 9-1-1 system includes the transmission of emergency communications:

(a) from persons requesting emergency services to a primary public safety answering point and communications systems for the direct dispatch, relay, and transfer of emergency communications; and

(b) to or from a public safety answering point to or from emergency service units.

(2) "Access line" means a voice service of a provider of exchange access services, a wireless provider, or a provider of interconnected voice over IP service that has enabled and activated service for its subscriber to contact a public safety answering point via a 9-1-1 system by entering or dialing the digits 9-1-1. When the service has the capacity, as enabled and activated by a provider, to make more than one simultaneous outbound 9-1-1 call, then each separate simultaneous outbound call, voice channel, or other capacity constitutes a separate access line.

(3) "Commercial mobile radio service" means:

(a) a mobile service that is:

(i) provided for profit with the intent of receiving compensation or monetary gain;

(e) supports data and communications needs for coordinated incident response and management; and

(f) provides a secure environment for emergency communications.

(12) "Originating service provider" means an entity that provides capability for a retail customer to initiate emergency communications.

(13) "Per capita basis" means a calculation made to allocate a monetary amount for each person residing within the jurisdictional boundary of a county according to the most recent decennial census compiled by the United States bureau of the census.

(14) "Private safety agency" means an entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

(15) "Provider" means a public utility, a cooperative telephone company, a wireless provider, a provider of interconnected voice over IP service, a provider of exchange access services, or any other entity that provides access lines.

(16) "Public safety agency" means a functional division of a local government or the state that dispatches or provides law enforcement, firefighting, or emergency medical services or other emergency services.

(17) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives emergency communications from persons requesting emergency services and that may, as appropriate, directly dispatch emergency services or transfer or relay the emergency communications to appropriate public safety agencies.

(18) "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays the information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

(19) "Subscriber" means an end user who has an access line or who contracts with a wireless provider for commercial mobile radio services.

(20) "Transfer" means a service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers the request to an appropriate public safety agency or other emergency services provider.

(21) "Wireless provider" means an entity, as defined in **35-1-113**, that is authorized by the federal communications commission to provide facilities-based commercial mobile radio service within this state.

History: En. Sec. 1, Ch. 635, L. 1985; amd. Sec. 30, Ch. 370, L. 1987; amd. Sec. 46, Ch. 42, L. 1997; amd. Sec. 1, Ch. 448, L. 1997; amd. Sec. 1, Ch. 304, L. 2007; amd. Sec. 15, Ch. 2, L. 2009; amd. Sec. 1, Ch. 316, L. 2013; amd. Sec. 16, Ch. 367, L. 2017.

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Emergency Telephone System Requirements

10-4-103. (Temporary) Emergency telephone system requirements. (1) Every public and private safety agency in this state may establish or participate in a basic or enhanced 9-1-1 system.

(2) A basic 9-1-1 system must include:

(a) a 24-hour communications facility automatically accessible anywhere in the 9-1-1 jurisdiction's service area by dialing 9-1-1;

(b) direct dispatch of public and private safety services in the 9-1-1 jurisdiction or relay or transfer of 9-1-1 calls to an appropriate public or private safety agency; and

(c) a 24-hour communications facility equipped with at least two trunk-hunting local access circuits provided by the local telephone company's central office.

(3) An enhanced 9-1-1 system must include, in addition to the requirements for a basic 9-1-1 system:

(a) automatic number identification that automatically identifies and displays the calling telephone number at the public safety answering point; and

(b) automatic location identification that automatically identifies and displays the address of the calling telephone at the public safety answering point.

(4) The primary emergency telephone number within the state is 9-1-1, but a public safety answering point shall maintain both a separate seven-digit secondary emergency number for use by the telephone company operator and a separate seven-digit nonemergency number.

10-4-103. (Effective July 1, 2018) Emergency telephone system requirements. (1) Every public and private safety agency in this state may establish or participate in a 9-1-1 system.

(2) A 9-1-1 system must include:

(a) a 24-hour communications facility automatically accessible anywhere in the public safety answering point's service area by dialing 9-1-1;

(b) direct dispatch of public and private safety services in the public safety answering point's service area or relay or transfer of 9-1-1 communications to an appropriate public or private safety agency;

(c) a 24-hour communications facility equipped with at least two trunk-hunting local access

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9-1-1 Advisory Council

10-4-105. 9-1-1 advisory council. (1) There is a 9-1-1 advisory council.

(2) The council consists of 17 members appointed by the governor as follows:

(a) the director of the department or the director's designee, who serves as presiding officer of the council;

(b) a representative of the department of justice, Montana highway patrol;

(c) a representative of the Montana emergency medical services association;

(d) three representatives of Montana telecommunications providers, including at least one wireless provider;

(e) a representative of the Montana association of public safety communications officials;

(f) two public safety answering point managers, one serving a population of less than 30,000 and one serving a population of greater than 30,000;

(g) a representative of the department of military affairs, disaster and emergency services division;

(h) a representative of the Montana association of chiefs of police;

(i) a representative of the Montana sheriffs and peace officers association;

(j) a representative of the Montana state fire chiefs' association;

(k) a representative of the Montana state volunteer firefighters association;

(l) a representative of the Montana association of counties;

(m) a representative of the Montana league of cities and towns; and

(n) the state librarian or the state librarian's designee.

(3) The council is attached to the department for administrative purposes only, as provided in **2-15-121**.

(4) The council shall, within its authorized budget, hold quarterly meetings.

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9-1-1 Advisory Council Duties -- Consultation By Department

10-4-106. 9-1-1 advisory council duties -- consultation by department. The 9-1-1 advisory council shall:

(1) advise the department in its duty to allocate and distribute 9-1-1 fees in accordance with **10-4-305** and to update the allocation and distribution in accordance with rules adopted pursuant to **10-4-108(3)**;

(2) provide recommendations to the department in determining grants awarded in accordance with **10-4-306**;

(3) advise the department in the development of a statewide 9-1-1 plan; and

(4) advise the department on significant matters concerning 9-1-1 systems development and 9-1-1 services in the state of Montana, including rulemaking.

History: En. Sec. 2, Ch. 367, L. 2017.

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Department Duties And Powers -- 9-1-1 Planning

10-4-107. Department duties and powers -- 9-1-1 planning. (1) There is a 9-1-1 program administered by the department.

(2) The department shall:

(a) allocate and distribute 9-1-1 fees;

(b) update the allocation and distribution of 9-1-1 fees in accordance with **10-4-305** and rules adopted pursuant to **10-4-108**;

(c) provide grants in accordance with **10-4-306**. In awarding the grants, the department shall review and approve requests for funding in accordance with **10-4-306**.

(d) monitor the expenditure of program funds for:

(i) 9-1-1 purposes by local governments that host public safety answering points; and

(ii) allowable uses of grant funds by entities;

(e) establish a statewide 9-1-1 plan in accordance with subsection (3) and planning completed in accordance with **10-4-315**;

(f) staff and fund the administrative costs of the 9-1-1 advisory council established in **10-4-105**; and

(g) accept federal funds granted by congress or by executive order and gifts, grants, and donations for the purposes of administering this chapter.

(3) A statewide 9-1-1 plan must include:

(a) to the maximum extent feasible the use of existing commercial communications infrastructure; and

(b) 9-1-1 system standards and support efforts to migrate legacy technologies to next-generation 9-1-1 technologies when appropriate and to provide for the implementation of future 9-1-1 technologies. Any standards adopted by the department for legacy 9-1-1 technologies or principles adopted for baseline next-generation 9-1-1 technologies must be:

(i) flexible and graduated, while ensuring minimum service levels; and

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Rulemaking Authority

10-4-108. Rulemaking authority. (1) Before July 1, 2018, the department shall adopt rules to implement the provisions of this chapter. The rules must include but are not limited to:

- (a) distribution procedures for funding authorized in **10-4-305(1)**;
- (b) procedures for grant funding authorized in **10-4-306**. The rules for grant funding must include but are not limited to:
 - (i) eligibility requirements for entities applying for grants;
 - (ii) criteria for awarding grants; and
 - (iii) reporting procedures for grant recipients;
- (c) postdisbursement activities by the department to monitor the use of funding by entities, including:
 - (i) reporting requirements; and
 - (ii) procedures for repayment of funds expended on activities determined not to meet eligibility requirements.

(2) Before January 1, 2019, the department shall adopt rules including but not limited to:

- (a) technology standards, based on industry standards and a statewide 9-1-1 plan pursuant to **10-4-315**, to ensure that public safety answering points meet minimum 9-1-1 services levels; and
- (b) baseline next-generation 9-1-1 principles to facilitate the appropriate deployment of baseline next-generation 9-1-1.

(3) (a) Before January 1, 2022, the department shall adopt rules for the allocation and distribution of funds in the account provided for in **10-4-304(2)(a)** in accordance with **10-4-305(2)** and (3) to local government entities that host public safety answering points.

(b) The rules adopted for allocation must be based on the official final decennial census figures and must ensure that each local government entity that hosts a public safety answering point receives funding. The allocation must account for:

- (i) historic allocations provided to a local government entity that hosts a public safety answering point;

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Local Government Entities And Funding -- Department Delegation

10-4-109. Local government entities and funding -- department delegation. (1) After the department determines baseline next-generation 9-1-1 principles in accordance with rules adopted pursuant to **10-4-108(2)** and a statewide 9-1-1 plan, the department shall delegate implementation to local government entities that host public safety answering points.

(2) If the department determines through its monitoring process that a local government entity that hosts a public safety answering point is not using funds in the manner prescribed in this chapter or has failed to provide information required by the department, the department may, after notice and hearing, suspend payment to the local government entity. The local government entity is not eligible to receive funds until the department determines that the local government is complying with department requirements or has provided the requested information.

History: En. Sec. 5, Ch. 367, L. 2017.

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Submission Of Phase I And Phase Ii Wireless Notification By Wireless Provider

10-4-115. (Temporary) Submission of phase I and phase II wireless notification by wireless provider. (1) A wireless provider must meet the following requirements to be eligible for wireless cost recovery:

(a) Within 30 days of receipt of a formal phase I and phase II request from a public safety answering point, the wireless provider shall submit to the department a notification stating the anticipated date of deployment and the number of subscribers, based on billing addresses, for the 9-1-1 jurisdiction.

(b) The department shall first determine that the wireless provider is providing phase I and phase II functionality to the public safety answering point. The wireless provider is responsible for notifying the department of the date of deployment and proof of acceptance tests.

(2) A 9-1-1 jurisdiction must be ready to provide phase I and phase II wireless service and have submitted a phase I and phase II wireless request to the wireless providers providing service in the jurisdiction's area. (*Repealed effective July 1, 2018--secs. 25, 31, Ch. 367, L. 2017.*)

History: En. Sec. 4, Ch. 304, L. 2007.

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Limitation On Liability

10-4-116. *(Effective July 1, 2018)* **Limitation on liability.** (1) Except as provided in subsection (2), a provider and its employees, directors, officers, and agents are not liable for death or injury to any person or for damage to property as a result of developing, adopting, establishing, participating in, implementing, maintaining, or carrying out duties involved in or related to a 9-1-1 system or to emergency communications or 9-1-1 calls, including but not limited to the identification of phone numbers, addresses, or names associated with a person involved in an emergency communication or 9-1-1 call.

(2) The immunity granted by subsection (1) does not extend to liability resulting from gross negligence, willful or wanton misconduct, or an intentional tort.

History: En. Sec. 14, Ch. 367, L. 2017.

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Provider Obligations -- Limitations

10-4-117. *(Effective July 1, 2018)* **Provider obligations -- limitations.** Nothing in this chapter:

(1) relieves a provider from its obligations pursuant to parts 1 through 3 of this chapter, including obligations pursuant to **10-4-201** to collect 9-1-1 fees from customers on a per access line basis; or

(2) grants the department the authority to regulate the services offered by an originating service provider.

History: En. Sec. 15, Ch. 367, L. 2017.

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Fees Imposed For 9-1-1 Services

10-4-201. *(Temporary)* **Fees imposed for 9-1-1 services.** (1) Except as provided in **10-4-202**:

(a) for basic 9-1-1 services, a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services;

(b) for enhanced 9-1-1 services, a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services; and

(c) for wireless enhanced 9-1-1 services, a fee of 50 cents a month per access line or subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services.

(2) The subscriber paying for exchange access line services is liable for the fees imposed by this section.

(3) The provider shall collect the fees. The amount of the fees collected by the provider is considered payment by the subscriber for that amount of fees.

(4) Any return made by the provider collecting the fees is prima facie evidence of payments by the subscribers of the amount of fees indicated on the return.

10-4-201. *(Effective July 1, 2018)* **Fees imposed for 9-1-1 services.** (1) Except as provided in **10-4-202**:

(a) for 9-1-1 services, a fee of 75 cents a month per access line on each subscriber in the state is imposed for the administration of 9-1-1 programs in accordance with **10-4-305**; and

(b) a fee of 25 cents a month per access line on each subscriber in the state is imposed for the grants provided in accordance with **10-4-306**.

(2) The subscriber paying for an access line is liable for the fees imposed by this section.

(3) The provider shall collect the fees. The amount of the fees collected by the provider is considered payment by the subscriber for that amount of fees.

(4) Any return made by the provider collecting the fees is prima facie evidence of payments by the subscribers of the amount of fees indicated on the return.

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Exemptions From Fees Imposed

10-4-202. Exemptions from fees imposed. The fees imposed by **10-4-201** do not apply to:

- (1) services that the state is prohibited from taxing under the constitution or laws of the United States or the constitution or laws of the state of Montana; or
- (2) amounts paid by depositing coins in a public telephone.

History: En. Sec. 10, Ch. 635, L. 1985; amd. Sec. 10, Ch. 448, L. 1997.

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Provider Required To Maintain Record Of Collections

10-4-203. Provider required to maintain record of collections. Every provider responsible for the collection of the fee imposed by **10-4-201** shall keep records, render statements, make returns, and comply with rules adopted by the department of revenue with respect to the fee. Whenever necessary in the judgment of the department of revenue, it may require the provider or subscriber to make returns, render statements, or keep records sufficient to show whether there is liability for the fee.

History: En. Sec. 11, Ch. 635, L. 1985.

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Deadlines For Filing Returns

10-4-204. (Temporary) Deadlines for filing returns. (1) The provider collecting the fee under **10-4-201** must 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 fee due on exchange access line services during the quarter. Returns are subject to the penalty for false swearing provided in **45-7-202**.

(2) When a return of the fee is required, the provider required to make the return shall pay the fee due the department of revenue at the time fixed for filing the return.

(3) The provider shall pay the fee based on the net amount billed for the exchange access service fee during the quarter.

(4) As used in this section, the "net amount billed for the exchange access service fee" equals the gross amount billed for such service, less adjustments for uncollectible accounts, refunds, incorrect billings, and other appropriate adjustments.

10-4-204. (Effective July 1, 2018) Deadlines for filing returns. (1) The provider collecting the fee under **10-4-201** must 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 fee due on access lines during the quarter. Returns are subject to the penalty for false swearing provided in **45-7-202**.

(2) When a return of the fee is required, the provider required to make the return shall pay the fee due the department of revenue at the time fixed for filing the return.

(3) The provider shall pay the fee based on the net amount billed for the access line fee during the quarter.

(4) As used in this section, the "net amount billed for the access line fee" equals the gross amount billed for the service, less adjustments for uncollectible accounts, refunds, incorrect billings, and other appropriate adjustments.

History: En. Sec. 12, Ch. 635, L. 1985; amd. Sec. 19, Ch. 367, L. 2017.

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Refund To Provider For Excess Payment Of Fee

10-4-205. Refund to provider for excess payment of fee. If the amount paid by a provider to the department of revenue exceeds the amount of fee owed, the department of revenue shall refund the amount of the excess payment, with interest on the excess payment at the rate of 0.5% a month or fraction of a month from the date of payment of the excess until the date of the refund. A refund may not be made to a provider who fails to claim the refund within 5 years after the due date for filing of the return with respect to which the claim for refund relates.

History: En. Sec. 13, Ch. 635, L. 1985; amd. Sec. 1, Ch. 229, L. 1993.

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Credit For Overpayment -- Interest On Overpayment

10-4-206. Credit for overpayment -- interest on overpayment. (1) If the department of revenue determines that the amount of fee, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or the taxpayer's successor through reorganization, merger, or consolidation or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on deficiency assessments from the due date of the return or from the date of overpayment, whichever date is later, to the date the department of revenue approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for a refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department of revenue for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than \$1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable.

History: En. Sec. 11, Ch. 676, L. 1991.

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Statute Of Limitations

10-4-207. Statute of limitations. (1) Except as provided in subsection (3), a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of the additional fee proposed to be assessed is mailed within 5 years from the date the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the fee, consents in writing to an assessment after that time, the fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim or the department of revenue determines the existence of the overpayment and approves the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department of revenue may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department of revenue.

History: En. Sec. 15, Ch. 676, L. 1991.

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Provider Required To Hold Fee In Trust For State -- Penalty And Interest

10-4-211. Provider required to hold fee in trust for state -- penalty and interest. (1) Every provider required to collect the fee imposed by **10-4-201** holds it in trust for the state of Montana and for the payment thereof to the department of revenue in the manner and at the time provided by **10-4-204**.

(2) (a) If a provider required to collect the fee fails to remit any amount held in trust for the state of Montana or if a subscriber fails to pay the fee on or before the last day of the month following the end of each calendar quarter, the department of revenue shall add to the amount of the delinquent fee, in addition to any other penalty provided by law, a penalty equal to 10% of the delinquent fee plus interest at the rate of 1% a month or fraction of a month computed on the amount of the delinquent fee plus any unpaid penalties and interest. Interest is computed from the date the fee is due until the date of payment.

(b) The department of revenue may waive the penalty if the provider establishes that the failure to pay on time was due to reasonable cause and was not due to neglect.

(3) (a) When a deficiency is determined and the additional fee becomes final, the department of revenue shall mail a notice and demand for payment to the provider. The fee is due and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date of the return.

(b) If payment is not made within 10 days, the amount of the deficiency is considered delinquent. A 10% penalty must be added to the amount of the deficiency.

(4) The 10% penalty provided for in subsection (3)(b) may be waived by the department of revenue if the provider establishes that the failure to pay the proper amount of fees was due to reasonable cause and was not due to neglect.

(5) The department of revenue may enforce collection by the issuance of a warrant for distraint for the collection of the delinquent amount and all penalties, interest, and collection charges accrued thereon. The warrant is governed by the provisions of Title 15, chapter 1, part 7.

History: En. Sec. 14, Ch. 635, L. 1985; amd. Secs. 1, 19, Ch. 676, L. 1991.

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TITLE 10. MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 4. STATE EMERGENCY TELEPHONE SYSTEM

Part 2. Funding

Provider Considered A Taxpayer Under Provisions For Fee

10-4-212. Provider considered a taxpayer under provisions for fee. Unless the context requires otherwise, the provisions of Title 15 referring to the audit and examination of reports and returns, determination of deficiency assessments, claims for refunds, penalties, interest, jeopardy assessments, warrants, conferences, appeals to the department of revenue, appeals to the state tax appeal board, and procedures relating thereto apply to this part as if the fee were a tax imposed upon or measured by net income. The provisions apply to the subscriber liable for the fee and to the provider required to collect the fee. Any amount collected and required to be remitted to the department of revenue is considered a tax upon the provider required to collect it, and that provider is considered a taxpayer.

History: En. Sec. 15, Ch. 635, L. 1985; amd. Sec. 19, Ch. 10, L. 1993.

Montana Code Annotated 2017

TITLE 10. MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 4. STATE EMERGENCY TELEPHONE SYSTEM

Part 3. Emergency Telephone System Account -- Usage

Establishment Of Emergency Telecommunications Accounts

10-4-301. (Temporary) Establishment of emergency telecommunications accounts. (1)

There are established in the state special revenue fund in the state treasury:

- (a) an account for all fees collected for basic 9-1-1 services pursuant to **10-4-201(1)(a)**;
 - (b) an account for all fees collected for enhanced 9-1-1 services pursuant to **10-4-201(1)(b)**; and
 - (c) an account for all fees collected for wireless enhanced 9-1-1 services pursuant to **10-4-201(1)**
- (c). The money is allocated as follows:
- (i) 50% of the account must be deposited in an account for distribution to the 9-1-1 jurisdictions; and
 - (ii) 50% of the account must be deposited in an account for distribution to wireless providers or must be deposited in accordance with **10-4-307**.

(2) Money in the account provided for in subsection (1)(c)(ii), including interest earned from the investment of money in the account, is subject to legislative fund transfers.

(3) All money received by the department of revenue pursuant to **10-4-201** must be paid to the state treasurer for deposit in the appropriate account. An amount equal to 2.74% of the money received pursuant to **10-4-201** must be deposited in an account in the state special revenue fund to be used for the administration of this chapter. Any remaining funds at the end of a fiscal year must be equally distributed to each of the four accounts provided for in subsection (1).

(4) The accounts established in subsection (1) retain interest earned from the investment of money in the accounts.

(5) After payment of refunds pursuant to **10-4-205**, the balance of the respective accounts must be used for the purposes described in part 1 of this chapter.

(6) The distribution of funds in the 9-1-1 emergency telecommunications accounts described in subsection (1), as required by **10-4-302**, **10-4-311**, and **10-4-313**, is statutorily appropriated, as provided in **17-7-502**, to the department.

(7) Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from appropriations made for that purpose. (*Repealed effective July 1, 2018--secs. 25, 31, Ch. 367, L. 2017.*)

Montana Code Annotated 2017

TITLE 10. MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 4. STATE EMERGENCY TELEPHONE SYSTEM

Part 3. Emergency Telephone System Account -- Usage

Distribution Of Basic 9-1-1 Account By Department

10-4-302. (Temporary) Distribution of basic 9-1-1 account by department. (1) The department shall make quarterly distributions of the entire basic 9-1-1 account. The distributions must be made for the costs incurred during the preceding calendar quarter by each provider of telephone service in the state for:

(a) collection of the fees imposed by **10-4-201**; and

(b) modification of central office switching and trunking equipment for emergency telephone service only.

(2) Payments under subsection (1) may be made only after application by the provider to the department for costs incurred in subsection (1). The department shall review all applications relevant to subsection (1) for appropriateness of costs claimed by the provider. If the provider contests the review, payment may not be made until the amount owed the provider is made certain.

(3) After all amounts under subsections (1) and (2) have been paid, the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account. A 9-1-1 jurisdiction whose 9-1-1 service area includes more than one city or county is eligible to receive operating funds from the allocation for each city or county involved. The department shall distribute to the accounting entity designated by a 9-1-1 jurisdiction with an approved final plan the proportional amount for each city or county served by the 9-1-1 jurisdiction. The department shall provide a report indicating the proportional share derived from the individual city's or county's allocation with each distribution to a 9-1-1 jurisdiction.

(4) If the department through its monitoring process determines that a 9-1-1 jurisdiction is not adhering to an approved plan, is not using funds in the manner prescribed in **10-4-303**, or has failed to provide information as provided in **10-4-107(4)**, the department may, after notice and hearing, suspend payment to the 9-1-1 jurisdiction. The jurisdiction is not eligible to receive funds until the department determines that the jurisdiction is complying with the approved plan and fund usage limitations or has provided the requested information. (*Repealed effective July 1, 2018--secs. 25, 31, Ch. 367, L. 2017.*)

Montana Code Annotated 2017

TITLE 10. MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 4. STATE EMERGENCY TELEPHONE SYSTEM

Part 3. Emergency Telephone System Account -- Usage

Limitation On Use Of Basic 9-1-1 Funds

10-4-303. *(Temporary)* **Limitation on use of basic 9-1-1 funds.** Money received under subsection (3) of **10-4-302** may be used only to pay for installing, operating, and improving a basic 9-1-1 emergency telephone system. Money not necessary for immediate use may be invested by the city or county. The income from the investments may be used only for the purposes described in this section. *(Repealed effective July 1, 2018--secs. 25, 31, Ch. 367, L. 2017.)*

History: En. Sec. 18, Ch. 635, L. 1985; amd. Sec. 13, Ch. 448, L. 1997.

Montana Code Annotated 2017

TITLE 10. MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 4. STATE EMERGENCY TELEPHONE SYSTEM

Part 3. Emergency Telephone System Account -- Usage

Establishment Of 9-1-1 Accounts

10-4-304. Establishment of 9-1-1 accounts. (1) Beginning July 1, 2018, there is established in the state special revenue fund an account for fees collected for 9-1-1 services pursuant to **10-4-201**.

(2) Funds in the account are statutorily appropriated to the department, as provided in **17-7-502**. Except as provided in subsection (3), beginning July 1, 2018, funds that are not used for the administration of this chapter by the department are allocated as follows:

(a) 75% of the account must be deposited in an account for distribution to local government entities that host public safety answering points in accordance with **10-4-305** and with rules adopted by the department in accordance with **10-4-108**; and

(b) 25% of the account must be deposited in an account for distribution in the form of grants to private telecommunications providers, local government entities that host public safety answering points, or both in accordance with **10-4-306**.

(3) Beginning July 1, 2018, all money received by the department of revenue pursuant to **10-4-201** must be paid to the state treasurer for deposit in the appropriate account.

(4) The accounts established in subsections (1) and (2) retain interest earned from the investment of money in the accounts.

History: En. Sec. 6, Ch. 367, L. 2017.

Montana Code Annotated 2017

TITLE 10. MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 4. STATE EMERGENCY TELEPHONE SYSTEM

Part 3. Emergency Telephone System Account -- Usage

Distribution Of 9-1-1 Systems Account By Department

10-4-305. Distribution of 9-1-1 systems account by department. (1) Beginning July 1, 2018, and for each quarter after that until the first quarter of the 2023 fiscal year, the department shall distribute the total quarterly balance of the account provided for in **10-4-304(2)(a)** as follows:

(a) each local government entity that hosts a public safety answering point must receive an allocation of the total quarterly balance of the account equal in proportion to the quarterly share received by the local government entity that hosts the public safety answering point during the 2017 fiscal year;

(b) each local government entity that hosts a public safety answering point must receive an allocation in accordance with subsection (1)(a). The allocation may vary from the amount distributed during the 2017 fiscal year based on the amount collected by the department of revenue in accordance with **10-4-201(1)(a)**.

(2) Beginning July 1, 2022, and in accordance with subsection (3), the department shall allocate and distribute the total quarterly balance of the account provided for in **10-4-304(2)(a)** based on rules adopted by the department in accordance with **10-4-108(3)**.

(3) Within 1 year after the official final decennial census figures are available, the department shall update the rules establishing the quarterly allocation and distribution provided for in subsection (2) and allocate and distribute the quarterly balance for each quarter after that until the next update.

History: En. Sec. 7, Ch. 367, L. 2017.

Montana Code Annotated 2017

TITLE 10. MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 4. STATE EMERGENCY TELEPHONE SYSTEM

Part 3. Emergency Telephone System Account -- Usage

9-1-1 Grants

10-4-306. 9-1-1 grants. (1) The department shall, in consultation with the 9-1-1 advisory council created pursuant to **10-4-105**, award competitive grants annually using the account established pursuant to **10-4-304(2)(b)** for private telecommunications providers and for local government entities that host public safety answering points. Beginning July 1, 2018, grants must be awarded to private telecommunications providers, local government entities that host public safety answering points, or both in accordance with this section and with rules adopted by the department in accordance with **10-4-108**.

(2) In accordance with subsection (3), grants may be awarded to private telecommunications providers and to local government entities that host public safety answering points for:

- (a) emergency telecommunications systems plans;
- (b) project feasibility studies or project plans;
- (c) the implementation, operation, and maintenance of 9-1-1 systems, equipment, devices, and data; and
- (d) the purchase of services that support 9-1-1 systems.

(3) In awarding grants, preference must be given to applications in the following order of priority:

- (a) requests by private telecommunications providers or by local government entities that host public safety answering points by working with a private telecommunications provider; and
- (b) requests by local government entities that host public safety answering points.

(4) Nothing in this section prevents a local government entity that hosts a public safety answering point in accordance with this section from:

- (a) providing grant money received by the local government entity to a private telecommunications provider for 9-1-1 purposes; or
- (b) collaborating with another local government entity on a joint grant application.

History: En. Sec. 8, Ch. 367, L. 2017.

Montana Code Annotated 2017

TITLE 10. MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 4. STATE EMERGENCY TELEPHONE SYSTEM

Part 3. Emergency Telephone System Account -- Usage

Baseline Next-Generation 9-1-1 Account Transfers

10-4-307. (Temporary) Baseline next-generation 9-1-1 account transfers. (1) After the department makes distributions for the final quarter of the 2017 fiscal year from the wireless enhanced 9-1-1 account established in **10-4-301(1)(c)**, the department shall transfer:

(a) \$5 million into the next-generation 9-1-1 infrastructure account established in accordance with **10-4-308**;

(b) \$80,000 into the 9-1-1 GIS mapping account established in accordance with **10-4-314**; and

(c) \$350,000 into the statewide 9-1-1 planning account established in accordance with **10-4-315**.

(2) The allocations in subsection (1) may be used only in accordance with **10-4-308**, **10-4-309**, **10-4-314**, and **10-4-315**. (*Terminates October 1, 2019--sec. 32, Ch. 367, L. 2017.*)

History: En. Sec. 9, Ch. 367, L. 2017.

Montana Code Annotated 2017

TITLE 10. MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 4. STATE EMERGENCY TELEPHONE SYSTEM

Part 3. Emergency Telephone System Account -- Usage

Next-Generation 9-1-1 Infrastructure Account Created -- Source Of Funding -- Use Of Account

10-4-308. (Temporary) Next-generation 9-1-1 infrastructure account created -- source of funding -- use of account. (1) There is an account in the state special revenue fund to be known as the next-generation 9-1-1 infrastructure account.

(2) There must be deposited in the account:

(a) money received from legislative allocations;

(b) a transfer of money in accordance with **10-4-307(1)(a)** for the purposes of **10-4-309**; and

(c) a gift, donation, grant, legacy, bequest, or devise made for the purposes of **10-4-309**.

(3) Except as provided in subsection (4), the account may be used only by the department to provide grants for next-generation 9-1-1 infrastructure as provided in **10-4-309** to a local government entity working with a private telecommunications provider.

(4) At the end of fiscal year 2019, any unexpended balance in the account must be transferred to the account established by the department in accordance with **10-4-304(2)(b)**. (*Terminates October 1, 2019--sec. 32, Ch. 367, L. 2017.*)

History: En. Sec. 10, Ch. 367, L. 2017.

Montana Code Annotated 2017

TITLE 10. MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 4. STATE EMERGENCY TELEPHONE SYSTEM

Part 3. Emergency Telephone System Account -- Usage

Next-Generation 9-1-1 Infrastructure Grants -- Criteria -- Rulemaking

10-4-309. (Temporary) Next-generation 9-1-1 infrastructure grants -- criteria -- rulemaking.

(1) Money deposited in the next-generation 9-1-1 infrastructure account established in **10-4-308** may be expended by the department through a grant to a local government working with a private telecommunications provider for next-generation 9-1-1 infrastructure.

(2) For the purposes of **10-4-308** and this section, the following definitions apply:

(a) "ESInet" means an emergency services IP network. It includes the IP infrastructure on which independent application platforms and core functional processes are deployed.

(b) "IP" means internet protocol, or the method by which data are sent on the internet, or a communications protocol for computers connected to a network, especially the internet.

(c) "Next-generation 9-1-1 infrastructure" means a statewide ESInet, upgrades and replacement of existing selective routers with IP routers, and upgrades to all non-IP-capable public safety answering points for IP capability.

(3) In making grant awards under this section, the department shall give preference to local governments working with private telecommunications providers that the local government determines can most effectively implement infrastructure improvements.

(4) The department shall consult with and consider recommendations by the 9-1-1 advisory council established in **10-4-105** for awards made under this section.

(5) The department may adopt rules to administer the provisions of **10-4-308** and this section. The rules must ensure that all local governments are treated equitably and must include but are not limited to provisions regarding:

- (a) applications;
- (b) timelines;
- (c) eligibility, including proof of eligibility;
- (d) the procedure for establishing the priority of grant awards;
- (e) the appeal process for grant applications that are denied; and
- (f) disbursement of grant money to providers.

Montana Code Annotated 2017

TITLE 10. MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 4. STATE EMERGENCY TELEPHONE SYSTEM

Part 3. Emergency Telephone System Account -- Usage

Distribution Of Enhanced 9-1-1 Account By Department

10-4-311. (Temporary) Distribution of enhanced 9-1-1 account by department. (1) The department shall make quarterly distributions of the entire enhanced 9-1-1 account for costs incurred during the preceding calendar quarter by each provider of telephone service in the state for:

(a) collection of the fee imposed by **10-4-201(1)(b)**; and

(b) modification of central office switching and trunking equipment necessary to provide service for an enhanced 9-1-1 system only.

(2) Payments under subsection (1) may be made only after application by the provider to the department for costs described in subsection (1). The department shall review all applications relevant to subsection (1) for appropriateness of costs claimed by the provider. If the provider contests the review, payment may not be made until the amount owed the provider is made certain.

(3) After all amounts under subsections (1) and (2) have been paid, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(4) An enhanced 9-1-1 jurisdiction whose enhanced 9-1-1 service area includes more than one city or county is eligible to receive operating funds from the allocation for each city or county involved. The department shall distribute to the accounting entity designated by an enhanced 9-1-1 jurisdiction with an approved final plan for enhanced 9-1-1 service the proportional amount for each city or county served by the enhanced 9-1-1 jurisdiction. The department shall, upon request, provide a report indicating the proportional share derived from the individual city's or county's allocation with each distribution to a 9-1-1 jurisdiction.

(5) If the department determines that an enhanced 9-1-1 jurisdiction is not adhering to an approved plan for enhanced 9-1-1 service or is not using funds in the manner prescribed in **10-4-312**, the department may, after giving notice to the jurisdiction and providing an opportunity for a representative of the jurisdiction to comment on the department's determination, suspend payment from the enhanced 9-1-1 account to the 9-1-1 jurisdiction. The jurisdiction is not eligible to receive funds from the enhanced 9-1-1 account until the department determines that the jurisdiction is complying with the approved plan for enhanced 9-1-1 and fund usage limitations. (*Repealed effective July 1, 2018--secs. 25, 31, Ch. 367, L. 2017.*)

Montana Code Annotated 2017

TITLE 10. MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 4. STATE EMERGENCY TELEPHONE SYSTEM

Part 3. Emergency Telephone System Account -- Usage

Limitation On Use Of Enhanced 9-1-1 Funds

10-4-312. (Temporary) Limitation on use of enhanced 9-1-1 funds. (1) Money received under **10-4-311(3)** or (4) may be used only to pay for installing enhanced 9-1-1 features or for operating and improving an emergency telephone system using 9-1-1 service once the plan for converting to enhanced 9-1-1 has been approved.

(2) With department approval, money received under **10-4-311(3)** or (4) may be used to pay for basic 9-1-1 service. The 9-1-1 jurisdiction shall submit a request for an exception under this subsection to the department based on a demonstrated hardship, including geographical constraints, funding limitations, or absence of technical capability or capacity.

(3) Money not necessary for immediate use may be invested by the city or county. The income from the investments may be used only for the purposes described in this section. (*Repealed effective July 1, 2018--secs. 25, 31, Ch. 367, L. 2017.*)

History: En. Sec. 15, Ch. 448, L. 1997.

Montana Code Annotated 2017

TITLE 10. MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 4. STATE EMERGENCY TELEPHONE SYSTEM

Part 3. Emergency Telephone System Account -- Usage

Distribution Of Wireless Enhanced 9-1-1 Account By Department

10-4-313. (Temporary) Distribution of wireless enhanced 9-1-1 account by department. (1) Except as provided in **10-4-307** and subsection (2) of this section, the department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account for allowable costs described in **10-4-301(1)(c)(ii)** incurred by each wireless provider in each 9-1-1 jurisdiction as follows:

(a) For each fiscal year through the fiscal year ending June 30, 2019:

(i) 84% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. The wireless provider in each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be allocated evenly to the wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state; and

(iii) prior to distribution, the amounts allocated under subsections (1)(a)(i) and (1)(a)(ii) must be adjusted to ensure that a wireless provider does not receive less than the amount allocated to wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state.

(b) For fiscal years beginning after June 30, 2019, 100% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. Each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(c) If the department is unable to fully reimburse a wireless provider under subsection (1)(a) in any quarter, the department shall in the subsequent quarter pay from the allocation under subsection (1)(a) to wireless providers any unpaid balances from the previous quarter. If the amount available is insufficient to pay all previous unpaid balances, the department shall repeat the process of paying unpaid balances that remain unpaid for as many quarters as necessary until all unpaid balances are fully paid. The department shall review all invoices for appropriateness of costs claimed by the wireless provider. If the wireless provider contests the review, payment may not be made until the amount owed to the wireless provider is determined.

(d) A wireless provider shall submit an invoice for cost recovery according to the allowable costs.

(iii) prior to distribution, the amounts allocated under subsections (5)(a)(i) and (5)(a)(ii) must be adjusted to ensure that a county does not receive less than the amount allocated to counties with 1% or less of the total population of the state; and

(b) for fiscal years beginning after June 30, 2019, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account. *(Repealed effective July 1, 2018--secs. 25, 31, Ch. 367, L. 2017.)*

History: En. Sec. 7, Ch. 304, L. 2007; amd. Sec. 3, Ch. 111, L. 2009; amd. Sec. 1, Ch. 2, L. 2011; amd. Sec. 5, Ch. 19, L. 2011; amd. Sec. 2, Ch. 316, L. 2013; amd. Sec. 1, Ch. 35, L. 2015; amd. Sec. 22, Ch. 367, L. 2017.

Montana Code Annotated 2017

TITLE 10. MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 4. STATE EMERGENCY TELEPHONE SYSTEM

Part 3. Emergency Telephone System Account -- Usage

9-1-1 Gis Mapping Account Created -- Source Of Funding -- Use Of Account

10-4-314. (Temporary) 9-1-1 GIS mapping account created -- source of funding -- use of account. (1) There is an account in the state special revenue fund to be known as the 9-1-1 GIS mapping fund.

(2) There must be deposited in the account:

(a) money received from legislative allocations;

(b) a transfer of money by the department in accordance with **10-4-307(1)(b)** for use in accordance with subsection (3) of this section; and

(c) any gift, donation, grant, legacy, bequest, or devise made for the purposes of subsection (3).

(3) The account may be used only by the state library provided for in **22-1-102** in carrying out its land information and management duties to award a contract in accordance with **18-1-102** to assess the status of GIS adoption and operations in Montana as they pertain to next-generation 9-1-1.

(4) Before September 1, 2018, the state library shall produce a report summarizing the status of GIS adoption and operations in Montana as they pertain to next-generation 9-1-1, including policy and funding recommendations necessary to use GIS to advance next-generation 9-1-1. The state library shall provide the report to the energy and telecommunications interim committee provided for in **5-5-230**.

(5) At the end of fiscal year 2019, any unexpended balance in the account must be transferred to the account established by the department in accordance with **10-4-304(2)(b)**. (*Terminates October 1, 2019--sec. 32, Ch. 367, L. 2017.*)

History: En. Sec. 12, Ch. 367, L. 2017.

Montana Code Annotated 2017

TITLE 10. MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 4. STATE EMERGENCY TELEPHONE SYSTEM

Part 3. Emergency Telephone System Account -- Usage

Statewide 9-1-1 Planning Account Created -- Source Of Funding -- Use Of Account

10-4-315. (Temporary) Statewide 9-1-1 planning account created -- source of funding -- use of account. (1) There is an account in the state special revenue fund to be known as the statewide 9-1-1 planning account.

(2) There must be deposited in the account:

(a) money received from legislative allocations;

(b) a transfer of money by the department in accordance with **10-4-307(1)(c)** for use in accordance with subsections (3) through (5) of this section; and

(c) any gift, donation, grant, legacy, bequest, or devise made for the purposes of subsections (3) through (5).

(3) The account may be used only by the department to award a contract in accordance with **18-1-102** and after consulting with the 9-1-1 advisory council created in **10-4-105** to develop a statewide 9-1-1 plan.

(4) A statewide 9-1-1 plan must include proposed:

(a) priorities for 9-1-1 systems in Montana and plans for next-generation 9-1-1 technology deployment;

(b) potential formulas and methods to distribute 9-1-1 money;

(c) uniform standards relating to technology, next-generation 9-1-1 technology, and administration and operation of 9-1-1 systems in Montana;

(d) steps to promote collaboration among local governments and greater incentives for cooperation among local governments and public safety answering points to improve efficiency by developing interconnectivity of 9-1-1 systems through partnerships for enhancement, operation, and maintenance of the network;

(e) eligible uses for money received by local governments in accordance with this chapter;

(f) audits or other steps necessary to ensure program compliance from entities receiving disbursements in accordance with this chapter;

(g) necessary plans to include, to the maximum extent feasible, the use of existing commercial