

SESSION OF 2019

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2084

As Amended by Senate Committee on Utilities

Brief*

HB 2084, as amended, would revise the Kansas 911 Act (Act) and repeal three outdated statutes not included in the Act. The bill would make changes to definitions, the membership of the 911 Coordinating Council (Council), administration of funds by the Council, the Council's rules and regulations authority, the Local Collection Point Administrator (LCPA) expenses, public safety answering point (PSAP) geographic information service (GIS) data requirements, PSAP annual report requirements, 911 fee funds, 911 fees, PSAP distributions, PSAP expenditures, liability provisions, audit expenses, and county restrictions.

Definitions

The bill would add the following definitions to the Act:

- "GIS" would mean a geographic information system for capturing, storing, displaying, analyzing, and managing data and associated attributes that are spatially referenced;
- "GIS data" would mean the geometry and associated attributes packaged in a geodatabase that defines the roads, address points, and boundaries within a PSAP's jurisdiction; and
- "Non-traditional PSAP" would mean a PSAP not operated by a city or county, including, but not

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

limited to, PSAPs operated by universities, tribal governments, or the state federal government.

The bill would amend two definitions in the Act. Current law defines “local collection point administrator” to mean the person designated by the Council to collect and distribute 911 fees and 911 state grant fund moneys. The bill would create the 911 Operations Fund and would require the LCPA also collect and distribute 911 Operations Fund moneys. Current law defines “Next Generation 911” (NG911) to mean a 911 service that enables PSAPs to receive Enhanced 911 service calls and emergency calls from Internet protocol-based technologies and applications that may include text messaging, image, video, and data information from callers. The bill would add to the definition that NG911 service conforms with National Emergency Number Association i3 standards.

911 Coordinating Council

Membership

In continuing law, the Council has 13 voting members and the bill would eliminate the member representing PSAPs without regard to size and add a member representing the Kansas chapter of the Association of Public Safety Communications Officials.

In current law, the Council has ten non-voting members appointed by the Governor and the bill would add two members representing non-traditional PSAPs, one of whom would be a representative of tribal government.

Expenses

Current law requires the Council-related expenses be reimbursed from the 911 State Grant Fund. The bill would require the expenses to be reimbursed from the 911

Operations Fund, which would be created by the bill. The bill would limit payments for administration expenses of the Council to 2.0 percent of the total receipts from providers and the Kansas Department of Revenue (Department) received by the LCPA. The Council would also be authorized to reimburse state agencies or independent contractors for expenses incurred effectuating the Act, from the 911 Operations Fund.

Rules and Regulations

The Council's authority to adopt rules and regulations necessary to effectuate the provisions of the Act would be expanded to include establishing training standards and programs related to the technology and operations of the NG911 hosted solution, establishing data standards, maintenance policies, and data reporting requirements for GIS data, and assessing civil penalties upon a finding that a provider has violated any provision of the Act.

The bill would prohibit the Council from adopting rules and regulations or imposing any requirements that would create a mandatory certification program of PSAP operations or PSAP emergency communications personnel.

Local Collection Point Administrator

Expenses

Current law requires the LCPA-related expenses be reimbursed from the 911 State Grant Fund. The bill would require the expenses to be reimbursed from the 911 Operations Fund.

Selection

The bill would require the Council to receive approval from the Legislative Coordinating Council (LCC) in selecting

the LCPA. Current law states the Council shall receive advice and consent from the LCC in selecting the LCPA.

GIS Data Oversight

The bill would set forth a process for the Council to ensure the GIS data for PSAPs remains up-to-date. If a PSAP does not provide certification of up-to-date GIS data or update its GIS data, the Council would be allowed to contract with a third party to update the GIS data and would be required to assess the governing body of the PSAP with any costs incurred in updating the GIS data.

Public Safety Answering Points' Annual Reports

The bill would require the Council to provide notice to the governing body of a PSAP that failed to file and finalize an annual report, as required by the Act. If after 60 days, the report is not filed or finalized, 10.0 percent of each subsequent distribution of 911 fees would be withheld from such PSAP until such report has been submitted.

911 Operations Fund

The bill would require the LCPA, upon approval of the Council, to establish the 911 Operations Fund for administrative costs of the Council and deployment and maintenance of the Statewide NG911 system outside of the State Treasury.

911 Fees

Subscriber Accounts

Continuing law imposes a 911 fee per month, per subscriber account of any exchange telecommunications service, wireless telecommunications service, voice over

Internet protocol service, or other service capable of contacting a PSAP. The bill would increase the 911 fee from \$0.60 to \$0.90 per month, per subscriber account. The Council would have the authority, through rules and regulations, to lower the fee. Continuing law requires service providers collect the 911 fees and remit such fees to the LCPA for distribution to the PSAPs pursuant to the Act.

Prepaid Purchases

Continuing law imposes a prepaid wireless 911 fee per retail transaction to be collected by the seller and remitted to the Department. The Department remits the fees to the LCPA for distribution as provided in the Act. The bill would increase the fee from 1.20 percent to 2.06 percent per transaction. The bill would require the Council, through rules and regulations, to lower the prepaid wireless fee proportionally to any reduction in the 911 subscriber fee. Current law requires the Council to adjust the 911 subscriber fee and requires the prepaid 911 fee to be adjusted proportionately, either up or down, upon adjustment of the 911 subscriber fee.

Distribution to PSAPs

Continuing law states 911 fees will be distributed to PSAPs in each county based upon the amount of 911 fees collected from service users located in that county, based on place of primary use information provided by the providers, by using the distribution method set forth in statute. The bill would not change the distribution method; however, the bill would increase the minimum county distribution from \$50,000 to \$60,000.

The bill would require that prior to the distribution of 911 fees to the PSAPs, the LCPA withhold \$0.23 from every 911 fee remitted by service providers and deposit such amount in the 911 Operations Fund for deployment and maintenance of the statewide NG911 system and standardized functionality upgrade to that system. The bill would state if these funds

withheld from PSAP distribution exceed 15.0 percent of the total receipts received by the LCPA from providers and the Department over the prior three years, the bill would require such funds in excess of the 15.0 percent total be deposited in the 911 State Grant Fund and used for PSAP grants based on demonstrated need.

The bill would require the LCPA withhold \$0.01 from every 911 subscriber fee remitted to the LCPA prior to PSAP distribution, if the balance in the 911 State Grant Fund is less than \$2.0 million, and deposit such amount in the 911 State Grant Fund. Additionally, if the balance in the 911 State Grant Fund exceeds \$2.0 million, the LCPA would not be required to withhold such amount.

The bill would require all moneys remaining after distribution, moneys withheld to deploy and maintain the statewide NG911 system, and any money that cannot be attributed to a specific PSAP be transferred to the 911 Operations Fund.

The bill would require all moneys in the 911 State Fund collected from the prepaid wireless 911 fee be deposited in the 911 Operations Fund unless \$3.0 million of such moneys have been deposited in any given year, then all remaining moneys would be distributed to the counties in an amount proportional to each county's population as a percentage share of the population of the state.

PSAP Expenditures

The bill would require the Council, pursuant to rules and regulations, to establish a process for a PSAP, at the discretion of the PSAP, to seek pre-approval of an expenditure. The Council would be required to respond in writing to any pre-approval request within 30 days and inform the PSAP the requested expenditure is approved or disapproved. The bill would require, if the expenditure is disapproved, the written notification state the reason for the

disapproval and such PSAP could, within 15 days after service of the notification, make a written request to the Council to appeal the decision and for a hearing to be conducted in accordance with the Kansas Administrative Procedure Act.

The bill would require the Council annually to review expenditures of 911 funds reported on the annual report for each PSAP and to appoint a committee to review such expenditures. The bill would state if the committee determines a reported expenditure was not authorized by the Act, the committee would be required to request the expenditure be refunded by the PSAP to the PSAP's 911 account. The PSAP would be allowed to request a review of the decision of the committee before the Council. Upon a finding that an unauthorized expenditure was made intentionally, the Council would be allowed to assess a fine to the PSAP. Any final action of the Council would be subject to review in accordance with the Kansas Judicial Review Act.

Continuing law prohibits PSAPs from using 911 fees to purchase subscriber radio equipment. The bill would further prohibit the use of 911 fees for the procurement, maintenance, or upgrade of such equipment. The bill would also prohibit the use of 911 fees to pay salaries for training of personnel.

Liability

The bill would provide that except for action or inaction that constitutes gross negligence or willful and wanton misconduct, the LCPA; PSAPs; and each provider and seller, and their respective employees, agents, suppliers, and subcontractors would not be liable for payment of damages resulting directly or indirectly from the total or partial failure of any transmission to an emergency communication service or for damages resulting from the performance of installing, maintaining, or providing 911 service.

Audit Expenses

Audits authorized by the Act would be paid or reimbursed from the 911 Operations Fund.

Restrictions on Counties

Counties would not be allowed to exempt from or effect changes in the Act.

Outdated Statutes

The bill would repeal three outdated statutes regarding enhanced wireless 911 provisions. These statutes are not included in the Act.

Background

The bill was introduced in the House Committee on Energy, Utilities and Telecommunications at the request of the NG911 administrator for the Council. In the House Committee hearing, the NG911 administrator and representatives from the Kansas Association of Chiefs of Police, Kansas Sheriffs' Association, and Johnson County Emergency Management and Communications testified in favor of the bill. The proponents generally stated the increase in the 911 fee is critical to the financial sustainability of the Kansas NG911 system and without the increase, migration to full NG911 would be suspended and the system would remain stagnant. Additionally, the \$10,000 increase in the minimum payment to smaller PSAPs is needed to assist smaller counties with rising costs of providing accurate advanced 911 services.

Proponent written-only testimony was provided by representatives from Allen County Emergency Communications and Emergency Management; the Association of Public Safety Communications Officials, Kansas Chapter; Harvey County Communications; the

Kansas Geological Survey; the National Emergency Number Association, Kansas Chapter; Rice County 911; and Sprint.

Neutral testimony was provided by a representative from CenturyLink. Neutral written-only testimony was provided by representatives from AT&T, the Kansas Association of Counties (KAC), and the League of Kansas Municipalities (LKM).

No opponent testimony was provided.

The House Committee amended the bill to change the payment limit for administrative expenses of the Council from 2.5 percent to 2.0 percent of the total receipts from providers and the Department received by the LCPA.

The House Committee also amended the bill by changing the standard of care for which the LCPA and each provider and seller and their respective employees and agents could be liable for payments of damages resulting from failure of any transmission to an emergency communication service or for damages resulting from the performance of installing, maintaining, or providing 911 service. The amendment added PSAPs and suppliers and subcontractors of providers and sellers to the liability provisions.

The House Committee of the Whole amended the bill to change the 911 fee from \$1.03 to \$0.82 per month, per subscriber account. The House Committee also amended the bill to require the LCPA withhold \$0.01 from every 911 subscriber fee remitted to the LCPA prior to PSAP distribution, if the balance in the 911 State Grant Fund is less than \$2.0 million, and deposit such amount in the 911 State Grant Fund. Additionally, if the balance in the 911 State Grant Fund exceeds \$2.0 million, the LCPA would not be required to withhold such amount.

In the Senate Committee on Utilities hearing, a representative of Brevitz Consulting Services and Inspired

Technologies, a consulting firm that conducted an independent audit of the Kansas 911 System on behalf of the Legislative Division of Post Audit, briefed the Senate Committee on its findings. The NG911 administrator and representatives from Haskell County Sheriff's Office, Johnson County Emergency Management and Communications, Kansas Association of Chiefs of Police and Kansas Sheriffs' Association, and Rice County 911 Emergency Communications testified in favor of the bill. The proponents generally stated the increase in the 911 fee is critical to the financial sustainability of the Kansas NG911 system, and expressed concern regarding the House Committee of the Whole amendment reducing the 911 fee from \$1.03 to \$0.82 per month, per subscriber account.

Written-only proponent testimony was provided by representatives of the Johnson County Board of County Commissioners, Kansas Geological Survey, Mid-America Regional Council, and Sprint.

Neutral testimony was provided by representatives of AT&T, KAC, and LKM.

A representative of the Sedgwick County Division of Emergency Communications testified in opposition to the bill and a representative of the Miami County Commission provided written-only opponent testimony. Opponents stated concerns over the House Committee of the Whole amendment that reduced the 911 fee from \$1.03 to \$0.82 per month, per subscriber account.

The Senate Committee amended the bill to change the 911 fee from \$0.82 to \$0.90 per month, per subscriber account, and made a technical amendment.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Council indicates local 911 centers receive a percentage, based on population, of the fee-per-subscriber account currently required by statute and enactment of the bill would result in an increase in the

percentage to \$0.80 per subscriber account, for an overall estimated increase in revenue to the state's 117 PSAPS from \$18.5 million to \$24.7 million annually. The Council also indicates the bill would increase the minimum amount a PSAP would receive annually from \$50,000 to \$60,000, which would result in an increase for 51 of the 117 PSAPs. The increase to the prepaid wireless service fee would be expected to generate an additional \$1.3 million, resulting in total revenues from this source of about \$3.1 million. The Council further indicates enactment of the bill would provide sufficient revenue to cover system and administrative costs for the Council, as well as allow system enhancement to full NG911.

The KAC reports enactment of the bill, as introduced, would have a fiscal effect on all counties and cities that operate a PSAP, as their current per month, per subscriber payment would increase by \$0.20, resulting in an increase in the amount the PSAPs receive from the 911 fees.

An updated fiscal note on the bill, as amended by the House Committee of the Whole, was not available when the Senate Committee on Utilities took action on the bill.