

SESSION OF 2002

**CONFERENCE COMMITTEE REPORT  
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2034**

As Agreed to May 8, 2002

**Brief \***

Senate Sub. for HB 2034 would establish a mechanism for financing of emergency telephone service. The bill defines "enhanced wireless 911 service" as a telephone exchange communication service by which wireless telecommunication carriers can provide automatic number identification, pseudo-automatic number identification, and wireless automatic location identification information to a public safety answering point which has the capability of providing selective routing, selective transfer, fixed transfer, automatic number identification, and wireless automatic location identification. Specifically, the bill would authorize a surcharge on wireless telecommunications service for purposes of financing emergency telephone systems. Current law provides for a tax on wireline or exchange telephone service, but expressly prohibits the taxation of wireless (cellular) telephone service.

The bill includes the following provisions.

**Surcharge.** The bill would authorize a surcharge of \$.75 per month per subscriber account until July 1, 2006. The fee could be reduced prior to that date if the Legislative Post Audit report in 2004 (required in Section 9) of the bill recommends a reduction of the surcharge. On or after July 1, 2006, the Enhanced Wireless 911 Board may modify the amount, provided it does not exceed \$.75 per month per subscriber account. However, if the Board reduces the amount and subsequently elects to increase it, the surcharge would be subject to rules and regulations of the Kansas Corporation Commission. The supplier collects the tax and could retain an amount of tax proceeds equal to 2 percent as an administrative fee.

**Wireless Enhanced 911 Advisory Board.** The bill would create a 12-member Enhanced Wireless 911 Board, which, in contrast to both the House and Senate versions, is not advisory and which,

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among other responsibilities, is authorized to review and approve all contracts of the administrator and expenditures from the Fund, supervise and review the performance of the administrator, establish the amount of compensation for the administrator and the staff (not more than 3.0 percent would be credited to the Enhanced Wireless 911 Fund for these and other administrative expenses), and recommend to the Kansas Corporation Commission rules and regulations for implementing enhanced 911 service.

**Administrator of the Enhanced Wireless 911 Fund.** The administrator would be under the supervision of the Board and the position would be attached to the Kansas Corporation Commission. the administrator would serve at the Governor's pleasure. In contrast to the Senate version, the administrator would not have approval authority. The administrator would:

- Negotiate and coordinate with wireless carriers and counties to ensure cost-effective, statewide E911 coverage and ensure uniformity of service and compliance with agreements.
- Promote collaboration among wireless carriers, counties, and Public Safety Answering Points (PSAPs).
- Verify time lines for implementation of enhanced wireless 911 service and monitor progress.
- Draft reports, applications and other documents.
- Review all technical and financial reports required by the Board.
- Sign contracts approved by the Board.
- Collect moneys due to, and make disbursements from, the Enhanced Wireless 911 Fund.
- Submit to the Joint Committee on Information Technology, for review and recommendations, any implementation plans approved by the Board.
- Execute other responsibilities assigned by the Board.

**Cost Recovery. (PSAPs)** The administrator would distribute an amount equal to 22.5 percent annually to each county treasury or \$25,000, whichever is greater. Counties may apply to the administra-

tor for additional moneys from the Enhanced Wireless 911 Fund. PSAP recoverable costs would include:

- Purchase of equipment and upgrades and modification to equipment used solely to process the data elements of enhanced wireless 911 service.
- Maintenance costs and license fees for such equipment and training PSAP personnel to provide effective service to all users of emergency telephone service who have communication disabilities.
- Installation, maintenance, and operation of telecommunications equipment and telecommunications services required for the provision of 911 service or enhanced 911 service, if the costs are necessary to prepare the PSAP to provide enhanced wireless 911 service. Such costs could not include expenditures for new or expanded buildings or similar facilities or to construct other capital improvements.

**(Wireless Providers).** Wireless carrier recoverable costs would include the necessary and reasonable costs incurred by the carrier under a service agreement or a request for service from a PSAP for the following items.

- Costs of creating and maintaining any database or database elements used solely for enhanced wireless 911 service.
- That portion of the costs of equipment or services, including leased equipment or services, used in the wireless carrier's main infrastructure necessary to implement enhanced 911 service or enhanced wireless 911 service.
- Any other costs incurred by the carrier to establish enhanced 911 wireless service.

Wireless carriers could apply to the administrator for moneys from the Enhanced Wireless 911 Fund.

**Suspension of Wireless Tax.** If a PSAP has not entered into an agreement with a wireless carrier within two years of receiving moneys from the county for implementation of enhanced 911 service, the PSAP would have to repay the administrator and would be ineligible for

additional moneys until the PSAP has proven that an implementation agreement exists between the PSAP and wireless carrier.

**Deployment Deadline.** The bill would impose a deadline of July 1, 2006 for deployment of Phase I and II of the enhanced 911 service as established by the Federal Communications Commission (FCC). must be deployed throughout Kansas prior to July 1, 2006.

**Proprietary Information.** Under the bill, information would be considered proprietary and would not be subject to the Kansas Open Records Act unless it is used to document surcharge revenue expenditures and is compiled in aggregate to the extent that the information cannot be related to or identified with a specific wireless carrier. However, the Division of Legislative Post Audit could report in the aggregate such information provided that specific wireless carriers are not identified.

**Audits.** Audits of wireless carrier's books could be required at the expense of the Enhanced Wireless 911 Fund.

**Board Reporting Requirements.** The Board would be required to submit an annual report to the Governor and Legislature for distribution to the appropriate Legislative Committees. Other reporting requirements include a provision that the Division of Legislative Post Audit submit reports in 2004 and 2006 and that the administrator submit implementation plans approved by the Board to the Joint Committee on Information Technology for its review.

**Liability Issues.** Liability protection applies to the public agency or supplier for failure to transmit emergency telephone service or, in the case of the supplier, for the release of subscriber information.

## **Background**

Currently, when someone calls 911 using a wireless phone, no information is available to the dispatcher about the call or the caller. In 1996, the Federal Communications Commission (FCC) issued regulations which set up a two-phase process for implementing enhanced 911 for wireless service. Phase I requires wireless service providers to relay to the appropriate PSAP the telephone number of a wireless handset originating a 911 call, as well as the location of the cell tower receiving the call. This information will provide a rough indication of the caller's location. The FCC requires the wireless

service provider to comply with Phase I requirements within six months after a PSAP makes a request for those services.

A 14-member task force established by 2000 Senate Sub. for HB 2945 proposed several recommendations, which were reflected in the introduced version of HB 2034. The House Utilities Committee amended the bill to: add cable telephony service providers to the definition of service supplier; prohibit the use of a protest petition for the extension of the emergency telephone tax to cable telephony service or wireless service; specify that the customer's billing address is the basis for the imposition of the tax on wireless service; provide that the tax should not be imposed on wireless connections used for remote control purposes; specify that non-administrative expenses not included in tariffs or customer charges may be recovered through negotiations between service providers and the city or county at its discretion; remove as allowable uses for emergency telephone tax funding for PSAP operations: engineering, architectural, and construction costs attributable to the emergency telephone system; require separate accounting of emergency telephone tax revenues and expenditures by type of service; require a deadline on the imposition of an emergency telephone tax on wireless service if Phase I is not implemented within 24 months after the date the tax is first imposed; expand protection to service suppliers and public agencies from liability that may result from the release of subscriber information; require service suppliers to design, maintain, and operate their facilities to maximize direct delivery of each 911 call to the appropriate PSAP; and establish a wireless enhanced 911 advisory board. Other amendments were technical.

The Senate Commerce Committee introduced SB 298, also pertaining to wireless emergency 911 services. The Committee held hearings on both HB 2034 and SB 298, at which time representatives of the following governments, corporations, and organizations offered testimony: the Johnson County Sheriff's Office, the League of Kansas Municipalities, Sedgwick County Emergency Management, the City of Overland Park, the Kansas Association of Counties, the City of Olathe, AT&T, the Kansas Trial Lawyers Association, the Rural Local Exchange Carriers of Kansas, Sprint, ALLTEL, the Overland Park Police Department, the Rural Telephone Companies of Kansas, the Kansas Emergency Medical Services Association, and Barton County.

The Senate Committee ultimately recommended a Senate substitute bill for HB 2034 using language from both HB 2034 and SB 298. The Senate substitute bill contains the centralized approach of SB 298, which differs from the decentralized approach of HB 2034. The

decentralized approach of the House version would allow governing bodies to impose a tax on cable telephony access lines and wireless connections.

The Senate Committee of the Whole made the following amendments to Senate Sub. for HB 2034.

- Inserted language in the liability section of the bill to hold the administrator, governing bodies, public agencies, and wireless carriers liable for the payment of damages resulting from intentional acts.
- Provided for recovery of costs of training PSAP personnel to provide effective service to system users with communications difficulties.
- Removed the requirement that members of the Wireless Enhanced 911 Advisory Board be appointed for staggered terms.
- Exempted wireless connections used for remote control purposes and capable of accessing only one number from any access line tax.

The Senate Committee further amended HB 2034 in several ways. These amendments include the following.

- Provide for an automatic payment of 20 percent of the surcharge to cities or counties operating a PSAP and wireless carriers providing emergency 911 service.
- Specify that no additional money beyond the surcharge could be collected from a subscriber's bill for emergency 911.
- Impose a deadline of July 1, 2004 for deployment of Phase I and II of the enhanced 911 service as established by the FCC.
- Allow the administrator to adjust, once every two years, the percentages of the surcharge which participating wireless carriers, cities, or counties automatically receive.

The Senate amended the bill on final action to remove the provision specifying that no additional money beyond the surcharge could be collected from a subscriber's bill for E-911. This language

was replaced with a requirement that all charges for E-911 services must be identified as such on the subscriber's bill.

The Conference Committee agreed to a number of compromise provisions and updated the bill by changing implementation dates to one year later.

An updated fiscal note for the Senate substitute for HB 2034 was not available upon publication of this supplemental note. However, the Division of the Budget provided a fiscal note for SB 298 which estimated that a surcharge of \$0.50 per subscriber account would generate \$6,000,000 for the Wireless Enhanced 911 Fund in FY 2002. The fiscal note also anticipated additional expenditures of \$314,884 by the Highway Patrol relative to the program in FY 2002.