

Revised
SESSION OF 2004

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SUBSTITUTE FOR SENATE BILL NO. 153**

As Amended by House Committee of the Whole

Brief*

The bill would enact the Wireless Enhanced 911 Act that would create a funding mechanism for improvements required to establish wireless enhanced (e-911) service. Such improvements would be financed from a combination of grants and e-911 fee revenue. Grant funds would be generated from a 25¢ per month fee imposed on each wireless service account in the state. Grants would be available to counties with populations under 75,000 and to cities in those counties. An additional 25¢ local e-911 fee would be imposed on all wireless user accounts in the state. In 2010 the fee dedicated to the grant fund would be abolished. Also at that time the local fee and the existing wireline 911 assessment would be authorized to be equalized at a rate based on county population.

The bill would provide for audits and reports to the Governor and the Legislature regarding the use of revenue generated under the bill's authority. The bill also would give cities, counties, and public safety answering points (PSAPs) that serve them until July 1, 2006 to request that wireless service carriers begin implementation of e-911 services.

The grant fee and related provisions of the bill would expire on July 1, 2010. The local fee would provide ongoing support for the e-911 system.

The bill would become effective upon publication in the *Kansas Register*.

Specific provisions of the bill are described below.

*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>

e-911 Service Defined

- ! "Wireless enhanced 911 service" would be defined as a service that enables a wireless carrier to provide number and location identification of calls made to a PSAP that is capable of utilizing e-911 service.

Grant Fee

- ! The bill would impose a 25¢ per month wireless enhanced grant fee (grant fee) on each wireless subscriber account and prepaid wireless telephone service in Kansas. A "subscriber account" would be defined by the bill to be the 10-digit access number assigned to a wireless customer regardless of whether more than one number is aggregated for the purpose of billing a service user.
- ! The grant fee would be collected from wireless users by carriers and remitted to the Secretary of Administration for deposit in the Grant Fund. Collection of the fee would begin July 1, 2004.
- ! The grant fee would be abolished on July 1, 2010.

Local Fee

- ! The bill also would impose, effective July 1, 2004, a wireless enhanced local fee (local fee) of 25¢ per month per wireless subscriber account and prepaid wireless telephone service in Kansas.
- ! Proceeds of the local fee could be used to pay for costs of wireless and wireline 911 services. Revenue from the local fee could not be used for:
 - " expenditures to provide wireless automatic location identification information unless the municipality had taken competitive bids for provision of that information and those expenditures were less than the bid of the lowest responsible bidder; or
 - " new or expanded buildings or similar facilities or to construct other capital improvements not specifically authorized by the Act.
- ! If a PSAP has not made a valid request to an emergency telephone service provider to implement e-911 service by July 1, 2006, local fee revenue generated within the local unit would be deposited in the Grant Fund. A waiver of up to one year could be

granted by the Advisory Board for just cause or if necessary equipment is not available to meet the application deadline.

- ! With one exception, on July 1, 2010, the local fee would be authorized to increase to a maximum of 50¢ per month in counties with populations of 40,000 or more. At that time, the existing wireline 911 assessment and the local fee would be equalized. The exception to the 50¢ maximum would be in counties where revenue from the wireline assessment was pledged to repay bonds issued before the effective date of the Act. In counties with populations under 40,000, the wireline assessment and local fee would be equalized at a maximum of 75¢ per month.

Fee Collection

- ! Wireless service users would be liable for fees imposed by the bill until those fees are paid to the wireless carrier. Wireless carriers would begin collecting fees imposed under the bill July 1, 2004. Fees would be added to and could be separately enumerated on users' bills. If the fee is identified separately on bills, it would be labeled "public safety grants: and "public safety A.P. fee." Wireless carriers would collect fees at the same time as, and along with, charges for wireless service in accordance with carriers' regular billing practices. Amounts collected from customers would be remitted by carriers monthly.
 - " Revenue generated from the grant fee would be remitted to the Secretary of Administration.
 - " The local fee would be remitted to the League of Kansas Municipalities and the Kansas Association of Counties which would be designated the "local collection point administrator" (LCPA) by the bill.
 - The LCPA would be required to distribute fee revenue to PSAPs based on information provided by carriers regarding the primary place of use of the wireless service.
 - The LCPA would be authorized to retain, as an administrative fee, a maximum of 2 percent of total local fee revenue collected.

Grant Fund

- ! The Wireless Enhanced 911 Grant Fund (Fund) would be created in the State Treasury as the repository for revenue generated by the grant fee and other moneys available for the purposes of the Fund. The Fund would be administered by the Secretary of Administration. Moneys in the Fund could only be used for:
 - " Grants to counties with populations of less than 75,000, or cities located in such counties. Those grants could be used to finance:
 - Necessary and reasonable costs incurred by PSAPs to implement e-911 service;
 - Purchase or upgrade of equipment used solely to process data elements of e-911 service; and
 - Costs of maintenance and license fees for e-911 equipment and training of personnel to operate that equipment.
 - " Administrative expenses limited to a maximum of 5 percent of revenue. Those administrative costs may include costs incurred by the advisory board and the cost of audits.
 - " Grant funds specifically could not be used for:
 - expenditures to provide wireless automatic location identification information unless the municipality had taken competitive bids for provision of that information and those expenditures were less than the bid of the lowest responsible bidder; or
 - to build new or expanded facilities or to construct other capital improvements not explicitly authorized by the Act.
- ! The Grant Fund would be abolished on July 1, 2010. Any unobligated balance in the Fund at that time would be paid to the LCPA for distribution to municipalities based on population.

General Administration

- ! As Administrator under the Act, the Secretary of Administration would be required to:
 - " Provide eligible municipalities with technical advice and assistance regarding e-911 projects or grant applications;
 - " Establish grant application procedures and requirements; and

- " Make an annual report to the Governor and the Legislature describing how the goals and objectives of the previous year have been met and reporting progress toward implementation of federal Phase II e-911 requirements.

- ! The Secretary would be authorized to:

- " Adopt rules and regulations to implement the Act; and

- " Select projects to be funded from the Grant Fund.

Grant Administration

- ! The Secretary would be authorized to enter into agreements with eligible municipalities receiving grants from the fund. Agreements would address purposes for the grants, implementation schedules, and grant amounts. Grantees would be required to repay the amount of any grant received if implementation is not completed in accordance with the agreement.

- ! Grantees served by PSAPs that have not requested, by July 1, 2006, that wireless carriers implement e-911 service, would be required to repay to the Secretary all grant funds received. A waiver of up to one year could be granted by the Advisory Board for just cause or if necessary equipment is not available to meet the time requirement. Any amounts paid back would be deposited in the Grant Fund. Any grantee who forfeits grant funds due to failure to make a valid request would be prohibited from receiving another grant until the grantee has submitted evidence to the Secretary that a valid request has been made.

- ! The Secretary and the Advisory Board would be required to prepare an annual plan identifying intended uses of the Grant Fund. The plan would be subject to public comment and review. The plan would have to include, but not be limited to:

- " A project priority list ("project" would be defined to be development and acquisition of necessary improvements to facilitate establishment of e-911 services);

- " A description of short and long-term goals and objectives for deployment of e-911;

- " Descriptions of projects to be financed, terms of grants, and information about grantees; and
- " Criteria and method for making grants from the fund.

Advisory Board

! A nine-member Wireless Enhanced 911 Advisory Board would be appointed by the Governor. Members of the Advisory Board would have to be familiar with development and implementation of e-911 service. The Board would be composed of one representative each of:

- " the Association of Counties;
- " the League of Kansas Municipalities;
- " local law enforcement;
- " local fire/emergency medical services;
- " PSAPs in counties with populations of less than 15,000; and
- " PSAPs in counties with populations of 15,000 or more.

! Of the Advisory Board members representing the groups enumerated above, two each would be from counties:

- " with a population of more than 75,000;
- " with a population of 15,000 to 75,000; and
- " with a population of less than 15,000.

! The remaining three positions on the Board would be occupied by persons representing:

- " the wireless carriers industry;
- " the Kansas Highway Patrol; and
- " local exchange service providers.

! Authorization for the Board would expire on July 1, 2010.

Accountability

! The Secretary and the Advisory Board would report annually to the Governor and the Legislature regarding how the goals and objectives of the previous year have been met and reporting progress toward implementation of federal Phase II e-911 requirements.

! Each PSAP would be required to submit to the Secretary an annual accounting for revenue received from the local fee.

! Legislative Post Audit would be required to conduct audits of the e-911 service system in calendar year 2006 and during the 12 months following July 1, 2008 to determine:

- " whether grant and local fee moneys received by municipalities under the Act are being used appropriately;
- " whether amounts of money collected under the Act are adequate;
- " the status of e-911 implementation; and
- " the need for and level of continued funding of the system.

Those audits would be conducted in accordance with scope statements authorized and approved by the Legislative Post Audit Committee.

! In 2005, the Secretary would be required to conduct an audit of wireless carrier's books and records regarding collection and remittance of fees under the Act. The cost of any such audit would be borne by the Corporation Commission.

! All payments and disbursements of local fee revenue by the LCPA would be subject to an annual audit under the auspices of the Post Audit Act.

Limitation of Liability

! Liability of the Secretary, LCPA, governing bodies of cities and counties, public agencies, wireless carriers and their employees and agents would be limited in regard to damages resulting from installing, maintaining, or providing e-911 service under certain circumstances.

Public Access to Information

! Information provided by carriers to the State under the Act would be treated as proprietary and withheld from the public upon request of the submitting carrier.

Recovery of Carriers' Costs

! The bill would prohibit interpretation of the Act as limiting the ability of wireless carriers to recover, directly from their customers, costs associated with collecting and administering the fees, and

designing, developing, deploying, and maintaining e-911. Any such recovery from customers could be itemized on customers' bills as a surcharge.

Accurate Coverage

- ! The bill would require all PSAPs and wireless carriers to make a good faith effort to ensure that e-911 calls placed near jurisdictional borders are forwarded to the appropriate PSAP.

Notice of Waiver Request

- ! The bill would require PSAPs to notify the Secretary when they are notified of a wireless carrier's application to the Federal Communications Commission for a waiver of deadlines for implementation of e-911.

Background

The Federal Communications Commission (FCC) issued an order in 1996 creating rules governing the availability of Basic 911 service and the implementation of e-911 service for wireless telephone users. In this order and in subsequent rulings, the FCC established time frames, quality, and conditions for emergency service for wireless telephone users.

Development of a funding mechanism for e-911 service in Kansas has been discussed for several years, most recently in the form of 2003 HB 2037. The bill was in Conference Committee at the time the House Committee on Utilities took action on this bill early during the 2004 Session. Other bills on this topic in the House Committee on Utilities when the 2004 Session began were HB 2334, HB 2473, and HB 2476. HB 2334 and SB 153 were identical as introduced in 2003, but the Senate-passed Substitute for SB 153 contained different provisions. The e-911 provisions of HB 2037 in Conference Committee were identical to Sub. SB 153, as passed by the Senate.

Early during the 2004 Session, the House Committee on Utilities held hearings on HB 2476 which contained provisions initially discussed during Conference Committee meetings on HB 2037 at the end of the 2003 Legislative Session. Those provisions were tentatively agreed to by the conferees, but final agreement was not reached before adjourn-

ment. The House Committee's hearings in 2004 also included HB 2334, HB 2473, and Sub. SB 153.

Conferees who presented testimony in support of HB 2476 at the House Committee's hearings included: The League of Kansas Municipalities, the Kansas Public Safety Alliance, a representative of the Kansas 9-1-1 Providers Association, a representative of Kansas County Commissioners, representatives of Johnson and Dickinson counties, and a representative of the Kansas Legislative Policy Group. Written testimony in support of the bill was presented by the City of Overland Park, and the Kansas Emergency Management Association. A representative of several wireless carriers presented an alternative proposal during the House Committee's hearing.

The House Committee amended provisions of HB 2476 into Sub. SB 153 with the following substantive changes:

- ! providing for expiration of authority for the grant fee and certain other provisions in 2010 rather than 2008;
- ! providing for the KCC rather than the Secretary of Administration to conduct audits of wireless carriers;
- ! requiring that the cost of carriers' audits be assessed against the company audited;
- ! providing for collection of two fees earmarked for specific purposes rather than a tax and a fee;
- ! allowing the Division of Post Audit to conduct a performance audit of a sample, rather than of all components, of the wireless 911 system; and
- ! providing for equalization of the local fee and wireline 911 assessments in smaller counties at a higher rate than in larger counties, unless those revenues had been used to back bonds.

The House Committee of the Whole amended the bill to:

- ! require competitive bids be obtained by municipalities for automatic location identification information if expenditures are to be covered by either grant funds or local fees established by the bill;
- ! require that fees established by the bill be labeled "public safety grants" and "public safety A.P. fee" if those fees are separately identified on customers' bills;
- ! shift responsibility for conducting audits of carriers from the Corporation Commission to the Secretary of Administration; and

! shift the expense of audits of carriers from the carriers to the Corporation Commission.

A fiscal note was not available for the House Committee's recommended substitute bill at the time this supplemental note was prepared.