

SESSION OF 2010

**SUPPLEMENTAL NOTE ON
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2582**

As Recommended by Senate Committee on
Utilities

Brief*

Senate Sub. for HB 2582 would enact new law relating to 911. Provisions of the bill would apply to all modes of service, including telephone, cell phone, Voice over Internet Protocol (VoIP), and other service capable of contacting a public safety answering point (PSAP). Major provisions of the bill are described below.

Payment and Collection of 911 Fees (excluding prepaid wireless service)

- Imposes a fee of \$0.55 per month per subscriber account, effective January 1, 2011. The 911 Coordinating Council, pursuant to rules and regulations, may raise or lower the 911 fee to not less than \$0.40 and not more than \$0.60 if it finds that moneys generated by the fee are in excess of or are below the cost required to operate a PSAP, based on expenditure information reported to the Council;
- Requires the fee to be paid by the service user, and collected by the service provider monthly. The duty to collect fees would begin January 1, 2011; and
- Requires service providers to remit fees to the local collection point administrator (LCPA) within 15 days of the end of the calendar month, along with a return for the preceding month, and to retain records of fee collections for three years.

*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>

Administrative Fees (excluding prepaid wireless service)

- Allows service providers and the 911 Coordinating Council to retain an administrative fee of not more than 2 percent of the moneys collected. The 911 Coordinating Council is authorized to use administrative fee moneys for expenses including the statewide 911 coordinator, the LCPA, the state grant fund administrator, and any other expense deemed necessary by the Council.

Prepaid Wireless Service

- Imposes a prepaid wireless 911 fee of 1.1 percent per retail transaction which occurs in Kansas, with the fee to be paid by the consumer, effective January 1, 2012;
- Requires a proportionate increase or decrease in the prepaid wireless 911 fee if the \$0.55 per month per subscriber account 911 fee is changed;
- Requires sellers to remit all prepaid wireless 911 fees collected to the Department of Revenue by electronic filing, except sellers with 10 or fewer sales of prepaid wireless per month could remit fees by paper filing;
- Requires the Department of Revenue to transfer all remitted prepaid wireless 911 fees to the LCPA within 30 days of receipt;
- Authorizes the Department of Revenue to audit a seller's prepaid wireless 911 fee compliance at the time of sales and use tax audits;
- Allows the Department to retain up to 1 percent of remitted charges for administrative uses and up to \$70,000 of remitted funds in fiscal year 2011 only, for use in paying for programming and other one-time costs for establishing a system for collecting the prepaid wireless 911 fee; and

- Requires that the prepaid wireless 911 fee be the only 911 funding obligation imposed with respect to prepaid wireless service.

Distribution

- Requires the LCPA to distribute fees to public safety answering points (PSAPs) within 30 days of receipt, in the ratio of 82 percent to PSAPs based on place of primary use and 18 percent deposited into the LCPA Grant Fund. Fees with no identifiable source are placed in the LCPA Grant Fund; and
- Transfers fees collected on prepaid wireless service to the LCPA Grant Fund.

Use of Fee Moneys

- Restricts the use of fees collected, including interest, to only necessary and reasonable costs incurred by PSAPs for the following uses:
 - Procurement and installation of 911 equipment, software, computer platforms and upgrades;
 - Maintenance and license fees for 911 equipment, software, and computer platforms;
 - Internet protocol-based applications for mapping, voice logging, data logging, data storage and other Internet protocol-based applications that enhance 911 services;
 - Training of PSAP personnel or the training of other personnel directly involved with the use of 911 equipment;
 - Recurring charges for 911 system services billed by a provider or by service suppliers as approved by the Council;

- Installation, service establishment, and non-recurring start-up charges billed by the provider;
- Charges for equipment or other physical enhancements to the 911 system; and
- Acquisition and installation of road signs designed to aid in the delivery of emergency service.
- Disallows expenditures from fee moneys to lease, construct, expand, acquire, remodel, renovate, repair, furnish, or make improvements to buildings or similar facilities. In addition, disallows expenditures to procure, maintain or upgrade subscriber radio equipment, or salaries for PSAP personnel.
- Creates a “hardship exemption” for PSAPs in counties with less than 10,000 in population, by authorizing the 911 Coordinating Council to approve expenditures by these PSAPs for basic operating expenses that are not otherwise authorized by the act.

911 Coordinating Council and 911 Statewide Coordinator

- Creates the 911 Coordinating Council to monitor the delivery of 911 services, develop strategies for future enhancements to the 911 system, and distribute grant funds to PSAPs. After April 1, 2011, the Council shall designate the LCPA;
- Establishes membership requirements of the Council, to include 15 voting members (11 appointed by the Governor and four legislators appointed by legislative leadership) and eight non-voting members appointed by the Governor. Voting members would be limited to no more than two three-year terms; and

- Creates a statewide 911 coordinator, appointed by the Governor, and housed in the Division of Emergency Management in the Office of the Adjutant General. The coordinator would:
 - Advise and coordinate with the 911 Coordinating Council, the LCPA, and various entities, and enable the operation of emergency services in Kansas to function efficiently and effectively;
 - Implement statewide 911 planning and ensure that policies adopted by the 911 Coordinating Council are carried out; and
 - Administer the Next Generation 911 federal grant, which is transferred from the Governor's Grants Program to the Division of Emergency Management. The Office of the Adjutant General could adopt rules and regulations necessary for administration of the grant.

Rules and Regulations, Immunity

- Authorizes the 911 Coordinating Council to adopt rules and regulations necessary to carry out the act, including but not limited to:
 - Creating a uniform reporting form designating how moneys, including 911 fees, have been spent by the PSAP;
 - Establishing procedures for determining whether 911 fees should be raised or lowered, within specified limits, based on information provided on uniform reporting forms;
 - Requiring service providers to notify the 911 Coordinating Council;

- Setting standards for coordinating and purchasing equipment; and
- Assessing civil penalties.

Rules and regulations necessary to begin administration of the act shall be proposed by October 31, 2010.

- Except as provided by the Kansas Tort Claims Act, and except for failure to use ordinary care, or for intentional acts, provide the local collection point administrator and providers with immunity from liability 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.

Audits and Reviews

- Requires yearly audits of the receipts and disbursements of the local collection point administrator by a licensed municipal accountant or CPA;
- Allows the local collection point administrator to require an audit of the books and records of any provider or wholesaler of prepaid wireless concerning collection and remittance of 911 fees, with the audit cost paid from the LCPA Grant Fund;
- Requires an audit of the 911 system by Legislative Post Audit on or before December 31, 2012 and at least once every three years thereafter. Audits are to be contracted, with the cost of the audit paid from the LCPA Grant Fund; and
- Mandates legislative review of the act at the regular 2015 Legislative Session and every five years thereafter.

Cost Recovery

- Does not limit providers from recovering directly from their customers the costs associated with designing, developing, deploying and maintaining 911 service, as well as the providers' cost of collection and administration of the 911 fees.

Grant Fund

- Directs the 911 Coordinating Council to establish the LCPA Grant Fund, which is not to be part of the state treasury;
- Directs the 911 Coordinating Council to use a competitive bidding process to select a neutral, competent, and bonded third party to administer the LCPA Grant Fund. The LCPA state grant administrator would be responsible for ensuring that grant moneys are spent only for allowable purposes;
- Restricts the use of grant moneys (including earned interest) to the following:
 - Projects involving the development of Next Generation 911;
 - Costs associated with PSAP consolidation or cost-sharing projects;
 - Expenses related to the 911 Coordinating Council;
 - Audits of PSAPs conducted by Legislative Post Audit and audits of providers directed by the LCPA; and
 - Other costs incurred by PSAPs specified in the *Use of Fee Moneys* section above; and

- Directs the 911 Coordinating Council to develop criteria for grant applicants, and to award grant funds.

Dissolution of Current Process

- Transfers all unobligated funds remaining in the Wireless Enhanced 911 Grant Fund to the LCPA on the effective date of this act. Funds received on or after the effective date and prior to January 1, 2011 will be transferred to the LCPA at least monthly. All such transferred funds will be deposited in the LCPA Grant Fund; and
- On January 1, 2011, discontinues the wireless and VoIP enhanced 911 local and grant fees, abolishes the advisory board and the Wireless Enhanced 911 Grant Fund, and requires payment of the unobligated balance in the Grant Fund to the local collection point administrator for deposit in the LCPA Grant Fund.

Other Provisions

- Requires information received by the Department of Revenue in compliance with this act to be confidential and not disclosed except in accordance with other provisions of law with respect to the enforcement and collection of tax;
- Allows the Secretary of Revenue to provide information to the LCPA from returns filed by sellers of prepaid wireless services for the purpose of verifying seller compliance with collection and remittance of such fees.; and
- Creates an exemption to the Kansas Open Records Act for information provided by providers to the LCPA or to the 911 Coordinating Council, upon request of the party submitting the records.

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

Background

HB 2582 as passed by the House of Representatives dealt with sentencing requirements. The Senate Committee on Utilities replaced the contents of HB 2582 as passed by the House with the contents of Senate Substitute for House Substitute for Substitute for SB 48, which relates to 911.

Under current law, the funding structure for 911 will change on July 1, 2010 when statutory provisions authorizing the 911 grant fee, Grant Fund, and the grant advisory board expire, and changes in the remaining fees are enacted.

In 2009, the Senate passed SB 48 which would have extended the current funding structure for one year and would create a one-year joint committee to study 911 funding, technology, and related issues. The bill was not acted on in the House of Representatives that year, and the 2009 Interim Special Committee on Utilities was created to review the issue of extending funding, as well as future technology needs. The Special Committee reviewed a joint proposal from representatives of the public safety answering points and the telecommunications industry for funding the 911 system. The introduced version of House Bill 2423 generally reflects the provisions of that proposal.

The House Committee on Energy and Utilities received testimony in support of HB 2423 from representatives of the League of Kansas Municipalities, the Kansas Association of Counties, AT&T, and Sprint. Written comments in support of the bill were received from the Sedgwick County Department of Emergency Communications, the Kansas Association of Chiefs of Police and the Kansas Peace Officers Association, Johnson County Emergency Communications, and the Kansas Legislative Policy Group. A representative of the Legislative Division of Post Audit provided neutral testimony regarding

audit provisions in the bill. There was no testimony in opposition to the bill.

During discussion of an amendment to change collection of the 911 fee on prepaid wireless from the wholesaler to the point of sale (retailer), AT&T testified this change could generate \$1.4 million in tax annually, in contrast to the \$350,000 remitted on prepaid wireless in fiscal year 2009. The Secretary of Revenue testified there is a national trend to centralize telecommunications fees, and the Department of Revenue would be agreeable to processing this fee. The Department would be allowed to retain \$70,000 of the remitted fees in 2011 for costs of establishing the system, in addition to an annual 1 percent administrative fee.

The Committee made technical and substantive amendments to HB 2423. The substantive amendments included the following:

- Addition of a requirement for the Legislature to review the 911 act during the 2015 Legislative Session and every five years thereafter;
- Replacement of the requirement for an annual audit of the 911 service system by Legislative Post Audit with a requirement for an audit before the end of 2011, and at least once every three years thereafter, under the contract authority and supervision of Legislative Post Audit; and
- Change in responsibility for collection of the 911 fee on prepaid wireless service from the wholesaler to the point of sale (retailer). Sellers could retain a 2 percent administrative fee, and would be required to remit 911 fees to the Department of Revenue by electronic filing.

The House Committee on Energy and Utilities then removed the contents of SB 48 and replaced them with the contents of HB 2423, as amended.

The bill was ruled materially altered and referred to the Senate Utilities Committee, which heard testimony on House Sub. for Sub. for SB 48.

Proponents testifying included representatives of the Kansas Association of Counties, Johnson County Emergency Communications, CenturyLink, the Kansas Association of Chiefs of Police, and the Kansas Peace Officers Association, the League of Kansas Municipalities, and AT&T (also representing Verizon, Sprint, the Kansas Cable Association, T-Mobile, Cox Communications, and U.S. Cellular). Written testimony in support of the bill was received from the Unified Government of Wyandotte County/Kansas City, the City of Overland Park, the Kansas Statewide Interoperability Executive Committee, and Sedgwick County.

The Committee received written testimony in opposition to the bill from the Topeka Independent Business Association and the Petroleum Marketers and Convenience Store Association of Kansas. They opposed the portion of the bill requiring retail collection of 911 tax on prepaid wireless.

Subgroups of the Committee reviewed sections of the bill, including those related to fee increases, retail collection of the 911 tax on prepaid wireless, allowable uses of fee revenues, immunity, the 911 Coordinating Council, distribution of fees, and location and oversight of the grant fund.

The Committee amended the bill to do the following:

- Delete authorization for a 2 percent administrative fee for retailers collecting the 911 fee on prepaid wireless, and allow retailers that sell ten or fewer prepaid wireless cards in a month to file on paper, rather than electronically;
- Modify the allowable uses of 911 fees by PSAPs, including allowing the 911 Coordinating Council to approve expenditures by counties with less than 10,000 population for items not otherwise allowed under the act;

- Include more specific language regarding immunity;
- Change the composition of the 911 Coordinating Council, and limit the terms of voting members;
- Require PSAPs to file a uniform report annually listing expenditures of 911 fee moneys;
- Authorize the 911 Coordinating Council, pursuant to rules and regulations, to raise or lower the 911 fee within specified limits;
- Further specify rules and regulations authorized to be adopted by the 911 Coordinating Council to include setting standards for coordinating and purchasing equipment, and requiring service providers to notify the Council;
- Amend the Kansas Open Records Act to create an exemption for information provided by providers to the LCPA or the 911 Coordinating Council, upon request;
- Create a 911 Statewide Coordinator, appointed by the Governor and housed at the Kansas Department of Emergency Management;
- Authorize the 911 Coordinating Council to designate the Local Collection Point Administrator effective April 1, 2011;
- Establish the LCPA State Grant Fund outside the state treasury by January 1, 2011, and use a competitive bidding process to select a neutral, competent, and bonded third party to administer the Grant Fund;
- Transfer administration of the Next Generation 911 federal grant from the Kansas Governor's Grants Program to the Department of Emergency Management to be administered by the 911 Statewide Coordinator, create the NG911 federal grant fund in the State treasury, and

authorize adoption of rules and regulations necessary to administer the grant; and

- Delete the requirement that no 911 fee be imposed on more than 100 land line phones per location.

The Committee placed the contents of the amended bill into Senate Sub. for House Sub. for Sub. for SB 48.

The fiscal note for the original version of HB 2423 developed by the Division of the Budget indicates the Office of the Adjutant General expects an increase of approximately \$852 in expenditures annually, based on the number of cellular phones the agency uses. [Note: at the time the fiscal note was developed there was no provision for a 911 Coordinator to be housed at the Office of the Adjutant General] The Board of Emergency Medical Services indicates the bill would have no fiscal effect on the agency. The Kansas League of Municipalities and the Kansas Association of Counties estimate that combined wireless and landline 911 fees paid by Kansas consumers would decrease from approximately \$20.8 million annually to \$19.4 million annually. The Governor's Grants Office indicated it could manage responsibility for the remaining grant funds until January 1, 2011 within existing resources.

The fiscal note for the original version of HB 2582 is not applicable to the substitute bill.