

Substitute for SENATE BILL No. 153

By Committee on Commerce

2-26

AN ACT concerning telecommunications; relating to enhanced wireless 911 service; public safety grant fund; amending K.S.A. 12-5301 and 12-5302 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 12-5301 is hereby amended to read as follows: 12-5301. As used in this act, unless the context otherwise requires:

(a) "Emergency telephone service" means a telephone system utilizing a single three digit number "911" for reporting police, fire, medical or other emergency situations;

(b) "emergency telephone tax" means a tax to finance the operation of emergency telephone service;

(c) "exchange access facilities" means all facilities provided by the service supplier for the facility which provides local telephone exchange access to a service user;

(d) "tariff rate" means the rate or rates billed by a service supplier and as stated in the service supplier's tariffs, approved by the state corporation commission which represent the service supplier's recurring charges for exchange access facilities or their equivalent, exclusive of all taxes, fees, licenses or similar charges whatsoever;

(e) "public agency" means any city, county, municipal corporation, public district or public authority located in whole or in part within this state which provides or has authority to provide fire fighting, law enforcement, ambulance, emergency medical or other emergency services;

(f) "governing body" means the board of county commissioners of a county or the governing body of a city;

(g) "person" means any individual, firm, partnership, copartnership, joint venture, association, cooperative organization, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or fraternal organization, nonprofit organization, estate, trust, business or common law trust, receiver, assignee for the benefit of creditors, trustee or trustee in bankruptcy or any other service user;

(h) "service supplier" means any person providing exchange telephone services or wireless service to any service user in this state;

1 (i) “service user” means any person who is provided exchange tele-
2 phone service or wireless *service* in this state;

3 (j) “wireless carrier” means any common, private or other radio car-
4 rier licensed by the federal communications commission to provide two-
5 way voice or text radio service in this state which provides interconnection
6 to the public switched telephone network and access to a 24-hour an-
7 swering point;

8 (k) “wireless service” means a two-way voice or text radio service
9 provided by a wireless carrier; and

10 (l) “PSAP” means public safety answering point.

11 (m) “Fund” means *the public safety grant fund established by this*
12 *act.*

13 (n) “Municipality” means: (1) *Any political or taxing subdivision au-*
14 *thorized by law to construct, operate and maintain a public safety an-*
15 *swering point system; and (2) two or more such subdivisions jointly con-*
16 *structing, operating and maintaining a public safety answering point*
17 *system.*

18 (o) “Project” means *the development and acquisition of the necessary*
19 *improvements in order to facilitate the establishment of enhanced wireless*
20 *emergency telephone services.*

21 (p) “Project costs” means *all costs or expenses which are necessary or*
22 *incident to a project and which are directly attributable thereto.*

23 (q) “Administrator” means *the Kansas department of administration.*

24 (r) “Enhanced 911 service” means *an emergency telephone service*
25 *that generally may provide, but is not limited to, selective routing, auto-*
26 *matic number identification and automatic location identification*
27 *features.*

28 (s) “Enhanced wireless 911 service” means *a communication service*
29 *by which wireless telecommunication carriers can provide automatic*
30 *number identification, pseudo-automatic number identification or wire-*
31 *less automatic location identification information to a requesting public*
32 *safety answering point as defined in FCC docket 94-102 which is capable*
33 *of receiving and utilizing the data elements associated with enhanced*
34 *wireless 911 service.*

35 New Sec. 2. (a) There is hereby established in the state treasury the
36 public safety grant fund.

37 (b) Moneys from the following sources shall be credited to the fund:

38 (1) Amounts received by the state from the federal government for
39 the purposes of the fund;

40 (2) amounts appropriated or otherwise made available by the legis-
41 lature for the purposes of the fund;

42 (3) amounts received by the state pursuant to section 3 and amend-
43 ments thereto;

1 (4) interest attributable to investment of moneys in the fund; and
2 (5) amounts received from any public or private entity for the pur-
3 poses of the fund.

4 (c) Subject to the conditions and in accordance with requirements of
5 this act, moneys credited to the fund shall be used only for:

6 (1) Necessary and reasonable costs incurred or to be incurred by pub-
7 lic safety answering points to implement enhanced wireless 911 service;

8 (2) purchases of equipment and upgrades and modification to equipment
9 used solely to process the data elements of enhanced wireless 911 service;

10 (3) maintenance costs and license fees for such equipment and the train-
11 ing of personnel to operate such equipment including costs of training
12 PSAP personnel to provide effective service to all users of the emergency
13 telephone system who have communications disabilities; (4) actual and
14 necessary expenses incurred by members of the advisory board while
15 performing duties required by this act; and (5) such costs shall not include
16 expenditures for new or expanded buildings or similar facilities or to con-
17 struct other capital improvements not expressly authorized by this act.

18 (d) Administrative expenses shall not exceed 5% of revenue in the
19 fund.

20 (e) On or before the 10th of each month, the director of accounts
21 and reports shall transfer from the state general fund to the public safety
22 grant fund interest earnings based on:

23 (1) The average daily balance of moneys in the public safety grant
24 fund for the preceding month; and

25 (2) the net earnings rate of the pooled money investment portfolio
26 for the preceding month.

27 (f) All payments and disbursements from the fund shall be made in
28 accordance with appropriation acts upon warrants of the director of ac-
29 counts and reports issued pursuant to vouchers approved by the admin-
30 istrator or by a person or persons designated by the administrator. All
31 payments and disbursements from the fund, and beginning and ending
32 balances thereof, shall be subject each year to post audit in accordance
33 with article 11 of chapter 46 of the Kansas Statutes Annotated, and
34 amendments thereto.

35 New Sec. 3. (a) There is hereby established a public safety fee in the
36 amount of \$.25 per month on each wireless service user.

37 (b) It shall be the duty of each wireless service provider to collect
38 and remit such fee to the administrator quarterly.

39 New Sec. 4. The administrator shall administer the provision of this
40 act and shall be responsible for administration and management of the
41 fund. The administrator is hereby authorized to:

42 (a) Enter into binding commitments for the provision of grants in
43 accordance with the provisions of this act;

1 (b) review applications of municipalities for grants and select the pro-
2 jects for which grants will be made available;

3 (c) provide the governor and the legislature with an annual report
4 prepared in accordance with section 8, and amendments thereto, and with
5 copies of the audit required under section 2, and amendments thereto;
6 and

7 (d) adopt rules and regulations necessary for effectuation of the pro-
8 visions of this act.

9 New Sec. 5. There is hereby established the public safety grant fund
10 advisory committee. Such committee shall be comprised of nine individ-
11 uals familiar with development and implementation of enhanced 911
12 service appointed by the governor satisfying the following constituent
13 groups:

14 (1) One individual recommended by the Kansas association of
15 counties;

16 (2) one individual recommended by the league of Kansas
17 municipalities;

18 (3) one individual representing the wireless carriers industry;

19 (4) one individual representing local exchange service providers;

20 (5) one individual representing local law enforcement;

21 (6) one individual representing local fire/emergency medical services;
22 and

23 (7) one individual representing local PSAP operators;

24 (8) one representative of the Kansas highway patrol;

25 (9) one member shall be a person with a communication disability
26 recommended by the Kansas commission for the deaf and hard of
27 hearing.

28 New Sec. 6. After providing for public comment and review each
29 year, the administrator, in conjunction with the advisory council, shall
30 prepare a plan identifying the intended uses of the moneys available in
31 the fund. The intended use plan shall include, but not be limited to:

32 (a) The project priority list;

33 (b) a description of the short- and long-term goals and objectives of
34 the fund;

35 (c) information on the projects to be financed, including a description
36 thereof, the terms of grants to be provided and the municipalities receiv-
37 ing the grants; and

38 (d) the criteria and method established for the provision of grants to
39 be made from the fund.

40 New Sec. 7. (a) Municipalities which desire the provision of a grant
41 under this act shall submit an application therefor to the administrator.
42 Applications shall be in such form and shall include such information as
43 the administrator shall require and shall be submitted in a manner and

1 at a time to be determined by the administrator.

2 (b) The administrator may enter into agreements with any munici-
3 pality for the provision of a grant thereto for payment of all or a part of
4 project costs and any municipality may enter into such an agreement and
5 may accept such grant when so authorized by the municipal governing
6 body. The purposes of the grant to be provided, a time frame for imple-
7 mentation, and the amount thereof, which may vary among municipali-
8 ties, shall be included in the agreements. All such agreements shall in-
9 clude provisions for repayment of grant if implementation is not
10 completed in accordance with the terms of the agreement.

11 (c) If a municipality to which a grant is made available under this act
12 fails to enter into an agreement with the administrator for the provision
13 of such grant in accordance with the requirements of this act, the admin-
14 istrator may make the amount of the grant available for one or more other
15 projects on the priority list.

16 (d) The administrator shall provide any municipality, upon request,
17 with technical advice and assistance regarding a project or an application
18 for a grant for the payment of all or part of project costs.

19 New Sec. 8. The administrator shall prepare an annual report de-
20 scribing how the state has met the goals and objectives for the previous
21 year as identified in the intended use plan prepared pursuant to section
22 6, and amendments thereto.

23 New Sec. 9. The provisions of sections 2 through 8, and amendments
24 thereto, shall expire effective July 1, 2006.

25 New Sec. 10. (a) On and after July 1, 2003, pursuant to FCC rules
26 and orders, each wireless carrier who has a subscriber with primary place
27 of use as defined in the mobile telecommunications sourcing act in the
28 state of Kansas shall collect from each subscriber a surcharge not to ex-
29 ceed \$.25 per month per subscriber telephone number in the state. The
30 wireless carrier shall add and may state separately the surcharge on each
31 subscriber's bill.

32 (b) The surcharge hereunder shall ensure, over a reasonable period
33 of time the full recovery by wireless carriers of necessary and reasonable
34 costs associated with developing and maintaining an emergency telecom-
35 munications service on a technologically and competitively neutral basis.
36 Such costs shall include, but not be limited to, the portion of the costs
37 for equipment used for providing enhanced wireless 911 service, costs to
38 lease another vendor's equipment or services to provided enhanced wire-
39 less 911 service, costs to create or maintain any database or database
40 elements used solely for enhanced wireless 911 service and other costs
41 of establishing enhanced 911 wireless service. Only the portion of the
42 costs of equipment or services used in the wireless carrier's main infra-
43 structure necessary to implement enhanced 911 service of enhanced wire-

1 less 911 service shall be eligible for funding.

2 Sec. 11. K.S.A. 12-5302 is hereby amended to read as follows: 12-
3 5302. (a) In addition to other powers for the protection of the public
4 health and welfare, a governing body may provide for the operation of an
5 emergency telephone service and may pay for it by imposing an emer-
6 gency telephone tax for such service in those portions of the governing
7 body's jurisdiction for which emergency telephone service has been con-
8 tracted. The governing body may do such other acts as are expedient for
9 the protection and preservation of the public health and welfare and are
10 necessary for the operation of the emergency telephone system. The gov-
11 erning body is hereby authorized by ordinance in the case of cities and
12 by resolution in the case of counties to impose such tax in those portions
13 of the governing body's jurisdiction for which emergency telephone serv-
14 ice has been contracted. The amount of such tax shall not exceed \$.75
15 per month per exchange access line or its equivalent.

16 (b) Within 60 days of the publication of a resolution by a county
17 adopted pursuant to subsection (a) there may be filed with the county
18 election officer of the county a petition signed by not less than 5% of the
19 registered voters of the county, and within 60 days of publication of an
20 ordinance adopted pursuant to subsection (a) there may be filed with the
21 county election officer of the county in which the city is located a petition
22 signed by not less than 5% of the registered voters of the city, in either
23 such case requesting that the question of the installation and operation
24 of emergency telephone service and imposition of tax therefor be sub-
25 mitted to the qualified voters of the county. Upon determination of the
26 sufficiency of such petition and certification thereof by the county elec-
27 tion officer, the proposition shall be submitted to the qualified voters of
28 the county or city as the case may be at the next primary or general
29 election of county officers following by not less than 60 days the certifi-
30 cation of such petition. If a majority of the votes cast at such election are
31 for the installation and operation of emergency telephone service and
32 imposition of tax therefor, or if no protest petition is filed within the time
33 hereinbefore prescribed, the governing body may provide for the instal-
34 lation and operation of such service and impose such tax. If a tax is im-
35 posed on the effective date of this act or thereafter, any proposed increase
36 in the amount of the tax shall be subject to the protest petition provided
37 in this subsection. The proceeds of the tax shall be utilized to pay for the
38 operation of emergency telephone service as set forth in subsection (b)
39 of K.S.A. 12-5304, and amendments thereto, and may be imposed at any
40 time subsequent to execution of a contract with the provider of such
41 service at the discretion of the governing body. The collection of such tax
42 may begin at the time determined to be necessary to generate revenue
43 in an amount necessary to pay the nonrecurring expenses of establishing

1 the emergency telephone service. Any interest earned on revenue derived
2 from such tax shall be used to pay the expenses authorized by K.S.A. 12-
3 5304, and amendments thereto. Such tax shall not be imposed until after
4 the expiration of the protest period or until after approved at an election
5 if a sufficient protest petition is filed.

6 (c) As an alternative to the procedure provided in subsection (b), the
7 governing body may submit, on its own initiative, the proposal to establish
8 an emergency telephone service to the qualified voters of the city or
9 county for approval. Any such election shall be called and held in the
10 manner provided by the general bond law.

11 (d) Such tax shall be imposed only upon exchange access lines or their
12 equivalent. No such tax shall be imposed upon more than 100 exchange
13 access facilities or their equivalent per person per location.

14 (e) Every billed service user shall be liable for any tax imposed under
15 this act until it has been paid to the service supplier. ~~Wireless service~~
16 ~~users shall be exempt from the emergency telephone tax~~ *Wireless service*
17 *users shall be taxed pursuant to section 12, and amendments thereto.*

18 (f) The duty to collect any tax imposed under authority of this act
19 from a service user shall commence at such time as specified by the
20 governing body. Taxes imposed under authority of this act and required
21 by it to be collected by the service supplier shall be added to and may be
22 stated separately in the billings to the service user.

23 (g) The service supplier shall have no obligation to take any legal
24 action to enforce the collection of any tax imposed under authority of this
25 act. The service supplier shall provide annually the governing body with
26 a list of amounts uncollected along with the names and addresses of those
27 service users which carry a balance that can be determined by the service
28 supplier to be nonpayment of any tax imposed under authority of this act.

29 (h) Any tax imposed under authority of this act shall be collected
30 insofar as practicable at the same time as, and along with, the charges for
31 the tariff rate in accordance with the regular billing practice of the service
32 supplier.

33 New Sec. 12. (a) The governing body is hereby authorized by ordi-
34 nance in the case of cities and by resolution in the case of counties to
35 impose a wireless emergency telephone tax in those portions of the gov-
36 erning body's jurisdiction for which such wireless emergency telephone
37 service has been contracted. The amount of such tax shall be \$.25 per
38 month per wireless service user within such governing body jurisdiction.

39 (b) The proceeds of the tax shall be utilized to pay for the operation
40 of emergency telephone service as set forth in subsection (b) of K.S.A.
41 12-5304, and amendments thereto, and may be imposed at any time sub-
42 sequent to execution of a contract with the provider of such service at
43 the discretion of the governing body. In addition to allowable expendi-

1 tures under 12-5304 and amendments thereto, the proceeds of such tax
2 may be used to implement enhanced wireless 911 services including but
3 not limited to: (1) Necessary and reasonable costs incurred or to be in-
4 curred by public safety answering points to implement enhanced wireless
5 911 service; (2) purchases of equipment and upgrades and modification
6 to equipment used solely to process the data elements of enhanced wire-
7 less 911 service; (3) maintenance costs and license fees for such equip-
8 ment and the training of personnel to operate such equipment including
9 costs of training PSAP personnel to provide effective service to all users
10 of the emergency telephone system who have communications disabili-
11 ties. Such costs shall not include expenditures for new or expanded build-
12 ings or similar facilities or to construct other capital improvements not
13 expressly authorized by this act. Any interest earned on revenue derived
14 from such tax shall be used to pay the expenses authorized by K.S.A. 12-
15 5304, and amendments thereto.

16 (c) Every billed service user shall be liable for any tax imposed under
17 this act until it has been paid to the service supplier.

18 (d) The duty to collect any tax imposed under authority of this act
19 from a service user shall commence at such time as specified by the
20 governing body. Taxes imposed under authority of this act and required
21 by it to be collected by the service supplier shall be added to and may be
22 stated separately in the billings to the service user.

23 (e) The wireless service supplier shall have no obligation to take any
24 legal action to enforce the collection of any tax imposed under authority
25 of this act. The wireless service supplier shall provide annually the gov-
26 erning body with a list of amounts uncollected along with the names and
27 addresses of those service users which carry a balance that can be deter-
28 mined by the service supplier to be nonpayment of any tax imposed under
29 authority of this act.

30 (f) Any tax imposed under authority of this act shall be collected in-
31 sofar as practicable at the same time as regular billing practice of the
32 wireless service supplier.

33 (h) Any tax imposed under authority of this act and the amounts re-
34 quired to be collected are due quarterly. The amount of tax collected in
35 one calendar quarter by the service supplier shall be remitted to the
36 governing body no later than sixty days after the close of a calendar quar-
37 ter. On or before the sixtieth day of each calendar quarter following, a
38 return for the preceding quarter shall be filed with the governing body
39 in such form as the governing body and service supplier shall agree. The
40 service supplier required to file the return shall deliver the return to-
41 gether with a remittance of the amount of the tax payable to the office
42 of the governing body. The service supplier shall maintain records of the
43 amount of any tax collected pursuant to action in accord with this act.

1 Such records shall be maintained for a period of three years from the
2 time the tax is collected.

3 New Sec. 13. The administrator may require an audit of any wireless
4 carrier's books and records concerning the collection and remittance of
5 the surcharge pursuant to this act. Any such audit shall be conducted at
6 the administrator's expense. Information provided by wireless carriers to
7 the advisory board or to the administrator pursuant to this act will be
8 treated as proprietary records which will be withheld from the public
9 upon request of the party submitting such records.

10 New Sec. 14. The enhanced wireless 911 service described in this
11 act is within the governmental power and authority of the administrator,
12 governing bodies and public safety agencies. Except as provided by the
13 Kansas tort claims act, in contracting for such service and in providing
14 such service, and except for failure to use ordinary care, or for intentional
15 acts, the administrator, each governing body, each public agency, each
16 wireless carrier and their employees and agents shall not be liable for the
17 payment of damages resulting from the performance of installing, main-
18 taining or providing enhanced wireless 911 service.

19 New Sec. 15. (a) During calendar year 2005, in accordance with a
20 scope statement authorized and approved by the legislative post audit
21 committee, the division of post audit shall conduct an audit of the books,
22 records, files, documents and correspondence, confidential or otherwise,
23 of each wireless carrier, and each local PSAP relating to all payments,
24 disbursements and uses of the funds authorized by this act. This audit
25 shall be conducted in accordance with article 11 of chapter 46 of the
26 Kansas Statutes Annotated, and amendments thereto.

27 (b) The audit authorized in subsection (a) shall include but not be
28 limited to an audit of: (1) The appropriate uses of funds; (2) sufficiency
29 of funds collected; (3) status of wireless enhanced 911 implementation;
30 and (4) the need and level of continued funding.

31 (c) Based upon the findings of such audit, the legislature may impose
32 a moratorium on or reduce the funding source for the collection of such
33 fee, surcharge or tax, or authorize a reduction in such fee, surcharge or
34 tax.

35 (d) Any such information provided to the division of post audit shall
36 be treated as proprietary records which will be withheld from the public
37 upon the request of the party submitting such records.

38 Sec. 16. K.S.A. 12-5301 and 12-5302 are hereby repealed.

39 Sec. 17. This act shall take effect and be in force from and after its
40 publication in the statute book.

41
42
43