

SESSION OF 2011

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR SENATE BILL NO. 50**

As Amended by House Committee of the Whole

Brief*

Sub. for SB 50 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), prepaid wireless, 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 911 fee of \$0.55 per month per subscriber account, effective January 1, 2012. The 911 Coordinating Council, pursuant to rules and regulations, may lower the 911 fee or may raise it to 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 (e.g., owner of the phone), and collected by the service provider (e.g., telephone company) monthly. The duty to collect fees would begin January 1, 2012;
- 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

*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>

the preceding month, and to retain records of fee collections for three years; and

- Authorizes providers to retain an administrative fee of up to one percent of 911 fees they collect.

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 (e.g., the purchaser of the prepaid card), effective January 1, 2012;
- Requires a proportionate increase or decrease in the prepaid wireless 911 fee if the subscriber monthly 911 fee is changed;
- Requires sellers to remit all prepaid wireless 911 fees collected to the Department of Revenue by electronic filing, at the same filing frequency as they remit sales tax;
- 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 \$70,000 of remitted funds in fiscal year 2012 only, to pay 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 on prepaid wireless service.

Distribution of Fee Moneys

- Requires the LCPA to distribute fees to PSAPs within 30 days of receipt. Each PSAP receives a percentage of the fees generated from its users. This amount varies based on the population of the county, which is as follows:

Population	Percent of Fees
80,000 or more	82 percent
65,000 - 79,999	85 percent
55,000 - 64,999	88 percent
45,000 - 54,999	91 percent
35,000 - 44,999	94 percent
25,000 - 34,999	97 percent
Less than 25,000	100 percent

In addition, every county would receive a minimum distribution of \$50,000.

All moneys remaining after distribution would be transferred to the 911 State Grant Fund, along with fees with no identifiable source; and

- Requires the LCPA to transfer up to \$2 million annually of fees collected on prepaid wireless service to the 911 State Grant Fund. Prepaid receipts in excess of \$2 million annually would be distributed to PSAPs according to the formula shown above.

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:
 - Implementation of 911 services;
 - Purchase of 911 equipment and upgrades;
 - Maintenance and license fees for 911 equipment;

- Training of personnel;
 - Monthly recurring charges billed by service suppliers;
 - Installation, service establishment, and non-recurring start-up charges billed by the service supplier;
 - Charges for capital improvements and equipment or other physical enhancements to the 911 system; and
 - The original 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, the bill disallows expenditures to purchase subscriber radio equipment.
 - Requires PSAPs to report their expenditures from 911 fee moneys annually to the 911 Coordinating Council and for the Council to include detailed reports of those expenditures in the Council's annual reports to the Legislature's utilities committees; and
 - Requires PSAPs that are found to have spent 911 fee moneys on unauthorized uses to repay those funds plus 10 percent to the LCPA for deposit in the 911 State Grant Fund.

911 Coordinating Council

- 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 January 1, 2012, the Council also shall designate the LCPA subject to the consent of the Legislative Coordinating Council;
- Establishes membership requirements of the Council, to include 16 voting members (12 appointed by the

Governor and four legislators appointed by legislative leadership) and 10 non-voting members appointed by the Governor. Voting members would be limited to no more than two three-year terms;

- Assigns duties to the Chairperson of the 911 Coordinating Council as listed below. The Chairperson, who must be a PSAP administrator, is appointed by the Governor. The Chairperson's duties include:
 - Coordinating Enhanced 911 and Next Generation 911 services in the state;
 - Implementing statewide 911 planning;
 - Ensuring that policies adopted by the 911 Coordinating Council are carried out;
 - Acting as a liaison between the LCPA and the Council;
 - Assisting in development of regulations; and
 - Administering the federal grant fund, and distributing federal grants as recommended by the Council; and
- Limits contracts between the 911 Coordinating Council and the LCPA to no longer than five years, specifies that the LCPA is not a state agency, makes the LCPA subject to the Kansas Open Records and Open Meetings Acts, and requires the LCPA to treat moneys received as public funds pursuant to the state Banking Code.
- Designates the Department of Administration as the entity to provide staffing to the 911 Coordinating Council prior to January 1, 2012. After that date, the LCPA would provide staffing to the Council.

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 PSAPs;
- Establishing procedures for determining whether 911 fees should be raised or lowered, within the specified limit, based on information provided on uniform reporting forms;
- Recommending standards for training of PSAP personnel;
- 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 adopted by December 31, 2011.

- Except as provided by the Kansas Tort Claims Act, and except for failure to use ordinary care, or for intentional acts, the LCPA and providers shall 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.

Audits and Reviews

- Requires yearly audits of the receipts and disbursements of the LCPA by a licensed municipal accountant or CPA;
- Allows the LCPA to require an audit of any provider's books and records concerning collection and remittance of 911 fees, with the audit cost paid from the 911 State Grant Fund;
- Requires an audit of the 911 system by Legislative Post Audit on or before December 31, 2013, and at least

once every three years thereafter. Audits are to be contracted, with the cost of the audit paid from the 911 State Grant Fund; and

- Mandates legislative review of the act at the regular 2014 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.

911 State Grant Fund

- Directs the LCPA, upon advice and consent of the 911 Coordinating Council, to establish the 911 State Grant Fund, which is not to be part of the State Treasury;
- The 911 Coordinating Council would be responsible for ensuring that 911 State Grant Fund moneys are spent only for the following purposes:
 - Projects involving the development and implementation of Next Generation 911;
 - Costs associated with PSAP consolidation or cost-sharing projects;
 - Expenses related to the 911 Coordinating Council, up to 1.5 percent of the total receipts remitted by the providers and the Department of Revenue to the LCPA;
 - 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 of this document.

911 Federal Grant Fund

- Establishes the 911 Federal Grant Fund in the State Treasury to receive grant moneys from the federal government, and establishes related funds as needed for receipt of moneys from other sources; and
- Sets out allowable uses for grant moneys.

Dissolution of Current Process

- Certifies all unobligated funds remaining in the Wireless Enhanced 911 Grant Fund on January 1, 2012 and transfers the funds to the LCPA for deposit in the 911 State Grant Fund;
- Discontinues the wireless and VoIP enhanced 911 local and grant fees on January 1, 2012; and
- Abolishes the Kansas Wireless Enhanced Advisory Board on January 1, 2012.

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*. Many sections of the bill would not take effect until January 1, 2012.

Background

Under current law, the funding structure for 911 will change on July 1, 2011 when statutory provisions authorizing the 911 grant fee, Grant Fund, and the grant advisory board expire, and changes in the remaining fees become effective.

The Senate Committee on Utilities received testimony in support of SB 50 from representatives of the Kansas Association of Counties, the League of Kansas Municipalities, AT&T, Sprint, Verizon, CenturyLink, Johnson County Emergency Communications, the Kansas Legislative Policy Group and on behalf of a Morton County Commissioner. Written comments in support of the bill were received from the cities of Wichita, Overland Park, and Andover; the Kansas Association of Chiefs of Police, the Kansas Sheriffs Association and the Kansas Peace Officer's Association; the Shawnee County Consolidated Emergency Communications Center; and Ford and Norton counties. There was no testimony in opposition to the bill.

The Senate Committee on Utilities made substantive and technical amendments to the bill. The substantive amendments made the following changes:

- Reduced the monthly 911 fee to \$0.50;
- Eliminated the position of 911 state coordinator, and assigned those duties to the Chairperson of the 911 Coordinating Council;
- Eliminated administrative fees for the service providers charged with collecting 911 revenues from their subscribers, and from the Kansas Department of

Revenue for monthly processing of prepaid wireless 911 fees remitted by retailers;

- Named the Kansas Association of Counties to provide any necessary staffing for the Council, with reimbursement of expenses paid from the 911 State Grant Fund;
- Required the annual report of the 911 Coordinating Council to include a detailed description of all expenditures of the PSAPs;
- Eliminated the provision for retailers with less than \$50 per month in prepaid wireless sales to remit fees on a biannual basis;
- Created the 911 State Maintenance Fund in the 911 Federal Grant Fund to ensure that federal funds would not be mixed with state funds or donations;
- Modified two population ranges used in determining distributions of fee moneys to PSAPs; and
- Amended current law relating to the allowable uses of the Wireless Enhanced 911 Grant Fund to allow payment of expenses authorized by the 911 Coordinating Council.

The Senate Committee on Utilities placed the contents of SB 50, as amended, into Sub. for SB 50.

The Senate Committee of the Whole amended the bill to decrease the prepaid wireless fee from 1.1 percent to 1.0 percent per retail transaction.

The House Committee on Energy and Utilities received testimony from many of the same proponents as the Senate. In addition, the Unified Government of Wyandotte County/Kansas City testified in opposition to the bill.

Amendments in the House Committee made the following changes:

- Increased the 911 fee on subscribers to \$0.55 per month, and increased the prepaid wireless 911 fee to 1.1 percent per retail transaction;
- Modified the authority of the 911 Coordinating Council to raise or lower the 911 fee by removing the limit on how far the Council could lower the fee;
- Required at least two members of the 911 Coordinating Council who represent PSAPs to be PSAP administrators;
- Required the Chairperson of the 911 Coordinating Council to be a PSAP administrator, and removed authority to provide compensation to the Chairperson (as with other members, expenses would be reimbursed);
- Extended the maximum length of the contract between the Council and the LCPA to five years;
- Required the LCPA to be subject to the Kansas Open Records Act and the Kansas Open Meetings Act, and to treat all moneys received as public funds pursuant to the state Banking Code. Further specified that the LCPA would not be considered a state agency;
- Required the Legislative Coordinating Council to consent to the selection of the LCPA, and to be involved in annual reviews of the LCPA designation and contract;
- Named the LCPA, rather than the Kansas Association of Counties, as staff to the 911 Coordinating Council;
- Reduced maximum funding for the 911 Coordinating Council from 2 percent to 1.5 percent of the the total receipts from providers and the Department received by the LCPA;

- Established a one percent administrative fee for providers (the companies that provide the telephone, wireless, VoIP or other service capable of contacting a PSAP);
- Specified that the PSAP reports of expenditures from 911 fee moneys due on March 1, 2012 become annual reports, due March 1 of every year;
- Specified that only expenditures made from 911 fees would be included in the detailed reporting of PSAP expenditures in the 911 Coordinating Council's annual report; and
- Required PSAPs that are found to have spent 911 fee moneys on unauthorized uses to repay those funds plus 10 percent to the LCPA for deposit in the 911 state grant fund.

The House Committee of the Whole amended the bill to designate the Department of Administration to provide staffing to the 911 Coordinating Council until January 1, 2012. After that date, the LCPA would provide staffing to the Council.

The fiscal note for the original SB 50 prepared by the Division of the Budget indicates the Department of Revenue would have start-up programming costs of \$70,000 which the bill allows to be reimbursed from retained fees. The Department estimated ongoing administrative costs of approximately \$20,000 annually. The League of Kansas Municipalities indicates the bill will have a fiscal effect on cities but the amount cannot be determined. The Governor's Grants Office which administers the current grant fund would presumably no longer administer the grants.