

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1126

55th Legislature
1998 Regular Session

Passed by the House March 11, 1998
Yeas 98 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate March 11, 1998
Yeas 45 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1126** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1126

AS RECOMMENDED BY CONFERENCE COMMITTEE

Passed Legislature - 1998 Regular Session

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Finance (originally sponsored by Representatives Mastin, Sump, Boldt, Doumit, Hatfield, McMorris, Kessler, Sheahan, Sheldon, Mulliken, Grant, Chandler, O'Brien, Conway, Wood, Cooper, Murray and Morris)

Read first time 03/10/97.

1 AN ACT Relating to the implementation of the enhanced 911 excise
2 tax study recommendations regarding 911 emergency communications system
3 funding; amending RCW 82.14B.020, 82.14B.030, 82.14B.040, 82.14B.060,
4 82.32.010, 82.32.105, and 38.52.540; adding new sections to chapter
5 82.14B RCW; creating a new section; prescribing penalties; and
6 providing effective dates.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** The legislature finds that:

9 (1) The state enhanced 911 excise tax imposed at the current rate
10 of twenty cents per switched access line per month generates adequate
11 tax revenues to enhance the 911 telephone system for switched access
12 lines state-wide by December 31, 1998, as mandated in RCW 38.52.510;

13 (2) The tax revenues generated from the state enhanced 911 excise
14 tax when the tax rate decreases to a maximum of ten cents per switched
15 access line on January 1, 1999, will not be adequate to fund the
16 long-term operation and equipment replacement costs for the enhanced
17 911 telephone systems in the counties or multicounty regions that
18 receive financial assistance from the state enhanced 911 office;

1 (3) Some counties or multicounty regions will need financial
2 assistance from the state enhanced 911 office to implement and maintain
3 enhanced 911 because the tax revenue generated from the county enhanced
4 911 excise tax is not adequate;

5 (4) Counties with populations of less than seventy-five thousand
6 will need salary assistance to create multicounty regions and counties
7 with populations of seventy-five thousand or more, if requested by
8 smaller counties, will need technical assistance and incentives to
9 provide multicounty services; and

10 (5) Counties should not request state financial assistance for
11 implementation and maintenance of enhanced 911 for switched access
12 lines unless the county has imposed the maximum enhanced 911 tax
13 authorized in RCW 82.14B.030.

14 **Sec. 2.** RCW 82.14B.020 and 1994 c 96 s 2 are each amended to read
15 as follows:

16 As used in this chapter:

17 (1) "Emergency services communication system" means a multicounty,
18 county-wide, or district-wide radio or landline communications network,
19 including an enhanced 911 telephone system, which provides rapid public
20 access for coordinated dispatching of services, personnel, equipment,
21 and facilities for police, fire, medical, or other emergency services.

22 (2) "Enhanced 911 telephone system" means a public telephone system
23 consisting of a network, data base, and on-premises equipment that is
24 accessed by dialing 911 and that enables reporting police, fire,
25 medical, or other emergency situations to a public safety answering
26 point. The system includes the capability to selectively route
27 incoming 911 calls to the appropriate public safety answering point
28 that operates in a defined 911 service area and the capability to
29 automatically display the name, address, and telephone number of
30 incoming 911 calls at the appropriate public safety answering point.

31 (3) "Switched access line" means the telephone service line which
32 connects a subscriber's main telephone(s) or equivalent main
33 telephone(s) to the local exchange company's switching office.

34 (4) "Local exchange company" has the meaning ascribed to it in RCW
35 80.04.010.

36 (5) "Radio access line" means the telephone number assigned to or
37 used by (~~an end user~~) a subscriber for two-way local wireless voice
38 service available to the public for hire from a radio communications

1 service company. Radio access lines include, but are not limited to,
2 radio-telephone communications lines used in cellular telephone
3 service, personal communications services, and network radio access
4 lines, or their functional and competitive equivalent. Radio access
5 lines do not include lines that provide access to one-way signaling
6 service, such as paging service, or to communications channels suitable
7 only for data transmission, or to nonlocal radio access line service,
8 such as wireless roaming service, or to a private telecommunications
9 system.

10 (6) "Radio communications service company" has the meaning ascribed
11 to it in RCW 80.04.010.

12 (7) "Private telecommunications system" has the meaning ascribed to
13 it in RCW 80.04.010.

14 (8) "Subscriber" means the retail purchaser of telephone service as
15 telephone service is defined in RCW 82.04.065(3).

16 **Sec. 3.** RCW 82.14B.030 and 1994 c 96 s 3 are each amended to read
17 as follows:

18 (1) The legislative authority of a county may impose a county
19 enhanced 911 excise tax on the use of switched access lines in an
20 amount not exceeding fifty cents per month for each switched access
21 line. The amount of tax shall be uniform for each switched access
22 line. Each county shall provide notice of such tax to all local
23 exchange companies serving in the county at least sixty days in advance
24 of the date on which the first payment is due.

25 (2) The legislative authority of a county may also impose a county
26 911 excise tax on the use of radio access lines located within the
27 county in an amount not exceeding twenty-five cents per month for each
28 radio access line. The amount of tax shall be uniform for each radio
29 access line. The county shall provide notice of such tax to all radio
30 communications service companies serving in the county at least sixty
31 days in advance of the date on which the first payment is due. Any
32 county imposing this tax shall include in its ordinance a refund
33 mechanism whereby the amount of any tax ordered to be refunded by the
34 judgment of a court of record, or as a result of the resolution of any
35 appeal therefrom, shall be refunded to the radio communications service
36 company or local exchange company that collected the tax, and those
37 companies shall reimburse the (~~users~~) subscribers who paid the tax.
38 The ordinance shall further provide that to the extent the (~~users~~)

1 subscribers who paid the tax cannot be identified or located, the tax
2 paid by those ((users)) subscribers shall be returned to the county.

3 (3) ((Beginning January 1, 1992,)) A state enhanced 911 excise tax
4 is imposed on all switched access lines in the state. ((For 1992, the
5 tax shall be set at a rate of twenty cents per month for each switched
6 access line. Until December 31, 1998,)) The amount of tax shall not
7 exceed twenty cents per month for each switched access line ((and
8 thereafter shall not exceed ten cents per month for each switched
9 access line)). The tax shall be uniform for each switched access line.
10 The tax imposed under this subsection shall be remitted to the
11 department of revenue by local exchange companies on a tax return
12 provided by the department. Tax proceeds shall be deposited by the
13 treasurer in the enhanced 911 account created in RCW 38.52.540.

14 (4) By August 31st of each year the state enhanced 911 coordinator
15 shall recommend the level for the next year of the state enhanced 911
16 excise tax, based on a systematic cost and revenue analysis, to the
17 utilities and transportation commission. The commission shall by the
18 following October 31st determine the level of the state enhanced 911
19 excise tax for the following year.

20 **Sec. 4.** RCW 82.14B.040 and 1994 c 96 s 4 are each amended to read
21 as follows:

22 The state enhanced 911 tax and the county enhanced 911 tax on
23 switched access lines shall be collected from the ((user)) subscriber
24 by the local exchange company providing the switched access line. The
25 county 911 tax on radio access lines shall be collected from the ((end
26 user)) subscriber by the radio communications service company providing
27 the radio access line to the ((end-user)) subscriber. The amount of
28 the tax shall be stated separately on the billing statement which is
29 sent to the ((user)) subscriber.

30 **Sec. 5.** RCW 82.14B.060 and 1981 c 160 s 6 are each amended to read
31 as follows:

32 A county legislative authority imposing a tax under this chapter
33 shall establish by ordinance all necessary and appropriate procedures
34 for the administration and collection of the tax, which ordinance shall
35 provide for reimbursement to the telephone companies for actual costs
36 of administration and collection of the tax imposed. The ordinance
37 shall also provide that the due date for remittance of the tax

1 collected shall be (~~(thirty days following the collection month)~~) on or
2 before the last day of the month following the month in which the tax
3 liability accrues.

4 NEW SECTION. Sec. 6. A new section is added to chapter 82.14B RCW
5 to read as follows:

6 (1) The department of revenue shall administer and shall adopt such
7 rules as may be necessary to enforce and administer the state enhanced
8 911 excise tax imposed by this chapter. Chapter 82.32 RCW, with the
9 exception of RCW 82.32.045, 82.32.145, and 82.32.380, applies to the
10 administration, collection, and enforcement of the state enhanced 911
11 excise tax.

12 (2) The state enhanced 911 excise tax imposed by this chapter,
13 along with reports and returns on forms prescribed by the department,
14 are due monthly on or before the last day of the month following the
15 month in which the tax liability accrues.

16 (3) The department of revenue may relieve any taxpayer or class of
17 taxpayers from the obligation of remitting monthly and may require the
18 return to cover other longer reporting periods, but in no event may
19 returns be filed for a period greater than one year. For these
20 taxpayers, tax payments are due on or before the last day of the month
21 next succeeding the end of the period covered by the return.

22 (4) The state enhanced 911 excise tax imposed by this chapter is in
23 addition to any taxes imposed upon the same persons under chapters
24 82.08 and 82.12 RCW.

25 NEW SECTION. Sec. 7. A new section is added to chapter 82.14B RCW
26 to read as follows:

27 (1) A local exchange company or radio communications service
28 company shall file tax returns on a cash receipts or accrual basis
29 according to which method of accounting is regularly employed in
30 keeping the books of the company. A local exchange company or radio
31 communications service company filing returns on a cash receipts basis
32 is not required to pay tax on debts that are deductible as worthless
33 for federal income tax purposes.

34 (2) A local exchange company or radio communications service
35 company is entitled to a credit or refund for state enhanced 911 excise
36 taxes previously paid on debts that are deductible as worthless for
37 federal income tax purposes.

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.14B RCW
2 to read as follows:

3 The taxes imposed by this chapter do not apply to any activity that
4 the state or county is prohibited from taxing under the constitution of
5 this state or the constitution or laws of the United States.

6 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.14B RCW
7 to read as follows:

8 (1) The state enhanced 911 excise tax imposed by this chapter must
9 be paid by the subscriber to the local exchange company providing the
10 switched access line, and each local exchange company shall collect
11 from the subscriber the full amount of the tax payable. The state
12 enhanced 911 excise tax required by this chapter to be collected by the
13 local exchange company is deemed to be held in trust by the local
14 exchange company until paid to the department. Any local exchange
15 company that appropriates or converts the tax collected to its own use
16 or to any use other than the payment of the tax to the extent that the
17 money collected is not available for payment on the due date as
18 prescribed in this chapter is guilty of a gross misdemeanor.

19 (2) If any local exchange company fails to collect the state
20 enhanced 911 excise tax or, after collecting the tax, fails to pay it
21 to the department in the manner prescribed by this chapter, whether
22 such failure is the result of its own act or the result of acts or
23 conditions beyond its control, the local exchange company is personally
24 liable to the state for the amount of the tax, unless the local
25 exchange company has taken from the buyer in good faith a properly
26 executed resale certificate under section 10 of this act.

27 (3) The amount of tax, until paid by the subscriber to the local
28 exchange company or to the department, constitutes a debt from the
29 subscriber to the local exchange company. Any local exchange company
30 that fails or refuses to collect the tax as required with intent to
31 violate the provisions of this chapter or to gain some advantage or
32 benefit, either direct or indirect, and any subscriber who refuses to
33 pay any tax due under this chapter is guilty of a misdemeanor. The
34 state enhanced 911 excise tax required by this chapter to be collected
35 by the local exchange company must be stated separately on the billing
36 statement that is sent to the subscriber.

37 (4) If a subscriber has failed to pay to the local exchange company
38 the state enhanced 911 excise tax imposed by this chapter and the local

1 exchange company has not paid the amount of the tax to the department,
2 the department may, in its discretion, proceed directly against the
3 subscriber for collection of the tax, in which case a penalty of ten
4 percent may be added to the amount of the tax for failure of the
5 subscriber to pay the tax to the local exchange company, regardless of
6 when the tax is collected by the department. For the sole purpose of
7 applying the various provisions of chapter 82.32 RCW, the last day of
8 the month following the tax period in which the tax liability accrued
9 is to be considered as the due date of the tax.

10 NEW SECTION. **Sec. 10.** A new section is added to chapter 82.14B
11 RCW to read as follows:

12 (1) Unless a local exchange company has taken from the buyer a
13 resale certificate or equivalent document under RCW 82.04.470, the
14 burden of proving that a sale of the use of a switched access lines was
15 not a sale to a subscriber is upon the person who made the sale.

16 (2) If a local exchange company does not receive a resale
17 certificate at the time of the sale, have a resale certificate on file
18 at the time of the sale, or obtain a resale certificate from the buyer
19 within a reasonable time after the sale, the local exchange company
20 remains liable for the tax as provided in section 9 of this act, unless
21 the local exchange company can demonstrate facts and circumstances
22 according to rules adopted by the department of revenue that show the
23 sale was properly made without payment of the state enhanced 911 excise
24 tax.

25 (3) The penalty imposed by RCW 82.32.291 may not be assessed on
26 state enhanced 911 excise taxes due but not paid as a result of the
27 improper use of a resale certificate. This subsection does not
28 prohibit or restrict the application of other penalties authorized by
29 law.

30 NEW SECTION. **Sec. 11.** A new section is added to chapter 82.14B
31 RCW to read as follows:

32 (1) Upon termination, dissolution, or abandonment of a corporate or
33 limited liability company business, any officer, member, manager, or
34 other person having control or supervision of state enhanced 911 excise
35 tax funds collected and held in trust under section 9 of this act, or
36 who is charged with the responsibility for the filing of returns or the
37 payment of state enhanced 911 excise tax funds collected and held in

1 trust under section 9 of this act, is personally liable for any unpaid
2 taxes and interest and penalties on those taxes, if such officer or
3 other person willfully fails to pay or to cause to be paid any state
4 enhanced 911 excise taxes due from the corporation under this chapter.
5 For the purposes of this section, any state enhanced 911 excise taxes
6 that have been paid but not collected are deductible from the state
7 enhanced 911 excise taxes collected but not paid. For purposes of this
8 subsection "willfully fails to pay or to cause to be paid" means that
9 the failure was the result of an intentional, conscious, and voluntary
10 course of action.

11 (2) The officer, member, manager, or other person is liable only
12 for taxes collected that became due during the period he or she had the
13 control, supervision, responsibility, or duty to act for the
14 corporation described in subsection (1) of this section, plus interest
15 and penalties on those taxes.

16 (3) Persons liable under subsection (1) of this section are exempt
17 from liability if nonpayment of the state enhanced 911 excise tax funds
18 held in trust is due to reasons beyond their control as determined by
19 the department by rule.

20 (4) Any person having been issued a notice of assessment under this
21 section is entitled to the appeal procedures under RCW 82.32.160
22 through 82.32.200.

23 (5) This section applies only if the department has determined that
24 there is no reasonable means of collecting the state enhanced 911
25 excise tax funds held in trust directly from the corporation.

26 (6) This section does not relieve the corporation or limited
27 liability company of other tax liabilities or otherwise impair other
28 tax collection remedies afforded by law.

29 (7) Collection authority and procedures prescribed in chapter 82.32
30 RCW apply to collections under this section.

31 **Sec. 12.** RCW 82.32.010 and 1984 c 204 s 26 are each amended to
32 read as follows:

33 The provisions of this chapter shall apply with respect to the
34 taxes imposed under chapters 82.04 through 82.14 RCW, under RCW
35 82.14B.030(3), under chapters 82.16 through 82.29A RCW of this title,
36 under chapter 84.33 RCW, and under other titles, chapters, and sections
37 in such manner and to such extent as indicated in each such title,
38 chapter, or section.

1 **Sec. 13.** RCW 82.32.105 and 1996 c 149 s 17 are each amended to
2 read as follows:

3 (1) If the department of revenue finds that the payment by a
4 taxpayer of a tax less than that properly due or the failure of a
5 taxpayer to pay any tax by the due date was the result of circumstances
6 beyond the control of the taxpayer, the department of revenue shall
7 waive or cancel any penalties imposed under this chapter with respect
8 to such tax.

9 (2) The department shall waive or cancel the penalty imposed under
10 RCW 82.32.090(1) when the circumstances under which the delinquency
11 occurred do not qualify for waiver or cancellation under subsection (1)
12 of this section if:

13 (a) The taxpayer requests the waiver for a tax return required to
14 be filed under RCW 82.32.045, section 6 of this act, 82.23B.020,
15 82.27.060, 82.29A.050, or 84.33.086; and

16 (b) The taxpayer has timely filed and remitted payment on all tax
17 returns due for that tax program for a period of twenty-four months
18 immediately preceding the period covered by the return for which the
19 waiver is being requested.

20 (3) The department shall waive or cancel interest imposed under
21 this chapter if:

22 (a) The failure to timely pay the tax was the direct result of
23 written instructions given the taxpayer by the department; or

24 (b) The extension of a due date for payment of an assessment of
25 deficiency was not at the request of the taxpayer and was for the sole
26 convenience of the department.

27 (4) The department of revenue shall adopt rules for the waiver or
28 cancellation of penalties and interest imposed by this chapter.

29 **Sec. 14.** RCW 38.52.540 and 1994 c 96 s 7 are each amended to read
30 as follows:

31 The enhanced 911 account is created in the state treasury. All
32 receipts from the state enhanced 911 excise tax imposed by RCW
33 82.14B.030 shall be deposited into the account. Moneys in the account
34 shall be used only to help implement and operate enhanced 911 state-
35 wide(~~(, and to conduct a study of the tax base and rate for the 911~~
36 ~~excise tax)). Moneys in the account may be used to provide salary
37 assistance on a temporary basis not to exceed three years to counties
38 with a population of less than seventy-five thousand that need~~

1 additional resources to cover unfunded costs that can be shown to
2 result from handling 911 calls. Moneys in the account may be used to
3 assist multicounty regions, including ongoing salary assistance for
4 multicounty regions consisting of counties with populations of less
5 than seventy-five thousand. However, funds shall not be distributed to
6 any county that has not imposed the maximum county enhanced 911 taxes
7 allowed under RCW 82.14B.030 (1) and (2). The state enhanced 911
8 coordinator, with the advice and assistance of the enhanced 911
9 advisory committee, shall specify by rule the purposes for which moneys
10 may be expended from this account.

11 NEW SECTION. **Sec. 15.** This act takes effect January 1, 1999,
12 except section 14 of this act which takes effect July 1, 1998.

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