
ENGROSSED SECOND SUBSTITUTE SENATE BILL 6034

State of Washington 57th Legislature

2002 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Fraser and Finkbeiner)

READ FIRST TIME 02/06/2002.

1 AN ACT Relating to a state wireless enhanced 911 excise tax;
2 amending RCW 38.52.010, 38.52.530, 38.52.540, 38.52.550, 82.14B.020,
3 82.14B.030, 82.14B.040, 82.14B.042, 82.14B.061, and 82.14B.200; adding
4 a new section to chapter 38.52 RCW; creating a new section; repealing
5 RCW 38.52.560; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that statewide
8 enhanced 911 has proven to be a lifesaving service and that routing a
9 911 call to the appropriate public safety answering point with a
10 display of the caller's identification and location should be available
11 for all users of telecommunications services, regardless of the
12 technology used to make and transmit the 911 call. The legislature
13 also finds that it is in the best public interest to ensure that there
14 is adequate ongoing funding to support enhanced 911 service.

15 **Sec. 2.** RCW 38.52.010 and 1997 c 49 s 1 are each amended to read
16 as follows:

17 As used in this chapter:

1 (1) "Emergency management" or "comprehensive emergency management"
2 means the preparation for and the carrying out of all emergency
3 functions, other than functions for which the military forces are
4 primarily responsible, to mitigate, prepare for, respond to, and
5 recover from emergencies and disasters, and to aid victims suffering
6 from injury or damage, resulting from disasters caused by all hazards,
7 whether natural, technological, or human caused, and to provide support
8 for search and rescue operations for persons and property in distress.
9 However, "emergency management" or "comprehensive emergency management"
10 does not mean preparation for emergency evacuation or relocation of
11 residents in anticipation of nuclear attack.

12 (2) "Local organization for emergency services or management" means
13 an organization created in accordance with the provisions of this
14 chapter by state or local authority to perform local emergency
15 management functions.

16 (3) "Political subdivision" means any county, city or town.

17 (4) "Emergency worker" means any person, including but not limited
18 to an architect registered under chapter 18.08 RCW or a professional
19 engineer registered under chapter 18.43 RCW, who is registered with a
20 local emergency management organization or the department and holds an
21 identification card issued by the local emergency management director
22 or the department for the purpose of engaging in authorized emergency
23 management activities or is an employee of the state of Washington or
24 any political subdivision thereof who is called upon to perform
25 emergency management activities.

26 (5) "Injury" as used in this chapter shall mean and include
27 accidental injuries and/or occupational diseases arising out of
28 emergency management activities.

29 (6)(a) "Emergency or disaster" as used in all sections of this
30 chapter except RCW 38.52.430 shall mean an event or set of
31 circumstances which: (I) Demands immediate action to preserve public
32 health, protect life, protect public property, or to provide relief to
33 any stricken community overtaken by such occurrences, or (ii) reaches
34 such a dimension or degree of destructiveness as to warrant the
35 governor declaring a state of emergency pursuant to RCW 43.06.010.

36 (b) "Emergency" as used in RCW 38.52.430 means an incident that
37 requires a normal police, coroner, fire, rescue, emergency medical
38 services, or utility response as a result of a violation of one of the
39 statutes enumerated in RCW 38.52.430.

1 (7) "Search and rescue" means the acts of searching for, rescuing,
2 or recovering by means of ground, marine, or air activity any person
3 who becomes lost, injured, or is killed while outdoors or as a result
4 of a natural, technological, or human caused disaster, including
5 instances involving searches for downed aircraft when ground personnel
6 are used. Nothing in this section shall affect appropriate activity by
7 the department of transportation under chapter 47.68 RCW.

8 (8) "Executive head" and "executive heads" means the county
9 executive in those charter counties with an elective office of county
10 executive, however designated, and, in the case of other counties, the
11 county legislative authority. In the case of cities and towns, it
12 means the mayor in those cities and towns with mayor-council or
13 commission forms of government, where the mayor is directly elected,
14 and it means the city manager in those cities and towns with council
15 manager forms of government. Cities and towns may also designate an
16 executive head for the purposes of this chapter by ordinance.

17 (9) "Director" means the adjutant general.

18 (10) "Local director" means the director of a local organization of
19 emergency management or emergency services.

20 (11) "Department" means the state military department.

21 (12) "Emergency response" as used in RCW 38.52.430 means a public
22 agency's use of emergency services during an emergency or disaster as
23 defined in subsection (6)(b) of this section.

24 (13) "Expense of an emergency response" as used in RCW 38.52.430
25 means reasonable costs incurred by a public agency in reasonably making
26 an appropriate emergency response to the incident, but shall only
27 include those costs directly arising from the response to the
28 particular incident. Reasonable costs shall include the costs of
29 providing police, coroner, fire fighting, rescue, emergency medical
30 services, or utility response at the scene of the incident, as well as
31 the salaries of the personnel responding to the incident.

32 (14) "Public agency" means the state, and a city, county, municipal
33 corporation, district, town, or public authority located, in whole or
34 in part, within this state which provides or may provide fire fighting,
35 police, ambulance, medical, or other emergency services.

36 (15) "Incident command system" means: (a) An all-hazards, on-scene
37 functional management system that establishes common standards in
38 organization, terminology, and procedures; provides a means (unified
39 command) for the establishment of a common set of incident objectives

1 and strategies during multiagency/multijurisdiction operations while
2 maintaining individual agency/jurisdiction authority, responsibility,
3 and accountability; and is a component of the national interagency
4 incident management system; or (b) an equivalent and compatible all-
5 hazards, on-scene functional management system.

6 (16) "Radio communications service company" has the meaning
7 ascribed to it in RCW 82.14B.020.

8 **Sec. 3.** RCW 38.52.530 and 2000 c 34 s 1 are each amended to read
9 as follows:

10 The enhanced 911 advisory committee is created to advise and assist
11 the state enhanced 911 coordinator in coordinating and facilitating the
12 implementation and operation of enhanced 911 throughout the state. The
13 director shall appoint members of the committee who represent diverse
14 geographical areas of the state and include state residents who are
15 members of the national emergency number association, the associated
16 public communications officers Washington chapter, the Washington state
17 fire chiefs association, the Washington association of sheriffs and
18 police chiefs, the Washington state council of fire fighters, the
19 Washington state council of police officers, the Washington ambulance
20 association, the state fire protection policy board, the Washington
21 fire commissioners association, the Washington state patrol, the
22 association of Washington cities, the Washington state association of
23 counties, the utilities and transportation commission or commission
24 staff, and an equal number of representatives of large and small local
25 exchange telephone companies and large and small radio communications
26 service companies offering commercial mobile radio service in the
27 state. This section expires December 31, 2006.

28 **Sec. 4.** RCW 38.52.540 and 2001 c 128 s 2 are each amended to read
29 as follows:

30 (1) The enhanced 911 account is created in the state treasury. All
31 receipts from the state enhanced 911 excise (~~(tax)~~) taxes imposed by
32 RCW 82.14B.030 shall be deposited into the account. Moneys in the
33 account shall be used only to support the statewide coordination and
34 management of the enhanced 911 system, for the implementation of
35 wireless enhanced 911 statewide, and to help supplement, within
36 available funds, the operational costs of the system, including
37 adequate funding of counties to enable implementation of wireless

1 enhanced 911 service and reimbursement of radio communications service
2 companies for costs incurred in providing wireless enhanced 911 service
3 pursuant to negotiated contracts between the counties or their agents
4 and the radio communications service companies.

5 (2) Funds generated by the enhanced 911 excise tax imposed by RCW
6 82.14B.030(3) shall not be distributed to any county that has not
7 imposed the maximum county enhanced 911 ((taxes)) tax allowed under RCW
8 82.14B.030(1) ((and (2))). Funds generated by the enhanced 911 excise
9 tax imposed by RCW 82.14B.030(4) shall not be distributed to any county
10 that has not imposed the maximum county enhanced 911 tax allowed under
11 RCW 82.14B.030(2) or to any unit of local government where a moratorium
12 on the siting of cellular towers that provide emergency communications
13 services is being imposed by that government.

14 (3) The state enhanced 911 coordinator, with the advice and
15 assistance of the enhanced 911 advisory committee, is authorized to
16 enter into statewide agreements to improve the efficiency of enhanced
17 911 services for all counties and shall specify by rule the additional
18 purposes for which moneys, if available, may be expended from this
19 account.

20 **Sec. 5.** RCW 38.52.550 and 1991 c 329 s 7 are each amended to read
21 as follows:

22 A telecommunications company, or radio communications service
23 company, providing emergency communications systems or services or a
24 business or individual providing data base information to emergency
25 communication system personnel shall not be liable for civil damages
26 caused by an act or omission of the company, business, or individual in
27 the:

28 (1) Good faith release of information not in the public record,
29 including unpublished or unlisted subscriber information to emergency
30 service providers responding to calls placed to a 911 or enhanced 911
31 emergency service; or

32 (2) Design, development, installation, maintenance, or provision of
33 consolidated 911 or enhanced 911 emergency communication systems or
34 services other than an act or omission constituting gross negligence or
35 wanton or willful misconduct.

36 NEW SECTION. **Sec. 6.** A new section is added to chapter 38.52 RCW
37 to read as follows:

1 The state enhanced 911 coordinator, with the advice and assistance
2 of the enhanced 911 advisory committee, shall set nondiscriminatory,
3 uniform technical and operational standards consistent with the rules
4 of the federal communications commission for the transmission of 911
5 calls from radio communications service companies to enhanced 911
6 emergency communications systems. These standards must not exceed the
7 requirements set by the federal communications commission. The
8 authority given to the state enhanced 911 coordinator in this section
9 is limited to setting standards as set forth in this section and does
10 not constitute authority to regulate radio communications service
11 companies.

12 **Sec. 7.** RCW 82.14B.020 and 1998 c 304 s 2 are each amended to read
13 as follows:

14 As used in this chapter:

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

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

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

32 (4) "Local exchange company" has the meaning ascribed to it in RCW
33 80.04.010.

34 (5) "Radio access line" means the telephone number assigned to or
35 used by a subscriber for two-way local wireless voice service available
36 to the public for hire from a radio communications service company.
37 Radio access lines include, but are not limited to, radio-telephone
38 communications lines used in cellular telephone service, personal

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

7 (6) "Radio communications service company" has the meaning ascribed
8 to it in RCW 80.04.010, except that it does not include radio paging
9 providers. It does include those persons or entities that provide
10 commercial mobile radio services, as defined by 47 U.S.C. Sec.
11 332(d)(1), and both facilities-based and nonfacilities-based resellers.

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 (9) "Place of primary use" has the meaning ascribed to it in the
17 federal mobile telecommunications sourcing act, P.L. 106-252.

18 **Sec. 8.** RCW 82.14B.030 and 1998 c 304 s 3 are each amended to read
19 as follows:

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

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

1 company that collected the tax, and those companies shall reimburse the
2 subscribers who paid the tax. The ordinance shall further provide that
3 to the extent the subscribers who paid the tax cannot be identified or
4 located, the tax paid by those subscribers shall be returned to the
5 county.

6 (3) A state enhanced 911 excise tax is imposed on all switched
7 access lines in the state. The amount of tax shall not exceed twenty
8 cents per month for each switched access line. The tax shall be
9 uniform for each switched access line. The tax imposed under this
10 subsection shall be remitted to the department of revenue by local
11 exchange companies on a tax return provided by the department. Tax
12 proceeds shall be deposited by the treasurer in the enhanced 911
13 account created in RCW 38.52.540.

14 (4) A state enhanced 911 excise tax is imposed on all radio access
15 lines whose place of primary use is located within the state in an
16 amount of twenty cents per month for each radio access line. The tax
17 shall be uniform for each radio access line. The tax imposed under
18 this section shall be remitted to the department of revenue by radio
19 communications service companies, including those companies that resell
20 radio access lines, on a tax return provided by the department. Tax
21 proceeds shall be deposited by the treasurer in the enhanced 911
22 account created in RCW 38.52.540. The tax imposed under this section
23 is not subject to the state sales and use tax or any local tax.

24 (5) By August 31st of each year the state enhanced 911 coordinator
25 shall recommend the level for the next year of the state enhanced 911
26 excise tax imposed by subsection (3) of this section, based on a
27 systematic cost and revenue analysis, to the utilities and
28 transportation commission. The commission shall by the following
29 October 31st determine the level of the state enhanced 911 excise tax
30 for the following year.

31 **Sec. 9.** RCW 82.14B.040 and 1998 c 304 s 4 are each amended to read
32 as follows:

33 The state enhanced 911 tax and the county enhanced 911 tax on
34 switched access lines shall be collected from the subscriber by the
35 local exchange company providing the switched access line. The state
36 enhanced 911 tax and the county 911 tax on radio access lines shall be
37 collected from the subscriber by the radio communications service
38 company providing the radio access line to the subscriber. The amount

1 of the tax shall be stated separately on the billing statement which is
2 sent to the subscriber.

3 **Sec. 10.** RCW 82.14B.042 and 2000 c 106 s 2 are each amended to
4 read as follows:

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

21 (2) If any local exchange company or radio communications service
22 company fails to collect the state enhanced 911 excise tax or, after
23 collecting the tax, fails to pay it to the department in the manner
24 prescribed by this chapter, whether such failure is the result of its
25 own act or the result of acts or conditions beyond its control, the
26 local exchange company or the radio communications service company is
27 personally liable to the state for the amount of the tax, unless the
28 local exchange company or the radio communications service company has
29 taken from the buyer in good faith a properly executed resale
30 certificate under RCW 82.14B.200.

31 (3) The amount of tax, until paid by the subscriber to the local
32 exchange company, the radio communications service company, or to the
33 department, constitutes a debt from the subscriber to the local
34 exchange company or the radio communications service company. Any
35 local exchange company or radio communications service company that
36 fails or refuses to collect the tax as required with intent to violate
37 the provisions of this chapter or to gain some advantage or benefit,
38 either direct or indirect, and any subscriber who refuses to pay any

1 tax due under this chapter is guilty of a misdemeanor. The state
2 enhanced 911 excise (~~(tax)~~) taxes required by this chapter to be
3 collected by the local exchange company or the radio communications
4 service company must be stated separately on the billing statement that
5 is sent to the subscriber.

6 (4) If a subscriber has failed to pay to the local exchange company
7 or the radio communications service company the state enhanced 911
8 excise (~~(tax)~~) taxes imposed by this chapter and the local exchange
9 company or the radio communications service company has not paid the
10 amount of the tax to the department, the department may, in its
11 discretion, proceed directly against the subscriber for collection of
12 the tax, in which case a penalty of ten percent may be added to the
13 amount of the tax for failure of the subscriber to pay the tax to the
14 local exchange company or the radio communications service company,
15 regardless of when the tax is collected by the department. Tax under
16 this chapter is due as provided under RCW 82.14B.061.

17 **Sec. 11.** RCW 82.14B.061 and 2000 c 106 s 3 are each amended to
18 read as follows:

19 (1) The department of revenue shall administer and shall adopt such
20 rules as may be necessary to enforce and administer the state enhanced
21 911 excise (~~(tax)~~) taxes imposed by this chapter. Chapter 82.32 RCW,
22 with the exception of RCW 82.32.045, 82.32.145, and 82.32.380, applies
23 to the administration, collection, and enforcement of the state
24 enhanced 911 excise (~~(tax)~~) taxes.

25 (2) The state enhanced 911 excise (~~(tax)~~) taxes imposed by this
26 chapter, along with reports and returns on forms prescribed by the
27 department, are due at the same time the taxpayer reports other taxes
28 under RCW 82.32.045. If no other taxes are reported under RCW
29 82.32.045, the taxpayer shall remit tax on an annual basis in
30 accordance with RCW 82.32.045.

31 (3) The department of revenue may relieve any taxpayer or class of
32 taxpayers from the obligation of remitting monthly and may require the
33 return to cover other longer reporting periods, but in no event may
34 returns be filed for a period greater than one year.

35 (4) The state enhanced 911 excise (~~(tax)~~) taxes imposed by this
36 chapter (~~(is)~~) are in addition to any taxes imposed upon the same
37 persons under chapters 82.08 and 82.12 RCW.

1 **Sec. 12.** RCW 82.14B.200 and 1998 c 304 s 10 are each amended to
2 read as follows:

3 (1) Unless a local exchange company or a radio communications
4 service company has taken from the buyer a resale certificate or
5 equivalent document under RCW 82.04.470, the burden of proving that a
6 sale of the use of a switched access (~~(lines-[line])~~) line or radio
7 access line was not a sale to a subscriber is upon the person who made
8 the sale.

9 (2) If a local exchange company or a radio communications service
10 company does not receive a resale certificate at the time of the sale,
11 have a resale certificate on file at the time of the sale, or obtain a
12 resale certificate from the buyer within a reasonable time after the
13 sale, the local exchange company or the radio communications service
14 company remains liable for the tax as provided in RCW 82.14B.042,
15 unless the local exchange company or the radio communications service
16 company can demonstrate facts and circumstances according to rules
17 adopted by the department of revenue that show the sale was properly
18 made without payment of the state enhanced 911 excise tax.

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

24 NEW SECTION. **Sec. 13.** RCW 38.52.560 (Automatic number
25 identification--Wireless two-way telecommunications service) and 1994
26 c 96 s 5 are each repealed.

27 NEW SECTION. **Sec. 14.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 15.** This act takes effect January 1, 2003.

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