

SENATE BILL REPORT

SB 5348

As of February 25, 2011

Title: An act relating to the taxation of prepaid wireless telecommunications service.

Brief Description: Concerning the taxation of prepaid wireless telecommunications service.

Sponsors: Senators Nelson and Delvin.

Brief History:

Committee Activity: Environment, Water & Energy: 2/01/11, 2/16/11 [DPS-WM, DNP].
Ways & Means: 2/25/11.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: That Substitute Senate Bill No. 5348 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Rockefeller, Chair; Nelson, Vice Chair; Honeyford, Ranking Minority Member; Chase, Delvin, Fraser, Morton and Ranker.

Minority Report: Do not pass.

Signed by Senator Holmquist Newbry.

Staff: William Bridges (786-7416)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Dean Carlson (786-7305)

Background: Emergency 911 communications services allow callers to reach local public safety agencies. Enhanced 911 (E-911) is a service that displays caller's phone number and location at the public safety answering point.

E-911 services are funded by county and state excise taxes. Counties may impose an E-911 excise tax up to \$0.70 per month for each switched access line, radio access line, and interconnected voice over internet protocol (VOIP) service line. The state may impose an E-911 excise tax on the same services but not exceeding \$0.25 per month.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Receipts from the county E-911 excise tax are deposited in the County Enhanced 911 Excise Tax Account and may only be used to support county emergency services communication systems. Receipts from the state E-911 excise tax are deposited in the Enhanced 911 Account and may only be used to support the statewide coordination and management of the E-911 system, among other similar purposes.

In October 2010 the Washington Supreme Court held that the state E-911 excise tax must be paid on prepaid wireless telecommunications service.

Summary of Bill (Recommended Substitute): Exempting Prepaid Wireless Telecommunications Service from E-911 Excise Taxes. Beginning on October 1, 2011, county and state E-911 excise taxes no longer apply to prepaid wireless telecommunications service.

Imposing an E-911 Tax on Prepaid Wireless Telecommunications Service at the Point of Sale. Beginning on October 1, 2011, a 2.5 percent E-911 excise tax is imposed on the sale of prepaid wireless telecommunications service. The tax must be collected by the seller and remitted to the Department of Revenue, although a seller may retain 3 percent of the collected amount. Of the remaining amount received by the department, 73.7 percent must be transferred to the County E-911 Excise Tax Account and 26.3 percent must be transferred to the Enhanced 911 Account.

Beginning on October 1, 2011, the point-of-sale E-911 excise tax is the only E-911 funding obligation imposed on prepaid wireless telecommunications service. No other state or local government tax or fee may be imposed on prepaid wireless telecommunications service to fund E-911 service.

Limiting Liability. Among other things, providers or sellers of prepaid wireless telecommunications service are not liable for damages resulting from failures of the 911 system, nor are they liable to persons for damages resulting from cooperation with a lawful police investigation.

Definitions. Terms are defined, including prepaid wireless telecommunications service, which generally means a telecommunications service that is paid in advance and sold in predetermined units that decline with use by a known amount.

EFFECT OF CHANGES MADE BY ENVIRONMENT, WATER & ENERGY COMMITTEE (Recommended Substitute): Where it is not practical for a retailer to separately disclose the E-911 tax on a receipt or similar document, the retailer may prominently display a sign notifying consumers of the tax. The amount a retailer may deduct and retain from the E-911 tax is raised from 2 percent to 3 percent.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on October 1, 2011.

Staff Summary of Public Testimony on Original Bill (Environment, Water & Energy):

PRO: The bill addresses how the E911 tax should be applied to prepaid cell phone service. A point-of-sale tax for prepaid cell phones is the appropriate way to apply the E911 tax because prepaid services are not billed monthly and the companies who offer prepaid services do not even know the home addresses of their customers. This bill is based on a model bill developed by NCSL and has been adopted in 13 other states and considered in 17 others.

CON: A new point-of-sale tax will create problems for stores because it will require separate accounts and be costly to collect. The 2 percent allowance for stores is too low and should be 3 percent and 4 percent for smaller stores. The cell phone service provider should be the entity that collects the tax, something that they are already doing. The bill creates a new tax and will require a supermajority vote.

OTHER: The Department of Revenue (DOR) has suggested language to allow the agency to administer the tax more effectively.

Persons Testifying (Environment, Water & Energy): **PRO:** Stephanie Fritts, Association of Public-Safety Communications Officials, Association of Public National Emergency Number Association; Joyce Masamitsu, Verizon Wireless; Russell Sarazen, T-Mobile; Dan Youmans, AT&T.

CON: Mark Johnson, Washington Retail Association.

OTHER: Greg Potegal, DOR.

Staff Summary of Public Testimony on Recommended Substitute (Ways & Means):

PRO: This bill provides the most appropriate way to collect the tax. The phone companies don't have addresses or other information for prepaid phones. Seventeen other states have adopted this method. The \$0.95 per transaction fee is consistent with what is being collected on similar services. We would like the collection of the tax to begin right away.

CON: The net impacts of this bill is a loss to state and counties. We believe it would be simpler and more effective for a handful of phone companies to collect rather than retailers. This may make the state non-compliant with the streamlines sales tax agreement. This requires retail stores to do new paperwork and set up new systems. The enforcement of this tax is far easier with a few phone companies versus thousands of stores.

Persons Testifying (Ways & Means): **PRO:** Steve Gano, AT&T; Jim Quackenbush, Association of Public Safety Communications Officials, National Emergency Number Association.

CON: Mark Johnson, Washington Retail Association; Carolyn Logue, Washington Food Industry Association.