

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2255 - SB 2407

February 25, 2014

**SUMMARY OF ORIGINAL BILL:** Creates the *911 Funding Modernization and IP Transition Act of 2014*. Requires retail sellers of communication services and prepaid communication services, to collect, with the sales price of the service, a \$1.16 surcharge from customers. This amount is subject to change in order to fully fund the mandatory reimbursements to emergency communications districts (ECD), the operational expenses of the Tennessee Emergency Communications Board (TECB) and the Tennessee Relay Services/Telecommunications Devices Access Program (TRS/TDAP).

Any increase in such surcharge must be approved by the General Assembly and notice of such increase shall be made at public hearing of the TECB. Any decrease in the surcharge must first be made public at a hearing of the TECB. The TECB must report annually to the Finance, Ways and Means Committees of the Senate and the House of Representatives on the financial status and solvency of emergency communications districts, status of the implementation of a uniform statewide 911 system and the status, level and solvency of the 911 Emergency Communications Fund (ECF).

Surcharge revenue collected by retail sellers of communication services, except for prepaid communications services, shall be remitted to the TECB every two months. Collections by prepaid communications services shall be collected at the point of sale and remitted to the Department of Revenue (DOR). The DOR is required to establish registration and payment procedures that are currently applicable to the sales and use tax. The DOR is required to remit all surcharge revenue to the TECB within 30 days of receipt; however, the Department may deduct up to 2 percent of surcharge collections to reimburse its direct costs of administering the collection and remittance of 911 surcharges. Authorizes sellers of communication services and prepaid communication services to withhold 3 percent of surcharge collections to offset administrative costs.

Authorizes the TECB to withhold distributions to any ECD, if the district it is operating within fails to correct a violation of state law. Authorizes the Tennessee Claims Commission to adjudicate any claims made by retail sellers of communication services and prepaid communication services, and reward damages, at the Commission's discretion. Requires retail sellers to annually provide the Board of Accounting, the amounts billed and collected and the dispositions of such amounts. Requires the Comptroller of the Treasury to conduct any audit or review of any accounting as necessary.

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Specifies that the TECB shall be funded by the 911 surcharge. All funds currently in the 911 Emergency Communications Fund, funds collected by the TECB at future times, and interest accrued on these funds, shall be deposited by the Department of Treasury in a separate interest-bearing fund to be known as the 911 Emergency Communications Fund. Disbursements from this fund are limited to operational and administrative expenses of the TECB and other necessary expenditures. Requires the TECB to annually distribute to each ECD a base amount equal to the average of total recurring annual revenue the district received from distributions from the TECB and from direct remittance of 911 surcharges for fiscal years 2010, 2011, and 2012; however, in no event shall such distribution be less than the amount the district received in fiscal year 2012. Requires the TECB to, by December 1, 2014, publish on its website the base amount for any emergency communications district unless the local government funding for such ECD is reduced, in which case the TECB is authorized to reduce the base amount by the same amount as the local funding reduction.

Requires the TECB to distribute 1/6 of the base amount for each ECD every two months, beginning in the second month of each fiscal year. Any ECD with a locally established 911 surcharge in effect as of July 1, 2011 may apply to the TECB for an increase in the base amount. Requires the TECB to implement an IP-based next generation 911 network and any future 911 system advancements the TECB deems necessary. The TECB is required to provide a report to the Information Systems Council each year to describe any necessary advancement. Any unspent funds in the ECF shall carry forward to the next fiscal year. The TECB's operational expenses shall include funding to the Tennessee Regulatory Authority (TRA) for the TRS/TDAP, and such funding to TRS/TDAP shall not exceed the total cost of the TRS/TDAP program in 2012 unless approved by the Fiscal Review Committee.

Any 911 surcharge revenue in excess of the annual fiscal requirements of the TECB and the payments to ECD shall not revert to the General Fund. At minimum, 50 percent of such excess shall revert to an ECD. All remaining, unspent funds shall carry over to the succeeding fiscal year. Provides certain immunities from suit or liability for civil claims for ECDs, sellers, providers, and users of telecommunications service and service providers or users of 911 services or next generation 911 services, a public safety answering point, and the officers, directors, employees, vendors, agents, and authorizing governmental entity, if any, of such provider, user, or public safety answering point. Such immunity shall extend to employees of county and municipal government for acts or omissions in the management, supervision, or performance of 911 emergency communications services.

Requires the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) to implement a study of issues regarding this surcharge and the funding of emergency communications districts. Provides that the state is liable for any claims rising in regards to the billing, collection, or remittance of 911 surcharges. Authorizes the TRA to create a reserve for the TRS/TDAP program which shall not exceed \$1,000,000 in any given year. The administrative cost incurred by the TRA to create such reserve shall come from the TECB's allocations to the TRS/TDAP program. This act shall take effect on January 1, 2015.

**FISCAL IMPACT OF ORIGINAL BILL:**

Increase State Revenue - \$19,872,500 / FY14-15 / 911 Fund  
\$62,200 / FY14-15 / DOR  
\$39,775,000 / FY15-16 and Subsequent Years / 911 Fund  
\$124,400 / FY15-16 and Subsequent Years / DOR

Increase State Expenditures - \$19,883,800 / FY14-15 / 911 Fund  
\$29,562,000 / FY15-16 / 911 Fund  
\$18,150,700 / FY16-17 and Subsequent Years / 911 Fund

Other Fiscal Impact - According to TECB, local ECD surcharge revenue will stabilize in accordance with the base amount received from TECB. Any additional revenue received by an ECD will correspond with offsetting expenditures to improve 911 services, resulting in a net increase that is not significant. TECB will allocate funds from the 911 Fund to TRA for the purpose of improving TRS/TDAP and to create a reserve not to exceed \$1,000,000. The administrative cost to TRA will be paid for out of such money allocated to TRS/TDAP.

According to the Department of Commerce and Insurance, the estimated reserve balance in the 911 Fund for FY13-14 is \$75,162,300. The expenditures of \$11,300 in FY14-15 over the estimated revenue (\$19,883,800 - \$19,872,500) will be covered out of reserve funds.

**SUMMARY OF AMENDMENT (012655):** Makes a technical correction to the original bill.

**FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Unchanged from the original fiscal note.**

Assumptions for the bill as amended:

- This Act will make extensive changes to the funding of ECDs, the TRS/TDAP program, and the TECB.
- All surcharges will be set at \$1.16.
- The following are the current monthly surcharge rates applicable to wireline, wireless and VoIP:
  - wireline: \$0.45 - \$1.50 for residents/\$1.52 - \$3 for businesses.
  - Wireless: \$1.00 (Postpaid)/\$0.53 Prepaid (point of sale).
  - VoIP: \$1.00.

### *Wireline*

- According to TECB, the number of wireline customers to be affected is 1,833,430 (residential 1,088,121 + business 745,309).
- Under this new law, the annual collection of surcharge revenue from wireline resident and business customers would be \$25,521,346 (1,833,430 x 12 months x \$1.16).
- Providers are authorized to retain three percent or approximately \$765,640 (\$25,521,346 x 3%) of the service charge for administrative costs.
- The remaining \$24,755,706 (\$25,521,346 - \$765,640) will be remitted to the TECB.
- This act increases, from 100 to 200, the number of surcharges that may be imposed on any single subscriber of service. According to TECB, raising this cap to 200 will result in a recurring increase in state revenue of \$220,600.

### *Wireless - Prepaid*

- In 2010, the General Assembly enacted PC 774, which effectively set a rate of \$0.53 against all prepaid phones (“pay as you go”).
- Surcharge revenue is deducted at the point of sale and directly submitted to the Department of Revenue (DOR), who retains two percent for administrative costs.
- Providers are authorized to retain three percent of all surcharges collected for administrative costs.
- According to DOR, in FY12-13, it collected approximately \$5,233,846.
- DOR retained a two percent administrative fee of \$104,677 (\$5,233,846 x 2%) and remitted the remaining \$5,129,169 (\$5,233,846 - \$104,677) to TECB.
- There were approximately 10,180,599 charges [(\$5,233,846 submitted to DOR / 97%) / \$0.53 per charge].
- Under this new law, approximately \$11,455,210 would be collected by DOR [(\$1.16 x 10,180,599) x 97%].
- The DOR would retain a two percent administrative fee of \$229,104 (\$11,455,210 x 2%) and remit the remaining \$11,226,106 (\$11,455,210 - \$229,104) to TECB.
- The increase in revenue to DOR will be \$124,427 (\$229,104 - \$104,677).

### *Wireless Postpaid + Voice over IP (VoIP)*

- The TECB has set a \$1.00 fee per month per user on wireless postpaid service (pay after the fact) and VoIP (calls over the internet).
- According to the TECB, in FY12-13, it collected approximately \$51,493,932 in postpaid surcharges and \$7,051,735 in VoIP charges.
- Providers are authorized to retain three percent of all surcharges collected for administrative costs.
- There were approximately \$53,086,528 (\$51,493,932 / 97%) in surcharge revenue from postpaid and \$7,269,830 (\$7,051,735 / 97%) from VoIP.

- In FY12-13, there were approximately 5,029,697  $[(\$53,086,528 + \$7,269,830) / \$1.00 / 12 \text{ months}]$  users annually.
- Under this new law, TECB will receive \$67,912,981 in annual surcharge revenue collected from postpaid charges and VoIP charges  $[(5,029,697 \times \$1.16 \times 12 \text{ months}) \times 97\%]$ .

### *Revenue*

- Pursuant to Tenn. Code Ann §7-86-303, all funds collected by TECB shall be deposited in the 911 Emergency Communications Fund. (911 Fund).
- Under the proposed legislation, total surcharge revenue remitted to the TECB is estimated to be \$104,115,392 (\$11,226,106 prepaid wireless + \$67,912,981 postpaid wireless and VoIP + \$24,755,706 residential and business landline + \$220,600 landline single payer cap).
- According to TECB, FY13-14 surcharge revenue is estimated to be \$64,370,410.
- This bill will take effect January 1, 2015, resulting an increase in revenue to TECB of \$19,872,491  $[(\$104,115,392 - \$64,370,410) \times 50\%]$  in FY14-15.
- The TECB increase in revenue in FY15-16 and subsequent years is estimated to be \$39,774,982  $(\$104,115,392 - \$64,370,410)$ .
- DOR will experience an increase in administrative fee revenue of \$62,214 in FY14-15  $(\$124,427 \times 50\%)$  and \$124,427 in FY15-16 and subsequent years.

### *Expenditures*

- According to TECB, prior to enactment of this law, total recurring expenditures in FY14-15 are estimated to total \$83,318,200.
- According to TECB, after enactment of this law, total recurring expenditures in FY14-15 are estimated to be \$103,201,995.
- This law will result in an increase in FY14-15 recurring expenditures of \$19,883,795  $(\$103,201,995 - \$83,318,200)$ .
- According to TECB, there will be an increase in FY14-15 non-recurring expenditure of \$5,000 for rulemaking.
- Total expenditures for FY14-15 are estimated to be \$19,888,795  $(\$19,883,795 + \$5,000)$ .
- According to TECB, after enactment of this law, total recurring expenditures in FY15-16 are estimated to be \$101,468,976.
- Accord to TECB, there will be non-recurring expenditure of \$11,411,239 in FY15-16.
- Total expenditures for FY15-16 are estimated to increase by approximately \$112,880,215  $(\$101,468,976 + \$11,411,239)$ .
- The increase in expenditures in FY15-16 is estimated to be \$29,562,015  $(\$112,880,215 - \$83,318,200)$ .

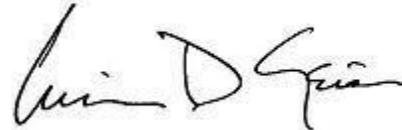
- The increase in expenditures in FY16-17 and subsequent years is estimated to be \$18,150,776 (\$101,468,976 - \$83,318,200).

*Other*

- According to TECB, local ECD surcharge revenue will stabilize in accordance with the base amount received from TECB.
- Any increase in revenue received by ECDs will result in offsetting expenditures for the purpose of improving 911 services.
- TRA will receive additional funding from TECB to fund operating expenses of TRS/TDAP and to create a reserve not to exceed \$1,000,000.
- Any money collected by TECB in excess of expenditures for ECDS, TRA, or expenditures related to implementing an IP-based next generation 911 network and any future 911 system advancements will not revert to the general fund, but to the 911 Fund.
- The Department of Treasury's Claims Commission anticipates that any additional claims brought by service providers will be handled within existing resources.
- TACIR will be able to complete any additional study within existing resources.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

/jdb