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*Bill Analysis*  
*Legislative Service Commission*

**H.B. 310**  
123rd General Assembly  
(As Introduced)

**Reps. Mead, Logan, Callender, Willamowski, Householder, Mottley, Olman, Boyd**

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**BILL SUMMARY**

- Imposes a monthly charge (initially at 65¢ per month) billed to each wireless telephone number in the state.
- Authorizes disbursement of one half of the proceeds of the charge to facilities-based wireless service providers to reimburse them for their actual costs in providing enhanced wireless 9-1-1 (automatic number identification and automatic location identification for wireless calls to a countywide 9-1-1 system).
- Authorizes disbursement of the other half of the proceeds to counties based on the number of wireless service subscribers in the county, to pay for subdivision costs in staffing public safety answering points to provide wireless 9-1-1 service and in equipping them to provide enhanced wireless 9-1-1.
- Authorizes a wireline service provider to fund certain costs of updating the wireline telephone network through the existing excise tax credit mechanism that covers nonrecurring charges of the wireline network in providing 9-1-1 service.
- Vests the Director of Public Safety with authority to carry out the bill and creates an Ohio 9-1-1 Council and a Wireless 9-1-1 Advisory Group.

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**TABLE OF CONTENTS**

BACKGROUND

|   |   |
|---|---|
| General background on 9-1-1 service .....               | 3 |
| Background on ANI and ALI technology requirements ..... | 3 |

|   |   |
|---|---|
| Background on funding of the provider costs of 9-1-1 service..... | 4 |
| Wireline costs.....   | 4 |
| Wireless costs.....   | 4 |
| Background on funding of the PSAP costs of 9-1-1 service.....     | 5 |

**PROVISIONS OF THE BILL**

|   |    |
|---|----|
| New wireless 9-1-1 service charge .....               | 6  |
| Use of revenues obtained from the charge.....         | 7  |
| Collection of the wireless 9-1-1 service charge ..... | 11 |
| Adjustment of the wireless 9-1-1 service charge ..... | 12 |
| Ohio 9-1-1 Council .....                              | 13 |
| Composition .....                                     | 13 |
| Duties .....  | 14 |
| Conditions of service .....                           | 14 |
| Wireless 9-1-1 Advisory Group.....                    | 15 |
| Composition .....                                     | 15 |
| Duties .....  | 15 |
| Conditions of service .....                           | 16 |
| Information requirements.....                         | 16 |
| Expanded use of an existing excise tax credit.....    | 17 |
| Immunity from civil liability .....                   | 17 |
| Other criminal penalties .....                        | 18 |
| Enforcement of 9-1-1 obligations .....                | 19 |

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**CONTENT AND OPERATION**

In brief, the bill addresses wireless 9-1-1 service in two respects: (1) it provides a funding mechanism for reimbursing facilities-based wireless service providers for their costs in providing enhanced wireless 9-1-1 (automatic number identification (ANI) and automatic location identification (ALI) capabilities for wireless calls made to 9-1-1 emergency telephone systems), and (2) it utilizes this same mechanism for funding the wireless 9-1-1 staffing costs and the enhanced wireless 9-1-1 equipment costs of the public safety answering points (PSAPs) of a countywide 9-1-1 system. The funding mechanism is a monthly charge billed to each wireless telephone number in the state, the proceeds from which are distributed to counties based on the number of wireless service subscribers in the county and distributed to wireless service providers based on actual costs.

The bill also expands the use of an existing excise tax credit mechanism to fund certain costs of a wireline service provider in providing 9-1-1 service.

The Director of Public Safety is given certain duties to carry out the bill, and an Ohio 9-1-1 Council and a Wireless 9-1-1 Advisory Group are created for purposes relating to 9-1-1 service and the new funding mechanism.

## **BACKGROUND**

### **General background on 9-1-1 service**

The current Ohio 9-1-1 Law became effective in 1985, prior to the general availability of any telephone technology beyond traditional wireline technology. The 9-1-1 law establishes a framework in which the decision to institute 9-1-1 emergency telephone service is a local one, and the sources of funding 9-1-1 service also are local. To date, 77 counties in Ohio currently provide 9-1-1 service, one county will be adding that service in January 1999, and in the remaining ten counties there is no 9-1-1 service (that is, emergency services generally cannot be accessed by dialing "9-1-1"). Generally, 9-1-1 systems are established on a countywide basis, although the 9-1-1 law also authorizes a large municipal corporation or township to establish a 9-1-1 system within its boundaries (sec. 4931.48).

Currently, whether 9-1-1 calls made by callers using wireless telephone technology reach the PSAPs established to answer and route 9-1-1 calls in those counties that provide 9-1-1 service depends on a number of technical factors in how the 9-1-1 system is set up and how wireless service providers are interconnected to the county system. One deficiency of wireless calling made to 9-1-1 is that PSAPs in Ohio currently are not equipped to discern for wireless calls the type of automatic caller information that generally is available to the PSAPs for wireline calls. For calls originating with wireline technology, PSAPs can identify automatically the calling number and the street address associated with that number. However, for calls originating with wireless technology, most PSAPs cannot identify automatically the calling number, and, since the necessary technology is not yet finalized, no PSAPs can identify automatically the location of the caller. In other words, there generally is no ANI and ALI technology for wireless 9-1-1 calls.

### **Background on ANI and ALI technology requirements**

In 1996, the Federal Communications Commission (FCC) issued an order and regulations that require certain facilities-based wireless service providers to provide "Phase I" ANI and "Phase II" ALI technology for wireless calls made to a 9-1-1 emergency telephone system (*In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 9-1-1 Emergency Calling Systems*, CC Docket No. 94-102, Report and Order and Further Notice of Proposed

Rulemaking, FCC 96-264 (June 12, 1996); also Memorandum Opinion and Order, FCC 97-402 (December 1, 1997)). The requirements apply only if the administrator of a particular PSAP requests it, the PSAP is capable of receiving and using the data elements associated with the service, and a mechanism for recovering the costs of the service is in place (47 C.F.R. 20.18(f)). ANI capability was required as of April 1, 1998, and ALI capability was required as of October 1, 2001. The more expensive ALI capability consists of providing to a PSAP the location of all 9-1-1 calls by longitude and latitude such that the accuracy for all calls is 125 meters or less using a Root Mean Square methodology.

### **Background on funding of the provider costs of 9-1-1 service**

#### **Wireline costs**

Current law provides a funding mechanism for the recurring and nonrecurring charges for the "telephone network portion" of a 9-1-1 system (sec. 4931.47).

The funding mechanism for the recurring rates for the operation and maintenance of the telephone network is an amount imposed on each residential and business customer access line, or its equivalent, within the area served. The amount appears on the subscriber's monthly bill. (Subscribers in Franklin County, for instance, currently are charged 12¢ per month for such recurring costs.) The amount so billed by a telephone company is determined by the Public Utilities Commission (PUCO). A company is prohibited from including the amount on a customer bill until its portion of the 9-1-1 telephone network is completed. (Sec. 4931.47(A) and (B).)

The nonrecurring charges for the 9-1-1 telephone network may be recovered by a company through a credit on its state excise tax liability. The costs are recoverable only upon completion of the company's portion of the network. Certain restrictions apply to the use of the credit, and there is a statutory cap on the aggregate amount of recovery through the excise tax credit mechanism. (Secs. 4931.47(C) and 5727.39.) As explained further in "**Expanded use of an existing tax credit**," below, the bill extends the use of the excise tax credit mechanism to certain 9-1-1 upgrades by a wireline service provider.

#### **Wireless costs**

Current law does not provide any mechanism to fund the costs of a wireless service provider in providing its portion of 9-1-1 service. As explained further under "**New wireless 9-1-1 service charge**," below, the bill creates a funding

mechanism that, in part, must be used to reimburse facilities-based wireless service providers for their costs in providing ANI and ALI technology.

**Background on funding of the PSAP costs of 9-1-1 service**

As described in "*New wireless 9-1-1 service charge*," below, the bill establishes an additional funding mechanism for the PSAP costs of providing wireless 9-1-1. Currently, subdivisions participating in 9-1-1 systems provide both wireline 9-1-1 service and wireless 9-1-1, and they do so using existing sources of funding available to them.

Current law provides that the PSAP costs of providing 9-1-1 service are funded through local revenues of a subdivision. "Subdivision" is defined as a county, municipal corporation, township, township fire district, joint fire district, township police district, or joint ambulance district that provides emergency service within its territory, or that contracts with another municipal corporation, township, or district or with a private entity to provide such service. "Subdivision" also means a state college or university, port authority, or park district of any kind that employs law enforcement officers that act as its primary police force. (Sec. 4931.40(D).)

Specifically, current law requires a subdivision that operates a PSAP to pay all the costs associated with establishing, equipping, furnishing, operating, and maintaining that facility and to allocate those costs among itself and the subdivisions served by the PSAP based on an allocation formula in a statutorily required final plan under which the features of the 9-1-1 system and the obligations of the subdivisions and emergency service providers participating in the 9-1-1 system are established in accordance with the 9-1-1 law. In addition, current law requires that each subdivision served by a PSAP must pay the subdivision operating the PSAP the amount computed in accordance with the allocation formula. (Sec. 4931.41(D) and (E).)

Ultimately, each subdivision decides for itself the sources of funds it will use to pay its particular obligation for PSAP costs as prescribed in the final 9-1-1 plan. How PSAPs are funded may depend partly on what funding mechanisms were available under state law at the time a 9-1-1 system was set up. The sources of funds may be general operating funds of the subdivision or revenues the use of which is not otherwise prohibited. Other statutory sources of funding authority are earmarked for 9-1-1 systems or PSAP costs. These include voter approval of a tax on real and personal property within the subdivision in excess of the ten-mill limitation on such tax (sec. 5705.19(BB), not in the bill); and voter approval of a tax of 1/4 or 1/2 of 1% on most retail sales in the county or an increase to 1/2 of 1% (sec. 5739.026(A)(6), not in the bill).

In addition, the 9-1-1 law authorizes two additional funding mechanisms relating to PSAP costs. First, authority exists to impose a uniform assessment on each lot or parcel of real property in the county that is owned by a person or political subdivision and is improved or in the process of being improved. The assessment must reflect reasonable charges sufficient to pay only the estimated allowed costs of (1) establishing, equipping, and furnishing one or more PSAPs of a countywide 9-1-1 system or (2) operating and maintaining the PSAPs, or both (1) and (2). The resolution imposing the assessment is subject to referendum, unless there is an election on the question of the assessment. (Sec. 4931.51, not in the bill.)

Secondly, current 9-1-1 law authorizes imposition of a monthly charge, not exceeding 50¢ per month, on residential and business customer access lines, or their equivalent, to pay only for the equipment costs of establishing and maintaining no more than three PSAPs of a countywide system. Such a charge may be imposed only by voter approval and only in a county that meets both of the following conditions: (1) a 9-1-1 final plan has not been approved, or has been approved but not implemented for lack of funding, and (2) voters, at least once, have rejected funding through the authorized property assessment or property or sales tax described above. (Sec. 4931.52, not in the bill.) A telephone company billing the monthly charge may retain 3% of any such charge as compensation for its collection costs (sec. 4931.53, not in the bill).

## **PROVISIONS OF THE BILL**

### **New wireless 9-1-1 service charge**

The bill imposes a monthly charge on each wireless telephone number of a wireless service subscriber who has a billing address in Ohio, beginning on the bill's effective date (sec. 4931.61(A)). Initially, the amount imposed on each such telephone number is 65¢ per month. That amount may change pursuant to procedures specified in the bill and explained under "**Adjustment of the wireless 9-1-1 service charge**," below. (Sec. 4931.70.)

The bill additionally provides that the wireless 9-1-1 service charge is exempt from state or local taxation (sec. 4931.61(D)).

The new wireless 9-1-1 service charge is available as a funding mechanism within the continuing framework that the provision of 9-1-1 service is a local decision, made pursuant to the adoption of a final 9-1-1 plan. The bill expressly provides that a countywide 9-1-1 system must be for the purpose of providing both wireline 9-1-1 and wireless 9-1-1 (sec. 4931.41(B)).

The bill adds several purposes for which a final 9-1-1 plan must be amended (sec. 4931.45(A)(5) to (7)), including for the purpose of providing enhanced wireless 9-1-1, and authorizes the convening of a 9-1-1 planning committee for purposes of adopting an amended final plan (sec. 4931.45(A), second paragraph). The bill provides an exception to the general amendment procedure if the purpose of the amendment is adding a telephone company as a participant in a countywide 9-1-1 system after the implementation of wireline 9-1-1 or enhanced wireless 9-1-1 (sec. 4931.45(A), second paragraph).

The bill also adds or amends several definitions (sec. 4931.40(D) to (L), and (W)) and amends several sections of existing 9-1-1 law to reflect the bill's distinction between wireless service providers and wireline service providers and the characteristics of their separate 9-1-1 services (secs. 4931.41 and 4931.43 to 4931.48).

**Use of revenues obtained from the charge**

The bill creates three funds into which portions of the periodic remittances of the wireless 9-1-1 service charge must be deposited (sec. 4931.62): the Wireless 9-1-1 Administrative Fund, the Wireless 9-1-1 Government Assistance Fund, and the Wireless 9-1-1 Service Provider Reimbursement Fund, collectively known as the Wireless 9-1-1 Service Funds (sec. 4931.40(I)). The Director of Public Safety must administer the funds and otherwise carry out the Director's duties under the bill. The Director may assign one or more Department employees to assist in carrying out those duties, and the PUCO may provide the Director with any technical assistance the Director requests in carrying out the duties. (Sec. 4931.60.)

The Director is required to adopt rules in accordance with the Administrative Procedure Act (Chapter 119.) to carry out the new sections of the 9-1-1 law the bill enacts, including rules prescribing the necessary accounting for a billing and collection fee and rules concerning other specific aspects of the bill as described separately below (sec. 4931.67).

**State administrative costs.** The bill requires that 1% of the periodic remittances of the wireless 9-1-1 service charge must be deposited into the Wireless 9-1-1 Administrative Fund in the state treasury. These moneys must be used exclusively by the Director to cover nonpayroll costs of the Department of Public Safety incurred in carrying out the bill. (Sec. 4931.62.)

**PSAP costs.** One-half of the remaining remittances of the wireless 9-1-1 service charge must be deposited into the Wireless 9-1-1 Government Assistance Fund. The Treasurer of State may disburse money from the funds solely upon

order of the Director of Public Safety as authorized under the bill. (Sec. 4931.62(A).)

The bill requires the Director of Public Safety, not later than the tenth day of each month beginning with the month next succeeding the first month in which remittances of the wireless 9-1-1 service charge are received, to disburse the amount credited as remittances to the Wireless 9-1-1 Government Assistance Fund during the preceding month (sec. 4931.63(B)). Rules the Director must adopt under the bill include rules concerning the disbursement of moneys from the fund (sec. 4931.67).

A disbursement must be made to each county for which a final 9-1-1 plan for enhanced wireless 9-1-1 has been adopted. The disbursement must be paid to the county treasurer. (Sec. 4931.63(B).)

The bill requires that a countywide 9-1-1 system of a county receiving a disbursement must provide countywide enhanced wireless 9-1-1, beginning as soon as reasonably possible after receipt of the first disbursement or, if that service is already implemented, must continue to provide the service. A disbursement must be used solely for the purpose of paying any of the following:

(1) Any costs of designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining the necessary data, hardware, software, and trunking required for PSAPs to provide Phase I ANI or Phase II ALI enhanced 9-1-1 services as described in FCC regulations, which costs are incurred before or on or after the bill's effective date and consist of such additional costs of the 9-1-1 system over and above costs incurred to provide wireline 9-1-1;

(2) Any costs of staffing, and training staff of, PSAPs, which costs result from the answering, routing, or proper disposition of wireless 9-1-1 calls, are incurred before or on or after the bill's effective date, and consist of such additional costs of the 9-1-1 system over and above costs incurred to provide wireline 9-1-1. (Sec. 4931.64(A) and (B).)

The costs described in (1) and (2) above may include any such costs payable pursuant to an agreement, authorized under the bill and included in a final 9-1-1 plan, providing that the State Highway Patrol or one or more PSAPs of another countywide system is the PSAP or PSAPs for the provision of enhanced wireless 9-1-1 for the county. For that purpose, the county for which wireless 9-1-1 is provided is deemed the subdivision operating the PSAP or PSAPs for purposes of the 9-1-1 law. Additionally, for the purpose of the continuing requirement that a subdivision operating a PSAP pay all of the costs of the PSAP and allocate those costs among itself and the other subdivisions served by the PSAP, the county must

pay only so much of the costs associated with the PSAP as are specified in the agreement. (Sec. 4931.41(J).)

The bill also requires that, immediately upon its receipt of a disbursement, a county disburse the amount received to those subdivisions in the county that pay the costs of any PSAP providing enhanced wireless 9-1-1. The amount disbursed to each subdivision must be disbursed in accordance with the allocation formula set forth in the final 9-1-1 plan. (Sec. 4931.63(C).) The bill states that its provisions do not affect the authority of a subdivision operating or served by a PSAP to use any other authorized revenues of the subdivision for the purpose of providing wireline or wireless 9-1-1 (sec. 4931.63(D)).

The amount disbursed by the Director of Public Safety to each county must be a proportional share based on the ratio between (1) the number of wireless telephone numbers assigned to wireless service subscribers who have billing addresses within that county and (2) the total number of wireless telephone numbers assigned to subscribers who have billing addresses within all counties that have adopted such a final plan (sec. 4931.63(B)).

For the purpose of making a disbursement to a county, the bill requires the Director, prior to the first disbursement under the bill and annually not later than July 25 thereafter, to do the following: (1) determine, for the county, the number of wireless telephone numbers assigned to wireless service subscribers who have billing addresses within each county for which a final 9-1-1 plan for enhanced wireless 9-1-1 has been adopted, and determine each county's proportionate share of the Wireless 9-1-1 Government Assistance Fund for the ensuing fiscal year for purposes of an authorized disbursement to the county under the bill, (2) estimate the ensuing fiscal year's fund balance, (3) compute the county's estimated proceeds for the ensuing fiscal year based on its proportionate share and the estimated fund balance, and (4) certify that amount to the county auditor. (Sec. 4931.63(A).)

The Wireless 9-1-1 Government Assistance Fund is in the custody of the Treasurer of State but is not part of the state treasury. The Treasurer of State must deposit or invest the moneys in the fund in accordance with Ohio Public Depository Law and any other provision of law governing public moneys of the state as defined in that law. Interest earned must be credited to the fund. Annually, the Treasurer of State must certify to the Director the amount of moneys in the Treasurer of State's custody belonging to the fund. (Sec. 4931.62(B).)

Additionally, the bill expressly includes customer premises equipment that is used to provide enhanced wireless 9-1-1 in the current exemption from statutory competitive bidding requirements that exists for customer premises equipment at a PSAP (sec. 4931.41(F)).

**Provider costs.** The other half of the remaining remittances of the wireless 9-1-1 service charge must be deposited into the Wireless 9-1-1 Service Provider Reimbursement Fund. Like the Wireless 9-1-1 Government Assistance Fund described above, the Wireless 9-1-1 Service Provider Reimbursement Fund is in the custody of the Treasurer of State but is not part of the state treasury. The Fund is subject to the same deposit, investment, disbursement, and certification requirements as the Wireless 9-1-1 Government Assistance Fund. (Sec. 4931.62(B).) Rules the Director must adopt under the bill include rules concerning the disbursement of moneys from the Wireless 9-1-1 Service Provider Reimbursement Fund (sec. 4931.67).

The bill requires the Director of Public Safety to authorize payment of a specified amount of moneys from the fund to a facilities-based wireless service provider that submits an invoice to the Director (secs. 4931.40(G) and 4931.65(A)). The invoice must contain an itemization of those eligible costs the provider incurred before or on or after the bill's effective date, either directly or through contractors, to comply with ANI and ALI requirements and for which the provider is seeking reimbursement pursuant to the invoice.

Eligible costs under the bill consist only of the costs to the provider of upgrading, purchasing, maintaining, programming, or installing any necessary data, hardware, or software, and any associated administrative costs and overhead; eligible costs exclude any profit or other return on investment (sec. 4931.65(A)). The invoice submitted to the Director must be accompanied by adequate supporting documentation of the eligible costs for which the provider is seeking reimbursement (sec. 4931.65(A)), as such documentation is specified in rules the Director must adopt under the bill (sec. 4931.67). The invoice also must be accompanied by a certification signed by an officer of the provider, or the officer's designee, as to all of the following:

(1) The total amounts of costs shown on the invoice represents such eligible costs as the provider incurred before or on or after the bill's effective date, either directly or through contractors to comply with the ANI or ALI requirements.

(2) The related wireless 9-1-1 for which reimbursement is sought is operational on the date the invoice is submitted.

(3) The total amount of costs shown on the invoice does not exceed 125% of the total amount of the wireless 9-1-1 service charges remitted by the provider to the Director in the month next preceding the month in which the invoice is submitted; or, alternatively, the provider has received prior written approval as described in "**Ohio 9-1-1 Council**," below, to submit an invoice that exceeds that cap. (Sec. 4931.65(A).)

The bill prohibits the Director from authorizing payment to a provider except upon receipt of such a certified invoice. The amount authorized must equal the total amount of costs shown on the invoice as certified unless the total amount of all certified invoices submitted to the Director in a given month exceeds the amount in the Wireless 9-1-1 Service Provider Reimbursement Fund. In that case, payment is subject to both of the following conditions:

(1) The amount authorized for reimbursement to a particular provider must be a pro rata share of the fund at the time of payment, based on the total amount of the provider's approved invoice relative to the amount of moneys in the fund.

(2) The balance of the certified invoices must be carried forward to the following month or months, as necessary, until all of the authorized reimbursements are made, with any such later payment subject to the payment of interest at the rate authorized under Ohio interest rate law (currently, 8% per year). (Sec. 4931.65(B).)

The bill requires the Director, in carrying out the reimbursement provisions described above, to ensure that no provider is reimbursed for a cost for which any provider has already been reimbursed in the case of enhanced wireless 9-1-1 technology shared by two or more wireless service providers (sec. 4931.65(C)).

Additionally, the bill provides that a certification by a provider for purposes of reimbursement is a statement for purposes of existing Ohio law establishing the criminal offense of falsification to secure benefits administered by a governmental agency or paid out of a public treasury (sec. 4931.65(D)).

### **Collection of the wireless 9-1-1 service charge**

The bill requires a subscriber to pay the wireless 9-1-1 service charge, and requires the subscriber's wireless service provider, or the reseller of wireless service to the subscriber, to collect the charge from the subscriber as part of the provider's or reseller's monthly billing process and as a separate line item on the monthly bill, designated as a charge for wireless 9-1-1. (Sec. 4931.61(A).)

The bill requires a wireless service provider or reseller of wireless services, beginning with the next calendar month following the month in which the wireless 9-1-1 service charge is first imposed, to remit the full amount of all wireless 9-1-1 service charges it collected for the next preceding calendar month to the Director of Public Safety, with the exception of charges equivalent to the authorized billing and collection fee. Under the bill, a provider or reseller may retain as such fee 2% of the total wireless 9-1-1 service charges it collects in any month. The provider or reseller must account to the Director for the amount retained.

If the provider or reseller receives a partial payment for a bill from the subscriber, the provider or reseller must apply the payment first against the amount the subscriber owes the provider or reseller and must remit to the Director such lesser amount, if any, as results from that invoice. (Sec. 4931.61(B)(1) and (2).)

The bill states that each subscriber billed for a wireless 9-1-1 service charge is liable to the state for the amount so billed. If a provider or reseller fails to bill for the charge, the provider or reseller is liable for the amount not billed. If a provider or reseller fails to remit to the Director a charge collected, the provider or reseller is liable to the state for any amount collected and not remitted. (Sec. 4931.61(C).)

### **Adjustment of the wireless 9-1-1 service charge**

The bill provides for subsequent adjustments to the wireless 9-1-1 service charge. Generally, the bill requires the Director of Public Safety to include in rules adopted under the bill rules establishing a fair and reasonable process for recommending the amount of any adjustment to the wireless 9-1-1 service charge (sec. 4931.67). Additionally, the bill requires the Director, prior to the beginning of each budget biennium, to submit a report to the General Assembly that contains a recommendation as to the amount of the charge for the next budget biennium. If the Director's recommendation is for an amount of 65¢ or less per month, the wireless 9-1-1 service charge must be the amount of the Director's recommendation, subject to adjustment by the General Assembly. If the Director's recommendation is for an amount exceeding 65¢ per month, the charge must be 65¢ per month, subject to adjustment by the General Assembly. (Sec. 4931.70(C)(1) and (2).)

The bill requires the Director to submit a recommendation to the General Assembly at least three months, but not earlier than four months, before the respective effective date of the wireless service charge for the next budget biennium (sec. 4931.70(D)).

The Director's report to the General Assembly must explain in sufficient detail the bases for the recommended amount. The amount must reflect the minimum amount necessary during the next budget biennium (1) to fully cover the PSAP costs, described in "**PSAP costs**," above, as projected for that biennium (given any balance in the Wireless 9-1-1 Government Assistance Fund to be carried over to that biennium and the projected revenues from the charge), (2) to provide for full reimbursement of eligible provider costs, as described in "**Provider costs**," above, as projected for that period (given any balance in the Wireless 9-1-1 Service Provider Reimbursement Fund to be carried over to that biennium and the projected revenues from the charge, and (3) to cover the Department's nonpayroll,

administrative costs, as described in "State administrative costs," above (given the Wireless 9-1-1 Administrative Fund balance to be carried over).

In making a recommendation on the amount of the wireless 9-1-1 service charge, the Director must consider any recommendation of the Wireless 9-1-1 Advisory Group, as described in "Wireless 9-1-1 Advisory Group," below. (Sec. 4931.70(B).)

### Ohio 9-1-1 Council

#### Composition

The bill creates the Ohio 9-1-1 Council, consisting of 11 members as follows: the Director of Public Safety, serving ex officio; a designee of the PUCO, serving ex officio and selected by the PUCO chairperson; and nine members appointed by the Governor.

In appointing the nine members, the Governor must select one representative of public safety communications officials in Ohio, one representative of administrators of 9-1-1 service in Ohio, one representative of countywide 9-1-1 systems in Ohio, three representatives of facilities-based wireline service providers in Ohio, and three representatives of wireless service providers in Ohio. For each such appointment, the Governor must consider a nominee proposed, respectively, by the Ohio Chapter of the Association of Public-Safety Communications Officials, the Ohio Chapter of the National Emergency Number Association, the County Commissioners Association of Ohio; and nominees proposed, respectively by the Ohio Telecommunications Industry Association and the Wireless Operators of Ohio (or any successor organization of any of the above such entities).

Initial appointments must be made not later than 30 days after the bill's effective date. The bill states that its provisions do not prevent the Governor from rejecting any of the nominees or requesting that a nominating entity submit the names of alternative nominees for consideration. (Sec. 4931.68(A).)

#### Duties

The bill provides that the Council's duties consist of both of the following:

(1) Arbitrating or establishing technically and competitively neutral, minimum, nonbinding technical standards and guidelines for 9-1-1 systems in Ohio, with the objective of coordinating the effectiveness and compatibility of system technologies;

(2) As necessary, submitting a report to the General Assembly containing any recommendations for improving the provision of 9-1-1 systems in Ohio or any recommendations or review of legislation before the General Assembly concerning such systems. (Sec. 4931.68(D).)

The Council must select a chairperson from among its appointed members. The PUCO designee is not a voting member of the Council. Each appointed member has one vote in all deliberations. The Director is a voting member only in the case of a tie. A majority of the voting members constitutes a quorum. (Sec. 4931.68(C).)

The bill additionally states that the Council is not an agency for purposes of Ohio statutes governing the sunseting of state agencies (sec. 4931.68(E)).

### **Conditions of service**

Appointed members of the Council serve without compensation and may not be reimbursed for expenses.

The term of office of the initial appointee to the Council representing public safety communications officials and the terms of one of the initial appointees representing separately wireline and wireless service providers expire on January 31, 2003. The terms of the initial appointee representing 9-1-1 administrators, another representing telephone companies, and another representing wireless service providers expire on January 31, 2004. The term of the initial appointee representing countywide 9-1-1 systems and the terms of the remaining, initial telephone company and wireless service provider representatives expire on January 31, 2005. Thereafter, terms of appointed members are for three years, with each term ending on the same day of the same month as the term it succeeds.

Each Council member holds office from the date of the member's appointment until the end of the term for which the member was appointed. Members may be reappointed.

Vacancies are filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed holds office as a member for the remainder of that term. A member continues in office after the expiration date of the member's term until the member's successor takes office or until a period of 60 days has elapsed, whichever occurs first. (Sec. 4931.68(B).)

## Wireless 9-1-1 Advisory Group

### Composition

The bill creates the Wireless 9-1-1 Advisory Group, consisting of seven members as follows: the three appointees to the Ohio 9-1-1 Council representing public safety communications officials, administrators of 9-1-1 service, and countywide 9-1-1 systems; the three Council appointees representing wireless service providers; and, at the Governor's designation, one of the appointees to the Council representing wireline service providers (sec. 4931.69(A)).

### Duties

The duties of the Advisory Group consist of all of the following:

(1) Making a recommendation to the Director of Public Safety regarding the amount of the wireless 9-1-1 service charge to be recommended by the Director in the required report to the General Assembly, and consulting with the Director regarding the report;

(2) Making recommendations to and consulting with the Director regarding any rules to be adopted by the Director of Public Safety to carry out the bill;

(3) Providing written approval, on the basis of good cause shown, of the submission of an invoice by a wireless service provider for reimbursement in an amount exceeding the reimbursement cap specified in the bill, as described in "Provider costs," above. (Sec. 4931.69(D).)

The Advisory Group must select a chairperson from among its members. Each member, except the representative of wireline service providers, is a voting member of the Group and has one vote in all deliberations of the Group. A majority of the voting members constitutes a quorum. (Sec. 4931.69(C).)

The bill provides that the Advisory Group is not an agency for purposes of statutory provisions governing the sunset of state agencies (sec. 4931.69(E)).

### Conditions of service

The terms of office of Advisory Group members are concurrent with their terms as appointed members of the Ohio 9-1-1 Council as prescribed under the bill. The conditions of holding office, manner of filling vacancies, and other matters concerning service by a Group member are the same as set forth for Council members under the bill. (Sec. 4931.69(B).)

### **Information requirements**

The bill requires a facilities-based wireless service provider, and each subdivision operating one or more PSAPs for a countywide system providing wireless 9-1-1, to provide the Director of Public Safety with such information as the Director requests for the purposes of carrying out the Director's duties under the bill, including, but not limited to, duties regarding the collection of the wireless 9-1-1 service charge and regarding the provision of the biennial report to the General Assembly (secs. 4931.40(G) and (M) and 4931.66(A)(1)).

A wireless service provider also must provide an official or employee of a subdivision operating a PSAP with such technical, service, and location information as requested for the purpose of providing wireless 9-1-1 (sec. 4931.66(A)(2)).

A subdivision operating one or more PSAPs of a 9-1-1 system, and a telephone company, must provide to the Ohio 9-1-1 Council such information as the Council requests for the purposes of any Council report to the General Assembly authorized under the bill (sec. 4931.66(A)(3)).

The bill requires any of the above information that consists of trade secrets under the Ohio Uniform Trade Secrets Act or of information regarding the customers, revenues, expenses, or network information of a telephone company to be kept confidential; the bill also provides that the information does not constitute a public records under Ohio public records law (sec. 4931.66(B)(1)).

The bill prohibits the Director of Public Safety, and any official, employee, agent, or representative of the Director or of a subdivision operating a PSAP, while acting or claiming to act in the capacity of the Director or such official, employee, agent, or representative, from disclosing any such information regarding a telephone company's customers, revenues, expenses, or network information. However, this prohibition does not preclude any such information from being aggregated and included in a Council report to the General Assembly or the Director's required report to the General Assembly, provided the aggregated information does not identify the number of any particular company's customers or the amount of its revenues or expenses, or identify a particular company. (Sec. 4931.66(B)(2).) A violation of the disclosure prohibition is a fourth degree misdemeanor on a first offense, and a fifth degree felony on each subsequent offense (sec. 4931.99(E)).

### **Expanded use of an existing excise tax credit**

Under current law, a telephone company generally may fund its nonrecurring charges for the telephone network used in providing 9-1-1 service, by filing for a credit against its state excise tax liability in the amount of the charges set forth in the rate schedule (tariff) the company must file under current Ohio public utility law (secs. 4931.47(C)(1) and 5727.39). The bill expressly authorizes such funding for a telephone company that is a wireline service provider, defined under the bill as a facilities-based provider of basic local exchange service by means of an interconnected wire or cable network (sec. 4931.40(K) and (J)).

The bill also expressly authorizes that 9-1-1 funding include wireless 9-1-1. Additionally, it authorizes such funding for the total nonrecurring charges for any updating or modernization of its wireline telephone network in accordance with a final 9-1-1 plan or an agreement to provide 9-1-1 service within a large municipal corporation or township, as such charges are set forth in its filed rate schedule. In that instance, the recovery may occur only upon the completion of the updating or modernization. (Secs. 4931.47(C)(1) and 5727.39.)

Current law specifies circumstances under which use of the excise tax credit is not allowed (sec. 4931.47(C)(2)). The bill adds a disallowance for any portion of the total nonrecurring charges for the telephone network used in providing wireless 9-1-1, as set forth in the filed rate schedule, to the extent that the telephone company, in otherwise providing 9-1-1 service, previously recovered those charges through the excise tax credit mechanism or to the extent the telephone company recovers or recovered those charges from a wireless service provider pursuant to a tariff or contract (sec. 4931.47(C)(2)(b)).

### **Immunity from civil liability**

Current law provides immunity from civil liability to the state, the State Highway Patrol, or a subdivision participating in a 9-1-1 system established under the Ohio 9-1-1 Law, and to any officer, agent, or employee of the state, State Highway Patrol, or participating subdivision, in the event of injuries, death, or loss to persons or property arising from any act or omission, except willful or wanton misconduct, in connection with developing, adopting, or approving any final 9-1-1 plan or otherwise bringing into operation a 9-1-1 system (sec. 4931.49(A)).

The bill extends this immunity to any independent contractor, and also extends this immunity with respect to a 9-1-1 system to any other emergency calling system provided in cooperation with state or local government (sec. 4931.49(A)(1)). Further, the existing immunity from civil liability of an individual who gives emergency instructions through a 9-1-1 system, and the principals for

which the person acts, and the existing immunity for a telephone company, or other installer, maintainer, or provider of customer premises equipment, are extended to specified activities involving any other emergency calling system provided in cooperation with state or local government (sec. 4931.49(B) and (C)).

The bill also provides immunity from civil liability to the Ohio 9-1-1 Council, the Wireless 9-1-1 Advisory Group, and any Council or Group member, for injuries, death, or loss to persons or property arising from any act or omission, except willful or wanton misconduct, in connection with the development or operation of a 9-1-1 system established under the 9-1-1 law (sec. 4931.49(A)(2)).

### **Other criminal penalties**

Current law prohibits a person from knowingly using the telephone number of a 9-1-1 system to report an emergency if the person knows no emergency exists. The bill adds a prohibition against knowingly using the telephone number of any other emergency calling system provided in cooperation with state or local government to report an emergency under the same circumstances. (Sec. 4931.49(D).) A violation is a fourth degree misdemeanor (sec. 4931.99(A)).

The bill also prohibits a person from knowingly using 9-1-1 service or any other emergency calling system provided in cooperation with state or local government for a purpose other than obtaining emergency service (sec. 4931.49(E)). A violation is punishable as a fourth degree misdemeanor on the first offense and a fifth degree felony on each subsequent offense (sec. 4931.99(E)).

The bill adds the following exceptions to the current list of exceptions to the general prohibition against disclosing or using information concerning telephone numbers, addresses, or names obtained from a 9-1-1 data base serving a PSAP: (1) for the purpose of another emergency calling system provided in cooperation with state or local government, (2) for the purpose of responding to an emergency call to an emergency service provider, and (3) in the circumstance of the inadvertent disclosure of such information due solely to technology of the wireline telephone network portion of the 9-1-1 system not allowing access to the data base to be restricted to 9-1-1-specified answering lines at PSAP (sec. 4931.49(F)).

Additionally, the bill expressly defines "services" for purposes of the Ohio Theft and Fraud Law as including wireless services as defined in the Ohio 9-1-1 Law (sec. 2913.01(E)).

**Enforcement of 9-1-1 obligations**

The bill authorizes the Attorney General, upon the Attorney General's own initiative, or any prosecutor, upon the prosecutor's initiative, to begin proceedings against a subdivision as to wireline or wireless 9-1-1 to enforce compliance with the Ohio 9-1-1 Law or a final 9-1-1 plan or agreement to provide 9-1-1 service within a large municipal corporation or township (sec. 4931.50(B)). Under current law, the authority to begin proceedings against a subdivision to enforce compliance with such law or a final plan or agreement lies with the Attorney General, upon request of the PUCO or the Attorney General's own initiative (sec. 4931.50(A)).

Additionally, the bill authorizes the Attorney General, upon the Attorney General's own initiative, or any prosecutor, upon the prosecutor's initiative, to begin enforcement proceedings against a wireless service provider as to wireless 9-1-1 (sec. 4931.50(B)).

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**HISTORY**

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